

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

**August 19, 2020**

**Opinion No. 20-15**

**Funding Joint Economic and Community Development Boards – Eligibility for State Grants**

**Question 1**

If a city or county fails to fully fund its share of its joint economic and community development board’s budget as required by Tenn. Code Ann. § 6-58-114(g), does the city or county become ineligible for all state grants or only the specific grant programs set forth in Tenn. Code Ann. § 6-58-110?

**Opinion 1**

A city or county that fails to fully fund its share of its joint economic and community development board’s budget is ineligible for all state grants.

**Question 2**

In view of Tenn. Att’y Gen. Op. 17-37 (Aug. 31, 2017), which states that Tenn. Code Ann. § 6-58-111(c) has been impliedly repealed, has Tenn. Code Ann. § 6-58-114 been impliedly repealed, as well?

**Opinion 2**

No.

**ANALYSIS**

In 1998, the General Assembly enacted the “Comprehensive Growth Plan,” currently codified at Tenn. Code Ann. §§ 6-58-101 to -118. This statutory scheme required nearly every county in Tennessee to develop a “growth plan.”<sup>1</sup> *See id.* §§ 6-58-103 to -107. Because establishing “urban growth boundaries” for the municipalities within each county is the most important part of developing a growth plan, *see id.* §§ 6-58-104(a)(2), -106(a)(1), -107(b), each county’s plan was required to be adopted by the county and by the city governments within the county. *See id.* § 6-58-104.

Next, each county was required to have its adopted plan approved by the local government planning advisory committee and in place no later than July 1, 2001. *See id.* § 6-58-107(a).

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<sup>1</sup> The general purpose of a growth plan is to direct the rate, location, and character of new development. *See* Tenn. Code Ann. § 6-58-107(c).

Pursuant to Tenn. Code Ann. § 6-58-110, local governments that did not meet this deadline were rendered ineligible for six statutorily specified loan and grant programs until their growth plans were approved.<sup>2</sup>

To encourage local governments to engage in long-term planning and “to foster communication relative to economic and community development between and among governmental entities, industry, and private citizens,” Tenn. Code Ann. § 6-58-114(a), (b), the General Assembly further required local governments to establish a “joint economic and community development board” by interlocal agreement for each county. *Id.* § 6-58-114(b).

Each county’s joint economic and community development board is composed of representatives of county and city governments, private citizens, and present industries and businesses. *Id.* § 6-58-114(c). But the activities of the board are funded solely by the participating governments. *See id.* § 6-58-114(g). Each board is required to set an annual budget, and that budget must be funded by participating governments in accordance with the formula set by statute. *Id.* § 6-58-114(h).

Section 6-58-114(i) provides that “a city or county *shall* certify its compliance with the requirements of [§ 6-58-114]” when it “appl[ies] for any state grant.”<sup>3</sup> (Emphasis added.) Accordingly, each local government member must fully fund its share of its joint economic and community development board’s budget if it is to maintain its eligibility for state grants.<sup>4</sup> Tenn. Att’y Gen. Op. 08-111 (May 16, 2008); Tenn. Att’y Gen. Op. 05-109 (July 11, 2005).

1. A city or county that fails to fully fund its share of its joint economic and community development board’s budget is ineligible for all state grants because the phrase “*any* state grant” in subsection (i) of Tenn. Code Ann. § 6-58-114 is most likely to be construed to mean “*all* state grants” in the context of the Comprehensive Growth Plan statutory scheme.

In construing statutes, a court’s role is “to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.” *State v. Strode*, 232 S.W.3d 1, 9 (Tenn. 2007) (citations omitted). Thus, initial focus must be on the words of the statute, giving them their natural and ordinary meaning in light of their statutory context.

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<sup>2</sup> The six programs specified in Tenn. Code Ann. § 6-58-110 are (1) Tennessee housing development agency grant programs; (2) community development block grants; (3) Tennessee industrial infrastructure program grants; (4) industrial training service grants; (5) Intermodal Surface Transportation Efficiency Act funds or any subsequent federal authorization for transportation funds; and (6) tourism development grants.

