North Dakota Law Review

Volume 41 | Number 3 Article 3

1964

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THE NORTH DAKOTA ANTI-CORPORATE FARMING ACT: A DISSENTING OPINION

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Since 1932 North Dakota has had a corporate farming law, better labeled an "anti-corporate farming law." It is generally acknowledged that a justifiably irate citizenry, in the midst of a grinding depression, chose to strike back at corporate foreclosings. North Dakota is not alone in such legislation although it appears to be one of the first states to have such a law. North Dakota is, however, one of two states which seemingly prohibits all corporate farming. Kansas, the other state, has a statute providing that corporations can not be formed for producing "wheat, corn, barley, oats, rye, potatoes or the milking of cows for dairy purposes."[1] Other states have statutes which either put a quantitative limit on the amount of land a farm corporation may acquire or hold,[2] or limit the corporate holding to an amount necessary to accomplish the corporate purposes,[3] or else have no limiting provision.

At first blush, the corporate farming act would seem to be a sweeping prohibition against any corporate ownership of any rural land. Closer inspection of the statutes and language of pertinent decisions, to be discussed later, would make this generalization at least arguable. It would be a brave lawyer, indeed, who would advise a client in North Dakota to incorporate for farming purposes. The only safe forms of farming operation for present North Dakota farmers are as sole operator or partnership.

North Dakota's corporate farming law is short and to the point.[4] Section 10-06-01 in a bold letter headnote states that "Farming by Domestic and Foreign Corporations [is] Prohibited." All corporations, both domestic and foreign, except as otherwise provided in

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1. KAN. GEN. STAT. ANN. § 17-202A (1949).
2. *E.g.*, MINN. STAT. § 500.22(3) (1961). "Except as hereinafter provided, no corporation organized for and engaged in any farming operation, shall acquire more than 5,000 acres of land."
3. *E.g.*, 18 OKLA. STAT. ANN. §§ 1.20(a), (b)(1) (1961). (a) "No corporation of any sort, . . . shall, except as herein provided, own, hold, or take any real estate located in this State outside of any incorporated city or town or any addition thereto. (b) Nothing in this Act shall be construed as prohibiting the owning, holding, or taking of:
   (1) Such real estate as is necessary and proper for carrying on the business for which any corporation has been lawfully formed. . . ."
4. N.D. CENT. CODE § 10-06 (1960).

a later section are prohibited from engaging in the business of farming or agriculture. The exceptions are corporate land owners holding land prior to July 29, 1932,[5] and cooperative corporations whose membership is seventy-five per cent farmers.[6]

Surprisingly, the farming law has not been tested extensively judicially. There are only two reported cases reaching our Supreme Court, one of them going on to the United States Supreme Court. The first of these cases is the regionally celebrated *Asbury Hospital v. Cass County*.[7] Plaintiff hospital was a non-profit corporation organized under Minnesota law holding a quarter section of rural land in Cass County that had been acquired in 1925. Plaintiff was concededly not in the farming business but the property was farmed under the usual lease arrangement. In the litigation it was thought by plaintiffs to be important that their charter permitted ownership of land. The State's Attorney of Cass County set about to effect and enforce the escheat provisions in the law. The case settled that the corporate farming law was applicable to a non-farming corporation which incidentally held and farmed rural land. The law would apply implicity to outright farming corporations as well. The court said that our North Dakota law could regulate a foreign chartered corporation doing business in this state and in doing so it was not a violation of the interstate commerce clause or any other clause in the federal constitution. The language of the law was described by the court as being clear, certain, and unambiguous. The appeal to the United States Supreme Court on general constitutional grounds failed.[8]

The second case interpreting the farming act was *Loy v. Kessler*.[9] This was a quiet title action in which the corporate farming law was only secondarily involved. Among other contentions, the defendant claimed that a corporation's deed to the plaintiff was void because the corporation was prohibited from taking title to the land in question. The court came to the mildly bewildering decision that chapter 10-06 does not prohibit corporations from acquiring title to farm lands. With Alice-in-Wonderland reasoning they noted that the act did not *expressly* prohibit corporations from acquiring title although the bare reading of section 10-06-01 would seem to cover ownership of farm land as well as its operation and use. In fairness to our Supreme Court, the original initiated measure did contain a specific prohibition against acquiring real estate by a corporation.[10] This prohibition was deleted by an amendment of

