

STATE OF TENNESSEE
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April 21, 2004

Opinion No. 04-072

Charitable Gaming Implementation Law

QUESTION

Does the definition of “§501(c)(3) organization” in Tenn. Code Ann. §§3-17-102(a)(2), 103(a)(6), and 104(a)(3) conflict with the definition of a “§501(c)(3) organization” in the Tennessee Charitable Gaming Implementation Law, Tenn. Code Ann. § 3-17-101?

OPINION

No. The provisions of Tenn. Code Ann. §§ 3-17-102(a)(2), 103(a)(6) and 104(a)(3) do not conflict with the definition of “§501(c)(3) organization” as set forth in Tenn. Code Ann. § 3-17-101. The definition will apply throughout the statute.

ANALYSIS

The question asks whether the definition of a “501(c)(3) organization” in the Tennessee Charitable Gaming Implementation Law (hereinafter “Charitable Law”) conflicts with subsequent provisions in the law. The provisions are set forth below.

The legislature defined “§501(c)(3) organization” as follows:

(1) ‘§501(c)(3) organization’ means an entity which is exempt from federal income taxation under §501(a) of the Internal Revenue Code as an organization described in §501(c)(3) and, for the limited purposes of this chapter, an entity which has been in continuous and active existence for five (5) years immediately preceding the event date listed in an annual event application and has been exempt from federal income taxation under §501(a) of the Internal Revenue Code as an organization described in any subdivision of §501(c) but, prior to submission of an annual event application, has received exemption from federal taxation as an organization described in

§501(c)(3).

Tenn. Code Ann. § 3-17-101.

Provisions appearing after the definition within the same chapter provide that “[A] §501(c)(3) organization shall have been in continuous and active existence as a §501(c)(3) organization located in Tennessee for at least five (5) years immediately preceding the event date listed in the annual event application.” Tenn. Code Ann. § 3-17-102(a)(2).

(a) All annual event applications shall be submitted to the secretary by twelve o’clock (12:00) noon Central Daylight Time (CDT) on April 20, 2004, and prior to January 1 in any subsequent year, and shall include:

(6) A copy of organizational documents and any other documents that prove to the satisfaction of the secretary that the 501(c)(3) organization has been in continuous and active existence as a 501(c)(3) organization located in Tennessee for at least five (5) years immediately preceding the event date listed in the annual event application.

Tenn. Code Ann. § 3-17-103(a)(6).

(a) The secretary shall examine each annual event application submitted under this chapter for inclusion on the omnibus list. An annual event shall be included on the omnibus list if:

(3) The secretary determines that the 501(c)(3) organization has been in continuous and active existence as a 501(c)(3) organization located in Tennessee for at least five (5) years immediately preceding the event date listed in the annual event application;

Tenn. Code Ann. § 3-17-104(a)(3).

The overriding concern in construing a statute is to ascertain and give effect to the intention or purpose of the General Assembly as expressed in the statute. *Republic Ins. Co. v. Oakley*, 637 S.W.2d 448 (Tenn. 1982). If the language of a statute is plain, clear, and unambiguous, the words of the statute as written will be given full effect, and there is no need to resort to rules of construction in order to reach the legislative intent. *Coke v. Coke*, 560 S.W.2d 631 (Tenn. Ct. App. 1977). The terms of the statute should be taken according to the natural and ordinary meaning. *State v. Hensley*, 627 S.W. 2d 351 (Tenn. 1982). Unless an ambiguity requires looking elsewhere for legislative intent, courts are restricted to their natural and ordinary meaning of the language within the statute. *Austin v. Memphis Publishing Co.*, 655 S.W.2d 146 (Tenn. 1983). Further, “when words are not defined, they still must be given their ordinary and natural meaning.” *State v. Thompson*, 43 S.W.3d

516, 525 (Tenn. Crim. App. 2000). In this chapter, “§501(c)(3) organization” is clearly defined. A definition which declares what a term “means” excludes any meaning that is not stated. 2A NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION, §47:07, 232 (rev. 6th ed 2000) . It is the duty of a court in construing an act to reconcile the different provisions, giving them a consistent meaning rather than otherwise. *Scales v. State*, 81 Tenn. 40, 181 S.W.2d 621 (1944).

The plain meaning of the definition of “§501(c)(3) organization” is clear and does not present a conflict. The context of all of these provisions has the same requirements as set forth in the same chapter for an organization to make application for an annual event. This definition requires that all approved §501(c)(3) organizations must have been in existence for five years prior to the event date listed in the application for a charitable gaming event. The definition applies throughout the statute to all references to a “§501(c)(3) organization” unless otherwise stated.

Tenn. Code Ann. §3-17-101 specifies the definition of a “501(c)(3) organization” to be applied in the subsequent provisions. Sections 3-17-102(a)(2), 3-17-103(a)(6), and 3-17-104(a)(3) use the exact language as the definition of “§501(c)(3) organization” and specify additional requirements for qualification. Given that the subject provisions, taken in the context, do not require any different definition to be implied or expressed, they are consistent in meaning and do not conflict with Tenn. Code Ann. §3-17-101. The subsequent provisions simply explain procedural requirements of the application and approval process and do not create any ambiguity about the definition of “§501(c)(3) organization” under the chapter.

It is clear that the legislature is deferring to the IRS and the Internal Revenue Code for the actual determination of an organization’s §501(c)(3) status. By adding a five-year requirement of existence for a gaming event, the legislature does not change the fact that the state can not determine §501(c)(3) status. As long as the IRS approves the organization’s status, the legislature can specify its own requirements and limits on annual gaming events. The limits are clearly defined in the statute.

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