

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

September 25, 2003

Opinion No. 3-123

Amendment to In Lieu of Tax Payments Statute

QUESTIONS

1. 2003 Tenn.Pub.Acts Ch. 405 contains the heading "AN ACT to amend Tennessee Code Annotated, Title 7 and Title 13." The body of the act amends Tenn. Code Ann. § 7-53-305(g). Does the act violate Article II, Section 17 of the Tennessee Constitution requiring each bill to have one subject expressed in its title?

2. 2003 Tenn.Pub.Acts Ch. 405 amended Tenn. Code Ann. § 7-53-305(g). Under the subsection as amended, an industrial development board may agree with a lessee to accept in lieu of tax payments that are less than the taxes that would be payable if the property were owned by a private owner, but only if certain conditions are met. The provision is applicable only in counties with a population of 897,400 to 897,500 and in counties with a population of 51,900 to 52,000, according to the 2000 federal census or any subsequent federal census. Only two counties meet these qualifications. Does the subsection, as amended, violate Article XI, Section 8 of the Tennessee Constitution?

OPINIONS

1. The caption of the act meets the requirements of Article II, Section 17 of the Tennessee Constitution.

2. Absent a rational basis for the different treatment of an industrial development board's power to negotiate in lieu of tax payments in counties within two narrow population brackets, we think this act is constitutionally suspect under Article XI, Section 8 of the Tennessee Constitution.

ANALYSIS

1. Article II, Section 17 of the Tennessee Constitution

This opinion concerns the constitutionality of 2003 Tenn.Pub.Acts Ch. 405. As a general matter, there is a strong presumption in favor of the constitutionality of acts passed by the legislature. *See, e.g., Bozeman v. Barker*, 571 S.W.2d 279, 282 (Tenn. 1978); *West v. Tennessee Housing Development Agency*, 512 S.W.2d 275, 279 (Tenn. 1974). The burden of proof rests on one

challenging the constitutionality of the statute to rebut the presumption that the act is constitutional. *State Personnel Recruiting Services Board v. Horne*, 732 S.W.2d 289, 291 (Tenn. Ct. App. 1987). The first question concerns the constitutionality of the act under Article II, Section 17 of the Tennessee Constitution, regarding bill captions. This provision states:

Origin and frame of bills. — Bills may originate in either House; but may be amended, altered or rejected by the other. No bill shall become a law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the *title* or substance of the law repealed, revived or amended.

(Emphasis added). The caption of Chapter 405 provides:

AN ACT to amend Tennessee Code Annotated, Title 7 and Title 13.

The body of the act amends Tenn. Code Ann. § 7-53-305(g). Article II, Section 17 is to be construed liberally, and a court will presume that the caption adequately expresses the subject of the body of the act. *Chattanooga-Hamilton County Hospital Authority v. City of Chattanooga*, 580 S.W.2d 322 (Tenn. 1979). The courts have used various tests for the proper construction of this constitutional provision, but “the true rule of construction, as fully established by the authorities, is, that any provision of the act, *directly or indirectly relating to the subject expressed in the title*, and having a natural connection thereto, and not foreign thereto, should be held to be embraced in it.” *Id.* at 326 (emphasis in original, quoting *Cannon v. Mathes*, 55 Tenn. 504, 521(1872)). *See also Tennessee Municipal League v. Thompson*, 958 S.W.2d 333, 336-37 (Tenn. 1997) (restrictive caption).

In this case, the subject of the act is amending two titles of the Tennessee Code Annotated, Title 7 and Title 13. The body of the act amends one code section, Tenn. Code Ann. § 7-53-305. This section falls within Title 7. An act whose caption is broader than its body does not violate Article II, Section 17 of the Tennessee Constitution. *Witt v. McCanless*, 200 Tenn. 360, 292 S.W.2d 392 (1956). The act, therefore, does not violate Article II, Section 17.

2. Article XI, Section 8 of the Tennessee Constitution: Equal Protection

The second question is whether Tenn. Code Ann. § 7-53-305(g), as amended, violates Article XI, Section 8 of the Tennessee Constitution. Tenn. Code Ann. § 7-53-305(g), as amended, now provides:

(g) An industrial development corporation may not negotiate any payment in lieu of tax agreement for less than the county ad valorem taxes otherwise due unless:

(1) The corporation is a joint corporation organized by the county and one or more of the municipalities therein;

(2) The corporation has entered into an interlocal agreement with the county in regard to payments in lieu of ad valorem taxes; or

(3) The corporation has received written approval from the chief executive and the legislative body of the county regarding payments in lieu of ad valorem taxes.

