STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

August 30, 2016

Opinion No. 16-35

Exception to Sex Offender Residential and Work Restrictions

Question

Would a registered sex offender's presence at a government office to avail himself of the services provided by that office be "any other . . . legitimate reason" within the meaning of Tenn. Code Ann. § 40-39-211(d)(6)(B) sufficient to constitute an exception to the statutory location constraints imposed on sex offenders?

Opinion

Depending entirely on the particular facts in any given case, the "any other legitimate reason" exception in Tenn. Code Ann. § 40-39-211(d)(1)(B) may apply to allow a sex offender to visit a government office[1] to seek or receive services from that office, even if the office is located within 1,000 feet of a prohibited location.

ANALYSIS

The Tennessee Sex Offender Act restricts sex offenders whose victims were minors from living, working, or being present in various specified locations. Tenn. Code Ann. § 40-39-201, et seq. In particular, a sex offender may not "stand, sit idly . . . or remain within one thousand feet . . . of the property line of" of schools, day care centers, parks, playgrounds, and similar properties when children are present, unless the sex offender has

> a reason or relationship involving custody of or responsibility for a child or any other specific or legitimate reason for being there . . . .

Tenn. Code Ann. § 40-39-211(d)(1)(B) (emphasis added).

The question is whether visiting a government office to receive services may constitute "any other . . . legitimate reason" within the meaning of this statutory exception. Questions involving statutory construction, such as this one, must be answered in light of reason, bearing in mind the object and policy of the statute. State v. Netto, 486 S.W.2d 725, 728 (Tenn. 1972). The basic principle of statutory construction is to ascertain and give effect to the legislative intent, derived whenever possible from the natural and ordinary meaning of the language used, without

[1]This Opinion does not deal and shall not be read to deal with a government office that provides a sexual offender treatment program since Tenn. Code Ann. § 40-39-211(a)(1) specifically prohibits sex offenders and violent sex offenders whose victims were minors, as defined in Tenn. Code Ann. § 40-39-202, from obtaining sexual offender treatment or participating in a treatment program within a prohibited area.

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). The doctrine of *ejusdem generis* offers further applicable guidance in construing statutory language. Under this doctrine, when general words follow the enumeration of specific things, the general words will be construed as applying to things of the same general class or nature as the enumerated specifics. *Sallee v. Barrett*, 171 S.W.3d 822, 828-29 (Tenn. 2005).

The phrase "or any other . . . legitimate reason," although not ambiguous, is broad and general. It follows a specific exception for child care responsibilities, to which it is connected by the coordinating conjunction "or." That grammatical structure makes clear that the General Assembly recognized the potential need for some reasonable exceptions in addition to the child care exception while also recognizing that it could not foresee—and therefore could not specifically enumerate—every possible exception. The general phrase "or any other specific or legitimate reason for being" in an otherwise prohibited area is intended to allow for such additional exceptions. Under the doctrine of *ejusdem generis*, those "legitimate reasons" should be similar to the child care exception, which is based on relationship and duty. Thus, the general phrase may be understood to allow for an exception when the sex offender has a reason to be in the prohibited area related to his legitimate, cognizable responsibilities, duties, or obligations.

Depending entirely on the specific facts and circumstances in any given case, visiting a government office that assists offenders in complying with various aspects of their supervision or meeting their responsibility to reintegrate into society—such as assistance with securing employment or housing—may rise to the level of a "legitimate reason" for being in an otherwise prohibited area and may, therefore, come within the statutory exception under Tenn. Code Ann. § 40-39-211(d)(1)(B). Accordingly, the "legitimate reason" exception *could* apply, *depending on the particular facts and circumstances in any given case*, to allow a sex offender to be in an otherwise prohibited area for the purpose of seeking or receiving such services from a government office.

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