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Opinion No. 03-030

State Lottery — Application of discrimination law to lottery scholarship program

QUESTIONS

1. Would the State violate age discrimination laws if the State awards lottery scholarships only to students who attend college immediately after graduation from high school?
2. Would the State violate discrimination laws if the State denies lottery scholarships to college students who are under the age of 40 and who graduated high school several years before their enrollment in college?

OPINIONS

1. No. Generally, there is no state or federal law that prohibits age discrimination in these circumstances. Furthermore, while the federal and state constitutions guarantee equal protection, the State need only have a rational basis for legislative classifications based on age.
2. No, for the same reasons stated in the analysis of Question 1.

ANALYSIS

1. Based on the facts presented in your letter, it does not appear that the State would be liable for a claim of age discrimination if lottery scholarships were awarded to students who attended college immediately after graduation. While there are laws that prohibit discrimination against individuals who are at least 40 years old, these statutes generally pertain to discrimination in employment and public accommodations.¹ See, e.g., Tenn. Code Ann. § 4-21-101(a)(3) (prohibiting employment and public accommodations discrimination against persons at least 40 years old); 29

¹The Tennessee Human Rights Act defines "public accommodation" as "any place, store or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public, or which is supported directly or indirectly by government funds . . ." Tenn. Code Ann. § 4-21-102(15). Generally, "[a] public accommodation is limited to a physical place and cannot be applied to the contents of . . . benefit plans." *Kolling v. Blue Cross & Blue Shield of Michigan*, 318 F.3d 715, 716 (6th Cir. 2003).

U.S.C. §§ 621 *et seq.* (prohibiting employment discrimination against persons who are at least 40 years).

Furthermore, it does not appear that equal protection guarantees will be implicated. The equal protection provisions of the state and federal constitutions guarantee that all persons similarly circumstanced shall be treated alike; these provisions do not, however, require absolute equality. *Tennessee Small School Sys. v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993) ("If [the different treatment] has a rational basis, it is not unconstitutional merely because it results in some inequality.")

An equal protection challenge based on age would be subject to a rational basis test. *Vogel v. Wells Fargo Guard Services*, 937 S.W.2d 856, 858 (Tenn. 1996); *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 83 (2000). Under the rational basis test, a classification will be upheld upon a finding of "some reasonable basis" or "if any state of facts may reasonably be conceived to justify it." *McWherter*, 851 S.W.2d at 153. Thus, assuming that the State could articulate a rational basis for the lottery scholarship eligibility requirements, the statute would not violate state or federal equal protection guarantees.

2. The preceding analysis applies equally to your second question. There is no state or federal statute that prohibits discrimination against individuals under the age of 40 years. Similarly, under an equal protection analysis, any legislative classification that affected individuals under a certain age would also be subject to the rational basis test described above. *See, e.g., State v. Crain*, 972 S.W.2d 13, 15 (Tenn. Ct. App. 1998); *United States v. Maxwell*, 160 F.3d 1071, 1075-76 (6th Cir. 1998).

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