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STATE OF NEBRASKA
OFFICIAL
MAY 12 1994
DEPT. OF JUSTICE

DATE: May 6, 1994.

SUBJECT: Whether "Aquaculture" Constitutes "Farming or Ranching" Within the Meaning of Neb. Const. art. XII, § 8.

REQUESTED BY: Senator David F. Bernard-Stevens
Nebraska Legislature

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to whether "aquaculture" constitutes "farming or ranching" within the meaning of Neb. Const. art. XII, § 8 (commonly referred to as "Initiative 300"). As you note in your request, Initiative 300 generally prohibits non-family corporate ownership or operation of farm or ranch land in Nebraska. Because you indicate that you have been involved with legislation dealing with the aquaculture industry, we assume that, depending on our response, you may seek to introduce legislation seeking to ask the voters to amend the Constitution, if necessary, to address this issue.

"Aquaculture" is defined by statute to "mean the agricultural practice of controlled propagation and cultivation of aquatic plants or animals for commercial purposes." Neb. Rev. Stat. § 2-3804.01 (1991). The Legislature has enacted legislation relating to the development of the practice of aquaculture in Nebraska. Neb. Rev. Stat. §§ 2-5001 to -5005 (Supp. 1993). Section 2-5003 created the Nebraska Aquaculture Board ["Board"], which was charged with the duty of providing a State Aquaculture Plan ["Plan"] to the Legislature. Neb. Rev. Stat. § 2-5004. As part of the Plan, the

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Board was required to submit recommended proposed legislation related to aquaculture in Nebraska. Neb. Rev. Stat. § 2-5005. The Plan primarily contemplates the adoption of legislation regarding "[t]he establishment of standards for and certification of private aquaculture facilities. . . ." § 2-5005(3). "Aquaculture facility" is defined as "any facility, structure, lake, pond, tank, or tanker truck used for the purpose of propagating, selling, brokering, trading, or transporting live fish or viable gametes." § 2-5002(2). "Aquatic organism" is defined to "mean an individual member of any species of fish, mollusk, crustacean, aquatic reptile, aquatic amphibian, aquatic insect, or other aquatic invertebrate." § 2-5002(5). The definition of "aquatic organism" also "include[s] the viable gametes, eggs or sperm, of an aquatic organism". *Id.* Thus, while the definition of aquaculture in § 2-3804.01 refers to both "aquatic plants or animals", the focus of §§ 2-5001 to 2-5005 is aquacultural endeavors relating to fish or other defined "aquatic organism[s]".

Article XII, § 8, provides, with certain exceptions [including family farm or ranch corporations] that "[n]o corporation or syndicate shall acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any title to real estate used for farming or ranching in this state, or engage in farming or ranching." "Farming or ranching" is defined to "mean (i) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products, or (ii) the ownership, keeping or feeding of animals for the production of livestock or livestock products." *Id.* In view of the Legislature's present focus under §§ 2-5001 to 2-5005, noted above, we view the question presented as requiring resolution of whether aquacultural pursuits involving fish or other aquatic organisms constitute the "ownership, keeping or feeding of animals for the production of livestock or livestock products" within the meaning of art. XII, § 8.[1]

Because art. XII, § 8, was placed in the Nebraska Constitution as a result of the voters' approval of an initiative petition, the meaning of its provisions must be found "from the words of the amendment itself". ***Omaha Nat'l Bank v. Spire***, 223 Neb. 209, 225,

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[1] While the definition of aquaculture in § 2-3804.01 refers to both "controlled propagation and cultivation of aquatic plants or animals", we note that, based on the Nebraska Aquaculture Report submitted to the Legislature by the Board, there appears to be no aquacultural industry in Nebraska devoted to the raising of aquatic plants. Consistent with the Legislature's directive, the Report focuses on the development of aquacultural pursuits involving fish or other aquatic organisms. Accordingly, we will limit our response to the potential impact of art. XII, § 8, in this context.

389 N.W.2d 269, 279 (1986). Therefore, we must examine whether the language prohibiting non-family corporate "ownership, keeping or feeding of livestock or livestock products" in art. XII, § 8, encompasses aquacultural activities involving fish or other aquatic organisms.

