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

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Opinion No. 06-098

Constitutionality of Provision in Senate Bill 3296 Exempting Agricultural Land from Consideration as Blighted Area

QUESTION

Senate Bill 3296 proposes, *inter alia*, to amend Tenn. Code Ann. § 13-20-201 to provide that "[u]nder no circumstances shall land used predominantly in the production of agriculture, as defined by [Tenn. Code Ann.] § 1-3-105, be considered a blighted area." Does this provision violate any provision of the United States or Tennessee Constitutions by exempting agricultural land from consideration as a blighted area without expressing any legislative reason, purpose or rationale for providing that exemption?

OPINION

The proposed amendment to Tenn. Code Ann. § 13-20-201 is constitutional even though Senate Bill 3296 does not express the specific legislative reason, purpose or rationale for the proposed amendment.

ANALYSIS

Senate Bill 3296 proposes to amend Tenn. Code Ann.§ 13-20-201 to provide that

> Under no circumstances shall land used predominantly in the production of agriculture, as defined by [Tenn. Code Ann.] § 1-3-105, be considered a blighted area. [1]

Tenn. Code Ann. §§ 13-20-201, *et seq*. authorizes housing authorities to acquire "blighted areas" through the exercise of the power of eminent domain for the purpose of redevelopment. Section 13-20-201(a) defines blighted areas as

> areas (including slum areas) with buildings or improvements which,

[1] Tenn. Code Ann. § 1-3-105(2)(A) defines "agriculture" as (i) The land, buildings and machinery used in the commercial production of farm products and nursery stock; (ii) The activity carried on in connection with the commercial production of farm products and nursery stock; and (iii) Recreational and educational activities on land used for the commercial production of farm products and nursery stock.

> by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use, or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

The proposed amendment would exempt "land used predominantly in the production of agriculture" from consideration as a blighted area.

The power of eminent domain is an inherent power of the sovereign State of Tennessee. *Rivergate Wine and Liquors, Inc. v. City of Goodlettsville*, 647 S.W.2d 631, 633 (Tenn. 1983). That power is exercised in the manner provided by statute. *Trustees of New Pulaski Cemetery v. Ballentine*, 151 Tenn. 622, 625, 271 S.W. 38 (1925). Both the United States and Tennessee Constitutions allow the taking of private property for public use but require payment of just compensation for that taking. *See Edwards v. Hallsdale-Powell Utility District*, 115 S.W.3d 461, 464 (Tenn. 2003).

On June 23, 2005, the Supreme Court of the United States affirmed the decision of the Supreme Court of Connecticut that the exercise of the power of eminent domain by the City of New London to acquire land for use in accordance with an economic development plan approved by the city satisfied the "public use" requirement of the Fifth Amendment's Takings Clause. *Kelo v. City of New London, Connecticut*, 125 S.Ct. 2655, 162 L.Ed.2d 439. The *Kelo* Court further opined that this decision did not preclude states from placing further restrictions on the exercise of the power of eminent domain. *Id.* at 2668. In response to *Kelo*, the Tennessee General Assembly has proposed SB 3296 in an effort to provide, *inter alia*, a statutory definition of "public use" and to impose various restrictions upon the exercise of the power of eminent domain by the State of Tennessee, local governmental agencies and any other entities authorized to exercise that power.[2]

The State of Tennessee also has the inherent power to control the use of private property within this state. *See Lafferty v. City of Winchester*, 46 S.W.3d 752, 757 (Tenn. Ct. App. 2000).

In evaluating the constitutionality of a statute, the Tennessee Supreme Court begins with the presumption that an act of the General Assembly is constitutional. *Gallaher v. Elam*, 104 S.W.3d 455, 459 (Tenn. 2003). The Court "must indulge every presumption and resolve every doubt in favor of the statute's constitutionality." *Id.* The Court applies this presumption "with even greater force when the facial constitutionality validity of a statute is challenged." *Id.*

Both the United States and Tennessee Constitutions guarantee citizens the equal protection of the laws. *State v. Robinson*, 29 S.W.3d 476, 480 (Tenn. 2000). Article I, section 8 and article XI, section 8 of the Tennessee Constitution provide "essentially the same protection" as the Fourteenth Amendment to the United States Constitution. *State v. Tester*, 879 S.W.2d 823, 827 (Tenn. 1994).

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[2] The preamble to Senate Bill 3296 expresses the general legislative intent and purpose of the proposed bill.

