

STATE OF TENNESSEE

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Opinion No. 09-183

Legislature's Authority to Appoint Judges

QUESTIONS

1. What provision of the Tennessee Constitution grants to the Legislature the power to appoint or to delegate the appointment of any judge other than a special judge?
2. How should the phrase "not otherwise directed or provided by this Constitution" contained in Art. VII, § 4, of the Tennessee Constitution be construed?

OPINIONS

1. Pursuant to Art. VII, § 4, of the Tennessee Constitution, the legislature has the authority to provide for the appointment of judges to fill judicial vacancies. Art. VI, § 11, of the Tennessee Constitution also authorizes the General Assembly to provide by general laws for the appointment of special judges of the inferior courts in the case of the absence or disqualification of the regular judge.

2. Based upon the canons of constitutional construction and the plain language of Art. VII, § 4, the Tennessee Supreme Court has held that this phrase "reposes wide discretion in the Legislature with respect to elections and the filling of vacancies." *State ex rel. Higgins v. Dunn*, 496 S.W.2d 480, 489 (Tenn. 1973).

ANALYSIS

1. You have asked what provision of the Tennessee Constitution grants to the Legislature the power to appoint or to delegate the appointment of any judge other than a special judge. This Office has previously opined that, pursuant to Art. VII, § 4, of the Tennessee Constitution, the legislature has the authority to provide for the appointment of judges to fill judicial vacancies and has, in fact, enacted legislation authorizing county legislative bodies to make appointments to fill vacancies in general sessions courts and authorizing the governor to

make appointments to fill vacancies in all other trial and appellate courts. *See* Op. Tenn. Att’y Gen. 09-133 (July 28, 2009) and Op. Tenn. Att’y Gen. 09-174 (November 2, 2009) (copies attached); *see also State ex rel. Higgins v. Dunn*, 496 S.W.2d 480, 487 (Tenn. 1973) (finding that Art. VII, § 4, authorized the legislature to enact legislation providing for the filling of judicial vacancies by appointment). The legislature also has the authority under Art. VI, §11, of the Tennessee Constitution to provide for the appointment of a temporary special judge in the case of the absence or disqualification of the regular judge.

2. Your second question asks how broadly the phrase “not otherwise directed or provided by this Constitution” contained in Art. VII, § 4, of the Tennessee Constitution should be construed. In construing the Tennessee Constitution, the Tennessee Supreme Court has stated:

The Court, in construing the Constitution, must give effect to the intent of the people that are adopting it, as found in the instrument itself, and it will be presumed that the language thereof has been employed with sufficient precision to convey such intent; and where such presumption prevails nothing remains except to enforce such intent. *Prescott v. Duncan*, 126 Tenn. 106, 148 S.W. 229.

We cannot see any doubt as to the meaning of this language. It seems plain to us that it means just what we have interpreted above as meaning. If there should be doubt though, it is the first obligation of the Court to go to the proceedings of the Constitutional Convention which adopted this provision and see from these proceedings what the framers of this resolution intended it to mean. *State v. Cloksey*, 37 Tenn. 482.

* * *

As we have said once or twice above this provision clearly means one thing and when it does the judiciary should not give it another meaning. *Henry v. White*, 194 Tenn. 192, 250 S.W.2d 70. If there are portions of the constitutional provision which seem to conflict it is our duty to harmonize these portions and favor the construction that will render every word operative rather than one which make some words idle and meaningless. *Tiger Creek Bus Lines v. Tiger Creek Transportation Ass’n*, 187 Tenn. 654, 216 S.W.2d 348.

There are other rules of statutory and constitutional construction which may be applied here and among them is that the constitutional provision will be taken literally unless its language is of doubtful import. When the words are free from ambiguity and doubt, and express plainly and clearly the sense of the framers of the Constitution there is no occasion to resort to other means of

interpretation. *State ex rel. Coates v. Manson*, 105 Tenn. 232, 58 S.W. 319.

Shelby County v. Hale, 200 Tenn. 503, 292 S.W.2d 745, 748-49 (1956). Based upon these canons of construction and the plain language of Art. VII, §4, the Tennessee Supreme Court has held that the provision “reposes wide discretion in the Legislature with respect to elections and the filling of vacancies.” *State ex rel. Higgins v. Dunn*, 496 S.W.2d at 489.

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