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Opinion No. 09-102

Constitutionality of SB1354/HB552 and SB1355/HB549 related to local funding of schools

QUESTION

Are SB1354/HB552 and SB1355/HB549 constitutionally sound?

OPINION

These bills would be found constitutional if there is a rational basis justifying the application of their provisions to a single special school district.

ANALYSIS

You have asked this Office to examine two pending bills, SB1354/HB552 and SB1355/HB549, with regard to their constitutionality. SB1354/HB552 provides, in pertinent part, as follows:

> BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:
>
> SECTION 1. Tennessee Code Annotated, Section 49-3-314(c), is amended by adding the following language as a new, appropriately designated subdivision:
>
> ( ) In any fiscal year, the governing body of a city in which is located a special school district whose boundaries are coterminous with the city's boundaries shall not reduce funding, excluding capital outlay and debt service, below that provided by the governing body in the previous fiscal year as adjusted for inflation based on the local government price deflator used to adjust the basic education program. If such index reflects an inflation rate of less than zero (0), then such decline shall be treated as no change in the inflation rate. A reduction of funds based on fewer students in the special school district rather than actual fund cuts, shall not be considered a reduction of funds for purposes of this subdivision.

SECTION 2. Tennessee Code Annotated, Section 49-2-203 (a)(10)(A), is amended by adding the following language as a new, appropriately designated subdivision:

( ) A special school district whose boundaries are coterminous with the city's boundaries shall not prepare a budget, excluding capital outlay and debt service, that directly or indirectly supplants or proposes to use state funds to supplant any operating funds provided by the governing body of a city in which such special school district is located nor shall such budget include funds from the governing body that are less than the funds received by the LEA from the governing body in the previous fiscal year as adjusted for inflation based on the local government price deflator used to adjust the basic education program. If such index reflects an inflation rate of less than zero (0), then such decline shall be treated as no change in the inflation rate. A proposed reduction in funds based on fewer students in the special school district rather than actual fund cuts, shall not be considered a reduction in funds for purposes of this subdivision.

The pertinent portions of SB1355/HB549, in turn, state as follows:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-3-314(c), is amended by adding the following language as a new, appropriately designated subdivision:

( ) In any fiscal year, the governing body of a city in which is located a special school district having an ADM of ten thousand (10,000) or more students seventy-five percent (75%) or more of whom are eligible for the federal free and reduced price lunch program shall not reduce funding, excluding capital outlay and debt service, below that provided by the governing body in the previous fiscal year as adjusted for inflation based on the local government price deflator used to adjust the basic education program. If such index reflects an inflation rate of less than zero, then such decline shall be treated as no change in the inflation rate. A reduction of funds based on fewer students in the special school district rather than actual fund cuts, shall not be considered a reduction of funds for purposes of this provision.

> SECTION 2. Tennessee Code Annotated, Section 49-2-203(10)(A), is amended by adding the following language as a new, appropriately designated subdivision:
>
> ( ) A special school district having an ADM of ten thousand (10,000) or more students seventy-five percent (75%) or more of whom are eligible for the federal free and reduced price lunch program shall not prepare a budget, excluding capital outlay and debt service, that directly or indirectly supplants or proposes to use state funds to supplant any operating funds provided by the governing body of a city in which such special school district is located nor shall such budget include funds from the governing body that are less than the funds received by the LEA from the governing body in the previous fiscal year as adjusted for inflation based on the local government price deflator used to adjust the basic education program. If such index reflects an inflation rate of less than zero, then such decline shall be treated as no change in the inflation rate. A proposed reduction in funds based on fewer students in the special school district rather than actual fund cuts, shall not be considered a reduction in funds for purposes of this provision.

As is evident, both bills are designed to require the governing body of a city within which exists either a special school district that meets the identifying parameters of (a) "a special school district whose boundaries are coterminous with the city's boundaries," or (b) "a special school district having an ADM of ten thousand (10,000) or more students seventy-five percent (75%) or more of whom are eligible for the federal free and reduced price lunch program,"[1] to prepare budgets that conform to the "maintenance of effort" requirements set forth in Tenn. Code Ann. §§ 49-3-314(c)(1)[2] and 49-2-203(a)(10)(A)(ii).[3]

Last year, this Office issued an opinion[4] addressing the constitutionality of similar language which had been proposed as amendments to the "maintenance of effort" provisions of

[1] Currently the only special school district meeting these descriptions is the Memphis City School System, and the only "city governing body" meeting these descriptions is the Memphis City Council.

[2] Tenn. Code Ann. § 49-3-314(c)(1) states, "No LEA shall use state funds to supplant total local current operating funds, excluding capital outlay and debt service. The provisions of the preceding sentence shall not apply to a newly created LEA in any county where the county and city schools are being combined for a period of three (3) years after the creation of such LEA."

[3] Tenn. Code Ann. § 49-2-203(a)(10)(A)(ii) states, "No LEA shall submit a budget to the local legislative body that directly or indirectly supplants or proposes to use state funds to supplant any local current operation funds, excluding capital outlay and debt service."

