

STATE OF TENNESSEE

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Opinion No. 03-059

Juvenile Court Discretion to Permit Minors to Buy Tobacco in Sting Operations

QUESTION

Does Tenn. Code Ann. § 39-15-413 mandate that a juvenile judge grant permission to the Department of Agriculture to use a minor to illegally buy tobacco in a sting operation?

OPINION

No.

ANALYSIS

Tenn. Code Ann. § 39-15-413 provides that a minor, who ordinarily may not legally purchase tobacco products, may do so as part of a law enforcement effort to enforce the laws against tobacco sale to minors, so long as the law enforcement officer has obtained the prior written approval of both the minor's parent or legal guardian and the juvenile court. The statute provides, in full:

(a) It is not a violation of §§ 39-15-404, 39-15-410, 39-17-401 - 39-17-427, 39-17-901 - 39-17-908, 39-17-911, 39-17-914, 39-17-918, 39-17-1003 - 39-17-1005, 39-17-1501 - 39-17-1508, or any other offense providing a prohibition for use of or sales to a minor, for a law enforcement officer to use or send a minor, or in the case of alcohol a person under twenty-one (21) years of age, to purchase smoking material, smoking paraphernalia, any smokeless tobacco product, alcohol, illegal drugs or any other prohibited material for the purpose of aiding in the enforcement of laws prohibiting sales to or use of minors so long as the law enforcement officer has obtained the prior written approval of the minor's parent or legal guardian and the juvenile court. The consent of the minor's parent or legal guardian and the juvenile court shall not be required where the person is eighteen (18) years of age or older.

(b) Under all circumstances, a law enforcement officer shall obtain the written approval of the minor's parent or legal guardian and the juvenile court before using a minor to perform illegal or delinquent acts for the purposes of aiding in the enforcement of the laws of this state.

Tenn. Code Ann. § 39-15-413. We have previously opined that an employee of the Department of Agriculture may be a “law enforcement officer” within the statute’s meaning when the Department enforces the Prevention of Youth Access to Tobacco Act of 1994, currently codified at Tenn. Code Ann. §§ 39-17-1501 through 1551 (“the Act”). Op. Tenn. Att’y Gen. No. 99-016 (February 2, 1999).

You now ask whether the Tenn. Code Ann. § 39-15-413 requires a juvenile court to approve a Department of Agriculture request to use a minor to buy tobacco in a sting operation to enforce the Act. Nothing in Tenn. Code Ann. § 39-15-413 suggests such a mandate. The statute mandates only that the Department must obtain prior written approval from both the juvenile court and a minor’s parent or guardian before using a minor to purchase tobacco. The statute mandates neither the juvenile court nor the child’s parent or guardian to furnish such approval.

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