The provisions of this subsection (g) shall apply to any county having a population of not less than eight hundred ninety-seven thousand four hundred (897,400) nor more than eight hundred ninety-seven thousand five hundred (897,500) and at least five (5) industrial development corporations formed under title 7, chapter 53, or any county having a population of not less than fifty-one thousand nine hundred (51,900) nor more than fifty-two thousand (52,000), both according to the 2000 federal census or any subsequent federal census.

The 2003 act replaced the last sentence of subsection (g) with the italicized language. According to the population tables in Volume 13 of the Tennessee Code Annotated, according to the 2000 census only Shelby County falls within the first population classification, and only Roane County falls within the second.

The statute implicates the equal protection provisions of the United States and Tennessee Constitutions. U.S. Const. Amend. XIV; Tenn. Const. Art. I, § 8 & Art. XI, § 8. The United States Supreme Court has stated that, where taxation is concerned and no specific federal right apart from equal protection is implicated, “the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.” *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359, 93 S.Ct. 1001, 1003, 35 L.Ed.2d 351 (1973). In general, a state's classification for tax purposes does not violate the Equal Protection Clause of the Fourteenth Amendment unless it is “invidious” or “palpably arbitrary.” *Id.*, 93 S.Ct. at 1004. Similarly, the Tennessee Supreme Court has held that a tax classification that does not interfere with a “fundamental right” (such as the right to vote) or implicate a “suspect class” (such as race) will be subject only to a rational basis test. *Bates v. Alexander*, 749 S.W.2d 742, 743 (Tenn. 1988). The person challenging a tax classification has the burden of showing that it is unreasonable and arbitrary, and “if any state of facts can reasonably be conceived to justify the classification or if the unreasonableness of the class is fairly debatable, the statute must be upheld.” *Id.*, citing *Harrison v. Shrader*, 569 S.W.2d 822, 826 (Tenn. 1978).

This Office has concluded that the bill adding subsection (g) to the statute in 2002 was constitutionally suspect under Article XI, Section 8 of the Tennessee Constitution. Op. Tenn. Atty. Gen. 02-044 (April 9, 2002). That opinion concerned Senate Bill 2367/House Bill 2920, later enacted as 2002 Tenn.Pub.Acts Ch. 712. Under the bill considered in that opinion, the new subsection (g) applied only in Shelby County. Our Office concluded that the bill created an exception to the general law, as well as an exception to the exception to the general law, without any evident rational basis for the exception. We think the same reasoning applies to the 2003 amendment. Under the general law, nothing prevents most industrial development corporations from waiving all payments in lieu of ad valorem taxes, so long as the agreement meets specific requirements in Tenn. Code Ann. § 7-53-305(b). The only exception is for projects located in an area designated as the center-city area by a municipality in which there has been created a central business improvement district created under Tenn. Code Ann. §§ 7-84-101, *et seq.* With regard to those projects, the law provides that an industrial development corporation may not fix in lieu of property taxes below the taxes otherwise due and payable by a tax paying entity upon the current fair market value of the leased properties, or the taxes that were or would have been payable on the leased properties just before the industrial development board acquired them, whichever is less.

Subsection (g) of Tenn. Code Ann. § 7-53-305, therefore, imposes a restriction that does not exist with regard to most industrial development projects and lifts a restriction that does exist with regard to a particular subset of industrial development projects, namely those in the center-city area in a central business improvement district created under Tenn. Code Ann. §§ 7-84-101, *et seq.* Each of these results — an exception to the general law, and an exception to an exception — is constitutionally suspect absent a rational basis for the different treatment of projects located in counties within two narrowly defined population brackets.

With regard to projects that are not located in a center-city area within the meaning of subsection (b), subsection (g) now provides that an industrial development corporation may negotiate payments in lieu of taxes for less than the county ad valorem taxes otherwise due only if one of three different conditions is met. This restriction would apply only in counties within two narrow population brackets, in effect, only to Shelby and Roane Counties. This Office is unaware of any rational basis for treating projects in counties within these two population brackets differently from projects in other counties. Similarly, with regard to projects that are located in a city-center area within the meaning of subsection (b), the bill would provide that an industrial development corporation may negotiate payments at a level less than the minimum mandated under that provision, so long as one of three conditions is met. Again, this Office is unaware of any rational basis for treating projects in a center-city area in counties within two narrow population brackets differently

from projects in other counties. For this reason, we think the act is constitutionally suspect under Article XI, Section 8 of the Tennessee Constitution.¹

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Randy McNally
State Senator
307 War Memorial Building
Nashville, TN 37243-0205

¹ As enacted, 2003 Tenn.Pub.Acts Ch. 405 only applies to two counties, each in a narrow population bracket, and thus, it is also subject to challenge under Article XI, Section 9 of the Tennessee Constitution because it does not provide for local approval. We will not discuss this issue further because, even if the act did provide for local approval, it would still be constitutionally suspect under Article XI, Section 8 of the Constitution.