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Opinion No. 12-98

Regulation of Used Jewelry Purchasers Under Tennessee Law

QUESTION

Is a person who buys gold or other precious metals in the form of used jewelry required to register with the Department of Commerce and Insurance as a "scrap metal dealer" pursuant to Tenn. Code Ann. §§ 62-9-101 to -113?

OPINION

No. The regulation of scrap jewelry and precious metal dealers is not regulated by Tenn. Code Ann. §§ 62-9-101 to -113 but rather is governed by Tenn. Code Ann. §§ 38-1-201 to -205. Thus, buyers and dealers of scrap jewelry and precious metals must register with the chief of police and sheriff of each county in which they conduct such activity pursuant to Tenn. Code Ann. § 38-1-201(a).

ANALYSIS

Scrap metal dealers are regulated by Tenn. Code Ann. §§ 62-9-101 to -113. Tenn. Code Ann. §§ 62-9-101 defines "scrap metal" and "scrap metal dealer" as follows:

> (3) "Scrap metal" means any ferrous or nonferrous metal that is no longer used for its original purpose and is capable of being processed for reuse by a metal recycling facility, including, but not limited to, iron, brass, wire, cable, copper, bronze, aluminum, platinum, lead, solder, steel, stainless steel, catalytic converters or other similar obsolete ferrous or nonferrous metals, but shall not include recyclable aluminum cans; and
>
> (4) "Scrap metal dealer" means a person who buys, exchanges or deals in scrap metal or an employee or agent of that dealer who has the express or implied authority to buy, exchange or deal in scrap metal on behalf of the dealer.

Tenn. Code Ann. §62-9-101(3) & (4). A scrap metal dealer is prohibited from engaging in the scrap metal business unless the dealer is registered with the Tennessee Department of Commerce and Insurance. Tenn. Code Ann. § 62-9-102(a). Scrap metal dealers must maintain detailed

record keeping and comply with various other requirements governing the acquisition of scrap metal. *See* Tenn. Code Ann. §§ 62-9-103 to -108, -111, & -112. These statutory provisions are intended to closely scrutinize the trafficking in second-hand goods in order "to limit access to channels through which thieves may safely convert stolen property into cash." *State v. Kirkland*, 655 S.W.2d 140, 142 (Tenn. 1983) (quoting *State v. Barneff*, 389 So.2d 352, 356 (La. 1980)).

The regulatory scheme established by the General Assembly for dealers in scrap jewelry and precious metals differs in several aspects from the regulatory scheme for scrap metal dealers in Title 62, Chapter 9 of the Tennessee Code. The Scrap Jewelry and Metal Dealers Act, codified at Tenn. Code Ann. §§ 38-1-20 to -205, applies to those "purchasing or otherwise dealing in antique, used or scrap jewelry and precious metals." Tenn. Code Ann. § 38-1-201(a). Such dealers are required to register with the chief of police and sheriff of each city and county in which they conduct business. *Id*. Specifically, the statute provides that:

> (a) 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, shall be required to register with the chief of police and sheriff of each city and county in which the activity is carried on.

Id. Thus, unlike scrap metal dealers who are licensed by the Tennessee Department of Commerce and Insurance, dealers of scrap jewelry and precious metals must register with local law enforcement officials. *Compare* Tenn. Code Ann. § 38-1-201(a) *with* Tenn. Code Ann. § 62-9-102(a). Furthermore, although both types of dealers are subject to detailed record keeping and purchase/payment requirements, the specific regulatory conditions imposed on each type of dealer are quite different. *Compare* Tenn. Code Ann. §§ 62-9-102 to -105 & -107 to -112 *with* Tenn. Code Ann. §§ 38-1-202 to -205.

Where, as here, the General Assembly has enacted one general regulatory scheme for dealers of scrap metal and a more specific regulatory process for dealers of scrap jewelry and precious metals, the more specific procedures will control for scrap jewelry and precious metals dealers. *See Keough v. State*, 356 S.W.3d 366, 371 (Tenn. 2011) (stating the general rule of statutory construction that "a special statute, or a special provision of a particular statute, will prevail over a general provision in another statute or a general provision in the same statute").

Moreover, a review of both statutory schemes reveals a legislative intent to exclude dealers of scrap jewelry and precious metals from the law governing scrap metal dealers. The provisions dealing with scrap metal dealers are intended to apply to scrap metal relating to industrial-type materials rather than used or scrap jewelry and precious metals. *See, e.g.* Tenn. Code Ann. §§ 62-9-101(2) (including "licensed HVAC contractor" in Act's definitions); -106(a), (c) (prohibiting attempted purchase or sale of scrap metal marked as belonging to public utilities

or cooperatives); -107 (specifying restrictions for purchasing air conditioner evaporator coils or condensers). Additionally, 2008 Tenn. Pub. Acts ch. 690 ("Chapter 690"), which repealed and reenacted a number of provisions concerning junk dealers, *see* Tenn. Code Ann. § 62-9-101, compiler's notes, also amended Tenn. Code Ann. § 39-14-406 to include criminal provisions for trespassing on construction sites and property owned by public and private utilities or telephone or electric cooperatives. Tenn. Code Ann. § 39-14-406(e).

Furthermore, the use of the phrases "scrap jewelry" and "precious metals" in the Scrap Jewelry and Metal Dealers Act indicates an intention for this statute to apply to metals other than basic industrial-type scrap metal. Additionally, Chapter 690 did not alter or amend any part of the already existing Scrap Jewelry and Metal Dealers Act. Similarly, none of the subsequent legislative amendments to either the Scrap Jewelry and Metal Dealers Act or to Chapter 690 evidence any intent that persons who buy gold or other precious metals in the form of used jewelry must register with the Department of Commerce and Insurance. *See, e.g.*, 2012 Tenn. Pub. Acts 969 (amending Title 62, Chapter 9, Part 1, effective July 1, 2012, to authorize the Department of Commerce and Insurance to not only register but also to regulate scrap metal dealers); 2012 Tenn. Pub. Acts. 675 (amending Title 28, Chapter 1, Part 2, in regard to the time frame that dealers must hold purchased scrap jewelry).

In sum, dealers in scrap jewelry and precious metals must comply with the Scrap Jewelry and Metal Dealers Act and are not subject to the laws governing scrap metal dealers *unless* they are also in the business of purchasing and selling non-precious metals, in which case they would be required to comply with both statutes for the type of metal covered by each. This conclusion comports with the general rule that, in ascertaining legislative intent, statutes muse be read in conjunction with their surrounding parts and, if possible, these component parts should be construed consistently and reasonably. *See Lind v. Beaman Dodge, Inc.* 356 S.W.3d 889, 897 (Tenn. 2011); *Sallee v. Barrett*, 171 S.W.3d 822, 828 (2005).

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