The equal protection provisions of the federal and state constitutions "demand that persons similarly situated be treated alike." *Gallaher*, 104 S.W.3d at 461.

In analyzing equal protection challenges, the Tennessee Supreme Court has "adopted an analytical framework similar to that used by the United States Supreme Court." *Id.* at 460. The Court applies one of three standards, "depending upon the nature of the right asserted or the class of persons affected." *Id.* Those standards include: (1) strict scrutiny (when the classification at issue "operates to the peculiar disadvantage of a suspect class or interferes with the exercise of a fundamental right"); (2) heightened scrutiny (when the classification at issue involves "a quasi-suspect class"); or (3) reduced scrutiny (when the challenged classification is evaluated in light of its relationship to "a legitimate state interest"). *Id.* at 460, 461. The last standard is often described as the "rational basis test." *Id.*

The *Gallaher* Court has opined:

> When applying the rational basis test, we have observed that state legislatures have the initial discretion to determine what is "different" and what is "the same" and that they are given considerable latitude in making those determinations. *See Robinson*, 29 S.W.3d at 480. Our inquiry into legislative choice usually is limited to whether the challenged classifications have a reasonable relationship to a legitimate state interest. *See id*. We have held that under the rational basis test, a statute may discriminate in favor of a certain class, as long as the discrimination is founded upon a reasonable distinction or difference in state policy. *See Castlewood, Inc. v. Anderson County*, 969 S.W.2d 908, 910 (Tenn. 1998). . . .
>
> A classification will pass constitutional muster if we can conceive of some rational basis for the distinction. *See Riggs v. Burson*, 941 S.W.2d 44, 53 (stating that a statutory classification is rational "if any state of facts may reasonably be conceived to justify it").

Gallaher, 104 S.W.3d at 461, 462. A legislature may make distinctions based on classification unless that classification is arbitrary, capricious or unreasonable, even though the basis for the classification is not apparent on the face of the statute. *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439, 442 (Tenn. 1978).

Considering the power of the General Assembly to determine how eminent domain authority can be exercised and how the use of private property can be controlled and further considering the expressed legislative purpose of Senate Bill 3296, this office believes that a rational basis exists for the exemption of land predominantly used for agriculture from consideration as a blighted area under Tenn. Code Ann. §§ 13-20-201, *et seq.* Even though the specific basis for the proposed exemption is not expressly stated in Senate Bill 3296, it is conceivable that the General Assembly has proposed to exempt such lands across Tennessee from consideration as blighted areas in order

to preserve productive agricultural lands for the commercial production of valuable farm products.

Both the United States and Tennessee Constitutions guarantee citizens substantive due process. Section 1 of the Fourteenth Amendment to the United States Constitution prohibits any state from depriving "any person of life, liberty, or property, without due process of law." Article I, section 8 of the Tennessee Constitution provides that "no man shall be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the judgment of his peers, or the law of the land." The Tennessee Supreme Court has opined that "unless a fundamental right is implicated, a statute comports with substantive due process if it bears 'a reasonable relation to a proper legislative purpose' and 'is neither arbitrary nor discriminatory.'" *Riggs*, 941 S.W.2d at 51.

Generally, a substantive due process claim is based on the exercise of governmental power without reasonable justification. *Consolidated Waste Systems, LLC v. Metropolitan Government of Nashville and Davidson County*, 2005 WL 1541860 (Tenn. Ct. App. 2005) at *5. Where governmental action does not deprive a citizen of a particular constitutional guarantee, that action will be upheld against a substantive due process challenge if it is rationally related to a legitimate state interest. *Id.* Under this standard, a legislative regulation of land use will be upheld "if it has a rational relationship with a legitimate governmental interest or public welfare concern." *Id.* If "any reasonable justification" for the law may be conceived, it must be upheld. *Riggs*, 941 S.W.2d at 48.

The proposed Tenn. Code Ann. § 13-20-201 amendment would exempt all land across the state that is predominantly agricultural, as specifically defined by Tenn. Code Ann. § 1-3-105, regardless of the racial or economic status of the owners of such land. Furthermore, the resulting preservation of productive agricultural lands is rationally related to a legitimate state interest to maintain the viability of the agricultural component of the state economy.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

LARRY M. TEAGUE
Deputy Attorney General

Requested by:

The Honorable Henri Brooks
State Representative
38 Legislative Plaza
Nashville, Tennessee 37243-0192