

changed or should be limited by a restrictive interpretation. We would conclude then that the state should reimburse the counties not only for the jurors', witness', and attorneys' fees at the original trial but also for counsel, transcript and other costs in appeal when the court has so ordered these to be paid for a defendant convicted of a crime while a prisoner in a state penal institution.

FRANK J. KELLEY,
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670613.1

TAXATION: Property Tax — Exemption of corporation as "farmer."
WORDS & PHRASES: "Farmer," corporation as

A corporation, to the extent it uses personal property in agricultural operations, is a "farmer" within the intent of that term as employed in the statutory tax exemption provided by paragraph Tenth of Section 9 of the General Property Tax Law, as amended by Act 205, PA 1966.

No. 4582

June 13, 1967.

Mr. Paul M. Ladas
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Muskegon, Michigan

You request my opinion as to whether the tangible personal property actually being used by a corporation in agricultural operations, is exempt from taxation under paragraph Tenth of Section 9 of the General Property Tax Law, as amended by Act 205, P.A. 1966, which provides as follows:

"The following personal property shall be exempt from taxation, to wit:

* * *

"Tenth, That property actually being used by a farmer in agricultural operations."

The question thus more precisely becomes: Is a corporation, to the extent it uses personal property in agricultural operations, exempt as a "farmer" under said paragraph?

Basically, it is of course established beyond question that persons may lawfully form a corporation to carry on a farming business, like any other lawful business. M.S.A. §21.3; C.L. 1948 §450.3; both as amended; see also O.A.G. 1923-24, p. 335.

Further it appears that for many years prior to the enactment of above-quoted Act 205, PA. 1966, the exemption (\$1000.00) conferred by the statutory predecessor of said paragraph Tenth of Section 9 of the General Property Tax Law, was repetitively and rather clumsily expressed, seriatim, in terms of "farm tools, farm equipment and farm stock."¹ The

¹ "Tenth, All mules, horses and cattle not over 1 year old, and all sheep and swine not over 6 months old, farm tools, farm equipment and farm stock to the value of \$1,000.00, actually used in agricultural operations."

present form of said paragraph Tenth to some extent suggests the convenient use of the phrase "by a farmer," as a single and descriptively effective substitute for the earlier repeated use of the word "farm."

While the question of a corporation's entitlement to this exemption of farming stock and equipment does not appear expressly to have arisen, under the earlier statute, in either Michigan cases or opinions of the Attorney General, there seems little doubt, under the then language of the paragraph, that the exemption would have been granted. Certainly a predecessor in my office indicated no reservations in ruling that the exemption extended to a partnership. See O.A.G. 1941-42, p. 607, at p. 608. It is true that Section 12 of the General Property Tax Law (to which the Attorney General had reference), then provided (as it now provides) as follows:

"For the purpose of assessing property and collecting taxes, a co-partnership shall be treated as an individual, and whenever the name of the owner or occupant of property is required to be entered upon the assessment roll, if such property is owned or occupied by a co-partnership, the firm name shall be used. . . ."

At the same time, it is perhaps pertinent to note, as a parallel reference of possibly persuasive force, that Section 11 of the General Property Tax Law then and now provides, in part, as follows:

"All corporate real and tangible personal property, except where some other provision is made by law, shall be assessed to the corporation as to a natural person, in the name of the corporation. . . ."

It is noted also that in the opinion of another predecessor in my office, ruling upon the aforesaid earlier exemption provisions of paragraph Tenth, reference was had by the Attorney General to C.L. 1929, §3412, which is Section 24 of the General Property Tax Law (M.S.A. §7.24; C.L. 1948 §211.24; both as amended), and which then, as now, in reciting duties of the supervisor or assessor, states that "he shall set down the name and address of every *person* liable to be taxed," and "He shall also estimate the true cash value of all the personal property of each *person*, and set the same down opposite the name of such *person*. . ." (Emphasis added). See O.A.G. 1935-36, p. 79, at p. 80. Thus, there is precedent, in both the latter and former opinions of the Attorney General, for using in the interpretation of subject paragraph Tenth of Section 9 of the General Property Tax Law, specific other Sections thereof which deal with other than individual taxpayers, *at the same time* as they repeatedly refer to the taxpayer, collectively, by the term "person." We are all, of course, continuously mindful of M.S.A. §2.212(12) (being C.L. 1948, §8.3-1; both as amended), which provides as follows:

"The word 'person' may extend and be applied to bodies politic and corporate, as well as to individuals."

