S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

January 13, 2006

Opinion No. 06-011

Courts in Gibson County

QUESTIONS

1. The Humboldt Law Court was created in 1869 with jurisdiction over the first, second, third, fourth, sixteenth, and twentieth civil districts of Gibson County. Does it still legally exist?

2. When the judicial districts were reorganized in 1984, the "law and equity court currently located in Gibson County" became a chancery court for the 28th Judicial District. In light of this statute, is the court at Humboldt only a chancery court?

3. The same individual serves as clerk for the Gibson County General Sessions Court at Trenton and as clerk for the Circuit Court at Trenton. This clerk does not run for office in the first, second, third, fourth, sixteenth, and twentieth civil districts in Gibson County. The Chancellor for the 28th Judicial District appoints two clerks and master, one for the Chancery Court in Trenton, and the other for the Chancery Court in Humboldt. The individual appointed Clerk and Master in Humboldt also serves as the General Sessions Court Clerk and the Circuit Court Clerk for the court in Humboldt. Is the court clerk at Trenton popularly elected as required by Article VI, Section 13, of the Tennessee Constitution?

4. Is it legal to have two Clerks and Master for the Chancery Court, one in Trenton and one in Humboldt?

5. Are the Humboldt Chancery Court and the Humboldt Law Court authorized to have jury trials?

6. Does the Clerk and Master for the Humboldt Chancery Court, who also serves as General Sessions Court Clerk and the Circuit Court Clerk in Humboldt, have to be popularly elected in the civil districts that compose the Humboldt Court?

7. May the Clerk and Master of the Chancery Court at Humboldt legally serve as the General Sessions Court Clerk and/or the Circuit Court Clerk for the court at Humboldt, or must two different individuals carry out these duties?

8. If the courts that operate in Humboldt were abolished by the General Assembly:

a. Which court would receive the jurisdiction now vested in those courts?

b. Would the Clerk and Master and the Circuit Court Clerk in Trenton automatically become the clerk for any court given the jurisdiction now vested in the courts in Humboldt?

c. Could the Circuit Court Clerk in Trenton constitutionally serve as the clerk for any court given jurisdiction now vested in the courts at Humboldt, since that official is not now elected by the people in those districts?

d. Would there need to be a special election for new clerks in the civil districts now served by the courts in Humboldt?

9. The separate office of the Gibson County Juvenile Court Clerk was created by private act in 2000. 2000 Tenn. Priv. Acts Ch. 142. The Gibson County Juvenile Court was created in 1982. 1982 Tenn. Priv. Acts Ch. 307. If this court were abolished:

a. Where would the cases now pending in Gibson County Juvenile Court be decided?

b. What judge would preside over these cases?

c. Who would serve as clerk for the court vested with jurisdiction over these cases?

10. What remedy is available if it is determined that an individual who serves as the clerk for a court in Humboldt or at Trenton was not elected in accordance with Article VI, Section 13, of the Tennessee Constitution?

OPINIONS

1. Yes.

2. No. The law and equity court referred to in the 1984 act was created under 1967 Tenn. Pub. Acts Ch. 248; it is not the same court that was created in 1869 as the Humboldt Law Court.

3. The official who serves as Circuit Court Clerk and General Sessions Court Clerk at Trenton is popularly elected as required under Article VI, Section 13, of the Tennessee Constitution.

4. Yes, the applicable general and local acts require one chancery court clerk at the county seat in Trenton, and one in Humboldt.

5. Yes. These courts have full circuit and chancery court jurisdiction within the first, second, third, fourth, sixteenth, and twentieth civil districts of Gibson County and, therefore, are authorized to hold jury trials to the same extent as any other chancery or circuit court.

6. and 7. We think a court would conclude that the constitutional offices of Clerk and Master and Clerk of another inferior court may not be combined. We think a court would also conclude that the General Assembly may combine the offices of Clerk for the Humboldt Law Court and Clerk for the General Sessions division at Humboldt, but that the individual who serves in this office must be elected by the voters of the territorial jurisdiction of the Humboldt Law Court, that is, the first, second, third, fourth, sixteenth, and twentieth civil districts of Gibson County.

