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. 08-164

Tenn. Code Ann. § 48-66-103

QUESTION

Does Tenn. Code Ann. § 48-66-103 give a member of a nonprofit corporation the right to receive an electronic copy of records to which the member has a right of inspection under Tenn. Code Ann. § 48-66-102 if the corporation maintains the records in electronic format but for whatever reason refuses to issue them electronically?

OPINION

Yes. Pursuant to Tenn. Code Ann. § 48-66-103(b), a member is entitled to receive corporate records in electronic format, if reasonable.

ANALYSIS

"Subject to § 48-66-103(c), a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in § 48-66-101(e) if the member gives the corporation a written demand at least five (5) business days before the date on which the member wishes to inspect and copy." Tenn. Code Ann. § 48-66-102(a). "The right to copy records under § 48-66-102 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means." Tenn. Code Ann. § 48-66-103(b).

"The primary rule of statutory construction is to 'ascertain and give effect to the intention and purpose of the legislature.'" *LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000); *Carson Creek Vacation Resorts, Inc. v. Dept. of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993); *Exxonmobil Oil Corp. v. Metro. Gov't of Nashville and Davidson Co.*, 246 S.W.3d 31, 35 (Tenn. Ct. App. 2005); *McGee v. Best*, 106 S.W.3d 48, 64 (Tenn. Ct. App. 2002). "To determine legislative intent, one must look to the natural and ordinary meaning of the language used in the statute itself." *Craighead v. BlueCross Blueshield of Tenn.*, 2008 Tenn. App. LEXIS 454, *13. "We must examine any provision within the context of the entire statute and in light of its over-arching purpose and the goals it serves." *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000); *Cohen v. Cohen*, 937 S.W.2d 823, 828 (Tenn. 1996); *Exxonmobil*, 246 S.W.3d at 35; *T.R. Mills Contractors, Inc. v. WRH Enterprises, LLC*, 93 S.W.3d 861, 867 (Tenn. Ct. App. 2002). "The statute should be read 'without any forced or subtle construction which would extend or limit its meaning.'" *Craighead*, 2008 Tenn. App. LEXIS at *14 (quoting *Nat'l Gas Distributors, Inc. v.*

State, 804 S.W.2d 66, 67 (Tenn. 1991)). The Tennessee Supreme Court has concluded that a court "must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning." *Scott v. Ashlan Healthcare Center, Inc.*, 49 S.W.3d 281, 286 (Tenn. 2001) (citing *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995)).

Tenn. Code Annotated § 48-66-103(b) gives a member of a nonprofit entity "if reasonable, the right to receive copies made by photographic, xerographic, or other means." The phrase "receive by photographic, xerographic, or other means" follows the words "right to copy records…includes," and therefore delineates the means by which a member may obtain the responsive documents, including presumably electronic formats. A member's right to receive records in a particular format, however, is not absolute; the phrase, "if reasonable," limits the member's right to receive records to those formats which the nonprofit entity can reasonably produce. If it is not reasonable for the nonprofit entity to produce the records in a requested format, the nonprofit entity may simply provide the member with an opportunity to inspect and copy the records.

This application of the "the right to receive copies made by photographic, xerographic, or other means" is consistent with the statutory scheme established by Tenn. Code Ann. §§ 48-66-101, *et seq.*, the hallmarks of which are reasonableness and flexibility. For example, a member's right to inspection must be at a "reasonable time and location." Tenn. Code Ann. § 48-66-102(a). The member must describe "with reasonable particularity the purpose and the records the member desires to inspect." Tenn. Code Ann. § 48-66-102(c)(2). The corporation may impose a "reasonable charge" for providing the documents. Tenn. Code Ann. § 48-66-103(c).

As such, a nonprofit entity must act in good faith and provide the responsive documents in the requested format if it is reasonable to do so. As required when construing a statute, the definition of "reasonable" should first be based on its "natural and ordinary meaning." *Craighead*, 2008 Tenn. App. LEXIS at *13. "Reasonable" is defined as "fair, proper, or moderate under the circumstances." BLACK'S LAW DICTIONARY 1293 (8th ed. 2004).

While all the circumstances surrounding a member's request for documents in a specific format are relevant to its "reasonableness," it is not unfair, improper, or unreasonable to ask a nonprofit corporation to produce records in electronic format when they are already maintained in electronic format. Accordingly, a member of a nonprofit corporation as set forth in your question is entitled to receive the records in electronic format, and the nonprofit should comply with this request pursuant to Tenn. Code Annotated § 48-66-103(b).

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

JESSE C. NEIL
Assistant Attorney General

Requested by:

Representative Henry Fincher
Assistant Majority Whip
Representative 42nd District
305 East Spring Street
Cookeville, Tennessee 38501