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Opinion No. 02-014

Legislator's Oath of Office

QUESTIONS

1. If a legislator is fully aware of the constitutional ban on lotteries, including cases decided by the Tennessee Supreme Court on the issue, does he or she violate his or her oath of office by voting for legislation that allows a charity to engage in a lottery or game of chance under the rationale that the charity is collecting the funds as a charitable contribution rather than as consideration?

2. Assuming the answer to Question 1 is yes, would the violation be reviewable for possible sanctions by the Ethics Committee of either the House of Representatives or the Senate?

OPINIONS

1. and 2. Any claim that a legislator violated his or her oath of office by voting for any particular bill is barred by legislative immunity. Under Article II, Section 12 of the Tennessee Constitution, either house of the General Assembly has the sole authority to decide whether one of its members has violated the oath of office and to determine the appropriate sanctions for such action.

ANALYSIS

Article X, Section 2 of the Tennessee Constitution provides as follows:

> Each member of the Senate and House of Representatives, shall before they proceed to business take an oath or affirmation to support the Constitution of this State, and of the United States and also the following oath: I ..... do solemnly swear (or affirm) that as a member of this General Assembly, I will, in all appointments, vote without favor, affection, partiality, or prejudice; and that I will not propose or assent to any bill, vote or resolution, which shall appear to me injurious to the people, or consent to any act or thing, whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this State.

Tenn. Const. art. X, § 2. You note that the Tennessee Constitution prohibits the General Assembly from

authorizing lotteries. Tenn. Const. art. XI, § 5. You also cite several Tennessee Supreme Court cases interpreting this constitutional provision. You ask whether a legislator who is aware of the constitutional ban and the cited cases would violate the oath of office by voting on legislation that allows a charity to engage in a lottery or game of chance under the rationale that the charity is collecting funds connected with the game of chance as a charitable contribution rather than as a consideration. We assume your question is whether, by voting for legislation that is clearly unconstitutional, a legislator has violated his or her oath of office to support the Tennessee Constitution.

This opinion does not address the constitutionality of the legislation you describe. Under Tennessee law, legislators are absolutely immune from any kind of lawsuit arising out of an act that is part of the Legislature's deliberative process. *Mayhew v. Wilder,* 46 S.W.3d 760 (Tenn.Ct.App. 2001), *p.t.a. denied* (2001). For this reason, we think any claim that a legislator violated his or her oath of office by voting for any particular bill is barred by legislative immunity. *Lucchesi v. Colorado*, 807 P.2d 1185 (Colo.Ct.App. 1990), *rehearing denied* (1990), *cert. denied* (1991) (members and officers of the Colorado legislature enjoyed absolute immunity from a lawsuit based on their alleged violation of their oaths of office as legislators by being part of a legislative body that adopted unconstitutional statutes).

Your second question is whether the Ethics Committee of either the House of Representatives or the Senate is authorized to review a legislator's violation of the oath of office for possible sanctions. Article II, Section 12 of the Tennessee Constitution provides:

> Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the Legislature of a free State.

Under this provision, we think either house of the General Assembly has the sole authority to decide whether one of its members has violated the oath of office and to determine the appropriate sanctions for such action.

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