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Opinion No. 08-112

Constitutionality of HB 82 as Amended

QUESTION

Whether HB 82, as amended, is constitutionally defensible?

OPINION

Assuming that Art. XI, Section 8 of the Tennessee Constitution is applicale, absent a rational basis for treating Shelby County differently than all others, a court would conclude that HB 82, as amended, violates Article XI, Section 8. A court would also probably conclude that HB 82, as amended, violates Art. XI, Section 9 of the Tennessee Constitution because it applies only in one county within a narrowly defined population bracket but does not contain the requirement of local ratification under Art. XI, Section 9.

ANALYSIS

You have asked whether HB 82, which has been amended by the House with the adoption of Amendments Nos.19 and 21, is constitutionally defensible. HB 82 originally provided as follows:

> SECTION 1. Tennessee Code Annotated, Section 2-5-101(f)(5), is amended by designating the existing language as subdivision (A) and adding the following language as a new subdivision (B) thereto:
>
> (B) No candidate, whether independent or represented by a political party, may be permitted to submit and have accepted by any election commission, more than one (1) qualifying petition, or otherwise qualify and be nominated, or have such candidate's name anywhere appear on any ballot for any election or primary, wherein such candidate is attempting to be qualified for and nominated or elected to more than one (1) local public office as defined in § 2-10-102(13).
>
> SECTION 2. Tennessee Code Annotated, Title 8, Chapter 18, Part 1, is amended by adding the following as a new section thereto:

> 8-18-115.
>
> No person shall be allowed to hold more than one (1) local public office as defined in § 2-10-102(13).
>
> SECTION 3. This act shall take effect July 1, 2007, the public welfare requiring it and shall apply to all persons elected or reelected on or after such date.

Amendment No. 19 deletes all the language after the enacting clause and substitutes the following language:

> SECTION 1. Tennessee Code Annotated, Title 8, Chapter 18, Part 1, is amended by adding the following as a new section thereto:
>
> 8-18-115.
>
> No Person shall be allowed to hold more than one (1) local public office as defined in § 2-10-102(13) in any county having a population of not less than eight hundred ninety-seven thousand four hundred (897,400) nor more than eight hundred ninety-seven thousand five hundred (897,500) according to the 2000 federal census or any subsequent federal census.
>
> SECTION 2. This act shall take effect July 1, 2007, the public welfare requiring it and shall apply to all persons elected or reelected on or after such date.

The first issue is whether HB 82, as amended by Amendment No. 19, violates Art. XI, Section 8 of the Tennessee Constitution. Generally, any legislation affecting different counties or cities in their governmental or political capacity must satisfy the requirements of Article XI, Section 8 of the Tennessee Constitution. *Jones v. Haynes*, 221 Tenn. 50, 424 S.W.2d 197 (1968); *Brentwood Liquors Corporation v. Fox*, 496 S.W.2d 454 (Tenn. 1973). These provisions generally prohibit the General Assembly from suspending any general law for the benefit of any particular individual. In order to trigger application of Article XI, Section 8, a statute must contravene some general law that has mandatory statewide application. *Riggs v. Burson*, 941 S.W.2d 44, 78 (Tenn. 1997), *reh'g denied* (1997), *cert. denied*, 118 S.Ct. 444 (1997).

Tenn. Code Ann. § 2-5-101(f)(5) currently prohibits a candidate, whether independent or represented by a political party, from qualifying, being nominated or otherwise appearing on the ballot for any election wherein such candidate is attempting to be qualified for and nominated or elected to more than one *state* office as described in Tenn. Code Ann. § 2-13-202(1), (2) or (3) or in Art. VI of the Tennessee Constitution, or more than one constitutional *county* office described in Art. VII, Section 1 of the Tennessee Constitution or any other county-wide office, voted on by voters during any primary or general election. This statute does not, however, prohibit a candidate from attempting to be qualified for and nominated or elected to more than one local office as defined in

Tenn. Code Ann. § 2-10-102(13). Moreover, we are not aware of any statute of statewide application that specifically permits candidates for local public office to be elected to and/or to hold more than one local public office. Thus, there does not appear to be a general law of mandatory statewide application that would be contravened by the application of HB 82 and, therefore, Art. XI, Section 8 of the Tennessee Constitution is not implicated by this bill.

However, if Art. XI, Section 8 were applicable, we think that this bill is constitutionally suspect absent a rational basis for the different treatment of candidates for local public office in a single location. Only one county — Shelby County — falls within the specified population bracket under the 2000 federal census. Tenn. Code Ann. Vol. 13 (Supp. 2007) at 238. The bill does not on its face disclose any reason why candidates for local public office in Shelby County are treated differently than such candidates in all other counties. Absent a rational basis for treating Shelby County differently than all others, a court would conclude that HB 82, as amended, violates Article XI, Section 8.

The second issue is whether HB 82, as amended, violates Art. XI, Section 9 of the Tennessee Constitution because it is not required to be ratified by the county legislative bodies in the counties where it applies. Under Art. XI, Section 9, any act of the General Assembly "private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity" is void unless the act by its terms requires approval by the legislative body of the municipality or county, or an approval in a county or city referendum. Thus, if HB 82, as amended, is an act "private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity" within the meaning of Art. XI, Section 9, then it must include a provision requiring local approval before it can become effective.

The test under Art. XI, Section 9 is whether the enactment, irrespective of its form, is local in effect and application. *Farris v. Blanton*, 528 S.W.2d 549 (Tenn. 1975) (an act that was general in its form but could only apply to Shelby County required local ratification under Article XI, Section 9); *Lawler v. McCanless*, 220 Tenn. 342, 417 S.W.2d 548 (1967) (a general law limited by population bracket to Gibson County required local ratification under Article XI, Section 9). As previously noted, HB 82, as amended, while general in form, is expressly limited to counties whose populations fall within one narrowly defined bracket. Because the bracket restricts the application of the bill to a single county, we think a court would conclude that the bill is unconstitutional because it does not contain the requirement of local ratification under Art. XI, Section 9.

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