

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE

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July 10, 1995

**SYLLABUS:**

[\*1]

Applicability of Contractor's Licensing Act of 1994, *T.C.A. § § 62-6-101*, et seq. to landscaping work

**REQUESTBY:**

CHARLES W. BURSON, Attorney General and Reporter (MICHAEL E. MOORE, Solicitor General EUGENIE B. WHITESELL, Assistant Attorney General)

**OPINION:**

QUESTION

Does the Contractors Licensing Act of 1994, *T.C.A. § § 62-6-101, et seq.*, govern persons or entities that perform landscaping work?

OPINION

The Contractors Licensing Act of 1994 governs contractors who directly contract with owners to perform landscaping work.

ANALYSIS

The question asked is whether an entity must have a state contractors license pursuant to the Contractors Licensing Act of 1994, found at *T.C.A. § § 62-6-103 to -207* (the "Act" or "Contractors Licensing Act"), in order to bid on and undertake the following landscaping projects:

1. Furnish all labor, material, equipment and services necessary to plant specified varieties of trees along an entry road to University of Tennessee property, including soil preparation, setting trees, staking, wrapping and mulching.
2. Deliver and install sod and grass sprigs at campus locations designated by the University.
3. Provide all material, labor, equipment and related [\*2] items and supervision necessary to maintain specified parking areas, including litter pick-up, mowing, weed control, mulching, tree pruning, leaf collection, storm drain maintenance, and watering.

This Office understands that each of the landscaping projects will cost more than \$ 25,000.00. It further understands that the University will provide the landscaping contractor with site plans n1 and that the University will perform any necessary site preparation. This opinion assumes that the entity which will perform the landscaping work will contract directly with the University and, thus, will not be a subcontractor.

n1 Accordingly, we have assumed for purposes of this opinion that *T.C.A. § § 62-2-101, et seq.*, regarding the licensing of landscape architects is inapplicable.

The Act generally requires anyone engaged in "contracting" in Tennessee to become licensed by the State Board for Licensing Contractors. The section provides in pertinent part as follows:

Any person, firm or corporation engaged in contracting [\*3] in this state shall be required to submit evidence of qualification to engage in contracting, and shall be licensed as hereinafter provided. It is unlawful for any person, firm

or corporation to engage in or offer to engage in contracting in the state, unless such person, firm or corporation has been duly licensed under the provisions of this chapter, as hereinafter provided. . . .

*T.C.A. § 62-6-103(a)(1)* (1994). Section 62-6-102 of the Act defines the terms "contracting" and "contractor" as follows:

(2) "Contracting" means any person or entity who performs or causes to be performed any of the activities defined in subdivision (3)(A);

(3)(A) "Contractor" means any person or entity who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner assume charge of the construction, alteration, repair, improvement, demolition, putting up, tearing down, or furnishing labor to install material or equipment for any building, highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement, [\*4] or any other construction undertaking for which the total cost of the same is twenty-five thousand dollars (\$ 25,000) or more. "Contractor" includes, but is not limited, to prime contractors, electrical contractors, mechanical contractors, construction managers of any kind whatsoever, including, but not limited, to residential construction managers, construction consultants, architects, and/or engineers who conduct or provide any activity or service described herein other than normal architectural or engineering services.

*T.C.A. § 62-6-102* (1994) (Emphasis added).

The primary purpose of statutory construction is to ascertain and give effect, if possible, to the intention or purpose of the legislature as expressed in a statute without unduly expanding the statute's coverage beyond its intended scope. *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993). Such intent should be ascertained primarily from the natural and ordinary meaning of the language used when read in context with the entire act or statute. *Sallee v. State Board of Education*, 828 S.W.2d 742 (Tenn. Ct. App. 1991). Indefinite and unclear words in a statute must be given such interpretation as will [\*5] express the legislature's intention and purpose. *Loflin v. Langsdon*, 813 S.W.2d 475 (Tenn. Ct. App.), perm to appeal denied, (Tenn. 1991). Similarly, when proper application of a statute is not entirely clear, the first inquiry is to ascertain general legislative intent. *State by Lockert v. Knott*, 631 S.W.2d 124 (Tenn. 1982).

