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

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NO.
STATE OF NEBRASKA
OFFICIAL
APR 25 1985
DEPT. OF JUSTICE

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

April 24, 1985

Senator Jerome Warner
Nebraska State Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Senator Warner:

This is in response to your letter of April 18, 1985, concerning LB 271. As you point out, pursuant to Amendment 4 to the Nebraska Constitution, LB 271 would establish a different method for valuing agricultural land based on income generating capacity rather than market value. Your question is whether the Nebraska Constitution, including Amendment 4, nevertheless prohibits an individual's agricultural land from being valued at more than its fair market value.

Article VIII, Section 1, of the Nebraska Constitution provides in part that, "Taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises, . . ." Amendment 4 was a specific exception to this provision and provided as follows: "The Legislature may provide that agricultural land and horticultural land used solely for agricultural or horticultural purposes shall constitute a separate and distinct class of property for purposes of taxation."

We cannot ignore the fact that the plain intent behind Amendment 4 was to allow agricultural land to be valued in a different manner than other property, in other words by some means other than market value. LB 271 implements Amendment 4 by doing just that, valuing agricultural land solely on the basis of its income producing capacity without regard to market value. Under LB 271 the market value of agricultural land is no longer a relevant factor and the fact that some agricultural land may receive a higher value under this method than its market value

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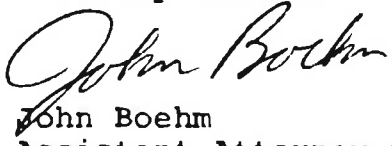
or selling price is simply no longer relevant. In short, there is nothing in the Constitution that would prohibit this result, rather to the contrary, Amendment 4 specifically permits such a result.

This is not to say, however, that the Legislature could not correct this potential problem by an amendment to LB 271. Amendment 4, of course, is only implemented by legislation, and it is this legislation which will determine the parameters for valuing agricultural land.

Sincerely,

ROBERT M. SPIRE
Attorney General



John Boehm
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JB:ejg

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