STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

March 12, 2020

Opinion No. 20-04

Housing Protections for Senior Citizens

Question

May the General Assembly enact legislation to protect low-income and disabled senior citizens' access to housing and provide them relief from tax debts and the potential delinquent tax sale of their property?

Opinion

Yes. The General Assembly has the authority to pass legislation to protect senior citizens' access to housing and to provide them tax relief, as long as the legislation is consistent with the U.S. and Tennessee Constitutions.

ANALYSIS

The Tennessee General Assembly has plenary authority to enact legislation to govern the State, but that authority must be exercised in accordance with the U.S. and Tennessee Constitutions. See Dennis v. Sears, Roebuck & Co., 223 Tenn. 415, 446 S.W.2d 260, 265-66 (1969) ("[T]he legislature has unlimited power to enact laws except as expressly or impliedly restricted by the constitution."); Tenn. Att'y Gen. Op. 78-367 (Oct. 11, 1978). Accordingly, the General Assembly has the authority to enact legislation to protect low-income and disabled senior citizens and their access to housing so long as such legislation does not run afoul of any federal or state constitutional provisions.

Tax Relief for Senior Citizens. The Tennessee Constitution has long granted the General Assembly authority to provide "in such a manner as it deems appropriate, tax relief to elderly, low-income taxpayers" and to disabled homeowners so long as that relief does not impose any obligations on counties or municipalities. Tenn. Const., art. II, § 28. In 2006, Article II, § 28 was amended to "expand[] the available avenues of tax relief for the elderly" by also permitting the General Assembly to authorize tax relief programs administered by local governments. See Tenn. Att'y Gen. Op. 07-156 (Nov. 21, 2007). Accordingly, the General Assembly may pass legislation providing tax relief for elderly or disabled homeowners, as long as the legislation conforms to the terms of Article II, § 28.

Delinquent Tax Sale of Property. The General Assembly has previously enacted numerous laws governing the procedures and notice requirements for delinquent tax sales of property to satisfy delinquent taxes owed by the property owner. See Tenn. Code Ann. § 67-5-2501 to -2516. The legislature retains the authority, consistent with the U.S. and Tennessee

Constitutions, to amend those laws to provide additional procedures to protect elderly or disabled citizens who are potentially subject to a delinquent tax sale.

Displacement or Eviction of Senior Citizens from Public Housing. The General Assembly may establish guidelines governing public housing in the State. The 1935 Housing Authorities Law authorized the creation of local housing authorities and provided them considerable authority to own, operate, and purchase property within their local jurisdictions. *See* Tenn. Code Ann. § 13-20-101 et seq.; *Knoxville Housing Auth. v. City of Knoxville*, 174 Tenn. 76, 123 S.W.2d 1085, 1086-88 (1939). The General Assembly later passed legislation to "establish a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or policies undertaken" by state and local agencies. Tenn. Code Ann. § 13-11-102 et seq. And the provision of public housing, eviction of tenants, and treatment of displaced persons in the State is governed by numerous other statutory provisions and regulations, all of which are subject to amendment, limitation, or expansion by the General Assembly under its broad legislative authority. *See, e.g.*, Tenn. Code Ann. § 13-20-115 (requiring local housing authorities to "furnish an evicted tenant with the reasons for such tenant's eviction from a housing project upon the request of an evicted tenant").

In sum, the General Assembly has the authority to pass legislation to protect senior citizens' access to housing and to provide them tax relief, as long as the legislation is consistent with the U.S. and Tennessee Constitutions. For example, the legislation may not "substantially impair" existing, private contractual obligations, which are protected by the Contracts Clause of the U.S. Constitution. *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411–412 (1983); *see* U.S. Const., art. I, § 10 (prohibiting States from enacting "any . . . Law impairing the Obligation of Contracts"). Nor may the legislation deprive a property owner of "all economically beneficial" use of his property or defeat the owner's "reasonable investment-backed expectations" without providing for just compensation as required by the Takings Clause of the U.S. Constitution. *Horne v. Dep't of Agric.*, 135 S. Ct. 2419, 2428, 2437 (2015) (internal quotation marks omitted); *see* U.S. Const., amdt. 5; *see also B & B Enters. v. City of Lebanon*, 318 S.W.3d 839, 845-46 (Tenn. 2010) (assuming without deciding that Tenn. Const., art. I, § 21 provides the same protection from regulatory takings as the U.S. Constitution). And, to the extent the proposed legislation did not apply statewide but instead distinguished between counties or municipalities, those distinctions would need to be supported by a rational basis. *See* Tenn. Att'y Gen. Op. 18-18 (Apr. 4, 2018); Tenn. Att'y Gen. Op. 97-47 (Apr. 14, 1997); *see also Admiralty Suites & Inns, LLC v. Shelby Cty.*, 138 S.W.3d 233, 240 (Tenn. Ct. App. 2003), *overruled on other grounds by Chuck's Package Store v. City of Morristown*, 545 S.W.3d 398 (Tenn. 2018).

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