

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

November 6, 2015

Opinion No. 15-73

Sexual Offender Registry Residence Within 1,000 Feet of Victim

Question

Does Tenn. Code Ann. § 40-39-211(b) prohibit a sexual offender from residing within 1,000 feet of his/her victim even if the offender had established that residence before the sexual offense was committed?

Opinion

Yes.

ANALYSIS

Tennessee Code Annotated § 40-39-211(b)(1) provides:

No sexual offender, violent sexual offender, or violent juvenile sexual offender, as those terms are defined in § 40-39-202, shall knowingly [r]eside within one thousand feet (1,000') of the property line on which the offender's former victims or the victims' immediate family members reside.¹

A basic principle of statutory construction is to ascertain and give effect to legislative intent, derived whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995); *Carson Creek Vacation Resorts, Inc. v. State, Dept. of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993). If a statute is clear and unambiguous, courts will find the intent in the plain and ordinary meaning of its language. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918, 921 (Tenn. 2007).

The language of § 40-39-211(b)(1) is clear and unambiguous: a sexual offender as defined in § 40-39-202 is prohibited from living within 1,000 feet of the residence of his/her former victims or the victims' immediate family members. The plain and ordinary meaning of "reside" is to live or to have a home in a particular place. *See New Oxford American Dictionary*, 3rd ed. Thus, the statute prohibits a sexual offender from having a home or living within 1,000 feet of his/her victims and their family members. Except for the scienter requirement, the prohibition is unqualified and

¹ The opinion request states the concern that the answer to this question "may well mean the difference in whether or not the family of a minor victim must move from their long-time residence in order to avoid contact with the perpetrator of the offense." It is important to note that the requirements of Tenn. Code Ann. § 40-39-211 only apply to *offenders*. Victims and family members of victims do not have to comply with any restrictions under this section.

it is absolute. It makes no difference when the residence was acquired or established; if it is within 1,000 feet of a victim, the offender is prohibited from living in it.

This reading of Tenn. Code Ann. § 40-39-211(b)(1) is supported and reinforced when its language is read in the context of § 40-39-211 as a whole, which shows that the Legislature clearly intended to distinguish between “residing” in a particular place and “establishing a residence” in a particular place. For example, Tenn. Code Ann. § 40-39-211(a) makes it a crime for a qualifying offender to “knowingly *establish* a primary or secondary residence . . . within (1,000’) of the property line of any public school . . .” or other places where children are present. By contrast, Tenn. Code Ann. § 40-39-211(b)(1) makes it a crime to “reside” within 1,000 feet of a victim’s residence. “Reside” and “establish a residence” are not synonyms; each expresses a different concept. Whereas “reside” means to live or have a home in a particular place without reference to when that residence was first created, “establish a residence” is a forward-looking term meaning to “set up” or “organize.” *New Oxford American Dictionary*, 3rd ed. Thus, statutory language prohibiting an offender from “establishing a residence” in a specified zone only prohibits the offender from taking up residence at a new location within the specified zone. *See Op. Tenn. Atty. Gen. 04-053* (March 25, 2004). But “a sex offender who on release from incarceration returns to his pre-incarceration residence within the prohibited zone does not “establish” residence within the meaning of [the statute].” *Id.* Had the Legislature intended the same result when it comes to living near the offender’s actual victims as opposed to children in general, the Legislature would have used the term “establish a residence” instead of “reside.”

In sum, while an offender may remain in or return to a residence that he/she had established before the crime even if it is within 1,000 feet of a location where children are present, Tenn. Code Ann. § 40-39-211(a), an offender may not under any circumstances live within 1,000 feet of his/her victim or the victim’s immediate family members even if the offender had established that place of residence before the crime was committed, Tenn. Code Ann. § 40-39-211(b)(1). If an offender’s residence is within 1,000 feet of his/her victim or the victim’s immediate family members, the offender must change residences to comply with the requirements of Tenn. Code Ann. § 40-39-211, regardless of whether the offender lived at that location before the offense. Failure to change residence would subject the offender to a Class E felony pursuant to Tenn. Code Ann. § 40-39-211(f).

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