S T A T E O F T E N N E S S E E
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March 31, 2008

Opinion No. 08-70

Constitutionality of House Bill 2778 (2008)

QUESTION

1. Is House Bill 2778 (HB2778)[1] constitutional?

OPINION

1. Yes.

ANALYSIS

HB2778 provides as follows:

HOUSE BILL 2778
By Cooper B

AN ACT to amend Tennessee Code Annotated, Title 4, relative to the National Civil Rights Museum.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The executive director of the Tennessee state museum shall report to the house and senate government operations committees concerning the lease and operations of the National Civil Rights Museum in Memphis by no later than January 11, 2009. The report shall include an assessment of the governance of the museum and the implementation of any memorandum of understanding relating to the lease of state property for the museum. The report shall make appropriate recommendations for any legislation that may prove beneficial to the operation of the museum.

[1]The corresponding Senate Bill is SB3265.

> SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

The only potential constitutional issue that appears to be implicated by this proposed legislation is whether the General Assembly may constitutionally enact legislation requiring the appearance of a member of the Executive branch before the House and Senate Government Operations Committees.

The Tennessee Constitution, Article II, Sections 1 and 2, provides:

> The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.
>
> No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.

Under the doctrine of separation of powers, the three departments of government are "coordinate, independent, coequal and potentially coextensive." *Richardson v. Tennessee Board of Dentistry*, 913 S.W.2d 446, 453 (Tenn. 1995). Each department is expressly prohibited from encroaching on the powers and functions of the other departments. *Richardson*, 913 S.W.2d at 453. The doctrine of separation of powers is not absolute, however. *State v. King*, 973 S.W.2d 586, 588 (Tenn. 1998). Tennessee courts have held that, in general, the legislature has the power to make, order, and repeal law; the executive branch has the authority to administer and enforce the law; and the judicial branch has the power to interpret and apply the law. *Id.* Thus, the Court in *State v. King* stated as follows:

> The separation of powers doctrine arises from the precept that "[i]t is essential to the maintenance of republican government that the action of the legislative, judicial, and executive departments should be kept separate and distinct." *Richardson v. Young*, 122 Tenn. 471, 492, 125 S.W. 664, 668 (1910). The Court of Appeals has summarized the doctrine as follows:
>
> > In general, the "legislative power" is the authority to make, order, and repeal law; the "executive power" is the authority to administer and enforce the law; and the "judicial power" is the authority to interpret and apply law. The Tennessee constitutional provision prevents an encroachment by any of the departments upon the powers, functions and prerogatives of the others. The branches of government, however, are guided by the doctrine of checks and balances; the doctrine of separation of powers is not absolute.
> >
> > *State v. Brackett*, 869 S.W.2d 936, 939 (Tenn.Crim.App.1993) (citations omitted). Thus, while the three branches of government are independent and co-equal, they are to a degree interdependent as

> well, with the functions of one branch often overlapping that of another. *Underwood v. State,* 529 S.W.2d 45, 47 (Tenn.1975).
>
> "[B]ecause the defining powers of each department are not always readily identified, recognizing an encroachment by one department upon another is sometimes difficult." *Summers v. Thompson,* 764 S.W.2d 182, 189 (Tenn.)(Drowota, J., concurring), *cert. dismissed,* 488 U.S. 977, 109 S. Ct. 524, 102 L.Ed.2d 556 (1988).

Id., 973 S.W.2d at 588-589.

In a previous opinion of this Office, Tenn. Op. Att'y Gen. No. 05-084 (May 16, 2005), we noted that other statutes, such as Tenn. Code Ann. §§ 37-3-103(a)(1)(E) and 37-5-105(4), provide that the Tennessee Commission on Children and Youth and the Department of Children's Services must provide annual reports to "members of the general assembly." In that opinion, we found no concerns with such legislation under the Separation of Powers Doctrine.[2] Indeed, we anticipate that a court would be unlikely to consider the mere legislative mandate that a member of the Executive branch appear before legislative committees to report and make recommendations concerning operation of the civil rights museum to constitute "encroachment" by the Legislative branch upon the Executive branch's "authority to administer and enforce the law." *State v. Brackett,* 869 S.W.2d at 939. Rather, such legislation appears to be a natural function of the "overlapping" that occurs between the branches of government.

Accordingly, HB2778 appears to comply with both the United States and Tennessee Constitutions.

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[2]In that opinion, this Office identified a potential Separation of Powers Doctrine issue concerning legislation that required the Department of Correction and the Department of Children's Services to provide a report on the cause of death of any individual who dies while in departmental custody to that individual's state senator or representative, as opposed to reporting to a legislative committee or to the General Assembly as a whole. *See* Tenn. Op. Att'y Gen. No. 05-084 (May 16, 2005)

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