

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 07-73

Prosecutorial discretion as to traffic offenses

QUESTIONS

1. To what extent does a prosecutor have discretion to enter into a plea bargain with a person accused of violating a state traffic statute by accepting a guilty plea to a “non-point” state offense?
2. To what extent does a prosecutor have discretion to enter into a plea bargain with a person accused of violating a state traffic statute by accepting a guilty plea to a violation of a local ordinance or regulation which is not subject to reporting or delivery of any forfeiture funds to the state?
3. To what extent does a prosecutor have discretion to enter into a plea bargain with a person accused of violating either an original, independent municipal ordinance, or a municipal ordinance based on, similar to, or derived from a state statute by accepting a guilty plea to a violation of a local ordinance or regulation which is not subject to reporting or delivery of any forfeiture funds to the state?
4. Does the response to the above change in regard to commercial drivers’ license operators charged while driving a commercial vehicle?
5. Does the response to the above change in regard to commercial drivers’ license operators charged while driving a non-commercial vehicle?

OPINIONS

1. Pursuant to Tenn. Code Ann. § 8-7-103(1), district attorneys in Tennessee are vested with generally unfettered discretion in the disposition of criminal cases involving violations of “state criminal statutes.” As applied to questions 2 through 5, this includes any violations of state traffic laws committed by commercial drivers, whether or not points are assessed for convictions, and whether or not forfeitures are involved.
2. Regarding questions 2 and 3, district attorneys generally have no statutory authority to prosecute violations of local ordinances, since such ordinances are promulgated by independent municipalities and are civil, not criminal, in nature. However, a statutory exception provides some

limited authority for district attorneys to prosecute violations of county ordinances.

ANALYSIS

1. A District Attorney General is an elected constitutional officer whose function is to prosecute state criminal offenses in his or her circuit or district. *Ramsey v. Town of Oliver Springs*, 998 S.W.2d 207, 209 (Tenn.1999); Tenn. Const. art. VI, § 5; Tenn. Code Ann. § 8-7-103(1). The prosecutor's discretion to seek a warrant, presentment, information, or indictment is extremely broad and subject only to certain constitutional restraints.¹ *City of Chattanooga v Davis*, 54 S.W.3d 248, 278-279 (Tenn. 2001); *Ramsey*, 998 S.W.2d at 209.

The prosecutor's discretion with regard to prosecution extends to the plea bargaining process. *See Ramsey*, 998 S.W.2d at 209; *State v. Superior Oil, Inc.*, 875 S.W.2d 658, 660 (Tenn.1994); *Young v. United States*, 481 U.S. 787, 807, 107 S.Ct. 2124, 2137, 95 L.Ed.2d 740 (1987). Plea bargaining is “entirely within the district attorney general's discretion,” *State v. Head*, 971 S.W.2d 49, 51 (Tenn. Crim. App. 1998), though the trial court is not obligated to accept any plea agreement. *State v. Layman*, 214 S.W.3d 442, 452 (Tenn. 2007). A prosecutor may even dismiss an indictment so long as the dismissal was not motivated by bad faith or by “considerations that could be fairly characterized as clearly contrary to manifest public interest.” *Id.* Moreover, a district attorney may accept a plea to a state criminal offense not considered a lesser-included offense of the original charge. *State v. Yoreck*, 133 S.W.3d 606, 612 (Tenn. 2004).

Therefore, within certain constitutional constraints, a district attorney has sole discretion as to the prosecution of violations of state criminal statutes, including all traffic offenses committed by commercial vehicle operators. This office can find no distinction, as regards limitations on plea bargaining, between so-called “point” and “non-point” offenses. Though the decision to impose points for traffic offenses rests with the Department of Safety, points are imposed only upon conviction. *See* Tenn. Code Ann. § 55-50-505(a)(1). Likewise, offenses involving forfeitures arising from traffic offenses fall within the ambit of the Department of Safety, which may seek forfeiture even in the absence of a conviction, since forfeiture requires a lower burden of proof than a criminal conviction. *See Stuart v. State Department of Safety*, 963 S.W.2d 28 (Tenn.1998).

