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Opinion No. 03-033

Senate Bill 1332/House Bill 977 - Governmental Tort Liability Act - Constitutionality

QUESTIONS

1. Whether Senate Bill 1332/House Bill 977, which extends the definition of "governmental entity" under Tenn. Code Ann. § 29-20-102 to nonprofit public benefit corporations operating hospitals in counties with a population of 897,400 to 897,500 according to the 2000 Federal Census or any subsequent Federal Census, violates Article XI, Section 8 of the Tennessee Constitution which prohibits the suspension of the general law without a rational basis.

2. If not, whether Senate Bill 1332/House Bill 977 violates Article XI, Section 9 of the Tennessee Constitution which prohibits the enactment of a general law of local application without the 2/3's approval of the relevant local legislative body or a majority vote of the voters in the relevant political subdivision.

OPINIONS

1. It is the opinion of this Office that Senate Bill 1332/House Bill 977, if enacted, would not violate Article XI, Section 8 of the Tennessee Constitution as there is a rational basis justifying its application to a single not-for-profit hospital in Shelby County, Tennessee.

2. It is the opinion of this Office that Senate Bill 1332/House Bill 977, does not require local approval under Article XI, Section 9 of the Tennessee Constitution as it is not local legislation that affects a municipality or county "either in its governmental or proprietary capacity."

ANALYSIS

The first question concerns whether Senate Bill 1332/House Bill 977 violates Article XI, Section 8 of the Tennessee Constitution which provides in relevant 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, immunitie [sic], 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.

The Tennessee courts have applied a rational basis test for determining whether a statute violates the above-quoted constitutional provision. Under the rational basis test, "[i]f some reasonable basis can be found for the classification, or if any state of facts may reasonably be conceived to justify it, the classification will be upheld." *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994) (citations omitted, emphasis added); *see also Estrin v. Moss*, 221 Tenn. 657, 667, 430 S.W.2d 345 (1968), *appeal dismissed*, 393 U.S. 318, 89 S.Ct. 554 (1969). Thus, the rational basis test is a lenient standard under which a defendant may satisfy its burden merely by demonstrating any possible reason or justification for the statute's passage. *Eye Clinic v. Jackson-Madison County General Hospital*, 986 S.W.2d 565, 579 (Tenn. Ct. App. 1998), *p.t.a. denied* (Tenn. 1999). Further, a classification having some reasonable basis does not offend equal protection merely because classification is not made with mathematical nicety, or because in practice it results in some inequality. *Wyatt v. A-Best Products Company, Inc*., 924 S.W.2d 98 (Tenn. Ct. App. 1995) as modified on rehearing, *p.t.a. denied* (Tenn. 1996).

Senate Bill 1332/House Bill 977 proposes to expand the definition of "governmental entities" in Tenn. Code Ann. §20-20-102(3) which is the definitional statute for terms under the Tennessee Governmental Tort Liability Act. Specifically, Senate Bill 1322/House Bill 977 proposes to add the following language at the end of the definition of "governmental entities":

> [A]ny . . . nonprofit public benefit corporation operating a hospital whose voting board of directors (or governing body) is appointed, designated or elected by one (1) or more of the herein named local governmental entities, and which hospital corporation either: (i) Receives funds appropriated by a county legislative body or a legislative body of a municipality; or (ii) Receives or leases real property from a county and/or municipality.

Senate Bill 1332/House Bill 977 also limits the applicability of the above-quoted definition to counties with a population of not less than 897,400 and not more than 897,500 according to the 2000 Federal Census or any subsequent federal census. At present Senate Bill 1332/House Bill 977 applies only to Shelby County. Furthermore, it is this Office's understanding that within Shelby County, Senate Bill 1332/House Bill 977 applies only to the Regional Medical Center at Memphis, known as the "Med."

In analyzing Senate Bill 1332/House Bill 977 under Article XI, Section 8 of the Tennessee Constitution, the first question is whether its application to only one county in the State (Shelby County) by population classification can be justified by a rational basis. The Tennessee Court of Appeals has stated that a classification based on a population bracket must have some relation to a distinctive characteristic of that size population. *Chattanooga Metropolitan Airport Authority v. Thompson*, 1997 WL 129366 (Tenn. Ct. App. 1997). In this instance, the population classification

of not less than 897,400 and not more than 897,500 according to the 2000 Federal Census or any subsequent federal census applies only to Shelby County. A rational basis for covering not-for-profit hospitals under the Governmental Tort Liability Act (GTLA) in only the largest county in the State (Shelby County) could be due to the size of the population, *i.e.*, there is a much greater indigent population in need of medical care than anywhere else in the State.

The next question under Article XI, Section 8 of the Tennessee Constitution then becomes whether there is a rational basis for expanding the definition of "governmental entity" to include the Med, thereby extending coverage of the GTLA to only that entity and none other in Shelby County. Based upon information provided to this Office, it is this Office's understanding that from 1829 until 1981, the hospital now known as the Med was a government-owned and operated hospital being owned by the federal government, the State of Tennessee, the City of Memphis and Shelby County at one time or another during this period. In 1981, the Med was chartered as a not-for-profit corporation pursuant to a resolution of the Shelby County Commission. The twelve members of the Board of Directors are appointed by the Shelby County Mayor. Shelby County leases all real and personal property of the former government-owned hospital to this not-for-profit corporation for $1 for 50 years. Furthermore, the lease between Shelby County and this not-for-profit corporation requires all meetings of its board of directors to be open in compliance with the Open Meetings Act. Finally, this not-for-profit corporation is required to submit its annual budget to Shelby County to determine the amount of annual county appropriation to fund the budget.

Based on these facts, one may conclude that there is a rational basis for extending the term "governmental entity" under Tenn. Code Ann. § 29-20-102(3) to include the Med. The Med is not just another not-for-profit corporation. The hospital facility existed for more than 150 years as a government-owned hospital. Furthermore, the Med in its present form is subject to control by a governmental entity, *i.e.*, Shelby County appoints the members of the Board of Directors and funds its budget. Senate Bill 1332/House Bill 977 expands the definition of "governmental entity" to include the Med so as to provide the immunity protection of the Governmental Tort Liability Act to that entity and its employees. It would be reasonable for the General Assembly to extend that coverage to the Med in light of the fact that it is controlled by Shelby County even though it is a not-for-profit corporation. Furthermore, this Office is unaware of any other not-for-profit corporation that runs a former government-owned hospital in this state and is controlled by the governmental entity that formerly owned, operated and managed that hospital. These factors are more than sufficient to conclude that there is a rational basis justifying this proposed legislation.

As to the second question, Article XI, Section 9 of the Tennessee Constitution states the following:

> The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General Assembly private or local in form

> or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

Tennessee Courts have held that Article 11, Section 9 of the Tennessee Constitution does not apply to private acts which relate to special school districts, because special school districts are not 'municipalities' within the language of that section. *Perritt v. Carter*, 204 Tenn. 611, 325 S.W.2d 233 (1959). Senate Bill 1332/House Bill 977 applies to the Med, which is a not-for-profit corporation. The Med is neither a municipality nor a county. Accordingly, Article XI, Section 9 of the Tennessee Constitution does not apply to the proposed legislation. In addition, Senate Bill 1332/House Bill 977 does not affect either Shelby County or the City of Memphis in their "governmental or propriety capacities." Thus, there is no requirement that the proposed legislation include a provision requiring local approval.

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