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Opinion No. 09-91

Renewal of Insurance Producer Licenses

QUESTIONS

Under Tenn. Code Ann. § 56-6-107, as amended in 2008, "[f]or licenses issued or renewed on or after January 1, 2007, the licenses shall remain in effect for twenty-four (24) months from the last day of the licensee's birth month." Before its amendment, this statute provided, "An insurance producer license shall remain in effect for a period of twenty-four (24) months unless revoked or suspended." Under rules adopted by the Commissioner of Commerce and Insurance, producer licenses must be renewed every other year in the month of the licensee's birth, regardless of the month the license was first issued. As a result, some licenses issued or renewed in 2007 and 2008 will be in effect for less than two years. Others will be in effect for more than two years. The Department has not prorated the license fee to reflect the difference.

1. Is this interpretation of the statute authorized?

2. Does this result violate any constitutional provisions?

OPINIONS

1. Yes, this interpretation is consistent with the language of the statute. The statute does not authorize the Department to prorate license fees to reflect the variation in licensing periods during the change in renewal dates that it requires.

2. No. The change satisfies the requirements for substantive and procedural due process. The change does not affect a fundamental right and is reasonably related to a proper legislative purpose. The legislative and rulemaking processes satisfied licensees' procedural due process rights. The method of carrying out the change and the classification by birth month are supported by a rational basis as required under the Equal Protection Clauses of the United States and Tennessee Constitutions.

ANALYSIS

This opinion concerns the interpretation of Tenn. Code Ann. § 56-6-107(b). Subsection (a) of the statute provides for issuance of an insurance producer license**.** In 2006, the General Assembly extended the effective period of a producer license from twelve months to twenty-four. 2006 Tenn. Pub. Acts Ch. 1018, § 3. The same act increased the renewal fee for a producer license from thirty dollars to sixty dollars, and for a limited lines producer license from fifteen to thirty dollars. *Id.* at §§ 4 and 5. With respect to these provisions, that act became effective January 1, 2007. *Id.* at § 7. As amended by the 2006 act, therefore, subsection (b) provided:

> An insurance producer license shall remain in effect for a period of twenty-four (24) months unless revoked or suspended.

The General Assembly rewrote this provision in 2008. 2008 Tenn. Pub. Acts Ch. 1192, § 1. As rewritten, Tenn. Code Ann. § 56-6-107(b) provides:

> (1) For licenses issued or renewed on or after January 1, 2007, the licenses shall remain in effect for twenty-four (24) months ***from the last day of the licensee's birth month.***
>
> (2) Business entity licenses will expire biennially on March 1.

(Emphasis added). This provision of the act became effective July 1, 2008. *Id.* at § 10. The statute does not specify from which birth month the twenty-four month period should be measured. Thus, for example, the period could be measured from the birth month of the year of registration, or the birth month that first occurs following the year of registration. The Commissioner has also promulgated rules to implement this statute. These rules provide:

> (1) An insurance producer shall renew his/her/its license ***every other year on or before the end of the producer's birth month.*** All applications for renewal shall contain the following:
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> (a) A completed renewal form adopted by the commissioner signed by the applicant or an officer or director of the business entity in a manner acceptable to the commissioner;
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> (b) If applicable, proof of compliance with Rule 0780-01-56-.08; and
>
> (c) A non-refundable renewal fee of sixty dollars ($60.00).
>
> (2) Unless directed otherwise by the Department, an applicant shall file the information required under this Rule with the commissioner, and in a manner approved by the commissioner, by electronic submission, personal delivery, or mail addressed to: Tennessee Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Tower, Nashville, Tennessee 37243, Attention: Agent Licensing Section.

> (3) In order to ensure the prompt review and granting of a renewal application, applicants should file all information required under Paragraph (1) or this Rule thirty (30) days prior to the end of the producer's birth month.