5. N.D. CENT. CODE § 10-06-02 (1960). Such previously acquired land had to be disposed of before July 29, 1942.
6. N.D. CENT. CODE § 10-06-04 (1960).
7. 72 N.D. 359, 7 N.W.2d 438 (1943); *aff'd*, 73 N.D. 469, 16 N.W.2d 523 (1944); *aff'd*, 326 U.S. 207 (1945).
8. 326 U.S. 207 (1945).
9. 39 N.W.2d 260 (1949).
10. N.D. Sess. Laws 1933 at 494.

the legislature in 1933 but the court said that the reason for the amendment was to permit corporations to pass valid and marketable titles to rural real estate. There is no indication that it was ever the intention of the legislature to relax the ban on corporations wishing to acquire and use rural real estate. Is there a practical difference between "acquiring" land, then renting it out and "farming?" Either way a corporation would get income from rural land. Returning to an earlier theme, it is this writer's opinion that corporate farming is under no circumstances allowable. In so saying, such opinion would seem to be at odds with at least one other lawyer writing on the subject.[12] *Asbury* may not be a ban on all corporate farming. He correctly points out that *Asbury* was a chartered hospital and there was nothing in its purpose clause to give it power to own, hold, or manage real estate of any kind and quotes the language used by the Supreme Court:

> When the statute provides that there shall be expected from its operations such real estate that is reasonably necessary in the conduct of the business of the corporation, it means such real estate as is *reasonably necessary for carrying on the business or activity which the corporation was created to carry on.*[13] (Emphasis his.)

If, by implication, this language means that a corporation can hold and farm rural land that is reasonably necessary to conduct its non-rural business, then it is suggested that such an exception applies only to corporations which acquired real estate prior to 1932.[14] While it is conceivable that it may be reasonably necessary for a corporation to farm in order to carry on the business for which it was created, such a corporation is quite beyond the realistically imaginative grasp of this writer. In any event, we do not have a reported case where a litigant-corporation is farming land as a necessary adjunct to carrying on the business for which it was created.

To round out the discussion of the statutes, mention should be made of the truly formidable escheat provisions.[15] Should any corporation violate the corporate farming law, the title to such real estate shall escheat to the county in which such real estate is situated upon an action instituted by the State's Attorney of such county, and such county shall dispose of the land within one year at public auction to the highest bidder and proceeds of such sale after all the expenses shall be paid to the corporation which formerly owned the land. This qualifies as cruel and unusual punishment except for the fact that fortunately (for the corporation) on the ladder of enforcement

11. N.D. Sess. Laws 1933, ch. 89, § 1, at 122.
12. McElroy, *North Dakota's Anti-Corporate Farming Act*, 36 N.D.L. REV. 96 (1960).
13. Asbury Hospital v. Cass County, *supra* note 7, at 447.
14. N.D. CENT. CODE § 10-06-02 (1960).
15. N.D. CENT. CODE § 10-06-06 (1960).

it would be near the bottom rung—somewhere between the Sunday Blue Laws and fornication. This is not to imply that corporate farming is rampant in North Dakota, but the existence of such operations would lend themselves to easy concealment and public indifference.

Lest we wander too far into an area of academic trivia where a farm corporation is a non-farm corporation is a farm corporation (with apologies to Gertrude Stein) this article now asks and attempts to answer the question of continuing the corporate farming law. As a prime observation, the face of farming has been tremendously changed from Grandpa's day. Labor saving devices, automation, and fertilizers have performed a technological revolution making American farms the world's most productive and has transformed agriculture into a big business requiring large capital, large acreage, and sophisticated management. Reference is even made to agriculture as being "agri-business." American farmers invested 4.8 billion dollars in plant and equipment last year—more than any manufacturing industry.[16] It follows that when farming becomes a highly complex business, farmers turn to business-like methods for operation. Incorporation, having served the needs of American business, can and does serve the needs of American farmers. North Dakota is no less part of the national trend to larger units and less farmers. Our population has been static over the last ten years[17] and this, in part, would indicate farmers are not all leaving the state but rather leaving rural North Dakota for urban North Dakota. President Johnson in this year's budget message[18] said that he believed that no more than one million farmers, compared to the present total of three and one-half million, can expect in the future to earn their living from farming alone.

