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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January 4, 2001

Opinion No. 01-001

Jurisdiction of General Sessions Courts — Boating Regulation Violations

QUESTIONS

Whether Tenn. Code Ann. § 69-10-221 precludes a preliminary hearing before the general sessions court and a subsequent bind-over to criminal court?

OPINIONS

Tenn. Code Ann. § 69-10-221 cannot constitutionally preclude a preliminary hearing before a general sessions court and a subsequent bind-over to criminal court unless a person, firm, or corporation charged with violating the provisions of the chapter waives the right to a jury trial in writing.

ANALYSIS

Tenn. Code Ann. § 69-10-221 provides:

> The court of general sessions of any county of the State of Tennessee is hereby given final jurisdiction to try and convict persons, firms, or corporations violating any of the provisions of this chapter or the rules and regulations promulgated thereunder, subject to any proper appeal or writ of error.

This provision has apparently never been challenged or construed. Nevertheless, your question raises an issue that implicates the constitutionality of the provision under Art. I, § 14 of the Tennessee Constitution if the statute were construed as precluding a preliminary hearing and a subsequent bind-over to a criminal court for a jury trial.

Tenn. Code Ann. § 40-1-109 vests general sessions courts with jurisdiction to try and render final judgment in all misdemeanor cases brought before the court by warrant or information when the charged person enters a plea of guilty in writing or requests a trial on the merits and expressly waives an indictment, presentment, grand jury investigation, and jury trial. The statutory provision requires that the waiver be in writing as provided by Rule 5, Tenn. R. Crim P.

Rule 5(b), Tenn. R. Crim P., permits small offenses to be tried before a magistrate exercising general sessions court jurisdiction. The Advisory Commission Comments to Rule 5 point out that, after a trial for a small offense upon a plea of not guilty with a resulting conviction, the defendant has a right to a *de novo* trial on appeal but no right to a jury trial because that right does not extend to small offenses, *i.e*., to offenses with penalties of $50.00 fines or less and no confinement. Limiting the right to a jury trial to greater than "small offenses" is consistent with the holding in *State v. Dusina*, 764 S.W.2d 766, 767 (Tenn. 1989), that the right to a jury trial under Tenn. Constitution VI § 14 is established for those charged with violating general criminal statutes that carry a fine of more than $50 and confinement.

Courts zealously safeguard the constitutional right to a jury trial for charges other than small offenses. For example, the court in *State v. Jarnigan*, 958 S.W.2d 135, 137 (Tenn. Crim. App. 1997), reversed the convictions of the defendant in general sessions court and in the criminal court based on his argument that he never waived his right to a jury trial on charges that he violated Tenn. Code Ann. § 55-9-107, a Class C misdemeanor. Even though the defendant had had two bench trials and never requested a jury in either, the reviewing court reversed based on the premise that "the right of a person charged with a crime to be tried by jury of his or her peers is fundamental to our criminal justice system." *Id*. at 137.

Chapter 10 of Title 69 makes a violation of any of the provisions in the chapter a Class C misdemeanor and a violation of Tenn. Code Ann. § 69-10-216(a) a Class A misdemeanor. Tenn. Code Ann. § 69-10-219(a)(b). The authorized terms of imprisonment for Class C misdemeanors is up to 30 days or a fine not to exceed $50, or both; imprisonment terms for Class A misdemeanors are up to 11 months, 29 days or a fine not to exceed $2,500, or both. Tenn. Code Ann. § 40-35-111(d)(1)(3). Violations of Tenn. Code Ann. § 69-10-217(a) are Class A misdemeanors with fines ranging from a minimum of $250.00 for the first offense to a minimum of $1,000.00 for the third or subsequent conviction. Tenn. Code Ann. § 69-10-219(c)(1).

Based on the foregoing, this Office concludes that Tenn. Code Ann. § 69-10-221 cannot constitutionally preclude a preliminary hearing before a general sessions court and a subsequent bind-over to criminal court unless a person, firm, or corporation charged with violating the provisions of the chapter waives the right to a jury trial in writing pursuant to Rule 5, Tenn. R. Crim P.

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