

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

April 13, 2022

Opinion No. 22-07

Exemption from County Zoning Regulation for Buildings on Land Used for Agriculture

Question

Does Tenn. Code Ann. § 13-7-114 exempt from county zoning regulation cotton gins, grain elevators, slaughterhouses, processing plants, and milk bottling plants?

Opinion

No, there is no blanket exemption from county zoning regulation for cotton gins, grain elevators, slaughterhouses, processing plants, or milk bottling plants. A structure housing these operations is exempt from county zoning regulations only if the structure is located on lands devoted to agricultural purposes and is incidental to the underlying agricultural enterprise.

ANALYSIS

To be exempt from county zoning regulation under Tenn. Code Ann. § 13-7-114, a building or structure must meet two requirements: (1) it must be located on lands “devoted to agricultural uses;” and (2) it must be “incidental to the agricultural enterprise.” Tenn. Code Ann. § 13-7-114(a).¹ The exemption does not apply, however, if the building or structure is located on agricultural lands in proximity to state federal-aid highways, public airports, or public parks. *Id.* Nor does the exemption apply if the building or structure is located on land located within the one-hundred-year flood plain. Tenn. Code Ann. § 13-7-114(c)(2).

Thus, a cotton gin, grain elevator, slaughterhouse, processing plant, or milk bottling plant would be exempt from county zoning regulation under Tenn. Code Ann. § 13-7-114 only if it is (1) located on lands devoted to agricultural uses *and* (2) incidental to the agricultural enterprise. In theory, a farmer could slaughter his own cattle or bottle milk produced on the farm, and the

¹ This statute is part of the code regulating county zoning. It provides:

This 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(a). 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).

buildings or structures used in that process would be exempt from county zoning regulation. *See, e.g., Brunetti v. Bd. of Zoning Appeals*, No. 01A01-9803-CV-00120, 1999 WL 802725, at *7 (Oct. 7, 1999) (no perm. app. filed) (holding that grain bins placed on property where grain was grown and harvested were exempt from county zoning regulation). But if the cotton gin, grain elevator, slaughterhouse, processing plant, or milk bottling plant is not located on land that is otherwise used for related agricultural purposes, then the building or structure is merely a manufacturing or processing facility that is not incidental to an agricultural enterprise taking place on the underlying land. *See, e.g., Tenn. Att’y Gen. Op. 8-145* (Sept. 10, 2008) (opining that “the operation of a commercial sawmill that obtains timber from off-site is not an agricultural use of land”). Such a building or structure would not be exempt from county zoning regulation.

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