

STATE OF TENNESSEE
OFFICE OF THE
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October 4, 2010

Opinion No. 10-103

Drug Testing Fees

QUESTION

Does 2010 Tenn. Pub. Acts, ch. 1004 (“Public Chapter 1004”), which increases the fees that are assessed for drug testing, apply statewide, or is its application limited to the counties that assess drug testing fees pursuant to Tenn. Code Ann. § 39-17-420(d)?

OPINION

Public Chapter 1004, which increases the fees assessed for drug testing in certain cases, applies statewide.

ANALYSIS

Public Chapter 1004 took effect July 1, 2010. Among other provisions, Public Chapter 1004 deleted in its entirety subsection (h) of Tenn. Code Ann. § 39-17-420 and substituted the following:

(h) In addition to all other fines, fees, costs and punishments now prescribed by law, imposed pursuant to subsection (d), a drug testing fee in the amount of two hundred and fifty dollars (\$250) shall be assessed upon a conviction of or upon the granting of pretrial diversion under § 40-15-105 or judicial diversion under § 40-35-313 for a violation of any part of the Tennessee Drug Control Act, compiled in this part and title 53, chapter 11, parts 3 and 4.

2010 Tenn. Pub. Acts, ch. 1004. Tenn. Code Ann. § 39-17-420(d) provides:

(d) In addition to all other fines, fees, costs and punishments now prescribed by law, in counties having a population of not less than eighty-seven thousand nine hundred (87,900) nor more than eighty-eight thousand (88,000), or a population greater than seven hundred thousand (700,000), according to the 2000 federal census or any subsequent federal census, a drug testing fee of twenty dollars (\$20.00) shall be assessed upon conviction of a violation of this part whenever a

drug analysis is performed by a publicly funded forensic laboratory or other forensic laboratory maintained in or operated by those counties. This fee shall be collected by the clerks of the various courts of those counties and forwarded to the appropriate county trustees on a monthly basis and designated for the exclusive use of the publicly funded forensic laboratory of those counties.

You ask if the newly enacted subsection (h) applies statewide or only to those counties that are specified in subsection (d). In construing a statute, a court first looks to the language of the statute itself, keeping in mind that the court's proper role is "to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *Curtis v. G.E. Capital Modular Space*, 155 S.W.3d 877, 881 (Tenn. 2005) (quoting *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995)). The court must apply the natural and ordinary meaning of the language used. *Curtis*, 155 S.W.3d at 882. When the language of the statute is plain, clear, and unambiguous, the legislative intent must be derived from the statute's face. *Id.* Under these circumstances, a court is bound by the plain language of the statute and by the general rules of grammatical construction. *Hawkins v. Case Management Inc.*, 165 S.W.3d 296, 300 (Tenn. Ct. App. 2004).

A plain reading of subsection (h) indicates that the drug testing fee is to be assessed for violations of the Tennessee Drug Control Act in addition to all other fines, fees, costs, and punishments. The assessment of such fee is not limited to those counties enumerated in subsection (d). This conclusion is reached by applying accepted and ordinary principles of English grammar. The usual rule of English grammar is that an adjective phrase modifies and describes the nouns in the preceding phrase. Thus, the adjective phrase "imposed pursuant to subsection(d)" is descriptive and modifies the nouns "fines," "fees," "costs," and "punishments" in the preceding phrase.¹ Stated another way, the "fines," "fees," "costs," and "punishments" referred to in subsection (h) are those imposed pursuant to subsection (d). As a result, it is the opinion of this Office that 2010 Tenn. Pub. Acts, ch. 1004 imposes a \$250 drug testing fee for violations of the Tennessee Drug Control Act statewide in addition to the \$20 drug testing fee imposed by certain counties enumerated in Tenn. Code Ann. § 39-17-420(d).²

¹ While subsection (d) imposes a fee, it does not impose any fines, costs, or punishments. This suggests that the legislature was mistaken when it referred to "all other fines, fees, costs and punishments now prescribed by law" as being "imposed pursuant to subsection (d)." But this mistake does not create an ambiguity or an absurdity that would render the statute meaningless. *See, e.g., Seals v. H & F, Inc.*, 301 S.W.3d 237, 250-51 (Tenn. 2010). *See also Frillici v. Town of Westport*, 231 Conn. 418, 650 A.2d 557, 564 (1994) ("That the legislative branch enacts legislation based upon what may be a reasonable but mistaken factual or legal assumption is not a sufficient justification ... to fail to give proper effect to the legislation.") It is the prerogative of the legislature, and not the courts, to amend statutes. *In re Swanson*, 2 S.W.3d 180, 187 (Tenn. 1999).

² As noted above, Public Chapter 1004 repealed existing language in subsection (h) and replaced it with new language. In fact, the new language only replaced parts of subsection (h). While the primary change was to increase the drug testing fee from \$100 to \$250, Public Chapter 1004 also modified the phrase "imposed pursuant to subsection (d)" at issue in this opinion. Prior to passage of Public Chapter 1004, the language read as follows: "including the fee imposed pursuant to subsection (d)" (emphasis added). As originally worded, this phrase would not have been construed as modifying the nouns "fines, fees, costs and punishments" but rather as identifying a particular fee falling within those general categories; as such, it clearly would not have been interpreted to limit the application of the drug testing fee only to the counties identified in subsection (d). While the omission of the words

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“including the fee” in Public Chapter 1004, whether intentional or inadvertent, can be read to change the phrase’s meaning, even without those words the adjective phrase at issue does not limit the applicability of the drug testing fee for the reasons explained above.