



Dogs – Hogs & Bullfrogs
Diversified Agriculture

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Agriculture – The Classic Definition

- *“The science, art, or occupation of cultivating the soil, producing crops, or raising livestock”*

Webster’s Dictionary, 1896 ed.



Tall Corn – The Art in Agriculture





The Issue

- *All 50 U.S. States either exempt some form of agriculture from land use regulations, or give substantial leeway in regulating agriculture*
- *The central question is “why” do they give special exemptions to agriculturally related activities?*



Why Exempt?

- *Agricultural is a “must have” good and should not be related except for purity*
- *When zoning enabling legislation was first enacted most legislators were rural based*
- *Land and use regulation is seen as an “urban problem”*
- *Land regulation cannot be sold to rural people unless there is a guarantee of agricultural freedom*



Several Problems

- *The problem is defining what is “agriculture” in terms of an exempt activity – and*
- *Deciding what agricultural activities will not be granted exemptions*



Typical Activities That Are Not Exempt

- *C.A.F.Os – concentrated animal feeding operations*
- *Animal slaughtering & rendering*
- *Many hobby and boutique applications*



Conflicting or Compatible Wordage in Zoning

- *Exclusive Agricultural Use – Idaho*
- *Production Agriculture – New York*
- *Agricultural Purpose – Kansas*
- *Agricultural Enterprise or Farming – Connecticut*
- *Devoted to Agricultural Use – Wisconsin*
- *Secondary Agricultural Uses - Ohio*



Good, Bad and Awful State Guidance on Ag. Exemption

- *Connecticut and Hawaii – Thorough, exhaustive*
- *Wisconsin and Indiana – Helpful and informative but raises some questions*
- *Kansas and Ohio – Overbroad, not informative and raises questions every time you talk about it*

Some of the Problem



*The Reviser of
Statutes for the
State of Kansas*





And a Farm – Or To Qualify for an Agricultural Exemption

- *Wisconsin - 35 contiguous acres and \$6,000 annually in gross farm profits*
- *Wyoming “land” used for two continuous years to obtain a monetary profit from crops or livestock*
- *North Dakota – Any unplatted land used for raising crops or for grazing*



Canada – Strathona County

Permitted Uses

**Agriculture, general
Horticultural
Agricultural garden stand
Minor intensive livestock
Care Centre
Primary dwelling
Secondary dwelling
Equestrian centre
Home business - minor**

Discretionary Uses

**Agriculture, intensive
Aggregate extraction
Agriculture major livestock
Agricultural support service
Bed and Breakfast facility
Cemetery
Dwelling – non agricultural
Government service
Library
Private camps
Parks**



Bureau of the Census Definition - 1975

- *A farm*

- A farm is currently defined, for statistical purposes, as any place from which \$1,000 or more of agricultural products (crops and livestock) were sold or normally would have been sold during the year under consideration.

And In Kansas – What is A Farm?

*Hell!
Everybody
knows what a
farm is!*





The Kansas Scene – Enabling Clause

- *An obscure provision – the enabling clause in 12-741 giving clear indication of home rule intent*
 - *“This act is enabling legislation for the enactment of planning and zoning. ... and is not intended to prevent the enactment or enforcement of additional laws and regulations on the same subject which are not in conflict with the provisions of this act.”*



The Key Articles

- *KSA 12-715b The Extraterritorial Powers*

- *. . . nothing in this act shall be construed as authorizing a city to adopt regulations for land in excess of three acres which is used only for an agricultural purpose. . .*



Agricultural Neutrality Clause

- *KSA 12-758 . . . regulations adopted pursuant to this act shall not apply to the use of land for agricultural purposes nor the erection or maintenance of buildings thereon*
- *History 1997 – 1991 – 1965 – 1938*
- *Counties given power to plan and zone in 1939*



The Question – What is an Agriculture Purpose?

- *KSA 2-3201 “Farmland Protection”*
 - *Agricultural activity means the growing and raising of agricultural crops, hay, poultry and livestock, dairy products for commercial purposes*



Did We Mention Poultry?

