

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

October 21, 2015

Opinion No. 15-71

Constitutionality of Property Tax Exemption for Electric Cooperatives

Question

Is the four-year property tax exemption for rural electric cooperatives afforded by Tenn. Code Ann. § 65-25-122(a) constitutional?

Opinion

No. The tax exemption for rural electric cooperatives contained in Tenn. Code Ann. § 65-25-122(a) is unconstitutional because it purports to grant a tax exemption that is not authorized by Article II, Section 28, of the Tennessee Constitution.

ANALYSIS

The statute in question purports to grant a limited property tax exemption for facilities and plants constructed by rural electric cooperatives. The statute declares “that all facilities and plants constructed for [a rural electric cooperative’s] primary purpose shall be exempt from ad valorem property taxes for a period of four (4) years from and after the date of such construction.” Tenn. Code Ann. § 65-25-122(a).

By definition, rural electric cooperatives are “nonprofit cooperative membership corporations.” Tenn. Code Ann. § 65-25-102(4). Their primary purpose is to supply or furnish electric power and energy services to patrons and other entities at wholesale or retail. Tenn. Code Ann. § 65-25-104(a)(1). They are required to operate “on a nonprofit basis and without pecuniary gain, and [to] furnish their services on an area coverage basis at the lowest cost consistent with sound business principles.” Tenn. Code Ann. § 65-25-103.

The Tennessee Constitution declares that all property shall be subject to taxation, and it authorizes the General Assembly to exempt only those properties that fall into specific categories. *See* Tenn. Att’y Gen. Op. 82-142 (Mar. 18, 1982). These categories include property owned by state and local governments, property held and used for purely religious, charitable, scientific, literary, or educational purposes, and residential property owned by elderly and disabled taxpayers. Tenn. Const. art. II, § 28. Thus, the Legislature’s authority to create tax exemptions is much more circumscribed as to property taxes than with respect to privilege taxes, over which it may exercise broad discretion in ordaining exemptions. *See* Tenn. Att’y Gen. No. 13-11 (Feb. 13, 2013).

The rural electric cooperatives covered by Tenn. Code Ann. § 65-25-122(a) do not fall within any of the authorized categories. Rural electric cooperatives are not, and they are not owned by, governmental entities; they do not own residential property; rather, they are nonprofit

cooperative membership corporations. *See* Tenn. Code Ann. § 65-25-102(4). They also are not charitable organizations. Although they operate on a nonprofit basis, they provide electric services for a fee “consistent with sound business principles.” Tenn. Code Ann. § 65-5-103.

As the Supreme Court has made clear, “the fact that an organization is chartered for the general welfare, or not for profit, is not sufficient to entitle its property to tax exempt status.” *LaManna v. Elec. Workers Local Union No. 474*, 518 S.W.2d 348, 352 (Tenn. 1974); *see also Ga. Osteopathic Hosp., Inc. v. Strickland*, 179 S.E.2d 560, 561 (Ga. Ct. App. 1970) (recognizing that the terms “[c]haritable’ and ‘non-profit’ are not synonymous”). Other courts have distinguished between cooperative corporations and charitable organizations. “A cooperative corporation is created by a banding together of persons for their common advantage or advancement, financial or otherwise, and is organized for the mutual benefit of its members.” *Michael v. St. Mercury Indem. Co.*, 92 F. Supp. 140, 144 (W.D. Ark. 1950). A charitable organization, on the other hand, “is organized for some benevolent purpose for the benefit of the public or an indefinite class thereof.” *Id.* A “rural electric cooperative is not designed to accomplish the beneficial purposes in the public interest which a charitable association in the accustomed sense, such as a church, college or hospital, is organized to serve.” *Byrd v. Blue Ridge Rural Elec. Coop., Inc.*, 215 F.2d 542, 545 (4th Cir. 1954); *accord Bush v. Aiken Elec. Coop., Inc.*, 85 S.E.2d 716, 720 (S.C. 1955).

Inasmuch as rural electric cooperatives do not fall within any of the exemption categories authorized by Article II, Section 28, the Tennessee Constitution does not permit a four-year property tax exemption for their facilities and plants.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

MARY ELLEN KNACK
Senior Counsel

Requested by:

The Honorable Bill Ketron
State Senator
5 Legislative Plaza
Nashville, Tennessee 37243