S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 01-063

Interpretation of Tenn. Code Ann. § 62-6-111(i)(2)

QUESTION

Does Section 104.5.4.1 of the 1994 Mechanical Code of Memphis and Shelby County violate the prohibition in Tenn. Code Ann. § 62-6-111(i)(2) against a county or municipality imposing additional requirements upon a state licensee?

OPINION

No.

ANALYSIS

Tennessee Code Ann. § 62-6-111 sets forth the process for becoming a licensed contractor in the State of Tennessee. Subsection (i) of this statute declares that once a contractor is licensed by the State Board for Licensing Contractors, the licensee may engage in contracting statewide. The subsection then lists the actions a licensee must take to be eligible to contract for work in a county or municipality. Finally, subsection (i) of Tennessee Code Ann. § 62-6-111 restrains a local government from imposing any additional examination or other requirement upon a state licensee to do work in that locality. Subsection (i) states in full:

> (i)(1) Notwithstanding any provision of the law to the contrary, the board may issue a license to any person who establishes such person's competency in any classification by successfully passing a proficiency test or examination for measuring of industry expertise in such work that is administered by the board, and such license shall authorize the licensee to engage in contracting in this state or any of its political subdivisions.
>
> (2) Such licensee shall be eligible to contract for such work in any county or municipality upon:
>
> (A) Exhibiting evidence of a current certificate of license to the appropriate local officials;

> (B) Paying any local licensing fees in effect on May 8, 1992; and
>
> (C) Paying any inspection or permit fees customarily required by any county or municipality for such work. No county or municipality shall require such state licensee or its employees to pass any county or municipal test or examination; ***nor shall a county or municipality impose any additional requirements upon such state licensee or its employees***, nor in any way discriminate against such state licensee or its employees on the basis of the licensee's nonresidency within the county or municipality.

Tenn. Code Ann. § 62-6-111(i) (emphasis added).

The issue you present concerns whether a requirement in the Memphis and Shelby County Mechanical Code violates the prohibition against a county or municipality imposing an additional requirement upon a state licensee. Specifically, Section 104.5.4.1 of the Memphis and Shelby County Mechanical Code requires electrical contractors to identify ownership of business vehicles by painting the firm name on the vehicles. The Code reads:

> All trucks and similar vehicles used by electrical, gas, mechanical and plumbing contractors or their employees shall have conspicuously painted on the body of both sides of said vehicles, in any color in contrast to the color of the vehicle's body, the following identification: the full name of the firm to which it belongs, in lettering at least 2 inches high on the top line, and the wording MSC in lettering at least 1-1/2 inches high on the second line.

The customary rules of statutory construction are important in addressing this issue. Most important, 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 express the legislature's intention and purpose. *Loftin v. Langsdon*, 813 S.W. 2d 475 (Tenn. Ct. App. 1991), *perm. to appeal denied* (Tenn. 1991).

It is a well settled principle that cities and counties have only those powers expressly greanted by or necessarily implied from the Constitution or through acts of the Legislature. *See, e.g., Barnes v. City of Dalton,* 392 S.W.2d 813 (1965); *Bayless v. Knox County,* 286 S.w.2d 579 (1956); *KnoxTenn*

Theatres v. Dance, 208 S.w.2d 536 (1948). This statute does not authorize a local government to issue local licenses or add requirements to Counties and municipalities, by local legislation, may not contravene the established principles of the common law, the Constitution, or the state statutes. *City of Bartlett v. Hoover*, 571 S.W.2d 291 (Tenn. 1978). A municipality has no authority, by ordinance, to suspend, alter or change a general statute of the state. *Katzenberger v. Lawo*, 90 Tenn. 235, 16 S.W.2d 611 (1981). "As a general rule, additional regulations to that of the state law does not constitute a conflict therewith. The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith, unless the statute limits the requirement for all cases to its own prescriptions. *Southern Ry. & City v. City of Knoxville*, 442 S.W.2d 619 (1968). Municipalities, as creatures of the state, have only such authority as may be conferred upon them by the Legislature. *See, e.g. Barnes v. City of Dayton*, 392 S.W.2d 813 (1965). As noted in 62 C.J.S. Municipal Corporations § 143 (b)(1), p. 287:

The state by its very nature has superior powers, as against its municipalities, over matters which are state, rather than purely local affairs, appropriated the field and declared the rule, its declaration is binding throughout the state."

The Legislature has stated that, upon meeting the conditions imposed by statute and obtaining a license or permit, contracting is statewide. To allow a municipality to deny to a license holder that permission by additional permit or regulatory requirements would place state law in confleict with municipal ordinances, an intolerable situation. As cited in C.J.S., supra: in a field which is fully occupied by the statutes: (at p. 289).

It is the opinion of this Office that Section 104.5.4.1 of the Memphis and Shelby County Mechanical Code does not violate the restriction contained in Tenn. Code Ann. § 62-6-111(i)2)(C). In Tenn. Code Ann. § 62-6-111(i), the legislature clearly establishes that a person licensed by the State Board for Licensing Contractors may perform work anywhere in the State, and a county or municipality cannot subject the licensee to additional testing, license fees or other licensing requirement. The Memphis and Shelby County Mechanical Code provision requiring a contractor to identify itself on a firm vehicle does not rise to the level of a licensing requirement prohibited by the law. The vehicle identification requirement obviously aids the local government in recognizing a contractor that is performing work in the locality. Tennessee Code Ann. § 62-6-111(i)(2) acknowledges the local officials' duty to check a contractor's certificate of license and to inspect the work for code compliance.

In sum, when Tenn. Code Ann. § 62-6-111(i)(2)(C) is read in the context of the entire statute, it is the opinion of this Office that the Memphis and Shelby County requirement does not violate Tenn. Code Ann. § 62-6-111(i)(2)(C). The code requirement does not appear to conflict with the statute. It merely recognizes the continuing authority of counties and municipalities to monitor work being performed within its territorial area. The identification requirement does not appear to attempt to impose local examination requirements or fees on the state licensee. Nothing prevents licensee from getting job. Codes officials merely can know with whom they are dealing with, out of state or locality.

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