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Opinion No. 08-136

Authority of General Sessions and City Courts to issue Subpoenas for Telephone and Other Electronic Records in the Possession of Service Providers

QUESTIONS

1. Do general sessions courts have the authority under 18 U.S.C. § 2703 to issue subpoenas duces tecum for electronically stored telephone and other electronic data?

2. Do city courts that possess concurrent jurisdiction with general sessions courts have the authority under 18 U.S.C. § 2703 to issue subpoenas duces tecum for electronically stored telephone and other electronic data?

OPINIONS

1. Yes. General sessions courts are courts of competent jurisdiction within the meaning of 18 U.S.C. § 2703 and, therefore, have the authority to issue subpoenas duces tecum for electronically stored telephone and other records and data, but such authority is limited to the county in which the court is located.

2. City courts that possess concurrent jurisdiction with general sessions courts to issue subpoenas for electronic records pursuant to Tenn. Code Ann. § 40-17-123 are courts of competent jurisdiction within the meaning of 18 U.S.C. § 2703. Whether a particular city court is such a court of competent jurisdiction depends on the language of the private act that established that particular city court

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ANALYSIS

1. 18 U.S.C. §2703 governs disclosure of telephone records and other electronic data that are in the possession of service providers[1]. Subsection (d) authorizes disclosure of such information pursuant to an order issued by a federal court or state "court of competent jurisdiction." The statute does not define the term court of competent jurisdiction.

The primary objective in construing a federal statute is to ascertain the intent of Congress.

[1]In addition to disclosure of electronically stored telephone data, 18 U.S.C. § 2703 also governs disclosure of e-mails and other internet data.

Statutes are to be read in a common sense manner, *In re Laurain*, 113 F.3d 595 (6th Cir. 1997), and, if possible, such intent is to be found from the plain meaning of the statutory language. *In re Arnett*, 731 F.2d 358 (6th Cir. 1984).

The term "court of competent jurisdiction" has a recognized legal meaning. That term is used to describe a court that has the legal authority to act on the matter at hand. *United States v. Morton*, 467 U.S. 822 (1984). As that case also shows, determining whether a state court is a court of competent jurisdiction within the meaning of a federal statute is a question of state law.

Tenn. Code Ann. § 40-17-123 authorizes courts to issue subpoenas for books, records, electronic data and other types of evidence upon application of a law enforcement officer. Subsection (d)(1) states that such applications may be submitted to courts of record and general sessions courts. Such courts may issue such subpoenas if they find that the applicant has met the statutory requirements. Subpoenas that are issued by courts of record are valid statewide. Subpoenas that are issued by general sessions courts are valid only in the county where the court is located.

As under federal law, the objective of statutory construction under state law is to ascertain legislative intent. *Griffin v. State*, 182 S.W.3d 795 (Tenn. 2006). If the meaning of the statutory language is clear, it must be interpreted as it is written. *In re Audrey S.*, 182 S.W. 3d 838 (Tenn. App. 2005).

Tenn. Code Ann. § 40-17-123 clearly and unambiguously authorizes general sessions courts to issue subpoenas for electronic records and other types of evidence. Such courts are therefore courts of competent jurisdiction within the meaning of 18 U.S.C. § 2703(d), but only for subpoenas that are issued for records that are located within that county.

2. Tenn. Code Ann. § 40-17-123 does not mention city courts. Tenn. Code Ann. § 40-1-107, however, provides that city courts in certain cities and towns, along with general sessions, circuit and criminal courts have original jurisdiction over criminal actions. Statutes relating to the same subject matter are to be construed *in pari materia*. *In re C.K.G.*, 173 S.W.3d 714 (Tenn. 2005). Reading the two statutes *in pari materia* indicates that the legislature intended to authorize some city courts to issue subpoenas for electronic records.

Other than stating that certain city courts may exercise concurrent jurisdiction with general sessions courts, there is nothing in the language of Tenn. Code Ann. § 40-1-107 that specifies the city courts that possess such authority. City courts are creatures of private acts and the authority of any city court to issue subpoenas for electronic records will depend on the specific language of the private act that created a particular city or municipal court. Because of the large number of such private acts and probable differences in language, it is not possible to render an opinion that would

cover all city courts. [2]

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[2]A review of a sampling of private acts shows that the authority that is conferred on city courts varies. Some city courts are given concurrent jurisdiction with general sessions courts in cases involving violations of state laws that are committed within the city limits. *See, e.g.*, 2007 Tenn. Priv. Acts 49 (City of Elkton); 2006 Tenn. Priv. Acts 103 (Town of Smyrna); 2004 Tenn. Priv. Acts 121 (Ashland City); 2003 Tenn. Priv. Acts 52 (Town of Jonesborough). The term "cases" has an established legal meaning. It is defined as " a civil or criminal proceeding, action, suit or controversy at law or in equity." Blacks Law Dictionary, at 228. Under Tenn. Code Ann. § 16-15-401, such courts would have the authority to issue subpoenas for witnesses to appear in cases that are pending before them. Arguably, however, such city courts would not have the authority to issue subpoenas for electronic records in all circumstances, because subpoenas issued pursuant to Tenn. Code Ann. § 40-17-123 are sometimes issued in investigations that have not yet ripened into formal "cases" as defined above.

Other private acts state that the city court shall have subject matter jurisdiction concurrent with general sessions court. *See, e.g.*, 2006 Tenn. Priv. Acts 128 (City of Ripley). Use of the phrase "same subject matter jurisdiction" indicates an intent to clothe the city court with all of the authority that is possessed by a general sessions court. Such a court would therefore have the authority to issue subpoenas for electronic records under Tenn. Code Ann. § 40-17-123.