There has been a previous article in this Law Review by Professor James P. White dealing with the family farm corporation and the farm partnership.[19] In that article Mr. White listed three prime advantages in corporate family farming: 1. limited liability on the part of the participants; 2. flexibility in the expansion of business; 3. facility and problems of estate planning; and two principal disadvantages: 1. double taxation; 2. the disadvantage of fixed salaries. The selection of business form is based, to a large extent, on the same considerations no matter what your business may be, but the main impetus to interest in the corporate form for farming undoubtedly arises from tax considerations.

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16. Time, Oct. 2, 1964, p. 111c.

17. In 1950 North Dakota's population was 619,636. In 1960 it had increased only 2.1% to 632,446, compared to a national increase in population of 18.5%. INFORMATION PLEASE ALMANAC, ATLAS AND YEARBOOK 400 (19th ed. 1965).

18. N.Y. Times, Jan. 26, 1965, p. 25, col. 1.

19. White, *Taxation of the Family Farm Corporation and Partnership*, 36 N.D.L. REV. 87 (1960).

Prior to 1958 one of the main disadvantages of incorporating was the taxation of the earnings of a corporation and the subsequent taxation of the dividends received by the shareholder. In 1958 the Internal Revenue Code was amended to permit the shareholders of a "small business corporation" to elect to be taxed upon its annual income, whether or not it was actually distributed.[20] To be eligible for the election under Subchapter S, the corporation must not have more than ten shareholders,[21] who must be individuals or estates,[22] cannot be a nonresident alien,[23] and the shareholders must be unanimous in electing to come under Subchapter S.[24] The corporation itself must have only one class of stock.[25] Presumably, most farm corporations would be formed for qualification under Subchapter S. It must be noticed, however, that the requirement of a single class of stock would hamper the corporation when it attempts to utilize desirable estate planning and income splitting programs which require two classes of stock.[26]

The possibility of disqualification or termination is a problem that must be reckoned with at all times in a Subchapter S corporation. Although it takes unanimous consent to revoke the election[27] it is possible for one shareholder to disqualify the corporation by selling to an outside person who does not consent to the election[28] or to a group which would bring the number of shareholders over the requirement of ten or to a trust or corporation. That is to say, any time the electing corporation does not meet the requirements the election is terminated.[29] The possibility of losing a Subchapter S status by a shareholder could be met by having a stock transfer restriction agreement in the corporation by-laws.

Under Subchapter S the corporation is not taxed on its income, but rather each shareholder must include in his gross income a pro-rata share of the corporation's undistributed net income each taxable year during the election,[30] whether or not it is distributed. Each shareholder thus builds up a "credit" in undistributed income which may be distributed tax free in subsequent years.[31] It must be noted that this credit is not transferable and is terminated on the disqualification of the corporation under Subchapter S.[32] It would

20. INT. REV. CODE OF 1954, §§ 1371-1377.
21. *Id.* § 1371 (a)(1).
22. *Id.* § 1371 (a)(2)
23. *Id.* § 1371 (a)(3).
24. *Id.* § 1372 (a).
25. *Id.* § 1371 (a)(4).
26. This would also be true under the legislation that has been proposed in North Dakota during past legislative sessions.
27. INT. REV. CODE OF 1954, § 1372 (e).
28. *Id.* § 1372 (e)(1).
29. *Id.* § 1372 (e)(3).
30. *Id.* § 1373 (a-c).
31. *Id.* § 1375 (d).
32. *Id.* § 1375 (e).

thus seem advisable to distribute all the income annually to the shareholders.[33]

Most standard treatises[34] do not treat a farming corporation as having any separate incidents. In other words, the decision on incorporation for a farmer would be governed by much the same factors that would govern incorporation for any other type of enterprise, taking into consideration the peculiarities of the operation. Farmers incorporate for the same reasons as others. Aside from tax considerations, there are other equally compelling reasons for using a corporate form for farming purposes:

a. Limited liability.

