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Opinion No. 09-04

Constitutionality of Bill To Remove Law Enforcement Residency Requirement

QUESTIONS

1. Does HB 11, which, if enacted, would prohibit the imposition of residency requirements in law enforcement agencies of home rule municipalities that employ more than 2000 officers, violate Art. XI, § 9 of the Tennessee Constitution?

2. Does HB 11 violate any other provision of the Tennessee Constitution?

OPINIONS

1. No. HB 11, if enacted, would not be a local law that would violate Art. XI, § 9 of the Tennessee Constitution.

2. No. HB 11 is constitutionally defensible against a due process or equal protection challenge under Art. I, § 8 or Art. XI, § 8 of the Tennessee Constitution.

ANALYSIS

1. If enacted, HB 11 would prohibit any law enforcement agency, including an agency created by a home rule municipality, that employs more than 2000 full-time law enforcement officers from imposing a residency requirement as a condition of employment.

Art. XI, § 9 of the Tennessee Constitution states, in relevant part:

> Any municipality may by ordinance submit to its qualified voters in a general or special election the question: "Shall this municipality adopt home rule?" In the event of an affirmative vote by a majority of the qualified voters voting thereon, and until the repeal thereof by the same procedure, such municipality shall be a home rule municipality, and the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect.

Art. XI, § 9 of the Tennessee Constitution prohibits the legislature from enacting laws that are purely local in character. However, courts have concluded that neither the local

approval requirement nor the home rule limitations imposed by Article XI, Section 9 of the Tennessee Constitution apply to legislation where the subject matter is general and statewide in nature, a subject over which the Legislature has plenary power. *State ex rel. Cheek v. Rollings*, 202 Tenn. 608, 308 S.W.2d 393 (Tenn. 1957); *City of Knoxville ex rel. Roach v. Dossett*, 672 S.W.2d 193 (Tenn. 1984). The fact that a law, at the time of its enactment, applies to one municipality only will not necessarily affect its validity. The test is whether the statue could potentially apply to any other municipality, even though, at the time of enactment, the statute applied to a single municipality. *Civil Service Merit Bd. v. Burson*, 816 S.W.2d 725, 729 (Tenn. 1991). If a statute could only ever apply to one county without further action of the General Assembly, it would then be in violation of Art. XI, § 9. *Farris v. Blanton*, 528 S.W.2d 549, 552-53 (Tenn. 1975).

HB 11 would not violate Art. XI, § 9 of the Tennessee Constitution even if, at the time of its enactment, it applied to a single municipality. By its terms, HB 11 would be applicable to any municipal police department that ever employed more than 2000 full time officers.

2. The rights to due process and equal protection under the state constitution are embodied in Art. I, § 8 and Art. XI, § 8 of the Tennessee Constitution. Absent implication of a fundamental right or a protected or suspect class, a legislative act will withstand a substantive due process challenge if the government identifies a legitimate governmental interest that the legislative body could rationally conclude was served by the legislative act. *State v. Tester*, 879 S.W.2d 823, 828 (Tenn.1994); *Parks Properties v. Maury County*, 70 S.W.3d 735, 744-45 (Tenn. Ct. App. 2001).

If enacted, HB 11 would likewise be constitutionally defensible against a due process or equal protection challenge under the Tennessee Constitution. To uphold a statute under the rational basis test, all that is required is an articulable justification for its enactment. *See Stalcup v. Gatlinburg*, 577 S.W.2d 439, 441 (Tenn. 1978). A court reviewing this legislation could find, for example, that it is rational to remove residency requirements for larger police departments because of a need to draw from a larger population pool to find qualified applications. At the same time, a court could find that residency requirements are rational for smaller departments because of a need to be able to quickly call in extra officers in the event of an emergency.

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