STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 23-11

Constitutionality of Definition of "Moveable Structure" in Tenn. Code Ann. § 67-5-501(7)

Question 1

Article II, section 28 of the Tennessee Constitution declares that "[h]ouse trailers, mobile homes, and all other similar movable structures" are to be assessed as "real property" for taxation purposes. Tennessee Code Annotated § 67-5-501(7) defines "moveable structure" for the statutory scheme that implements this constitutional provision. Expressly excluded from that definition are certain moveable structures that contain less than three hundred square feet of enclosed space.

When an assessor of property does not assess as real property those moveable structures that are expressly excluded under the statutory definition of "moveable structure" is the assessor constitutionally applying the law in accordance with article II, section 28, and *Williams v. Carr*, 218 Tenn. 564, 404 S.W.2d 522 (1966)?

Opinion 1

Yes. The exclusion of "self-propelled vehicles, sleeping and camping facilities attached to, or designed to be attached to, or drawn by a pick-up truck or an automobile, [] that contain[] less than three hundred square feet (300 sq. ft.) of enclosed space" from the definition of "moveable structure" in Tenn. Code Ann. § 67-5-501(7) appears to be consistent with the plain language of article II, section 28 and reflective of the intent of the framers and the people who adopted that constitutional provision.

Question 2

If so, may the General Assembly authorize the assessor of property to assess the property to the owner of the excluded moveable structure instead of assessing it as real property as an improvement to the land on which it is located?

Opinion 2

Yes. Because the specified, excluded moveable structures with less than 300 square feet of enclosed space are not assessed as real property, they are assessed by statute to the owner as "tangible personal property." *See* Tenn. Code Ann. § 67-5-501(8), (13). As a practical matter, however, all tangible personal property in Tennessee is exempt from property taxation unless it falls within the classifications of public utility property or commercial and industrial property, as explained in Tenn. Att'y Gen. Op. 00-062 (Apr. 3, 2000).

ANALYSIS

The authority to tax property is established by article II, section 28 of the Tennessee Constitution. *In re All Assessments*, 67 S.W.3d 805, 807 (Tenn. Ct. App. 2001). Since 1972, when article II, section 28 was completely revised, this constitutional provision has classified all property "[f]or purposes of taxation" into three classes: (1) real property, (2) tangible personal property, and (3) intangible personal property. *In re All Assessments*, 58 S.W.3d 95, 97-98 (Tenn. 2000); *see Sherwood Co. v. Clar*y, 734 S.W.2d 318, 320 (Tenn. 1987). Article II, section 28 further subclassifies "real property" into (a) public utility property, (b) industrial and commercial property, (c) residential property, and (d) farm property.

As relevant here, article II, section 28 classifies "[h]ouse trailers, mobile homes, and all other similar movable structures" as "real property" for taxation purposes. *Belle-Aire Village, Inc. v. Ghorley*, 574 S.W.2d 723, 725 (Tenn. 1978). And it specifically provides that

> *[h]ouse trailers, mobile homes, and all other similar movable structures used for commercial, industrial, or residential purposes shall be assessed as Real Property as an improvement to the land where located*.

Tenn. Const. art. II, § 28 (emphasis added).

As explained by the Tennessee Supreme Court, the purpose of the italicized provision was to provide an effective manner for taxing mobile homes, which had proliferated in the years immediately preceding the Limited Constitutional Convention of 1971. *Belle-Aire Village, Inc.*, 574 S.W.2d at 725. "The method chosen was to treat them as real property by taxing them as improvements to the land where located, thereby making such land liable for the taxes on the mobile homes." *Id*.

To implement this constitutional provision, Tenn. Code Ann. § 67-5-802(a)(1) requires "moveable structures" to be assessed as real property for tax purposes. As defined by the General Assembly,

> "[m]oveable structure" includes any mobile home or such other movable structure that is constructed as a trailer or semitrailer and designed to either be towed along the highways or to be parked off the highways, and that may be used, temporarily or permanently, as a residence, apartment, office, storehouse, warehouse or for any other commercial or industrial purpose; *but does not include self-propelled vehicles, sleeping and camping facilities attached to, or designed to be attached to, or drawn by a pick-up truck or an automobile, and that contains less than three hundred square feet (300 sq. ft.) of enclosed space*.

Tenn. Code Ann. § 67-5-501(7) (emphasis added).

The question presented here is whether the express statutory exclusion of self-propelled vehicles, and the specified, limited-space sleeping and camping facilities from the statutory definition of "moveable structure," is consistent with the constitutional requirement that "[h]ouse trailers, mobile homes, and all other similar movable structures" are to be assessed as real property for taxation purposes.

