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# Right-to-Farm Statutes and Corporate Farming Laws

*Rusty Rumley*

*Staff Attorney*

479-575-7646 • [nataglaw@uark.edu](mailto:nataglaw@uark.edu)

# Topics

- Right-to-Farm Statute Provisions and the changes that have occurred over the past five years (not including the “zoning” states)
- Corporate Farming Laws and their ability to preserve agricultural land.

# Right-to-Farm Statutes

- All 50 states have “Right-to-Farm” statutes of some form
- Essentially the purpose behind a Right-to-Farm statute is to provide liability protection to agricultural operations from nuisance lawsuits.

# Constitutionality of Right-to-Farm Statutes

- *Bormann v. Bd. Of Sup'rs In and For Kossuth County*, 584 N.W.2d 309 (Iowa 1998).
  - Iowa statute violated the “takings clause” of the 5<sup>th</sup> Amendment.
  - Board’s creation of an “agricultural area” immediately triggered the nuisance immunity
  - *Churchill v. Burlington Water Co.*, 62 N.W. 646, (1895) – right to maintain a nuisance action is an easement, which is an interest in real property in the state of Iowa.

# Other Cases on Constitutionality, Upheld

- *Moon v. North Idaho Farmers Ass'n*, 96 P.3d 637 (Idaho 2004) (burning grasslands).
  - Not the Idaho RtF statute, however it is extremely similar...so much so that the Idaho Supreme Court cited the Bormann decision.
  - Idaho has no direct authority that providing nuisance immunity conveys an easement in real property (unlike Iowa) so no takings was found.

# Other Cases on Constitutionality, Upheld

- *Lindsey v. DeGroot*, 898 N.E.2d 1251 (Ind. Ct. App. 2009) (dairy operation).
  - Indiana did not recognize the granting of nuisance immunity as a easement in real property
- *Barrera v. Hondo Creek Cattle Co.*, 132 S.W.3d 544 (Tex. Ct. App. 2004) (feedlot).
  - Plaintiff could not show that there was an intentional act by the government or that a public purpose was being accomplished so the court ruled that there was no taking

# Oklahoma and Arkansas Right-to-Farm Statutes (among others)

- Comparison between the Right-to-Farm statutes in Oklahoma and Arkansas as well as other states around the country
- Unique provisions and what impact they may have on future litigation

# Common Provisions in Right-to-Farm Statutes

- General Statements of Policy
- Definitions of “agriculture” and “agricultural activities”
- Limitations on Protections Provided
- Prohibitions against Local Government Regulation
- Awarding Attorney Fees and other Costs

# The General Policy Statement

- Many states have put a statement of general intent that explains the objectives that the statute is intended to accomplish
- Because attorneys are innovative, the general policy statement can curtail “creative” legal theories

# Arkansas Policy Statement

- **§ 2-4-101. Purpose**
- It is the declared policy of the state to **conserve, protect, and encourage the development and improvement** of its agricultural and forest lands and other facilities for the production of food, fiber, and other agricultural and silvicultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many are discouraged from making investments in farm or other agricultural improvements. It is **the purpose of this chapter to reduce the loss to the state of its agricultural resources** by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. (emphasis added)

# General Policy Statements:

*Rancho Viejo LLC v. Tres Amigos Viejos LLC*, 123 Cal. Rptr. 2d 479 (Cal. Ct. App. 2002).

- Because of the right-to-farm statute protection against nuisance, the developer argued an alternative theory, that the suit should be maintained under the tort of trespass because of the physical invasion of water onto the plaintiff's property.
- Court ruled that legislative history showed the intent to prevent such suits even though trespass was not enumerated.

# Definition of “Agricultural Activities” Oklahoma

- "Agricultural activities" ~~shall include~~ includes, but is not be limited to, the growing or raising of horticultural and viticultural crops, berries, poultry, livestock, *aquaculture*, grain, mint, hay, dairy products and forestry activities. *"Agricultural activities" also includes **improvements or expansion** to the activities provided for in this paragraph including, but not limited to, new technology, pens, barns, fences, and other improvements designed for the sheltering, restriction, or feeding of animal or aquatic life, for storage of produce or feed, or for storage or maintenance of implements. If the expansion is part of the same operating facility, the **expansion need not be contiguous.***
  - H.B. No. 1482, 52nd Leg., 1st Reg. Sess. (Okla. 2009). This statute goes into effect on Nov. 1, 2009.

# Limitations on Protected Actions, Oklahoma

- While the definition of “agricultural activity” is broad, it is not without limitations
- Oklahoma’s primary limitation is found at the end of the new Right-to-Farm Statute
  - E. This section does not relieve agricultural activities of the duty to abide by state and federal laws, including, but not limited to, the Oklahoma Concentrated Animal Feeding Operations Act and the Oklahoma Registered Poultry Feeding Operations Act.

