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Opinion No. 06-075

Constitutionality of Passing On Cost of a Collection Agent

QUESTION

Would a municipal court that assesses a monetary sanction that consists of a fine less than fifty dollars and a collection cost, both of which combine to equal more than fifty dollars, violate Article VI § 14?

OPINION

No. Because the cost of collection is remedial and not punitive in nature, any amount collected would not be counted toward the fifty dollar maximum allowed by Article VI § 14 of the Tennessee Constitution.

ANALYSIS

Article VI § 14 of the Tennessee Constitution states: "[n]o fine shall be laid on any citizen of this State that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers[.]" In *City of Chattanooga v. Davis*, the Tennessee Supreme Court articulated the standard for determining whether an assessment is subject to the fifty dollar maximum. 54 S.W.3d 248 (2001). In *Davis*, the Court stated that the Fifty-Dollar Fine Clause does not apply to assessments in excess of fifty dollars that are not punitive in nature. *Id.* at 259.

The Court then iterated a test for whether or not an assessment was punitive. The Court stated that a monetary assessment is punitive in nature if: 1) the legislative body that enacted the assessment primarily intended for the sanction to punish the offender; or 2) despite evidence of some remedial and not punitive intent, the assessment is shown by the "clearest proof" to be so punitive in its actual purpose or effect that it cannot be reasonably considered to be remedial. *Id.* at 264. In explaining this test the Court stated that, if the legislative body intended the assessment to be punitive, the inquiry ends there and the fifty dollar maximum applies. *Id.* If, however, it appears the assessment was intended to be remedial, the Court must still look at the second prong of the test. *Id.* If the assessment was intended to be remedial but does not actually serve a remedial purpose, then it must comply with the fifty dollar limit. *Id.* at 265.

In *Dickson v. Tennessee*, the Court of Appeals of Tennessee, when analyzing the *Davis* decision, stated, "[a]s we understand the Supreme Court's analysis, the only way a fixed, determinate fine can be considered remedial is when it bears some relationship to the harm caused by the violation, compensates the state for the costs of enforcement, or requires the wrongdoer to disgorge ill-gotten gains." 116 S.W.3d 738, 744 (2003).

Here, the proposed bill would allow courts to assess the cost of collecting a fine in an amount not to exceed forty percent of the fine. Because the stated/intended purpose of this assessment is not punitive in nature, and this assessment is directly related to the cost to the court to collect the fine, it is remedial in nature and exempt from the Fifty-Dollar Fine Clause. The collection costs assessed are intended to compensate the state for the costs of enforcement, and as such, would not count toward the fifty dollar maximum

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