STATE OF CALIFORNIA 740-10970

STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 1799, SACRAMENTO, CALIFORNIA 95808)

GEORGE R. REILLY
First District, San Francisco

JOHN W. LYNCH
Second District, Fresno

PAUL R. LEAKE.
Third District, Woodland

RICAHRD NEVINS
Fourth District, Pasadena

HOUSTON I. FLOURNOY
Controller, Sacramento

H.F. FREEMAN.
Executive Secretary

January 9, 1970

TO COUNTY ASSESSORS:

"OPEN-SPACE LANDS" INCLUDE
TAXABLE FRUIT-BEARING AND NUT-BEARING
TREES AND VINES

We are enclosing a copy of the Attorney General's opinion on the treatment of fruit-bearing or nut-bearing trees and vines as land in appraising under open-space legislation.

As you recall, the 1969 Legislature added Section 429 to the Revenue and Taxation Code. This section designated taxable fruit-bearing and taxable nut-bearing trees and vines as land for appraisal purposes. The Attorney General's conclusion is that the term "open-space lands" includes these taxable trees and vines as land for appraisal purposes. Man-made improvements are not included in the definition of "open-space lands."

Tree and vine values should be placed in the improvement column on the assessment roll.

Sincerely,

Jack F. Eisenlauer, Chief
Assessment Standards Division

JFE/msd
Attachment

THOMAS C. LYNCH
Attorney General

CHARLES A. O'BRIEN
CHIEF DEPUTY ATTORNEY GENERAL

T. A. WESTPHAL, JR.
CHIEF ASSISTANT ATTORNEY GENERAL
DIVISION OF CIVIL LAW

ARLO E. SMITH
CHIEF ASSISTANT
ATTORNEY GENERAL
DIVISION OF CRIMINAL LAW

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

STATE BUILDING, SAN FRANCISCO 94102

December 17, 1969

Mr. Herbert F. Freeman
Executive Secretary
State Board of Equalization
1020 N Street
Sacramento, California 95814

Re: Section 429, Revenue and Taxation Code

Dear Mr. Freeman:

We are in receipt of your memorandum of December 5, 1969, wherein you raise a question respecting the constitutionality of section 429 of the Revenue and Taxation Code which was added by chapter 862 of the Statutes of 1969. Section 429 provides:

> "Notwithstanding the provisions of Section 105 (b) of this code, in valuing land subject to an enforceable restriction pursuant to this article, fruit-bearing or nut-bearing trees and vines on the land and not exempt from taxation shall be valued as land. Any income shall include that which can be expected to be derived from such trees and vines and no

other value shall be given such trees and vines for the purpose of assessment."

You specifically ask whether, under the reasoning set forth in Forster Shipbldg. Co. v. County of L.A., 54 Cal. 2d 450 (1960), the California Legislature is precluded from prescribing rules respecting the valuation of fruit-bearing or nut-bearing trees and vines pursuant to the provisions of Article XXVIII which was added to the California Constitution in November of 1966.

Section 1 of Article XXVIII declares that it is in the best interests of the State to maintain, preserve, conserve and otherwise continue in existence "open space lands for the production of food and fiber." Section2 of this constitutional provision authorizes the Legislature to define such open space lands. The rule of the Forester case would not be here applicable since there is no established meaning for the term "open space lands" or for "open space lands for the production of food and fiber." Indeed, even the term "land" itself taken alone does not have a fixed meaning. See Krouser v. County of San Bernardino, 29 Cal. 2d 766 (1947). Accordingly, in ascertaining the meaning of the constitutional provisions, consideration must be given to the intent of the Legislature and the People of the State of California in adopting Article XXVIII.

Although the matter is not free from doubt, in view of the general presumption of the validity of acts passed by the Legislature, it is our view that the California appellate courts would hold that the enactment of section 429 as added by chapter 862 of the Statutes of 1969 constituted a valid exercise of the authorization granted to the Legislature under Article XXVIII of the California Constitution. In that regard it would appear that fruit-bearing or nut-bearing trees and vines are so intimately connected with the use of open space lands for the production of food and fiber that the Legislature could properly treat them as part of the open space lands for purposes of applying a special valuation formula thereto.

Our conclusion would not affect the treatment of such trees and vines as improvements on the assessment roll as required by section 105 (b) of the Revenue and Taxation Code which implements Article XIII, section 2 of the California Constitution. There is no inherent inconsistency between regarding such trees and vines as covered by the term "open space lands for the production of food and fiber" under Article XXVIII and as being improvements for the purposes of placing them on the assessment roll.

We feel it appropriate to point out that there would appear to be a distinction between products of the land, such as trees and vines on the one hand, and man-made

structures on the other. The views herein expressed are not to be interpreted as indicating that the latter would fall into the category of open space lands referred to in Article XXVIII of the California Constitution.

Very truly yours,

THOMAS C. LYNCH
Attorney General

ERNEST P. GOODMAN
Assistant Attorney General

EPG:amm