8. a. The answer to this question would depend on the terms of the legislation. Any such legislation should clarify which court will exercise the jurisdiction now exercised by the Humboldt Law Court and the Humboldt Chancery Court.

b. The answer to this question would depend on the terms of the legislation. Any such legislation should clarify who is to perform the duties of court clerk for the court accorded the jurisdiction now exercised by the Humboldt Law Court and the Humboldt Chancery Court.

c. Under Article VI, Section 13, the clerk of the circuit court must be elected by the people in the district or county where the court is held. Any legislation abolishing the Humboldt Law Court and the Humboldt Chancery Court should clarify who is to perform the duties of circuit court clerk for the court accorded the jurisdiction now exercised by the Humboldt Law Court and the Humboldt Chancery Court. The Circuit Court Clerk at Trenton may not act as the clerk and master for any court exercising the chancery jurisdiction formerly exercised by the Humboldt Chancery Court. If the legislation provides that the Circuit Court Clerk at Trenton will perform the duties of circuit court clerk for the court accorded the circuit court and general session jurisdiction formerly exercised by the Humboldt Law Court, then it should provide that the next individual to hold that office will be elected county-wide.

d. Whether a special election would need to be held would depend on the effective date of the law and its terms.

9. a. The answer to this question would depend on the terms of the legislation abolishing the court. Ordinarily, general sessions courts exercise juvenile court jurisdiction in all counties except counties or municipalities in which juvenile courts are specially provided by law. Tenn. Code Ann. § 37-1-203.

b. The answer to this question would depend on the terms of the legislation abolishing the court. Ordinarily, general sessions courts exercise juvenile court jurisdiction in all counties except counties or municipalities in which juvenile courts are specially provided by law. Tenn. Code Ann. § 37-1-203.

c. The answer to this question would depend on the terms of the legislation abolishing the court. The legislation should address this issue. Any individual authorized to serve as the clerk of an inferior court must be elected in accordance with Article VI, Section 13, of the Tennessee Constitution. The Clerk and Master in Humboldt cannot constitutionally exercise this function.

10. The county should seek legislation addressing the constitutional defects outlined above. Any legislation should provide that any clerk and master be appointed by the chancellor for a term of six years, and that the clerk of any inferior court or courts in the county be elected to a four-year term by the people in the territorial jurisdiction of that court.

ANALYSIS

1. Legal Existence of the Humboldt Law Court

This opinion concerns the law governing several courts in Gibson County. Under Tenn. Code Ann. § 16-2-506, the State is divided into thirty-one judicial districts. Gibson County is part of the 28th Judicial District. Tenn. Code Ann. § 16-2-506(28) provides:

> (A) The twenty-eighth judicial district consists of the counties of Crockett, Gibson and Haywood. The two (2) incumbent trial court judges and the district attorney general currently residing in such counties shall continue to serve the twenty-eighth judicial district in their representative capacities;
>
> Effective September 1, 1984, the law and equity court currently located in Gibson County shall become a chancery court for the twenty-eighth judicial district and the current law and equity judge shall become a chancellor who on such date shall possess the same jurisdiction, powers and duties and shall receive the same compensation, benefits, emoluments and dignity of office as is required or provided by law for chancellors;
>
> (B) The district attorney general of the twenty-eighth judicial district is entitled to five (5) assistant district attorney general positions and one (1) criminal investigator position.

Our research indicates that the 28th Judicial District presently has one chancellor and one circuit court judge who serve the entire district.

A. The Humboldt Law Court

The Humboldt Law Court was created by Chapter 22, 1868-1869 Tenn. Pub. Acts. Section 1 of this act provides:

> Be it enacted by the General Assembly of the State of Tennessee, That there shall be held at Humboldt, a Common Law Court, for the first, second, third, fourth, sixteenth, and twentieth Civil Districts of Gibson County, to be called the Law Court of Humboldt, and to constitute one of the courts of the Fourteenth (14) Judicial Circuit, and be held by the Judge thereof, with common law jurisdiction, original and appellate, over all cases arising at law, within said civil districts, of a civil, commercial, or criminal nature, and that the Attorney General of said Fourteenth (14) Circuit shall attend said court and transact the business appertaining to his office thereat.
>
> Sec. 2. Be it further enacted, That the Law Court of Humboldt has general common law jurisdiction, original and appellate, in all cases at law, of a civil or criminal character, arising in the civil districts named in the first section of this Act, and that no resident of said districts shall be sued in the Circuit Court of Gibson County, nor presented or indicted therein, unless the offense was committed in the county out of said districts. Where the court has the jurisdiction of the cause of action, counterparts of writs may issue from said court for joint defendants residing out of said districts.

