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Knox County wind-farm tax credit ruled unconstitutional

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LINCOLN — A district judge has ruled unconstitutional a tax credit that state lawmakers created in 2010 for a Knox County wind farm.

The Knox County Board successfully challenged a provision of a 2010 law that provided the tax credit for Elkhorn Ridge Wind Farm near Bloomfield, Neb. Lancaster County District Judge Paul Merritt Jr. ruled the law commuted property taxes paid by the wind farm in violation of the state constitution.

“The judge did a really good job of expressing the idea of why it's wrong to commute taxes and why it creates planning problems for governmental subdivisions,” said Omaha attorney David Domina, who represented the plaintiffs.

The judge's ruling otherwise left intact a law hailed as a major step toward the encouragement of private wind power facilities in Nebraska.

Among other things, Legislative Bill 1048 changed how wind farms are taxed to help reduce their upfront costs. The turbines had been subject to personal property tax. The law substituted a new nameplate capacity tax, based on the amount of electrical generation, so farms that produce more power pay higher taxes.

Elkhorn Ridge was the state's only privately developed wind farm when the law took effect. In 2009, it paid nearly \$1.6 million in personal property tax.

Under the new tax system, however, Elkhorn Ridge would pay about \$285,000 annually. The new tax was structured to generate the same tax revenue as the personal property tax, just over a longer time period.

The 2010 law included a provision allowing Elkhorn Ridge to claim future credits under the new system for the taxes it paid in 2009. The result was the company would not have to pay the nameplate capacity tax for years into the future.

Such a credit, however, clearly violated the law because it commuted a tax that was legally levied, Merritt ruled.

“While (the law) does not ‘forgive’ future taxes, in Elkhorn Ridge's case, it eliminates them with a credit,” the judge wrote in his ruling.

The lawsuit named Gov. Dave Heineman, State Treasurer Don Stenberg and State Tax Commissioner Doug Ewald as defendants.

Messages left with the Nebraska Attorney General's Office and the parent company of Elkhorn Ridge were not returned Tuesday.

The judge ordered both sides to pay their own attorneys' fees.

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