

Judgment rendered August 13, 2014.
Application for rehearing may be filed
within the delay allowed by art. 2166,
La. C.C.P.

No. 49,189-CA
No. 49,190-CA
No. 49,191-CA
No. 49,192-CA
(Consolidated Cases)

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

MEMPHIS LIGHT, GAS AND
WATER DIVISION

Plaintiff-Appellee

Versus

JERRY L. PHILLEY, IN HIS CAPACITY
AS TAX COLLECTOR FOR THE PARISH
OF WEST CARROLL; DEANNA K. SMITH,
IN HER CAPACITY AS THE ASSESSOR
FOR THE PARISH OF WEST CARROLL;
AND THE LOUISIANA TAX COMMISSION

Defendant-Appellant

* * * * *

Appealed from the
Fifth Judicial District Court for the
Parish of West Carroll, Louisiana
Trial Court Nos. 28,972; 29,345; 29,359; and 29,699

Honorable Edwin Rudolph McIntyre, Jr., Judge

* * * * *

BRIAN ANDREW EDDINGTON

Counsel for
Appellants

KEAN MILLER LLP
By: Linda S. Akchin
Christopher J. Dicharry

Counsel for
Appellee

* * * * *

Before DREW, PITMAN and GARRETT, JJ.

DREW, J.

The City of Memphis, Tennessee, operates a municipal public utility through its Light, Gas, and Water Division. The natural gas plant is located within the corporate limits of the City of Memphis and Shelby County and provides electric, gas, and water service to residents of the area. In the course of its operations as a municipal public utility, the Memphis Light, Gas, and Water Division (“MLGW”) purchases natural gas, some of which is temporarily stored in West Carroll Parish until needed at peak times during the winter. The parties agree that:

- MLGW is a Tennessee political subdivision;
- the stored natural gas is public property; and
- equivalent volumes of the stored MLGW natural gas were later delivered exclusively to Memphis for sale to MLGW’s customers.

The dispute here is whether the gas is “held for public purposes.” We find that it is, and is thus exempt from Louisiana ad valorem taxes.

FACTUAL BACKGROUND

For the tax years 2009, 2010, 2011, and 2012, West Carroll Parish Assessor DeAnna K. Smith assessed this natural gas inventory for ad valorem tax purposes.

West Carroll Parish Sheriff Jerry Philley issued property tax bills totaling \$406,041.85 on those assessments.

During the tax years at issue, MLGW purchased natural gas from suppliers who delivered the volumes purchased into Trunkline Gas Company, LLC’s interstate natural gas pipeline system at points in Louisiana and Texas. All of the natural gas received by Trunkline into its pipeline system is commingled as multiple buyers and sellers use the

pipeline simultaneously. Once an amount of natural gas is delivered into the pipeline for MLGW's account, energy-equivalent volumes are deliverable to MLGW, pursuant to a computerized scheduling system.

Trunkline also offers storage as a part of its transportation services. MLGW uses a computerized system to nominate volumes for injection, storage, and withdrawal from Trunkline's storage facility in West Carroll Parish.

MLGW paid the taxes under protest and filed suit against the local public officials, seeking a refund because of its tax-exempt status.

LEGAL DISPUTE

MLGW asserts four different grounds for its claim of exemption, the first of which is dispositive of this dispute. We find that MLGW's natural gas, stored in West Carroll Parish, is "public property held for public purposes" and therefore exempt under the provisions of Art. VII, §21 (A) of the Louisiana Constitution.¹

Both parties filed cross-motions for summary judgment that were brought for hearing on June 10, 2013. On July 25, 2013, the trial court

¹MLGW's other claims may well have merit, but the resolution of the other issues is unnecessary for the disposition of this dispute.

