Agricultural Law Update

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"A law is valuable not because it is law, but because there is right in it."

— Henry Ward Beecher

Field sanitation - proposed OSHA rule

The long awaited OSHA field sanitation rule has issued in proposed form at 49 Fed. Reg. 7589 (1984). Early promulgation of a final rule is anticipated. Many farm employers will be affected as the standards will apply to any agricultural establishment where 11 or more employees are engaged on any given day in hand-labor operations in the field. Hand harvesting of vegetables, fruit and nuts is included along with weeding, hand planting and other activities. Without cost to the employee the following will have to be provided: potable drinking water and single use cups; and, one toilet and handwashing facility for each 20 employees or fraction thereof. Toilets may be biological or chemical, combustion, or sanitary privy. When promulgated the standard will appear at 29 C.F.R. § 1928.110. California, Colorado, Connecticut, Florida, Idaho, Illinois, New Jersey, New York, North Carolina, Oregon, Pennsylvania and Texas already regulate in this area, but may have to upgrade their standards if the proposed OSHA rule becomes final.

— Donald B. Pedersen

Special use value and transfer of ownership interests

Several private letter rulings have made it clear that no recapture of special use value benefits occurs upon transfer of corporate stock or partnership interests to family members of the transferor provided the transferees consent to personal liability for any potential recapture tax. *Ltr. Rul. 8416016, January 13, 1984,* restates those rules. In that ruling, a surviving spouse wanted to incorporate farmland under a special use valuation election and then make gifts of the non-voting stock to the children. IRS approved both parts of the ruling request.

However, IRS warned in the ruling that if the transfers of stock by the qualified heir resulted in the qualified heir's interest not being an "interest in a closely held business," *the qualified heir's entire interest would be deemed to have been transferred.* The point merits careful planning attention before every transfer of corporate stock or partnership interest in an entity owning land under a special use value election. In a corporation, for example, the qualified heir must continue to hold 20% or more in value of the corporate voting stock or the corporation must have 15 or fewer shareholders, and the corporation must continue to be carrying on a trade or business as required by I.R.C. §§ 2032A(g), 6166(b)(1).

— Neil E. Harl

California court approves public utility extension controls

A California appellate court has sanctioned the use of public utility extension control as a planning tool to prevent "leap-frog" development and urban sprawl. See *Dateline Builders, Inc. v. City of Santa Rosa,* 146 Cal. App. 3d 520, 194 Cal. Rptr. 258 (Cal. Ct. App. 1983). The state's Supreme Court declined to review the decision.

Dateline Builders held an option on land located in rural Sonoma County outside the City of Santa Rosa. The land was zoned for agricultural use, but the company wanted to develop the property for single-family homes. The county attached several conditions to its approval of Dateline's tentative subdivision map, including a requirement that the developer apply for and receive authorization from the city for extension of necessary sewer facilities. *(continued on page 2)*

This requirement was prompted by an agreement between the city and the county that development in the area must be consistent with a joint "General Plan." The plan allows for extension of public utilities only when it is economically feasible to do so *and* when it is "in accordance with orderly development instead of urban sprawl." In effect, the two governments set up a single, regional sewer treatment facility (owned and operated by the city) and agreed that all extensions must be consistent with the city's development policies and regulations.

The city concluded that Dateline's proposed development in an agricultural area well beyond city limits was inconsistent with the standards for compact development set out in the General Plan. Dateline challenged the city's refusal to extend utility services by asserting that the municipality had no power to act beyond its boundaries. The developer also argued that a city holding itself out as the sole provider of sewer services in a given locale can deny sewer hook-ups to property within its "service area" only for such utility-related reasons as lack of capacity.

The court rejected both arguments. First, the court noted that California municipalities are authorized by statute to enact restrictions which are effective beyond their boundaries. Second, the court held that "[n]either common law nor constitutional law inhibits the broad grant of power to local government officials to refuse to extend utility service so long as they do not act for personal gain nor in a wholly arbitrary or discriminatory manner." The court stated explicitly that this power can be used for planning purposes, but it stressed the importance of comprehensive planning as a prelude to public control of the timing and location of utility extensions: "Builder's contention that denial of the certificate could not be used as a planning device overlooks a fundamental distinction between such a decision as an improper initial use of the police power, and as here, a necessary and proper exercise of the power once the planning decision has been made."

