IN THE COURT OF APPEALS OF TENNESSEE

AT KNOXVILLE

E1999-02525-COA-R3-CV

HERMAN L. GARNER, BLOUNT EXCAVATING, INC., and BLOUNT CONTRACTORS, INC.,	) C/A NO. 03A01-9906-CV-00214
Plaintiffs-Appellants,	)
v.	) APPEAL AS OF RIGHT FROM THE BLOUNT COUNTY CIRCUIT COURT
BLOUNT COUNTY and THE PUBLIC BUILDING AUTHORITY OF BLOUNT COUNTY, TENNESSEE,	)
Defendants-Appellees.	) HONORABLE REX HENRY OGLE, JUDGE, By Interchange

For Appellants

ROBERT N. GODDARD
Goddard & Gamble
Maryville, Tennessee

For Appellees

JOE H. NICHOLSON
DAVID R. DUGGAN
Nicholson, Garner, and Duggan
Maryville, Tennessee

O P I N I O N

AFFIRMED AND REMANDED

Susano, J.

The plaintiffs, Herman L. Garner ("Garner"), Blount Excavating, Inc. ("Blount Excavating"), and Blount Contractors, Inc. ("Blount Contractors"), brought this action for declaratory judgment, seeking the trial court's judgment as to the validity of three contracts between the corporate plaintiffs and The Public Building Authority of Blount County, Tennessee ("Public Building Authority" or "Authority"). The trial court held that two[1] of the contracts were "in direct violation of Tennessee Code Annotated §§ 5-14-114[2] and 12-4-101[3]." The plaintiffs appeal, raising two issues:

> 1. Does T.C.A. § 5-14-114 render unlawful a contract between a county building authority and a corporation in which a county commissioner owns an interest?
>
> 2. Does T.C.A. § 12-4-101 render unlawful a contract between a county building authority and a corporation in which a county commissioner owns an interest?

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[1]The validity of the third contract does not appear to have been addressed directly by the trial court; apparently it is subject to the trial court's determination with respect to the other contracts.

[2]T.C.A. § 5-14-114 (1998) provides, in pertinent part, as follows:

> (a) Neither the county purchasing agent, nor members of the county purchasing commission, nor members of the county legislative body, nor other officials of the county, shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any supplies, materials, equipment or contractual services used by or furnished to any department or agency of the county government.
>
> * * *
>
> (c) A violation of this section is a Class D felony.

[3]T.C.A. § 12-4-101 (1999) provides, in pertinent part, as follows:

> (a)(1) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. "Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest.

I.

The parties stipulated the pertinent facts. The Public Building Authority is a public, non-profit corporation that filed its Certificate of Incorporation with the Secretary of State on July 1, 1998. The stated purposes of the Authority are

> to make possible the construction, acquisition or enlargement of public buildings, structures and facilities to be made available for the use by the County and other public lessees at convenient locations within the County, in the efficient and economical furnishing of governmental, educational, health, safety and welfare services to the citizens of the County, and to exercise the authority and pursue the objectives of public building authorities as provided in Chapter 10 of Title 12 of the Tennessee Code Annotated, as amended.

Garner is a duly-appointed and serving Blount County Commissioner. He was appointed on February 23, 1998, and has served continuously since that date. He is also the majority shareholder and president of Blount Excavating. When the contracts at issue were executed, Garner was also a 50 percent shareholder and director of Blount Contractors.[4]

On May 22, 1998, Blount Contractors entered into a contract with Miller Building Corporation ("Miller Building"), the general contractor for the Public Building Authority,[5] to perform the slab work at the Blount County Justice Center. On October 4, 1998, Blount Excavating entered into a contract with

[4]On November 20, 1998, Garner transferred his shares of Blount Contractors and resigned as a director of that corporation.

[5]For the purpose of our conflict-of-interest analysis, we have treated this contract as one with the Authority -- the approach taken by the trial court and one with which the plaintiffs seem to agree.

the Public Building Authority to perform the site work at Heritage Middle School. On November 11, 1998, Blount Contractors entered into a contract with the Public Building Authority to perform the foundation work at Heritage Middle School. All three contracts were the result of a competitive bidding process conducted through the Public Building Authority.[6]

This case was heard below on the parties' Stipulations of Fact and the Public Building Authority's Certificate of Incorporation. Also before the trial court were opinions by the State Attorney General and the Blount County Attorney.[7] No additional evidence was presented at the hearing.[8]

In its memorandum opinion, the trial court held that the May 22, 1998, contract between Blount Contractors and Miller Building, and the October 4, 1998, contract between Blount Excavating and the Public Building Authority were in direct violation of T.C.A. § 5-14-114 and T.C.A. § 12-4-101.

II.

Since all of the material facts in this case have been stipulated, the issues before us present pure questions of law. Therefore, the record of the proceedings below comes to us for a

[6]At the hearing, the parties advised the trial court that the project at the Blount County Justice Center had been completed and that the Heritage Middle School projects were 95 to 98 percent complete.

