

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

May 15, 2007

Opinion No. 07-70

Caption of HB512, As Amended

QUESTION

Is HB512, as amended, broader than the caption of the bill, and thus violative of Article II, § 17 of the Tennessee Constitution?

OPINION

Yes. HB512, as amended, is broader than the caption of the bill. Therefore, it violates Article II, § 17 of the Tennessee Constitution.

ANALYSIS

Article II, § 17 of the Tennessee Constitution provides as follows:

Bills may originate in either House; but may be amended, altered or rejected by the other. No bill shall become a law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended.

The caption of HB512 provides: “AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29 and Section 63-7-201, to extend the board of nursing.” Section 1 of the bill amends Tenn. Code Ann. § 4-29-225(a) by deleting subdivision (15) in its entirety, while Section 2 of the bill amends Tenn. Code Ann. § 4-29-231(a), by adding a new subdivision: “the board of nursing, created by § 63-7-201.” The first subsection in Title 4 mentioned above sometimes is referred to as a “sunset” provision, which is a provision that terminates the existence of a State board or other governmental entity. However, the second subsection in Title 4 mentioned above includes the Board of Nursing among those agencies whose existence is being extended. Thus, the caption of the bill properly describes the bill as one “to extend the board of nursing.”

On the other hand, Amendment 1 to HB512 would add language to Tenn. Code Ann. § 63-7-202(a), as follows: “No one serving on the board shall be an instructor in a postsecondary educational institution.” First, the body of HB512 seeks only to amend Tenn. Code Ann. § 4-29-

226(a) (by deletion of subsection (15)) and § 4-29-231(a) (by adding a new subdivision referencing the Board of Nursing, created by § 63-7-201). There is no reference in the caption of HB512 to the composition of the Board of Nursing, or to candidates and qualifications for Board membership, or to vacancies on the Board. *Id.*

The caption of the bill states expressly that its purpose is “to extend the board of nursing.” Therefore, the subject of the bill is limited to extending the existence of the Board of Nursing. Yet, Amendment 1 to HB521 would limit the composition of the Board to those persons who are not instructors in a postsecondary educational institution. Hence, the amendment falls outside the caption of the bill, and is not germane to, nor embraced within, the subject of the bill. “Thus when the body of the Act goes far afield and introduces things into the body of the Act which are incongruous with the caption of the Act then unquestionably said Act is violative of Article II, Section 17, of the Constitution.” *Armistead v. Karsch*, 192 Tenn. 137, 142, 237 S.W.2d 960, 962 (Tenn. 1951). For these reasons, it is our opinion that HB521 as amended is unconstitutional because it violates Article II, § 17 of the Tennessee Constitution.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

SARA E. SEDGWICK
Assistant Attorney General

Requested by:

Mike Kernell
State Representative, 93rd District
Suite 38, Legislative Plaza
Nashville, TN 37243-0193