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September 18, 2025

ATTORNEY GENERAL OPINION NO. 2025-21

Michael A. Montoya
Ottawa County Counselor
256 S. Santa Fe Ave.
Salina, KS 67401

Re: Corporations—Agricultural Corporations—Swine Production Facilities; Establishment in County; Procedure

Kansas Uniform Partnership Act—Limited Liability Partnership—Statement of Qualification

Synopsis: A limited liability partnership is not a "limited partnership" that must obtain approval under K.S.A. 17-5908 in order to establish a swine production facility in a county. Cited herein: K.S.A. 17-5903; 17-5904; 17-5908; 56-1a101; 56a-101; 56a-1001.

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Dear Mr. Montoya:

As County Counselor for Ottawa County, you ask whether a limited liability partnership is a limited partnership that must obtain approval under K.S.A. 17-5908 in order to establish a swine production facility in a county. We conclude the answer is no.

As background, K.S.A. 17-5904(a) provides that "[n]o corporation, trust, limited liability company, limited partnership or corporate partnership, other than [certain exempt entities] shall, either directly or indirectly, own, acquire or otherwise obtain

or lease any agricultural land in this state." The statute then goes on to list a number of exceptions to this general prohibition, including:

> Agricultural land held or leased by a corporation, trust, limited liability company, limited partnership or corporate partnership for use as a swine production facility in any county where the voters, after the effective date of this act, have voted pursuant to K.S.A. 17-5908, and amendments thereto, to allow establishment of swine production facilities within the county.[1]

K.S.A. 17-5908, in turn, provides that a "board of county commissioners, by resolution, may permit or deny a swine production facility, as defined in K.S.A. 17-5903, and amendments thereto, to be established within the county by a corporation, trust, limited liability company, limited partnership or corporate partnership." Any such resolution is subject to a protest petition and an election in the event of a valid protest petition.[2]

You explain that a Nebraska limited liability partnership, which is also registered to conduct business in Kansas as a foreign limited liability partnership, has entered into a purchase agreement for land in Ottawa County and intends to establish a swine production facility on the property. Whether the requirement in K.S.A. 17-5908 for a resolution by the county commission (as well as the general prohibition on corporate farming in K.S.A. 17-5904) applies in this situation thus turns on whether a limited liability partnership constitutes one of the specified entities. You ask specifically whether a limited liability partnership is a limited partnership.

For purposes of these statutes, "limited partnership" "has the meaning provided by K.S.A. 56-1a01, and amendments thereto."[3] This appears to be a scrivener's error, since K.S.A. 56-1a01 is merely the title of the Kansas Revised Uniform Limited Partnership Act, while the definitions appear in K.S.A. 56-1a101. K.S.A. 56-1a101(g) defines "limited partnership" as "a partnership formed by two or more persons under the laws of the state of Kansas and having one or more general partners and one or more limited partners."[4]

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[1] K.S.A. 17-5904(a)(16). The statute references approval by the voters because prior to 2012, K.S.A. 17-5908 provided that a board of county commissioners may submit a proposition to the voters to allow corporate swine production facilities. In 2012, K.S.A. 17-5908 was amended to provide that a board of county commissioners may permit or deny corporate swine production facilities by adopting a resolution subject to a protest petition, but K.S.A. 17-5904 was not amended to reflect this change. We need not address this apparent discrepancy here.

[2] K.S.A. 17-5908.

[3] K.S.A. 17-5903(c).

[4] The statute also defines a "foreign limited partnership" as "a partnership formed under the laws of any state or jurisdiction other than the state of Kansas, or under the laws of any foreign country, and having as partners one or more general partners and one or more limited partners." K.S.A. 56-1a101(d).

Limited liability partnerships, however, are not formed under the Kansas Revised Uniform Limited Partnership Act.[5] Rather, limited liability partnerships arise under the Kansas Uniform Partnership Act.[6] K.S.A. 56a-1001 lays out the procedure by which a partnership may become a limited liability partnership by filing a statement of qualification with the Secretary of State.[7] For purposes of this statute, a partnership is defined as "an association of two or more persons to carry on as co-owners a business for profit formed under K.S.A. 56a-202"[8]—not a limited partnership formed under K.S.A. 56-1a01 *et seq.*, the Kansas Revised Uniform Limited Partnership Act. In other words, a limited liability partnership is formed by a general partnership, not a limited partnership.[9] And because a limited liability partnership does not have a mixture of general and limited partners, it does not meet the definition of a limited partnership under K.S.A. 56-1a101.

As one scholar has explained, "except with respect to the personal liability of the partners, a limited liability partnership is, in most respects, identical to a general partnership. It is formed under and governed by the same statute as a general partnership, and its partners play the same role in managing its business and affairs."[10] Limited partnerships, however, "are a completely different form of

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[5] K.S.A. 56-1a01 *et seq*.

