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Opinion No. 08-182

Archives and Records Management Fee

QUESTION

Whether a county legislative body may establish and collect an archives and record management fee for documents filed with the Circuit Court Clerk and the Clerk and Master pursuant to Tenn. Code Ann. § 10-7-408.

OPINION

No. Pleadings, documents and other papers filed with the clerks of all courts, including the courts of record, general sessions courts, and former courts of justices of the peace, are excluded from the fee authorized by Tenn. Code Ann. § 10-7-408.

ANALYSIS

You have asked whether a county legislative body may establish and collect an archives and record management fee for documents filed with the Circuit Court Clerk and the Clerk and Master pursuant to Tenn. Code Ann. § 10-7-408. That statute provides as follows:

> (a) The county legislative body of any county which creates a county records commission has the power to appropriate such funds as may be required for the carrying out of the purposes of this chapter including, but not limited to, the purchase or leasing of equipment, the equipping of an office and the payment of the expenses thereof, the furnishing of secretaries and clerical help and the employment of expert advice and assistance.

> (b) In any county, if the county legislative body creates a county records commission, then the county legislative body is authorized to:
>
> (1) Appropriate such funds as may be required for carrying out of the purposes of this chapter, including, but not limited to, the purchase or leasing of equipment, the equipping of an office and the payment of the expenses of the office, the furnishing of secretaries and clerical help, and the employment of expert advice and assistance; and
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> (2) Establish and collect, through all entities creating public records, as defined in § 10-7-403(1) and (3), except for the office of county register, an archives and record management fee not to exceed two dollars ($2.00) per document filed. Funds collected through this fee must be designated exclusively for duplicating, storing and maintaining any records required by law to be permanently kept.

Pursuant to this statute, if a county legislative body has created a county records commission pursuant to Tenn. Code Ann. § 10-7-401, then it is authorized to establish and collect an archive and record management fee for each document filed with the entities identified in Tenn. Code Ann. § 10-7-403(1) and (3) as creating public records, with the exception of the county register.

Tenn. Code Ann. § 10-7-403 provides:

> "Public records" within the county shall be construed to mean:
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> (1) All documents, papers, records, books, and books of account in all county offices, including, but not limited to, the county clerk, the county register, the county trustee, the sheriff, the county assessor, the county executive and county commissioners, if any;
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> (2) The pleadings, documents and other papers filed with the clerks of all courts, including the courts of record, general sessions courts, and former courts of justices of the peace, and the minute books and other records of these courts; and
>
> (3) The minutes and records of the county legislative body.

Tennessee courts have promulgated two cardinal rules of statutory construction. "The cardinal rule of statutory construction is to follow the plain meaning of the statute where the language is clear and unambiguous on its face." *Jackson v. General Motors Corp.*, 60 S.W.3d 800, 804 (Tenn. 2001). "The cardinal rule of statutory construction is to effectuate legislative intent with all rules of construction being aids to that end." *Brower v. Morris*, 975 S.W.3d 308, 311 (Tenn. 1998). "Legislative intent or purpose is to be ascertained primarily from the natural

and ordinary meaning of the language used, without forced or subtle construction that would extend the meaning of the language." *Hamblen County Educ. Ass'n v. Hamblen County Bd. of Educ*., 892 S.W.2d 428, 431 (Tenn.Ct.App. 1994) (citing *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66 (Tenn. 1991)). Thus, "[i]f a statute is unambiguous, legislative intent is to be determined from the face of the statute." *Id*. at 432.

Tenn. Code Ann. § 10-7-408(b)(2) on its face specifies that an archive and record management fee may be collected for documents filed only with those entities creating public records that are identified in subsections (1) and (3) of Tenn. Code Ann. § 10-7-403, with the exception of the county register. This language is clear and unambiguous. Thus, documents filed with those entities identified in subsection (2) of Tenn. Code Ann. § 10-7-403, *i.e.*, the clerks of all courts, including courts of record, general sessions courts, and former courts of justices of the peace, are excluded and a county legislative body may not collect an archive and record management fee for documents filed with these entities.

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