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Opinion No. 06-088

Legislation Regarding Carter County Probate Clerk

QUESTIONS

Senate Bill 2774/ House Bill 2931 would transfer the duties of the probate clerk in Carter County from the Carter County Clerk and Master to the Carter County Clerk.

1. a. Under Tenn. Code Ann. § 18-6-106(a)(1), the probate clerk duties were transferred from the Carter County Clerk to the Carter County Clerk and Master. Does the bill violate the equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 8, of the Tennessee Constitution?

b. If the answer to (a) is yes, is the county subject to a lawsuit from a Carter County citizen that has been denied equal protection of the law?

2. Assume the bill results from a resolution of the Carter County Commission requesting that their legislators introduce the bill to exempt Carter County from the provisions of Tenn. Code Ann. § 18-6-106(a)(1), so that the probate clerk duties of Carter County will be transferred to the County Clerk. Is such a resolution unconstitutional because it infringes the General Assembly's supreme and exclusive legislative power under Article II, Section 3, of the Tennessee Constitution and its power to vest jurisdiction in those courts under Article VI, Section 1, of the Tennessee Constitution?

3. In addition to the facts recited above, assume that the bill's sponsors introduced it upon a request from the Carter County Commission as an accommodation or professional courtesy to the county commission. Does the bill violate Article XI, Section 8, of the Tennessee Constitution because it suspends the general law without a rational basis?

OPINIONS

1. a. Because it involves the duties of county officials, the exemption does not appear to implicate the Fourteenth Amendment to the United States Constitution. Further, we think the exemption is defensible under Article XI, Section 1, of the Tennessee Constitution first, because it is not clear that Tenn. Code Ann. § 18-6-106(a)(1) is statute of mandatory statewide applicability; and second, because there appears to be a valid rational basis for the exemption.

b. A plaintiff who can establish standing could challenge the exemption.

2. No.

3. The sponsors' motivation for introducing the bill, by itself, would not make the bill unconstitutional under Article XI, Section 8, so long as it is supported by some rational basis.

ANALYSIS

1. Equal Protection

This opinion concerns Senate Bill 2774/ House Bill 2931. That act would amend Tenn. Code Ann. § 18-6-106(a) by adding the following new subdivision:

> (5) The provisions of this subsection (a) shall not apply in any county having a population of not less than fifty-six thousand seven hundred (56,700) nor more than fifty six eight hundred (56,800) according to the 2000 federal census or any subsequent federal census. In any such county, the county clerk shall continue to serve as clerk of the court with probate jurisdiction, and such clerk shall continue to exercise the same powers and duties as it exercised on June 30, 2003.

Carter County falls within this population bracket. Tenn. Code Ann. Vol. 13 (2005 Supp.) at 201. The request indicates that, under Tenn. Code Ann. § 18-6-106(a), the Carter County Clerk and Master assumed the duties of probate clerk in October 2005. If Senate Bill 2774/ House Bill 2931 is passed, therefore, the duties of probate clerk would shift to the Carter County Clerk.

Senate Bill 2774/ House Bill 2931 would amend Tenn. Code Ann. § 18-6-106, which was amended regarding the duties of probate court clerk in 2003. 2003 Tenn. Pub. Acts Ch. 310. Section 1 of the act deleted 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.

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. At least seven counties were exempted from the 2003 amendments. 2003 Tenn. Pub. Acts Ch. 310, §§ 2 & 6-10. Op. Tenn. Att'y Gen. 03-143 (November 7, 2003).

