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October 8, 2003

Opinion No. 03-134

Constitutionality of Chapter No. 370, 2003 Public Acts, Removing for Certain Counties the Prohibition Against Duplicate Hotel-Motel Taxes

QUESTION

Is Chapter No. 370, 2003 Public Acts, which removes in certain counties the prohibition of Tenn. Code Ann. § 67-4-1425 against duplicate hotel-motel taxes, constitutional?

OPINION

Chapter No. 370's exemption of certain counties from the general law coordinating local hotel-motel taxes is constitutional if a rational basis can be conceived for exempting the designated counties from that law. Since the Act's preamble states a plausible rational basis, and other such bases also may be readily conceived, it is the opinion of this Office that Chapter No. 370 is constitutional.

ANALYSIS

Tenn. Code Ann. § 67-4-1425 is a general law that coordinates local hotel-motel taxes authorized by private acts. Its operative language provides that

> (1) A city shall only levy such tax on occupancy of hotels located within its municipal boundaries;
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> (2) A city shall not be authorized to levy such tax on occupancy of hotels if the county in which such city is located has levied such tax prior to the adoption of the tax by the city; and
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> (3) A county shall only levy such tax on occupancy of hotels located within its boundaries but outside the boundaries of any municipality which has levied a tax on such occupancy prior to the adoption of such tax by the county.

The obvious thrust of this provision is to prevent duplicate hotel-motel taxation within the same municipality by both that municipality and the county in which it lies. The statute gives priority to

levy such a tax within a municipality's boundaries to the local government entity (either the county or the municipality) that first imposes such a tax, and prohibits the other local entity from doing so.

Section 67-4-1425 contains several exceptions, and Public Chapter No. 370 rewrote one of them. Subsection (c) previously exempted counties with populations between 777,000 and 780,000 according to the 1980 or subsequent federal census. This provision, which essentially designated Shelby County, is presently the subject of judicial challenge in the Court of Appeals, after having been upheld by the trial court, in *Admiralty Suites and Inns, LLC, et al. v. City of Bartlett, Tennessee, et al.*, Shelby Chancery No. 99-0036-3, pending decision in Court of Appeals, Western Section, No. W2002-02155-COA-R3-CV. Now, for future periods, Chapter No. 370 has deleted the previous population bracket exemption of subsection (c), substituting in its place the following language:

> (c) The provisions of this section do not apply in any county, excluding any county with a metropolitan form of government, that:
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> (1) Contains or borders a county that contains an airport designated as a regular commercial service airport in the international civil aviation organization (ICAO) regional air navigation plan; and
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> (2) Contains a government-owned convention center of at least fifty thousand (50,000) square feet with an attached, adjoining, or adjacent hotel or motel facility; or
>
> (3) Contains an airport with regularly scheduled commercial passenger service, and the creating municipality of the metropolitan airport authority for the airport is not located within such county. The tax levied on occupancy of hotels by cities located within such a county may only be used for tourism as defined by Tennessee Code Annotated, Section 7-4-101(8).

This new language thus allows duplicate hotel-motel taxes in municipalities in counties that (1) contain or border on a county containing a regular commercial service airport, and also have a government-owned convention center of at least 50,000 square feet with an adjacent hotel or motel facility, or (2) contain a regularly scheduled commercial passenger airport created by a municipality not located within that county.

Whether this new language from Chapter No. 370 is constitutional depends on whether there is a rational basis to distinguish the counties that it designates from the other counties to which the general law would continue to apply. The General Assembly has the authority to create exceptions to general statutory provisions without running afoul of any constitutional prohibitions, as long as a reasonable basis exists for making the exceptions. *Civil Service Merit Board v. Burson*, 816 S.W.2d 725, 731 (Tenn. 1991). Article XI, Section 8 of the Tennessee Constitution 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, immunitie[s] 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.

The "law of the land" clause of Article I, Section 8 partakes of the same principle, as does the Equal Protection Clause of the fourteenth amendment of the federal Constitution. All of these provisions foster general laws. But they do not require things that are different to be treated the same. The courts have determined that a statutory exception to a general law is valid if the Legislature could have had a reasonable basis for treating the objects of the exception differently from the general run of things. *See State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994); *City of Memphis v. International Bhd. of Elec. Workers Union Local 1288*, 545 S.W.2d 98, 102 (Tenn. 1976); *King-Bradwall Partnership v. Johnson Controls, Inc.*, 865 S.W.2d 18, 21 (Tenn. Ct. App. 1993); *Town of Huntsville v. Duncan*, 15 S.W.3d 468, 472 (Tenn. Ct. App. 2000). The Supreme Court articulated these principles in *Doe v. Norris*, 751 S.W.2d 834, 840-42 (Tenn. 1988), as follows:

> The concept of equal protection espoused by the federal and our state constitutions guarantees that "all persons similarly circumstanced shall be treated alike." Conversely, things which are different in fact or opinion are not required by either constitution to be treated the same. "The initial discretion to determine what is 'different' and what is 'the same' resides in the legislatures of the States," and legislatures are given considerable latitude in determining what groups are different and what groups are the same. *Id*. In most instances the judicial inquiry into the legislative choice is limited to ***whether the classifications have a reasonable relationship to a legitimate interest***. (emphasis added)

