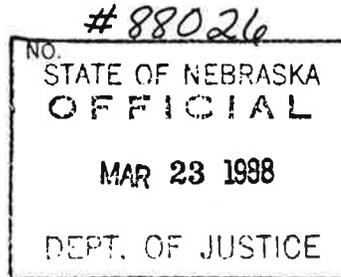


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General



DATE: March 22, 1988

SUBJECT: Constitutionality of LB 1207 - Valuation of agricultural land for tax purposes.

REQUESTED BY: Senator Rex Haberman  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
L. Jay Bartel, Assistant Attorney General

You have requested our opinion on three questions relating to specific portions of LB 1207. Generally, LB 1207 proposes to amend various Nebraska statutory provisions concerning the valuation of agricultural land for tax purposes. The specific provisions of LB 1207 to which your questions relate will be discussed below in reference to each particular question you have presented for our consideration.

Your initial question concerns certain language contained in Section 1 of LB 1207 which proposes to amend Neb.Rev.Stat. §77-1358 (Reissue 1986) by adding the following language: "The Legislature finds that the effect of Amendment IV of 1984 to Article VIII, Section 1, of the Constitution of Nebraska is to permit the Legislature to adopt a valuation method which values agricultural land and horticultural land in a non-uniform manner relative to other classes of property." You ask whether, in light of the recent Nebraska Supreme Court decision in Banner County v. State Board of Equalization and Assessment, 226 Neb. 236, 411 N.W.2d 35 (1987)[Banner County], this legislative declaration as to the effect of the enactment of amendment four is sufficient to permit the non-uniform valuation and taxation of agricultural land.

L. Jay Bartel  
Martel J. Bundy  
Janie C. Castaneda  
Elaine A. Catlin  
Dale A. Comer  
Laura L. Freppel

Lynne R. Fritz  
Yvonne E. Gates  
Royce N. Harper  
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Charles E. Lowe  
Lisa D. Martin-Price  
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Harold I. Mosher

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Marie C. Pawol  
Jill Gradwohl Schroeder  
LeRoy W. Sievers

James H. Spears  
Mark D. Starr  
John R. Thompson  
Susan M. Ugai  
Linda L. Willard

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In Banner County, the Nebraska Supreme Court discussed the language added to Article VIII, Section 1, of the Nebraska Constitution by virtue of the adoption of amendment four in 1984, providing: "The Legislature may provide that agricultural land and horticultural land used solely for agricultural and horticultural purposes shall constitute a separate and distinct class of property for purposes of taxation." The opinion addressed at length the court's view as to the intent and meaning of the language adopted under amendment four, and the effect of such language on the applicability of the uniformity requirement contained in Article VIII, Section 1, as to the separate class of agricultural land established for tax purposes by the enactment of LB 271 in 1985 after the passage of amendment four. In particular, the court stated the following:

The State Constitution requires that taxes be levied "by valuation uniformly and proportionately upon all tangible property" except motor vehicles. The constitutional amendment, upon which LB 1207 is based, amendment four, permits agricultural property to be treated as a separate class for purposes of property tax. The amendment did not repeal the uniformity clause.

\* \* \*

Since amendment four did not repeal the uniformity clause, expressly or by implication, the two clauses must be read in such a way as to give effect to both clauses. Thus, L.B. 271 must meet the requirements of both clauses to pass the test of constitutionality. Specifically, amendment four permitted the Legislature to classify property as a separate class, but the uniformity clause required the Legislature to treat that class in a uniform manner with other tangible property.

\* \* \*

Since the uniformity clause was not repealed, the Legislature can divide the class of tangible property into different classifications, but these classifications remain subdivisions of the overall class of "all tangible property," and there must be a correlation between them to show uniformity. Such a correlation is made by evidence that all tangible property has been uniformly assessed.

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No evidence of such a correlation is present in the record before us or in the statutes implementing amendment four. In fact, our review of the statutes shows the correlation requirement was entirely disregarded.

\* \* \*

[The statutes] provide for the separate classification and valuation of agricultural property and are consistent with amendment four. Conspicuously absent from these statutes, however, is a requirement that the resulting values obtained for agricultural land be correlated with the values obtained for other real property as required by the uniformity clause.

