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ATTORNEY GENERAL OPINION NO. 88- 144

The Honorable Joan Wagnon  
State Representative, Fifty-Fifth District  
1606 Boswell  
Topeka, Kansas 66604

Re: Constitution of the State of Kansas--Finance and  
Taxation--Assessment and Taxation of Land Devoted  
to Agricultural Use

Taxation--Property Valuation, Equalizing  
Assessments, Appraisers and Assessment of  
Property--Statewide Reappraisal of Real Property;  
Methods of Establishing Valuations

Synopsis: Legislation defining "land devoted to agricultural  
use" to include land subject to the federal  
conservation reserve program is an appropriate  
implementation of article 11, section 12 of the  
Kansas Constitution, and therefore such land may  
properly be classified as land devoted to  
agricultural use pursuant to article 11, section 1  
of the constitution. Cited herein: K.S.A. 1987  
Supp. 79-1476, as amended by L. 1988, ch. 377, §14;  
Kan. Const., Art. 11, §§1, 12; 16 U.S.C.A. §§  
3801, 3831, 3832, 3833 (West Supp. 1988).

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Dear Representative Wagnon:

As a member of the Special Committee on Assessment and  
Taxation, you request our opinion regarding the  
appropriateness of including land subject to the federal  
conservation reserve program in the definition of "land

devoted to agricultural use" for purposes of classification. Kan. Const., Art. 11, §1(b). The question arises due to language in the federal law implementing the conservation reserve program which prohibits land subject thereto from being used for agricultural purposes.

The purpose of the federal conservation reserve program is to convert highly erodible cropland normally devoted to the production of agricultural commodities to a less intensive use, such as pasture, legumes, hay or trees, in order to protect our long term capacity to produce food and fiber. See 1985 U.S. Code Cong. & Ad. News 1103, 1185, 1387. This is accomplished through a contractual agreement between eligible landowners and the Secretary of Agriculture (Secretary) in which landowners agree not to use the land for "agricultural purposes" (except as permitted by the Secretary) 16 U.S.C.A. §3832(a)(3), and not to conduct any harvesting or grazing, or otherwise make commercial use of the forage on land subject to the contract (except as permitted by the Secretary) for a specified period of time. 16 U.S.C.A. §3832(a)(7). For purposes of this program, the term "agricultural commodity" is defined as "any agricultural commodity planted and produced by annual tilling of the soil, or on an annual basis by one-trip planters." 16 U.S.C.A. §3801(1)(A). While the land may not be used to produce agricultural commodities as so defined, a vegetative cover (such as hay, grass, trees, etc.) must be maintained on the land. 16 U.S.C.A. §3832(a)(4). The land must be farm or ranch land to be eligible for program participation. 16 U.S.C.A. §3831(a).

Article 11, section 1(b)(1)(B) of the Kansas Constitution provides that land devoted to agricultural use is to be valued on "the basis of its agricultural income or agricultural productivity pursuant to section 12 of article 11 of the constitution." Article 11, section 12 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." (Emphasis added.)

In that this section is not self-executing [see Attorney General Opinion No. 85-135; Nelson, Differential Assessment of Agricultural Land in Kansas, 25 U. Kan. L. Rev. 215, 218 (1977)], K.S.A. 79-1476 was enacted to implement its provisions.

"[V]aluations 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 or, in the case of such land which is subject to the federal conservation reserve program, in its usage immediately prior to being subject to such program, under a degree of management reflecting median production levels in the manner hereinafter provided.

. . . .

"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." K.S.A. 1987 Supp.

79-1476, as amended by L. 1988, ch. 377,  
§14.

The constitutionally authorized statutory definition of "land devoted to agricultural use" would appear to include land subject to the federal conservation reserve program. While such land may not be used to produce and harvest traditional agricultural commodities as defined by 16 U.S.C.A. § 3801(a)(1), a cover "crop" must be maintained thereon, such as hay, timber or legumes. These products are specifically listed in the statutory definition. Additionally, to be eligible for participation in the program the land must be farm or ranch land; land the primary function of which is residential or recreational cannot be subject to the conservation reserve program. Further, article 11, section 12 in no way requires annual tillage and harvest of a traditional crop for land to be deemed as devoted to agricultural use. Fine tuning of the definition of "land devoted to agricultural use" was left to the legislature. Land which is being revitalized for future production clearly meets a common understanding of the term "devoted to agricultural use," particularly when the land cannot be used for other commercial purposes in the meantime. See Nelson, supra, at 235, 236, note 125 (land reserved for "open space" meets the common understanding of land devoted to agricultural use). That land in this program is "devoted to agricultural use" seems to be implicit in the definition attributed to the term by the legislature in view of the specific provision for valuing land subject to the federal reserve program. K.S.A. 1987 Supp. 79-1476, as amended by L. 1988, ch. 377, §14. In short, the constitution directs the legislature to define "land devoted to agricultural use." As long as the legislative definition does not clearly exceed the limits of the common meaning of the words, the courts will not strike it down. Frizzell v. Highwood Service, Inc., 205 Kan. 821 (1970); State ex rel. Anderson v. Fadely, 180 Kan. 652 (1957). In our opinion, defining "land devoted to agricultural use" as including land subject to the federal reserve program is an appropriate use of legislative discretion in implementing article 11, section 12 of the Kansas Constitution.

You further ask whether, absent the statutory language referencing the conservation reserve program, lands subject to that program would nevertheless be land devoted to agricultural use despite the federal requirement that such land not be used for agricultural purposes. We believe that it would, based on the arguments enunciated above. Land does not necessarily have to be tilled and harvested annually to be

devoted to agricultural use. It is important to future production to allow land to lie fallow, just as it is important to future production to conserve the soil pursuant to the conservation reserve program. Absent the provision directing that such lands are to be valued upon the basis of the agricultural income or productivity attributable to its inherent capabilities in its usage immediately prior to being subject to the program, however, valuation of the land may be skewed.

In summary, legislation defining "land devoted to agricultural use" to include land subject to the federal conservation reserve program is an appropriate implementation of article 11, section 12 of the Kansas Constitution, and therefore such land may properly be classified as land devoted to agricultural use pursuant to article 11, section 1 of the constitution.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm