S T A T E O F T E N N E S S E E
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Opinion No. 02-063

Duty of General Sessions Court Clerk Regarding Litigation Tax

QUESTIONS

1. Does Tenn. Code Ann. § 67-4-605(c) require general sessions court clerks to report to the Court of the Judiciary all general sessions judges who, pursuant to Tenn. Code Ann. § 40-25-123(b), suspend litigation taxes for indigent criminal defendants?

2. If the answer is "yes," is the Court of the Judiciary authorized to take punitive action against any judge who is so reported by the clerk? If so, what type of action is authorized?

3. How does Tenn. Code Ann. § 67-4-605(b) apply to court clerks if they do not report general sessions judges who suspend litigation taxes for indigent defendants?

OPINIONS

1. & 2. A literal reading of Tenn. Code Ann. § 67-4-605(c) requires a general sessions clerk to immediately report a judge who suspends litigation taxes to the Department of Revenue and the Department, in turn, to make an immediate report to the Court of the Judiciary. The statute contains no exception for litigation taxes suspended for an indigent criminal defendant by a general sessions judge pursuant to Tenn. Code Ann. § 40-25-123(b). A literal reading, however, leads to an absurd result because § 67-4-605(c) is clearly intended to address unauthorized waivers of the litigation tax by judges, and a general sessions judge who suspended litigation taxes as expressly authorized by Tenn. Code Ann. § 67-4-605(c) would not be subject to sanction by the Court of the Judiciary. Thus, in our opinion, the courts would conclude that a general sessions court clerk need not make an immediate report to the Department of Revenue and the Department, in turn, to the Court of the Judiciary whenever a general sessions judge suspends litigation taxes for an indigent criminal defendant in accordance with Tenn. Code Ann. § 40-25-123(b).

3. Subsection (b) of Tenn. Code Ann. § 67-4-605, which makes a clerk personally liable for failing or refusing to collect and pay over litigation taxes, has no application to a clerk who fails to comply with subsection (c) of the statute.

ANALYSIS

1. & 2. You have asked about two statutes regarding litigation tax: Tenn. Code Ann. §§ 67-4-605 and 40-25-123. Your first question is whether § 67-4-605(c) requires a general sessions clerk to report to the Court of the Judiciary all general sessions judges who, pursuant to Tenn. Code Ann. § 40-25-123(b), suspend litigation taxes for indigent defendants. Subsection (c) provides:

> If the judge of any court suspends, releases, waives, remits or orders the clerk of the court not to collect any privilege tax on litigation, or in any other manner releases any party from liability for any privilege tax on litigation, the clerk of the court shall immediately report such suspension, release, waiver, remission, or order to not collect such tax, to the department in such manner as shall be prescribed by the department, and the commissioner or the commissioner's delegate shall immediately, upon receipt of such a report from any clerk of a court, present such information to the court of the judiciary, which court shall take appropriate action pursuant to title 17, chapter 5. The commissioner or the commissioner's delegate shall also report such information to the council on pensions and insurance.

Tenn. Code Ann. § 67-4-605(c). Our Office previously relied on this statute, in part, in concluding that judges generally are not authorized to waive litigation taxes. Op. Tenn. Atty. Gen. U91-95 (July 16, 1991). In 1998, however, the General Assembly enacted subsection (b) of Tenn. Code Ann. § 40-25-123, which allows general sessions judges certain discretion to suspend the litigation tax. 1998 Tenn. Pub. Acts. ch. 806. Subsection (b) states:

> Notwithstanding any provision of law to the contrary, the presiding judge of a court of general sessions may suspend the court costs and the litigation tax as required by §§ 67-4-602 - 67-4-606, for any indigent criminal defendant, as in the presiding judge's opinion the equities of the case require.

Tenn. Code Ann. § 40-25-123(b). A literal reading of the two statutes together would require a general sessions clerk to immediately report to the Department of Revenue and the Department, in turn, to the Court of the Judiciary, whenever litigation taxes are suspended by a general sessions judge in accordance with Tenn. Code Ann. § 40-25-123(b).

