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December 29, 2008

Opinion No. 08-191

Constitutionality of 1978 Tenn. Priv. Acts Ch. 322

QUESTION

Whether Chapter 322 of the Private Acts of 1978 violates the Tennessee Constitution.

OPINION

We think that a court could find that Chapter 322 does not violate Article XI, Section 8, in light of all the circumstances and in view of the broad powers which the General Assembly has with reference to the structure of local governments and their agencies.

ANALYSIS

This opinion concerns the validity of 1978 Tenn. Priv. Acts Ch. 322 concerning the election of the county executive and members of the county legislative body of Rhea County. Chapter 322 of the Private Acts of 1978 states in part as follows:

> SECTION 1. No person shall seek office as the county executive of Rhea County or as a member of the county legislative body of Rhea County and advertise, publicize, or otherwise hold himself or herself out to be the candidate or nominee of a political party. Elections for these offices in Rhea County shall be conducted without the use of party identification or labels, and no political party shall publicize or otherwise identify any particular office seeker as a nominee or candidate of that or any other political party.

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 (1969); *Brentwood Liquors Corporation v. Fox*, 496 S.W.2d 454 (Tenn. 1973). That section provides in relevant part:

> The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie, [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

In order to trigger application of Article XI, Section 8, a statute must "contravene some *general law* which has *mandatory statewide application*." *Knox County ex rel. Kessell v. Lenoir City*, 837 S.W.2d 382, 383 (Tenn. 1992); *Leech v. Wayne County*, 588 S.W.2d 270, 273 (Tenn. 1979); *Rector v. Griffith*, 563 S.W.2d 899 (Tenn. 1978) (emphasis added). The question is whether Chapter 322 as a whole violates Article XI, Section 8, of the Tennessee Constitution because it contradicts a law of statewide applicability governing the election of county executives and the members of county legislative bodies.

Tenn. Code Ann. § 5-5-102 governs the election of the members of county legislative bodies. While that statute contains provisions concerning when such election shall be held, the qualifications and terms of members of the legislative body, and how offices in multi-member districts are to be designated on the ballot, the statute does not contain any requirement that the election of members of county legislative bodies be partisan elections. Similarly, Tenn. Code Ann. § 5-6-102 governs the election of county mayors.[1] This statute establishes when elections for county mayors are to be held but it does not mandate that such elections be partisan elections. Thus, Chapter 322 does not contradict either of these statutes.

However, Tenn. Code Ann. § 2-13-203(a) provides that "[p]olitical parties may nominate their candidates for any office other than those listed in § 2-13-202 by any method authorized under the rules of the party or by primary election under this title." County mayors and members of the county legislative body are not included in the list in Tenn. Code Ann. § 2-13-202. Thus, the general law would appear to provide that county political parties may decide whether to hold a primary election for county mayors and members of the county legislative body contrary to Chapter 322, which mandates that the election of the Rhea County mayor and members of the county legislative body be nonpartisan. *See also* Tenn. Op. Atty. Gen. No. 97-094 (June 26, 1997) (copy attached). We would note, however, that subsection (e) of Tenn. Code Ann. § 2-13-204 provides that elections for state trial court judgeships and county judicial offices in any county having a population in excess of eight hundred twenty-five thousand (825,000) are to be nonpartisan. Additionally, Tenn. Code Ann. § 2-13-208 provides that municipal elections, as well as elections for county mayor and members of the legislative body of any county having a metropolitan form of government, shall also be nonpartisan.

Even if a Chapter 322 were found to constitute special or class legislation, it nonetheless would not violate Article XI, Section 8 if it is rationally related to a legitimate legislative interest.

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[1] Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

In applying the rational basis test, courts presume that the legislature acted constitutionally and will uphold the statute "if any state of facts can reasonably be conceived to justify the classification or if the reasonableness of the class is fairly debatable …" *City of Chattanooga v. Davis*, 54 S.W.248, 276 (Tenn. 2001) (quoting *Bates v. Alexander*, 749 S.W.2d 742, 743 (Tenn. 1988)); *Phillips v. State*, 304 S.W.2d 614, 617 (Tenn. 1957); *Knoxtenn Theatres v. McCanless*, 151 S.W.2d 164, 167 (Tenn. 1941). The party attacking the statute bears the burden of showing that the classification does not rest upon a reasonable basis. *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439 (Tenn. 1978); *Estrin v. Moss*, 430 S.W.2d 345, 349 (Tenn. 1968), *cert. denied*, 393 U.S. 318, 89 S.Ct. 554 (1969). It is not necessary that the reasons for the special legislation appear on the face of the legislation. *Stalcup*, 577 S.W.2d at 442; *State ex rel. Melton v. Nolan*, 30 S.W.2d 601, 602 (Tenn. 1930).

Clearly there is a conflict between Chapter 322 and Tenn. Code Ann. § 2-13-203(a) as Chapter 322 requires nonpartisan elections for the the county mayor and members of the county legislative body of Rhea County. However, it is not certain that a court would find Tenn. Code Ann. § 2-13-203(a) to be a mandatory general law of statewide application, and even if found to be such, if there is any rational basis for justifying Chapter 322's application only to Rhea County, then it would withstand any attack under Article XI, Section 8 of the Tennessee Constitution. While Chapter 322 does not on its face disclose any, we think that there are any number of reasons why the residents of Rhea County would choose nonpartisan elections for their county mayor and commissioners, such as the desire to save money or to encourage election of county leaders on the basis of their abilities and not their political party affiliation. Thus, a court could find that Chapter 322 does not violate Article XI, Section 8, in light of all the circumstances and in view of the broad powers which the General Assembly has with reference to the structure of local governments and their agencies. *See Leech v. Wayne County*, 588 S.W.2d 270, 274 (Tenn. 1979).

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