STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

April 21, 2014

Opinion No. 14-48

Validity of Legislation Authorizing Traffic-Enforcement Cameras on School Buses

QUESTIONS

1. Does House Bill 2196 of the 108th General Assembly (2014) (hereinafter "HB2196"), which provides that the owner of a motor vehicle is responsible for payment of a citation for passing a stopped school bus that is issued solely on the basis of evidence obtained from a traffic-enforcement camera, comport with due-process requirements?

2. Can a local municipality that installs cameras on school buses pursuant to HB2196 enforce and collect fines in excess of $50 consistent with Article VI, § 14, of the Tennessee Constitution?

OPINIONS

1. HB2196 is susceptible to a due-process challenge on the basis that it establishes a criminal, not a civil, enforcement scheme.

2. A municipal ordinance that tracks or mirrors HB2196 would likewise be susceptible to challenge as imposing punitive fines in violation of the Fifty-Dollar-Fine Clause in Article VI, § 14, of the Tennessee Constitution.

ANALYSIS

HB2196 would amend Tenn. Code Ann. § 55-8-151 relative to vehicles passing stopped school buses. Under current law,

> [t]he driver of a vehicle upon a highway, upon meeting or overtaking from either direction any school bus that has stopped on the highway for the purpose of receiving or discharging any school children, shall stop the vehicle before reaching the school bus, and the driver shall not proceed until the school bus resumes motion or is signaled by the school bus driver to proceed or the visual signals are no longer actuated.

Tenn. Code Ann. § 55-8-151(a)(1). Failure to comply with this requirement is a Class A misdemeanor punishable by a fine of not less than $250 nor more than $1,000. *Id.* § 55-8-151(a)(5)(B).

Section 1 of HB2196 would amend subdivision (a)(5)(B) to provide that a violation is punishable by a fine of $300 for a first offense, $750 for a second offense, and $1,000 for a third or subsequent offense, and to further provide as follows:

> The person cited for the violation may elect not to contest the charge and may, in lieu of appearance in court, submit the fine to the address provided on the notice of violation or citation. Any citation for the violation shall be considered a moving traffic violation for assessing points on the driving record of the person convicted pursuant to § 55-50-505 and for suspending the driver license of the person cited after the person fails to either pay the fine or appear in court pursuant to § 55-50-502(a)(1)(I).

Section 2 of HB2196 would add a new subsection (c) to the statute (and redesignate the existing subsections accordingly) to allow local education agencies to install cameras on school buses in order to detect violations. Under this new subsection, images recorded by the cameras are transmitted to the "appropriate local law enforcement agency" in order to determine whether a violation has occurred. If a violation is detected, a citation is mailed to the registered owner of the vehicle. HB2196, § 2 (new subdivision (c)(3)).

> The registered owner of the motor vehicle shall be responsible for payment of any notice of violation or citation issued as the result of a camera; except, that the owner shall not be responsible for the violation if the owner submits documentation in accordance with § 55-8-198(e).

Id. (new subdivision (c)(2)).[1]

The proceeds from any fine imposed by new subdivision (a)(5)(B) for a violation of § 55-8-151(a) that is based solely upon evidence obtained from a camera are to be allocated as follows: The local education agency receives 70% to defray costs associated with the cameras and a further 5% to defray administrative expenses; the chief law enforcement officer for the county or municipality in which the violation occurred receives 20% to be used for the purpose of school safety; and 5% goes to the State general fund without designation for any particular purpose. HB2196, § 2 (new subdivision (c)(6)).

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[1] The documentation referred to in this provision is an affidavit showing that the owner was not the driver—for example, by stating that the vehicle was stolen or identifying the person who had control of it at the time of the violation. *See* Tenn. Code Ann. § 55-8-198(e)(1)-(2).

1. A civil fine may be imposed constitutionally on the owner of a motor vehicle based solely upon evidence from a traffic-enforcement camera. *See, e.g., Mendenhall v. City of Akron*, 374 Fed. Appx. 598, 599-600 (6th Cir. Mar. 29, 2010) (unpublished); *City of Knoxville v. Brown*, 284 S.W.3d 330, 338-39 (Tenn. Ct. App. 2008); Tenn. Op. Att'y Gen. No. 08-179 (Nov. 26, 2008). Criminal penalties however, are attended by greater due-process protections. Due process requires that the government prove beyond a reasonable doubt every fact necessary to constitute the elements of a crime. *Smith v. United States*, 133 S.Ct. 714, 719 (2013). Mandatory presumptions in criminal cases—those that tell the triers of fact that they must find an elemental fact upon proof of a basic fact unless the defendant comes forward with evidence to rebut the presumed connection between the two—violate due process because they shift the burden to the defendant. *State v. Pickett*, 211 S.W.3d 696, 703 (Tenn. 2007).

It is an element of the offense of passing a stopped school bus that the "driver" engage in the proscribed conduct. Tenn. Code Ann. § 55-8-151(a)(1). By requiring that owners be responsible for the payment of citations issued as a result of a camera, HB2196 effectively creates a presumption that the owner is the driver unless the defendant comes forward with documentation to rebut the connection between ownership and operation of the vehicle. That presumption is not permissible if the penalty is criminal in nature.

