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Opinion No. 00-012

Constitutionality of Tenn. Code Ann. § 36-5-116(a)(1)

QUESTIONS

1. Does Tenn. Code Ann. § 36-5-116(a)(1) and any related state regulations issued by the Tennessee Department of Human Services violate the separation of powers clause of the Constitution of Tennessee?

2. Does federal law require the State of Tennessee to have a statute which transfers responsibility for collection and distribution of support payments from the clerks of court to the Tennessee Department of Human Services, "any order of the court notwithstanding?"

OPINIONS

1. No. Tenn. Code Ann. § 36-5-116(a)(1) does not frustrate or interfere with the adjudicative function of the courts. Nor does the statute interfere with the judiciary's independent decision making authority. Rather, it merely alters the means by which the ministerial function of collections and disbursement are made by transferring that function in most cases to the department of human services.

2. No. Neither 42 U.S.C. § 666 nor any other federal statute or regulation requires that the transfer of this function from the existing system to the centralized system must be accomplished "any order of the court notwithstanding."

ANALYSIS

I.

Tenn. Code Ann. § 36-5-116(a)(1) provides as follows:

> Effective October 1, 1999, the department of human services shall become the central collection and disbursement unit for the state as required by 42 U.S.C. § 654b. All order [sic] in Title IV-D support cases, and all orders for income assignments which have directed support to be paid to the clerk of any court, and which are subject to the provisions of 42 U.S.C. § 654b, shall be deemed to require that the support be sent to the central collection and disbursement unit, **any order of the court notwithstanding**.

Tenn. Code Ann. § 36-5-116(a)(1) (Emphasis supplied).[1] You have asked whether this statute, and particularly the highlighted language, violates the separation of powers clause of the Constitution of Tennessee.

As one justice of the Tennessee Supreme Court has noted:

> The Tennessee Constitution, Article II, § 1, expressly states that "the powers of the government shall be divided into three distinct departments: the Legislative, Executive, and Judicial," and by Article II, § 2, "no person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted." [Footnote omitted]. Underwood v. State, 529 S.W.2d 45 (Tenn. 1975), recognized that "the doctrine of separation of the powers, as set out in Article II, §§ 1 and 2, of the Constitution of Tennessee, is a fundamental principle of American constitutional government." Id., at 47. Moreover, "'it is essential to the maintenance of republican government that the action of the legislative, judicial, and executive departments should be kept separate and distinct. . . .'" Richardson v. Young, 122 Tenn. 471, 492, 125 S.W. 664, 668 (1909). The tension and play among these powers provide restraint and maintain the limits placed on the government in all its departments to protect the rights and liberties of the citizens and to deter abuses of power. [Footnote omitted]. See Bank of the State v. Cooper, 10 Tenn. 599, 611 (1831) (Opinion of Peck, J.). Each department acts within its own sphere as an independent and co-equal branch of government and can be subject to the will of no other department when performing its particular functions. The primacy of these fundamental principles is undisputed but because the defining powers

[1]You have inquired as to whether "certain state regulations issued by the Department of Human Services" containing the same highlighted language would also violate the separation of powers clause of the Constitution of Tennessee. While this Office is unaware of any such regulations, they would be subject to the same separation of powers analysis as an exercise of legislatively delegated rulemaking authority by an executive branch agency.

> of each department are not always readily identified, recognizing an encroachment by one department upon another is sometimes difficult. What is necessary is to find the operating principles at stake in any given case and determine their application to those circumstances based on the evils against which they were intended by the people of the state to provide protection. Those principles decide the case or controversy presented by the facts.

Summers v. Thompson, 764 S.W.2d 182, 188-89 (Tenn. 1988) (Concurring Opinion, J. Drowota).

