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OPINION NO. 2634p

March 10, 1986

SUBJECT: Taxation & Revenue - Equalization of
Agricultural Land Values.

SYLLABUS: When agricultural land values within counties with soil maps change by reason of the modification of elements within the statute that sets forth the procedure to determine those values, then in such cases, the agricultural land values in counties without soil maps must be equalized to insure that all agricultural lands are equally and uniformly assessed.

TO: Honorable John T. Weeks, Chairman
South Carolina Tax Commission

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: Tax Commission Regulation 117-126 requires periodic changes in certain elements in the procedure used to value agricultural lands. These values are then applied to the class of soil set forth in county soil maps. Soil maps, however, are not available for a limited number of counties. When the elements are modified, the agricultural land values will change in those counties with soil maps. The inquiry is whether the Commission should similarly change the land values for those counties without soil maps?

APPLICABLE LAW: Article X, §§ 1 and 2 of the South Carolina Constitution, The Due Process and Equal Protection Clauses of both the State and Federal Constitutions, §§ 12-43-220 and 12-3-130 of the South Carolina Code of Laws, 1976.

DISCUSSION:

Article X, § 1 of the South Carolina Constitution divides property into eight different classes for purposes of ad valorem property taxation. Agricultural lands are taxed

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upon an assessment based upon the value of the land for agricultural purposes. The Article further provides that:

"* * *. The assessment of all property shall be equal and uniform in the following classifications * * *."

The values of all agricultural land under this mandate must therefore be equal and uniform. Owen Steel Co., Inc. v. S. C. Tax Commission, 337 S.E.2d 880 (1985).

In addition, Article X, § 2 provides that:

"(a) The General Assembly may define the classes of property and values for property tax purposes of the classes of property set forth in Section 1 of this article * * *."

The General Assembly has defined the value of such lands and the same is set forth in § 12-43-220 of the 1976 Code of Laws. It is understood that without equalization, the land values in those counties without soil maps would be greatly in excess of the values of similar lands in counties with soil maps. Such would therefore contravene the mandatory requirement of Article X, § 1 that the assessment (land value) be equal and uniform. The same would also be in conflict with the due process and equal protection requirements of both the State and Federal Constitutions. The land values should therefore be equalized. A Commission regulation must be consistent with law. (See § 12-3-130) Here, the regulation must therefore be interpreted and modified when necessary to conform with statutory and constitutional requirements. A regulation cannot prevail over a clear statutory provision and a constitutional mandate.

CONCLUSION:

When agricultural land values within counties with soil maps change by reason of the modification of elements within the statute that sets forth the procedure to determine these values, then in such cases, the agricultural land values in counties without soil maps must be equalized to insure that all agricultural lands are equally and uniformly assessed.

JLAJr:wcg