The statutory definitions of the terms "contracting" and "contractor," set forth in *T.C.A. § 62-6-102*, do not specifically include landscaping. However, the definition of "contractor" contains language broad enough to encompass landscaping projects such as those to be performed at the University. In particular, landscaping could be considered an "alteration to an improvement" or an "improvement to an improvement," depending on the meaning of the catch-all term "improvement." The Act does not include a definition of the term "improvement." Black's Law Dictionary 386 (5th ed. 1983) broadly defines the term "improvement" as follows:

A valuable addition made to property (usually real estate) or an amelioration in its condition, amounting to more than mere repairs or replacement, costing labor or capital, and intended to enhance its value, beauty [\*6] or utility or to adapt it for new or further purposes. Generally, buildings, but may also include any permanent structure or other development, such as a street, sidewalks, sewers, utilities, etc.

See also 14 Tenn. Juris., Improvements § 1 (1984) (setting forth same definition).

Reading the above definition of the term "improvement" into the Act's definition of "contracting," one could conclude that landscaping work, generally, as well as the work to be performed at the University, is an improvement. The landscaping work will increase the value of the campus property, including permanent structures such as buildings, roads and utilities. It should be noted that the term "improvement," as defined in *T.C.A. § 66-11-101(7)* (1993), pertaining to Tennessee's mechanics' lien legislation, specifically includes "ornamental shrubbery and trees." Further, the dictionary definition for the term "landscaping" describes landscaping as an "improvement" to land. See American Heritage Dictionary 713 (2nd College Ed.)(1985).

This reading of the definition of "contracting" set forth in *T.C.A. § 62-6-102* so as to include landscaping work also comports with the legislative history for [\*7] the statutory section. The 1994 General Assembly amended the definition of the term "contracting." See 1994 Tenn. Pub. Acts. ch. 986, § 1. One of the sponsors of the bill explained that the revised version would broadly expand the definition of the term to include "almost all people who do contract work." Discussion of 1994 Tenn. Pub. Acts ch. 986, § 1, House Commerce Comm. (April 5, 1994) (statement by Rep. Head).

The inclusion of landscaping within the purview of the Act also is consistent with the purpose of the Act. The Tennessee Supreme Court has held that the Contractors Licensing Act is justified under the police power of the State for the purpose of safeguarding life, health and property and to promote the public welfare. *Farmer v. Farmer*, 528 S.W.2d 539, 542 n.1 (Tenn. 1975); *Ross-Frankel, Inc., v. State*, 179 Tenn. 320 (1942). Since health and safety issues can be associated with landscaping work, the licensing of landscape contractors promotes the purpose of the Act. Moreover, even if landscaping was considered purely aesthetic in nature, Tennessee adheres to the modern view that aesthetic considerations will justify an exercise of the police power when there [\*8] are viable concerns such as environmental protection, pollution control, or prevention of unsightliness. *State v. Smith*, 618 S.W.2d 474, 477 (Tenn. 1981).

To the extent that the broad language of *T.C.A. § 62-6-102(3)(A)* is vague or ambiguous, the administrative construction of the Act is relevant and usually is given deference by courts. *Provident Life & Acc. Ins. Co. v. U.S.*, 740 F.Supp. 492, appeal dismissed, 925 F.2d 1465 (E.D. Tenn. 1990); *Nashville Mobil Phone Co., Inc. v. Atkins*, 636 S.W.2d 335 (Tenn. 1976); *Gallagher v. Butler*, 214 Tenn. 129, 378 S.W.2d 161 (1964). The State Board for Licensing Contractors, pursuant to its rulemaking authority under *T.C.A. § 62-6-112(b)*, has included landscaping as a specialty classification under the general categories of Building Construction and Highway, Railroad & Airport Construction. *Tenn. Comp. R. & Regs. ch. 0680-1-.16* (1985).

In sum, it is the opinion of this Office that the State Board for Licensing Contractors Act of 1994 governs entities that directly contract with owners to perform landscaping work. First, landscaping work fits within the definition of the term "contracting," which is set forth in *T.C.A. § [\*9] 62-6-102(3)(A)*. Second, requiring landscaping contractors to be licensed is consistent with the purpose of the Act. Finally, the Contractors Licensing Board has required the licensing of landscape contractors since at least 1985, and the General Assembly has not revised the Act so as to exclude landscaping. Accordingly, the University should contract with an entity that has been licensed pursuant to the Act.

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#### **Legal Topics:**

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