The Tennessee Supreme Court has also noted that:

> Of course, the doctrine of separation of the powers, as set out in Article II, §§ 1 and 2, of the Constitution of Tennessee, is a fundamental principle of American constitutional government. Nonetheless, it has long been recognized that it is impossible to preserve perfectly the theoretical lines of demarcation between the executive, legislative and judicial branches of government. Bank of Commerce and Trust Company v. Senter, 149 Tenn. 569, 260 S.W. 144, 151 (1924); Richardson v. Young, 122 Tenn. 471, 493, 494, 125 S.W. 664 (1910). There is necessarily a certain amount of overlapping. The three departments are interdependent.
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> > "The Constitution does not define in express terms what are legislative, executive, or judicial powers.
> >
> > "Theoretically, the legislative power is the authority to make, order, and repeal, the executive, that to administer and enforce, and the judicial, that to interpret and apply, laws." Richard v. Young, supra, at 668.

Underwood v. State, 529 S.W.2d 45, 47 (Tenn. 1975).

In *Underwood v. State, supra*, the Tennessee Supreme Court upheld the constitutionality of the statutes providing for the expungement of criminal records. In so doing, the Court formulated the test to guide any determination of separation of powers issues between the legislative and judicial branches of government. According to the Court, "[a] legislative enactment which does not frustrate or interfere with the adjudicative function of the courts does not constitute an impermissible encroachment upon the judicial branch of government." In *Perkins v. Scales*, 2 Shannon's Cases 235 (Tenn. 1877), a leading Tennessee case on the separation of judicial and legislative powers, the Supreme Court held that under Article II, Sections 1 and 2 of the Tennessee Constitution, any decree

that a court shall give must be the results of its own judgment. No other department of government has the right to indicate or dictate to a court what its judgment shall be. The legislature may not require or forbid rendition of a particular judgment in derogation of judicial discretion as to its propriety.

In this instance, the legislature is not dictating to a court what its judgment must be. Nor is it frustrating or interfering with an adjudicative function of the courts. Thus, the statutory language in question does not constitute an impermissible encroachment upon the judicial branch of government or a violation of the separation of powers provisions of the Tennessee Constitution. Rather, the statute merely alters the entity which will perform a ministerial function — the collection and distribution of child support payments — from the clerks of court to the department of human services. The statutory language allows this change in the collection and distribution of child support payments without requiring the court to enter an order accomplishing the change in the hundreds of thousands of cases impacted by the implementation of the federally mandated centralized collections and distribution system. Congress has dictated which cases are to be included in the central collection and distribution system, and it has left no room for the exercise of judicial discretion in such matters. 42 U.S.C. § 654b(a)(1).

II.

You have also inquired whether any provision of federal law required the State of Tennessee to enact such statutory language — "any order of the court notwithstanding." Tenn. Code Ann. § 36-5-116(a)(1). 42 U.S.C. §§ 654(27) and 654b required the State of Tennessee to establish and to operate a state disbursement unit for the collection and disbursement of payments under support orders by October 1, 1999. 42 U.S.C. § 666 does not directly address the federal requirement to operate a state distribution unit.[2] While there is statutory language in 42 U.S.C. § 666(a)(1)(B) that would require the issuance of an income assignment order in support cases not already subject to a withholding order where an arrearage accrues "without the need for a judicial or administrative hearing," this language does not relate to the implementation of the centralized collections and distribution unit or the broader provision of Tenn. Code Ann. § 36-5-116(a)(1) about which you have inquired. This Office has been unable to identify any federal statute or regulation that would require the State of Tennessee to enact the aforementioned language found in Tenn. Code Ann. § 36-5-116(a)(1). Thus, it is our opinion that such statutory language was not required by federal law. Federal law is silent as to how the states are to accomplish the redirection of support payments to the central collection and distribution unit. Presumably, the Tennessee General Assembly could have required the domestic relations courts of this State to issue orders redirecting the payments in these cases from the court clerk to the central unit. Alternatively, the Deaprtment of Human Services could have issued administrative orders to redirect child support in all such cases pursuant to Tenn. Code Ann. § 36-5-803. What Congress did not leave either to the states to decide or to the discretion

[2]We have been unable to locate the statutory provision that you referenced in your letter: 42 U.S.C. § 666(a)(19)(V)(D)(ii)(11). It does not appear in the 1999 codification of the United States Code. Nor have we been able to locate the statutory language you quoted from that provision.

of state court judges was what cases were to be included in the central collection and distribution system or whether the support payments in such cases could continue to be collected and distributed by any entity other than the central collection and distribution unit. See 42 U.S.C. § 654b(a)(1).

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