

OFFICIAL OPINION NO. 90-47, Permissible Activities of Poultry Raising Corporation

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John R. Steele
Aurora County State's Attorney
P.O. Box 577
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OFFICIAL OPINION NO. 90-47

Permissible activities of poultry raising corporation

Dear State's Attorney Steele:

You have requested an official opinion from this Office regarding the following factual situation:

FACTS:

A corporation operates a facility in Aurora County for the purpose of feeding poultry for the production of eggs. That corporation proposes to acquire some additional land in the vicinity of its present poultry operation.

Based upon the foregoing facts, you have asked the following question:

QUESTION:

May a corporation which is neither a "family farm corporation" or defined as SDCL 46-9A-14 or an "authorized small farm corporation" as defined by SDCL 46-9A-15, acquire land:

1. To provide a place for spreading chicken manure with crops to be planted on the land on alternate years or some other schedule?
2. For growing grain to be fed at the local facility to the poultry?
3. For growing grain to be sold to other persons?
4. To be held for future expansion?

IN RE QUESTION:

The heart of SDCL ch. 47-9A, the Family Farm Act, is SDCL 47-9A-3. That statute reads as follows:

No corporation shall engage in farming; nor shall any corporation, directly or indirectly, own, acquire, or otherwise obtain an interest, whether legal, beneficial or otherwise, in any title to real estate used for farming or capable of being used for farming in this state.

Standing alone, the prohibition on corporate farming in South Dakota is rather broad.

Activities that compromise "farming" are specifically set out in statute. Subdivision (2) of SDCL 47-9A-2 (the definitions statute for the Family Farm Act) reads as follows:

(2) 'Farming,' the cultivation of land for the production of agricultural crops; livestock or livestock products; poultry or poultry products; milk or dairy products; or fruit or other horticultural products. It shall not include the production of timber or forest products; nor shall it include a contract whereby a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services;

This definition, it should be noted, cites the "cultivation of land for the production of crops" and the "raising of poultry or poultry products" as separate activities.

The key principle underlying your question is articulated in SDCL 47-9A-3.2 which sets out a general prohibition against farming by corporations. Over the years, however, the State Legislature has provided various exemptions from the Family Farm Act and the operation of this principle. The Act itself creates one such exemption by stating, "The restrictions of @ 47-9A-3 do not apply to facilities acquired by a corporation for the purpose of feeding poultry for the production of meat or eggs." Thus, the referenced poultry raising operation is exempt from the general provisions of SDCL ch. 47-9A; the question is how broad an exemption is created.

In early 1987, I rendered an opinion upon several issues surrounding a proposed hog confinement facility. (Subsequently, initiated legislation was enacted specifically dealing with corporate hog feeding operations.) In a Memorandum Opinion 87-02 (unpublished), I outlined my understanding of the legislative intent behind the Family Farm Act. I said:

Reference to the language of the Act reveals that its primary focus is the restriction of corporations from 'controlling agricultural land' by using the agricultural land for cultivation. See subdivisions (1) and (2) of SDCL 47-9A-2. It seems quite clear that the Act directs itself to the use of the land as opposed to the production of products that might ordinarily be thought to be associated with farming. This description of the Act's intent is buttressed by the fact that it does not address itself to the processing of agricultural products as might be done in a dairy, cheese factory, egg market and the like. Even a brief perusal of the sections involved in this Chapter reveals that 'agricultural land' which is defined as 'land used for farming' and the cultivation of land is the primary focus of the Act. See SDCL 47-9A-1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 21, and 22.

Later in that Memorandum Opinion, I affirmed and expanded my understanding, stating, "Reference to the definition of 'farming,' . . . reveals that the word is limited to 'the cultivation of land for the production of agricultural crops, livestock or livestock products, etc. . . .'" Still later, I stated, "I believe that, following the precise words of the statute, the Legislature intended a restricted definition of farming to apply so that it would relate to the use of land for cultivating or farming and not the incidental use of land" Finally, I concluded that a corporation otherwise falling within the legal constraints of the Act could purchase land as a "buffer zone" as part of its normal operations. As an additional point, I noted throughout the opinion that SDCL 47-9A-12 permits a corporation holding agricultural land for non-farm purposes to lease the land to a family farm unit, a family farm corporation or an authorized farm corporation. Utilizing that understanding of the Act, I will address your sub-questions individually.

First, I believe it is proper for the corporation to acquire additional land as a site to dispose of chicken manure as part of its normal operations. I do not believe, however, that the poultry-raising corporation would be permitted to grow crops on that land, even if such activities took place only in alternative or even random years. Again, it would be permissible for the organization to lease the land to certain entities as outlined in SDCL 47-9A-12.

Sub-question 2 asks whether the corporation may acquire land to grow grain to be fed to the poultry. As noted above, the general prohibition against corporate farming prevents a corporation from acquiring land both for the "cultivation of land for the production of agricultural crops" and "poultry and poultry products." SDCL 47-9A-2; see SDCL 47-9A-3. A later amendment to the Family Farm Act provides that the "restrictions of SDCL 47-9A-3 do

not apply to facilities acquired by a corporation for the purpose of feeding poultry for the production of meat and eggs." SDCL 47-9A-3.2.

It is my view that the amendment allowing the acquisition of "facilities" for poultry operations allows a corporation to acquire buildings and land for such a poultry operation; thus, the prohibition against farming for "poultry and poultry operations" contained in SDCL 47-9A-2 is, to that extent, repealed. However, it is my further view that the amendment allowing the acquisition of "facilities" for poultry operations cannot be read to include a repeal of a statutory prohibition against the acquisition of land for "cultivation of land for the production of agricultural crops." SDCL 47-9A-2; 47-9A-3. The Legislature could clearly have provided for a broader exemption for poultry and poultry products which included the acquisition of land for "cultivation" see generally, SDCL 47-9A-3.1, but it did not. When the failure of the Legislature to specifically provide a broader exemption is considered in view of the maxim that exemptions from general statutes should be read narrowly, I conclude that the answer to your second question is no.

On the basis of the foregoing, my answer to sub-question 3 is that the corporation cannot cultivate its additional land to raise grain for sale outside its operation.

As noted previously, poultry raising operations are exempt from the provisions of the Act. Consequently, in answer to sub-question 4, the operation you describe would be allowed to acquire additional land for expansion of its exempted corporate purpose. While acquisition and use of additional land is subject to various restrictions in law, expansion of the principle poultry operation raises no legal red flags.

Respectfully submitted,

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ATTORNEY GENERAL

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