Other claims asserted by MLGW:

- The natural gas belonging to MLGW and held in storage in West Carroll Parish is "personal property in private storage moving through Louisiana in interstate commerce" and therefore exempt under Art. VII §21(D)(3) of the Louisiana Constitution;
- The assessment of ad valorem tax on the natural gas belonging to MLGW and held in storage in West Carroll Parish is a violation of the Commerce Clause of the United States Constitution as Louisiana residents receiving natural gas from a similarly situated Louisiana political subdivision would not bear the burden of paying a property tax on the natural gas; and
- The assessment of ad valorem tax on the natural gas belonging to MLGW and held in storage in West Carroll Parish violates the Due Process and Equal Protection Clauses of the United States and Louisiana Constitutions.

issued written reasons for judgment holding that the stored natural gas was “public property used for public purposes” and was therefore exempt from property taxation under Art. VII, §21 of the Louisiana Constitution. We have attached and adopt *in toto* the trial court’s excellent reasons for judgment.

INITIAL ANALYSIS

Over 60 years ago, the Louisiana Supreme Court ruled on a facially similar issue in *Warren County, Miss. v. Hester*, 219 La. 763, 54 So. 2d 12 (1951). That case held in *dicta* that for taxation purposes, “public property” refers only to property of Louisiana and its political subdivisions.

The trial court here referenced *Hester, supra*, but declined to follow the ruling, stating, “this court does not feel constrained to follow the reasoning and ruling of *Hester*,” noting that “the limiting terms ‘Louisiana’ or ‘Louisiana political subdivisions’ do not appear in the constitutional provision providing for the exemption of ‘public property used for public purposes’.”

The trial court held that:

- the general rule for interpreting constitutional provisions is to give words their generally understood meaning;
- when a constitutional provision is plain and unambiguous and its application does not lead to absurd consequences, its language must be given effect;
- the natural gas owned by MLGW is public property used for public purposes and as such, is exempt from taxation under Art. VII, §21(A);
- the exemption of public property used for public purposes is not limited to the public property of the State of Louisiana or its political subdivisions;

- MLGW, being exempt from ad valorem taxation in Louisiana, was due a refund of all taxes paid under protest; and
- since MLGW was granted full relief on this one issue, the court pretermitted consideration of the other claims of MLGW.

Sheriff Philley and Assessor Smith appealed. We affirm in all respects.

DISCUSSION

1. Does the term “public property” apply only to Louisiana owned property?

In the ruling under review, the trial court concluded that the natural gas that is the subject of the underlying suits was exempt from property taxation under the provisions of Art. VII, §21(A) of the Louisiana Constitution, which provides:

In addition to the homestead exemption provided for in Section 20 of this Article, the following property and no other shall be exempt from ad valorem taxation:

(A) Public lands; other public property used for public purposes.

Hester, supra, allowed property taxes on a Warren County toll bridge that crossed the Mississippi River from Vicksburg to Louisiana. The *Hester* court made an extraneous comment in its opinion that the public property exemption did not extend to the property of other states and their political subdivisions.² The trial court in the instant case disagreed, as do we.

²“We think it plain that the exemption of all public property has reference only to property of Louisiana and its political subdivisions. There is no reason whatever to believe that the people of Louisiana, in adopting their constitution, intended to exempt from taxation the local property of foreign countries, other states or their political subdivisions.”

We recognize the strict analysis required in exemption cases.³ We also know that our review is *de novo*. We totally agree, however, with the trial court's application of the first rule of constitutional interpretation, that when a constitutional provision is plain and unambiguous and its application does not lead to absurd consequences, its language must be given effect.⁴ The constitutional language here could not be clearer.

2. *Is the stored natural gas being "used for public purposes"?*

Keith Knowles is the supervisor of energy resources for the City of Memphis. When he was asked in his deposition how the gas was used, he answered, "This gas is used to meet the demands of our customers, either by, to heat their homes for residential customers, or to heat their hot water heaters. For commercial and industrial customers it is used to also heat their buildings, their [air] conditioned space. It can also be used in the process of a business, such as a cleaners is using natural gas in the process of their business."

In an affidavit, Mr. Knowles stated that MLGW:

- has neither physical control of nor legal authority over the pipeline;
- had the gas stored in order to meet the public need, not any profit motive;
- does not make a profit on its sales of natural gas to its customers;
- does not store natural gas for speculative purposes;

³In *Sherwood Forest Country Club v. Litchfield*, 2008-0194 (La. 12/19/2008), 998 So. 2d 56, our Supreme Court held that tax exemptions are strictly construed against the taxpayer, whose stringent burden is to overcome the judicial maxim that "to doubt is to deny the exemption."