[4] Op. Tenn. Att'y Gen. 08-194 (December 29, 2008) (copy attached).

Tenn. Code Ann. §§ 49-3-314(c)(1)[5] and 49-2-203(a)(10)(A)(ii). We found that the proposed language passed constitutional muster. SB1354/HB552 and SB1355/HB549, however, present two additional issues that have constitutional implications.

First, SB1354/HB552 and SB1355/HB549 are written so as to apply to only a single city special school district, the Memphis City Schools System. This feature implicates Article XI, Section 8 of the Tennessee Constitution,[6] which prohibits "special legislation" for the benefit of particular individuals or governmental entities. Secondly, SB1354/HB552 and SB1355/HB549 would put into place a different fiscal standard applicable to only the Memphis City Schools System. The bills would require the application of an inflation adjustment to the "local match" portion of the local school budget, i.e., that portion of the total local school budget that is contributed by the local government.[7] While the application of this inflation adjustment would almost certainly be minimal in terms of total funding, it would nevertheless establish a unique budgetary formula applicable to only a single school system. No other statute authorizes the use of such an inflation adjustment by the other 135 local Tennessee school districts. This issue implicates Article I, Section 8 of the Tennessee Constitution,[8] which has been interpreted by Tennessee courts as an Equal Protection provision analogous to the Equal Protection Clause of the United States Constitution.

Tennessee Constitution, Article XI, Section 8

In order for the provisions of this Article to come into play, an act which is either local or local in effect must contravene some general law which has mandatory statewide application.[9] The initial question to be answered is, therefore, whether the two bills, SB1354/HB552 and

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[5] Tenn. Code Ann. § 49-3-314(c)(1) states, "No LEA shall use state funds to supplant total local current operating funds, excluding capital outlay and debt service. The provisions of the preceding sentence shall not apply to a newly created LEA in any county where the county and city schools are being combined for a period of three (3) years after the creation of such LEA."

[6] Article XI, Section 8 states:

> 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 the law.

[7] *See* Op. Tenn. Att'y Gen. 08-194 (December 29, 2008) (copy attached).

[8] Article I, Section 8 states:

> That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

[9] *See Knox County ex rel. Kessel v. Lenoir City*, 837 S.W.2d 382, 383 (Tenn. 1992); *Leech v. Wayne County*, 588 S.W.2d 270, 273 (Tenn. 1979). *See also Civil Service Merit Board v. Burson*, 816 S.W.2d 725, 731 (Tenn. 1991); *Rector v. Griffith*, 563 S.W.2d 899 (Tenn. 1978); *Long v. Blount County Election Commission*, 854 S.W.2d 894 (Tenn. Ct. App. 1993).

SB1355/HB549, contravene a mandatory and statewide general law. Because local school district funding is governed by a statutory scheme that has, thus far, been both mandatory and statewide in its application, the answer to this inquiry appears to be in the affirmative[10] (although the minimal impact of the inflation adjustment might cause a reviewing court to conclude that these bills do not sufficiently depart from the budgeting process applicable to the other Tennessee school systems to actually constitute a distinct budgetary process). But the analysis does not end here. Even if a bill is found to contravene a mandatory and statewide statutory scheme, Tennessee courts have held that the Legislature possesses the discretion to make distinctions and provide for special circumstances where appropriate, provided there is at least a rational basis for the distinctions drawn. In this instance this would require the showing of a rational basis for legislative enactments creating a unique local education budgetary feature applicable to a single local school district.

Tennessee Constitution , Article I, Section 8

At this point it is appropriate to turn to Article I, Section 8 of the Tennessee Constitution, because Tennessee courts have interpreted this constitutional provision to guarantee not only due process but equal protection of the law.[11] "The core concern expressed in this constitutional provision is that legislative classification, to the extent that it exists, not be unreasonable or unfair. Moreover, the provisions of Article I, Section 8, protect cities and counties as well as individuals."[12] Class legislation affecting a particular county or municipality and conferring benefits or imposing burdens on its residents, without affecting others similarly situated in the state, will not offend the equal protection provision implicit in Article I, Section 8, as long as there is a reasonable basis for the classification.[13]

Courts will endeavor to find some rational basis for classifications within legislation in order to avoid resorting to declaring legislation unconstitutional. Tennessee courts observe a "strong presumption that acts passed by the Legislature are constitutional."[14] Legislation "need not, on its face, contain the reasons for a certain classification."[15] Rather, "if any possible reason can be conceived to justify the classification it will be upheld and deemed reasonable."[16]

Moreover, the fact that a statute affects only a single county at the time of enactment is not dispositive of its constitutionality. For example, in *Civil Service Merit Board v. Burson*, the

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[10] *See* Op. Tenn. Att'y Gen. 08-194 (December 29, 2008) (copy attached).

[11] *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 152 (Tenn. Ct. App. 1993).

