

OFFICIAL OPINION NO. 95-02, Family Farm Act/Cooperatives

March 30, 1995

The Honorable William J. Janklow  
Governor of South Dakota  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

**OFFICIAL OPINION NO. 95-02**

Family Farm Act/Cooperatives

Dear Governor Janklow:

You have asked my opinion concerning the following facts:

**FACTS:**

The question is whether the Family Farm Act, and specifically SDCL 47-9A-13.1, prohibits a cooperative corporation, foreign or domestic, from owning or operating a hog confinement facility. The concern settles around whether the term "corporation," defined in SDCL 47-9A-2(2) to include corporations found in the South Dakota Business Corporation Act and limited liability companies found in the South Dakota Limited Liability Company Act, includes cooperatives.

If the Family Farm Act is applicable to cooperatives, the second concern is whether SDCL 47-9A-13.1 would prohibit a foreign or domestic cooperative from owning or operating a swine farrowing facility in South Dakota. Generally, cooperative ownership of agricultural land for livestock feeding purposes is permitted under the Family Farm Act. SDCL 47-9A-11.

In SDCL 47-9A-13.1, the Legislature chose to use a conjunctive term "and," as opposed to the disjunctive term "or," when referring to the acts prohibited by that section. Thus I question whether a corporation which engages in less than all three activities (for example, only breeding and farrowing) would be prohibited from doing so by SDCL 47-9A-13.1.

Based on these facts you asked the following questions:

**QUESTIONS:**

1. Does SDCL 47-9A-13.1 prohibit a cooperative, whether foreign or domestic, from owning or operating a hog confinement facility?
2. Does SDCL 47-9A-13.1 prohibit a cooperative, whether foreign or domestic, from owning or operating a swine farrowing facility?

**IN RE QUESTION NO. 1:**

The Family Farm Act as adopted by the Legislature in 1974 recognizes that family farms are threatened by the entry of conglomerates into farming. SDCL 47-9A-1. In an attempt to protect family farms, the Legislature imposed a broad prohibition on corporate farming. SDCL 47-9A-3. Your first question is whether a cooperative falls within the prohibitions on corporate hog confinement facilities. In my opinion, cooperatives are exempt from the Act.

SDCL 47-9A-2(2) defines the term "corporation" for purposes of the Family Farm Act, as "both corporations under the South Dakota Business Corporation Act and limited liability companies under the South Dakota Limited Liability Company Act." Neither of those acts regulates cooperatives.

The "South Dakota Business Corporation Act" is defined in SDCL 47-2-70 as a distinct set of statutes found at Chapters 47-2 to 47-9, inclusive. Similarly, limited liability companies are regulated under a distinct set of laws. SDCL ch. 47-34. Neither of those chapters deal with cooperatives. Cooperatives are regulated at SDCL chapters 47-15 to 47-20, inclusive.

Resolution of your first question is a matter of statutory construction. The goal is to determine the intent of the Legislature. It is appropriate to look not only to the words used in the statute at issue, but also to examine other statutes on the subject as well. Words used in a statute are to be given their plain, ordinary and popular meaning, unless the context clearly requires otherwise. *American Rim and Brake Inc. v. Zoellner*, 382 N.W.2d 421 (S.D. 1986); *Border States Paving v. Department of Revenue*, 437 N.W.2d 872, 874 (S.D. 1989); *Whalen v. Whalen*, 490 N.W.2d 276 (S.D. 1992); SDCL 2-14-1. The presumption is that the statutes "mean what they say and that the legislators have said what they meant." *Crescent Electric Supply Co. v. Nerison*, 232 N.W.2d 76, 80 (S.D. 1975).

The Legislature has specifically described the types of corporations that fall within the purview of the Family Farm Act in SDCL 46-9A-2(2). There is no ambiguity in the language. The definition of corporation does not include those statutes regulating cooperatives.

Therefore, even though a cooperative is defined at SDCL 47-15-1(2) as a "cooperative corporation," it is not the type of corporation subject to the Family Farm Act. My answer to your first question is NO.

**IN RE QUESTION NO. 2:**

In view of my answer to your first question, it is not necessary to address your second inquiry. This office has, however, addressed the issue you raise in your second question. Enclosed is a copy of Memorandum Opinion No. 89-05. That opinion discusses SDCL 47-9A-13.1, and concludes that a corporation that engages in less than all three of the activities described--the breeding, farrowing, and raising of swine--is not a hog confinement facility. Therefore the ban of SDCL 47-9A-13.1 would not apply unless all three activities occur.

MB:HHD