

June 15, 2009

CORPORATE FARMING LAW RULED CONSTITUTIONAL

BISMARCK – A state trial court has ruled that North Dakota's corporate farming law does not violate the US Constitution. District Court Judge James Bekken from New Rockford, in a decision issued June 5, 2009, rejected the constitutional challenge brought by a conservation group.

Crosslands, Inc., a North Dakota corporation that buys land to convert to habitat for wildfowl, challenged the law after Attorney General Wayne Stenehjem brought a lawsuit against it. Because Crosslands is a not-for-profit conservation group, state law requires that it get the governor's consent before purchasing agricultural land. In 2003, Crosslands bought 949 acres in Griggs County and in 2004, it bought 480 acres in Cavalier County. In 1985, the corporation had acquired 320 acres in Ward County.

"The Griggs County and Cavalier County purchases were made without obtaining Gov. Hoeven's consent as required by law," Stenehjem stated. "In fact, the governor specifically rejected each application," Stenehjem said. "Because state law requires me to enforce the corporate farming law, I filed suit against Crosslands in 2005 asking the court to order Crosslands to divest the land."

State officials were unaware of the Ward County land until the dispute over the other parcels arose.

In the lawsuit, Crosslands argued that the state's corporate farming law violates the commerce clause of the federal constitution, which prohibits states from enacting discriminatory laws that interfere with interstate commerce.

"The court ruled that the corporate farming law is not discriminatory because it applies to all corporations, whether they are in-state and out-of-state," Stenehjem said. "And the fact that the law has some exceptions, such as those for family farm corporations and for some conservation groups, didn't make it unconstitutional."

The court found that North Dakota's law has more flexibility than the corporate farming laws in South Dakota and Nebraska that recently were struck down by federal courts.

Although the District Court found the corporate farming law constitutional, it did not require Crosslands to divest all of the land. The court allowed Crosslands to retain title to the Ward County land. Crosslands acquired the land in 1985 as a gift, and the court found that conservation groups like Crosslands are only prohibited from acquiring land by purchase.

The court, however, ordered Crosslands to divest all of the Cavalier County land, but allowed it to keep about half of the Griggs County land. According to the court, some of the Griggs County land was not agricultural land so the corporate farming law did not apply to it.

“The court said that semi-permanent wetlands aren’t farmland,” Stenehjem stated. It allowed Crosslands to keep 267 acres of wetlands as well as an additional 270 acres as a buffer around the wetlands.

To do so the court applied another exception in the corporate farming law, known as the “business purpose” exception. This provision allows corporations to acquire farmland if necessary to complement the use of adjoining non-agricultural land.

“This exception,” Stenehjem stated, “is usually used by businesses that want to expand an industrial plant or by subdivisions and developers that gradually move from urban to more rural areas. As far as we know, the exception has never been applied to acquisitions by conservation groups, and could ultimately prove to be a significant loophole in the corporate farming law.”

The decision could be appealed to the North Dakota Supreme Court by either. “We’ll make that decision after we get the final judgment papers from the court and confer with interested parties,” stated Stenehjem.

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