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NOTES

THE TAXATION PROVISION OF THE RURAL ELECTRIFICATION ACT OF 1936

In 1936 The Kentucky legislature passed an act creating Rural Electrification Corporations organized as non-profit co-operatives and providing:

"Corporations formed hereunder shall be exempt from all franchise taxes, profits taxes, gross and net taxes, sales taxes, occupation taxes, privileges taxes, income taxes, any and all taxes on electric current (so in the Printed Acts. Should it read "current"?) consumed and from all excise taxes whatsoever, any statute or statutes now existing or hereafter passed to the contrary notwithstanding. In lieu of any and all other taxes, state, county, municipal and/or local corporations formed under this act being non-profit co-operative organizations shall pay annually to the Treasurer of the Commonwealth of Kentucky an annual tax of Ten ($10.00) dollars."

The question has been raised whether this section, which attempts to exempt from local taxation the real estate, poles, lines, transformers, generators and other property belonging to such Rural Electrification Corporations is constitutional?

It was clearly the intention of the legislature to permit each of these corporations to pay into the State Treasury annually the sum of $10 in lieu of all other state, county, municipal and district taxes, regardless of the amount or value of the property owned by such corporation. The co-operatives claim that, while their property cannot escape state taxation under this section, the legislature did intend to exempt from local ad valorem taxation all property owned by them and used in non-profit and co-operative activities.

In the recent case of Martin v. High Splint Coal Co., Judge Thomas, speaking for the Kentucky Court of Appeals, said:

"Taxation of all property being the rule and exemptions the exception, exemptions will never be presumed or implied in reference to property which would be subject to taxation without some express grant of immunity."

Section 170 of the Kentucky Constitution provides:

"There shall be exempt from taxation public property used for public purposes; places actually used for religious worship, with the grounds attached thereto and used and appurtenant to the..."

1 Kentucky Statutes (Carroll, 1936) Secs. 883j-1 to 883j-33.
2 Kentucky Statutes (Carroll, 1936) Sec. 883j-28.
3 268 Ky. 11, 103 S.W. (2d) 711 (1937).
house of worship, not exceeding one-half acres in the country; places of burial not held for private or corporate profit, institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education; public libraries, their endowments, and the income of such property as is used exclusively for their maintenance; all parsonages or residences owned by any religious society, and occupied as a home, and for no other purpose, by the minister of any religion with not exceeding one-half acre of ground in towns and cities and two acres of ground in the country appurtenant thereto; household goods and other personal property of a person with a family, not exceeding two hundred and fifty dollars ($250.00) in value; crops grown in the year in which the assessment is made, and in the hands of the producer; and all laws exempting or commuting property from taxation other than the property above mentioned shall be void. The general assembly may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation, for a period not exceeding five years, as an inducement to their location.” (Italics writer's)

This section expressly grants exemption in seven instances upon certain types of property or property used in certain institutions and for specific purposes. The specific enumeration of such property would seem to be an exclusion of all other property not so named or used from this exemption.

No other clause in the Kentucky Constitution designates the use to which property is devoted as a ground for its exemption from ad valorem tax.

That portion of Sec. 171 of the Constitution applicable to this problem reads:

“The General Assembly shall provide by law an annual tax, which with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws.

“The General Assembly shall have power to divide property into classes and to determine what class or classes of property shall be subject to local taxation. Bonds of the state and of counties, municipalities, taxing and school districts shall not be subject to taxation.” (Italics writer's).