Generally the corporate form separates the assets of the individual farmer from the corporation's failures and conversely the corporation's assets from the creditors of an individual farmer. According to a Minnesota survey this principal of limited liability was the most common reason given for incorporating a farm.[35]

The general rule, which North Dakota follows, is that a shareholder is liable to the corporation or its creditors only for the full consideration of shares or for unpaid stock subscriptions.[36] But with this general concept of limited liability there are some qualifications. First of all the concept of limited liability may be pointless if all the property is owned by the corporation. This will put an individual farmer who has all his property in the corporation in exactly the same situation as if he were not incorporated. The only difference would be that the corporation rather than the individual would stand to lose. In fact if a farmer put all of his land in the corporation, he could even possibly lose his homestead exemption.[37] If, however, the farmer would incorporate only the operation of the farm and rent its land from the farmer-owner, or incorporate his land separately[38] and rent to the operating corporation, or if he ran another business as a sideline,[39] limited liability and farm incorporation would have credence.

There are other areas in which one must be careful when incorporating a close corporation. First one must be careful of "watered" shares.[40] This may be particularly acute in the farm

33. For an excellent discussion of the mechanics of Subchapter S, see O'BRYNE, FARM INCOME TAX MANUAL 602 (3d ed. 1964).

34. *E.g.*, HORNSTEIN, CORPORATION LAW AND PRACTICE (1959).

35. Note, 43 MINN. L. REV. 305, 308 n. 18 (1958).

36. N.D. CENT. CODE § 10-19-22 (1960).

37. N.D. CENT. CODE § 47-18-01 (1960).

38. This may be impractical for the obvious economic reasons surrounding the cost of incorporating and necessity of keeping separate records for several corporations.

39. The farmer could have a business which would involve more risk than the farming operation. Eckhardt gives an example of a farmer with an artificial insemination business wherein the farmer would be subject to possible heavy tort liability. Eckhardt, *Should the Farmer Incorporate*, 1 PRAC. LAW. 61, 62 (1955).

40. Watered shares exist when the value given for the stock is less than the par or stated value of the stock itself.

situation where shares would be given for property or services[41] which do not have a determinable value at the time of the transaction. The problems surrounding evaluation of property or services are left to the board of directors, or the shareholders, as the case may be, and in the absence of fraud their judgment is conclusive.[42] This problem will arise, of course, only in the case of an insolvent corporation. The problem of watered stock has been lessened with the increased use of low par or no par stock.[43]

Another area of concern in the field of limited liabilities for the close corporation is that courts may often "pierce the corporate veil" and hold the major shareholder personally liable for the corporate debts. The test used is whether or not recognition of corporateness would produce unjust or undesireable consequences inconsistent with the purpose of the concept.[44] A one-man, family or other close corporation is particularly subject to close scrutiny, but if the business is used for a legitimate purpose, conducted on a corporate and not a personal basis, and is established on an adequate financial basis, the courts will recognize the corporateness of the business.[45]

We have been talking mainly of contractual limited liability, but limited liability also extends to torts. In early times it was thought that corporations could not commit a tort, and therefore the corporation was not liable for any tort liability.[46] Today, however, it is well settled that a corporation is liable for torts committed by its agents or servants under the rule of respondeat superior.[47] But in the agency or master-servant situation the agent or servant is severally liable also for the tort, so that in the farming corporation the farmer could be personally liable to the plaintiff if he caused plaintiff's injury. The farm owner may, however, be able to reduce his tort liability through insurance, though few farmers have seemingly relied on liability insurance.[48] Even so, it would seem that for tort liability insurance would be the answer, both for the private farmer and the farm corporation.

b. Credit.

Generally better credit and financing programs are available to those operating within a corporate framework. It is usually

41. "The consideration for . . . shares . . . may be paid . . . , in money, in other property, . . . or in labor or services actually performed for the corporation." N.D. CENT. CODE § 10-19-16 (1960).

42. N.D. CENT. CODE § 10-19-16 (1960).

43. Low par shares would probably be used more than no par shares because of the difference in license fee rates. A no par share is considered by statute to be valued at $100. This can mean a considerable difference in the amounts paid when incorporating. N.D. CENT. CODE § 10-23-06 (1960).

44. HENN, CORPORATIONS § 144 (1961).

45. Caroldo, *Limited Liability With One-Man Companies and Subsidiary Corporations*, 18 LAW & CONTEMP. PROB. 473, 482-483 (1953).

46. 10 FLETCHER, CYCLOPEDIA OF CORPORATIONS § 4877 (Rev. ed. 1961).

