

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at
Chairperson

10:00 a.m./~~p.m.~~ on April 2, 1985, in room 423-S of the Capitol.

All members were present except: Senator Doyen (excused)

Committee staff present: Raney Gilliland, Research Department
Arden Ensley, Revisor of Statutes Department

Conferees appearing before the committee: Donald R. Peterson, Council Grove
Richard Worley, Abilene
Ivan Wyatt, Kansas Farmers Union, McPherson
Gerald Riley, Kansas Association of Wheat
Growers

Senator Allen called the committee to order at 10:10 a.m. and ask Raney Gilliland to explain SB 288.

Raney Gilliland explained SB 288 has new definitions concerning agricultural corporation laws. Mr. Gilliland reported a new definition on line 129 states, " 'Qualified lease back with option to purchase agreement' means any written agreement whereby a corporation purchases agricultural land and whereunder the deed is held in escrow for a stated period of at least four years during which period the agricultural land is leased back to the seller with an option to buy back the agricultural land during the period for the purchase price plus an amount of appreciation determined by a method stated in the agreement." and commencing on line 137 " 'Authorized agricultural investment corporation' means a domestic corporation organized for profit purposes to acquire agricultural land for investment purposes solely under qualified lease back with option to purchase agreements". Mr. Gilliland explained section 14 reading, "Agricultural land owned by an authorized agricultural investment corporation pursuant to a qualified lease back with option to purchase agreement" is a new section to the bill.

Senator Allen called on the first proponent, Donald Peterson, to testify.

Donald Peterson explained he had helped plan this proposed legislation and expressed support for the bill. (see attachment A). Mr. Peterson explained that on line 132 the word 'four' should be changed so the bill would read 'two but not more than six years'.

Senator Allen called on Richard Worley, a proponent, to testify.

Richard Worley explained he had worked with Donald Peterson in writing this proposed legislation and expressed his support for it and encouraged the committee to support SB 288. (see attachment B).

Senator Allen called on Ivan Wyatt, an opponent, to testify next.

Ivan Wyatt explained SB 288 may be an attempt to open the door to unlimited corporate farming, a problem the Kansas' farmer does not need at this time. Mr. Wyatt encouraged the committee to give its support to SB 308. (see attachment C).

The chairman called on Gerald Riley, an opponent, to testify.

Gerald Riley expressed appreciation for the intent of SB 288 but expressed concern that the bill might allow some to skirt around our present corporate farm law. (see attachment D).

Senator Allen declared the hearing completed on SB 288 and called for committee action on SB 349.

Senator Arasmith made a motion SB 349 be reported adversely to the Senate. Senator Thiessen seconded the motion.
Motion carried.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Senator Allen declared the committee adjourned at 10:55 a.m.

GUEST LIST

COMMITTEE: SENATE AGRICULTURE

DATE: April 2, 1985
10:00 a.m.

| NAME (PLEASE PRINT) | ADDRESS | COMPANY/ORGANIZATION |
|---------------------|----------------|--------------------------------------|
| Donald R. Peterson | Council Grove | _____ |
| RICHARD WIRLEY | ARILENE | — |
| Doug Brehm | Topoka | Intm. Atty General |
| Gerald Riley | Dighton | Ks Assoc of Wheat Growers |
| Ray Fairs | Andalus | Lawyer Union 1984 |
| Emmett Koch | Centerville Ks | " " |
| Gary Hellebust | Manhattan Ks | KPPC |
| Nancy E Mantola | Topoka | Kansas Co-op Council |
| Gary Watts | Emporia | Farmers Union |
| Raymond Trumble | Emporia | Farm Union |
| John H. Hering | Baileysville | Farm Union |
| George Holthaus | Seneca | Farm Union |
| W. J. Buessing | Baileysville | |
| Leo (Schmidt) | Baileysville | |
| Rose Flora | Topoka | Kansas Rural Center Farmers Union |
| Vaughn L. Flora | Topoka | KRC, KFU, NFO |
| Bruce Larkin | Baileysville | Farmer |
| Jerry Strathman | Baileysville | FARMER |
| Dwan W. Wyatt | W. Pherson | Ks Farmers Union |
| Chris Wheelers | Topoka | Leg. Policy Group |
| The Liber | " " " | Ks Co-op Council |
| Marda Hutchison | Hutchinson | KG7DA/K7CA |
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1985

AGRICULTURE IS IN THE MIDST OF VERY TROUBLED TIMES---FINANCIALLY!!

