S T A T E O F T E N N E S S E E
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Opinion No. 06-112

Metro Pawnshop Enforcement Program

QUESTIONS

1. Is the enforcement program described below authorized by Tenn. Code Ann. § 45-6-212(1)?

2. Does the enforcement program violate due process guarantees under the Tennessee or the United States Constitution?

3. Does the enforcement program violate equal protection guarantees?

4. Does the enforcement program violate the Fourth Amendment rights of pawn customers?

OPINIONS

1. No, this program is not authorized under Tenn. Code Ann. § 45-6-212(1).

2., 3., and 4. Our answer to the first question pretermits questions 2 through 4.

ANALYSIS

1. Pawnshop Enforcement Program

This request concerns an enforcement program recently instituted by law enforcement officials in the Nashville-Davidson County Metropolitan Government. Our discussion is based solely on the facts provided in the request. The police department has prepared and distributed to all pawnshops in Davidson County a "Pawnshop Convicted Thief List." The list contains the names of persons who have been convicted of property theft crimes and who are known to engage in pawn transactions. The police department has instructed all pawnshops in Davidson County that, pursuant to Tennessee law, no person whose name appears on the List is to be given a loan by any pawnshop. The police department updates the List on a monthly basis and transmits the updates to each pawnshop via e-mail. Pawnbrokers who do not comply with this program of denying loans to all persons on the List will be "cited and prosecuted."

State laws governing pawnbrokers appear at Tenn. Code Ann. §§ 45-6-201, *et seq.* Under Tenn. Code Ann. § 45-6-205, a pawnbroker must obtain a license from the county clerk in which he or she is to do business. Pawnbrokers must maintain a record of pawn transactions and deliver them to the appropriate law enforcement agency within forty-eight hours following the day of the transactions. Tenn. Code Ann. § 45-6-209. Tenn. Code Ann. § 45-6-212(1) provides:

> A pawnbroker shall not:
>
> (1) Accept a pledge or purchase property from a person under eighteen (18) years of age, nor accept a pledge from anyone who appears intoxicated, nor from any person known to such pawnbroker to be a thief, or to have been convicted of larceny, burglary, or robbery, *without first notifying a police officer;*

Tenn. Code Ann. § 45-6-212(1) (emphasis added).

Tenn. Code Ann. § 45-6-218(a) provides in part that

> [e]very person, firm or corporation, or agents or employees thereof, who knowingly violates any of the provisions of this part, on conviction thereof, commits a Class A misdemeanor.

Thus, Tenn. Code Ann. § 45-6-212(1) provides that a pawnbroker may not accept a pledge or purchase property from any person known by the pawnbroker to be a thief or to have been convicted of an offense involving theft, without first notifying a police officer. The statute does not, however, prohibit pawnbrokers from lending money to such persons if advance notice is provided to the police. Because the program described in the request purports to impose a blanket prohibition without regard to whether pawnbrokers comply with the notice requirement, the program exceeds the scope of Tenn. Code Ann. §§ 45-6-212(1) and 45-6-218(a). In other words, Tenn. Code Ann. § 45-6-218(a) would not authorize the prosecution of a pawnbroker who provides advance notice to a police officer before accepting a pledge or purchasing property from one of the persons whose name appears on the List.

Tenn. Code Ann. § 45-6-219(a) authorizes local governments by ordinance to impose additional regulations upon pawnshops, with certain exceptions not relevant here. Thus, if the program described in the request is authorized by ordinance of the Metropolitan Government, pawnbrokers who violate the program could be cited for violating the ordinance. We have not undertaken to ascertain whether the Metropolitan Government has adopted any such ordinance.

Our answer to this question pretermits questions 2 through 4.

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