

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

May 12, 2009

Opinion No. 09-77

Constitutionality of Legislation Permitting a County to Create a Unified Family Court

QUESTION

Is Senate Bill 1422/House Bill 1479 (“SB1422”) constitutional in light of *Moses v. City of Jellico*, 2009 WL 167072 (Tenn. Ct. App. at Knoxville January 26, 2009), *no application for permission to appeal filed*, which held that the Legislature may not delegate to local governments its authority under Article VI, Section 1 of the Tennessee Constitution to “ordain and establish” inferior courts?

OPINION

No, because SB1422 impermissibly delegates to a county the Legislature’s constitutional authority to ordain and establish an inferior court, namely a unified family court.

ANALYSIS

The constitutional grant of power to the judicial branch of government is set out in Article VI, Section 1 of the Tennessee Constitution, which provides:

The judicial power of this State shall be vested in one Supreme Court and in 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.

Tennessee cases have held that the Legislature may not delegate to local governments its authority to “ordain and establish” inferior courts. In *State ex rel. Haywood v. Superintendent, Davidson County Workhouse*, the Tennessee Supreme Court struck down a statute that required the City of Nashville “by ordinance [to] provide for a Juvenile and Domestic Relations Court.” 259 S.W.2d 159, 160 (Tenn. 1953) (quoting 1947 Tenn. Priv. Acts ch. 246, art. 51), *overruled on other grounds, Bankston v. State*, 908 S.W.2d 194 (Tenn. 1995). The statute required the mayor to appoint the judge of the court, whose salary was to be fixed by the city council. *Id.* The

statute authorized the City to set out procedural rules and provide staff for the court. *Id.* at 160-61. The statute apparently set out the jurisdiction of the court, which included “all powers and jurisdiction conferred upon the Juvenile Courts by law,” *id.* at 162 (quoting 1947 Tenn. Priv. Acts ch. 246, art. 51), as well as adult misdemeanor cases, *id.* at 161.

The Supreme Court recognized that the Legislature could “establish, as a part of the governmental machinery of a municipality, a ‘corporation court’” to adjudicate “small offenses, i.e., the violation of local ordinances . . . which partakes more or less of a civil wrong.” *Id.* However, the Supreme Court wrote that the “court with which we are now dealing is not a ‘corporation court,’ but is one which is authorized to enforce the criminal laws of the state affecting juveniles.” *Id.* Thus, it “exercises judicial power and can have no legal existence unless erected by the Legislature.” *Id.* The Supreme Court noted that the statute did not create the Juvenile and Domestic Relations Court but delegated the power to do so to the City. *Id.* The judge was not required to be “elected by the qualified voters of the district” as required by the Tennessee Constitution. *Id.* (quoting Tenn. Const. art. VI, § 4). The Supreme Court concluded, “It thus appears that the court is not only one that is not erected by the Legislature with its jurisdiction fixed and determined, but its existence results from the delegation of legislative authority to a municipality in plain violation of the Constitution of Tennessee.” *Id.* at 162.

In the case referred to in your question, the court examined a private act that purported to delegate to the City of Jellico, Tennessee, the authority to establish a city court, determine its jurisdictional powers, and fix the compensation of its judge. 2009 WL 167072, at *1 (Tenn. Ct. App. at Knoxville January 26, 2009), *no application for permission to appeal filed*. Acting pursuant to the private act, the City adopted an ordinance establishing a city court and vesting its judge with the power and authority of a general sessions judge. *Id.* In a subsequent ordinance, the City fixed the judge’s compensation at 75% of that of a general sessions court judge. *Id.* The *Moses* court noted that the private act “did not create, establish, or ordain the Jellico City Court, but rather purported to delegate the authority to do so to the City.” *Id.* at *3. Quoting at length from *Haywood*, the *Moses* court concluded that the private act had unconstitutionally delegated to the City the Legislature’s sole constitutional authority under Article VI, Section 1 to ordain and establish inferior courts. *Id.* at *3-5.

The bill that you ask us to address, SB1422, provides that “[a]ny county may *create* a unified family court pilot program if approved by a majority vote of the county legislative body.” SB1422 § 1(a) (emphasis added). Further, “[a]ny county that *establishes* a pilot unified family court” is responsible for payment of its costs. SB1422 § 1(c). The county legislative body must establish a Family Court Steering Committee, which is to decide whether the pilot court is to be selected by the county legislative body or by a request for proposal process. SB1422 § 1(b), (d), and (e). The bill assigns to the court chosen as the unified family court exclusive jurisdiction over such matters as juvenile cases, including dependency and neglect and delinquency cases; domestic relations cases, including divorces, adoptions, and misdemeanor domestic relations criminal charges; and estate cases. SB1422 § 1(h). The court chosen as the unified family court exercises concurrent jurisdiction over charges of contributing to the delinquency of a minor, over cases of child custody and visitation, and over termination of parental rights cases. SB1422 § 1(i).

Given the nature of cases over which it would exercise jurisdiction, a unified family court established pursuant to SB1422 would be an inferior court, which Article VI, Section 1 of the Tennessee Constitution authorizes the Legislature alone to establish. *See Haywood*, 908 S.W.2d at 161. However, SB1422 delegates the establishment of a unified family to a county. SB1422 § 1(a) and (c). Such delegation is prohibited by Article VI, Section 1 of the Tennessee Constitution, meaning that SB1422 is unconstitutional as currently drafted. *See Haywood*, 908 S.W.2d at 162; *Moses*, 2009 WL 167072, at *3-5.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

DOUGLAS EARL DIMOND
Senior Counsel

Requested by:

Honorable Doug Jackson
State Senator
10 Legislative Plaza
Nashville, TN 37243-0026