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

March 1, 2010

Opinion No. 10-23

Corporate Criminal Responsibility under Tennessee Code Annotated section 39-16-602(c)

QUESTIONS

1. Does the word "person" in Tennessee Code Annotated section 39-16-602(c) include a corporation, business, or legal entity?

2. If so, and such a "person" refused to allow a sheriff or private process server onto its property to execute service, or refused to accept process executed upon the "person," would that conduct constitute "preventing or obstructing" service as prohibited by subsection (c)?

3. If not, why, and how should the statute be modified in order to cover that conduct?

OPINIONS

1. Under the proper circumstances, the statutory definition of "person" may include corporations, businesses, and other legal entities for all criminal offenses in Title 39 .

2. Yes. It is an offense for any corporation, business, or other legal entity included in the definition of "person" to intentionally prevent or obstruct service of process.

3. The answer to the first two questions obviates the need to answer the third question.

ANALYSIS

1. Tennessee Code Annotated section 39-11-103 states that "[e]very person, whether an inhabitant of this or any other state or country, is liable to punishment by the laws of this state, for an offense committed in this state, except where it is by law cognizable exclusively in the courts of the United States." As defined in Title 39, "'[p]erson' includes the singular and the plural and means and includes any individual, firm, partnership, copartnership, association, corporation, governmental subdivision or agency, or other organization or other legal entity, or any agent or servant thereof." Tenn. Code Ann. § 39-11-106(a)(27) (emphasis added). Accordingly, "person" as used in Tennessee Code Annotated section 39-16-602(c) would not be limited to an individual but would include a corporation or other legal entity.

2. Under Tennessee Code Annotated section 39-16-602(c), "[i]t is an offense for a person to intentionally prevent or obstruct an officer of the state or any other person known to be

a civil process server in serving, or attempting to serve or execute, any legal writ or process." (Emphasis added). A person acts intentionally "when it is the person's conscious objective or desire to engage in the conduct or cause the result." Tenn. Code Ann. § 39-11-106(18). The terms "prevent" and "obstruct," however, are not defined by the statute. But, "prevent" generally means "[t]o keep from happening," and "obstruct" means "[t]o impede, retard, or interfere with." *The American Heritage College Dictionary* 859, 982 (2nd ed. 1985).

Therefore, it is the opinion of this office that, under the proper circumstances, a corporation or other legal entity consciously impeding an officer of the state or civil process server serving or attempting to serve process, or consciously keeping such process from being served, would be committing an offense under Tennessee Code Annotated section 39-16-602(c) and may be subject to criminal prosecution.

It should be further noted that pursuant to Tennessee Code Annotated section 39-11-404(a)(3)(A), a corporation commits an offense when the conduct constituting the offense is engaged in by an agent of the corporation acting within the scope of the agent's employment and on behalf of the corporation, and the offense is a misdemeanor. A violation of Tennessee Code Annotated section 39-16-602(c) is a Class A or B misdemeanor, depending on the circumstances. Therefore, a corporation could be committing an offense under Tennessee Code Annotated 39-16-602(c) when an agent of the corporation, acting within the scope of his employment and on behalf of the corporation, intentionally prevents or obstructs a legal process server in serving or attempting to serve process.

3. The answer to the first two questions obviates the need to answer the third question.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

LINDSY PADUCH STEMPEL
Assistant Attorney General

Requested by:

The Honorable Harry Brooks
State Representative
212 War Memorial Building
Nashville 37243-0119