

## LEGISLATIVE HISTORY OF THE COAL MINING EXCEPTION TO THE CORPORATE FARMING LAW

This memorandum discusses the legislative history of the coal mining exception to the corporate farming law. North Dakota Century Code (NDCC) Section 10-06.1-06 provides that “[a] corporation or limited liability company not engaged in the business of farming or ranching may own or lease lands used for farming or ranching, when the business of such a corporation or limited liability company is the conducting of surface coal mining operations or related energy conversion, and when the owning or leasing of lands used for farming or ranching is reasonably necessary in the conduct of the business of surface coal mining or related energy conversion. When the necessity for owning or leasing of lands used for farming or ranching no longer exists, the exception provided in this section ceases and the corporation or limited liability company owning or leasing such lands is subject to this chapter [10-06.1].”

Representative Vander Vorst, a sponsor of the bill creating this section, testified before the House Agriculture Committee that the “bill was introduced at the request of the Lignite Council. After passing the farm corporation bill in the 1981 session, the Attorney General advised all the coal companies in the fall of 1982 that they were in violation of the Corporation Farming Act. This bill would make them an exception to this law.” Mr. John Dwyer, President of the North Dakota Lignite Council, testified that “[t]his bill is to take care of the problem that developed after the 1981 session. The purpose of this bill is to take care of this problem. They have no intention of using the farm land to farm. During their reclamation process of the land they have been using, they have a bond for 10 years. During that time they restore the land and if they are in violation of any laws, their permit would be taken away.” Mr. Randolph Nodland, Dunn Center, testified that “the coal companies are leasing out land that has never been mined. He said the language should be made clearer about divesting of the land.” Representative Vander Vorst again testified before the Senate Agriculture Committee and stated that “this bill was introduced because there were some problems with legislation passed in 1981. The Attorney General advised coal companies in the fall of 1982 that they were in “technical violation” of the Corporate Farming Act passed in 1981. Prior to that time, there was an exception in ND’s law that allowed businesses including coal companies to own or lease farm land. That exception was accidentally omitted in the 1981 legislation. HB 1563 must pass if coal

companies [sic] are to reclaim land and lease land back to farmers.” Mr. Dwyer stated that “HB 1563 simply remedies the technical violation.”

The section of law containing the exception allowing corporations to own rural real estate used or usable for farming or agriculture that is reasonably necessary in the conduct of their business was repealed in 1981 as a part of a revision of the corporate farming or ranching statutes. Section 3 of the initiated measure approved on June 29, 1932, prohibiting corporation farming provided “[t]hat any corporation, either domestic or foreign, that acquires real estate by judicial process or operation of law hereafter, except such as is reasonably necessary in the conduct of its business, shall dispose of such real estate within ten years from the date that it is so acquired, provided that during said ten year period it may farm and use same for agricultural purposes.” The 23rd Legislative Assembly (1933) amended Section 3 of the initiated measure to provide “[t]hat any corporation, either domestic or foreign, that acquires any rural real estate, used or usable, for farming or agriculture, by judicial process or operation of law, hereafter, except such as is reasonably necessary in the conduct of its business, shall dispose of such real estate within ten years from the date that it is so acquired, provided that during said ten year period it may farm and use the same for agricultural purposes, provided further that the ten year limitation provided by this Section shall be deemed a covenant, running with the title to the land, against any grantee, successor, or assignee of such corporation, which is also a corporation.” This section was codified as NDCC Section 10-06-03.

The corporation business exception as contained in NDCC Section 10-06-03 was reviewed by the North Dakota Supreme Court in *Slope County v. Consolidation Coal Company*, 277 N.W.2d 124 (N.D. 1979). In this case, the court reviewed the issue of whether the ownership by the Consolidation Coal Company of certain lands in Slope County was reasonably necessary in the conduct of its mining operations. The court approved of its decision in *Asbury Hospital v. Cass County*, 7 N.W.2d 438 (N.D. 1943), affirmed by the United States Supreme Court, 326 U.S. 207, that the phrase except such as is reasonably necessary in the conduct of its business in Section 10-06-03 refers to such real estate as is reasonably necessary for carrying on a business or activity which a corporation was created to carry on and concluded the term “reasonably necessary” refers to that which is useful,

convenient or suitable, and not inconsistent with the legitimate objectives of the corporation. The term is to be distinguished from more exacting degrees of necessity, such as absolute, strict, or indispensable. Further, the court said the "determination of whether or not a particular piece of land is reasonably necessary in the conduct of a corporation's business is not always easily resolved and does not necessarily depend upon the present actual use of the land by the corporation. The business of the corporation will play a dominant role in this determination. If the property is reasonably necessary for the business when acquired, is held for that purpose, and is actually used for the purpose for which it was acquired, then it should be treated as necessary to carry on the business. The necessity for its actual use need not be a present one; it may arise in the future." Finally, it is interesting to note that the court concluded by stating that "[a]lthough we have concluded the property in question

is reasonably necessary in the conduct of Consolidation's business, no doubt closer cases will arise in the future. If cases such as the present one arise in the future, the issue of reasonable necessity must be dealt with on a case-by-case basis through an examination of the evidence presented. If the opportunity for abuse exists under Ch. 10-06, NDCC, it is more appropriately corrected by the Legislature than by attempts on the part of this court to place an unwarranted construction on the statute."

Representatives of the Attorney General's office indicated that that office has not received any complaints concerning the surface coal mining exception to the corporate farming law, but indicated that resolution of such a complaint would necessarily be heavily dependent on the specific facts in that case and thus such complaints would be resolved on a case-by-case basis.