In search for a way to help relieve a little of the pressure that some farmers and ranchers face, Richard Worley and I drew up some guidelines whereby a farmer or rancher could arrange with an investor to "purchase" his farm, lease it back to operate, and agree to terms on a "buy-back" contract which would be enacted a few years in the future.

This would in essence:

1. create cash to pay off debts,
2. leave the farmer on "his" land,
3. not change the size of his operation,
4. give him some time for prices and circumstances to change, and
5. still have first chance at re-owning his farm.

In pursuing this idea, we soon learned that the large businesses that have the finances available for such investments are public corporations, which, under present law, are prohibited from owning farm land.

It is the Attorney General's opinion (copy attached) that, under present law, ownership is assumed, under the circumstances mentioned, when the deed is placed in escrow, even though a valid Buy-Back agreement is in force.

0129 By adding the stipulations outlining the guidelines (o) under which a regular corporation could invest capital into the agriculture sector of our state, would possibly reduce some of the immediate pressure on our farmers and ranchers.

0162 If a corporation should become owner of a parcel of land, due to lack of fulfillment of the "buy-back" provisions of a "Qualified lease-back with option to purchase agreement", I would consider them in the same catagorie as banks and other financial institutions which have a 10 year divestiture of land limit.

0206 I would encourage this committee, the full Senate, the House of Representatives, and Governor Carlin to approve these changes and an additional exception to the "Corporate Farm Ownership Law" to allow "a regular corporation or an authorized agricultural investment corporation to purchase farm land if there is a qualified lease back with option to purchase agreement enacted simultaneously."

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to
Return

Enacting legislation allowing corporations to supply some of the capital needed to free up a cash flow for the farmers and ranchers would also help agri-business and the rest of the business community.

The chain reaction that would follow an improved cash flow for agriculture, would produce very gratifying results up and down "Main Street, Rural America" and this in turn to "Business Center, U.S.A."

Thank you.

Donald R. Peterson
Council Grove, Kansas

SENATE BILL NO. 288

0129 (o) "Qualified lease back with option to purchase agree-
0130 ment" means any written agreement whereby a corporation
0131 purchases agricultural land and whereunder the deed is held in
0132 escrow for a stated period of at least two but not more than six
years during which
0133 period the agricultural land is leased back to the seller with an
0134 option to buy back the agricultural land during the period for
0135 the purchase price plus an amount of appreciation determined
0136 by a method stated in the agreement.
0137 (p) "Authorized agricultural investment corporation" means
0138 a domestic corporation organized for profit purposes to acquire
0139 agricultural land for investment purposes solely under qualified
0140 lease back with option to purchase agreements.

0161 (4) Agricultural land acquired by a corporation by process of
0162 law in the collection of debts, or through the lack of fulfilling
the buy-back agreement provisions, or pursuant to a contract for deed
0163 executed prior to the effective date of this act, or by any pro-
0164 cedure for the enforcement of a lien or claim thereon, whether
0165 created by mortgage or otherwise, if such corporation divests
0166 itself of any such agricultural land within 10 years after such
0167 process of law, contract or procedure.

0206 (14) Agricultural land owned by a ^{regular} ~~domestic~~ corporation or by
an authorized agricultural
0207 investment corporation pursuant to a qualified lease back with
0208 option to purchase agreement.

