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February 24, 2006

Opinion No. 06-040

Constitutionality of House Bill 1282

QUESTION

Is House Bill 1282 constitutional?

OPINION

The primary aim of the bill, which is to render void municipal ordinances or charter provisions that require municipal employees to reside within the municipality, is constitutional. The bill is vulnerable to challenge, however, because its terms are limited solely to municipal firefighters and there appears to be no rational basis upon which to distinguish this group of employees from others.

ANALYSIS

House Bill 1282 states as follows:

> SECTION 1. Tennessee Code Annotated, Title 7, Chapter 51, Part 2[1], is amended by adding the following language as a new section:
>
> > 7-51-207. It is against public policy and unenforceable for a municipality to require a person employed by the municipality as a firefighter . . . to maintain his or her primary residence within the municipality.
>
> SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

In *City of Memphis v. International Brotherhood of Electrical Workers Union, et al.*, 545 S.W.2d 98 (Tenn. 1976), the Tennessee Supreme Court held that provisions of the Memphis City Charter requiring all personnel solely employed by the City of Memphis to reside within the territorial limits of Shelby County were constitutional. Cities, counties and municipalities are, however, creatures of the Tennessee General Assembly, and the General Assembly has the authority

[1]Tenn. Code Ann. § 7-51-207 currently addresses death benefits for volunteer rescue squad workers who are killed in the line of duty.

to dictate the manner in which local governments shall operate. As stated by the Tennessee Court of Appeals,

> In *Nichols v. Tullahoma Open Door, Inc.*, 640 S.W.2d 13 (Tenn.Ct.App. 1982), we recognized the well-established principle that municipal authorities cannot adopt ordinances which infringe the spirit of state law or are repugnant to the general policy of the state. [. . .] Municipalities are, after all, creatures of the legislature, and they may exercise the powers given them by the legislature so long as they do so in the manner the legislature prescribes.

Manning v. City of Lebanon, 124 S.W.3d 562, 564-565 (Tenn. Ct. App. 2003).

It therefore appears beyond dispute that the General Assembly has the authority to enact legislation prohibiting local ordinances or charter provisions requiring employees to live within specific geographical areas.

House Bill 1282, however, is quite limited in terms of the employees whose interests it is designed to protect. The bill provides only that it is against public policy and unenforceable for *municipal firefighters* to be required to maintain their primary residence within the municipality. While such legislation need only survive a "rational basis" analysis[2] if challenged on equal protection grounds, there must be a rational basis for distinguishing municipal firefighters' residential requirements from those of other municipal employees, particularly other emergency workers such as police officers. None readily suggests itself.

Accordingly, we are of the opinion that while the bill's primary aim, which is to render void municipal ordinances or charter provisions that require municipal employees to reside within the municipality, is constitutional, the bill is vulnerable to an equal protection challenge because its terms are limited solely to municipal firefighters. In the event of such a challenge, defense of the bill would hinge upon demonstrating that there is some rational basis upon which to distinguish this group of employees from others.

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[2] *See Civil Service Merit Board v. Burson*, 816 S.W.2d 725, 730-734 (Tenn. 1991)(discussion by Tennessee Supreme Court of Equal Protection challenge to residency requirement for county civil service board).

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