47. *Ibid.*

48. Shoemaker, *Incorporation of Family Agricultural Business*, 30 ROCKY MT. L. REV. 401, 404, n. 11 (1958).

conceded that a credit institution would rather deal with a corporation than with an individual. Reasons given are that management will be more unified and able within a corporation,[49] and that a corporation will have to file periodic reports with the state, compelling it to keep its books and finances up to date.[50] Other reasons given for better credit standing are that the credit of a corporation is not impaired by the individual liabilities of the shareholders, and that the corporation will continue in existence if the owner leaves the business.[51]

Financing in a corporation is obviously much more flexible with the myriad of combinations and variations available to corporate securities. Debt financing may be used as well as the issuing of shares if the need arises.[52]

One more thing should be said with regards to credit standing (and this has to do with limited liability as well). In many cases a close corporation's major shareholders are required to co-sign notes issued to the corporation. This could leave the major shareholders liable for the note in the event that the corporation should fail to meet its obligation.

c. Shareholder-employee benefits.

There is no reason why the successful profit-sharing plans, pension plans and insurance plans available to corporate busines employees could not be used with equal success in dealing with farm employees. These benefits, if duly qualified, may be deducted from current operations, invested tax free and subsequently distributed to the employees. The benefits would not be taxed until received,[53] and this presumably would be when the employee is in a lower tax bracket. Under the Internal Revenue Code officers of a corporation are considered employees and are therefore eligible for these fringe benefits also.[54]

Insurance plans maintained by the corporation would be available to all the corporate employees. Health and accident plans would be received tax free.[55] These would include medical expenses, permanent injuries and wages lost due to personal injuries or sick-

49. Note, 43 MINN. L. REV. 305, 321 (1958). The author of the Note does not agree with this contention, his reasoning being that the same management would be running the farm both before and after incorporation.

50. N.D. CENT. CODE § 10-23-01 (1960).

51. Conflicting views as to the worth of the credit argument for incorporating are set out in; Hall, *Agricultural Corporations: Their Utility and Legality*, 17 OKLA. L. REV. 389, 394 (1964); Shoemaker, *Incorporation of Family Agriculture Business, supra* note 48, at 404; and the opposite negative view in Note, 43 MINN. L. REV., *supra* note 49, at 320.

52. The proposed legislative acts in the past would put a limit on the sale of shares by limiting the shareholders to ten and would allow only one class of stock to be sold. House Bill 724, 1959 Legislative Session.

53. INT. REV. CODE OF 1954 §§ 401-404; See generally, Eckhardt, *Family Farm Corporations*, 1960 WIS. L. REV. 555.

54. INT. REV. CODE OF 1954 §§ 401, 404.

55. *Id.* § 106.

ness.[56] Also excluded from gross income of the recipient are life insurance proceeds and death benefits.[57]

Profit sharing plans are another means of incentive compensation. They provide for bonuses, either cash or stock, and are dependant upon corporate profits, sales or some other factor. They may be either individual or on a group basis.

Pension plans are a form of old-age security and are used to encourage the life-term careers with the corporation. A corporation has the power to set up such incentive programs.[58] These shareholder-employee benefit plans could be the answer to obtaining and keeping good farm help. In a family operation, these benefits could be extended to all the working members.

d. Income splitting.

In a high tax bracket a farmer may be thinking of ways to split his income, that is, channeling earnings directly to members of his family without increasing his own income. Taking members of his family into a partnership has some complications. The Internal Revenue Service is suspicious of family partnerships and one cannot limit the children's right to sell their interest.

In a corporation the farmer-father could control the corporation through majority stock ownership and control the distribution as he saw fit depending upon his particular tax status. It would make no difference when a member of the family came into the corporation to share in undistributed profits.

There are many possible ways to split income. One is by paying interest on debt securities held by shareholders of the corporation. This of course would eliminate the double taxation problem which arises in the paying out of dividends. This means is limited by the possibility that debt will be classified as equity for tax purposes.[59] Another means of splitting income is through the declaring of dividends and multi-class capital structures, that is, equitable means. If the corporation has only one class of stock the paying of dividends will also increase the income of the majority shareholder, sending him into a higher tax bracket and defeating the purpose of income splitting. The only way of using equity as a means for income splitting would be in a corporation with a capital structure comprised of two or more classes of stock. In this situation the majority shareholder could keep complete control over the corporation by distributing only shares of nonvoting stock to persons other than himself or those that he wants to have a voice in the business and then declare a dividend to that nonvoting stock of which he has no ownership.[60]

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56. *Id.* § 105, as amended, Rev. Act of 1964 § 205(a), 78 Stat. 38, 26 U.S.C. 105.
57. INT. REV. CODE OF 1954 § 101.
58. N.D. CENT. CODE § 10-19-04(16) (1960).
59. Note, 43 MINN. L. REV. 782, 806-809 (1959).
60. This would not be possible under the one class of stock provision proposed by the 1959 legislature, *supra* note 52.

