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SJS

FILE # ML-26850-94

I.D.# 26890

June 6, 1994

The Honorable Dan Morales  
Attorney General  
Opinion Division  
P.O. Box 12548  
Austin, Texas 78711

Dear Mr. Morales:

I would like to request an Attorney General's opinion on behalf of Representative Henry Cuellar. He would like an interpretation of "productivity capacity" as used in Article VIII, Sec. 1-d-1, Texas Constitution. The enclosed documents offer more detail pertaining to this request.

Thank you for your attention to this matter and if you need any additional information, please contact Chrisee Huffman (463-0822).

Respectfully submitted,

Tom Craddick  
Chairman



**DON JOSÉ LAND & CATTLE CO.**

Mr. and Mrs. J. O. Dodier & Sons

RT. 1. BOX 600  
ZAPATA, TEXAS 78078



Nov. 17, 1993

Hon. Henry Cuellar  
State Representative  
43th District  
1602 Victoria  
Laredo, Texas 78040

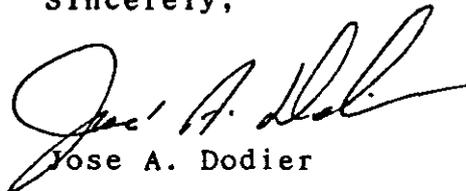
Dear Rep. Cuellar:

Thank you for taking the time to visit with Memo Benavides and me reference the Ag. value laws and valuation methods. You will recall that we suggested that an Attorney General's opinion might correct what appears to be a misinterpretation of the term productive capacity as used in Texas Constitution, Article VIII, Section 1-d-1. "(a) To promote the preservation of open-space land, the legislature shall provide by general law for taxation of open-space land devoted to farm or ranch purposes on the basis of its productive capacity and may provide by general law for taxation of open-space land devoted to timber production on the basis of its productive capacity."

The Agricultural Appraisal Manual of the Property Tax Division, of the Office of the Comptroller uses the term productivity value to be the value arrived at by using a capital rate formula which is termed Cash Lease Method. The typical cash lease is divided by a capitalization rate to yield productivity value.

I would ask the Attorney General the following question; Does the capital value arrived at by the cash lease method of valuation comply with the intent of the Constitutional requirement to tax based on productive capacity?

Sincerely,



Jose A. Dodier

xc: Rep. Irma Rangel  
Rep. Pedro Nieto  
Mr. Memo Benavides



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Sept 20, 1993

Hon. Irma Rangel  
Texas State Representative  
P. O. Box 2910  
Austin, Texas 78768-2910

Dear Rep. Rangel:

Thank you for taking the time to discuss the changes I propose to the agriculture property valuation laws on the phone recently. Currently two laws allow land to be valued as ag.-land; they are the "old law" Sec. 1-d., and the open space or Sec. 1-d-1. The old law allows individuals only to apply for the valuation and excludes family partnerships, family estates, closely held family corporations from applying under this section. The land may apply and qualify under section 1-d-1 but is then subject to the cash lease method of valuation that in many cases yields a capital value which far exceeds the capacity of the land to produce. Appraisal districts have adopted the attitude that the cash lease formula is a state mandate and the only method acceptable to determine value. I believe that this method is contradictory to the states desire to preserve open space and family farming and ranching operations. The cash lease formula uses capitalization rates over which farmers and ranchers have no control.

I propose that either the old law be amended to allow "family" owned and operated partnerships, corporations and estates to qualify under Sec 1-d so that the actual production income of the family operated farm or ranch be considered to determine value and that the fifty percent (50%) requirement also be amended to allow the family owned farm or ranch to qualify if the facility has operated at a profit for at least three of the past five years. Or, that the State Property Division, of the State Comptrollers Office issue rules that would allow the use of production income under Sec. 1-d-1 by appraisal districts when a family owned and operated facility is willing to provide such confidential information.



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I have attached copies of pertinent information taken from the Manual for the Appraisal of Agricultural Land for your staff review. I would be willing to travel to Austin to discuss this matter further with you or your staff. Should you need any additional information or if there are any questions please do not hesitate to call me at 210-765-5810. I would like to take this opportunity to thank Terry for her help in contacting you.

Sincerely,



Jose A. Dodier

xc: Hon. Henry Cuellar