

MINUTES

SPECIAL COMMITTEE ON AGRICULTURE

October 9, 2001
Pittsburg State University
Pittsburg, Kansas

Members Present

Senator Derek Schmidt, Chair
Representative Dan Johnson, Vice Chair
Senator Stan Clark
Senator Janis Lee
Senator Larry Salmans
Representative John Faber
Representative Gary Hayzlett
Representative Bruce Larkin
Representative Dennis McKinney
Representative Sharon Schwartz

Members Absent

Senator Mark Taddiken
Representative Don Dahl
Representative Dan Thimesch

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Jo Cook, Committee Secretary

Conferees

Dr. Ron Plain, University of Missouri, Columbia
Clay Fulcher, Attorney-at-Law, Rogers, Arkansas
Mary Clouse, Pittsboro, North Carolina
Jake Looney, Maddox & Maddox, Mena, Arkansas
Roger Black, Arkansas City
Ken McCauley, Agramarke, Inc. and Lifeline Foods, White Cloud

John Meetz, Future Beef Operations, Wichita
Gary Beachner, Beachner Grain, Inc. and Kansas Grain and Feed Association, St. Paul
Garry Holloway, Plains Cotton Cooperative Association, Kincaid
Scott Burkdoll, Burkdoll Brothers, Inc. and Sunflower Pork, Rantoul
Jere White, Kansas Corn Growers Association/Kansas Grain Sorghum Producer
Association, Garnett
Allie Devine, Kansas Livestock Association, Topeka
Mel Davis, Seaboard Corporation
Mike Jensen, Kansas Pork Association, Manhattan
Leslie Kaufman, Kansas Farm Bureau
Carolyn Burns, Pittsburg
Vernon Deines, Kansas Farmers Union

Open Forum Speakers

See attached list.

Others Attending

See attached list.

Morning Session

Senator Schmidt, Chair, opened the meeting by welcoming all to Pittsburg State University. He then introduced the panel members that would be discussing various aspects of contracting in agriculture. The panelists were: Dr. Ron Plain, Agricultural Economist with the University of Missouri at Columbia; Mr. Clay Fulcher, Attorney from Rogers, Arkansas; and Ms. Mary Clouse, poultry farm contractor from Pittsboro, North Carolina.

Dr. Plain stated that a number of states have enacted or are considering enactment of legislation responding to some of the structural changes that have occurred in the livestock industry (Attachment 1). He then detailed the Missouri Livestock Marketing Law, which was passed by the Missouri Legislature in the spring of 1999. He said it eventually was amended by a special session in September 2001 after being ruled unconstitutional in the spring of 2000. A subsequent court ruling deemed it constitutional. Dr. Plain shared that his conclusion from this experience is that it is difficult for a state legislature to control an international market and it is also difficult to legislate the behavior of buyers because livestock producers have to sell, but livestock buyers do not have to buy. Dr. Plain stated that because of production contracts, many self-employed farmers make a living raising livestock and poultry without having to actually own the livestock or poultry. Dr. Plain provided information from a marketing survey on hogs conducted during 2001. Dr. Plain concluded his remarks by outlining reasons not to pass additional legislation. He explained that this was a solution in search of a problem, contract growers are more successful and

happier than independent farmers, and that legislation may preclude small farmers from opportunities and may push livestock production into another state.

Clay Fulcher is an attorney who represents farmers engaged in contract farming. Mr. Fulcher addressed proposed legislation in Kansas. Some of his concerns included mandating that there be certain disclosure statements provided to contract producers, sections about termination and disclosing conditions under which contract producers could be terminated, civil penalties, good faith in contracts, and confidentiality clauses and waiver of rights. Mr. Fulcher then explained the two federal acts that protect production contract producers. The first is the Packers and Stockyards Act which combats the anti-competitive prices in the meat packing industry and gives some additional protection for contract poultry productions. It does not, however, provide protection to poultry producers who grow the broilers or poults nor does it protect cattle or swine producers growing under contract. The second act is the Agricultural Fair Trade Practices Act which basically prevents abuses against farmers on their decision to join a cooperative. Mr. Fulcher spoke about proposed legislation with respect to mandated disclosure. In preparing to engage in contract growing production, it is necessary to know what the income and expenses are expected to be. Some of this information can be gleaned from the local bank or the local Extension office. The actual contract contains important clauses growers need to be aware of, including warranty clauses, update or replacing equipment, contract termination, and arbitration clauses.

Mary Clouse addressed the Committee on production contracts. Ms. Clouse distributed several documents: Changes in Contract Poultry Production ([Attachment 2](#)); a diagram of a poultry complex ([Attachment 3](#)); broiler house cost analysis ([Attachment 4](#)); copy of an agreement for the finishing of feeder pigs with Brown's of Carolina ([Attachment 5](#)); an article from the *Baltimore Sunday Sun* ([Attachment 6](#)); "The Problem" picture ([Attachment 7](#)); an article from the *Winston-Salem Journal* ([Attachment 8](#)); and a copy of the *Poultry Growers News* (available from Kansas Legislative Research Department). Ms. Clouse told the Committee about her family's personal experiences as a contract poultry farmer in North Carolina. Ms. Clouse also detailed some changes that have occurred in the past 30 years in contract poultry production.

