S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

June 1, 2000

Opinion No. 00-104

Item in Appropriations Bill

QUESTION

The administration's amendment to the general appropriations bill for fiscal year 2000-2001 contains the following item:

> The Commissioner of Finance and Administration is hereby authorized to expend or lend from the funds appropriated such sums as the Commissioner deems appropriate to assist TennCare HMO(s) in their operations and obtain services from contractors, consultants, and other third parties to give such assistance, such being determined by the General Assembly to be for a public purpose.

Does this item violate any provision of the Tennessee Constitution?

OPINION

This item does not violate any provision of the Tennessee Constitution.

ANALYSIS

This opinion addresses the constitutionality of the following provision in the general appropriations bill for fiscal year 2000-2001:

> The Commissioner of Finance and Administration is hereby authorized to expend or lend from the funds appropriated such sums as the Commissioner deems appropriate to assist TennCare HMO(s) in their operations and obtain services from contractors, consultants, and other third parties to give such assistance, such being determined by the General Assembly to be for a public purpose.

The request does not indicate the context in which this item appears. We assume that, in the context of the entire bill, it refers to funds appropriated for the TennCare program. The request asks whether this provision violates any provision of the Tennessee Constitution.

Under Article II, Section 24 of the Tennessee Constitution, "[n]o public money shall be expended except pursuant to appropriations made by law." This limitation has generally been

interpreted by Tennessee courts to mean that the appropriation of public monies to other than "public purposes is beyond the power of the legislature." *Demoville and Company v. Davidson County*, 87 Tenn. 214, 10 S.W.2d 353, 355 (1889). No available Tennessee case defines what constitutes a "public purpose" justifying the appropriation of state funds under Article II, Section 24. But this Office has concluded that the definition of the term "public purpose" developed by courts within the context of Article II, Section 31 of the Tennessee Constitution is also applicable to Article II, Section 24. Op.Tenn.Atty.Gen. 83-489 (November 10, 1983). Under Article II, Section 31, "[t]he credit of this State shall not be hereafter loaned or given to or in aid of any person, association, company, corporation or municipality . . .." Tennessee courts have found that the State may lend its credit to private companies or individuals without violating this provision so long as the loans are in furtherance of a public purpose. *Bedford County Hospital v. Browning*, 189 Tenn. 227, 225 S.W.2d 41 (1949); *Pack v. Southern Bell Telephone & Telegraph Co.*, 215 Tenn. 503, 387 S.W.2d 789 (1965); *West v. Tennessee Housing Development Agency*, 512 S.W.2d 275 (Tenn. 1974). In *Pack*, the Tennessee Supreme Court stated:

> What is a 'public purpose' that will justify the expenditure of public money is not capable of a precise definition, but the courts generally construe it to mean such an activity as will serve as a *benefit to the community as a body* and which at the same time is *directly related to the functions of government.*
>
> The mere fact that some private interests may derive an incidental benefit from the activity does not deprive the activity of its public nature, if its primary purpose is public.

215 Tenn. 503 at 515-16 (emphasis added). *See also* Op.Tenn.Atty.Gen. 88-102 (May 19, 1988) (Article II, Section 31 does not prohibit a program under which the State pays a surety a portion of its loss upon the default of a disadvantaged business on a surety bond because such a program follows a public purpose outlined by the legislature); Op.Tenn.Atty.Gen. 95-038 (April 18, 1995) (Article II, Section 31 does not prohibit the use of state funds to offer interest-free loans to teachers for the purpose of obtaining a master's or doctoral level degree because this use furthers a public purpose).

The proposed appropriation item authorizes use of state funds "to assist TennCare HMO(s) in their operations and obtain services from contractors, consultants, and other third parties to give such assistance, such being determined by the General Assembly to be for a public purpose." We think this purpose clearly meets the definition of a constitutional public purpose outlined above. Moreover, the appropriation expressly designates the use as a public purpose. For this reason, we think the provision falls within the authority of the General Assembly to appropriate public funds under Article II, Section 24 of the Tennessee Constitution. Since any loans of monies under this appropriations item would be from available funds, it is unlikely that such a loan would be a "lending of credit" of the State within the meaning of Article II, Section 31 of the Tennessee Constitution. Even if such a loan were a "lending of credit", however, it would not violate Article II, Section 31 because it is made in the furtherance of a public purpose.

The only other constitutional issue that this provision might raise is whether its inclusion in the appropriations act would violate Article II, Section 17 of the Tennessee Constitution. That provision states in relevant part that "[n]o bill shall become a law which embraces more than one subject . . .." Similarly, Tenn. Code Ann. § 9-4-5108(c) provides that "[t]he appropriation bill shall not contain any provisions of general legislation." This Office has concluded that an appropriations provision that conferred substantive authority on state officials that they enjoyed under no other provision of state law in effect amended the general law and violated Article II, Section 17. Op.Tenn.Atty.Gen. 83-251(May 12, 1983). The proposed item does purport to confer considerable authority on the Commissioner of Finance and Administration. But a reasonable argument exists that this authority is no broader than the authority the Commissioner already may exercise under Tenn. Code Ann. §§ 71-5-101, *et seq.*, particularly Tenn. Code Ann. § 71-5-105(10). These functions were transferred from the Department of Health to the Department of Finance and Administration under Executive Order No. 23 (October 19, 1999). Accordingly, we think this provision is constitutional under Article II, Section 17 of the Tennessee Constitution.

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