

April 2, 1992

The Honorable Kevin "Pat" Parnell
House of Representatives
P.O. Box V
State Capitol
Juneau, Alaska 99811

Re: Tax benefits for farm use land,
Our File No. 661-92-0414

Dear Representative Parnell:

By letter dated November 22, 1991, you requested our opinion concerning whether commercial greenhouse operators are eligible for tax benefits under AS 29.45.060. This statute provides that farm use land is to be assessed for tax purposes on the basis of full and true value for farm use, not for non-farm purposes. Earlier opinions from this office concluded that commercial greenhouses were not eligible. See 1981 Inf. Op. Atty. Gen. J-66-801-80 (June 23, 1981); 1980 Inf. Op. Atty. Gen. J-66-801-80 (September 4, 1980). The Division of Agriculture has apparently disagreed, and either been unaware of or disregarded the opinions.¹

We have reviewed the statute, the earlier opinions, and a memorandum decision by Superior Court Judge Richard D. Savell in Lantz v. Fairbanks North Star Borough, 4FA-89-0986 (February 9, 1990). We conclude that the better view is that AS 29.45.060 applies to commercial greenhouses.²

¹ The former Director of the Division of Agriculture has written several letters stating that horticulture is included in the term "agriculture", and that greenhouses fulfill one purpose of the tax exception, the preservation of green space. These letters are quoted in a recent Alaska Superior Court decision by Judge Savell in Lantz v. Fairbanks North Star Borough, 4FA-89-0986 (February 9, 1990).

² The earlier opinions refer to AS 29.53.035. This statute was repealed in 1985 (Sec. 88, Ch.74, SLA 1985) and replaced by the current AS 29.45.060 with no relevant substantive changes.

As Judge Savell noted, the 1981 Attorney General's opinion was based primarily on an Oregon case, Salem Nursery, Inc. v. Dep't of Revenue, 497 P.2d 371 (Or. 1972). The issue there was whether greenhouse plants were exempt from a tangible personal property tax, not whether greenhouse operations are an agricultural use of the land. Under AS 29.45.060, the question is whether the land is put to "farm use." "Farm use" is defined as "the use of land for profit for raising and harvesting crops, . . . or another agriculture use," AS 29.45.060(c).

The term "agriculture" is commonly defined as including horticulture, as well as farming, husbandry, dairying and fruit growing. "In modern usage, agriculture is a wide and comprehensive term, and statutes using it without qualification must be given an equally comprehensive meaning." 3 C.J.S. Agriculture • 2.

Based on our review, we agree with Judge Savell. As 29.45.060 should be interpreted to apply to commercial greenhouse operations. Please contact the undersigned if you have further questions on this matter.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: Elizabeth J. Barry
Assistant Attorney General

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