Nuisance protection law unconstitutional

Neil E. Harl
Iowa State University

Charles F. Curtiss
Iowa State University

Follow this and additional works at: http://lib.dr.iastate.edu/cropnews

Part of the Agricultural Economics Commons, Agricultural Science Commons, and the Agriculture Law Commons

Recommended Citation
http://lib.dr.iastate.edu/cropnews/2275

The Iowa State University Digital Repository provides access to Integrated Crop Management News for historical purposes only. Users are hereby notified that the content may be inaccurate, out of date, incomplete and/or may not meet the needs and requirements of the user. Users should make their own assessment of the information and whether it is suitable for their intended purpose. For current information on integrated crop management from Iowa State University Extension and Outreach, please visit https://crops.extension.iastate.edu/.
Nuisance protection law unconstitutional

Abstract
In late September, the Iowa Supreme Court declared unanimously that an Iowa statute providing protection against nuisance suits for agricultural operations is "flagrantly" unconstitutional. The lawsuit involved the Iowa agricultural areas statute that allows counties to designate agricultural areas of at least 300 contiguous acres. Farming operations conducted within such a designated area are not subject to nuisance lawsuits if they are operated properly.

Keywords
Economics

Disciplines
Agricultural Economics | Agricultural Science | Agriculture | Agriculture Law

This article is available at Iowa State University Digital Repository: http://lib.dr.iastate.edu/cropnews/2275
Nuisance protection law unconstitutional

In late September, the Iowa Supreme Court declared unanimously that an Iowa statute providing protection against nuisance suits for agricultural operations is "flagrantly" unconstitutional. The lawsuit involved the Iowa agricultural areas statute that allows counties to designate agricultural areas of at least 300 contiguous acres. Farming operations conducted within such a designated area are not subject to nuisance lawsuits if they are operated properly.

Reason behind the decision

The Iowa court said the provision dealing with nuisance protection constituted a "taking" of property by government without compensation. The court ruled that the provision created what amounted to an easement to allow odors over land adjacent to the agricultural area's boundary. The easement was a property right for which the government should have to pay compensation if the easement were forced onto a property owner. The court said, "...with all respect, this is not a close case. When all the varnish is removed, the challenged statutory scheme amounts to a commandeering of valuable property rights without compensating the owners, and sacrificing those rights for the economic advantage of a few. In short, it appropriates valuable property rights and awards them to strangers."

Impact

The impact of the decision is expected to be far reaching. Most of Iowa's 99 counties have agricultural areas. Beyond the Iowa agricultural areas law, however, every state has enacted a "right to farm" law. These laws are designed to protect existing agricultural operations by giving farmers and ranchers who meet the legal requirements a defense in nuisance suits. Moreover, in 1995 Iowa enacted H.F. 519 that provides strong protection against nuisance suits for animal feeding operations. This law was modified in 1998 to ease slightly the nuisance suit protection but the Iowa Supreme Court decision in September could be used in a challenge of this legislation.

Expected consequences

The Iowa decision will certainly lead to efforts to cut down on odors generated in confinement livestock operations, encourage farmers to practice a good-neighbor policy, and buffer confinement operations to reduce the level of odors passing across boundary lines.

With the court's emphasis on a property-rights approach to dealing with odors, which is
consistent with the way property is viewed in this country, one policy solution would be to place the problem in the context of a market in the property rights involved. With this approach, those creating odors are viewed as infringing upon the property rights of neighbors. Infringement would be expected to lead to compensation. Those responsible for creating the odors and those forced to endure them would be free to negotiate an outcome. Those not polluting the air would not be expected to pay. But the higher the level of odors, the more polluters would be expected to pay. Once an agreement was reached, the agricultural operation could not be sued for nuisance. Thus, it would reduce the problem to a cost of doing business for the confinement operation. And that may be an attractive alternative to long and costly nuisance suits. More importantly, it would provide an economic incentive for confinement operations to

1. site operations so as to minimize odors for the neighbors,
2. use the most effective odor-reducing technology, and
3. use the very best management to keep odor levels low.

In addition, it would provide compensation for those forced to endure significant levels of odors.

To make such an approach workable, it would be necessary for an agreement to be reached with nearby property owners and occupants before construction and operation permits could be issued for an animal feeding operation.

This issue promises to be a front-burner topic in the 1999 Iowa General Assembly. It probably will be discussed in other states as well.

This article originally appeared on page 195 of the IC-480(25) -- December 7, 1998 issue.

Source URL:

IOWA STATE UNIVERSITY
University Extension