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Opinion No. 12-04

Owner's Use of Milk and Licensing of the Sale of Eggs

QUESTIONS

1. Can an "independent or partial owner of any hoofed mammal" use a dairy product made from the milk produced by such animal for the owner's personal consumption or other personal use?

2. Does the Tennessee Department of Agriculture ("TDA") have the legal authority to impose a licensing fee on those who "sell only eggs produced by their own flocks"?

OPINIONS

1. Yes, an "independent or partial owner of any hoofed mammal" may use a dairy product made from the milk produced by such animal for the owner's personal consumption or other personal use. However, this exemption from the regulatory standards established by Tennessee's Dairy Law does not permit the sale of such milk or dairy products in the commercial marketplace.

2. No, the TDA does not have the legal authority to impose a licensing fee on those who "sell only eggs produced by their own flocks." This exemption from licensure should be narrowly construed in consideration of the remedial and public safety purposes of the Tennessee Egg Law. This exemption does not relieve persons selling eggs in the commercial market from compliance with the Egg Law's regulatory safeguards.

ANALYSIS

This opinion request addresses a provision of the Dairy Law of the State of Tennessee, enacted in 1970 (hereinafter "Dairy Law"). Tenn. Code Ann. §§ 53-3-101 to 309. *See also* 1970 Tenn. Pub. Acts 577. The Dairy Law, among other things, regulates the production and sale of dairy products to ensure that such products are safe for human consumption. Tenn. Code Ann. §§ 53-3-101 to 119; Tenn. Comp. R. & Regs. 0080-03-01 to 07 (2011).

The Tennessee General Assembly in 2009 enacted legislation to allow an "independent or partial owner of any hoofed mammal" to use milk produced by the animal for the owner's personal consumption or other personal use. 2009 Tenn. Pub. Acts Ch. 285. This legislation

exempted milk so used from the regulatory requirements set forth in the Dairy Law. The statute provides:

> Nothing in this part or any other provision of law shall be construed as prohibiting the independent or partial owner of any hoofed mammal from using the milk from such animal for the owner's personal consumption or other personal use.

Tenn. Code Ann. § 53-3-119.

The question presented is does this statute also apply to a "dairy product" made from such milk, which is used for the owner's personal consumption or other personal use. When construing a statute, the primary goal of the courts is to give effect to the purpose of the legislation without exceeding its intended scope. *Hayes v. Gibson County*, 288 S.W.3d 334, 337 (Tenn. 2009). Legislative intent is determined from the natural and ordinary meaning of the statutory language within the context of the entire statute, without adopting any forced or subtle construction that would extend or limit the statute's meaning. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000).

The statute in question permits milk from a hoofed mammal to be used by the owner for personal consumption or *other personal use*. In considering the natural and ordinary meaning of the term "other personal use," it is our opinion this term should be reasonably construed to include allowing an independent or partial owner to use a dairy product made from the milk produced by such animal for his or her personal consumption or use.

In so finding, this Office observes the General Assembly intended the exemption for "partial owners" of hoofed animals to be narrowly construed. The term "partial owner" is not defined by this statute. Thus conceivably an argument might be made that innumerable partial interests in a mammal or mammals could be included in the commercial sales price of milk or milk products from those mammals, thereby allowing the seller of milk or milk products to use this exemption to entirely avoid compliance with Tennessee's regulatory framework designed to ensure the safe production and consumption of milk and related dairy products in the commercial marketplace.

In this case, where the definition of "partial owner" is unclear and subject to various interpretations, the statute's meaning is to be ascertained by examining the broader statutory scheme as well as the history of the legislation. *See Leggett v. Duke Energy Corp*., 308 S.W.3d 843, 851 (Tenn. 2010); *Hayes v. Gibson County,* 288 S.W.3d 334, 337 (Tenn. 2009). An examination of these relevant sources affirms that the term "partial owner" in Tenn. Code Ann. § 53-3-119 should be narrowly construed.

First, the legislative history of Chapter 285, which was enacted as Tenn. Code Ann. § 53-3-119, reveals that the personal use or consumption of milk from the "partial" ownership of hoofed mammals was to be limited to persons who would go to farms selling such milk and buy the milk as well as a share of the mammal producing such milk. The following testimony before the House Agriculture Committee confirms this intent:

Rep. Bass: Thank you Mr. Chairman, how many people can own a part of a cow?

Rep. Niceley: Rep. Litz says hundreds. Just like a race horse or anything else. But I could say the good thing about the way and the Department of Agriculture brought me this version and other states do it this way and a good thing about this is the *person buying the milk* knows the cow, knows the farm, *has to go to the farm to buy it* and is familiar with the level of management and is comfortable with it and the good thing about it, *it keeps the consumer coming to the farm and the farmer gets full retail*. What's hurting the farming industry is the middle man is making all the money and the farmer is not getting the retail but *doing it this way the consumer comes to the farm pays full retail which is a tremendous eight times what they would get if they would be selling it wholesale.* And then once you get them there you may sell them something else. You may sell them some vegetables or eggs or one thing or another and you know it's not a big thing. I like to look at it like it's a micro dairy just like the micro breweries and the micro distilleries. I like to look at this like it's a micro dairy. Does that answer your question?

