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Opinion No. 08-195

Effect of Tenn. Code Ann. § 9-4-210 on General Assembly elected after its passage

QUESTIONS

Tenn. Code Ann. § 9-4-210 establishes appropriations requirements for any law enacted after July 1, 1986, that increases imprisonment terms. Subsection (f) provides that "[a]ny law enacted without the funding required by this section shall be null and void unless such funding is appropriated in the general appropriations act."

1. Is a General Assembly elected after this statute was passed subject to or restricted by this statute?

2. Must a General Assembly elected after this statute was passed repeal this statute to avoid its requirements?

3. Is this statute null and void in regards to any or all requirements and restrictions upon a General Assembly elected after July 1, 1986?

OPINIONS

1. – 3. To the extent the statute imposes duties on executive officials, they must continue to follow it until amended or repealed. So long as the statute is consistent with its other rules, the Fiscal Review Committee should carry out the responsibilities that Tenn. Code Ann. § 9-4-210 imposes on it. But, to the extent that the statute imposes limits on the appropriation and lawmaking powers of the General Assembly that are not in the Tennessee Constitution, it is not binding on a General Assembly elected after its passage. A subsequent General Assembly need not amend or repeal the statute to avoid its requirements. Under Article II, Section 24, of the Tennessee Constitution, if a bill requires the expenditure of state funds, the General Assembly must appropriate funds for its estimated first year's funding during the same session that it passes the bill. To the extent that Tenn. Code Ann. § 9-4-210(a) requires an appropriation that is greater than the estimated first year's funding, it is not binding on a subsequent General Assembly.

ANALYSIS

This opinion concerns the effect of Tenn. Code Ann. § 9-4-210. By its terms, that statute applies to "any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities . . . ." The statute requires the estimated operating cost of such law to be appropriated from recurring revenues. The statute provides:

> (a) For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law.
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> (b) "Operating costs," as referred to in subsection (a), means all costs other than capital outlay costs.
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> (c) The amount of appropriations made under subsections (a) and (d) shall be equal to the amounts reflected in fiscal notes prepared by the staff of the fiscal review committee. For purposes of subsection (a), such cost shall be the operating cost, in current dollars, of the highest of the next ten (10) fiscal years commencing after December 4, 1985.
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> (d) Prior to submission of the budget for fiscal years beginning after 1986-1987, estimates of appropriations made under subsection (a) may be adjusted to determine the amount of appropriations of recurring revenues to be repeated for the ensuing fiscal year. If no adjustment is made, then the amount of appropriations previously made shall be repeated.
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> (e) Appropriations made under the provisions of this section shall be placed in a reserve to be used only for the following purposes:
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> (1) Cancellation of bonds authorized but not yet sold; and
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> (2) Capital outlay for the department of correction.
>
> (f) Any law enacted without the funding required by this section shall be null and void unless such funding is appropriated in the general appropriations act.

This statute became effective December 4, 1985. 1985 Tenn. Pub. Acts Ch. 1 (Ext. Sess.). The preamble to this act provides:

> WHEREAS, there is often a significant period of time between the enactment of laws increasing prison sentences and the expenditure of funds to retain custody of prisoners for longer periods of time; and

> WHEREAS, it is the policy of this General Assembly to require that the General Assembly which enacts laws increasing prison sentences be responsible for the funding of such measures; . . . .

The request asks whether this statute is binding on sessions of the General Assembly that were elected after the statute became effective. We note, however, that the statute also imposes some duties that must be carried out by executive officials. Thus, for example, subsection (d) applies to appropriation estimates. Similarly, subsection (e) requires appropriations made under the statute to be placed in a reserve to be used for specific purposes. To the extent the statute imposes duties on executive officials, they must continue to follow the statute until it is amended or repealed.

Further, this statute imposes duties on the Fiscal Review Committee. The Fiscal Review Committee is a joint legislative committee created under Tenn. Code Ann. §§ 3-7-101, *et seq.* To the extent the statute governs this committee, we think a court would conclude that Tenn. Code Ann. § 9-4-210 is a rule of proceeding adopted by both Houses. Op. Tenn. Att'y Gen. 06-036 (February 21, 2006) (statutes creating the Fiscal Review Committee are a legislative rule of proceeding adopted by both Houses). So long as Tenn. Code Ann. § 9-4-210 is consistent with its other rules, the Fiscal Review Committee should carry out the responsibilities that this statute imposes on it.

