May 11, 1973

Honorable Wakine G. Tanous
Chairman, Committee on Judiciary
Senate Chambers
State House
Augusta, Maine

Re: L. D. 572 - AN ACT to Permit Associations for the Promotion of the Pulpwood Industry.

Dear Senator Tanous:

This will respond to your letter dated May 7, 1973 addressed to Deputy Attorney General John W. Benoit, Jr., requesting an opinion with respect to the constitutionality of the Bill referred to above. For the reasons which follow, it is our opinion that the Bill does not, on its face, appear to be unconstitutional.

The Bill under consideration would, in effect, exempt certain associations and corporations "organized for the sole purpose of marketing, producing or trucking pulpwood or sawlogs" from the full operation of the State's antitrust laws, particularly 10 M.R.S.A. § 1101. That section declares unlawful "every contract, combination in the form of trusts or otherwise, or conspiracy, in restraint of trade."

The Legislature has heretofor specifically exempted the formation of certain kinds of organizations from the full operation of the foregoing language. 13 M.R.S.A. § 171 specifically exempts fish and shellfish organizations as follows:

> "No association or corporation organized for the sole purpose of marketing, fish, shellfish or any of the fish products or agricultural products of this State, the

> "members of or stockholders in which are actually engaged in the production of such products, or in the selling, canning or otherwise preserving of the same, shall be deemed to be a conspiracy or a combination or in restraint of trade or an attempt to lessen competition or to fix prices arbitrarily; nor shall the marketing contracts and agreements between such association or corporation and its members or stockholders be considered illegal as such or in unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose."

Similarly, 13 M.R.S.A. § 1829, relating to agricultural associations, explicitly provides that no such association otherwise complying with the provisions of the Uniform Agricultural Cooperative Association Act "shall be deemed to be a conspiracy, or a combination in restraint of trade or an illegal monopoly . . ."

Exemptions from the antitrust laws exist on the federal level as well. Section 6 of the Clayton Act (15 U.S.C. Section 17) exempts agricultural cooperatives, as follows:

> ". . . Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations, or conspiracies in restraint of trade, under the antitrust laws."

The Copper-Volstead Act (7 U.S.C. Section 291) extends the fore-

going exemption to corporate or non-corporate agricultural associations with or without capital stock, and specifically permits certain collective activities, as follows:

> "Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreement to effect such purposes . . ."

In addition, Section 5 of the Cooperative Marketing Act of 1926 (7 U.S.C. Section 455) provides that agricultural associations may "acquire, exchange, interpret and disseminate past, present, and prospective crop, market, statistical, economic and similar information by direct exchange between . . . such associations."

The act under consideration goes no further than 13 M.R.S.A. § 171 or 13 M.R.S.A. § 1829. Indeed, the language of Section 1 of the Bill appears to be a carbon copy of portions of 13 M.R.S.A. § 171 relating to fish and shellfish marketing organizations. If fish and shellfish marketing organizations do not per se constitute a violation of the State's antitrust laws, and the statute permitting the formation of such organizations is not unconstitutional, we do not perceive how a Bill granting pulpwood truckers organizations similar treatment can, on its face, be considered unconstitutional.

In this latter connection, we note that similar exemptions from State antitrust statutes have been upheld as being within permissible boundaries under the Fourteenth Amendment to the United States Consitution. In Tigner v. State of Texas, 310 U.S. 141, 60 S. Ct. 879, reh. den. 310 U.S. 659, 60 S. Ct. 1092 (1940), the United States Supreme Court ruled that an exemption from the Texas antitrust statute granted to agricultural products and live stock in the hands of producers or raisers did not violate

the Equal Protection Clause. See also Williams v. Quill, 277 N.Y. 1, 12 N.E. 2d 547 (1938), appeal dismissed 303 U. S. 621, 58 S.Ct. 650; Cf. Dickinson v. Maine Public Service Co., 223 A. 2d 435 (1966).

We trust the foregoing opinion will be of assistance to you. If we may be of any further assistance, please let us know.

Very truly yours,

MARTIN L. WILK
Assistant Attorney General

MLW/jo