Still another way of income splitting is through intra-family gifts of stock. There is however, no certain means of insuring that the intra-family transfer of stock will be recognized for income tax purposes. The question of income splitting in this situation is relevant today only in regards to transfers of stock to the transferor's children, since the Internal Revenue Code now allows husband and wife to split their income by filing a joint return.[61] The transfers to children are generally upheld if it can be shown that it was a bona fide gift. Requirements for being a valid gift under Internal Revenue Code are: a donor competent to make a gift; a clear intent on the part of the donor to make a gift; delivery and acceptance; a complete transfer of the donor's control over the stock.[62]

e. Estate planning.

Of all of the above suggested advantages to corporate farming the area of estate planning and inter vivos transfers seems to be the most practical. It is true that in a partnership you can provide for the continuation of the business upon the death of one of the partners. Usually this is done by some complex method for distribution incorporated into the partnership agreement and usually the formula gives rise to later uncertainty and downright evasion. Practicing lawyers are painfully aware, too, of the number of farm partnerships that operate without an informal understanding, much less a written formal agreement.

With the use of transfers of shares of stock before the death of the owner it would 1. permit the heirs to acquire ownership in farm property at an early age, 2. provide a method of offsetting a decline in the productivity of the farm and, 3. help to hold down death taxes.[63] The principal advantage, however, would be the transferability and distribution of the farmer's estate upon his death. It is much easier to transfer shares of stock in a corporation than to transfer the relatively indivisible property of a farm. It is also possible to distinguish between beneficiaries, some of which would farm the property while others could be compensated in lesser degree.

Most discussions on repeal of the Corporate Farming Act begin and end on the premise that the economic evil it was intended to correct is dead. The roots of opposition have only changed their form and while it may be true that corporate foreclosures are no longer prevalent, it is naive to think that opposition to corporate farming has dissolved. We cannot view this question as all economic. The question in 1932 was part political but mostly economic. The question in 1965 is part economic but mostly political. The concept of the corporate form was a long time in gaining social and political

61. INT. REV. CODE OF 1954 § 6013.
62. Apt. v. Birmingham, 89 F. Supp. 361, 370 (N.D. Iowa 1950).
63. Shoemaker, *supra* note 48, at 407.

acceptance. There is no reason to believe that the path to corporate farming, at least in North Dakota, will be any easier. Mr. E. W. Smith, President of the North Dakota Farmers Union, is quoted as saying: "Perhaps the time has come when we should give serious consideration to an anti-corporation farming law at the national level similar to the one that has worked so successfully here in North Dakota. Without a farm program to stop the encroachments of giant corporations, we will in time be eliminated as family farmers."[64]

So we see that the thinking of some farm leaders is in precisely the opposite direction—for an expansion of the Corporate Farming Act rather than a repeal. Assuming that the opposition to corporate farming does not arise from opposition to the corporate concept as such, what then is the main objection? When you speak of Blackacre Corporation being in the farming business, we immediately equate that type of operation with General Motors. Rather, in North Dakota, it is more likely to be composed of farmer Blackacre, his wife, Mrs. Blackacre, and two of the Blackacre sons who are helping dad on the farm, and maybe a brother-in-law or two. It is not the likes of the Blackacre Corporation that will kill the family farm or farming as we know it. We are losing farmers in North Dakota without corporate farming. The reasons for this are broader than the scope of this article and are well known to those with even a passing acquaintance with the changing complexions of our society. Everything from the tax structure to low prices and overproduction has been blamed.