Section 4 provides:

> Be it further enacted, That the Law Court of Humboldt shall have all the powers within the local jurisdiction that belong by law to the Circuit Courts of this State.

Under Section 6 of the act, jurors for the Humboldt Law Court are drawn from those civil districts within the jurisdiction of that court, while jurors for the Gibson County Circuit Court in Trenton are drawn from the rest of the county. Under the 1869 act, criminal cases arising from the civil districts within the jurisdiction of the Humboldt Law Court are tried in that court. *State v. Harris,* 678 S.W.2d 473 (Tenn. Ct. Crim. App. 1984), *p.t.a. denied* (1984). The 1869 act was passed to localize, insofar as Gibson County was concerned, the defendants of two sets of districts, one to be heard in the Law Court of Humboldt and the other in the Circuit Court of Gibson County at Trenton. *White v. Garner,* 192 Tenn. 429, 241 S.W.2d 518 (1951).

B. Humboldt Chancery Court

Section 12 of the 1869 act provides:

> Be it further enacted, That there shall be held at Humboldt a Chancery Court, with equity jurisdiction over all Chancery cases arising within the first, second, third, fourth, sixteenth and twentieth Civil Districts of Gibson County, to be called the Chancery Court of

> Humboldt, and to constitute one of the courts of the Chancery District No. ____, composed of the counties of Gibson, Madison, Haywood and Dyer, and to possess all the powers belonging to any other Chancery Court in this State.

C. Clerk of the Humboldt Law Court and the Humboldt Chancery Court

Section 9 of the 1869 act provides:

> Be it further enacted, That the Clerk of the Circuit Court of Gibson County shall be Clerk of said court, and keep an office by himself or a deputy, at Humboldt, which shall be constantly open for the transaction of business.

Section 13 of the 1869 act provides:

> Be it further enacted, that the Chancellor of the district named in the 12th section of this Act shall appoint a Clerk and Master of the Chancery Court of Humboldt, who shall keep his office at Humboldt.

In 1925, however, the office of Clerk of the Law Court at Humboldt was consolidated with that of Clerk and Master of the Chancery Court of Humboldt. 1925 Tenn. Pub. Acts Ch. 139. Under Section 2 of that act, the Clerk and Master of the Chancery Court of Humboldt was to act "*ex-officio*" as the Clerk of the Law Court of Humboldt. Under Section 3 of this act, successors to the office of Clerk and Master of the Chancery Court continue to act as Clerk of the Law Court at Humboldt, "said Clerk and Master to be appointed in the same way and manner as the Clerk and Master is now appointed, but shall give a special bond to be approved by the Circuit Judge, who is the Judge of the Law Court at Humboldt, Tennessee, in such sum and in such amount as required by law for the faithful performance of the duties of said office, said bond to be [a] separate and distinct bond from the bond now required by law to be given by the Clerk and Master of the Chancery Court." We have found no later act amending or repealing the 1925 act. The applicable statutes, therefore, require the Chancellor for the judicial district to appoint a separate Clerk and Master to serve as the Clerk and Master for Humboldt Chancery Court. This same individual serves *ex officio* as the Court Clerk for the Humboldt Law Court, which has the powers of a circuit court.

D. General Sessions Court

The General Sessions Court in Gibson County appears to have been created under Tenn. Code Ann. § 16-15-101.[1] Under Tenn. Code Ann. § 16-15-103, the county commission in each county may require the court of general sessions to meet at three places in the county in addition to the county seat, and must provide a courtroom at the other places. Our Office has concluded that

[1] A 1959 private act creating a general sessions court in Gibson County did not receive local approval.

the Gibson County General Sessions Court was created with countywide jurisdiction and is separated into two parts: one operating in Trenton and one in Humboldt. Op. Tenn. Att'y Gen. 00-108 (June 12, 2000).

