STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

December 27, 2018

Opinion No. 18-49

Disclosure of Travel Expenses by Members of the General Assembly

Question

Must a member of the General Assembly disclose travel expenses that are paid for or reimbursed by a foreign government seeking to influence public policy or are those expenses exempt from disclosure under Tenn. Code Ann. § 8-50-502(5)(B)?

Opinion

Tennessee Code Annotated § 8-50-502(5)(B) is ambiguous about whether travel expenses paid for or reimbursed by a foreign government are exempt from disclosure. The statutory context and legislative history suggest that the General Assembly did not intend to exempt from disclosure travel expenses paid for or reimbursed by a foreign government. The Ethics Commission, however, has the ultimate statutory authority to implement, enforce, and issue guidance on the proper interpretation of this provision.

ANALYSIS

Tennessee Code Annotated § 8-50-502(5) requires members of the General Assembly to disclose "the amount and source, by name" of certain monetary contributions, including travel expenses "paid on behalf of the member by a person with an interest in a public policy of this state if the travel was for the purpose of informing or advising the member with respect to the public policy." Tenn. Code Ann. § 8-50-502(5)(B). An exception to this disclosure requirement exists, however, for certain government-related travel. Disclosure is not required if the travel expenses are:

> paid for or reimbursed by a governmental entity or an established and recognized organization of elected or appointed state government officials, staff of state government officials, or both officials and staff, or any other established and recognized organization that is an umbrella organization for such officials, staff, or both officials and staff.

Id.

"Governmental entity" in this statute is capable of multiple meanings because there are multiple governments—including foreign governments—to which it could potentially refer. "Governmental entity" is not defined for purposes of § 8-50-502(5)(B). In general, undefined words in the Tennessee Code must "be given their natural and ordinary meaning, without forced or subtle construction that would limit or extend the meaning of the language, except when a

contrary intention is clearly manifest." Tenn. Code Ann. § 1-3-105(b). The natural and ordinary meaning of "governmental entity," however, does not resolve the question presented here. In natural, ordinary usage the adjective "governmental" may refer equally to a public entity that is part of or related to a foreign government, the federal government, state and local governments, or some combination of the above. *See, e.g.*, *Black's Law Dictionary* (10th ed. 2014) (defining "governmental" as "[o]f, relating to, or involving a government" and "public entity" as "[a] governmental entity, such as a state government or one of its political subdivisions").

A statute that is "capable of conveying more than one meaning" is ambiguous. *Walker v. Sunrise Pontiac-GMC Truck, Inc.*, 249 S.W.3d 301, 309 (Tenn. 2008) (quoting *LeTellier v. LeTellier*, 40 S.W.3d 490, 498 (Tenn. 2001)). In such cases, a court will "look to the entire statutory scheme to ascertain the legislative intent and purpose," *id.*, and "seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning," *id.* at 310 (quoting *Scott v. Ashland Healthcare Ctr., Inc.*, 49 S.W.3d 281, 286 (Tenn. 2001)).

Context suggests that the legislature intended § 8-50-502(5)(B) to refer only to state governmental entities. As part of the series beginning with "governmental entity," § 8-50-502(5)(B) also exempts travel expenses paid for or reimbursed by "an established and recognized organization of *state* government officials, staff of *state* government officials, or both officials and staff," as well as travel expenses paid for or reimbursed by "umbrella organization[s] for such officials, staff, or both officials and staff." (emphasis added). The inclusion of only non-governmental organizations that are composed of *state* officials and staff suggests that the state government is also the referent for "governmental entities." *See Sallee v. Barrett*, 171 S.W.3d 822, 828-29 (Tenn. 2005) (explaining that the statutory interpretation canons of *noscitur a sociis* and *ejusdem generis* require a court to interpret a term in light of the surrounding words and concluding that the ambiguous term "infliction of mental anguish" should be limited to include only intentional torts because of its statutory context).

Moreover, in the larger statutory context, the term "governmental entity" appears numerous times throughout the Tennessee Code, including within Title 8 itself. Aside from one banking provision that includes the federal government as well, those statutes uniformly define "governmental entity" to include only the State of Tennessee and its political subdivisions. *See, e.g.*, Tenn. Code Ann. § 7-51-1002 (defining "governmental entity" as "any political subdivision of the state of Tennessee and any municipality, metropolitan government, county or airport authority"); *id.* § 8-31-102 (defining "governmental entity" as "any state agency, authority, board, commission, department, or office within the executive or judicial branch of state government or any autonomous state agency, authority, board, commission, department, office, or institution of higher education" but excluding "any agency or office of the legislative branch"); *id.* § 10-7-504(16)(A) (defining "governmental entity" as "the state of Tennessee and any county, municipality, city or other political subdivision of the state of Tennessee"); *id.* § 29-20-102(3)(A) (defining "governmental entity" as "any political subdivision of the state of Tennessee . . . or instrumentality of government" created by a local government or the General Assembly and providing a list of examples); *id.* § 50-1-702(8) (defining "governmental entity" as "this state or any political subdivision which exercises governmental powers under the laws of the state and uses tax revenues"); *id.* § 58-8-102(8) (defining "governmental entity" as "any political subdivision of the state" and providing examples); *id.* § 69-1-202 (same); *see also id.* § 45-2-

611(b)(1) (defining "governmental entity" as the "State of Tennessee or any other state, counties, incorporated municipalities and their political subdivisions or any utility district organized under the laws of a state or interstate compact" as well as the "United States government or any agency thereof" and "[a]ny instrumentality of the United States the funds of which are required by law to be secured").