The first question is whether, if passed, Senate Bill 2774/ House Bill 2931 would violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution or Article XI, Section 8, of the Tennessee Constitution. The bill addresses which county official will carry out the duties of probate clerk in Carter County. A county is a political division of the State. *Claiborne County v. Jennings,* 199 Tenn. 161, 285 S.W.2d 132 (1956). Generally, the federal constitution does not, except in very limited cases, affect the power of the states to organize their political subdivisions. *Hunter v. Pittsburgh,* 207 U.S. 161, 178-79, 28 S.Ct. 40, 152 L.Ed. 151 (1907). In a later case, the United States Supreme Court noted that, "[w]hen a state exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right." *Gommillion v. Lightfoot,* 364 U.S. 339, 81 S.Ct. 125, 130, 5 L.Ed.2d 110 (1960). That case involved an allegation of state manipulation of municipal boundaries for the purpose of race discrimination in voting. *See also, Sailors v. Board of Education of the County of Kent,* 387 U.S. 105, 87 S.Ct. 1549, 18 L.Ed.2d 650 (1967). There, the Court ruled that the state of Michigan could provide for a system of selecting members of a county school board that was basically appointive rather than elective without violating federally protected constitutional rights. The Court stated:

> Viable local government may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation. At least as respects nonlegislative officers, a State can appoint local officials or elect them or combine the elective and appointive systems as was done here.

87 S.Ct. at 1553.

We think that, under this authority, a court would conclude that the federal constitution would not affect the State's power to transfer the duties of probate clerk from one county official to another. We are unaware of any federally protected right to have these duties carried out by the same official in all Tennessee counties. For this reason, the bill would not violate the Fourteenth Amendment to the United States Constitution.

Article XI, Section 8, of the Tennessee Constitution provides in relevant part:

> The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights,

> privileges, immunitie, [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

The same rules are applied as to the validity of classifications made in legislative enactments under the United States Constitution, Amendment 14, Article I, Section 8, and Article XI, Section 8 of the Tennessee Constitution. *City of Memphis v. State ex rel. Ryals,* 133 Tenn. 83, 88, 179 S.W. 631 (1915). These provisions guarantee that "all persons similarly circumstanced shall be treated alike." *State v. Robinson,* 29 S.W.3d 476, 480 (Tenn. 2000); *Tennessee Small School Systems v. McWherter,* 851 S.W. 2d 139, 153 (Tenn. 1993), (both quoting *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 562, 64 L.Ed.2d 989 (1920)).

In order to trigger application of Article XI, Section 8, a statute must "contravene *some general law which has mandatory statewide application*." *Leech v. Wayne County*, 588 S.W.2d 270, 273 (Tenn. 1979) (emphasis added). Tenn. Code Ann. § 18-6-106(a) by its terms applies to every county, but the provision excepted counties in seven narrow population brackets when it was first adopted. These counties range from counties within a population bracket of 12,800 to 12,900 to counties within a population bracket of 182,000 to 182,100 according to the 2000 census or any subsequent census. Seven counties fell within these brackets under the 2000 census. It is not clear whether this number of exceptions prevents the statute from being one of mandatory statewide application. In *Leech,* the Tennessee Supreme Court found that an act applicable in "nearly 90" counties and excepting two counties by population bracket was a "permanent, general provision." But the Court actually held that the exception was a "private act . . . without any statement of reasons and without requirement of a local referendum," that violated recently approved provisions of Article VII regarding county government and Article XI, Section 9, requiring a local referendum. 588 S.W.2d at 274. In this case, the act from its passage excepted seven counties within a wide range of population brackets. It can be argued, therefore, that the statute regarding the duties of probate clerk was never intended to be a statute of mandatory statewide applicability. Excepting one county more by the bill in question would strengthen that argument.

Even if the act is one of mandatory statewide application, however, we think it can be argued that there is a sufficient rational basis for excluding Carter County from its operation at the request of the county commission. All classifications that do not affect a fundamental right or discriminate as to a suspect class are generally subject to the rational basis test. *State v. Tester,* 879 S.W.2d 823, 828 (Tenn. 1994). The burden of showing that a classification is unreasonable and arbitrary is placed upon the individual challenging the statute. If any state of facts can reasonably be conceived to justify the classification or if the reasonableness of the class is fairly debatable, the statute must be upheld. *Id.* Under this test, the classification will be upheld "if any state of facts may reasonably be conceived to justify it." *Id.,* citing *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993)*; Harrison v. Schrader,* 569 S.W.2d 822, 825 (Tenn. 1978). The question is "whether the classifications have a reasonable relationship to a legitimate state interest." *Doe v. Norris,* 751 S.W.2d 834, 841 (Tenn. 1988), citing *Plyler v. Doe,* 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982), *rehearing denied* (1982). In such an instance, there is a presumption of validity. The legislative body may make distinctions and treat various groups differently so long

