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Opinion No. 05-056

Applicability of the Fifty-Dollar Fines Clause to Municipal Beer Boards and Administrative Boards

QUESTIONS

1. Are fines or civil penalties imposed by administrative boards limited by Article VI, § 14 of the Tennessee Constitution?

2. Are fines or civil penalties imposed by municipalities limited by Article VI, § 14 of the Tennessee Constitution?

3. May municipal beer boards offer permit-holders the alternative statutory civil penalties contemplated by Tenn. Code Ann. § 57-5-108(2)(A)?

4. What alternatives may a municipal beer board offer to permit-holders who have committed a punishable offense?

OPINIONS

1. No, according to *Dickson v. State*, 116 S.W.3d 738 (Tenn. Ct. App. 2003).

2. If imposed by a court and punitive in purpose or effect, then yes. If imposed by a municipal board and not a court, then no, under the rationale of *Dickson*.

3. Yes, under the rationale of *Dickson*.

4. All of the disciplinary powers accorded by Tenn. Code Ann. § 57-5-108(2)(A) may be exercised by municipal beer boards, including monetary penalties, suspension, and revocation of permits.

ANALYSIS

1. The case of *Dickson v. State*, 116 S.W.3d 738 (Tenn. Ct. App. 2003), involved the assessment of penalties against a plaintiff pursuant to a settlement agreement between the plaintiff and the Tennessee Department of Environment and Conservation (TDEC) that the plaintiff had allegedly violated. The Tennessee Petroleum Underground Storage Tank Board assessed the

plaintiff a "civil penalty" of $15,000 under that agreement. *Id.* at 739-40. In that case, the court faced the question of "whether Article VI § 14 of the Tennessee Constitution prohibits a state agency from imposing a fine of more than $50." *Id.* at 739. The court there determined that the key to its analysis was "whether this provision [Article VI, § 14] applies to the government as a whole or only to the judiciary," noting that the Supreme Court's cases construing the clause had come from cases in which the judiciary had imposed the fine in question. *Id.* at 741.

The court in *Dickson* therefore looked back to the case of *France v. State*, 65 Tenn. 478 (1873), which dealt with a fixed, mandatory fine prescribed by the legislature for the offense of selling a lottery ticket. The Court in *France* said that "[i]t is very plain . . . that the provision in our own Constitution that a fine exceeding fifty dollars cannot be imposed unless assessed by a jury refers to cases where the court has a discretion in fixing the amount of the fine. It can have no application in the case at hand where the Legislature has peremptorily fixed the fine at five hundred dollars in every case." *France* at 486. Finding it "significant that the constitution contains a separate prohibition against excessive fines that does bind the other branches of the government" (and earlier noting that the clause's "placement in the judicial article suggests that its effect is limited to judges"), the court in *Dickson* concluded that "*France v. State* stands for the proposition that Article VI § 14 of our Constitution applies only to the judiciary and not to the government as a whole." *Dickson* at 741-42. This led to the court's holding on the issue that "Article VI § 14 does not apply to the Board." *Id.* at 739.

It is clear then that, under *Dickson*, the fifty-dollar fines clause applies only to fines imposed by the judiciary and that any fines imposed by an administrative board (such as the Tennessee Petroleum Underground Storage Tank Board in *Dickson* itself) are not limited by Article VI, § 14 of the state constitution.

2. Given the holding in *Dickson* discussed above, it is clear that the fifty-dollar fines clause does not apply to municipal authorities of a non-judicial nature, such as a municipal beer board. Based upon *O'Dell v. City of Knoxville*, 388 S.W.2d 150 (Tenn. Ct. App. 1964), it was generally thought until 2001 that the clause did not apply to municipalities in any context. *See, e.g.*, Op. Tenn. Att'y Gen. No. U94-055 (March 23, 1994). This issue, however, was decided to the contrary in *City of Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn. 2001). Thus, a municipal board, on the same reasoning as the State board in *Dickson*, may impose a fine or civil penalty of more than fifty dollars. The fifty-dollar fines clause does, however, apply to municipal fines and penalties if they are imposed in the first instance by a court rather than by an administrative board and if they are punitive in nature.

City of Chattanooga consisted of two consolidated cases, both of which involved a monetary penalty being imposed by a municipal judge for violation of a municipal ordinance. The Court in *City of Chattanooga* discussed at length the history and jurisprudence of the fifty-dollar fines clause. The Court first noted that, "[w]ere it not for section 14 of article 6 of the Constitution, an impecunious defendant upon whom a large fine had been imposed might be imprisoned for years at the will of the judge alone who tried him." *City of Chattanooga* at 258-59 (quoting *Poindexter v. State*, 137 Tenn. 386, 393 (1917)). Taking this rationale as the underpinning of the clause, the

Court went on to note that, as it had "acknowledged for nearly a century, the restriction on imposing 'fines' contained in Article VI, section 14 does not prevent a court from imposing any monetary assessment in excess of fifty dollars. . . . [A]s we held long ago in *Poindexter*, Article VI, section 14 does not apply to assessments greater than fifty dollars when the assessment is not punitive in nature." *Id.* at 259. The requirement of a punitive nature is therefore the first limitation on the scope of the fifty-dollar fines clause.