Control over the location and extension of major public works can obviously influence development in fringe areas. In recognition of this fact, some states have included limited public utility extension control programs in their farmland preservation schemes. *See, e.g.,* Cal. Gov't. Code §§ 5120 -295 (West 1983 & Cum. Supp. 1984) (Williamson Act); N.Y. Agric. & Mkts. Law §§ 300-309 (McKinney 1972 & Supp. 1983-84) (Agricultural Districts); Va. Code §§ 15.1-1506 to 15.1-1513 (1981) (Agricultural and Forestal Districts Act).

But courts in a few jurisdictions have been reluctant to approve public utility land use controls. For example, in *Robinson v. City of Boulder,* 190 Colo. 357, 547 P.2d 228 (1976), the Colorado Supreme Court invalidated Boulder's attempt to control development by refusing to extend water and sewer services to a subdivision outside city limits. The city had argued that its decision was based upon growth objectives outlined in a comprehensive plan adopted by the city and the surrounding county. The court held that the city could refuse extension only for utility-related reasons, not because of land use planning considerations.

The *Dateline Builders* case stands in sharp contrast to the Colorado decision. The California court emphasized both the desirability of regional planning and the need for legislative discretion in the resolution of the important housing and environmental issues raised in the case. Significantly, the court held that a city does not forfeit such discretion simply because the municipal project crosses city boundaries. To be sure, the decision comes from an intermediate appellate court in a jurisdiction where the courts are known to be deferential to local government land controls. But the opinion is nevertheless important for its frank approval of public utility extension control as a land use planning device.

— *David Myers*

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Flat storage

In February, 1984, Agricultural Law Update, we discussed GCM 39098, July 6, 1983, which indicated that the IRS would likely be applying the "reasonably adaptable" test to flat storage for purposes of eligibility of investment tax credit. The IRS has now published Rev. Rul. 84-60, I.R.B. 1984-17, 7 which confirms that the earlier GCM correctly stated the IRS position.

Under the facts of the ruling, the taxpayer's structure, which was constructed for grain storage —

> "is 200 feet long and 70 feet wide, with two large sliding doors at each end. The structure encloses a flat, unobstructed concrete floor. The side walls are reinforced concrete from the base to a height of 5 feet with steel siding extending 22 feet from the top of the concrete to the roof. A beam is in place under the roof to support a device used to unload the grain. The taxpayer uses the structure . . . for the bulk storage of grain. Although the structure can be reasonably adapted to other uses, the taxpayer does not plan to change the use of the structure at this time."

The ruling holds that the structure could be reasonably adapted to other uses and is not eligible for investment tax credit. The ruling points out that—

> "Whether a structure is reasonably adaptable to other uses is determined, on a case-by-case basis, by the degree of specialization of the structure, by the amount of space available for alternative uses, the economic cost required to convert the facility from one use to another, and the feasibility of other uses."

Quite clearly, the IRS position spells trouble on audit for flat storage.

— *Neil E. Harl*

Farm workers have the right to receive visitors at their farm residences

by Christopher R. Kelley

Each year thousands of migrant farmworkers are seasonally employed on farms in all of the contiguous forty-eight states. For a variety of reasons, most migrant farmworkers are housed on the farms where they are employed. Since the late 1960's, the residence of migrant farmworkers on the farms of their employers has spawned litigation over the right of those workers to invite and receive visitors at their quarters.[1] The issue is an emotionally volatile one. Many farmers, sensitive to the potential for discontent and unrest among their workers during the critical harvest period and accustomed to the traditional protections of state trespass law, are reluctant to allow union organizers, legal services attorneys, or other persons to visit the workers. On the other hand, faced with the isolation and unfamiliarity of their temporary workplace, and subject to working and living conditions that are frequently substandard, farmworkers more often than not desire and need the assistance offered by those concerned with their plight.

