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April 26, 2007

Opinion No. 07-59

2005 Amendments to the Drug-Free School Zone Act

QUESTIONS

1. Does a violation of Tenn. Code Ann. § 39-17-432, as it pertains to preschools, child care agencies, public libraries, recreational centers or parks, subject the offender to the requirement of serving the minimum sentence of the appropriate range at 100% as required in subsections (d) and (e) of § 39-17-432?

2. Since Tenn. Code Ann.§ 39-17-432(b)(3) states that a violation within the prohibited zone of a preschool, child care agency, public library, recreational center or park shall not subject the offender to additional incarceration as a result of this subsection, is an offender who has violated this subsection subject to the enhanced sentencing range as required in section (b)(1) of § 39-17-432?

3. Since Tenn. Code Ann. § 39-17-417 (c)(2)(A) maximizes the fine for a violation of subsection (a)(1) concerning Schedule II controlled substances at $100,000, does a violation of the Drug Free School Zone concerning Schedule II controlled substances reduce the maximum fine to $60,000 under Tenn. Code Ann. § 39-17-432 (b)(2)(D)?

4. Are all preschools, child care agencies, recreational centers, and parks included, both public and private, in the grounds or facilities that the Drug-Free School Zone Act is designed to protect? If so, what defines a preschool, child care agency, recreational center, and park?

OPINIONS

1. Yes. There is nothing in the statute that would exempt an offender from the requirement of serving the entire minimum sentence of the appropriate range for a violation of the Drug-Free School Zone Act as it pertains to a preschool, child care agency, public library, recreational center, or park.

2. No. Tenn. Code Ann. § 39-17-432(b)(2) specifically provides that a violation of the Act within the prohibited zone of a preschool, child care agency, public library, recreational center, or park does not subject an offender to the additional incarceration of one classification higher as required in subsection (b)(1).

3. Yes. Tenn. Code Ann. § 39-17-432(b)(2)(D) sets the maximum fine for a Class B felony under the Drug-Free School Zone Act at $60,000.

4. The Drug-Free School Zone Act covers all preschools and child care agencies, both public and private. However, only *public* recreational centers and *public* parks are covered by the Act.

ANALYSIS

1 and 2. Tennessee Code Ann. § 39-17-432 establishes drug-free school zones, with the purpose of "providing vulnerable persons in this state an environment in which they can learn, play and enjoy themselves without the distractions and dangers that are incident to the occurrence of illegal drug activities." *Id*. § 39-17-432(a) (2005). The statute further provides: "The enhanced and mandatory minimum sentences required by this section for drug offenses occurring in a Drug-Free Zone are necessary to serve as a deterrent to such unacceptable conduct." *Id.*

Tenn. Code Ann. § 39-17-432(b)(1)(2005) provides that a violation of Tenn. Code Ann. § 39-17-417, "or a conspiracy to violate the section that occurs on the grounds or facilities of any school or within one thousand feet (1,000') of the real property that comprises a public or private elementary school, middle school, secondary school, preschool, child care agency, or public library, recreational center or park shall be punished one (1) classification higher than is provided in § 39-17-417(b)-(i) for such violation." However, subsection (b)(3) goes on to state that a person convicted of violating subsection (b)(1) "who is within the prohibited zone of a preschool, childcare center,[1] public library, recreational center or park shall not be subject to additional incarceration as a result of this subsection (b) but shall be subject to the additional fines imposed by this section."

Therefore, only violations which occur on the grounds or facilities of any school or within 1,000 feet of the real property that compromises a public or private elementary school, middle school, or secondary school will subject an offender to the additional incarceration of one classification higher than that provided in § 39-17-417(b)-(i).

Tenn. Code Ann. § 39-17-432(d) - (e) states in pertinent part that a defendant convicted of violating § 39-17-432(b)(1) shall serve the "entire minimum sentence for the defendant's appropriate range of sentence." Although an offender who is within the prohibited zone of a preschool, childcare center, public library, recreational center, or park is not subject to additional incarceration, as discussed above, there is nothing in the statute that exempts the offender from serving the entire minimum sentence at the non-enhanced range.

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[1]Although subsection (b)(1) uses the term "child care agency" and subsection (b)(3) uses the term "child care center," it does not appear that the legislature intended to distinguish between the two.

3. According to Tenn. Code Ann. § 39-17-417(a)(1)-(4), it is an offense for a defendant to knowingly manufacture, deliver, sell or possess a controlled substance with the intent to manufacture, deliver or sell the controlled substance. A violation of subsection (a) with respect to cocaine or methamphetamine is a Class B felony if the amount involved is point five (.5) grams or more of any substance containing cocaine or methamphetamine, and a defendant may not be fined more than one hundred thousand dollars ($100,000). Tenn. Code Ann. § 39-17-417(c)(1). Tenn. Code Ann. § 39-17-417 (c)(2)(A) provides:

> Any other Schedule II controlled substance, including cocaine or methamphetamine in an amount of less than point five (.5) grams, is a Class C felony and, in addition, may be fined not more than one hundred thousand dollars ($100,000); provided, that if the offense involves less than point five (.5) grams of a controlled substance containing cocaine or methamphetamine but the defendant carried or employed a deadly weapon as defined in § 39-11-106, during commission of the offense or the offense resulted in death or bodily injury to another person, the offense is a Class B felony.

However, under the Drug-Free School Zone Act, in addition to punishment one classification higher for a violation of § 39-17-417, a defendant convicted of violating the Act is subject to a maximum fine of $60,000 for the enhanced Class B felony rather than a maximum fine of $100,000 as provided in § 39-17-417(c)(1)-(2)(A). Tenn. Code Ann. § 39-17-432 (b)(2)(D). .

4. You have asked whether both public and private preschools, child care agencies, recreational centers, and parks are included in the Drug-Free School Zone Act. As previously discussed, the statute provides that a violation of the Act that "occurs on the grounds or facilities of any school or within one thousand feet (1,000') of the real property that comprises a *public or private elementary school, middle school, secondary school, preschool, child care agency, or public library, recreational center or park* shall be punished one (1) classification higher than is provided in § 39-17-417(b)-(i) for such violation." (Emphasis added). The wording of the statute makes it clear that the General Assembly intended the Act to cover both public and private schools and child care agencies, but only *public* libraries, recreational centers and parks.

The terms "preschool" and "child care agency" are not defined in the statutes involved; therefore, one must look to the plain language of the statutes and apply the ordinary meaning of the words. *Cohen v. Cohen*, 937 S.W.2d 823, 827 (Tenn. Ct. App. 1996). "Preschool" is defined as "pertaining to, or designed for a child of nursery school age." A "nursery school" is defined as a "school for children who are not old enough to attend kindergarten." The *American Heritage Dictionary* 853, 979 (2d ed. 1985). Tenn. Code Ann. § 49-6-201 provides that "[c]hildren entering kindergarten shall be five (5) years of age on or before September 30 of the current kindergarten term." Tenn. Code Ann. § 71-3-501(4) defines a "child care agency" as "a place or facility, regardless of whether it is currently licensed, that is operated as a 'family child care home,' a 'group child care home,' a 'child care center,' or a 'drop-in center,' as those terms are defined in this part, or that provides child care for five (5) or more children who are not related to the primary caregiver for three (3) or more hours per day."

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