FOREST CROP LAND: It is the opinion of this department that the law setting forth classifications of forest crop land and providing for grants to counties in lieu of taxes for such is valid and that use of such classified forest crop land in a manner contrary to the rules promulgated by the Forest Crop Land Commission established by Chapter 254, RSMo 1949, subjects such land to removal from classification as forest crop land.

February 18, 1959

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Honorable T. A. Penman
Missouri House of Representatives
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"In connection with my renewed study of free open range I have learned of an opinion of your department (Oct., 1954) concerning open range and our forest crop land. This opinion cast doubts on the validity of the forest crop land classifications when the land classified is subjected to free open range grazing.

"I am in complete agreement with this opinion. All technical authority states that forests should not be grazed, especially hardwoods. Also the National Forest Service states officially that open range 'cannot be regulated.' Finally our Forestry Act statutes require a written plan of grazing regulations to be submitted for approval by the Conservation Commission. Such plans are completely impossible for a land owner whose property is subjected to open range grazing. In short, lands in open range should never have been classified as forest crop land.

"Generally speaking the tracts of forest crop land are submitted for classification after a heavy timber harvest and/or after the land changes ownership; going from an owner who gave the timber poor management to an owner who hopes to practice good management. In such cases it is vital that no concentrations of livestock be allowed to root or trample or

> wallow or eat the desirable seedlings. Authorities point out that these desirable timber producing species are most preferred by domestic animals.
>
> "Since the classifications are probably invalid when forest crop land is subjected to free open range grazing, it should follow that the payments (in lieu of taxes) to the open range counties on this same area are also invalid.
>
> "May I have an opinion on the validity of these payments as I have outlined? The area involved is estimated to be about three fourths of our total forest crop land or about 300,000 acres."

From the above letter, it would appear that the question which you are asking us is whether classifications of forest crop land become invalid when such land is subjected to free open range grazing and if, therefore, the payments in lieu of taxes to the open range counties are also invalid.

Let us state first that we believe the classification of forest crop lands and the payments made thereon in lieu of taxes to be constitutional. Section 7 of Article X of the Missouri Constitution reads:

> "Relief from taxation--forest lands--obsolete, decadent, or blighted areas--limitations.--For the purpose of encouraging forestry when lands are devoted exclusively to such purpose, and the reconstruction, redevelopment and rehabilitation of obsolete, decadent or blighted areas, the general assembly by general law, may provide for such partial relief from taxation of the lands devoted to any such purpose, and of the improvements thereon, by such method or methods, for such period or periods of time, not exceeding twenty-five years in any instance, and upon such terms, conditions, and restrictions as it may prescribe."

Based upon the foregoing section and article of the Missouri Constitution, the state legislature enacted Chapter 254 which sets forth in detail the manner in which forest crop lands shall be classified, the manner of tax relief, the manner of assessment, private plan of forest management, grants to counties in lieu of taxes, and other related matters, all of which it would appear to

us the legislature was authorized to do by virtue of the grant of authority to it by Section 7 of Article 10 of the Constitution aforesaid.

As to the methods which shall be followed with respect to forest crop land, these are matters which are vested in the state commission which is provided for in numbered paragraph (1) of Section 254.020, RSMo 1949, and which reads:

> "(1) The word 'commission' shall mean the conservation commission of Missouri upon which, by the terms hereof impressed, are vested the responsibilities for the administration hereof in conformity with section 40 to 46 of article IV of the Constitution of Missouri; and the words 'rules and regulations' shall mean those made by the commission pursuant thereto;"

Section 254.200, RSMo 1949, reads:

> "1. When any lands have been so classified the classifications shall be continued as long as proper forest conditions and practices are maintained and continued thereon, and for such periods of time as do not exceed the provisions of this chapter.
>
> "2. Use of such lands for pastures, destruction of tree-growth by fire and failure of owner to restore forest conditions, removal of tree-growth and use of land for other purposes, or any changed condition which in the opinion of the commission shall show that the requirements of this chapter are not being fulfilled, or the use of such lands for pasture in violation of any regulations promulgated by the commission shall be sufficient ground for the cancellation of such classification. If the commission find the provisions of this chapter are not being complied with, it shall forthwith cancel the classification of such lands, sending notice of such cancellation to the assessor, the county clerk of the county in which the land its situated and to the owner of such lands. Such lands shall thereafter be taxed as other lands. (L. 1945 p. 672 §11)"

Honorable T. A. Penman

You will note from the above that use of forest crop lands for pastures may be grounds for removing such land from classification as far as crop land if, in the opinion of the commission, such pasturage is in violation of any regulations which the commission has promulgated. Therefore, it would appear to us that use of land classified as forest crop lands in a manner which is not consistent with the rules and regulations of the commission would serve to remove that land from its favored position as forest crop land but we do not see how pasturage of such land in violation of the rules of the commission could serve to render unconstitutional or invalid the law setting forth such classification. We do not in fact believe that such would be the effect but rather that the effect would be simply to remove the land from the forest crop land classification.

CONCLUSION

It is the opinion of this department that the law setting forth classifications of forest crop land and providing for grants to counties in lieu of taxes for such is valid and that use of such classified forest crop lands in a manner contrary to the rules promulgated by the Forest Crop Land Commission established by Chapter 254, RSMo 1949, subjects such land to removal from classification as forest crop land.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton
Attorney General

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