S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
P. O. BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 08-56

Fines Under Tenn. Code Ann. § 53-11-402

QUESTION

Are the fines listed in Tenn. Code Ann. § 53-11-402(b)(2) mandatory?

OPINION

No. Section 53-11-402(b)(2), Tennessee Code Annotated, merely changes the maximum authorized fines relative to those set forth in Tenn. Code Ann. § 40-35-111(b)(4).

ANALYSIS

Section 40-35-111(b)(4), Tennessee Code Annotated, establishes the authorized terms of imprisonment, and fines for Class D felonies generally. Specifically, with respect to fines, the statute provides that "the jury may assess a fine for a Class D felony not to exceed five thousand dollars ($5,000.00), unless otherwise provided by statute[.]"

Section 53-11-402, Tennessee Code Annotated, creates various criminal offenses involving controlled substances and classifies them as Class D felonies. With respect to the imposition of fines for violations of the statute, Tenn. Code Ann. § 53-11-402(b)(2) provides:

> Notwithstanding the provisions of § 40-35-111, relative to the authorized fines for a Class D felony, the authorized fine for a violation of this section shall be as follows:
>
> (A) For a violation involving a Schedule I or II controlled substance $100,000;
>
> (B) For a violation involving a Schedule III or IV controlled substance 50,000;
>
> (C) For a violation involving a Schedule V or VI controlled substance 5,000;
>
> (D) For a violation involving a Schedule VII controlled substance 1,000;
>
> (E) For any other violation of this section not involving a scheduled controlled substance . . . . . 20,000.

Like Tenn. Code Ann. § 40-35-111(b)(4), Tenn. Code Ann. § 53-11-402(b)(2) establishes the authorized fines for criminal offenses. When dealing with statutes relating to the same subject matter, one must read them together. *State Through Baugh v. Williamson Co. Hosp. Trustees*, 679 S.W.2d 934, 936 (Tenn. 1984). Accordingly, any interpretation of § 53-11-402(b)(2) must take into account § 40-35-111(b)(4).

When one construes two acts of like subject matter together, and one act contains provisions not present in the other, one must apply the omitted provisions to the act not containing them so long as doing so is not inconsistent with the purposes of that act. *Gates v. Long*, 172 Tenn. (8 Beeler) 471, 113 S.W.2d 388, 392 (1938). Section 40-35-111(b)(4) uses the language "not to exceed" when establishing the authorized fine for the commission of a Class D felony, while § 53-11-402(b)(2) omits this language when setting forth the amount of the fine. Construing these statutes together, however, the provision in § 40-35-111(b)(4) requiring that fines not exceed the specified amount also modifies the sums set forth in § 53-11-402(b)(2). Nothing in either act suggests that such a construction is in any way inconsistent with their respective purposes. Thus, this Office concludes that the fines set forth in § 53-11-402(b)(2) are intended to be discretionary, and the designated sums represent the maximum allowable fine for each offense.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

BENJAMIN A. BALL
Assistant Attorney General

Requested by:

The Honorable William Donnelly Young, Jr.
Interim District Attorney General
Twenty-first Judicial District
Post Office Box 937
Franklin, Tennessee 37065