⁴*Indest-Guidry, Ltd. v. Key Office Equip., Inc.*, 2008-599 (La. App. 3d Cir. 11/5/08), 997 So. 2d 796, *writ denied*, 2008-2851 (La. 2/6/09), 999 So. 2d 782.

- does not “buy low” and “sell high”; and
- stores gas to ensure that it is able to meet the fundamental needs of its customers when winter comes to Memphis.

By affidavit, Rodney Cleek stated that he was an employee of MLGW, serving as the assistant manager of the Budget, Plant and Rates Department. He advised that the property tax paid by MLGW for 2009–2012 was passed through and incurred by MLGW’s customers, located in Shelby County, Tennessee.

By affidavit, Cheryl W. Patterson stated that she was employed by MLGW as vice president and general counsel. She advised that MLGW:

- does not maintain an office or other physical facilities in Louisiana;
- does not own or operate the subject storage facility; and
- does not maintain any employees or representatives in Louisiana.

Ms. Patterson further stated that “the natural gas at issue in the petitions is municipally-owned property used for the public purpose of supplying the individual and corporate residents and citizens of the City of Memphis and Shelby County, Tennessee with natural gas services.”

Appellants argue that:

- the passive act of storing gas does not rise to the level of “use,” as required by the exemption; and
- the natural gas at issue was not used for “public purposes” after leaving storage in West Carroll Parish.

On the contrary, supplying energy for heating in the dead of winter seems to be the most basic public service owed by a city to its citizens.

Accordingly, we find that the natural gas is used for public purposes.⁵

3. Does La. Const. Art. VII, §21(A) exempt the stored gas from taxation?

We agree with the trial court that this property is exempt from ad valorem taxes, for these five reasons.

- (1) *Hester, supra*, is factually distinguishable.⁶
- (2) The sheriff and assessor rely upon *dicta* in *Hester*.⁷
- (3) One 60-year-old judicial decision is not *jurisprudence constante*.⁸
- (4) The language of La. Const. Art. VII, §21(A) is clear.⁹
- (5) Supplying natural gas to the public is a use for a public purpose.¹⁰

⁵MLGW points out that the allowable scope of review would enable this court to affirm the trial court’s judgment on the same or other legal ground. We agree, but we find we can base this opinion upon the trial court’s precise reasoning in finding that MLGW’s stored natural gas is exempt from ad valorem taxation, pursuant to La. Const. Art. VII, §21(A). The trial court was not required to rule on any of the other alternative arguments of MLGW, as its ruling was predicated upon the most obvious issue, *i.e.*, that this dispute involves “public property used for public purposes.” We also do not reach the alternative arguments.

⁶In *Hester*, the toll bridge at issue was built by private capital and was operated as a private business venture until acquired by Warren County. The Louisiana Supreme Court focused its ruling on the fact that the bridge had never been properly dedicated for public use.

⁷The *Hester* court indeed commented that the exemption applied only to property owned by Louisiana and its political subdivisions. This language, however, was in no way necessary to the disposition of the case. Accordingly, Sheriff Philley and Assessor Smith are relying on mere *dicta*, which are not binding. The trial court properly chose not to apply that judicial surplusage.

⁸Only where a long line of cases within the state has followed the same reasoning may that reasoning be recognized as authority under the civil law principle of *jurisprudence constante*. There is no such line of cases following the reasoning in *Hester, supra*.

⁹La. Const. Art. VII, §21(A) expressly exempts public property used for public purposes from ad valorem taxation. Neither the term “Louisiana” nor “Louisiana political subdivisions” appears in this constitutional provision. The trial court was indeed “bound under our Constitution and the Civil Code to uphold and abide by the law” in its ruling.

¹⁰There is ample support for this proposition in Louisiana statutory law:
La. R.S. 30:22. Underground storage of natural gas, liquid hydrocarbons, and carbon dioxide
A. The underground storage of natural gas, liquid hydrocarbons, and carbon dioxide which promotes conservation of natural gas or liquid hydrocarbons, or

The position of the Louisiana public officials here is untenable. If the sheriff and assessor are correct, there will effectively be a Louisiana tariff collected from Tennessee consumers for natural gas stored in Louisiana, awaiting transit to the Memphis gates for use by its citizens.

