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Opinion No. 05-061

Expanding Jurisdiction of Municipal Courts

## QUESTIONS

House Bill 677/Senate Bill 1817 would amend Tenn. Code Ann. § 16-18-302(b) to give a city court in any municipality where the main campus of a public university is located the jurisdiction to enforce any municipal law or ordinance that mirrors or incorporates several state statutes making various offenses with regard to underage drinking a Class A misdemeanor. The bill also grants a city court in any city with a population of more than 150,000, according to the 2000 or any subsequent federal census, jurisdiction over offenses under a municipal law or ordinance that mirrors two traffic-related offenses.

1. Does the provision giving additional jurisdiction over these offenses to city courts where the main campus of a public university is located unconstitutionally suspend the general law conferring jurisdiction on municipal courts under Tenn. Code Ann. § 16-18-302(a)?

2. Is there a rational basis for conferring this jurisdiction on cities where the main campus of a public university is located, and not including private universities?

3. Does the provision conferring additional jurisdiction over the two traffic-related offenses in city courts in a city with a population of more than 150,000 unconstitutionally suspend the general law conferring jurisdiction on municipal courts under Tenn. Code Ann. § 16-18-302(a)?

## OPINIONS

1. and 2. This classification is supported by a rational basis. Further, the General Assembly may constitutionally extend jurisdiction over these offenses to city courts where the main campus of a public university is located without including private universities.

3. This provision does not unconstitutionally suspend a general law. But the bill presents three constitutional problems if it is interpreted to authorize a city court to impose the fines and sentences authorized for Class A and Class B misdemeanors under Tenn. Code Ann. § 40-35-111. First, we think a court would conclude that the bill extends the jurisdiction of a city court beyond that of a "corporation court" and makes it an "inferior court" subject to the requirements of Article VI of the Tennessee Constitution. The judge and clerk of an inferior court must be elected. Second, allowing an individual to be tried by a non-attorney judge for an offense punishable by

incarceration — including the Class A and Class B misdemeanors included in the bill — would violate that defendant's due process rights. Third, unless a defendant waives his or her right to a jury determination of a fine for violating a city ordinance, a city court may not constitutionally impose a fine of more than fifty dollars for the violation of a city ordinance, even if a statute authorizes the city to do so. Amending the bill to make it clear that the court may only impose a penalty of no more than fifty dollars for violation of municipal ordinances mirroring the listed statutes would avoid these problems.

## ANALYSIS

1. and 2. Jurisdiction over Underage Drinking Offenses

This opinion concerns House Bill 677/Senate Bill 1817. This bill would amend Tenn. Code Ann. § 16-18-302 by rewriting subsection (b). Subdivision (1) of the new subsection (b) would provide:

> (1) Notwithstanding the provisions of subdivision (a)(2) or any other provision of law to the contrary, a municipal court in any municipality where the main campus of a public university is located, also possesses jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates, or incorporated by cross reference, the language of any of the following state criminal statutes:
>
> (A) § 1-3-113(b), relative to Class A misdemeanor offenses of underage purchasing, possession, transportation, or consumption of alcoholic beverages, wine or beer:
>
> (B) § 57-3-412(a)(3), relative to Class A misdemeanor offenses of underage consumption, possession, or transportation of beer or any intoxicating liquor;
>
> (C) § 57-3-412(a)(5), relative to Class A misdemeanor offenses of underage purchasing or attempting to purchase any alcoholic beverages;
>
> (D) § 57-4-203(b)(2), relative to the Class A misdemeanor offenses of underage purchasing, attempting to purchase or possession of any alcoholic beverages;
>
> (E) § 57-5-301(d), relative to the Class A misdemeanor offenses of underage purchasing or attempting to purchase beer or alcoholic beverages; and
>
> (F) § 57-5-301(e), relative to the Class A misdemeanor offenses of underage possession or transportation of beer.

