**STATE OF TENNESSEE**
# OFFICE OF THE ATTORNEY GENERAL

May 12, 2014

Opinion No. 14-54

Legislature's Authority to Eliminate Specific Judicial Positions

## QUESTIONS

1. Can the General Assembly lawfully eliminate two judicial positions in the 30th Judicial District, as contemplated in Senate Bill 1484 of the 108th General Assembly (2014) (hereinafter "SB1484"), when these positions are scheduled for election this August, and for which the election filing process has already begun, and candidate nominating petitions are already being signed by qualified voters?

2. Can the General Assembly single out specific divisions in a judicial district for elimination, as opposed to a more random, objective or sequential procedure?

3. If the General Assembly can "single-shot" particular court divisions for elimination, does this create the danger or give the appearance of targeting specific judges?

4. Does this elimination procedure conflict with any objectively neutral or past court-administration procedures for adding or reducing court divisions?

## OPINIONS

1. Yes. Pursuant to its authority under Article VI, § 1, of the Tennessee Constitution, the General Assembly has the authority to abolish circuit and chancery courts, such as those contemplated in SB1484, even if the positions are scheduled for election and candidates have begun the nomination process.

2. & 3. The General Assembly can eliminate specific divisions in a judicial district, and its discretion in choosing which divisions to eliminate is broad and subject to deference.

4. No. Tenn. Code Ann. § 16-2-513 requires the Comptroller of the Treasury to develop and maintain a weighted caseload formula for determining the need to add or reallocate judicial positions. Beyond this mechanism for determining a need for legislative action, which is not binding on the General Assembly, this Office is not aware of any established procedures for how the General Assembly determines to create or abolish a judicial position.

## ANALYSIS

1. Article VI, § 1, of the Tennessee Constitution states:

> The judicial power of this state shall be vested in one Supreme Court and in such Circuit, Chancery and other Inferior Courts as the Legislature shall from time to time, ordain and establish; in the Judges thereof, and in Justices of the Peace.

"The plain language of Article VI, Section 1 indicates that it is the Legislature that must vest judicial power in the courts by 'ordaining and establishing' them." *Moses v. City of Jellico*, No. E2008-00004-COA-R3-CV, 2009 WL 167072, at *3 (Tenn. Ct. App. Jan. 26, 2009).

> Since the Constitution gives to the General Assembly the right to establish such courts, it likewise has the right to abolish such courts whenever, in the opinion of the Legislature, the public welfare requires this to be done. The discretion of the Legislature is not subject to review by the courts and has the right to abolish the circuit court and chancery court . . . .

*State ex rel. Cheek v. Rollings*, 202 Tenn. 608, 619, 308 S.W.2d 393 (Tenn. 1957); *see also Walker v. Stone*, 174 Tenn. 700, 702, 130 S.W.2d 120 (Tenn. 1939) ("[I]t should also be said that the General Assembly may in the exercise of the legislative power abolish existing civil districts in a county and create other districts . . . .").

SB1484 would have amended Tenn. Code Ann. § 16-2-506(30)(A) to abolish Parts I and V of the Circuit Court for the 30th Judicial District effective September 1, 2014. SB1484, § 1. Under the authority granted under Article VI, § 1, the General Assembly can exercise its discretion to eliminate these judicial positions. This conclusion is supported by the Tennessee Supreme Court's decision in *State ex rel. Robinson v. Lindsay*, 103 Tenn. 625, 53 S.W. 950 (Tenn. 1899), in which the Court restated the following propositions:

> First, the Legislature has the constitutional power to abolish particular Circuit and Chancery Courts, and to require the papers and records therein to be transferred to other Courts, and the pending causes to be heard and determined in the Courts to which they are transferred. The power to ordain and establish, from time to time, Circuit and Chancery Courts includes the power to abolish existing Courts, and to increase or diminish the number. Second, the Judge's right to his full term and his full salary is not dependent alone upon his good conduct, but also upon the contingency that the Legislature may, for the public good, in ordaining and establishing Courts from time to time, consider his office unnecessary and abolish

> it. The exercise of this power by the Legislature is neither such as interferes with the independence of the Judge or with his tenure of office as can be complained of.

