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Opinion No. 03-065

Lottery Scholarships; Home Schooled Students

QUESTION

Do the lottery scholarship qualifying criteria contained in Senate Bill 437 with regard to home schooled students violate the Tennessee Constitution's Equal Access Clause in that they treat home schooled students differently than public and private school students.

OPINION

No. Article XI, § 12 does not apply in this instance. For the classifications created under the proposed legislation to pass muster if challenged under Tenn. Const. Art. 1 § 8, the General Assembly would have to have a rational basis for placing different eligibility requirements on students who have completed a home school program.

ANALYSIS

Senate Bill 437, Section 1, deals with lottery scholarships and establishes student eligibility criteria. The bill creates two classes or groups of students, and they are (1) students who have graduated from an eligible high school and (2) students who have either graduated from an ineligible high school, completed a home school program that meets state requirements or obtained a GED. Standardized minimum test score eligibility requirements are the same for all students except those who have obtained a GED. Students with a GED must have an ACT score of 23 or a SAT score of 1060. All other students must have an ACT of 19 or a SAT of 890.

Article XI, § 12, of the Tennessee Constitution states as follows:

> The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such postsecondary educational institutions, including public institutions of higher learning, as it determines.

Under this constitutional article, the State's duty to provide for a system of free public schools covers kindergarten through twelfth grades. The State has the option to establish and support postsecondary educational institutions, but is not required to do so. Also, this constitutional article does not require the General Assembly to provide free public higher educational institutions. Thus different treatment of students eligible for higher education scholarships is not controlled by this provision.

Article I, Section 8 of the Tennessee Constitution, guarantees equal protection of the laws. Ordinarily, unless a classification places a burden on a "suspect class" of persons (such as one based on race) or interferes with the exercise of a fundamental right (such as the right to vote), it will be upheld under an equal protection analysis if there is a rational basis for the classification. *See, e.g., Wygant v. Jackson Board of Education*, 476 U. S. 267, 274, 106 S.Ct. 1842 (1986). Under rational basis scrutiny, a statutory classification will be upheld if "some reasonable basis can be found for the classification . . . or if any state of facts may reasonably be conceived to justify it." *Riggs v. Burson*, 941 S.W.2d 44, 53 (Tenn. 1997).

Generally, the "legislation need not, on its face, contain the reasons for a certain classification." *Civil Service Board v. Burson*, 816 S.W.2d 725, 730-31 (Tenn. 1991), citing *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439, 442 (Tenn. 1978). Rather, "if any possible reason can be conceived to justify the classification it will be upheld and deemed reasonable." *Civil Service Board*, 816 S.W.2d at 731. Reasonableness depends upon the facts of the case, and no general rule can be formulated for its determination. See *Harrison v. Schrader*, 569 S.W.2d 822, 825-26 (Tenn. 1978).

In the present context, the concern would be the reasonableness of the proposed legislation, which has two sets of scholarship eligibility criteria, depending upon how the student obtained a secondary education. The proposed legislative classifications do not involve a fundamental right or a suspect class. Therefore, the classifications would have to meet the rational basis test to be constitutional. If the General Assembly has a reasonable basis for requiring some students to meet one set of lottery scholarship eligibility criteria and other students a second set of eligibility criteria, a court could find the proposed legislation constitutional.

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