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Opinion No. 03-162

Interpretation of Tenn. Code Ann. § 54-5-804

QUESTION

Is the Tennessee Department of Transportation obligated under Tenn. Code Ann. § 54-5-804 to reimburse a utility for the cost of the relocation of the utility's facilities within county road right-of-way when the Department undertakes a project for a county to replace a county bridge and such project requires that utility facilities located within county road right-of-way adjacent to the bridge be relocated?

OPINION

It is the opinion of this office that the Tennessee Department of Transportation is not obligated under Tenn. Code Ann. § 54-5-804 to reimburse a utility for the cost of the relocation of the utility's facilities within county road right-of-way when the Department undertakes a project for a county to replace a county bridge and such project requires that utility facilities located within county road right-of-way adjacent to the bridge be relocated.

ANALYSIS

In 2003 the General Assembly of the State of Tennessee amended Tenn. Code Ann. § 54-5-804 in its entirety and substituted the following language:

> (a) The commissioner is authorized to reimburse a utility for the cost of relocation, and to include such cost as a highway construction project cost, where the cost of relocation arises from the relocation of a utility facility located on a public highway right-of-way and the highway construction project is undertaken by the department, subject to the following conditions:
>
> (1) The utility shall fully comply with all provisions of § 54-5-854(b) including the preparation and submission to the department of the utility's relocation plan, cost estimate and schedule of calendar days for completing the relocation, within the time period specified or within such additional time as may be allowed under § 54-5-854(b); and

(2) The utility shall either:

(A) Enter into a written agreement with the commissioner to include the relocation as a part of the department's highway construction contract; provided, however, that such agreement may provide that the utility shall perform certain relocation work with its own union employees as required under a negotiated organized labor contract; but, in such case, the utility shall be required to reimburse the department for all relocation costs if it fails to timely perform its relocation work as provided in the agreement with the commissioner; or

(B) Enter into a written agreement with the commissioner to remove all utility facilities that conflict with the highway construction, as determined by the department, prior to the letting of the department's construction contract, and otherwise perform and complete the utility relocation in accordance with approved relocation plans and schedule of calendar days; provided, however, that such agreement may provide that, in the event that the department does not undertake the highway construction project within a specified time, the utility shall be reimbursed for such relocation work as it has timely performed in accordance with the approved plans and schedule.

(3) Notwithstanding any other provision of law to the contrary, the utility shall be responsible, at its own expense, to inspect all phases of the utility relocation to ensure that the removal, installation, or removal and installation of the utility facility is done in accordance with all applicable specifications and safety codes.

(b) The cost of relocation for which a utility may be reimbursed under subsection (a) shall nevertheless be borne in full by the utility without reimbursement by the department where, if required by law, the utility does not have a valid permit to locate on the public highway right-of-way from the department or from the county or municipality having jurisdiction over the right-of-way.

(c) The department shall make no reimbursement payment to a utility as authorized under subsection (a) unless, and until, the commissioner is satisfied that the relocation has been performed in accordance with the relocation plans and schedule of calendar days approved by the department.

(d) To ensure that the department shall never pay any cost of relocation for which it cannot receive proportionate reimbursement under any federal aid highway act, if the United States department of transportation shall finally

> determine that the cost of relocation is not reimbursable to the department from federal funds, or that the cost of relocation is less than the amount reimbursed to the utility by the department, the utility so reimbursed shall repay to the department the difference between the amount so reimbursed to the utility and the cost of relocation finally determined by the department.

The Commissioner of Transportation is authorized under this statute, subject to certain conditions set forth in this statute, to reimburse a utility for the cost of relocating its utility facility where the cost of relocation arises from the relocation of a utility facility located within a public highway right-of-way and the relocation results from a highway construction project undertaken by the Tennessee Department of Transportation. However, the Commissioner of Transportation is not obligated by this statutory grant of authority to reimburse a utility for the cost of such utility relocations.

The primary objective in interpreting statutes is "to ascertain and give effect to the intention and purpose of the legislature." *Jones v.Garrett,* 92 S.W.3d 835, 839 (Tenn. 2002). Legislative intent is best determined by looking at the natural and ordinary meaning of the words used by the General Assembly in the statute. *Id.* The interpreter "must presume that the legislature says in a statute what it means and means in a statute what it says there." *Id.* Legislative intent and purpose "are to be ascertained primarily from the natural and ordinary meaning of the statutory language, without a forced or subtle interpretation that would limit or extend the statute's application." *State v. Morrow,* 75 S.W.3d 919, 921 (Tenn. 2002).

In the statute under review the General Assembly expressed its intent and purpose by stating in pertinent part the following: "The commissioner is authorized to reimburse...." Tenn. Code Ann. § 54-5-804(a). The natural and ordinary meaning of the term *authorized* is "permitted" or "empowered." Black's Law Dictionary (7th ed. 1999). Such an interpretation of the term *authorized* is supported by the plain language of Section 54-5-804(b), which provides in pertinent part as follows: "The cost of relocation for which a utility *may* be reimbursed under subsection (a) shall nevertheless be borne in full by the utility without reimbursement...." Interpreting the term *authorized* as an expression of the intent of the General Assembly to obligate the Commissioner of Transportation to reimburse the cost of relocation of utility facilities would extend the application of Tenn. Code Ann. § 54-5-804 beyond the legislative intent expressed by the natural and ordinary meaning of the plain language of this statute.

If the General Assembly had intended to obligate the Tennessee Department of Transportation to reimburse the cost of relocating utility facilities by its enactment of Tenn. Code Ann. § 54-5-804, the General Assembly could have expressed such an intent by choosing statutory language that plainly and naturally expresses such an intent.

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