S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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March 28, 2000

Opinion No. 00-055

Permanent Disqualification from Office

QUESTION

May the General Assembly constitutionally bar any person convicted of an infamous crime for acts committed while holding public office under the laws of Tennessee and that pertain to that office from qualifying for, seeking, or holding any office under the authority of the State, even if such person's citizenship rights have been restored?

OPINION

Such a bar would be constitutional.

ANALYSIS

This request concerns proposed legislation. As proposed, the bill would add a new section to Tennessee Code Annotated, Title 2, Chapter 19, Part 1. The statute would provide:

> (a) Notwithstanding any provision of law to the contrary, any person convicted of an infamous crime, either on the state or federal level, for acts committed while holding a public office under the laws of this state and that pertain to such office, shall be forever disqualified from qualifying for, seeking or holding such office or any other office under the authority of this state even if such person's citizenship rights have been restored.
>
> (b) This section shall not be construed as limiting the restoration of any individual's right of suffrage provided for in §§ 2-19-143, 2-2-139 or 40-29-105.

Other provisions of state law currently bar certain persons convicted of certain types of crimes or offenses from qualifying for, seeking, or holding any office under the authority of the State unless and until such person's citizenship rights have been restored by a court of competent jurisdiction. Tenn. Code Ann. § 40-20-114; Tenn. Code Ann. § 8-18-101(1). The proposed statute would permanently prevent a person convicted of an infamous crime for acts committed while holding public office in Tennessee and that pertain to that office from qualifying for, seeking, or holding any office under the authority of Tennessee, whether or not such person's citizenship rights have been restored.

We think this bar is constitutional. This statute would establish another qualification for public office in Tennessee. This Office has stated that the General Assembly is authorized to impose qualifications in addition to those contained in the Tennessee Constitution for members of the General Assembly. Op. Tenn. Atty. Gen. 91-26 (March 25, 1991). Similarly, the Tennessee Supreme Court has upheld the authority of the General Assembly to require a general sessions judge — who is the judge of an inferior court subject to Article VI, Section 4 of the Tennessee Constitution — to be licensed to practice law. *LaFever v. Ware*, 211 Tenn. 393, 365 S.W.2d 44 (1963). Under this authority, we think the General Assembly may impose qualifications for any office under state law beyond the minimal qualifications in the constitution, so long as they do not directly conflict with the constitutional qualifications.

There is no fundamental right to run as a candidate for elective public office, or to be appointed to public office. *Civil Service Merit Board of Knoxville v. Burson*, 816 S.W.2d 725 (Tenn. 1991); *Bullock v. Carter*, 405 U.S. 134, 142-43, 92 S.Ct. 849 (1972) (no fundamental right to run as a candidate for elective public office). Further, the proposed statute does not establish a suspect classification. Therefore, under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and under Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution, the statute would be upheld if there is a rational basis for the classification. *Doe v. Norris*, 751 S.W.2d 834, 841 (Tenn. 1988); *Brown v. Campbell County Board of Education*, 915 S.W.2d 407, 412 (Tenn. 1995), *cert. denied*, 116 S.Ct. 1852 (1996); Op. Tenn. Atty. Gen. U90-58 (March 28, 1990) (a statute permanently barring a person convicted of a felony from ever serving as a sheriff, while allowing the same person to serve in other office after restoration of citizenship, was constitutional). Clearly, barring a person convicted of an infamous crime for acts while holding public office under Tennessee law and that pertain to such office has a rational basis — that of ensuring integrity among public officeholders. *See, e.g., State v. Musto*, 454 A.2d 449 (N.J.Super.Ct. 1982) (statute disqualifying any person convicted of offense "involving or touching on his public office, position or employment" from holding any office or position of honor, trust, or profit held constitutional even under an intermediate level of scrutiny rather than the more permissive rational basis test); *Dixon v. McMullen*, 527 F.Supp. 711 (N.D.Tex. 1981) (statute automatically excluding ex-felons from certification as police officers held constitutional)

The request indicates that the proposed legislation would amend Senate Bill 3124/House Bill 3083 by deleting everything after the enacting clause and substituting language enacting the new statute and setting its effective date. The caption of these bills provides:

> AN ACT to amend Tennessee Code Annotated, Title 2, relative to restoration of suffrage to persons convicted of infamous crimes.

Under Article II, Section 17 of the Tennessee Constitution, "[n]o bill shall become a law which embraces more than one subject, that subject to be expressed in the title." If the legislature has adopted a restrictive title where a particular part or branch of a subject is carved out and selected, then the body of the act must be confined to the particular portion expressed in the limited title. *Tennessee Municipal League v. Thompson*, 958 S.W.2d 333, 338 (Tenn. 1997). Under *Tennessee*

Municipal League, the subject of this bill as expressed in the caption would be the amendment of Tennessee Code Annotated, Title 2. But the phrase "relative to the restoration of suffrage to persons convicted of infamous crimes" makes the title restrictive, and the body of the bill must be confined to that particular portion of the statute. The proposed amendment in effect provides that persons convicted of a particular type of infamous crime are permanently barred from office under state law, regardless of whether their rights of suffrage have been restored. We think this provision "relates to" the restrictive provision in the caption as required under Article II, Section 17.

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