

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

June 21, 2016

Opinion No. 16-23

Application of Divestiture Under the Tennessee Shield Law

Question

Is an application pursuant to Tenn. Code Ann. § 24-1-208(c)(1) for an order divesting the protection of the Tennessee Shield Law necessary only when someone is seeking disclosure of information or the source of information otherwise protected under Tenn. Code Ann. § 24-1-208(a), or must someone seeking disclosure of the source of defamatory information as permitted under Tenn. Code Ann. § 24-1-208(b) also apply pursuant to Tenn. Code Ann. § 24-1-208(c)(1) for an order divesting protection?

Opinion

The divestiture order provisions of Tenn. Code Ann. § 24-1-208(c)(1) apply only when someone is seeking disclosure of information or the source of information that is protected under Tenn. Code Ann. § 24-1-208(a). The divestiture order provisions of Tenn. Code Ann. § 24-1-208(c)(1) do not apply with reference to Tenn. Code Ann. § 24-1-208(b).

ANALYSIS

The “Tennessee Shield Law,” Tenn. Code Ann. § 24-1-208, provides, in relevant part:

- (a) A person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast, shall not be required by a court, a grand jury, the general assembly, or any administrative body, to disclose before the general assembly or any Tennessee court, grand jury, agency, department, or commission any information or the source of any information procured for publication or broadcast.
- (b) Subsection (a) shall not apply with respect to the source of any allegedly defamatory information in any case where the defendant in a civil action for defamation asserts a defense based on the source of such information.
- (c)(1) Any person seeking information or the source thereof protected under this section may apply for an order divesting such protection. Such application shall be made to the judge of the court having jurisdiction over the hearing, action or other proceeding in which the information sought is pending.

When construing a statute, a court must give effect to the intent of the legislature. *Morgan Keegan Co., Inc., v. Smythe*, 401 S.W.3d 595, 602 (Tenn. 2013). If the statutory text is clear and unambiguous, legislative intent is to be found in the ordinary and natural meaning of the statutory language. *Nye v. Bayer CropScience, Inc.*, 347 S.W. 3d 686, 694 (Tenn. 2011).

The language of Tenn. Code Ann. § 24-1-208 is clear and unambiguous. As the Tennessee Supreme Court has found, in Tenn. Code Ann. § 24-1-208(a) “the Legislature has in clear and unambiguous language expressly stated that a newsman, etc., gathering information for publication, shall not be required to disclose” any information that was gathered for publication and shall not be required to disclose the source of any such information. *Austin v. Memphis Pub. Co.*, 655 S.W.2d 146, 149 (Tenn. 1983). In other words, subsection (a) creates a privilege; it “shields” and protects the specified information and sources from disclosure. *See id.*

But this protection not absolute. Subsection (b) creates an exception. “[S]ubsection (b) of T.C.A. § 24-1-208 . . . excludes the source of information from the privilege in a civil action for defamation where defendant asserts a defense based on that source” *Id.* Thus, the subsection (a) “shield” does not apply at all to protect the source of any alleged defamatory information in any such case. T.C.A. § 24-1-208(b). In short, the source of defamatory information gathered for publication does not even come within the scope of the shield created by subsection (a) when that information and its source are at issue in a lawsuit.

In addition, subsection (c)(1) explicitly allows any person to apply for a court order to access the “information or the sources thereof protected under this section” The only information and sources protected under “this section,” i.e., Tenn. Code Ann. § 24-1-208, are the information and sources protected under subsection (a), since subsection (b) does not protect anything, but instead creates an exception to the protection afforded by subsection (a). Accordingly, subsection (c)(1) applies when disclosure is sought for information and sources otherwise protected under subsection (a).

But subsection (c)(1) does not apply in the context of subsection (b). Because subsection (b) does not protect sources from disclosure in certain specified cases, subsection (c)(1), which applies only when someone is seeking disclosure of information or sources “protected” by the Shield Law, does not apply to subsection (b). In sum, the divestiture provisions of subsection (c)(1) apply only when someone is seeking disclosure of information or sources that are protected under the Shield Law and therefore apply only with reference to information or sources otherwise protected under subsection (a).

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