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Blue Book

EXAMINATION BOOK

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Box No. _____

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SUBJECT INTRO TO LAW

CLASS _____

SECTION _____

INSTRUCTOR CARR

DATE 12/20/12

11" x 8.5" 8 LEAVES 16 PAGES

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TO: T. SMITH

FROM: NEW ASSOCIATE

RE: PRIORITY REQUEST

~~AFTER A QUICK ANALYSIS OF THE SITUATION
THAT FACE OUR CLIENTS, JILL AND RON MORRIS,
I VIEWED THE SITUATION AS CONFL~~

AFTER A QUICK ANALYSIS OF THE SITUATION

THAT FACE OUR CLIENTS, JILL AND RON MORRIS,

I VIEWED THE SITUATION AS A CONFLICT OF

TWO BUSINESSES AND THEIR RELEVANT STATUTES,

IF WE ~~CAN~~ INFER THAT THEY ARE CO-OWNERS

OF THE 10 ACRE PROPERTY, WHERE THEY

OPERATE A DAIRY AND A CHARTER SCHOOL.

THE QUESTION WE HAVE TO RESOLVE IS

IF ONE BUSINESS HAS TO CEASE, WHICH

ONE MAKES THE MOST ECONOMICAL SENSE.

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I NOTICED BOTH LAWS ARE STATE
STATUTES AND NEITHER IS SUPERIOR
TO THE OTHER. IT ALSO APPEARS UPON
MY INITIAL ASSESSMENT THAT THERE
ARE NO BINDING CASES OR STATE DECISIONS
TO GIVE US DIRECTION.

ISSUE 1: NEWLY ADOPTED SECTION 19 FROM

~~THE~~

THE STATE BUREAU OF ENVIRONMENTAL
SAFETY ADDRESSES BUSINESS THAT GIVE
OFF OR CREATE TOXIC MATERIALS. OUR CLIENT'S
DAIRY GENERATES 600 LBS OF METHANE DAILY.

RULE: NO BUSINESS SHALL COMMENCE OPERATIONS

WHICH WILL DISCHARGE SIGNIFICANT AMOUNTS
OF TOXIC MATERIAL IF IT IS WITHIN 2 MILES.

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OF A SCHOOL.

ANALYSIS: THE FIRST ISSUE WE HAVE TO

DETERMINE IS IF OUR DAIRY PRODUCES

A SIGNIFICANT AMOUNT OF METHANE. OUR

SET OF FACTS DON'T IDENTIFY IF METHANE

IS CONSIDERED A TOXIC MATERIAL OR IF

WE PRODUCE A SIGNIFICANT AMOUNT.

WE ALSO HAVE TO SEE IF THE NEW

LAW EFFECTS BUSINESSES ALREADY OPERATING.

BY THAT I NEED TO FOCUS ON THE LANGUAGE

IN THE STATUTE; AS ["]COMMENCING["] WE WERE

IN PRODUCTION WHEN THE LAW WAS WRITTEN.

I AM ASSUMING THE FINES WILL BE STEEP

OR EVEN FORCED CLOSURE WOULD BE A HUGE

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FINANCIAL IMPACT. WE NEED TO SEE
WHAT THE ^{good plan, ~~to~~ but state in new} HISTORICAL FINES HAVE BEEN

LIKE. THE STATUTE SAYS WE CANNOT
PRODUCE TOXIC MATERIALS WITHIN 2 MILES
OF A SCHOOL. IF BOTH BUSINESSES ARE
ON THE 10 ACRE PARCEL, THEN WE WOULD
BE TOO CLOSE.

CONCLUSION: I THINK OUR DAIRY WOULD
BE IN VIOLATION OF SECTION 19 IF WE
WERE TO CHALLENGE THIS IN COURT. I

DO NOT THINK MINCING WORDS IN A
STATUTE OR STRETCHING THE LAW TO
BUT WON'T "SIGNIFICANT" + COMMUNICATING "LEGITIMATELY QUESTIONED"

SUIT THE SIN WOULD PLAY WELL IN

FRONT OF A JURY.

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ISSUE #2: THE PRIVATE SCHOOL MAY BE

TOO CLOSE TO THE DAPR) AND IF

WE CLOSE IMMEDIATELY WHAT IS THE

IMPACT?

RULE: EDUCATION CODE CHAPTER 3.2 SAYS

ANY PRIVATE SCHOOL LICENSED IN THE

STATE THAT CEASES OPERATION OR RELOCATE

MUST GIVE 12 MONTHS NOTICE TO ALL STUDENTS.

FAILURE TO GIVE NOTICE CAN CAUSE CIVIL

PENALTIES UP TO \$1000 PER DAY FOR EVERY

CALENDAR DAY SHORT OF THE REQUIRED

NOTICE PERIOD.

ANALYSIS: THE FIRST ISSUE WE NEED TO

ANSWER IS IF THE LEGISLATURE JUST

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PASSED THIS LAW, WHEN DOES IT

GO INTO EFFECT. THE FACTS DO NOT

INDICATE IF THE COURTS HAVE WEIGHED

IN ON THIS SO I WOULD LOOK AT

THE MINUTES OF THE HEARINGS TO DETERMINE

THE LEGISLATIVE INTENT. ARE THERE

EXCEPTIONS TO SCHOOLS THAT NEED TO

CLOSE OR RELOCATE BECAUSE OF PUBLIC

SAFETY ISSUES? WE ALSO NEED TO CONSIDER

HOW SEVERE SIGNIFICANT THE PENALTIES ARE

GOING TO BE. IF RELOCATING COMES WITH

A PERCEIVED COST AND CAN OUR FUTURE

REVENUES COVER THIS. ONE UNIQUE PERSPECTIVE

WE CAN ARGUE IN DEFENSE OF A FINE IS

good
approach

very
practical

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THE CONCEPT OF AN AGRICULTURAL
EDUCATION AS WOULD ANY TRADE SCHOOL
OR VOCATIONAL SCHOOL CREATE AN
EXCEPTION TO THE STATUTE.

CONCLUSION: IT WOULD APPEAR OUR
SCHOOLS OPERATION WOULD BE IN
VIOLATION OF EDUCATION CODE. OUR
CONCERNS ARE HOW DO WE REMEDY THE
VIOLATION WITH THE LEAST AMOUNT OF
IMPACT FROM CLOSURE, OR RELOCATION.

RECOMMENDATION: TO HELP OUR CLIENTS
I WOULD RECOMMEND RELOCATING THE
~~SCHOOL TO A DAIRY TO - SCHOOL TO~~
A MORE TRADITIONAL SITE THAT DOES

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NOT VIOLATE THE LAW. SINCE THIS
IS A NEW LAW THAT HAS IMPACT ON
OUR EXISTING SITUATION I THINK WE
CAN SWAY A JACOBI JURY TO SUPPORT OUR
DEFENSE IF WE GET FINED. WE CAN
ARGUE OUR DECISION WAS A SAFETY
DECISION AND NOT A MONEY DECISION.

IT IS ^{probably} COBVIOUS WE CANNOT GO ON WITH
BUSINESS AS USUAL AND IT APPEARS THIS
(This conclusion - always leave room for
argument.)

WILL BE THE BEST DECISION FOR

RON AND JILL MORRIS.