As currently in effect, Tenn. Code Ann. § 16-18-302(a) provides:

> (a) Notwithstanding any provision of law to the contrary:
>
> (1) A municipal court possesses jurisdiction in and over cases:
>
> (A) For violation of the laws and ordinances of the municipality; or
>
> (B) Arising under the laws and ordinances of the municipality; and
>
> (2) A municipal court also possesses jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute, if and only if:
>
> (A) The maximum penalty prescribed by state law for the state criminal offense is a fine of fifty dollars ($50.00) or less, or confinement for a period of thirty (30) days or less, or both; and
>
> (B) The maximum penalty prescribed by municipal law or ordinance for the violation is a civil fine not in excess of fifty dollars ($50.00).

The first question is whether the provision of the bill granting jurisdiction over the listed offenses to city courts where the main campus of a state university is located violates Article XI, Section 8, of the Tennessee Constitution. Under that provision:

> 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 equal protection provisions of the Tennessee Constitution provide the same protection as the Equal Protection Clause of the United States Constitution; therefore, the rational basis review is the same. *State v. Price*, 124 S.W.3d 135, 137-138 (Tenn. Crim. App. 2003), *p.t.a. denied* (2003). 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); *Knox County Educational Association v. Knox County Board of Education,* 60 S.W.3d 65 (Tenn. Ct. App. 2001).

Tenn. Code Ann. § 16-18-302 is part of the Municipal Court Reform Act of 2004 and became effective March 1, 2005. Subdivision (d) of this statute provides:

> (d) Notwithstanding any provision of law to the contrary, *a municipal court may exercise no jurisdiction other than the jurisdiction authorized by the provisions of this section*; provided, however, that the provisions of this section shall not be construed to impair or in any way restrict the authority of a juvenile judge to waive jurisdiction over any cases or class of cases of alleged traffic violations, as authorized pursuant to the provisions of § 37-1-146, or the authority of a municipal court to receive and dispose of such cases or classes of cases of alleged traffic violations.

(Emphasis added). Under Tenn. Code Ann. § 16-18-301(b)(1):

> The language "any provision of law to the contrary" includes, but is not limited to, any conflicting provision of any general statute, local law, private act, charter provision, municipal law or municipal ordinance.

The statute on city court jurisdiction, therefore, is intended to be a general statute of mandatory statewide application. 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). Under this test, the classification will be upheld "if any state of facts may *reasonably be conceived* to justify it." *Tester,* 879 S.W.2d at 828 (emphasis added) (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). The question is "whether the classifications have a reasonable relationship to a legitimate state interest." *Doe v. Norris*, 751 S.W.2d 834, 841 (Tenn. 1988) (citing *Plyler v. Doe,* 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982), *rehearing denied* (1982)). In such an instance, there is a presumption of validity. The legislative body may make distinctions and treat various groups differently so long as the classification is not arbitrary. *Harrison*, 569 S.W.2d at 825.

We think that extending city court jurisdiction over offenses related to underage drinking to city courts in cities where the main campus of a public university is located is supported by a rational basis. More underage students are likely to reside, and pursue entertainment, in a city where the main campus of a public university is located. Extending jurisdiction over these offenses, therefore, promotes the legitimate state interest of judicial efficiency by authorizing additional courts to deal with those offenses in those cities.

The second question is whether there is a rational basis for extending jurisdiction over these offenses to city courts where the main campus of a public university is located, and not including private universities. A classification having some reasonable basis does not offend equal protection merely because classification is not made with mathematical nicety, or because in practice it results in some inequality. *Wyatt v. A-Best Products Company, Inc.*, 924 S.W.2d 98, 105 (Tenn. Ct. App. 1995) *as modified on rehearing, p.t.a. denied* (Tenn. 1996). Further, "a legislature is allowed to attack a perceived problem piecemeal . . .. Underinclusivity alone is not sufficient to state an equal protection claim." *Howard v. City of Garland*, 917 F.2d 898, 901 (5th Cir. 1990) (quoting J*ackson Court Condominiums v. City of New Orleans*, 874 F.2d 1070, 1079 (5th Cir. 1989) (citing *City of*

*New Orleans v. Dukes*, 427 U.S. 297 (1976)). For these reasons, the General Assembly may constitutionally extend jurisdiction over these offenses to city courts where the main campus of a public university is located without including private universities.

