

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

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H. THOMAS CADELL, JR., *Chief Counsel*

November 18, 1996

Terrence R. O'Connor
Western Legal Associates
975 W. Alisal Street, Suite F
Salinas, CA 93901

Re: **Ag Management Associates, Inc.**
Farm Labor Contractors License

Dear Mr. O'Connor:

In a letter to Abel Mendoza, Deputy Labor Commissioner, dated September 27, 1996, you stated that Ag Management Associates, Inc. "does not provide agricultural services for a fee for a farmer or agricultural employer." In reliance on that statement the Division concluded that your client was not a farm labor contractor.

We have now received information that, unlike the representations made to us in your letter, paint the following picture of the situation in regard to the operation of your client:

- The land in question is owned by absentee owners who don't happen to do any farming on the land because all of the operations are performed by Ag. Management for a fee.
- Ag. Management negotiates with the landowners and, depending on the size of the parcel, the location, the condition of the land, how far it is from sources of labor, what kind of water is available, etc., they enter into agreements which provide that Ag. Management will, for a fee paid in monthly installments, do all of the farming operations.
- Ag. Management then does all the farming including deciding what crop to grow, buying the seed, paying for insurance and water, renting equipment, hiring labor, computing payroll, issuing checks to workers, etc.

- Ag. Management sends bills to the owners for all of the expenses which Ag. Management incurs and the owner pays these costs on a regular basis.
- Ag. Management arranges for marketing the crop and sends the owner a check for the proceeds. If the owner has paid out more in expenses and management fees over the course of the year than he realizes in profit from the sale of the crop, he has sustained a loss. If, on the other hand, he has paid out less in expenses and management fees than the sum he receives for the crop, he has made a profit.

Labor Code § 1682 defines farm labor contractor to include any individual, firm, partnership, association, limited liability company or corporation which, "for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person..."

Given the facts set out above, there can be little doubt that the activities of Ag. Management require that the organization be licensed as a farm labor contractor. A portion of the fee paid to Ag. Management is for the cost of hiring workers to provide personal services. The letter of October 15, 1996, from Ramon Yuen-Garcia which was in response to your letter of September 27, 1996, clearly states that the conclusion is based on the "facts that you have stated in your letter" to Abel Mendoza. Since, obviously, the facts in your letter were incorrect, the conclusion is not correct.

Yours truly,



H. THOMAS CADELL, JR.
Chief Counsel

c.c. Roberta Mendonca, State Labor Commissioner
Nance Steffen, Assistant Labor Commissioner
Jim Pattillo, Staff Attorney, Los Angeles TIPP Legal Section
Abel Mendoza, DLC I, Bakersfield
Ramon Yuen-Garcia, Staff Attorney, San Francisco Legal Section