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Opinion No. 07-167

Effectiveness of Subsurface Sewage Disposal Statutes

QUESTIONS

1. Did Tenn. Code Ann. § 68-221-415 expire in 2001, or, if not, will it be obsolete when the rules referred to in subsection (c) thereof are effective?

2. Did Tenn. Code Ann. §§ 68-221-416 and 68-221-417 expire in 2001, or are they still in effect?

3. If Tenn. Code Ann. §§ 68-221-416 and 68-221-417 are still in effect, do they apply to all advanced treatment systems (ATS) for subsurface sewage disposal, or only to ones installed under the pilot study?

OPINIONS

1. No. Tenn. Code Ann. § 68-221-415, which directs the Tennessee Department of Environment and Conservation (TDEC) to coordinate a two year pilot project study of advanced treatment systems (ATS) for subsurface sewage disposal and incorporate the results into regulations, did not expire in 2001. Once TDEC finishes the pilot project study and incorporates the results into regulations, it will have fulfilled its obligations under Tenn. Code Ann. § 68-221-415.

2. No. Tenn. Code Ann. § 68-221-416 and § 68-221-417 did not expire in 2001, and both sections are still in effect today.

3. Tenn. Code Ann. § 68-221-416 and § 68-221-417 apply to all ATS, including experimental systems for subsurface sewage disposal permitted by TDEC under Tenn. Code Ann. § 68-221-403 and Tenn. Code Ann. § 68-221-404, that meet the definition of an ATS, as defined in Tenn. Code Ann. § 68-221-415, and that were installed subsequent to Public Chapter 919 becoming effective in 2000. Additionally, Tenn. Code Ann. § 68-221-416 and Tenn. Code Ann. § 68-221-417 will apply to systems that meet the definition of ATS in Tenn. Code Ann. § 68-221-415 and that are installed pursuant to regulations that TDEC will promulgate in the future as provided in Tenn. Code Ann. § 68-221-415.

ANALYSIS

1. In 2000, the General Assembly passed Public Chapter 919 amending the law regulating subsurface sewage disposal systems. *See* 2000 Tenn. Pub. Acts, ch. 919. Sections 2 and 5 of Public Chapter 919 were codified as Tenn. Code Ann. § 68-221-415. Section 2 directs TDEC to coordinate a two year pilot project study of ATS for subsurface sewage disposal. Section 2 also specifies how the study is to be conducted as well as the purposes for the study. Section 5 provides that TDEC shall incorporate the results of the study into the regulations for subsurface sewage disposal systems. Finally, section 6 of Public Chapter 919, which was not codified, extends the deadline for a special joint legislative committee, created by 1999 Tenn. Pub. Acts, ch. 532, to submit its report studying on-site sewage treatment systems to no later than July 1, 2001. Section 6 also provides that after the legislative committee makes its report, it will cease to exist.

The questions posed in this request suggest that the provisions of Public Act 919 expired in 2001 when the special legislative committee ceased to exist. Determining whether Tenn. Code Ann. § 68-221-415 expired in 2001 is a matter of statutory construction. "The fundamental rule of statutory construction is to ascertain and, if possible give effect to the intention or purpose of the legislature as expressed in the statute." *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977). "Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language." *Carson Creek Vacation Resort, Inc. v. State of Tennessee*, 865 S.W.2d 1, 2 (Tenn. 1993). Applying these principles of statutory construction, it is necessary to look at the language used in Public Chapter 919 from which Tenn. Code Ann. § 68-221-415 originated to determine if the General Assembly intended for this section to expire in 2001.

After reviewing the language of sections 2 and 5 of Public Chapter 919, later codified in Tenn Code Ann. § 68-221-415, it is clear that the General Assembly did not intend for these sections to expire in 2001 for several reasons. First and foremost, the General Assembly did not expressly provide in either section 2 or section 5 that these sections would expire in 2001. If this had been the intent of the General Assembly, it could have easily inserted an expiration date into both of these sections. Second, neither section 2 nor section 5 makes reference to section 6 or the special joint legislative committee in any way. If the General Assembly had intended to have the requirements in section 2 and 5 expire along with the legislative committee in 2001, it is reasonable to conclude that there would be a reference to sections 2 and 5 in section 6 or vice versa. Absent an express expiration date or reference to section 6 in sections 2 and 5, there is no reasonable basis to infer that the General Assembly intended for sections 2 and 5 to expire in 2001. For these reasons, it is clear that Tenn. Code Ann. §68-221-415, which codifies section 2 and section 5 of Public Chapter 919, did not expire in 2001 and remains in effect today.

Because Tenn. Code Ann. § 68-221-415 did not expire in 2001, TDEC must fulfill its obligations under this section of the statute by coordinating the two year pilot project study and incorporating the results into regulations for subsurface sewage disposal systems. Once TDEC takes these actions, it will have fulfilled its obligations under Tenn. Code Ann. § 68-221-415.