The trial court was correct that natural gas stored in Louisiana for the account of MLGW is exempt from taxation. We find no error in the pure reasoning of the trial court on the asserted issues before us in this matter.¹¹ MLGW is entitled to summary judgment as a matter of law that the natural gas stored for MLGW's account is exempt from property tax pursuant to La. Const. Art. VII §21 (A).

DECREE

The judgment of the trial court in favor of Memphis Light, Gas, and Water Division, appellee, and against appellants, Hon. Jerry L. Philley, in his public capacity as Sheriff and Tax Collector of West Carroll Parish, and Hon. Deanna K. Smith, in her public capacity as Assessor of West Carroll Parish, is affirmed.

which permits the building of large quantities of natural gas or liquid hydrocarbons in reserve for orderly withdrawal in periods of peak demand, making natural gas or liquid hydrocarbons more readily available to the consumer, or which provides more uniform withdrawal from various gas or oil fields, each is in the public interest and for a public purpose.

¹¹We resolve all of the following issues in the negative:

- Did the trial court err in finding that natural gas owned by the City of Memphis and held in storage in West Carroll Parish was exempt from ad valorem property taxation?
- Did the trial court err in failing to follow the Louisiana Supreme Court's ruling in *Warren County, Miss. v. Hester, supra*, and declaring that natural gas owned by the City of Memphis was "public property" within the meaning of Art. VII, §21(A) of the Louisiana Constitution?
- Did the trial court err in finding that the natural gas held in storage in West Carroll Parish was being "used for a public purpose"?
- Did the trial court err in ordering a full refund of taxes paid under protest?

All court costs have been paid. Further costs are not assessed. La.

R.S. 13:4521.

AFFIRMED.

EXHIBIT A

STATE OF LOUISIANA, PARISH OF WEST CARROLL
FIFTH JUDICIAL DISTRICT COURT

MEMPHIS LIGHT, GAS AND
WATER DIVISION

FILED: July 30, 2013

VERSUS NO. 28,972, DIV "C"

JERRY PHILLEY, IN HIS CAPACITY
AS THE TAX COLLECTOR FOR THE
PARISH OF WEST CARROLL,
ET AL

BY: Kelli Jones
Dy. CLERK OF COURT

Consolidated with: 29,345 and 29,359

MEMPHIS LIGHT, GAS AND
WATER DIVISION

VERSUS NO. 29,699, DIV. "C"

JERRY PHILLIEY, IN HIS CAPACITY
AS THE TAX COLLECTOR FOR THE
PARISH OF WEST CARROLL, ET AL

REASONS FOR JUDGMENT

FACTS AND PROCEDURAL HISTORY

Memphis Light, Gas and Water Division ("MLGW") filed suit in the above captioned and consolidated matters for the refund of property taxes paid under protest on interstate natural gas temporarily held in storage in West Carroll Parish.

The suit asserts, among others, the following legal grounds entitling MLGW to a refund of the property taxes paid under protest:

- (1) La. Const. Art. VII, §21(A) exempts from taxation public property held for a public purpose; or
- (2) Alternatively, the provision of a tax benefit to Louisiana public entities (such as the exemption for public property held for a public purpose), but not to out-of-state public entities, violates the

Commerce Clause of the United States Constitution, U. S. Const. Art. I, §8, cl. 3 (“Commerce Clause”), because it discriminates against interstate commerce; and

(3) La. Const. Art. VII, §21(D)(3) exempts from taxation “goods, commodities, and personal property in public or private storage while in transit through this state which are moving in interstate commerce through or over the territory of the state or which are in public or private storage within Louisiana, having been shipped from outside Louisiana for storage in transit to a final destination outside Louisiana, whether such destination was specified when transportation began or afterward,” or

(4) Alternatively, the imposition of tax on natural gas temporarily stored in Louisiana for the account of MLGW while in interstate transit violates the Commerce Clause.

