

STATE OF TENNESSEE
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April 5, 2005

Opinion No. 05-042

Petitioning for Additional Personnel

QUESTION

Under Tenn. Code Ann. §§ 8-20-101, *et seq.*, various county officials — including court clerks — may petition a court for an order allowing them to hire sufficient personnel as are necessary to carry out their duties of office. House Bill 1824/Senate Bill 1148 would add a new provision to this statutory scheme. If enacted, a petition filed under this statute must be heard and determined by a judge or chancellor serving in the judicial district in which the petition or application is filed “unless the hearing of such petition or application would be in violation of law or Rule of the Supreme Court.” Is this provision constitutional?

OPINION

Yes.

ANALYSIS

This request concerns the constitutionality of House Bill 1824/Senate Bill 1148. This bill would amend Tenn. Code Ann. §§ 8-20-101, *et seq.* Under that statutory scheme, various county officials, including court clerks, may petition a court for an order allowing them to hire sufficient personnel as are actually necessary to carry out their duties of office. Under Tenn. Code Ann. § 8-20-101(b), where a petition is filed by a court clerk, the court shall, upon the request of any party, transfer the case to a court other than a court the clerk serves. The petition must name the county mayor as defendant. Tenn. Code Ann. § 8-20-102. The county mayor has five days to file an answer, and the court must hold a hearing on the application promptly thereafter. *Id.* The court may allow or disallow the application in whole or in part. *Id.* Either party may appeal the decision. Tenn. Code Ann. § 8-20-106.

House Bill 1824 would add the following subsection (d) to Tenn. Code Ann. § 8-20-101:

Any petition or application for the authority to appoint or employ one (1) or more additional deputies or assistants filed pursuant to this chapter shall be heard and determined by a judge or chancellor serving the judicial district in which the petition or application is filed

unless the hearing of such petition or application would be in violation of law or Rule of the Supreme Court.

This provision is constitutional. Under Article VI, Section 1, of the Tennessee Constitution, “The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish; in the Judges thereof, and in Justices of the Peace.” Similarly, under Article VI, Section 8, of the Tennessee Constitution, “The jurisdiction of the Circuit, Chancery, and other Inferior Courts, shall be as now established by law, until changed by the Legislature.”

House Bill 1824 would require a judge or chancellor serving the judicial district in which a petition or application by a county official for permission to hire more personnel is filed to hear the case unless the hearing would violate any law or Supreme Court rule. Subsection (b) of the statute would not be amended. Presumably, therefore, if such a petition was filed by a judge’s own clerk, and the county mayor requested a transfer, the judge could not keep the case, because to do so would violate subsection (b). Further, subsection (d) would not require a judge to preside in the case if he or she were interested in it under Article VI, Section 11, of the Tennessee Constitution, if he or she were disqualified under Tenn. Code Ann. § 17-2-101, or if Supreme Court Rules required the judge to disqualify himself or herself. *See, e.g.*, Supreme Court Rule 10, Canon 3E.(1)(a) (a judge must disqualify himself or herself in cases where “the judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding”). For the same reason, the bill does not impermissibly infringe on the authority of the judicial branch.

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