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Opinion No. 12-89

Court Fees for Expungements

QUESTION

May clerks of court charge both the $100 fee set forth in Tenn. Code Ann. § 8-21-401 and the $350 fee set forth in Chapter 1103 of the 2012 Tennessee Public Acts, effective July 1, 2012, for expungement proceedings initiated under Chapter 1103?

OPINION

No. The fee for filing an expungement petition commenced under Chapter 1103 is $350.

ANALYSIS

Tenn. Code Ann. §§ 8-21-101 to -1301 set forth allowable fees for particular services rendered by clerks of court and other public officers. For criminal cases in courts of record, the statute specifies that the clerk of a criminal court "shall charge a fee of one hundred dollars ($100) for proceedings related to a violation of probation, any post-judgment actions, or expungements." Tenn. Code Ann. § 8-21-401(d)(2). The fee for expungements in general sessions court is likewise $100 and is payable to the general sessions court clerk. Tenn. Code Ann. § 8-21-401(g). This chapter of the Code contains a rule of construction which specifically states that "[t]his chapter listing fees of clerks and other officials is not to be construed to be inclusive of all fees" and "[i]n cases of conflicts or apparent conflicts, the fees shall be those named in other sections dealing with the particular subject matters." Tenn. Code Ann. § 8-21-106(a).

On May 1, 2012, the General Assembly passed Chapter 1103 of the 2012 Tennessee Public Acts ("Chapter 1103"), which amends Tenn. Code Ann. § 40-32-101 to allow certain nonviolent offenders to petition to have their criminal records expunged if they are otherwise qualified. 2012 Tenn. Pub. Acts, ch. 1103 (to be codified at Tenn. Code Ann. § 40-32-101(g)). Chapter 1103 is effective July 1, 2012. *Id.* § 3. For this class of expungements, the statute provides:

> The petitioner shall pay to the clerk of the court a fee of three hundred fifty dollars ($350) upon the filing of the petition. Fifty dollars ($50.00) of the fee

> shall be transmitted to the Tennessee Bureau of Investigation for the purpose of defraying the costs incurred from the additional expungement petitions filed and granted as the result of this subsection. The clerk shall retain ten dollars ($10.00) of the fee and shall remit the remainder to the trustee to be allocated in the following manner . . . .

Id. § 1(g)(10).

Thus, like Tenn. Code Ann. § 8-21-401 which authorizes certain fees to be collected by clerks of courts, Chapter 1103 establishes a fee for certain defined expungements payable to the clerk of the court. The statutes differ in that Chapter 1103 only allows the clerk to retain $10 of the $350 fee paid, whereas generally the fees imposed by Tenn. Code Ann. § 8-21-401 are retained by the clerks as compensation for services rendered. *Compare* Tenn. Code Ann. § 8-21-101 and -401 *with* Chapter 1103, § 1(g)(10).

The question posed is what fees can be collected by the clerk for expungements filed under Chapter 1103–the $350 fee assessed by Chapter 1103, the $100 fee assessed for expungements by Tenn. Code Ann. § 8-12-401, or both. Based upon the unambiguous terms of these statutes and established rules of statutory construction, the only fee to be paid for expungements initiated under Chapter 1103 is the $350 fee assessed under Chapter 1103.

Tenn. Code Ann. § 8-21-106(a) states that, in the case of conflicts or apparent conflicts between the fees imposed by Chapter 21 of Title 8 (including fees collected by clerks under Tenn. Code Ann. § 8-21-401) and fees collected by public officials in other sections of the Tennessee Code, "the fees shall be those named in other sections dealing with the particular subject matters." Accordingly, the specific $350 fee required for expungements filed under Chapter 1103, which is paid to the clerk of the court, takes precedence over the $100 fee for expungements provided for in Tenn. Code Ann. § 8-21-401. *See Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 214 (Tenn. 2012) (quoting *In re Adoption of A.M.H.*, 215 S.W.3d 793, 808 (Tenn. 2007) and *Bell South Telecomms., Inc. v. Greer*, 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997)) (stating the general rule of statutory construction that if the statutory language is unambiguous "the plain and ordinary meaning of the statute must be given effect" and the courts will "presume that the legislature says in a statute what it means and means in a statute what it says there"). *See also Steppach v. Thomas*, 346 S.W.3d 488, 506-507 (Tenn. Ct. App. 2011) (stating that "specific statutory language will control over general conflicting statutory language").

Furthermore, a review of other provisions of the Tennessee Code reveals that the General Assembly, when it wishes to do so, has specifically required payment of both the general fee listed in Chapter 21 of Title 8 and a more specific fee established elsewhere in the Tennessee Code. For example, for expungement of records relating to charges dismissed as a result of the successful completion of a pretrial diversion program, Tenn. Code Ann. § 40-32-101 specifies that the petitioner "shall be charged the appropriate court clerk's fee pursuant to § 8-21-401." Tenn. Code Ann. § 40-32-101(a)(1)(B). The statute goes on to impose a $350 fee for such diversions to be used by the Tennessee Bureau of Investigation for certain enumerated purposes. 2012 Tenn. Pub. Acts, ch. 1041 (to be codified at Tenn. Code Ann. § 40-32-101(d)(2)). Thus,

when the General Assembly wishes to incorporate the $100 fee from § 8-21-401 and also to assess fees for special purposes, it does so explicitly. Public Chapter 1103 does not contain such a feature.

The legislative history of Chapter 1103 bolsters the conclusion that the fee for filing an expungement petition pursuant to Chapter 1103 is only $350. A fiscal memorandum prepared in connection with the successful amendment 017468 to House Bill 2865/Senate Bill 3520 of the 107th General Assembly of Tennessee (which was enacted as Chapter 1103) estimated a net increase in revenue at both the state and local levels in the event of passage of the bill. Tenn. Gen. Assembly Fiscal Rev. Comm., Fiscal Memo. HB 2865 – SB 3520, at 4 (Apr. 25, 2012), available at http://www.legislature.state.tn.us/. Those revenue projections appear to rest on the assumption that eligible offenders will pay only "the $350 to have his or her record expunged resulting in an increase in revenue for state and local government." *Id.* at 5 (further stating that "[t]he court clerk will retain $10 of each fee resulting in an increase in local revenue of at least $479,280 ($10 x 47,928 expungement requests)"). The same assumption appears in the statements of individual legislators during committee hearings. Although debate on the fee to be charged for expungements is sparse, it contains such statements as "[t]he petitioner will pay a one-time fee of $350 to petition the court" and "the application fee is $350 regardless." Hearing on H.B. 2865 Before the House Comm. on Finance, Ways and Means, 107 Gen. Assembly, 2nd Sess. (Tenn. Apr. 30, 2012) (statement of Rep. Matheny); Hearing on S.B. 3520 Before the Senate Comm. on Finance, Ways and Means, 107 Gen. Assembly, 2nd Sess. (Tenn. Apr. 26, 2012) (statement of Sen. Tate).[1] The hearings contain no mention of the $100 fee set forth in Tenn. Code Ann. § 8-21-401.

On balance, the plain language of the rule of construction set forth in Tenn. Code Ann. § 8-21-106, the structure of Tenn. Code Ann. § 40-32-101, and the legislative history of Chapter 1103 confirm that the General Assembly intended that petitioners pay only a $350 fee for initiating expungement proceedings pursuant to the new Tenn. Code Ann. § 40-32-101(g). Accordingly, court clerks may not charge an additional $100 fee for such expungements under Tenn. Code Ann. § 8-21-401.

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[1] Audio recordings of these hearings are available at http://www.legislature.state.tn.us/.

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