

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

October 27, 2014

Opinion No. 14-94

Work Restrictions on Sexual Offenders

QUESTION

Are institutions in the State University and Community College System of Tennessee that are within 1,000 feet of any school, licensed day-care center, or public athletic field required, pursuant to Tenn. Code Ann. § 40-39-211(a)(2), to terminate the employment of a registered sexual offender who was hired before July 1, 2014?

OPINION

No. Tenn. Code Ann. § 40-39-211(a)(2) does not regulate the conduct of employers and does not prohibit a sexual offender hired before July 1, 2014, from maintaining employment within a prohibited zone.

ANALYSIS

In 2014 Tenn. Pub. Acts, ch. 992, § 1, the General Assembly amended the provisions of Tenn. Code Ann. § 40-39-211 relative to the restrictions on sexual offenders. Subdivision (a)(2) now provides:

While mandated to comply with the requirements of this chapter, no sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, whose victim was an adult, shall knowingly establish a primary or secondary residence or any other living accommodation or knowingly accept employment within one thousand feet (1,000') of the property line of any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public.

Under prior law, this prohibition extended only to sexual offenders whose victims were minors. *See* Tenn. Code Ann. § 40-39-211(a) (2010). The change took effect on July 1, 2014. 2014 Tenn. Pub. Acts, ch. 992, § 2.

By its plain terms, Tenn. Code Ann. § 40-39-211(a)(2) regulates the conduct of sexual offenders, not employers. This reading is supported by subdivision (h)(2) of

the statute, which forbids property owners from knowingly permitting more than three sexual offenders to take up residence in a habitation. This provision suggests that when the General Assembly desires to impose burdens on third parties with respect to sexual-offender registration and monitoring, it does so explicitly. Section 40-39-211 does not explicitly create duties for employers.

A person can be held criminally liable for the conduct of another under certain circumstances,¹ but a sexual offender hired before July 1, 2014, would not violate § 40-39-211(a)(2) by maintaining employment within a prohibited zone. This conclusion flows from construction of the phrase “accept employment” in subdivision (a)(2). Legislative intent is derived from the plain and ordinary meaning of the statutory language. *Dixon v. Holland*, 70 S.W.3d 33, 37 (Tenn. 2002). In this context, the plain and ordinary meaning of “accept” is “to take upon oneself the duties or responsibilities of.” *The American Heritage Dictionary* 71 (2d college ed. 1985). Offenders who were hired before July 1, 2014, undertook the duties of their employment before § 40-39-211(a)(2) existed to proscribe that conduct. The statute does not prohibit maintaining employment already accepted; that is to say, a person is not “accepting employment” when the person is already employed.

This interpretation is consistent with Tenn. Att’y Gen. Op. 04-053 (Mar. 25, 2004), in which this Office concluded that the language “establish a residence” in § 40-39-211(a) does not prohibit a sexual offender from returning to a residence that he or she occupied before incarceration, but “only prohibits such an offender from taking up residence at a new location within a prohibited zone.” Op. 04-053, at 2. “[A] person cannot establish a residence if he or she has previously lived at that location.” *Id.* n.2. Likewise, a person cannot “accept employment” if he or she has already been carrying out the duties of the job for some time. To the extent that the terminology is susceptible to more than one interpretation, moreover, the rule of lenity would require any ambiguity to be resolved in favor of the defendant. *See State v. Smith*, 436 S.W.3d 751, 768 (Tenn. 2014).

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¹ See Tenn. Code Ann. § 39-11-402 (criminal responsibility); *id.* § 39-11-403 (facilitation of a felony).

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