Id. at 252-254, 411 N.W.2d at 45-46.

On the basis of the foregoing, it is evident that, while the court's statements could arguably be viewed as dicta, we believe the court has clearly stated that the adoption of amendment four (and the subsequent enactment of LB 271) did not exempt agricultural land from the requirement of maintaining uniformity in relation to all other tangible property, as required by Article VIII, Section 1.

In light of the preceding statements by the court in Banner County, you have asked us to consider what impact the legislative declaration contained in Section 1 of LB 1207 as to the effect of amendment four may have in permitting the non-uniform valuation and taxation of agricultural land. It is true, of course, that legislative construction of a constitutional provision, while not conclusive, will be given due consideration by the courts in determining the meaning of a constitution. See generally 16 Am.Jur.2d Constitutional Law §125 (1979). In this particular instance, however, we do not believe that the legislative statement of findings as to the effect of amendment four in Section 1 of LB 1207 would alter the court's interpretation of the intent and effect of this constitutional amendment as expressed in the Banner County decision.

As you are no doubt aware, this office filed a motion for rehearing following the issuance of the court's opinion in Banner County, specifically requesting the court to reconsider its conclusion that the adoption of amendment four was not intended to permit non-uniform valuation and taxation of agricultural land. In the brief filed on behalf of the State Board in support of the motion for rehearing, as well as in an amici curiae brief filed by a number of Nebraska farm organizations in support of the request for rehearing, arguments were advanced urging the

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court to determine that the history behind the adoption of amendment four (and the subsequent enactment of LB 271) demonstrated that the intent and effect of the amendment was to specifically except agricultural land from the requirement of uniform taxation contained in Article VIII, Section 1. The court overruled the motion for rehearing sought on this basis. Under these circumstances, we believe it is extremely unlikely that the court will alter its position regarding the intent and effect of amendment four as expressed in Banner County, and that the legislative finding as to the effect of this amendment contained in Section 1 of LB 1207 would not cause the court to change its determination that amendment four did not remove the constitutional requirement of uniformity in relation to the taxation of agricultural land.

Your second question relates to the limitations placed on county boards of equalization under Sections 7 and 8 of LB 1207 regarding the authority of such boards to make adjustments to valuations placed on agricultural land. Generally, Section 7 would amend Neb.Rev.Stat. §77-1504 (Reissue 1986) to limit the authority of a county board of equalization to making specific types of corrections in relation to agricultural or horticultural land. Section 8 would amend Neb.Rev.Stat. §77-1506.02 (Reissue 1986) by eliminating the authority of a county board of equalization to make a percentage adjustment to the class of agricultural land, or to make a percentage adjustment to a subclass of agricultural land. Your specific question with regard to such limitations on the authority of county boards of equalization concerns whether these provisions result in a denial of due process to owners of agricultural land seeking to challenge their valuations.

In a previous opinion, our office concluded that, under the statutory provisions in existence at that time, a county board of equalization possessed the authority to establish values of land different from those set forth in appraisal manuals prepared by the State Tax Commissioner. Report of Attorney General 1979-80, Opinion No. 296, p. 427. In this opinion, we quoted the following language from 16A Am.Jur.2d Constitutional Law §853 (1979):

Due process of law requires a hearing before a court or other tribunal having jurisdiction of the cause either in equity or at law. The tribunal must be appointed by law and be governed by rules of law previously established. It must be a legally constituted body for determining the right in question.

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Relying upon this principle, we concluded that if land owners were not permitted to contest their valuations before the county board of equalization, they would effectively be precluded from ever contesting their valuations at any stage. We further concluded that the absence of any such ability to contest valuations in this manner would violate due process, and determined that a county board could place values on property different from those in the manuals, if warranted by evidence presented before the county board. Report of Attorney General 1979-80, Opinion No. 269, at 429.

