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OPINION COMMITTEE

The Honorable John Cornyn  
Texas Attorney General  
P. O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

RE: Request For Attorney General's opinion; Whether implements of husbandry used in the production of timber are exempt from ad valorem taxation as provided in Section 11.161 of the Texas Property Tax Code

Dear Attorney General Cornyn:

During the 76<sup>th</sup> Legislative Session which occurred in 1999 Section 11.161 of the Texas Property Tax Code was amended to include "implements of husbandry that are used in the production of timber" as exempt from ad valorem taxation. The type equipment involved is log trucks, log loaders, log skidders, bulldozers etc. used in the production of timber.

Article VIII Section (b) of Texas Constitution provides as follows:

All real property and tangible personal property in this State, unless exempt as required or permitted by this Constitution, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law.

Article VIII, Section 19(a) of the constitution provides that "[i]mplements of husbandry that are used in the production of farm or ranch products are exempt from ad valorem taxation". This

language makes no mention of timber-producing equipment.

Further, the definition of agricultural use contained in Section 23.51(2) of the Texas Property Tax Code does not appear to include timber production in general but does provide that the term "includes the use of land to produce or harvest logs and posts for the use in constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land..."

The basic question is whether constitutional authority is necessary for Section 11.161 to grant tax exempt status as to equipment used for timber production. If you conclude that constitutional authority is necessary, is Article VIII, Section 19(a) of the Constitution broad enough in its application to exempt from taxation equipment used in the production of timber.

Further, if constitutional authority is necessary, is there any other provision of the constitution which applies. I have not been able to locate any additional constitutional authority.

The case of Allred vs. J.C. Englemen, Inc., 61 S.W.2d 75 is a case which interpreted whether trucks used on the highway were tax exempt and may be of some assistance in arriving at your opinion.

I have enclosed a copy of the statutory and constitutional law cited above.

Thank you for your time and consideration.

Yours truly,



Ed C. Jones  
County Attorney

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