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Opinion No. 11-45

"Public Safety Agencies" Exemption from Registration and Inspection Fee for Radiation Machines

QUESTION

Does the term "public safety agencies" in Tenn. Code Ann. §68-202-503(d) include law enforcement agencies, firefighters, first responders, and other such entities whose purpose is to enhance the public welfare, thereby exempting them from the radiation machine annual registration and inspection fee?

OPINION

It is the opinion of this Office that the term "public safety agencies" used in the context of Tenn. Code Ann. §68-202-503(d) includes law enforcement agencies, firefighters, first responders, and other such entities whose purpose is to enhance the public welfare if they have x-ray machines.

ANALYSIS

In 1982, the General Assembly enacted the Medical Radiation Inspection Safety Act (Act) which provided for the registration and inspection of radiation machines and the payment of an annual registration fee. 1982 Tenn. Pub. Acts § 946. In 1988, the General Assembly amended Tenn. Code Ann. §68-202-503 to carve out an exemption from the fee requirement for public safety agencies of government entities. 1988 Tenn. Pub. Acts § 692.

The statute at issue is Tenn. Code Ann. §68-202-503(d), which states:

> (d) X-ray machines owned and used by public safety agencies of any county, city, municipality or any area operating under a metropolitan form of government shall be registered and inspected by the department according to the provisions of this part, but shall not be required to pay any fee.

The Act does not provide a definition of "public safety agencies" nor do any of the other environmental regulatory statutes. In the absence of a statutory definition and in light of the fact

that the term "public safety agencies" is broad and can encompass different entities, statutory interpretation is required.

The purpose in construing statutes is "to ascertain and give effect to the intention and purpose of the legislature." *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000). Further, "[l]egislative intent is to be ascertained whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language." *Id.* If a law is challenged, a court can review the law to determine the intent or purpose of the law-creating body at the time of enactment. According to the Tennessee Supreme Court in *Lipscomb*, "when the statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without a forced interpretation that would limit or expand the statute's application." *Id.*

The natural and ordinary meaning of "public safety agency," based on the common understanding of each of those terms,[1] would encompass any agency that is responsible for the protection of the safety of the general public from significant danger, harm, or damage. Law enforcement agencies, firefighters, first responders, and other such entities whose purpose is to enhance the public welfare would fall within the natural and ordinary meaning of "public safety agency."

This Office also looked at definitions provided by neighboring states. Arkansas provides the definition of "public safety agency" under the Arkansas Emergency Services Act of 1973 as "an agency of the State of Arkansas or a functional division of a political subdivision that provides firefighting and rescue, natural or human-caused disaster or major emergency response, law enforcement, and ambulance or emergency medical services." Ark. Code Ann. §12-75-103(19)(A). Alabama provides a very similar definition of "public safety agency" for purposes of emergency telephone services for counties and municipal corporations as "an agency of the State of Alabama, or a functional division of a political subdivision, that provides fire fighting, rescue, natural or man-caused disaster, or major emergency response, law enforcement, ambulance, or emergency medical services." Ala. Code 1975 §11-98-1(6). These definitions are not provided in the context of x-ray machine registration and inspection, and they are not controlling of the interpretation of Tennessee's laws. Nevertheless, they provide examples of what are considered public safety agencies.

In reviewing the legislative history of 1988 Tenn. Pub. Acts § 692, which created the fee exemption for public safety agencies, it is clear that the legislators intended for the fee exemption to apply to public safety agencies that have bomb squads that use x-ray equipment. The bill was described by bill sponsors before three committees and during a House session. At each meeting, the bill sponsor clearly stated that the bill concerned bomb squad x-ray machines. At the March 9, 1988, meeting of the Senate General Welfare, Health & Human Resources Committee the Senate bill sponsor stated that the bill exempts bomb squad x-ray equipment and that there are

[1] "Public" is defined, *inter alia*, to mean "[o]f, concerning, or affecting the community or the people." *The American Heritage Dictionary of the English Language* 1056 (New College ed. 1980). "Safety" is defined as "[f]reedom from danger, risk, or injury," *id.* at 1142. "Agency" is defined as "[a] business or service authorized to act for others," *id*. at 24.

only three in the state. He continued that the exemption would allow more money to remain in the bomb squad budgets. Senator Douglas Henry noted that the agency administering the program stated it tried to make the medical radiation inspection program a fee-supported program and expressed concern as to whether the amount of fees exempted by the bill would impact the program. It was indicated that the fiscal impact was to be only $750.[2] *Radiation Machines Inspection, 1988: Meeting of the Senate General Welfare, Health & Human Resources Committee*, *Remarks of Senator Hicks on SB1881*, 95th General Assembly, 2nd Regular Session (March 9, 1988).

