

KANSAS FARM BUREAU LEGAL FOUNDATION

Q: What Does an Agricultural Lawyer Do?

A: Everything that other lawyers do, just with a focus on and understanding of agriculture. Let me explain:

A little background:

When I was younger, and someone asked me what I wanted to be when I grew up, my answer was never, “a lawyer.” I didn’t really know any lawyers at that time, so my knowledge of practicing law was based on TV and movies. As a result, my path to becoming an agricultural law attorney was not a particularly straight one, but I have gotten here nonetheless.

In my current role, one thing I have heard a lot about is the lack of good agricultural law attorneys in rural Kansas. I have also heard about how some of the big city attorneys just do not “get” agriculture – like how certain estate plan structures could negatively impact available federal program payments. Like many other professions, it is getting harder to attract attorneys back to rural Kansas, and the previous generation of attorneys is retiring. This paper is designed to inform current and future college students about the opportunities in law for them, to expand the realm of what they “know” about future career possibilities.

Private practice:

Private practice is probably what most people picture when they think of an attorney. An attorney in private practice can work in a small or large law firm, and will provide legal advice to a number of different clients, possibly on a wide-array of topics. Whether from behind a desk or in a courtroom, in this career path, an agricultural lawyer could assist individual producers and farm businesses with the following:

- **Estate planning** – Estate planning involves providing tax advice and business planning alternatives to achieve an individual’s or a farm family’s desires for transitioning the farm to the next generation. Practitioners in this area will need to know about taxes, business, and be able to foster effective communication within varying family dynamics, to be able to effectively assist their estate planning clients.
- **Corporate law** – There are many advantages to forming a separate business entity for farming operations (e.g. liability protection, succession planning, tax planning), and a private agricultural law attorney will often be asked by their clients to help them establish a separate legal entity, like a corporation or a limited liability company, and then to provide guidance in the operation of that business over time.
- **Real estate** – A lot of land is needed in production agriculture. Many farmers do not own all of the land that they farm. Instead, they can lease the land from another person under a contract. Utility easements, of all kinds, greatly impact rural landowners. Additionally, farmers may need assistance navigating county zoning rules when they choose to use their agricultural land for an alternative use than traditional agricultural production. Sound guidance from a real estate attorney can be very helpful in planning and negotiating these transactions.
- **Agricultural labor** – Farms do not run themselves. Even robotic dairies require some human oversight. Just like any other industries, agricultural employers run into employment issues that require the guidance of a skilled employment law attorney. Additionally, agricultural employers often encounter issues relating to immigrant labor forces, requiring their attorneys to know about immigration laws, too.
- **Regulatory issues** – Many of today’s farms need guidance through regulatory requirements placed on their operations. These regulations can vary from rules governing pesticide use, to the engineering requirements for confined animal feeding operations, and can involve planning, or response to a regulatory violation enforcement action brought by a governmental agency.
- **Criminal law** – Failure to recognize and abide by laws applicable to their operation could expose farmers and ranchers to criminal liability, requiring the help of an attorney with criminal law experience. Examples could be 1) operating their water right in a way that violates state law, or 2) engaging in a pattern or practice of hiring and recruiting unauthorized aliens to work on their farm in violation of U.S. immigration laws.

In-house work:

In-house attorneys work directly for a large business and provide legal advice to a single client, and, possibly, its related businesses.

- **Corporate law** – In-house corporate attorneys can be called upon to advise their clients on a broad range of legal issues from advising a board regarding a provision of their bylaws, to advising company leadership regarding human resources issues, to overseeing the engagement of outside counsel in a high-stakes litigation matter. Alternatively, they can become so specialized when working for a large company, that their sole role is to oversee one aspect of the company’s daily operations, or one facet of the company’s litigation matters (like e-discovery or patents).
- **Intellectual property** – Intellectual property is a work or invention that is the result of creativity, such as a design or writing, which can be protected from use by others through a patent, copyright, or trademark. A real niche can be created when someone with an affinity and aptitude for math and science wants to become an intellectual property attorney. Clients will naturally appreciate the knowledge and expertise that an attorney with, for example, an engineering degree, brings to the job. This position could be held in-house with a large agricultural products manufacturer, or with a law firm that serves agricultural clients.

A government attorney:

With all of the agencies involved in regulating agricultural activities through statutes and regulations, there is a real need for some common-sense attorneys, that understand agriculture, to work on promulgating and enforcing those laws.

- **Legislation drafting** – While it is the role of the legislative branch to adopt legislation that creates our statutes, it is not uncommon for government attorneys to draft the legislation based on input from agency personnel or legislators. Even if they are not responsible for drafting any proposed legislation, the insight of agency attorneys can be invaluable in considering the impact of proposed legislation, and whether it accomplishes what legislators want to achieve.

- **Rule-making** – When statutes provide a framework for certain laws, agencies can create regulations (rules) necessary or appropriate, with more detail, to implement the statutes. Agency attorneys are typically involved in all phases of the process, from drafting, to hearings, to outreach.
- **Enforcement of statutes and regulations** – When an individual or an agricultural company fails to comply with applicable statutes and regulations, it may become necessary for agency attorneys to take civil enforcement action in response to such noncompliance. While enforcement of these laws can be necessary to ensure a safe food supply and fair business competition, it is imperative for agency attorneys to have a solid understanding of agriculture so that enforcement can be handled in a practical manner that makes sense to agricultural operators.

Non-attorney jobs:

Sometimes, a law degree can be useful, even if a person does not end up actually practicing law. For instance, persons in the following positions can benefit from the substance and skills learned during law school:

- **Policy** – Whether working as an in-house or contract lobbyist, or in a leadership role with a governmental agency, individuals working in policy can benefit greatly from a solid foundation of constitutional law principles. Additionally, the experience a person receives in reading and writing in law school could be invaluable when drafting legislation or regulations, and when evaluating how proposed laws affect other areas of existing law.
- **Corporate Leadership** – While those in leadership positions within a business must still rely on the knowledge and experience of a team of good legal advisors, having a legal background can help them think more critically about transactions, and recognize when it is the right time to enlist the help of those legal advisors.

Conclusion:

The term “agricultural lawyer” really describes so many career paths. Hopefully, this paper helps describe some of those paths so that high school and college students with a background in agriculture have a little more information when considering whether they want to pursue a law degree.

The Kansas Farm Bureau Legal Foundation supports the rural practice of law through its Rural Law Practice Grant. The \$16,500 grant helps defray the educational costs of law school and is aimed at encouraging new attorneys to locate their practice in rural Kansas. To learn more, visit www.kfb.org/legalfoundation.

Disclaimer: This document is intended for informational purposes only and NOT provided as legal advice. If you have legal questions, you should contact a private attorney for advice relating to your specific facts and circumstances.