This article provides an overview of recent developments on the access issue. Because the greatest unfamiliarity is likely to be among farmers who employ and house only a relatively small number of workers, the emphasis will be on the law as it relates to those farmers.

Proponents of a right of access have advanced a variety of theories to support their claim. In large part, the variety is a consequence of the fact that the traditional attributes of the landlord-tenant relationship generally do not exist between the farmer and his workers. Most farmworkers live "rent free" and their housing is merely an incident of their employment. Under the general common law rule, an agricultural employee who lives on the farm rent free is a servant, not a tenant. While a tenant acquires the right of possession and the concomitant rights to invite or exclude visitors when the premises are demised to him by the landlord, a servant does not acquire the right of possession. Possession continues to the employer who, under the common law rule, retains the right to limit or prohibit visitors from entering the property.

The obstacle presented by the law of master and servant together with the frequent desire to obtain federal court jurisdiction has resulted in at least three major categories of theories being advanced to support a right of access.

Statutory Theories of Access

A theory which has been frequently asserted but rarely accepted by the courts is that various federal statutes create an implied right of access for persons performing duties pursuant to them. The argument is made by analogy to the right of access that has been implied from the National Labor Relations Act, the provisions of which do not apply to agricultural workers. 29 U.S.C. § 152(3) (1982). The difficulty encountered by such claims has been the lack of any suggestion in the legislative history or purpose of the statutes that they were intended to override state property law. *See Illinois Migrant Council v. Campbell Soup Co.*, 574 F.2d 374, 378-79 (7th Cir. 1978) (rejecting claims under the Economic Opportunity Act and the Comprehensive Employment and Training Act); *Peterson v. Talisman Sugar Corp.*, 478 F.2d 73, 79-80 (5th Cir. 1973) (rejecting claims under the Sugar Act and the Wagner Peyser Act); *See also State v. Shack*, 58 N.J. 297, 277 A.2d 369, 371 (1971) (declining to rule on a claim under the Economic Opportunity Act). Consequently, only one court has based its decision, at least in part, on an implied right of access theory. *Lee v. A. Duda & Sons, Inc.*, 310 So.2d 391 (Fla. Dist. Ct. App.), *cert. dismissed*, 311 So.2d 669 (Fla. 1975) (claim of legal services investigator under the Economic Opportunity Act). However, even there, the statutory authority was primarily construed as affording a right to communicate with the farmworkers with the right to access being incidental. Because the court also relied on authority supporting a right of access under a different theory, the case is not compelling authority for the implied right of access theory.

In addition and apart from any statutory authority, it has been suggested that governmental employees seeking access to migrant labor camps in the performance of their duties have common law privilege to enter land without the consent of the owner. Comment, *Property Law - Criminal Trespass - Representatives of Federal and Local Service Organizations Granted Right of Access Onto Farmer-Employer's Property To Communicate With Migrant Workers - State v. Shack*, 46 N.Y.U.L. Rev. 834, 836 (1971). In Maryland, the common law privilege recently has been enacted as an express statutory exception to the prohibition against trespass on cultivated land and expanded to include all persons providing a lawful service, not just public officials. Md. Ann. Code Art. 27, § 579B (1982). *See* Maryland Attorney General, Op. Att'y. Gen., No. 82-024 (July 19, 1982). In California, the Agricultural Labor Relations Act, Cal. Labor Code §§ 1140-1166.3 (West Supp. 1984), has been held to afford an implied right of access for union organizers.[2]

Constitutional Theories

Constitutional arguments also have been offered in support of access to migrant labor camps.[3] A right of access premised on the First Amendment to the United States Constitution is derived from *Marsh v. Alabama*, 326 U.S. 501 (1946). In *Marsh*, the court overturned a criminal trespass conviction arising out of the distribution of religious literature in a privately owned company town. Except for its private ownership, the town was indistinguishable from any other small town in that it was open to the public and had its own stores, service establishments, streets, sewers, and post office. The Court held that, functionally, the town was sufficiently analogous to a public municipality for its owners to be restricted in their actions by the limitations of the First and Fourteenth Amendments.

