

STATE OF TENNESSEE

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Opinion No. 05-084

Constitutionality of House Bill 53/Senate Bill 277

QUESTION

Does House Bill 53/Senate Bill 277, which requires the Department of Correction and the Department of Children's Services to provide a report concerning the cause of death of any individual in the custody of the respective department to the deceased individual's state senator and representative, violate any provision of the Tennessee or United States Constitutions?

OPINION

House Bill 53/Senate Bill 277 does not violate the right to privacy under either the Tennessee or the United States Constitutions; however, it may violate the separation of powers doctrine of the Tennessee Constitution.

ANALYSIS

House Bill 53/Senate Bill 277 (hereinafter "House Bill 53") would require the Department of Correction and the Department of Children's Services to provide a report on the cause of death of any individual who dies while in departmental custody to that individual's state senator or representative. You ask whether this proposed legislation would violate either the Tennessee or United States Constitutions. This legislation implicates both the right to privacy, under the Tennessee and the United States Constitutions, and the separation of powers provisions of the Tennessee Constitution.

Both the Tennessee Supreme Court, considering the Tennessee Constitution, and the Sixth Circuit Court of Appeals, considering the United States Constitution, have held that there is no constitutionally protected right against the disclosure of personal information. The Tennessee Supreme Court, in analyzing a statute allowing disclosure of previously sealed adoption records, held that confidentiality of records is a statutory matter within the province of the legislature and explicitly refused to extend constitutional protection to the non-disclosure of personal information. *Doe v. Sundquist*, 2 S.W.3d 919, 926 (Tenn. 1999). While the legislature has generally made records of the Department of Children's Services confidential, *see* Tenn. Code Ann. § 37-5-107, several exceptions already exist, including autopsy reports in cases of suspected child sexual abuse.

Tenn. Code Ann. §§ 37-1-605 (c), 37-1-612 (c).¹ Given the Tennessee Supreme Court's analysis in *Doe v. Sundquist*, it is clear that reporting information as required by House Bill 53 does not violate the Tennessee Constitution.

Likewise, this bill would not violate any right to privacy under the United States Constitution. The Sixth Circuit Court of Appeals has generally held that there is no constitutional right to non-disclosure of personal information under the United States Constitution. *J.P. v. DeSanti*, 653 F.2d 1080, 1088 (6th Cir. 1981); *Jarvis v. Wellman*, 52 F.3d 125 (6th Cir. 1995). In one case to the contrary, *Kallstrom v. City Columbus*, 136 F. 3d 1055 (6th Cir. 1997), the Sixth Circuit determined that undercover police officers had a constitutionally protected interest to personal security and bodily integrity where members of a gang requested information from the officers' personnel files, including home phone numbers, addresses, and photographs. Because House Bill 53 does not implicate an individual's right to personal security or bodily integrity, the concerns of the court in *Kallstrom* do not exist. Thus, we believe that a court would analyze House Bill 53 under the general standard enunciated in *J.P. v. DeSanti* and hold that there is no constitutionally protected interest in the disclosure of personal information such as that required by House Bill 53.

Analysis of this legislation under the separation of powers provision of the Tennessee Constitution is more complicated. The Tennessee Constitution, Article II, Sections 1 and 2 provides:

The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.

No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.

Under the doctrine of separation of powers, the three departments of government are "coordinate, independent, coequal and potentially coextensive." *Richardson v. Tennessee Board of Dentistry*, 913 S.W.2d 446, 453 (Tenn. 1995). Each department is expressly prohibited from encroaching on the powers and functions of the other departments. *Richardson*, 913 S.W.2d at 453. The doctrine of separation of powers is not absolute, however. *State v. King*, 973 S.W.2d 586, 588 (Tenn. 1998). Tennessee courts have held that, in general, the legislature has the power to make, order, and repeal law; the executive branch has the authority to administer and enforce the law; and the judicial branch has the power interpret and apply the law. *State v. King*, 973 S.W.2d 586 (Tenn. 1998).

The General Assembly has broad authority to enact laws — limited only by the state and federal constitutions. *Mayhew v. Wilder*, 46 S.W.3d 760 (Tenn. Ct. App. 2001). However, courts

¹There is no overall confidentiality provision governing records of the Department of Correction. To the contrary, most records of the Department of Correction are subject to the Tennessee Open Records Act. *Thompson v. Reynolds*, 858 S.W.2d 328, 329 (Tenn. Ct. App. 1993).

have long held that in order to be a valid exercise of legislative authority, a law must rest upon some natural or reasonable basis. *Motlow v. State*, 145 S.W. 177 (Tenn. 1912). Unlike Tenn. Code Ann. §§ 37-3-103 (a)(1)(E) and 37-5-105 (4), which provide that the Tennessee Commission on Children and Youth and the Department of Children’s Services must provide annual reports to “members of the general assembly,” House Bill 53 requires that a report be provided only to the representative and senator of the deceased individual’s district. Thus, it is unclear whether a court would find House Bill 53 to have a reasonable basis to the legislature’s role to “make, order, and repeal the law” under the separation of powers doctrine. Accordingly, House Bill 53 may violate the separation of powers provision of the Tennessee Constitution.

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