[7]The Attorney General opined that "[T.C.A.] § 5-14-114 prohibits a contract between a company in which a county commissioner owns a controlling interest and the county building authority." Op. Tenn. Att'y Gen. 98-218 (November 25, 1998). The Blount County Attorney expressed an opinion only as to T.C.A. § 12-4-101. He was of the opinion that it was not applicable to the contracts at issue in this case. As will be seen, we agree with both opinions.

[8]The contracts at issue are not included in the record.

de novo review without a presumption of correctness. ***Presley v. Bennett,*** 860 S.W.2d 857, 859 (Tenn. 1993); ***Union Carbide Corp. v. Huddleston,*** 854 S.W.2d 87, 91 (Tenn. 1993).

III.

T.C.A. § 5-14-114(a) prohibits a county official, including a county commissioner, from having a direct or indirect financial interest "in any contract or purchase order" for goods or services provided "to any department or agency of the county government." ***Id***. It is undisputed that, when the subject contracts were executed, Garner was a shareholder and corporate officer of both Blount Excavating and Blount Contractors. Thus, there is no dispute as to whether Garner, a Blount County Commissioner, was "financially interested in" these contracts, as contemplated by the statute; he clearly was. The plaintiffs question, however, whether the Public Building Authority is a "department or agency of the county government" within the purview of T.C.A. § 5-14-114. Thus, in order to determine whether the subject contracts are in violation of the statute, we must first determine whether the Public Building Authority is a "department or agency" of Blount County.

The words "department or agency" are not defined in T.C.A. § 5-14-114 or elsewhere in the statutory scheme of which that code section is a part, *i.e.*, the County Purchasing Law of 1957, T.C.A. § 5-14-101, *et seq*. When a term is not defined in a statute, we must give the term its ordinary and commonly accepted meaning. *See* ***Beare Co. v. Tennessee Dep't of Revenue,*** 858 S.W.2d 906, 908 (Tenn. 1993). The Legislature's intent must be ascertained primarily from the natural and ordinary meaning of

the language of the statute, without a forced or subtle construction that would extend or limit its meaning. ***Steele v. Industrial Development Bd.,*** 950 S.W.2d 345, 348 (Tenn. 1997). "The background, purpose, and general circumstances under which words are used in a statute must be considered, and it is improper to take a word or a few words from its context and, with them isolated, attempt to determine their meaning." ***Id.***

Black's Law Dictionary defines "department" as "a branch or division of governmental administration." *Black's Law Dictionary* 436 (6th ed. 1990). "Agency" is defined in several different ways, depending upon the context in which the term is used. In regard to the relationship between a principal and agent, "agency" is defined as a "relation created by express or implied contract or by law, whereby one party delegates the transaction of some lawful business with more or less discretionary power to another, who undertakes to manage the affair and render to him an account thereof." ***Id.*** at 62. A different definition, however, is provided for an "agency" in the context of a division of government. For example, an "administrative agency" is defined as

> [a] governmental body charged with administering and implementing particular legislation....In addition to "agency", such governmental bodies may be called commissions, *corporations* (*e.g.* F.D.I.C.), boards, departments, or divisions.

Id. at 45 (Emphasis added). One of the definitions of "agency" in Webster's Dictionary is "a department or other administrative unit of a government." *Webster's Third New International Dictionary* 40 (1993).

The plaintiffs argue that the term “agency” as used in T.C.A. § 5-14-114 should be interpreted as it is used when describing the relationship between a principal and an agent. Thus, the argument goes, the essential test to determine whether an “agency” exists is the absolute right of the principal –- here, Blount County –- to control the actions of the agent -- in this case, the Public Building Authority. The plaintiffs contend that because the County does not have the right to control the activities of the Authority, the latter entity is not an “agency” within the meaning of T.C.A. § 5-14-114.

We decline to read the term “agency” in such a restricted manner. We find and hold that the “ordinary and commonly accepted meaning” of the term “agency,” as used in T.C.A. § 5-14-114, *considering the purpose and context of the statute*, is as a division or arm of government, and not as a term describing a principal-agent relationship. Accordingly, we hold that the term “agency” as found in T.C.A. § 5-14-114 includes the Public Building Authority.

Our finding that the Public Building Authority is an “agency” of Blount County is buttressed by an examination of the purposes for which the Authority was created. Its Certificate of Incorporation states that the purposes of the Authority are “to make possible the construction, acquisition or enlargement of public buildings, structures and facilities to be made available for the use by the County....” The Public Building Authorities Act clearly contemplates that an authority will be “a public instrumentality of the municipality,” T.C.A. § 12-10-109(a), and that the Authority will perform “a public function in behalf of the municipality with respect to which it is organized....”

T.C.A. § 12-10-113(a). The statutory definition of "municipality" includes a county. *See* T.C.A. § 12-10-103(8).

