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. 08-115

Clerks Fees in Department of Human Services Child Support Enforcement Actions

QUESTIONS

1. Is Tenn. Code Ann. § 8-21-401(a)(7)(R)(2004) the subdivision that establishes the fee to be assessed by clerks of juvenile courts against the Department of Human Services (the Department) for filing and docketing petitions and orders arising from child support actions and collection efforts by the Department?

2. Does the answer to question one change if the services rendered by the clerks are to a contractor of the Department?

OPINIONS

1. Yes, unless the clerk has elected to assess a flat fee pursuant to Tenn. Code Ann. § 8-21-401(a)(7)(M)(ii)(2004).

2. No.

ANALYSIS

I.

Regarding question one, Tenn. Code Ann. § 8-21-401(a)(7)(R)(2004) states:

> (a) Circuit court clerks, criminal court clerks, clerks and masters of chancery courts, clerks of courts of general sessions, clerks of trial justice courts, county clerks, clerks of juvenile and probate courts, clerks of law and equity courts, and clerks of city courts, insofar as commissions for receiving and paying over privilege taxes on litigation are concerned, are authorized to demand and receive for their services, where appropriate the following fees for services indicates:
>
> (R) For filing and docketing petitions and orders *not otherwise provided*.....75.00

(Emphasis supplied.) The activities of the Department in "filing and docketing petitions and orders arising from child support actions and collection efforts" do not fit under any other provisions of Tenn. Code Ann. § 8-21-401.[1] Therefore, only § 8-21-401 (a)(7)(R)(2004) applies.[2]

However, this catch-all provision, by its plain language, would not be applicable where provision for the fees against the Department for filing and docketing petitions and orders arising from child support actions and collection efforts by the Department is otherwise provided for. Considering this, the United States Congress, concerned about the effectiveness of child support enforcement, adopted legislation that affects the way in which the states determine and enforce child support obligations through the Child Support Enforcement Act, 42 U.S.C. §§ 651, *et seq*. (sometimes referred to as Title IV-D of the Social Security Act). *Ashley v. Jones*, 2005 WL 204367 *4 (Tenn. Ct. App. 2005). The Tennessee statutes authorizing and governing the role of the Department of Human Services in enforcement, review, and modification of support orders were a response to this mandate. *Id*.[3]

Generally actions by the Department under Title IV-D have been characterized as "child support enforcement actions." *See State ex rel. Whitley v. Lewis*, 244 S.W.3d 824, 830 (Tenn. Ct. App. 2007).[4] Title 42, section 654 of the United States Code (42 U.S.C. § 654) requires states to have a plan for child and spousal support which provides services for establishment of paternity, and for establishment and enforcement of support obligations. 42 U.S.C. § 654(4). Furthermore, states must have laws in effect to improve enforcement of all support obligations under 42 U.S.C. § 666. 42 U.S.C. § 654(20).

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[1]Regarding § 8-21-401(a)(7)(P)(2004) (fees for custody petitions), the Department generally does not file petitions for custody or change of custody in child support enforcement actions or collections efforts. *See* 42 U.S.C. § 654, 666. Generally, regarding § 8-21-401(a)(7)(Q)(2004) (fee for entry of foreign judgment), state law prohibits charging fees and costs against a child support obligee or the state enforcement agency should entry of a foreign judgment become necessary in the Department's efforts. Tenn. Code Ann. § 36-5-2313.

[2]The Clerk's Fees statute was extensively amended effective January 1, 2006. However, charges to the State in collection efforts brought by the Department of Human Services remain at amounts chargeable prior to January 1, 2006. Tenn. Code Ann. § 8-21-401(l)(2006).

[3]Such statutes include those codified in Titles 36, 37, and 71, dealing with paternity establishment, determination of child support, collection of child support, and assignment of rights for child support.

[4]*See also Howell v. Howell*, 2006 WL 1763660 (Tenn. Ct. App. 2006) (attorneys fee award in modification of child support to prevailing spouse in "child support enforcement action;" *State ex rel. Oakes v. Oakes*, 2006 WL 1472701 (Tenn. Ct. App. 2006) (state provided "child support enforcement" services to Ms. Oakes pursuant to Title IV-D of the Social Security Act, 42 U. S. C. §§ 651 *et seq*., and Tenn. Code Ann. § 71-3-124(c) in dispute addressing contempt and petitions to modify); *Rodgers v. Rodgers*, 2006 WL 1358394 *1 (Tenn. Ct. App. 2006) (addressing Tennessee Department of Human Services "child support enforcement" administrative collection procedures); *Nash v. Mulle*, 846 S.W.2d 803, 804, n. 2 (Tenn. 1993) (state plan under Title IV-D essential to receiving federal matching funds for child support enforcement to include creation of child support guidelines for support award amounts).

Therefore, 42 U.S.C. § 654 requires states' plans to include procedures for withholding income for payment of support (42 U.S.C. § 666(1)), expedited judicial procedures for review and adjustment of support (42 U.S.C. §§ 666(1) and (10)). Hence, the statutory scheme makes it clear that all of these activities (and others) fall under the rubric of "child support enforcement."[5]

Within Tenn. Code Ann. § 8-21-401(2004) is a provision expressly applicable to "child support enforcement actions." Tennessee Code Annotated § 8-21-401(7)(M)(ii)(2004) states:

> (M) In the following cases the clerk may, at the clerk's option, charge a flat fee instead of itemizing the fees set out in subsection (a):
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> * * *
>
> (ii) The clerk's fee for cases involving *child support enforcement* shall be.....35.00
>
> * * *

Tenn. Code Ann. § 8-21-401(7)M)(ii)(2004).

To exercise the option, clerks must notify the office of the comptroller of the treasury and the county executive. The election to change the flat fee shall apply to all cases after notice is provided. Tenn. Code Ann. § 8-21-401(7)(N). Therefore, if the clerk has made the election and provided notice pursuant to this section, then the fees for all activities of the Department in filing and docketing petitions and orders arising from child support actions and collections efforts must be charged under § 8-21-401(a)(7)(M)(ii).

II.

Regarding question two, the Department is explicitly authorized to contract with private or public entities to effectively provide its applicants with child support enforcement services throughout the State. Tenn. Code Ann. § 71-3-124(c)(2). The Department or its approved contractors "have authority and standing to file any legal actions to . . . establish, modify or enforce child or spousal support in any judicial . . . proceeding on behalf of the department and the State for persons who have assigned rights of support to the department pursuant to this section, or who have otherwise applied for child or spousal support services pursuant to the provisions of subdivision (c)(1) or Title IV-D of the Social Security Act." *Id.* Given this authority, the Department's contractors are authorized to appear for the State of Tennessee and represent its interests in child support enforcement matters. *Id.* Furthermore, as the fees for matters addressed

[5]Further, it appears that the amended Tenn. Code Ann. § 8-21-401(2006) adopts this view, although the State and the Department of Human Services have been exempted from the amendments by § 8-21-401(l)(2006). *See* Tenn. Code Ann. § 8-21-401 (b)(i)(E)(2006); *see also* 8-21-409 (a)(7)(M)(ii)(2006).

by these contractors are charged to the State, clerks are governed by Tenn. Code Ann. § 8-21-401(l)(2004). *See* Tenn. Code Ann. § 8-21-401(l)(2006).

Therefore, it does not change the answer to question one that those to whom the clerk provides services are Department contractors.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

WARREN A. JASPER
Assistant Attorney General

Requested by:

Honorable Tommie F. Brown
State Representative
36 Legislative Plaza
Nashville, TN 37243-0128