Agricultural Law Digest

An Agricultural Law Press Publication | Volume 5, No. 16 | August 19, 1994
Editor: Robert P. Achenbach, Jr. | Contributing Editor Dr. Neil E. Harl, Esq. | ISSN 1051-2780

EASING STATE CORPORATE FARMING LIMITATIONS

— by Neil E. Harl*

Between 1931 and 1982, the states of Kansas,[1] North Dakota,[2] Minnesota,[3] South Dakota,[4] Wisconsin,[5] Iowa,[6] Missouri,[7] and Oklahoma,[8] enacted statutes and Nebraska [9] adopted a constitutional provision limiting corporate operation of farms and corporate ownership of farmland.[10] Minor limits were adopted by Texas,[11] West Virginia,[12] South Carolina,[13] Arizona[14] and Kentucky.[15] A few of the states enacted limits on limited partnerships and trusts.[16]

Beginning in 1991, four states have enacted amendments of various types relaxing those limits.[17] The amendments all relate to hog confinement operation and represent one manifestation of competition for the hog business as that sector goes through a veritable economic revolution.

Oklahoma

The State of Oklahoma, with a constitutional provision going back to statehood[18] and a statutory limitation enacted in 1971,[19] amended its limitations in 1991 to allow "research and/or feeding arrangements or operations concerned with the feeding of livestock or poultry" and operations directly related to "the production of livestock or poultry for sale or use as breeding stock and/or swine and other livestock operations."[20] In 1993, limitations were added for trusts, general and limited partnerships and limited liability companies.[21]

The basic limitation enacted in 1971 provided for several limitations on farm corporations including a 35 percent limit on corporate gross receipts from sources other than farming, ranching or mineral rights, a restriction to not more than 10 shareholders (unless related by marriage or as lineal descendants) and a requirement that shareholders be individuals or estates or certain types of trusts or corporations.[22]

Missouri

Missouri in 1975 enacted legislation[23] patterned after the 1973 Minnesota law[24] classifying farm corporations as family farm corporations, authorized farm corporations and all others with the latter barred from corporate farm ownership or farmland ownership. The Missouri statute was amended in 1993 to make the restrictions inapplicable in North Central Missouri (Mercer, Putnam and Sullivan Counties) "for the production of swine or swine products."[25]

It is widely known that the Missouri limitations were eased to permit a large confinement hog operation, Premium Standard Farms, Inc., to be constructed and operated in Northern Missouri.

Kansas

The State of Kansas, in 1931, enacted the first major corporate limitations[26] on farmland ownership and farm operations, largely as a reaction to the growth and subsequent demise of the Wheat Farming Company in that state. The Kansas law was amended in 1981 to allow family farm corporations, authorized farm corporations and certain types of partnerships and trusts to own farmland and carry on farming operations.[27]

In 1991, the Kansas statute was amended to allow a corporation or limited liability company to own land used as a feedlot, poultry confinement facility or rabbit confinement facility.[28] Earlier this year, 1994, the Kansas legislature added a provision authorizing the county commissioners by resolution to permit swine production facilities in a county.[29] A petition can, however, cause the matter to be referred to a county vote.[30]

Minnesota

Minnesota has relaxed the limitations on who can form an authorized farm corporation, i.e., a corporation which owns farm land.[31] The amendment expands the definition of authorized corporation to include a corporation in which (1) 75 percent or more of the "control and financial investment" is held by "farmers residing in Minnesota;" (2) at least 51 percent of the required percentage of farmers are actively engaged in livestock production; and (3) all shareholders are natural persons, estates, or family farm corporations; the revenue from rents, royalties, dividends, interest and annuities is 20 percent or less of gross receipts; and (4) no shareholder is also a shareholder in another authorized farm corporation and the amount of land owned by both corporations does not exceed 1500 acres. The amendment also provides that an authorized corporation cannot own or have an interest in more than 1500 acres of land and must be formed for the production of livestock other than dairy cattle. The amendment defines "actively engaged in livestock production" to mean the performance of day-to-day physical labor or operations management that

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Agricultural Law Digest is published by the Agricultural Law Press, P.O. Box 5444, Madison, WI 53705, bimonthly except June and December. Annual subscription $100. Printed on recycled paper by Accurate Business Service, Madison, WI.

significantly contributes to livestock production and the livestock operation.

The issues involved

Basically, the states are struggling with three issues — (1) where hogs in this country are going to be produced, which has enormous economic implications, (2) whether large confinement operations constitute unfair competition for family-size producers and (3) the extent to which the "externalities" of air and water pollution are to be contained to the tracts of land involved in the confinement operations. Most concede the first point and agree that states adopting highly restrictive policies governing confinement facilities could reduce their chance of being a major player in hog production in the future.

