

North Dakota Stockmen's Association
Testimony to the House Agriculture Committee on HB 1371
Jan. 27, 2023

Good morning, Chairman Thomas and members of the House Agriculture Committee. My name is Julie Ellingson and I represent the North Dakota Stockmen's Association, a 93-year-old beef cattle trade organization comprised of more than 3,100 cattle-ranching members.

The North Dakota Stockmen's Association appears in support of HB 1371, which provides some exemptions to North Dakota's anti-corporate farming law, allowing those in the animal agriculture space, including cattle feeders and finishers, to raise capital and manage risk with business tools available to entrepreneurs in other industries.

Interestingly, cattle feeding and its application under the anti-corporate farming law were the topics of two separate North Dakota Attorney General opinions – one in May 1960 and another in October 1962. In each of those opinions, the AG ruled that individuals may form a corporation to operate a feedlot without violating the provisions of Chapter 10-06, provided that the corporation does not raise any of the cattle or feed it will use and, instead, purchases all of its cattle and feed. HB 1371 simply codifies those determinations to make it clear that these allowances are available tools for those wishing to pursue that option.

As the committee dives into this bill, we would like to work with you on some minor language changes in the definitions of cattle backgrounding and finishing feedlot. Our aim is not to change the intent, but, instead, replace ambiguous terms such as “commercial” and “market” that have caused confusion in other areas of law.

Thank you for the opportunity to testify. We ask for your favorable consideration of this bill.

**OPINION
60-39**

May 17, 1960 (OPINION)

CORPORATIONS

RE: Corporate Farming Law - Corporate Feedlot

This in reply to your request for the further clarification on the question whether a corporation would be barred or prohibited from operating a "feedlot" under chapter 10-06 of the N.D.R.C. of 1943.

Basic facts are as follows: A group of local people contemplate an incorporated business venture for the purpose of owning and operating a feedlot. The principal operation would consist of buying range livestock for the purpose of feeding, upgrading, and then reselling in a few weeks or months. You further submit the additional information that the corporation would not raise any cattle or feed itself. All the feed would be purchased instead of raised by the corporation.

The term "farming" is not quite as broad as the term "agriculture." The term "agriculture" embraces in its general meaning many items, phases, and facets of the science of cultivating the ground, planting of seeds, raising and harvesting of crops, the raising, feeding and management of livestock, tillage, husbandry or farming. The term as used in chapter 10-06 I do not believe is used in its broadest sense. The view is supported when we consider the intent and purpose of said chapter.

The original act, an initiated measure, was entitled, "An act prohibiting corporation farming and relating to corporations acquiring and holding real estate not necessary in the operation of their business."

It is observed that the title refers to prohibiting corporation farming. Considering the title and the body of the act, it strongly appears that the intent and purpose of the act was to prohibit corporation farming. The term "agriculture" as used in the text of the act adds little if anything to the term "farming." The term "agriculture" apparently was used in its restricted sense.

The body of the act, chapter 10-06, except for section 10-0601 is devoted almost entirely to the conditions and provisions under which a corporation may acquire and hold farmland. It also sets out the length of time such land can be held and how the land must be disposed of after a certain time. This strongly supports the aforesaid intent and purpose of the act.

The operation of a feedlot is not farming in the common accepted meaning. The operators of the feedlot in question would not be raising livestock; neither would they be

OPINION
62-69

October 19, 1962 (OPINION)

CORPORATIONS

RE: Operation of Feed Lot as Corporation - Limitations

Your office has advised that you are confronted with a problem in filing articles of incorporation under chapter 10-06 of the North Dakota Century Code. The question which has arisen is whether or not a farmer in general agricultural pursuit may establish a feed lot for cattle as a separate corporate entity apart from his general cattle raising and grain farming activities. The question also has arisen on the operations of a similar nature, such as hog feeding, turkey raising, broiler operations and dairying. Your facts do not disclose how these other operations are to be conducted.

The original act, an initiated measure, was entitled "An act prohibiting corporation farming and related corporations acquiring and holding real estate not necessarily in the operation of their business." In examining the provisions of chapter 10-06, we come to the conclusion that it was primarily designed to prevent corporations from acquiring large tracts of farmland and farming same. It also appears from the title and body of the act that the intent and purpose of the act was to prohibit corporation farming.

The term "agriculture" is a broad comprehensive term which embraces, in its general meaning, many phases and operations of the science of cultivating the ground, planting seeds, raising and harvesting crops, raising feed and managing livestock. It also embraces tillage of the soil, husbandry and farming. The term "agriculture" is used in chapter 10-06 but it is in connection with the term "farming." This is indicative that the term is used as synonymous with the term "farming" and that it is not used in its broad general sense. The term "farming" is not as broad as the term "agriculture." Farming is a phase of agricultural pursuit.

The court in TOWN OF LINCOLN v. MURPHY, 40 N.E.2d., 453, held that premises devoted entirely to raising nearly 2100 hogs for which no food was purchased thereon and not equipped with farming implements or buildings for housing of livestock did not constitute a farm within the town zoning bylaws. The court observed that the premises were devoted entirely to the raising of hogs and that the food furnished to the hogs was not produced on the premises.

On May 17, 1960, this office issued an opinion to the Securities Commissioner on the question whether or not "feed lot" operations by a corporation were prohibited under chapter 10-06 of the North Dakota Century Code. In this opinion, it was held that where the feed lot operators (the corporation) bought the cattle and bought the feed and merely put the two together, it was not in violation of chapter 10-06. The crux of the opinion was that where the corporation did not raise the cattle or the feed, it was not, in the true sense,