With regard to clerks of the general sessions court, Tenn. Code Ann. § 16-15-301 (a) and (b) provide:

> (a) The clerk of the circuit court of the county shall act as clerk of the court of general sessions, and when acting as clerk of such court shall be designated as the clerk of the court of general sessions of such county.
>
> (b) In addition thereto, the clerk of any special court now established or hereafter established, having exactly the same jurisdiction as and no more jurisdiction than the circuit court within any part and for a portion of a particular county, *such clerk of the special court shall also serve as clerk of the court of general sessions within the venue of such special court.*

(Emphasis added). The Circuit Court Clerk for the Circuit Court in Trenton, therefore, serves as the clerk for the Gibson County General Sessions Court in the districts outside the jurisdiction of the Humboldt Law Court. The Humboldt Law Court is a special court with the same jurisdiction as a circuit court within the first, second, third, fourth, sixteenth, and twentieth civil districts of Gibson County. The Clerk and Master of the Humboldt Chancery Court also serves as the clerk of the Humboldt Law Court. Under Tenn. Code Ann. § 16-15-301(b), therefore, the Clerk and Master of the Humboldt Chancery Court also serves as the clerk of the Gibson County General Sessions Court within the first, second, third, fourth, sixteenth, and twentieth civil districts of Gibson County.

1. Legal Existence of the Humboldt Law Court

The first question is whether the Humboldt Law Court still legally exists. We have found no statute that either expressly or impliedly repealed the act creating the Humboldt Law Court and the Humboldt Chancery Court as those statutes were subsequently amended. Provisions creating and governing these courts were codified in the general laws in 1917. Shannon's Code of 1917, §§ 152-160 (law court); §§ 161-163 (chancery court). These provisions do not appear in the 1934 codification of Tennessee law, but that codification expressly states that local acts are not to be deemed repealed by enactment of the code or failure to include them in the code unless repealed by necessary implication. Shannon's Code of 1934, § 3(1). A similar provision appears in the current Tennessee Code. Tenn. Code Ann. § 1-2-105(1). The judicial districts were reorganized in 1984. 1984 Tenn. Pub. Acts Ch. 931. But, Section 28 of that act, now codified at Tenn. Code Ann. § 16-2-517, provides:

> Notwithstanding any provision of this part to the contrary, nothing in this part shall be construed to repeal, amend, or affect in any manner

> any jurisdiction granted to any local court by any public or private law.

It appears that the Humboldt Law Court now functions as a division of the Circuit Court for the 28th Judicial District, exercising circuit court jurisdiction over the first, second, third, fourth, sixteenth, and twentieth civil districts in Gibson County.

2. Effect of Tenn. Code Ann. § 16-2-506(28) on the Humboldt Law Court

The second question is whether, in light of the following passage, the Humboldt Law Court retains only chancery jurisdiction. As quoted above, that statute provides in relevant part:

> Effective September 1, 1984, *the law and equity court currently located in Gibson County* shall become a chancery court for the twenty-eighth judicial district and the current law and equity judge shall become a chancellor who on such date shall possess the same jurisdiction, powers and duties and shall receive the same compensation, benefits, emoluments and dignity of office as is required or provided by law for chancellors;

(Emphasis added). Research indicates that the "law and equity court currently located in Gibson County" refers to a court created by 1967 Tenn. Pub. Acts Ch. 248. That act did not purport to repeal the act creating the Humboldt Law Court, and in fact refers to that court as a separate entity. For this reason, Tenn. Code Ann. § 16-2-506(28) regarding the law and equity court located in Gibson County in 1984 did not divest the Humboldt Law Court of its circuit court jurisdiction.

3. Circuit Court Clerk at Trenton

The next question is whether the Circuit Court Clerk at Trenton, who also serves as the General Sessions Court Clerk for the Trenton division of the Gibson County General Sessions Court, is properly elected as required by Article VI, Section 13, of the Tennessee Constitution. This provision states:

> Judges of the Supreme Court shall appoint their clerks who shall hold their offices for six years. Chancellors shall appoint their clerks and masters, who shall hold their offices for six years. Clerks of the Inferior Courts holden in the respective Counties or Districts, shall be elected by the qualified voters thereof for the term of four years. Any Clerk may be removed from office for malfeasance, incompetency or neglect of duty, in such manner as may be prescribed by law.