as the classification is not arbitrary. *Harrison*, 569 S.W.2d at 825. There is no general rule by which to distinguish a reasonable from an unreasonable classification, the question being a practical one varying with the facts in each case. *Stalcup v City of Gatlinburg*, 577 S.W. 2d 439, 441 (Tenn. 1978).

The proposed act, therefore, could not violate Article XI, Section 8, of the Tennessee Constitution, if it is supported by a rational basis. Our research indicates the Carter County Commission passed a resolution to request the General Assembly to exempt Carter County because they did not wish to bear expenses associated with implementing the change. Our research also indicates that there is some dispute among officials about whether the change would subject the county to any additional expenses. Concern by local officials over the expense of complying with a new law is a valid rational basis for the General Assembly to exclude it from that law, so long as there is some reasonable basis for this concern. Op. Tenn. Att'y Gen. 98-076 (April 6, 1998) (city's desire for higher sales tax revenues could serve as a constitutionally defensible rational basis for exempting the city from a ban on retail fireworks sales in larger counties imposed by a public act).[1]

The second part of question 1 is, assuming the exemption violates the United States or Tennessee Constitutions, whether a citizen of Carter County could bring a lawsuit seeking to have the act declared unconstitutional. In order to bring a lawsuit, a plaintiff must establish standing. A plaintiff who could establish standing could challenge the exemption.

2 Infringement of Legislative Power

The next question assumes the bill results from a resolution of the Carter County Commission requesting that their legislators introduce the bill to exempt Carter County from the provisions of Tenn. Code Ann. § 18-6-106(a)(1), so that the probate clerk duties of Carter County will be transferred to the County Clerk. The question is whether such a resolution is unconstitutional because it infringes the General Assembly's supreme and exclusive legislative power under Article II, Section 3, of the Tennessee Constitution and its power to vest jurisdiction in those courts under Article VI, Section 1, of the Tennessee Constitution. We think the request is within the authority of a county commission. Further, we find no legal basis to conclude that the resolution infringes the General Assembly's legislative authority. The resolution asks the General Assembly to pass a particular bill. Whether or not to comply with that request remains in the hands of the General Assembly. For these reasons, the county commission's resolution does not unconstitutionally infringe the General Assembly's legislative authority.

3. Reason for Introduction

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[1] The bill does not contain a provision for local ratification. We think it can be argued that such a provision is not constitutionally required under Article XI, Section 9, of the Tennessee Constitution because courts are a subject over which the General Assembly has plenary power. *City of Knoxville ex rel. Roach v. Dossett*, 672 S.W.2d 193 (Tenn. 1984) (jurisdiction of city courts); *Cheek v. Rollings*, 202 Tenn. 608, 308 S.W.2d 393 (1957) (circuit and chancery courts). The 2003 act did not require referenda in the counties it exempted by population bracket.

The last question assumes that the sponsors of Senate Bill 2774/ House Bill 2931 introduced it upon a request from the Carter County Commission as an accommodation or professional courtesy to the county commission. The question is whether, in light of this factor, the bill violates Article XI, Section 8, of the Tennessee Constitution because it suspends the general law without a rational basis. Generally, in determining the validity of a statute, courts cannot inquire into the conduct and motives attributable to members of the General Assembly. *Caldwell v. Lyon,* 168 Tenn. 607, 80 S.W.2d 80 (1935); *Williams v. Nashville,* 89 Tenn. 487, 15 S.W. 364 (1891). The immediate reasons why the sponsors chose to introduce the bill, therefore, are not relevant to whether it is constitutional. Under Article XI, Section 8, of the Tennessee Constitution, however, it must still be supported by a rational basis.

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