OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. Edgar Hutchins
County Attorney
Hunt County
Greenville, Texas

Dear Sir:

Opinion No. O-6910
Re: Whether county has authority to levy ad valorem taxes for county and state purposes on the properties of an electrical cooperative chartered under the provisions of Article 1528b, (the Electric Cooperative Corporation Act), and related question.

Your request for opinion, which has been considered carefully by this department, reads as follows:

"I would like to have an official opinion from your department on the following propositions:

"1. Does the county have authority to levy ad valorem taxes for county and state purposes on the properties within the county of an electric co-op chartered under the provisions of Article 1528b RCS of Texas?

"2. If you answer question No. 1 in the affirmative does the District Court of the County levying the ad valorem tax have jurisdiction in a delinquent tax suit against the electric co-op?

"I am unable to find any cases in point which will answer the above two questions. It is the contention of the Electric Co-op that under section 25(a) of Article 1528b the corporation being a non-profit public utility is not subject to an ad valorem tax levy, and it is their further contention that because the Rural Electrification Administration as an agency of the Federal Government has a Deed of

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COMMUNICATION IS TO BE CONSTRUED AS A DEPARTMENTAL OPINION UNLESS APPROVED BY THE ATTORNEY GENERAL OR FIRST ASSISTANT

Trust on record covering all the properties of the co-op located within the county that they would be subject only to (token) payments rather than regularly assessed ad valorem taxes as same apply to properties belonging to other corporations.

"I will appreciate your assistance in this matter."

All exemptions from ad valorem taxes must be based upon the provisions of Section 2 of Article VIII of the Constitution of Texas. That section authorizes the Legislature to exempt certain property from taxation, and provides further that "all laws exempting property from taxation other than the property above mentioned shall be null and void." We are unable to find in said Section any provision which would authorize the exemption of property belonging to an electrical cooperative incorporated under the provisions of Article 1528b from ad valorem taxes.

The corporations authorized by the provisions of Article 1528b are private corporations, and the mere fact that they are non profit corporations does not make them tax exempt. They are in no sense state agencies, as are the various Districts and Authorities created directly by Acts of the Legislature pursuant to Article XVI, Section 59, of the Constitution.

Section 25 of Article 1528b reads as follows;

"(a) Each corporation shall be operated without profit to its members but the rates, fees, rents, or other charges for electric energy and any other facilities, supplies, equipment, or services furnished by the corporation shall be sufficient at all times

"(1) To pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business and the principal of and interest on the obligations issued or assumed by the corporation in the performance of the purpose for which it was organized, and

"(2) For the creation of reserves.

"(b) The revenues of the corporation shall be devoted first to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and thereafter to such reserves for improvement, new construction, depreciation, and contingencies as the Board may from time to time prescribe.

"(c) Revenues not required for the purposes set forth in Sub-section (b) of this Section shall be returned from time to time to the members on a pro rata basis according to the amount of business done with each during the period, either in cash, in abatement of current charges for electric energy, or otherwise as the Board determines; but such return may be made by way of general rate reduction to members, if the Board so elects."

Certainly there is nothing in this section to indicate a legislative intention to exempt any part of the properties of such co-operatives from taxation.

Attention is called to Section 30 of the Electric Cooperative Corporation Act:

"Corporations formed hereunder shall pay annually on or before May first, to the Secretary of State, a license fee of Ten Dollars ($10) and such corporations shall be exempt from all other <u>excise taxes</u> of whatsoever kind or character." (Emphasis added)

This is the only reference to a tax exemption contained in the entire act, and since it is limited to excise taxes it must be construed as a tacit recognition that such corporations are subject to all other types of taxes.

The fact that the R. E. A., an agency of the Federal Government, is the holder of a deed of trust on the properties of the corporation cannot change the above conclusion. The

R. E. A. holds no more than the naked legal title to the property, while the equitable title, the use, remains in the cooperative. It is settled that the property must be rendered and assessed in the name of the trustor, and the trustee is not liable for any part of the taxes accruing thereon. Harvey v. Provident Investment Co., 156 S. W. 1127; Buttram v. Gray County, 62 Fed. (2) 47.

In answer to your second question: The statutes pertaining to suits to foreclose tax liens (Arts. 7326, 7328, 7328.1, and 7345b) require that such suits be brought in the district court of the county in which the real estate is situated.

For your general information and assistance we are enclosing herewith a copy of our Opinion No. O-2800.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By Arthur L. Moller
Arthur L. Moller
Assistant

ALM:ddt
Encl.

APPROVED OPINION COMMITTEE BY BWB CHAIRMAN