

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

April 15, 2014

Opinion No. 14-47

Constitutionality of Legislation Authorizing Partial Relocation of Nursing Home

QUESTIONS

1. Is House Bill 2342 of the 108th General Assembly (2014), as amended (hereinafter “HB2342”),¹ constitutional under Article I, § 8, or Article XI, § 8, of the Tennessee Constitution, considering that it applies to only one nursing home in Tennessee?

2. If HB2342 is constitutionally suspect, would an amendment making the bill applicable to all nursing homes statewide render it constitutional?

OPINIONS

1. If HB2342 applies to only one entity in one county, it qualifies as “special legislation” that implicates Article I, § 8, and Article XI, § 8, of the Tennessee Constitution. A rational basis must exist, therefore, for the special classification.

2. If HB2342 were made applicable to all nursing homes statewide, it would no longer qualify as special legislation.

ANALYSIS

1. HB2342 would amend the Tennessee Health Services and Planning Act of 2002, Tenn. Code Ann. §§ 68-11-1601 to -1631, relative to certificates of need for nursing-home beds and the partial relocation of a nursing home. Under current law, a certificate of need is required in order for a health-care institution, including a nursing home, to relocate beds to another facility or site, Tenn. Code Ann. § 68-11-1607(a)(3)(D), and certain criteria and restrictions have been established for the issuance of such a certificate, *see* Tenn. Code Ann. §§ 68-11-1621, -1622. The bill would add new § 68-11-1632, which allows an existing nursing home to relocate a portion of its licensed beds, but not more than 140, to a new location under the following conditions: (1) the existing nursing home is licensed for at least 400 beds, (2) the existing nursing home has operated for at least 45 years at its current location,

¹ On April 2, 2014, the Health Committee approved an amendment to HB2342 that had previously been adopted by the Health Subcommittee. (Amendment 1, Drafting Code 013476). This opinion addresses the amended version of the bill.

(3) the existing nursing home is located in a county with a metropolitan form of government and a population in excess of 500,000 according to the 2010 federal census or any subsequent census, (4) the proposed location for the partial-relocation facility is within the same county as the existing nursing-home facility, and (5) an application for the qualified partial relocation of the nursing-home beds is filed with and approved by the Health Services and Development Agency. HB2342, § 1 (new § 68-11-1632(a)).² The bill's population classification encompasses only Davidson County;³ and it is assumed here that the bill applies to only one nursing home in that county.⁴

HB2342 implicates both Article I, § 8, and Article XI, § 8, of the Tennessee Constitution. See Tenn. Att'y Gen. Op. 09-116 (June 11, 2009). Article XI, § 8, provides that the legislature "shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law." Article I, § 8, provides that no one shall be "disseized of his freehold, liberties or privileges, . . . or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land." "The former restricts the legislature from enacting 'special legislation' for the benefit of specific individuals or localities in an arbitrary or capricious manner, and the latter guarantees equal protection of the laws." Tenn. Att'y Gen. Op. 09-116, at 1. HB2342 qualifies as "special legislation"; it affords one entity in one county a privilege or exemption that is not extended or available to other entities in that county or in other counties. A rational basis must exist, therefore, for this special classification, i.e., to justify treating this one entity differently.

2. If HB2342 were amended to eliminate its several conditions so as to make it applicable to all nursing homes statewide, it would no longer qualify as special legislation that implicates Article I, § 8, or Article XI, § 8, of the Tennessee Constitution.

² HB2342 further provides that the criteria and restrictions contained in Tenn. Code Ann. §§ 68-11-1621, -1622 shall not apply to an application under this new section but that the application shall be reviewed and considered pursuant to § 68-11-1609(b) and not be considered new nursing-home beds. *Id.* (new § 68-11-1632(c)).

³ See Tenn. Code Ann., Vol. 13 (2013 Supp.) at 303.

⁴ The Fiscal Note on the as-introduced version of HB2342 states: "According to the Health Services and Development Agency (HSDA), there is one nursing home that will meet the criteria of the bill to relocate beds." <http://www.capitol.tn.gov/Bills/108/Fiscal/SB2429.pdf>. The amendment on HB2342 did not materially change the conditions listed above.

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