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

**February 10, 2021**

**Opinion No. 21-02**

**Electronic Traffic Citation Fees**

## Question

Tennessee Code Annotated § 55-10-207(e)(4) allows the legislative body of any county or municipality to adopt a resolution or ordinance to authorize a county or municipal court clerk to impose an electronic traffic citation fee of five dollars for each traffic citation that results in a conviction. If a local government passes such legislation, does the provision of Tenn. Code Ann. § 55-10-207(e)(4) that "[a]ny electronic traffic citation fee imposed pursuant to an ordinance or resolution under this subdivision (e)(4) shall terminate five (5) years from the date on which the ordinance or resolution is adopted" prohibit that local government from adopting another resolution or ordinance again authorizing such a fee after the expiration of the initial five-year period for which the fee had been authorized?

## Opinion

Yes.

## ANALYSIS

Under Tennessee law, a law enforcement officer is authorized to issue a citation in lieu of arrest for certain misdemeanor traffic offenses. Tenn. Code Ann. § 55-10-207. Before 2014, an officer's only option was to prepare a paper citation and deliver it to the court. *See* Tenn. Code Ann. § 55-10-207 (2001). In 2014, the General Assembly amended this law to also allow law enforcement officers to prepare electronic citations and file them with the court having jurisdiction over the alleged offense. 2014 Tenn. Pub. Acts, ch. 750.[1]

To defray the costs of implementing such electronic citation systems, the General Assembly provided that each court clerk "shall charge and collect an electronic traffic citation fee of five dollars ($5.00) for each traffic citation resulting in a conviction." 2014 Tenn. Pub. Acts, ch. 750, § 4 (codified in Tenn. Code Ann. § 55-10-207(e)(1)). The fee is in addition to all other fees, taxes, and charges. *Id*. One dollar of each fee is retained by the clerk, and the remaining four dollars are transmitted to the law enforcement agency that prepared the citation. *Id*. The law enforcement agency may use its portion of the fees only on electronic citation systems and related expenditures. *See id*. (codified in Tenn. Code Ann. § 55-10-207(e)(2)). Similarly, the portion of

[1] The Act, though, does not require local governments to implement electronic citation systems. Local governments remain free to continue issuing only written citations.

the fee retained by court clerks may only be used for computer-related expenditures. *See id.* (codified in Tenn. Code Ann. § 55-10-207(e)(3)).

"The local legislative body of any county or municipality may, by majority vote, adopt a resolution or ordinance to authorize a county or municipal court clerk to charge and collect electronic traffic citation fees . . . ."[2] Tenn. Code Ann. § 55-10-207(e)(4). If a local government adopts such a resolution or ordinance, "[a]ny electronic traffic citation fee . . . shall terminate five (5) years from the date on which the ordinance or resolution is adopted." *Id*. For the reasons that follow, this five-year automatic-termination provision precludes a local legislative body from adopting another resolution or ordinance again authorizing the imposition of such a fee after the initial five-year period for which the fee was imposed by the original resolution or ordinance has elapsed.

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) (internal quotation marks and citations omitted). Thus, the first step in construing a statute is to "look . . . at the plain language." *Spires v. Simpson*, 539 S.W.3d 134, 143 (Tenn. 2017); *see Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010). If the language is clear and unambiguous, the task is at an end. *Keen v. State*, 398 S.W.3d 594, 610 (Tenn. 2012). When the language is ambiguous, however, it is appropriate to examine the broader statutory scheme, the legislative history, and other sources, including established canons of statutory construction. *Spires*, 539 S.W.3d at 144; *State v. Marshall*, 319 S.W.3d 558, 561 (Tenn. 2010); *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 836 (Tenn. 2008).

