

STATE OF TENNESSEE

OFFICE OF THE
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Opinion No. 01-108

Salary of General Sessions Judge under New Population Classification

QUESTIONS

1. Under Tenn. Code Ann. § 16-15-5003, general sessions judges are entitled to a base salary and jurisdictional supplements based on the population of the county where their court is located. Under Tenn. Code Ann. § 16-15-5003(i), effective September 1, 1998, the annual salary of each general sessions judge was increased by ten thousand dollars or twenty percent of the salary that judge actually received as of August 31, 1998. Assume a judge in a county of the sixth class received an increase equal to twenty percent of the salary the judge was actually receiving as of August 31, 1998. That county, under the 2000 census results, is now a county of the fifth class. Should the judge's salary from 2000 on include an increase equal to twenty percent of the salary that judge would have been receiving if the county had been in the fifth class as of August 31, 1998?

2. Under Tenn. Code Ann. § 16-15-5003(f), beginning July 1, 1991, base salaries of general sessions judges were to be adjusted annually to reflect the change in the average consumer price index. The statute provides "[f]or each two percent (2%) increase in the average consumer price index between two successive calendar years, the base salaries shall be adjusted by one percent (1%)." Assume that for one year the increase in the consumer price index was three percent. Is the general sessions judge entitled to an adjustment of one and one-half percent, or only one percent?

OPINIONS

1. No. The statutory language does not support this interpretation.
2. The statute provides that the adjustment will be made to reflect two percent incremental changes. The judge is therefore entitled to an adjustment of one percent.

ANALYSIS

1. Salary Increase under Tenn. Code Ann. § 16-15-5003(i)

You have asked for a clarification of an opinion this Office issued concerning calculating the salary

of a general sessions judge whose county has, as a result of the 2000 census, moved into a different class under Tenn. Code Ann. § 16-15-5001. Op. Tenn. Atty. Gen. 00-190 (December 20, 2000). Under Tenn. Code Ann. § 16-15-5003(a), counties are divided into eight different classes, based on population according to the most recent census. General sessions judges are entitled to a base salary and jurisdictional supplements according to the classification of the county where their court is located. Tenn. Code Ann. § 16-15-5003(i) provides:

(i) (1) 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.

(2) Notwithstanding any other provision of law to the contrary, each full-time general sessions court judge in a county shall receive the same compensation as the most highly compensated general sessions court judge in that county if such judges have the same jurisdiction.

(3) Instead of the annual adjustments authorized in subsection (f), on July 1, 1999, and each succeeding July 1, the base salaries as adjusted annually and supplements as adjusted annually established by this section shall be adjusted in accordance with the provisions of § 8-23-103.

(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.

(B) Notwithstanding any provision of law to the contrary, a judge of a court of general sessions may not be paid compensation based on both this part and the compensation provisions in a private act.

(C) Nothing in this part shall be construed as prohibiting a county, by private act, from compensating its general sessions judge or judges at levels in excess of what is required by this part. Any private or public act in effect on September 1, 1998, that provides greater compensation for

a general sessions judge than is required by this section shall, to the extent of the judge's amount of compensation, prevail over the provisions of this part, and the base salary of such judge shall be the salary paid to the holder of that office on August 31, 1998, pursuant to such public or private act plus a percentage increase thereto equivalent to the same percentage increase herein given by § 16-15-5003(i)(1) to a judge of a Class 6 county determined as of August 31, 1998.

Tenn. Code Ann. § 16-15-5003(i) (emphasis added). Your first question concerns the salary of a judge whose county was in the sixth class as of September 1, 1998, but which under the 2000 census results is now a county of the fifth class. In our Opinion 00-190, we concluded that this judge's new salary should include the base salary for a judge of the fifth class, plus all the annual cost of living increases made under Tenn. Code Ann. § 16-15-5003(f). To that amount should be added the increase that the judge actually received on September 1, 1998, under Tenn. Code Ann. § 16-15-5003(i). Supplements for additional jurisdiction for a judge in a county of the fifth class should be added to that amount. That result is then subject to annual cost of living increases under Tenn. Code Ann. § 16-15-5003(i)(3).

Your question specifically addresses the increase made to general sessions judges under Tenn. Code Ann. § 16-15-5003(i)(1). You ask whether this salary increase should be adjusted to reflect a twenty percent increase in the amount the judge would have been receiving on September 1, 1998, if the county, at that time, had been a county of the fifth class. We have reviewed the material attached to your request including arguments supporting this interpretation. The material argues that, if this adjustment is not made, judges within the same class county exercising equal jurisdiction will be receiving slightly different salaries. The material argues, further, that this result is unconstitutional under the Equal Protection Clauses of the Tennessee and United States Constitution.

We have reviewed the statutory arguments as well as the legislative history of the statutes governing the compensation of general sessions judges. We do not believe the statutory language of Tenn. Code Ann. § 16-15-5003(i)(1) supports the interpretation that the salary increase made September 1, 1998, must be recalculated when, after September 1, 1998, a county is placed in a higher classification under Tenn. Code Ann. § 16-15-5001(a). The language refers to an increase over the salary the judge "*actually received*" as of August 31, 1998. Further, the language appears in a separate subsection from the subsection establishing base salaries, and it nowhere purports to raise the base salaries. For these reasons, we conclude that Tenn. Code Ann. § 16-15-5003(i)(1) was intended to give a one-time increase to all judges as of September 1, 1998. That increase does not change when, as a result of a later census, the judge is entitled to a higher base salary.

We agree that, under this interpretation of Tenn. Code Ann. § 16-15-5003(i)(1), a judge in a county of the sixth class that has been reclassified as a county of the fifth class under the 2000 census results will receive a slightly lower salary than a judge exercising the same jurisdiction in a county of the fifth class that was in that class as of September 1, 1998. We do not agree, however, that this result makes the

statute unconstitutional under the Equal Protection Clause of the Tennessee and United States Constitution.

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, immunities, [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.

Tenn. Code Ann. § 16-15-5003(i)(1) does not discriminate among judges in the same class; each judge receives a salary based on the salary that judge was actually receiving as of the same date. The increase is calculated according to the same formula, with a \$10,000 maximum. Similarly, Tenn. Code Ann. § 16-15-5003(a) does not discriminate among judges in the same class.

In support of its argument that Opinion 00-190's interpretation of Tenn. Code Ann. § 16-15-5003(i) is unconstitutional, the material cites several cases interpreting statutes that provide for the salary of county officials. *See, e.g., Hobbs v. Lawrence County*, 193 Tenn. 608, 247 S.W.2d 73 (Tenn. 1952). In that case, the Tennessee Supreme Court found that the General Assembly could not constitutionally authorize county legislative bodies to opt out of a statutory system setting the salaries for county officials statewide. The Court stated:

Where it definitely appears on the face of a general law that it is intended to apply to all citizens alike, and purports to represent the public policy of the State such as fixing the salaries of county officials . . . such law is not subject to emasculation by local authorities. . . . [Based on the statutory scheme and legislative amendments since 1921] [i]t has been definitely decided that the compensation of county officials is not a "private or local affair" within the meaning and intent of Article 11, Section 9 of the Constitution. The Legislature itself is not privileged to suspend the general law and discriminate between counties in fixing salaries.

247 S.W.2d at 76 (citations omitted). By contrast, Tenn. Code Ann. § 16-15-5003 expressly authorizes a county, under a private act, to pay a general sessions judge a salary in excess of that set by the statute. Whether or not a statute violates Article XI, Section 8 depends upon whether it suspends a general law "mandatorily applicable statewide." *Rector v. Griffith*, 563 S.W.2d 899, 904 (Tenn. 1978). Where a statute does not suspend any other laws, or such laws are not "mandatorily applicable statewide," then the General Assembly possesses "almost unlimited discretion to enact private legislation affecting the structure and organization of local government units." *Id.* We think a court could conclude that Tenn. Code Ann.

§§ 16-15-5001, *et seq.*, is not a statute of mandatory statewide application because it expressly provides for counties, by sponsoring and adopting a private act, to pay a general sessions judge a salary in excess of the levels set in the statute. For this reason, the fact that different judges in the same class receive different salary levels does not violate Article XI, Section 8 of the Tennessee Constitution because the different arrangements do not suspend a statute of mandatory statewide application.

Even if a court concluded that the statutory scheme does set forth a statute of mandatory statewide application, Tenn. Code Ann. § 16-15-5003(i) does not suspend a general law. The statute itself applies statewide on an equal basis. The statute itself, read together with Tenn. Code Ann. § 16-15-5003(a), brings about the result that different general sessions judges within the same class will receive slightly different salaries. This result is therefore by operation of the statute itself. It does not suspend a general law; it *is* a general law.

In any case, we think the differences in salary levels resulting from the increase under Tenn. Code Ann. § 16-15-5003(i) are constitutional under Article XI, Section 8 and the Equal Protection Clause of the United States Constitution. Article XI, Section 8 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). The right of equal protection of 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 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.*

Under Tenn. Code Ann. § 16-15-5003(i)(1), each general sessions judge was to receive a salary increase based on the salary he or she actually received as of August 31, 1998. We think a court would conclude that there is a rational basis to support a salary increase calculated in this manner. The increase reflects the jurisdiction each judge was exercising and the class of the county where the judge's court was located on the same day. Further, the method of calculation permits the county to determine the increase based on its own records of what the judge was receiving as of August 31, 1998. For these reasons, we

think a court would conclude that there is a rational basis for the statute as interpreted.

2. Cost-of-Living Increases under Tenn. Code Ann. § 16-15-5003(f)

The second question concerns calculating cost of living increases under Tenn. Code Ann. § 16-15-5003(f). That statute provides:

(f) (1) On July 1, 1991, the base salaries established by this section shall be adjusted in accordance with the provisions of subdivision (f)(2) to reflect the percentage of change in the average consumer price index (all items - city average) as published by the United States department of labor, bureau of labor statistics, between calendar year 1989 and calendar year 1990. Each succeeding July 1, a similar adjustment shall be made upon the percentage of change in the average consumer price index between the two (2) calendar years preceding July 1 of the year in which the adjustment is made. However, no reduction shall be made by way of adjustment on account of any decrease in the average consumer price index between the two (2) successive calendar years.

(2) For each two percent (2%) increase in the average consumer price index between two (2) successive calendar years, the base salaries shall be adjusted by one percent (1%). No annual adjustment shall exceed four percent (4%) regardless of the increase in the average consumer price index between any two (2) successive calendar years. Annual adjustments shall be made upon the base salary set out in subsection (a) and such adjustment shall not include any supplement that may be received pursuant to subsection (b) or (c).

Tenn. Code Ann. § 16-15-5003(f) (emphasis added). You ask whether, under this statute, a general sessions judge is entitled to an increase equal to half the actual percentage increase in the consumer price index for that year. For example, if the consumer price index increases three percent, you ask whether a judge should receive an increase of one and one-half percent, or of one percent. We think the statute provides that incremental increases are to be provided to reflect each two percent change in the consumer price index. For this reason, where the consumer price index increases three percent, general sessions judges should receive an increase of one percent.

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