103 Tenn. at 636-37 (quoting *The Judges' Cases,* 102 Tenn. 509, 533-34, 53 S.W. 134 (Tenn. 1899)). Accordingly, the General Assembly has the authority to eliminate divisions of a judicial district, such as those contemplated in SB1484, even if the positions are scheduled for election and candidates have begun the nomination process.[1]

2. & 3. The General Assembly has from time to time exercised its authority under Article VI, § 1, to eliminate or redistribute judicial positions. For instance, in *Duncan v. Rhea County,* 199 Tenn. 375, 287 S.W.2d 26 (Tenn. 1955), the Tennessee Supreme Court considered a challenge by an incumbent judge to the validity of a statute that abolished the Court of General Sessions in Rhea County. The judge argued that the legislature's actions were an improper attempt to remove him from office. 199 Tenn. at 378. In rejecting that argument, the Court observed:

> [U]nless a Court or a system of Courts, such as the Circuit or Chancery Courts, is protected by the Constitution, the Legislature may redistribute the business of the Courts for the purpose of economy and efficiency, and when such a Court is abolished it operates to vacate the office of the Judge who presided over the same.

*Id*. at 379.

Similarly, in *Walker* the General Assembly had redistricted Moore County from eleven civil districts to six, and the incumbent justices of the peace challenged the validity of the act. 174 Tenn. at 702. After reaffirming the General Assembly's authority to abolish judicial districts, the Supreme Court held:

> The act, in substance, provides that the civil districts of Moore County shall be reduced from eleven to six, and for the appointment of justices of the peace in the newly created districts. The legal consequences of the creation of six new districts from the territory that formerly composed the eleven old districts was to extinguish the old districts and to create the new. The offices of the justices of the peace for the old districts were dependent for their existence upon the old civil districts, and, when they were extinguished by use of their territory in making the new and enlarged districts, all offices in the districts ceased to exist and the official life of the officers terminated.

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[1] SB1484 further provides that "no person shall be elected at the August 2014 general election to serve as circuit judge of those parts [Parts I and V of the Circuit Court]." It thus would not have abolished a judicial position during an incumbent's unexpired term.

*Id*. at 702-03.

In *Lindsay* the Supreme Court considered an incumbent judge's challenge to an act of the General Assembly that abolished the Second Chancery Division and divided its jurisdiction and pending business between the First and Twelfth Chancery Divisions. 103 Tenn. at 626. The judge claimed that the General Assembly had abolished the division based on sinister motives and in an effort to legislate him out of office. *Id.* at 630. In support of his claim, the judge pointed to the awkward and unreasonable geographical redistricting that resulted. *Id.* at 643-44. The Court responded as follows:

> With respect to what has been said regarding the awkward shape of the First and Twelfth Divisions, and the statement that it would have been better and more natural for the Legislature to have abolished the Twelfth or the First Division rather than the Second, we can only say that this was a matter of discretion addressing itself alone to the Legislature, and which this Court can neither interfere with nor criticize. An examination of all these matters merely indicates that it became apparent to the Legislature that the three divisions were unnecessary, and that one or the other should be abolished. This naturally precipitated a contest between the friends and adherents of each of the three Chancellors as to which division should be abolished. The Legislature selected the Second, and the same argument, it seems to us, could just as well be made by the Chancellor of the First or of the Twelfth Divisions if either of those divisions had been selected instead of the Second.

*Id*. at 645.

Based on the General Assembly's power under Article VI, § 1, and the Supreme Court's repeated affirmation of that authority, the decision to eliminate specific divisions of a judicial district is a matter of legislative discretion, and the process employed by the General Assembly in exercising its discretion is subject to deference.

4. Tenn. Code Ann. § 16-2-513(a) provides that "[t]he comptroller of the treasury shall devise and maintain a weighted caseload formula for the purpose of determining the need for creation or reallocation of judicial positions using case weights derived from the most recent weighted caseload study." This provision establishes a metric by which the General Assembly can determine if legislation is necessary to properly allocate judicial positions. But the decisions discussed above demonstrate that there are no established procedures for how the General Assembly ultimately determines to create or abolish a judicial position. Additionally, we are not aware of any past court administrative procedures that have been established to govern the reduction or addition of court divisions. As the Tennessee Supreme

Court has succinctly stated, when the General Assembly decides to eliminate certain divisions in a judicial district, it is "a matter of discretion addressing itself alone to the Legislature, and which this Court can neither interfere with nor criticize." *Lindsay*, 103 Tenn. at 645.

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