S T A T E   O F   T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

August 11, 2004

Opinion No. 04-129

Civil Rights Intimidation; Harassment

QUESTIONS

1.   Do the provisions of Tenn. Code Ann. § 39-17-309 apply to persons who are intimidated from exercising a right or privilege secured by the Constitution or laws of the United States or the Constitution or laws of the State of Tennessee, even though such act of intimidation is not related to race, color, ancestry, religion or national origin?

2.   Under the provisions of Tenn. Code Ann. § 4-21-701, does a civil cause of action for malicious harassment exist even though the harassment is not related to race, color, ancestry, religion or national origin?

OPINIONS

1.   No.

2.   No.

ANALYSIS

Tenn. Code Ann. § 39-17-309(a) (civil rights intimidation) begins with the following sentence:

> The general assembly finds and declares that it is the right of every
> person regardless of race, color, ancestry, religion or national origin,
> to be secure and protected from fear, intimidation, harassment and
> bodily injury caused by the activities of groups and individuals.

Tenn Code Ann.§ 39-17-309(a) protects "every person" from intimidation, harassment and bodily injury for exercising his civil rights. For there to be a violation of this criminal statute, the intimidation must have occurred because of an individual's race, color, ancestry, religion or national origin. *See Surber v. Cannon*, No. M1998-00928-COA-R3-CV, 2001 WL 120735, *5 (Tenn. App.

Page 2

February 14, 2001).[1] Thus, this criminal statute does not proscribe intimidation of others from exercising civil rights if the act of intimidation is not related to race, color, ancestry, religion or national origin. It does not include incidents of intimidation unless they are within one of these protected groups. *See Young v. State Farm Mut. Auto. Ins. Co.,* 868 F.Supp. 937, 943 (D.C.TN. 1994) (age not a protected category).

Tenn. Code Ann. § 4-21-701(a) states, "There is hereby created a civil cause of action for malicious harassment." On its face, the statute does not limit the cause of action to incidents related to race, color, ancestry, religion or national origin. The elements of malicious harassment under Tenn. Code Ann. § 4-21-701, however, are derived from Tenn. Code Ann. § 39-17-309, the criminal statute. *Surber*, 2001 WL 120735 at *4. Furthermore, Tenn. Code Ann. § 4-21-701 is found in the Tennessee Human Rights Act, "which, in general, addresses discrimination based on race, creed, color, religion, sex, gender or national origin." *Washington v. Robertson Co*., 29 S.W.3d 466, 471 (Tenn. 2000). Thus, when Tenn. Code Ann. § 4-21-701 is read in context and as it relates to Tenn. Code Ann. § 39-17-309, an individual would not have a cause of action for malicious harassment under Tenn. Code Ann. § 4-21-701 unless the person alleging malicious harassment claimed that it occurred because of her race, color, ancestry, religion or national origin. *Parr v. Middle Tenn. State Univ.*, No. M1999-01442-COA-R3-CV, 1999 WL 108641, *4 Tenn. App. December 3, 1999).

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

---

[1] In *Surber,* the Tennessee Court of Appeals explained:

> Tennessee Code Annotated § 39-17-309, which provides the elements necessary to establish malicious harassment, specifically addresses the legislature's concern about 'intimidation' arising from 'race, color, ancestry, religion or national origin.' This language identifies the statute as an 'ethnic intimidation' or 'hate crimes' statute, similar to those passed in a number of states. . . . In general, conviction under such statutes requires proof of the defendant's specific intent to assault or commit other specified acts due to the defendant's perception of the victim's race, religion, national origin or other factor defined by the relevant statute.

2001 WL: 120735 at *5.

<div style="text-align: right;">

_____

KATE EYLER
Deputy Attorney General

</div>

Requested by:

      The Honorable Joe F. Fowlkes
      State Representative
      24 Legislative Plaza
      Nashville, TN 37243-0165