

STATE OF TENNESSEE

OFFICE OF THE
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Opinion No. 00-170

Constitutionality of Private Act Restricting Campaign Materials in Polling Place

QUESTION

1975 Tenn. Priv. Acts Ch. 11 makes it a misdemeanor to solicit votes or distribute campaign materials on the “grounds” of any polling place. “Grounds” means the area within the boundaries of any tract, parcel, or lot of land on which the polling place is situated. The act requires that it be published in the local newspaper at least ten days before the date of any election. Is the act constitutional?

OPINION

The act is unconstitutional.

ANALYSIS

This opinion addresses the constitutionality of 1975 Tenn. Priv. Acts Ch. 11 (the “Private Act”). The Private Act applies to Montgomery County. It makes it unlawful for any person to distribute voter solicitation material or to “loiter about for the purpose of soliciting votes” on the grounds of any polling place. The term “grounds” means the area within the boundaries of any tract, parcel, or lot of land on which the polling place is situated. 1975 Tenn. Priv. Acts Ch. 11, § 2. Under Section 3, no election may be held in Montgomery County unless the entire act has been published in a newspaper at least ten days before the date of the election. A violation of the Private Act is a misdemeanor. 1975 Tenn. Priv. Acts Ch. 11, § 4. The Private Act requires, and has received, local approval. Under Tenn. Code Ann. § 2-7-111, the display and distribution of campaign materials, and the solicitation of votes, is prohibited within 100 feet of the entrance to a building in which an election is held. It is a Class C misdemeanor to violate this statute while boundary signs are posted. Tenn. Code Ann. § 2-19-119. The United States Supreme Court upheld the 100-foot limit because it found it was narrowly tailored to serve the State’s compelling interest in preventing voter intimidation and election fraud, as required by the First Amendment. *Burson v. Freeman*, 504 U.S. 191, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992).

We think the Private Act is unconstitutional for several reasons. First, the efficacy of a criminal statute cannot be made to hinge upon the approval of the county legislative body. *Jones v. Haynes*, 221 Tenn. 50, 424 S.W.2d 197 (1968). The Private Act creates a misdemeanor upon its adoption by a two-

thirds vote of the county legislative body, and therefore is invalid under this principle. Op. Tenn. Atty. Gen. 83-135 (March 16, 1983). Second, the Private Act restricts activity within the “grounds” of a polling place, rather than the 100-foot boundary prescribed by the general state law. The Private Act therefore suspends the general law within Montgomery County. Unless there is a rational basis to support suspending the general law in this manner, the Private Act violates Article XI, Section 8 of the Tennessee Constitution. Op. Tenn. Atty. Gen. 97-128 (September 22, 1997); Op. Tenn. Atty. Gen. 87-185 (December 8, 1987). In addition, because the Private Act applies to the “grounds” of a polling place, which vary based on the tract of land where the polling place is located, we think a court would probably conclude that the Private Act violates the First Amendment because it is not narrowly tailored, and that it violates due process requirements because it is unconstitutionally vague. For all these reasons, the Private Act is unconstitutional.

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