The state agency that administers the program is the Tennessee Department of Environment and Conservation (TDEC) under its Division of Radiological Health. It is this Office's understanding that since Tenn. Code Ann. § 68-202-503(d) was amended in 1988 to exempt public safety agencies, TDEC has applied the fee exemption only to local public safety agencies with bomb squads that use x-ray machines. All other local agencies, including law enforcement agencies, have been required to pay the fee for x-ray machines. TDEC has assessed the fee for local government x-ray machines used for courthouse and jail security as well as medical and dental x-ray machines used in jails. TDEC's practice of exempting only local government bomb squads has lasted from 1988 to 2011, almost 23 years. The General Assembly amended Tenn. Code Ann. § 68-202-503 only once more in the past 23 years, in 2002, and it amended paragraph (b) and not paragraph (d), which is the subject of this opinion request. 2002 Tenn. Pub. Acts 755.

While an agency's interpretation of a statute is neither controlling nor presumed correct, it is "entitled to consideration and respect." *H&R Block Eastern Tax Services, Inc. v. State, Dep't. of Commerce and Insurance*, 267 S.W.3d 848, 854-56 (Tenn. Ct. App.), *appeal denied,* (Aug. 25, 2008). In addition, "[w]hen such an administrative construction persists for a long period, without legislative action, the court is particularly loath to disturb that construction." *New England Mutual Life Ins. Co. v. Reece*, 169 Tenn. 84, 94, 83 S.W.2d 238 (1935).

Legislative history and administrative interpretation are useful tools of statutory construction. They are properly invoked, however, only when the statutory language itself is ambiguous; where the statutory language is clear, courts treat that language as the best and controlling indication of legislative intent. *See In re Estate of Tanner*, 295 S.W.3d 610, 613 (Tenn. 2009) ("When a statute is clear, we apply the plain meaning without complicating the task. It is only when a statute is ambiguous that we may reference the broader statutory scheme, the history of the legislation, or other sources."); *Midwestern Gas Transmission Co. v. Stephenson*, 2006 WL 461044, at *4 (Tenn. Ct. App. Feb. 24, 2006) ("When the meaning of statutory language is clear, we must interpret it as written, rather than using the tools of construction to give the statute another meaning.") (citations omitted). "Public safety agencies" may be a broad term, but that quality does not make it inherently ambiguous. Because of its

[2] The fiscal note for House Bill 1510/Senate Bill 1881 states that "[t]he fiscal impact from enactment of this bill is estimated to result in a decrease in first year state revenues to the extent metropolitan police departments using radiation machines for bomb detection are exempt from the fee requirement; however, the decrease in revenues is estimated not to be significant since there are only a few agencies using this equipment." *Fiscal Review Committee Staff, Fiscal Note for HB 1510/SB 1881*, 95th General Assembly, 2nd Regular Session (Feb. 17, 1988).

breadth, there may be entities whose status as a public safety agency is unclear, and in such cases resort to statutory construction tools might be appropriate. Ambiguities at the margin of a statute, however, would not appear to justify the use of such tools to exclude entities that clearly fall within the definition of a "public safety agency." To conclude otherwise would mean that a sheriff's office or police department would not qualify as a "public safety agency" unless it had bomb squad x-ray machines. Such an interpretation would be a "forced construction" clearly at odds with the common understanding of the language in question. *See Lipscomb*, 32 S.W.3d at 844; *Midwestern Gas Transmission*, 2006 WL 461044, at *4 ("[C]omments made during the General Assembly's debates cannot provide a basis for a construction that is not rooted in the statute's text.").

Accordingly, even though the legislative history reveals that the primary focus of the exemption under Tenn. Code Ann. § 68-202-503 was bomb squads that use x-ray machines, the General Assembly used the term "public safety agencies" and not "bomb squads" in Tenn. Code Ann. § 68-202-503(d). While the focus of the sponsors may have been bomb squads, the language of the bill is broader than that. When interpreting such statutes, we must be guided principally by the terms they use, even when they are broad in scope. *See Lipscomb*, 32 S.W.3d at 844. While we are mindful of the weight given to long-standing administrative interpretations of a statute, we are not convinced that the deference normally accorded such interpretations can overcome the plain language of the statute here. Thus, it is the opinion of this Office that as used in Tenn. Code Ann. 68-202-503(d), "public safety agency" includes all public agencies ordinarily thought of as protecting public safety and enhancing security and which use x-ray machines. All such agencies may qualify for the fee exemption.

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