

Official Opinion No. 80-21, Control of Agricultural Land by Non-Resident Aliens

March 21, 1980

The Honorable Homer Harding
314 Mary Lane
Pierre, South Dakota 57501

Official Opinion No. 80-21

Control of Agricultural Land by Non-Resident Aliens

Dear Senator Harding:

You have requested an official opinion from this office in regard to the following situation:

FACTS:

May a Canadian citizen, who resides in Canada, form a corporation in South Dakota in which he is the sole shareholder and has himself and another resident of South Dakota as officers and directors. May such corporation then acquire farm and ranch land in South Dakota while the Canadian citizen continues to reside in Canada. Assume that such corporation files as an authorized farm corporation under SDCL 47-9A-15 and has one class of stock and receives less than 20 percent of its revenue from rent, royalties, dividends, interest and annuities.

Based on the above facts, you have asked the following question:

QUESTION:

Does this arrangement violate any South Dakota law including SDCL 47-9A and 43-2A?

SDCL 43-2A-2 provides:

No alien, who is not a resident of this state, or some state or territory of the United States or of the District of Columbia; and no foreign government shall hereafter acquire agricultural lands, or and interest therein, exceeding one hundred sixty acres, except such as may be acquired by devise or inheritance, and such as may be held for

indebtedness. The provisions of this section do not apply to citizens, foreign governments or subjects of a foreign country whose rights to hold land are secured by treaty.

In my opinion, the answer to your question is yes. The arrangement which is contemplated in the fact situation above appears to me to conflict with the provisions of SDCL 43-2A-2 whereby the Legislature has prohibited non- resident aliens from acquiring agricultural lands, or any interest therein, except in certain specified instances. In my opinion, the scope of the broad language emphasized above from Chapter 43-2A indicates an intent on the part of the Legislature to prevent indirect as well as direct control and interest of non- resident aliens in agricultural land in South Dakota. Assuming that the facts in this case do not fall within any of the exceptions in Chapter 43-2A, I do not believe the arrangement would be lawful.

Respectfully submitted,

Mark V. Meierhenry
Attorney General