Although the *Marsh* opinion contains language lending itself as authority for the broad proposition that an owner's dominion over his property is diminished in correlation with the extent that others are permitted on it, the subsequent decisions of *Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968); *Lloyd Corp. Ltd. v. Tanner*, 407 U.S. 551 (1972); and *Hudgens v. N.L.R.B.*, 424 U.S. 507 (1976), all of which involved access to privately owned shopping centers, narrowed the permissable application of *Marsh*. As a result, the public function analysis of *Marsh* is arguably now available only where the situs at issue contains the physical attributes of a municipality together with the functional aspects of a community. With regard to the latter element, the *Marsh* analysis may now require proof that alternatives to access for purposes of communication are not available, a requirement which underscores the notion that *Marsh* was intended to protect and enhance the free exchange of ideas on private land only where, for the residents on that property, that is the only place where the exchange can occur in a community setting. *See Lloyd Corp. Ltd. v. Tanner*, 407 U.S. at 567; *Associacion de Trabajadores Agricolas de Puerto Rico v. Green Giant Co.*, 518 F.2d 130, 138-39 (3rd Cir. 1975).

Even under the narrowed scope of *Marsh*, the public function analysis has been used to establish a right of access to migrant labor camps. *Ill. Migrant Council v. Campbell Soup Co.*, 574 F.2d 374, 376 (7th Cir. 1978) (interpreting the progeny of *Marsh* as reaffirming the applicability of *Marsh* to migrant labor camps). In *Patterson v. Talisman Sugar Corp*, 478 F.2d 73 (5th Cir. 1973), a labor camp housing over

1,000 farmworkers and located 25 miles from the nearest town was held to be a "company town" subject to the protection of the First Amendment. The camp had its own eating and recreational facilities, store, chapel, infirmary, and post office. The same result has been reached by at least two federal district courts and one state court. *Mid-Hudson Legal Services Inc. v. G. & U, Inc.*, 437 F.Supp. 60 (S.D.N.Y. 1977) (camp had living quarters, kitchen and sanitary facilities, and company store); *Herendon v. Rogers*, No. 77-259 Civ. T-K (M.D. Fla. April 15, 1977) (unpublished opinion); *People v. Rewald*, 65 Misc.2d 453, 318 N.Y.S.2d 40 (App. Div. 1971) (camp had church, grocery store, improved streets, sewer, barber shop, and recreational facilities)[1]. However, two appellate courts have declined to find a right of access under the *Marsh* doctrine because of factual deficiencies. *Ill. Migrant Council v. Campbell Soup Co.*, 574 F.2d 374 (7th Cir. 1978) (only non-residential facility in the camp was "store" distributing surplus food once a week); *Asociacion de Trabajadores Agricolas de Puerto Rico v. Green Giant Co.*, 518 F.2d 130 (3rd Cir. 1975) (camp not open to public and no proof of unavailability of alternative means of communication).

State Property Law Theories

For the small farmer, the two most significant theories supporting a right of access are grounded in landlord-tenant law, and in public policy limitations to property ownership as illustrated by the case of *State v. Shack*, 58 N.J. 297, 277 A.2d 369 (1971). The latter approach may represent the trend of the law on the issue.

At least three courts have found migrant farmworkers to be tenants. *State v. Fox*, 82 Wash.2d 289, 510 P.2d (1973), *cert. denied*, 414 U.S. 1130 (1974); *Franceschina v. Morgan*, 346 F.Supp. 833 (S.D. Ind. 1972); *Folgueras v. Hassle*, 331 F.Supp. 615 (W.D. Mich. 1971). In *Fox*, the workers paid for their daily room and board, a fact which the court found to be a sufficient basis to give them the status of tenants. However, in *Franceschina* and *Folgueras*, the workers were residing rent free.

In *Franceschina*, the defendant was a major processor as well as a producer of vegetables. As an inducement to attract migrant workers to the area, the defendant provided rent free housing regardless of whether the workers were its employees. The presence of ample numbers of workers in the area benefited the defendant by guaranteeing the flow of crops to the defendant's processing facilities and the court found that such a benefit was sufficient consideration for the workers to be considered tenants.

