

Opinion No. 2012-098

September 4, 2012

The Honorable Jimmy Jeffress
State Senator
Post Office Box 904
Crossett, Arkansas 71635-0904

Dear Senator Jeffress:

This is my opinion on your question whether the “inside . . . cabin” of a “commercial intrastate slip-seated truck[] that [is] driven by multiple drivers”¹ is a “place of employment” for purposes of the Arkansas Clean Indoor Air Act of 2006, A.C.A. §§ 20-27-1801 to -1809 (Supp. 2011) (the “Act”).

RESPONSE

In my opinion, a truck cab is not a place of employment under the Act.

The Act defines “place of employment” as

an enclosed area under the control of a public or private employer that employees utilize during the course of employment, including, but not limited to:

- (i) Work areas;
- (ii) Employee lounges;
- (iii) Restrooms;
- (iv) Conference rooms;
- (iv) Meeting rooms;

¹ “Slip-seated” apparently means substantially the same thing as “driven by multiple drivers.” *See, e.g.*, Paul Dexler, *Slip Seating: Can it Benefit Your Fleet?*, *Work Truck Magazine* (May 2008), <http://www.worktruckonline.com/Article/Story/2008/05/Slip-Seating-Can-it-Benefit-Your-Fleet-.aspx>.

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- (v) Classrooms;
- (vi) Employee cafeterias; and
- (vii) Hallways.

A.C.A. § 20-27-1803(9)(A).

“Enclosed area” is defined as “all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, that extend from the floor to the ceiling.” A.C.A. § 20-27-1803(5).

The Act prohibits smoking “in all . . . enclosed areas within places of employment. . . .” A.C.A. § 20-27-1804(b)(1).²

The answer to your question depends on the meanings of the terms “enclosed area” and “place of employment” used in the Act.

When construing a statute, we interpret the statute to give effect to the intent of the General Assembly. We determine legislative intent from the ordinary meaning of the language used where the language of the statute is plain and unambiguous. Words in the statute are given their ordinary and usually accepted meaning in common language.

Broussard v. St. Edward Mercy Health System, Inc., 2012 Ark. 14, *4, ___ S.W.3d ___, 2012 WL 149761.

But a statute is ambiguous “where it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning.” *Thomas v. Hall*, 2012 Ark. 66, *5, 2012 WL 503879. In my view, the Act is ambiguous on your question, as reasonable minds might differ on the answer. Where a statute is ambiguous, the

² Because every “place of employment” is, by definition, an “enclosed area,” the statute, read literally, prohibits smoking in enclosed areas within enclosed areas. I do not believe the legislature intended such a limited prohibition. The courts will not interpret a statute in a way that yields an absurd result that defies common sense. *E.g.*, *State v. Owens*, 370 Ark. 421, 260 S.W.3d 288 (2007). I assume for purposes of this opinion that the Act prohibits smoking in places that are “enclosed areas” within “places of employment,” the latter determined without reference to the “enclosed areas” language of its definition.

courts apply rules of statutory construction to determine legislative intent and the statute's meaning. *Id.*

Applying rules of statutory construction to three parts of the Act leads me to conclude that a truck cab is not a place of employment under the Act.

First, the Act's definition of "place of employment," quoted above, is relevant. A rule of statutory construction known as *ejusdem generis* (Latin meaning "of the same kind or class") applies where a statute lists specific things; the list suggests a class; the list does not exhaust the class; a general reference supplements the list; and the statute does not clearly require that the general term be given a broad meaning. *McKinney v. Robbins*, 319 Ark. 596, 599, 892 S.W.2d 502 (1995).

The definition lists eight specific examples of places of employment. With the possible exception of "work areas" – the most general example listed – each example denotes an area within a building, not part of an object like a vehicle. Thus the list suggests, but does not exhaust, a class of spaces within buildings. "[A]n enclosed area under the control of a public or private employer that employees utilize during the course of employment" is a general reference that supplements the list, and I see no evidence that the General Assembly intended for the general term to be given a meaning broader than that suggested by the items on the list. *Ejusdem generis* therefore dictates that the defined term be limited to areas within buildings. The result is similar to that in *McKinney*, where the court held that a statute that referred generally to domesticated animals, and included a list that specified only livestock, did not include pets.

