S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

June 29, 2001

Opinion No. 01-107

McMinn County General Sessions Judge's Salary

QUESTIONS

Under the 2000 federal census, McMinn County is classified as a county of the first class for purposes of determining its general sessions judge's salary under Tenn. Code Ann. § 16-15-5003. The McMinn County General Sessions Judge has been in office since 1986. The judge exercises juvenile court and probate court jurisdiction.

1. Should the new salary for the remainder of the judge's term since the new census figure became effective include juvenile and probate court supplements authorized under Tenn. Code Ann. § 16-15-205?

2. As a result of Tenn. Code Ann. § 16-15-5003(i), judges in counties of the first class who were actually receiving supplements under Tenn. Code Ann. § 16-15-205 on August 31, 1998 will continue to receive a salary that reflects those supplements. Would excluding the same jurisdictional supplements from the salary for judges in counties that have moved into counties of the first class as a result of the 2000 census violate legislative intent that judges in the same class counties with the same jurisdictions be paid equal salaries?

3. If the answer to Questions 2 and 3 is no, does the discrepancy in the method for calculating the salaries of general sessions judges in counties of the first class violate the United States Constitution?

OPINIONS

1. No. Tenn. Code Ann. § 16-15-205 was repealed in 1993. No statute currently in effect authorizes the payment of jurisdictional supplements to a judge in a county that is newly classified as a first class county.

2. Neither the statute nor the legislative history of the acts setting the salaries for general sessions judges reflects such intent.

3. No. The differences in treatment are rationally related to the legitimate state interest of retaining incumbent judges.

ANALYSIS

1. Treatment of Jurisdictional Supplements under Tenn. Code Ann. § 16-15-205

This opinion concerns the method of calculating the salary of the general sessions judge in McMinn County. Under the 1990 census, McMinn was a county of the second class under Tenn. Code Ann. § 16-15-5001. Under the 2000 census, McMinn has now become a county of the first class. The request indicates that the general sessions judge in McMinn County exercises juvenile and probate court jurisdiction. Under Tenn. Code Ann. § 16-15-5003, a judge in a county of the second class is entitled to salary supplements over the $50,000 base salary, up to a maximum of $20,000. No statute now in effect directly authorizes a general sessions judge in a county of the first class to receive any supplements over the $70,000 base salary to reflect additional jurisdiction.

Under Tenn. Code Ann. § 16-15-205, general sessions judges were entitled to salary supplements for exercising juvenile and probate court jurisdiction. The General Assembly expressly repealed that statute in 1993. But our Office concluded that Class 1 judges who took office before the repeal were entitled to continue receiving these supplements until the end of their current term — in most cases, until August 31, 1998. Op. Tenn. Atty. Gen. 94-44 (April 4, 1994). In 1997, the General Assembly amended Tenn. Code Ann. § 16-15-5003 to add subsection (i) regarding the salaries of general sessions judges for the term beginning September 1, 1998. That subsection provides:

> Effective September 1, 1998, the annual salary for a general sessions court judge shall be increased over the annual compensation and supplements and annual adjustments which each judge *actually received as of August 31, 1998*, by the lesser of:
>
> (A) Ten thousand dollars ($10,000); or
>
> (B) Twenty percent (20%) of such annual compensation and supplements and annual adjustments as of August 31, 1998.

(Emphasis added). Thus by its terms, Tenn. Code Ann. § 16-15-5003(i) provides that each judge reelected to office was entitled to receive an increase over the salary and supplement he or she *actually received* on August 31, 1998. Presumably, at least some judges in class one counties were still receiving additional jurisdictional supplements under Tenn. Code Ann. § 16-15-205 and Opinion 94-44 as of August 31, 1998. Those judges therefore received a $10,000 increase over their *actual* August 31, 1998, salary. If a class one judge was actually receiving jurisdictional supplements on August 31, 1998, then that judge's salary for the 1998 term will continue to reflect those jurisdictional supplements.

The request asks whether, because some judges in counties of the first class continue to receive a salary that reflects jurisdictional supplements, the salaries of judges whose counties move into class one as a result of the 2000 census should also reflect those supplements.

We have reviewed the legislative history for the various acts now codified at Tenn. Code Ann. § 16-15-5003. We do not think the General Assembly intended the statute to be interpreted to entitle individuals who were not actually receiving salary supplements under the repealed statute to receive them when their salary is recalculated. The effect of this interpretation would be to incorporate jurisdictional supplements no longer directly authorized by statute permanently into the base salary of the class one judge. The statutory language does not support this interpretation. Tenn. Code Ann. § 16-15-5003(i) nowhere purports to increase the base salary payable to a judge in a class one county. Further, the statute refers to an increase over the salary the judge was *actually receiving* as of August 31, 1998. It does not refer to an increase over the hypothetical maximum salary to which a general sessions judge in a class one county would have been entitled as of that date. In any case, as of that date no statute then in effect expressly authorized these supplements. Finally, Tenn. Code Ann. § 16-15-5003(i)(4)(A), enacted in 1997, expressly provides:

> (4) (A) The compensation, supplement and annual adjustment provisions of this section are to be construed as minimum levels. The compensation schedule established by *this part* is a comprehensive plan, and *no salary supplement in excess of the supplements provided by this part shall be available to a general sessions judge unless expressly provided and funded by a private act*.

