

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

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Opinion No. 13-02

Homeowners' Association's Restrictive Covenants on Beekeeping

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**QUESTIONS**

1. Does Tenn. Code Ann. § 44-15-101 to -125, or any other Tennessee law, prohibit, supersede, or otherwise render unenforceable a restrictive covenant adopted by a homeowners' association that disallows the establishment and maintenance of honeybees in hives on property subject to these covenants?

2. If a property owner currently maintains a honeybee hive within a subdivision, and the hive existed on the property on or before June 10, 2011, does Tenn. Code Ann. § 44-15-124 preclude the homeowners' association of that subdivision from adopting a restrictive covenant that would disallow the continued maintenance of this honeybee hive within the subdivision?

**OPINIONS**

1. No. The referenced statutes do not apply to restrictive covenants adopted by homeowners' associations, nor do they express an unequivocal public policy against such restrictive covenants. Nor is this Office aware of any other Tennessee statute that would preclude such a covenant.

2. No. Tenn. Code Ann. § 44-15-124 only protects hives maintained in accordance with the zoning regulations of a county or municipal government as of June 20, 2011, from being adversely affected by changes to those zoning regulations and does not apply to subsequent private restrictive covenants prohibiting the continued maintenance of honeybee hives on property subject to these covenants.

**ANALYSIS**

Tenn. Code Ann. §§ 44-15-101 to -125 govern beekeeping in Tennessee. The questions posed regard the effect, if any, of Tenn. Code Ann. § 44-15-124 on the enforceability of a restrictive covenant that disallows the establishment and maintenance of honeybees in hives on property located within a subdivision. Tenn. Code Ann. § 44-15-124 provides:

No county, municipality, consolidated government, *or other political subdivision of this state* shall adopt or continue in effect any *ordinance or resolution* prohibiting the establishment or maintenance of honeybees in hives, provided that such establishment or maintenance is in compliance with this chapter. This section shall not be construed to restrict or otherwise limit the zoning authority of county or municipal governments; provided, however, that a honeybee hive being maintained at a location in compliance with applicable *zoning* requirements on June 10, 2011, shall not be adversely affected and may be maintained at the same location notwithstanding any subsequent zoning changes.

(Emphasis added).

1. Tenn. Code Ann. § 44-15-124 does not invalidate a restrictive covenant duly adopted by a homeowners' association that prohibits beekeeping within the property of the subdivision subject to the covenants established by the homeowners' association. By its terms, Tenn. Code Ann. § 44-15-124 prevents any "county, municipality, consolidated government, or other political subdivision" of the state from adopting or continuing in effect any "ordinance or resolution" prohibiting the establishment or maintenance of honeybees in hives that are in compliance with the statutes governing beekeeping in Tennessee, but does not restrict or limit the zoning authority of a county or municipal government. The statute does not define the term "political subdivision." In such cases, a court would look to dictionary definitions, including Black's Law Dictionary, to establish the meaning of the undefined term. *See State v. Majors*, 318 S.W.3d 850, 859 (Tenn. 2010); *State v. Edmondson*, 231 S.W.3d 925, 928 (Tenn. 2007). Black's Law Dictionary defines the term "political subdivision" as a "division of a state that exists primarily to discharge some function of local government." *Black's Law Dictionary* 1197 (8<sup>th</sup> ed. 2004). Thus the phrase "county, municipality, consolidated government or other political subdivision of this state" means an entity with some local governmental authority or function. *See Smith County Regional Planning Commission v. Hiwassee Village Mobile Home Park, LLC*, 304 S.W.3d 302, 311-12 (Tenn. 2010); *Cider v. County of Henry*, 295 S.W.3d 269, 273-76 (Tenn. Ct. App. 2008), *Johnson v. South Central Human Resource Agency*, 926 S.W.2d 951, 952 (Tenn. Ct. App. 1996) (all recognizing in a variety of contexts that the term "political subdivision of a state" only includes entities that are created by the State for governmental purposes).

By contrast, a restrictive covenant is a contract regarding the use of land among generally private landowners. Such covenants are property interests that run with the land and usually arise from a series of overlapping contractual transactions. *See Maples Homeowners Association, Inc. v. T & R Nashville Limited Partnership*, 993 S.W.2d 36, 38-39 (Tenn. Ct. App. 1998). Accordingly, they should be viewed as contracts and construed using the rules of construction generally applicable to the construction of other contracts. *Id.*

For these reasons, the terms "county, municipality, consolidated government, or other political subdivision" as used in Tenn. Code Ann. § 44-14-124 would not include a privately incorporated organization, such as a homeowners' association, authorized to enforce the covenants under the terms of an agreement among landowners. Such an organization derives its

authority from the terms of the contract and would not be an instrumentality of local government.<sup>1</sup>

