STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 12-05

Licensure under the Tennessee Egg Law

QUESTION

May a buyer, seller or processor of eggs who is exempt from licensure under Tenn. Code Ann. § 53-2-107(2) of the Tennessee Egg Law be subject to licensure under the requirements of the Tennessee Food, Drug and Cosmetic Act?

OPINION

No. However, given the overriding remedial and public safety purposes of the Tennessee Egg Law, the exemption set forth at Tenn. Code Ann. § 53-2-107(2) should be narrowly construed. Furthermore, this exemption does not relieve persons selling eggs in the commercial market from compliance with the regulatory safeguards established by the Egg Law.

ANALYSIS

The Tennessee Egg Law sets forth the regulatory and licensing standards for the sale of eggs in Tennessee. Tenn. Code Ann. §§ 53-2-101 to 115. See also Tenn. Comp. R. & Regs. 0080-5-4-.01 to .21 (2011). The Egg Law provides that "[n]o 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." Tenn. Code Ann. § 53-2-107. The statute contains seven specific exemptions from the licensing requirement, including an exception for "[t]hose who sell only eggs produced by their own flocks." Id. Presumably the word "those" refers to a "person", which is defined broadly by the Egg Act to include individuals, partnerships, corporations, companies and associations. Tenn. Code Ann. § 53-2-102(4).

The Egg Law was originally adopted in 1951. Compare 1951 Tenn. Pub. Acts 124 and 1955 Tenn. Pub. Acts 9 with Tenn. Code Ann. §§ 53-2-101 to 111. (2008 and Supp. 2010). The Egg Law has the same purpose today as it did when enacted in 1951, namely to prohibit the sale of eggs unfit for human food and to ensure the sanitary production of eggs at processing plants. Indeed the exemption under consideration in this opinion request is exactly the same today as it was when originally enacted in 1951. Compare 1951 Tenn. Pub. Acts 124, § 7 with Tenn. Code Ann. § 53-2-107(2) (2008 and Supp. 2010).

The Tennessee Food, Drug and Cosmetic Act sets forth standards for the sale of food, drugs, and cosmetics within the State. Tenn. Code Ann. §§ 53-1-101 to 2-210. The Act's licensing provision states in relevant part:

> The commissioner shall require that a factory, warehouse, or establishment in which foods are manufactured, processed, packed or held for introduction into commerce have a license where the factory, warehouse, or establishment is not otherwise required to be licensed pursuant to this chapter.

Tenn. Code Ann. § 53-1-208(b).

Unlike the Tennessee Egg Law, the Tennessee Food, Drug and Cosmetic Act does not provide for exemptions from licensure. *See* Tenn. Code Ann. §53-1-208.

You have requested our opinion whether a buyer, seller or processor of eggs who is exempt from licensure under the Tennessee Egg Law may nonetheless be subject to licensure under the requirements of the Tennessee Food, Drug and Cosmetic Act. 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). 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 Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes that are related to the same subject matter should be read *in pari materia*. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). Most importantly given the question presented, it is a well established rule of statutory construction that statutes addressing specific matters take priority over those that address general matters. *State v. Marshall*, 319 S.W.3d 558, 562-63 (Tenn. 2010); *Drennon v. General Electric Company*, 897 S.W.2d 243, 247 (Tenn. 1994); *State ex rel. Maner v. Leech*, 588 S.W.2d 534, 539 (Tenn. 1979).

Applying these principles of statutory construction, we conclude that the Department of Agriculture cannot require a buyer, seller or processor of eggs who is exempt from licensure under the Tennessee Egg Law to obtain a license under the Tennessee Food, Drug and Cosmetic Act. Both acts address food safety, prohibit deceptive advertising, contain labeling and licensing requirements, and provide enforcement mechanisms. *See* Tenn. Code Ann. §§ 53-1-101 to 2-210 and Tenn. Code Ann. §§ 53-2-101 to 115. Thus, they must be read *in pari materia*. *In re C.K.G.*, 173 S.W.3d at 722. However, the Tennessee Egg Law specifically addresses eggs, whereas the Tennessee Food, Drug and Cosmetic Act addresses food in general. *Compare* Tenn. Code Ann. §§ 53-1-101 to 2-210 *with* Tenn. Code Ann. §§ 53-2-101 to 115. An act which specifically regulates eggs has priority over, and preempts, an act which generally regulates other foods. *See State v. Marshall*, 319 S.W.3d at 562-563 (Tennessee Supreme Court finding that the General Assembly enacted a separate statutory scheme to regulate public housing, and thus public housing is distinct from and not subject to the statutory provisions regulating utilities or hotel accommodations).

Such a conclusion is also compelled by a comparison of the two statutory schemes. For example, the Tennessee Egg Law specifically defines adulterated eggs as "eggs that are filthy, putrid, decomposed or otherwise unfit for human food, in whole or in part." Tenn. Code Ann. § 53-2-102(1). The statute then explicitly states when an egg is unfit for human food. Tenn. Code Ann. § 53-2-102(3). The Tennessee Food, Drug and Cosmetic Act, on the other hand, broadly defines adulterated food to include food that is "contaminated, filthy, putrid, . . . or otherwise unfit for food," but it does not contain food specific definitions. Tenn. Code Ann. § 53-1-104(1)(B). As such, a court or department inspector would rely on the Tennessee Egg Law rather than the Tennessee Food, Drug and Cosmetic Act when determining if an egg is unfit for human food and, therefore, adulterated. Similarly, in order to calculate the licensing fees for an egg manufacturer, the Department of Agriculture would look to the specific licensing scheme found at Tenn. Code Ann. § 53-2-109, not the more general scheme found at Tenn. Code Ann. § 53-1-208(b) and (c).

Finally, the Tennessee Egg Law must 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). The Tennessee Egg Law requires all egg venders to obtain a license, with seven specific exceptions. Tenn. Code Ann. § 53-2-107. If Tenn. Code Ann. § 53-1-208 were interpreted to require a person to obtain a license when that person is exempt from licensure under the Tennessee Egg Law, the exceptions would be rendered void or insignificant. Further, those exempt from licensure under the Tennessee Egg Law would be subject to higher licensing fees than egg manufacturers and processors not exempt from licensure under the Tennessee Egg Law. *Compare* Tenn. Code Ann. §§ 53-1-208(b) and (c) *with* Tenn. Code Ann. § 53-2-109(c). Because such a construction would produce an absurd or incongruous result, the Egg Law, and not the Food and Drug Cosmetic Act, must have been intended by the Legislature to control the licensure and regulation of egg production. *See Barnett v. Barnett*, 27 S.W.3d 904, 908 (Tenn. 2000).

For these reasons, the Department cannot subject a buyer, seller or processor of eggs to the licensure requirements of the Tennessee Food, Drug and Cosmetic Act when that person is exempt from licensure under the Tennessee Egg Law.

This statute however does not create a broad exemption from the licensure components of the Tennessee Egg Law or relieve a seller of eggs from the regulatory components of the Egg Law. This Office has specifically addressed this issue in an opinion issued contemporaneously with this opinion, stating:

> …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 [Tennessee Department of Agriculture] 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.
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> 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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