STATE OF TENNESSEE
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Opinion No. 14-02

Performing Graffiti Removal as Community Service

QUESTION

When an offender is sentenced by a court to perform general community service, may that offender's probation officer, community corrections officer, or sentence management supervisor order the offender to perform graffiti-removal services on public and private property pursuant to Tenn. Code Ann. § 6-54-127(h)?

OPINION

No. Pursuant to Tenn. Code Ann. § 6-54-127(h), the use of offenders to assist in removing graffiti or repairing or replacing that portion of the property that was defaced is limited to offenders who have been specifically ordered by the general sessions, criminal or juvenile court to participate in those services.

ANALYSIS

Recognizing the harm that graffiti can cause to the public's safety, health, welfare, convenience, and enjoyment of public property, the General Assembly enacted Tenn. Code Ann. § 6-54-127 to declare graffiti a specific type of public nuisance. The statute empowers municipalities to use municipal funds to remove graffiti from property in the public's view or to repair or replace that portion of the property that was defaced. Tenn. Code Ann. § 6-54-127(c), (e), and (g). To assist in graffiti removal and in dealing with its after-effects, such as repair or replacement of the property that was defaced, subsection (h) of the statute provides that "the municipality or county may use the services of persons ordered to perform those services by a general sessions, criminal or juvenile court." Id. § 6-54-127(h).

Whether offenders who are under a more general order of a court to perform community service may be required by their probation officer, community correction officer, or sentence management officer to perform graffiti-maintenance work as a community service under subsection (h) is a matter of statutory construction. The paramount rule of statutory construction "is to ascertain and give effect to legislative intent without broadening the statute beyond its intended scope." Carter v. Bell, 279 S.W.3d 560, 564 (Tenn. 2009). Legislative intent is to be discerned from the precise wording of the statute, giving those words their natural and ordinary meaning within the context of the legislation as a whole, and not utilizing any forced construction that would extend the statute's meaning. Chapman v. Davita, Inc., 380 S.W.3d 710,

714 (Tenn. 2012); *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010). The words of the statute, furthermore, should be construed "in the context in which they appear in the statute and in light of the statute's general purpose." *Lee Medical, Inc.*, 312 S.W.3d at 526.

As noted previously, Tenn. Code Ann. § 6-54-127, as a whole, is tailored to address the problem of graffiti as a public nuisance. The statute is found in the portion of the code that deals with local governments and sets out the specific powers possessed by local governing agencies. Since subsection (h) appears in this particular section and not in the general criminal portions of the code, and since it only authorizes, for graffiti-maintenance purposes, "persons ordered to perform those services by a general sessions, criminal or juvenile court," we conclude that, unless an offender is specifically ordered by the sentencing judge to perform such work, this provision does not authorize the offender's service supervisor to include graffiti-maintenance work as part of the offender's general community service. However, for those offenders who were not specifically ordered as contemplated by Tenn. Code Ann. § 6-54-127(h) to perform graffiti-maintenance work but who are under a general order of a court to perform community service and who are probationers, those sentenced to split confinement who serve the in-custody portions of their sentences in a local jail or workhouse, or those sentenced to community corrections, the sentencing court retains jurisdiction to modify the alternative-sentencing conditions and could add graffiti-maintenance work to an offender's public-service requirements even after the sentencing judgment has otherwise become final. Tenn. Code Ann. §§ 40-35-212(c), and (d)(1); 40-35-308(a)(1); and 40-36-106(e)(2).

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