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Opinion No. 07-08

Interpretation of Fireworks Permit Statutes by the State Fire Marshal

QUESTIONS

1. Whether Tenn. Code Ann. § 68-104-102(c) mandates that a fireworks manufacturer, distributor, wholesaler, retailer, exhibitor or seasonal retailer wishing to conduct business year-round obtain a fireworks permit, at the latest, by January 2 of the calendar year for which the permit is sought?

2. Whether the State Fire Marshal has reasonably interpreted the phrase "chief executive officer of the county or municipality" in Tenn. Code Ann. § 68-104-105(a) as referring to the mayor, city manager or county manager?

3. Whether a municipality's chief executive officer's statement that the sale of fireworks in such municipality is permissible must accompany a fireworks permit application for a "new location" as defined by Tenn. Code Ann. § 68-104-105(a)?

OPINIONS

1. Yes. Tenn. Code Ann. § 68-104-102(c) mandates that a fireworks manufacturer, distributor, wholesaler, retailer, exhibitor or seasonal retailer wishing to conduct business year-round obtain a fireworks permit, at the latest, by January 2 of the calendar year for which the permit is sought.

2. Yes. The State Fire Marshal has reasonably interpreted phrase "chief executive officer of the county or municipality" in Tenn. Code Ann. § 68-104-105(a) as referring to the mayor, city manager or county manager.

3. Yes. A municipality's chief executive officer's statement that the sale of fireworks in such municipality is permissible must accompany a fireworks permit application for a "new location" as defined by Tenn. Code Ann. § 68-104-105(a).

ANALYSIS

1.

As the State Fire Marshal, the Commissioner of the Tennessee Department of Commerce & Insurance is charged, in relevant part, with enforcement of laws relating to the "storage, sale and use of combustibles and explosives." Tenn. Code Ann. §§ 68-102-102(2) & 68-102-112. Consistent with this mandate, the General Assembly has placed supervisory authority over intra-state firework sales with the State Fire Marshal:

> It is the legislative intent that all fireworks sold and delivered to consumers within this state must take place within this state and be sold and delivered only by a Tennessee dealer holding a Tennessee fireworks permit, and that *all fireworks coming into the state and sold within the state be under the supervision of the state fire marshal as provided in this chapter*.

Tenn. Code Ann. § 68-104-102(a) (emphasis added). This provision also proscribes, in relevant part, the manufacture, sale, distribution, or shipping of fireworks into or within Tennessee without an appropriate permit:

> It is unlawful for any person to manufacture, sell, offer for sale, ship or cause to be shipped or received into or within this state, except as herein provided, any item of fireworks, without first having secured the required applicable permit, as a manufacturer, distributor, wholesaler, retailer or seasonal retailer, from the state fire marshal. This provision applies to nonresidents as well as residents of this state.

Id.

The State Fire Marshal may issue a fireworks permit to individuals 18 years of age and older for a specific calendar year, which expires on December 31, and the permit holder has a two-day grace period to obtain a permit for the next calendar year:

> All permits shall be for the calendar year or any fraction thereof and shall expire on December 31. A grace period of two (2) days shall be allowed each holder of a permit. Permits issued to retailers and seasonal retailers must be displayed. No permit provided for herein shall be transferable to another person or location unless such transfer shall have been approved by the state fire marshal.

Id. at § 68-104-102(c). The State Fire Marshal's decision "as to what type of permit or permits shall be required of each person under this chapter shall be final." *Id.* "No permit provided for herein shall be transferable to another person or location unless such transfer shall have been approved by the state fire marshal." *Id.* A violation of these provisions constitutes a class C misdemeanor. Tenn. Code Ann. § 68-104-114.

Your question states that, in the past, the State Fire Marshal had allowed fireworks companies, seasonal retailers in particular, to obtain permits by June 1, six months after the expiration of the previous permit. Presently, the State Fire Marshal requires that all individuals seeking a fireworks permit obtain it by January 2 of the calendar year for which the permit is sought.

