

2019 SENATE AGRICULTURE COMMITTEE

SB 2200

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee Roosevelt Park Room, State Capitol

SB 2200
1/17/2019
30973

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Dan Johnston II

Explanation or reason for introduction of bill/resolution:

Relating to the definition of farming or ranching.

Minutes:

1 Attachment

Chairman Luick: Opens the hearing on SB 2200. All members present.

Senator Rich Wardner, District 37: We brought this bill before you at the request of the Secretary of State, and it was to make sure that the growing and processing of marijuana was included in this list. Because of this definition, I have been told that it held up the process of getting medical marijuana out quickly. I just want to make sure that the Committee understands that it was never the intention of the sponsor of the medical marijuana bill, to hold that up; we want that to go as quickly as possible and if we had known that last session, we would have made sure this was taken care of. Therefore, Chairman Luick and members of the Committee, I am just here to open the hearing up, we someone from the Secretary of State's office who will go through the details of what happened and give you a background of why this is important. So with that, my colleague is going to make a couple of comments.

Senator Heckamen, District 23: I am here to join with the Senate Majority Leader in support of this bill. What he said was right. There have been a number of hiccups along the road for medical marijuana; it was never our intention last Session to let any of that happen. Because of the piece of legislation before you, the Secretary of State will give an explanation.

Senator Klein: I know that you were involved a bit last time through the entire administrative rules process. legislative intent come up a number of times in front of the Committees, that this did not fall under the corporate farm law; so I don't think that we should suggest at any time that we weren't clear or that we tried to hinder the process, because that conversation came up quite a bit. So once again, what we're doing here is clarifying the clarification.

Senator Heckamen: We do that quite often Senator.

Senator Hogan: This doesn't in any way affect industrial hemp, does it?

Senator Heckamen: I would leave somebody else to answer that; but it is only addressing medical marijuana Senator.

Barbara Siegel, Director of Business Services on behalf of Secretary of State Al Jaeger: See attachment #1 for testimony in support of SB 2200.

Chairman Luick: Ok so let say that we are now taking this away from the identification of farming and ranching: what happens if federal law says that now medical marijuana is accepted across the USA and this comes under a farm program? Now where are they? Because now they've already basically gone under the guise of a corporate facility, now what going to happen?

Barbara Siegel: I absolutely understand what you're saying and I guess it would depend on what that legalization would look like and then the State interpretation of how broad that legalization would be. Personally I've been following some of the recent farm bills in that it has some CBD oil provisions in it. So I absolutely understand what you're saying, but in conversations with the Attorney General's office on some of the CBD oil issues, I also understand that just because something federally may be passed that the state is going to have to take a look at it as well.

Vice Chair Myrdal: What if our corporate farming laws change?

Barbara Siegel: I guess it depends on what the changes are, I think, however, it is imperative that we clarify at least this.

Senator Larsen: Would it be too much of a problem to add vegetables into that? Because I would imagine there would be a bigger interest in that stuff.

Barbara Siegel: I don't think I could answer that.

Al Jaeger, Secretary of State: We identified this problem the day after the election, because we were already receiving filings. The only intent of this bill is to excluded the growing of medical marijuana. Senator Larsen, what you're bringing up might have to do with what falls under horticulture, because that is where the problem lies. That's probably for a whole other discussion and a whole other bill. The only intent of this is to make sure that this particular application does not fall horticulture. As Senator Wardner alluded to if you look at the date of the opinion by 2018 we really had stuff piled up.

Senator Klein: Do we need an emergency clause on this?

Al Jaeger: We really won't have a need for one.

Chris Nulden: I believe that the intention of this bill is goodhearted, I do, I think people are trying to fix a problem. Just understand that I've read all the definitions and all of the century codes, and I struggle with, with these definitions. Because they use a word that I am not comfortable using and I would just like to see this plant identified as what it is; it is cannabis. We are making laws on it, we are trying to define it, I just feel at some level we should be using the proper name. We do not have a medicinal jazz cabbage program, we have a medicinal marijuana program, I would prefer it to be a medicinal cannabis program. Same thing with industrial cannabis. I'll keep my comments short, I do have relevant information, I can get my name and name down on the sheet. If you have any questions just call me. I'm just concerned because right now in California there are many farmers that are fighting off huge corporate interests to get into what they are doing very legally now and that is farming. They have actually banded together now and formed cooperatives to try to stop corporate interests from coming in and buying all their land and taking all their industry. I know that a lot of people don't view California very good way; I actually met a gentleman who said that he wishes

California would just fall into the ocean and all die. I do not agree with that. I don't think that 17million people should just die.

