

STATE OF TENNESSEE
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Opinion No. 05-007

Compensation of Gibson County Juvenile Court Clerk

QUESTION

A private act in 2000 created a separate elected office of juvenile court clerk in Gibson County and set the clerk's annual salary at \$32,000. 2000 Tenn. Priv. Act Ch. 142. The act authorized the county commission to appoint a clerk to serve until the new clerk was elected at the August 2002 elections. In 2001, Tenn. Code Ann. § 8-24-102 was amended to provide a new scale of pay for general officers in counties within various population brackets. The term "general officer" includes juvenile court clerks. Under the new statute, effective July 1, 2001, the minimum salary for general officers in counties with a population of 35,000 to 49,999 is \$50,805, with a provision for subsequent raises. The population of Gibson County under the 2000 census was 48,152. Should the juvenile court clerk in Gibson County be paid under the 2000 private act, or the general law, as amended in 2001?

OPINION

For the period from July 1, 2000, until the 2001 act became effective on July 1, 2001, the Gibson County Juvenile Court Clerk should be paid under the 2000 private act. Beginning July 1, 2001, the Gibson County Juvenile Court Clerk should be paid under Tenn. Code Ann. § 8-24-102, as amended.

ANALYSIS

This opinion addresses the salary to be paid the Gibson County Juvenile Court Clerk. Under the private act creating the Gibson County Juvenile Court, the county clerk served as the juvenile court clerk. 1982 Tenn. Priv. Acts Ch. 307; Op. Tenn. Att'y Gen. 99-093 (April 19, 1999). The General Assembly amended this act to provide for a separate elected juvenile court clerk. 2000 Tenn. Priv. Acts Ch. 142. The first clerk was to be elected at the August 2002 general election. The act authorized the Gibson County Commission to appoint a person to serve as juvenile court clerk from July 1, 2000, until the elected juvenile court clerk was to take office in September 2002. The act provides:

The juvenile court clerk appointed and elected pursuant to the provisions of subsection (e) of this section shall receive compensation of thirty-two thousand dollars (\$32,000) each fiscal

year. The juvenile court clerk shall also receive any annual raises given to county employees by the Gibson County Commission.

2000 Tenn. Priv. Acts Ch. 142, § 2(f). We assume the private act was duly adopted by the Gibson County Commission in accordance with Section 3 of the act.

Under the 1990 census, Gibson County had a population of 46,315. Tenn. Code Ann. Vol. 13, p. 185 (Supp. 2004). In 2000, Tenn. Code Ann. § 8-24-102(b) provided that “general officers” in counties with a population of 35,000 to 49,999 “shall” receive compensation of \$45,000. Under subsection (a) of this statute, juvenile court clerks were included among “general officers.” In 2001, the legislature amended Tenn. Code Ann. § 8-24-102. 2001 Tenn. Pub. Acts Ch. 405. Among other changes, the amendment deleted (b) and substituted a new payment schedule. The statute now provides in relevant part:

Beginning July 1, 2001, general officers *shall* receive minimum compensation per year as follows:

County Population		General Officers
	* * * *	
35,000 to 49,999		\$50,805

Tenn. Code Ann. § 8-24-102(b) (Supp. 2004) (emphasis added). The 2001 amendment also provides a method for calculating salary increases. Under the 2000 census, Gibson County had a population of 48,152. Tenn. Code Ann. Vol. 13, p. 185 (Supp. 2004).

The question, then, becomes under what statutory scheme the Gibson County Juvenile Court Clerk should be paid — the 2000 private act or the general law at Tenn. Code Ann. § 8-24-102. As in effect in 2000, Tenn. Code Ann. § 8-24-102(b) provided that general county officers, including juvenile court clerks, “shall” be compensated according to the listed schedule. The general law provides no exceptions, nor does it preserve any conflicting private acts. The 2000 private act sets a salary for the Gibson County Juvenile Court Clerk considerably lower than that in the general law then effective.

It is a rule of statutory construction that a statute adopted later in time controls over a conflicting statute adopted earlier in time. *Steinhouse v. Neal*, 723 S.W.2d 625, 627 (Tenn. 1987); *Stewart Title Guaranty Co. v. McReynolds*, 886 S.W.2d 233, 236 (Tenn. Ct. App. 1994). It is also a rule of statutory construction that “where there is a conflict between a special statute and a general statute, the special statute will be given effect.” *State v. Cauthern*, 967 S.W.2d 726, 735 (Tenn. 1998), *rehearing denied* (1998), *cert. denied* 525 U.S. 987, 119 S.Ct. 414, 142 L.Ed.2d 336 (1998). In the present case, we think a court would conclude that the 2000 private act was intended as an exception to the general law at Tenn. Code Ann. § 8-24-102(b). Absent a rational basis for the exception, the private act is constitutionally suspect because it suspends the general county official salary law. Tenn. Const. Art. XI, § 8. But a statute is presumed to be valid until it has been found

unconstitutional by a court of competent jurisdiction. *Cumberland Capital Corp. v. Patty*, 556 S.W.2d 516 (Tenn. 1977). Because of the presumption in favor of the constitutionality of statutes, the public and individuals are bound to observe a statute though unconstitutional, until it is declared void by an authoritative tribunal. *Franks v. State*, 772 S.W.2d 428, 431 (Tenn. 1989). For this reason, the Gibson County Juvenile Court Clerk was entitled to the salary under the 2000 private act until that act was repealed or declared unconstitutional by an authoritative court.

The next question is the effect of the 2001 amendment to Tenn. Code Ann. § 8-24-102, the general statutory scheme governing the compensation of county officials, including juvenile court clerks. Again, where two statutes conflict, the later in time controls. An amended act is ordinarily construed as if the original statute has been repealed and a new and independent act in the amended form has been adopted in its stead. *Redmon v. LeFevre*, 503 S.W.2d 97 (Tenn. 1973). A repeal by implication of an earlier act by a later act will be found only when a conflict between the acts is inescapable. *Knox County Association v. Knox County Board of Education*, 60 S.W.3d 65, 74 (Tenn. Ct. App. 2001). In this case, we think the 2000 private act directly conflicts with the general law as amended and, in effect, adopted, in 2001. For this reason, we think a court would conclude that the 2001 amendment repealed the 2000 private act by implication. For this reason, the Gibson County Juvenile Court Clerk should be paid under the 2001 act beginning July 1, 2001, when it became effective.

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