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Opinion No. 12-101

Pawnbroker Compliance with Scrap Jewelry and Metal Dealers Act

QUESTION

If a pawnbroker licensed in the State of Tennessee purchases antique, used or scrap jewelry or precious metals for the purpose of resale, either in the original or an altered form, then is the pawnbroker acting as a scrap jewelry or metal dealer subject to regulation under Tenn. Code Ann. §§ 38-1-201 to -205?

OPINION

Yes.

ANALYSIS

Pawnbrokers conducting business in Tennessee are subject to licensure and regulation under the Tennessee Pawnbrokers Act of 1988, codified at Tenn. Code Ann. §§ 45-6-201 to -224 (hereinafter the "Pawnbrokers Act"). A pawnbroker must obtain a license from the county clerk in the county in which he or she is conducting business. Tenn. Code Ann. §§ 45-6-205 to -208. A pawnbroker also must maintain a detailed daily record of pawn transactions and deliver this record to the appropriate law enforcement agency within forty-eight hours following the day of the transactions. Tenn. Code Ann. § 45-6-209.

A licensed pawnbroker is authorized to engage in the business activities set forth in Tenn. Code Ann. § 45-6-204. In addition to making loans on the security of goods pledged as a pawn transaction under Tenn. Code Ann. § 45-6-204(a)(1), pawnbrokers also are authorized to make over the counter purchases of goods that the seller does not intend to buy back. Tenn. Code Ann. § 45-6-204(a)(7). Such goods could include antique, used or scrap jewelry and precious metals.

Scrap jewelry and metal dealers are subject to regulation under the Scrap Jewelry and Metal Dealers Act of 1980, codified at Tenn. Code Ann. §§ 38-1-201 to -205 (hereinafter the "Dealers Act"). The Dealers Act applies to "[a]ny 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." Tenn. Code Ann. § 38-1-201(a). The Dealers Act is similar to the Pawnbrokers Act in that it contains defined holding periods as well as detailed record keeping and reporting requirements.

Compare Tenn. Code Ann. §§ 38-1-202 to -203 *with* Tenn. Code Ann. §§ 45-6-209, -211, -213, -219 & -221.

The question posed is whether a licensed pawnbroker is subject to regulation under the Dealers Act if the pawnbroker purchases antique, used or scrap jewelry or precious metals for the purpose of resale, either in an original form or as altered. Tenn. Code Ann. § 45-6-204(b) of the Pawnbrokers Act provides that notwithstanding the provisions of this section setting forth the authority granted to licensed pawnbrokers "*except for a pawn or pawn transaction authorized by Acts 1995, ch. 186 [now codified at Tenn. Code Ann. § 45-6-203(4)(A)]*, no pawnbroker shall have the power as enumerated in this section without first complying with the law regulating the particular transactions involved." (Emphasis added).

Tenn. Code Ann. § 45-6-203(4)(A) defines pawn or pawn transaction as either of the following:

> (i) "Buy-sell" agreement means any agreement whereby a pawnbroker agrees to hold a property (pledged goods) for a specified period of time not to be less than sixty (60) days to allow the seller the exclusive right to repurchase the property. A buy-sell agreement is not a loan of money, but shall still meet all recording procedures to law enforcement officers as with a pawn transaction; or
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> (ii) "Loan of money" transaction means any loan on the security of pledged goods and being a written bailment of pledged goods as a security lien for the loan, for the cash advanced, interest and fees authorized by Acts 1995, ch. 186 [now codified at Tenn. Code Ann. § 45-6-210], redeemable on certain terms and with the implied power of sale on default.

Under the plain language of this definition, the distinguishing characteristic of a pawn or pawn transaction is that the debtor or seller has the legal right to reacquire possession or title of the property. A transaction where the seller has no such intent is not a pawn or pawn transaction and is, therefore, subject to any other laws and regulations that may govern the transaction pursuant to Tenn. Code Ann. § 45-6-204(b) of the Pawnbrokers Act. As such, a pawnbroker who acquires scrap jewelry or precious metals from a seller who does not intend to buy back the item must comply with the statutes governing the purchase and sale of scrap jewelry and precious metals set forth in the Dealers Act. *See Wlodarz v. State*, 361 S.W.3d 490, 496 (Tenn. 2012) (stating the general rule of statutory construction that, when a statute is clear in its purpose and intent, courts will apply its plain meaning without complicating the task).

The provisions of Tenn. Code Ann. § 45-6-204(a)(7) do not dictate a different result. That statute provides that a pawnbroker may "[m]ake over-the-counter purchases of goods that the seller does not intend to buy back" and that "[t]he pawnbroker shall hold the goods for a period of not less than twenty (20) business days before offering the merchandise for resale." The twenty-day holding period required in § 45-6-204(a)(7) is shorter than the thirty-day holding period required in Tenn. Code Ann. § 38-1-202(a) for antique, used or scrap jewelry and precious metals. However, Tenn. Code Ann. § 45-6-204(a)(7) addresses the broad category of all goods obtained for resale by a pawnbroker, whereas Tenn. Code Ann. § 38-1-202(a) is limited specifically to antique, used or scrap jewelry and precious metals. Thus the longer holding period required by the Dealers Act would apply to antique,

used or scrap jewelry and precious metals obtained by a pawnbroker for resale, especially given the Pawnbroker Act's directive that in such cases a pawnbroker must comply with all other applicable laws. Tenn. Code Ann. § 45-6-204(b). *See also Keough v. State*, 356 S.W.3d 366, 371 (Tenn. 2011) (recognizing the generally accepted rule of statutory construction that a special or specific statute will prevail over a general provision in another statute).

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