STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 09-150

TRICOR Service Industry Partnerships with the Private Sector

QUESTIONS

1. Does TRICOR have the authority to enter into service industry partnerships with the private sector?

2. If so, do these partnerships have to follow the same statutory requirements as the Prison Industry Enhancement Certification Program (PIECP) operations (i.e., paying prevailing wage to offenders, etc.)?

OPINIONS

1. Yes. TRICOR has the authority to enter into service industry partnerships with the private sector.

2. No. Prison Industry Enhancement Certification Program (PIECP) requirements apply only to joint ventures for the sale of prison-made goods. It does not apply to service industry partnerships.

ANALYSIS

1. Tennessee Code Annotated. § 41-22-403 provides, in pertinent part, as follows:

> (2) TRICOR has a mission to accomplish the following objectives:
>
> (A) To work inmates in manufacturing, business services or agricultural jobs;
>
> (B) To offset the costs of incarceration by generating revenue through the sale of products or business services; . . . .

(Emphasis added). The TRICOR board is responsible for "developing jobs, training and selecting department of correction inmates for participation in industry, *business services* or agricultural programs" and for "the sale of products or *services* for the purpose of generating revenue to offset the costs of incarceration." Tenn. Code Ann. § 41-22-403(3) (emphasis added). The repeated references to "business services" in § 41-22-403 is a clear indication that TRICOR is authorized to work inmates in service jobs.

Tenn. Code Ann. § 41-22-406 gives the TRICOR board "such powers as are necessary to effectively carry out its mission as defined in § 41-22-403" and states the specific intent of the general assembly "that the board should be free as is possible to operate its facilities and to pursue its mission with the principles of free enterprise." Nothing in § 41-22-403 purports to restrict TRICOR's authority to work inmates in service jobs in partnership with the private sector.

2. Tennessee Code Annotated § 41-22-116(e) authorizes the TRICOR board to enter joint ventures with private sector businesses. Section 41-22-116(e) further provides in pertinent part:

> *These ventures shall operate pursuant to the Private Sector Prison Industry Enhancement Certification Program (PS/PIEC) (P.L. 96-157, as amended) and in accordance with §§ 41-6-204, 41-6-205(a) and (c), 41-6-206 and 41-6-207.* Section 41-6-205(b) also applies to ventures in which inmates are employed by private industries. Eligibility for participation will not be extended to those businesses which have ceased Tennessee operations within twenty-four (24) months of the initiation of the venture or during such venture. If the private sector business is doing business in Tennessee, the venture shall not cause the loss of jobs for Tennessee employees. *Goods produced in these ventures may be sold on the open market.*

(Emphasis added). Section 41-22-116(e) is a subsection of Tenn. Code Ann. § 41-22-116 entitled "Sale of prison-made goods in open market prohibited — Exceptions." Section 41-22-116(e) is an exception to Tenn. Code Ann. § 41-22-116(a) which provides in pertinent part:

> Except as provided in subsections (c)-(f), no goods, wares or merchandise manufactured, in whole or in part, by inmates, except inmates on parole or probation, shall be sold or offered for sale in this state by any person, firm, association or corporation or by any federal authority, state or political subdivision thereof.

The prohibition in subsection (a) by its terms applies only to "goods, wares or merchandise manufactured, in whole or in part, by inmates, except inmates on parole or probation." It does not apply to inmate services.

The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature. *State v. Hannah*, 259 S.W.3d 716 (Tenn. 2008). If the statute is clear and unambiguous, courts find legislative intent from the plain meaning of the text and will enforce the statute as written. *State v. Sherman*, 266 S.W.3d 395 (Tenn. 2008). Under rules of statutory construction, the express mention of one subject in a statute means the exclusion of subjects that are not mentioned. *State v. Edmondson*, 231 S.W.3d 925 (Tenn. 2007).

By its plain terms, Tenn. Code Ann. § 41-22-116 applies only to the sale of prison-made goods. Accordingly, the PIECP requirements of § 41-22-116(e) apply only to joint ventures with the private sector for the sale of prison-made goods. Service industry partnerships between TRICOR and the private sector are not governed by § 41-22-116(e).

This interpretation is consistent with federal law which generally prohibits the transportation in interstate commerce of any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners. *See* 18 U.S.C. 1761(a) (known as the Ashurst-Sumners Act). The PIECP provides an exception to that prohibition, allowing the interstate transportation of prisoner-made goods that have been produced in a federally-certified program that meets certain requirements, including the payment of prevailing wage. *See* 18 U.S.C. 1761(c). Service industries were not included in the initial Ashurst-Sumners Act prohibition, and thus are also not included in the PIECP. As a result, federal law does not require service industry partnerships to meet the same statutory requirements as PIECP programs.[1]

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MARK A. HUDSON
Senior Counsel

[1] Although service industry partnerships are not included in the initial Ashurst-Sumners Act prohibition, the Office of Justice Programs, Bureau of Justice Assistance has noted that "a number of service industries have elected to comply with the PIECP requirements."

Requested by:

Ms. Patricia Weiland
State of Tennessee
TRICOR
240 Great Circle Road Suite 310
Nashville, TN 37228-1790