The request states that the Trenton Circuit Court Clerk is elected by all the civil divisions in Gibson County except for the first, second, third, fourth, sixteenth, and twentieth civil districts. Since a different official acts as the Circuit Court Clerk for the Humboldt Law Court and for the

General Sessions Court in those civil districts, Article VI, Section 13, does not require the Trenton Circuit Court Clerk to be elected from those districts. The Trenton Circuit Court Clerk, therefore, is popularly elected as required under Article VI, Section 13, of the Tennessee Constitution.

4. Legality of Two Clerks and Master for Gibson County

The next question is whether it is legal to have two Clerks and Master for the Chancery Court, one in Trenton and the other in Humboldt. The 1869 statute creating the Humboldt Chancery Court expressly requires the chancellor to appoint a clerk and master to serve at Humboldt. Under Tenn. Code Ann. § 18-1-101, each court has a clerk, elected or appointed for a term of years. Tenn. Code Ann. § 18-1-102 provides:

> The clerk of each of the courts shall reside in the county wherein the court is held, shall keep an office at the county seat of such county, and give due attendance at such office for the performance of official duties.

This statute contemplates that the clerk of a chancery court held in Gibson County must reside in Gibson County and keep an office at the county seat, which is Trenton. The applicable statutes, therefore, appear to require two clerks and master within Gibson County, one with an office in Trenton and one with an office in Humboldt.

5. Authority to Hold Jury Trials

The next question is whether the Humboldt Chancery Court and the Humboldt Law Court are authorized to have jury trials. Under the 1869 act, each of these courts has chancery court and circuit court jurisdiction, respectively. Each of these courts, therefore, may hold jury trials to the same extent as any other chancery or circuit court.

6. & 7. Clerk and Master Serving as Circuit Court and General Session Court Clerk in Humboldt

The next two questions are whether the Clerk and Master at Humboldt, who serves *ex officio* as general sessions court clerk, and the circuit court clerk in Humboldt, must be popularly elected in the civil districts that compose the Humboldt Law Court, and whether the same individual may serve in all three offices. These questions must be answered under Article VI, Section 13, of the Tennessee Constitution. Under that provision, a clerk and master is appointed by a chancellor for six years. By contrast, the clerks of other inferior courts, including circuit and general sessions courts, must be elected by the district where the court is held. The clerk of these inferior courts is elected for a term of four years. We think a court would conclude that the offices of clerk and master and clerk of another inferior court may not be combined, because the offices have different terms. The Tennessee Supreme Court has concluded that two constitutional offices with different terms cannot constitutionally be combined. *Waters v. State ex rel. Schmutzer*, 583 S.W.2d 756 (Tenn. 1979). In that case, the Court concluded that the offices of Juvenile Court Judge, which had

a term of eight years under Article VI, Section 4, and County Executive, which had a term of four years under Article VII, Section 1, could not constitutionally be combined. Under the reasoning of this case, the constitutional offices of Clerk and Master and Clerk of another inferior court cannot be combined.

At the same time, the Tennessee Constitution requires the clerk of an inferior court such as a circuit or general sessions court to be elected by the district where the court is held. Tennessee courts have held that the General Assembly may provide that the clerk of one inferior court will also serve as the clerk for another inferior court. *Hodge v. State,* 135 Tenn. 525, 188 S.W. 203 (1916). In that case, the Tennessee Supreme Court found that the circuit court clerk for the county could also, by statute, be required to serve as the clerk of a new criminal court in the county. Each court had the same territorial jurisdiction, and the circuit court clerk was already elected county-wide. This Office has concluded that the General Assembly may not authorize the clerk of an inferior court to serve as the clerk of another inferior court with different territorial jurisdiction. Op. Tenn. Att'y Gen. 89-103 (August 16, 1989). We think a court would conclude that the General Assembly may combine the offices of Clerk for the Humboldt Law Court and Clerk for the General Sessions division at Humboldt, but that the individual who serves in this office must be elected by the voters of the territorial jurisdiction of the Humboldt Law Court, that is, the first, second, third, fourth, sixteenth, and twentieth civil districts of Gibson County.

