S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
SECOND FLOOR CORDELL HULL BUILDING
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243-0488

November 7, 2003

Opinion No. 03-143

Probate Court Clerk in Unicoi County

QUESTION

2003 Tenn. Pub. Acts Ch. 310 deletes Title 16, Chapter 16, Part 1, in its entirety. Section 2 of this act provides in part that "[n]o later than July 1, 2006, notwithstanding any law or public, private, special or local act to the contrary, no county clerk shall serve as clerk of a court with probate jurisdiction." Under 1981 Tenn. Priv. Acts Ch. 98, probate jurisdiction in Unicoi County was vested in the Unicoi County General Sessions Court. The same act assigns various functions to the Unicoi County Court Clerk. Does Chapter 310 remove probate jurisdiction from the Unicoi County General Sessions Court and the Unicoi County Court Clerk and assign those functions to the Chancery Court and the Clerk and Master?

OPINION

Chapter 310 does not transfer probate jurisdiction from the Unicoi County General Sessions Court. Under the act, however, all probate functions now performed by the Unicoi County Court Clerk under 1981 Tenn. Priv. Acts Ch. 98 must be transferred to the Clerk of the Unicoi County General Sessions Court or the Clerk and Master no later than July 1, 2006.

ANALYSIS

This opinion concerns the effect of 2003 Tenn. Pub. Acts Ch. 310 on probate matters in Unicoi County. Section 1 of the act deletes Part 1 of Chapter 16 of Title 16 of the Tennessee Code in its entirety. That statutory scheme established a county court in each county to deal with probate matters. Section 2 of the act added the following subdivision (a)(1) to Tenn. Code Ann. § 18-6-106, regarding administration of estates:

> No later than July 1, 2006, *notwithstanding any law or public, private, special or local act to the contrary*, no county clerk shall serve as clerk of a court with probate jurisdiction. No later than July 1, 2006, in any county in which the county clerk is performing this function, the duties as to administration of estates and guardian appointments shall be vested in either the clerk of the court with probate jurisdiction or the clerk and master. No later than July 1, 2006, in any county in which the county clerk is the only clerk of the

> court with probate jurisdiction, these duties shall be transferred to the clerk and master.

(Emphasis added). Section 2 of this act exempts counties in a population bracket from the act. Under the 2000 federal census, Sevier County falls within this bracket and is exempted from the act. Sections 3, 4, and 5 of the act delete Tenn. Code Ann. §§ 18-6-107, -108 and -110. These statutes all assigned duties related to the administration of estates to the county court clerk. Sections 6 through 10 exempt counties in various population brackets from the act. Under the 2000 census, Putnam, Rutherford, Lauderdale, Loudon, Cannon and Dickson Counties fall within the specified brackets and are exempted from the act. No provision exempts Unicoi County from the act.

Section 1 of 1981 Tenn. Priv. Acts Ch. 98 provides:

> The Judge of the General Sessions Court of Unicoi County is hereby vested with jurisdiction over the probate of wills and the administration of estates, and all matters relating thereto, previously vested in the County Court, the County Judge or County Chairman, and the Chancery Court. However, to assist the Judge of the General Sessions Court, the County Court Clerk shall be authorized and empowered to grant letters of administration and letters testamentary, appoint administrators and executors, receive and adjudicate all claims, probate wills in common form, determine allowances to surviving spouse and family of the deceased, preside over the assignment of homestead, direct and approve final distributions, and hear and determine all probate matters whether herein enumerated or not. Subject to the approval of the General Sessions Judge, such clerk may also take and state all accounts and settlements. The Judge of the General Sessions Court shall hear all probates in solemn form and may hear such other probate matters as he may deem proper. All action taken by the County Court Clerk shall be subject to review by the Judge of the General Sessions Court by simple motion, petition, or the filing of exceptions as may be appropriate.

The duties of the clerk of a court having probate jurisdiction are set forth in Tenn. Code Ann. § 18-6-106, which Chapter 310 has now designated as subsection (b). These duties are somewhat different from those accorded the Unicoi County Court Clerk under the private act. But the duties accorded the Unicoi County Court Clerk clearly include functions performed by the probate court clerk under Tenn. Code Ann. § 18-6-106(b). Further, Chapter 310 provides that, in any county where the county court clerk is acting as the clerk of the court with probate jurisdiction, "the *duties as to administration of estates and guardian appointments* shall be vested in either the clerk of the court with probate jurisdiction or the clerk and master." (Emphasis added). Under this statute, therefore, we think the General Assembly intended that all probate functions now performed by the Unicoi

County Court Clerk under 1981 Tenn. Priv. Acts Ch. 98 must be transferred to the Clerk of the Unicoi County General Sessions Court or the Clerk and Master no later than July 1, 2006.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable David Hawk
State Representative
202 War Memorial Building
Nashville, TN 37243-0105