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Opinion No. 03-104

Applicability of child abuse and neglect statute for purposes of applying the $500.00 privilege tax pursuant to Tenn. Code Ann. 40-24-107(a)(1)(B)

QUESTIONS

1. Why is Tenn. Code Ann. § 39-15-401, child abuse and neglect, not among the statutes providing for a $500.00 privilege tax upon conviction pursuant to Tenn. Code Ann. § 40-24-107(a)(1)(B)?

2. Can a trial court impose a $500.00 privilege tax pursuant to Tenn. Code Ann. § 40-24-107(a)(1)(B) for a conviction under the child abuse and neglect statute, absent an express provision in the statute?

OPINIONS

1. Subpart (a)(1)(B) of Tenn. Code Ann. § 40-24-107 was specifically implemented to provide funding for programs related to child sexual abuse through a privilege tax on offenders convicted only of sexual offenses involving children.

2. No. A trial court cannot impose a $500.00 privilege tax absent statutory authority.

ANALYSIS

1. The "Criminal Injuries Compensation Act," Tenn. Code Ann. § 40-24-107, was established in 1976 to provide a means of compensating victims of crime in Tennessee. *See* 1976 Tenn. Pub. Acts, ch. 736. In 1985, Tenn. Code Ann. § 40-24-107 was amended pursuant to a comprehensive package of legislation for "the detection, intervention, prevention and treatment of child sexual abuse . . . ." *See* 1985 Tenn. Pub. Acts, ch. 478, § 2. Section 25 of chapter 478 amended Tenn. Code Ann. § 40-24-107 to provide for imposition of a $500.00 privilege tax upon conviction for any sex crime involving children, as a means of funding programs created by chapter 478. This amendment resulted in subpart (a)(1)(B) of Tenn. Code Ann. § 40-24-107 and thus reflects a legislative intent to impose a $500.00 privilege tax on only child sexual abuse offenders.[1]

[1]Tennessee Code Annotated § 40-24-107(a)(1)(B) currently permits a trial court to impose the $500.00 privilege tax for convictions under the following statutes if the victim is a child under eighteen years of age: § 39-12-101 (criminal attempt); § 39-13-101(assault, which includes "offensive touching"); §§ 39-13-501--39-13-505 (rape,

The child abuse and neglect statute, Tenn. Code Ann. § 39-15-401, would not appear to fit within the legislative intent of (a)(1)(B), since the elements of that crime require physical injury or neglect. Moreover, subpart (d) of §39-15-401 provides that child abuse and neglect "may be a lesser included offense of any kind of homicide, statutory assault, or sexual offense if the victim is a child and the evidence supports a charge under this section." (emphasis added) When interpreting statutes, "the Legislature is presumed to have knowledge of its prior enactments and to know the state of the law at the time it passes legislation." *Wilson v. Johnson County*, 879 S.W.2d 807, 810 (Tenn.1994). Accordingly, subpart (d) appears to reflect a legislative intent that violations of the child abuse and neglect statute do not rise to the level of harm contemplated by Tenn. Code Ann. § 40-24-107 (a)(1)(B).

2. A trial court may not go beyond the provisions of Tenn. Code Ann. § 40-24-107(a)(1)(B) by assessing privilege taxes on those convicted of child abuse and neglect. The cardinal rule of statutory construction is to effectuate legislative intent, with all rules of construction being aids to that end. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 926 (Tenn.1998). Courts are restricted to the natural and ordinary meaning of the language used by the legislature in the statute, unless an ambiguity requires resort elsewhere to ascertain legislative intent. *Austin v. Memphis Pub. Co*., 655 S.W.2d 146, 148 (Tenn.1983). The legislature explicitly implemented section (a)(1)(B) for funding programs related to child sexual abuse by taxing child sexual abuse offenders. Accordingly, there is no authority allowing a trial court to expand the intent of the statute to encompass child abuse and neglect offenders. Moreover, neither the Executive nor the Judicial Department may establish or exact a tax in contravention of the constitutional authority vested in the Legislature. *National Gas Distrib., Inc. v. State*, 804 S.W.2d 66, 67 (Tenn.1991).

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aggravated rape, aggravated sexual battery, and sexual battery); § 39-15-302 (incest); and § 39-17-1005 (especially aggravated sexual exploitation of a minor).

Requested by:

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