Tennessee Rules and Regulations Ch. 0780-1-56-.09 (emphasis added). This provision governed all licenses applied for or renewed on or after January 1, 2009. *Id.* at 0780-01-56-.12. It appears that, under this rule, the birth month from which the two-year period is measured under the statute is the agent's birth month that occurs the year the agent registered. Thus, if the agent last registered anytime in 2007, the agent must renew his or her license before the end of his or her birth month in 2009. If the agent last registered anytime in 2008, the agent must renew his or her license before the end of his or her birth month in 2010. Further, the Commissioner of Commerce and Insurance issued an interpretive letter concerning this statute in August 2008. This letter provides in relevant part:

> In 2007, the law was changed to allow insurance producers to renew their licenses every other year. This legislative session, the law was modified so that the *date* on which insurance producers renew their licenses will change. Currently, an insurance producer renews his/her license prior to the anniversary date of the issuance of the license. Effective immediately, producers will renew their licenses *before the last day of their birth month.* Note that all renewals in 2009 will occur prior to the last day of the licensee's birth month regardless of when the producer renewed or was licensed in 2007. The following two examples are provided to help clarify how these changes will work:
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> Example 1 - A producer last renewed his current license in August of 2007 and his birthday is in September. He will renew his current license prior to September 30, 2009. The next time his license will need to be renewed will be September 30, 2011.
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> Example 2 - A producer last renewed her current license in August of 2007 and her birthday is in July. She will renew her license prior to July 31, 2009. The next time her license will need to be renewed will be July 31, 2011.

State of Tennessee Department of Commerce and Insurance Bulletin (August 21, 2008).

As the request points out, this interpretation of the statute affects a licensee differently, depending on when his or her license was issued or renewed in relation to the month of his or her birth. In the most extreme example, a licensee born in January may have received a license in December 2007. Under the previous statute, that license would be renewed in December 2009. Under the new law and regulations, the license must be renewed in January 2009. In this case, the term of the license has been reduced from twenty-four months to thirteen months. Conversely, a licensee born in December may have received a license in January 2007. Under the previous statute, that license would be renewed in January 2009. Under the new law and regulations, the license need not be renewed until December 2009. In this case, the license term has been increased from twenty-four months to thirty-five months. In neither case does the Department prorate the license fee to reflect the change in terms. Thus, in the first case, the

licensee will have paid sixty dollars for a licensing term of thirteen months, while in the second the licensee will have paid sixty dollars for a licensing term of thirty-five months.

The first question is whether the Commissioner's method of implementing the change in renewal dates is authorized under the statute. Neither the language nor the legislative history of the 2008 act directly addressed how the change in license renewals was to be implemented and thereby left the Department considerable discretion and flexibility in that regard. The method the Department has adopted to implement the change falls within the scope of that discretion. Because the General Assembly did not amend the statute to change licensing fees, the Department was not authorized to adjust fees to reflect any shorter or longer licensing term resulting from implementing the change. Accordingly, regardless of how the Department structured the transaction, some licensees were going to benefit from longer terms during the transition than other licensees who paid the same license fee.

The second question is whether the Commissioner's interpretation, and the resulting impact on the license term of different individuals during the transition period, violates any constitutional provisions. Due process protections arise from the Fourteenth Amendment to the United States Constitution and Article I, Section 8, of the Tennessee Constitution. Article I, Section 8, of the Tennessee Constitution is synonymous with the Due Process Clause in the United States Constitution. *State v. Burns*, 205 S.W.3d 412, 416 (Tenn. 2006). Property protected by the Due Process Clause is not defined by the United States Constitution, but by existing rules or understandings that stem from other sources, such as state law. *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972).

In this case, as we noted, the licensing statute in effect between January 1, 2007, and January 1, 2009, provided that a producer's license would remain in effect for two years from the date it was issued or renewed. Under the 2008 act, as implemented by regulations, during the first renewal cycle, the term of some licenses has been shortened, while the term of others has been lengthened.

A statute will pass constitutional muster under substantive due process, as long as the statute does not implicate a fundamental right, if it bears a "reasonable relation to a proper legislative purpose" and is "neither arbitrary or discriminatory." *Gallaher v. Elam*, 104 S.W.3d 455, 463 (Tenn. 2003) (quoting *Riggs v. Burson*, 941 S.W.2d 44, 51 (Tenn. 1997) and *Newton v. Cox*, 878 S.W.2d 105, 110 (Tenn. 1994)). The right to have an insurance license for a two-year term is not a fundamental right. Further, in this case, the change in renewal dates means that renewals will occur at regular intervals throughout the year, enabling the Department to use the resources at its disposal more effectively to process license applications and renewals. Thus, the change bears a reasonable relation to a proper legislative purpose. Nor is the method of implementing the change arbitrary or discriminatory under existing case law. All licensees who last renewed in 2007 must renew before the end of their birth month in 2009. All licensees who last renewed in 2008 must renew before the end of their birth month in 2010. To this extent, therefore, the change treats similarly situated licensees similarly.

