

Linda

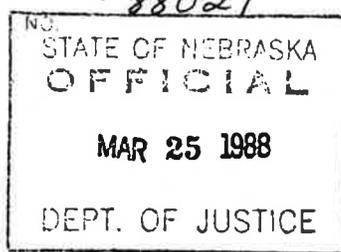
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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DATE: March 22, 1988  
SUBJECT: LR 249CA - Proposed constitutional amendment to exempt agricultural land from the uniformity requirement.  
REQUESTED BY: Senator Rod Johnson  
Nebraska State Legislature  
WRITTEN BY: Robert M. Spire, Attorney General  
L. Jay Bartel, Assistant Attorney General

You have requested our opinion on two questions relating to LR 249CA. Generally, this proposed constitutional amendment would amend Article VIII, Section 1, of the Nebraska Constitution, to establish agricultural land as a separate class of property for tax purposes which would be exempt from the uniformity requirement contained in this constitutional provision.

Your initial question is whether the language of the proposed amendment is sufficient to establish an intent to exempt agricultural and horticultural land from the uniformity clause in Article VIII, Section 1, of the Nebraska Constitution.

In Banner County v. State Board of Equalization and Assessment, 226 Neb. 236, 411 N.W.2d 35 (1987), the Nebraska Supreme Court stated that the adoption of Amendment Four in 1984 (permitting the legislature to establish agricultural land as a separate and distinct class of property for tax purposes) did not exempt agricultural land from the requirement of uniformity in relation to all other tangible property, as mandated by Article VIII, Section 1, of the Nebraska Constitution. The language of

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Senator Rod Johnson  
March 22, 1988  
Page -2-

LR 249CA would repeal the language adopted by the passage of Amendment Four, and would replace such language with the following:

The Legislature may provide that agricultural land and horticultural land, as defined by the Legislature, used for agricultural and horticultural purposes, shall constitute a separate and distinct class of property for purposes of taxation and may provide that agricultural land and horticultural land be assessed for purposes of taxation by a method which results in values which are not uniform or proportionate with other classes or subclasses of property.

On the basis of the plain meaning of the foregoing language, we believe that the language of LR 249CA clearly expresses an intent to establish agricultural and horticultural land as a separate class of property for purposes of taxation which is not subject to the requirement of uniform and proportionate taxation in Article VIII, Section 1.

Your second question concerns whether the inclusion of language in LR 249CA exempting subclasses of agricultural land from the uniformity requirement is constitutionally permissible if such language is construed to mean that subclasses of agricultural land need not be uniform and proportionate to one another.

Initially, we note that some ambiguity may be presented by the language in LR 249CA permitting the assessment of agricultural land by a method resulting in values which are not uniform "...with other classes or subclasses of property." (emphasis added). As a result of this language, some question may exist as to whether this provision is intended to eliminate any requirement of uniformity of subclasses within the class of agricultural land. In our view, the plain meaning of the language of the amendment does not necessarily evince an intent to eliminate any requirement of uniformity among subclasses of agricultural land; rather, the amendment speaks only in terms of permitting the assessment of the class of "agricultural and horticultural land" in a manner "which results in values which are not uniform or proportionate with other classes or subclasses of property." Nevertheless, the Statement of Purpose accompanying LR 249CA indicates the intent behind this language is to remove any requirement of uniformity within the agricultural land class. The Statement provides, in pertinent part: "Amendment Four did not address uniformity within the agricultural class itself, but LR 249CA proposes to exempt

Senator Rod Johnson  
March 21, 1988  
Page -3-

agricultural subclasses (irrigated, dryland and range) from the uniformity clause also." Committee Statement on LR 249CA, 90th Legislature, Second Session at 1-2. (Emphasis in original). Thus, while the Statement of Purpose indicates the amendment is intended to eliminate any requirement of uniformity within the class of agricultural and horticultural land, we cannot definitively conclude that the current language of the amendment supports such an interpretation. In order to accomplish this stated purpose, we believe it may be necessary to revise the language of the amendment to clearly effectuate the Legislature's intent with regard to the requirement of uniformity within the class of agricultural and horticultural land.

