

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

April 6, 2010

Opinion No. 10-44

Assessment of Civil Penalty for Violation of Order of Protection

QUESTION

Would increasing the civil penalty allowed under Tenn. Code Ann. § 36-3-610(b) for violating an order of protection or court-approved agreement from fifty dollars to five hundred dollars violate Article VI, Section 14, of the Tennessee Constitution?

OPINION

Yes. The proposed amendment to Tenn. Code Ann. § 36-3-610(b) increasing the civil penalty a judge may assess for violation of an order of protection or court-approved consent agreement from fifty dollars to five hundred dollars would violate Article VI, Section 14, of the Tennessee Constitution.

ANALYSIS

As provided in Tenn. Code Ann. § 36-3-610, upon violation of an order of protection or a court-approved consent agreement, the court may hold the defendant in civil or criminal contempt. In addition to the authorized punishments for contempt of court, the judge may assess a civil penalty of fifty dollars. Under Senate Bill 3100, the amount of the civil penalty would be increased to five hundred dollars. The stated purpose for this increase would be to encourage compliance by increasing the available sanction.

Article VI, Section 14, of the Tennessee Constitution provides:

No fine shall be laid on any citizen of this State that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers, who shall assess the fine at the time they find the fact, if they think the fine should be more than fifty dollars.

The Tennessee Supreme Court has held that Article VI, Section 14, applies to any fine that is punitive, as opposed to remedial, in nature. *City of Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn. 2001). A monetary sanction 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 . . . ; 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.

Remedial purposes have been recognized to include those intended to compensate for loss; reimburse for expenses; provide restitution for harm; or ensure compliance with an order or directive through a prospectively coercive fine. 54 S.W.3d at 270. On the other hand, the Tennessee Supreme Court has held that when the predominant purposes served by the penalty are “to provide general and specific deterrence and to ensure overall future compliance,” then the monetary penalty is deemed to be punitive. *Id.*

In our view, the predominant purpose of the civil penalty assessed under Tenn. Code Ann. § 36-3-610(b) is to deter violations of orders of protection or court-approved consent agreements and ensure future compliance. While the civil penalties collected are sent to the state treasury for deposit in the domestic violence community education fund, these monetary penalties do not seem to be intended to compensate for loss or reimburse expenses so as to have a predominantly remedial purpose. Thus, since the proposed Bill would authorize a judge to assess a punitive fine which exceeds fifty dollars without the intervention of a jury, it is in violation of Article VI, Section 14, of the Tennessee Constitution.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

DIANNE STAMEY DYCUS
Deputy Attorney General

Requested by:

Honorable Beverly Marrero
State Senator
War Memorial Building, Suite 312
Nashville, TN 37243-0189