2. To determine if Tenn. Code Ann. § 68-221-416 and Tenn. Code Ann. § 68-221-417 expired in 2001, it is necessary to look at sections 3 and 4 of Public Act 919 from which these sections of the Code originated. Section 3 places a number of requirements on manufacturers and owners of ATS to ensure that they are properly installed, operated, and maintained. Section 4 provides that failure to comply with the specific requirements in section 3 for operation and maintenance of ATS will result in a Class C misdemeanor.

After reviewing the language of sections 3 and 4 of Public Chapter 919, it is clear that the General Assembly did not intend for either of these sections to expire in 2001. Neither section 3 nor section 4 expressly provides that they will expire in 2001. If the General Assembly had intended for these sections to expire in 2001, it could have easily inserted an expiration date into each section. Because it did not do so, it can be reasonably concluded that the General Assembly intended for these sections not to have an expiration date. Additionally, it is not reasonable to infer that the General Assembly intended for sections 3 and 4 to expire in 2001 because it provided that a special joint legislative committee would expire in 2001 as provided in section 6. Neither section 3 or 4 references the legislative committee in section 6 or vice versa. Moreover, the requirements in section 3 and the sanctions in section 4 are in no way tied to or dependent upon the existence of the legislative committee which expired in 2001.

In addition to looking at the plain meaning of the language used in sections 3 and 4, it is important to look at the overall purpose of the statute that contains these sections. "Legislative intent is ascertained from the plain and ordinary meaning of the language used, *when read in the context of the entire statute*. . . ." *Worrall v. Kroger Co*., 545 S.W.2d 736, 738 (Tenn. 1977) (emphasis added). The intent of the General Assembly, as provided in Tenn. Code Ann. § 68-221-401, is to minimize the risk of harm to the public health and welfare from subsurface sewage disposal systems. This intent would be thwarted by construing Tenn. Code Ann. § 68-221-416 and Tenn. Code Ann. § 68-221-417 as having expired in 2001 because this would result in ATS not being subject to the installation, operation, and maintenance requirements in section 3 and the sanctions for failure to comply in section 4. Without such requirements, ATS would be more likely not to function properly and thus cause a risk to the public health and welfare.

Finally, the fact that the General Assembly amended Tenn. Code Ann. § 68-221-416 in 2006 is significant. The legislature is presumed to know about its prior enactments and the state of the law at the time it passes legislation. *Wilson v. Johnson County*, 879 S.W.2d 807, 810 (Tenn. 1994). Therefore, it is reasonable to conclude that the General Assembly believed that Tenn. Code Ann. § 68-221-416 had not expired in 2001 because otherwise it would not have amended it in 2006. For these reasons, it is clear that Tenn. Code Ann. §§ 68-221-416 and 68-221-417, which codified sections 3 and 4 of Public Chapter 919, did not expire in 2001.

3. Tenn. Code Ann. § 68-221-416 and § 68-221-417 apply to all ATS, including experimental systems for subsurface sewage disposal permitted by TDEC under Tenn Code Ann. § 68-221-403 and Tenn Code Ann. § 68-221-404, that meet the definition of ATS, as defined in Tenn. Code Ann. § 68-221-415, and that were installed subsequent to Public Chapter 919 becoming

effective in 2000. Additionally, Tenn. Code Ann. §68-221-416 and Tenn. Code Ann. §68-221-417 will apply to systems that meet the definition of ATS in Tenn. Code Ann. §68-221-415 and that are installed pursuant to regulations that TDEC will promulgate as provided in Tenn. Code Ann. § 68-221-415(c). This is a reasonable interpretation of the statute because the language in Tenn. Code Ann. § 68-221-416 is very broad and refers to "all ATS." Moreover, the General Assembly did not include language in either Tenn. Code Ann. §§ 68-221-416 or 68-221-417 limiting their applicability only to ATS installed pursuant to the two year pilot project study. If this had been the intent of the General Assembly, it could have easily provided for this in each section, but it did not do so.

Additionally, ensuring that ATS, permitted as experimental systems or pursuant to regulations promulgated by TDEC in the future, are subject to installation, operation and maintenance requirements, as well as sanctions for non-compliance, furthers the intent of the General Assembly in the statute to minimize the risk of harm to the public health and welfare from subsurface sewage disposal systems. *See* Tenn. Code Ann. § 68-221-401. Without such requirements and sanctions for non-compliance, ATS would be more likely not to function properly and as a result cause a threat to the public health and welfare. In conclusion, it is reasonable to conclude that the General Assembly intended for the requirements in Tenn. Code Ann. § 68-221-416 and the sanctions in Tenn. Code Ann. § 68-221-417 to apply to all subsurface sewage disposal systems that meet the definition of ATS, as provided in Tenn. Code Ann. § 68-221-415, and that were installed after Public Chapter 919 became effective in 2000.

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