

1041.

APPROVAL—BONDS OF VILLAGE OF WILLOWICK, LAKE COUNTY, OHIO, \$1,000.00.

COLUMBUS, OHIO, August 19, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Village of Willowick, Lake County,
Ohio, \$1,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above village dated October 1, 1933. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission under date of April 13, 1934, being Opinion No. 2508.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said village.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1042.

ELECTRIC COMPANY NOT FOR PROFIT—ORGANIZED TO GENERATE, TRANSMIT AND DISTRIBUTE ELECTRIC ENERGY—PRIVATE CORPORATION OPERATING AS PUBLIC UTILITY—NOT ENTITLED TO TAX EXEMPTION—THE UNION RURAL ELECTRIC COOPERATIVE, INC.

SYLLABUS:

The Union Rural Electric Cooperative, Inc., organized under the General Corporation Act of the State of Ohio, not for profit, for the purpose of generating, manufacturing, purchasing, acquiring and accumulating electric energy for its members and for the transmission and distribution thereof through transmission and distribution lines or systems constructed, owned and operated by the corporation and for the purpose of carrying out all other incidental purposes thereto and in furtherance of which said corporation borrows money from the Adminis-

trator of the Rural Electrification Administration authorized by the Rural Electrification Act of 1936, is a private corporation operating as a public utility and as such is not entitled to the exemption from the application of any taxes authorized by the laws of the State of Ohio to be levied against it.

COLUMBUS, OHIO, August 19, 1937.

HON. WILLIAM J. PORTER, *Prosecuting Attorney, Marysville, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date which reads as follows:

"I am wondering if you would be kind enough to advise me whether the property owned by the Union County Rural Electrification Corporation is taxable or non-taxable property.

This property, as I understand it, is government property and is a government project. Yet it is a Public Utility, which in my humble opinion should be taxable, but as to whether or nor my conclusion is correct I am leaving to your good judgment."

In your letter you mention the Union County Rural Electrification Corporation. I presume that the corporation about which you make inquiry is the Union Rural Electric Cooperative, Inc., Marysville, Ohio, which filed its articles of incorporation with the Secretary of State of the State of Ohio on May 20, 1936. This company is incorporated not for profit under the General Corporation Act of Ohio. The purpose of the corporation as shown by its articles of incorporation include the following:

1. To generate, manufacture, purchase, acquire and accumulate electric energy for its members and to transmit, distribute, furnish, sell and dispose of such electric energy to its members only and to construct, erect, purchase, lease and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease, exchange and mortgage plants, buildings, works, machinery, equipment and supplies, and transmission and distribution lines or systems necessary, convenient or useful for carrying out and accomplishing any of the foregoing purposes.
2. To acquire and hold franchises, etc.
3. To purchase or lease land and personal property, etc.
4. To assist members to wire premises, install electric and plumbing appliances, fixtures, machinery, etc.
5. To make available electric transmission facilities to other not for profit organizations, etc.

6. The corporation shall have authority to contract with any federal, state, governmental or other agency in connection with the borrowing of money, the pledging of securities and real or personal property for the repayment thereof, subject to the terms and conditions of any federal or state law now or hereafter enacted with reference thereto.

The articles of incorporation also provide that any savings which may be effected by the corporation are to be related to members as patronage refunds in proportion to the amount of business each member has transacted with the corporation, etc. The corporation is also authorized to borrow money, execute mortgages and to do any other thing necessary or incidental thereto.

This corporation is organized primarily for the purpose of receiving aid and assistance from the Rural Electrification Administration authorized by the Rural Electrification Act of 1936, effective May 20, 1936, as contained in Chapter 31, Title 7 of the Federal Code Annotated. Among the provisions of this Act are the following:

“There is hereby created and established an agency of the United States to be known as the ‘Rural Electrification Administration,’ all of the powers of which shall be exercised by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of ten years * * *.”

Also:

“The Administrator is authorized and empowered to make loans in the several States and Territories of the United States for rural electrification and the furnishing of electric energy to persons in rural areas who are not receiving central station service, as hereinafter provided; to make, or cause to be made, studies, investigations, and reports concerning the condition and progress of the electrification of rural areas in the several States and Territories; and to publish and disseminate information with respect thereto.”

The Act also provides the method for the making of loans for the construction and operation of generating plants, electric transmission and distribution lines and also loans for the wiring of premises and the installation of equipment. The Act also provides:

“Such loans shall be on such terms and conditions relating to the expenditure of the moneys loaned and the security there-

for as the Administrator shall determine and may be made payable in whole or in part out of income: Provided, however, That all such loans shall be self-liquidating within a period of not to exceed twenty-five years, and shall bear interest at a rate equal to the average rate of interest payable by the United States of America on its obligations, having a maturity of ten or more years after the dates thereof, issued during the last preceding fiscal year in which any such obligations were issued * * *.”

The Act further provides:

“The Administrator is authorized and empowered to bid for and purchase at any foreclosure or other sale, or otherwise to acquire, property pledged or mortgaged to secure any loan made pursuant to this Act; to pay the purchase price and any costs and expenses incurred in connection therewith from the sums authorized in Section 3 of this Act (\$50,000,000 from the Reconstruction Finance Corporation); to accept title to any property so purchased or acquired in the name of the United States of America; to operate or lease such property for such period as may be deemed necessary or advisable to protect the investment therein, but not to exceed five years after the acquisition thereof; and to sell such property so acquired, upon such terms and for such consideration as the Administrator shall determine to be reasonable.

No borrower of funds under Section 4 shall, without the approval of the Administrator, sell or dispose of its property, rights, or franchises, acquired under the provisions of this Act, until any loan obtained from the Rural Electrification Administration, including all interest and charges, shall have been repaid.”

In your communication, in which you make inquiry as to whether or not the property owned by this corporation is taxable or non-taxable, you state:

“I understand it is government property and is a government project.”

A careful review of the articles of incorporation distinctly shows that this is a private corporation organized by private individuals for a public utility purpose. It is organized primarily for the purpose of

developing the distribution of electric energy in rural areas. By specific authorization of Congress in the Rural Electrification Act of 1936, this corporation is entitled to borrow money from the government for the carrying out of the purposes of the corporation, which loans are made on a self-liquidating basis over a period of not to exceed twenty-five years. The corporation is liable for the payment of interest on its obligations to the government and in the event it fails to meet such payments promptly, the Administrator on behalf of the government is authorized to institute foreclosure proceedings for the acquiring of actual possession of the property by the government or to force the corporation to liquidate the loan which it has received from the government. In other words, there is a pure relationship of debtor and creditor in so far as the government and the corporation are concerned. In such case property of the Union Rural Electric Cooperative, Inc., is not government property nor is it such a government project as would exempt it from taxation by the State of Ohio. In my opinion it is purely a public utility and subject to all of the tax laws of this State properly applicable thereto.

Therefore, in specific answer to your question, it is my opinion that the Union Rural Electric Cooperative, Inc., organized under the General Corporation Act of the State of Ohio, not for profit, for the purpose of generating, manufacturing, purchasing, acquiring and accumulating electric energy for its members and for the transmission and distribution thereof through transmission and distribution lines or systems constructed, owned and operated by the corporation and for the purpose of carrying out all other incidental purposes thereto and in furtherance of which said corporation borrows money from the Administrator of the Rural Electrification Administration authorized by the Rural Electrification Act of 1936, is a private corporation operating as a public utility and as such is not entitled to the exemption from the application of any taxes authorized by the laws of the State of Ohio to be levied against it.

Respectfully,

HERBERT S. DUFFY,
Attorney General.