Reaffirming that the clause applies only to punitive assessments, the Court next turned to whether or not it applies to assessments for violations of municipal ordinances. The *O'Dell* court had reduced an assessment for such a violation to fifty dollars, reasoning that "because the Knoxville city ordinance itself characterized its sanction for driving-under-the-influence as a 'penalty,' and not as a 'fine,' the limitations of Article VI, section 14 simply did not apply." *City of Chattanooga* at 260. The *O'Dell* court secondly reasoned that the longstanding characterization of municipal violations as civil actions meant that no criminal sanction could be imposed in such instances and the limitation on "fines" was therefore inapplicable. *Id.* The *City of Chattanooga* Court rejected the *O'Dell* analysis because it "exalted technical form over constitutional substance in a manner rarely seen elsewhere" and cited with approval the United States Supreme Court's statement that "[t]he notion of punishment, as we commonly understand it, cuts across the division between civil and the criminal law. It is commonly understood that civil proceedings may advance punitive as well as remedial goals." *City of Chattanooga* at 261 (quoting *Austin v. United States*, 509 U.S. 602, 610 (1993)). The Court therefore overruled *O'Dell* to the extent that it "compels the conclusion that proceedings involving municipal ordinance violations are outside the scope of Article VI, section 14" and instead concluded that, "[b]ecause Article VI, section 14 is concerned with the punitive purpose or effect of the sanctions imposed, the proper inquiry must be whether, despite the primary character of the proceeding, the purpose or effect of the monetary assessment is to further the goals of punishment." *City of Chattanooga* at 261.

The Court then proceeded to set out the test for determining whether a monetary penalty is punitive in purpose and effect. "[A] monetary sanction imposed for a municipal ordinance violation falls within the scope of Article VI, section 14, when: (1) the legislative body creating the sanction primarily intended that the sanction punish the offender for the violation of an ordinance; or (2) despite evidence of remedial intent, the monetary sanction is shown by the "clearest proof" to be so punitive in its actual purpose or effect that it cannot legitimately be viewed as remedial in nature." *Id.* at 264. Furthermore, "the 'clearest proof' of punitive purpose or effect is more properly established by considering whether the totality of the circumstances demonstrates that the statutory scheme truly envisions the pecuniary sanction as serving to remedy or to correct a violation." *Id.* at 265. The application of this test to specific factual circumstances will determine whether a monetary penalty imposed by a municipal court, or any other court for that matter, will be considered punitive and thus limited to fifty dollars by the Tennessee Constitution.

3. Revocation and suspension of beer permits is controlled by Tenn. Code Ann. § 57-5-108. Subsection (2)(A) therein states in part that:

> A city, class A county, or class B county, or any committee, board, or commission created by such governmental bodies, may, at the time it imposes a revocation or suspension, offer a permit or license holder the alternative of paying a civil penalty not to exceed one thousand five hundred dollars ($1,500) for each offense of making or permitting to be made any sales to minors or a civil penalty not to exceed one thousand dollars ($1,000) for any other offense.

As noted above, *City of Chattanooga* did not specifically address whether or not the fifty dollar fines clause applies to non-judicial government bodies, but *Dickson* subsequently has expressly answered that question in the negative. Therefore, the imposition of fines greater than fifty dollars by a municipal beer board pursuant to Tenn. Code Ann. § 57-5-108(2)(A) does not implicate Article VI, § 14 of the State constitution.

4. A municipal beer board's disciplinary authority does not extend beyond that which is granted in Tenn. Code Ann. §§ 57-5-101 *et seq*., which includes the authority to grant, deny, revoke, and suspend such permits. Tenn. Code Ann. § 57-5-108(2)(A) provides the further discretion to impose fines in lieu of suspending or revoking a permit. Despite the discretionary nature of the authority granted to beer boards by § 57-5-108(2)(A) to impose monetary penalties (which are characterized in the statute as "civil penalties," likely in reliance upon the distinction in *O'Dell* that is now irrelevant after *City of Chattanooga*), current Tennessee law states that this authority is not limited by Article VI, § 14 of the State Constitution. All of the disciplinary powers accorded by Tenn. Code Ann. § 57-5-108(2)(A) are therefore constitutionally available to municipal beer boards.

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