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June 27, 2001

Opinion No. 01-106

Constitutionality of Pawnshop Bill

QUESTIONS

1. The caption to Senate Bill 1801/House Bill 1548 provides:

> AN ACT to amend Tennessee Code Annotated, Section 45-6-209, relative to pawnshop transactions.

The body of the act, as enacted by the General Assembly, amends Tenn. Code Ann. § 45-6-209, but also adds two new statutory sections to the pawnshop law. Does the act violate Article II, Section 17 of the Tennessee Constitution because its body is broader than its caption?

2. By its terms, Senate Bill 1801/House Bill 1548 establishes a "pilot program" in counties that fall within specified population brackets. Only two counties fall within these brackets. In these counties, and these counties only, licensed pawnbrokers will be required to take and maintain a copy of a thumbprint from an individual pawning property. Is the Pawnshop Bill unconstitutional because it only applies in two counties?

OPINIONS

1. We think the act is defensible because it amends no existing statutes besides Tenn. Code Ann. § 45-6-209, and the additional statutory sections are germane to its subject.

2. We think the Pawnshop Bill is defensible against a challenge that it violates state and federal equal protection requirements because there is a rational basis for the classification. Further, we think a court would conclude that the limitations in Article XI, Section 9 of the Tennessee Constitution do not apply to the Pawnshop Bill because it imposes criminal penalties.

ANALYSIS

1. Constitutionality under Article II, Section 17 of the Tennessee Constitution

This opinion concerns the constitutionality of Senate Bill 1801/House Bill 1548, as recently amended and enacted by the House and Senate (the "Pawnshop Bill"). As a general matter, there is a strong presumption in favor of the constitutionality of acts passed by the legislature. *See, e.g., Bozeman v. Barker*, 571 S.W.2d 279, 282 (Tenn. 1978); *West v. Tennessee Housing Development Agency*, 512 S.W.2d 275, 279 (Tenn. 1974). The burden of proof rests on one challenging the constitutionality of the statute to rebut the presumption that the act is constitutional. *State Personnel Recruiting Services Board v. Horne*, 732 S.W.2d 289, 291 (Tenn. Ct. App. 1987). The first question concerns the constitutionality of the bill under Article II, Section 17 of the Tennessee Constitution, regarding bill captions. This provision states:

> **Origin and frame of bills. —** Bills may originate in either House; but may be amended, altered or rejected by the other. No bill shall become a law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended.

The caption of the Pawnshop Bill provides:

> AN ACT to amend Tennessee Code Annotated, Section 45-6-209, relative to pawnshop transactions.

As amended, Section 1 of the Pawnshop Bill amends Tenn. Code Ann. § 45-6-209 by adding a new subsection (b)(7). Under that provision, pawnbrokers in counties that fall within certain population brackets must take a thumbprint from an individual pawning property. The print must be maintained with other records of the pawnbroker. Section 3 of the bill also amends Tenn. Code Ann. § 45-6-209 by adding new subsections regarding pawn transactions involving a firearm in a county or municipality that requires a thumbprint under subsection (b)(7).

Section 2 of the Pawnshop Bill adds a new Section 45-6-222 to the present pawnbrokers law. That statute sets forth the process by which a law enforcement officer may obtain a thumbprint taken under Tenn. Code Ann. § 45-6-209(b)(7). The section also adds a new Section 45-6-223. This statute prohibits a law enforcement officer or agency from using a thumbprint obtained under Tenn. Code Ann. § 45-6-209(b)(7) for the purpose of racial profiling. The statute provides for enforcement and penalties for the violation of this prohibition. Finally, Section 2 of the Pawnshop Bill adds a new Section 45-6-224. Under that statute, pawnshops required to take a thumbprint under Tenn. Code Ann. § 45-6-209(b)(7) must post a notice, specified in the statute, near the place where the pawn transaction will occur.

Article II, Section 17 is to be construed liberally, and a court will presume that the caption adequately expresses the subject of the body of the act. *Chattanooga-Hamilton County Hospital Authority v. City of Chattanooga*, 580 S.W.2d 322 (Tenn. 1979). The courts have used various tests

for the proper construction of this constitutional provision, but "'the true rule of construction, as fully established by the authorities, is, that any provision of the act, *directly or indirectly relating to the subject expressed in the title*, and having a natural connection thereto, and not foreign thereto, should be held to be embraced in it.'" *Id.* at 326 (emphasis in original, quoting *Cannon v. Mathes*, 55 Tenn. 504, 521(1872). The Tennessee Supreme Court recently discussed Article II, Section 17 as follows:

> The Constitutional language was "to prohibit so-called 'omnibus bills' and bills containing hidden provisions which legislators and other interested persons might not have appropriate or fair notice." Nonetheless, the provision was to be liberally construed, so that the General Assembly would not be "unnecessarily embarrassed in the exercise of its legislative powers and functions."
>
> This Court also recognized early that titles to acts may be general and broad or restrictive and narrow, and that the legislature has the right to determine for itself how comprehensive the object of the statute will be. Moreover, if the title is general or broad and comprehensive, all matters which are germane to the subject may be embraced in the act. *If the matters are naturally and reasonably connected with the subject expressed in the title, then they are properly included in the act.* If, on the other hand, 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, 336-37 (Tenn. 1997) (emphasis added; citations omitted). In that case, the Court addressed the constitutionality of an act that contained the following caption:

> AN ACT to amend Tennessee Code Annotated, Title 6, Chapter 1, Part 2; Title 6, Chapter 18, Part 1; and Title 6, Chapter 30, Part 1, relative to the distribution of situs-based tax collections after new municipal incorporations and the timing of elections to incorporate new municipalities.

1997 Tenn. Pub. Acts, Ch. 98. Several sections of the act amended Tenn. Code Ann. § 6-1-201 to liberalize the requirements for the incorporation of new municipalities. Among other arguments, the plaintiff cities contended that the amendment was invalid under Article II, Section 17. The Court found that the subject of the act was the amending of the statutory schemes enumerated in the caption, but that the phrase "relative to . . . " made the caption restrictive. The Court concluded that the act violated Article II, Section

17 because the body of the bill included amendments that fell outside the "relative to . . . " clause in the caption.

The Tennessee Supreme Court has also concluded that a caption stating that its purpose was to amend a particular statute "relative to verdict and sentence on felony conviction" was restrictive. *Farris v. State*, 535 S.W.2d 608 (Tenn.1976). The Court found that the body of the act could not constitutionally amend the specified statute relative to a judge's charge to a jury in felony prosecutions. Similarly, the Court concluded that an act with a caption specifying the statutory schemes it was to amend could not amend other statutes not mentioned in the caption. *State v. Chastain,* 871 S.W.2d 661 (Tenn. 1994).

We think Senate Bill 1801 is distinguishable from the acts found to be unconstitutional in these cases. In *State v. Chastain*, the body of an act amended an existing statute entirely outside the statutory schemes specified in its title. In *Farris* and *Tennessee Municipal League,* the body of the act amended the statute specified in the caption but regarding a subject outside the restrictive title. But the caption of Senate Bill 1801 specifies a single statute to be amended, Tenn. Code Ann. § 45-6-209, "relative to pawnshop transactions." Tenn. Code Ann. § 45-6-209 describes the records that a licensed pawnbroker must maintain of pawn transactions. When any section of the official Code is amended the members of the Legislature are presumed to know the nature of the section sought to be amended. *Pharr v. N.C. & St. L. Ry.*, 186 Tenn. 154, 208 S.W.2d 1013 (1948).

In this case, each of the new sections added to the statutory scheme on pawnshop transactions is directly germane to the amendment that the act makes to Tenn. Code Ann. § 45-6-209, namely, the requirement that licensed pawnbrokers in certain counties must take a thumbprint from individuals pawning property. New Section 45-6-222 details the process by which a law enforcement officer can obtain a thumbprint required to be kept under Tenn. Code Ann. § 45-6-209. New Section 45-6-223 prohibits a thumbprint kept under Tenn. Code Ann. § 45-6-209 and obtained by a law enforcement officer from being used for the purpose of racial profiling. New Section 45-6-224 provides a detailed requirement for posting notice by any licensed pawnbroker required to take a thumbprint under Tenn. Code Ann. § 45-6-209. None of the provisions of the Pawnshop Bill amends any existing statute besides Tenn. Code Ann. § 45-6-209. Each of these statutes could just as easily and logically have been appended to Tenn. Code Ann. § 45-6-209. The provisions appear in new sections to prevent the amended statute from becoming unmanageably lengthy. For this reason, we think a court would conclude that each of the provisions in the body of the bill is germane to the subject of the bill, that is "amending Tennessee Code Annotated Section 45-6-209," and, further, falls within the clause "relative to pawnshop transactions."

