STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

April 4, 2018

Opinion No. 18-18

Constitutionality of Legislation Exempting Obion County from Tax Law

Question

Would proposed legislation intended to exempt Obion County from the operation of Tenn. Code Ann. § 67-4-1425 by means of a narrow population bracket raise constitutional concerns?

Opinion

Yes.

ANALYSIS

State law generally prohibits a county and a municipality from both levying occupancy taxes on hotels and motels located in the municipality. Tenn. Code Ann. § 67-4-1425(a). Instead, 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." Tenn. Att'y Gen. Op. 03-134 (Oct. 8, 2003). In other words, "only the entity that first levies an occupancy tax may maintain that tax" under the general terms of the law. *Admiralty Suites & Inns, LLC v. Shelby County*, 138 S.W.3d 233, 236 (Tenn. Ct. App. 2003), *overruled on other grounds by Chuck's Package Store v. City of Morristown*, No. E2015-01524-SC-R11-CV, --- S.W.3d ---, 2018 WL 718348 (Tenn. Feb. 6, 2018).

House Bill 2341/Senate Bill 1652, 110th Tenn. Gen. Assem. (2018), would exempt any county "having a population of not less than thirty-seven thousand seven hundred one (37,701) nor more than thirty-one thousand eight hundred seven (31,807), according to the 2010 federal census or any subsequent federal census" from the operation of Tenn. Code Ann. § 67-4-1425. As the legislative description of the bill indicates, the practical effect of this narrow population bracket would be to exempt only Obion County from the prohibition on double taxation.

The use of a narrow population bracket to exempt only Obion County from the operation of the general prohibition in § 67-4-1425 would raise significant concerns under the Tennessee Constitution. Article I, section 8 and article XI, section 8 prohibit legislation that treats some counties differently than others without a rational basis for the classification. *Civil Serv. Merit Bd. v. Burson*, 816 S.W.2d 725, 730-02 (Tenn. 1991). As this Office recently explained, article I, section 8 "guarantees equal protection of the laws," and article XI, section 8 "restricts the legislature from enacting 'special legislation' for the benefit of specific individuals or localities in an arbitrary or capricious manner." Tenn. Att'y Gen. Op. 18-10 (Mar. 14, 2018).

Such legislative classifications are presumptively constitutional and will be upheld if "any state of facts may reasonably be conceived to justify" the different treatment. *Riggs v. Burson*, 941 S.W.2d 44, 53 (Tenn. 1997). Thus, with respect to a narrow population bracket proposed in HB 2341/SB 1652, the test would be "whether a rational basis exists for the narrow population classification that suspends the general law" prohibiting double taxation only as to Obion County. Tenn. Att'y Gen. Op. 13-37 (May 2, 2013).

The proposed legislation, through a narrow population bracket, would have the effect of exempting Obion County from the prohibition against double taxation without providing any rationale. And no rationale unique to a county with a population in that particular range is otherwise apparent. Accordingly, a court would likely conclude that the proposed legislation is unconstitutional because there appears to be no rational basis on which to justify the narrow population-bracket classification.[1] *See Knoxville Cmty. Dev. Corp. v. Knox County*, 665 S.W.2d 704, 705 (Tenn. 1984) (finding "no reason to justify the discriminatory classification" of a narrow population bracket); *Nolichuckey Sand Co. v. Huddleston*, 896 S.W.2d 782, 789 (Tenn. Ct. App. 1994) (finding "no underlying rationale" to support "myriad population exclusion brackets" in a tax law). As the Court of Appeals has recognized in analyzing a similar statute that exempted Hamilton County from a generally applicable provision, "even the generous rational basis standard requires that an exclusion based on a population bracket have some relation to a distinctive characteristic of that size population." *Chattanooga Metro. Airport Auth. v. Thompson*, No. 03A01-9610-CH-00319, 1997 WL 129366, at *3 (Tenn. Ct. App. Mar. 24, 1997) (no perm. app. filed).[2]

But even if a court were presented with evidence of a rational basis sufficient to preserve the narrow population bracket against an equal protection/special legislation challenge under article I, section 8 and article XI section 8, the proposed legislation could face a challenge under another section of article XI, namely section 9. Legislation that is "private or local in form or effect [and] applicable to a particular county or municipality" is void under article XI, section 9 unless the legislation requires local approval. *Civil Serv. Merit Bd.*, 816 S.W.2d at 729 (alteration in original) (quoting Tenn. Const. art. XI, § 9); *see also Farris v. Blanton*, 528 S.W.2d 549, 551-52 (Tenn. 1975) (section 9 applies to "legislation [that] was [not] designed to apply to any other

[1] In the *Admiralty Suites* decision, which was overruled on jurisdictional grounds, the Court of Appeals upheld the constitutionality of similar legislation, which exempted three particular counties—Shelby, Williamson, and Rutherford—from the double-taxation prohibition in Tenn. Code Ann. § 67-4-1425 based on narrow population brackets. 138 S.W.3d at 240-41. In that case, however, the State defended the exemption by providing evidence from experts supporting a rationale for the differential treatment of those three specific counties. *Id.* If similar evidence could be presented in favor of the proposed legislation, it could potentially withstand constitutional scrutiny under the reasoning of *Admiralty Suites*.

[2] This Office has in the past questioned the constitutionality of classifications identifying individual counties through the use of narrow population brackets that lack any express or apparent rationale. *See, e.g.*, Tenn. Att'y Gen. Op. 13-37 (May 2, 2013) (concluding that the exemption of Williamson County by means of a narrow population bracket was likely unconstitutional because the Office could not "identify any rational basis why Williamson County should be treated differently than any other county in the State"); Tenn. Att'y Gen. Op. 08-80 (Apr. 3, 2008) (concluding an exemption of four counties based on narrow population brackets at the request of local officials was likely unconstitutional); Tenn. Att'y Gen. 99-104 (May 10, 1999) ("It is difficult to argue that there is a rational basis for the application of a statute to a single county based on a two-hundred-person population bracket[.]").

county"); *Bd. of Educ. of Shelby County v. Memphis City Bd. of Educ.*, 911 F. Supp. 2d 631, 652-660 (W.D. Tenn. 2012) (finding a general law void under section 9 because it applied in practice only to Shelby County and did not require local approval). Thus, the proposed bill, which in effect applies only to a single county because of a narrow population bracket and does not require local approval, may be subject to challenge under article XI, section 9. *See Leech v. Wayne County*, 588 S.W.2d 270, 274 (Tenn. 1979); *Lawler v. McCanless*, 220 Tenn. 342, 417 S.W.2d 548 (1967); Tenn. Att'y Gen. 08-112 (May 19, 2008); Op. Tenn. Att'y Gen. Op. 97-47 (Apr. 14, 1997); Tenn. Att'y Gen. Op. 95-62 (May 26, 1995).

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