Consequently, legislation containing particular classifications is not in violation of the Tennessee Constitution if "***any possible reason can be conceived to justify the classification, or if the reasonableness be fairly debatable*** . . . ." *Estrin v. Moss*, 221 Tenn. 657, 430 S.W.2d 345, 349 (1968)(emphasis added); *Nolichuckey Sand Co. v. Huddleston*, 896 S.W.2d 782, 789 (Tenn. Ct. App. 1994). Indeed, a statute that contravenes or is inconsistent with the general law is invalid only if "no reasonable basis for the special classification can be found." *See Stalcup v. Gatlinburg*, 577 S.W.2d 439, 441 (Tenn. 1978). Moreover, it is not necessary that the reasons for the classification appear on the face of the legislation. *Id*. at 442. Rather, if "***any*** possible reason can be conceived to justify the classification, it will be upheld and deemed reasonable." *Id.* (emphasis added); *see also Knoxtenn Theatres v. McCanless*, 177 Tenn. 497, 151 S.W.2d 164 (1941).

It is particularly well established that challenges to tax statutes are determined upon the rational basis test. *Brentwood Liquors Corp. v. Fox*, 496 S.W.2d 454, 457 (Tenn. 1973); *City of Tullahoma v. Bedford County*, 936 S.W.2d 408, 412 (Tenn. 1997); *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439, 443 (Tenn. 1979); *Nolichuckey Sand Co., Inc. v. Huddleston*, 896 S.W.2d 782, 789 (Tenn. Ct. App. 1994). As "the right to tax is essential to the existence of government, and is

particularly a matter for the Legislature," a plaintiff seeking to challenge the constitutionality of a Tennessee revenue statute "bears a heavy burden." *Nolichuckey Sand Co., Inc. v. Huddleston, supra*, 896 S.W.2d at 788 (quoting *Vertrees v. State Board of Elections*, 141 Tenn. 645, 214 S.W. 737, 740)(1919)).

Thus, in order to uphold the constitutionality of the new provisions of T.C.A. § 67-4-1425(c), a court need only be able to envision a legitimate justification upon which the legislature could have acted. *See Civil Service Merit Bd.*, 816 S.W.2d at 732. Courts are understandably reluctant to substitute their own judgment for that of the citizens' elected representatives, for, as the Tennessee Supreme Court has explained, "[r]easons eminently wise and provident might control the lawmaking body, which do not appear upon the face of a statute, and for the Court to strike it down, because not readily perceptible, might well be criticized as an act of judicial usurpation." *Shelby County Civil Service Merit Bd. v. Lively*, 692 S.W.2d 15, 18 (Tenn. 1985). And as the Supreme Court recently summed up in *City of Chattanooga v. Davis*, 54 S.W3d 248, 276 (Tenn. 2001),

> unless the classification "interferes with the exercise of a 'fundamental right' or operates to the peculiar disadvantage of a 'suspect class,'" Article XI, section 8 requires only that the legislative classification be rationally related to the objective it seeks to achieve.

Certainly the Act in question does not relate to any fundamental right or suspect class.

The General Assembly expressly stated in a preamble its reasons for enacting Chapter No. 370:

> WHEREAS, the General Assembly determines that there are tremendous demands on revenue sources in counties serving as international tourism and business, conference, or convention travel destinations and in municipalities in those counties; and
>
> WHEREAS, users of hotel-motel services contribute to these demands; and
>
> WHEREAS, because of the foregoing, the general prohibition of Tennessee Code Annotated § 67-4-1425, should not apply in those counties and municipalities.

Obviously, it is reasonable for the legislature to accord greater taxing powers in counties with unusual demands for revenue, and one means of doing this is to allow duplicate hotel-motel taxation in areas affected by tourism, conferences, and airport traffic. In seeking to do so, it is not beyond reason to focus on counties near major airports that also have major convention and hotel facilities. Thus sections (c)(1) and (2) clearly comport with the stated goal. Subsection (c)(3) also exempts counties in which are located commercial passenger airports created by a different county. While the relationship of this exemption to the stated legislative purpose is not so obvious as with sections (c)(1) and (2), it is still sensible to presume that a county would sustain unusual revenue demands

as the location of a major airport operated by a different municipality. Moreover, the legislative classifications can be sustained by reasons in addition to those expressly stated in the act itself. Indeed, it would be enough of a justification that proximity to a major airport could be expected to generate a significant tourist business, and the hotels and motels serving those tourists offer a lucrative revenue source to relieve some of the tax burden otherwise borne by local residents.

This Office is not aware of all the areas in the State that might now or in the future come within the new exemption afforded by Chapter No. 370. But, with such strong presumptions working in favor of the legislature's pronouncements, the courts would appear bound to indulge the legislature's determinations. Certainly upon the facts known to this Office, we could not conclude otherwise. Therefore, it is the opinion of this Office that Chapter No. 370 of the 2003 Public Acts is constitutional.

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