Official Opinion No. 82-49, Tax Classification of Game Production Land

September 22, 1982

Mr. Leon J. Vander Linden
Day County State's Attorney
Holland, Delaney & Vander Linden
P.O. Box 615
Webster, South Dakota 57274

Official Opinion No. 82-49
RE: **Tax Classification of Game Production Land**

Dear Mr. Vander Linden:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

Game production land situated in Day County and used only for game production is being classed as agricultural for taxation (mill levy) purposes the same as agricultural land used exclusively for agricultural purposes such as production of livestock, grain, dairy, etc.

Covering this you have asked the following question:

QUESTION:

Should game production land owned by the State of South Dakota in Day County be classed as agricultural for taxation purposes?

Land devoted to agricultural use is classified and taxed in a manner different from nonagricultural property. SDCL 10-6-31. Prior to 1979 there was only a general criterion for the assessment of agricultural property and as this office noted in 1939-40 AGR 633:

The term 'agriculture' is an indefinite word, including in its broad sense, farming, horticulture and forestry, together with such subjects as butter, cheese and sugar making, and the words 'agricultural purposes' have generally been given a comprehensive meaning unless restricted by the context of the statute in which it is used.

In that opinion, citing from the case of Milne v. McKinney, et al., 144 N.W. 117 (S.D. 1913) the Attorney General held that even though only five acres of land were suitable for agricultural purposes out of a tract of one hundred eighty (180) acres, it nevertheless was all agricultural in character. Milne perhaps represents an extreme insofar as agricultural use is concerned; however, the Supreme Court stated:

Appellant has never during its ownership thereof, during a period of over seven years, used the same for any purpose nor received any rent therefrom. The tract is of little or no value for any purpose and could not be in the least degree affected by the drainage ditch in question nor benefited by the construction and establishment of the same. Can it be claimed that the complaint states facts showing that the land west of the river is not agricultural land? Certainly a tract of land need not be in use and cultivated for agricultural purposes in order for it to be agricultural land. The unbroken prairie, the timber covered valleys and hillsides are agricultural lands before they have been prepared for husbandry as well as after they have been so prepared. It certainly does not appear that this tract of land is not agricultural land.

Subsequent to this the Court in 1978, in deciding that certain tracts of land were rural and agricultural and should receive the agricultural classification, found there was nothing in the statute which required the land to be economically self-sufficient or that the owners' primary source of income had to be connected to the land. The assessor at that time was confined to determining whether the land or property was used exclusively for agricultural purposes. The land was used for crops, pasture, or livestock and some was rented to people who raised livestock or crops on the land. Nielson v. Erickson**,** 272 N.W.2d 82.

Following this decision, the 1979 Legislature adopted chapter 65, Laws of 1979, now codified as SDCL 10-6-31.3 which sets forth criteria for determining whether or not land is agricultural and requires that the land meet two of the three criteria. These are as follows:

(1) At least thirty-three per cent of the total family gross income of the owner is derived from production from the land, or the total value of agricultural production from the land produced or sold exceeds two thousand five hundred dollars in three of the last five years;

(2) It is devoted to the production of livestock, dairy animals, dairy products, poultry and poultry products, furbearing animals, fish, horticulture and nursery stock, fruit of all kinds, vegetables, forage, grains, or bees and apiary products. Any slough wasteland or woodland contiguous to or surrounded by other agricultural land shall be considered as agricultural land if it is under the same ownership or management;

(3) It consists of not less than five acres of unplatted land or is a part of a management unit of more than forty acres of unplatted land. However, the board of county commissioners may increase the general minimum acre requirement up to forty acres at their discretion.

In connection with this statute, I rendered Official Opinion 79-43 answering certain questions with respect to agricultural property. Perhaps so far as applicable here question number five having to do with the raising of plants or grasses not qualifying property for an exemption would be appropriate if this land were in fact not being used for any purpose other than game production as suggested in the opinion request. However, I cannot reach that conclusion based on information I have as contained in the records of the State Board of Equalization and the Department of Game, Fish and Parks. This land is a part of some ten thousand acres of game production land in Day County which is intensively managed by the Department of Game, Fish and Parks under a five-year management program. Approximately ten percent of this acreage is in cultivation--either small grain or row crops--and twenty to thirty percent additional acreage is grazed or hayed. There are in effect annual contracts with cooperators. In some instances, however, the Department crews themselves plant the crops or harvest the grain. Somewhere from sixty to seventy percent of the land is either marshland, brushland, or woodland which is not capable of being cultivated or otherwise used for farming operations. The income from this property in Day County last year to the State alone was $6,609 from the grazing, having, and the crops sold. This would indicate that the total realized from the agricultural operations approached twenty thousand dollars ($20,000).

In answer to your question it is clear that approximately thirty percent of the property is actively under cultivation or grazing or haying and that sixty to seventy percent of it is in the nature of a slough, wasteland or woodland; however, the same is contiguous to the agricultural land and is certainly under the same ownership or management. It is my opinion that the property in question fulfills all three of the criteria of SDCL 10-6-31.3 and therefore is property classified as agricultural land.

Respectfully submitted,

Mark V. Meierhenry
Attorney General