

## Opinion No. 61-55

June 28, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Norman S Thayer, Assistant Attorney General

**TO:** Mr. Dan Sosa, Jr., District Attorney, Third Judicial District, Dona Ana County Courthouse, Las Cruces, New Mexico

### QUESTION

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Can the County of Dona Ana tax the personal property and equipment of the local office of the federal land bank association?

#### CONCLUSION

Yes.

### OPINION

#### ANALYSIS

Title 12, U.S.C.A., Section 931 provides:

"Every Federal land bank and every Federal land bank association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of Sections 761 and 781 of this title."

It is settled that Congress has power to create a bank, and that such a bank is exempt from state or local taxation except as permitted by Congress. **McCulloch v. Maryland**, 4 Wheat 316, 4 L. Ed. 579 (1819). A few quotations from that opinion would not be amiss.

At page 429:

"The sovereignty of a state extends to everything which exists by its own authority, or is introduced by its permission; but does it extend to those means which are employed by congress to carry into execution powers conferred on that body by the people of the United States? We think it demonstrable, that it does not. Those powers are not given by the people of a single state. They are given by the people of the United States, to a government whose laws, made in pursuance of the constitution, are declared to be

supreme. Consequently, the people of a single state cannot confer a sovereignty, which will extend over them."

And at page 436:

"The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government."

Under its power to create a bank, Congress could validly create a federal land bank, and such a bank is a federal instrumentality even though it transacts primarily private business with private individuals. **Smith v. Kansas City Title Co.**, 255 U.S. 180, 41 S. Ct. 243, 65 L. Ed. 577 (1920).

We have not found a case dealing with the question whether federal land bank **associations** are exempt from state taxation. If associations are federal instrumentalities created by congress in the exercise of a power conferred on that body, then Congress can prescribe the extent that the states and local governments will be allowed to tax them. We are not bound here by Congress' classification of these associations as federal instrumentalities, for Congress had no power to make that classification unless the associations in fact occupy the legal status of federal instrumentalities.

The provisions of law prescribing the creation, organization, and powers of associations are contained in Title 12, U.S.C.A., Sections 711-761.

Associations are organized by groups of persons desiring to borrow money on farm mortgage security. Section 711. Such persons file their articles of association with the federal land bank of their farm credit district, and that bank recommends to the Farm Credit Administration the granting or refusing of the association's charter. Section 718. If the recommendation is favorable, the Farm Credit Administration "shall thereupon grant a charter to the applicants." Section 719. These citations show that associations are authorized by the United States, and not by a State.

The loan committee of each association elects applicants to membership and approves loans on behalf of the association. Section 712.

The manager of each association pays over to members all amounts received for their accounts from the federal land bank; he collects and transmits to the federal land bank all payments on loans made through the association; he reports to the Farm Credit Administration; he carries out duly authorized orders of the Administration; it is his duty to see that loans are used for the purposes for which they were made; and he reports to the federal land bank the amount of delinquent taxes on any land mortgaged to the bank. Section 714.

Chartered associations are empowered to receive from the federal land bank all sums to be loaned to the association's members. Section 720.

The loan committee, upon application for a loan, investigates the solvency of the applicant and the sufficiency of the security, and obtains an appraisal for the federal land bank. Section 751.

After studying the functions and powers of federal land bank associations, it is our opinion that they are more than mere associations of borrowers; they are arms or agencies of the federal land banks themselves, and perform many duties of the land banks. But an agency of the land bank is not necessarily a federal instrumentality, and associations may not be exempted by congress unless they are truly federal instrumentalities. In our opinion, associations do not occupy that status.

Associations do not perform any of the **federal** functions for which land banks were accorded the status of federal instrumentalities. Referring to **Smith v. Kansas City Title Co.**, supra, the crucial factors in determining the status of land banks are: (1) they are depositaries for United States funds, (2) they are fiscal agents of the United States, and (3) they are readymade markets for United States bonds, because they are required to invest 5% of their assets in such bonds.

None of these factors apply to associations. They are not banks. They are not depositaries of United States funds, since they only transmit loans to members and payments to the bank. They have no power to act as United States fiscal agents. They are not required to invest in United States bonds.

Associations act only in nonfederal areas, namely, loans to private persons. While **Smith v. Kansas City Title Co.**, supra stands for the proposition that an instrumentality created by Congress to perform a federal function does not lose its status because it also performs private business, it does not confer the status of federal instrumentality upon agencies that perform only private business functions. To adopt such a rule would, in our opinion, stretch the doctrine of governmental immunity from taxation to an intolerable degree.

We conclude that associations are not true federal instrumentalities, that congress has no power to exempt them from state and local taxation, and that the exemptions stated in Title 12, U.S.C.A., Section 931 do not apply to associations.

It follows that, in our opinion counties may tax the personal property, as well as the real property, of federal land bank associations.