In a broad and general sense, the term "livestock " includes "domestic animals kept for use on a farm or raised for sale and profit". Webster's New Universal Unabridged Dict. 1059 (2d ed. 1983). "Animal" is also broadly defined as "any living being capable of sensation and the power of voluntary motion, distinguished from **plants** by its inability to make its own food by photosynthesis." *Id.* at 71-72 (emphasis in original). The definition of "domestic", in reference to animals, includes reference to "domesticated; tame, not wild; as, **domestic** animals." *Id.* at 543 (emphasis in original).

Based on these general definitions, it could be argued that the term "livestock" used in art. XII, § 8, is broad enough to include fish or other aquatic organisms. A number of courts have held, however, in various contexts, that fish or other aquatic organisms are not "livestock". ***In re Dunkly***, 64 F. Supp. 10, 10-11 (N.D. Cal.) (fish not "livestock" within provisions of farmer-debtor provisions of Bankruptcy Act) ***aff'd sub nom Dunkly v. Erich***, 158 F.2d 1 (9th Cir. 1946); ***Brundidge Milling Co. v. State***, 45 Ala. App. 208, 210, 228 So. 2d 475, 477-78 (1969) (sales tax statute exempting gross proceeds of sales of feed for livestock did not include farm grown catfish within category of livestock); ***Meader v. Unemployment Comp. Div.***, 64 Idaho 716, 722-724, 136 P.2d 984, 987-88 (1943) (exemption from Unemployment Compensation Act for services of person employed in the raising of "livestock" did not exempt from payment of contributions employer engaged in producing trout and spawn); ***Coast Oyster Co. v. Perluss***, 32 Cal. Rptr. 740, 748, 218 Cal. App. 2d 492, (1963) (services rendered to corporation engaged in business of raising and selling oysters not within exemption for "agricultural labor" under Unemployment Insurance Code); ***Krobitzsch v. Industrial Acc. Comm'n***, 181 Cal. 541, 545-47, 185 P. 396, 398 (1919) (employees working for employer conducting a trout farm business not engaged in "`farm, dairy, agricultural, viticultural or horticultural labor,' in stock or poultry raising" under Workmen's Compensation Insurance and Safety Act). As stated by the Supreme Court of Idaho in ***Meader v. Unemployment Comp. Div.***:

> Our attention has not been called to the decision of any court holding fish are livestock,. . ., and applying the rule that words and phrases in a legislative act are presumed to have been used in their popular sense if they have not acquired a technical meaning, we cannot conclude our legislature so intended. The term `livestock', as

> commonly used and defined, does not include `trout' or `spawn'. (citations omitted).

64 Idaho at 723, 136 P.2d at 987.

While the correct answer to your question is not completely free from doubt, we are inclined to agree with the rationale of these decisions holding that, albeit in different contexts, fish or other aquatic organisms are not "livestock" as that term is commonly understood. In reaching this conclusion, we note that Nebraska has, by statute, defined "livestock" to "mean any domestic cattle, horses, mules, donkeys, sheep, or swine;. . . ." Neb. Rev. Stat. § 54-101(15) (Cum. Supp. 1992). This statutory definition has remained largely unchanged since its adoption in 1969, prior to the passage of Initiative 300. *See* 1969 Neb. Laws, LB 902, § 1. While this fact is not, in and of itself, controlling, it seems to comport with what we believe is the common understanding that, in popular parlance, fish or other aquatic organisms are not considered to be livestock. We see no logical reason for departing from this commonly held view in construing the prohibitions contained in art. XII, § 8.

In sum, it is our conclusion that aquacultural endeavors involving fish or other aquatic organisms do not involve the "ownership, keeping or feeding of animals for the production of livestock or livestock products" within the meaning of art. XII, § 8.

Very truly yours,

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cc: Patrick J. O'Donnell
Clerk of the Legislature

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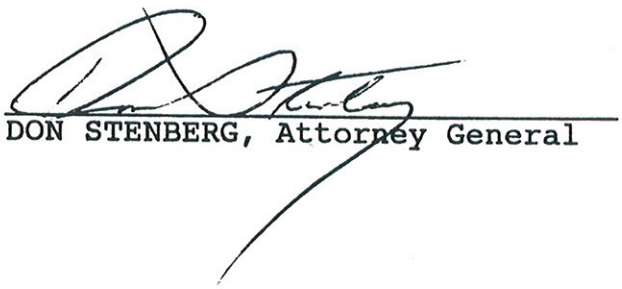
APPROVED BY:



DON STENBERG, Attorney General