

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

January 16, 2015

Opinion No. 15-05

Bonds with Security Posted for Appeals from General Sessions Court

QUESTION

Does the recent decision of the Tennessee Supreme Court in *Griffin v. Campbell Clinic, P.A.*, 439 S.W.3d 899 (Tenn. 2014), alter the conclusion reached on Question 1 in Tenn. Att’y Gen. Op. 12-23 (Feb. 23, 2013) regarding the need to post a surety bond to perfect an appeal from a General Sessions Court to a Circuit Court?

OPINION

No. However, the *Griffin* opinion does require a clarification of the prior opinion of this Office. Opinion 12-23 correctly states that Tenn. Code Ann. § 27-5-103 generally requires a “security bond” to perfect an appeal from a General Sessions Court to a Circuit Court. It also opines specifically that “a party must provide a surety bond to perfect an appeal from General Sessions to Circuit Court.” While that opinion is correct, it requires clarification to the extent that it implies that a surety bond is the only “security bond” that meets the requirements of Tenn. Code Ann. § 27-5-103.

We therefore now revise Opinion 12-23 to clarify that a party must post a bond with security to perfect an appeal from General Sessions Court to Circuit Court and that any “bond with security,” including but not limited to a surety bond and a cash bond, will satisfy the “bond with security” requirement of Tenn. Code Ann. § 27-5-103.

ANALYSIS

Tennessee Code Annotated § 27-5-103 governs the bond-posting requirements for appealing from a decision of a General Sessions Court. It provides in relevant part:

- (a) Before the appeal is granted, the person appealing shall give bond with security, as hereinafter provided, for the costs of the appeal, or take the oath for poor persons.

- (b) An appeal bond filed by a plaintiff or defendant pursuant to this chapter shall be considered sufficient if it secures the cost of the cause on appeal.

Tenn. Code Ann. § 27-5-103.

The first question (Question 1) addressed by this Office in Opinion 12-23 was whether an appealing party who pays costs to the General Sessions Court Clerk under Tenn. Code Ann. § 8-21-401(a) “must . . . also submit a surety bond under Tenn. Code Ann. § 27-5-103 to perfect the appeal?” In response to that specific question about a “surety bond,” this Office answered in the affirmative, opining that the party “must provide a surety bond” to perfect the appeal. Tenn. Att’y Gen. Op. 12-23 at p. 1 (Feb. 23, 2013). This Office also explained that the payment of costs in the General Sessions Court did not in and of itself relieve an appealing party from posting “bond with security” as required by Tenn. Code Ann. § 27-5-103. *Id.* at pp. 1-2. *See also City of Red Boiling Springs v. Whitley*, 777 S.W.2d 706, 708 (Tenn. Ct. App. 1989) (stating that “[t]he requirement of a bond in order to perfect an appeal from an inferior court to the circuit court is not a formality” and “[t]he appeal is not perfected without it.”).

This opinion request now asks whether the 2014 decision in *Griffin v. Campbell Clinic, P.A.*, 439 S.W.3d 899 (Tenn. 2014) alters the opinion we rendered on Question 1 in Opinion 12-23. Although the conclusions reached in Opinion 12-23 are correct, clarification is required, particularly in light of *Griffin*, to the extent that Opinion 12-23 suggests that only a surety bond can satisfy the “bond with security” requirement of Tenn. Code Ann. § 27-5-103.

Griffin v. Campbell Clinic dealt with the bond requirements of Tenn. Code Ann. § 27-5-103 in a slightly different context than did Opinion 12-23. The Tennessee Supreme Court in *Griffin* addressed the type and amount of the bond required under Tenn. Code Ann. § 27-5-103. *Griffin v. Campbell Clinic, P.A.*, 439 S.W.3d at 903-05. Finding the language of Tenn. Code Ann. § 27-5-103 to be unambiguous, the Court held that Tenn. Code Ann. § 27-5-103 does require a “bond with security” to perfect an appeal, but found that the bond need not necessarily be “a surety bond in an unlimited amount” and that “a cash bond is sufficient to satisfy the appeal bond requirement” of Tenn. Code Ann. § 27-5-103. *Id.* at 905.

The *Griffin* decision thus does not conflict with—and indeed supports—the conclusion of this Office in Opinion 12-23 that the payment of costs to the General Sessions Court Clerk under Tenn. Code Ann. § 8-21-401(a) does not relieve a party appealing a decision of the General Sessions Court from posting “bond with security” as required by Tenn. Code Ann. § 27-5-103. Nonetheless, Opinion 12-23 does need to be clarified to the extent that it used the terms “bond with security” and “surety bond” interchangeably, Tenn. Att’y Gen. Op. 12-23 at pp. 1-2, when, in fact, “surety bond” is a subset of “bond with security.”

As the Tennessee Supreme Court recognized in *Griffin*, the “bond with security” requirement of Tenn. Code Ann. § 27-5-103 can be met by a cash bond rather than a surety bond and the amount of the bond may be limited in amount as determined by the court reviewing the type and amount of bond posted. Thus, *Griffin* reinforces the general understanding that a surety bond is one type of “bond with security,” but that it is not the only type of “bond with security.”

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