S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 02-101

Private Act Creating New Division of General Sessions Court

QUESTION

Chapter 111 of the Private Acts of 2002 creates a new Division III for the Court of General Sessions of Sumner County. Section 8 provides that "[t]his act shall take effect only if the cost of providing any additional assistant district attorney general, assistant public defender, or other costs associated with the judgeship created by this act are funded by Sumner County, Tennessee, and such funding continues for the term of the judgeship created by this act." Other private acts creating a new general sessions judgeship in other counties do not contain this provision. May the General Assembly constitutionally impose this condition on the creation of a new judgeship in Sumner County?

OPINION

Yes.

ANALYSIS

This opinion concerns the constitutionality of 2002 Tenn. Priv. Acts Ch. 111. That act creates an additional division of the Court of General Sessions of Sumner County effective August 1, 2004. Section 8 of the act provides:

> This act shall take effect only if the cost of providing any additional assistant district attorney general, assistant public defender, or other costs associated with the judgeship created by this act are funded by Sumner County, Tennessee, and such funding continues for the term of the judgeship created by this act.

2002 Tenn. Priv. Acts. Ch. 111, § 8. This provision was added in a House amendment to the original bill. Under Tenn. Code Ann. § 16-2-518, any increase in local funding for positions or office expense for the district attorney general must be accompanied by an increase in funding of seventy-five percent of the increase in funding to the office of the public defender in the same judicial district.

The request indicates that the General Assembly has created additional general sessions

courts in other counties without expressly imposing the requirement that the county fund any costs associated with the additional judgeship. The question is whether the General Assembly may impose this condition on the creation of an additional general sessions court in Sumner County when it has not imposed the same condition when it created other additional general sessions courts in other counties.

The only constitutional provisions relevant to this analysis are the equal protection clauses of Article XI, Section 8 of the Tennessee Constitution and of the Fourteenth Amendment to the United States Constitution. Article XI, Section 8 of the Tennessee Constitution provides in part:

> 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, immunitie, [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.

This provision, Article I, Section 8 of the Tennessee Constitution, and the Fourteenth Amendment to the United States Constitution all guarantee to citizens equal protection of the laws, and the same rules are applied under them as to the validity of classifications made in legislative enactments. *Brown v. Campbell County Board of Education*, 915 S.W.2d 407, 412 (Tenn. 1995), *cert. denied*, 116 S.Ct. 1852 (1996).

Every act of the General Assembly comes to the courts with a strong presumption in favor of its constitutionality. *West v. Tennessee Housing Development Agency*, 512 S.W.2d 275, 279 (Tenn. 1974). Thus, when a constitutional attack is levied on a statute, courts must indulge every presumption in favor of the statute's validity and resolve any doubt in favor of, rather than against, the constitutionality of the act. *Riggs v. Burson*, 941 S.W.2d 44 (Tenn. 1997), *rehearing denied* (1997), *cert. denied,* 522 U.S. 982, 118 S.Ct. 144, 139 L.Ed.2d 380 (1997); *Petition of Burson,* 909 S.W.2d 768 (Tenn. 1995).

In order to trigger application of Article XI, Section 8, a statute must contravene some general law with mandatory statewide application. *Riggs v. Burson*, 941 S.W.2d 44, 78 (Tenn. 1997), *reh'g denied* (1997), *cert. denied,* 118 S.Ct. 444 (1997); *Mink v. City of Memphis*, 222 Tenn. 216, 435 S.W.2d 114 (1968) (there is no constitutional inhibition against special legislation as to municipalities, unless the special law is contrary to a general law mandatorily applicable to all municipalities alike).

It is not clear that there has ever been a mandatory law of statewide applicability regarding funding of the district attorneys' general offices. While Tenn. Code Ann. § 16-2-502 creates the judicial districts and lists the number of assistant district attorney general positions to which each district attorney is entitled, local governments are also authorized under public and private acts to

contribute resources to the office of the district attorney general of the judicial district where the local government is located. *See, e.g.*, Tenn. Code Ann. § 16-2-508(a) ("Nothing in this part shall be construed as affecting a county's authority to provide staff and other resources to the district attorney general of the district in which the county is located.") and Tenn. Code Ann. § 8-7-205 ("This part shall not affect any salaries and compensation paid by any county to the several assistant district attorneys general and/or criminal investigators, nor any laws authorizing such salaries and compensation.") The General Assembly has enacted a large number of private acts that expressly authorize a local government to fund one or more assistant district attorney general positions in its judicial district. Some of these acts are still in effect.

Similarly, no general law addresses staffing in the office of the district attorney or the public defender when a new general sessions court is created. General law provides that the number of assistant district attorney general positions in all judicial districts except those in the five urban counties must satisfy a statutory formula in relation to the number of chancery and circuit courts within the district. Tenn. Code Ann. § 16-2-508. Thus, where an additional trial court judge is added to a judicial district, a new assistant district attorney general position may be required to meet the statutory formula. But no general law mandates that when the General Assembly creates a new division of a general sessions court it must provide funding for new positions in the offices of the district attorney and the public defender to serve the new court. Further, this Office has concluded that a general sessions judge does not have the authority to require an attorney from the district attorney's office to be present in the general sessions courtroom during all criminal proceedings. Op. Tenn. Atty. Gen. 00-001 (January 4, 2000). The private act in question, therefore, does not contravene any law of mandatory general application.