For the reasons that follow, the definition of "moveable structure" in Tenn. Code Ann. § 67-5-501(7) does not impermissibly exclude moveable structures that article II, section 28 intends to assess as real property for tax purposes.

To begin with, article II, section 28 itself states that "the value *and definition of property* in each class or subclass" of property is "to be ascertained in such manner as the Legislature shall direct." This provision gives the General Assembly "very broad discretion" to determine "the value and definition of property in each of the authorized classifications or subclassifications." *Sherwood Co.*, 734 S.W.2d at 321.

Hence, as long as the General Assembly's definition is not inconsistent with the inherent meaning of the words in the Constitution, the General Assembly may define a "movable structure" for the purposes of the statutory scheme that implements the constitutional provision requiring "[h]ouse trailers, mobile homes, and all other similar movable structures" to be assessed as real property *See Williams v. Carr*, 218 Tenn. 564, 578, 404 S.W.2d 522, 529 (1966) ("[T]he Constitution is the superior law . . . ."); *Marion Cnty. v. State Bd. of Equalization*, 710 S.W.2d 521, 522 (Tenn. Ct. App. 1986) ("the right to tax property is peculiarly a matter for the legislature and the legislative power in this respect can only be restricted by the distinct and positive expressions in the constitution").

When construing constitutional provisions, courts must give effect to the intent of the people who adopted those provisions. *Gaskin v. Collins*, 661 S.W.2d 865, 867 (Tenn. 1983); *see Dixie Rents, Inc. v. City of Memphis*, 594 S.W.2d 397, 400 (Tenn. Ct. App. 1979) (the Constitution or any amendment thereto must be construed so as to accomplish the intent of the framers). "These intentions are reflected in the terms of the constitutional provision, and unless the context requires otherwise, terms in a constitution must be given their ordinary and inherent meaning." *Cleveland Surgery Ctr., L.P. v. Bradley Cnty. Mem'l Hosp*., 30 S.W.3d 278, 282 (Tenn. 2000) (citation and internal quotation marks omitted). To accomplish this end, "the state of things when the provision originated is to be considered," *Peay v. Nolan*, 157 Tenn. 222, 230, 7 S.W.2d 815, 817 (1928), and provisions must be construed "reasonably in light of the practices and usages that were well-known when the provision was passed," *Cleveland Surgery Ctr., L.P*. 30 S.W.3d at 282 (citation and internal quotation marks omitted).

When the words of a constitutional provision "are free from ambiguity and doubt and express plainly and clearly the sense of the framers of the Constitution, there is no need to resort to other means of interpretation." *Hooker v. Haslam*, 437 S.W.3d 409, 426 (Tenn. 2014); (citing *Shelby Cnty. v. Hale*, 200 Tenn. 503, 510-11, 292 S.W.2d 745, 748 (1956)). "But if there is doubt about the meaning, the Court should look first to the proceedings of the Constitutional Convention which adopted the provision in question to determine the intent of the framers." *Id*.; *see Gaskin*, 661 S.W.2d at 867 (noting that events and circumstances precipitating a constitutional convention can also be important in understanding the meaning of a constitutional provision).

Article II, section 28 commands that "[h]ouse trailers, mobile homes, and all other *similar* movable structures" are to be assessed as real property. It follows that movable structures that are *not similar* to house trailers and mobile homes are not within the ambit of this command.

When article II, section 28 was adopted in 1972, the common understanding of a "house trailer" or a "mobile home" was "any vehicle or conveyance, not self-propelled, designed for travel upon the public highways, and designed for use as a residence, office, apartment, storehouse, warehouse, or any other similar purpose, ..." Tenn. Code Ann. § 59-105 (1968) (definition of "mobile home or house trailer" in motor vehicle title and registration law).[1] Accordingly, as understood at the time, very small "self-propelled vehicles, sleeping and camping facilities attached to, or designed to be attached to, or drawn by a pick-up truck or an automobile, [] that contain[] less than three hundred square feet (300 sq. ft.) of enclosed space" were not typically considered to be house trailers or mobile homes. These excluded vehicles and facilities are typically viewed as designed for recreational use—not for use as a residence, office, apartment, storehouse, or warehouse. Thus, their exclusion from the definition of "movable structure" in Tenn. Code Ann. § 67-5-501(7) appears to be a sound distinction—and an appropriate carve-out. When the *Sherwood* Court recognized the "very broad discretion" bestowed on the General Assembly to determine the definition of property in each class or subclass of property under article II, section 28, it emphasized that "the General Assembly [is] not constitutionally required to attempt to administer and maintain an impractical system of taxation." *Sherwood Co.*, 734 S.W.2d at 321.

