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

September 4, 2001

Opinion No. 01-142

Constitutionality of H.B.2030, relative to a proposed optional bail bond procedure for individuals required to appear in the Overton County General Sessions Court.

QUESTIONS

Under Tenn. Code Ann., Title 40, Chapter 11, Part 1, as to methods of setting and making bail in criminal cases, this bill would create a new and additional method for executing bail bonds for appearances within the general sessions court of any county within a narrowly defined population bracket that presently only includes Overton County. This bill would not modify present law over the execution of bail bonds in any other way, and it would only apply to the general sessions court in Overton County.

1. Would H.B.2030, if enacted as filed, suspend the general law, either Tenn. Code Ann. § 40-11-122 or any other law, for the benefit of criminal defendants in Overton County?

2. If the answer to No. 1 is "yes," would the proposed act violate Article XI, §8 of the Tennessee Constitution?

OPINIONS

1. Yes, H.B. 2030 would suspend the general law only as to persons required to appear before the Overton County General Sessions Court.

2. Yes, the proposed act appears to violate Article XI, §8, in that there is no apparent rational basis for suspending the general law only for the Overton County General Sessions Court. Absent such a rational basis, the act would violate Article XI, §8 of the Tennessee Constitution.

ANALYSIS

1. This bill would allow individuals appearing before the Overton County General Sessions Court, and only this court, to make bail by paying a cash bail security in the amount of ten percent of the bail amount set by the appropriate judicial commissioner or judge, but only so long as the individual agrees to pay the full bail amount if such individual fails to appear in court as directed. Failure to appear as required would result in forfeiture of the ten percent paid as a cash bail deposit or security. The security would later be applied to any fine, restitution, attorney fees or court costs imposed by the court. If the case against the one making bail under this bill were to be dismissed, then the deposit would be returned within 30 days of the dismissal, minus a clerical fee of five percent of the security or $10.00, whichever is greater. If the case were referred to the grand jury, then the same case bail deposit would remain in effect, or the court could direct that a different bond procedure be used thereafter.

This bill would suspend the general law of the state as to bail bond procedures, including the scheme set out within Tenn. Code Ann. § 40-11-122 involving bond secured by real estate or surety, for the Overton County General Sessions Court. It is the opinion of this office that providing this option only to persons appearing before the Overton County General Sessions Court would suspend a general law of mandatory statewide application.

2. It is the opinion of this office that this proposed act would violate Article XI, §8 absent a showing of a rational basis for this additional bail bond procedures in the Overton County General Sessions Court than those provided by general law. Generally, any legislation affecting different counties or cities within their governmental or political capacity must satisfy the requirements of Article I, §8 and Article XI, §8 of the Tennessee Constitution. *Jones v. Haynes*, 221 Tenn. 50, 424 S.W.2d 197 (1968); *Brentwood Liquors Corporation v. Fox*, 496 S.W.2d 454 (Tenn. 1973). These constitutional provisions generally prohibit the General Assembly from suspending any general law for the benefit of any particular individual. Since this bill would contravene the general law enumerated within Title 40, Chapter 11, Part 1 of the Tennessee Code Annotated, a constitutionality issue under Article XI, §8 would be raised by this proposed act. *Riggs v. Burson*, 941 S.W.2d 44, 78 (Tenn. 1997), *reh'g denied* (1997), *cert. denied*, 118 S.Ct. 444 (1997).

The classification created by this bill would satisfy Article XI, §8 if the bill is supported by a rational basis. *Harrison v. Schrader*, 569 S.W.2d 822, 825 (Tenn. 1978) The proper question is "whether the classifications have a reasonable relationship to a legitimate state interest." *Doe v. Norris*, 751 S.W.2d 834, 841 (Tenn. 1988). The burden of showing that the classification is unreasonable and arbitrary is upon an individual challenging the act. If any state of facts could reasonably be conceived to justify the classification, or if the reasonableness of the class is fairly debatable, then the act must be considered constitutional. *Id.* at 825-826.

The Tennessee Supreme Court addressed the issue of a rational basis within *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994), where it noted the following:

> [T]he classification must not be merely arbitrary selection. It must have some basis which bears a natural and reasonable relation to the object sought to be accomplished, and there must be some good and valid reason why the particular individual or class upon which the benefit is conferred, or who are subject to the burden imposed, not given to or imposed upon others should be so preferred or discriminated against. *There must be reasonable and substantial differences in the situation and circumstances of the persons placed in different classes which disclose the propriety and necessity of the classification. . . . The fundamental rule is that all classification must be based upon substantial distinctions which make one class really different from another; and the characteristics which form the basis of the classification must be germane to the purpose of the law. . . .*

Id. at 829. (emphasis in original) (quoting *State v. Nashville, Chattanooga & St. Louis Railway Co.*, 124 Tenn. 1, 135 S.W. 773 (1910)). The Supreme Court there overturned the statutory provision that allowed second-offense DUI offenders in Davidson, Moore and Shelby Counties to serve their mandatory 45-day jail sentences in work release programs. The Supreme Court found "no rational basis for distinguishing between the three counties to which the act is limited and all the other counties of the State." *Id.*

It is the opinion of this office that this proposed act may be constitutionally suspsect. The proposed act does not disclose any reason why the general session court of the one county falling within the narrow population bracket of the bill should be treated differently than all other Tennessee courts. With nothing further to support a rational basis, a court could deem this proposed act as unconstitutional under Article XI, §8 if there is not a sufficient showing of a rational basis for the resulting differing treatment. *See also State v. Whitehead*, ___ S.W.3d ___ (Tenn. Crim. App., September 26, 2000) (holding that the County Purchasing Law of 1957, applicable only to 14 counties, is unconstitutional, in violation of equal protection guarantees).

However, if the proposed act, either on its face or in some other method within its legislative history, were to present and support a rational basis for the differing treatment, then Artile XI, §8 may be satisfied.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

JOHN H. BLEDSOE
Assistant Attorney General

Requested by:

The Honorable Lincoln Davis
Senator, 12th Senatorial District
Suite 6-A, Legislative Plaza
Nashville, Tennessee 37243-0212