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May 31, 1979

Representative Bonnie Post, Chairperson
Senator Thomas Teague, Chairperson
Committee on Taxation
State House
Augusta, Maine 04333

Dear Representative Post and Senator Teague:

This responds to your request for advice as to whether the Chase Law, 36 M.R.S.A. §§563-564, violates Article IX, Section 8 of the Maine Constitution.

While we cannot state with complete confidence that the courts would uphold the constitutionality of the Chase Law, we are of the opinion that reasonable arguments may be advanced in favor of its constitutionality.

The fundamental purposes of the Chase Law are:

1. "to encourage by the maintenance of adequate incentive the operation of all forest lands on a sustained yield basis by their owners;" and
2. "to establish and maintain uniformity in methods of assessment for purposes of taxation according to the productivity of the land, giving due weight in the determination of assessed value to location and public facilities as factors contribution to advantage in operation."

36 M.R.S.A. §563

We are convinced that the method of valuation created by the Chase Law was unconstitutional when it was enacted in 1953. At that time Article IX, Section 8 required that all real and personal property be valued at its fair market value for property tax purposes. The Chase Law violated that provision by requiring that forest land be valued only on the basis of its tree growth productivity. In 1970, however, Article IX, Section 8 was amended so that forest land may be valued in accordance with its "current use value." An argument can be made that the general method of valuation

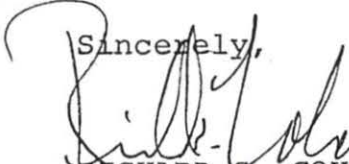
created by the Chase Law became lawful, as a form of current use valuation, once Article IX, Section 8 was amended. Thus, it can plausibly be maintained that the amendment to Section 8 cured the original defects in the Chase Law.

There are certain facets of the Chase Law that are troubling. Section 564 sets forth a test to determine whether assessors have correctly ascertained the productivity or current use value of forest land. That test requires assessors to lower a forest landowner's valuation whenever the tax burden placed on forest land "creates an incentive to abandon the land, or to strip the land, or otherwise to operate contrary to the public policy declared in section 563." To prove this contention a landowner must "show that by reason of the burden of the tax he is unable by efficient operation of the forest land on a sustained yield basis to obtain an adequate annual net return commensurate with the risk." 36 M.R.S.A. §564. We are concerned with this test for two reasons. First, it may be argued that the Chase Law, by forcing assessors to consider the local tax rate as well as proper indicators of forest land value, exceeds the constitutional boundaries on current use valuation. Second, we are concerned that the Chase Law provides insufficient standards for assessors to determine properly whether forest landowners are being overtaxed under the test established in section 564. While we recognize that these arguments might have legal merit, we are not prepared to say that a Maine court would necessarily conclude that the Chase Law is unconstitutional. In reaching this result, we are influenced by the strong presumption of constitutionality which the courts accord acts of the Legislature.

We should add, in closing, that the relationship between the Chase Law and the Tree Growth Tax Law is unclear. It is our belief that the Legislature could eliminate this confusion if it addressed this question.

Please feel free to call on me if I can be of any further assistance.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC:vt