S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 00-106

Validity of Proposed Property Tax Exemption under Article XI, Section 8 of the Tennessee Constitution.

QUESTION

Does Senate Bill 2569 (Amendment 3)/House Bill 2324 (Amendment 1) grant the YMCA a special right not shared by other health facilities in violation of Article XI, Section 8 of the Tennessee Constitution?

OPINION

No, Senate Bill 2569 (Amendment 3)/House Bill 2324 (Amendment 1) does not grant the YMCA a special right in violation of Article XI, Section 8 because the proposed legislation meets the applicable rational basis standard for review of classifications in tax laws.

ANALYSIS

The proposed legislation at issue, SB 2569 (Amend. 3)/HB 2324 (Amend. 1) states as follows:

> SECTION 1. Tennessee Code Annotated, Title 67, Chapter 5, is amended by adding the following language as a new section in part 2:
>
> > Section ___(a) Real and personal property used as a nonprofit family wellness center shall be exempt from property taxes as a charitable use of property if the center is owned and operated as provided in this section. "Family wellness center" means real and personal property used to provide physical exercise opportunities for children and adults. The property must be owned by a nonprofit corporation that is a charitable institution which (1) has as its historic sole purpose the provision of programs promoting physical, mental, and spiritual health, on a holistic basis without emphasizing one over another; (2) provides at least five (5) of the eight (8) following programs dedicated to the improvement of conditions in the community and to support for families: day care programs for preschool and school-aged children; team sports opportunities for

youth and teens; leadership development for youth, teens, and adults; services for at-risk youth and teens; summer programs for at-risk and non-at-risk youth and teens; outreach and exercise programs for seniors; aquatic programs for all ages and skill levels; and services for disabled children and adults; and (3) provides all programs and services to those of all ages, incomes and abilities under a fee structure which reasonably accommodates persons of limited means and therefore ensures that ability to pay is not a consideration. The corporation must further meet the requirements of subsection (b).

(b) To qualify for exemption, the nonprofit corporation must first be exempt from federal income taxation as an exempt charitable organization under the provisions of Section 501(c)(3) of the Internal Revenue Code (U.S.C., title 26) and any amendments thereto. In addition, the nonprofit corporation shall provide that:

(1) The directors and officers shall serve without compensation beyond reasonable compensation for services performed;

(2) The corporation is dedicated to and operated exclusively for nonprofit purposes;

(3) No part of the income or the assets of the corporation shall be distributed to inure to the benefit of any individual;

(4) Upon liquidation or dissolution, all assets remaining after payment of the corporation's debts shall be conveyed or distributed only in accordance with the requirements applicable to a 501(c)(3) corporation.

(c) All claims for exemptions under this section are subject to the provisions of Tennessee Code Annotated, Section 67-5-212(b).

(d) Nothing in this section shall prevent property of the corporation other than wellness centers from qualifying under other provisions of law.

> SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to all matters pending before the Board of Equalization on the effective date of this act.

It has been observed that this proposed legislation, by limiting the exemption from property taxes to nonprofit wellness centers, operates to the disadvantage of health clubs and wellness centers that are for profit or otherwise do not meet the proposed exemption criteria. The question has been raised as to whether this legislation, by differentiating between nonprofit and for profit wellness centers for tax purposes, violates the equal protection provision of Article XI, Section 8 of the Tennessee Constitution.

The relevant provision of Article XI, Section 8 states as follows:

> The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie, [immunities] or exemptions other than such as may be, by the same law, extended to any member of the community, who may be able to bring himself within the provisions of such law.

This section of the state constitution has been interpreted to confer upon the citizens of Tennessee essentially the same protections provided by the Fourteenth Amendment to the United States Constitution. *State v. Smoky Mtn. Secrets, Inc*., 937 S.W.2d 905, 911 (Tenn. 1996); *Brown v. Campbell*, 915 S.W.2d 407, 413 (Tenn. 1995). Thus, the same analytical framework that is used for the evaluation of federal equal protection claims is used for similar state claims. *Id*.

This well-established, analytical framework provides that if a statutory provision is challenged on equal protection grounds, it will be subject to one of three standards of scrutiny, depending on the nature of the right asserted or of the class of persons affected. The three standards are: (1) strict scrutiny, (2) heightened scrutiny, or (3) reduced scrutiny, applying the rational basis test. *Id.*; *Riggs v. Burson*, 941 S.W.2d 44, 52 (Tenn. 1997), *cert. denied*, 522 U.S. 982, 188 S.Ct. 444, 139 L.Ed.2d 380 (1997). We must first determine which scrutiny standard to apply to the legislation at issue by examining the relevant legal precedents and the class of persons affected.