The primary purpose in construing statutes is "to ascertain and give effect to the intention and purpose of the Legislature." *See, e.g., Gleaves v. Checker Cab Transit Corp.*, 15 S.W.3d 799, 802 (Tenn. 2000). "Legislative intent is to be ascertained whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language." *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 16 (Tenn. 1997). When the language of the statute is clear and unambiguous, then the courts apply the plain language of the statute to resolve the issue. *See, e.g., State v. Nelson*, 23 S.W.3d 270, 271 (Tenn. 2000). Where the plain language of the statute does not directly address the issue or leads to an absurd result, however, the courts

will look beyond the language of the statute and adopt a reasonable construction that provides for harmonious operation of the laws. *See State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000); *Fletcher v. State*, 951 S.W.2d 378, 382 (Tenn. 1997); *see also Business Brokerage Ctr. v. Dixon*, 874 S.W.2d 1, 5 (Tenn. 1994) (holding that "when the [statutory] language produces an absurd or incongruous result when applied in specific factual situations, the intent of the Legislature will prevail over the literal language of the statute").

In our opinion, a court would not adopt a literal reading of § 67-4-605(c) together with § 40-25-123(b), because it would lead to an absurd result. The reporting requirement contained in § 67-4-605(c) was enacted as part of Chapter 488 of the Public Acts of 1981, which consolidated various litigation taxes and made other provisions for their collection and disbursement. A 1978 opinion by this Office notes an earlier statute providing that litigation taxes may not be suspended, "and if suspended, the amount shall be deducted by the Commissioner of Finance and Administration from the salary of the suspending judge." Op. Tenn. Atty. Gen. 78-175 (April 13, 1978), citing Tenn. Code Ann. § 67-4203, item 60. Thus, Tenn. Code Ann. § 67-4-605(c) is clearly intended to address unauthorized waivers of the litigation tax by judges.

While the reporting requirement in subsection (c) is sensible when applied to unauthorized waivers of litigation tax, such a requirement yields absurd results when applied to suspensions of the litigation tax that are expressly authorized by statute. By establishing the Court of the Judiciary, the General Assembly provided a method for making inquiry into a judge's performance of duty, among other matters. Tenn. Code Ann. § 17-5-101. The Court may impose various sanctions, ranging from issuing a private admonition to recommending a judge's removal from office. Tenn. Code Ann. § 17-5-301(f). These sanctions, however, presuppose the commission of a judicial offense. Tenn. Code Ann. § 17-5-302. Because § 40-25-123(b) authorizes general sessions judges to suspend litigation taxes in certain cases, it is our opinion that a judge would not be liable for sanction by the Court of the Judiciary for acting in accordance with the statute. If the Court would not sanction such an act, it makes no sense for the clerk to immediately report the act to the Department of Revenue to, in turn, make a report to the Court of the Judiciary.

The opinion request refers to pending legislation on this subject. Ambiguity does, in fact, exist, and legislation could be helpful to clarify that the reporting requirement contained in § 67-4-605(c) does not apply to cases where the privilege tax on litigation has been suspended by a general sessions judge pursuant to Tenn. Code Ann. § 40-25-123(b). Nevertheless, even without such legislation, it is our opinion that a reasonable construction of Tenn. Code Ann. § 67-4-605(c) does not require a general sessions clerk to make an immediate report to the Department of Revenue and the Department, in turn, to the Court of the Judiciary, each time a general sessions judge suspends litigation taxes for a criminal defendant in accordance with Tenn. Code Ann. § 40-25-123(b).

3. Your final question asks how Tenn. Code Ann. § 67-4-605(b) applies to court clerks if they do not report general sessions judges who suspend litigation taxes for indigent defendants. Subsection (b) of Tenn. Code Ann. § 67-4-605 provides:

> Any clerk of the court failing or refusing to collect and pay over to the department the tax imposed by § 67-4-602 shall be liable therefor and the clerk's official bondsman shall also be liable therefor, and the commissioner or the commissioner's delegate may collect the amount of the tax from the clerk or the clerk's official bondsman pursuant to chapter 1, part 14 of this title.

Tenn. Code Ann. § 67-4-605(b). This statute makes a clerk personally liable for failing to collect and pay litigation taxes to the Department of Revenue. It has no application to a clerk's failure to comply with § 67-4-605(c). Depending upon facts and circumstances, a clerk of court may be removed from office for neglect of duty under Tenn. Code Ann. §§ 18-1-301, *et seq.*, but failure to report a suspension made under the authority of § 40-25-123(b) would not constitute neglect of duty.

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