The question posed is one of statutory interpretation, requiring us to determine whether a fireworks manufacturer, distributor, wholesaler, retailer, exhibitor or seasonal retailer wishing to conduct business year-round must obtain their fireworks permits, at the latest, by January 2 of the calendar year for which the permit is sought. In construing statutes, we must "ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). When the statute is unambiguous, legislative intent is determined from the plain and ordinary meaning of the language used. *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). The statutory language must be "read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning." *National Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes that are related to the same subject matter must be read in *pari materia*. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005).

We note that, in Tennessee, "interpretations of statutes by administrative agencies are customarily given respect and accorded deference by courts." *Riggs v. Burson*, 941 S.W.2d 44, 50-51 (Tenn. 1997) (citing *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 844 (1984)). Accordingly, courts will defer to the State Fire Marshal's interpretation without substituting "their own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron*, 467 U.S. at 844.

Applying the above principles of statutory interpretation, we conclude that, under Tenn. Code Ann. § 68-104-102(c), a fireworks manufacturer, distributor, wholesaler, retailer, exhibitor or seasonal retailer wishing to conduct business year-round must obtain a fireworks permit, at the latest, by January 2 of the calendar year for which the permit is sought.[1] Because we find that § 68-104-102(c) is unambiguous, we determine legislative intent from the plain meaning of the statute's language. *Freeman*, 27 S.W.3d at 911. The statute's plain text provides that fireworks permits to manufacture, distribute, or sell at wholesale, retail or seasonally "shall be for the calendar year or any fraction thereof and shall expire on December 31." Tenn. Code Ann. § 68-104-102(c). Thus, the State Fire Marshal may issue fireworks permits that are valid for the calendar year, or for any

[1]We assume that the fireworks manufacturer, distributor, wholesaler, retailer, exhibitor or seasonal retailer had complied with Tenn. Code Ann. § 68-104-102(a) and had obtained an appropriate permit to manufacture, sell, distribute, or ship fireworks for the previous calendar year.

fraction thereof. The permits must expire on December 31 of the particular calendar year and are not renewable *per se*. Under the "grace period" provision in § 68-104-102(c), a fireworks permit holder may operate for two days after expiration of the permit — January 1 and 2 — but must obtain a *new* permit by January 2 of the calendar year in progress.[2] If the permit holder has failed to obtain a permit for the current calendar year by January 2, and continues to manufacture, sell, distribute or ship fireworks in Tennessee, the individual would be in violation of Tenn. Code Ann. § 68-104-102(a) and would be subject to prosecution. *Id.* at § 68-104-114.

2.

This question deals with the State Fire Marshal's interpretation of Tenn. Code Ann. § 68-104-105(a) regarding the meaning of the term "chief executive officer" used therein. You state that the State Fire Marshal has interpreted the term "chief executive officer" in this provision as the city manager, mayor or county mayor of the particular municipality in question.

Section 68-104-105(a), which only applies to retailers or seasonal retailers of fireworks, requires that any application for a "new location" after May 2, 1983, be accompanied by a statement from the municipality's "chief executive officer," where the fireworks will be sold, stating that the sale of fireworks is locally[3] permitted:

> Any request for the issuance of a retailer's or seasonal retailer's fireworks permit for a new location after May 2, 1983, shall be accompanied by a statement from the chief executive officer of the county or municipality wherein such fireworks are to be sold that the sale of fireworks in such county or municipality, respectively, is permissible.

Tenn. Code Ann. § 68-104-105(a).

