STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

October 24, 2018

Opinion No. 18-45

Authority of District Attorneys General to Bring a Civil Action Under the Scenic Highway System Act of 1971

Question

If there is a violation of the Scenic Highway System Act of 1971, does the district attorney general for the judicial district in which the violation occurs or is threatened have the authority to bring a civil action to enjoin or remove the violation?

Opinion

Yes.

ANALYSIS

The purpose of the Tennessee Scenic Highway System Act of 1971, Tenn. Code Ann. §§ 54-17-101 through -116, is generally to foster tourism and economic development by preserving the natural beauty along designated scenic highways and providing a safe and attractive environment for travelers. Id., § 54-17-104. To accomplish these objectives the Act prohibits or regulates certain activities—such as maintaining junkyards and dumping trash—along designated scenic highways. Id., §§ 54-17-108 and -111. Violation of any provision of the Act is a Class C misdemeanor and will result in an appropriate criminal sanction for the person, firm, or corporation committing the violation. Id., § 54-17-112(a).

Civil remedies for violations of the Act are also available. The plain language of the Act authorizes specified state and local officials and private property owners to bring certain civil actions—"in addition to other remedies provided by law"—when there is a violation or threatened violation of the Act. Id., §54-17-112(b). In particular, "the district attorney general for the judicial district in which the violation occurs or is threatened . . . may institute injunction, mandamus, abatement or other appropriate action, actions or proceedings to prevent, enjoin or abate or remove the violation." Tenn. Code Ann. §54-17-112(b).

While the Tennessee Constitution, art. VI, § 5, which provides for the election of district attorneys general, contemplates that district attorneys general shall prosecute crimes, the General Assembly has from time to time conferred on district attorneys general the authority to bring expressly delimited civil actions and proceedings. See, e.g., Tenn. Code Ann. § 3-7-111 (civil actions regarding zoning violations), Tenn. Code Ann. § 29-3-102 (civil actions to abate public nuisances), Tenn. Code Ann. § 47-18-405 (civil actions with respect to the True Origin of Goods Act), Tenn. Code Ann. § 47-18-5204(b) (civil actions with respect to the Anti-Phishing Act of

2006), and Tenn. Code Ann. § 53-11-452 (civil actions regarding forfeiture of real estate for drug violations). The authority accorded district attorneys general by the General Assembly to bring specified civil actions to enjoin or remove a violation of the Scenic Highway System Act is commensurate with these and other similar statutory grants of authority by the legislature.

In sum, according to the plain language of Tenn. Code Ann. § 54-17-112(b), the General Assembly has expressly conferred on the district attorney general for the judicial district in which a violation of the Scenic Highway System Act occurs or is threatened the authority to bring a civil action—such as "injunction, mandamus, abatement or other appropriate action or proceeding"—seeking to prevent, enjoin, abate, or remove the violation.

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