Chairman Luick: If you would just leave your contact info, I will make sure that the Committee gets it.

No Further Testimony.

Chairman Luick: Any further discussion committee?

Senator Klein: I feel that the term we are using certainly falls within all the discussion and all the language in current code. I do not feel it would be beneficial to start using a different terminology now.

Senator Klein: Moved a Do Pass.

Senator Larsen: Seconded.

A Roll Call is Taken: 6yea, 0nay, 0absent.

Motion Carries.

Senator Osland will carry the bill.

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2200**

Senate Agriculture Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Klein Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Senator Luick-Chairman	X		Senator Hogan	X	
Senator Myrdal- Vice Chair	X				
Senator Klein	X				
Senator Larsen	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Osland

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2200: Agriculture Committee (Sen. Luick, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2200 was placed on the
Eleventh order on the calendar.

2019 HOUSE AGRICULTURE

SB 2200

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2200
3/7/2019
Job #33387

☐ Subcommittee
☐ Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to the definition of farming or ranching

Minutes:

Attachment #1

Al Jaeger, Secretary of State: Introduced Barbara Siegel.

Barbara Siegel, Director of Business Services, Secretary of State: (Attachment #1)

(5:55)

Representative Satrom: What happens if they legalize recreational marijuana?

Barbara Siegel: When we are talking recreational, this definition doesn't go there. It would only be excluded for medical marijuana. If a state law was passed for recreational, we may have an issue.

Representative Skroch: Could we have a grower that is not corporate that would still qualify?

Barbara Siegel: Now for growing medical marijuana the only entity types accepted are corporations and Limited Liability Companies.

Opposition: None

Representative Headland: Moved Do Pass

Representative Skroch: Seconded the motion

A Roll Call vote was taken: Yes 10, No 2, Absent 2.

Do Pass carries.

Representative Skroch will carry the bill.

Date: 3/7/2019

Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2200**

House **Agriculture**

Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation

- ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Headland Seconded By Rep. Skroch

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Ruth Buffalo	X	
Vice Chairman Wayne Trottier		X	Rep. Gretchen Dobervich		X
Rep. Jake Blum	X				
Rep. Jay Fisher	X				
Rep. Craig Headland	X				
Rep. Dwight Kiefert	X				
Rep. Aaron McWilliams	X				
Rep. David Richter	X				
Rep. Bernie Satrom	AB				
Rep. Cynthia Schreiber Beck	AB				
Rep. Kathy Skroch	X				
Rep. Bill Tveit	X				

Total **Yes** 10 **No** 2

Absent 2

Floor Assignment Representative Skroch

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2200: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **DO PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). SB 2200 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2200

ALVIN A. JAEGER
 SECRETARY OF STATE
 STATE OF NORTH DAKOTA
 600 E BOULEVARD AVENUE DEPT 108
 BISMARCK ND 58505-0500



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SECRETARY OF STATE

January 17, 2019

TO: Senator Larry Luick and Members of the Senate Agriculture Committee

FR: Barbara Siegel, Director of Business Services on behalf of Secretary of State Al Jaeger

RE: SB 2200 – Excluding medical marijuana from the definition of farming or ranching

Chapter 10-06.1 of the Century Code pertains to corporate or limited liability company farming. In N.D.C.C. § 10-06.1-02, corporations and limited liability companies are prohibited from engaging in the business of farming or ranching. That is, unless they comply with N.D.C.C. § 10-06.1-12, which includes requirements relating to the number and kinship of members and shareholders; residency on, or operation of, the farm or ranch; and percent of income derived from farming or ranching.

The definition of farming and ranching in the Century Code is as follow:

10-06.1-01. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Farming or ranching" means cultivating land for production of agricultural crops or livestock, or the raising or producing of livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. It does not include production of timber or forest products, nor does it include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services. (underlined emphasis added)

The day after the election and before the medical marijuana act (SB 2344) was adopted by the 2017 Legislative Assembly, the Secretary of State began receiving filings from corporations and limited liability companies that indicated intent to be a manufacturing facility, i.e., involved in the growing and processing of marijuana.

There was, however, uncertainty whether these filings were subject to provisions of Chapter 10-06.1.