Furthermore, to the extent there is any question about the scope of the phrase "[h]ouse trailers, mobile homes, and all other similar movable structures" in article II, section 28, the Journal and Proceedings of the Limited Constitutional Convention of 1971 explicitly reveals that the framers were not seeking to assess as real property "self-propelled vehicles, sleeping and camping facilities attached to, or designed to be attached to, or drawn by a pick-up truck or an automobile, [] that contain[] less than three hundred square feet (300 sq. ft.) of enclosed space." Immediately before the Limited Constitutional Convention of 1971 was convened, the General Assembly had passed an Act to provide for the assessment of "mobile structures" for property tax purposes. 1971 Tenn. Pub. Acts, ch. 199. The Act provided that mobile structures covered by the Act were to be assessed with the land as an improvement on the land. *Id*. at § 2 (codified at Tenn. Code Ann. § 67-648 (Supp. 1971)). The Act defined a "mobile structure" in the same substantive manner as Tenn. Code Ann. § 67-5-501(7) currently defines a "moveable structure," and it excluded the identical structures from its definition of "mobile structure" that Tenn. Code Ann. § 67-5-501(7) does:

> For the purposes of this Act, the term "mobile structure" means any mobile home or any structure, which is constructed as a trailer or semi-trailer and designed either to be towed along the highways or to be parked off the highways and used temporarily or permanently, as a residence, apartment, office, storehouse, warehouse or any other commercial purpose; *but shall not include self-propelled vehicles, sleeping and camping facilities attached to or designed to be attached to or drawn by a pick-up truck or an automobile and which contains less than three hundred (300) square feet of enclosed space.*

Id. at § 1 (codified at Tenn. Code Ann. § 67-647 (Supp. 1971)) (emphasis added).

[1] The definition of a "mobile home or house trailer" for the purposes of Tennessee's motor vehicle title and registration law has remained unchanged. *See* Tenn. Code Ann. § 55-1-105(b).

The framers at the Limited Constitutional Convention of 1971 specifically examined the provisions of Chapter 199 of the Public Acts of 1971 and expressed their support for the General Assembly to assess "mobile homes" as real property, but several of the framers questioned whether the General Assembly could do so under article II, section 28 as the provision stood at that time. *See* Journal and Proceedings of the Limited Constitutional Convention of 1971, at 610, 612-13, 615-17. Thus, the framers proposed that the General Assembly's authority to assess "mobile homes" as real property be constitutionally confirmed. *See id*. The framers, however, took no issue with the General Assembly's exclusion of the "mobile structures" described in the italicized language above:

> MR. EDMONDSON: Mr. Chairman, I also agree that we should not be legislating, at this time. The bill that the General Assembly passed, in May of this year, is a very fine bill. It does make it clear that mobile homes will be taxed as real property. *It also excludes self-propelled vehicles used for sleeping and camping and the whole thing is pretty clearly spelled out, which is fine*. The only problem, that I see in this, if anyone takes this to the Supreme Court and says I live in a mobile home that should be classified as tangible property and not as real property. I am not sure how the Supreme Court would look at that, unless we say specifically in our amended part of the constitution that we intend for mobile homes to be real property. . . .

Id. at 616 (emphasis added).

In sum, the exclusion of "self-propelled vehicles, sleeping and camping facilities attached to, or designed to be attached to, or drawn by a pick-up truck or an automobile, [] that contain[] less than three hundred square feet (300 sq. ft.) of enclosed space" from the definition of "moveable structure" in Tenn. Code Ann. § 67-5-501(7) appears to be consistent with the plain language of article II, section 28 and reflective of the intent of the framers and the people who adopted article II, section 28. *See State v. McCoy*, 459 S.W.3d 1, 8 (Tenn. 2014) (Court has duty to uphold constitutionality of a statute whenever possible).

It therefore follows that "self-propelled vehicles, sleeping and camping facilities attached to, or designed to be attached to, or drawn by a pick-up truck or an automobile, [] that contain[] less than three hundred square feet (300 sq. ft.) of enclosed space" are to be assessed to the owner as "tangible personal property." *See* Tenn. Code Ann. § 67-5-501(8) ("[f]or purposes of classification and assessment of property, 'personal property' includes every species and character of property that is not classified as real property"); *id*. § 67-5-501(13) ("[f]or purposes of classification and assessment of property, 'tangible personal property' includes personal property such as goods chattels, and other articles of value that are capable of manual or physical possession, and certain machinery and equipment, separate and apart from any real property, and the value of which is intrinsic to the article itself"). As a practical matter, however, all tangible personal property in Tennessee is exempt from property taxation unless it falls within the classifications of public utility property or commercial and industrial property, as fully explained in Tenn. Att'y Gen. Op. 00-062 (Apr. 3, 2000).

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