

**OPINION
55-114**

July 15, 1955 (OPINION)

STATE LAND DEPARTMENT

RE: Farm Loans - Meaning of "Farm Land"

This is in reply to your letter of July 13, 1955, asking whether the words "farm land" as used in section 15-0307 of the 1953 Supplement to the N.D.R.C. of 1943 in referring to limitations on farm loans refers only to cultivated land or to both cultivated and uncultivated (grazing) land.

Tracing back this statute, we find the original provision, section 172 of the 1895 N.D.R.C., authorizing such investments in "first mortgages on farm lands in the state," in practically the identical words of section 162 of the North Dakota Constitution.

The first restriction to investments in "cultivated" lands appears in subsection 2 of section 1 of chapter 128 of the 1897 S.L., amending section 172 of the 1895 Revised Code, providing in so far as here pertinent, that: "First mortgage loans shall only be made upon cultivated lands within the state * * *." This restriction was continued down to and including the date of the introduction of House Bill No. 536 of the 1953 Session, which provided in so far as here applicable that: "Farm loans secured by a first mortgage shall be made only upon cultivated land in this state, and only to persons who are actual residents of this state."

In the course of the passage of this bill, we find that the bill was amended by changing the word "cultivated" to "farm", (see Senate Journal pages 607 and 641) and as so amended the bill was duly passed, now appearing as section 15-0307 of the 1953 Supplement to the N.D.R.C. of 1943. We find the statement that: "The general rule is that a change in phraseology indicates persuasively, and raises a presumption that a departure from the old law was intended, and amendments are accordingly generally construed to effect a change, particularly where the wording of the statute is radically different." At 50 Am. Jur. 262, Statutes Section 275.

It is my opinion in view of the above history of this statute that both the 1897 and the 1953 legislature recognized a distinction between the phrase farm lands and cultivated lands and attempted to accomplish a specific result by in the first instance changing farm lands to cultivated lands, and in the second by changing cultivated lands to farm lands.

I find no decisions of the Supreme Court of this state defining "farm lands" as distinguished from "cultivated lands" that would be in any manner in point in this regard. However, a statement in the case of Porter v. Yakima County, 137 P. 466, 467, gives the following dissertation on "farm lands" which I believe at least helpful in this case:

"A tract of land devoted to the breeding, grazing, shearing, and lambing of sheep is a farm as much as a tract that is devoted to the growing of grain or to diversified farming. In short, a tract may be a farm without the aid of a plow. In common parlance the words "farm" and "ranch" are used interchangeable. In Webster's New International Dictionary a farm is defined as a "plot or tract of land devoted to the raising of domestic or other animals; as a chicken farm; in a like statute is defined as a "body of land, usually under one ownership, devoted to agriculture, either to raising of crops or pasturage or both."

In conclusion, it is my opinion that under the provisions of section 15-0307 of the 1953 Supplement to the N.D.R.C. of 1943, farm loans secured by a first mortgage may be made upon uncultivated farm lands.

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