The case of *Pioneer Subdivision Homeowners Association, Inc. v. Professional Counseling Services, Inc.*, No. W2001-03053-COA-R3-CV, 2002 WL 31443218 (Tenn. Ct. App. Oct. 31, 2002) does not dictate a different conclusion. In *Pioneer*, a non-profit corporation, including lot owners within a subdivision, sued to prevent a purchaser from using a home in the subdivision as a group home for mentally handicapped persons or their guardians. *Id.* at \*1-2. The association claimed that the home would violate a restrictive covenant prohibiting any business use or other use of property in the subdivision other than a private residence or single family dwelling. *Id.* The petition also claimed the home would violate a city ordinance prohibiting group homes and nursing homes in residential areas. *Id.* The trial court denied the association's request for an injunction. *Id.* The Court of Appeals found that both the restrictive covenant and the zoning ordinance were preempted by Tenn. Code Ann. §§ 13-24-101 to -104. *Id.* at \*3. Tenn. Code Ann. § 13-24-101(a) states that “[i]t is the purpose of this part to remove any zoning obstacles which prevent persons with a disability from living in normal residential surroundings.” Tenn. Code Ann. § 13-24-102 provides:

For the purposes of any zoning law in Tennessee, the classification “single family residence” includes any home in which eight (8) or fewer unrelated persons with disabilities reside, and may include three (3) additional persons acting as support staff or guardians, who need not be related to each other or to any of the persons with disabilities residing in the home.

Most importantly for purposes of the question under consideration, Tenn. Code Ann. § 13-24-103 specifically states that “[t]his part takes precedence over any provision in any zoning law or ordinance in Tennessee to the contrary.” The Court found that the statute overrode both the restrictive covenant for the subdivision and the city zoning ordinance. *Id.*

Unlike the statute addressed in *Pioneer*, Tenn. Code Ann. § 44-15-124 does not expressly override zoning law or ordinances restricting the practice of beekeeping. In fact, Tenn. Code Ann. § 44-15-124 expressly provides that it “shall not be construed to restrict or otherwise limit the zoning authority of county or municipal governments.” Thus, under the statute, cities and counties can continue to restrict beekeeping by zoning ordinance. But, under the last proviso, a zoning ordinance passed by a local government after the act became effective cannot adversely affect a hive maintained at a location in compliance with applicable zoning as of June 10, 2011.

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<sup>1</sup> This Office is aware that, under certain circumstances, private action could be considered “state action” for purposes of invoking the protections of the Fourteenth Amendment to the United States Constitution but only if there exists such a close nexus between the state and the challenged action that seemingly private behavior may be treated as an action by the state. See *Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S. 288, 295 (2001). This principle does not support extending the phrase “county, municipality, consolidated government, or other political subdivision” in Tenn. Code Ann. § 44-15-124 to include a private entity like a homeowner's organization. In construing a statute, legislative intent is determined from the natural and ordinary meaning of the statutory language within the context of the entire statute without any forced or subtle construction that would extend or limit the statute's meaning. See, e.g., *State v. Strode*, 232 S.W.3d 1, 9 (Tenn. 2007). The language of Tenn. Code Ann. § 44-15-124 reflects no intent to extend the restriction on prohibiting beehives beyond ordinances and resolutions passed by governmental entities, and this Office is not aware of any factors in this context evidencing a “close nexus” between the State of Tennessee and a private homeowners' association.

Tenn. Code Ann. § 44-15-124 also does not purport to override existing restrictive covenants contractually established between generally private landowners. For these reasons, the statute does not invalidate a homeowners' association's restrictive covenant prohibiting beekeeping on private property.

This Office is unaware of any other statutes that would render such a covenant unenforceable. The Tennessee Right to Farm Act, codified at Tenn. Code Ann. §§ 43-26-101 to -104, creates a rebuttable presumption that an established farm operation is not a public or private nuisance. The term "farm operation" means an activity on a farm in connection with the commercial production of farm products or nursery stock. Tenn. Code Ann. § 43-26-102(2). "Farm product" is defined to include apiaries. Tenn. Code Ann. § 43-26-102(3). But this Act does not prevent cities and counties from restricting beekeeping operations through zoning, and it does not render unenforceable any private restrictive covenants established by a homeowners' association to restrict or prohibit beekeeping.

2. Again, Tenn. Code Ann. § 44-15-124 by its terms is inapplicable to restrictive covenants agreed to by landowners as part of a homeowners' association. Thus, restrictive covenants are not subject to the last proviso in the second sentence of Tenn. Code Ann. § 44-15-124, stating that "a honeybee hive being maintained at a location in compliance with applicable **zoning** requirements on June 10, 2011, shall not be adversely affected and may be maintained at the same location **notwithstanding any subsequent zoning changes.**" (Emphasis added). By its terms, this proviso only applies to hives maintained in accordance with zoning regulations as of the effective date of the act. In essence, this provision "grandfathers in" properly zoned hives that existed on June 10, 2011 so that subsequent zoning changes by a local government cannot affect their right to continue. It has no effect on hives that violate private restrictive covenants by a homeowners' association on or before that date. *See Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 714 (Tenn. 2012) (stating general rule of statutory construction that a statute's language should be given its natural and ordinary meaning, without any forced or subtle construction that would extend the statute's meaning).

ROBERT E. COOPER, JR.  
Attorney General and Reporter

WILLIAM E. YOUNG  
Solicitor General

C. SCOTT JACKSON  
Deputy Attorney General

Requested by:

The Honorable Glen Casada  
State Representative  
25 Legislative Plaza  
Nashville, Tennessee 37243-0163