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Opinion No. 07-112

Dissemination of information by governmental agencies in languages other than English

QUESTIONS

1. Is it lawful for a governmental agency in Tennessee to post information in any language other than English?

2. Does the clause "unless the nature of the course would require otherwise" in Tenn. Code Ann. § 4-1-404 codify the only exception to be in a classroom setting?

OPINIONS

1. Yes. Tenn. Code Ann. § 4-1-404 requires that all governmental agency communications and publications be in English. However, to avoid constitutional challenge, a court would likely conclude that the statute does not forbid agency communications and publications in other languages as long as all such materials are also published in English.

2. No. As previously stated, the statute would likely be construed not to forbid publications and communications in languages other than English. The language in Tenn. Code Ann. § 4-1-404 pertaining to Tennessee schools requires courses to be conducted in English unless the nature of the course requires otherwise.

ANALYSIS

1. Tenn. Code Ann. § 4-1-404 reads:

> English is hereby established as the official and legal language of Tennessee. All communications and publications, including ballots, produced by governmental entities in Tennessee shall be in English, and instruction in the public schools and colleges of Tennessee shall be conducted in English unless the nature of the course would require otherwise.

The statute's injunction that "all communications and publications . . . shall be in English" is susceptible of two meanings, depending upon the manner in which the adjective "all" is interpreted. On the one hand, "all" could be read to have a restrictive connotation of exclusivity, signifying "nothing but" or "only," so that the statute requires that all governmental communications and publications must be disseminated in English, and only English. *Webster's Ninth New Collegiate Dictionary* (1987). Alternatively, the adjective "all" might also reasonably be read to mean "every" without any restrictive connotation. *Id*. Under that interpretation, as long as every communication and publication of a governmental agency is made in the English language, the statutory directive is satisfied, and it matters not that some may also be published in other languages.

We think a court would opt for the latter, less restrictive interpretation. It is a basic canon of statutory construction that, "if an otherwise acceptable interpretation would raise serious constitutional problems, and where an alternative interpretation of the statute is fairly possible," courts "are obligated to construe the statute to avoid such problems." *Immigration and Naturalization Service v. St. Cyr*, 533 U.S. 289, 299-300 (2001) (internal quotes omitted); *see also Jordan v. Knox County*, 213 S.W.3d 751, 780 (Tenn. 2007) (court's duty whenever possible is "to adopt a construction which will sustain the statute and avoid . . . constitutional conflict"). In this instance construing the statute to require state and local government agencies to speak only in English would render the statute vulnerable to constitutional challenge. *See Ruiz v. Hull*, 191 Ariz. 441, 957 P.2d 984 (1998), *cert. denied*, 525 U.S. 1093 (1999). The *Ruiz* court opined that such a construction would violate the "First Amendment to the United States Constitution because it adversely impacts the constitutional rights of non-English-speaking persons with regard to their obtaining access to their government and limits the political speech of elected officials and public employees." *Ruiz*, 957 P.2d at 987. The *Ruiz* court also concluded that such a construction would deny persons of limited English proficiency from exercising their constitutional right to participate in and have access to government, "a right which is one of the 'fundamental principle[s] of representative government in this country.'" *Id*. at 997. (*quoting Reynolds v. Sims*, 377 U.S. 533, 560 (1964)).[1]

Additionally, according to *Ruiz*, such a construction would violate "the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because it unduly burdens core First Amendment rights of a specific class without materially advancing a legitimate state interest." *Id*. at 987. This Office has previously opined that a Senate Bill similar to the statute in question, requiring all driver's license tests to be administered in English, may be subject to attack under Title VI of the Civil Rights Act of 1964. *See* Op. Tenn. Att'y Gen. 05-125 (August 17, 2005). Because the less restrictive construction of Tenn. Code Ann. § 4-1-104 posited above would avoid the thorny constitutional issues discussed in *Ruiz*, we conclude that a court would most likely

[1]In contrast to the language of the statute at issue here, *Ruiz* involved an amendment to the Constitution of the State of Arizona adopted in 1988 which unambiguously stated not just that English was the official language of the state but also that "[t]his State and all other political subdivisions of this State shall act in English and in no other language."

interpret the statute to mean that governmental agencies in Tennessee must disseminate information in English but are not prohibited from posting the same information in other languages as well.[2]

2. As discussed above, Tenn. Code Ann. § 4-1-404 likely would not be interpreted to prohibit government communication in languages other than English. Nevertheless, the statute's directive regarding public school and university instruction is constitutional. Case law from other jurisdictions has suggested that the constitution affords to teachers less protection in their determination of what language to use in class. The concluding clause of Tenn. Code Ann. § 4-1-104 states that "instruction in the public schools and colleges of Tennessee shall be conducted in English unless the nature of the course would require otherwise." The Supreme Court has not definitively addressed the question of whether and to what extent a teacher's instructional speech is protected by the First Amendment. *See California Teachers Association v. State Board of Education*, 271 F.3d 1141, 1138 (9th Cir. 2001). But the Ninth Circuit has concluded that, "in the context of curriculum presentation, it is the state's pedagogical interests that take a clear precedence over the teachers' First Amendment interests." *Id*. at 1154. Therefore, a restriction on a teacher's instructional speech is valid if it is "reasonably related to legitimate pedagogical interests." *Id*.

Accordingly, as long as a teacher is presenting the school's curriculum to a class, that teacher may constitutionally be required to present the curriculum in the English language when there is a legitimate educational reason to do so. Of course, Tenn. Code Ann. § 4-1-104 permits instruction in other languages if "the nature of the course would require otherwise." Whether the nature of a particular course would "require otherwise" will depend upon the facts and circumstances, including the pedagogical objectives sought to be achieved by the educational professionals responsible for designing the curriculum.

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[2]Although scant, the legislative history supports this interpretation. The statute was enacted as 1984 Tenn. Pub. Acts, Chapter 821. The members advocating passage indicated during committee hearings and on the floor that the purpose of the bill was to provide governmental agencies and school districts with a legal basis to resist demands to conduct business in multiple foreign languages. There is nothing in their remarks, however, to suggest that the legislation was intended to require governmental agencies to conduct business solely in English.

Requested by:

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