

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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February 29, 2012

Opinion No. 12-26

Discount Utility Rates for Senior Citizens

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**QUESTION**

May the General Assembly adopt legislation allowing or requiring local utility providers to discount water and/or sewer rates to senior citizens?

**OPINION**

Yes, the General Assembly may adopt legislation allowing or requiring local utility providers to discount water and/or sewer rates to senior citizens. The “equal and uniform” clause of Article II, Section 28, of the Tennessee Constitution applies to taxes, not to utility rates, and thus is not applicable to the question presented. Nor does this proposed legislation violate federal or Tennessee equal protection constitutional provisions, since there is a rational basis for charging lower rates to senior citizens.

**ANALYSIS**

This opinion concerns the authority of the General Assembly to adopt legislation either allowing or requiring local utility providers to discount water and/or sewer rates to senior citizens. This opinion will assume that the term “local utility providers” includes privately-owned utility companies as well as utility companies owned by Tennessee political subdivisions.

As the request notes, this Office has addressed discount utility rates to charitable organizations in two different opinions. *See* Op. Tenn. Att’y Gen. 99-026 (February 16, 1999); Op. Tenn. Att’y Gen. 97 127 (September 8, 1997). Both those opinions conclude that a metropolitan government is not authorized to charge discount water rates to charitable institutions. These opinions are based on the statutory requirement that the system charge “reasonable rates” and on the common law principle that municipal utilities may not charge rates that are “unjustly discriminatory.” Op. Att’y Gen. 99-026, at 1-2; Op. Tenn. Att’y Gen. 97-127, at 2-4. *See also City of Parsons v. Perryville Utility District*, 594 S.W.2d 401, 406-407 (Tenn. Ct. App. 1979). When those opinions were written, however, no statute authorized or required the discount rates in question. Thus, should the General Assembly enact a statute that expressly authorizes or requires discount utility rates to senior citizens, the reasoning of those opinions would not apply to discounts approved by legislation.

The question then becomes whether such a statute would violate any provision of the Tennessee or the United States Constitution. A definite answer to this question would depend on the language of the statute. No constitutional provision directly addresses utility rates. With respect to taxes, Article II, Section 28, of the Tennessee Constitution, provides that “[t]he ratio of assessment to value of property in each class or subclass shall be *equal and uniform* through the State.” (Emphasis added). Accordingly, this Office concluded that local governments could not constitutionally provide for property tax relief for elderly citizens unless Article II, Section 28, specifically authorized it. Op. Tenn. Att’y Gen. 98-034 (February 9, 1998). But Article II, Section 28, addresses taxes, not utility fees. A tax is a revenue raising measure levied for the purpose of paying the government’s general debts and liabilities. *City of Tullahoma v. Bedford County*, 938 S.W.2d 408, 412 (Tenn. 1997). A fee, on the other hand, is imposed for the purpose of regulating a specific activity or defraying the cost of providing a service or benefit to the party paying the fee. *Id.* Thus, the “equal and uniform” requirement in Article II, Section 28, of the Tennessee Constitution would not prevent the General Assembly from statutorily authorizing or requiring public utilities to provide discount utility rates, which are fees not taxes, for senior citizens.

The only other constitutional provisions relevant to legislation authorizing or requiring discount utility rates to senior citizens by both public and private utilities would be the equal protection provisions of the Tennessee and United States Constitutions. The Tennessee Constitution’s provisions concerning equal protection provide in relevant part:

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, immunities, [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.

Tenn. Const. art XI, § 8. Similarly the Fourteenth Amendment of the United States Constitution states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The same rules apply to the validity of classifications made in legislative enactments under the 14<sup>th</sup> Amendment to the United States Constitution and Article XI, Section 8, of the Tennessee Constitution. *City of Memphis v. State ex rel. Ryals*, 133 Tenn. 83, 88, 179 S.W. 631 (1915). 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)).

A law authorizing or requiring discount utility rates to senior citizens would create different classes of customers based on age. 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). In this case, the rational basis standard would apply. The burden of showing that a classification is unreasonable and arbitrary is placed upon the individual challenging the statute. If any state of facts can reasonably be conceived to justify the classification or if the reasonableness of the class is fairly debatable, the statute must be upheld. *Id.* Thus, a classification will be upheld “if any state of facts may reasonably be conceived to justify it.” *Id.*, (quoting *Tennessee Small School Systems v. McWherter*, 851 S.W.2d at 152); *see also Harrison v. Schrader*, 569 S.W.2d 822, 825 (Tenn. 1978). Courts in other jurisdictions have upheld senior citizen discounts against equal protection challenges. *See, e.g., Kahn v. Thompson*, 185 Ariz. 408, 916 P.2d 1124 (Ariz.Ct.App. 1995), (city tennis court fee discount); *Starkman v. Mann Theatres Corporation*, 227 Cal.App.3d 1491, 278 Cal.Rptr. 543 (Ca.Ct.App. 1991) (movie theater discount for senior citizens and children was not arbitrary discrimination prohibited by state statute). In these cases, the courts found different treatment amply justified by the fact that older citizens generally had less disposable income than other age groups. A similar rationale would support discount utility rates for senior citizens.

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