The competition issue, many believe, can only be addressed meaningfully at the national level. Short of a firm national policy favoring family-size operations, support for state-level limitations is likely to erode as some states aggressively pursue investment in hog facilities.

As for water pollution, that is mostly a question of investment needed to contain runoff and seepage. Tough environmental rules are likely to require that the necessary investment be made, at least for operations above some minimum size.

The odor problems are currently the most difficult to handle. Ultimately, science is expected to reduce and possibly eliminate the problem. At the moment, states are left with a regulatory approach in terms of "buffering" of operations and limits on waste disposal practices.

In conclusion

The four states that have recently legislated on the matter are likely to be joined by other jurisdictions attempting to grapple with the issues involved.

FOOTNOTES

[1] Kan. Stat. Ann. § 17-5901.
[2] N.D. Cent. Code § 10-06-01.
[3] Minn. Stat. § 500.24.
[4] S.D. Comp. Laws §§ 47-9A-1, 47-9A-23.
[5] Wis. Stat. Ann. § 182.001.
[6] Iowa Code ch. 9H.
[7] Mo. Ann. Stat. ch. 350.
[8] Okla. Stat. tit. 18, § 951.
[9] Neb. Const. Art. XII, § 1.
[10] See generally 6 Harl, *Agricultural Law* § 51.04 (1994).
[11] Tex. Bus. Corp. Act Art. 2.01(B)(3).
[12] W. Va. Code Ann. § 11-12-75.
[13] S.C. Code § 12-43-220(d)(1).
[14] Ariz. Const. Art. 10, § 11; Ariz. Rev. Stat. Ann. § 37-240(A).
[15] Ky. Rev. Stat. Ann. § 271A.705.
[16] E.g., Kan. Stat. Ann. § 17-5901.
[17] See notes 18-29 *infra*.
[18] Okla. Const. Art. XXII, § 2 (corporation cannot own real estate outside cities and towns except that necessary and proper for carrying on business for which chartered). See Leforce v. Bullard, 454 P.2d 297 (Okla. 1969); Oklahoma Land & Cattle Co. v. State, 456 P.2d 544 (Okla. 1969).
[19] Okla. Stat. tit. 18, § 951.
[20] Okla. Stat. tit. 18, § 954.
[21] Okla. Stat. Supp. tit. 18, § 955.
[22] Okla. Stat. tit. 18, § 951.
[23] Mo. Ann. Stat. ch. 350.
[24] Minn. Stat. § 500.24.
[25] Mo. Ann. Stat. § 350.16.
[26] Kan. Stat. Ann. § 17-5901.
[27] Kan. Stat. § 17-5903.
[28] Kan. Stat. Ann. § 17-5903.
[29] Kan. Sen. Bill No. 554 (1994).
[30] *Id*.
[31] Minn. Laws 1994, Ch. 622, amending Minn. Stat. § 500.24.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

ABANDONMENT. The debtor had filed a pre-petition suit against the seller of dairy cattle to the debtor which were infected with brucellosis. The case was pending at the time the debtor filed for Chapter 7 but the debtor did not include the case in the schedule of assets. The debtor did eventually include the case in the statement of financial affairs. The trustee filed a no-asset report and the Chapter 7 case was closed. Four years later, the debtor received a $2.4 million award in the case against the cattle seller and the trustee moved to reopen the case to include the award in bankruptcy estate property. The debtor argued that the award was abandoned by the trustee under Section 554(c) by virtue of the trustee's filing of the no-asset report. The court held that the award was not abandoned under Section 554(c) because the pending suit was not included in the debtor's schedule of assets. ***In re* Winburn, 167 B.R. 673 (Bankr. N.D. Fla. 1993)**.

ELIGIBILITY. The debtors had filed a previous Chapter 11 case. A creditor had sought relief from the automatic stay but the request was denied. The debtors voluntarily dismissed the case in March 1993. The debtor refiled for Chapter 11 in May 1993 and the creditors sought dismissal of the case, arguing that the debtors were ineligible, under Section 109(g) to file another case sooner than 180 days after the dismissal of the previous case. The court held that the statute was clear that where a case is dismissed after a request for relief from the automatic stay, the debtor, if an individual or family farmer, may not file another case for 180 days. The court held that the outcome of the request for relief from the stay or the debtors' motives in filing the second case were irrelevant to the application of