S T A T E O F T E N N E S S E E
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Opinion No. 03-061

Enforcement of Municipal Ordinance in State Court

QUESTIONS

1. Can the Legislature authorize the enforcement of a municipal ordinance in State court.

2. If the answer is yes, can the legislature authorize enforcement of a municipal ordinance which imposes a fine over fifty dollars for enforcement of the ordinance.

OPINIONS

1. Yes.

2. Yes. Provided that fines exceeding $50 are subject to assessment by a jury if punitive in purpose or effect.

ANALYSIS

1. TENN. CODE ANN. § 4-21-601 forbids discrimination in housing opportunities on the basis of race, color, creed, religion, sex, handicap, familial status or national origin. Bill 607 amends TENN. CODE ANN. § 4-21-601(e), which provides that the section may be enforced by appropriate civil action, to also provide:

> In addition to the remedies provided under this part, any local or municipal government who has enacted a fair housing ordinance in connection with this part may enforce the provisions of the ordinance in the circuit court of the county in which the violation occurred.

Under Article VI, section 1, the General Assembly may determine how many and what kind of courts are required for the administration of justice and fix the limit of their jurisdiction. *State ex rel Ward v. Murrey*, 169 Tenn. 688, 90 S.W.2d 945 (1936). The proposed amendment allows

enforcement of local ordinances which have been enacted in connection with this statute.[1] Pursuant to the constitutional provision, a legislature may extend the jurisdiction of its courts to effect the purpose of the statute.

2. The Tennessee Supreme Court in *City of Chattanooga v. Davis*, 54 S.W.2d 3d 248 (2001) addressed whether a monetary assessment imposed for a violation of a municipal ordinance is subject to the provisions of Article VI, Section 14 of the Tennessee Constitution. "The Fifty-Dollar Fines Clause" prohibits fines exceeding $50 unless assessed by a jury. The proposed amendment does not address what sanctions the Legislature intends to make available to a local or municipal government to enforce local ordinances prohibiting discrimination in housing. However, any such provision would be subject to the Supreme Court's interpretation of the clause in *City of Chattanooga*. There, the Court ruled that:

> Accordingly, we hold that a monetary sanction imposed for a municipal ordinance violation falls within the scope of Article VI, section 14 when: (1) the legislative body creating the sanction primarily intended that the sanction punish the offender for the violation of an ordinance; or (2) despite evidence of remedial intent, the monetary sanction is shown by the "clearest proof" to be so punitive in its actual purpose or effect that it cannot legitimately be viewed as remedial in nature.

As a result, the intention of the municipal legislative body in creating the enforcement provisions of any local ordinance would determine whether Article VI, section 14 is implicated. We have not been asked to address a specific municipal ordinance in this context. However, "the Fifty Dollar Fines" clause would not prohibit the Legislature from enacting Bill 607. Any municipal ordinance created pursuant to Bill 607 would, however, be subject to the restrictions of Article VI, section 14, and the Supreme Court's decision in *City of Chattanooga*.

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[1]This letter does not address whether this part or any provision of the Tennessee Human Rights Act authorizes a local or municipal government to enact legislation pursuant to them.

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Requested by:

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