Some people believed the growing of marijuana fell under the definition of being a "horticultural" product as listed in N.D.C.C. § 10-06.1-01(1). Others believed that it may not have been the intent of the legislature in 2017 to have the growing and processing of marijuana subject to the corporate and limited liability company provisions. For example, SB 2344 excluded the growing and processing of medical marijuana related to taxation from the definition of "farmer" in N.D.C.C. § 57-02-08 (15)(b)(2) (2017 Session Laws, Chapter 171, Section 4, see attachment). However, a similar exclusion was not made in Chapter 10-06.1.

After extensive discussions among the Office of Attorney General, the Department of Health, and the Secretary of State's office, a legal opinion was requested from the Attorney General (attached AG Opinion 2018-L-01, April 3, 2018). The opinion states that a medical marijuana manufacturing facility is not presumed to be subject to Chapter 10-06.1 and that it is up to each entity to review the legal restrictions within the Chapter. Based on it, the filings were processed by the Secretary of State.

With this bill, on lines 9 and 10, it is made clear that the growing or processing of marijuana is not subject to the farming/ranching prohibitions in Chapter 10-06.1 as it relates to the medical marijuana act in Chapter 19-24.1.

1-17-19 #1

⁸⁰ **SECTION 4. AMENDMENT.** Paragraph 2 of subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

- (2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, with the exception of marijuana grown under chapter 19-24.1; poultry; livestock; or dairy farming in such products' unmanufactured state and has received annual net income from farming activities which is fifty percent or more of annual net income, including net income of a spouse if married, during any of the three preceding calendar years. For purposes of this paragraph, "farmer" includes a:
- (a) "Beginning farmer", which means an individual who has begun occupancy and operation of a farm within the three preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the three preceding calendar years.
- (b) "Retired farmer", which means an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.
- (c) "Surviving spouse of a farmer", which means the surviving spouse of an individual who is deceased, who at the time of death owned and occupied as a farmer the residence in which the surviving spouse lives and for which the exemption is claimed. The exemption under this subparagraph expires at the end of the fifth taxable year after the taxable year of death of an individual who at the time of death was an active farmer. The exemption under this subparagraph applies for as long as the residence is continuously occupied by the surviving spouse of an individual who at the time of death was a retired farmer.

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**LETTER OPINION
2018-L-01**

April 3, 2018

Ms. Mylynn Tufte
State Health Officer
North Dakota Department of Health
600 East Boulevard Avenue, Dept. 301
Bismarck, ND 58505-0200

Dear Ms. Tufte:

Thank you for your letter asking whether corporations or limited liability companies that apply with the Department of Health to obtain a license to produce and process medical marijuana must comply with North Dakota's corporate farming law.

In 2017, the 65th Legislative Assembly enacted Senate Bill 2344, which authorized the establishment and implementation of a medical marijuana program.¹ Pursuant to this legislation, a person may not process or produce or dispense usable marijuana for medical purposes in this state unless the person is registered as a compassion center.² An applicant must submit, among other things, articles of incorporation or articles of organization to be a registered compassion center.³

The North Dakota Department of Health is authorized to register no more than two compassion centers to be "manufacturing facilities" authorized to produce, process, and sell usable medical marijuana to a dispensary.⁴ The two authorized compassion centers will not be allowed to possess more than 1,000 plants, regardless of the stage of growth.⁵ They must have strict security and safety measures to prevent theft of medical marijuana.⁶

¹ N.D.C.C. § 19-24.1-02.

² N.D.C.C. § 19-24.1-12(1).

³ N.D.C.C. § 19-24.1-14(1)(b).

⁴ N.D.C.C. § 19-24.1-01(21).

⁵ N.D.C.C. § 19-24.1-24. An additional fifty plants may be possessed exclusively for department-authorized research and development.

⁶ N.D.C.C. § 19-24.1-25.

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LETTER OPINION 2018-L-01

April 3, 2018

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The production of medical marijuana is, by definition, the cultivation of a medicinal plant; it is within the plain, ordinary, and commonly understood meaning of what constitutes the practice of horticulture.⁷ Although the production of medical marijuana was not described or defined as "farming" in N.D.C.C. ch. 19-24.1, the business of "[f]arming . . . means . . . producing of . . . horticultural products" under the corporate farming law.⁸

The Legislature, however, specifically exempted marijuana grown under N.D.C.C. ch. 19-24.1 from the definition of "farmer" in N.D.C.C. § 57-02-08, the tax exemption for all farm structures and improvements located on agricultural lands.⁹ The Legislature did not exempt marijuana grown under N.D.C.C. ch. 19-24.1 from the definition of "farming or ranching" in N.D.C.C. § 10-06.1-01(1).