0132 delete---four
insert---two but not more than six

0162 insert---or through the lack of fulfilling the buy-back agreement
provisions,

0206 insert---a domestic corporation or by

DONALD R. PETERSON---Council Grove, Kansas

--lifelong resident of Morris County

--owned and managed family farm and ranch operation over 25 years

--in investment and insurance business over 15 years

--still actively engaged in agriculture.

RICHARD L. (Dick) WORLEY---Abilene, Kansas

--Federal Land Bank loan officer and appraiser for over 25 years

--Kansas Real Estate Broker---specializing in rural property

--Member Kansas Society of Farm Management and Rural Appraisers.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

June 1, 1984

ATTORNEY GENERAL OPINION NO. 84-47

The Honorable Gerald "Jerry" Karr
State Senator, Seventeenth District
R. R. 2, Box 101
Emporia, Kansas 66801

Re: Corporations--Agricultural Corporations--Limitations

Synopsis: Pursuant to the restrictions of K.S.A. 17-5904, and subject to exemptions prescribed therein, corporations (other than family farm corporations and authorized farm corporations) may not own agricultural land in this state. An investment plan whereby a corporation (other than a family farm corporation or authorized farm corporation) would own agricultural land, subject to a "buy-back option," would violate the restrictions of the aforesaid statute. Cited herein: K.S.A. 1983 Supp. 17-5903, K.S.A. 17-5904.

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Dear Senator Karr:

You request our interpretation of K.S.A. 17-5904. Said statute prohibits, in part, ownership or leasing of agricultural land in this state by corporations, and you ask whether the restrictions of the statute apply to corporate investment in farm land through a plan referred to as a "lease-back with a buy-back option." Under this plan, a farm owner would sell his land to an investor at 80% or less of its value, and the investor would lease the farm back to the farmer. The farmer would have the option to "buy back" the farm for a prescribed period, at the original

The Honorable Gerald "Jerry" Karr
Page Two

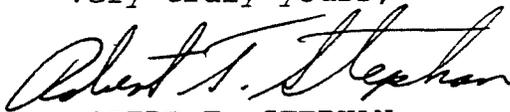
sales price plus an amount deemed to constitute "appreciation in value."

As stated above, K.S.A. 17-5904 prohibits, in part (and subject to certain exemptions not pertinent here) ownership and leasing of agricultural land in this state by corporations (other than family farm corporations and authorized farm corporations). Agricultural land is defined as "land suitable for use in farming" [K.S.A. 1983 Supp. 17-5903(f)] and the term farming is defined as follows:

"'Farming' means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming does not include the production of timber, forest products, nursery products or sod, and farming does not include a contract to provide spraying, harvesting or other farm services." K.S.A. 1983 Supp. 17-5903(g).

Under the investment plan described above, which is referred to as a "lease-back with buy-back option," the investor "buys" farm land at 80% of its value. Based upon the limited description of the plan in question, we must presume that this means the investor becomes the owner of the subject land, i.e. takes title thereto, and holds said title subject to a "buy back option." As K.S.A. 17-5904 prohibits ownership of agricultural land in this state by corporations (other than family farm corporations or authorized farm corporations), it is our opinion that corporate investment in farm land through the plan described above would violate the provisions of aforesaid statute.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm

My name is Richard Worley. I live in Abilene, Kansas, and am currently engaged in real estate sales and appraisals and insurance sales. I am a licensed real estate broker, and operate a small real estate agency headquartered in the small town of Hope, Kansas, in Dickinson County. Prior to 1980, I was associated with the Federal Land Bank system for some 28 years. Virtually all of that time was as a loan officer and appraiser working directly with farmers and ranchers in making and servicing farm real estate mortgage loans for the Federal Land Bank of Wichita through Federal Land Bank Association offices in Lawrence, Manhattan, Washington, Herington and Abilene. In the last three offices, I was chief executive officer in addition to serving as a loan officer.

