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

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Opinion No. 11-69

Holding Period Location Requirements of Scrap Jewelry and Metal Dealer's Act of 1980

## QUESTION

Does a person violate Tennessee Code Annotated § 38-1-202(a) who makes qualifying purchases of jewelry and precious metals at a temporary storefront, and then, for the required thirty-day holding period, holds such items in a storage facility at a different location?

## OPINION

Yes, because the plain language of Tennessee Code Annotated § 38-1-202(a) requires those who make qualifying purchases of jewelry and precious metals to hold such items, for the required thirty-day holding period, at "the place in which such business is conducted" rather than in a separate storage facility at a different location.

## ANALYSIS

The Scrap Jewelry and Metal Dealer's Act of 1980 regulates certain acquisitions of jewelry and other precious metals. See State v. Kirkland 655 S.W.2d 140, 142 (Tenn. 1983). Initially, with certain exceptions, any person, firm, or corporation purchasing or otherwise dealing in antique, used or scrap jewelry and precious metals, where the purchase is for resale in its original form or as changed by remounting, melting, reforming, remolding or recasting or for resale as scrap or in bulk, is required to register with the chief of police and sheriff of each city and county in which the activity shall be carried on. Tenn. Code Ann. § 38-1-201(a). The Act then requires, subject to limited exceptions, that such items be retained for thirty days before being resold, stating in pertinent part:

> [i]t is unlawful for any person or corporation engaging in the activity described in § 38-1-201 to sell, exchange, barter or remove from the place in which such business is conducted, or to change the form of any such items by remounting, melting, cutting up, or otherwise changing the form of any such items for a period of thirty (30) days from the date of purchase.

Tenn. Code Ann. § 38-1-202(a).

Our review of this statute is guided by the principle of statutory construction to ascertain and give effect to legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995), *citing State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993). Where a statute's language is clear and unambiguous, legislative intent should be derived from its plain and ordinary meaning. *State v. Collins*, 166 S.W.3d 721, 726 (Tenn. 2005), *citing State v. Wilson*, 132 S.W.3d 340, 341 (Tenn. 2000). Further, the General Assembly has directed that criminal statutes "shall be construed according to the fair import of their terms, including reference to judicial decisions and common law interpretations, to promote justice, and effect the objectives of the criminal code." Tenn. Code Ann. § 39-11-104.

Section 38-1-202(a) clearly states that, during the thirty-day holding period, persons or corporations may not remove qualifying jewelry and precious metals "from the place in which such business is conducted." The plain meaning of Section 38-1-202(a) compels the conclusion that "such business" refers to "the activity described in § 38-1-201," namely "purchasing or otherwise dealing in antique, used or scrap jewelry and precious metals, where the purchase is for resale in its original form or as changed by remounting, melting, reforming, remolding or recasting or for resale as scrap or in bulk . . . ." *See* Tenn. Code Ann. § 38-1-201(a).

The place in which such a business is conducted thus cannot be construed as including a place, such as a separate storage facility, at which no "purchasing or otherwise dealing" in jewelry and precious metals occurred. The holding period at the location of the original sale arguably aids in the prevention of illegal trafficking of stolen property, by requiring items that are high targets for theft to be held and subject to inspection at a place and time certain before being resold. *See State v. Kirkland*, 655 S.W.2d at 142. Consequently, purchasing qualifying jewelry and precious metals at a temporary storefront and then holding such items at a separate storage facility at a different location for the thirty-day waiting period is not in accord with the regulatory requirements of Tennessee Code Annotated § 38-1-202(a).

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

AARON E. WINTER
Assistant Attorney General

Requested by:

The Honorable Mike Bottoms
District Attorney General
22nd Judicial District
P.O. Box 279
Lawrenceburg, TN 38464