The panel participants responded to questions from members of the Committee. A member of the Committee asked if any members of the panel could point to a state that had laws which could be examined and were good examples in this area. The panelists could not pinpoint a specific state. Another Committee member asked if there were other laws not currently applicable to agriculture that could be modified to fit agriculture regarding franchise and production contracts and one of the panelists indicated that real estate disclosure laws could be applicable, along with consumer protection laws and franchise agreements.

Afternoon Session

Senator Schmidt welcomed Mr. Jake Looney, Maddox & Maddox law firm, and past Dean of the University of Arkansas School of Law. Mr. Looney provided information about agricultural contracts and how contracts have evolved through court issues and not just

through statutes. Mr. Looney stated that all states have adopted the Universal Commercial Code (UCC) and one provision of that deals with the sale of goods. He noted that all commodities come under the UCC. The most common contract in agriculture is a marketing agreement or sales contract. He noted that these are regulated by Article Two of the UCC. Another common contract in agriculture is the financing agreement. He asked them to remember that one piece of legislation does not fit all. Mr. Looney responded to questions from Committee members. Mr. Looney was asked if there were other statutory models that could be used, with adjustments, in agriculture. Mr. Looney explained there were not any real models, but some regulated models, such as insurance.

Roger Black, stock grower near Arkansas City, addressed the Committee ([Attachment 9](#)). Mr. Black detailed his operations and expressed concern about bills introduced during the 2001 Session. He explained he was not interested in a "level playing field" because that would infer there was no inherent competitive advantage. If there is no advantage, or no extra value, then there is nothing to sell. With nothing to sell, they are out of business.

Ken McCauley, White Cloud, farms 3,500 acres and has added value to his operations by investing in several businesses ([Attachment 10](#)). He expressed fear that excess regulation could restrict his opportunity in new ventures and asked for more education of producers for the future. Mr. McCauley responded to questions from the Committee.

John Meetz, Vice President, Corporate Relations for Future Beef Operations, spoke about his company ([Attachment 11](#)). He explained that his company relies on a series of contractual relationships with producers, stock operators, and feed yards to produce and market identity preserved products to insure quality and food safety. He stated he believes that his company must share information, provide incentives, and be fair in its dealings in order to grow and create employee, shareholder, supplier, and customer wealth.

Gary Beachner, General Manager for Beachner Grain, Inc., St. Paul, addressed the Committee on behalf of the Kansas Grain and Feed Association ([Attachment 12](#)). Mr. Beachner shared the Association's policy position statement on free enterprise. Mr. Beachner responded to questions from the Committee.

Garry Holloway, cotton producer and member of the Plains Cotton Cooperative Association, shared information about his operation and the role of the Cooperative Association ([Attachment 13](#)). Mr. Holloway responded to questions from the Committee.

Scott Burkdoll, whose family owns and operates a cattle feeding operation, provided information about not only their cattle feed operation, but also about the swine finishing company he and two neighbors created ([Attachment 14](#)). Mr. Burkdoll expressed his belief that the legislative pursuit to pass laws to protect family owned operations was sincere. He also believes that they would have a detrimental effect on the future of Kansas farms. Mr. Burkdoll responded to questions from the Committee.

Jere White, Executive Director of the Kansas Corn Growers Association and the Kansas Grain Sorghum Producers Association, addressed the Committee ([Attachment 15](#)). Mr. White expressed concern about finding that "one solution that would solve the inequities

of production agriculture." His organizations suggest better education and outreach to producers that need assistance, perhaps through KSU Extension, without restricting opportunities. Mr. White responded to questions from the Committee.

Allie Devine, Director of Research and Legal Affairs for the Kansas Livestock Association (KLA), spoke to the Committee on the Association's concerns with proposed legislation ([Attachment 16](#)). Ms. Devine explained that the KLA supports producers' rights to contract freely and they oppose any legislation that would interfere with those fundamental rights. Ms. Devine responded to questions from the Committee.

Written testimony was provided by Ms. Sarah Thom, Director of Government Relations for Pioneer Hybrid Seeds ([Attachment 17](#)).

Mel Davis, Vice President of Procurement for Seaboard Farms, addressed the Committee, providing a brief overview of his company ([Attachment 18](#)). Mr. Davis stated that his company considers itself to be a true example of value-added agriculture by taking grain grown in Kansas, feeding it to hogs, and converting those animals into high-quality pork products which are then sold both domestically and internationally. Addressing the issue of contracts, Mr. Davis explained that the company enters into contracts in a variety of markets and that it provides stability and lower risk. Mr. Davis responded to questions from the Committee. A Committee member asked about the percentage of hogs that are raised by his company in comparison to those raised by others and Mr. Davis stated that this year it would be about 65 percent Seaboard and 35 percent external producers (25 percent on contract and 10 percent open market). In response to a question about contract length, Mr. Davis stated that the recent ones in Kansas are for 12 years and are designed to have the building paid off by the time the contract is over. A member of the Committee asked for information on production based versus pig-per-space contracts and Mr. Davis will provide that information to staff.