3. Extending City Court Jurisdiction in Cities of 150,000 or More

The third question is whether subsection (b)(2) of the proposed amendment to Tenn. Code Ann. § 16-18-302(b) unconstitutionally suspends a general law. Under the bill, Tenn. Code Ann. § 16-18-302(b)(2) would provide:

> (2) Notwithstanding the provisions of subdivision (a)(2) or any other provision of law to the contrary, in any municipality having a population in excess of one hundred fifty thousand (150,000), according to the 2000 federal census or any subsequent such census, a municipal court also possesses jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates, or incorporates by cross-reference the language of any of the following state criminal statutes.
>
> (A) § 55-50-301, relative to the offense of operating a motor vehicle without a valid driver license; and
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> (B) § 55-10-205, relative to the Class B misdemeanor offense of reckless driving.

The question is whether, by extending jurisdiction over certain offenses to cities with a population of more than 150,000, according to the 2000 federal census or any subsequent census, this provision unconstitutionally suspends a general law. Because the law includes any city with a population of more than 150,000, we think it can be defended as a "general law." *See, e.g., County of Shelby v. McWherter,* 936 S.W.2d 923 (Tenn. Ct. App. 1996), *p.t.a. denied* (1996) ( a statute that applied only in counties with a population of 700,000 or more, according to the 1990 federal census or any subsequent federal census was a "general law" that did not require local approval); *Bozeman v. Barker,* 571 S.W.2d 279 (Tenn. 1978); *Frazer v, Carr,* 210 Tenn. 565, 360 S.W.2d 449 (1962) (a statute permitting the formation of metropolitan government in counties with a population over 200,000 was general, even though it only applied in four counties when it was passed). For this reason, this provision is itself, arguably, a general law.

Even if the provision creates a classification, we think it is supported by a rational basis. A classification based on a population bracket must have some relation to a distinctive characteristic of that size population. *Chattanooga Metropolitan Airport Authority v. Thompson,* No. 03A01-9610-CH-00319 (Tenn. Ct. App. 1997). A city with a population of more than 150,000 is likely to have a larger number of the two types of traffic violations in the bill. For this reason, extending city court jurisdiction to these offenses in cities with this population is rationally related to the legitimate state interest of judicial efficiency by authorizing additional courts to deal with those offenses in those cities.

Depending on how it is interpreted, this bill presents three other constitutional issues regarding the jurisdiction of city courts. The bill authorizes the city courts to which it applies to enforce a municipal ordinance that "mirrors" various state statutes defining a Class A misdemeanor and a Class B misdemeanor. A Class A misdemeanor is punishable by imprisonment of up to eleven months and twenty-nine days, and a fine of up to two thousand five hundred dollars. Tenn. Code Ann. § 40-35-111. A Class B misdemeanor is punishable by imprisonment of up to six months and a fine of up to five hundred dollars. *Id.* It is not clear whether the statute is intended to allow a city court to impose these statutory penalties. If this is the intent, then the bill presents the following constitutional problems. Amending the bill to make it clear that the court may only impose a penalty of no more than fifty dollars for violation of municipal ordinances mirroring the listed statutes would avoid these problems.

Article VI, Section 1, of the Tennessee Constitution provides that:

> The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish; in the Judges thereof, and in Justices of the Peace. The Legislature may also vest such jurisdiction in Corporation Courts as may be deemed necessary. Courts to be holden by Justices of the Peace may also be established.

Thus, the Constitution distinguishes between the functions of judges of inferior courts and those of justices of the peace. Article VI, Section 4, of the Tennessee Constitution provides:

> The Judges of the Circuit and Chancery Courts, and of other inferior Courts, shall be elected by the qualified voters of the district or circuit to which they are to be assigned. Every Judge of such Courts shall be thirty years of age, and shall before his election, have been a resident of the State for five years and of the circuit or district one year. His term of service shall be eight years.

