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 11, 2002

Opinion No. 02-097

Payment Professional Privilege Tax

QUESTION

The professional privilege tax, Tenn. Code Ann. §§ 67-4-1701, *et seq.*, was recently amended to exclude full-time state employees. Does the tax still apply to a general sessions judge in Meigs County?

OPINION

Because a general sessions judge is not a "full-time state employee" within the meaning of this new exemption, the exemption does not apply to a general sessions judge.

ANALYSIS

This opinion concerns the applicability of the professional privilege tax, Tenn. Code Ann. §§ 67-4-1701, *et seq.* The tax is levied, among other individuals, on persons licensed as attorneys by the Supreme Court of Tennessee. Tenn. Code Ann. § 67-4-1702(a)(5). During the last legislative session, the General Assembly amended the professional privilege tax statutes by adding the following new section 67-4-1710:

> The provisions of this part shall not apply to full-time state employees.

2002 Tenn. Pub. Acts Ch. 856, § 7. The tax applies to persons licensed as attorneys by the Supreme Court of Tennessee. Tenn. Code Ann. § 67-4-1702(a)(5). General sessions judges are generally required to be licensed to practice law in Tennessee. Tenn. Code Ann. § 16-15-5005(a).

The tax law, as amended, does not define the term "state employee." That term is defined in Tenn. Code Ann. § 8-42-101(3)(A), which provides in relevant part:

> (3) (A) "State employee" means any person who is a state official, including members of the general assembly and legislative officials elected by the general assembly, or any person who is employed in the service of and whose compensation is payable by the state, or any person who is employed by the state whose compensation is paid in

> whole or in part from federal funds, but does not include any person employed on a contractual or percentage basis.

The salary of a general sessions judge is paid by the county. Tenn. Code Ann. § 16-15-5006(a). Moreover, courts have held that a general sessions judge is a county officer for other purposes. *State ex rel. Winstead v. Moody,* 596 S.W.2d 811 (Tenn. 1980); *Durham v. Dismukes*, 333 S.W.2d 935, 206 Tenn. 448 (1960). For these reasons, a general sessions judge is not a "full-time state employee" within the meaning of the exemption from the privilege tax under Tenn. Code Ann. § 67-4-1710.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Jayne Johnston-Crowley
General Sessions Judge
Meigs County General Sessions Court
P.O. Box 205
Decatur, TN 37322-0205