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An Agricultural Law Research Article

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Farm Businesses**

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CONSIDERATIONS IN INCORPORATING FARM BUSINESSES

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The owner-operated family farm has long been an articulated and generally accepted ideal of farm people.¹ Although this ideal has never been completely attained with respect to land ownership,² farming has clearly been dominated by the sole proprietorship form of business organization with the farm business owned and managed by the farm family.³ Increased attention has been given in recent years to examination of alternative tenure-business organizational forms for farm firms, particularly the corporation.⁴ Although the

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1. See U.S. DEP'T OF AGRICULTURE, TECH. BULL. NO 1217, *THE TENURE STATUS OF FARMWORKERS IN THE UNITED STATES* 33 (1960). The Jeffersonian view that a nation of small landholding farmers was essential to enlightened self-government and therefore individual freedom and democracy has been central to tenure policy since Colonial times. See generally Brewster, *The Relevance of the Jeffersonian Dream Today*, in *LAND USE POLICY AND PROBLEMS IN THE UNITED STATES* 86 (Otto-son ed. 1963).

2. A substantial proportion of farmers in recent years has leased part or all of the land operated. Nationally, approximately 57% of the farms were operated by full owners in 1959. Part-owners operated 22½% and full tenants most of the remainder. 2 U.S. BUREAU OF THE CENSUS, *CENSUS OF AGRICULTURE 1008-10* (1959). Some evidence indicates that the proportion of owners of farm land who farm has been decreasing in recent years. In Iowa, about half of the landowners were farmers in 1958 compared with almost 2/3 of the owners who were farmers in 1946. During the same period, land owners in business and professional occupations increased from 8 3/10 to 18 3/10% of all farm landowners. See Strohbehn & Timmons, *Ownership of Iowa's Farmland*, Iowa State University Agricultural & Home Economics Experiment Station, Research Bull. No. 489, at 13-14 (1960).

3. The precise number of farms operated as partnerships, corporations, or trusts is unknown inasmuch as the Census of Agriculture does not presently enumerate farms by method of organization.

4. See University of Iowa Agricultural Law Center, Monograph No. 2, *Family Farm Corporations* (Harris & Hines eds. 1963); Harl, *Identification and Measurement of Selected Legal-Economic Effects of the Corporate Form of Business Organization Upon a Small, Closely-Held Firm* (1965) (unpublished Ph.D. dissertation in Iowa State University Library); Hubbard & Blanch, *The Farm-Ranch Corporation—A Tool for Financial Planning and Management*, Oregon State University Agricultural Experiment Station, Station Bull. No. 576 (1961); Krausz & Mann, *Corporations in the Farm Business*, University of Ill. Extension Service in Agriculture & Home Economics, Circular 797 (rev. 1960); O'Byrne, Krausz, Harl & Jurgenson, *The Farm Corporation*, North Central Regional Extension Publication No. 11, Iowa State University Pamphlet No. 273 (1960); Eckhardt, *Family Farm Corporations*, 1960 Wis. L. REV. 555; Harl, *Public Policy Aspects of Farm Incorporation*, 20 BUS. LAW. 933 (1965); Harl, *The Farm-Ranch Corporation—Business Organization*.

number of farm corporations remains relatively small,⁵ the rate of farm incorporation in at least one state appears to have increased since 1957.⁶ Whether the corporation will continue to displace other forms of farm business organization depends heavily upon the advantages to be gained and the disadvantages incurred by farm incorporation. Inasmuch as both the usual advantages and disadvantages of farm incorporation may be effectively increased or diminished in magnitude by the public policy manifestation of statutory change, the future organizational pattern of agriculture is dependent to a considerable extent upon articulated public policy.⁷

In this article, the principal advantages and disadvantages of farm incorporation are discussed in light of the current use being made of the corporation in agriculture. Attention is then directed to long-term financing problems of farm firms and the agricultural industry and the likely effects of the farm corporation thereon.

al Form of the Future, 43 NEB. L. REV. 365 (1964), Note, *Incorporating Farm Business*, (pts. 1-2), 43 MINN. L. REV. 305, 782 (1959).

5. Based upon available income tax data, it is likely that the number of farm corporations does not exceed 15,000 annually. See Harl, *Public Policy Aspects of Farm Incorporation*, 20 BUS. LAW. 933, n.1 (1965).

6. See Harl, *Selected Aspects of Employee Status in Small Corporations*, 13 KAN. L. REV. 23, 55, n.220 (1964).

7. Several states impose restraints specifically on farm incorporation. Kansas, until 1965, provided that corporations could not be formed to, nor could foreign corporations receive permission to, engage in the business of "producing, planting, raising, harvesting or gathering wheat, corn, barley, oats, rye or potatoes or the milking of cows for dairy purposes." See KAN. STAT. ANN. §17-202a (1964). Kansas Senate Bill No. 226, enacted in 1965, relaxes the prohibition if the corporation has no more than ten shareholders who are individuals, guardians, conservators, executors, administrators, or trustees under trust instruments whereby individuals or classes of individuals are the principal beneficiaries; and if all incorporators are residents of the state of Kansas. Moreover, a corporation operating for one of the otherwise-prohibited purposes cannot, directly or indirectly, manage, own, or supervise more than 5,000 acres of land; and none of the shareholders may own stock in another corporation authorized to engage in one of the prohibited activities. Grain sorghums are added by the 1965 amendment to the list of products that could not be produced by corporations under prior law, and that can be produced under the 1965 amendment only if the necessary conditions are met. MINN. STAT. §500.22 (3) (1961) (corporations engaged in farming operations cannot acquire more than 5,000 acres of land); N.D. CENT. CODE §10-06-01 (1960) (all corporations whether foreign or domestic prohibited from engaging in farming). See OKLA. CONST. art. XXII, §2 (corporations cannot own real estate outside cities and towns except such as shall be necessary and proper for carrying on the "business for which it was chartered"); TEX. BUS. CORP. ACT. art. 2.01 (B) (3) (1956) (corporation cannot combine cattle raising and meat packing); W. VA. CODE ANN. §930 (1955) (tax of five cents per acre imposed on corporate landholdings over 10,000 acres).