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Opinion No. 13-80

County Zoning of Residential Structures on Land Used for Agricultural Purposes

QUESTION

Does Tenn. Code Ann. § 13-7-114 exempt from county zoning regulation buildings used as residences by farmers and farm workers?

OPINION

Because buildings used as residences by farmers and farm workers are "incidental to the agricultural enterprise," the provisions of Tenn. Code Ann. § 13-7-114 exempt such buildings located on farm property from county zoning regulation, unless the buildings are located on farm property "adjacent or in proximity to state federal-aid highways, public airports or public parks."

ANALYSIS

The statute in question, which is part of the Tennessee statutory provisions governing zoning in Tennessee counties codified at Tenn. Code Ann. §§ 13-7-101 to -119, provides that

> [t]his part shall not be construed as authorizing the requirement of building permits nor providing for any regulation of the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, except on agricultural lands adjacent or in proximity to state federal-aid highways, public airports or public parks; provided, that such building or structure is incidental to the agricultural enterprise.

Tenn. Code Ann. § 13-7-114. This provision applies to counties only and has no application to municipalities. See Tenn. Att'y Gen. Op. 10-12, at 2, n. 1 (Jan. 28, 2010).

By its plain language, this statute provides that the general zoning powers given to county legislative bodies generally do not authorize the counties to require building permits or otherwise regulate buildings or other structures on lands devoted to agricultural purposes, provided such buildings or structures are incidental to those agricultural purposes. Thus, in deciding whether buildings or structures are excepted from the county's zoning powers, the question becomes

whether those buildings or structures are "incidental to the agricultural enterprise." Tenn. Code Ann. § 13-7-114.

Courts construing the meaning of "agricultural enterprise" have generally given the term a broad definition. In *Brunetti v. Williamson County Bd. of Zoning Appeals*, No. 01A01-9803-CV-00120, 1999 WL 802725, at *8 (Tenn. Ct. App. Oct. 7, 1999), the Tennessee Court of Appeals observed that the statute in question prohibited county "zoning regulations and officials from regulating a structure which is incidental to an agricultural enterprise." The issue in that case was whether the county could regulate two grain bins used to treat and store grain grown by the farmer on leased acreage nearby. When a neighboring landowner objected to the operation of the two grain bins, the farmer began cultivating wheat on his own property as well. The court held that the grain bins were not subject to county regulation, reasoning that "[s]ince the storing and treating of crops is accessory to cultivation, the buildings used for such purposes are, within the meaning of the statute, incidental to an agricultural enterprise." *Id.*

In construing a similar provision, the Arizona Court of Appeals held that on-site dwellings for farm workers were incidental to farming or agriculture and, thus, were exempt from local building codes. *Braden Trust v. Yuma County*, 69 P.3d 510, 513 (Ariz. Ct. App. 2003). An Arizona statute provided that building codes "shall not be construed to apply to . . . [c]onstruction or operation incidental to . . . farming . . . [or] agriculture." *Id.* at 513 (citing Ariz. Rev. Stat. § 11-865(A)(1)). The court reasoned as follows:

> "Incidental" is generally defined as "[s]ubordinate to something of greater importance; having a minor role," *Black's Law Dictionary* 765 (7th ed. 1990), "happening in fortuitous or subordinate conjunction with something else," *The Random House Dictionary* 444 (1980), and "being likely to ensue as a chance or minor consequence," *Webster's Ninth New Collegiate Dictionary* 609 (1987).
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> Thus, "construction or operation" that is "incidental" to farming or agriculture does not necessarily involve the primary functions of the farm but, instead, may concern functions that are tangentially related to the principal activity of the farm. On-site housing for full-time farm workers can be said to be "incidental" to farming because housing the workers on the farm is a subordinate accommodation to their primary role as employees and because free, on-site housing arguably benefits both the employer and the workers in terms of safety and productivity.

Id. at 513.

Similarly, in *Blauvelt v. Bd. of County Comm'rs of Leavenworth*, 605 P.2d 132, 134 (Kan. 1980), the Kansas Supreme Court held that a farmhouse occupied by the farmer-owner was exempt from county zoning regulations. The Kansas statute at issue exempted "the use of land

for agricultural purposes" and "the erection or maintenance of buildings thereon for such purposes so long as such land and buildings erected thereon are used for agricultural purposes and not otherwise." *Id.* at 133 (citing Kan. Stat. Ann. § 19-2921). As the court explained:

> The pertinent provisions of the statute have been in effect since 1939. . . . The obvious purpose of the proviso in Kan. Stat. Ann. § 19-2921 was to favor agricultural uses and farmers. Since this state's economy is based largely on the family farm it would appear the intent of the legislature was to spare the farmer from more governmental regulation and not to discourage the development of this state's farm industry.

Id. at 135 (citation omitted).

In previous opinions, this Office has likewise recognized that the terms "agriculture" and "agricultural use" traditionally have been broadly defined. *See* Tenn. Att'y Gen. Op. 99-071, at 2 (Mar. 22, 1999); Tenn. Att'y Gen. Op. 94-103, at 1-2 (Sept. 9, 1994). In light of the generally expansive definition given agricultural uses in Tennessee, buildings located on farm property that are used as residences by farmers and farm workers would be considered exempt from county zoning regulations, provided that the farm property is not "adjacent or in proximity to state federal-aid highways, public airports or public parks." Tenn. Code Ann. § 13-7-114. On-site housing for farmers and farm workers directly facilitates the operation of the farm itself. Farmers and farm workers who live onsite may be more productive and responsive than other workers who do not live on the premises. The around-the-clock presence of farmers and farm workers may be crucial to tending to livestock or to performing urgent tasks during planting and harvesting seasons. Thus, onsite housing for farmers and farm workers is incidental to the agricultural enterprise, and Tenn. Code Ann. § 13-7-114 prohibits a county from using its zoning power to regulate buildings or structures used as farm housing subject to the limited exceptions set forth in this statute.

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