Other provisions of the statute, however, purport directly to limit the power of the General Assembly. Thus, for example, subsections (a) and (c) require the General Assembly to appropriate funds at the level set in the statute. Further, subsection (f) states that any law enacted without the funding required by the statute "shall be null and void unless such funding is appropriated in the general appropriations act." To the extent that it limits the legislature's power to appropriate and to pass laws, Tenn. Code Ann. § 9-4-210 applies to the General Assembly that passed the statute, but it is not binding on subsequent sessions of the General Assembly. The Tennessee Supreme Court has long recognized that "'each successive General Assembly is a law unto itself in this regard. It is constitutional, and not statutory, prohibitions which bind the legislature."' *Mayhew v. Wilder*, 46 S.W.3d 760, 770 (Tenn. Ct. App. 2001), p.t.a. denied (2001), quoting *Daughtery v. State*, 159 Tenn. 573, 20 S.W.2d 1042, 1043 (1929). Thus, one General Assembly may not bind a subsequent General Assembly.

Further, under Article II, Section 12, of the Tennessee Constitution, each House of the General Assembly has the right to make its own rules, and it must be the judge of those rules. *State v. Cumberland Club*, 136 Tenn. 84, 188 S.W. 583, 585 (1916). In reviewing the passage of an act, all the court can do is to ascertain whether the Constitution has been complied with; if this has been done, the court will look no further. *Id. See, e.g.*, Op. Tenn. Att'y Gen. 06-087 (May 11, 2006) (opining that act creating a new Part III of the Rutherford County General Sessions Court was valid even if not approved by the House and Senate judiciary committees as required by Tenn. Code Ann. § 16-18-311(b)). In Op. Tenn. Att'y Gen. 99-101 (May 5, 1999), this Office addressed the effect of a proposed statutory requirement that all bills changing county

lines be accompanied by a resolution approved by two-thirds of the county commission of each affected county. The Office concluded that the proposed requirement was valid as a rule of legislative procedure enacted in statutory form. But the opinion states that, even if the requirement were passed, the General Assembly could pass a valid law that did not meet the requirement. Thus, to the extent that Tenn. Code Ann. § 9-4-210 imposes limits on the General Assembly that are not in the Tennessee Constitution, the statute is not binding on a General Assembly elected after is passage. A subsequent General Assembly need not amend or repeal the statute to avoid its requirements.

The Tennessee Constitution requires the General Assembly to appropriate the first year's funding for any act requiring expenditure of state funds. Article II, Section 24, provides in relevant part:

> Any law requiring the expenditure of state funds shall be null and void unless, during the session in which the act receives final passage, an appropriation is made for the estimated first year's funding.

Thus, the General Assembly is constitutionally required to appropriate funds for the estimated first year's funding of any law requiring the expenditure of state funds. The funds must be appropriated during the session in which the act receives final passage. This constitutional requirement applies to a bill that results in a net increase in periods of imprisonment in state facilities, regardless of Tenn. Code Ann. § 9-4-210. Under Article II, Section 24, of the Tennessee Constitution, if the bill requires the expenditure of state funds, the General Assembly must appropriate funds for its estimated first year's funding during the same session that it passes the bill. Where a bill requires no expenditures for its first year, no appropriation that year is required under Article II, Section 24. Op. Tenn. Att'y Gen. 97-067 (May 12, 1997) (bill creating new judgeships during the fiscal year after the bill is passed did not need to be funded in the same session); Op. Tenn. Att'y Gen. 81-395 (July 2, 1981).

Under Tenn. Code Ann. § 9-4-210(a), the General Assembly must appropriate the "estimated operating cost" of any law enacted after July 1, 1986, that results in a net increase in periods of imprisonment in state facilities. Subsection (c) states that, "such cost shall be the operating cost, in current dollars, of the highest of the next ten (10) fiscal years commencing after December 4, 1985." To the extent this figure is higher than the estimated first year's funding for a law, Tenn. Code Ann. § 9-4-210 imposes a higher standard than that imposed by Article II, Section 24, of the Tennessee Constitution. This higher requirement is not binding on the General Assembly. But the General Assembly must still appropriate the first year's estimated funding of any bill as required by Article II, Section 24.

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