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Opinion No. 13-111

The Tennessee Claims Commission

## QUESTIONS

1. Is the Tennessee Claims Commission, as found in Title 9 of the Tennessee Code, part of the judicial branch of government?

2. Is a Claims Commissioner, as found in Title 9, a member of the judiciary?

3. Are employees of the Claims Commission and the Claims Commissioners subject to Tenn. Code Ann. § 2-19-207?

## OPINIONS

1. No. The Tennessee Claims Commission is part of the executive branch of government.

2. No. A Tennessee Claims Commissioner is not a member of the judiciary.

3. Yes. Employees of the Tennessee Claims Commission and Claims Commissioners are subject to Tenn. Code Ann. § 2-19-207.

## ANALYSIS

1. The Tennessee Constitution decrees that "[t]he powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial." Tenn. Const. art. II, § 1. Although "it is impossible to preserve perfectly the theoretical lines of demarcation" between the three branches, Underwood v. State, 529 S.W.2d 45, 47 (Tenn. 1975), "the legislative power is the authority to make, order, and repeal, the executive, that to administer and enforce, and the judicial, that to interpret and apply, laws." Id. (quoting Richardson v. Young, 125 S.W. 664 (1910)).

"Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct." Tenn. Const. art. I, § 17. The General Assembly has directed that "[n]o court in the state shall have any power, jurisdiction or authority to entertain any suit against the state . . . with a view to reach the state, its treasury, funds or property." Tenn. Code Ann. § 20-13-102(a). Instead of creating a court under Title 16, the General Assembly created

"an administrative tribunal . . . known as the 'Tennessee claims commission'" under Title 9. Tenn. Code Ann. § 9-8-301(a). The Claims Commission "has exclusive jurisdiction to determine all monetary claims against the state." Tenn. Code Ann. § 9-8-307. It is attached to the Tennessee Department of Treasury for administrative purposes. Tenn. Code Ann. § 9-8-301(b).

The Tennessee Court of Appeals has concluded that the Claims Commission is an administrative agency. *See Stewart Title Guar. Co. v. McReynolds*, 886 S.W.2d 233, 238 (Tenn. Ct. App. 1994). In *Stewart*, the plaintiff argued that Tenn. Code Ann. § 9-8-404, which allows a Claims Commissioner to transfer some cases to circuit or chancery court, violates the separation-of-powers doctrine because "it gives the claims commission concurrent jurisdiction with the circuit or chancery courts." *Id.* A grant of concurrent jurisdiction to a municipal-corporation court over violations of criminal laws had been found unconstitutional in *Town of South Carthage v. Barrett*, 840 S.W.2d 895 (Tenn. 1992). *Id.* In *Town of South Carthage*, the Supreme Court determined that the municipal court had been vested with judicial power under Article VI, § 1, of the Tennessee Constitution, and so the judges must be elected under § 4 of the same article. *Id.* In *Stewart* though, the Court concluded that there was no constitutional violation because suits against the State are fundamentally different and that "it is proper for the legislature to give the power to adjudicate such claims to an administrative agency." *Id.*

"Administrative agencies are part of the executive branch of government." *Barrett v. Tenn. Occupational Safety and Health Review Comm'n*, 284 S.W.3d 784, 789 (Tenn. 2009). Although an administrative agency "may have judicial characteristics and may be required to perform quasi-judicial functions, an agency is not part of the judicial branch of government." *Id.* Thus, even administrative tribunals are part of the executive branch. *See, e.g., Barrett*, 284 S.W.3d at 784; *Plasti–Line v. Tenn. Human Rights Comm'n*, 746 S.W.2d 691, 692 (Tenn. 1988).

The Claims Commission has both quasi-judicial functions, *see* Tenn. Code Ann. § 9-8-305, and quasi-legislative functions, *see* Tenn. Code Ann. § 9-8-306. However, the Commission primarily acts as part of the executive branch to administer the statutory provisions created by the General Assembly.

Therefore, the Claims Commission is not part of the judicial branch but rather is part of the executive branch of government. This conclusion is consistent with an earlier opinion of this Office concluding that the Board of Claims, the precursor to the Claims Commission, was part of the executive branch of government. *See* Tenn. Att'y. Gen. Op. 83-207 (Apr. 22, 1983).

2. The General Assembly prescribed the appointment, term, necessary qualifications, compensation, and powers of a Claims Commissioner exclusively in Title 9. It is well settled that "[a]dministrative judges and personnel are not subject to the constitutional provisions [in article VI] pertaining to the election of state judges." *Barrett*, 284 S.W.3d at 789 (citing *Plasti-Line*, 746 S.W.2d at 694). "While [an administrative official] . . . exercises a judicial or quasi-judicial function, still he is not a judge of a supreme or inferior court in the sense of the constitutional provision . . . ." *Id.* (quoting *State v. Tenn. Coal, Iron & R.R. Co.*, 29 S.W. 116, 123 (Tenn. 1895)). Therefore, a Claims Commissioner is not a member of the judiciary.

3. Tennessee Code Ann. § 2-19-207 provides in relevant part:

> It is unlawful for any person employed by the state to engage actively in a political campaign on behalf of any party, committee, organization, agency or political candidate, or to attend political meetings or rallies or to otherwise use such person's official position or employment to interfere with or affect the result of any regular of special primary election conducted within the state, or to perform political duties or functions of any kind not directly at part of such person's employment, during those hours of the day when such person is required by law or administrative regulation to be conducting the business of the state.

Tenn. Code Ann. § 2-19-207(a). By its plain language, the statute applies to any person "employed by the state." *Id.*

A "state employee" is defined as "any person who is a state official, including members of the general assembly and legislative officials elected by the general assembly, or any person who is employed in the service of and whose compensation is payable by the state." Tenn. Code Ann. § 8-42-101(3)(A). The members of the Claims Commission's staff are employed in the service of, and their compensation is paid by, the State. Tenn. Code Ann. § 9-8-301. Similarly, a Claims Commissioner is a state official who receives the same compensation as a Class 1 Commissioner. *See* Tenn. Code Ann. § 9-8-303. Accordingly, both a Claims Commissioner and the employees of the Claims Commission are "employed by the state."

The following state employees are excluded from § 2-19-207: "[P]opularly elected officials, officials elected by the General Assembly, qualified candidates for public office, teachers, as defined by § 49-1501 [repealed], members of the governor's cabinet, and members of the governor's staff." Tenn. Code Ann. § 2-19-201(3). A Claims Commissioner is not elected by the General Assembly but rather "appointed by the governor with confirmation by resolution of both houses of the general assembly." Tenn. Code Ann. § 9-8-302(a). Therefore, a Claims Commissioner and the employees of the Claims Commission are subject to the provisions of Tenn. Code Ann. § 2-19-207.

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