Here, the General Assembly has expressly provided that "[a]ny electronic traffic citation fee imposed pursuant to an ordinance or resolution . . . shall terminate five (5) years from the date

[2] Subsection 55-10-207(e)(4), which allows a court clerk to charge and collect electronic traffic citation fees only if authorized to do so by ordinance, appears to conflict with Subsection 55-10-207(e)(1), which states that "[e]ach court clerk *shall* charge and collect an electronic traffic citation fee of five dollars ($5.00) for each traffic citation resulting in a conviction." (Emphasis added.) The conflict would lead to the absurd result that a court clerk would be required to charge and collect electronic traffic citations fees even in cities and counties that have elected not to implement electronic citation systems or in those cities or counties that have elected to implement electronic citation systems but have chosen not to levy the additional fee. Courts resolve such apparent conflicts between provisions of a statute by examining the entire statute to determine the true intention of each section and, if possible, by harmonizing the seemingly conflicting sections in a way that will render every word operative, *Hill v. City of Germantown*, 31 S.W.3d 234, 238 (Tenn. 2000) (quoting *Bible & Godwin Constr. Co. v. Faener Corp.*, 504 S.W.2d 370, 371 (Tenn. 1974)), will result in "a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning," *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995), and will avoid a construction that yields absurd results, *Martin v. Powers*, 505 S.W.3d 512, 518 (Tenn. 2016).

Here, subsections 55-10-207(e)(1) and (e)(4) can be harmonized according to these principles of statutory construction by reading subsection (e)(1) as simply setting the *amount* of the electronic traffic citation fee that a court clerk must charge and collect *when* a city or county implements an electronic citation system *and* passes an ordinance authorizing its court clerk to charge and collect fees. That is, in cities and counties that have implemented electronic citation systems and have passed ordinances authorizing their respective court clerks to charge and collect electronic traffic citation fees, subsection (e)(1) sets the amount of the fee at five dollars and prevents the city or county from setting the fee in any other amount. Such a construction avoids the otherwise absurd result of requiring clerks to collect electronic citation fees even when there is no local electronic citation system, gives effect to every word of the two sections, and at the same time harmonizes the apparently conflicting provisions in a way that is consistent with the purposes of the statute as a whole.

on which the ordinance or resolution is adopted." The General Assembly has not provided for a legislative body to pass another resolution or ordinance again authorizing the clerk to charge and collect an electronic traffic citation fee once the initial five-year authorization period has elapsed. Since it is well settled that counties and municipalities have only those powers expressly granted by, or necessarily implied from, statutes, *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988); *Bayless v. Knox County*, 199 Tenn. 268, 281, 286 S.W.2d 579, 585 (1956), the plain language of the statute does not suggest a construction that would allow local legislative bodies to re-authorize the collection of the electronic traffic citation fee after the five-year period has elapsed. *Compare* Tenn. Code Ann. § 55-10-207(e)(4) *with* Tenn. Code Ann. § 55-10-315(a) (General Assembly authorizes specific municipalities, by ordinance, to levy a fee of up to seventy-five cents (75¢) on all convictions for certain traffic violations without providing that the fee under this provision will terminate after a specified time-period).

To the extent that there is any ambiguity about the meaning of Tenn. Code Ann. § 55-10-207(e)(4), the ambiguity is resolved by statutory construction rules and the legislative history of this provision.

Statutes *in pari materia*—that is, statutes relating to the same subject or having a common purpose—are to be construed together, and the construction of one such statute, if doubtful, may be aided by considering the words and legislative intent indicated by the language of another, related statute. *Lyons v. Rasar*, 872 S.W.2d 895, 897 (Tenn. 1994) (citations omitted).

Title 8, Chapter 21 of the Tennessee Code governs the fees that may be charged by various public officials. The right of court clerks to receive fees in civil and other cases is addressed in Tenn. Code Ann. § 8-21-401. While the fees listed therein are not inclusive of all fees that court clerks may collect, *see* Tenn. Code Ann. § 8-21-106(a), the General Assembly has made clear that "[n]o officer is allowed to demand or receive fees . . . for any service further than is *expressly* provided by law," *id*. § 8-21-101 (emphasis added). *See* Tenn. Code Ann. § 40-25-102 ("Officers are entitled to no other fees in criminal cases, except those *expressly* provided for by law[.]") (emphasis added).

