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April 1, 2003

Opinion No. 03-035

Authority of TRICOR (Tennessee Rehabilitative Initiative in Correction) under Tenn. Code Ann. § 41-22-407(d) to establish recruiting, hiring, and salary policies.

QUESTIONS

1. Does the Board of Directors (the Board) of TRICOR (Tennessee Rehabilitative Initiative in Correction) have the authority under Tenn. Code Ann. § 41-22-407(d) to establish its own procedures for recruiting and hiring all staff (executive and career service) without being limited to the Department of Personnel's (TDOP's) register placement process?

2. Does the Board have the authority under Tenn. Code Ann. § 41-22-407(d) to pay salaries for all employees (executive and career service) which may exceed the salary levels established by the TDOP for these positions?

OPINIONS

1. Yes, assuming the procedures are approved by the Commissioner of TDOP.

2. Yes, assuming the salaries are approved by the Commissioner of TDOP.

ANALYSIS

According to your opinion request, the Board of Directors of TRICOR believes that it may be necessary to expand its authority, under Tenn. Code Ann. § 41-22-407(d), to hire staff consistent with its mission and the principles of free enterprise. The Board therefore seeks to determine the extent of its authority over personnel matters under Tenn. Code Ann. § 41-22-407(d), independent of the TDOP's hiring processes and salary policies.

Tenn. Code Ann. § 41-22-407(d) states as follows:

> (d) Within budgetary limitations and ***subject to the approval of the commissioner of personnel***, the board through its executive director may employ professional and staff employees as may be appropriate for the efficient discharge of its duties to manage and operate the

> prison industry program. Notwithstanding § 8-30-208[1], the board ***with the approval of the commissioner of personnel***, shall have the option of declaring certain management positions, unique to the operations under the control of the board, a part of the executive service and under the exclusive control of the board. Each position up to and including the manager of a plant shall be a career service employee. ***The commissioner of personnel shall assist the board in using and/or developing a procedure for hiring qualified personnel in a timely manner at salary levels competitive with the free market*** in order to ensure the production and timely delivery of low cost, quality products and to assure that the operations of prison industries are efficiently managed and thus off-set the costs of incarceration.

(Emphasis added).

Tenn. Code Ann. § 41-22-406 also addresses the Board's authority over personnel issues:

> **41-22-406**. Powers and duties of board.
>
> (a) (1) (A) The board has such powers as are necessary to effectively carry out its mission as defined in § 41-22-403. It is the intent of the general assembly that the board should be as free as is possible to operate its facilities and to pursue its mission with the principles of free enterprise. ***Notwithstanding any law to the contrary, the board, with the approval of the commissioner of personnel, may adopt policies governing supplemental pay plans.*** Such plans shall reward performance of the employees of TRICOR and relate to the unique responsibilities of TRICOR.
>
> (B) Any compensation awarded under this section shall not be considered as an addition to base pay and is further limited to the period outlined in the approved policy. Such supplemental pay policies shall ensure that funds are distributed in a fair manner without bias on account of race, color, sex, age, national origin or political affiliation.
>
> (C) The supplemental pay policies shall be based on measurable criteria to reward performance. Pay plans shall be consistent with the mission of TRICOR and shall emphasize safety and security in the workplace.

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[1]Tenn. Code Ann. §8-30-208 sets forth, *inter alia*, those positions that are executive service, those that are career service, and the [TDOP] commissioner's authority to establish certain job classifications.

> (D) The guidelines and criteria for receiving supplemental pay shall be developed in the best interest of all TRICOR employees and the criteria shall be clearly communicated with all affected employees. Employee input will be considered in the development process.
>
> (E) ***The select oversight committee on corrections shall review any proposed supplemental pay plan and shall make its comments to the commissioner of personnel prior to its implementation***. Any such comment shall be made within thirty (30) days after receipt by the committee of the proposed supplemental pay plan.
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> * * * *

These statutes do not specifically require TRICOR to recruit and hire staff according to the TDOP's register placement process. Rather, as the emphasized language of these statutes indicates, TRICOR is required to conduct its hiring "within budgetary limitations and subject to the approval of the commissioner of personnel."[2] Consequently, TRICOR may employ alternative processes for the recruitment and hiring of staff, provided that the Commissioner of TDOP approves of such processes.

Similarly, with regard to the Board's authority to pay salaries for all employees which may exceed the salary levels established by the TDOP for these positions, these statutes do not indicate that TRICOR must abide by the salary levels established for other state employees. Indeed, Tenn. Code Ann. § 41-22-407(d), which states that "[t]he commissioner of personnel shall assist the board in using and/or developing a procedure for hiring qualified personnel in a timely manner ***at salary levels competitive with the free market***" (emphasis added), clearly suggests that the salaries of TRICOR personnel need not be the same as those of other state employees. This statute again, however, requires the approval of the Commissioner of TDOP for the salaries that are established by TRICOR. Tenn. Code Ann. § 41-22-406, quoted above, includes the same requirement for any supplemental pay plan established by TRICOR.

One of the most basic principles of statutory construction requires the interpreter to ascertain and give effect to the intention and purpose of the legislature. That intent and purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, eschewing any

[2]Tenn. Code Ann. § 41-22-407(d).

forced or subtle constructions that might artificially limit or extend the meaning of the language.[3] Where the statutory language is plain, clear, and unambiguous, one must avoid any interpretation or construction that departs from the words of the statute.[4]

The language of these statutes is plain, clear, and unambiguous with regard to the questions asked in the instant opinion request. TRICOR is neither required to abide by the TDOP register placement process, nor the TDOP salary levels, in hiring and establishing salary levels for its employees. TRICOR is, however, clearly required to obtain the approval of the Commissioner of the TDOP for any alternative hiring processes or salary scales it might wish to establish.

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[3]*See, e.g., Tuggle v. Allright Parking Systems, Inc.*, 922 S.W.2d 105, 107 (Tenn. 1996); *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991); *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977).

[4]*Tuggle v. Allright Parking Systems, Inc.*, 922 S.W.2d at 107.