STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

September 9, 2019

Opinion No. 19-14

Authority of General Sessions Judges To Interchange for Circuit Judges or Chancellors

Question 1

May general sessions court judges sit by interchange for circuit court judges or chancellors in the absence of a private act specifically granting such interchange authority?

Opinion 1

No, except "for the exclusive purpose of hearing and deciding uncontested and irreconcilable differences in divorce cases" in counties with a population over 700,000 pursuant to Tenn. Code Ann. § 17-2-209.

Question 2

May the General Assembly, by private act, authorize general sessions judges to interchange with circuit court judges and chancellors in a particular county?

Opinion 2

Yes, as long as the General Assembly has a rational basis for granting interchange authority in that county.

ANALYSIS

Under the statutory provisions governing interchange, judges of the general sessions court may interchange with circuit court judges and chancellors only in the limited circumstances authorized by Tenn. Code Ann. § 17-2-209. In general, the legislature has authorized general sessions court judges and juvenile court judges to interchange only with "each other." Tenn. Code Ann. § 17-2-208. And it has authorized "[m]unicipal court judges and general sessions court judges . . . to sit by interchange for other municipal court judges." Tenn. Code Ann. § 16-18-312(b). But "the general laws do not authorize [circuit court judges and chancellors] to interchange with general sessions judges[.]" Tenn. Att'y Gen. Op. 02-74 (June 12, 2002).

Circuit court judges and chancellors are state officials; they are "judges and chancellors for the state at large, and, as such, may, upon interchange and upon other lawful ground, exercise the duties of office in any other judicial district in the state." Tenn. Code Ann. § 17-1-203. By contrast, general sessions court judges are county—not state—officials. See State ex rel. Winstead v. Moody, 596 S.W.2d 811 (Tenn. 1980). Whereas state trial court judges are authorized, and in some circumstances required, to interchange with other state trial court judges, see Tenn. Code Ann. § 17-2-202; Tenn. Att'y Gen. Op. 96-114 (Sept. 5, 1996), "no general statute allow[s] a

general sessions judge to sit by interchange for a circuit judge or chancellor[,]" *Jackson v. Lanphere*, No. M2010-01401-COA-R3-CV, 2011 WL 3566978, at *5 (Aug. 12, 2011).

Tennessee Code Annotated § 17-2-209(a) provides the "exclusive" instance in which general sessions judges may sit by interchange for circuit court judges and chancellors:

> In counties with a population of over seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census, the general sessions judges may sit by interchange as a circuit court judge or chancellor for the exclusive purpose of hearing and deciding uncontested and irreconcilable differences in divorce cases.

Absent a private act providing additional authority within a particular county, interchange between general sessions court judges and circuit court judges and chancellors is not allowed in any other circumstance. *See* Tenn. Att'y Gen. Op. 02-74.

The legislature has, by private act, authorized county judges in certain counties to sit by interchange with the circuit court judges or chancellors in that county. *See Jackson*, 2011 WL 3566978, at *5 n.5 (recognizing this practice); *Crawford v. Gilpatrick*, 646 S.W.2d 433, 435 (Tenn. 1983) (discussing a private act that allowed the judge of the court of common pleas in Clay County to sit by interchange with the circuit court judges and the chancellor).

In a previous opinion, this office concluded that such private acts are constitutional so long as they have a rational basis. In response to the question whether the legislature could, by private act, authorize the general sessions court judge for Haywood County to interchange with the chancellor for Haywood County, the opinion concluded that the legislature could do so as long as it "articulate[d] the reasons why such authority [was] necessary or convenient to the operation of the judicial system in the affected county." Tenn. Att'y Gen. Op. 02-74.

A private act that allowed general sessions court judges to interchange with circuit court judges or chancellors within a particular county would also be consistent with the legislature's constitutional authority to provide for temporary "special judges." Article VI, section 11 of the Tennessee Constitution gives the legislature the authority to "make provisions that special Judges may be appointed, to hold any Court the Judge of which shall be unable or fail to attend or sit; or to hear any cause in which the Judge may be incompetent." As this office has explained:

> Article VI, section 11 does not "enable the General Assembly to provide for filling a vacancy in an office, but only for supplying a temporary judge in the case of the absence or disqualification of the regular judge." Tenn. Att'y Gen. Op. 09-133 (July 28, 2009). Pursuant to this authority, "the General Assembly has enacted several statutes relating to the appointment of special/substitute judges[.]" *Ferrell v. Cigna Prop. & Cas. Ins. Co.*, 33 S.W.3d 731, 736 (Tenn. 2000); *see, e.g.*, Tenn. Code Ann. §§ 17-2-109, 17-2-116; 17-2-118, 17-2-121, 17-2-122. And the Tennessee Supreme Court has recognized that there is no conflict between the general requirement that judges be elected and the specific grant of authority to the General Assembly to provide for the appointment of special judges. See *In re*

Valentine, 79 S.W.3d 539, 545 (Tenn. 2002); *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567, 575 (Tenn. Ct. App. 1994).

Tenn. Att'y Gen. Op. 18-14 (Mar. 23, 2018). Accordingly, a private act that allowed the general sessions judges and state trial court judges in a particular county to interchange in certain circumstances would not violate any of the constitutional requirements applicable to state trial court judges. It would be an exercise of the legislature's constitutional authority to provide for special, temporary judges when necessary.

In sum, the legislature may, by private act, provide for the interchange of general sessions court judges and state trial court judges within a particular county as long as the private act has a rational basis and provides only for temporary—not permanent—interchange.

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