

## GENERAL PROVISIONS

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Section 19(b), Regulation No. 9 and, indirectly, the amendments to Articles 15 and 43 of the Declaration of Rights have recently been before the Maryland Court of Appeals in *Supervisor of Assessments for Montgomery County v. Alsop*.<sup>8</sup> The Court there held that the grazing and feeding of a herd of more than forty head of beef and dairy cattle on the land in question throughout the year is a "farm or agricultural use" within the meaning of the constitutional and statutory provisions. The land in question was used by a gentleman farmer who did not personally farm his land, but permitted his neighbors to graze beef and cattle on his land and permitted one of his tenants to cultivate a truck garden as a sideline.

The court below, the Maryland Tax Court, had upheld the assessor's refusal to classify the land in question as a bona fide farm on the grounds:

"That the owner, seeking quiet and solitude, acquired a former farm as a country estate, and engaged in no bona fide operations;

"That the owner, in order to maintain the property in proper condition as economically as possible and for no other reason, permitted a neighboring farmer to graze his cattle on the property, and to use some of the buildings thereon in return for keeping the hay cut and doing general maintenance work on and about the property, without monetary consideration;

"That the owner rents the farm tenant houses to tenants at a reduced rental in order to obtain part time assistance from them in maintaining the farm and, as a matter of convenience to the owner, in tilling a small truck garden."

<sup>8</sup> 232 Md. 188 (1963).

In reversing the Tax Court, the Court of Appeals stated:

"As we see it, the question here is not whether the owner and taxpayer is personally engaged in a bona fide farm operation or is permitting a neighbor to use the land for grazing cattle without monetary consideration, but instead is whether the land is actively devoted to a 'farm or agricultural use.' We think it was so used.

"Applying only the specified statutory standards to the facts, it appears that the land in question is zoned rural residential and that it, as well as the surrounding lands, is primarily used for farming; that the present and past use of the land is and was agricultural; that the land is used as a pasture for grazing forty or more beef and dairy cattle and for the production of hay to feed such cattle during the winter months; and that the proportion of the farm used for agricultural purposes is far in excess of the proportion used as a curtilage to the main dwelling and as yards and vegetable gardens appurtenant to the rented tenant houses. This was enough to require a finding that the land was in fact a bona fide farm, without resorting to any of the other criteria set forth in Regulation 9, some of which seem to have a limited use as a guide in determining whether or not a particular tract of land is a farm within the meaning of the constitutional and statutory provisions. In the instant case it seems clear that the grazing and feeding of a herd of more than forty head of beef and dairy cattle on the land in question throughout the year is a 'farm or agricultural use' within the meaning of the constitutional and statutory provisions."<sup>9</sup>

<sup>9</sup> See 3 AM. JUR. 2d *Agriculture* §§ 1, 2 (1962).