

OPINION
46-54

July 15, 1946 (OPINION)

CORPORATIONS

RE: Possess Only Powers Specifically Granted by Statute

Your letter of July 5, 1946, addressed to the attorney general's office, has been received and contents of same have been noted.

Your letter relates to chapter 10-06 of the North Dakota Revised Code of 1943, known as the "Corporate Farming Law." Section 10-0602 contains the following exception: "Except such as is reasonably necessary in the conduct of their business." A similar exception is found in section 10-0603. Your specific question is: Does this exception permit a corporation whose primary business is the processing of agricultural products to hold rural real estate and engage in the business of farming or agriculture to the extent of producing raw material only for its own use and not for direct sale to others.

You illustrate the point raised in your question by referring to corporations such as a flour mill corporation, a corporation processing flax seed, a corporation awning and operating stockyards, a corporation engaged in warehousing, grading, and marketing of potatoes, and a corporation engaged in the winning of sugar from sugar beets. The question in regard to each is, whether or not it may engage in agriculture in order to produce the grain and raw materials necessary in the principal business for which it was incorporated.

Section 10-0601 prohibits all corporations, both domestic and foreign, except as otherwise provided, from engaging in the business of farming and reads as follows:

"All corporations, both domestic and foreign, except as otherwise provided in this chapter, are hereby prohibited from engaging in the business of farming or agriculture."

Section 10-0602 reads as follows:

"All corporations, both domestic and foreign, which now own or hold rural real estate which was acquired prior to July 29, 1932, and which is used or usable for farming or agriculture, except such as is reasonably necessary in the conduct of their businesses, shall dispose of the same on or before July 29, 1942, and said corporations may farm and use said real estate for agricultural purposes until such date. The ownership limitations provided by this section shall be deemed a covenant running with the title to the land against any grantee, successor, or assignee of a corporation, which is also a corporation."

Section 10-0603 also has an exception identical with the one contained in section 10-0602. This statute has been upheld by the

Supreme Court of the State of North Dakota and by the Supreme Court of the United States and, therefore, no question can now be raised as to its validity. The purpose of the act is designed to prevent accumulations of real estate by corporations and to engage in the business of farming the same. In other words, it was the intent of the legislative assembly in enacting the corporate farming statute to prevent a tendency towards a monopoly by corporations in owning land and conducting farming operations.

Referring specifically to one of the corporations to which you have referred, for instance, a flour mill corporation. The principal business of this corporation is the processing and conversion of wheat into commercial flour, for instance, the Russell-Milling Company at Grand Forks, a corporation. This corporation was organized for the purpose of purchasing and grinding wheat into flour and other by-products. I do not believe that we can, by any logic, hold that in order to enable it to operate it may purchase farm lands and engage in active farming in order to enable it to conduct and operate the business for which it was organized and empowered by its articles of incorporation.

If such a corporation were permitted to engage in farming in order to produce raw material for the business for which it was organized there would be nothing to prevent it from expanding its farming operations and to acquire and own land for that purpose to any extent, and this certainly would be in conflict with the intent and spirit of the corporate farming statute of this state.

It may be stated as a general proposition that a corporation has only such powers as are specifically granted by statute and under its articles of incorporation based on the statutes, and if a corporation is organized for any one of the purposes stated in your five illustrations, it could not act in a double capacity by collaterally engaging in another business even if such business would promote the activities for which it was organized.

NELS G. JOHNSON

Attorney General