8. Consequences of Abolishing Humboldt Law Court and Humboldt Chancery Court.

a. The next question concerns consequences of abolishing the Humboldt Law Court and Humboldt Chancery Court. The first question is which court would exercise the jurisdiction now exercised by the Humboldt Law Court and the Humboldt Chancery Court. The answer to this question would depend on the terms of the legislation. Any such legislation should clarify which court will exercise the jurisdiction now exercised by the Humboldt Law Court and the Humboldt Chancery Court.

b. The next question is which official would act as clerk for the court accorded the jurisdiction now exercised by the Humboldt Law Court and the Humboldt Chancery Court. The answer to this question would depend on the terms of the legislation. Any such legislation should clarify who is to perform the duties of court clerk for the court accorded the jurisdiction now exercised by the Humboldt Law Court and the Humboldt Chancery Court.

c. The next question is whether the Circuit Court Clerk in Trenton could constitutionally serve as the clerk for any court given jurisdiction now vested in the courts at Humboldt, since that official is not now elected by the people in those districts. Under Article VI, Section 13, the clerk of the circuit court must be elected by the people in the district or county where the court is held. Any legislation abolishing the Humboldt Law Court and the Humboldt Chancery Court should clarify who is to perform the duties of circuit court clerk for the court accorded the jurisdiction now exercised by the Humboldt Law Court and the Humboldt Chancery Court. The Circuit Court Clerk at Trenton may not act as the clerk and master for any court exercising the chancery jurisdiction formerly exercised by the Humboldt Chancery Court. If the legislation provides that the Circuit Court Clerk at Trenton will perform the duties of circuit court clerk for the court accorded the circuit

court and general session jurisdiction formerly exercised by the Humboldt Law Court, then it should provide that the next individual to hold that office will be elected county-wide.

d. The next question is whether a special election would have to be held for a new clerk if the Humboldt Law Court and Humboldt Chancery Court were abolished by the General Assembly. The answer to this question would depend on the effective date of the law and its terms.

9. Gibson County Juvenile Court

a. Question 9 concerns Gibson County Juvenile Court. This Court was created by private act in 1982. This question concerns the consequences of abolishing this court. The first question is where cases now pending in Gibson County Juvenile Court would be decided. The answer to this question would depend on the terms of the legislation abolishing the court. Ordinarily, general sessions courts exercise juvenile court jurisdiction in all counties except counties or municipalities in which juvenile courts are specially provided by law. Tenn. Code Ann. § 37-1-203.

b. The next question is which judge would preside over cases now pending in Gibson County Juvenile Court. The answer to this question would depend on the terms of the legislation abolishing the court. Ordinarily, general sessions courts exercise juvenile court jurisdiction in all counties except counties or municipalities in which juvenile courts are specially provided by law. Tenn. Code Ann. § 37-1-203.

c. The next question is who would serve as clerk for any court vested with jurisdiction over these cases. The answer to this question would depend on the terms of the legislation abolishing the court. The legislation should address this issue. Any individual authorized to serve as the clerk of an inferior court must be elected in accordance with Article VI, Section 13, of the Tennessee Constitution. The Clerk and Master in Humboldt cannot constitutionally exercise this function.

10. Curing Constitutional Defect in Office of Court Clerk

The last question is what remedy is available if the clerk at Humboldt or the clerk at Trenton has not been properly elected. As discussed above, we think a court would conclude that the Clerk and Master at Humboldt may not constitutionally serve as the clerk for the Humboldt Law Court and the General Sessions Court at Humboldt. At the same time, no statute has established a separate office of clerk of the Humboldt Law Court to be elected by the people of the civil districts served by that court. For this reason, the county should seek legislation addressing the problem. Any legislation should provide that any clerk and master be appointed by the chancellor for a term of six years, and that the clerk of any inferior court or courts in the county be elected to a four-year term by the people in the territorial jurisdiction of that court.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Don McLeary
State Senator
6-A Legislative Plaza
Nashville, TN 37243-0227