The question remains whether the private act violates the equal protection clause of the Tennessee and United States Constitutions because it imposes different conditions on the citizens of similarly situated counties. As an initial matter, we think it would be difficult to establish that any county where a new general sessions division was created in the past was similarly situated to Sumner County in 2002. Relevant factors would include the caseload of the district attorney's and public defender's offices at the time the new court was created, as well as the population, the crime rate, and the level of local funding then in effect.

The right to have a third general sessions court staffed by additional district attorney and public defender personnel who are paid through taxes imposed statewide rather than taxes imposed locally is not a fundamental right. Ordinarily, unless a classification involves a suspect class or interferes with a fundamental right, it will be upheld under an equal protection analysis if there is a rational basis for the classification. Under rational basis scrutiny, a statutory classification will be upheld if "some reasonable basis can be found for the classification . . . or if any state of facts may reasonably be conceived to justify it." *Riggs v. Burson*, 941 S.W.2d at 53, quoting *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993).

It is not clear whether the Sumner County private act in fact imposes a unique condition. We have examined private acts creating a new division of a general sessions court in other counties to

see how they address this issue. Like the private act in Sumner County, 2001 Tenn. Priv. Acts Ch. 21, creating an additional part-time general sessions court in Hamblen County, contains a similar express condition that the county fund any new positions in the offices of the district attorney and the public defender required to serve the new general sessions court. 2001 Tenn. Priv. Acts Ch. 21, § 1(g).

In at least one instance where the General Assembly created several new divisions of the Shelby County General Sessions Court, the act expressly provides that the county will fund any new positions in the district attorney's office required by the creation of the new divisions. 1982 Tenn. Pub. Acts Ch. 772, §15. In 1999, the General Assembly created an additional general sessions division in Shelby County and required the district attorney general to appoint three assistants to serve the new division, all to be funded from local funds. 1999 Tenn. Pub. Acts Ch. 365, § 1. Section 6 of the 1999 act states: "The provisions of this act shall be repealed if local funding to implement the provisions of this act is inadequate to fund its implementation." Our research has found no other private act creating a general sessions judgeship that includes a similar express condition. On the other hand, research has found no private act creating a general sessions judgeship that expressly creates new positions in the offices of the district attorney or the public defender and funds them with state funds. Other acts creating a new division of a general sessions court simply do not provide for additional district attorney or public defender personnel to carry out any additional duties that may be created by the new general sessions court.

The fiscal note to the Sumner County bill does indicate that the bill will require increased state expenditures. We are informed that the estimated expenditures reflect new positions in the office of the district attorney and the public defender to serve the new court. It is the practice of the Fiscal Review Committee within the General Assembly to note these additional expenditures in the fiscal note to any bill creating a new court. But the source for defraying the new expenditures for any particular newly created general sessions court is not always reflected in the act creating it.

Even if the private act does impose a new and different burden on Sumner County from that imposed on other similarly situated counties where a new general sessions court was created, we think it is supported by a rational basis. As noted above, a classification will be upheld if any state of facts may reasonably be conceived to justify it. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. *Wyatt v. A-Best Products Company, Inc.*, 924 S.W.2d 98, 105-06 (Tenn. Ct. App. 1995), *modified on rehearing* (1995), *p.t.a. denied* (Tenn. 1996), *citing Motlow v. State*, 125 Tenn. 547, 145 S.W. 177, 180 (Tenn 1912). As is well-known, the State of Tennessee has been experiencing revenue problems for the last several years. Requiring Sumner County to fund the additional costs associated with a third general sessions court — the jurisdiction of which is confined to the county — preserves state funds for use for statewide purposes. Without this condition, the General Assembly may have been reluctant to create the new court at all.

The fact that this condition may not have been imposed on other counties does not undermine

this basis for the law. A classification having some reasonable basis does not offend against the equal protection clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. *Id.*

Finally, even if a party with standing successfully argued that the Sumner County private act is unconstitutional, a court is unlikely simply to elide the condition in question. The Tennessee Supreme Court has stated:

> The doctrine of elision is not favored. The rule of elision applies if it is made to appear from the face of the statute that the legislature would have enacted it with the objectionable features omitted, and those portions of the statute which are not objectionable will be held valid and enforceable . . . provided, of course, there is left enough of the act for a complete law capable of enforcement and fairly answering the object of its passage. However, a conclusion by the court that the legislature would have enacted the act in question with the objectionable features omitted ought not to be reached unless such conclusion is made fairly clear of doubt from the face of the statute. Otherwise, its decree may be judicial legislation. The inclusion of a severability clause in the statute has been held by this Court to evidence an intent on the part of the legislature to have the valid parts of the statute enforced if some other portion of the statute has been declared unconstitutional.

State v. Harmon, 882 S.W.2d 352, 355 (Tenn. 1994), *quoting Gibson County Special School Dist. v. Palmer*, 691 S.W.2d 544 (Tenn. 1985). The Sumner County private act contains no severability clause. Even if a court were to conclude that the condition in question is unconstitutional, we think it would void the entire act, thereby preventing the creation of the new general sessions court. Of course, the county commission could bring about the same result by refusing to adopt it as required under Section 7.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Jo Ann Graves
State Senator
10 A Legislative Plaza, Tennessee General Assembly
Nashville, TN 37243-0218

Honorable Diane Black
State Representative
113 War Memorial Building
Nashville, TN 37243-0145