As discussed in Tenn. Att'y Gen. Op. 10-17 (Feb. 19, 2010), distinguishing between criminal and civil proceedings follows a two-part inquiry under federal law. First, courts inquire whether the legislature intended to create a non-punitive civil scheme. *See Kansas v. Hendricks*, 521 U.S. 346, 361 (1997). If the answer is yes, courts secondarily examine the enactment to determine whether it is so punitive, either in purpose or effect, as to negate the intention to deem it "civil." *See United States v. Ward*, 448 U.S. 242, 248-49 (1980). Only the "clearest proof" will suffice to transform what has been denominated a civil remedy into a criminal penalty. *Id.* at 249. *See also Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963) (identifying seven considerations to guide this inquiry). Tennessee courts follow this same two-part test but ultimately ask whether the "totality of the circumstances demonstrates that the statutory scheme truly envisions the pecuniary sanction as serving to remedy or to correct a violation." *City of Chattanooga v. Davis*, 54 S.W.3d 248, 265 (Tenn. 2001); *see Brown*, 284 S.W.3d at 338. This examination focuses not on the personal impact of the sanction on the defendant but on whether the penalty truly serves a remedial role within the context of the statutory scheme. *Davis*, 54 S.W.3d at 265, 269.

In Tenn. Att'y Gen. Op. 10-17, this Office opined that the issuance of traffic citations based on evidence obtained from traffic-enforcement cameras pursuant to Tenn. Code Ann. § 55-8-198 does not violate due process. In reaching this conclusion, the opinion noted both the "evident preference for a civil label," *see* Tenn. Code Ann.

§ 55-8-198(a) (identifying such a citation as a nonmoving traffic violation), and the "modest fine" involved, *see id.* § 55-8-198(b)(3) (allowing person cited to submit, in lieu of appearing, a fine of not more than $50). Op. 10-17, at 3.[2]

HB2196 differs in these two respects. The bill does not explicitly provide that it is creating a civil enforcement scheme. To the contrary, it provides that "[a]ny citation for the violation shall be considered a moving traffic violation" for the purposes of assessing points on the person's driving record and for suspending the person's driver license for failure to appear or to pay the fine assessed. HB2196, § 1 (new subdivision (a)(5)(B)). *Cf. Mendenhall v. City of Akron*, Nos. 5:06-cv-139, 5:06-cv-154, 2008 WL 748179, at *5 & n.25 (N.D. Ohio Dec. 9, 2008) (finding sanction under traffic-camera ordinance "is not punitive in that no points on the violator are assessed"), *aff'd,* 374 Fed. Appx. 508 (6th Cir. Mar. 29, 2010). HB2196 also provides that violations of Tenn. Code Ann. § 55-8-151(a)(1) are punishable by a fine of $300 for a first offense, $750 for a second offense, and $1,000 for a third offense. *Cf. Mendenhall*, 2008 WL 748179, at *5 & nn.24-25 (noting the absence of a progressive penalty for repeat violations and that a fine higher than $100 "may result in a different conclusion"). And in obvious contrast to Tenn. Code Ann. § 55-8-198(b)(3), while new subdivision (a)(5)(B) allows the person cited for the violation to submit, in lieu of appearing, "the fine," it does not specify an amount or set any maximum. These features of the HB2196 tend toward the conclusion that the bill establishes a criminal, not a civil, enforcement scheme.

Part of HB2196 does support the opposite conclusion. Fully 75% of the proceeds from fines imposed under the bill for violations based solely on evidence obtained from cameras would be allocated to defraying costs and administrative expenses, and an additional 20% would be "used for the purpose of school safety." HB2196, § 2 (new subdivision (c)(6)). And monetary penalties can serve a "truly remedial purpose" where they compensate for loss, reimburse for expenses, disgorge "ill-gotten" gains, provide restitution, and ensure compliance with a prospectively coercive fine. *See Davis*, 54 S.W.3d at 270. Nevertheless, the lack of an explicit civil label and features making its sanctions look more punitive than nonpunitive render HB2196 susceptible to a due-process challenge.

2. Article IV, § 14, of the Tennessee Constitution prohibits the laying of fines in excess of $50 unless assessed by a jury. This provision applies to proceedings for the violation of a municipal ordinance when the monetary sanction imposed is punitive in nature. *Davis,* 54 S.W.3d at 251. Absent statutory authorization to the contrary, municipal court judges lack power to empanel juries and hence cannot impose fines in excess of $50 for violation of a municipal ordinance absent a valid

[2]Op. 10-17 pointed only to the constitutional prohibition on the imposition of a fine in excess of $50. Tenn. Code Ann. § 55-8-158 was amended in 2011 to add this $50-fine provision. *See* 2011 Tenn. Pub. Acts., ch. 425, § 4.

waiver of the defendant's Article VI, § 14 right. *City of Nolensville v. King,* 151 S.W.3d 427, 432-33 (Tenn. 2004).

HB2196 contemplates that municipalities will enact ordinances that mirror, substantially duplicate, or incorporate by reference the language of Tenn. Code Ann. § 55-8-151(a). *Id.* (new subdivision (c)(7)); *see also* Tenn. Code Ann. § 55-10-307(a) (allowing municipalities to adopt by ordinance any of the appropriate provisions of chapter 8 of the title). As discussed above, fines imposed for violations of Tenn. Code Ann. § 55-8-151(a) that are based solely upon evidence obtained from a camera are likely to be deemed punitive in nature. Fines imposed under a municipal ordinance that tracks or mirrors HB2196 are also likely to be deemed punitive. Such fines would be subject to the prohibition of Article VI, § 14.

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