The change also meets the requirements of procedural due process. The United States Supreme Court has recognized that a licensee may acquire a status entitling the licensee to procedural due process. *Barry v. Barchi*, 443 U.S. 55, 64, 99 S.Ct. 2642, 61 L.Ed.2d 365 (1979).

At the same time, however, the Fourteenth Amendment does not curtail a state's power to amend its laws, common or statutory, to conform to changes in public policy. *Seattle v. First National Bank v. Shoreline Concrete Co.,* 91 Wash. 2d 230, 588 P.2d 1308, 1317 (1978). A legislature that creates a statutory entitlement or other property interest may alter or even terminate the entitlement by later legislative enactment. *Gattis v. Gravett,* 806 F.2d 778, 780 (8th Cir. 1986). "While the legislative alteration or elimination of a previously conferred property interest may be a 'deprivation,' the legislative process itself provides citizens with all of the 'process' they are 'due.'" *Id.* at 781; Op. Tenn. Att'y Gen. 98-045 (February 17, 1998). In this case, the General Assembly changed the renewal date for all licenses issued after January 1, 2007. The legislative and rulemaking processes satisfy the requirements of procedural due process.

The change should also be examined under the Equal Protection Clauses contained in the United States and Tennessee Constitutions. Under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1. Article XI, Section 8, of the Tennessee Constitution provides:

> 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.

The standards governing the validity of legislative classifications are the same under Article XI, Section 8, of the Tennessee Constitution and the Fourteenth Amendment to the United States Constitution. *Calaway ex rel. Calaway v. Schucker,* 193 S.W.3d 509, 518 (Tenn. 2005); *Brown v. Campbell County Board of Education,* 915 S.W.2d 407, 412 (Tenn. 1995), *cert. denied*, 116 S.Ct. 1852 (1996); *State v. Price*, 124 S.W.3d 135, 137-38 (Tenn. Crim. App. 2003), *p.t.a. denied* (2003). These provisions guarantee that "all persons similarly circumstanced shall be treated alike." *State v. Robinson*, 29 S.W.3d 476, 480 (Tenn. 2000); *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993) (both quoting *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 562, 64 L.Ed.2d 989 (1920)).

In this case, some insurance producer licensees were licensed for a shorter or longer period than 24 months, depending on the month the license was last issued or renewed and each licensee's birth month. The right to engage in a particular occupation is not a fundamental right, and legislation affecting it must only be supported by a rational basis. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 96 S.Ct. 2672, 49 L.Ed.2d 520 (1976). Further, classification by birth month is not a suspect classification. All classifications that do not affect a fundamental right or discriminate as to a suspect class are generally subject to the rational basis test. *State v. Tester,* 879 S.W.2d 823, 828 (Tenn. 1994). Under this test, the classification will be upheld "if any state of facts may *reasonably be conceived* to justify it." *Tester,* 879 S.W.2d at 828 (emphasis added) (citing *Tennessee Small School Systems v. McWherter,* 851 S.W.2d 139, 153 (Tenn. 1993)); *Harrison v. Schrader*, 569 S.W.2d 822, 825 (Tenn. 1978). A classification having some reasonable basis does not offend equal protection merely because the classification

is not made with mathematical nicety, or because in practice it results in some inequality. *Wyatt v. A-Best Products Company, Inc.*, 924 S.W.2d 98, 105 (Tenn. Ct. App. 1995), *as modified on rehearing, p.t.a. denied* (Tenn. 1996).

We think a court would conclude that the classification is supported by a rational basis. The disparity affects licensees only for one licensing period; after the first renewal under the new system, all licensees will be entitled to a twenty-four-month license term. The classification enables the Department of Commerce and Insurance to bring about the change mandated under the 2008 law over the next two calendar years from the effective date of the act. Thus, all licensees who last renewed in 2007 must renew before the end of their birth month in 2009. All licensees who last renewed in 2008 must renew before the end of their birth month in 2010. As a result of the change, license renewals will occur at regular intervals throughout the year. This change enables the Department to use the resources at its disposal more effectively to process license applications and renewals. For this reason, neither the method of change nor the new classification violates licensees' rights to equal protection under the United States and Tennessee Constitution.

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