S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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May 6, 2002

Opinion No. 02-059

Constitutionality of HB 2479

QUESTION

Does proposed HB 2479 (SB 2521) violate either the Tennessee or federal constitution, particularly the equal protection clause?

OPINION

HB 2479 does not violate either the Tennessee or federal constitution, particularly when read in conjunction with Tenn. Code Ann. § 63-1-141.

ANALYSIS

HB 2479 would amend Tenn. Code Ann. § 63-1-120 (a) (concerning grounds for health care professional license denial, suspension or revocation) by adding a new subdivision regarding health care professionals who fail to comply either with any federal or state direct or guaranteed loan or with service requirements of any federal or state loan allowing forgiveness of debt in exchange for a period of service. It echoes the sanctions imposed by Tenn. Code Ann. §63-1-141 which was enacted in 1999 and which concerns default on student loans by members of the healing arts profession. Apparently the intent of HB 2479 is to conform the several grounds for such license denial, suspension or revocation contained in Tenn. Code Ann. § 63-1-120 (a) to include also the grounds for license denial, suspension or revocation contained in Tenn. Code Ann. § 63-1-141.

The latter statute requires each board, commission, committee, agency or other governmental entity created pursuant to Title 63 to suspend, deny or revoke the license of, or take other appropriate disciplinary action against any person who has defaulted on a repayment or service obligation under any federal family education loan program; the federal Higher Education Act of 1965, as amended; a student loan guaranteed or administered by the Tennessee student assistance corporation; or any other state or federal educational loan or service-conditional scholarship program. Tenn. Code Ann. § 63-1-141 contains specific due process requirements including service of a notice of intent upon the debtor by the Tennessee student assistance corporation (TSAC) or the guarantee agency which must state that the debtor's license will be suspended, denied or revoked ninety (90) days after service unless within that time

the debtor either pays the entire debt stated in the notice, enters into an approved payment plan or complies with an approved payment plan which was entered into previously, or requests in writing a hearing before the TSAC or the guarantee agency within twenty (20) days of service of the notice of intent. All such administrative hearings shall be conducted in the same manner as those conducted pursuant to Tenn. Code Ann. §§ 36-5-703 and 36-5-704, which concern hearings regarding enforcement of child or spousal support orders through license denial or revocation. The only issues for determination in such hearings are the amount of the debt, if any; whether the debtor is delinquent or in default; and whether the debtor either has entered or is willing to enter into a payment plan or to comply with a payment plan previously entered into and approved by TSAC or the guarantee agency. If a debtor fails to respond to such notice of intent, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the debtor's defenses, objections, request for or compliance with a payment plan may be determined to be without merit, and TSAC or the guarantee agency shall enter a final decision or order requesting suspension, denial or revocation of the debtor's license or certificate and further requesting the licensing authority to order the debtor to refrain from engaging in the licensed activity for which a certificate has been issued. Tenn. Code Ann. § 63-1-141 (b) (2). Each board, commission, committee, agency or other governmental entity created pursuant to Title 63 shall promulgate rules and regulations to effectuate the purposes of the section. Tenn. Code Ann. § 63-1-141 (c).

Previously this office has addressed issues very similar to those raised in this question. In Tenn. Op. Atty. Gen. No. 99-078, a copy of which is attached, this office opined that legislation which exempts attorneys' licenses and those issued by city and county authorities but includes doctors and others in a similar class, namely those holding state licenses, does not violate the equal protection provisions of the Tennessee constitution. If a legislative classification impairs the exercise of a "fundamental right" (such as the right to vote) or places a burden on a "suspect class" of persons (such as one based on race) the legislation will be subject to strict scrutiny and will be upheld only if it uses the least restrictive means available to promote a compelling state interest. *See Wygant v. Jackson Board of Education*, 476 U. S. 267, 274, 106 S. Ct. 1842, 1847, 90 L. Ed. 2d 260 (1986). However, if a legislative classification does not affect a fundamental right or a suspect class, it is subject to the rational basis test and will be upheld if there is a rational basis for the legislation. *Massachusetts Board of Retirement v. Murgia*, 427 U. S. 307, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976). As explained in the previous opinion mentioned above, courts faced with classifications based on different professions or occupations have applied the rational basis test in determining the constitutionality of challenged legislation. *Kenneally v. Medical Board of California*, 32 Cal. Rptr. 2d 504 (Cal. App. 1994) concerned a statute which treated attorneys and doctors differently with respect to licensure disciplinary proceedings, and which was held constitutional under the rational basis test. The court in *Kenneally* pointed out that the legislature is free to eliminate problems as to one profession without being required to treat all professions identically, and "[i]t may resolve identical problems with respect to different professions at the same time in the same manner, or determine to regulate different professions differently." *Kenneally* at 511, 510.