# Oklahoma Concentrated Animal Feeding Operations Act – Okla. Stat. tit. 2, § 20.

- Provides additional guidelines for qualifying agricultural operations.
- Included in this is a nuisance protection section, however the CAFO must:
  - Be in compliance with all rules of the act
  - Shall not be operated or located in violation to any zoning regulations
  - Located 3 or more miles outside of a municipality
  - And is not located within 1 mile or ten or more occupied residences

Unless the operation endangers the health and safety of others

# Prohibitions against Local Government Regulations

- There is wide variation between states on whether the local government can regulate agricultural operations.
- If they can regulate agricultural operations than the scope of that authority may be limited in certain circumstances
  - Examples would be forbidding certain types of regulations such as the power to zone or to enact environmental regulations.

# Prohibitions against Local Government Regulations, continued

- Arkansas - Ark. Code Ann. § 2-4-105.
  - Any and all ordinances...are void and shall have not force or effect.
- Oklahoma
  - Nothing is said about limiting a local government's authority under the Right-to-Farm statute; however the Oklahoma CAFO Act and its poultry counterpart require that an operation comply with zoning requirements.

# Prohibitions against Local Government Regulations, continued

- Georgia - Ga. Code Ann. § 2-1-6. (May 1, 2009)
  - Forbids any ordinance or rule regulating crop management or animal husbandry practices, except for zoning
  - Not found with the GA Right-to-Farm statute
  - Intended to stop animal welfare regulations at the local level.
  - Extends beyond nuisance protection

# Awarding Attorney Fees and other Costs

- Oklahoma – 50 Okla. Stat. tit. § 1.1(D)  
(Effective on Nov. 1, 2009)
  - The agricultural operator shall recover reasonable costs *if the court finds the nuisance action to be frivolous* (emphasis added).
- Arkansas – Ark. Code Ann. § 2-4-1017(d).
  - The court may award expert fees, reasonable court costs, and reasonable attorney's fees.

# Awarding Attorney Fees and other Costs, continued

- As with the other provisions found in right-to-farm statutes there is considerable variation:
  - Washington - Wash. Rev. Code § 7.48.320
    - A farmer may recover costs if they succeed in their claim or counterclaim
    - If the court finds that the nuisance claim was maliciously made or had no probable cause than a farmer may recover exemplary damages
    - The state and local agencies can recover costs

# Awarding Attorney Fees and other Costs, continued

- Texas - Tex. Agric. Code. Ann. § 251.004(b)
  - A person who brings an action against an agricultural operation that has existed for more than one year is liable to the agricultural operator for all costs and expenses incurred in defense of that action (emphasis added).
- *Aguilar v. Trujillo*, 162 S.W.3d 839 (Tex. App. 2005).
  - Manure application was not a nuisance and ag operation recovered attorney fees and other costs

# Corporate Farming Statutes

- 9 states in the Great Plains and the Midwest have a statute, constitutional provision, or both which restrict the right of corporate entities to own agricultural property in some fashion
  - Kansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin

# Corporate Farming Statutes, continued

- There are several stated purposes:
  - "to prevent large, nonfamily farm corporations from using unfair, anticompetitive production arrangements to turn independent family farmers and ranchers into 'a new generation of sharecroppers.'"
    - John C. Pietila, Note, *[W]e're Doing This to Ourselves": South Dakota's Anticorporate Farming Amendment*, 27 J. CORP. L. 149 (2001)
  - To protect the environment
  - To prevent perpetual ownership
  - To promote competition and agricultural diversity
  - And more...
- Opponents say that the statutes have other objectives

# Status of the Corporate Farming Statutes

- Of the nine states that have such statutes:
  - 3 have been found (completely or partially) to be unconstitutional under the dormant Commerce Clause
    - Iowa, Nebraska and South Dakota
  - 2 states have had constitutional challenges which were unsuccessful
    - Missouri and North Dakota
  - The other 4 states have yet to be challenged
    - Kansas, Minnesota, Oklahoma, and Wisconsin

# Primary Problem with Corporate Farming Laws

- Nothing really prevents states from regulating what business entities can own agricultural land or operations
- However, states are not allowed to favor the citizens or business entities of their own state over citizens or businesses of another state without a compelling reason.
  - This runs afoul of the “dormant” Commerce Clause

