

**STATE OF TENNESSEE**

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Opinion No. 12-10

Scope of Enforcement Authority of Judicial District Task Force Members

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**QUESTIONS**

1. Does a law enforcement officer who is assigned to a judicial drug task force by a constituent agency have the authority to exercise the full extent of his law enforcement powers while he or she is operating outside the jurisdictional limits of his appointing authority?

2. If a judicial task force officer is employed directly by a drug task force, pursuant to Tenn. Code Ann. § 8-7-110, does that officer have the authority to exercise full law enforcement authority over offenses that are not drug related or do not involve violence?

3. Do officers of judicial district drug task forces, who are employed directly by the drug task force pursuant to Tenn. Code Ann. § 8-7-110, have the authority to make traffic stops by use of radar guns or other speed detection equipment?

4. Does the assignment of investigators who are employed by a district attorney general to a drug task force create a conflict of interest for that district attorney general?

5. Are the operations of drug task forces vulnerable to constitutional challenges based on the fact that the task forces are funded solely from the proceeds of asset forfeitures from cases the tasks forces have investigated?

**OPINIONS**

1. Under Tenn. Code Ann. § 8-7-110(a), a law enforcement officer who is assigned to a judicial drug task force by a constituent agency may exercise the same law enforcement authority within the entire judicial district that the officer possesses within the jurisdiction of the constituent agency which employs that officer.

2. Under Tenn. Code Ann. § 8-7-110, an agent who is employed directly by a drug task force is a commissioned law enforcement officer and has peace officer authority throughout the judicial district but that authority is limited by the power the drug task force may confer and exercise according to the governing interlocal agreement.

3. Under Tenn. Code Ann. § 8-7-110(b) an officer assigned to a drug task force by a constituent agency has all of the authority that is generally conferred on peace officers and may exercise such authority throughout the judicial district. Consequently, such an officer will have the authority to make traffic stops that are unrelated to suspected drug stops if that officer has such authority in the officer's home jurisdiction. An officer employed directly by a drug task force may exercise only those powers as the drug task force may confer and exercise. Therefore, an officer who is employed directly by a drug task force will have the general authority to make traffic stops only if such authority has been conferred upon the drug task force by the governing interlocal agreement.

4. A district attorney general's assignment of an investigator to a drug task force would not per se create a conflict of interest.

5. The funding of a judicial task force's budget from asset and bond forfeitures proceeds does not raise constitutional concerns so long as the compensation of judicial task force members is not directly tied to the level of proceeds from forfeiture and members do not otherwise have a direct financial stake in the seized property.

### **ANALYSIS**

1. Judicial district and multi-judicial district drug task forces are entities established by intralocal agreements for the purpose of investigating and prosecuting violent crime and drug cases. Tenn. Code Ann. § 8-7-110(a); Tenn. Code Ann. § 12-9-104. Task forces derive their authority from these intralocal agreements. As Tenn. Code Ann. § 12-9-104(a)(1) states, "[a]ny power or powers, privileges, or authority exercised or capable of exercise by a public agency of this state, including those provided in § 6-54-307 [mutual aid agreements] . . . may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority...." Tenn. Code Ann. § 6-54-307 also authorizes municipalities and counties to enter into mutual aid agreements to provide law enforcement services and furnish assistance to one another.

Intralocal and mutual aid agreements allow county and municipal law enforcement officers to partner with state agencies, including a district attorney general, to pool resources and form a distinct entity, such as a judicial district task force, to more effectively and efficiently combat crime.<sup>1</sup> The constituent agencies may convey police powers upon the judicial district task force. Tenn. Code Ann. § 12-9-104(a)(1). Furthermore, sheriff offices, police departments, the district attorney general, and state law enforcement agencies are authorized, subject to the approval of the district attorney general or governing board of the task force, to assign law enforcement personnel to the task force. Tenn. Code Ann. § 8-7-110(a). In addition to obtaining manpower from the constituent agencies, drug task forces may also employ officers directly. Tenn. Code Ann. § 8-7-110(a).

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<sup>1</sup> A judicial district task force may be considered to be a joint cooperative or undertaking or, pursuant to the interlocal agreement, be formed as a not for profit corporation. Tenn. Code Ann. § 12-9-104(c)(2). See also *Timberlake v. Benton*, 786 F. Supp. 676, 682 (M.D. Tenn. 1992).

