STATE OF TENNESSEE
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Opinion No. 11-61

Constitutionality of Restrictions on Use of Unmanned Traffic Enforcement Cameras

QUESTION

Whether Chapter 425 of the 2011 Tennessee Public Acts is defensible against a challenge that it unconstitutionally impairs the obligations of contracts.

OPINION

Yes. The opinion request received by the Office states that, prior to the passage of Public Chapter 425, several local governments executed contracts with vendors to install and maintain traffic enforcement camera systems to assist the local governments in the issuance of traffic citations. The local governments under these contracts would pay a certain percentage of revenues from all traffic citations issued by the traffic enforcement camera system. Per the opinion request, there was an understanding that a minimum number of traffic citations would be based on right-turn-on-red violations. Although this Office has not been provided with a particular contract against which to measure the impact of Chapter 425, compelling arguments can be made that Chapter 425 does not unlawfully impair any contractual relationship. Such arguments include that the passage of Chapter 425 is remedial in nature, represents a legitimate exercise of the State's police power, and is reasonable in relation to its purpose.

ANALYSIS

Effective July 1, 2011, Tenn. Code Ann. § 55-8-198 was amended as follows:

> (g) Prior to implementation of any new unmanned traffic enforcement camera used to enforce or monitor traffic violations, the local governing body shall conduct a traffic engineering study for the area being considered. The study shall follow standard engineering practices as determined by the Institute of Transportation Engineers (ITE) and shall be stamped by a professional engineer specializing in traffic engineering and licensed to practice in this state. A vendor of traffic enforcement camera systems shall not be allowed to conduct the traffic engineering study, or to participate in the selection of such traffic engineer, to document the need for a traffic enforcement camera.
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> (h) No citation shall be issued based solely upon evidence obtained from a traffic enforcement camera that has been installed to enforce or monitor traffic

> violations of § 55-8-110(a)(3), or any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of § 55-8-110(a)(3), unless the evidence collected shows the target vehicle with its front tire or tires before the stop line when the signal is red, and subsequently shows the same vehicle with its rear tire or tires past the stop line while the signal is red.
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> (i) A traffic enforcement camera system may be used to issue a traffic citation for an unlawful right turn on a red signal at an intersection that is clearly marked by a "No Turn on Red" sign erected by the responsible municipal or county government in the interest of traffic safety in accordance with § 55-8-110(a)(3)(A). Any other traffic citation for failure to make a complete stop at a red signal before making a permitted right turn as provided by § 55-8-110(a)(3)(A) that is based solely upon evidence obtained from an unmanned traffic enforcement camera shall be deemed invalid.
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> (j) No more than one (1) citation shall be issued for each distinct and separate traffic offense in violation of a municipal ordinance or a traffic offense as provided in this Chapter 8.
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> (k) A traffic citation that is based solely upon evidence obtained from an unmanned traffic enforcement camera shall be deemed invalid if the registration information of the motor vehicle for which such traffic citation is issued is not consistent with the evidence recorded by such enforcement camera.
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> (l) Unmanned traffic enforcement cameras that monitor speed shall not be permitted on any public road or highway within one (1) mile of a reduction of speed limits on such public road or highway of ten miles per hour (10 mph) or greater. Provided, this subsection shall not apply to unmanned traffic enforcement cameras within the designated distance of a marked school zone when a warning flasher or flashers are in operation.

2011 Tenn. Pub. Acts, ch. 425 (to be codified at Tenn. Code Ann. § 55-8-198(g)-(l)).

In essence, Chapter 425 places additional restrictions on how unmanned traffic enforcement cameras may be used as evidence to support the issuance of a traffic citation.

Since this Office has not been provided with a copy of any contract that might be affected by the passage of Chapter 425, we cannot provide a definitive answer to the question presented given that claims that a legislative enactment unconstitutionally impairs the obligation of contracts are necessarily fact-intensive. *Cf., e.g.*, *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983) ("The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected"); *Von Hoffman v. City of Quincy*, 71 U.S. 535, 554 (1866) ("Every case must be determined upon its own circumstances.").

Nevertheless, based on the information set forth in the opinion request, this Office finds compelling arguments exist to support the position that the passage of Chapter 425 does not

unlawfully impair any contractual relationship. The Tennessee Constitution and the Constitution of the United States both prohibit laws that impair the obligation of a contract. U.S. Const., Art. I, § 10, cl. 1; Tenn. Const., Art. I, § 20. The threshold inquiry under federal and state law is whether the challenged law has, in fact, operated as a substantial impairment of a contractual relationship. *Energy Reserves Group*, 459 U.S. at 411. The obligations of a contract are impaired by a law that renders them invalid, or releases or extinguishes them. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 431 (1934). As the Tennessee Supreme Court recently recognized, a retrospective substantive legal change may not "take away or impair vested rights acquired under existing laws or create a new obligation, impose a new duty, or attach a new disability in respect of transactions or considerations already passed." *Estate of Bell v. Shelby County Health Care Corp.*, 318 S.W.3d 823, 829 (Tenn. 2010) (internal quotation marks omitted).