The second paragraph of the above excerpt authorizes the General Assembly to “divide property into classes and to determine what class or classes of property shall be subject to local taxation.” It is the property which is to be classified and not the uses to which the owners devote it, nor the owners themselves. When the property has been classified, then the General Assembly determines “what class or classes of property shall be
subject to local taxation." When it has put property into a
class and made that class subject to local taxation, it has no
right to provide that such a part of that property as is owned
by females shall not be taxed for local purposes, but only that
part which is owned by males and corporations shall be so taxed.
All of the property in the class subject to local taxation must be
so taxed. The fact that a part of such property is owned by a
lawyer, a doctor or a minister of the gospel cannot be an excuse
for exempting the property so owned from local taxation.
Neither is the use to which the property is devoted an excuse for
its exemption unless it is one of the uses designated in section
170 of the Constitution in which an exemption is provided; then,
in that instance, it will be exempted from all taxation so long as
it is so used. This conclusion is supported by State Tax Com-
mission v. Hughes Drug Co., in which case the Hughes Drug
Company was attacking the validity of the 1926 Act of the
General Assembly which levied a tax of 50 cents on each pint of
whiskey sold at retail. The company contended that the Act
was one to raise revenue and not to regulate the sale of the
commodity and was a tax upon property. They relied upon the
case of Commonwealth v. Fowler in support of their contention.
Judge Rees, speaking for the Court of Appeals, admitted that
the 1926 Act was one to raise revenue but denied that it was a
tax upon property and held it to be an excise tax. In comment-
ing upon the Fowler case, he said:

"An examination of that case shows that what the Court said in
regard to the validity of the statute there under consideration, if
regarded as a revenue statute, was not necessary to the decision of
the case, but the statute was held to be valid as it was a regulatory
statute and not one to raise revenue. If regarded as a revenue
statute it was clearly void for the reason that it violated the uni-
formity provisions of the Constitution, as it imposed a license fee on
druggists who retailed spirituous and vinous liquors different from
license fees required of others who could at that time engage in the
retail liquor business."

In the first paragraph of Section 171 of the Kentucky
Constitution it is provided:

"Taxes shall be ... uniform upon all property of the same class
subject to taxation within the territorial limits of the authority levy-
ing the tax; and all taxes shall be levied and collected by general
laws."

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4 219 Ky. 432, 293 S.W. 944 (1927).
5 96 Ky. 166, 28 S.W. 786 (1894).
6 219 Ky. 432, at 435. (1927)
It is the above provision which Judge Rees refers to as the "uniformity provision of the Constitution." He declares that if the Act attacked in the Fowler case was an act to raise revenue, it would have been unconstitutional because "it imposed a license fee upon druggists who retailed spirituous and vinous liquors different from license fees required of others. . . Taxes imposed for revenue purposes, whether upon an activity or upon property, must be uniform."

Section 883-J-28 is Special Legislation

This section seeks to place poles, wires, transformers and electrical generators and other property owned by a rural electric co-operative non-profit sharing corporation in a special sub-class and exempt that property in the sub-class from taxation for local purposes, while the same property, owned by such corporations as the Kentucky-Tennessee Light & Power Co. or the Louisville Gas & Electric Co., shall be taxed for county, municipal, district and school purposes, regardless of the fact that the property of the one corporation is used in the same activity and for the same purpose as the property of the other corporation, to wit, the generation and transmission to customers of electric current.

Mr. Justice Richardson, speaking for the Court of Appeals in the case of Ravitz v. Steurele, says:

"Within the meaning of our Constitution, 'special legislation is such as relates either to particular persons, places, or things, which, though not particularized, are separated by any method of selection from the whole class to which the law might, but for such legislation, be applied.'"

Section 883-j-28 seems to fall clearly within this definition of class legislation.

Section 59 of the Kentucky Constitution, provides:

"The general assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes, namely:

"To authorize or to regulate the levy, the assessment of the collection of taxes, or to give any indulgence or discharge to any assessor or collector of taxes, or to his sureties.

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2 257 Ky. 29, 77 S.W. (2d) 359, at 364 (1934).
"In all other cases where a general law can be made applicable, no special law shall be enacted."

The applicable part of Section 60 of the Constitution provides:

"The general assembly shall not indirectly enact any special or local act by the repeal in part of a general act, or by exempting from the operation of a general act any city, town, district or county; but laws repealing local or special acts may be enacted."

