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Opinion No. 09-53

Constitutionality of county or city exemptions by population bracket

QUESTION

Would it be constitutional for county or city exemptions by population bracket to be added to House Bill 15/ Senate Bill 13 since the bill requires local approval by a 2/3 vote before the provisions apply to a county or city?

OPINION

Without the benefit of reviewing the proposed statutory language, this Office is not able to provide a definite opinion concerning whether such exemption legislation would be constitutional. Generally, classifications by population bracket that prevent applicability of a statute to some counties are subject to constitutional attack, and will be held unconstitutional absent some rational basis for the classification. Any population bracket exemption included in legislation would raise issues under Article XI, Section 8 and Article I, Section 8 of the Tennessee Constitution as more fully explained below.

ANALYSIS

The question involves the constitutionality of adding county or city exemptions by population bracket to a bill that seeks to amend Tenn. Code Ann. § 49-2-203 and Tenn. Code Ann. § 49-2-301. The proposed legislation, House Bill 15/ Senate Bill 13, provides for the establishment of the office of elected, rather than appointed, superintendent of schools in counties that vote to establish such elected office. Because the proposed statutory language providing for exemptions is not before this Office, it is impossible to render a definite opinion concerning whether such exemption legislation would survive constitutional scrutiny. However, two constitutional provisions are implicated by the request: Article XI, Section 8 and Article I, Section 8 of the Tennessee Constitution.

Article XI, Section 8 states:

> 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.

Article XI, Section 8 restricts the legislature from suspending the general law of the land in an arbitrary or capricious manner for the benefit of specific individuals. *See* Op. Tenn. Att'y Gen. 99-226 (December 3, 1999). Where the provisions of an act which is either local or local in effect contravene a general law, the provisions of Article XI, Section 8 of the Tennessee Constitution are applicable and there must be a reasonable basis for the special provision. *See Knoxville's Community Development Corp. v. Knox County*, 665 S.W.2d 704, 705 (Tenn. 1984) (citing *Leech v. Wayne County*, 588 S.W.2d 270, 274 (Tenn. 1979); *Brentwood Liquors Corporation of Williamson County v. Fox*, 496 S.W.2d 454 (Tenn. 1973)). Any legislation creating a new exception, through population brackets, to Tenn. Code Ann. § 49-2-203 and Tenn. Code Ann. § 49-2-301 applicable in one or more counties but not others would trigger scrutiny under Article XI, Section 8 of the Tennessee Constitution. *See* Op. Tenn. Att'y Gen. 99-226 (December 3, 1999); *see also Civil Service Merit Board v. Burson*, 816 S.W.2d 725, 731 (Tenn. 1991).

The second provision implicated, Article I, Section 8 of the Tennessee Constitution, guarantees equal protection of the laws. Article I, Section 8 of the Tennessee Constitution provides:

> That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

This language has been interpreted broadly by the courts to guarantee not only due process but also equal protection of the law. *See Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 152 (Tenn. Ct. App. 1993); *see also* Op. Tenn. Att'y Gen. 99-112 (May 13, 1999). "The core concern expressed in this constitutional provision is that legislative classification, to the extent that it exists, not be unreasonable or unfair. Moreover, the provisions of Article I, Section 8, protect cities and counties as well as individuals." *Civil Service Merit Board v. Burson*, 816 S.W.2d 725, 731 (Tenn. 1991); *see also* Op. Tenn. Att'y Gen. 99-112 (May 13, 1999). Class legislation affecting a particular county or municipality and conferring benefits or imposing burdens on its residents, without affecting others similarly situated in the state, will not offend the equal protection provision implicit in Article I, Section 8, as long as there is a reasonable basis for the classification. *See Burson*, 816 S.W.2d at 731; *Fox*, 496 S.W.2d at 457.

This Office has previously addressed the analysis used to determine the reasonablenesss of a statute under the scrutiny of both Article XI, Section 8 and Article I, Section 8 of the Tennessee Constitution. *See* Op. Tenn. Att'y Gen. 99-226 (December 3, 1999). The same analysis would be applicable to the question under consideration. This Office opined as follows:

> In determining the reasonableness of a statute under either Article XI, section 8 or Article I, Section 8, the analysis is essentially the same. Generally, the legislation "need not, on its face, contain the reasons for a certain classification." *Id*. at 731

(citing *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439, 432 (Tenn. 1978)). Rather, "[i]f any possible reason can be conceived to justify the classification it will be upheld and deemed reasonable." *Id*. Reasonableness, however, depends upon the facts of the case, and no general rule can be formulated for its determination. *See Harrison v. Schrader*, 569 S.W.2d 822, 825-26 (Tenn. 1978); Tenn. Op. Atty. Gen. 99-112 (May 13, 1999). In the case of legislation which classifies by population bracket, the justification for the classification must itself relate to population. *Nolichuckey Sand Co. v. Huddleston*, 896 S.W.2d 782, 289 (Tenn. App. 1994) (citing *Leech v. Wayne County*, 588 S.W.2d 270, 280 (Tenn 1979)). In other words, there must be some reason relating specifically to differences in population that would justify varying the general prohibition contained in Tenn. Code Ann. § 62-2-102 based upon population size. In the absence of such a basis supporting population brackets, the legislation would be deemed unconstitutional.

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