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Opinion No. 09-105

Pending Legislation Regarding Shelby County General Sessions Court

QUESTIONS

1. Does Amendment 1 to House Bill 1212/Senate Bill 1094 ("HB 1212, amend. 1") violate the Separation of Powers clause of the Tennessee Constitution?

2. If passed, would HB 1212, amend. 1, remove the authority of the Shelby County General Sessions Court judges to designate an existing division of General Sessions Court as a specialty court?

OPINIONS

1. No. HB 1212, amend. 1, does not violate the Separation of Powers clause of the Tennessee Constitution.

2. Yes. If passed, the jurisdiction granted to the tenth division of the Shelby County General Sessions Court by HB 1212, amend. 1, would supersede any inherent authority of the General Sessions Court judges to designate an existing division of General Sessions Court as a specialty court.

ANALYSIS

1. HB 1212, amend. 1, if passed, would assign jurisdiction over Shelby County domestic violence cases to the tenth division of the Shelby County General Sessions Court. You have asked whether the legislative designation of this court as the domestic violence court for Shelby County violates the Separation of Powers clause of the Tennessee Constitution.

The Tennessee Constitution, in Article II, Sections 1 and 2, provides:

> The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.

> No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.

Under the doctrine of separation of powers, the three departments of government are "coordinate, independent, coequal and potentially coextensive." *Richardson v. Tennessee Board of Dentistry*, 913 S.W.2d 446, 453 (Tenn. 1995). Each department is expressly prohibited from encroaching on the powers and functions of the other departments. *Richardson,* 913 S.W.2d at 453. The doctrine of separation of powers is not absolute, however. *State v. King*, 973 S.W.2d 586, 588 (Tenn. 1998). Tennessee courts have held that, in general, the legislature has the power to make, order, and repeal law; the executive branch has the authority to administer and enforce the law; and the judicial branch has the power to interpret and apply the law. *King*, 973 S.W.2d at 588.

Article VI, Section 1 of the Tennessee Constitution 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.

As the Court of Criminal Appeals has explained:

> In addition to the power to "ordain and establish" courts, the legislature also has the constitutional power to change the jurisdiction of the courts. Article VI, § 8, Tennessee Constitution. *Moore v. Love*, 171 Tenn. 682, 107 S.W.2d 982, 985 (1937). This grant of power to the legislature includes the power to determine how many and what kinds of courts are required for the administration of justice and includes the power to fix the limits of each court's jurisdiction. The power granted to the legislature by Article VI, § 1, includes the power to "create courts of general, special or limited jurisdiction within a particular county or locality." *State ex rel. Ward v. Murrell*, 169 Tenn. 688, 90 S.W.2d 945, 946 (1936), citing numerous cases.

State v. Keller, 813 S.W.2d 146, 148 (Tenn. Crim. App. 1991).

Thus, we conclude that it is well within the purview of the legislature, and not a violation of the Separations of Powers clause, for the legislature to vest the tenth division of the Shelby County General Sessions Court with domestic violence jurisdiction.

2. HB 1212, amend. 1, would remove the authority of the General Sessions Court judges to designate any particular division other than the tenth division of Shelby County General Sessions Court as a domestic violence court. Your letter indicates that the General Sessions Court judges can currently issue an order designating an existing division of General Sessions Court as a specialty court. While every court has some inherent authority to issue certain administrative orders in order to conduct its business efficiently, your letter fails to cite any explicit authority, and we have found none, for the General Sessions Court to designate any particular division as a specialty court. In either event, however, we conclude that the legislature's constitutional power to designate a court's jurisdiction supersedes any inherent authority a court has to organize its divisions for the efficient conduct of its business.

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