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Opinion No. 07-147

Private Act Environmental Court

QUESTION

May a private or public act constitutionally authorize the City of Jackson to establish an environmental court with the following powers:

a. Injunctive powers, both mandatory and prohibitory, with such power to be exercised as provided for in Rule 65 of the Tennessee Rules of Civil Procedure; and

b. The authority to imprison for a violation, as contempt of court, for no more than five days?

OPINION

Article VI, Section 14, of the Tennessee Constitution provides that no fine of more than fifty dollars may be imposed without a jury hearing. Since a city court is not authorized to convene a jury, it may not constitutionally impose a fine of more than fifty dollars for contempt of court. Further, if imprisonment under the act in question is a punishment, rather than a means of coercing a person to correct an environmental violation, it may only be imposed by an "inferior court" within the meaning of Article VI of the Tennessee Constitution. Among other requirements, the judge of an inferior court must be elected to an eight-year term. Finally, under Article I, Section 8, of the Tennessee Constitution, the authority to imprison an individual as punishment for violating an environmental ordinance — whether or not termed a "contempt of court" — may only constitutionally be exercised by a judge of an inferior court who is an attorney.

ANALYSIS

This opinion addresses whether a private or public act may constitutionally authorize the City of Jackson to establish an environmental court with injunctive powers and power to imprison for no more than five days "in contempt matters." We assume this means the power to imprison for no more than five days for contempt of court, for example, for ignoring a court order to correct an environmental violation. Of course, the constitutionality of any particular act would depend on its terms. For example, it is not clear what powers the contemplated "environmental court" might have. We note that the Jackson City Charter requires the city council to establish a city court. Jackson City Charter, § 42. The City Judge is popularly elected. *Id.* Under the Municipal Court Reform Act

of 2004, Tenn. Code Ann. § 16-18-302, the Jackson City Court already has the authority to enforce city ordinances, including safety, health, and other environmental ordinances. Tenn. Code Ann. § 16-18-302(a)(1). The court also has jurisdiction to enforce any municipal law that mirrors a state criminal statute if the statute is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars. Tenn. Code Ann. § 16-18-302(a)(2). This opinion will address whether a city court may be given injunctive powers exercised by trial courts under Rule 65 of the Tennessee Rules of Civil Procedure and the power to imprison for no more than five days for violations of court orders enforcing environmental ordinances.

Research indicates that "environmental courts" with the enforcement powers specified in the request operate in at least two different counties, Shelby and Davidson. In these counties, one division of the general sessions court is the county's environmental court. Chapter 426 of the 1991 Public Acts is a local option law applicable to any county with a population of over 600,000 according to the 1970 federal census or any subsequent federal census. This law creates an additional division of the general sessions court with exclusive jurisdiction to hear cases involving violations of county ordinances, including environmental ordinances. Section 3 of the act provides in part that, "[i]n addition to other powers granted herein, the judge of the additional division is hereby granted the power to issue injunctions, both mandatory and prohibitory, such power to be exercised as provided for in Rule 65 of the Tennessee Rules of Civil Procedure and is hereby empowered to order any defendant found guilty of violating any ordinance relating to health, housing, fire, land subdivision, building or zoning to correct such violation at the defendant's own expense." Section 3 also provides:

> The judge of the additional division shall have the power to punish any person for contempt who, having been ordered to correct a violation of any county ordinance relating to health, housing, fire, land subdivision, building or zoning, willfully fails to obey such order within the designated day and at the designated time as given by such court order. The punishment for contempt in each such case is limited to a fine of fifty dollars ($50.00) and imprisonment not exceeding five (5) days for each such violation.
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> Notwithstanding any provision of law to the contrary, the judge of such additional division of the county general sessions court shall have the jurisdiction to try and dispose of violations of municipal ordinances pursuant to the terms of an intergovernmental agreement between the city government and the county government; provided, that a certified copy of all ordinances of the city to be enforced pursuant to such intergovernmental agreement shall have been filed with the judge of the division. The judge shall direct the clerk of the general sessions court that all fines collected pursuant to judgments rendered in cases of city ordinance violations shall be paid over to the city and all court costs provisions of Tennessee Code Annotated, Section 16-15-703(d), to help administer the cost of enforcement, provided that reasonable costs have been set by ordinance of the city.

The General Assembly has also granted a court designated as an environmental court under

this act the authority to abate public nuisances. Tenn. Code Ann. § 29-3-102. A similar environmental court operates in Davidson County under the authority of Chapter 212 of the Public Acts of 1993. Under that act, the metropolitan council of any county with a metropolitan form of government may designate Division IV of the county's general sessions court as the environmental court. In 2006, the General Assembly authorized the Bradley County Commission to designate a division of the Bradley County General Sessions Court as the Environmental Court for the county, and gave such a court similar contempt and injunctive powers. 2006 Tenn. Priv. Acts Ch. 86. In addition, any general sessions judge exercising jurisdiction over city ordinances may imprison offenders who fail to appear when cited. Tenn. Code Ann. § 29-9-108. The sentence is limited to five days.

No constitutional impediment exists to granting a general sessions court the powers of an "environmental court" outlined above. A general sessions judge is the judge of an "inferior court" within the meaning of Article VI of the Tennessee Constitution. *Franks v. State*, 772 S.W.2d 428 (Tenn. 1989); *see also Barker v. Harmon*, 882 S.W.2d 352 (Tenn. 1994). A judge exercising the powers of an inferior court must be popularly elected for an eight-year term and meet the other requirements for an inferior court judge under Article VI of the Tennessee Constitution. *Town of South Carthage v. Barrett*, 840 S.W.2d 895 (Tenn. 1992); *State ex rel. Newsom v. Biggers*, 911 S.W.2d 715, 717 (Tenn. 1995); *City of White House v. Whitley*, 979 S.W.2d 262 (Tenn. 1998) (a city court exercising concurrent general sessions jurisdiction over violations of state criminal laws within the city must meet the requirements of an "inferior court" under Article VI of the Tennessee Constitution). It is not clear whether the Jackson City Judge is popularly elected for an eight-year term or meets the other requirements for an inferior court judge. No private act appears to confer concurrent general sessions jurisdiction on the Jackson City Court.

The question then becomes whether either of the powers — that of injunction under Rule 65 or incarceration for five days for a violation as a contempt of court — is a power that may only be exercised by a court that meets the requirements of an "inferior court" under Article VI.

The major issue with regard to the power to issue injunctions under Rule 65 is the court's power to sanction violations of its orders. Under Rule 65.06, a judge may compel compliance or punish disobedience with an order "as a contempt." The rule does not specify what sanctions a court may impose. Under Tenn. Code Ann. § 16-18-306, contempt of a municipal court is punishable by a fine of fifty dollars or less. Under Article VI, Section 14, of the Tennessee Constitution, the judge of a municipal court — which does not have the authority to convene a jury — may not constitutionally impose a fine of more than fifty dollars for the violation of a municipal ordinance. *Town of Nolensville v. King*, 151 S.W.3d 427 (Tenn. 2004).

The next issue is whether a city court may constitutionally be authorized to imprison an individual who violates a court order for up to five days. This Office has concluded that, under Article VI, Section 1, of the Tennessee Constitution, those functions performed by justices of the peace at the time of the 1870 Constitution are all powers that need not be exclusively performed by an inferior court. Op. Tenn. Att'y Gen. 05-061 (April 27, 2005); Op. Tenn. Att'y Gen. 93-29 (April 1, 1993). Thus, powers similar to these may be assigned to lesser judicial officers, like city court

judges, who are "essentially acting as justices of the peace." Op. Tenn, Att'y Gen. 93-29. The 1993 opinion contains a list of functions justices of the peace were authorized to perform in 1870. This list does not include the power to incarcerate as a punishment for contempt of court. Under the Code of 1858, justices of the peace were expressly authorized "[t]o punish persons disturbing them in the discharge of their official duties." Code of Tennessee § 4125.9 (1858). Section 4112 provided that, [a]ny officer authorized to punish for contempt, is a court within the meaning of this chapter." Under this Code, the Circuit, Chancery, and Supreme Courts could impose a fine of fifty dollars and imprisonment not exceeding ten days for contempt of court. Other courts were limited to imposing a fine of ten dollars for contempt of court unless otherwise expressly provided by law. Code of Tennessee § 4107 (1858). Section 4108 of the same Code provided:

> But if the contempt consists in an omission to perform an act which it is yet in the power of the person to perform, *he may be imprisoned until the performs it.*

(Emphasis added). This provision appears to authorize all courts to imprison offenders for civil, as opposed to criminal, contempt of court. Courts still possess this authority. Tenn. Code Ann. § 29-9-104. The Tennessee Court of Criminal Appeals described the distinction between the two types of contempt as follows:

> The punishment in a civil contempt is remedial, compelling the doing of something by the contemnor, which, when done, will work his discharge. Civil contempt judgments coerce the contemnor into complying with an order of the court. It is often said that in civil contempt cases, the contemnor has the keys to the jail in his own pocket.
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> On the other hand, criminal contempts are punitive in character. These proceedings are to vindicate the authority of the law and the court as an organ of society. In criminal contempt cases, the contemnor must serve the sentence imposed whether or not he purges himself by complying with the court order. One convicted of criminal contempt does not carry the key to the jail in his pocket.

Robinson v. Gaines, 725 S.W.2d 692, 694 (Tenn. Crim. App. 1986) (citations omitted), *overruled on other grounds, Brown v. Latham*, 914 S.W.2d 887 (Tenn. 1996). City courts were authorized to fine an individual for contempt of court. *State ex rel. May v. Krichbaum*, 152 Tenn. 416, 278 S.W. 54 (1925). They were also authorized to imprison the offender until he or she paid the fine. *Id.* We have found no authority, however, indicating that justices of the peace were authorized to imprison offenders as a punishment for criminal contempt or for any other offense under the laws in effect in 1870. *See also Poole v. City of Chattanooga,* 2000 WL 310564, E1999-01965-COA-R3-CV (Tenn. Ct. App. March 27, 2000) (the Chattanooga City Court is not authorized to imprison an individual as a punishment for criminal contempt). For these reasons, we think a court would conclude that the authority to imprison an offender as a punishment for contempt may only be exercised by a court that meets the requirements of an "inferior court" under Article VI of the Tennessee Constitution.

Under Article VI, the judge of an inferior court need not be a licensed attorney. But the Tennessee Supreme Court has found that the due process protections of Article I, Section 8, of the Tennessee Constitution guarantee to a criminal defendant on trial for an offense punishable by incarceration the right to be tried before an attorney judge. *City of White House v. Whitley*, *supra*. Under this case, we think the authority to imprison an individual for contempt of court in punishment for violating an environmental ordinance — whether or not termed a "contempt of court" — may only constitutionally be exercised by a judge of an inferior court who is an attorney.

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