

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

January 26, 1988

Robert Tardy, House Chairman
Legislative Committee on Agriculture
State House
Augusta, Maine 04333

Re: New Draft of L.D. 1746

Dear Bob:

You asked me to provide to you and the Committee a written summary of my legal observations made at the hearing last week on the above bill.

Legal concerns have been voiced by opponents of the bill in two areas. First, there has been the suggestion that the county registry of deeds should be used for purposes of registering farmland under this program. This would be in lieu of registration with the municipal office, as contemplated by the current draft of the bill. Second, some commenters have suggested the possibility that the bill, if enacted, would result in an unconstitutional taking of property without compensation. I will attempt to address each of these issues below.

It is my understanding that the current draft of the bill provides for registration of farmland in the municipal office for two reasons. The first is simplicity. There is little question but that registration at the municipal level would be less legally cumbersome than with the county registry of deeds. Secondly, having these records available at the town office parallels other zoning and local land use control ordinances, all of which are on file at the municipal level but none of which appear in the registry of deeds.

This bill, if enacted, would constitute an exercise of the legislative police power, similar to a zoning or other land use regulatory law enacted for purposes of protecting the public health, safety and general welfare. This legislation is not, nor could it ever be as a matter of constitutional law, a vesting in farm landowners of property rights which are currently owned by their abutters. Accordingly, the registration of farmland under this program at the municipal level, and the availability of the resulting records at the municipal office, maintains compatibility with zoning laws. By contrast, registration in a registry of deeds permanently alters the title records of land and is more appropriate where there is a conveyance of proprietary rights in property (as in the case of the conveyance of a deed or the filing of a mortgage lien). It should also be noted that a fully effective record in the county registry of deeds (that is, one which is legally sufficient to assure proper notice to title examiners) would likely be very costly for the farm owner who is attempting to file a registration.


As to the constitutional issue, as indicated above, the format and substance of this bill parallels that of zoning and other land use control laws. If the Legislature determines that the setback and disclosure requirements set forth in this bill are needed in order to protect the public health, safety and general welfare, then I would think it very likely that a court would sustain the public purpose and rationale which stand behind this legislation. Similarly, just as with any other zoning or land use law, the mere fact that this legislation would impose a setback requirement for certain types of development does not constitute a taking by the government of private property. To demonstrate such a taking would require a showing that the setback restriction resulted in virtual elimination of the value and usefulness of the property involved. This legislation not only allows for some uses to be made of the land which is within the area of the required setback but also allows for unrestricted use of the land beyond the setback area. Finally, in a particular case where the effects of the setback requirement would impose an undue hardship on the affected landowner, this bill provides for a variance to be issued by the municipality so that the landowner can continue to make reasonable use of his property. Again, this variance procedure parallels zoning law and maintains the constitutionality of this legislation.

One final note. I am aware that in the last day or two your Committee has received a letter opposing this bill from an attorney for the Maine Bankers Association. While I have no interest in responding to the points which that letter presses as a matter of advocacy, I would like to briefly respond to the cases which that letter cites as supporting the proposition that this bill would create an unconstitutional taking. I am

very familiar with those cases, and am of the opinion that they are more fairly read to support the constitutionality of this bill. The other legal issues raised in that letter have otherwise been addressed above.

If you would like me to elaborate on these issues or if I can be of further help to you or the Committee, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to be 'JP', with a stylized flourish extending to the right.

Jeffrey Pidot
Assistant Attorney General

JP:msg

cc: Zachary Matthews, Senate Chairman
Senator Thomas Perkins
Representative John Lisnik
Representative John Nutting
Representative Vinton Ridley