

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

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Opinion No. 15-24

Constitutionality of the General Assembly's Delegation of Its Article XI, Section 7, Authority to Set Maximum Interest Rates for Short-Term Lending Transactions

Question

Does the Tennessee Constitution prohibit the General Assembly from delegating its article XI, section 7, authority to set maximum interest rates on short-term lending transactions?

Opinion

Yes.

ANALYSIS

Article XI, section 7, of the Tennessee Constitution provides in full:

The General Assembly shall define and regulate interest, and set maximum effective rates thereof. If no applicable statute is hereafter enacted, the effective rate of interest collected shall not exceed ten percent (10%) per annum. All provisions of existing statutes regulating rates of interest and other charges on loans shall remain in full force and effect until July 1, 1980, unless earlier amended or repealed.

This section grants the General Assembly plenary authority to make, order, and repeal laws regarding interest rates within the State of Tennessee. That authority is a legislative power of the General Assembly under Tenn. Const. art. II, § 3. *See Gallaher v. Elam*, 104 S.W.3d 455, 464 (Tenn. 2003).

The legislature generally lacks the constitutional authority to delegate its legislative powers to other entities. *See id.* (citing *State v. Edwards*, 572 S.W.2d 917, 919 (Tenn. 1978)); *Kee v. Parks*, 153 Tenn. 306, 313, 283 S.W. 751, 753 (1926); *see also* Tenn. Att'y. Gen. Op. 02-037 (April 1, 2002). The General Assembly is permitted to delegate its legislative powers in only two instances: (1) when the Tennessee Constitution itself authorizes the delegation, and (2) when the delegation is "sanctioned by immemorial usage originating anterior to the Constitution and continuing unquestioned thereunder." *See Gibson County Special Sch. Dist. v. Palmer*, 691 S.W.2d 544, 550 (Tenn. 1985); *Kee v. Parks*, 153 Tenn. at 313, 283 S.W. at 753.

Neither exception is available with respect to the General Assembly's legislative power to set maximum interest rates. First, article XI, section 7, vests the power to set maximum interest rates exclusively with the General Assembly; it expressly provides that the General Assembly and

no other body “shall define and regulate interest, and set maximum effective rates.” (Emphasis added.) As a result, the Tennessee Constitution does not authorize the General Assembly to delegate that legislative power to any other entity. *See, e.g., Chambers v. Marcum*, 195 Tenn. 1, 10, 255 S.W.2d 1, 5 (1953); Tenn. Att’y. Gen. Op. 02-037 (April 1, 2002) (stating that because the Tennessee Constitution specified that qualifications for county legislative bodies “shall be prescribed by the General Assembly,” that duty was non-delegable).

Second, there is no evidence that delegation of the General Assembly’s legislative power to set maximum interest rates is “sanctioned by immemorial usage originating anterior to the Constitution and continuing unquestioned thereunder.” “Immemorial usage” means “a usage that has existed a very long time; [a] long-standing custom.” *Black’s Law Dictionary* 1576 (8th ed. 1999). Since 1835, the Tennessee Constitution has vested the General Assembly with the exclusive authority to fix the rate of interest. *See* Tenn. Const. art. XI, § 6 (1835); Tenn. Const. art. XI, § 7 (1870); Tenn. Const. art. XI, § 7 (1978). For much of that history, the express purpose for vesting this power with the General Assembly was to insure equality and uniformity of interest rates throughout the state. *See* Tenn. Const. art. XI, § 6 (1835); Tenn. Const. art. XI, § 7 (1870). Prior to 1835, the General Assembly established the state-wide interest rate through statute. *See* Acts of 1819, ch. 32 (setting the legal rate of interest at six percent per annum). Prior to 1819, the legislature restricted the amount of interest that could be charged throughout the state. *See* North Carolina Act of 1741, ch. 11.¹ Thus, throughout Tennessee history, the long-standing custom is that the legislature possessed both practical and exclusive constitutional authority to set interest rates, exercised that authority by enacting statutes, and did not delegate this authority to any other body.

Therefore, because the Tennessee Constitution does not authorize the delegation, and because the delegation is not “sanctioned by immemorial usage,” a statute delegating the General Assembly’s legislative power to set maximum rates of interest on short-term lending transactions to other entities, if enacted, would be an unconstitutional delegation of the General Assembly’s authority under article XI, section 7, of the Tennessee Constitution.

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¹ The North Carolina Act of 1741, on matters relating to interest rate regulation, took effect in the State of Tennessee as of June 1, 1796, upon the state’s admission to the federal union and remained in effect until the Acts of 1819. *Cumberland Capital Corp. v. Patty*, 556 S.W.2d 516, 520 (Tenn. 1977).

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