OVERVIEW OF THE MUNICIPAL COURT REFORM ACT OF 2005

Presentation by
Aaron J. Conklin

History of the Act

- City/County dispute
  - Weakley County vs. City of Martin
- All about the money
- 2003 Public Chapter 113
  - Moratorium on municipal courts with GS jurx
  - Judicial Council Study Committee
- Report submitted with proposed legislation
- Reform Act signed June 8, 2004
  - Effective March 1, 2005

T.C.A § 16-18-301

- Definition section
- "Any law to the contrary"
  - Becomes a very important phrase as it allows this act to trump any other act addressing municipal courts
- "Municipal Court"
  - Broad definition

T.C.A § 16-18-302

- JURISDICTION
  - Violation of municipal ordinances
  - Arising under municipal ordinances
  - Mirrors language of state criminal statute, IF AND ONLY IF, said statute is punishable as a class C Misdemeanor and max penalty under ordinance is a civil fine of not more than $50
    - Handicap parking
    - Move Over law

T.C.A § 16-18-302 continued

- For municipalities over 150,000
  - Chattanooga, Knoxville, Memphis, Nashville
  - Only others close – Clarksville (132,000), Murfreesboro (109,000)
- Additional state criminal statutes, A and B Misdemeanors
  - Underage purchase, consumption or possession of alcoholic beverages (A Misd.)
  - Reckless driving (B Misd.)

T.C.A § 16-18-302 continued

- Cities over 150,000 continued
  - Driving without a valid license (B Misd. via TCA § 55-50-603)
    - TCA § 55-50-301 (driving w/o valid license)
    - TCA § 55-50-351 (driving w/o license on person)
- Concurrent GS jurisdiction – exercise if had it prior to May 2003 or if conferred via procedure
- Juvenile Court waiver
- *City of Knoxville v. Brown* - red light camera

T.C.A § 16-18-303 & 304

- 303 – Municipal judge can administer oath
- 304 – Municipal Court Costs
  - Must be set by ordinance
  - $1.00 of court cost sent to treasurer for municipal court education – split 50/50 between judges and clerks
  - Provision not applicable to exercise of GS jurisdiction. Costs for GS courts imposed in such cases.

T.C.A § 16-18-305

- Privilege Taxes
- $13.75 in all cases (except parking)
- $1.00 tax in all parking violations whether appears or not
- Authorizes adoption of local litigation tax up to $13.75
- Clerk liable for unpaid taxes
- Not applicable to GS cases
- 2% Clerk's commission – AG's opinion

T.C.A § 16-18-306 & 307

- 306 - Contempt of court - $50.00
- 307 – Appeal bond - $250
  - Appeal to Circuit Court
  - Appeal within 10 days (excluding Sundays)
  - Where to pay bond

T.C.A § 16-18-308

- Concurrent Office holder/city employment
  - Prohibits judge from holding another city position of employment or office concurrently
  - Grandfathering of such persons at time of passage of act
- Oliver Springs exception – if city charter provides that judge shall also serve as recorder, may hold both offices

T.C.A § 16-18-309

- Municipal Judge Continuing Education Requirement
  - 3 hours per year
  - Approved by AOC
  - Specifically designed for municipal court judges concerning issues, procedures and new developments relevant to judges
  - General legal CLE does not suffice
  - 6 months grace to comply, after which all subsequent judgments are null and void

T.C.A § 16-18-309 continued

- Requirement for city to reimburse for attending training (AOC typically covers)
- 1 year carryover
- Can count toward CLE hours
- AG Opinion – Constitutionality
- CLERK TRAINING
  - 3 hours per year
  - AOC approved courses
  - Reimbursed for attending training

T.C.A § 16-18-310

- Must be someone designated to serve as municipal court clerk
  - No restrictions on who may serve. It CAN BE a city employee who has other duties
  - Must provide clerk information to AOC
  - AG Opinion – How selected
- Clerk duties
  - Maintain accurate and detailed records of all financial transactions
  - Maintain records on disposed cases

T.C.A § 16-18-311

- Obtaining concurrent GS jurisdiction
  - Process makes it a virtual impossibility
    - City council must vote to seek jurisdiction
    - City notifies county by petition which must include a plan for provision of services and compliance with laws concerning GS operations
    - Feasibility study committee comprised of both city and county representatives
    - Committee determines need and impact and reports findings: GS needed in county, or city or not needed

T.C.A § 16-18-311 continued

- If need is determined, report to appropriate legislative committees and file legislation
  - Must be approved by Senate Judiciary and House Civil Justice Committees (normal part of the legislative process for public acts)
  - GS courts in general are often created by private act. See AG Opinion concerning compliance with legislative process

T.C.A § 16-18-312

- Interchange
  - Where a municipal court judge must be absent or has a conflict:
    - Another municipal judge may sit by interchange
    - A general sessions judge may sit by interchange
    - Enter an order designating interchange by case for a conflict, or by docket when absent
- NOTE – no other designated procedure for substitute judge

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QUESTIONS?

