

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

January 7, 2015

Opinion No. 15-03

Scope of Attorney Exemption from Collection Service License Requirements

QUESTION

Does the Tennessee Collection Service Board, established under the Tennessee Collection Service Act, Tenn. Code Ann. § 62-20-101 *et seq.*, have the authority to interpret Tenn. Code Ann. § 62-20-103(a)(2) to exempt only attorneys licensed to practice law in Tennessee from the requirements of the Act, but to require attorneys who are not licensed to practice law in Tennessee to obtain a collection service license before engaging in any collection service conduct in Tennessee?

OPINION

No. The regulatory and rule-making authority granted to the Tennessee Collection Service Board does not allow it to limit the scope of the attorney exemption in Tenn. Code Ann. § 62-20-103(a)(2) to only attorneys licensed to practice law in Tennessee.

ANALYSIS

Under the Tennessee Collection Service Act, any person engaging in, or attempting to engage in, “the collection of delinquent accounts, bills or other forms of indebtedness” must hold a valid collection service license. Tenn. Code Ann. §§ 62-20-102(3), 62-20-105(a). But by its own terms the Act “does not apply to . . . attorneys at law.” Tenn. Code Ann. § 62-20-103(a)(2). Thus, “attorneys at law” are exempt from the Act and from any rules or regulations promulgated under the Act.

The Act created the Tennessee Collection Service Board and authorized the Board to regulate the collection service industry, including promulgating rules “relating to the general conduct of collection service business that are consistent with recognized business practice and [the Act].” Tenn. Code Ann. § 62-20-104(g). Under Tennessee law, even an administrative body that has been given the power to make rules and regulations “does not have the power to make a rule or regulation which is inconsistent with . . . other law on the subject and it does not include the authority to enact laws, or to make rules affecting or creating substantive rights.” *Tasco Developing & Building Corp. v Long*, 368 S.W.2d 65, 67 (Tenn. 1963). “If an administrative agency or board is statutorily authorized to make rules and regulations, the rules and regulations promulgated by the agency or board may not

be inconsistent with the enabling statute.” *Cady v. Tenn. Bd. of Veterinary Med. Exam’rs*, No. M2008-02551-COA-R3-CV, 2009 Tenn. App. LEXIS 597, *11 (Tenn. Ct. App. Aug. 27, 2009) (citations omitted). Rules adopted by the agency or board that are inconsistent with the statute are invalid. *Id.* at *11-12.

The Act clearly exempts from its scope “attorneys” without any limitation. Accordingly, all attorneys are exempt from the licensing requirements of the Act. Any attempt by the Board to narrow this exemption by rule or regulation would be inconsistent with the enabling statute and would, therefore, be invalid. In particular, a rule promulgated by the Board limiting the Act’s attorney exemption to only those attorneys licensed to practice in Tennessee would be invalid because it would be inconsistent with the plain language of the Act and because the Board would be making a rule that affects a substantive right, i.e., the legislatively-created statutory right of exemption for all attorneys.

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