

Office of the Attorney General
State of North Dakota

Opinion No. 81-135

Date issued: December 23, 1981

Requested by: Harry E. Iszler
State Senator

--QUESTION PRESENTED--

Whether a family farm corporation is required to have a minimum of three directors even though it has less than three shareholders or members.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a family farm corporation if it has less than three shareholders or members is not required to have any more directors than it has shareholders or members.

--ANALYSIS--

The family farm incorporation law set forth in Chapter 10-06 of the North Dakota Century Code creates certain limited circumstances in which a corporation can engage in farming. Section 10-06-07(5), N.D.C.C., provides that the officers and directors of the family farm incorporation MUST be shareholders or members. The shareholders or members can be no more than fifteen (15) in number and must be related to one another by certain degrees of kinship or by marriage to a person of the proper degree of kinship. Through these provisions the Legislature has specifically limited the officers and directors of a family farm corporation to the shareholders or members who are drawn from a very limited class.

Chapter 10-19, N.D.C.C., contains the general business corporation act of this state. Section 10-19-37, N.D.C.C., requires that the number of directors in a corporation shall be not less than three (3). It is apparent that a family farm corporation with less than three shareholders or members, who are the only persons eligible to serve as directors, would be in direct conflict with this section of law. The provisions of Chapter 10-06, N.D.C.C., creating family farm corporations are unique statutes and constitute a specific exception to the general corporate law provisions contained in Chapter 10-19, N.D.C.C., insofar as they are in conflict.

Chapter 10-31, N.D.C.C., deals with professional corporations. Professional corporations are unique corporations the stockholders of which are limited to certain specific classes of individuals. The limitations on family farm corporations contained in Chapter 10-06, N.D.C.C. are analogous to the limitations placed on professional

corporations in Chapter 10-31, N.D.C.C. Section 10-31-06, N.D.C.C., specifically provides that in a professional corporation with only one shareholder, only one director is required. Likewise in a professional corporation with only two shareholders, only two directors are required. Necessarily the same rationale applies to family farm corporations. The Legislature clearly intended that family farm corporations were to be unique corporations with specific limited numbers of eligible shareholders. In interpreting the family farm corporation law, Section 10-2-38, N.D.C.C., provides that in interpreting a statute it is presumed that a just and reasonable result is intended and that a result feasible of execution is intended.

Accordingly, a family farm corporation with only one shareholder or member cannot have by law more than one director. Likewise, a family farm corporation with only two shareholders or members cannot have more than two directors. Accordingly, through the specific provisions of Section 10-06-07(5), N.D.C.C., the Legislature has exempted a family farm corporation with only one or two shareholders from the provisions of Section 10-19-37, N.D.C.C., requiring that in a general business corporation there shall not be less than three directors.

--EFFECT--

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

Robert O. Wefald
Attorney General