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Opinion No. 06-044

Authority to Appoint Temporary Replacement for Suspended General Sessions Judge

QUESTION

If the Tennessee Court of the Judiciary temporarily suspends a General Sessions Court Judge, is the county commission authorized to appoint a temporary replacement under Tenn. Code Ann. § 16-15-210(c)(1)?

OPINION

Section 16-15-210(c)(1) is ambiguous because it appears to contain a typographical error. In our opinion, however, the courts would conclude the statute authorizes a county commission to appoint a temporary replacement for a suspended General Sessions Judge.

ANALYSIS

This opinion concerns the interpretation of Tenn. Code Ann. § 16-15-210, which provides generally for the filling of vacancies in the office of General Sessions Court Judge. Subdivision (c)(1) states:

In the event of an interim suspension of a general sessions court or juvenile court judge pursuant to § 17-5-307(f), the county legislative body shall appoint a temporary replacement to serve until the interim suspension is lifted or the office becomes vacant.

The question arises because the statute cited, § 17-5-307(f), does not deal with suspension of either a general sessions court or juvenile court judge. Instead, the statute deals with the effect of a judge's failure to appear when ordered to do so by the Tennessee Court of the Judiciary. The statute provides:

If the judge should fail to appear when specifically so ordered by the hearing panel or the court, the judge shall be deemed to have admitted the factual allegations which were to be the subject of such appearance and to have conceded the merits of any motion or recommendation to be considered at such appearance. Absent good cause,

the hearing panel or court shall not continue or delay proceedings because of the judge's failure to appear.

Tenn. Code Ann. § 17-5-307(f). The statute does not provide that a judge's failure to appear results in suspension. Rather, suspension is one of the sanctions that the General Assembly has authorized the Court of the Judiciary to impose. Tenn. Code Ann. § 17-5-301(f) states, in part:

The court has the power to impose any or any combination of the following sanctions:

- (1) Suspension without impairment of compensation for such period as the court determines[.]

Suspension is also authorized by Tenn. Code Ann. § 17-5-304(f), which states:

Upon the filing of an indictment, presentment or information charging a judge with a felony under the law of any state or under federal law, the court may immediately place the judge on interim suspension.

Conceivably, therefore, Tenn. Code Ann. § 16-15-210(c)(1) could be interpreted in one of three ways: (1) it only authorizes a county commission to appoint a temporary replacement when a general sessions or juvenile judge is suspended because of the chance circumstance that suspension was the recommendation before the Court when the judge failed to appear, thereby consenting (by default) to that particular sanction; (2) the statute contains a typographical error, and the General Assembly intended to authorize a county commission to appoint a temporary replacement when the Court of the Judiciary has suspended a general sessions or juvenile judge pursuant to § 17-5-301(f), instead of -307(f); or (3) the statute contains a typographical error, and the General Assembly intended to authorize a county commission to appoint a temporary replacement when the Court of the Judiciary has suspended a general sessions or juvenile judge upon indictment pursuant to § 17-5-304(f), instead of -307(f). Because the statute is subject to more than one interpretation, it is ambiguous, and the courts may refer to legislative history in determining its meaning. *Chapman v. Sullivan County*, 608 S.W.2d 580 (Tenn. 1980).

The General Assembly enacted subsection (c) of Tenn. Code Ann. § 16-15-210 by Chapter 669 of the Public Acts of 1998. Representative McMillan sponsored the legislation in the House, and she explained her bill to the House Judiciary Committee as follows:

Yes, [House Bill] 3191 is a bill which comes to us from the Administrative Office of the Courts and deals with vacancies in office for general sessions or juvenile court judges. What the legislation would do [is] authorize the county legislative body to appoint a temporary replacement to serve when there is an interim suspension of a general sessions or juvenile court judge, which results when judges commit a judicial offense or suffer from a disability prescribed by statute. As many of you have probably seen, there have been several instances recently that have been publicized in the paper where general sessions judges have either

been under indictment or have other difficulties and have had to be suspended, and there was no procedure for replacing them during that interim suspension, so that is what this bill would do.

(Remarks of Representative McMillan, meeting of House Judiciary Committee, March 4, 1998, Library & Archives Tapes H-Judiciary 1 & 2).

The legislation passed first in the Senate, where its sponsor stated:

Mr. Speaker, members of the Senate, the statutes presently provide a method for filling a vacancy in the General Sessions Court. This last year, we had a suspension of a judge of the General Sessions Court. What this bill does is take the same method that you use for a permanent vacancy and use it for a temporary suspension of a general sessions judge. Move passage.

(Remarks of Senator Rochelle, Senate Session, March 16, 1998, Library & Archives Tape S-27). When the House considered the legislation two days later, Representative McMillan gave an explanation similar to her statement before the House Judiciary Committee. (House Session, March 18, 1998, Library & Archives Tape H-32).

Accordingly, the legislative history of Chapter 669 of the Public Acts of 1998 makes it clear that, in adding subsection (c) to Tenn. Code Ann. § 16-15-210, the General Assembly intended to authorize a county commission to appoint a temporary replacement whenever the Court of the Judiciary suspended a general sessions or juvenile judge for reasons of indictment or disability. Thus, we think a court would conclude that the statute, as written, contains a typographical error, and that the reference in § 16-15-210(c)(1) should be to § 17-5-301(f). Section -301(f) is the Court of the Judiciary's general authority for imposing a sanction of suspension, and this general authority would also support suspension in the more narrow circumstances of suspension by default under -307(f), or upon a judge's indictment under -304(f).

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