However, if we lay aside the provisions of our Constitution as to special legislation, how can we comply with the provisions of Section 174 of that document and uphold the provisions of Section 883j-28? The applicable part of Section 174 provides:

"All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this Constitution; and all corporate property shall pay the same rate of taxation paid by individual property."

Many electric light and power plants in Kentucky are owned by individuals and partnerships. How can you exempt the wires, poles, transformers, generators and other property used in the generation and transmission of electric current when owned by a rural co-operative, non-profit corporation without exempting the same property owned and used for the same purpose by individuals or partnerships, and comply with Section 174 of the Constitution? It simply cannot be done.

In the case of *Burley Tobacco Growers Co-operative Association v. City of Carrollton* the Court of Appeals had under consideration the Bingham Co-operative Marketing Act of January 10, 1922. This act, prepared by the late Ambassador Robert Worth Bingham, with the assistance of some of the ablest constitutional lawyers of the state and the leading co-operative marketing attorney in the United States, was designed to aid the tobacco farmers of Kentucky. Crops grown in the year the assessment is made are exempted under the provisions of Section 170 of the Constitution. They undertook to extend this provision to subsequent years upon tobacco held by co-operative associations organized under the provisions of the Bingham Act. Each tobacco farmer in the Co-operative Corporation owned stock of the nominal value of $5.00; there were 170,000 members; the Corporation held the naked title to each shareholder's tobacco; each shareholder, after his crop had been sold, was entitled to the net proceeds of the crop. Under the provisions of

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*208 Ky. 270, 270 S.W. 749 (1925).*
that Act each individual shareholder paid the tax on his share, and those shares represented all the property of the Association. Thus, they hoped that the Association would escape taxation. Each crop owned by the shareholder represented the owner’s proportion of crops grown by him and delivered to the Association, as was in the Act provided, and it was further provided that it should be exempt from taxation, inasmuch as it was the same thing exempted to such grower by the Constitution and statutes. When two parties own an interest in property, the Legislature can determine which shall pay the tax. However, the Court, speaking through Judge McCandles, said:10

"... in the exercise of this right the legislature cannot destroy the uniformity of taxation required by sections 171, and 172, and 174 of the Constitution or add to the exemptions allowed by section 170 of that instrument..."

In sustaining the lower court in the dismissal of the Association’s action in its effort to bar the City of Carrollton from assessing and taxing the tobacco held by the Association in that city, the Court of Appeals said:11

"Subject to the exemptions enumerated in section 170 of the Constitution and to the right of classification provided in section 171, a matter not here in issue, sections 171, 172, and 174 of that instrument provide for a uniform tax to be levied, assessed and collected on all property. These provisions may not be impinged, either directly or indirectly, and any legislative act having that effect is necessarily invalid."

The provisions of section 171 are expressed in plain, understandable language and there could be no question as to legislative contemporaneous construction. Any statute contrary to its provisions gains no sanctity by reason of its age.12

In the light of the foregoing authorities, there seems to be no basis for exempting from local taxation the property of the Rural Electrification Co-operative Corporations. Although these corporations are engaged in a laudable effort to extend aid to the farmers of the State who have suffered so actually from the depression, it is impossible to exempt from local taxation property owned and used by them without likewise exempting

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10 Burley Tobacco Growers Co-operative Association v. City of Carrollton, cited supra note 9, at 276.
11 Burley Tobacco Growers Co-operative Association v. City of Carrollton, cited supra note 9, at 278.
12 6 R.C.L. 67.
property used in the same activity and for the same purpose owned by profit earning corporations, individuals and partnerships. This, section 883j-28 does not attempt to do, but merely attempts to exempt all the property of the non-profit corporations when they pay a license tax of $10. This is not only class legislation, but it violates the Uniformity Clauses in sections 171 and 174 and the exemption provisions of Section 170 of the Kentucky Constitution.

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