

**OPINION
71-85**

July 20, 1971 (OPINION)

Mr. John Richardson

Assistant States Attorney

Mercer County

RE: Corporations - Corporate Farming - Application

This is in reply to your letter of July 14, 1971, requesting an opinion of this office as to whether or not a corporation formed for the purpose of custom combining would be in violation of section 10-06-01 of the North Dakota Century Code.

You inform us that the corporation in question would engage in the business of combining of crops for others and the question involved in whether or not this would constitute being in the business of farming or agriculture as prohibited in section 10-06-01 of the North Dakota Century Code. We assume, of course, that the primary purpose of the corporate entity you describe would be such custom combining and would not involve other phases of agriculture.

Said section 10-06-01 provides:

FARMING BY DOMESTIC AND FOREIGN CORPORATIONS PROHIBITED. 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."

We might mention in the first instance that the basic enforcement provision in chapter 10-06 of the North Dakota Century Code is an "escheat" procedure for disposal of corporate real estate. We would assume that a custom combining operation would not necessarily find ownership of real estate essential to its business. As we understand the theory of custom combining, the custom combiner harvests other crops, not its own.

We have not found a decision of the Supreme Court of this state in respect to whether such activities constitute farming within the meaning of said chapter 10-06, though we note with interest in this respect under the word "farming" in Volume 16, Perm. Ed. Words and Phrases, page 420, the following note:

"Wheat threshing is a business or industrial pursuit in and of itself, entirely separate and independent of 'farming'. North Whittier Heights Citrus Association v. National Labor Relations Board, C.C.A. 109 F. 2nd. 76, 81."

We also note, that in instances where said chapter 10-06 has been before the courts, the business of farming or agriculture concerned has in each instance involved the full business of farming, of ownership of land used or usable for agriculture not a single phase of such business such as harvesting. See for examples, Asbury

Hospital v. Cass County, 66 S. Ct. 61, 326 U. S. 207, 90 L. Ed. 6, Asbury Hospital v. Cass County, 7 N.W.2d. 438, 72 N.D. 359, Asbury Hospital v. Cass County, 16 N.W.2d. 523, 73 N.D. 469 and Loy v. Kessler, 39 N.W.2d. 260.

In this same regard your attention is called to opinion of this office of date October 19, 1962, holding in effect that farmers or other individuals may form a corporation to operate a "feedlot" without violating the provisions of said chapter 10-06 provided that the corporation will not raise any of the cattle nor the feed it will use, provided further that the corporation will purchase all of the cattle and feed it will use and process in the operation of the feedlot. (See Xerox copy enclosed.)

Your attention is also called to opinion of this office of date December 5, 1968, holding that the keeping of bees as a separate business would not be considered farming or agriculture within the prohibition of the Corporate Farming Act, assuming, of course, that the corporation would not be formed to keep bees and then attempt to "incidentally" farm the land where the bees flyways were located.

We are also enclosing copies of letters of this office with regard to somewhat similar projects where other phases of this matter and further limitations on same are applied.

In view of the other authorities cited herein, and our previous conclusions as indicated in opinions enclosed, it is thus our opinion that a custom combining corporation strictly limited to harvesting of crops of others would not be in violation of said chapter 10-06 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General