Thus, the judge of an "inferior court" must be elected to an eight-year term. Although some city judges are now elected, no law of mandatory statewide application requires all city judges to be elected. The Tennessee Supreme Court has concluded that the city judge of a court granted concurrent jurisdiction with a general sessions court exercises the jurisdiction of an inferior court and must meet the requirements of Article VI, Section 4. *State ex rel. Town of South Carthage v. Barrett*, 840 S.W.2d 895 (Tenn. 1992). If this bill grants the powers of an inferior court to the city courts to which it applies, the judges of these courts must, similarly, meet the requirements of Article VI, Section 4.

This Office has concluded that, under Article VI, Section 1, of the Tennessee Constitution, those functions performed by justices of the peace at the time of the 1870 Constitution are all powers that need not be exclusively performed by an inferior court. Op. Tenn. Att'y Gen. 93-29 (April 1, 1993); Op. Tenn. Att'y Gen. 95-020 (March 27, 1995). Thus, powers similar to these may be assigned to lesser judicial officers, like city court judges, who are "essentially acting as justices of the peace." Op. Tenn. Att'y Gen. 93-29 *at* 6. The 1993 opinion contains a list of functions justices

of the peace were authorized to perform in 1870. These powers include the power to hear and determine "all small offenses." "Small" offenses are those which carry a maximum fine of fifty dollars and for which no imprisonment may be inflicted. Op. Tenn. Att'y Gen. 95-020, n 2. The list also includes the power to try proceedings in misdemeanor cases where a guilty plea is entered, and impose a fine of not less than two dollars nor more than fifty dollars, and costs. This Office concluded that, because the authority to adjudicate offenses other than "small" offenses was not statutorily delegated to justices of the peace, an appointed municipal court judge may not now decide guilt or innocence in public intoxication cases or sentence the defendant by means of a fine in such cases. Op. Tenn. Att'y Gen. 95-020 *at* 1. For the same reasons, we think an appointed municipal court judge may not now adjudicate guilt or innocence in Class A or Class B misdemeanor cases like those listed in the bill.

Second, the Tennessee Supreme Court has found that the due process protections of Article I, Section 8 of the Tennessee Constitution guarantee to a criminal defendant on trial for an offense punishable by incarceration the right to be tried before an attorney judge. *City of White House v. Whitley*, 979 S.W.2d 262 (Tenn. 1998). City judges are now required to receive three hours of training each year. Tenn. Code Ann. § 16-18-309. But no general law of mandatory statewide application requires a city judge to be an attorney. Under *City of White House,* allowing an individual to be tried by a non-attorney judge for an offense punishable by incarceration — including the Class A misdemeanors included in the bill — would violate that defendant's due process rights.

Third, the Tennessee Supreme Court has held that Article VI, Section 14, of the Tennessee Constitution prohibits a municipal court judge from imposing fines in excess of fifty dollars for the violation of a municipal ordinance, irrespective of any right afforded the defendant to obtain a jury trial upon appeal to a higher court. *Town of Nolensville v. King,* 151 S.W.3d 427 (Tenn. 2004). We have found no statute authorizing a city court to empanel a jury. Tenn. Code Ann. § 16-18-307 does allow appeal of the judgment of a municipal court to circuit court within ten days. But, under *Town of Nolensville*, the availability of this remedy does not cure the constitutional prohibition. The Court noted that the defendant may voluntarily relinquish his or her right to a jury determination of fines greater than fifty dollars by executing a written waiver consistent with provisions of the Rules of Criminal Procedure governing waivers of the right to a trial by jury and to a grand jury investigation. Absent such a waiver, however, a city court may not constitutionally impose a fine of more than fifty dollars for the violation of a city ordinance, even if a statute authorizes the city to do so. The Tennessee Court of Criminal Appeals recently found, in fact, that the Chattanooga City Court was authorized to incorporate the elements of the state offense of reckless driving under Tenn. Code Ann. § 55-19-205 into its ordinances. *State v. Godsey,* E2003-021410CCA-R3-HC slip op. (E.S. Tenn. Crim. App. Sept. 22, 2004), *p.t.a. denied* (2005). But the Court found that the city court could not, constitutionally, impose the penalties set by that statute. Instead, the city court was limited to imposing a fine of fifty dollars or less.

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