Rep. Bass: Well, I guess what I am asking is can they set up shop selling raw milk and when they say using a number $5 gallon of milk is 50 cents of that going for part ownership in a cow and then that way they can be open from now on just to sell it wide open? Do I make sense?

Rep. Niceley: I guess a devious mind could probably pervert this somehow and you seem to have one.

Rep. Bass: Well, I think the author of this amendment had one that's the reason I'm asking.

Rep. Niceley: Actually, this amendment is the way they do it in other states and they don't have any problems. I think you know once it's been tested out that's a good thing about all these other states. These other states are laboratories that test things out and this has been tested out and seems to be working pretty good.

Rep. Bass: Thank you. Thank you, Mr. Chairman.

Chairman Bone: Do we have any comment from anybody or from the department? Do either one of you gentleman like to make a statement I know you've seen the amendment.

Adam Hill: Chairman, members of the committee. Adam Hill Department of Agriculture. We worked with the sponsor on the amendment and think it's gonna be ok.

……

Rep. Bass: Mr. Hill- same question to you that was asked to Mr. Niceley. So the department wouldn't have any problem with the scenario I presented?

Adam Hill: Sure.

Rep. Bass: You said no.

Adam Hill: Could you remind me of the scenario?

Rep. Bass: You go the farm you buy $5 gallon of milk and also 50 cents of that goes to your ownership of the cow, partial ownership of the cow, but that's ok?

Adam Hill: The way I understand this to work is that you enter into an agreement with a farmer and you would pay like a boarding fee and you'd pay an annual fee for the upkeep of that animal whatever they have to do you know feeding it and caring for the animal and as the owner of that cow you would enjoy all rights of ownership that milk or if it went to slaughter any ownership rights that you would have and that's consistent with where the department's position is on it. I think it helps encourage people to buy more cattle which is definitely something that would be good for the cattle industry.

Hearing on H.B. 720 before the House Agriculture Committee, 2009 Leg., 106th General Assembly (April 21, 2009) (emphasis added).

The following testimony before the Senate General Welfare Committee assured that this exemption would not permit milk or milk products subject to the exemption to be sold to the general public in the commercial marketplace:

Sen. Faulk:	Thank you, Mr. Chairman. The bill as it currently exists now simply says that there is nothing in our dairy law that is to be construed that prohibits the independent or partial owning of a hoofed animal from using that milk for the owner's personal consumption or other personal use.
Chairman Watson:	Members, you've seen the amendment. Are they any questions? Senator Marrero.
Sen. Marrero:	I am a little bit confused about this. *Are they going to sell this raw milk or are they going to consume this raw milk on the premises?*
Sen. Faulk:	*Consume*.
Sen. Marrero:	And it's just for the people around…
Sen. Faulk:	It's for the owner or partial owner of any hoofed animal.
Sen. Marrero:	Ok. *So, but they won't be, this is not something they'll be selling to the general public?*
Sen. Faulk:	*Not under this bill.*

Hearing on S.B. 1114 before the Senate General Welfare Committee, 2009 Leg., 106th General Assembly (April 29, 2009) (emphasis added).

The broader regulatory scheme of the Tennessee Milk Act, which is designed to protect consumers in the commercial marketplace from the production and sale of unsafe milk, further supports a narrow construction of this exemption. As confirmed by the aforementioned legislative history, the General Assembly did not intend this limited exemption to be used by individuals or entities to totally circumvent the laws designed to ensure the safe production and consumption of milk and other dairy products derived from milk. Such an expansive interpretation would be contrary to the overall intent of the Dairy Law to protect consumers from unsafe milk or milk byproducts. Indeed a narrow construction of the term "partial owner" in this context is in accord with the well-established rule of statutory construction that courts interpreting statutes must look to the object and reach of the entire statutory framework, the wrong or evil which it seeks to remedy or prevent, and the purpose sought to be accomplished by its enactment. *See Walker v. Sunrise Pontiac-GMC Truck, Inc.,* 249 S.W.3d 301, 309 (Tenn. 2008); *State v Edmonson*, 231 S.W.3d 925, 927 (Tenn. 2007). Absent the existence of a clear legislative intent to allow this exemption to significantly alter the long existing regulation of those selling dairy products in Tennessee's commercial marketplace, the exemption should be confined to those persons who own an interest in a mammal, intend to use the milk or dairy

product from the mammal for their own personal use, and are not engaged in the actual sale of such milk in the commercial marketplace. *See Anderson Fish & Oyster Co. v. Olds*, 197 Tenn. 604, 611, 277 S.W.2d 344, 347 (1955); *Metropolitan Development and Housing Agency v. Eaton*, 216 S.W.3d 327, 339-340 (Tenn. Ct. App. 2006) (both cases noting that an exception to a general statute is strictly construed).

