

STATE OF TENNESSEE

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Opinion No. 05-127

Education Requirement for City Judges

QUESTIONS

Under Tenn. Code Ann. § 16-18-309(a)(1), the judge of each municipal court must attend at least three hours of training or education provided by, through, or with the approval of the Administrative Office of the Courts. Failure to satisfy this requirement within six months of the next calendar year renders all subsequent judgments of the judge null and void until such time as the requirements are met.

1. Does this provision unconstitutionally modify the existing term of office for incumbent city judges?
2. Does this provision unconstitutionally encroach on the power of the Tennessee Supreme Court to set the standards for attorneys and judges?
3. By providing that judgments by a city judge who has failed to meet the education requirements are null and void, does the statute represent an unconstitutional exercise of judicial power by the General Assembly?

OPINIONS

1. No, the legislature may constitutionally impose additional duties on inferior court judges during their term of office.
2. No, we think a court would conclude that this measure represents a legitimate exercise of the legislative power.
3. No, we think a court would conclude that this measure is a legitimate exercise of the General Assembly's authority to create city courts and determine their jurisdiction.

ANALYSIS

1. Education Requirement: Constitutionality of Application to Incumbent City Judges

This opinion concerns the constitutionality of Tenn. Code Ann. § 16-18-309(a)(1), imposing education requirements on city judges. The statute provides:

Each calendar year, the judge of each municipal court must attend at least three (3) hours of training or continuing education courses provided by, through or with approval of the administrative office of the courts and must certify such attendance to the administrative director. If a municipal judge fails to timely comply with such requirements, then the judge shall be extended a six (6) month grace period in order to achieve compliance; provided, however, that training obtained to satisfy requirements for the preceding calendar year shall not also be used to satisfy requirements for the current calendar year. The failure of the judge to achieve compliance prior to conclusion of the six (6) month grace period shall render all subsequent judgments of the judge null and void, and of no effect, until such time as the requirements are met. Such training and continuing education courses may be offered by the administrative office of the courts in conjunction with the annual meeting of the Tennessee municipal judges conference held in accordance with the provisions of § 17-3-301(c).

This requirement applies to all city judges, whether or not they are attorneys.

The first question is whether the education requirement unconstitutionally modifies the existing term of office for incumbent city judges. The Tennessee Constitution clearly authorizes the General Assembly to create city courts. Article VI, Section 1, of the Tennessee Constitution provides in relevant part:

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. The Legislature may also vest such jurisdiction in Corporation Courts as may be deemed necessary.

The Tennessee Supreme Court has concluded that the city judge of a court granted concurrent jurisdiction with a general sessions court exercises the jurisdiction of an inferior court and must meet the requirements of Article VI, Section 4. *State ex rel. Town of South Carthage v. Barrett*, 840 S.W.2d 895 (Tenn. 1992). Depending on the jurisdiction it exercises under the act that created it, therefore, a city court may be an inferior court or a corporation court under Article VI, Section 1, of the Tennessee Constitution.

Clearly, the General Assembly may prescribe qualifications for the office of judge, so long as they do not conflict with constitutional requirements and are reasonable. *Perry v. Lawrence*

County Election Commission, 411 S.W.2d 538 (Tenn. 1967), *cert denied*, 389 U.S. 821, 88 S.Ct. 44, 19 L.Ed.2d 73 (1967). The question then becomes whether the General Assembly may constitutionally impose these educational requirements on incumbent judges. Judges of inferior courts must be popularly elected for eight-year terms. Tenn. Const. Art. VI, § 4; *Waters v. State ex. rel Schmutzer*, 583 S.W.2d 756 (Tenn. 1979). The educational requirement, however, does not change the judge's term of office; it adds to his or her duties during the term.

Under Article VI, Section 7, of the Tennessee Constitution, the salary of the judge of an inferior court may not be increased or diminished during the term for which the judge was elected to office. This provision, however, does not prevent the General Assembly from adding to the duties of an incumbent judge. *Boone v. Torrance*, 63 Tenn. App. 224, 470 S.W.2d 356 (1971), *p.t.a. denied* (1971). There, the General Sessions judges in Davidson County sued the metropolitan government director of finance for an increase in salary in accordance with the provisions of a 1969 Act of the General Assembly and the Metropolitan Charter. The Court of Appeals found that the 1969 Act should not be construed as increasing their salary during their terms even though it increased their jurisdiction and responsibilities. The Court stated:

If it can be plausibly argued that a judge's salary should be correspondingly increased each and every time his jurisdiction and responsibility are increased, then it could also be plausibly argued that whenever a judge's jurisdiction and responsibility are decreased, then his salary could be correspondingly decreased. Such reasoning violates both the letter and spirit of Article 6, Section 7 of the Constitution.

Id., 63 Tenn. App. at 249. Under the reasoning in *Boone*, we think a court would conclude that the General Assembly may constitutionally require incumbent city judges to comply with an additional educational requirement.

2. Separation of Powers

The next question is whether the education requirement violates the Separation of Powers Clause because it regulates the conduct of judges and attorneys. The Tennessee Constitution, Article II, Section 1, expressly states that “[t]he powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial,” and Article II, Section 2, provides that “[n]o person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in cases herein directed or permitted.” The Constitution does not define in express terms what are legislative, executive, or judicial powers, but the Tennessee Supreme Court has said that the legislative power is to make, order, and repeal laws; the executive power is to administer and enforce laws; and the judicial power is to interpret and apply laws. *Underwood v. State*, 529 S.W.2d 45, 47 (Tenn. 1975); *Richardson v. Young*, 122 Tenn. 471, 493, 125 S.W. 664 (1909).