Our corporate farming law could be readily amended to allow "family corporate units" while still placing restrictions on large scale diversified corporate operations. For example, could North Dakota not follow the Internal Revenue Service classification of small business (Subchapter S) corporations? In doing so, it could be provided that corporations having more than a certain number of shareholders could not engage in farming. An acreage limitation could also apply to corporations. A bill was introduced in 1959 authorizing certain corporations to farm and ranch.[65] The bill would have changed nothing in the present statutes but it would have enacted an addition to chapter 10-06 as follows:

> "BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:
>
> Section 1.) Sections 10-0607 of the North Dakota Revised Code of 1943 is hereby created and enacted to read as follows:

64. Fargo Forum, Nov. 13, 1964, p. 8, col. 2.
65. House Bill 724, 1959 Leg. sess.

10-0607. CERTAIN CORPORATIONS EXEMPTED FROM PROVISIONS OF CHAPTER.) Nothing in this chapter shall be construed as prohibiting any domestic corporation from owning rural real estate or carrying on farming or ranching operations, if such domestic corporation meets the following qualifications:

1. Stockholders shall not exceed ten in number; and
2. The corporation shall not have as a stockholder a person, other than a trust or estate, who is not a natural person; and
3. The corporation shall not have as a stockholder any nonresident alien; and
4. The corporation shall not have more than one class of stock; and
5. An officer of the corporation shall actively supervise the farming or ranching operations; and
6. At least eighty percent of the gross income of the corporation shall come from farming or ranching operation."

This bill did not even reach the floor for a vote. Qualifications one, three and four are identical with the provisions of the Subchapter S corporation. Qualification two is somewhat similar except that no stock can be owned by a trust under Subchapter S.

In *Asbury Hospital* the plaintiff corporation, in challenging the constitutionality of the farming law, made the point that the law discriminates arbitrarily between two classes of corporations by relieving cooperative corporations from the same inhibitions placed on other corporations. This argument was rejected by the court. The same argument can be made to the legislature as a reason for having the law changed.

The time is coming, and has in some places arrived, when the successful farmer spends as much time in an office chair as he does on a tractor. His office has a college degree or two and he is trained in perhaps wider areas than possessed by most business and professional men. The United States Department of Agriculture has outlined what it feels tomorrow's farmers will need.[66] He will need basic training in economics, mathematics, principles of accounting, financial management, business law, principles of farmer cooperatives, and political science. He will need special training in record keeping, use of capital for farming, business analysis, long range planning of farm operations, organizations of the farm, efficient use of labor, building requirements, use of automation, agriculture policies, and taxation. He will need specialized services and investment capital, working capital, loan analysis, bookkeeping, economic outlook analysis, and the advice of specialists in farm management

66. Minneapolis Sunday Star & Tribune, Dec. 13, 1964, p. 5c, col. 7.

and legal services. He will need basic training in general geology, soil science, elementary surveying, principals and practice of land use, soil analysis and land economics. He will need specialized training in soil and moisture conservation, terrace construction, drainage, irrigation, flood and erosion control, and forest and woodland management. Can there be any question but that the application of present knowledge will lead to more acres per farm and increased technical problems? From the crucible of technical change can come a vigorous farm economy for North Dakota. Incorporation is a part of the new picture. If a North Dakota farmer feels and is advised that corporate ownership is a good tool to use, he should be allowed to use it. It is here advanced that the corporate farm unit can play a role in the preservation of the family farm. The outlook for a farming career could be brighter for the farm youngster who chooses Blackacre to General Motors. Evidence that corporate farming will somehow precipitate an exodus of farmers from the state is unconvincing. North Dakota must continue to concern itself with preservation of the agrarian teachings that make the farm the center of a well balanced society. The present corporation law is a hindrance, not a help, in achieving this goal.

Insofar as can be determined, there has been no serious discussion of amending or repealing the corporate farming act. The 1965 North Dakota Legislative Assembly has adjourned without the introduction or consideration of any measures to alter or abolish the present corporate farming law.[67] A change, any change, in this law would create a storm of argument.[68] Yet, North Dakota farmers must not be made to lose faith with the future but must embrace it. Change, being the first law of life, is also the first law of farming.

67. A bill was introduced, however, to authorize "common law trusts" which would allow property to be held and managed by trustees for the benefit of holders of transferable certificates which would limit a holder's liability the same as a shareholder in a corporation. Sen. Bill 345, 39th Legis. Assembly (1965).

68. There is no room for much legislative division since it takes a two-thirds roll call vote of all members in both houses to repeal an initiated measure. N.D. CONST. art. 25.