[12] *Civil Service Merit Board v. Burson*, 816 S.W.2d 725, 731 (Tenn. 1991).

[13] *Id*. *See also Brentwood Liquors Corp. of Williamson County v. Fox*, 496 S.W.2d 454, 457 (Tenn. 1973).

[14] *County of Shelby v. McWherter*, 936 S.W.2d 923, 936 (Tenn. Ct. App. 1996).

[15] *Civil Service Merit Board v. Burson*, 816 S.W.2d at 731(citing *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439, 432 (Tenn. 1978)).

[16] *Id.*

Tennessee Supreme Court upheld the constitutionality of statutes containing population brackets which made uniform the procedures and qualifications for the nomination of persons serving on municipal civil service boards. The Court held the legislation was general, despite the fact that it only applied to counties with over 300,000 people, which at the time included Shelby, Davidson, and Knox Counties. The Court found that the statute affected the three most populous counties in the state and would affect additional counties as the population increased.[17]

In the instant case, SB1354/HB552 applies to "the governing body of a city in which is located a special school district whose boundaries are coterminous with the city's boundaries." While only one special school district currently fits this description, it is theoretically possible that other Tennessee special school districts, through legislative action, consolidation or other eventualities, might subsequently fall within this description. Unlike the use of population brackets in legislation, however, whereby counties or municipalities may come to fall within new population brackets through the natural growth of local populations, the number and extent of special school districts is currently limited by legislation that abolishes all special school districts that are not taxing districts.[18]

Similarly, SB1355/HB549 applies only to "the governing body of a city in which is located a special school district having an ADM of ten thousand (10,000) or more students seventy-five percent (75%) or more of whom are eligible for the federal free and reduced price lunch program." While other special school districts might theoretically fall within this description in the future, it is fair to assume that the identifying characteristics set forth in the two bills at issue here are written in such a way that other special school districts are unlikely to fall under their terms in the future.

Furthermore, Tennessee courts have been far from consistent in applying Article XI, Section 8 of the Constitution. Thus, for example, in *Nolichuckey Sand Co., Inc.*, 896 S.W.2d 782 (Tenn. Ct. App. 1994), the Tennessee Court of Appeals found an arrangement of population brackets unconstitutional. Noting that the challenged mineral severance tax provision exempted counties falling within 73 population brackets based upon no "unifying or discernible basis,"[19] the Court concluded that, "[o]ur state government was created to benefit all Tennesseans, not to preside over a hodge-podge of statutory exclusions having the very real effect of redistributing revenue monies among the counties for no rational reason."[20]

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[17] *Id.* at 729. *See also Bozeman v. Barker*, 571 S.W.2d 279, 282 (Tenn. 1978)(upholding the constitutionality of legislation limited by population brackets to only Knox and Davidson Counties, in part, on the grounds that the legislation could become applicable to many other counties, depending upon population growth that would be reflected in any subsequent federal census).

[18] *See* Tenn. Code Ann. §§ 49-2-501(a)(1); 49-2-502 through 504.

[19] *Nolichuckey*, 896 S.W.2d at 789. The statute at issue in *Nolichuckey*, Tenn. Code Ann. § 67-7-221, excluded the state's least populous county, but included the state's next to smallest, and excluded the second, third, and fourth most populous counties while including the most populous. In addition, a number of counties had grown into or out of their original brackets since passage of the original legislation. *Id.*

[20] *Id.*

There is no provision in either SB1354/HB552 or SB1355/HB549 that purports to state an explicit legislative intent regarding these bills. This Office is aware of litigation currently pending between the Board of Education of the Memphis City Schools as plaintiffs, and defendants City of Memphis and City Council of the City of Memphis. We are further aware that one of the positions taken by the defendants in that litigation is that the Memphis City Council is not required by the "maintenance of effort" provisions of the state education funding statutes to provide funding to the Memphis City Schools System in an amount at least equal to the funding level provided in the previous year. [21] It therefore may well be the case that SB1354/HB552 and SB1355/HB549 are designed to eliminate any viability this position might have. If so, a reviewing Court might well consider such a rationale to constitute a rational basis under either Article XI, Section 8, or Article I, Section 8 of the Tennessee Constitution. In the event of a constitutional challenge to either or both of the bills, defense of their validity will hinge upon whether a rational basis can be provided.

Accordingly, this Office is of the opinion that, in the event of a challenge, these bills would be found constitutional if there is a rational basis justifying the application of their provisions to a single special school district.

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[21] *The State of Tennessee, ex rel. The Board of Education of the Memphis City Schools, and Memphis Education Association v. The City of Memphis, City Council of the City of Memphis*, Shelby County Chancery Court, No. CH-08-1139-3. In a Memorandum Opinion issued on or about February 17, 2008, the Chancery Court held in favor of the plaintiffs. After subsequent proceedings, it is the understanding of this Office that a Notice of Appeal was filed, and that the appeal currently remains pending.