The defendants in these consolidated suits, Jerry Philley, Sheriff and Ex-Officio Tax Collector for West Carroll Parish and DeAnna K. Smith, Assessor for West Carroll Parish (hereafter “the taxing authority”) responded by moving for the entry of summary judgment as follows:

- (1) dismissing MLGW’S claims for declaratory judgment that the natural gas stored in West Carroll Parish is exempt from ad valorem taxation under Art. VII, §21(A) of the Louisiana Constitution;
- (2) dismissing MLGW’S claims for declaratory judgment that the natural gas stored in West Carroll Parish is exempt from ad valorem taxation under Art. VII, §21(D)(3) of the Louisiana Constitution;
- (3) dismissing MLGW’S claims for declaratory judgment that the levy of property taxes on Memphis Light’s natural gas stored in West Carroll Parish is prohibited by the Due Process, Commerce and Equal Protection Clauses of the United States Constitution and the Due Process and Equal Protection Clauses of the Louisiana Constitution; and

(4) dismissing MLGW’S claims for refund of taxes paid under protest.

Thereafter, MLGW filed a cross motion for summary judgment seeking a judgment granting it a full refund of all taxes paid under protest plus statutory interest.

This court heard the motion for summary judgment filed by the taxing authority and the cross motion for summary judgment filed by MLGW on June 10, 2013. Following the hearing and at the request of the parties, this court ordered that notice of these consolidated suits be served upon the Attorney General of the State of Louisiana. The Attorney General had thirty days from the date of notice to file appropriate pleadings in this cause. Thereafter, this court took the matter under advisement.

DISCUSSION

La. Const. Art. VII §21(A) (1974)

The pivotal question is whether the natural gas temporarily stored in West Carroll Parish by MLGW is subject to taxation by the taxing authority.

The Constitution of the State of Louisiana of 1974 provides exemptions from ad valorem taxation. La. Const. Art. VII §21(A) states:

In addition to the homestead exemption provided for in Section 20 of this Article, the following property and no other shall be exempt from ad valorem taxation:

(A) Public lands; other public property used for public purposes.

It is undisputed that MLGW is an administrative division of the City of Memphis, Tennessee, which provides electric, gas, and water service to the residents and businesses of the city and surrounding areas. In the course of its operations as a public utility, MLGW purchases natural gas, some of which is stored in West Carroll Parish. MLGW is, therefore, a Tennessee political subdivision. The storage of natural gas for MLGW's customers is a public purpose. It follows, therefore, that the exemption provided for in Article VII, §21(A) should apply to MLGW's temporarily stored natural gas in West Carroll Parish. However, for the tax years 2009, 2010, 2011, and 2012 the taxing

authority assessed this natural gas inventory for ad valorem tax purposes. Consequently, MLGW paid these property taxes under protest in accordance with the provisions of La. R. S. 47:2134.

The taxing authority contends that this exemption is unavailable and inapplicable to the natural gas stored by MLGW because plaintiff is not a Louisiana political subdivision citing *Warren County, Mississippi v. Hester*, 219 La. 763, 54 So. 2d 12 (1951), *cert. denied*, 342 U. S. 877, 72 S. Ct. 167, 96 L. Ed. 659 (1951), in support of its argument. In *Hester*, the Louisiana Supreme Court addressed this issue, which arose as a challenge to the levy of property taxes on a toll bridge spanning the Mississippi River owned by Warren County, Mississippi. Warren County filed suit claiming that the toll bridge was “public property” and, therefore, exempt under the provisions of Art. X §4 of the 1921 Constitution, predecessor to Art. VII, §21(A) of the current Constitution. The Louisiana Supreme Court rejected this claim, holding that the exemption of “public property” did not extend to the property of other states and their political subdivisions:

We think it plain that the exemption of all public property has reference only to property of Louisiana and its political subdivisions. There is no reason whatever to believe that the people of Louisiana, in adopting their constitution, intended to exempt from taxation the local property of foreign countries, other states or their political subdivisions. *Id.* at 15.

Therefore, because MLGW is not a Louisiana political subdivision, the taxing authority contends that the exemption from ad valorem taxation provided for by Art. VII, §21(A) does not apply to the natural gas stored in West Carroll Parish.

