8289 Library

HENRY MCMASTER
ATTORNEY GENERAL

December 19, 2006

The Honorable Herb Kirsh
Member, House of Representatives
Box 31
Clover, South Carolina 29710

Dear Representative Kirsh:

We received your letter requesting a follow-up opinion to the opinion we issued to you on November 8, 2006 concerning property tax issues involving timber property. In this letter, you asked us to address an additional concern voiced by your constituent, John Gossett. Mr. Gossett's concern centers around the impact of particular methods of reforestation on a property's classification as timber property for tax purposes. You informed us that "Mr. Gossett has a written management plan that he made when he got into the tree business. The plan calls for hardwood trees that have been planted and are growing and are from the regeneration from seed trees. The softwood trees have been planted in rows." Thus, you ask: "Does he need another management plan for hardwood trees since they are not planted in rows already? As I stated above, his hardwood reforestation is always from seed trees."

Law/Analysis

Section 12-43-232 of the South Carolina Code (2000 & Supp. 2005) governs the requirements for agricultural use property in South Carolina. According to this statute, a landowner may establish the agricultural use of his or her property if it meets the qualifications of timber property under subsection (1)(a). This provision generally requires a tract of land be at least five acres or more to qualify as timber property. However, it allows for tracts of timber "of less than five acres which are contiguous to or under the same management system as a tract of timberland which meets the minimum acreage requirement" to be treated as part of the qualifying tract and to qualify as timber property. S.C. Code Ann. § 12-43-232(1)(a) (2000).

In our November 8, 2006 opinion, we addressed the Legislature's intent with regard to its use of the term "management system" in section 12-43-232(1)(a). Finding no appellate court authority interpreting this language, we cited to several decisions rendered by the Administrative Law Judge

Request Letter

• TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

Division ("ALJ") in an effort understand the Legislature's intent. Op. S.C. Atty. Gen., November 8, 2006. We concluded:

> Based on our review of the plain language of section 12-43-232(1)(a) and the ALJ's decisions addressing this provision, we are of the opinion that the Legislature's intent with regard to term management system was to ensure property receiving the benefit of classification as agricultural use property due to its use to grow timber is in fact managed in such a way to grow, produce, and sell timber. Thus, the intent of this qualification is to separate this type of property from property that contains timber, but for which no effort is made to manage the property to insure the production of timber.
>
> The ALJ's decisions indicate property satisfies "management system" requirement when evidence exists to show that such property is part of a plan to produce and manage the growing of merchantable timber. The existence of a written management plan certainly provides evidence of this effort. However, we do not believe the existence of a plan is the sole or primary requirement. While our appellate courts have yet to interpret section 12-43-232(1)(a), based on the ALJ's decisions, we believe a court would find a management system exists upon a showing of sufficient evidence that a property owner holds such property with the intention to manage and care for a tract of timber for purposes of selling such timber, as evidenced by the planting, harvesting, and selling timber on such property.

Id.

In this follow-up opinion, you now ask us to comment on whether Mr. Gossett needs another management plan in light of the fact that his plan calls for the reforestation of hardwood trees from seed trees rather than planting those trees in rows. Initially, we note section 12-43-232(1)(a), which is silent as to what constitutes a management system, does not require that trees be planted in rows in order to meet this requirement. Thus, finding no indication that the Legislature desired only those tracts of land upon which trees are planted in rows to be considered under a management system, we are reluctant to read such a requirement into the statute. See City of Darlington v. Kilgo, 302 S.C. 40, 48, 393 S.E.2d 376, 380-81 (1990) (stating words may not be added to a statute when interpreting it).

In our prior opinion, we noted an ALJ decision in which the judge considered the fact that the property owner did not plant trees in rows in making its determination that a management system did not exist. Op. S.C. Atty. Gen., November 8, 2006 (citing Hendrix v. Lexington County Assessor, 2005 WL 1900512 (S.C. A.L.J. 2005)). However, we are compelled to point out that the ALJ also based its decision on its consideration of other factors, such as the fact that the landowner did not clear brush from the property, had not contracted with a timber company, and did not have any sort

of written management plan. Id. Thus, even relying on this decision, we could not conclude that whether a management system exists hinges solely on how the trees are planted. Rather, we believe planting trees in rows is but one factor among many a court may consider.

In speaking with Mr. Gossett about the subject of this opinion, he alerted us to a provision in a provision in a handbook entitled South Carolina's Best Management Practices for Forestry published by the South Carolina Forestry Commission, concerning the reforestation. South Carolina Forestry Commission, South Carolina's Best Management Practices for Forestry 43 (2006). Mr. Gossett provided us with a copy of this provision, which states: "Reforestation can be accomplished either naturally or artificially. Natural reforestation depends on seed in place on the forest floor, seed from seed trees, and sprouting of cut trees. Trees that reforest a site naturally are often the best suited for that particular site." Id. Accordingly, this provision indicates that allowing trees to reforest naturally from seed is an accepted practice. This may also provide further insight to a court on the impact of a property owner's reforestation practices on a tract of property's ability to produce timber and thus, whether a management system exists.

Determining whether or not Mr. Gossett's activities with regard to his property will or will not establish a management system and allow his property to qualify as agricultural use property is certainly a question of fact, which only a court may determine. Op. S.C. Atty. Gen., August 24, 2006 ("only a court, not this Office, may serve as a finder of fact and conclusively determine the outcome of a factual issue."). Similarly, whether or not a revision of Mr. Gossett's timber management plan would further his establishment of a management system can only be rectified by a court. Therefore, this Office is without the authority to make such determinations. However, based on our interpretation of section 12-43-232(1)(a) and with the guidance provided by the ALJ decisions cited in our previous opinion, we continue to believe a court would look to a homeowners overall activity with regard to a tract of land to determine whether it is in fact under a timber management system. While this may include the consideration of the landowner's method of reforestation, we do not believe a court would find a timber management system does not exist based solely on whether or not the trees timber property are planted in rows.

Very truly yours,

Cydney M. Milling

Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Assistant Deputy Attorney General