Tenn. Code Ann. § 8-7-110(a) defines the law enforcement authority that may be exercised by officers who are employed by or assigned to a drug task force, providing that such officers “have the same rights, powers, duties and immunities in every jurisdiction within the judicial district as such officer has within the officer’s own jurisdiction.” *Id.*

In reviewing these various statutes, the primary objective of statutory construction is to ascertain and give effect to the intention of the Legislature. *State v. Sherman*, 266 S.W.3d 395, 401 (Tenn. 2008); *Auto Credit v. Wimmer*, 231 S.W.3d 896, 900 (Tenn. 2007). If a statute is clear and unambiguous, courts will find the intent in the plain and ordinary meaning of its language. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918, 921 (Tenn. 2007). Here the language of Tenn. Code Ann. § 8-7-110(a) is plain and unambiguous. By its terms, this statute authorizes law enforcement officers who are assigned to a drug task force to exercise all of the law enforcement authority that has been conferred by the agency which employed that officer. Thus, if an officer has been cloaked with full law enforcement authority by the officer’s own jurisdiction, the officer may exercise such authority within the district covered by the judicial task force established by its authorizing agreements.

2. The next question is whether an officer who is employed directly by a drug task force may exercise the same powers as an officer who has been assigned to the task force by a constituent agency. The task force and its agents may exercise such powers and authority as has been conferred by statute, as well as such powers that may be fairly implied from the statutory language. *See In re Sentinel Trust Co.*, 206 S.W.3d 501, 519 (Tenn. Ct. App. 2005).

Tenn. Code Ann. § 8-7-110(a) is silent with respect to the authority that may be exercised independently by a drug task force or any officers who are employed directly by that drug task force.<sup>2</sup> Nonetheless other Tennessee statutes do address the scope of this authority. Under Tenn. Code Ann. § 12-9-104(a)(1), the constituent agencies may confer police powers upon a drug task force through their mutual aid agreement. *See also* Tenn. Code Ann. § 6-54-307. Thus, an officer who is employed by a task force may exercise those police powers which the constituent agencies have conferred upon that drug task force under the governing agreement for each particular drug task force.

3. As stated above, all judicial district task members “have the same rights, powers, duties and immunities in every jurisdiction within the judicial district as such officer has within the officer’s own jurisdiction.” Tenn. Code Ann. § 8-7-110(a). An officer assigned to a drug task force by a constituent law enforcement agency will, therefore, have the authority to make traffic stops that are unrelated to suspected drug stops if that officer has such authority in the officer’s home jurisdiction. Absent such authority, an officer employed by a drug task force may make such traffic stops only to the extent such action is permitted under the governing mutual aid agreement.

4. Generally, no conflict of interest should exist merely because an investigator who is employed by a district attorney general is assigned by that district attorney general to a drug task

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<sup>2</sup> The express language of Tenn. Code Ann. § 8-7-110(a) addresses only the law enforcement powers which may be exercised by officers who are employed by other agencies and are assigned to a drug task force.

force.<sup>3</sup> Tennessee recognizes a strong common law policy that precludes public officials from placing themselves in a position where their personal interests conflict with their public duties. *See* Op. Tenn. Att’y Gen. 85-036, at 2 (Feb. 14, 1985). Furthermore, district attorneys general specifically have a duty to investigate and prosecute criminal activity that occurs within their districts. *State ex rel. Swann v. Pack*, 527 S.W.2d 99, 112 (Tenn. Crim. App. 1995). In discharging that duty, district attorneys must be impartial in the same sense that they are required to seek the truth and to base their charging decisions on the evidence and without prejudice or bias. *State v. White*, 114 S.W.3d 469, 477 (Tenn. 2003).

Applying these standards to the question presented, it is difficult to perceive how the assignment of an investigator employed by a district attorney general to drug task force would create a conflict of interest for the district attorney. Both the drug task force and the district attorney general in essence have the same goals, to investigate and ensure the successful prosecution of those who violate the laws of this State.<sup>4</sup> Thus there is nothing to indicate that such an assignment per se would cause any conflict of interest.