It is likewise persuasive to recall the numerous Michigan cases which hold (as to various statutes using the word "person") that a corporation is a person. We cite only a few:

Bush v. Sprague, 51 Mich. 41;
Turnbull v. Prentiss Lumber Co., 55 Mich. 387;
Chicago & N.W.R. Co. v. Ellson, 113 Mich. 30;
People v. Ferguson, 119 Mich. 373;
City of Owosso v. Mich. Central R. Co., 183 Mich. 688.

More appositely, the Michigan Supreme Court has held that under a section of the former judicature act providing:

"In cases where the plaintiff is a *resident* of the State of Michigan, suits may be commenced in any county where the plaintiff resides, against any corporation not organized under the laws of this State; and where the plaintiff is a *non-resident* of the State of Michigan, where the causes of action accrued within the State of Michigan, such plaintiff may bring action in the county where the cause of action accrued." (Emphasis added),

the terms "resident" and "non-resident," as used therein, included corporations. See *Republic Motor Truck Co. v. The Buda Co.*, 212 Mich. 55, 60.

On the latter specific subject (Corporation as a Resident or Inhabitant), 18 Corpus Juris Secundum 388 declares as follows:

"A corporation is to be deemed a 'resident' or a 'nonresident' of a particular state, county, or district within the meaning of a statute, if it is within the purpose and intent of the statute, as in the case of statutes defining the jurisdiction of the courts, or relating to venue, *taxation*, etc. In like manner it may be an 'inhabitant.'" (Emphasis added)

On the general subject of other such generic terms as including corporations, 18 Corpus Juris Secundum 386 has the following to say:

"Since a corporation is for corporate purposes a legal entity and an ideal person in the law, it is regarded as a 'person,' 'party,' 'defendant,' 'debtor,' 'creditor,' etc., within the meaning of contract and statutory or constitutional provisions, if it is within the reason and purpose of such provisions and is not expressly or impliedly excluded from their operation; and sometimes this rule is expressly declared by statute."

As earlier indicated, there is no Michigan case adjudicating the specific question whether a corporation falls within the intendment of the term "farmer" as used in a specific statute. Similarly, case authority from other jurisdictions on the question is not only surprisingly scant, but becomes virtually non-existent when one necessarily eliminates cases arising under certain specific provisions of the Bankruptcy Act and the Fair Labor Standards Act, where, either by plainest definition itself or by otherwise unmistakably clear statutory language, corporations are obviously excluded. In fact, only one case survives such analysis as a seemingly definitive holding on the precise issue before us, namely *United States v. Maryland & Virginia Milk Producers Association, Inc.* (U.S.D.C. E.D. Penna.; 1958) 167 F. Supp. 45. The following quotation therefrom (p. 49) is pertinent:

"The second statute under which immunity is claimed is Section 1 of the Capper-Volstead Act, which became law on February 18, 1922. This provision, 7 U.S.C.A. §291, reads as follows;

"Persons engaged in the production of agricultural products as *farmers*, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock . . .

"The next query is, whether it [defendant corporation] is within the scope of the Capper-Volstead Act, which has been quoted. As has been stated, that statute authorizes persons engaged in the production of agricultural products as *farmers* or dairymen to act together in associations, corporate or otherwise, with or without capital stock. It is urged by the government that the words 'dairymen' and 'farmers' should be restricted to natural persons who personally work on dairy farms and who derive the major portion of their income from the farms. The Court sees no basis for such a restricted definition. The owner or operator of a dairy is a dairyman, whether he personally works on his dairy or has the work done by employees. So, too, the owner of a farm may be regarded as a farmer even though he devotes the major portion of his activities to other pursuits. When Congress desired to put a more circumscribed definition on the term 'farmer' it did so expressly, as is true of the Bankruptcy Act, 11 U.S.C.A. §1 et. seq." (Emphasis added)

The specific history of the subject statute and its interpretation, coupled with the indicated trend of legal authority on the subject, persuade me that the term "farmer," as used in paragraph Tenth of Section 9 of the General Property Tax Law, includes, by legislative intendment, a farming corporation.

FRANK J. KELLEY,
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670626.2

RETIREMENT SYSTEMS: Legislative.
LEGISLATURE: Retirement.

A retirant of the legislative retirement system who is again elected to the legislature may not again become a participant of the retirement system.

Such a retirant will continue to receive his retirement allowance as accrued by his past service in the legislature.

A survivor of one dying during the legislative membership subsequent to retirement may receive the survivor's allowance if otherwise qualified.

No. 4365

June 26, 1967.

Mr. William Baird, Secretary
Legislative Retirement System
State Capitol
Lansing, Michigan

You advise me that the possible election to the legislature of present "retirants;" i.e., former legislators receiving retirement allowances; presents the following questions upon which you seek my opinion:

1. If a retirant again becomes a member of the legislature, can he again become a participant in the retirement system?