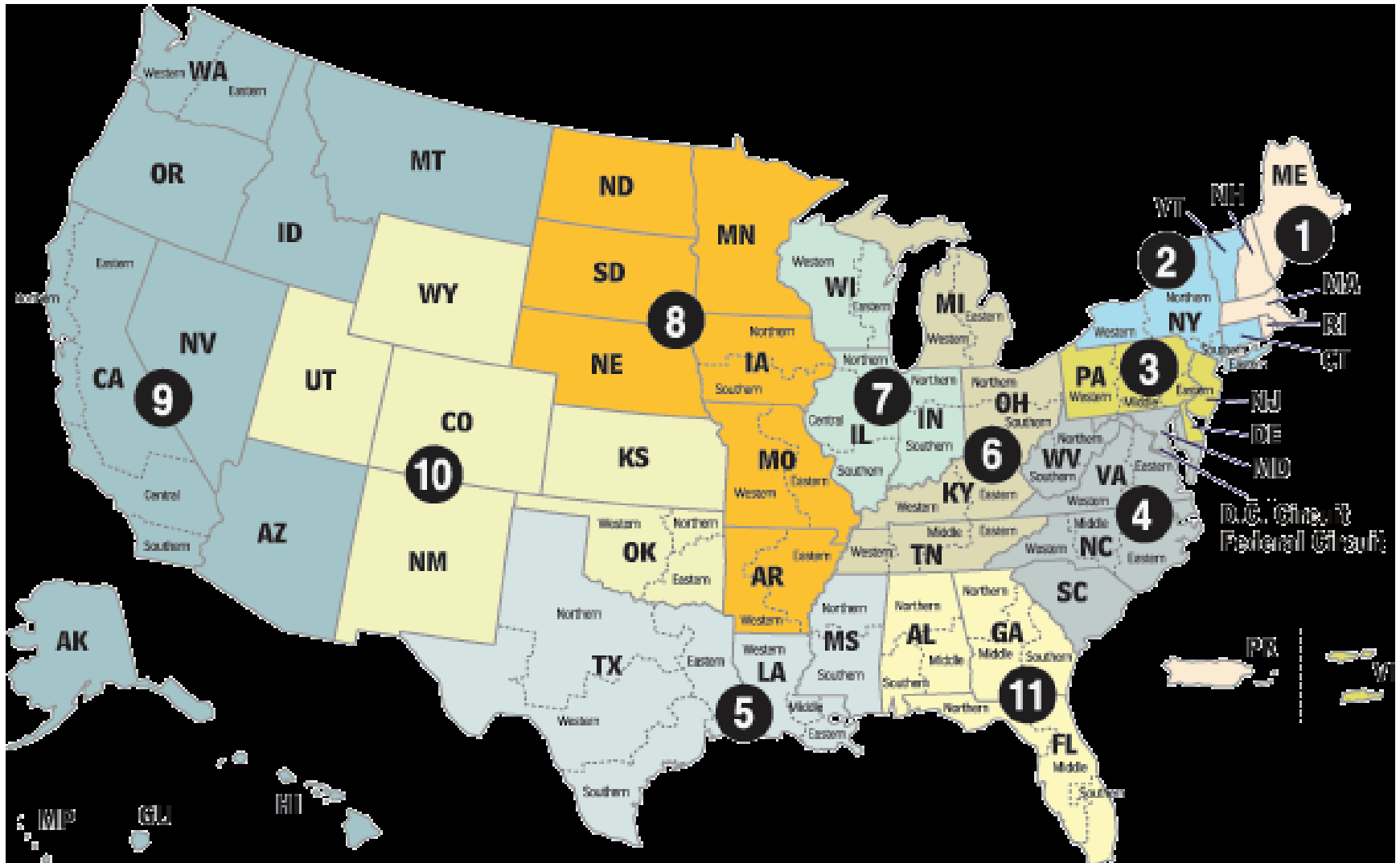
# Corporate Farming Law Cases in the 8<sup>th</sup> Circuit

- **South Dakota** - South Dakota Farm Bureau, Inc. v. Hazeltine, 340 F.3d 583 (8th Cir. 2003).
  - The 8<sup>th</sup> Cir. held that law showed a discriminatory intent and that it was unconstitutional under the dormant Commerce Clause.
    - An example of one statement that the found to be informative was “we don’t want Murphy or Tyson walking all over us.”
- **Iowa** – Smithfield Foods, Inc. v. Miller, 367 F.3d 1061 (8th Cir. 2004).
  - The federal district court granted summary judgment to Smithfield stating that the law was unconstitutional, however legislature amended the statute before appeal. Because of this the 8<sup>th</sup> Cir. did not rule on the constitutionality of the state’s corporate farming law.

# Corporate Farming Law Cases in the 8<sup>th</sup> Circuit, continued

- **Nebraska** – Jones v. Gale, 470 F.3d 1261 (8th Cir. 2006) (feedlot owner in CO (and others) sued challenging the constitutionality of law.
  - The Court held that the law was discriminatory on its face and its intent like in SD.
  - The law required either farm residency OR daily labor and management which was impossible for out of state residents or corporations.
  - Court said that the law was a “heroic effort” to avoid constitutionality problems, but the statements made about the provision before enactment showed a discriminatory purpose
    - “Let's send a message to those rich out-of-state corporations. Our land's not for sale, and neither is our vote.” (Dis. Purpose)

# 8th Circuit's Importance on Corporate Farming Statutes (6 of the 9 states are located here).



# Remaining States

- 10<sup>th</sup> Circuit (Oklahoma and Kansas):
  - Kansas – Kan. Stat. Ann. § 17-5904.
    - 18 exceptions to corporate farming restriction within the statute and production contracts (as well as many production livestock activities) are excluded. Includes the “actively engaged in labor or mgmt” like Nebraska did.
  - Oklahoma – Okla. Stat. Ann. tit. 18, § 951 & Okla. Const. Art. XXII, § 2.
    - Also has numerous exceptions; however it bases its restrictions around size and income requirements unlike other states which have residency or material participation requirements.
- 7<sup>th</sup> Circuit (Wisconsin):
  - It also bases its restrictions around size, but not income requirements, unlike the Nebraska statute that was struck down in *Jones v. Gale*.

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