The Equal Protection Clause has not been interpreted to mean that a state is prohibited from treating one class of individuals or entities differently from others. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359, 93 S.Ct. 1001, 1003, 35 L.Ed.2d 351 (1973). The United States Supreme Court has stated that in the realm of taxation, "if no specific federal right, apart from equal protection, is imperiled, the States have [great discretion] in making classifications and drawing lines which, in their judgment, produce reasonable systems of taxation." *Id.* For example, states are not required, for tax classification purposes, "to resort to close distinctions or to maintain a precise,

scientific uniformity with reference to composition, use or value." *Id.* States are also allowed to "impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products." *Id.* Disparate treatment is prohibited only when a legislative classification interferes with the exercise of a "fundamental right" or burdens a "suspect class." *Id.; State v. Smoky Mtn. Secrets, Inc.*, 937 S.W.2d 905, 911 (Tenn. 1996); *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 16, 93 S.Ct. 1278, 1287, 36 L.Ed.2d 16 (1973); *See also, Craig v. Boren*, 429 U.S. 190, 197, 97 S.Ct. 451 (1976); *Korematsu v. United States*, 323 U.S. 214, 65 S.Ct. 193 (1944).

A "suspect class", to which strict scrutiny applies, is defined as a group "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment or relegated to such a position of political powerlessness as to command extraordinary protection." *Brown v. Campbell*, 915 S.W.2d 407, 413 (Tenn. 1995), *cert. denied*, 517 U.S. 1222, 116 S.Ct. 1852, 134 L.Ed.2d 952 (quoting *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28, 93 S.Ct. 1278, 36 L.Ed. 2d 16 (1973)). Business owners who own health clubs or wellness centers that are for profit or do not otherwise meet the requirements of the legislation at issue do not conform to the definition of a "suspect class." *See Brown* at 413; *Newton v. Cox*, 878 S.W.2d 105, 109 (Tenn. 1994); *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28, 93 S.Ct. 1278, 1294, 36 L.Ed.2d 16 (1973). Nor can the operation of a health club properly be viewed as a "fundamental right." *See Lufkin v. Tennessee Department of Revenue*, 1995 WL 231446, *2 (Tenn. Ct. App.); *cf. Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359, 93 S.Ct. 1001, 1003, 35 L.Ed.2d 351 (1973). Therefore, this proposed legislation should be analyzed under the reduced scrutiny or rational basis test.

Under rational basis scrutiny, a statutory classification will be upheld if "some reasonable basis can be found for the classification . . . or if any state of facts may reasonably be conceived to justify it." *Riggs v. Burson*, 941 S.W.2d 44, 53 (Tenn. 1997), *cert. denied*, 522 U.S. 982, 188 S.Ct. 444, 139 L.Ed.2d 380 (1997) (quoting *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993)). Several different "reasonable" bases can be postulated for the exemption of nonprofit, family wellness centers from property taxes. Perhaps the drafters of this legislation wish to encourage the maintenance and expansion of such wellness centers so as to enhance the overall wellness and health of all Tennesseans. It is also possible that the drafters see the exemption as a vehicle to assist those centers in reallocating funds from administrative expenses to charitable projects. Each of the stated criteria in the proposed act has an obvious rational basis, so that, taken as a whole, the classification is a reasonable one. Moreover, even though the exemption may be tailored to cover the YMCA, it is not so peculiar as to preclude other similar worthwhile organizations from coming within its scope. Thus, as Article XI, Section 8 requires, other members of the community may be able to bring themselves within the provisions of this law, should it be enacted.

As long as such a "reasonable basis" is conceivable, the General Assembly may, without violating the constitution, exercise considerable discretion in enacting statutes for tax purposes that provide different classifications for different entities, products or professions. Such statutes will not

be subject to strict scrutiny provided that the classifications are not "suspect" and do not abridge "fundamental rights." As SB 2659 (Amend. 3)/HB2324 (Amend. 1) does not involve a suspect classification or a fundamental right and several possible rational bases exist for its enactment, it is the opinion of this office that the proposed legislation is constitutional under Article XI, Section 8.

This Office does not give an opinion on whether the proposed legislation violates any other provision of the Tennessee Constitution. In particular, the underlying issue as to whether such an exemption falls within the Legislature's power under Article II, Section 28 to exempt property "held and used for purposes purely religious, charitable, scientific, literary or educational" is not before this Office. As you have informed us, that issue is currently under review in an administrative proceeding pending before the State Board of Equalization. It is a longstanding policy of this Office not to opine on matters currently under administrative review.

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