[6] K.S.A. 56a-101 *et seq*. We recognize that the Legislature did not authorize the creation of limited liability partnerships until 1994, L. 1994, ch. 140, while the current corporate farming law dates to 1981, L. 1981, ch. 106, but that does not justify rewriting the plain language of the statute. *See Matter of Doelz*, 319 Kan. 259, 262, 553 P.3d 969 (2024) (recognizing that courts must read statutory language as it appears and cannot determine what the law should or should not be). The Legislature has amended the corporate farming law many times over the years. For example, limited liability companies did not exist in Kansas when the corporate farming law was first enacted. But after the creation of limited liability companies, the Legislature amended the corporate farming statutes to add limited liability companies to the list of covered entities. *See* L. 1991, ch. 76, § 10. The Legislature could likewise add limited liability partnerships if it desires but has not done so. We also note that K.S.A. 17-5908, the statute requiring county approval for swine production facilities established by certain types of entities, only dates to 1994, the year limited liability partnerships were recognized, and has been amended twice since, most recently in 2012 to specifically list the covered entities.

[7] *See also* K.S.A. 56a-101(e) (defining a limited liability partnership as a "partnership that has filed a statement of qualification under K.S.A. 56a-1001"). Under K.S.A. 56a-201, "[a] limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under K.S.A. 56a-1001."

[8] K.S.A. 56a-101(f).

[9] We express no opinion on whether a limited partnership may form a limited liability limited partnership. K.S.A. 17-78-102, part of the Business Entity Transactions Act, defines "entity" to include "a limited partnership, including a limited liability limited partnership." But the statute also defines entity to include "a general partnership, including a limited liability partnership," thus drawing a distinction between (1) limited liability partnerships and (2) limited liability limited partnerships. This further demonstrates that a limited liability partnership is not a form of limited partnership.

[10] Edwin W. Hecker, Jr., *Fiduciary Duties in Business Entities Revisited*, 61 U. Kan. L. Rev. 923, 929, n.38 (2013).

business organization. They have a much longer history, they are governed by a separate statute, and, by definition, they have two kinds of partners who typically play very different roles in the partnership."[11]

The distinction between limited liability partnerships and limited partnerships is recognized in numerous Kansas statutes. For instance, the Business Entity Standard Treatment Act defines "covered entity" to mean "(1) A corporation; (2) a limited partnership; (3) a limited liability partnership; and (4) a limited liability company,"[12] demonstrating that limited liability partnerships are not already included as a subset of limited partnerships. And in a recently enacted law prohibiting foreign principals from countries of concern from acquiring any interest in certain real property, the Legislature defined "company" to mean a "[f]or-profit corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, trust, association, sole proprietorship or other organization."[13] The Legislature is thus aware of the distinction between limited partnerships and limited liability partnerships but listed only limited partnerships and not limited liability partnerships in K.S.A. 17-5904 and 17-5908.

Notably, the Legislature also did not include general partnerships in the list of business entities in K.S.A. 17-5904 and K.S.A. 17-5908; general partnerships are subject to these statutes only if they meet the narrower definition of "corporate partnership."[14] Given the similarities between general partnerships and limited liability partnerships, it is rational for the Legislature to have treated limited liability partnerships in the same manner. Alternatively, the Legislature may have simply been unaware that limited liability partnerships existed and were not already included in the list of entities in the statutory text. However, that oversight would not change the meaning of the text. If the Legislature wishes to include limited liability partnerships, they can amend the statute to do so in the future.

Accordingly, we conclude that a limited liability partnership is not a limited partnership for purposes of the prohibition in K.S.A. 17-5904 on owning, acquiring, obtaining, or leasing agricultural land. Nor is a limited liability partnership a limited partnership with respect to obtaining county commission approval under K.S.A. 17-5908 in order to establish a swine production facility in a county. However, a limited liability partnership is a partnership as defined in K.S.A. 56a-101. And so it might constitute a "corporate partnership" within the meaning of

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[11] *Id.*
[12] K.S.A. 17-7902(a).
[13] L. 2025, ch. 68, § 2(b)(1). For other examples of statutes referencing both limited partnerships and limited liability partnerships, *see, e.g.*, K.S.A. 17-6801(c), K.S.A. 60-304(e) and (f), K.S.A. 79-5401(e), and K.S.A. 79-32,305.
[14] K.S.A. 17-5903(e) defines a "corporate partnership" as "a partnership, as defined in K.S.A. 56a-101, and amendments thereto, which has within the association one or more corporations or one or more limited liability companies."

these statutes if it "has within the association one or more corporations or one or more limited liability companies."[15] But the entity that proposes to establish a swine production facility in Ottawa County represents that that is not the case with respect to its partnership. Therefore, the entity that proposes to establish a swine production facility in Ottawa County is not subject to the general prohibition on corporate farming in K.S.A. 17-5904 or to the requirement of obtaining county commission approval under K.S.A. 17-5908.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Dwight R. Carswell

Dwight R. Carswell
Deputy Solicitor General

[15] K.S.A. 17-5903(e) (defining "corporate partnership").