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Opinion No. 09-49

Legislature's Power to Pass Laws Regulating Service of Process in General Sessions Courts

QUESTION

Does the legislature have authority to pass into law how service of process may be effectuated in the general sessions courts?

OPINION

Yes. The legislature is vested with the authority to pass statutes governing service of process in general sessions courts.

ANALYSIS

In general, the Supreme Court has the inherent power to promulgate rules governing the practice and procedure of the courts of Tennessee. *Corum v. Holston Health & Rehabilitation Center, et al.*, 104 S.W.3d 451 (Tenn. 2003). This power "exists by virtue of the establishment of a Court and not by largess of the legislature." *State v. Mallard*, 40 S.W.3d 473, 481 (Tenn. 2001). As the power to control the practice and procedure of the courts is inherent in the judiciary and necessary to engage in the complete performance of the judicial function, the power cannot be constitutionally exercised by any other branch of government. *Mallard*, 40 S.W.3d at 481 (citing *Anderson County Quarterly Court v. Judges of the 28th Judicial Cir.*, 579 S.W.2d 875, 877 (Tenn. Ct. App. 1978)); *see also* Tenn. Const., Art. II, § 2.

However, the inherent right of courts to prescribe rules and regulations necessary for the practice of law does not mean that the legislature is without any constitutional authority to act in the judicial process. *Cox v. Huddleston*, 914 S.W.2d 501, 504 (Tenn. Ct. App. 1995). For example, the legislature is empowered to fix and circumscribe the jurisdiction of the courts it creates pursuant to constitutional authority. *Alamo Development Corp. v. Thomas*, 212 S.W.2d 606 (Tenn. 1948). Moreover, the Tennessee Constitution enumerates other legislative powers:

> The judicial power of this State shall be vested in one Supreme Court and such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish; in the Judges thereof, and in Justices of the Peace. The Legislature may

> also vest such jurisdiction in Corporation Courts as may be deemed necessary. Courts to be holden by Justices of the Peace may also be established.

Tenn. Const., Art. VI, § 1. Thus, the legislature is empowered to establish inferior courts.

One such "inferior court" is the general sessions court. *State ex rel. Boone v. Torrence*, 470 S.W.2d 356 (Tenn. Ct. App. 1971). The creation and governance of this type of court is enumerated in the Tennessee Code in various provisions passed by the General Assembly, as well as in various private acts. *See, e.g.,* Tenn. Code. Ann. §§ 16-15-101 - 16-15-5013; 1937 Tenn. Priv. Acts ch. 12. In *Hunter v. Jones,* the Tennessee Supreme Court held that the right given to the legislature by the constitution to establish courts carries with it the right to also make provisions for the procedure of the courts created, including the election of judges, jurisdiction of the court, and service of process. *See Hunter v. Jones*, 189 S.W.2d 825, 826 (Tenn. 1945).

Specifically with regard to service of process, absent specific statutory authorization, general sessions courts are not governed by the provisions of the Tennessee Rules of Civil Procedure governing service of process. Tenn. R. Civ. P. 1. In fact, the Supreme Court specifically exempted the general sessions court from being governed by the Rules of Civil Procedure except for instances where the general sessions court exercises, under authority of a special or private act of the General Assembly, special jurisdiction similar to that of the circuit or chancery court. *See* Advisory Commission Comment, Tenn. R. Civ. P. 1. Therefore, for many years, specific provisions regarding service of process in general sessions courts were codified in the Tennessee Code. Tenn. Code Ann. §§ 16-15-601 - 16-15-605 (repealed 1993). In 1993, these provisions were repealed, and the General Assembly enacted a new provision, Tenn. Code Ann. § 16-15-717, providing that the Tennessee Rules of Civil Procedure, specifically Rules 4 and 5 (including rules for service of process), would apply to general sessions courts. 1993 Pub. Acts ch. 241; Tenn. Code Ann. § 16-15-717 (repealed in 1994). However, in 1994, the General Assembly repealed § 16-15-717. 1994 Pub. Acts ch. 991. There are currently no statutes in effect governing service of process in the general sessions court.

Thus, for the foregoing reasons, we are of the opinion that the legislature possesses the authority to pass laws governing service of process in the general sessions court.

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