

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
P.O. BOX 20207
NASHVILLE, TENNESSEE 37202

June 12, 2008

Opinion No. 08-118

Clerks Fees in Department of Human Services Child Support Enforcement Actions

QUESTIONS

1. Whether the appropriate fee billed to the state for the initial filing of a child support petition is controlled by Tenn. Code Ann. § 8-21-401(a)(7)(M)(2004) or by Tenn. Code Ann. § 8-21-401(a)(7)(R)(2004).
2. Whether the term “child support enforcement” contemplates all actions filed with the Juvenile Court Clerk, to include the filing of an initial child support petition, or whether it contemplates actions subsequent to the filing of an initial petition and issuance of a child support order.

OPINIONS

1. The appropriate fee billed to the state is controlled by Tenn. Code Ann. § 8-21-401(a)(7)(R)(2004) unless the clerk has elected to assess a flat fee pursuant to Tenn. Code Ann. § 8-21-401(a)(7)(N)(2004).
2. The term “child support enforcement” encompasses all actions establishing and enforcing support obligations accomplished by the Department of Human Services or its agents, including the filing of an initial child support petition.

ANALYSIS

I.

Question one was recently addressed in Op. Tenn. Att’y Gen. 08-115 (June 3, 2008). The activities of the Department and entities with which it contracts for child support enforcement in “filing [] petitions [] arising from child support actions and collection efforts” are controlled by Tenn. Code Ann. § 8-21-401 (a)(7)(R)(2004), unless the clerk, pursuant to Tenn. Code Ann. § 8-21-401(7)(N)(2004), has notified the office of the comptroller of the treasury and the county executive of its election to change the flat fee under Tenn. Code Ann. § 8-21-401(a)(7)(M)(ii)(2004). *See* Op. Tenn. Att’y Gen. 08-115 (June 3, 2008).

II.

Regarding question two, 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.*¹

Generally, all 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).² 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). Hence, the statutory scheme makes it clear that all of these activities, including filing petitions to establish support obligations, fall under the rubric of “child support enforcement.”³

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

¹Such statutes include those codified in Titles 36, 37, and 71, dealing with paternity establishment, establishment of child support, collection of child support, and assignment of rights for child support.

²*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).

³*See Op. Tenn. Att’y Gen. 08-115* (June 3, 2008).

WARREN A. JASPER
Assistant Attorney General

Requested by:

Honorable Curry Todd
State Representative
204 War Memorial Building
Nashville, TN 37243-0195