A subsequent opinion issued by this office, Tenn. Op. Atty. Gen. No. 00-141, a copy of which also is attached, concerned license revocation for non-compliance with a court order of visitation under 2000

Tenn. Pub. Acts ch. 971. There the statute in question excluded attorneys' licenses but included all other professional licenses; this office opined that "[t]he right at issue in this statute - a state-issued license - is not a fundamental right," although the statute affected a protected property interest. On several occasions the Tennessee Supreme Court has held that due process protections arising from the Fourteenth Amendment to the United States Constitution and Article I, Section 8 of the Tennessee Constitution are synonymous, and therefore has adopted the analytical framework of the United States Supreme Court in interpreting each. A statute will pass constitutional muster under substantive due process as long as it does not implicate a fundamental right, if it "bears a reasonable relation to a proper legislative purpose," and is neither arbitrary nor discriminatory. *Riggs v. Burson*, 941 S. W. 2d 44, 51 (Tenn. 1997); (quoting *Newton v. Cox*, 878 S. W. 2d 105, 110 (Tenn. 1994).) Attention is invited to the discussion in Tenn. Op. Atty. Gen. No. 00-141 concerning substantive and procedural due process concerns. Presumably, one of the purposes underlying HB 2479 is the need to connect the license sanctions already imposed for default on student loans by members of the healing arts profession under Tenn. Code Ann. § 63-1-141 and the grounds for license denial, suspension or revocation under Tenn. Code Ann. § 63-1-120. The underlying legislative purpose of each is providing a means of enforcement of the debtor's student loan obligations to the state or federal government, a proper legislative purpose which would be constitutional under a substantive due process analysis.

Moreover, Tenn. Code Ann. § 63-1-141 provides specific procedural due process safeguards for the debtor which likely would pass constitutional muster when applying the three factors used both by the Tennessee courts as well as the United States Supreme Court: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional safeguards; and (3) the government's interest. *Mathews v. Eldridge,* 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); *State, ex rel. McCormick v. Burson, et al.*, 894 S. W. 2d 739 (Tenn. Ct. App. 1994). First, the statutory antecedent to HB 2479, Tenn. Code Ann. § 63-1-141, protects a health care professional's interest in the continuing validity of the individual's property right, *i.e.*, a professional license. The debtor is notified either via personal service or certified mail a full ninety (90) days before the suspension, denial or revocation of the debtor's license is to take place, which allows the debtor ample opportunity either to pay the debt, enter into a payment plan, or request a hearing before TSAC or the guarantee agency, before there is any risk to the debtor's professional license. Tenn. Code Ann. § 63-1-141 (b) (2) (A). Second, the debtor may request a hearing before TSAC or the guarantee agency enters a final decision and order requesting suspension, revocation or denial of the debtor's license. Third, the government has a clear interest in ensuring that student loan obligations are repaid. Thus, it is the opinion of this office that HB 2479, when read in conjunction with Tenn. Code Ann. § 63-1-141, is constitutional under a procedural due process analysis.

Further, as mentioned above, the legislature legitimately may determine to regulate different professions differently. Equal protection guarantees that all persons similarly situated will be treated alike. However, persons who are different in fact or opinion are not required to receive equal treatment, *Tennessee Small School Systems v. McWherter*, 851 S. W. 2d 139 (Tenn. 1993), and different professions are not similarly situated and therefore do not have to be treated alike. *Lufkin v. Tennessee*

Department of Revenue, No. 03A01-9410-CH-00388, 1995 WL 231446*2 (Tenn. Ct. App. E. S. April 20, 1995); *State v. Blockman*, 615 S. W. 2d 672 (Tenn. 1981). When considering classifications based on different professions or occupations, Tennessee courts have applied the "rational basis" test. *Id.* Even if the legislature were to regulate only members of the healing arts regarding default on student loans, the legislature is free to regulate one profession without having to treat all professions alike. The Equal Protection Clause "does not require that a state must choose between attacking every aspect of a problem or not attacking the problem at all." *Dandridge v. Williams,* 397 U. S. 471, 90 S. Ct. 1153, 1162 (1970). A "legislature need not strike at all evils at the same time or in the same way...and...may implement its program step by step...." *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 466, 101 S. Ct. 715, 725, 66 L. Ed.2d 659 (1981). *See also Railway Express Agency v. New York,* 336 U.S. 106, 110, 69 S. Ct. 463, 465, 93 L. Ed 533 (1949) ("It is no requirement of equal protection that all evils of the same genus be eradicated or none at all.") "It is enough that the State's action be rationally based and free from invidious discrimination." *Dandridge v. Williams,* 397 U.S. at 487, 90 S. Ct. at 1162. Therefore it is the opinion of this office that HB 2497 does not violate the Equal Protection Clause of the United States Constitution.

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