

LETTER OPINION
2001-L-10

March 27, 2001

Honorable Ole Aarsvold
State Representative
House Chambers
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Representative Aarsvold:

I have received your letter requesting my opinion on the compliance of your proposed dairy project with the North Dakota corporate farming statutes. You ask if the proposed, hypothetical business structure as outlined in your letter, complies with the corporate farming statutes. Any opinion expressing the compliance with the statutes would be limited to the specific facts presented. The letter provides several variations in how the proposed project may be set up. Any variation from a specific set of proposed facts relating to the project could change whether the project would be in compliance with the statutes.

Corporate farming is controlled by N.D.C.C. ch. 10-06.1. Based on the proposed organization of your dairy project as stated in your letter, N.D.C.C. ch. 10-06.1 would apply. Chapter 10-06.1 defines the requirements for and provisions of corporate or limited liability company farming. The proposed dairy project would be included under the chapter according to N.D.C.C. § 10-06.1-01(1) which defines "farming or ranching." According to N.D.C.C. § 10-06.1-01(1), "farming or ranching" includes the raising of livestock as well as the production of milk or dairy products.

Generally, all corporations and limited liability companies are prohibited from owning or leasing land used for farming and also from engaging in the business of farming. See N.D.C.C. §10-06.1-02. The intent of North Dakota's corporate farming statutes is to protect small individual farmers from the negative effects of direct competition with large farm corporations. See Coal Harbor Stock Farm, Inc. v. Meier, 191 N.W.2d 583, 591 (1971). However, a corporation or limited liability company is not prohibited from being a partner in a partnership that is in the business of farming as long as the corporation or limited liability company complies with N.D.C.C. ch. 10-06.1. See N.D.C.C. § 10-06.1-02.

According to your proposal, the ownership of the land and the actual farming would be carried out by a limited liability limited partnership which would have no corporate or limited liability company ownership. N.D.C.C. ch. 10-06.1 does not prohibit a partnership from engaging in farming operations. Your letter states that a corporation would be formed

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solely to provide financing to and purchase milk from the various L.L.L.P.s. Based on your proposal, the corporation would have no direct involvement in the dairy facilities. If, as stated in your letter, the corporation's only involvement in the project is providing financing and purchasing milk, the project would appear to comply with the conditions of N.D.C.C. ch. 10-06.1. However, compliance would be conditioned upon a specific set of facts and all of the business organizations involved would be required to be set up in accordance with all applicable statutes.

Sincerely,

Wayne Stenehjem
Attorney General

st/pg