The media today is giving a lot of attention to the financial problems of agriculture. As you all certainly well know, these problems did not suddenly surface overnight. They have been coming on over an extended period of time, partially as a result of the philosophy of the 1970's that "bigger is better" supported by the Land Grant Colleges and reinforced by many of the financial institutions serving agriculture.

In an effort to develop "private sector" assistance in solving some of the problems of the highly leveraged "young tigers" on Kansas farms and ranches, Don Peterson and I worked up a "sale- lease back - buy back" concept some 2 years ago. Stated simply, this would involve an investor purchasing agricultural land who would agree to lease it back to the seller-farmer, who in turn would have the option of buying back the property a few years down the road. The agreement would be structured to provide an advantageous purchase for the investor plus a buy-back basis providing for appreciation. The investor would, in the meantime, enjoy the benefits of the entire "bundle of sticks" of ownership of farm property, including a lease arrangement with the seller providing customary share or cash rentals as agreed on.

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attachment B

The seller-farmer, in this circumstance, would retain his basic operation and remain on the land; the trade-off being in making lease payments instead of the burdensome debt-service requirements on substantial carry-over debt.

As envisioned, this concept would work one-on-one; that is, one individual investor purchasing land from one individual farmer. After knocking on a lot of doors over the past couple of years, it becomes apparent that the individual investor with adequate and available capital; together with an interest in, or knowledge of agriculture, is a rarity. This is compounded by the fact that leveraging such purchases has become increasingly difficult for investors whether their income base is agricultural or non-agricultural.

The proposed amendments to the Corporate Farm Ownership Law are necessary to permit money generated outside agriculture by large corporations to flow into the agricultural sector in the manner proposed in this sale-buy back concept. As I see it, this would provide another alternative method of meeting a portion of the large capital requirements of agriculture by utilizing available investment funds from the private sector. Under this method, the family farm remains the basic agricultural operating entity.

I certainly support the family farm, and do not see this proposed amendment as jeopardizing the family farm, but as another tool to help keep the "family on the farm" by providing an additional means of injecting some non-agricultural capital from the private sector into the rural economy. Of course, as is well recognized, anything that improves the economic health of agriculture also has a positive affect on "main street" in the rural towns, and so on up the line.

I would encourage your approval of the proposed amendments to the Corporate Farm Ownership Law together with your support and encouragement as the proposal moves through legislative channels.

Thank you.

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Statement
by
Ivan W. Wyatt, President
Kansas Farmers Union
on
Senate Bill 288
before the
Senate Committee on Agriculture

Mr. Chairman and members of the Committee:

I am Ivan W. Wyatt, President of the Kansas Farmers Union.

I approach Senate Bill 288 with great caution and suspicion. Some may also say with a jaundiced view. This may be true, but for good reason as I will point out.

The problems facing agriculture are real. Over the past several months, we have seen many who have offered solutions to the farmer's problems.

We have seen solutions offered that broke banks in western Kansas.

We saw a solution coming out of Texas several months ago that bilked many farmers out of over a quarter of a million dollars.

Just a few days ago, a Kansas City newspaper told of another solution to help the farmer. That individual also helped several Kansas farmers out of many thousands of dollars.

Investigators in this case stated, "there are a tremendous amount of deals floating around these days and I've yet to hear of any of them that worked " and indicated others would emerge.

The sole purpose of many of these schemes is to separate the farmer from the deed to his land.

Once the farmer is separated from his deed, he has only one option--accept the lease agreement or get out--accept the re-purchase price or walk away.

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As many of you have heard me say many times for several years, there is only one real solution to the problem of the farmer and that is a decent price for his production.

It is encouraging now to hear many elected officials agreeing.

I continue to believe it is a disgrace that the states continue to allow the natural and human resources of agriculture to be exploited without a fight or an effort to stop the exploitation.

I firmly believe if any of our other natural resources were being so exploited we would see a virtual uprising.

Back to the issue of allowing "authorized agricultural investment corporations"

I ask you, what other corporations are there? Are they not all "investment corporations"?