It is equally well established under federal and state law that a contract is not unlawfully impaired by the retrospective application of laws that are remedial in nature. Remedial legislation is intended to adjust the means or methods whereby a cause of action may be effectuated, wrongs redressed, and relief obtained. *See Caudill v. Foley*, 21 S.W.3d 203, 208 (Tenn. Ct. App. 1999) (citing *Doe v Sundquist*, 943 F. Supp. 886, 893 (M.D. Tenn. 1996), *aff'd*, 106 F.3d 702 (6th Cir. 1997)).

Federal and state law further recognize that all contracts are subject to be interfered with, or otherwise affected by, subsequent statutes that are enacted in the government's bona fide exercise of its police power. *Energy Reserves Group*, 459 U.S. at 411; *Profill Development, Inc. v. Dills*, 960 S.W.2d 17, 33 (Tenn. Ct. App. 1997); *see also Shields v. Clifton Hill Land Co.*, 28 S.W. 668, 674 (Tenn. 1894) (stating that the contract clause of the Tennessee Constitution "does not inhibit retrospective laws made in furtherance of the police power of the state"). The police power "is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contracts between individuals." *Home Bldg. and Loan Ass'n,* 290 U.S. at 437.

The enactment of Public Chapter 425 is both remedial in nature and a legitimate exercise of Tennessee's police power. Initially, Chapter 425 does not, by its terms, change the rights or responsibilities of the vendors with respect to any contract. Chapter 425 instead merely alters the rules of evidence to determine when a person has violated the traffic laws of Tennessee. The Legislature's changing of the rules of evidence is remedial in nature, and does not impair the vendors' contracts with local government. As the Tennessee Supreme Court recognized in *Brewer v. Aetna Life Insurance Co.*, 490 S.W.2d 506 (Tenn. 1973):

> It must be evident that the right to have one's controversies determined by existing rules of evidence is not a vested right. These rules pertain to the remedies which the state provides for its citizens, and, generally in legal contemplation, they neither enter into and constitute a part of any contract, nor can they be regarded as being of the essence of any right which a party may seek to enforce. Like other rules affecting the remedy, they must, therefore, at all times be subject to modification and control by the legislature; and the changes

> which are enacted may lawfully be made applicable to existing causes of action, even in those states in which retrospective laws are forbidden.
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> . . . .
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> Courts of high authority have held that mere rules of evidence do not form part of contracts entered into while they are in force, and that it is competent for the legislature to, from time to time, change the rules of evidence, and to make such change applicable to existing causes of action.

Brewer, 490 S.W.2d at 511 (quoting *Marx v. Hanthorn*, 148 U.S. 172, 181 (1893)).

Chapter 425 only changes the circumstances under which valid traffic citations may be sustained upon evidence obtained from unmanned traffic enforcement cameras and thus, as a remedial act, should withstand constitutional scrutiny. In any event, while Chapter 425 might arguably diminish the income received under a revenue-sharing agreement by reducing the number of traffic citations issued, any expected revenue stream was always necessarily contingent on the citizens of the State violating the law in certain numbers. That contingency tends to suggest that the parties have no "vested right" in a particular level of revenue.

Finally, notwithstanding the remedial nature of Chapter 425, the existence of pervasive State regulation on the subject of the operation of motor vehicles would likewise suggest that the vendors entered their contracts knowing that regulatory change was foreseeable, *see Energy Reserves Group,* 459 U.S. at 416, and hence that their reasonable expectations have not been defeated by the enactment of Public Chapter 425. Traffic enforcement is, in general, a matter within the police power. *See, e.g., Sproles v. Binford*, 286 U.S. 374, 379 (1932) ("Contracts which relate to the use of the highways must be deemed to have been made in contemplation of the regulatory authority of the state."). Chapter 425 does not favor one vendor over another, nor does it favor local governments at the expense of the vendors (since both parties might lose income under a revenue-sharing agreement). Rather, Chapter 425 would appear to favor motorists who are charged with misconduct. It enhances their ability to confront a live witness, instead of photographic evidence, at any contested hearing on the matter. Moreover, by restricting the use of unmanned traffic enforcement cameras to intersections that are "clearly marked by a „No Turn on Red' sign," Chapter 425 provides motorists better notice of when their conduct is likely to result in sanction. These considerations—each of which relates to notions of fairness in the administration of the law—amount to "significant and legitimate state interests." *Energy Reserves Group* 459 U.S. at 416. The means chosen to implement these purposes would further appear likely to survive a reasonableness challenge. The State does not seek to "simply walk away from its financial obligations," *id.* at 412 n.14, by the enactment of Chapter 425, but rather to impose conditions upon which traffic citations may be issued, when it is free either to proscribe or not to proscribe the underlying conduct of its citizens.

Although we again emphasize that it is impossible to determine the extent—if any—to which Chapter 425 adjusts the rights and responsibilities of contracting parties in the absence of a particular contract, we are of the opinion that Chapter 425 is defensible against a claim that it violates the contract clauses of the Tennessee or United States Constitutions.

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