STATE OF TENNESSEE
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Opinion No. 11-18

Tenn. Code Ann. § 36-3-301(c): Legality of Compensation for Performing Marriages

QUESTION

Under Tenn. Code Ann. § 36-3-301(c), is it lawful for an elected official (county mayor, county clerk, or municipal mayor) to charge, request, or otherwise solicit money or compensation for the performance of a marriage during or after office hours?

OPINION

While it is lawful under Tenn. Code Ann. § 36-3-301(c) for county mayors, county clerks, and municipal mayors to accept, request or solicit gratuities for performing wedding ceremonies, it is not lawful for such officials to charge a fee or demand compensation for performing wedding ceremonies.[1]

ANALYSIS

As a general rule, elected officials must always guard and protect the interest of the public and may not use their public office directly or indirectly for a personal profit. 67 C.J.S. Officers § 244. Under the provisions of Tenn. Code Ann. § 8-21-101, public officers are not allowed to "demand or receive fees or other compensation for any service further than is expressly provided by law."

You have asked whether Tenn. Code Ann. § 36-3-301(c) authorizes county mayors, county clerks, and municipal mayors to charge, request, or otherwise solicit compensation for the performance of a marriage ceremony. This statute provides:

> Any gratuity received by a county mayor, county clerk or municipal mayor for the solemnization of a marriage, whether performed during or after such person's regular working hours, shall be retained by such person as personal remuneration for such services, in addition to any other sources of compensation such person might receive, and such gratuity shall not be paid into the

[1] This opinion refers only to the officials addressed by Tenn. Code Ann. § 36-3-301(c) and not to other officials authorized by law to perform marriage ceremonies.

> county general fund or the treasury of such municipality.

Tenn. Code Ann. § 36-3-301(c).

In construing statutes, courts must "ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope." *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). When the statute is unambiguous, legislative intent is determined from the plain and ordinary meaning of the language used in the statute. *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). The statutory language must be "read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning." *National Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). A statute should be construed so that "no part will be inoperative, superfluous, void or insignificant." *State v. Northcutt*, 568 S.W.2d 636, 637-38 (Tenn. 1978). In addition, a statute should not be construed to produce an absurd or incongruous result. *Barnett v. Barnett*, 27 S.W.3d 904, 908 (Tenn. 2000).

The term "gratuity" has been defined as "something given voluntarily or beyond obligation, usually in return for or in anticipation of some service." *Webster's Ninth New Collegiate Dictionary.* By employing the term "gratuity" in referring to any remuneration received for the performance of marriage services, the General Assembly has expressed its intent to allow county mayors, county clerks, and municipal mayors to receive moneys voluntarily given. As a practical matter, this may involve a discussion, request or solicitation of such gratuity. Accordingly, in order to avoid an absurd or incongruous result, it is our opinion that Tenn. Code Ann. § 36-3-301(c) should be construed to allow a request or solicitation of a gratuity by a county mayor, county clerk, or municipal mayor for performing wedding ceremonies.

The General Assembly did not, however, expressly authorize such officials to charge or demand a fee for performing marriage ceremonies. Therefore, it is our opinion that county mayors, county clerks, and municipal mayors are precluded by Tenn. Code Ann. § 8-21-101 from charging a fee or demanding money for performing wedding ceremonies.

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