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ORIGINAL

RESOLUTION 2003-19

RESOLUTION REQUESTING THE LEGISLATURE TO DECLARE A MORATORIUM ON THE CREATION OF MUNICIPAL COURTS.

WHEREAS, there has been a proliferation of municipal courts created in the State of Tennessee; and

WHEREAS, this has had an adverse affect on the various Courts of General Sessions in the state; and

WHEREAS, the creation of additional courts creates a burden on taxpayers of the several counties by increasing costs of the judicial system; and

WHEREAS, recognizing these problems the State of Tennessee Judicial Council, has created a committee to study municipal courts; and

WHEREAS, it is advisable to know the results and recommendations of such a study by this statewide group of individuals who have knowledge of the judicial system in Tennessee.

NOW, THEREFORE, BE IT RESOLVED, by the county legislature body of Weakley County, Tennessee, assembled in regular session on this the 21st day of January 2003, in Dresden, Tennessee, that State Senator Roy Herron and State Representative Mark Maddox be requested to introduce and pass legislation to place a moratorium on the creation of municipal courts in Tennessee until the Tennessee Judicial Council makes a report on the advisability of such action.

BE IT FURTHER RESOLVED, that Senator Herron and Representative Maddox be requested not to pass legislation creating a municipal court in any city of Weakley County until the Tennessee Judicial Council makes a study and reports on the advisability of the creation of such a court.

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to Senator Roy Herron and Representative Mark Maddox.

Pursuant To The Rules Of The Commission, This Resolution Is Sponsored By The Following Members Of The Weakley County Board Of County Commissioners:

SPONSORED BY: _____

SPONSORED BY: _____

ACKNOWLEDGED AND APPROVED: _____
Chairman, Public Safety Committee

ACKNOWLEDGED AND APPROVED: _____
Chairman, Finance, Ways, & Means Committee

Motion made by Commissioner Salmon that the foregoing resolution be adopted:

Motion seconded by Commissioner Barner.

Upon being put to a roll call vote, Motion carried by a vote of 15 Yeas, 3 Nays,

0 Passed and 0 Absent.

APPROVED: _____
Ron Gifford, County Executive

ATTESTED: _____
Pat Scarbrough, County Clerk

This the 21st day of January 2003

CHAPTER NO. 113

HOUSE BILL NO. 572

By Representatives Fowlkes, Maddox

Substituted for: Senate Bill No. 785

By Senators Person

AN ACT to amend Tennessee Code Annotated, Title 6 and Title 16, Chapter 17, Part 1, relative to the creation of municipal courts.

WHEREAS, there has been a proliferation of municipal courts with concurrent general sessions court jurisdiction created in the State of Tennessee; and

WHEREAS, this has had an adverse effect on the various courts of general sessions in the State; and

WHEREAS, the creation of such additional courts creates a burden on taxpayers of the several counties by increasing costs of the judicial system; and

WHEREAS, recognizing these problems, the state of Tennessee Judicial Council has created a study committee to study the issue of municipal courts generally and make recommendations back to the Judicial Council; and

WHEREAS, it is advisable that the situation regarding the proliferation of municipal courts with concurrent general sessions court jurisdiction not worsen while this issue is being examined; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 6, Chapter 54, Part 1, is amended by adding the following as a new, appropriately designated section:

(a) Notwithstanding any other provision of the law to the contrary, the general assembly shall not, by general law, private act or amendment to a municipal charter, allow or provide for the creation of a municipal court with concurrent general sessions court jurisdiction until such time as the Tennessee judicial council, having heard the report of the committee it created to examine the issue of the proliferation of municipal courts in Tennessee, has made a recommendation to the general assembly and the general assembly has had until the adjournment of the first session of the 103rd General Assembly to consider the issue. During the second session of the 103rd General Assembly, and thereafter, any legislation on the subject of municipal courts with concurrent general sessions court jurisdiction may be considered and enacted.

(b) Further, there is a moratorium for the same time period on the creation of a municipal court with concurrent general sessions court jurisdiction by any municipality currently authorized to create such court and that has not done so prior to January 1, 2003.

(c) The judicial council must report by February 1st, 2004 to the General Assembly.

SECTION 2. Tennessee Code Annotated, Section 16-17-101, is amended by adding the following as a new, appropriately designated subsection:

(c) Notwithstanding the provisions of this section or any other provision of the law to the contrary, no municipality shall create a municipal court with concurrent general sessions court jurisdiction from the effective date of this act until such time as the Tennessee judicial council, having heard the report of the committee it created to examine the issue of the proliferation of municipal courts in Tennessee, has made a recommendation to the general assembly and the general assembly has had until the adjournment of the first session of the 103rd General Assembly to consider the issue and determine whether any legislative changes are necessary. During the second session of the 103rd General Assembly, and thereafter, any legislation on the subject of municipal courts with concurrent general sessions court jurisdiction may be considered and enacted.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 28, 2003

JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 12th day of May 2003

PHIL BREDESEN, GOVERNOR

16-18-301. Short title -- Construction of terms.