It is the understanding of this office that the Secretary of State's office is reluctant to register businesses that intend to apply for a compassion center license because the statutory definition of farming in the corporate farming law includes horticulture. Thus, although the Legislature has clearly determined the production of medical marijuana is lawful, the application of the corporate farming law could be construed to prohibit the otherwise lawful creation of a corporate entity as a compassion center to produce medical marijuana.

ANALYSIS

We construe statutes to ascertain the intent of the Legislature.¹⁰ Statutes must be considered as a whole and in relation to other provisions, with each provision harmonized, if possible, to avoid conflicts.¹¹ When read together, the provisions of N.D.C.C. ch. 10-06.1 do not preclude the Secretary of State from registering a corporation or limited liability company as required in N.D.C.C. ch. 19-24.1. The Legislature directed prospective compassion center applicants to provide articles of incorporation or articles of organization to the Department of Health as part of the extensive application process.¹² If the mere possibility of a corporate farming implication causes the applicants to be denied paperwork necessary to submit an application, it would create an irreconcilable conflict because the intent of N.D.C.C. ch. 19-24.1 could not be carried out.

⁷ N.D.C.C. § 19-24.1-01(34).

⁸ N.D.C.C. § 10-06.1-01(1).

⁹ N.D.C.C. § 57-02-08(15)(b)(2).

¹⁰ *Cont'l Cas. Co. v. Kinsey*, 499 N.W.2d 574 (N.D. 1993); *Dundee Mut. Ins. Co. v. Balvitsch*, 540 N.W.2d 609 (N.D. 1995).

¹¹ *Cont'l Cas. Co. v. Kinsey*, 499 N.W.2d 574 (N.D. 1993); *Dundee Mut. Ins. Co. v. Balvitsch*, 540 N.W.2d 609 (N.D. 1995).

¹² N.D.C.C. § 19-24.1-14.

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April 3, 2018

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There is nothing in the corporate farming law that prohibits the registration of an entity that lists "compassion center" as its business purpose because there is no presumption that the corporate farming law applies. The determination of whether the corporate farming law applies is a fact determination made by this office.¹³ The only obligation the Secretary of State's office has is to notify this office and the Governor of any non-compliance with the requirements of the corporate farming law it finds in an annual report of a corporation or limited liability company.¹⁴

This is not to say that corporations or limited liability companies that apply for a compassion center license should not be aware of the corporate farming law. The corporate farming law provides that:

All corporations and limited liability companies, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching *and* from engaging in the business of farming or ranching.¹⁵

The manifest purpose of the corporate farming law is to prevent certain corporations from directly or indirectly engaging in the business of farming or ranching by limiting their ownership of farmland.¹⁶ Thus, any corporation or limited liability company must be cognizant of its land ownership because if it owns or leases farmland or ranchland, corporate farming may apply.

In past opinions this office determined that certain enterprises did not constitute corporate farming. Some examples include a golf course,¹⁷ a feed lot,¹⁸ a beekeeping business,¹⁹ and a greenhouse type operation.²⁰

¹³ N.D.C.C. § 10-06.1-23.

¹⁴ N.D.C.C. § 10-06.1-21. *See also* N.D.C.C. § 10-06.1-24 (requiring county recorders to notify the Attorney General if farmland or ranchland is conveyed to a corporation or limited liability company); and N.D.C.C. § 10-06.1-22 (requiring Tax Commissioner to select random tax return filed by corporations or limited liability companies).

¹⁵ N.D.C.C. § 10-06.1-02 (emphasis added).

¹⁶ *Asbury Hosp. v. Cass Cnty.*, 326 U.S. 207, 214 (1945) (this legislation demonstrates "a state policy against the concentration of farming lands in corporate ownership."). *See also* N.D.A.G. 46-54 (July 15, 1946) ("it was the intent of the legislative assembly . . . to prevent a tendency towards a monopoly by corporations in owning land and conducting farming operations."); N.D.A.G. 46-50 ("the purpose of the legislature . . . was to encourage individual citizens in acquiring and improving farms.").

¹⁷ N.D.A.G. 2001-L-38.

¹⁸ N.D.A.G. 60-39.

¹⁹ N.D.A.G. 68-1.

²⁰ N.D.A.G. letter to Van Heuvelen (Aug. 15, 1977).

