



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

August 1, 1988

Honorable Joseph J. Skrivanek, III  
County Attorney, Burleson County  
County Courthouse, Room 304  
P. O. Box 1017  
Caldwell, Texas 77836

LO-88-89

Dear Mr. Skrivanek:

You present a specific set of facts about a parcel of real property and, based upon these facts, ask whether such land qualifies either as open-space timber land or as open-space agricultural land, both under article VIII, section 1-d-1, of the Texas Constitution, or as agricultural land under article VIII, section 1-d, of the Texas Constitution.

Sections 402.042 et seq. of the Government Code do not authorize us to make fact findings in opinions. We cannot determine whether the parcel about which you inquire qualifies for special valuation either as open-space agricultural land under article VIII, section 1-d-1, or as agricultural land under article VIII, section 1-d, because you have not provided us all the necessary facts. We do conclude that the parcel does not qualify for special valuation as open-space timber land under article VIII, section 1-d-1.

You ask us to assume the following facts and to apply the special valuation provisions to the 27-acre tract that you describe:

a. A property owner owns and operates a ranch in Burleson County.

b. This property owner also owns a twenty-seven (27) acre tract of land that is not contiguous to the ranch.

c. This twenty-seven (27) acre tract is used solely for cutting wood to build fences

for the ranch operation. None of the wood is sold commercially.

d. The twenty-seven (27) acre tract and ranch have been used in this manner for roughly 150 years.

e. The ranch itself qualifies as agricultural open-space land.

Article VIII, section 1-d, of the Texas Constitution permits real property designated for agricultural use to be valued in accordance with that use and not at market value. It provides in part:

(a) All land owned by natural persons which is designated for agricultural use in accordance with the provisions of the Section shall be assessed for all tax purposes on the consideration of only those factors relative to such agricultural use. "Agricultural use" means the raising of livestock or growing of crops, fruit, flowers, and other products of the soil under natural conditions as a business venture for profit, which business is the primary occupation and source of income of the owner.

(b) For each assessment year the owner wishes to qualify his land under provisions of this Section as designated for agricultural use he shall file with the local tax assessor a sworn statement in writing describing the use to which the land is devoted.

. . . .

(d) Such local tax assessor may inspect the land and require such evidence of use and source of income as may be necessary or useful in determining whether or not the agricultural use provision of this article applies.

(e) No land may qualify for the designation for provided for in this Act unless at least three (3) successive years immediately preceding the assessment date the

land has" been devoted exclusively for agricultural use, or unless the land has been continuously developed for agriculture during such time.

Article VIII, section 1-d, was self-enacting; no enabling legislation was required for its implementation. However, the legislature did enact a statutory correlate to article VIII, section 1-d, in 1979, at subchapter C of chapter 23 of the Tax Code. Section 23.42, which states the requirements for eligibility for special valuation as agricultural land, provides in part:

(a) An individual is entitled to have land he owns designated for agricultural use if, on January 1:

. . . .

(3) agriculture is his primary occupation and primary source of income.

(b) Use of land for nonagricultural purposes does not deprive an owner of his right to an agricultural designation if the nonagricultural use is secondary to and compatible with the agricultural use of the land.

. . . .

(d) For purposes of this section:

(1) 'Agriculture' means the use of the land to produce plant or animal products, including fish or poultry products, under natural conditions but does not include the processing of plant or animal products after harvesting or the production of timber or forest products.

(2) 'Occupation' includes employment and a business venture that requires continual supervision or management.

You have not provided us enough information to enable us to determine whether the applicant would qualify under article VIII, section 1-d, and subchapter C of chapter 23; for example, you do not indicate whether the agricultural

operation is the "primary occupation and source of income" of the applicant. Therefore we cannot determine whether, as a matter of law, the parcel will qualify for special valuation under article VIII, section 1-d. We do note, however, that the use to which the real property is put, namely cutting wood to build fences for the ranch operation, does not appear to fall within the definition of "agriculture," as set forth in subsection (d)(1) above.

Article VIII, section 1-d-1, of the Texas Constitution, adopted in 1979, authorizes the special valuation of real property that is "devoted to farm or ranch purposes":

(a) To promote the preservation of open-space land, the legislature shall provide by general law for taxation of open-space land devoted to farm or ranch purposes on the basis of its productive capacity and may provide by general law for taxation of open-space land devoted to timber production on the basis of its productive capacity. The legislature by general law may provide eligibility limitations under this section and may impose sanctions in furtherance of the taxation policy of this section.

Enabling legislation is set forth in Chapter 23 of the Tax Code. See Tax Code, ch. 23, subch. D (Open-space agricultural land); subch. E (Open-space timber land). Section 23.51 of the code contains the following definitions relevant to open-space agricultural land :

In this subchapter:

(1) 'Qualified open-space land' means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use or to production of timber and forest products for five of the preceding seven years . . . .

(2) 'Agricultural use' includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or

keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop rotation procedure.

We cannot determine whether the 27-acre tract qualifies for special valuation as open-space agricultural land, because you have not provided us with enough information. You have not informed us whether the parcel is devoted to an agricultural purpose to the degree of intensity generally accepted in the area. For example, it may be generally accepted in that area to devote such a parcel to the running of cattle, despite the presence of trees. Nor have you indicated whether the parcel about which you inquire falls within the ambit of section 23.56 of the code, which declares ineligible for special valuation as open-space agricultural land certain land that would otherwise qualify. Accordingly, we cannot determine, as a matter of law, whether the parcel about which you inquire qualifies for special valuation as open-space agricultural land.

Subchapter E of chapter 23 governs the special valuation of open-space timber land. Section 23.72 sets forth the qualifications for special valuation and provides the following:

Land qualifies for appraisal as provided by this subchapter if it is currently and actively devoted principally to production of timber or forest products to the degree of intensity generally accepted in the area with intent to produce income and has been devoted principally to production of timber or forest products or to agricultural use that would qualify the land for appraisal under Subchapter C or D of this chapter for five of the preceding seven years.

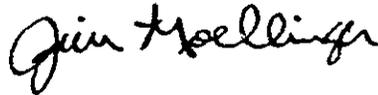
You state that the tract "is used solely for cutting wood to build fences for the ranch operation. None of the wood is sold commercially." On the basis of this information, we conclude that, as a matter of law, the parcel about which you inquire cannot qualify for special valuation as open-space timber land, because it is not "currently and actively devoted principally to production of timber or

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forest products to the the degree of intensity generally  
accepted in the area with intent to produce income."  
(Emphasis added.)

For the reasons already stated, we cannot determine  
whether, as a matter of law, the parcel could qualify for  
special valuation either as open-space agricultural land  
under article VIII, section 1-d-1 or as agricultural land  
under article VIII, section 1-d of the Texas Constitution.

Very truly yours,



Jim Moellinger  
Assistant Attorney General  
Opinion Committee

JRM/bc

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