We also note that the Supreme Court found that the "Health and Educational Facilities Board of the County of Knox," a board organized as a non-profit, public corporation, was an agency or instrumentality of Knox County. ***Fort Sanders Presbyterian Hosp. v. Health and Educ. Facilities Bd.,*** 453 S.W.2d 771, 774 (Tenn. 1970)("The Health and Educational Facilities Board, while it is a separate corporate entity, is merely an agency or instrumentality of Knox County...."); ***West v. Industrial Development Bd.,*** 332 S.W.2d 201, 202 (Tenn. 1960)("Even though the Industrial Board is a separate corporate entity, the pleadings show that it is a mere agency or instrumentality of the municipality."); *see also* ***Johnson v. Chattanooga-Hamilton County Hosp. Auth.,*** 749 S.W.2d 36, 37 (Tenn. 1988)(holding that hospital authority was a "subdivision of the state and county" for the purposes of workers' compensation law).

Plaintiffs list several ways in which the Public Building Authority is an independent corporate entity and, so the argument goes, not an agency of the County. However, upon reviewing the entire Public Building Authorities Act of 1971, T.C.A. § 12-10-101 *et seq.*, we find that its provisions are consonant with our determination that a public building authority is an "agency" as that term is used in T.C.A. § 5-14-114. For example, a public building authority's certificate of incorporation, and any amendments thereto, must be approved by the governing body of the municipality. T.C.A. § 12-10-104; T.C.A. § 12-10-107. The governing body of the municipality also confirms the appointment of directors to the authority's board.

T.C.A. § 12-10-108. T.C.A. § 12-10-109 provides that a public building authority shall be "a public instrumentality of the municipality with respect to which the authority is organized," and, as such, a public building authority's bonds and income are exempt from state taxation. T.C.A. § 12-10-113. A municipality may assign or loan its employees to a public building authority and may provide the authority "necessary office space, equipment, or other facilities...." T.C.A. § 12-10-110. Upon the dissolution of an authority, title to all of its funds and properties vests in the municipality. T.C.A. § 12-10-119. Therefore, we conclude that the Public Building Authority, inasmuch as it is an instrumentality of the County that it serves, is an "agency" of Blount County within the purview of T.C.A. § 5-14-114.

IV.

Next, we must determine whether T.C.A. § 12-10-122 exempts the Public Building Authority from the provisions of T.C.A. § 5-14-114(a). T.C.A. § 12-10-122 provides, in pertinent part, as follows:

> Projects may be acquired, purchased, constructed, reconstructed, improved, bettered and extended and bonds may be issued under this chapter for such purposes, notwithstanding that any other general, special or local law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment and extension of a like project, or the issuance of bonds for like purposes, and *without regard to the requirements, restrictions, limitations or other provisions contained in any other general, special or local law.*

T.C.A. § 12-10-122(a) (Emphasis added). As far as we can determine, this statute has been examined on only one prior occasion. In ***Shankle v. Bedford County Bd. of Educ.,*** C/A No. 01A01-9609-CH-00387, 1997 WL 83662, at *5 (Tenn.Ct.App. M.S., filed February 28, 1997), we held that T.C.A. § 12-10-122 exempts a public building authority from the provisions of T.C.A. § 5-14-108, which requires a county to base all purchases, sales, and contracts on competitive bids. Based on this holding, we determined that the authority in that case was permitted to seek out building contracts by methods other than the competitive bid process. The plaintiffs, relying on ***Shankle***, contend that because the Public Building Authority in the instant case is exempt from all "general, special, or local laws," the contracts at issue are not subject to the conflict-of-interest provisions of T.C.A. § 5-14-114(a). We disagree. T.C.A. § 5-14-114(a) is a broad restriction on the activities of *county officials*; it does

not purport to address the activities and conduct of a *public building authority*. Therefore, we do not understand how a statute exempting a public building authority from the operation of certain statutes can be construed to vitiate the effect of another statute that is not directed at the activities or conduct of such an entity. It would be unreasonable to construe T.C.A. § 5-14-114(a) so as to permit a county official to claim exemption from its provisions merely because the *agency* involved in the contract is a public building authority that is exempt from "general, special, or local law" regarding the administration of its projects. *See* T.C.A. § 12-10-122. T.C.A. § 5-14-114(a) tells a *county official* what he or she cannot do; it does not operate on a *public building authority*. We find plaintiffs' argument on this issue to be without merit.

V.

We now examine the applicability of T.C.A. § 12-4-101. While it is undisputed that Garner is "directly interested" in all three contracts given his roles as shareholder and corporate officer in both Blount Excavating and Blount Contractors, the parties have also stipulated that "it is not Herman L. Garner's duty as a Commissioner under T.C.A. Sec. 12-4-101, to vote for, let out, overlook, or in any manner superintend any work to be performed under said contracts." The statute only applies to individuals "whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract" of the nature described in the statute. *See* T.C.A. § 12-4-101. The stipulation takes Garner out of the ambit of this code provision. Thus, we conclude that the subject contracts are not in violation of T.C.A. § 12-4-101. However, having found that the contracts

are in violation of T.C.A. § 5-14-114, we affirm the judgment of the trial court, but predicate our affirmance solely on the violation of T.C.A. § 5-14-114.

VI.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellants. This case is remanded to the trial court for such further proceedings, if any, as may be required and for collection of costs assessed below, all pursuant to applicable law.

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Charles D. Susano, Jr., J.

CONCUR:

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Herschel P. Franks, J.

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D. Michael Swiney, J.