STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 18-02

Prohibition on Selling Alcohol to Individuals Convicted of a DUI

Question

Would legislation that (1) required an individual who had been convicted of driving under the influence (DUI) to bear a driver's license with a marker denoting the DUI conviction and (2) imposed a misdemeanor penalty on any establishment that sold alcohol to an individual bearing this type of license raise any constitutional concerns?

Opinion

Even though such legislation would be subject to deferential review, it would raise constitutional concerns due to its breadth and categorical operation.

ANALYSIS

The contemplated legislation would ban alcohol sales to individuals who have been convicted of driving under the influence (DUI). It would do so by mandating that each individual convicted of a DUI be issued a new driver's license that includes a marker of some kind—e.g., a red stripe—denoting that conviction. The legislation would then prohibit establishments that serve or sell alcoholic beverages from selling alcohol to an individual bearing a license with a DUI marker and would impose a misdemeanor penalty for failure to comply with that prohibition.

Legislation passed by the General Assembly enjoys a strong presumption of constitutionality. See Gallaher v. Elam, 104 S.W.3d 455, 459 (Tenn. 2003). And, if challenged on constitutional grounds, legislation that does not implicate a fundamental right or a suspect class, is subject only to deferential review. See Riggs v. Burson, 941 S.W.2d 44, 51-53 (Tenn. 1997).

The proposed DUI legislation does not disadvantage a suspect class. See Doe v. Mich. Dep't of State Police, 490 F.3d 491, 503 (6th Cir. 2007) (noting that the classifications the U.S. Supreme Court has identified as suspect include "race, alienage, national origin, gender, or illegitimacy"). Nor does it implicate a fundamental right. Accordingly, to be consistent with the equal protection and due process guarantees of the U.S. and Tennessee Constitutions, see U.S. Const. amend. XIV, § 1; Tenn. Const. art. I, § 8; id. art. XI, § 8, the legislation needs only to "bear[] 'a reasonable relation to a proper legislative purpose' and [be] 'neither arbitrary nor discriminatory.'" Riggs, 941 S.W.2d at 51 (quoting Newton v. Cox, 878 SW.2d 105, 110 (Tenn. 1994)). And any classifications or divisions it creates "will pass constitutional muster if [the court] can conceive of some rational basis for the distinction." Gallaher, 104 S.W.3d at 462. A party challenging this legislation would thus bear "the greatest burden of proof." Riggs, 941 S.W.2d at 53 (quoting Brown v. Campbell County Bd. of Educ., 915 S.W.2d 407, 413 (Tenn. 1995).

The types of interests that would motivate the General Assembly to enact the contemplated legislation—safety and preventing the dangers caused by drunk driving—are compelling. *See State v. Downey*, 945 S.W.2d 102, 104 (Tenn. 1997). Whether the contemplated legislation bears a "reasonable relation" to those interests or operates in an "arbitrary" or "discriminatory" manner is a more difficult question, however.

The two specific requirements of the proposed legislation—a special driver's license denoting a DUI conviction and an absolute prohibition on the sale of alcohol to the bearers of such licenses—apply broadly but align only loosely with the state's interests. They relate exclusively to the *purchase* of alcohol by individuals who have a previous DUI conviction, but they have very little relation to driving under the influence of alcohol or to alcohol consumption more generally. An individual bearing a DUI license would be flatly prohibited from buying alcohol, even if he did not have access to a vehicle or had travelled to an alcohol-serving establishment through alternative means, such as by taxi or on foot. The legislation as described would not distinguish between first-time offenders or repeat offenders; nor would it provide an expiration date or expungement mechanism for the DUI marker. Moreover, the legislation would not prohibit alcohol sales based on other forms of identification, such as a passport, and would not do anything to prevent or discourage an acquaintance from purchasing alcohol for an individual with a DUI license.

The proposed legislation operates bluntly and categorically, designating all individuals with a previous DUI conviction as an inferior class with respect to purchasing alcohol. Although legislation does not have to be narrowly tailored to fit a precise purpose under the deferential standard of review appropriate here, the breadth of this contemplated legislation does raise concerns about its reasonable relation to the state's interest. Legislative findings about the recidivism of first-time DUI offenders, the relationships between DUI and the purchase of alcohol, and the potential efficacy of the proposed legislation could help establish a connection between the law's requirements and the problem it is addressing. But the connection is tenuous without such findings.

Moreover, the categorical operation of the proposed legislation and the indignity it would impose on DUI offenders increase the chances that a court would consider it arbitrary or discriminatory. A convicted DUI offender would be forced to display the fact of his conviction to everyone who viewed his driver's license, even if the interaction—e.g., showing a photo ID to vote in an election—had nothing to do with alcohol. Individuals convicted of a DUI would be "marked" for the world to see. And because the driver's license is the most common form of identification, much of the indignity associated with bearing that marker would have nothing to do with the state's interest—driving under the influence of alcohol.

In short, a law of this type would be subject to deferential review and, may, depending on the legislative findings accompanying its passage, be upheld as constitutional. But the proposed legislation does raise constitutional concerns because it imposes a visible indignity on all convicted DUI offenders without distinction and prohibits all alcohol sales to them despite the lack of a specific connection between these activities and the act of driving, the danger the law appears designed to address.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

JONATHAN DAVID SHAUB
Assistant Solicitor General

Requested by:

The Honorable Bud Hulsey
State Representative
404 Cordell Hull Building
Nashville, TN 37243