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## **An Act Relating to Corporations: Prohibiting Farming or Ranching Business Corporations with Certain Exceptions: Okla. Stat. tit. 18, 951-54 (1971)**

Katherine A. Gallagher

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viction of possession. If the defendant pleads guilty or is found guilty of possession,

[t]he court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require including the requirement that such person cooperate in a treatment and rehabilitation program. . . .<sup>19</sup>

After the successful completion of the terms of the probation, the court dismisses the proceedings and the defendant is discharged without the stigma of conviction. However, the proceeding is deemed a conviction in any subsequent proceeding where a prior conviction is relevant in sentence determination.

Additional features of the Act are forfeiture of vehicles used in the transportation of illegal substances<sup>20</sup> and the imposition of tax liens against land cleared of illegal plants at state expense.<sup>21</sup>

The Act should provide Oklahoma with a modern standard to both prosecute and defend the accused drug abuser.

*Jim L. Lindsey*

## AN ACT RELATING TO CORPORATIONS; PROHIBITING FARMING OR RANCHING BUSINESS CORPORATIONS WITH CERTAIN EXCEPTIONS:

OKLA. STAT. tit. 18, §§951-54 (1971)

In *LeForce v. Bullard*,<sup>1</sup> the Supreme Court of Oklahoma held that corporations may be formed in Oklahoma for the purpose of engaging in the business of farming and ranching and further held that these corporations have the power to own and hold real estate outside the limits of incorporated cities and towns. This decision stirred considerable comment

<sup>19</sup> OKLA. STAT. tit. 63, §2-410 (1971).

<sup>20</sup> OKLA. STAT. tit. 63, §2-503 (4) (1971).

<sup>21</sup> OKLA. STAT. tit. 63, §2-509 (3) (1971).

<sup>1</sup> 454 P.2d 297 (Okla. 1969).

among legislators, the result of which was the passage of the above mentioned Act.

The Supreme Court, in *Le Force*, had circumvented the constitutional prohibition against corporate ownership of land outside the city limits by relying on the word "necessary and proper" as used in the second exception of the constitutional provision. It states that corporate ownership of lands is forbidden.

. . . except such as may be located in such towns and cities and as additions to such towns and cities, and further except such as shall be necessary and proper for carrying on the business for which it was chartered or licensed.<sup>2</sup>

This section of the constitution is not self-implementing, but relies on OKLA. STAT. tit. 18, §§ 1.20-30 (1961) for its enforcement. The court stated that the words "do not import that which is indispensably necessary, but do import that which is proper, useful and suitable and thus conducive to the accomplishment of the purposes of the corporation."<sup>3</sup> The court interpreted the intention of the framers of the constitution as not being "to prevent private corporations from owning land, but to prevent land companies from buying rural land and further to prevent private corporations from buying more rural land than necessary and proper for their operation so as to encourage private rural home ownership."<sup>4</sup>

Statutes which limit corporate ownership of realty are found in several states, although often the specific purpose for their enactment has been obscured. It is the general consensus, however, that the primary purpose of the Oklahoma prohibition was to protect the farmer from powerful corporations which would force him out of business. If indeed, the original purpose was to protect the small farmer, it has failed to serve its purpose in recent times.

<sup>2</sup> OKLA. CONST. art. XXII, § 2.

<sup>3</sup> 454 P.2d at 301.

<sup>4</sup> *Id.* at 303.

The inability of families legally to incorporate their farming operations has led many farmers to abandon farming as a livelihood. The expense of modern equipment and methods has forced more and more farmers to hedge against failure by diversification. Family farming corporations minimize some of the problems inherent in diversification. In the first place, incorporation allows for limited liability. Another desirable feature of corporate farming is the relative ease of property transference. It is possible to continue farming after the death of the head of the operation without its being destroyed by death and inheritance taxes which exceed the liquid capital of the farm. Furthermore, corporate farming can provide for retirement and employer's benefits not available to the individual farmer. Certain tax problems which may be created by incorporation can be alleviated by the utilization of the Subchapter S election.

The Oklahoma legislature, with the passage of this Act, has attempted to clarify the Oklahoma position on corporate farming. Senate Resolution No. 67 (1971 Okla. Laws 1055) declares that the legislative intent was to afford family corporate farming, while maintaining restrictions on other types of corporate farming. The restrictions which the legislature imposed upon the exceptions preclude foreign corporations or very large corporations from qualifying and Sections 3 and 4 of the Act impose restrictions upon corporations engaging in food processing and in the feeding of livestock or poultry. The obvious purpose of this act is to limit the scope of the *LeForce* decision, which left the door open for very large corporations to monopolize the farming business in Oklahoma. However, the exceptions to the restrictions provide assistance to the small family farmer who could benefit by incorporation.

*A. Katherine Gallagher*