(Emphasis added). Tenn. Code Ann. § 16-15-205 did not appear in Part 50 of the statute, but in Part 2. Further, that statute was repealed in 1993. Tenn. Code Ann. § 16-15-5003(i)(4)(A) therefore supports the argument that the General Assembly did not intend any judge besides those in office who were actually receiving supplements on August 31, 1998, to receive a salary reflecting supplements under that statute. For these reasons, we think that supplements formerly authorized under Tenn. Code Ann. § 16-15-205 should only be reflected in the salary of general sessions judges in counties of the first class who were *actually receiving* those supplements as of August 31, 1998.

2. Legislative Intent to Provide Uniform Compensation

The second question is whether excluding the same jurisdictional supplements from the salary for judges in counties that have moved into counties of the first class as a result of the 2000 census would violate legislative intent that judges in the same class counties with the same jurisdictions be paid equal salaries. The statutory language of Tenn. Code Ann. § 16-15-5003(i) reflects no such intent. On the contrary, by referring to the salary each judge *actually received* on August 31, 1998, as the base for the salary during that judge's next term, the General Assembly in effect preserved any discrepancies of pay existing among counties of the same class as of that date. Thus, if a class one judge was actually receiving

supplements as of that date, and he or she is elected to a subsequent term, that judge will continue to receive a salary that reflects the supplements. If a class one judge was not receiving such supplements as of that date, and he or she is elected to a subsequent term, that judge will receive a salary that does not reflect the supplements. For this reason, excluding jurisdictional supplements from the salary for judges in counties that have moved into counties of the first class as a result of the 2000 census does not contradict the General Assembly's legislative intent.

3. Constitutionality of Different Methods of Calculation

For the reasons discussed above, we conclude that the statute does not authorize a general sessions judge in a county that has moved into the first class as a result of the 2000 census to receive a salary that reflects jurisdictional supplements under Tenn. Code Ann. § 16-15-205. This Office has concluded that the salary for such an individual should be calculated as follows. The new base salary should be $70,000, plus all cost of living adjustments required for that salary from July 1, 1990, to July 1, 1998. To this figure should be added the actual one-time increase made to the McMinn County General Sessions Judge's salary effective September 1, 1998. We assume this increase was $10,000. To this figure should be added the cost of living adjustments required for that salary on July 1, 1999, and July 1, 2000. Op. Tenn. Atty. Gen. 01-024 (February 15, 2001)[1]. No general or private act appears to entitle the McMinn County General Sessions Judge to any salary supplements. The total salary may not be higher than the salary paid to a judge of a circuit court.

As the request indicates, a result of this interpretation is that the salaries of different general sessions judges exercising the same jurisdiction in counties of the first class will be calculated differently. Judges who were receiving supplements under Tenn. Code Ann. § 16-15-205 and Opinion 94-44 and who were reelected to office will receive a salary that continues to reflect those supplements. Judges in counties that moved into the first class as a result of the 2000 census will receive a salary that does not reflect those supplements. You ask whether this discrepancy violates the United States Constitution. The only provision this arrangement appears to implicate is the Equal Protection Clause of the Fourteenth Amendment.

The right of equal protection under the law guarantees that all persons similarly situated will be treated the same. *Hartford Steam Boiler Inspection and Insurance Company v. Harrison,* 301 U.S. 459, 57 S.Ct. 583. (1937). But equal protection of the law does not require equality of treatment where there is a reasonable and material difference between the classes of persons in question. *Rinaldi v. Yeagar,* 384 U.S. 305, 86 S.Ct. 1497; *Graham v. West Virginia,* 224 U.S. 616, 32 S.Ct. 582 (1966). A statutory scheme that involves no suspect classification and does not infringe on a fundamental right is subject to review under the rational basis test. Under that test, where a group possesses distinguishing characteristics relevant to the interests the State has the authority to implement, a state's decision to act on

[1] The request cites this opinion in support of the argument that "the proper method to calculate the new salary as a new first class county is to compute the new salary from September 1, 1990, as if the county were a first class county from that date to present." But that opinion did not address supplements for additional jurisdiction.

the basis of those differences does not give rise to a constitutional violation. *Board of Trustees of University of Alabama v. Garrett*, __ U.S. ___, 121 S.Ct. 955 (2001). Such a classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. *Id.* The State need not articulate its reasoning at the moment a particular decision is made; rather, the burden is upon the challenging party to negate any reasonably conceivable state of facts that could provide a rational basis for the classification. *Id.*

In the present case, the statutory scheme ensures that an incumbent judge who has been receiving salary supplements under the old statute will not experience a pay cut when his or her 1990 term expires and he or she begins a new term. We think this result is rationally related to the legislative interest of encouraging experienced judges to remain in office. By contrast, the maximum salary — excluding private act supplements — a judge can receive in a county of the second class is $70,000, plus cost of living increases and the $10,000 maximum increase. The maximum salary — excluding private act supplements — a judge of the first class can now receive under Tenn. Code Ann. § 16-15-5003, as interpreted in this opinion, is the $70,000 base, plus cost of living increases and the $10,000 maximum increase. It therefore appears that a judge in a county of the second class — regardless of the jurisdiction he or she was exercising — will not experience a pay cut as a result of the change in county classification if the new salary does not reflect the jurisdictional supplements under Tenn. Code Ann. § 16-15-205. For this reason, we think there is a rational basis for the different methods of calculation. *See, e.g., Gulbrandson v. Carey*, 272 Mont. 494, 901 P.2d 573 (1995), *rehearing denied* (1995) (a statute providing increased retirement benefits to judges who retired after its effective date was rationally related to the legislative purpose of providing an incentive for judges then serving to remain on the bench). For this reason, we think a court would conclude that the statutes for determining the salary of judges in counties of the first class comply with the Equal Protection Clause of the United States Constitution.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Robert S. McKee
State Representative
203 War Memorial Building
Nashville, TN 37243-0123