The Tennessee Supreme Court has observed that the three branches of government are interdependent. *State v. Mallard*, 40 S.W.3d 473, 481 (Tenn. 2001). There, the Court found that an evidentiary statute unconstitutionally encroached on the authority of the judiciary to control court practice and procedure. But the Court noted:

Despite the clear expression of the separation of powers doctrine in Article II and elsewhere, however, “it is impossible to preserve perfectly the ‘theoretical lines of demarcation between the executive, legislative and judicial branches of government.’ Indeed there is, by necessity, a certain amount of overlap because the three branches of government are interdependent.”

Id., quoting *Petition of Burson*, 909 S.W.2d 768, 774 (Tenn. 1995). See also *Anderson County Quarterly Court v. Judges of the 28th Judicial Circuit*, 579 S.W.2d 875, 878 (Tenn. Ct. App. 1978):

[U]nless . . . [the three branches of government] be so far connected and blended as to give each a constitutional control over the others, the degree of separation which the maxim requires, can never in practice be duly maintained.

citing *The Federalist* No. 48 (J. Madison).

The Tennessee Supreme Court has previously recognized that areas exist in which both the legislative and judicial departments have an interest. See, e.g., *Petition for Rule of Court Activating, Integrating and Unifying the State Bar of Tennessee*, 199 Tenn. 78, 282 S.W.2d 782 (1955) (both the legislative and judicial departments have an interest in prescribing the qualifications of attorneys; the legislature, under its police powers, could prescribe reasonable conditions and qualifications to which the Supreme Court could add). Similarly, “[a] legislative enactment which does not frustrate or interfere with the adjudicative function of the courts does not constitute an impermissible encroachment upon the judicial branch of government.” *Underwood*, 529 S.W.2d at 47 (statute permitting one who has successfully defended a criminal charge to have all public records of the case expunged upon filing a petition is not a violation of the separation of powers doctrine). Based on this reasoning, this Office has concluded that the General Assembly may constitutionally prohibit all elected officials, including judges, from accepting honoraria for any activity performed in that individual’s official capacity. Op. Tenn. Att’y Gen. 02-004 (January 2, 2002). The Office concluded that this measure is a legitimate exercise of the legislature’s police powers in preserving the integrity of, and public confidence in, all elected officials, and does not interfere with the adjudicative functions of judges.

Similarly, the General Assembly is charged with the constitutional authority to create courts and has the authority to establish judicial qualifications. Both the legislative and the judicial branches have an interest in ensuring a minimal level of training among city court judges, at least some of whom are not required to be attorneys. Nor does this measure interfere with the adjudicative function of the courts. Of course, where the Tennessee Supreme Court imposes a

higher standard of conduct, that rule controls over a statute prescribing a lower standard. *State v. Lipford*, 67 S.W. 3d 79 (Tenn. Ct. Crim. App. 2001). But the statute does not conflict with any existing rule of the Tennessee Supreme Court regarding educational requirements for all city court judges. Supreme Court Rule 21 prescribing continuing legal education requirements for attorneys does not apply to city court judges who are not attorneys. We think a court would conclude that the General Assembly may, by statute, prescribe continuing education requirements applicable to all judges of city courts. The measure ensures a minimal level of uniform training and practice among these judges across the State. For these reasons, the educational requirement does not represent an illegal exercise of judicial authority by the General Assembly.

3. Effect of Failure to Meet Continuing Education Requirements

The last question concerns the consequences under the statute for failing to meet the educational requirements. Tenn. Code Ann. § 16-18-309(a)(1) provides in relevant part:

If a municipal judge fails to timely comply with such requirements, then the judge shall be extended a six (6) month grace period in order to achieve compliance; provided, however, that training obtained to satisfy requirements for the preceding calendar year shall not also be used to satisfy requirements for the current calendar year. *The failure of the judge to achieve compliance prior to conclusion of the six (6) month grace period shall render all subsequent judgments of the judge null and void, and of no effect, until such time as the requirements are met.*

(Emphasis added). Thus, under the statute, a city court judge must meet the educational requirement each calendar year. A judge has six months after the end of the calendar year to meet this requirement. If a judge has not met this requirement by the end of the six-month grace period, the judge's subsequent judgments are null and void until he or she satisfies the requirement. The question is whether this provision violates the separation of powers clause because it interferes with the adjudicative function of the judiciary.

As discussed above, the Tennessee Supreme Court concluded that the General Assembly may not constitutionally pass a statute that unduly interferes with the power of the judiciary to weigh evidence and interpret laws. *State v. Mallard*, 40 S.W.3d 473, 481 (Tenn. 2001). Thus, the Court of Criminal Appeals cited a considerable line of Tennessee cases invalidating statutes that directed how pending cases should be dealt with, particular cases addressed, or particular statutes construed in *State v. Fleming*, 21 S.W.3d 203, 209-210 (Tenn. Ct. Crim. App. 1999), *p.t.a. denied* (2000). But the statute on educational requirements does not attempt to interfere with the manner in which city judges weigh evidence and hear and decide cases. Instead, it in effect suspends the jurisdiction of the court if the judge fails to meet continuing education requirements. We think a court would conclude that this measure is a legitimate exercise of the General Assembly's authority to create city courts and determine their jurisdiction. For this reason, this provision does not unconstitutionally encroach upon the judicial power.

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