- *KSA 2-909 “Poultry may include”*
 - *Chickens, turkeys, waterfowl and game birds but does not include doves or pigeons*



Most Complete Definition

- *KSA 50-624 – “Agricultural Purpose Means*
 - a purpose related to the production, harvest, exhibition, marketing, transportation, processing. ... of agricultural products.*
 - "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, . . .*
 - .. products, and any and all products raised or produced on farms. ...*
- EVEN BULLFROGS?*



Farming is Agricultural Agri-Corporations

- *17-5903 – Definition of Farming*
 - *Farming means the cultivation of the land for crops, raising poultry, egg production, milk, fruit and horticultural crops, grazing, production of livestock but does not include timber, forest products, nursery or sod, contracting to spray, harvesting or other farm services*



Feedlots

- *KSA 47-1501 and 47-1502*
 - *Can be for cattle, sheep, swine or horses*
 - *Must be 1,000 head or more*
 - *Declared to be an “agriculture pursuit” and not a commercial or industrial use*
 - *Subject to any city zoning regulations but not county regulations*



What the KS Statutes Specify as “Agri-Purpose”

- Bees KSA 2-428*
- Rabbit KSA-5903*
- Sale, production, storage of fertilizers
KSA2-1201*
- Sale of agricultural seed KSA 2-1415*
- All Ratites KSA 47-2201*
- Deer and Elk 47-2101*
- Winery KSA 41-102*

Bees -

- *U.S. honey production stands at \$225 million per year*
- *Total value of all honey markets in U.S., including imports = \$400 million/year*
- *World production is stable at 100 million metric tons per year*
- *Largest producers are China, U.S., Argentina and the Ukraine*



Rabbit Stew



Flemish Giants – 12 lbs of meat

Yes, We Did Say Ratites





Emu – The Other Red Meat

- Emu chicks at 3 and 4 months old can be purchased for approximately \$3,500 to \$4,500 per chick or \$7,000 to \$9,000 per pair.
- Current prices for yearling emu pairs are \$12,000 to \$18,000 per pair.
- Current price for 2-year-old emus are \$25,000 to \$28,000 per pair.

What Else Is An Agricultural Purpose & Thus Exempt?

Hobby Farms

Worm Farms

Mule Farms

Butterfly House

Orchards

Mink Raising





Rock Quarry

- *VanGurndy v Lyon County Zoning Board, 1984*
- *Very limited finding*
- *Rock quarrying is an agriculture purpose when used exclusively to construct an on-site pond for irrigation purposes*

Wildlife Hunting Preserve

- *Corbert v Shawnee Bd. of County Commissioners, 1989*
- *Land located near Topeka but outside three mile limit*
- *Commissioners denied special permit for “private hunting” wildlife management area, sporting clays – dog training*
- *Ct. of Appeals overturned decision granting agricultural use status to wildlife/hunting preserves – excellent case!*



Bormann v McGuire

- #192/96-2276, 1998 Sp. Ct Iowa
 - *If the county declares farmland within an “agricultural designation area” then activities are exempt from nuisance suit*
 - *Held that immunity from nuisance is a taking of property within the meaning of the 5th Amendment*

15126 SIC for Processing of Frog Legs





The Bullfrog

- *Native to eastern U.S. – imported to the West*
- *Jaws of the pond*
- *Have devastated western populations of smaller frogs, snakes, and just about anything else they can get their mouth around*
- *Damn good to eat*



Rana Catesbeiana

- *Bullfrogs farms were formed in the early 1900s to respond to the market demand for frog legs*
- *And yes, Frog-A-Culture is a stated agricultural use in Oregon, Louisiana, Mississippi, and Georgia*
- *And finally, 2001 marked the year of the first world conference on trade in frog legs - India*

*Maybe We Should Go In For
the Three Pounds Frog Legs*



And Finally

- *Just to top things off voters in Oklahoma became the 48th state to ban COCK FIGHTING on 11/11/02*
- *Which two states still allow Cock Fighting*
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