At a recent meeting I attended in St. Louis, it was pointed out that when the Tenneco Oil Company purchased International Harvester Tractor facilities to add to its Case Tractor Company because of the resulting tax credits, write-offs and loopholes, the ultimate price of the purchase would be paid for by the United States taxpayer, or by an increase in the Federal budget deficit.

The point is this: since there is either a negative profit or very little profit in agriculture, why would a corporation want to "invest" in agriculture.

The answer seems obvious! They seek not to farm the land but to farm the tax codes and as a result, the Federal Treasury.

The result will be the taxpayers of this country will pay for the corporation's farm and the eventual thanks the taxpayers will receive will be higher food prices.

It is the belief of the Farmers Union the Kansas legislature would better invest its time by not opening up another loophole in the Kansas Corporate Farming Law but rather time would be better spent considering SB-308 relating to certain "limited partnerships".

An apparent loophole in our present Corporate Farming Law that if it hadn't

been for a vigilant Attorney General, the Consolidated Family Farms scheme might now be operating in Kansas.

Yet another plan to help the farmer--to help separate him from his land. Yes, agriculture is sick--but in our rush to help the patient, let's not kill it with the wrong medicine.

The only medicine that will restor vigor to agriculture is that which makes our entire system work--profitability.

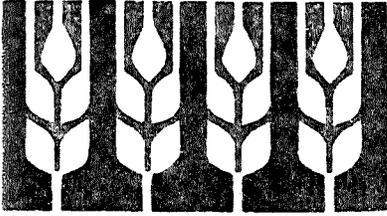
I think by now it is obvious we oppose Senate Bill 288.

At best, it may be an attempt to farm the tax code.

At worst, it may be an attempt to open the door to unlimited corporate farming that the people of Nebraska beat overwhelmingly in a referendum vote. That sort of problem is one the farmers don't need added to the current long list of problems.

Thank you.

KAN ASSOCIATION
OF WHEAT GROWERS



TESTIMONY

Senate Committee on Agriculture

SENATE BILL 288

Tuesday, April 2, 1985

My name is Gerald Riley, and I am President of the Kansas Association of Wheat Growers. I appreciate this opportunity to testify against Senate Bill 288.

We are certainly aware of the concerns expressed by many in agriculture about the need for an infusion of capital to keep distressed farmers in business. We understand that a few of our friends feel the bill under discussion today would provide that capital by allowing corporate buy-outs of farm land under the stipulation that the land would be leased back to the seller with an option for the seller to buy the land back.

Unfortunately, there are no safeguards in this bill, to make sure that the re-purchase price would not be so inflated as to make the buy-back impossible. There are no safeguards in this bill to make sure the length of the re-purchase contract would be long enough for the buyer to effect the purchase, if there is no improvement in the agriculture economy. In short, abuse of this bill by corporations who wish to gain permanent control of Kansas farmland, would be all too easy.

The current laws in Kansas prevent corporate ownership of farmland, and we feel that should remain the posture of our state. Kansas agriculture has long been opposed to corporate farming, and we remain opposed to it. Some feel this is a safe and helpful way to utilize the money that big corporations would make available. I would remind this committee that big corporations are not philanthropic by nature. They are profit oriented. The danger of those corporations obtaining that profit at the expense of Kansas farmers and consumers is too great to allow this loop-hole to be inserted into the corporate farm law.

We feel this committee has a very good bill before it to bring about that needed infusion of capital. That bill is Senate Bill 347. It may not be a cure-all, but as we have pointed out previously in this committee, there is no such thing. It is a much better approach than to insert a loop-hole into the corporate farm law that could so easily prove to be a bad mistake.

In conclusion, we feel that a few people are well intentioned in their support of this measure, but we cannot support it because of the very real concern we have about possible abuse. Let's not let our concern over the economic plight many of our farmers face blind us to the possible use of this measure as a way to skirt around our corporate farm law.

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attachment D