<sup>3</sup> If a local government planning advisory committee has determined that a similar existing organization within a county satisfies the requirement for a joint economic and community development board, “an affected municipality or county may rely on that status of the existing organization to satisfy the certification requirements of subsection (i).” Tenn. Code Ann. § 6-58-114(j).

<sup>4</sup> Additionally, “[i]n the event a participating government does not fully fund its contribution, the board may establish and impose such sanctions or conditions as it deems proper.” Tenn. Code Ann. § 6-58-114(h). A board may prevent a local government that has failed to fund its portion of the joint budget from voting at meetings. A joint board may also prevent representatives of a local government that has failed to fund its portion of the budget from serving as board officers. Tenn. Att’y Gen. Op. 08-111 (May 16, 2008).

*Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010). Any forced or subtle construction that would limit or extend the meaning of the language in the statute is to be avoided. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004).

Applying these principles, the Tennessee Supreme Court has generally held “any” to be synonymous with “all.” *Roddy Mfg. Co. v. Olsen*, 661 S.W.2d 868, 871 (Tenn. 1983); *Jones v. Whitworth*, 94 Tenn. 602, 609-10, 30 S.W. 736, 738 (1895). See *Employers Liability Assur. Corp. v. Farquharson*, 182 Tenn. 642, 652, 188 S.W.2d 965, 969 (1945) (“We take it that *any* and *every* as here used mean . . . *all*. . . . *Any* means one or more of a group. *Every* means the entire group without exception.”)(emphasis in original). But depending upon the context and the subject matter of the statute, the Court has on occasion found that “any” should be read to mean “some” or “one.” *In re D.L.B.*, 118 S.W.3d 360, 366 (Tenn. 2003); *Storey v. Bradford Furniture Co., Inc.*, 910 S.W.2d 857, 860-61 (Tenn. 1995).

Consequently, the word “any” may be considered ambiguous when it can have a variety of meanings. *Id.* When statutory language is ambiguous, it becomes necessary to look to the entire statutory scheme and rely on well-established canons of statutory construction to determine legislative intent. *State v. Henderson*, 531 S.W.3d 687, 692 (Tenn. 2017); *In re D.L.B.*, 118 S.W.3d at 365-66. Courts may also consider legislative history. *Carter v. State*, 952 S.W.2d 417, 419 (Tenn. 1997); *Storey*, 910 S.W.2d at 859.

*Storey* involved a statutory provision that allowed a debtor to receive alimony exempt from the claims of creditors “after the debtor asserts a claim to such exemption *in any judicial proceeding . . .*” *Storey*, 910 S.W.2d at 859-860 (emphasis in original). The Court rejected the debtor’s argument that an exemption claimed pursuant to this statute binds all creditors in *all* subsequent judicial proceedings because that construction “would produce unwieldy results,” including some illogical exemptions not intended by the legislature. *Id.* at 860. To avoid “unwieldy results” and effectuate legislative intent, and based on the language and legislative history of the statute “coupled with the context of the provision,” the Court concluded that “any judicial proceeding” did not mean *all* judicial proceedings, but only “means a judicial proceeding in which the exemption is asserted.” *Id.* at 861. See also *In re D.L.B.*, 118 S.W.3d at 366 (similarly construing “*any* petition” in the context of the statutory scheme governing termination of parental rights to include only certain petitions, not *all* petitions).

