



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

October 2, 1985

ATTORNEY GENERAL OPINION NO. 85- 135

The Honorable Gayle Mollenkamp
State Representative, 118th District
P.O. Box 5
Russell Springs, Kansas 67755

The Honorable Robin Leach
State Representative, 46th District
R.R. No. 1, Box 117
Linwood, Kansas 66052

Re: Taxation -- Property Subject to Taxation --
Valuation Based on Agricultural Income or
Productivity

Synopsis: Pursuant to Article 11, Section 12 of the
Constitution of the State of Kansas, agricultural
land may be valued upon the basis of the
agricultural income or productivity of such land.
The provisions of L. 1985, ch. 314, §1 are intended
to give effect to this constitutional grant of
authority, and will be operative regardless of
whether the proposed amendment to Article 11, §1 of
the Kansas Constitution found in L. 1985, ch. 364
is approved by the voters in the 1986 general
election. Cited herein: K.S.A. 79-1439; L. 1985,
chapters 314, 364; Kan. Const., Art. 11, §1, 12.

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Dear Representatives Mollenkamp and Leach:

As State Representatives for the 118th and 46th Districts
of Kansas, respectively, you request our opinion on a question

concerning L. 1985, ch. 314 and the proposed amendment to Article 11, Section 1 of the Kansas Constitution found in L. 1985, ch. 364. Specifically, you inquire whether, absent the adoption of L. 1985, ch. 364, land devoted to agricultural use may be valued upon the basis of the agricultural income or productivity pursuant to L. 1985, ch. 314.

Following its adoption in the 1976 general election, Article 11, §12 of the Constitution of the State of Kansas provides in part as follows:

"Land devoted to agricultural use may be defined by law and valued for ad valorem tax purposes upon the basis of its agricultural income or agricultural productivity, actual or potential, and when so valued such land shall be assessed at the same percent of value and taxed at the same rate as real property subject to the provisions of section 1 of this article."

In that this section is not self-executing ("Land devoted to agricultural use may be defined . . ."), legislative action was necessary to put the provisions of Article 11, Section 12 into effect. L. 1985, ch. 314 represents an attempt to do so, and uses essentially the same language as Article 11, §12 in stating as follows:

"In addition [to general reappraisal] valuations shall be established for each parcel of land devoted to agricultural use upon the basis of the agricultural income or productivity attributable to the inherent capabilities of such land in its current usage under a degree of management reflecting median production levels in the manner hereinafter provided." (Emphasis added.) L. 1985, ch. 314, §1.

Further, Section 1 defines "land devoted to agricultural use" as required by Article 11, §12 of the Kansas Constitution.

"For the purpose of the foregoing provisions of this section the phrase 'land devoted to agricultural use' shall

mean and include land, regardless of whether it is located in the unincorporated area of the county or within the corporate limits of a city, which is devoted to the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes, suburban residential acreages, rural home sites or farm home sites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition."

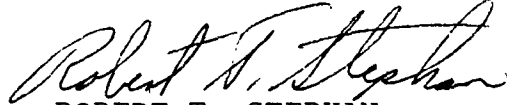
Article 11, Section 12 is also cited in another chapter of the 1985 Session Laws, specifically at chapter 364. There, a proposed amendment to article 1 of Section 12 of the state constitution was approved by the legislature for submission to the voters in the 1986 general election. If adopted, the amendment would provide for reclassification of real and personal property for taxation purposes, and would allow different types of property to be assessed at different percentages of value. While land devoted to agricultural use is among the categories listed, we note that the percentage used in the proposed amendment (30%) for such land is the same as is uniformly used now for all real and personal property. K.S.A. 79-1439. In view of this, and given the pre-existing language of Article 11, Section 12 which is now being made operative by L. 1985, ch. 314, the success or failure of the reclassification amendment will not alter the treatment of agricultural land.

In conclusion, insofar as the mechanism for valuation of agricultural land for ad valorem tax purposes based upon the agricultural productivity of such land is presently

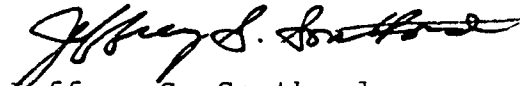
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embodied within Article 11, Section 12 of the Kansas Constitution, agricultural land may be valued in the manner described in L. 1985, ch. 314, regardless of the adoption of the proposed amendment to Article 11, §1 of the Kansas Constitution contained in L. 1985, ch. 364.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw