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Opinion No. 01-129

Authority to Establish a Credit Card Bank

QUESTIONS

1. Does Tenn. Code Ann. § 45-2-1902 authorize a group of individuals or an entity that does not meet the statutory definition of a domestic or foreign lender or a domestic or foreign holding company to organize, own or control a credit card bank under Tenn. Code Ann. §§ 45-2-1901, *et seq.* (the "Credit Card Bank Act")?

2. Is Tenn. Code Ann. § 45-2-1902 ambiguous on this issue?

3. Does the legislative history for Tenn. Code Ann. §§ 45-2-1901, *et seq.*, provide any assistance in determining whether the legislature intended for entities other than domestic or foreign lenders or holding companies to be able to organize, own or control a credit card bank?

OPINIONS

1. No.

2. The statute, on its face, does not support an interpretation that would allow any entity other than a domestic or foreign lender or a holding company as those terms are defined in the statute to organize, own or control a credit card bank.

3. The legislative history of the Credit Card Bank Act does not support the argument that the General Assembly intended any organization besides a domestic or foreign lender or a holding company as those terms are defined in the statute to organize, own or control a credit card bank.

ANALYSIS

1. Authority to Own, Operate or Control a Credit Card State Bank

This opinion concerns the interpretation of Tenn. Code Ann. §§ 45-2-1901, *et seq.*, the "Credit Card Bank Act." Tenn. Code Ann. § 45-2-1902(a) provides:

> Subject to the provisions of this chapter and to the approval of the commissioner, any domestic lender, foreign lender, or holding company may organize, own, and control a credit card state bank on the terms and conditions provided in this part. Notwithstanding the provisions of § 45-2-607(11), a state bank may own up to one hundred percent (100%) of the shares of a credit card state bank.

A credit card bank may engage only in credit card operations or the making of loans. Tenn. Code Ann. § 45-2-1902(d)(1). A credit card bank may not accept demand deposits or deposits that the depositor may withdraw by check, nor any savings or time deposits of less than one hundred thousand dollars. Tenn. Code Ann. § 45-2-1902(d)(2) and (3).

As used in the Credit Card Bank Act, "domestic lender" means:

> . . . any bank, savings and loan association, savings bank, or credit union organized and supervised under the laws of this state or the United States, which has its principal place of business in this state or any other business organization which is authorized by law to accept deposits and make loans and has its principal place of business in this state[.]

Tenn. Code Ann. § 45-2-1901(4). "Foreign lender" means:

> . . . any bank, savings and loan association, savings bank, credit union, organized or chartered under the laws of the United States, or any state other than this state, or the District of Columbia, which has its principal place of business outside this state, or any other business organization which is authorized by law to accept deposits and make commercial loans and has its principal place of business outside this state[.]

Tenn. Code Ann. § 45-2-1901(5). "Holding company" means "any company that controls a domestic or foreign lender." Tenn. Code Ann. § 45-2-1901(6). "Domestic holding company" means a company that controls a domestic or foreign lender and has its principal place of business in this State. Tenn. Code Ann. § 45-2-1901(3).

The request indicates that two entities located in Tennessee have submitted requests to the Department of Financial Institutions to form a credit card bank under this statute. The request indicates that neither of these companies is a domestic or foreign lender as defined in the Credit Card Bank Act. Further, the request indicates that neither company meets the definition of a holding company as defined in the statute. One company is registered as a deferred presentment services provider, and the other is in the process of obtaining a license as a money transmitter. The question is whether either of these entities may own, operate or control a credit card bank under the Credit Card Bank Act.

The fundamental role of a court in statutory interpretation is to ascertain and to effectuate the legislature's intent. *Jordan v. Baptist Three Rivers Hospital,* 984 S.W.2d 593 (Tenn. 1999). That intent is primarily discerned from the language of the enactment. *Halbert v. Shelby County Election Commission,* 31 S.W.2d 246, 247 (Tenn. 2000). A statute must be construed so as to ascertain and give effect to the intent and purpose of the legislation, considering the statute as a whole and giving words their common and ordinary meaning. *State v. Levandowski,* 955 S.W.2d 603 (Tenn. 1997). When construing a statute, courts cannot give it a forced or subtle construction in an effort to limit or extend the import of the language. *State v. Butler,* 980 S.W.2d 359 (Tenn. 1998).

As cited above, Tenn. Code Ann. § 45-2-1902(a) provides that any "domestic lender, foreign lender, or holding company" may establish a credit card bank under the statute. Materials included with the request suggest that other entities may form a credit card bank because the statute is permissive and does not expressly prohibit other entities besides those enumerated in the statute from exercising the same powers. But we think this issue is controlled by the principle of statutory construction that "expressio unius est exclusio alterius" (the expression of one thing implies the exclusion of another). *See Southern v. Beeler,* 183 Tenn. 272, 293, 195 S.W.2d 857 (1946). Under this rule, "where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are designated [in a statute] there is an inference that all omissions should be understood as exclusions." 2A Sutherland Statutory Construction § 47.23 (4th ed. 1984 revision). This rule has been accepted and applied by Tennessee courts. *Phillips v. Tennessee Technological University*, 984 S.W.2d 217 (Tenn. 1998); *Carver v. Citizen Utilities Company,* 954 S.W.2d 34 (Tenn. 1997). We think that, by providing that three different defined entities — a domestic lender, a foreign lender, or a holding company — may organize, own and control a credit card bank, the General Assembly meant to exclude entities that fall outside these defined terms from exercising the same powers.