Here, construing “any” as “all” in Tenn. Code Ann. § 6-58-114(i) does not produce “unwieldy results”; rather, it effectuates the General Assembly’s intent as gleaned from the entire Comprehensive Growth Plan statutory scheme. “[W]here the legislature includes particular language in one section of the statute but omits it in another section of the same act, it is presumed that the legislature acted purposefully in including or excluding that particular subject.” *State v. Casper*, 297 S.W.3d 676, 693 (Tenn. 2009) (citations omitted). See *Crowe v. Ferguson*, 814 S.W.2d 721, 723 (Tenn. 1991) (courts should assume that the General Assembly used each word in the statute purposely and that the use of these words conveyed some intent and had a meaning and purpose). Section 6-58-114(i) does not list specific state grants; it requires a city or county to certify its compliance with Tenn. Code Ann. § 6-58-114 “[w]hen applying for any state grant.” Unlike Tenn. Code Ann. § 6-58-110, which does list specific loan and grant programs,<sup>5</sup> § 6-58-

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<sup>5</sup> See note 2, *supra*, and accompanying text.

114 does not state that a city or county's certification of compliance is necessary only when applying for a finite, statutorily specified set of grant programs. It is presumed that the legislature acted purposefully when it included specific loan and grant programs in § 6-58-110 but not in § 6-58-114, and that presumption compels the conclusion that, if a city or county fails to fully fund its share of the board's budget as required by Tenn. Code Ann. § 6-58-114(g), it is ineligible for *all* state grants, not just for the specific grant programs set forth in Tenn. Code Ann. § 6-58-110.

In sum, application of statutory construction principles leads to the conclusion that the word "any" in Tenn. Code Ann. § 6-58-114(i) has its customary, general meaning of "all."<sup>6</sup> Accordingly, a city or county that fails to fully fund its share of its joint economic and community development board's budget is ineligible for all state grants.<sup>7</sup>

2. Tennessee Code Ann. § 6-58-114 has not been impliedly repealed.

In Tenn. Att'y Gen. Op. 17-37 (Aug. 31, 2017), we explained that the General Assembly passed sweeping legislation in 2014 and 2015 to phase out and ultimately eliminate annexation by ordinance in this State. *See* 2015 Tenn. Pub. Acts ch. 512; 2014 Tenn. Pub. Acts ch. 707. The legislation extensively amended Chapter 51 of Title 6, and it deleted Tenn. Code Ann. § 6-58-108, which expressly addressed a municipality's authority to annex by ordinance. The legislation, however, did not revisit Tenn. Code Ann. § 6-58-111(c)(1), which provides that a municipality may annex territory outside its urban growth boundary "by ordinance" following an amendment to its growth plan. In light of the General Assembly's unequivocal intent to prohibit all annexations by ordinance, we were constrained to opine that the recent amendments to Tennessee's annexation statutes impliedly repealed Tenn. Code Ann. § 6-58-111(c)(1). *See Metropolitan Gov't v. Hillsboro Land Co.*, 222 Tenn. 431, 440, 436 S.W.2d 850, 854 (1968) (while repeals by implication are not favored, a later Act does impliedly repeal an earlier Act if the two Acts are manifestly repugnant or in irreconcilable conflict of substance).

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<sup>6</sup> There is no legislative history to consider. The legislative history for 1998 Tenn. Pub. Acts ch. 1101 contains no discussion as to the meaning of "any state grant" in Tenn. Code Ann. § 6-58-114(i).

<sup>7</sup> In discussing the withholding of grant funds under Tenn. Code Ann. § 6-58-110, Tenn. Att'y Gen. Op. 98-239 (Dec. 28, 1998) cautions that to the extent any funds are distributed by the State under federal law, officials administering the programs should consult with federal officials to ensure that withholding funds would not violate any controlling federal law. That same admonishment applies with respect to Tenn. Code Ann. § 6-58-114.

We have found nothing that compels the same opinion with regard to Tenn. Code Ann. § 6-58-114. Neither the 2014 Act nor the 2015 Act evidences any intention to abrogate any of the provisions in Tenn. Code Ann. § 6-58-114 concerning joint economic and community development boards, the funding of those boards, or the ramifications for the failure to comply with the requirements of that section. Moreover, we have not identified any legislation enacted since the passage of these Acts that indicates such an intention.

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