Mike Jensen, President of the Kansas Pork Association, spoke to the Committee on his Association's opposition to government involvement in the swine business ([Attachment 19](#)). Mr. Jensen stated that "not a single Kansas pork producer has ever brought forth a concern to our Association that they have been aggrieved in a contractual agreement. Not one." Mr. Jensen responded to questions from the Committee.

Leslie Kaufman, Associate Director of the Public Policy Division, shared the Kansas Farm Bureau's perspective on agricultural contracting ([Attachment 20](#)). Ms. Kaufman stated that Kansas Farm Bureau strongly supports the ability of producers to enter into production or marketing enterprises and that production contracts must be negotiated and entered into in an environment free from unfair trade practices. She explained that her organization has initiated programs to educate and provide material that assist in gaining technical and practical information about contract production. One of their initiatives is a handbook titled *A Producer's Checklist for Agricultural Contracting* ([Attachment 21](#)). Ms. Kaufman responded to questions from the Committee.

Carolyn Burns, Pittsburg, appeared before the Committee to share information about their family-owned turkey operation ([Attachment 22](#)). Mrs. Burns explained the process they went through to become contract turkey growers and the difficulties they experienced during the contract period when ConAgra bought out Butterball Turkey. In response to questions

from the Committee, Mrs. Burns stated that most contracts are to the benefit of the company over the grower. She stated that additional investments had to be made and the profit margins were lower than expected.

Vernon Deines, Vice President of the Kansas Farmers Union, presented a statement written by Donn Teske, President of the organization (Attachment 23). Mr. Deines responded to questions from the Committee.

Senator Schmidt directed the Committee's attention to the minutes from the two previous meetings. Raney Gilliland, Legislative Research Department, requested the minutes of the August 30 meeting reflect the following changes: Page 3, first paragraph, where it says "a Senator" change to "a member" and in the following paragraph, fourth line down, where it says "It was first described" change to "It was first identified." *Representative Johnson moved to accept the minutes as amended. Senator Clark seconded the motion. The motion carried.* Regarding the minutes of the September 11 meeting, *Representative Johnson moved and Senator Salmans seconded that the minutes be approved. Motion carried.*

Senator Schmidt reminded those in attendance that if they desired to appear before the Committee during the open forum they should sign up on the sheet at the front table.

Evening Session

Senator Schmidt opened the public forum session and welcomed the first speaker, Mr. Gail Abram, who provided a copy of a contract for turkey growers with ConAgra (Attachment 24). Mr. Abram explained the contract and shared information about his concerns and problems with contract turkey growing. Mr. Abram responded to questions from the Committee.

Warren Scott appeared before the Committee and shared his concerns about his contract with ConAgra Turkey Company/Butterball Turkey Company (Attachment 25). He reiterated some of the same concerns of the previous speaker and told how, when he first started, the company was well known and well thought of, but later, problems arose. He told how he was required to make changes to his water system and was told that if he was unwilling to do so, the company might be forced to withhold poultry placement. He then told how one month later this same individual presented him and his wife a plaque naming them Number One Growers of the Year—1996. Mr. Scott responded to questions from the Committee.

Gene Ferguson, state treasurer for Kansas-National Farmers Organization (NFO), addressed the Committee (Attachment 26). Mr. Ferguson explained that the NFO has been marketing grain and livestock using contracts for over 34 years and that their farmers like that system. He also stated that his organization supports the idea of stronger contract legislation and does not feel it would have any negative impact on his organization's contracting programs. Mr. Ferguson suggested that Kansas should pass bargaining

legislation to give farmers more opportunity to form bargaining groups that would give them a stronger voice in contracting.

Alan Jones, also a member of the NFO, spoke to the Committee. Mr. Jones is a third-generation farmer who farms in Labette County. Mr. Jones told the Committee about a Sustainable Agriculture Research and Education grant he received to study cull cows and how it relates to marketing.

Don Rezac, a farmer-rancher from Emmett, addressed the Committee regarding his multi-faceted operation and various aspects of those operations.

Gary Bates, representing Southeast Kansas Independent Living Center, spoke to the Committee regarding concerns of the disabled farmer/rancher and a program called "Agribility." Mr. Bates responded to questions from the Committee.

Also distributed to the Committee was a letter from Rick and Laura Atkinson regarding their concerns with ConAgra Turkey Company (Attachment 27).

There being no further conferees or speakers, the meeting adjourned.

Prepared by Jo Cook
Edited by Raney Gilliland

Approved by Committee on:

11-15-01