Materials included with the request also argue that Tenn. Code Ann. § 45-2-1902(e) supports the contention that other entities besides a domestic lender, a foreign lender, or a holding company as defined in the statute are authorized to establish a credit card bank. That statute provides:

> A credit card state bank, *unless the subsidiary of a domestic lender or domestic holding company*, shall either:
>
> (1) Have, within one (1) year of the date it commences operations, fifty (50) employees located in this state devoted to the credit card activities contemplated hereby; or
>
> (2) Contract with a qualifying organization for the performance of such services.

(Emphasis added). The term "qualifying organization" means:

> . . . a corporation, partnership, or other entity which at all times maintains an office in the state of Tennessee, *at which it employs at least one*

> *hundred (100) persons residing in this state*, and which is directly engaged in providing the following services, either for the qualifying organization or on behalf of other domestic or foreign lenders or credit card state banks:
>
> (A) The distribution of credit cards or other devices designed and effective to access credit card accounts;
>
> (B) The preparation of periodic statements of amounts due under credit card accounts;
>
> (C) The receipt from credit card holders of amounts paid on or with respect to such accounts; and
>
> (D) The maintenance of financial records reflecting the status of such accounts from time to time. "Qualifying organization" also includes any domestic bank or credit card bank *satisfying the employment* and activities requirements set forth in this paragraph.

Tenn. Code Ann. § 45-2-1901(7) (emphasis added). We do not think, however, that Tenn. Code Ann. § 45-2-1902(e), when read within the context of the entire statute, reflects the General Assembly's intent to allow organizations that do not fall within the definition of "domestic lender," "foreign lender," or "holding company" to organize, own and control a credit card state bank. Tenn. Code Ann. § 45-2-1902(e) applies to a credit card state bank that is not the subsidiary of a domestic lender or a domestic holding company. Within the context of the statute, the requirement would apply to credit card state banks that are controlled by a foreign lender or a holding company that does not have its principal place of business in Tennessee. We think a court would conclude that the intent of these provisions is not to broaden the class of organizations that may organize, own and control a credit card state bank, but to ensure that credit card operations controlled by an out-of-state lender or holding company employ a minimum number of people in Tennessee.

2. Ambiguity of the Statute

The next question is whether Tenn. Code Ann. § 45-2-1902 unambiguously limits the authority to organize, own, and operate a credit card state bank to a domestic lender, a foreign lender, or a holding company as defined by the statute. Based on the principles of statutory construction discussed above, we think a court would reach this conclusion without having to resort to legislative history to determine the meaning of the statute.

3. Effect of Legislative History

Finally, the request asks whether the legislative history of the Credit Card Bank Act provides any assistance in determining whether the legislature intended for entities other than domestic or foreign lenders or holding companies to be able to organize, own or control a credit card bank. Once it is determined that the proper interpretation of a statute is left open to dispute, it is appropriate to turn to legislative history of

the statute for guidance. *Chapman v. Sullivan County*, 608 S.W.2d 580 (Tenn. 1980). As discussed above, we think a court would conclude that the statute, on its face, limits the authority to organize, own or control a credit card bank to the entities it specifies. In any case, the legislative history does not clearly reflect that the General Assembly intended to extend authority to organize, own or control a credit card bank to other entities beyond those specified in the statute.

We have reviewed the transcripts of legislative history included with the request. That history includes several statements by legislators that the Credit Card Bank Act was intended to bring about lower interest rates in Tennessee by allowing more competition. But the history nowhere clearly states that the legislation was intended to allow any entity to establish a credit card state bank. Representative Rinks, who sponsored the bill, noted:

> . . . Many of Tennessee's bank holding companies saw their credit operations moved out of Tennessee during consolidation because of the lack of positive environment. Those banks which continue to maintain operations in Tennessee must constantly consider the impact of adverse legislation and consider relocation options. In addition, several large retailers maintain card operations in Tennessee and must be conscious of these factors when deciding to locate facilities in Tennessee or expand existing facilities.

House Commerce Committee April 20, 1993 (remarks of Representative Rinks). This statement suggests, first that bank holding companies — which are explicitly authorized to organize, own, and operate a credit card state bank under the Credit Card Bank Act — should be encouraged to relocate or maintain credit card operations in Tennessee. Second, the statement suggests that, at the time the bill was considered, retailers were already authorized to maintain some form of credit card operation in Tennessee and that the General Assembly wished to encourage them to locate new or expand existing credit card facilities in the State. But it does not specify the authority under which retailers were already providing such services or that the proposed bill was intended to promote competition by authorizing any entity to establish a credit card state bank. As this Office interprets the Credit Card Bank Act, that act broadens competition by authorizing out-of-state lenders and holding companies as well as domestic lenders and holding companies to establish a credit card state bank. Thus, this interpretation is not inconsistent with the purpose of the Credit Card Bank Act expressed in the legislative history. Further, nothing in the legislative history clearly reflects legislative intent to authorize any organization beyond those specified in the act to establish a credit card state bank. For these reasons, we think that legislative history of the Credit Card Bank Act does not support the argument that the General Assembly intended any organization beyond those specified in the act to establish a credit card state bank.

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