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April 3, 2018

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Although medical marijuana will be grown using horticultural techniques, there is nothing in the medical marijuana law that requires a compassion center to be located on farmland or ranchland.²¹ It is entirely possible that a compassion center will be located in an urban or industrial area. The law requires that medical marijuana be produced in an enclosed, locked facility that does not allow the plants to be visible from the street or other public areas.²² The Department of Health must consider the suitability of the proposed compassion center location, including compliance with any local zoning laws, and the geographic convenience to access compassion centers for registered qualifying patients and registered designated caregivers from throughout the state.²³

The corporate farming law does not regulate land use or limit and control commercial and residential development; those purposes are addressed by laws governing local zoning. Interpretation of sections within N.D.C.C. ch. 10-06.1 should be limited to the purpose of preventing corporate farming, and not expanded to address unrelated issues that are resolved under other statutes.²⁴

It is my opinion that an entity applying to be a compassion center under N.D.C.C. ch. 19-24.1 is not presumed to be subject to the corporate farming law and it is up to each entity to review the legal restrictions within N.D.C.C. ch. 10-06.1.

Sincerely,

Wayne Stenehjem
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.²⁵

²¹ See N.D.C.C. § 19-24.1-14.

²² N.D.C.C. § 19-24.1-14(1)(e).

²³ N.D.C.C. § 19-24.1-14(2)(a).

²⁴ See N.D.A.G. 2001-L-38.

²⁵ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

#1
SB 2200

PHONE (701) 328-2900
EMAIL sos@nd.gov

March 7, 2019

TO: Representative Dennis Johnson and Members of the House Agriculture Committee

FR: Barbara Siegel, Director of Business Services on behalf of Secretary of State Al Jaeger

RE: SB 2200 – Excluding medical marijuana from the definition of farming or ranching

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#1
SB2200
3/2/19

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#1
SB2200
3/2/19

**LETTER OPINION
2018-L-01**

April 3, 2018

Ms. Mylynn Tufte
State Health Officer
North Dakota Department of Health
600 East Boulevard Avenue, Dept. 301
Bismarck, ND 58505-0200

Dear Ms. Tufte:

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¹ N.D.C.C. § 19-24.1-02.

² N.D.C.C. § 19-24.1-12(1).

³ N.D.C.C. § 19-24.1-14(1)(b).

⁴ N.D.C.C. § 19-24.1-01(21).

⁵ N.D.C.C. § 19-24.1-24. An additional fifty plants may be possessed exclusively for department-authorized research and development.

⁶ N.D.C.C. § 19-24.1-25.

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The production of medical marijuana is, by definition, the cultivation of a medicinal plant; it is within the plain, ordinary, and commonly understood meaning of what constitutes the practice of horticulture.⁷ Although the production of medical marijuana was not described or defined as "farming" in N.D.C.C. ch. 19-24.1, the business of "[f]arming . . . means . . . producing of . . . horticultural products" under the corporate farming law.⁸

The Legislature, however, specifically exempted marijuana grown under N.D.C.C. ch. 19-24.1 from the definition of "farmer" in N.D.C.C. § 57-02-08, the tax exemption for all farm structures and improvements located on agricultural lands.⁹ The Legislature did not exempt marijuana grown under N.D.C.C. ch. 19-24.1 from the definition of "farming or ranching" in N.D.C.C. § 10-06.1-01(1).

It is the understanding of this office that the Secretary of State's office is reluctant to register businesses that intend to apply for a compassion center license because the statutory definition of farming in the corporate farming law includes horticulture. Thus, although the Legislature has clearly determined the production of medical marijuana is lawful, the application of the corporate farming law could be construed to prohibit the otherwise lawful creation of a corporate entity as a compassion center to produce medical marijuana.

ANALYSIS

We construe statutes to ascertain the intent of the Legislature.¹⁰ Statutes must be considered as a whole and in relation to other provisions, with each provision harmonized, if possible, to avoid conflicts.¹¹ When read together, the provisions of N.D.C.C. ch. 10-06.1 do not preclude the Secretary of State from registering a corporation or limited liability company as required in N.D.C.C. ch. 19-24.1. The Legislature directed prospective compassion center applicants to provide articles of incorporation or articles of organization to the Department of Health as part of the extensive application process.¹² If the mere possibility of a corporate farming implication causes the applicants to be denied paperwork necessary to submit an application, it would create an irreconcilable conflict because the intent of N.D.C.C. ch. 19-24.1 could not be carried out.

⁷ N.D.C.C. § 19-24.1-01(34).

⁸ N.D.C.C. § 10-06.1-01(1).

⁹ N.D.C.C. § 57-02-08(15)(b)(2).

¹⁰ *Cont'l Cas. Co. v. Kinsey*, 499 N.W.2d 574 (N.D. 1993); *Dundee Mut. Ins. Co. v. Balvitsch*, 540 N.W.2d 609 (N.D. 1995).

¹¹ *Cont'l Cas. Co. v. Kinsey*, 499 N.W.2d 574 (N.D. 1993); *Dundee Mut. Ins. Co. v. Balvitsch*, 540 N.W.2d 609 (N.D. 1995).

¹² N.D.C.C. § 19-24.1-14.

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There is nothing in the corporate farming law that prohibits the registration of an entity that lists "compassion center" as its business purpose because there is no presumption that the corporate farming law applies. The determination of whether the corporate farming law applies is a fact determination made by this office.¹³ The only obligation the Secretary of State's office has is to notify this office and the Governor of any non-compliance with the requirements of the corporate farming law it finds in an annual report of a corporation or limited liability company.¹⁴

This is not to say that corporations or limited liability companies that apply for a compassion center license should not be aware of the corporate farming law. The corporate farming law provides that:

All corporations and limited liability companies, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching *and* from engaging in the business of farming or ranching.¹⁵

The manifest purpose of the corporate farming law is to prevent certain corporations from directly or indirectly engaging in the business of farming or ranching by limiting their ownership of farmland.¹⁶ Thus, any corporation or limited liability company must be cognizant of its land ownership because if it owns or leases farmland or ranchland, corporate farming may apply.

In past opinions this office determined that certain enterprises did not constitute corporate farming. Some examples include a golf course,¹⁷ a feed lot,¹⁸ a beekeeping business,¹⁹ and a greenhouse type operation.²⁰

¹³ N.D.C.C. § 10-06.1-23.

¹⁴ N.D.C.C. § 10-06.1-21. *See also* N.D.C.C. § 10-06.1-24 (requiring county recorders to notify the Attorney General if farmland or ranchland is conveyed to a corporation or limited liability company); and N.D.C.C. § 10-06.1-22 (requiring Tax Commissioner to select random tax return filed by corporations or limited liability companies).

¹⁵ N.D.C.C. § 10-06.1-02 (emphasis added).

¹⁶ *Asbury Hosp. v. Cass Cnty.*, 326 U.S. 207, 214 (1945) (this legislation demonstrates "a state policy against the concentration of farming lands in corporate ownership."). *See also* N.D.A.G. 46-54 (July 15, 1946) ("it was the intent of the legislative assembly . . . to prevent a tendency towards a monopoly by corporations in owning land and conducting farming operations."); N.D.A.G. 46-50 ("the purpose of the legislature . . . was to encourage individual citizens in acquiring and improving farms.").

¹⁷ N.D.A.G. 2001-L-38.

¹⁸ N.D.A.G. 60-39.

¹⁹ N.D.A.G. 68-1.

²⁰ N.D.A.G. letter to Van Heuvelen (Aug. 15, 1977).

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Although medical marijuana will be grown using horticultural techniques, there is nothing in the medical marijuana law that requires a compassion center to be located on farmland or ranchland.²¹ It is entirely possible that a compassion center will be located in an urban or industrial area. The law requires that medical marijuana be produced in an enclosed, locked facility that does not allow the plants to be visible from the street or other public areas.²² The Department of Health must consider the suitability of the proposed compassion center location, including compliance with any local zoning laws, and the geographic convenience to access compassion centers for registered qualifying patients and registered designated caregivers from throughout the state.²³

The corporate farming law does not regulate land use or limit and control commercial and residential development; those purposes are addressed by laws governing local zoning. Interpretation of sections within N.D.C.C. ch. 10-06.1 should be limited to the purpose of preventing corporate farming, and not expanded to address unrelated issues that are resolved under other statutes.²⁴

It is my opinion that an entity applying to be a compassion center under N.D.C.C. ch. 19-24.1 is not presumed to be subject to the corporate farming law and it is up to each entity to review the legal restrictions within N.D.C.C. ch. 10-06.1.

Sincerely,

Wayne Stenehjem
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.²⁵

²¹ See N.D.C.C. § 19-24.1-14.

²² N.D.C.C. § 19-24.1-14(1)(e).

²³ N.D.C.C. § 19-24.1-14(2)(a).

²⁴ See N.D.A.G. 2001-L-38.

²⁵ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).