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District Court Rules in Progress Pig Case

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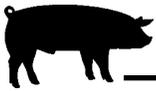
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District Court Rules in Progress Pig Case

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Article 8 §12 of the Nebraska Constitution (popularly referred to as Initiative 300) establishes several requirements for corporations to legally qualify as family farm or ranch corporations in Nebraska. Under one requirement, a majority of the family farm or ranch corporation's shareholders must be family members, "at least one of whom is a person residing on or actively engaged in the day to day labor and management of the farm or ranch." On Sept. 16, 1998, Otoe County District Court Judge Ronald Reagan ruled in *Hall v. Progress Pig* that where no family member resides on the farm or ranch, a family member must perform agricultural production labor on a *daily* basis on the farm or ranch in order for a corporation to legally qualify as a family farm or ranch corporation. The decision has significant implications for swine production in Nebraska, as many swine operations are organized and operated similarly to Progress Pig Inc., as family farm or ranch corporations.

Progress Pig Inc. is an Otoe county hog operation, with David Zahn as the sole shareholder. Mr. Zahn, who lives off the farm, handles finance and

marketing and works with production consultants. However Mr. Zahn's production manager feeds and cares for the pigs, not Mr. Zahn. Judge Reagan concluded that Mr. Zahn did provide labor and management for the farming operation. However, the judge ruled that Mr. Zahn's labor was insufficient to qualify as the *daily* labor and management required by article 8 §12. Judge Reagan stated

"It is my opinion that the drafters of this Initiative intended that the words 'day to day' be directed to the particular [agricultural] product involved. 'Day to day' labor in this context must be seen as respecting the output or product of the farm. When the product is pigs or cattle, the expectation is that one would need to be involved on an everyday basis. If the product were grain, for example, 'day to day' [labor] would encompass the various stages of [planting], fertilizing, and harvesting, which might not have to be addressed on an everyday basis."

The judge noted that daily labor requirements would vary depending on whether the farming operation were a crop operation or a livestock operation. The judge concluded that spending a few days per week on the farm and little time directly caring for the livestock

did not satisfy the article 8 §12 daily labor and management requirement.

Judge Reagan further noted that Zahn was an absentee landowner and that in the 1997 *Pig Pro* decision, the Nebraska Supreme Court stated that absentee ownership and operation of farm and ranch land by a corporate entity is precisely what article 8 §12 prohibits.

The case has been appealed to the Nebraska Supreme Court. If the Supreme Court approves the Otoe county court decision, Mr. Zahn will have under article 8 §12 two years within which to (1) make the farm his principal residence, (2) reorganize the farm as a sole proprietorship or a general partnership, (3) provide daily labor and management for the swine operation, (4) discontinue the farming operation, or (5) sell the property. If he does not implement one of these options within two years, the farm would become the property of the state of Nebraska. Mr. Zahn would lose the legal advantage of limited liability if the farm were operated as a proprietorship or general partnership.

¹J. David Aiken is professor of agricultural economics (water and agricultural law specialist).