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Opinion No. 03-122

Effect of 2003 Tenn. Pub. Acts Ch. 226: Functions of Juvenile Court Clerk

QUESTION

Under 2003 Tenn. Pub. Acts Ch. 226, no later than July 1, 2006, in those counties where the general sessions court is also the juvenile court, the clerk of the court of general sessions or the clerk and master will also serve as the juvenile court clerk "unless otherwise provided by law." Does this provision override any private acts that the county may have in effect?

OPINION

No. The phrase "unless otherwise provided by law" means that any conflicting private acts will continue to apply. The act also specifically exempts several counties from its operation.

ANALYSIS

This opinion concerns 2003 Tenn. Pub. Acts Ch. 226. Section 1 amends Tenn. Code Ann. § 37-1-210 by inserting a new sentence between the first and second sentences. As amended, the statute provides:

> In those counties in which the general sessions court is also the juvenile court, the clerk of the court exercising juvenile jurisdiction in such counties prior to May 19, 1982, shall serve as clerk of the general sessions court when it is exercising juvenile jurisdiction after May 19, 1982, unless otherwise provided by law. *No later than July 1, 2006, in those counties in which the general sessions court is also the juvenile court, the clerk of the court of general sessions or the clerk and master shall also serve as the juvenile court clerk, unless otherwise provided by law.* Such clerks shall maintain separate minutes, dockets and records for all matters pertaining to juvenile court proceedings as required by law. County legislative bodies may,

> in their discretion, provide additional compensation to general sessions court judges in such counties.[1]

The act inserted the italicized sentence. It should be noted that juvenile court judges are constitutionally required to be elected. *Shelby County Election Commission v. Turner*, 755 S.W.2d 774 (Tenn. 1988). The office of clerk and master, by contrast, is an appointive office. Tenn.Const. Art. VI, § 13. To the extent that the act authorizes a clerk and master to act as a juvenile court clerk, therefore, it is unconstitutional.

Section 2 of the act deletes Tenn. Code Ann. § 37-1-211 in its entirety. That section, now deleted, provided:

> The appropriate legislative body of a county having a special juvenile court may by resolution designate the duly elected clerk of another court of that county to serve as clerk of the special juvenile court. In any county in which the legislative body does not designate a duly elected clerk of another court to serve as clerk of the special juvenile court, the judge of such special juvenile court shall appoint a clerk or an administrator of the court, except in counties where a duly elected clerk is otherwise provided by law. Clerks of such special juvenile courts shall, under the supervision of the judge, keep all records of the court, and shall have all the duties, authorities, and obligations provided by law for clerks of other courts of record of this state, and shall give an appropriate surety bond for the faithful performance of their duties.

Section 3 of the act states that "[n]othing in this act shall be construed as affecting special juvenile courts authorized by law or elected juvenile court clerks." Under Tenn. Code Ann. § 37-1-202(2), "special juvenile court" means "a court created by law with jurisdiction limited to those matters contemplated in this title and other general laws of this state." Sections 4 through 8 of the act exclude counties within several population brackets from operation of the act. Section 9 is a severability clause. Under Section 10, the act took effect July 1, 2003.

Legislative history of the act indicates that it was intended to transfer the duties of juvenile court clerk from the office of the county court clerk in counties where that official continues to exercise those responsibilities. House Session May 8, 2003 (remarks of Representative Buck). By its terms, however, the act applies "unless otherwise provided by law," and expressly exempts counties in several different population brackets. As the act is written, therefore, it does not override conflicting private acts, and it does not apply at all in those counties exempted from its operation.

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[1] The Tennessee Supreme Court found the last sentence of this statute unconstitutional in *Franks v. State*, 772 S.W.2d 428, 430 (Tenn. 1989).

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