



ROLAND W. BURRIS

ATTORNEY GENERAL
STATE OF ILLINOIS



February 4, 1992

FILE NO. 92-004

ZONING:

Game Breeding and Hunting
Preserve Areas as an
Agricultural Purpose

Honorable Paul A. Logli
State's Attorney, Winnebago County
Courthouse Building, Suite 619
Rockford, Illinois 61101

Dear Mr. Logli:

I have your letter wherein you inquire whether property which is operated as a game breeding and hunting preserve area pursuant to the provisions of the Wildlife Code (Ill. Rev. Stat. 1989, ch. 61, pars. 3.27 through 3.35) is used for agricultural purposes, within the meaning of section 5-12001 of the Counties Code (Ill. Rev. Stat. 1990 Supp., ch. 34, par. 5-12001) and therefore is exempt from county zoning regulation. For the reasons hereinafter stated, it is my opinion that such game breeding and hunting preserve areas are

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used for agricultural purposes, within the meaning of section 5-12001 of the Counties Code, and consequently are not generally subject to county zoning ordinances.

It is well settled in Illinois that agricultural land uses are subject to control only in accordance with an express statutory grant. (County of Kendall v. Aurora National Bank Trust No. 1107 (1988), 170 Ill. App. 3d 212, appeal denied 122 Ill. 2d 576; Ill. Att'y. Gen. Op. No. 91-019, issued April 25, 1991; 1978 Ill. Att'y. Gen. Op. 146.) Section 5-12001 of the Counties Code, which contains the only statutory authorization for a county to regulate the use of agricultural lands, provides that a county may not exercise its zoning powers:

" * * *

* * * so as to impose regulations or require permits with respect to land used or to be used for agricultural purposes * * * or with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes upon such land except that such buildings or structures for agricultural purposes may be required to conform to building or set back lines; * * *

* * *

"

Under the language quoted above, a county's authority to regulate land used for agricultural purposes is limited to establishing building or set back lines. See Ill. Att'y. Gen. Op. No. 91-019, issued April 25, 1991.

Although section 5-12001 of the Act does expressly include several specific activities within the term "agricultural purposes" (including, "without limitation, the growing, developing, processing, conditioning or selling of hybrid seed corn, seed beans, seed oats, or other farm seeds"), and excludes others ("the extraction of sand, gravel or limestone"), that term is not generally defined in the Act. In determining whether a challenged use is a use of property for "agricultural purposes", however, the courts have evaluated the challenged activity in light of the discussion in People ex rel. Pletcher v. City of Joliet (1926), 321 Ill. 385, 388-89:

" * * *

* * * 'Agricultural' is another indefinite word which renders the statute more or less uncertain. The definition given by Webster is, 'of or pertaining to agriculture; connected with, or engaged in tillage.' 'Agriculture' is defined as the 'art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. In this broad use it includes farming, horticulture and forestry, together with such subjects as butter and cheese making, sugar making, etc.' Unless restricted by the context, the words 'agricultural purposes' have generally been given this comprehensive meaning by the courts of the country.

* * *

"

(Emphasis added.)

In applying this judicial definition, the Illinois courts have consistently focused on the nature of the specific use, rather than the property owners' business activities or ultimate business objectives. Furthermore, the courts have not restricted the term 'agricultural purpose' to only the growing of crops (Town of Libertyville v. Continental Illinois National Bank & Trust Co. of Chicago (1989), 187 Ill. App. 3d 84, 91, appeal denied 128 Ill. 2d 664). To the contrary, our courts have indicated that the excavation of land to create a pond from which to irrigate sod is an agricultural purpose (County of Kendall v. National Bank Trust No. 1107 (1988), 170 Ill. App. 3d 212), as are the training and boarding of show horses (Tuftee v. County of Kane (1979), 76 Ill. App. 3d 128), the raising of chickens in a hatchery (County of Lake v. Cushman (1976), 40 Ill. App. 3d 1045) and the spreading of digested sludge on farmland as a soil conditioner (Soil Enrichment Materials Corp. v. The Zoning Board of Appeals of Grundy County (1973), 15 Ill. App. 3d 432). Thus, whether an activity involving the use of land is for agricultural purposes is to be determined from a review of the activity itself.

Section 3.27 of the Wildlife Code (Ill. Rev. Stat. 1989, ch. 61, par. 3.27) sets forth the requirements for establishing a game breeding and hunting preserve area:

"Any person owning, holding or controlling by lease, which possession must be for a term of 5 of more years, any contiguous tract of land

having an area of not less than 200 acres, and not more than 1280 acres, with at least 100 acres of suitable wildlife habitat, who desires to establish a game breeding and hunting preserve area, to propagate, preserve and hunt game birds shall make application to the Department for a license as herein provided. * * * In the case of releasing and harvesting hand reared mallards, the tract of land, with the approval of the Department, may be smaller than that required in this Section * * *

Every licensee under this Section shall release not less than 250 Bobwhite quail or pheasants each season.

Upon receipt of such application, the Department shall inspect the proposed licensed area described in such application and the premises and facilities where game birds are to be propagated and the cover for game birds and the ability of the applicant to operate a property of this character. * * *

* * *

"

(Emphasis added.)

Under the language quoted above, game breeding and hunting preserve areas are established, inter alia, to propagate game birds. Although the term "propagate" is not defined in the Wildlife Code (Ill. Rev. Stat. 1989, ch. 61, par. 1.1 et seq.), it should be given its ordinary and popularly-understood meaning. (Union Electric Co. v. Department of Revenue (1990), 136 Ill. 2d 385, 397.) The term "propagate" commonly refers to the reproduction or breeding of plants and animals.

Under the pertinent provisions of the Wildlife Code, all licensees of game breeding and hunting preserve areas are

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authorized to accept birds or bird eggs from the State for breeding, hatching and further propagation. (Ill. Rev. Stat. 1989, ch. 61, par. 1.7.) In addition, the breeding and preserve areas are required, prior to release, to nurture the birds until minimum age and physical development standards have been satisfied. (Ill. Rev. Stat. 1989, ch. 61, par. 3.28.) Upon release, game birds located in game breeding and hunting preserve area may be taken during the designated season for human consumption. The nature of this activity clearly relates to agriculture, since it involves the use of the land for the production of animals which are useful to man.

Consequently, it is my opinion that the operation of a game breeding and hunting preserve area does constitute use for "agricultural purposes," under section 5-12001 of the Counties Code. Therefore, such land is not generally subject to regulation by the county under its zoning power.

Respectfully yours,

A handwritten signature in cursive script, reading "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL