S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 08-08

Charter County Authority over Juvenile Court

QUESTIONS

1. Shelby County is a charter county. In August 2007, the County Commission by resolution eliminated the funding for the position of public information officer for the Juvenile Court of Memphis and Shelby County. The Commission had included funding for this position in its 2007-2008 fiscal year budget, adopted in June 2007. The Juvenile Court is an "inferior court" within the meaning of Article VI of the Tennessee Constitution. Tenn. Code Ann. § 5-1-204(f)(1), addressing creation of a charter commission, provides in relevant part that "[n]othing contained within the provisions of this section shall be construed to affect the judicial system in any county adopting a charter form of government except as its charter or ordinances may direct the imposing, levying or collection of fines, penalties, fees or court costs or the procedures for the filling of vacancies as required by law." Did the Commission's reduction in the Juvenile Court budget violate this statute, and, if so, is the action void?

2. Apart from the specific matters listed in Tenn. Code Ann. § 5-1-204(f)(1), may a county commission in a county operating under a charter form of government take actions that impact the county judicial system in any other way?

OPINIONS

1. No. Under Section 11 of Chapter 219 of the Private Acts of 1967, the Shelby County Commission is expressly authorized to pay the personnel expenses of the Juvenile Court of Memphis and Shelby County. Under the applicable private act and other statutes, the Shelby County Commission is authorized to fund personnel for the Juvenile Court and may revise that budget to eliminate a position. Further, to the extent the private act authorizes the County Commission to terminate this position, the act does not unconstitutionally encroach on the judicial branch of government.

2. Yes. A charter county retains all the authority delegated to counties under general laws and under private acts as of the date it adopts its charter. A county commission operating under a charter form of government, therefore, may exercise all the authority of a county under general laws, as well as those accorded to it under private acts as of the date it adopted its charter. The county's authority with regard to courts operating within the county would depend on the applicable private acts and general laws. Of course, these powers are still subject to constitutional limitations.

Thus, a county commission may neither violate Article VI of the Tennessee Constitution nor impermissibly encroach upon the judicial power of a court to apply and interpret laws in violation of Article II, Section 3, of the Tennessee Constitution.

ANALYSIS

1. Amending the Budget for the Juvenile Court

This opinion concerns the authority of a county operating as a charter county under Tenn. Code Ann. §§ 5-1-201, *et seq.*, with respect to the Juvenile Court of Memphis and Shelby County. The request indicates that, in August 2007, the Shelby County Commission voted to eliminate funding for the position of public information officer for the Juvenile Court of Memphis and Shelby County (the "Juvenile Court"). The Commission had included funding for this position in its 2007-2008 fiscal year budget, adopted in June 2007. In the course of employment, the public information officer received frequent media inquiries concerning judicial proceedings and court operations. The public information officer directed media representatives to appropriate court staff personnel for responses in keeping with the rules relative to permissible dissemination of information. The public information officer helped increase public awareness of the court's responsibilities and operations. Under Tenn. Code Ann. § 5-1-204, the initial step in adopting a charter form of government is the creation of a charter commission. Subsection (f)(1) of this statute provides:

> Nothing contained within the provisions *of this section* shall be construed to affect the judicial system in any county adopting a charter form of government except as its charter or ordinances may direct the imposing, levying or collection of fines, penalties, fees or court costs or the procedures for the filling of vacancies as required by law.

(Emphasis added). The request asks whether the Commission's elimination of funding for the position of public information officer exceeded the Commission's authority and, therefore, is void.

As cited above, Tenn. Code Ann. § 5-1-204 limits only the effect of that statute. It must be read in conjunction with other statutes governing the Juvenile Court. These statutes generally authorize the Shelby County Commission to fund the Juvenile Court. The Juvenile Court was created under Chapter 219 of the Private Acts of 1967. Under Section 11 of this act, the County is authorized to pay personnel and other expenses for the Court. Section 12 authorizes the chairman of the Quarterly Court to pay juvenile court purchases and expenses but provides that the Quarterly Court may delegate these duties to the Shelby County Board of Commissioners.[1]

Section 2.01 of the Shelby County Charter vests the legislative power of the county in the

[1] When Chapter 219 was passed, the Shelby County Quarterly Court and the Shelby County Commission both administered county affairs. *See Shelby County Board of Commissioners v. Shelby County Quarterly Court*, 216 Tenn. 470, 392 S.W.2d 935 (Tenn. 1965). The County now operates under a Board of Commissioners and a County Mayor, pursuant to a charter adopted in accordance with Tenn. Code Ann. §§ 5-1-201, *et seq.*

Shelby County Commission, including all authority of a legislative nature vested in the county by the Constitution, general statutes, or special, local or private acts of the General Assembly or the charter. Tenn. Code Ann. § 5-9-407 generally authorizes a county commission to revise its budget. Under the applicable private act and other statutes, therefore, the Shelby County Commission is authorized to fund personnel for the Juvenile Court and may revise that budget to eliminate a staff position.

This question must also be considered within the broader constitutional framework. Counties owe their creation to statutes, and the statutes confer on them all the powers that they possess, prescribe all the duties they owe, and impose all the duties to which they are subject. *Maury County ex. rel. Maury Regional Hospital v. Tennessee State Board of Equalization,* 117 S.W.3d 779 (Tenn. Ct. App. 2003), *p.t.a. denied* (2003). The legislature has unlimited power to enact laws except as expressly or impliedly restricted by the United States or Tennessee Constitution. *Perry v. Lawrence County Election Commission,* 219 Tenn. 548, 551, 411 S.W.2d 538 (1966), *cert. denied, Kimbrell v. Perry,* 88 S.Ct. 44, 389 U.S. 821, L.Ed.2d 73 (1967); *Mayhew v. Wilder,* 46 S.W.3d 760, 784 (Tenn. Ct. App. 2001), *p.t.a. denied* (2001). The legislature cannot delegate to the county legislative body the authority to do an act that the constitution forbids the legislature from doing. *State ex. rel. Board of Dental Examiners v. Allen,* 192 Tenn. 396, 399, 241 S.W.2d 505 (1951). There is a strong presumption in favor of the constitutionality of acts passed by the legislature. *State v. Pickett,* 211 S.W.3d 696, 700 (Tenn. 2007). When considering the constitutionality of a statute, courts have a duty to adopt a construction that will sustain the statute and avoid constitutional conflict if at all possible, and this duty requires courts to indulge every presumption and resolve every doubt in favor of the statute's constitutionality. *State. v. Taylor,* 70 S.W.3d 717 (Tenn. 2002).

The statutes authorizing the Shelby County Commission to fund the Juvenile Court, therefore, should be interpreted to fall within constitutional restrictions on the authority of the legislative branch over the judicial branch. Thus, for example, the Shelby County Commission may not change the judge's salary or interfere with other provisions regarding inferior courts set forth in Article VI of the Tennessee Constitution. Further, the Shelby County Commission may not, in the exercise of its delegated legislative authority, impermissibly encroach on the judicial power of the court in violation of Article II, Section 3, of the Tennessee Constitution. The Tennessee Constitution, Article II, Section 1, expressly states that "[t]he powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial," and Article II, Section 2, provides that "[n]o person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in cases herein directed or permitted." The Constitution does not define in express terms what are legislative, executive, or judicial powers, but the Tennessee Supreme Court has said that the legislative power is to make, order, and repeal laws; the executive power is to administer and enforce laws; and the judicial power is to interpret and apply laws. *Bredesen v. Tennessee Judicial Selection Commission*, 214 S.W.3d 419, 434 (Tenn. 2007); *Underwood v. State,* 529 S.W.2d 45, 47 (Tenn. 1975); *Richardson v. Young,* 122 Tenn. 471, 493, 125 S.W. 664 (1909). Thus, a legislative enactment that does not frustrate or interfere with the adjudicative function of courts does not constitute impermissible encroachment on the judicial branch of government. *Lynch v. City of Jellico,* 205 S.W.3d 384, 395 (Tenn. 2006); *Underwood v. State,* 529 S.W.2d at 47.

The request points out that the public information officer whose position was terminated helped to educate the public about the functions of the Juvenile Court. Although this function may help the Juvenile Court to administer its cases, it is not a part of that court's power to interpret and apply laws. For this reason, to the extent the private act authorizes the County Commission to terminate this position, the act does not unconstitutionally encroach on the judicial authority.

2. General Authority of Charter County with Regard to State Court

The second question is whether a county commission in a county operating under a charter form of government may take actions that impact the county judicial system in any other way apart from the specific matters listed in Tenn. Code Ann. § 5-1-204(f)(1). As discussed in the answer to Question 1, Tenn. Code Ann. § 5-1-204(f)(1) is expressly limited to Tenn. Code Ann. § 5-1-204. It does not affect county powers set forth in other statutes or private acts. Under Tenn. Code Ann. § 5-1-210(1), a county charter must provide:

> For the creation of an alternative form of county government *vested with any and all powers that counties are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the state of Tennessee, and any and all powers and duties of such county that are required or authorized by private acts effective on the date of ratification of such charter,* as fully and completely as though the powers were specifically enumerated therein[.]

(Emphasis added). Section 1.03 of the Shelby County Charter provides:

> The government described herein shall be a public corporation vested with any and all powers which the counties are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the State of Tennessee and any and all powers and duties of such county which are required or authorized by private acts effective on the date of ratification of this charter, as fully and completely as though the powers were specifically enumerated herein.

Shelby County, therefore, retains all the powers of a county under general statutes as well as those conveyed to Shelby County under private acts in effect as of the date the charter was ratified. Counties in general have specific statutory duties with regard to various courts. For example, the county ordinarily owns and maintains the county courthouse. Tenn. Code Ann. § 5-7-104. Further, the sheriff has charge of the courthouse. Tenn. Code Ann. § 5-7-108; Tenn. Code Ann. § 8-8-201(a)(2). A charter county retains all the authority delegated to counties under general laws or under private acts as of the date it adopts its charter. A county commission operating under a charter form of government, therefore, may exercise all the authority of a county under general laws, as well as those accorded to it under private acts as of the date it adopted its charter. The county's authority with regard to courts operating within the county would depend on the applicable private acts and general laws. Of course, these powers are still subject to constitutional limitations. Thus, a county commission may neither violate Article VI of the Tennessee Constitution nor impermissibly encroach upon the judicial power of a court to apply and interpret laws in violation

of Article II, Section 3, of the Tennessee Constitution.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Brian Kelsey
State Representative
203 War Memorial Building
Nashville, TN 37243-0183