In spite of our conclusion that it is unclear whether the language of LR 249CA removes any requirement of uniformity between subclasses of agricultural land, we will nevertheless consider your question as to whether the elimination of any requirement of uniformity among subclasses of agricultural land would be constitutionally permissible. As you have not raised any particular constitutional question in this regard, we will limit our discussion to whether the adoption of such a provision would violate the guarantee of equal protection of the law mandated under the Fourteenth Amendment to the United States Constitution.

In Banner County v. State Board of Equalization and Assessment, supra, the court indicated some question may exist as to whether a state constitutional amendment permitting agricultural land to be taxed differently than other land utilized to produce income would violate the Equal Protection Clause of the United States Constitution. 226 Neb. at 255, 411 N.W.2d at 47. In raising this concern, the court cited the U.S. Supreme Court decision in Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923), in which the Court held that the failure to provide a taxpayer with equal tax treatment in accordance with the state constitutional requirement of uniform taxation resulted in a violation of the due process and equal protection guarantees contained in the Fourteenth Amendment of the United States Constitution. In view of the Nebraska Supreme Court's reference to this issue in the Banner County case, it is possible that, if presented with a question as to the validity of a constitutional provision permitting unequal treatment among owners of different classes of agricultural land, the court may conclude that such disparate treatment violates the guarantees of due process and equal protection of the law.

It should be noted, however, that recent decisions concerning the validity of state taxation under the Equal Protection Clause have upheld the classification of property for

Senator Rod Johnson  
March 21, 1988  
Page -4-

tax purposes, provided the distinctions drawn by virtue of such classification schemes rest upon some difference that bears a rational and reasonable relationship to the object of the act. F.S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920); See Anderson v. Tiemann, 182 Neb. 393, 155 N.W.2d 322 (1967); Comment, Preferential Assessment of Agricultural Property in South Dakota, 22 S.D.L.Rev. 632, 650 (1977). Courts from various jurisdictions have upheld the validity of legislative classifications of property for tax purposes based on the use of the property against challenges asserting such classification schemes violated the Equal Protection Clause. Howell v. Malone, 388 So.2d 908 (Ala. 1980); Holzwasser v. Brady, 262 S.C. 481, 205 S.E.2d 701 (1974). A number of states have adopted either constitutional or statutory provisions allowing classification of real property for tax purposes, Note, Classification of Real Property for Tax Purposes in Illinois - Hoffman v. Clark, 28 DePaul L.Rev. 849, 849n.9 (1979), and many states specifically provide for the separate classification of agricultural land for tax purposes. Note, Separate Property Tax Classification for Agricultural Land: Cure or Disease?, 64 Neb.L.Rev. 313, 315n.9 (1985).

In Stahmer v. State, 192 Neb. 63, 218 N.W.2d 893 (1974), the court, in upholding the validity of legislation which gave preferential treatment with respect to the taxation of property used in agricultural production, reiterated the general rule that it is competent for the Legislature to classify property for purposes of legislation, provided the classification rests on some reason of public policy, or some substantial difference of situation or circumstance, that would naturally suggest the justice or expediency of diverse legislation with respect to the objects to be classified. The criteria outlined in Stahmer with regard to the validity of classifications scrutinized under our State Constitution are equally applicable in considering whether legislative classifications satisfy the requirements of the Equal Protection Clause of the Federal Constitution.

As was noted, Sioux City Bridge Co. v. Dakota County, supra, involved a challenge under the Equal Protection Clause based on a failure to provide uniform tax treatment of property within the same class, as mandated under the State Constitution. LR 249CA, however, would specifically exempt agricultural land from the general uniformity requirement, and, in addition, could also be construed to eliminate any uniformity requirement among subclasses of agricultural land. Under these circumstances, the appropriate question to consider in analyzing the impact of the Equal Protection Clause with regard to disparate treatment which may result within the agricultural class may be whether a rational basis exists to justify different treatment within the

Senator Rod Johnson  
March 21, 1988  
Page -5-

class of agricultural land. We are not aware of any legislative declarations or findings supporting a basis for permitting disparities in the taxation of subclasses of the class of agricultural land, nor can we readily discern any clear basis upon which the potential for different tax treatment within the agricultural class could be supported. Accordingly, we cannot say that any disparity in taxation which may result from eliminating the requirement of uniformity among subclasses of agricultural land would withstand attack on equal protection grounds.

Very truly yours,

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Attorney General



L. Jay Bartel  
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7-19-3

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

APPROVED:

  
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Attorney General