

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

August 16, 2004

Opinion No. 04-132

Authority to Guarantee Student Loans

QUESTION

Would any “eligible lender,” as defined in the Higher Education Act of 1965, pt. B, § 435(d), 20 U.S.C. § 1085(d)(1) (1999) and as defined in the Federal Student Financial Aid Regulations in 34 C.F.R. § 682.200(b) (2004), qualify as an “approved Tennessee lender” under Tenn. Code Ann. § 49-4-203(1) (2002), thereby qualifying as a lender for which the Tennessee Student Assistance Corporation (TSAC) is authorized to guarantee student loans?

OPINION

No. An eligible lender would be limited to an approved Tennessee lender under Tenn. Code Ann. § 49-4-203(1) (2002).

ANALYSIS

I.

Under the provisions of Tenn. Code Ann. § 49-4-203 (2002), the Tennessee Student Assistance Corporation (hereinafter “TSAC”) has the authority to guarantee student loans under the Higher Education Act of 1965. Specifically, this statute, in part, provides:

Loans may be guaranteed for nonresidents of Tennessee if they are enrolled in an eligible educational institution located in Tennessee or parents of dependent nonresidents enrolled in an eligible educational institution located in Tennessee. Loans may also be guaranteed under the Higher Education Act of 1965, as amended, for students who are non-residents of Tennessee or their parents *if they are made through an approved Tennessee lender.*

(Emphasis added.)

The emphasized language was added May 19, 1995. 1995 Tenn. Pub. Acts, ch. 255. “Tennessee lender” and “approved Tennessee lender” are not defined in the Tennessee Code or in applicable Tennessee Rules and Regulations. Of course, neither term is defined in the aforementioned federal statutes and regulations. However, “eligible lender” is defined in applicable Tennessee Rules and Regulations as follows:

A national or state chartered bank, a savings and loan association, or a credit union which is subject to examination and supervision by an agency of the United States or the State of Tennessee and which does not have as its primary consumer credit function the making or holding of loans made to students under the Guaranteed Student Loan Program.

Tenn. Comp. R. & Regs. § 1640-1-2-.01(d) (2004). Hence, an eligible lender is defined broadly and is not limited to a “Tennessee lender” or an “approved Tennessee lender;” although, an eligible lender might also be a “Tennessee lender.”¹

As a general rule, a statute such as Tenn. Code Ann. § 49-4-203(1) (2002) is construed as an entirety, giving all words used their natural and ordinary meaning. *See, e.g., Tenn. Growers, Inc. v. King*, 682 S.W.2d 203, 205 (Tenn. 1984) (“Legislative intent is derived from construing the statute in its entirety, and it should be assumed the Legislature used each word purposely and that those words convey some intent and have a meaning and a purpose.”). Courts should look first to the language of the statute to determine legislative purpose. *Neff v. Cherokee Ins. Co.*, 704 S.W.2d 1, 3 (Tenn. 1986).

However, where a statute is ambiguous or when it is not clear what the legislature intended, courts may look to the legislative history to determine the meaning of the statute. *See, e.g., Lucius v. Bayside First Mfg., Inc.*, 43 F. Supp. 2d 868, 871 (W.D. Tenn. 1999). Here, the meaning of “approved Tennessee lender” is subject to interpretation and may be ascribed a number of meanings and, thus, may be deemed ambiguous, thereby necessitating resort to the legislative history of the aforementioned amendment to Tenn. Code Ann. § 49-4-203(1) (2002).

A review of the legislative history and debate surrounding the enactment of 1995 Tenn. Pub. Acts, ch. 255 (H.B. 1118) reveals that the term “Tennessee lender” or “approved Tennessee lender” was not defined during discussion or debate. House Comm. on Calendar & Rules, Education, and Session, Discussion of H.B. 1118 (Mar. 25, 1995) (Tape Nos. 1 and H-34). However, interpreting the terms “approved Tennessee lender” or “Tennessee lender” to mean “any eligible lender” would render these terms superfluous counter to the rules of statutory construction.

Under the provisions of 20 U.S.C. § 1085(d)(1) and 34 C.F.R. § 682.200(b), loans guaranteed by TSAC under the provisions of the Higher Education Act must have been made through an

¹*See also*, 20 U.S.C. § 1085 (d)(1) and 34 C.F.R. § 682.200(b).

“eligible lender” to be entitled to federal re-insurance. In addition, under the requirements of Tenn. Code Ann. § 49-4-203, TSAC’s authority to guarantee loans under the Higher Education Act is limited to loans made through an “approved Tennessee lender.” As the legislature chose to use the term “approved Tennessee lender” rather than “eligible lender” as provided in the Higher Education Act, a Tennessee lender or approved Tennessee lender must be recognized as a subset of eligible lenders. Hence, an eligible lender as defined in the federal statutes and regulations and in Tennessee rules and regulations would be limited to an “approved Tennessee lender” for loans under the Higher Education Act of 1965 (as amended).²

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

WARREN A. JASPER
Assistant Attorney General

Requested by:

Michael C. Roberts
Executive Director
Tennessee Student Assistance Corporation
Suite 1950, Parkway Towers
404 James Robertson Parkway
Nashville, TN 37243-0820

²There is no evidence or indication that Federal enactments have preempted the field in any way that would prevent Tennessee’s Legislature from limiting eligible lenders in this regard.