Franceschina is a significant decision in at least two respects. First, it found that the workers were tenants irrespective of whether they were employees of the defendant. Second, it expressly held that visitors were free to enter unless excluded by the workers. No prior invitation from the workers was necessary. *Franceschina v. Morgan*, 346 F.Supp. at 838-39.

In *Folgueras*, the plaintiffs asserted their right to enter as invitees of the workers. *Folgueras* upheld that right by holding that the workers were tenants based upon the finding that the free rent was but a justification for the low wages paid to the workers and that, consequently, consideration passed from the worker to the farmer. Having established that the workers were tenants, all three courts invoked the common law doctrine that by granting the right of possession to the tenant, the landlord surrendered the right to interfere with or to restrict the tenant's right to invite visitors.

If there is a modern trend in the law on access, it is represented by the case of *State v. Shack*, 58 N.J. 297, 277 A.2d 369 (1971). *See Folgueras v. Hassle*, 331 F.Supp. 615, 623 (W.D. Mich. 1971) (finding *Shack* to be the law in Michigan); *Velez v. Amenta*, 370 F.Supp. 1250, 1256 (D. Conn. 1974) (relying on *Shack* in establishing conditions for access); *Baer v. Sorbello*, 177 N.J. Super. 182, 425 A.2d 1089, *cert. denied*, 87 N.J. 388, 434 A.2d 1070 (1981) (access based on *Shack)*; Maryland Attorney General, Op. Att'y Gen. No. 82-024 (July 19, 1982) (interpreting Maryland law consistently with *Shack)*. In *Shack*, the court declined to limit its analysis to a determination of whether the camp residents were tenants or servants. Instead, it noted the uniquely disadvantaged status of migrant farmworkers and the fact that the legal services attorney and health services worker desiring access were seeking to improve that status as part of the federal government's response to the plight of the workers. For the court, the issue presented was "... whether the camp operator's rights in his land may stand between the migrant workers and those who would aid them." *Id.*, 277 A.2d at 372. Faced with that issue and the recognition that "[t]he key to that aid is communication," the court concluded that restricting its analysis to the traditional confines of the law of landlord-tenant and master-servant would be "artificial and distorting." *Id.*, 277 A.2d at 372, 374. Therefore, the court undertook to balance the competing interests of the parties.

In finding it "...unthinkable that the farmer-employer can assert a right to isolate the migrant worker in any respect significant for the worker's well being," the court noted that:

> Property rights serve human values. They are recognized to that end, and are limited by it. Title to real property cannot include dominion over the destiny of persons the owner permits to come upon the premises. Their well-being must remain the paramount concern of a system of law. *Id.* 277 A.2d at 374, 372.

Although the court in *Shack* accorded a right of access to those offering governmental or charitable services, it specifically cautioned that its purpose in doing so was not to open the employer's premises to the general public. Furthermore, unlike the decisions recognizing the workers' status as tenants, the court also sanctioned a requirement by the employer that visitors identify themselves and state the general purpose of their visit if the worker has not previously alerted the employer to the expected visit. However, it mandated that such a requirement not be used to interfere with the workers' privacy or dignity, a potential that was obvious to the court.

Although the right of access granted by *Shack* is unique in its public policy underpinnings, its breadth is substantially less than that afforded by the other theories, particularly those grounded in landlord-tenant law. Nevertheless, the *Shack* decision and the cases which have followed it signal an unwillingness on the part of courts to let traditional property law concepts serve to impose a barrier between migrant farmworkers and the outside world.

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1. The scope of this article is limited to the right of access to the living quarters of migrant farmworkers. Clear authority on access to migrants in fields and work areas is lacking but, by analogy to access decisions under the National Labor Relations Act, 29 U.S.C. § 157 (1982), it may be assumed that reasonable limitations would be imposed. *See State v. Shack*, 58 N.J. 297, 277 A.2d 369, 374 (1971). *See also Republic Aviation Corp. v. N.L.R.B.*, 324 U.S. 793 (1945) (decision under NLRA); *Jasmine Vineyards, Inc. v. Agric. Labor Relation Bd.*, 113 Cal. App.3d 968, 170 Cal. Rptr. 510 (1980) (discussion of differences between access to workers in industrial and agricultural settings in applying the California Agricultural Labor Relations Act).