2. Application in Two Counties

As discussed above, the Pawnshop Bill adds a new subsection (b)(7) to Tenn. Code Ann. § 45-6-209. That statute enumerates the information that a licensed pawnbroker must obtain from an individual pawning property. The new subsection (b)(7) provides:

> As a pilot project, in any county having a population in excess of eight hundred thousand (800,000), and in any county having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eighty-two thousand one hundred (382,100) according to the 2000 federal census or any subsequent federal census, the right thumbprint of the pledgor, provided that if taking the right thumbprint is not possible the pawnbroker shall take a fingerprint from the left thumb or another finger and shall identify on the pawn ticket which finger has been used. A thumb or fingerprint taken pursuant to this subpart shall be maintained by the pawnbroker for a period of five (5) years from the date of the pawn transaction.

The Pawnshop Bill also provides:

> If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

Under 2000 federal census results, two counties — Shelby and Knox — fall within the pilot program. Your question is whether the Pawnshop Bill is unconstitutional because it applies in only two counties. The only constitutional provisions this feature appears to implicate are the Equal Protection provisions of the Tennessee and United States Constitution and Article XI, Section 9 of the Tennessee Constitution regarding local or special laws.

A. Equal Protection

Article XI, Section 8 of the Tennessee Constitution provides in part:

> The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to 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 provision and Article I, Section 8 of the Tennessee Constitution, and the Fourteenth Amendment to the United States Constitution all guarantee to citizens the equal protection of the laws, and the same rules are applied under them as to the validity of classifications made in legislative enactments.

Brown v. Campbell County Board of Education, 915 S.W.2d 407, 412 (Tenn. 1995), *cert. denied*, 116 S.Ct. 1852 (1996). For the reasons discussed in Op. Tenn. Atty. Gen. 01-060 (April 17, 2001), we do not think this bill implicates a fundamental right, nor does it affect a suspect class. The statute would, therefore, be subject to review under the rational basis test.

1. Creation of a Pilot Program

Under the rational basis test, "[i]f some reasonable basis can be found for the classification, or if any state of facts *may reasonably be conceived to justify it*, the classification will be upheld." *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994) (citations omitted, emphasis added); *see also Estrin v. Moss*, 221 Tenn. 657, 667, 430 S.W.2d 345 (1968), *appeal dismissed*, 393 U.S. 318, 89 S.Ct. 554 (1969). Thus, the rational basis test is a lenient standard under which a defendant may satisfy its burden merely by demonstrating any *possible reason or justification* for the statute's passage. *Eye Clinic v. Jackson-Madison County General Hospital*, 986 S.W.2d 565, 579 (Tenn. Ct. App. 1998), *p.t.a. denied* (Tenn. 1999). Further, a classification having some reasonable basis does not offend equal protection merely because classification is not made with mathematical nicety, or because in practice it results in some inequality. *Wyatt v. A-Best Products Company, Inc.*, 924 S.W.2d 98 (Tenn. Ct. App. 1995) *as modified on rehearing, p.t.a. denied* (Tenn. 1996).

As we noted in Op. Tenn. Atty. Gen. 01-060 (April 17, 2001), the Tennessee Supreme Court has long recognized that regulation of the pawnbrokering business is a valid exercise of the State's police power to discourage burglaries, thefts, and robberies. *State v. Kirkland*, 655 S.W.2d 140, 142 (Tenn.1983). Legislation requiring licensed pawnbrokers to obtain a thumbprint from an individual pawning property is therefore clearly within the authority of the General Assembly. As Opinion 01-060 indicates, the General Assembly also considered legislation that would have imposed a requirement to obtain thumbprints on pawnbrokers statewide. The question, then, becomes whether the Pawnshop Bill violates the Equal Protection Clause because it establishes a pilot program in two counties. "[A] legislature is allowed to attack a perceived problem piecemeal . . .. Underinclusivity alone is not sufficient to state an equal protection claim." *Howard v. City of Garland*, 917 F.2d 898, 901 (5th Cir. 1990) (quoting *Jackson Court Condominiums v. City of New Orleans*, 874 F.2d 1070, 1079 (5th Cir. 1989), citing *City of New Orleans v. Dukes*, 427 U.S. 297 (1976). *See also Opinion of the Justices*, 135 N.H. 549, 608 A.2d 874 (1992) (implementation of pilot program in one part of the state does not violate equal protection). For this reason, we think applicability of the Pawnshop Bill is supported by a rational basis.

