

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

October 26, 2000

Opinion No. 00-167

Identification for Pawn Transactions on Separate Form

QUESTION

Cities, counties and taxing districts are authorized to adopt Tenn. Code Ann. §§ 45-6-201, *et seq.*, the Pawnbrokers Act of 1988, by ordinance, and to adopt such further rules as the legislative body may deem right and proper. But, under Tenn. Code Ann. § 45-6-219(a)(5), no county, city or taxing district has the authority to require reports or pawn tickets providing information or descriptions different from that required in Tenn. Code Ann. § 45-6-209. Is a city authorized, by ordinance, to require the pledgor in a pawn transaction to place his or her thumbprint on a form separate from the pawn ticket to be maintained by the pawnbroker and made available to law enforcement authorities even though this identification is not listed in Tenn. Code Ann. § 45-6-209(b)(6)?

OPINION

We think a court would conclude that Tenn. Code Ann. § 45-6-219(a)(5) prohibits a city from requiring a pawnbroker to request and maintain identification information in addition to that required under Tenn. Code Ann. § 45-6-209, even if the requirement does not include regular reporting. For this reason, we think a court would conclude that the proposed requirement is prohibited under Tenn. Code Ann. § 45-6-219(a)(5).

ANALYSIS

This request is based on an opinion this Office issued earlier this year concerning the authority of cities to adopt ordinances regulating pawn transactions. Op. Tenn. Atty. Gen. 00-071 (April 11, 2000). That opinion concluded that, under the Pawnbrokers Act of 1988, Tenn. Code Ann. §§ 45-6-201, *et seq.*, a city may not adopt an ordinance requiring the pledgor in a pawn transaction to place his or her thumbprint on the pawnbroker's copy of the pawn transaction. The request indicates a proposed city ordinance would require a pledgor in a pawn transaction to place a thumbprint on a separate form in addition to the pawn ticket. The separate form would have the same identification number as the pawnbroker transaction record and the pawn ticket. The pawnbroker would be required to maintain the thumbprint information, but not to transmit it to the director of the police services as required with regard to other information under the ordinance. Instead, the pawnbroker would be required to make the information available for inspection

and reproduction by the director of police services or other law enforcement official in the event the official deems it necessary in the investigation of a crime.

The Pawnbrokers Act of 1988, as amended, requires a license from the county clerk to conduct pawn transactions as defined in the statute. Under Tenn. Code Ann. § 45-6-209, a licensed pawnbroker is required to maintain records regarding pawn transactions. Subsection (b)(6) of this statute provides:

The pawnbroker shall, at the time of making the pawn transaction and/or buy-sell transaction, enter upon the pawnshop copy of the records as well as on the pawn ticket, and/or buy-sell ticket, the following information, which shall be typed or written in ink and in the English language:

* * * *

(6) The name, race, sex, height, weight, date of birth, residence address and numbers from the items used as identification. Acceptable items of identification are one (1) of the following documents:

- (A) A state-issued driver license;
- (B) A state-issued identification card;
- (C) A passport;
- (D) A valid military identification;
- (E) A nonresident alien border crossing card;
- (F) A resident alien border crossing card; or
- (G) A United States immigration and naturalization service identification.

Tenn. Code Ann. § 45-6-209(b)(6). Under Tenn. Code Ann. § 45-6-209(d) and (e):

(d) These records [including the pawn ticket, other pawn transaction information and the identification information in (b)(6)] shall be delivered to the appropriate law enforcement agency, by mail or in person, within forty-eight (48) hours following the day of such transactions. Delivery by mail shall be deemed made when deposited in the United States mail, postage prepaid. Further, *these records shall be made available for inspection each business day, except Sunday, by the sheriff of the county and the chief of police of the municipality in which the pawnshop is located.*

(e) These records shall be a correct copy of the entries made of the pawn transactions and/or buy-sell transactions and shall be carefully preserved without alteration and *shall be available during regular business hours for inspection by the appropriate law enforcement officers as herein provided.*

Tenn. Code Ann. § 45-6-209 (d) & (e)(emphasis added). Tenn. Code Ann. § 45-6-219(a)(5) provides in relevant part:

Counties, incorporated municipalities, cities and taxing districts in this state shall have the authority by ordinance to adopt the provisions of this part and shall have the authority to adopt such further rules and regulations as the legislative bodies of such counties, incorporated municipalities, cities and taxing districts may deem right and proper. No county, incorporated municipality, city or taxing district shall have authority to:

* * * *

(5) Require reports or pawn tickets providing *identification, information or descriptions different from that required in § 45-6-209*[.]

(Emphasis added). It could be argued that because the proposed ordinance does not require the pawnbroker to include the thumbprint identification form in a regular report to the director of police, the additional requirement would not be prohibited under Tenn. Code Ann. § 45-6-219(a)(5). But we think a court would conclude that Tenn. Code Ann. § 45-6-219(a)(5) prohibits a city from requiring a pawnbroker to request and maintain identification information in addition to that required under Tenn. Code Ann. §45-6-209, even if the requirement does not include regular reporting. For this reason, we think a court would conclude that the proposed requirement is prohibited under Tenn. Code Ann. § 45-6-219(a)(5).

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Stephen I. Cohen
State Senator
Suite 8, Legislative Plaza
Nashville, TN 37243-0030