

AG Opinion: Appropriation of Municipal Funds to Nonprofit Charitable Organizations Providing "Year-Round Services"

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Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Tenn. Op. Atty. Gen. No. 98-214
Office of the Attorney General
State of Tennessee

Opinion No. 98-214
November 23, 1998

Appropriation of Municipal Funds to Nonprofit Charitable Organizations Providing "year-round services"

The Honorable Bobby Sands
State Representative
War Memorial Building, Suite 110
Nashville, Tennessee 37243

Question

Does a nonprofit day care center or similar child care facility, which does not operate all 12 months of the year, meet *T.C.A.* § 6-54-11(a)(2)(A)'s requirement that a nonprofit charitable organization provide "year-round services" in order to qualify for appropriated funds from a municipality?

Opinion

No. A nonprofit charitable organization, including a day care center or similar child care facility, must operate during the entire year in order to meet the "year-round" services requirement of *T.C.A.* § 6-54-11(a)(2)(A).

Analysis

The inquiry to this office requests a legal opinion regarding *T.C.A.* § 6-54-11(a)(2)(A). The specific question is the definition of "year-round services benefiting the general welfare" and whether a nonprofit day care center or similar child care facility which does not operate all 12 months of the year meets the requirement of providing "year-round services."

T.C.A. § 6-54-11(a) provides:

(a)(1) The legislative body of each municipality may appropriate funds for the financial aid of any nonprofit charitable organization or any nonprofit civic organization in accordance with the guidelines required by subsection (b).

(2)(A) For the purposes of this section, a nonprofit charitable organization is one in which no part of the net earnings inures or may lawfully inure to the benefit of any private shareholder or individual and which provides year-round services benefiting the general welfare of the residents of the municipalities.

T.C.A. § 6-54-11(a) (emphasis added).

"The rule of statutory construction to which all others yield is that the intention of the legislature must prevail." *City of Caryville vs. Campbell County*, 660 S.W.2d 510, 512 (Tenn. App. 1983), perm. app. denied (1983). Legislative intent is "derived from a reading of the statute in its entirety and within its statutory context." *Crown Enterprises, Inc. vs. Woods*, 557 S.W.2d 491, 493 (Tenn. 1977).

Whenever possible, legislative intent and purpose are "ascertained primarily from the natural and ordinary meaning of the language used, when read in the context of the entire statute, without any forced or subtle construction to limit or extend the impact of the language." *Worrall vs. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977). *City of Caryville vs. Campbell County*, 660 S.W.2d 510, 512 (Tenn. App.), perm. app. denied (1983). If legislative intent is without contradiction or ambiguity, "there is no room for interpretation or construction, and the judges are not at liberty, on consideration of policy or hardship, to depart from the words of the statute; ... they have no right to make exceptions or insert qualifications, however abstract justice or the justice of a particular case may require it." *Carson Creek Vacation Resorts, Inc. vs. Woods*, 865 S.W.2d 1, 2 (Tenn. 1993) (citations omitted). The ordinary and common meaning of a word may be established by its definition in a recognized dictionary. *Edelman vs. State*, 62 Wis.2d 613, 620, 215 N.W.2d 386 (1974).

The term "year-round" is not defined in *T.C.A.* § 6-54-111. The term is not used or defined in the regulations promulgated by the Comptroller of the Treasury pursuant to *T.C.A.* § 6-54-111(b). (Tenn. Admin. Comp. 0380-3-7-.01 et seq., Rules of Comptroller of the Treasury.) Tennessee courts have not addressed the meaning of the term "year-round" in *T.C.A.* § 6-54-111(a).

Black's Law Dictionary defines "year" but not "year-round."^[1] English language dictionaries define the term "year-round." It means "[e]xisting, active, or continuous throughout the year; during all seasons." American Heritage Dictionary, p. 1400 (2d college ed. 1985). The Webster Dictionary defines the adjective "year-round" as "occurring, effective, employed, staying, or operating for the full year: not seasonal" and gives "a year-round resort" as an example. Webster Dictionary (Internet dictionary based on Merriam-Webster Collegiate Dictionary, 10th ed. 1998), entry for "year-round" as adjective, at

Based on the common, unambiguous meaning of "year-round," a day care or similar child care facility must operate continuously throughout the year, during all seasons, in order to qualify as a "a nonprofit charitable organization ... which provides year-round services benefiting the general welfare of the residents of the municipalities" within the meaning of Tenn. Code Ann. § 6-54-111(a)(2)(A).^[2]

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Notes:

[1] "Year" is "[t]he period in which the revolution of the earth round the sun, and the accompanying changes in the order of nature, are completed. Generally, when a statute speaks of a year, twelve calendar, and not lunar, months are intended.... When the period of a "year" is named, a calendar year is generally intended, but the subject-matter or context of statute or contract in which the term is found or to which it relates may alter its meaning." *Black's Law Dictionary* (6th ed. 1998).

[2] The term "year-round" is found, but not defined, in four other Tennessee statutes. In these statutes, as well as the statute at issue, the legislature has used the term "year-round" in a consistent way to mean during the entire year or continuously throughout the year and during all seasons. *T.C.A.* § 54-5-705, regarding eligibility of historic sites for interstate highway directional signs, requires that a historic site be "open to the public on a year-round basis." *T.C.A.* § 68-221-703(19)(B)(i) of the Safe Drinking Water Act defines "Community water system" as "a public water system which serves at least 15 service connections used by year-round residents ..." A provision in the Education Finance Act at *T.C.A.* 49-3-317(b), regarding adjustments to reflect local changes, states, "Whenever the schools in any LEA are conducted on a year-round basis, such shall not operate to reduce the level of state support to the LEA ..." *T.C.A.* § 49-6-101(f)(2), regarding special services for preschools, states, "Programs should strive to assist families by providing full-day, year- round services"

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