Finally, the legislative history and purpose behind § 8-50-502(5)(B) reinforce that the legislature intended to require disclosure of travel expenses paid on behalf of a member of the General Assembly by an outside third party if that third party was attempting to influence the state lawmaker in matters of policy. The legislation's sponsor in the Senate explained that the bill would ensure that the public would know when members of the General Assembly traveled at the expense of a third party who wanted to influence policy and also explained that the bill had been motivated by press reports of extensive travel at the expense of undisclosed donors. *See Hearing on S.B. 327 Before the S. State & Local Gov't Comm.*, 110th Gen. Assem. (Mar. 21, 2017) (statement of Sen. Overbey). As an example, the sponsor described a legislator's out-of-state trip to visit charter schools paid for by an entity interested in influencing public policy in Tennessee. *Id.* (statement of Sen. Overbey).

Initially, the legislation did not include the exception for expenses paid by governmental entities and organizations of state officials and staff. *See* H.B. 275, 110th Gen. Assem. (Apr. 20, 2017) (version adopted by House); S.B. 327, 110th Gen. Assem. (Mar. 21, 2017) (version introduced in Senate State & Local Government Committee). But several legislators in both the House and Senate, including the bills' sponsors, expressed some confusion and concern over whether travel paid for by national organizations of state officials—such as the National Conference of State Legislatures—would be exempt from disclosure. *See generally Hearings on S.B. 327 Before the S. State & Local Gov't Comm.*, 110th Gen. Assem. (Mar. 21, 2017) (statements of Sens. Gardenhire, Norris, and Overbey); *Hearings on H.B. 275 Before the H. State Gov't Comm.*,110th Gen. Assem. (Apr. 11, 2017) (statements of Reps. Sanderson and McCormick). As a result, the bill was amended to include the exception, the language of which was adopted directly from the exception to the gift prohibition in Tenn. Code Ann. § 3-6-305(b)(7)(A). *See Senate Session*, 110th Gen. Assem. (Apr. 24, 2017) (statement of Sen. Overbey).

The legislative intent of the bill was to increase disclosure so that the public would know when outside parties were paying for legislators' travel in an attempt to influence the public policy of Tennessee. That intent would be frustrated by interpreting "governmental entity" broadly to encompass foreign governments, including their various subdivisions and agencies. Nothing in the text or legislative history of either § 8-50-502(5)(B)—or the gift exception from which its language derives, § 3-6-305(b)(7)(A)—suggests that the General Assembly intended to exempt travel expenses paid for by a foreign government from disclosure requirements or gift prohibitions. Instead, the context and legislative history suggests that state governmental entities—who are by definition responsive to state and local concerns, not outside interests—are the entities the legislature had in mind. And the addition of the exception for travel paid for by governmental entities appears to have been motivated largely by a concern that travel paid for by national organizations of state legislators should not have to be disclosed.

The concerns that arise from a private third party paying a legislator's travel expenses as a means to influence public policy would appear equally applicable when a unit of a foreign

government pays those expenses. Accordingly, the "governmental entities" to which § 8-50-502(5)(B) refers are best understood to be state governmental entities, as that term is generally used in the Tennessee Code.

That conclusion, of course, is not free from doubt given that the statute does not expressly include or exclude foreign governments from the term "governmental entity." Adding to the doubt is the fact that the legislature chose to modify "government officials" in § 8-50-502(5)(B) with the adjective "state," but did not similarly qualify or modify "governmental entity."

The Tennessee Ethics Commission is the agency charged with the implementation and enforcement of § 8-50-502(5)(B). *See* Tenn. Code Ann. § 3-6-105(a); *see also* Tenn. Att'y Gen. Op. No. 06-159 (Oct. 9, 2006) (noting that "[q]uestions regarding the applicability and scope of disclosure requirements for state officials and employees . . . should be referred to the Tennessee Ethics Commission" because it is charged with "implementation and enforcement" of the statutory requirements). The Commission is authorized to issue formal advisory opinions "that deal with any statutory provision or provisions that are in any way subject to interpretation, unclear or uncertain, or subject to dispute as to their meaning or application." Tenn. Code Ann. § 3-6-117(a). In addition, the executive director of the Commission and its staff attorneys may also provide informal responses to any person subject to the jurisdiction of the Commission. *See id.* § 3-6-117(b)(2).

Accordingly, given the ambiguity of the statute, the Commission may issue guidance about the disclosure requirements of § 8-50-502(5)(B), including whether travel expenses paid for or reimbursed by a foreign government are exempt from disclosure. Individuals who conform their behavior to such an opinion or informal response "shall not be sanctioned" if it is later determined that the advisory opinion or informal response was not correct. *Id.* § 3-6-117(a), (b)(6).

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