"Expressly" means in direct or unmistakable terms. *In re Estelle's Estate*, 593 P.2d 663, 667 (Ariz. 1979) (citation omitted). Stated another way, the word "expressly" means "'directly and distinctly stated; expressed, not merely implied or left to inference.'" *Id*. (quoting *State ex. rel. Ashauer v. Hostetter*, 344 Mo. 665, 670, 127 S.W.2d 697, 699 (1939)). *See Lightfoot v. Bass*, 76 Tenn. 350, 354, 1881 WL 229, at *2 (1881) (court examined a statute declaring the power to convey property shall exist unless it be "expressly withheld" and determined that "the intention to withhold the power must be expressed, and not left to inference or intendment").

If the General Assembly had intended to allow a legislative body to pass another resolution or ordinance re-authorizing the electronic traffic citation fee after the initial five-year period had elapsed, it could have easily and clearly expressed that intention, and not left it to mere implication, which under Tennessee law is insufficient because an officer may not impose fees unless "expressly provided" for by law.

Finally, legislative history reinforces the construction of Tenn. Code Ann. § 55-10-207(e)(4) as precluding re-authorization of the fee once the initial authorization has terminated by operation of the statute. During the debates, legislators voiced the concern that the five-dollar fee would be imposed in perpetuity even after a local government had recouped its initial start-up costs to implement an electronic citation system.[3] Thus, a final amendment to the bill was introduced that "[a]ny electronic traffic citation fee . . . shall terminate five (5) years from the date on which the ordinance or resolution is adopted."[4] This amendment was referred to in a shorthand manner as a "sunset" provision[5] several times during the legislative process.[6]

[3] Hearing on S.B. 2350 Before Senate Comm. on Finance, Ways and Means, 108th Gen. Assem., 2nd Sess. (Tenn. March 18, 2014) (Statements of Leader Kyle and Sen. Finney).

[4] *See* Amendment No. 2 to H.B. 2368, 108th Gen. Assem., 2nd Sess. (Tenn. 2014); Amendment 2 to S.B. 2350, 108th Gen. Assem., 2nd Sess. (Tenn. 2014); Hearing on H.B. 2368 Before House Comm. on Finance, Ways and Means, 108th Gen. Assem., 2nd Sess. (Tenn. March 25, 2014); Hearing on S.B. 2350 before Senate Comm. on Finance, Ways and Means, 108th Gen. Assem., 2nd Sess. (Tenn. March 18, 2014).

[5] A sunset law is "[a] statute under which a governmental agency or program automatically terminates at the end of a fixed period unless it is formally renewed." *Sunset Law*, BLACK'S LAW DICTIONARY (10th ed. 2014).

[6] Hearing on H.B. 2368 Before House Sess., 108th Gen. Assem., 2nd Sess. (Tenn. Apr. 3, 2014) (Statement of Rep. Dean); Hearing on H.B. 2368 Before House Comm. on Finance, Ways and Means, 108th Gen. Assem., 2nd Sess. (Tenn. March 25, 2014) (Statements of Chairman Sargent and Rep. Camper); Hearing on S.B. 2350 before Senate Comm. on Finance, Ways and Means, 108th Gen. Assem., 2nd Sess. (Tenn. March 18, 2014) (Statements of Leader Kyle, Sen. Ketron, and Sen. Finney).

Accordingly, the statutory provision that "any electronic traffic citation fee imposed pursuant to an ordinance or resolution under this subdivision (e)(4) shall terminate five (5) years from the date on which the ordinance or resolution is adopted," Tenn. Code Ann. § 55-10-207(e)(4), precludes a local government from adopting another resolution or ordinance imposing such a fee after the initial five-year period for which the fee was imposed by the original resolution or ordinance has elapsed.

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