

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED

March 24, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

CHATTANOOGA METROPOLITAN AIRPORT AUTHORITY,) C/ A NO. 03A01-9610-CH-00319
)
Plaintiff - Appellee,) HAMILTON CHANCERY
)
v.) HON. R. VANN OWENS,
) CHANCELLOR
)
E. RAY THOMPSON, d/ b/ a EAST RIDGE CAB COMPANY, JAMES KENNEDY, LONNIE J. HICKS,)
)
Defendants - Appellants,)
)
and STATE OF TENNESSEE,) AFFIRMED
) AND
Defendant.) REMANDED

HUGH J. MOORE, JR., and JOEL A. CONKIN, WITT, GAITHER & WHITAKER, P. C., Chattanooga, for Plaintiff - Appellee.

ROBERT H. CRAWFORD, CRAWFORD & CRAWFORD, Chattanooga, for Defendants - Appellants.

O P I N I O N

Franks. J.

In this declaratory judgment action, the Trial Court declared Tennessee Code Annotated §7-51-1006 unconstitutional

under Article XI, §8, Constitution of Tennessee, and defendant has appealed.

Plaintiff, Chattanooga Metropolitan Airport Authority (Authority), oversees the operation of the Lovell Field airport in Chattanooga, and Defendant operates licensed taxicabs in and around the city of Chattanooga, including the airport.

The Tennessee Passenger Transportation Services Act (TPTSA), codified at T. C. A. §7-51-1001 *et seq*, gives government entities the power to control and regulate private passenger-for-hire vehicles within the entity's jurisdiction. The definition of governmental entity includes airport authorities. T. C. A. §7-51-1003(b)(1). Hamilton County, as specified through the use of its population bracket, was excluded from this act. T. C. A. §7-51-1006¹.

Despite this exclusion, the Authority used the power given in TPTSA and arranged an exclusive service agreement with a taxi cab company other than defendant's cabs. When defendant's drivers continued to operate at the airport taxi stand, they were arrested and charged with criminal trespass. The charges were dismissed in the Hamilton County General Sessions Court.

The Authority then filed this action for declaratory judgment.

¹ This exemption reads:

The provisions of this part shall not apply to any governmental entity of a county having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800) according to the 1980 federal census or any subsequent federal census.

T. C. A. § 5-51-1006.

Defendant argues that the Authority is a state agency, as defined in the Uniform Administrative Procedure Act. T. C. A. §4-5-102(2)². The UAPA provides that venue for such a state agency is Davidson County. T. C. A. §4-5-224(a)³.

In asserting jurisdiction, the Trial Court relied on UAPA which states that "the provisions of this chapter shall not apply to . . . to county and municipal boards, commissions, committees, departments or officers." T. C. A. §4-5-106(a). The statute which authorized Chattanooga to create an Airport Authority declared that "airport authorities created pursuant to this chapter shall be public and governmental bodies acting as agencies and instrumentalities of the creating and participating municipalities." T. C. A. §42-4-102(a) (emphasis added). The Authority is not an agent of the state within the meaning of UAPA and the issue was properly before the Chancery Court.

Next, defendant contends there was no justiciable controversy. A chancellor's decision regarding whether to grant or deny declaratory judgment is largely discretionary

² This section reads:

Definitions. - As used in this chapter: . . . (2) "Agency" means each state board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute or constitutional provision to make rules or to determine contested cases

T. C. A. § 4-5-102.

³ This provision reads in part:

Declaratory judgments. - (a) The legal validity or applicability of a statute, rule or order of an agency to specified circumstances may be determined in a suit for a declaratory judgment in the chancery court of Davidson County, unless otherwise specifically provided by statute, if the court finds that the statute, rule, or order, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the complainant. . . .

T. C. A. § 4-5-224.

and will not be disturbed on appeal unless such decision is arbitrary. *Huntsville Utility District of Scott County, Tenn. v. General Trust Co.*, 839 S.W2d 397, 400 (Tenn. App. 1992).

The dispute is due to a conflict over who may use the taxicab stand at the airport. The conflict has led to citations for criminal trespass, and the record indicates that the Sessions Court dismissed the charges because of the civil nature of the dispute. The Trial Court acted properly in resolving the dispute between the parties.

Next, defendant argues that summary judgment was not appropriate on this record.

Plaintiff points out that it submitted several affidavits to support its motion for summary judgment. It argues that "the nonmoving party cannot simply rely upon his pleadings . . ." and if he/she does, "summary judgment . . . shall be entered against him?" *Byrd v. Hall*, 847 S.W2d 208, 211 (Tenn. 1993). Since defendant did not respond with affidavits, plaintiff argues that it was entitled to summary judgment.

Defendant argues the dispute is a question of law, and he did not have to challenge the facts alleged by plaintiff, and summary judgment will not be appropriate unless the moving party is entitled to a judgment as a matter of law. T. R. C. P. 56.03. We agree.

The issue thus becomes, is Hamilton County's exemption unconstitutional as a special law suspending the general law?

The Tennessee Constitution requires that:

General laws only to be passed. - 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, immunities, [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. . . .

TN. Const. Art. XI, §8.

An Act which suspends the general law violates this provision unless there is a reasonable or rational basis for the exclusion. *Leech v. Wayne County*, 588 S.W2d 270 (Tenn. 1979).

Defendant first points out that a general law is one which has "mandatory statewide application." *Rector v. Griffith*, 563 S.W2d 899 (Tenn. 1978). He argues that TPTSA is not a general law because instead of requiring an affirmative action by the local governments, it merely enables them to establish an airport authority. However, laws which authorize local actions have repeatedly been considered "general" within the context of Art. XI, §8. *Taylor Theater v. Town of Mountain City*, 227 S.W2d 30, 31 (Tenn. 1950); *Brentwood Liquors Corp. of Williamson County v. Fox*, 496 S.W2d 454 (Tenn. 1973); *Nolichucky Sand Co., Inc. v. Huddleston*, 896 S.W2d 782 (Tenn. App. 1994). The TPTSA is a uniform, state-wide plan for dealing with passenger transportation. It is "general" for the purposes of Article XI, §8.

Next, defendant asserts that "[i]f any reasonable justification for the law may be conceived, it must be upheld by the courts." *State v. Tester*, 879 S.W2d 823, 830 (Tenn.

1994). Defendant proposes a possible rationale:

Chattanooga had already created an public transit authority which regulated taxis, in the form of CARTA (Chattanooga Area Regional Transportation Authority), pursuant to authority granted in T. C. A. § 7-56-102(a).

Defendant suggests that perhaps the legislators were attempting to avoid duplicative jurisdiction over taxi cab service.

However, the earlier statute authorizing the creation of a public transportation authority was also of state-wide application. Numerous communities presumably already have local transit authorities. It is not readily apparent why this circumstance would distinguish Hamilton County. More important, 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. *Knoxville's Community Development Corp. v. Knox County*, 665 S.W2d 704, 705 (Tenn. 1984); *State ex rel. Bells v. Hamilton County*, 170 Tenn. 371, 95 S.W2d 618, 619 (Tenn. 1936).

There is no factual evidence in the record to establish a rational basis for a diversity of laws based upon the population of Hamilton County. We conclude there is no rational basis for the exemption, and the judgment of the Trial Court is affirmed, declaring the statute unconstitutional.

The cost of the appeal is assessed to the appellant, and the cause remanded.

Herschel P. Franks, J.

CONCUR:

Houston M Goddard, P. J.

(Not participating).

Don T. McMurray, J.