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Opinion No. 06-035

Retroactive Application of New DUI Punishment

QUESTIONS

Whether Tennessee Code Annotated § 55-10-403(s), the new subsection requiring first-time DUI offenders to remove litter from highways for twenty-four hours, applies to individuals who committed offenses in 2005 but were sentenced in 2006.

OPINION

No. Because subsection (s) of Tennessee Code Annotated § 55-10-403 took effect on January 1, 2006, and imposed an additional punishment on first-time DUI offenders, it does not apply to offenses committed before January 1, 2006.

ANALYSIS

Tennessee Code Annotated § 55-10-403(s), which took effect on January 1, 2006, provides that in addition to the punishment set forth in subsection (a), a first-time DUI offender shall remove litter from highways for three shifts of eight consecutive hours. *See also* 2005 Tenn. Pub. Acts, ch. 504, § 2.

> Whenever any penal statute or penal legislative act of the state is repealed or amended by a subsequent legislative act, any offense, as defined by the statute or act being repealed or amended, committed while such statute or act was in full force and effect shall be prosecuted under the act or statute in effect at the time of the commission of the offense. Except as provided under the provisions of § 40-35-117, in the event the subsequent act provides for a lesser penalty, any punishment imposed shall be in accordance with the subsequent act.

Tenn. Code Ann. § 39-11-112. *See also Agee v. State*, 111 S.W.3d 571, 576-77 (Tenn. Crim. App. 2003). Tennessee Code Annotated § 55-10-403(s) explicitly states that the twenty-four hours of litter removal is a punishment "[i]n addition to the punishment provided in subsection (a)." Because the new subsection provides for additional punishment for first-time DUI offenders, it does not apply to offenses committed before the new subsection took effect on January 1, 2006.

Accordingly, it is the opinion of this Office that Tennessee Code Annotated § 55-10-403(s) does not apply to individuals who committed a DUI offense before January 1, 2006, but were not sentenced until after that date.

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