Applying the principles of statutory interpretation discussed above, we conclude that the State Fire Marshal has reasonably interpreted the phrase "chief executive officer of the county or municipality" in Tenn. Code Ann. § 68-104-105(a) as referring to the mayor, city manager or county

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[2]The materials accompanying the request suggest that the requirement to obtain a permit by January 2 to manufacture, sell, distribute or ship fireworks poses onerous obstacles to *seasonal fireworks retailers* because of the uncertainty associated with finding suitable locations in which to conduct business. Presumably, because seasonal fireworks retailers only operate during a fraction of the calendar year, they may lawfully obtain a fireworks permit *after* January 2 but *before* the date they commence business operations. For example, if a seasonal retailer seeks to operate in July only, it could obtain a permit after January 2 but before July 1. On the other hand, if the seasonal retailer wishes to operate in January only, it must obtain a permit, at the latest, by January 2. In any event, we note that Tenn. Code Ann. § 68-104-102(c) allows the State Fire Marshal to transfer a valid permit to another person *or* location.

[3]We note that most municipalities may enact stricter ordinances "further prohibiting or restricting the sale or use of fireworks." Tenn. Code Ann. § 68-104-116.

manager. Because we also find that § 68-104-105(a) is unambiguous,[4] we determine legislative intent from the plain meaning of the statute's language. *Freeman*, 27 S.W.3d at 911. "Chief" means a "person of highest title or authority" and, in turn, a chief executive officer is the "highest executive officer of an organization." *Webster's New World College Dictionary* 254 (4th ed. 2001). Because the title of the chief executive of particular municipalities or counties will vary, the General Assembly wisely chose terminology that would subsume the essence of his or her functions into a universally understood term. While in some localities the chief executive may have a different title, such as mayor, or city or county manager, by function he will always be the chief executive officer.

3.

The third question deals with the meaning of "new location" in Tenn. Code Ann. § 68-104-105(a) and its effect on whether the chief executive officer's statement that the sale of fireworks in such municipality is permissible must accompany a fireworks permit application. You state that the State Fire Marshal considers any permit application after January 2 to be a permit for a "new location," thus requiring the applicant to supply the letter from the municipality's "chief executive officer" stating that the sale of fireworks in that location is permissible. Again, this question calls for us to interpret a different portion of the same statutory provision discussed in the previous question.

The provision at issue defines the term "new location" as follows:

> For purposes of this section, "new location" means any location where fireworks were not sold at retail as of May 2, 1983. "New location" does not include any location wherein the lawful sale of fireworks has transpired for the immediate two (2) years prior to May 2, 1983.

Tenn. Code Ann. § 68-104-105(a).

We conclude that the plain meaning of § 68-104-105(a) requires that the statement from the chief executive officer accompany an application for retailers or seasonal retailers of fireworks for a "new location." The statute gives the term "new location" prospective application, defining it "as any location where fireworks were not sold at retail as of May 2, 1983." *Id.* Yet, the section also has a "grandfather clause" that excludes from the definition of "new location" any location in which fireworks were lawfully sold "for the immediate two (2) years prior to May 2, 1983." *Id.* Thus, if a fireworks retailer had sold fireworks for the immediate two years before May 2, 1983, and if the retailer applied for a new permit to sell at the same location,[5] the application would *not* be for a "new location" because fireworks *were* sold for two years immediately before May 2, 1983. This

[4]In any event, we have researched the legislative history of the relevant Senate and House bills for this provision, but we were unable to find any germane material.

[5]That is, on or after January 3 of the calendar year for which the permit is sought between 1984 and the present.

fireworks retailer would, in our view, benefit from the "grandfather clause" contained in Tenn. Code Ann. § 68-104-105(a), which exempts it from obtaining the statement from the chief executive officer of the respective municipality. By contrast, if fireworks had *not* been sold at that location for the immediate two years before May 2, 1983, the application *would be* for a "new location" and would, therefore, trigger the requirement that the application include the statement from the chief executive officer. Because we must "construe the statute so that no part will be inoperative, superfluous, void or insignificant," *State v. Northcutt*, 568 S.W.2d 636, 637-38 (Tenn. 1978), the statement from the chief executive officer must accompany permits for a "new location" as just described.

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