

STATE OF TENNESSEE
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Opinion No. 13-44

Purchase of Used or Secondhand Items by Municipalities and Counties

QUESTION

Is a municipality or county authorized to purchase a used or secondhand item from a private individual or entity without public advertisement and competitive bidding following a valuation of the item based on advertised prices for similar used and secondhand items listed for sale on websites?

OPINION

No.

ANALYSIS

Tennessee law authorizes municipalities and counties to purchase used and secondhand items from private individuals and entities without public advertisement and competitive bidding when certain requirements are met, stating specifically as follows:

Notwithstanding any charter, private act, or general law requirements, any municipality or any county may purchase used or secondhand articles consisting of goods, equipment, materials, supplies, or commodities from any private individual or entity without public advertisement and competitive bidding as long as the purchasing government documents the general range of value of the purchased item through a listing in a nationally recognized publication or through an appraisal by a licensed appraiser, and the price is not more than five percent (5%) higher than the highest value of the documented range.

Tenn. Code Ann. § 12-3-1003(b).

As set forth above, there are two methods whereby a municipality or county may purchase used or secondhand items from a private individual or entity without public advertisement and competitive bidding. A municipality or county may document the value either “through an appraisal by a licensed appraiser” or by establishing “the general range of value of the purchased item through a listing in a nationally recognized publication.” *Id.* If either of these tests are met, then the municipality or county may purchase the item if the price of the item is not more than five percent higher than the highest value of the documented range. *Id.*

A municipality or county may not comply with the requirement of “document[ing] the general range of value of the purchased item through a listing in a nationally recognized publication” by establishing a “value” on the used or secondhand item based on advertised prices for similar used and secondhand items listed for sale on websites. The word “value” is not defined by Tenn. Code Ann. § 12-3-1003(b). In such cases courts will look to dictionary definitions to determine the commonly accepted meaning of an undefined word used in a statute. *Eastman Chemical Co. v. Johnson*, 151 S.W.3d 503, 508 (Tenn. 2004); *State v. Clark*, 355 S.W.3d 590, 592-93 (Tenn. Crim. App. 2011). “Value” is generally defined as “1: a fair return or equivalent in money, goods, or services for something exchanged; 2: the monetary worth of a thing: MARKET PRICE.” *Merriam–Webster’s Dictionary* 547 (New ed. 2005). Thus, giving the word “value” its plain and ordinary meaning, the General Assembly intended it to mean fair market value. *See, e.g., Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010); *State v. Bobo*, 727 S.W.2d 945, 952 (Tenn. 1987); *Weaver v. Woods*, 594 S.W.2d 693, 695 (Tenn. 1980) (stating that legislative intent is derived primarily from the natural, ordinary, and commonly accepted meaning of the words that the General Assembly has chosen to use in the statute itself).

The provisions of Tenn. Code Ann. § 12-3-1003(b) expressly state that “fair market value” shall be determined by consulting “nationally recognized publications” that publish current fair market values of the item that the municipality or county wishes to purchase. For instance, the National Automobile Dealers Association (“NADA”) Used Car Guide and the Kelley Blue Book are nationally recognized authorities that are used to determine the fair market value of used vehicles. *See Clement v. Clement*, No. W2003-02388-COA-R3-CV, 2004 WL 3396472 at * 18-19 (Tenn. App. Dec. 30, 2004). Similarly, the Aircraft Bluebook is a publication utilized in the aviation industry to determine the fair market value of aircraft, and the Green Guide is a trade publication that supplies current information as to equipment values. *See CB Aviation, LLC v. Hawker Beechcraft Corp.*, Civil Action No. 2:10-cv-1411-JD, 2011 WL 5386359 at *5 (E.D. Pa. Nov. 8, 2011); *Rosebud Co. v. Dept. of Revenue*, 849 P.2d 177, 178 (Mont. 1993). In contrast, a sale price listed by a single individual or entity for a used or secondhand item on a website may or may not reflect the actual fair market value of the item. *See Port Everglades Launch Service, Inc. v. M/Y SITUATIONS*, No. 10-60571-CIV, 2011 WL 1196017 at *5 (S.D. Fla. Mar. 29, 2011) (rejecting testimony to establish fair market value that relied upon listed prices as opposed to actual sales prices). Thus, a website that simply lists items for sale is not a “nationally recognized publication” that contains the current fair market value of the item, as required by Tenn. Code Ann. § 12-3-1003(b). *See, e.g., In re Hogue*, 286 S.W.3d 890, 894 (Tenn. 2009) (stating that, when a statute is unambiguous, courts will discern legislative intent from the natural and ordinary meaning of the statutory language and will not adopt a forced construction that would extend the statute’s meaning).

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