5. Tennessee law specifically addresses the use of fines, forfeitures of appearance bonds, and the proceeds of asset forfeitures by drug task forces, stating in relevant part:

[A]ll fines and forfeitures of appearance bonds received from the violation of the provisions of this part and that are specifically set forth in this part, the proceeds of goods seized and forfeited under the provisions of § 53-11-451 and disposed of according to law that arise from the activities of a judicial district drug task force shall be paid to an expendable trust fund maintained by the county mayor in a county designated by the district attorney general and shall be used exclusively in a drug enforcement or drug education program of the district as designated by the board of directors of the judicial district drug task force.

Tenn. Code Ann. § 39-17-420(c).

Tenn. Code Ann. § 40-33-211 governs the use of such property by drug task forces and other law enforcement agencies. Subsection (a) tracks the language of Tenn. Code Ann. § 39-17-420(c) in that it authorizes drug task forces to use the money for drug enforcement as directed by its board of directors. Tenn. Code Ann. § 40-33-211(b), however, limits the use of the proceeds from asset forfeitures. That provision expressly states that “[f]unds derived from seizures, confiscations and sales shall not be used to supplement the salaries of any public employee or law enforcement officer.”

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<sup>3</sup> Tenn. Code Ann. § 16-2-508(f)(1) authorizes district attorneys to employ criminal investigators.

<sup>4</sup> It should also be noted that judicial district task forces are governed by a board of directors, not the district attorney general. Tenn. Code Ann. § 8-7-110(a). *See also Timberlake v. Benton*, 786 F. Supp. 676, 682 (M.D. Tenn. 1992) (discussing the organization of the judicial district task forces). The board of directors, along with the district attorney general, approves the assignments of law enforcement officers that the chief law enforcement official of the assigning jurisdiction makes to a task force. Tenn. Code Ann. § 8-7-110(a). The director of a judicial district drug task force has the authority to commission personnel assigned to or hired by the task force with the approval of the district attorney general. *Id.* Accordingly the members of a judicial district task force do not answer solely to the district attorney general nor are the members employed by the district attorney general. *Id.*

As previously mentioned, in determining the meaning of these statutes the primary objective is to ascertain and give effect to the intent of the Legislature. *Gragg v. Gragg*, 12 S.W.3d 412, 414-15 (Tenn. 2000). If the statute is clear and unambiguous, legislative intent is to be found in the plain meaning of the statutory text. *Bostic v. Dalton*, 158 S.W.3d 347, 350 (Tenn. 2005). Finally, where statutes govern both general and specific matters, the specific language will govern the matters specifically addressed. *Sallee v. Barrett*, 171 S.W.3d 822, 829 (Tenn. 2005).

Applying these principles to the statutes in question leads to the conclusion that Tenn. Code Ann. §§ 39-17-420(c) and 40-33-211(a) clearly and unambiguously authorize the board of directors of a drug task force to use fines and the proceeds of forfeitures of appearance bonds and seized and forfeited assets for drug enforcement and education programs of the district. The board must approve the specific uses of such funds and such funds must be used for drug education or drug enforcement programs.

Tenn. Code Ann. § 40-33-211(b) also unambiguously imposes an additional restriction on the use of proceeds from asset forfeitures. Under the statute, such funds may not be used to supplement the salaries of public employees or law enforcement officers. Reading that statute *in pari materia* with Tenn. Code Ann. § 39-17-420(c) requires that, if the funds appropriated represent the proceeds of asset forfeitures, such funds may not be used to supplement the salaries of any public employee or law enforcement officer, even if such person is working in a drug enforcement or drug education program.

Nonetheless, as this Office has opined, these statutes do not prohibit the use of the proceeds from asset and bond forfeiture related to drug offenses to pay public employee or law enforcement salaries so long as the salaries are for a predetermined amount and in no way linked to the amount of money that is forfeited based on the law enforcement work of that officer. Op. Tenn. Att’y Gen. 99-202 (Oct. 6, 1999) (copy attached). Thus, officers who are employed directly by a drug task force may be paid by the drug task force, regardless of the source of such funds, so long as such compensation is in the form of a regular, predetermined salary and the payments are not conditioned upon the officer effectuating any set amount of asset or bond forfeitures.

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