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REQUESTBY:

[*1]

Honorable Richard Spencer
House of Representatives
State House
Augusta, Maine 04333

OPINIONBY:

JOSEPH E. BRENNAN, Attorney General

OPINION:

This responds to your request for an opinion as to whether and to what extent the farm and open space tax law, *36 M.R.S.A. § 1101*, et seq, applies to poultry farming operations.

As discussed more fully below, in our view, the farm and open space tax law does not provide that land on which poultry operations are housed qualifies for current use valuation. However, the income from poultry operations on a farm may be used to qualify otherwise eligible land on that farm for current use valuation.

DISCUSSION:

The farm and open space land law was originally enacted in 1971, P.L. 1971, c. 548. In 1976, the law was substantially changed by legislation which you sponsored. n1 The results of the 1976 change were to substantially increase the capacity of farmers to assure that they received the benefits of the program.

n1 P.L. 1975, c. 726; L.D. 2193, enacted in new draft L.D. 2330. [*2]

The legislative history of the law during debates in 1971, 1975, and 1976, does not address separately the question of applicability of the farm and open space land law to poultry operations, all references in the legislative history being to general farm and agricultural activities or dairy farming.

While the law appears in its terms to apply to "farmland," in fact the lands eligible for reduction to current use valuation are more limited. Thus, *36 M.R.S.A. § 1105*, specifies the valuation practices for those lands to receive the benefits of the law. These lands are limited to "cropland," "orchard land," and "pastureland." The definitions of these lands in § 1102 make it clear that the specific lands upon which poultry houses sit and thus upon which poultry is raised do not qualify as croplands, orchard lands, or pasturelands which may be subject to the current use valuations specified in § 1105,* except to the extent that pastureland or cropland may be used to raise grains for poultry feed.

* This opinion does not address the question of whether lands which might be used for poultry raising through the so-called "open range" method of raising poultry would be covered under the law. The "open range" method does not appear to be widely used in Maine, if it is used at all, and it is an older method of raising poultry that is in declining use nationally. [*3]

However, this does not conclude the analysis. Another key definition in the law is the definition of farmland. That definition is as follows:

"4. Farmland. 'Farmland' means any tract or tracts of land, including woodland and wasteland of at least 10 contiguous acres on which farming or agricultural activities have produced a gross income per year in one of the 2 or 3 of the 5 calendar years preceding the date of application for classification of at least:

A. \$ 1,000 for 10 acres; and

B. \$ 100 per acre for each acre over 10, with the total income required not to exceed \$ 2,000.

Gross income as used in this section includes the value of commodities produced for consumption by the farm household. Any applicant for assessment under this subchapter bears the burden of proof as to his qualification." *36 M.R.S.A. § 1102-4*.

This definition, which sets the farm income criteria for qualification of farm properties for current use valuation, appears broader than lands defined as eligible for current use valuation.

The question of whether general statutory definitions referring to farming or agricultural activities include poultry operations has been a subject of considerable [*4] litigation in Maine and other states. Agriculture is generally defined as: "The art or science of cultivating the ground, and raising and harvesting crops, often including also feeding, breeding and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of production of plants and animals useful to man. . . ." Webster's New International Dictionary of the English Language, 2nd ed. For a general discussion of the meaning of "agriculture," see also *Dionne v. Blier*, 226 A.2d 527 (Me., 1967).

With this general definition as background, unqualified references to agriculture, agricultural labor or other similar terms have been held to include work in connection with poultry processing. *Drummonds Poultry Transportation Service v. Wheeler*, 178 F. Supp. 12 (D. Me., 1959); *Maplewood Poultry Co. v. Maine Employment Security Commission*, 151 Me. 467 (1956). However, in some instances general laws applying to agriculture have been amended to exempt application to certain poultry activities. *C.M.T.Co., Inc. v. Maine Employment Security Commission*, 156 Me. 218 (1960). [*5] A review of these cases and the general definition of agriculture leads to the conclusion that the general definition of farmland in *36 M.R.S.A. § 1102-4* does contemplate application to poultry activities.

As poultry raising does appear to be included within the definition of farmland, the funds derived from poultry raising may be used in calculating the total income of a farm or the yield per acre for purposes of qualifying cropland, orchard land, or pastureland for current use valuation. Thus, for example, a farm of 10 acres, with a yield of only \$ 300 from its pastureland, could qualify its pastureland for current use valuation if, in addition to the income from pastureland, the farm received \$ 700 or more income from poultry operations housed on other farmlands.

I hope this information is helpful.

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