**STATE OF TENNESSEE**
OFFICE OF THE
**ATTORNEY GENERAL**
**PO BOX 20207**
**NASHVILLE, TENNESSEE 37202**

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Opinion No. 10-33

Private Act Authorizing Hancock County to Operate Home Health Agency Outside County

## QUESTION

May the General Assembly pass a private act authorizing Hancock County to operate a home health care organization inside or outside the territorial limits of the county?

## OPINION

The bill could violate Article XI, Section 8, of the Tennessee Constitution only if it contravenes a mandatory law of general statewide application. Research has found no such statute. Even if the bill were found to violate a statute of mandatory statewide application, it would be upheld so long as there is a rational basis for conferring this authority on Hancock County.

## ANALYSIS

This opinion concerns the constitutionality of a private act attached to the request. Section 1 of the proposed private act provides:

> Hancock County is hereby authorized to own and operate a home care organization as defined in Tennessee Code Annotated, Section 68-11-201(20), in Hancock, Claiborne, Grainger and Hawkins counties, provided such organization is owned and operated in compliance with statutes and regulations applicable to home care organizations generally.

Section 2 of the act states:

> This Act shall have no effect unless it is approved by two-thirds (2/3) vote of the county legislative body of Hancock County, such approval to be within sixty (60) days following the approval of this Act by the Governor, or alternatively, as the case may be, sixty (60) days following the date that this Act becomes effective without the explicit approval of the Governor. Such approval or disapproval shall be certified to the Secretary of State by the presiding officer of the county legislative body of Hancock County.

The request asks whether this power may be conferred on Hancock County by private act. Article XI, Section 8, of the Tennessee Constitution provides in relevant 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.

The same rules are applied as to the validity of classifications made in legislative enactments under the United States Constitution, Amendment 14, and Article I, Section 8, and Article XI, Section 8, of the Tennessee Constitution. *City of Memphis v. State ex rel. Ryals*, 133 Tenn. 83, 88, 179 S.W. 631 (1915). These provisions guarantee that "all persons similarly circumstanced shall be treated alike." *State v. Robinson*, 29 S.W.3d 476, 480 (Tenn. 2000); *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993) (both quoting *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 562, 64 L.Ed.2d 989 (1920)).

In order to trigger application of Article XI, Section 8, a statute must "contravene *some general law which has mandatory statewide application*." *Leech v. Wayne County*, 588 S.W.2d 270, 273 (Tenn. 1979) (emphasis added). The first question, therefore, is whether the proposed act, by authorizing Hancock County to operate a home care organization in three other counties, contravenes a general law of mandatory statewide application. State law generally requires any person, including any "state, county or local governmental unit, or any division, department, board or agency of the governmental unit," to obtain a license to operate a home care organization. Tenn. Code Ann. § 68-11-206(a). This statute, therefore, seems to authorize a county to operate a home care organization so long as it obtains a license under state law. In addition, counties, by resolution, may exercise many powers granted to cities. Tenn. Code Ann. § 5-1-118. These powers include the power under Tenn. Code Ann. § 6-2-201(26), which authorizes municipalities to:

> Provide and maintain charitable, educational, recreative, curative, corrective, detentive, or penal institutions, departments, functions, facilities, instrumentalities, conveniences and services[.]

A home care organization appears to fall within the services authorized under this statute. The question then becomes whether any general law of mandatory statewide application currently prohibits a county from operating a home care organization outside county boundaries. Counties are creatures of statutes and have only such powers as are expressly conferred by the legislature or necessarily implied from such grants of power. *Metropolitan Government of Nashville and Davidson County v. Allen*, 220 Tenn. 222, 225, 415 S.W.2d 632 (1967); *Bayless v. Knox County*, 199 Tenn. 268, 281, 286 S.W.2d 579 (1955); *Hicks v. Fox*, 190 Tenn. 82, 86, 228 S.W.2d 68 (1950); *State ex rel. Citizens of Wilson County v. Lebanon & Nashville Turnpike Co.*,

151 Tenn. 150, 160, 268 S.W. 627 (1924). Since no statute of general applicability authorizes counties to operate a home care organization outside county boundaries, it must be assumed that counties generally do not have this authority. But a private act, by explicitly conferring this authority on a single county, does not contravene a statute of mandatory statewide application triggering the application of Article XI, Section 8, where the General Assembly has passed no such statute on this subject. *Large v. City of Elizabethton*, 185 Tenn. 156, 203 S.W.2d 907, 909-910 (1947) (private act allowing regulation of taxi cabs in one municipality only was not impermissible class legislation, since there was no general law on the subject of taxi cabs applicable to all municipalities); Op. Tenn. Att'y Gen. 96-140 (November 26, 1996).

Even if the bill were found to violate a statute of mandatory statewide application, it would be upheld so long as there is a rational basis for conferring this authority on Hancock County. All classifications that do not affect a fundamental right or discriminate as to a suspect class are generally subject to the rational basis test. *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994). The burden of showing that a classification is unreasonable and arbitrary is placed upon the individual challenging the statute. If any state of facts can reasonably be conceived to justify the classification or if the reasonableness of the class is fairly debatable, the statute must be upheld. *Id.* Thus, a classification will be upheld "if any state of facts may reasonably be conceived to justify it." *Id.*, citing *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993); *Harrison v. Schrader*, 569 S.W.2d 822, 825 (Tenn. 1978). Reasonableness depends upon the facts of the case, and no general rule can be formulated for its determination. *See Harrison v. Schrader*, 569 S.W.2d at 825-826; Op. Tenn. Att'y Gen. 99-112 (May 13, 1999). In this case, the bill would be defensible if a rational basis exists for conferring this power on Hancock County. Op. Tenn. Att'y Gen. 04-027 (February 12, 2004) (act applying explicitly to Coffee County).

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Michael Harrison
State Representative
206-A War Memorial Building
Nashville, Tennessee 37243-0109