

Tenn. Op. Atty. Gen. No. 98-151 (Tenn.A.G.), 1998 WL 543976

Office of the Attorney General

State of Tennessee
Opinion No. 98-151
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Applicability of Tenn. Code Ann. §39-17-1308 as a defense to Tenn. Code Ann. § 39-17-1321

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QUESTION

Can Tenn. Code Ann. §39-17-1308 be asserted as a defense to a prosecution under Tenn. Code Ann. §39-17-1321 for possession of a handgun while under the influence of alcohol or any controlled substance?

OPINION

No, the legislature clearly intended Tenn. Code Ann. §39-17-1308 to apply as a defense only to prosecutions under Tenn. Code Ann. §39-17-1307.

ANALYSIS

Your question regards the applicability of Tenn. Code Ann. §39-17-1308 as a defense to prosecutions under Tenn. Code Ann. §39-17-1307. Tenn. Code Ann. §39-17-1308 provides:

Defenses to Unlawful Possession or Carrying of a Weapon. (a) It is a defense to the application of 39-17-1307 if the possession or carrying was:

(3) At the person's

(A) Place of residence;

(B) Place of business; or

(C) Premises;

Tenn. Code Ann. §39-17-1307 provides:

Unlawful Carrying or Possession of a Weapon. (a)(1) A person commits an offense who carries with the intent to go armed a firearm..."

Tenn. Code Ann. §39-17-1321 states:

Possession of a Handgun While Under the Influence - Penalty.

(a) Notwithstanding whether a person has a permit issued pursuant to 39-17-1352, it is an offense for a person to possess a handgun while under the influence of alcohol or any controlled substance.

(b) Violation of the section is a Class A misdemeanor.

It is the opinion of this office that Tenn. Code Ann. §39-17-1308 applies as a defense only to prosecutions under Tenn. Code Ann. §39-17-1307, and does not apply to prosecutions under Tenn. Code Ann. §39-17-1321.

In 1989, the Tennessee Legislature adopted a new criminal code and codified all criminal defenses. *State v. Latham*, 910 S.W.2d 892, 895 (Tenn.Crim.App. 1995). In addition, the code expressly abolished all common law defenses. Tenn. Code Ann. §39-11-203(e)(2). Accordingly, a defense that is not expressly included in the criminal code is not recognized as a defense in Tennessee. *State of Tennessee v. Buell*, Putnam County, No. 01C01-9607-CC-00292 (Tenn.Crim.App., filed Nov. 3, 1997, at Nashville)(copy attached).

Tenn.Code Ann. §39-17-1308 plainly states that it is a defense to Tenn. Code Ann. §39-17-1307. The cardinal rule of statutory interpretation provides that “If the words of a statute plainly mean one thing they cannot be given another meaning by judicial construction.” *Henry v. White*, 250 S.W.2d 70, 72 (Tenn. 1952). Courts are to interpret statutes so as to give effect to the ordinary meaning of the language chosen by the Legislature. *Chapman*, 608 S.W.2d at 581. For example, in construing a zoning ordinance providing that “All regulations shall be uniform for each class or kind of buildings throughout each district ...,” the Tennessee Supreme Court held that variances are not permissible. *Henry*, 250 S.W.2d at 72. The Court stated that the language employed by the legislature was “clear and unequivocal,” and “reasonably capable of only one meaning.” *Id.*

*2 The plain meaning of Tenn.Code Ann. §39-17-1308 is that it applies only to Tenn. Code Ann. §39-17-1307. To allow this defense to apply to other provisions would require courts to enlarge the plain meaning of the statute. However, courts are to “give the fullest possible effect to a statute's purpose without unduly restricting *or expanding* the statute beyond its intended scope.” *Winter v. Smith*, 914 S.W.2d 527 (Tenn.Crim.App. 1995)(emphasis added).

Although the heading of this statute may raise a question as to its application as a defense to the unlawful carrying of a weapon in general, the limiting phrase makes it clear that the defense was only applicable to the stated crime.¹ The judicial concept of *expressio unius est exclusio alterius* forecloses the expansion of the applicability of a provision where its application is specifically delineated. NORMAN J. SINGER SUTHERLAND STATUTORY CONSTRUCTION 217 (1992); *Sheely v. McLemore*, 153 Tenn. 498, 503 (1926). Because the defense is limited by its terms, and because no defenses exist unless codified, Tenn. Code Ann. §39-17-1308 should be limited to apply only to prosecutions under Tenn. Code Ann. §39-17-1307.

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Footnotes

- 1 In the past section headings were added by the printer after the enactment of legislation and were accordingly not relevant. NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION 172 (1992) In Tennessee, however, because the heading is also enacted, it may be examined along with the body to assist in statutory interpretation. *Walker v. Applebury*, 400 S.W.2d 865, 867 (Tenn. 1966).

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