2. *See also* Idaho Code §§ 22-4101-4113 (Supp. 1983); Kan. Stat. Ann. §§ 44-818-830 (1981); Ariz. Rev. Stat. Ann. 23-1381-1395 (West 1983) (consitutional challenge to restrictive access provision dismissed on jurisdictional grounds in *United Farmworkers Nat'l Union v Babbitt*, 442 U.S. 289 (1979); composition of agricultural labor relations board held unconstitutional in *United Farm Workers of America, AFL-CIO v. Arizona Agric Labor Relations Bd.*, 96 Labor Cases (CCH) ¶ 55.381 (9th Cir. 1983)); *State v. Fox*, 82 Wash.2d 289, 510 P.2d 230 (1973), *cert. denied*, 414 U.S. 1130 (1974); *See e g. Agric. Labor Relations Bd. v. Superior Court*, 16 Cal App.3d 392, 546 P.2d 687, *appeal dismissed for want of a substantial federal question*, 429 U.S. 802 (1976); *People v. Medrano*, 78 Cal. App.3d 198, 144 Cal. Rptr. 217 (1978); Comment, *ALBR v. Superior Court: Access To The Fields -Sowing The Seeds Of Farm-Labor Peace*, 7 Golden Gate L. Rev. 709 (1977); Note, *Access To Farms As Mandated By The United States Constitution And By Action Of The California Board Of Agricultural Labor Relations*, 8 S.W.U.L. Rev. 165 (1976).

3. A novel argument based on the constitutional right to travel most notably recognized in *United States v. Guest*, 383 U.S. 745 (1966), has proposed judicial recognition of "interstate persons," a category which would include migrant farmworkers, and the imposition of strict scrutiny in the review of any action having the effect of diminishing the rights of those persons. Spriggs, *Access of Visitors To Labor Camps On Privately Owned Property*, 21 U. Fla. L. Rev. 295 (1969). *See also* duFresne and McDonel, *The Migrant Labor Camps' Enclaves of Isolation In Our Midst*, 40 Fordham L.Rev. 279 (1971) (suggesting Thirteenth Amendment argument)

4 *See also Folgueras v. Hassle*, 331 F.Supp. 615 (W.D. Mich. 1971); *Velez v. Amenta*, 370 F.Supp 1250 (D. Conn 1974); *Franceshina v. Morgan*, 346 F Supp. 833 (S.D Ind. 1972); *State v. Fox*, 82 Wash.2d 289, 510 P.2d 230 (1973), *cert. denied*, 414 U.S 1130 (1974); *Lee v. A Duda & Sons, Inc.*, 310 So.2d 391 (Fla Dist. Ct. App), *cert. dismissed*, 311 So.2d 669 (Fla. 1975); Attorney General of Michigan, *Report of Attorney General*, No 4727, filed April 13, 1971.

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Hazards of freezes

The decline in land values since 1981 has dramatized the hazards of freezing estates. In a deflationary era, an individual with an estate that has been converted to fixed principal form or "frozen" ends up with a larger estate than would have been the case otherwise. And those responsible for making payments to support a fixed principal interest discover that a heavy payment obligation can be an impossible burden. Moreover, freezes — whether carried out in a corporation with preferred stock or in a fixed principal limited partnership interest — may lead to steadily diminishing real value in a time of inflation. In short, estate freezes in a time of economic uncertainty should be undertaken only after very careful consideration of the economic and legal problems involved.