In analyzing your concern as to the potential deprivation of due process resulting from the limitations on the authority of county boards of equalization under LB 1207 to alter valuations of agricultural land determined pursuant to the Land Manual, it is necessary to consider whether the removal of such authority from county boards of equalization prohibits agricultural land owners from contesting the valuations placed on their property. While the guarantee of due process requires that a party be provided the opportunity to raise issues and be heard before a competent tribunal empowered to determine the right in question, the stage at which that hearing occurs, and the manner in which it is provided, if not unreasonably inconvenient, is a matter of legislative discretion. See 16A Am.Jur.2d Constitutional Law §§843, 844 (1979). In this regard, we note that Section 9 of LB 1207 proposes to amend Neb.Rev.Stat. §77-1510 (Reissue 1986) to permit taxpayers challenging values as determined by the Land Manual to contest their valuations in district court. The district court, upon consideration of the evidence presented, is empowered to alter valuations as determined by the Land Manual. Under these circumstances, we do not believe that the limitations imposed on county boards of equalization under LB 1207 result in an unconstitutional deprivation of the due process rights of owners of agricultural land, as such taxpayers are provided a judicial forum in which to contest the valuations placed on their property for tax purposes.

In addition to your concerns as to the due process implications raised by virtue of the limitations in Sections 7 and 8 of LB 1207, you also question whether the distinctions drawn between owners of agricultural and non-agricultural land, by virtue of the different authority granted to county boards to act in performing their equalization functions, results in a violation of the guarantee of equal protection of the law. See U.S. Const., Amend. 14.

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In considering questions as to the validity of legislation under the equal protection clause, it must be remembered that the Legislature has a broad range of discretion in drawing distinctions for purposes of statutory classification. Under traditional equal protection analysis, the guarantee of equal protection merely requires "...that distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state interest or purpose." 16A Am.Jur.2d Constitutional Law §750 (1979). See Porter v. Jensen, 223 Neb. 438, 390 N.W.2d 511 (1986). Upon analyzing the differences between the procedures for challenging valuations of agricultural land and non-agricultural land (by virtue of the limits imposed on county boards in altering agricultural land values), we cannot conclude that the distinctions created in this instance are wholly without any conceivable rational basis.

With the adoption of amendment four in 1984, the Legislature was permitted to classify agricultural land separately for property tax purposes. As the court noted in Banner County, the placing of agricultural land in a separate class for tax purposes permits the valuation of such land by a method different than that employed to value non-agricultural land. 226 Neb. at 253, 411 N.W.2d at 46. The Legislature has thus adopted an earning capacity method of valuation for agricultural land; has promulgated extensive statutory requirements mandating the method to be utilized in determining agricultural land valuations; and has imposed on the State Tax Commissioner the duty to prepare the agricultural land valuation manual employed to establish such values for all categories of agricultural land in the state. Neb.Rev.Stat. §§77-1358 to 77-1356; and §77-1968 (Reissue 1986 and Supp. 1987). Given the unique manner in which agricultural land is treated in establishing its valuation for tax purposes, and the potentially adverse impact on statewide equalization in the event of significant departures from valuations established by the Land Manual, we cannot say that the different procedures to be followed in seeking adjustments of agricultural land values under LB 1207 are without any rational basis, and, as such, are not necessarily in conflict with the constitutional guarantee of equal protection of the law.

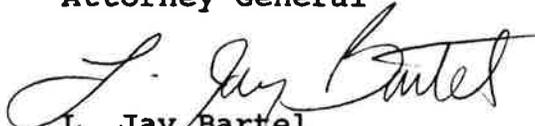
Your final question concerns whether the operative date of January 1, 1988, contained in Section 10 of LB 1207, violates the constitutional prohibition against the enactment of ex post facto laws. Neb. Const., Art. I, §16. The prohibition against ex post facto laws applies only to penal or criminal matters. In re Estate of Rogers, 147 Neb. 1, 22 N.W.2d 297 (1946). Thus, as the

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provisions of LB 1207 do not concern criminal penalties or sanctions, we conclude that the operative date established in Section 10 of the bill does not, in any manner, render LB 1207 invalid as an ex post facto law.

Very truly yours,

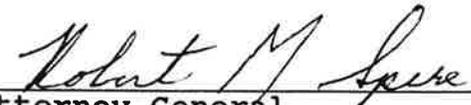
ROBERT M. SPIRE  
Attorney General

  
L. Jay Bartel  
Assistant Attorney General

7-20-3

cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED:

  
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Attorney General