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COOPERATIVES AND CORPORATE FARMING LAWS

— by Neil E. Harl*

In 1982, Nebraska voters approved Proposition 300, Nebraska's anti-corporate farming law.¹ The Nebraska provision has been criticized for its detailed, complex and not completely consistent approach to limiting corporations. The constitutional measure bars corporations or syndicates from acquiring real estate in the state except for family farm or ranch corporations; non-profit corporations; Indian tribal corporations; and several other categories of corporate enterprises.² The Nebraska Supreme Court has now ruled on whether a nonstock cooperative involved in hog production was exempt from the law as a "non-profit corporation."³

The cooperative in question was formed by five individuals in 1994 "so that together they [could] acquire feeder pigs, feed, and related products and services on a collective, cooperative, and cost-of-production basis." The articles of incorporation limited membership in the cooperative to "persons actively engaged in the feeding of hogs for slaughter." Members purchase feeder pigs from the cooperative as well as feed and animal health supplies. The articles and bylaws state that "net margins" were to be allocated to the members on a patronage basis. The Nebraska Nonstock Cooperative Marketing Act⁴ specifies that associations organized under the act are deemed to be nonprofit "...inasmuch as they are not organized to make profits for themselves as such or for their members as such but only for their members as producers."

The district court held that the cooperative was a "nonprofit corporation" not subject to Proposition 300.⁵ The district court found that the Nebraska Nonstock Cooperative Marketing Act⁶ provided an "absolute and unqualified" designation of a nonstock cooperative as a "nonprofit corporation." The Nebraska Supreme Court reversed, pointing out that while the cooperative itself does not retain profits, "it is nonetheless operated for the purpose of generating economic gain for the producers who compose its membership."⁷ The Nebraska Supreme Court noted that all "savings" from its operations inure to the exclusive benefit of its members, who have a "permanent investment" in the cooperative, not to agriculture in general. Members will have a permanent

investment in the enterprise represented by their initial and subsequently acquired base capital credits. Members will be eligible to receive annual "patronage refunds" representing each member's share of any amount by which the Cooperative's annual gross receipts exceed expenses and required reserves. The court noted that five unrelated individuals could not carry on a swine farrowing facility in corporate form and saw no reasonable basis for treating a nonstock cooperative differently. The court held that the cooperative in question was subject to the constitutional restriction on ownership of Nebraska real estate used in farming or ranching.

It is not known how many operations have been set up as cooperatives to circumvent state corporate farming laws on the grounds that the cooperative is "non-profit." For those who have, the Nebraska case is bad news, indeed. In some states, such as Iowa, the legislature has specifically exempted cooperatives from the state statutory corporate farming law.⁸ A cooperative, to be exempt from the state anti-corporate farming law, must meet several requirements— (1) farming entities must own 60 percent of the stock and be eligible to cast at least 60 percent of the votes; (2) "authorized persons" must own at least 75 percent of the stock and be eligible to cast at least 75 percent of the votes; and (3) the cooperative must not, directly or indirectly, acquire or lease agricultural land if the total would exceed 640 acres.⁹ Such a move is far more difficult in Nebraska where the corporate farming limitations are imbedded in the state constitution.¹⁰

FOOTNOTES

- ¹ Neb. Const. Art. XII, § 1. The Nebraska provision has been held constitutional. *MSM Farms, Inc. v. Spire*, 927 F.2d 330 (8th Cir. 1991) (equal protection and due process challenges). See generally 6 Harl, *Agricultural Law* § 51.04[2][h] (1997). Harl, *Agricultural Law Manual* § 7.02[1][c] (1997).
- ² Neb. Const. Art. XII, § 1.
- ³ *Pig Pro Nonstock Cooperative v. Moore*, 253 Neb. 72, 568 N.W. 2d 217 (1997).
- ⁴ Neb. Rev. Stat. § 21-1401 *et seq.*
- ⁵ See n. 3 *supra*.
- ⁶ Neb. Rev. Stat. § 21-1401(2).

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⁷ *Pig Pro Nonstock Cooperative v. Moore*, 253 Neb. 72, 568 N.W. 2d 217 (1997).