MLGW counters that nothing in the clear and unambiguous language of the constitutional provision limits the exemption to public property owned by the

State of Louisiana or a Louisiana political subdivision. Because it is undisputed that the natural gas at issue is public property used for a public purpose, MLGW argues that the exemption provided in Art. VII, §21(A) applies.

On multiple occasions in recent years, the Louisiana Supreme Court has reiterated and re-affirmed its adherence to the first rule of constitutional interpretation that the starting point is always the language of the constitution itself, and when a constitutional provision is plain and unambiguous and its application does not lead to absurd consequences, its language must be given effect. *In re Office of Chief Justice, Louisiana Supreme Court*, 2012-1342, p. 9 (La. 10/16/12), 101 So. 3d 9, 15; *Rainey v. Entergy Gulf States, Inc.*, 2009-572, p. 12 (La. 3/16/10), 35 So. 3d 215, 224; *Ocean Energy, Inc. v. Plaquemines Parish Government*, 2004-066, pp. 6-7 (La. 7/6/04), 880 So. 2d 1, 7; and *East Baton Rouge Parish School Bd. v. Foster*, 2002-2799, p.16 (La. 6/6/03), 851 So. 2d 985, 996.

Our Supreme Court has made it abundantly clear that unequivocal constitutional provisions are *not* subject to judicial construction and should be applied by giving words their generally understood meaning. *Ocean Energy, Inc. at 7; Rainey at 224; Cajun Elec. Power Co-op v. Louisiana Public Service Comm'n*, 544 So. 2d 362, 363 (La. 1989). Only where the constitutional language is subject to more than one reasonable interpretation is it necessary (or appropriate) to determine the intent of the provision. *In re Office of Chief Justice at 15*. “When a constitutional provision is clear and unambiguous, and its application does not lead to absurd consequences, it must be applied as written *without further interpretation in search of its intent.*” *Perschall v. State*, 1996-0322, (La. 7/1/97), 697 So. 2d 240, 255 (emphasis added); *Louisiana Associated*

General Contractors, Inc. v. State, 1995-2105, pp. 15-16 (La. 3/8/96), 669 So. 2d 1185, 1196; accord *Malone v. Shyne*, 41,781, p. 5 (La. App. 2 Cir. 8/29/06), 936 So. 2d 1279, 1283.

In addition to the foregoing rule of constitutional interpretation, our jurisprudence embraces the uniform and established rule of law that exemptions from taxation are exceptional privileges and as such must be expressly and clearly conferred in plain terms. See e.g. *Meyers v. Flournoy*, 209 La. 812, 820, 25 So. 2d 601, 603 (La. 1946) (“It is the uniform and settled jurisprudence of this and other states that an exemption from taxation being an exceptional privilege, it must be clearly, unequivocally and affirmatively established.”) (citing *Hibernia Nat. Bank v. Louisiana Tax Commission*, 195 La. 43, 57, 196 So. 15, 19 (1940). See also *Holley v. Plum Creek Timber Co., Inc.*, 38,716 (La. App. 2 Cir. 6/23/04), 877 So. 2d 284, 290.

In Art. VII, §21(A), the exemption is stated in general terms as one for “public property used for public purposes.” The limiting terms “Louisiana” or “Louisiana political subdivision” do not appear in the Constitutional provision. Therefore, the plain language of Art. VII, §21(A) seems to confer this tax exemption on the temporarily stored natural gas in question.

Moreover, the application of these clear and unambiguous words to public property used for public purposes and owned by a Tennessee political subdivision does not lead to an absurd consequence. The Louisiana Supreme Court explained when a literal application of the wording of a statute will be considered to lead to “absurd consequences” in *McLane Southern, Inc. v. Bridges*, 2011-1141, pp. 8-9 (La. 1/24/12), 84 So. 3d 479, 484-485, stating that in order for a court to find a literal application results in “absurd consequences,” “there must be a

determination by the court that the specific application at issue arising from the literal wording would, if judicially enforced, produce a factual result so inappropriate as to be deemed outside the ‘purpose of the law.’” This court finds nothing is absurd about the equal, non-discriminatory tax treatment of public entities, foreign or domestic nor is such an interpretation outside the purpose of the provision - to provide a property tax exemption for public property used for public purposes.

