S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 00-115

Applicability of the Uniform Trade Secrets Act to the State of Tennessee and its Employees

QUESTIONS

1. Does the Uniform Trade Secrets Act apply to the state or state employees or would the doctrine of sovereign immunity require that it be construed otherwise, i.e., does it authorize an action for damages or injunctive relief against either the state or state employees for misappropriation of a trade secret?

If the Uniform Trade Secrets Act does apply to the state or state employees, then please answer the following questions:

2. If information is given to the state with an express statement being made that the information is trade secret or "proprietary" under Tenn. Code Ann. § 69-3-113 or § 68-212-109 does that give "rise to a duty to maintain its secrecy or limit its use"?

3. If information is given to the state without any express statement being made that the information is a trade secret and the information is later made available as a public record, would the state or a state employee be liable for its disclosure, e.g., would that be in violations of "a duty to maintain its secrecy or limit its use"?

4. How does the knowledge element in subsection (2)(2)(B)(ii) apply to the situation in Question No. 3?

5. In the situation described in Question No. 3, does the state or a state employee have potential liability because if having a "reason to know that it [the trade secret] was a trade secret and that knowledge of it had been acquired by accident or mistake"?

OPINION

No. The Uniform Trade Secrets Act does not authorize an action for civil remedies against the State or state employees. The doctrine of sovereign immunity dictates that a lawsuit brought under the Uniform Trade Secrets Act against the State or a state employee would be barred. The remaining questions are pretermitted by our response to the first question.

ANALYSIS

The Uniform Trade Secrets Act, 2000 Tenn. Pub. Acts, Ch. 647 provides an action for civil

remedies for the misappropriation of trade secrets. The Act allows for injunctive relief, monetary damages, and attorney's fees.

Sovereign immunity is the principle that a state cannot be sued in its own courts without its consent. *State ex rel. Allen v. Cook*, 171 Tenn. 605, 106 S.W.2d 858 (1937). Although sovereign immunity protects the state from suit, it does not operate as a bar to all suits that would be brought against the state. Art. I, Sec. 17 of the Tennessee State Constitution states as follows: "Suits may be brought against the State in such a manner and in such courts as the Legislature may by law direct." The courts have construed this provision very strictly. In *State ex rel. Allen*, the Tennessee Supreme Court opined that Art. I, Sec. 17, "being in derogation of the state's inherent exemption from suit, must itself be strictly construed; hence legislation authorizing suits against the state must strictly pursue the constitutional requirements, and be so plain, clear, and unmistakable in its provisions as to the manner and form in which such suits may be brought as to leave nothing to surmise or conjecture." *State ex rel. Allen*, 106 S.W.2d at 860-1. The Court further required that a statute authorizing suit against the state must provide the manner and designate the court or courts in which the action may be brought. *Id*. at 860. No suit against the State may be sustained absent express authorization from the Legislature. *Coffman v. City of Pulaski*, 220 Tenn. 642, 422 S.W.2d 429 (1967). In *Brown v. State*, 783 S.W.2d 567, 571 (Tenn. Ct. App. 1989), the court opined that a statute permitting suit against the State must be strictly construed, and jurisdiction cannot be enlarged by implication. *Citing Stokes v. University of Tennessee*, 737 S.W.2d 545 (Tenn. Ct. App. 1987), *cert. denied* 485 U.S. 935, 108 S. Ct. 1110, 99 L. Ed. 2d 271 (1988), *Sweeney v. State Dept. of Transportation*, 744 S.W.2d 905 (Tenn.App. 1987). Sovereign immunity applies not only to the State, but also to state officials acting in their official capacity. *Cox v. State*, 217 Tenn. 644, 648, 399 S.W.2d 776 (1965).

The doctrine of sovereign immunity is codified at Tenn. Code Ann. § 20-13-102(a):

> Actions against state prohibited.
> (a) No court in the state shall have any power, jurisdiction, or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds, or property, and all such suits shall be dismissed as to the state or such officers, on motion, plea, or demurrer of the law officer of the state, or counsel employed for the state.

Additionally, the court in *Greenhill v. Carpenter*, 718 S.W.2d 268, 272 (Tenn. Ct. App. 1986) found that Tenn. Code Ann. §20-13-102(a) bars not only suits with a view to reach state funds, but also suits with a view to reach the state itself.

The Uniform Trade Secrets Act establishes a cause of action against a "person" violating its provisions. The Act defines *person* as "a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, and any other legal or commercial entity." 2000 Tenn. Pub. Acts, Ch. 647 §2(3). Neither the "State" nor a "state employee" is expressly mentioned in this definition. Although the definition does refer to the

"government" and a "governmental subdivision or agency," a court would have to resort to "surmise or conjecture" to conclude that these terms include the State or its employees. Under the strict construction mandated by *State ex rel. Allen*, it is the opinion of this Office that the terms "government" and "governmental subdivision or agency" are insufficient to waive the sovereign immunity of the State. *State ex rel. Allen*, 106 S.W.2d at 860-1. Additionally, the Uniform Trade Secrets Act would fail as a purported waiver of sovereign immunity because the act does not specify which court the action may be sought, which is a requirement under the Tennessee State Constitution. *Id*. at 860.

In light of the doctrine of sovereign immunity and the above mentioned cases, it is the opinion of this Office that the Uniform Trade Secrets Act does not authorize an action for civil remedies against the State or state employees for misappropriation of trade secrets.

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