

OFFICIAL OPINION 2013-7

The Honorable Brent E. Steele
Indiana State Senate
200 W. Washington St.
Indianapolis, IN 46204

RE: Limited Liability for Agritourism Activities

Dear Senator Steele:

You asked whether Ind. Code § 34-31-9-2, governing limited liability for agritourism activities, would apply to a dormant limestone quarry used as a tourism attraction.

BRIEF ANSWER

A limestone quarry that has been retrofitted as a tourism attraction could fall within the definition of “agritourism activity” in Ind. Code § 34-31-9-2 if it includes natural resource based activities and attractions.

ANALYSIS

Ind. Code Chpt. 34-31-9 was added to the Indiana Code in 2011.¹ Subject to certain restrictions and requirements, the chapter provides that an agritourism provider² is not liable for injuries to or deaths of participants³ resulting from inherent risks⁴ of agritourism activities.

Ind. Code § 34-31-9-2 defines “agritourism activity” as:

- (1) an activity at an agricultural, horticultural, or agribusiness operation where the general public is allowed or invited to participate in, view, or enjoy the activities for recreational, entertainment, or educational purposes, including farming, ranching,

¹ House Enrolled Act No. 1133 (Pub. L. 3-2011), effective July 1, 2011.

² Ind. Code § 34-31-9-3 defines “agritourism provider” as “a person who provides the opportunity for agritourism activities whether or not the participant pays to participate in the activity. The term includes employees or authorized agents who offer or conduct agritourism activities on behalf of an agritourism provider.”

³ “Participant” is defined by Ind. Code § 34-31-9-7 as “any person, other than the agritourism provider, who engages in an agritourism activity.”

⁴ Ind. Code § 34-31-9-4 provides the definition of “inherent risk of agritourism activities” in this context. “As used in this chapter, “inherent risks of agritourism activities” mean those conditions, dangers, or hazards that are an integral part of an agritourism activity, including the following: (1) Surface and subsurface conditions and natural conditions of land, vegetation, and waters. (2) The behavior of wild or domestic animals. (3) The ordinary dangers of structure or equipment when the structures or equipment are being: (A) used; or (B) stored; by an agritourism provider in a manner and for a purpose for which a reasonable person should know that structures or equipment is intended. (4) The negligent acts of a participant that may contribute to injury to the participant or others, including failing to follow instructions given by an agritourism provider, failing to exercise reasonable caution while engaging in the agritourism activity, or failing to obey written warnings or postings on the premises of the agritourism operation.”

- historic and cultural agricultural activities, self-pick farms, or farmers' markets;
- (2) an activity involving an animal exhibition at an agricultural fair; or
- (3) natural resource based activities and attractions, including hunting, fishing, hiking, and trail riding.

Although the term “agritourism” suggests some connection to agriculture, the third part of the definition is not limited to agricultural or horticultural operations or activities. The use of the term “natural resource based activities and attractions” broadens the definition of agritourism to include activities that are not directly related to agriculture. “When the legislature defines a word, this Court is bound by that definition in construing the statute, even though the definition may conflict with the common meaning of the word.” *Tucker v. State*, 646 N.E.2d 972, 975 (Ind. Ct. App. 1995). A limestone quarry would fall within the scope of Ind. Code § 34-31-9-2 if it includes “natural resource based activities.” There is no statutory or common law definition for “natural resource based activities,” and “natural resources” is not defined for purposes of this statute. In the absence of a statutory definition, we may look at the common and ordinary meaning of the word. *Id.* Black’s Law Dictionary defines “natural resource” as “any material from nature having potential economic value or providing for the sustenance of life, such as timber, minerals, oil, water, and wildlife.” NATURAL RESOURCE, Black’s Law Dictionary (9th ed. 2009). Limestone is clearly a natural resource.

It is not clear what type of activities would be “natural resource based activities.” The statute includes hunting, fishing, hiking and trail riding, but the definition is not limited to those activities. It is reasonable to interpret the phrase to include activities that utilize, promote, or education about the natural resource. In addition to the activities listed in the statute, limestone-based activities might include quarry tours, carving workshops, and educational or entertainment activities that take advantage of the unique setting. On the other hand, an activity that is not related to the natural resource, for example, a restaurant on a quarry site, would likely not be considered an agritourism activity.

Additionally, it should be noted that in order for an agritourism provider to qualify for the immunities provided in Ind. Code Chpt. 34-31-9, it must comply with the requirements in sections 12, 13, and 14 of that chapter relating to the posting of warning signs and inclusion of notices in contracts. Specifically, Ind. Code § 34-31-9-12 provides that the immunities do not apply in situations where participants pay the provider to have access to the premises *unless* the provider either:

- (1) posts and maintains a sign on which is printed the warning notice set forth in [Ind. Code § 34-31-9-14]; or
- (2) has a signed release from the participant indicating that the participant has received written notice of the warning set forth in [Ind. Code § 34-31-9-13].

Furthermore, the warning sign must be placed in a clearly visible location at the main point of entrance to the agritourism activity, and the notice on the sign must be printed in black letters.⁵ Any written contracts between agritourism providers and participants for the providing of access, services, instruction, or the rental of equipment to a participant for purpose of engaging in or

⁵ Ind. Code § 34-31-9-12(b), (c).

participating in an agritourism activity must also contain a specific written notice that is set forth in the chapter.⁶

Ind. Code § 34-31-9-14 specifies the precise text of the warning that must be displayed on warning signs or written contracts covered by the chapter:

WARNING

Under Indiana law, an agritourism provider is not liable for an injury to, or the death of, a participant in agritourism activities at this location if the death or injury results from the inherent risks of agritourism activity. Inherent risks of agritourism activities include risks of injury inherent to land, equipment, and animals as well as the potential for you to act in a negligent manner that may contribute to your injury or death, or for other participants to act in a manner that may cause you injury or cause your death. You are assuming the risk of participating in this agritourism activity.

CONCLUSION

Although the term “agritourism activity” suggests an agricultural or farming activity, Ind. Code § 34-31-9-2’s definition encompasses non-agricultural, natural resource based activities. Tourist activities at a limestone quarry could fall within the scope of the statute.

Sincerely,

Gregory F. Zoeller
Attorney General

Donna Stolz Sembroski
Deputy Attorney General

⁶ Ind. Code § 34-31-9-13.