To complicate matters, the Internal Revenue Service has served notice that a frozen interest — with no chance of capital appreciation — runs a risk of being worth substantially less than other ownership interests that are identical except for growth potential. The usual outcome is a gift if family members are involved which is usually the case with farm and ranch firms. In *Kincaid v. United States*, 682 F.2d 1220 (5th Cir. 1982), a mother and her sons entered into a complex freeze for a large ranch operation. The fixed principal securities received back by the mother were worth substantially less than the property contributed, resulting in a large gift from the mother to the sons. In *Rev. Rul. 83-120*, I.R.B. 1983-33, 8, the IRS laid down guidelines for valuing preferred stock. The ruling indicates that the value of preferred stock is dependent upon — (1) adequacy of the dividend rate; (2) whether the preferred stock has voting rights and, if so, whether the holders have voting control; (3) dividend "coverage" or dividend payment capacity; and (4) the liquidation preference. A typical outcome in applying the IRS approach is higher values for common stock or other growth interests and lower values for preferred stock or other "frozen" interests.

As a rule of thumb, if current income is expected to average five percent over time and appreciation in value of assets is expected to average five percent over time, removing the possibility for participation in growth and maintaining the same participation in income could cut the value of fixed principal securities by as much as 50%. The potential gift tax liability can be awesome. The effects of maintaining a larger income distribution to those holding frozen interests as a move to counter the loss of appreciation potential can be equally awesome in times of economic adversity.

— Neil E. Harl

Review of recent law review literature

Introductory Note: Since this is just the start of a new feature for the newsletter, there are many law reviews to cover. For the first few months I plan to summarize recent (1982 to present) articles by subject. This month's topic is agricultural land preservation. Later I will provide a review of newer pieces as they are published. I would appreciate hearing from any of you who have suggestions for articles to be noted or who may suggest things in advance to which I should pay special attention.

Grossman & Fischer, *Protecting the Right to Farm: Statutory Limits on Nuisance Actions Against the Farmer*. 1983 Wisc. L. Rev. 95 (1983). This article is perhaps the most comprehensive piece of legal writing concerning right-to-farm statues. Adopted in an ever-increasing number of states, right-to-farm statutes attempt to protect farmers from liability in nuisance litigation for agricultural activities. Grossman and Fischer review traditional agricultural nuisance law and the right-to-farm statutes and then consider the constitutional, environmental and governmental implications of legislation of this type. The article concludes with a thoughtful model right-to-farm statue.

Other somewhat less extensive or local analyses of right-to-farm legislation include:

Comment, *The Arizona Agricultural Nuisance Protection Act*, 1982 Ariz. St. L. J. 689 (1982).

Comment, *"Right to Farm" Statutes — The Newest Tool in Agricultural Land Preservation*, 10 Fla. St. U. L. Rev. 415 (1982).

Note, *Agricultural Law: Suburban Sprawl and the Right to Farm*, 22 Washburn L. J. 448 (1982).

Thompson, "Right to Farm Law" in *1983 Planning & Zoning Law Handbook* 207 (F. Strom ed., 1983).

Comment, *Farmland Preservation in Ohio — Good News for Land Speculators?*, 12 Cap. U. L. Rev. 229 (1982). This article joins a lengthy list of pieces describing various programs to preserve agricultural land. It describes and critically evaluates the Ohio program for farmland preservation. The key elements of Ohio's approach are deferred property tax provisions and a voluntary agricultural districting program. As has been the case with evaluations in other states, the author concludes that the deferred tax statute is ineffective in preserving agricultural land in the face of development. The author also concludes that the incentives in the districting program are not likely to be sufficient to achieve enough voluntary participation to create a meaningful program.

Other similar references include:

WEST VIRGINIA

Note, *Agricultural Land Preservation by Local Government*, 84 W. Va. L Rev. 961 (1982).

PENNSYLVANIA

Agricultural Land Preservation: Can Pennsylvania Save the Family Farm?, 87 Dick L. Rev. 595 (1983).

— Sarah Redfield

AMERICAN AGRICULTURAL LAW ASSOCIATION NEWS

1984 Annual Meeting

Make your plans now for the 1984 meeting of the American Agricultural Law Association to be held at the Brown Palace Hotel in Denver, Colorado, October 25 and 26. Join your peers for two days of information and discussion. Mark your calendar!

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