

# TENNESSEE FARM BUREAU FEDERATION

## 2018 Policy Development



### County Attempts to Regulate Ag Practices

#### Issue

Tennessee law is clear. County governments have no regulatory authority over agriculture and cannot use zoning as a way to accomplish regulations. Through the years, numerous Attorney General Opinions have confirmed this. However, some counties have ignored the state law and adopted zoning ordinances pertaining to agriculture, often targeting livestock operations. Similarly, counties cannot require building permits for agricultural operations, though state law does allow cities this ability. Some counties have also attempted to penalize agriculture by subclassifying the property for property tax purposes. For example, a portion of a tract of property is reclassified as commercial based on an isolated use. The practice of subclassifying land has long been allowed for property tax purposes, but as long as the farm operation meets the definition of agriculture as defined by Tennessee law then the farm should not be subclassified. Unfortunately, Farm Bureau has seen examples of these situations across the state. Often, this is not done in malice against state law but rather a misunderstanding of how the law pertains to agriculture.

#### Background

To understand this issue, it is vital to understand how Tennessee law works pertaining to county authority. County governments are a creation of the State of Tennessee. The basis of county government is established in the State Constitution and provides a basic framework for governance. Tennessee law builds upon what is set out in the Constitution. In addition to the Constitution and the Code [law], there are other acts of the Tennessee General Assembly called "private acts" which are adopted by the General Assembly and then ratified locally by either the voters or the county legislative body. The private acts are usually made at the request of the county legislative body. These private acts cannot conflict with the general state law and are there to provide additional details in areas the state law does not address. Simply, county governments cannot pass ordinances outside of what state law allows.

Tennessee's law giving power to the counties to adopt zoning ordinances was passed in 1935. The zoning statute empowers counties to regulate the use of real property and the structure and design of buildings within their boundaries. The counties' power in these statutes are broad, but not without limit. Ever since county zoning statutes were enacted, counties have not been authorized to regulate "agricultural uses" of property [TCA 13-7-114(a)]. The law prohibits counties from regulating buildings and other structures devoted to agricultural uses. County inability to regulate agricultural uses of land are also reaffirmed in Title 5, Chapter 1, of the Code which governs the powers of counties generally.

Even with this in Tennessee law, counties have tried to regulate farming practices by using zoning. It is apparent counties misunderstand how the law pertains to agriculture. Any effort to do so is in direct contradiction to TCA 5-1-118, 5-1-122, and 13-7-114. The fact Tennessee law does not give counties this authority has been upheld in Tennessee Attorney General Opinions: 94-103, 99-071, 13-80, 14-79, and 18-30. The Tennessee Supreme Court referenced TCA 13-7-115 and 5-1-122 in specifying counties do not have authority over agricultural land under Tennessee law in *Shore v. Maple Lane Farms, LLC* 411 S.W.3d 405, 426 (Tenn. 2013).

Correspondingly, TCA 13-7-114 prohibits counties from requiring building permits devoted to agricultural uses. However, for farms located in city limits, city governments can require building permits for agricultural purposes, according to Tennessee Attorney General Opinion 10-12. This opinion is based on TCA 6-54-126, which prohibits cities from the power

to regulate the use of agricultural land but does not exclude power to regulate buildings. TCA 13-7-201(a)(1) empowers municipalities to regulate buildings thus the ability to require building permits.

Some counties have attempted to penalize farmers by subclassifying the property for property tax purposes. For example, a portion of a tract of property is reclassified as commercial based on an isolated use. The practice of subclassifying land has long been allowed for property tax purposes, but as long the farm operation meets the definition of agriculture as defined by Tennessee law then the farm should not be subclassified. Counties' ability to assess property taxes, and to subclassify property, comes from TCA Title 67, Chapter 5. Within the chapter, "Farm Property" references the definition of agriculture which is found in TCA 1-3-105 & 43-1-113. The definition of agriculture is

(A) "Agriculture" means:

- (i) The land, buildings and machinery used in the commercial production of farm products and nursery stock;
- (ii) The activity carried on in connection with the commercial production of farm products and nursery stock;
- (iii) Recreational and educational activities on land used for the commercial production of farm products and nursery stock; and
- (iv) Entertainment activities conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities occur on land used for the commercial production of farm products and nursery stock;

(B) As used in this definition of agriculture, the term "farm products" means forage and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; forestry products; fish and other aquatic animals used for food; bees; equine; and all other plants and animals that produce food, feed, fiber or fur;

(C) As used in this definition of agriculture, the term "nursery stock" means all trees, shrubs, or other plants, or parts of such trees, shrubs or other plants, grown or kept for, or capable of, propagation, distribution or sale on a commercial basis;

## Questions

1. Has your county enacted any zoning requirements or building permits on agricultural land?
2. Farm Bureau's policy is supportive of counties' ability to use zoning to accomplish orderly growth and designate land use to certain areas. TFBF policy further states: "Local governments should not use zoning as a tool to regulate agricultural practices." Is Farm Bureau policy still in line with the wishes and purposes of your farming community?
3. What can Farm Bureau do to educate counties and prevent the regulation of agricultural land?
4. Does the definition of agriculture meet today's production practices, particularly with the rise of agritourism operations?

## Farm Bureau Policy

### Land Use Planning (Partial)

We oppose federal land use planning. Planning can best be accomplished at the local level of government and by private landowners.

Several local communities have used zoning very effectively in accomplishing orderly growth and designating land use to certain areas. Local planning can save tax dollars and protect landowners if local people make decisions. In those counties with zoning, local farmers should have adequate representation on planning commissions, zoning boards and appeal boards.

We oppose federal, state or local legislation imposing land use regulations to qualify for federal grants and loans or to participate in other government programs. No government agency should have the right to control land use without specific legislative authority. Local governments should not use zoning as a tool to regulate agricultural practices.

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