

Date Issued: March 26, 1981 (AGO 81-31)

Requested by: W. J. Brandvik, State Inspector of Apiaries,
Department of Agriculture

- QUESTIONS PRESENTED -

I.

Whether chapter 4-12 of the North Dakota Century Code authorizes the registration of a commercial location by a commercial operator if the perimeter of the quarter section that is being registered lies within two miles of the perimeter of another quarter section that is registered by another commercial operator.

II.

Whether section 4-12-03.1(1), N.D.C.C., authorizes a commercial operator to establish a commercial location within two miles of any of the other commercial locations that he has registered.

III.

Whether a beekeeper, who has an apiary site registered, may sell, lease, transfer or rent that apiary site or the rights to that apiary site to another person if the land upon which the apiary is located is not owned by the beekeeper who has the site registered.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that chapter 412, N.D.C.C., does not authorize the registration of a commercial location if the perimeter of the quarter section that is being registered lies within two miles of the perimeter of another quarter section that is registered by another commercial operator.

II.

It is my further opinion that section 4-12-03.1(1), N.D.C.C., does not authorize a commercial operator to establish a commercial location within two miles of any of the other commercial locations that he has registered.

III.

It is my further opinion that a beekeeper, who has an apiary site registered, may not sell, lease, transfer or rent that apiary site or the rights to that apiary site to another person if

the land upon which the apiary is located is not owned by the beekeeper who has the site registered.

- ANALYSIS -

I.

Section 4-12-03, N.D.C.C., state that "each applicant for a beekeeper's license shall include on his application a legal description, to the nearest quarter section, of each apiary to be maintained by him."

Section 4-12-03.1(1), N.D.C.C., provides, in part:

No new commercial location may be established within two miles 3.22 kilometers of another commercial location. No commercial operator may establish an apiary within two miles 3.22 kilometers of another commercial operator.

There are no other location requirements. Section 4-12-03.1(1), N.D.C.C., mandates that no new commercial location may be within two miles of another commercial location. The commercial location is identified by a legal description of the quarter section in which it is located. For purposes of enforcement by the Department of Agriculture, the commercial location is that quarter section. Section 4-12-03.1(1), N.D.C.C., would be impossible to enforce if the two mile distance requirement was not measured from the perimeter of the quarter section. A commercial operator may not register a commercial location in a quarter section when that quarter section is within two miles of another quarter section that is registered by another commercial operator.

II.

Section 4-12-03.1(1), N.D.C.C., provides:

No new commercial location may be established within two miles 3.22 kilometers of another commercial location. No commercial operator may establish an apiary within two miles 3.22 kilometers of another commercial operator. The noncommercial beekeeper with one to twenty-four colonies will have territorial rights on one location. (Emphasis supplied).

The underscored language makes no reference to who owns the commercial location. As long as the commercial location is "new," it cannot be within two miles of another commercial location.

III.

Section 7-02-01-04 of the North Dakota Administrative Code (N.D.A.C.) provides, in part, that:

Location rights shall be established through registration of locations with the department of agriculture pursuant to North Dakota Century Code sections 4-12-03 and 4-12-03.1

Section 4-12-03.1, N.D.C.C., sets out distance requirements for the establishment of locations and does not apply here. Section 4-12-03, N.D.C.C., states that every beekeeper must apply for a beekeeper's license certificate, and further requires:

. . . Each applicant shall include on his application a legal description, to the nearest quarter section, of each apiary to be maintained by him. . . . No beekeeper shall maintain bees in this state unless he possesses a valid beekeeper's license. The license required by this section shall be nontransferable. . . . (Emphasis supplied).

The registration of apiary locations is an integral part of the licensing procedure. It follows that since the beekeeper's license is not transferable, the rights to registered apiary sites are not transferable.

- 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 is decided by the courts.

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