You next ask whether the TDA has the legal authority under the Tennessee Egg Law to impose a licensing fee on those who "sell only eggs produced by their own flocks." *See* Tenn. Code Ann. §§ 53-2-101 to 115. The TDA is an administrative department created and established by the legislature. Tenn. Code Ann. § 4-3-101(1). An administrative department has the authority to implement statutes but may not adopt rules or policies that contradict the intent of the legislature. *Tennessee Department of Mental Health v. Allison*, 833 S.W.2d 82, 85 (Tenn. Ct. App. 1992).

The licensing exemption at issue under the Egg Law states in pertinent part:

> No person shall buy, sell, trade, traffic or process eggs in this state without first having made application for and obtained a license as required by this chapter, with the following exceptions: . . .
>
> …
>
> (2) Those who sell only eggs produced by their own flocks.

Tenn. Code Ann. § 53-2-107(2).

This language plainly states that those who sell only eggs produced by their own flocks are exempt from the requirement of applying for and obtaining a license; thus the imposition of a "licensing fee" on such producers is contrary to the plain language and clear legislative intent of the statute. *See Hayes v. Gibson County*, 288 S.W.3d at 337. Therefore, the TDA does not have the requisite authority to impose a licensing fee on those who sell only eggs produced by their own flocks.

However, this exemption from licensure under the Egg Law is limited to a narrow group of egg sellers and does not relieve those sellers from the regulatory requirements of the Egg Law. The word "those" in Section 53-2-107(2) apparently refers to "persons," which is defined broadly under the Egg Law to include not only individuals but also corporations, companies, partnerships and associations. Tenn. Code Ann. § 53-2-102(4). Thus conceivably this exception could swallow the rule requiring licensure, given a large corporation could own substantial flocks from which it is selling eggs to the public. However, it is doubtful the General Assembly intended such a result given the Egg Law's clear intent to create a licensure and regulatory framework to ensure the safe production of eggs sold at retail to the general public. Tenn. Code Ann. §§ 53-2-102 to 111 (2008 and Supp. 2010). *See also* 1955 Tenn. Public Acts 9, § 2; 1951 Tenn. Public Acts 124. A narrow interpretation of this exemption conforms with the established rule of statutory construction that courts, when interpreting a statute, will look to the entire purpose of

the statutory framework as well as the wrong or evil it seeks to remedy or prevent. *See Walker v. Sunrise Pontiac-GMC Truck, Inc.,* 249 S.W.3d at 309; *State v. Edmondson*, 231 S.W.3d at 927. This Office also understands the TDA has long interpreted this licensure requirement in this manner. Such a well established interpretation is entitled to great weight in determining the intention of the legislature, especially where the interpretations are unchallenged over a long period of time. *Covington Pike Toyota, Inc. v. Cardwell*, 829 S.W.2d 132, 134 (Tenn. 1992). Accordingly this exemption from licensure should be limited in its application to those individuals engaged in relatively small sales of eggs from their own flocks and not be deemed applicable to those persons selling eggs as a commercial business. *See also Anderson Fish & Oyster Co. v. Olds*, 227 S.W.2d at 347 (holding that exceptions to a general statute should be strictly construed). This of course in some instances may be a difficult distinction to make, and the General Assembly may choose at some point to clarify the limits of this exemption.

Furthermore, a person's exemption from licensure does not exempt that person from complying with the Egg Law's salutary regulatory requirements designed to ensure the production and sale of safe eggs. The Egg Law prohibits *any person* from selling or attempting to sell inedible or adulterated eggs for human consumption. Tenn. Code Ann. § 53-2-103. The TDA likewise has authority to establish standards and grades for *all* eggs sold in the commercial market in order to protect the public health and welfare, as well as to restrict the advertising or sale of *all* fresh eggs and to ensure statutory labeling and candling requirements for *all* eggs sold in the commercial market. Tenn. Code Ann. §§ 53-2-104 to 106, 53-2-108. The TDA has adopted extensive regulations to enforce these statutes and thereby protect customers from the sale of eggs unfit for human consumption. Tenn. Comp. R. & Regs. 0080-5-4-.01 to .21 (2011). These regulatory provisions by their express terms apply to all eggs sold in the commercial marketplace, regardless whether the person selling the eggs is licensed. *See Graham v. Caples*, 325 S.W.3d 578, 582 (Tenn. 2010) (finding that the plain and ordinary meaning of a statute must be given full effect if the language is not ambiguous).

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