2. However, it is the opinion of this office that district attorneys cannot, with one exception, engage in plea negotiations that result in convictions of violations of local or municipal ordinances, because there appears to be no authority that confers jurisdiction upon district attorneys to prosecute

¹*Blackledge v. Perry*, 417 U.S. 21, 27, 94 S.Ct. 2098, 2102, 40 L.Ed.2d 628 (1974) (due process may be implicated if a prosecutor vindictively increases a charge to a felony after a misdemeanor has prevailed on appeal); *Wayte v. United States*, 470 U.S. 598, 608, 105 S.Ct. 1524, 1531, 84 L.Ed.2d 547 (1985) (equal protection prevents selective prosecution on the basis of race, religion, the exercise of protected statutory and constitutional rights, or other arbitrary classifications).

violations of such ordinances. Tennessee case law holds that violations of ordinances are local civil actions, not state criminal prosecutions. *See City of Chattanooga v Davis*, 54 S.W.3d 248, 259-260 (Tenn. 2001); *City of Chattanooga v. Myers*, 787 S.W.2d 921, 922 (Tenn. 1990). In *Myers*, the Court reiterated that:

[c]ases involving violation of city ordinances are not criminal prosecutions; that they are civil in nature having as their object the vindication of domestic regulations; that they are in the nature of actions for debt; and that on appeal to the Circuit Court they are "triable de novo in the circuit court in precisely the same manner and under the same procedural rules as those governing tort actions instituted in the General Sessions Courts, to include the right to a jury trial."

City of Chattanooga v. Myers, 787 S.W.2d 921, 922 (Tenn. 1990). As previously stated, district attorneys are vested with jurisdiction to

[p]rosecute in the courts of the district all violations of the state criminal statutes and perform all prosecutorial functions attendant thereto, including prosecuting cases in a municipal court where the municipality provides sufficient personnel to the district attorney general for that purpose

Tenn. Code Ann. § 8-7-103(1). This office has interpreted the "municipal court" provision as applying to prosecution of state criminal offenses. *See* 2001 Op. Tenn. Atty. Gen. 01-120 (opining that, under Tenn. Code Ann. § 8-7-103(1), district attorneys have no obligation to prosecute violations of *state criminal statutes* in municipal courts, absent funding from the municipality). This interpretation of the "municipal court" provision is consistent with the sole exception contained within the district attorney statute, which provides some limited jurisdiction to prosecute violations of county ordinances. That exception provides that:

[d]istrict attorneys general with responsibility for prosecuting offenses in counties with populations of less than five hundred thousand (500,000) according to the 1990 federal census or any subsequent federal census and with a charter form of government pursuant to title 5, chapter 1, part 2, also are authorized to contract or enter into an agreement with such counties for the prosecution of violations of the ordinances of such counties.

Tenn. Code Ann. § 8-7-112. Applying the rules of statutory construction, this exception appears to otherwise preclude prosecution of all other local ordinances. It is a long-recognized rule of statutory construction that "the mention of one subject in a statute means the exclusion of other subjects that are not mentioned." *Layman*, 214 S.W.3d at 453. Additionally, a review of the Tennessee statutes regarding municipalities reveals no authority for municipalities to empower district attorneys to prosecute violations of municipal ordinances. *See generally* Titles 6 & 7, Tennessee Code. Thus, absent the circumstances provided for in Tenn. Code Ann. § 8-7-112, there appears to be no

authority providing jurisdiction for district attorneys to prosecute violations of local ordinances, including entering into plea bargains for violations of such ordinances. *See also* Tenn. Code Ann. § 6-33-113 (establishing jurisdiction of city attorneys for prosecution of municipal ordinances); *City of Chattanooga v Davis*, 54 S.W.3d 248, 279-280 (Tenn. 2001) (noting in dicta that adoption of municipal ordinances mirroring state motor vehicle laws was “probabl[y]” unconstitutional, since it usurped district attorney’s constitutional authority to prosecute violations of state law).

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