A related rule is known as *noscitur a sociis* (Latin meaning "it is known from its associates") and "as practically applied, it means that a term may be defined by an accompanying word." *Id.* at 600. Here, the accompanying words – a list of specified areas within buildings – suggest a definition of "enclosed area under the control of a public or private employer that employees utilize during the course of employment" that is limited to other areas within buildings.

Second, the Act's definition of "enclosed area" refers to floors, ceilings, solid walls, windows, and doorways. With the exception of windows – and possibly floors – these words and terms are not generally used to denote parts of vehicles,

but they all denote parts of buildings. Applying *eiusdem generis* and *noscitur a sociis* suggests that “enclosed area” refers only to an area within a building.

Third, another section of the Act prohibits smoking “in all vehicles and enclosed areas owned . . . by the state” or local governments. A.C.A. § 20-27-1804(a). When a statute is ambiguous, judicial “review becomes an examination of the whole act.” *Woodrome v. Daniels*, 2010 Ark. 244, *8, ___ S.W.3d ___, 2010 WL 2015333. This separate smoking ban is therefore relevant to determining the meaning of the provisions at issue. The separate smoking ban in government-owned vehicles demonstrates that the legislature, in enacting the Act, was not unmindful of second-hand smoke in vehicles. It could easily have expressly banned smoking in privately-owned shared work vehicles if it had deemed such a ban necessary or appropriate. Yet the bans were enacted to apply to “vehicles and enclosed areas” (governmental property) and “public places and enclosed areas within places of employment” (non-governmental property). The inclusion of vehicles in the former makes it almost certain that the legislature intentionally excluded vehicles from the latter. “The phrase *expressio unius est exclusio alterius* is a fundamental principle of statutory construction that the express designation of one thing may properly be construed to mean the exclusion of another.” *MacSteel Div. of Quanex v. Arkansas Oklahoma Gas Corp.*, 363 Ark. 22, 31, 210 S.W.3d 878 (2005). Here, the designation of “enclosed areas within places of employment” may fairly be taken to mean the exclusion of “vehicles,” particularly where the legislature evidenced its attention to vehicles in a different but related part of the same act.

Additionally, the Act empowers the State Board of Health to adopt rules and the Department of Health to enforce the Act and the rules. A.C.A. § 20-27-1807. The Departmental web site’s FAQ about the Act includes the following:

Q: The Clean Indoor Air Act does not permit smoking in government-owned vehicles. What about privately-owned vehicles?

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A: Act 8 does not address smoking in vehicles owned by non-governmental or private businesses or by private individuals. Therefore smoking is permitted in such vehicles.^[3]

Arkansas Department of Health, Frequently Asked Questions, Act 8 – The Clean Indoor Air Act of 2006, <http://www.healthy.arkansas.gov/programsServices/environmentalHealth/arcleanair/Pages/CleanAirFAQs.aspx> (last visited Aug. 23, 2012).

“[T]he interpretation placed on a statute or regulation by an agency or department charged with its administration is entitled to great deference and should not be overturned unless clearly wrong.” *Seiz Co. v. Arkansas State Highway and Transp. Dep’t*, 2009 Ark. 361, 324 S.W.3d 336, 339. The rule is particularly applicable where, as here, the statute is ambiguous. *Junction City Sch. Dist. v. Alphin*, 313 Ark. 456, 855 S.W.2d 316 (1993).

For all of the reasons stated above, it is my opinion that a truck cab is not a place of employment under the Act.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh

³ The FAQ also refers to the Arkansas Protection from Secondhand Smoke for Children Act of 2006, which prohibits smoking “in any motor vehicle in which a child who is less than fourteen (14) years of age is a passenger.” A.C.A. § 20-27-1903 (Supp. 2011).