2. Rational Basis for Classification of Counties

Even if a court were to reject the argument that the Pawnshop Bill is supported by a rational basis because it implements a pilot program, we think the bill, to the extent that it applies only in Shelby and Knox Counties, is supported by a rational basis. The bill would apply in counties with a population of more than 800,000 under the 2000 federal census. Shelby County is the only county that falls within this population bracket. The Tennessee Court of Appeals has stated that a classification based on a population bracket

must have some relation to a distinctive characteristic of that size population. *Chattanooga Metropolitan Airport Authority v. Thompson,* No. 03A01-9610-CH-00319 (Tenn. Ct. App. 1997). We think a classification requiring more identification for pawn transactions in counties with larger populations can be justified by the larger number of pawnbrokers and the higher volume of pawn transactions in those counties. Because of these factors, we think the legislature could reasonably have concluded that police need more information in those counties to monitor pawn transactions for stolen property. For this reason, even if the legislative history of the bill does not reflect the basis for singling out the more populous counties, we think the classification is defensible against a challenge that it violates Article XI, Section 8 of the Tennessee Constitution. In this regard, we note that the pawnbroker statutes now in effect provide more requirements for pawnbrokers licensed in counties with a population in excess of 800,000 according to the 1990 federal census or any subsequent federal census. Tenn. Code Ann. § 45-6-206(a)(4); Tenn. Code Ann. § 45-6-209(f). For the reasons discussed above, we think the provision including counties with a population of more than 800,000 is supported by a rational basis.

The question then becomes whether there is also a rational basis for singling out Knox County for imposing the requirement that licensed pawnbrokers obtain a thumbprint from individuals pawning property. As noted above, the Tennessee Court of Appeals has stated that a classification based on a population bracket must have some relation to a distinctive characteristic of that size population. The Pawnshop Bill applies in any county ". . . having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eighty-two thousand one hundred (382,100) according to the 2000 federal census or any subsequent federal census." This is a very narrow population bracket. We have not reviewed the legislative history of the Pawnshop Bill. This Office, however, is unaware of any rational basis for singling out a county within this population bracket for different treatment. We note, however, that the Pawnshop Bill contains a severability clause. We think a court would conclude that, even if the act may not constitutionally apply to Knox County, it can constitutionally apply in Shelby County.

But the population bracket is very narrow. It is extremely unlikely that any other county besides Knox County will ever fall within this bracket. Further, the Pawnshop Bill refers to a "pilot program." No other county can even qualify for the program until the next federal census. For this reason, we think it can be argued that the classification is intended to apply to Knox County, and Knox County alone. We think there is a rational basis for singling out Knox County for application of the new requirement. The county has the third highest population in the State. More importantly, however, it is the site for a large public university. We think the General Assembly could rationally have concluded that such a county is uniquely situated because it has a large population of short-term residents and that, for this reason, police in Knox County need more information than other counties to monitor pawn transactions for stolen property. We think a court would therefore conclude that this classification is supported by a rational basis.

B. Article XI, Section 9

Under Article XI, Section 9 of the Tennessee Constitution:

> . . . any act of the General Assembly *private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.*
>
> Any municipality may by ordinance submit to its qualified voters in a general or special election the question: "Shall this municipality adopt home rule?"
>
> In the event of an affirmative vote by a majority of the qualified voters voting thereon, and until the repeal thereof by the same procedure, such municipality shall be a home rule municipality, *and the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect.*

Tenn. Const. Art. XI, § 9 (emphasis added). If the Pawnshop Bill is analyzed as a bill that applies only to Shelby and Knox Counties, then it is arguably "local in effect" within the meaning of this provision. Further, both Memphis and Knoxville are home rule municipalities. But the Pawnshop Bill imposes criminal penalties for violations. Neither the local approval requirement nor the home rule limitations imposed by Article XI, Section 9 of the Tennessee Constitution apply to the enactment of a criminal statute. *Jones v. Hayes*, 221 Tenn. 50, 424 S.W.2d 197 (Tenn. 1968). This Office has reached a similar conclusion with regard to the state statutory scheme governing gambling on horse racing. Op. Tenn. Atty. Gen. 89-37 (March 28, 1989). *See also Polk v. Edwards*, 626 So.2d 1128 (La. 1993) (the statutory scheme suspending the laws against gaming was not a local or special law even though it could only operate in Orleans Parish or on specific waterways). For this reason, we think a court would conclude that the Pawnshop Bill is not subject to review under Article XI, Section 9 of the Tennessee Constitution.

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