⁸ Iowa Code § 501.103(1) (1997).

⁹ Iowa Code § 501.103(1) (1997).

¹⁰ Neb. Const. Art. XII, § 1.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-ALM § 13.03.*

EXEMPTIONS. The debtors claimed a homestead exemption for their residence and the 58 acres of land on which it was located. The property was located within the city limits and consisted of the house, a barn and other farm buildings, and open land used for crop production and pasturing horses. The property was not platted but was surrounded by residential properties of normal size for city dwellings. The debtors had sold a portion of the property which was converted to a residential subdivision. The property was not surrounded by residential properties when purchased 35 years ago and the debtors had used the property continuously, except for the sold portion, as a farm. The court held that, under state law, the debtors' 58 acre property retained its character as rural farm property eligible for the rural homestead exemption of up to 120 acres. *In re Becker*, 212 B.R. 322 (Bankr. D. Minn. 1997).

FEDERAL TAXATION-ALM § 13.03[7].*

POST-PETITION INTEREST. The debtors filed for Chapter 11 in 1982 and the IRS filed a secured and an unsecured claim for employment taxes owed by the debtors. The proof of claim indicated that additional interest may be assessed on the claim during the bankruptcy case. However, the IRS did not file any claim for post-petition interest on the secured claim. The debtors' plan provided for full payment of the tax claim but did not include any payment for post-petition interest on the secured claim. The debtor received a discharge but after the discharge, the IRS sought to collect interest for the post-petition, pre-confirmation period. The court held that no post-petition, pre-confirmation interest was allowed where the IRS failed to file a claim or object to the plan. *United States v. Victor*, 121 B.R. 1383 (10th Cir. 1997).

SETOFF. The debtor airline was owed a refund of excise taxes by the IRS. The debtor owed claims made by other federal governmental agencies, including the Federal Aviation Administration, the Defense Finance Accounting Service and the National Finance Center. The agencies sought to offset the IRS refund against the amounts owed to the agencies. The court held that the setoff was allowed because the agencies of the federal government were considered a governmental unit for purposes of the setoff rules. *In re HAL, Inc.*, 122 F.3d 851 (9th Cir. 1997), *aff'g*, 196 B.R. 159 (Bankr. 9th Cir. 1996).

FEDERAL AGRICULTURAL PROGRAMS

CROP INSURANCE-ALM § 13.04.* The FCIC has adopted as final regulations which include the Canning and Processing Tomato Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 54339 (Oct. 20, 1997).**

The FCIC has adopted as final regulations which include the Prune Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 58628 (Oct. 30, 1997).**

The FCIC has adopted as final regulations which include the Canning and Processing Bean Endorsement in the Common Crop Insurance Policy and restrict the endorsement provisions to 1997 and earlier crop years. **62 Fed. Reg. 58621 (Oct. 30, 1997).**

MILK MARKETING ORDERS. The plaintiff milk producer association challenged as arbitrary and capricious the Class I pricing scheme of the federal milk marketing orders promulgated under the Agricultural Marketing Agreement Act, 7 U.S.C. § 608c(1). The current ruling was the third time the court had ruled on the issue of whether the USDA had sufficient evidence to make the factual findings required by the statute to support the pricing scheme. In the first two rulings, the court found that the USDA had failed to make specific factual findings as required by the statute to support the pricing system. In the current ruling, the court again found that the USDA did not make sufficient factual findings as required by the statute. The court concluded that after three attempts, the USDA had no possibility of making the required factual findings and held that the Class I pricing scheme was arbitrary and contrary to the statute. The statute required the pricing scheme to be based upon "the price of feeds, the available supply of feeds, and other economic conditions which affect market supply and demand for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates." Instead, the court found that the current Class I pricing scheme was based solely upon the local market's distance from Eau Claire, WI. The court found that, even if the distance differential had an effect on local markets, the USDA had failed to demonstrate that effect. *Minnesota Milk Producers v. Glickman*, Civil No. 4-90-31 (D. Minn. 1997).

RECORDS. The defendant was a farmer who had received federal farm disaster payments. In response to a