This notion was embraced in 1914 by the Louisiana Supreme Court in its interpretation of Const. art. 230 which provided “All public property is exempt from taxation.” On first hearing in the case of *City of New Orleans v. Salmen Brick and Lumber Co.*, 135 La. 828, 66 So. 237 (1914), the Supreme Court held that the public property of the City of Baltimore, Maryland, located in New Orleans, Louisiana, should be entitled to the same tax protection as that afforded the public property of this state. In *Salmen*, the Supreme Court stated:

The state of Louisiana declares ‘all public property’ shall be exempt from taxation. The exemption is wholesome and sound; the language used, ‘all public property,’ is written large, is strong, and is all-embracing; it is clear and explicit; and it cannot be limited in its scope by interpretation so as to confine the exemption to only that public property within its domain which belongs to itself. ‘All public property’ located in the state of Louisiana is exempt. The language is too clear not to be strictly followed. *Id. at 846.*

Thirty-seven years after the *Salmon* decision, the Louisiana Supreme Court in *Hester* stated that the tax exemption afforded to all public property in Section 4 of Article 10 of the Constitution of Louisiana of 1921 had reference only to property of Louisiana and its political subdivisions. In rendering this interpretation, the court seemed to ignore the plain language of the constitutional provision stating “all public property” was exempt from taxation. Instead, the

Court made a determination regarding the intent of the people of Louisiana in adopting the 1921 Constitution.¹ It is also noteworthy that in *Hester*, the Louisiana Supreme Court found that the toll bridge in question was not dedicated to public use and was, therefore, not “public property” within the constitutional provision in question. In the case *sub judice*, it is clear that the natural gas owned by MLGW is public property used for public purposes as contemplated by Art. VII, §21(A). For these reasons, this court does not feel constrained to follow the reasoning and ruling of *Hester*.

The plain language of Art. VII, §21(A) exempts “public property used for public purposes.” This exemption is not limited to the public property of the State of Louisiana or its political subdivisions. Had the redactors of the current Constitution intended this exemption to apply only to the public property of this state, they would have plainly so stated. Neither previous judicial interpretations nor decisions considered to be *jurisprudence constante* give this court license to deviate from sound legal methodology. This court is “bound under our Constitution and the Civil Code to uphold and abide by the law.” *Warren v. Louisiana Medical Mutual Insurance Co.*, 2007-0492, p. 14 (La. 12/2/08), 21 So. 3d 186, 217, (on rehearing, Knoll, J., concurring) (Citing Dennis, *Interpretation and Application of the Civil Code and the Evaluation of Judicial Precedent*, 54 La. L. Rev. 1, 10 (1993)). Therefore, this court finds that the plain language of Art. VII, §21(A) exempts from taxation the natural gas belonging to MLGW and held in temporary storage in West Carroll Parish.

¹“There is no reason whatsoever to believe that the people of Louisiana, in adopting their constitution intended to exempt from taxation the local property of foreign countries, other states or their political subdivisions.” 54 So. 2d at 15.

CONCLUSION

This court grants the cross motion for summary judgment filed by MLGW because the evidence submitted by the parties, scrutinized equally, demonstrates that no genuine issue of material fact is present and that MLGW is entitled to judgment as a matter of law. La. C.C.P. art. 966(C)(1). The motion for summary judgment filed by the taxing authority is denied.

Since this judgment provides MLGW with the relief requested, this court will not examine the other issues presented in these proceedings. Therefore, judgment is granted in favor of MLGW as prayed for in its petitions filed in these consolidated proceedings.

THUS DONE AND SIGNED in Chambers in Winnsboro, Louisiana, this

25th day of July, 2013.

Eudolph McDynys Jr.
DISTRICT JUDGE

~~NOTES: A TRUE COPY OF ORIGINAL~~

A. Newland

A. CLERK OF COURT 5th JUDICIAL DISTRICT
WEST CARROLL PARISH
OAK GROVE, LOUISIANA