- **(a)** This part shall be known and may be cited as the "Municipal Court Reform Act of 2004."
- **(b)** As used in this part:
  - **(1)** "Any 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; and
  - **(2)** "Municipal court" includes the city, town, mayor's, recorder's or municipal court, or other similarly functioning court, however designated, for any city, town, municipality or metropolitan government, whether the court exists pursuant to general statute, local law, private act, charter provision, municipal law, municipal ordinance or other legal authorization.

History

Acts 2004, ch. 914, § 1.

Annotations - Hide

Notes

Compiler's Notes.

Former part 3, § 16-18-301 (Acts 1999, ch. 149, § 1), concerning administration of oaths by municipal court judges, was repealed and replaced by Acts 2004, ch. 914, § 2, effective March 1, 2005.

Acts 2004, ch. 914, § 8(b) provided that, notwithstanding any provision of § 16-17-101(c), or any other law to the contrary, from May 12, 2003, through March 1, 2005, concurrent general sessions jurisdiction shall not be newly conferred upon any existing or newly created municipal court.

16-18-302. Jurisdiction of municipal courts.

- **(a)** For any municipality that does not have, on May 5, 2009, a municipal court that was ordained and established by the general assembly, a municipal court is created to be presided over by a city judge. Notwithstanding any 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 the state criminal statute mirrored, duplicated or cross-referenced is a Class C misdemeanor and the maximum penalty prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars ($50.00).
- **(b)** Notwithstanding subdivision (a)(2) or any other 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 federal 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 relative to:
  - **(1)** The offense of operating a motor vehicle without a valid driver license, § 55-50-301;
  - **(2)** The Class B misdemeanor offense of reckless driving, § 55-10-205;
  - **(3)** The Class A misdemeanor offenses of underage purchasing, possession, transportation or consumption of alcoholic beverages, wine or beer, § 1-3-113(b);
  - **(4)** The Class A misdemeanor offenses of underage consumption, possession or transportation of beer or any intoxicating liquor, § 57-3-412(a)(3);
  - **(5)** The Class A misdemeanor offenses of underage purchasing or attempting to purchase any alcoholic beverage, § 57-3-412(a)(5);
  - **(6)** The Class A misdemeanor offenses of underage purchasing, attempting to purchase or possession of any alcoholic beverages, § 57-4-203(b)(2);
  - **(7)** The Class A misdemeanor offenses of underage purchasing or attempting to purchase beer or alcoholic beverages, § 57-5-301(d); or
  - **(8)** The Class A misdemeanor offenses of underage possession or transportation of beer,§ 57-5-301(e).
- **(c)** Notwithstanding any law to the contrary, in addition to jurisdiction authorized pursuant to subsection (a) or (b), a municipal court may also exercise concurrent jurisdiction with the court of general sessions if, and only if:
  - **(1)** The municipal court possessed and exercised such concurrent general sessions jurisdiction continuously on and before May 11, 2003; or
  - **(2)** After May 12, 2003, concurrent general sessions jurisdiction is duly conferred upon the municipal court in accordance with the procedures and requirements set forth in § 16-18-311.
- **(d)** Notwithstanding any law to the contrary, a municipal court may exercise no jurisdiction other than the jurisdiction authorized by this section; provided, however, that 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 § 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.

History

Acts 2004, ch. 914, § 2; 2006, ch. 1004, § 1; 2009, ch. 144, § 1.

Annotations - Hide

Notes

Compiler's Notes.

Former part 3, § 16-18-301 (Acts 1999, ch. 149, § 1), concerning administration of oaths by municipal court judges, was repealed and replaced by Acts 2004, ch. 914, § 2, effective March 1, 2005.

Acts 2004, ch. 914, § 8(b) provided that, notwithstanding any provision of § 16-17-101(c), or any other law to the contrary, from May 12, 2003, through March 1, 2005, concurrent general sessions jurisdiction shall not be newly conferred upon any existing or newly created municipal court.

For tables of population of Tennessee municipalities, see Volume 13 and its supplement.

Amendments.

The 2009 amendment added the first sentence of the introductory paragraph of (a).

Effective Dates.

Acts 2009, ch. 144, § 2. May 5, 2009.

Case Notes

1. Jurisdiction Established.

Fine imposed by Knoxville, Tenn., City Code § 17-210 is a civil fine for purposes of establishing the Knoxville municipal court's jurisdiction pursuant to T.C.A. § 16-18-302, and the fine was a civil fine for procedural and appellate issues; however, there was no remedial purpose to the fine imposed by § 17-210, and because the fine imposed was intended to be punitive and a deterrent, constitutional protections were triggered. City of Knoxville v. Brown, 284 S.W.3d 330, 2008 Tenn. App. LEXIS 436 (Tenn. Ct. App. July 30, 2008), rehearing denied, -- S.W.3d --, 2008 Tenn. App. LEXIS 813 (Tenn. Ct. App. Aug. 22, 2008), appeal denied, -- S.W.3d --, 2009 Tenn. LEXIS 193 (Tenn. Feb. 17, 2009).

Opinion Notes

Attorney General Opinions.

Whether a private or public act may constitutionally authorize a city to establish an environmental court with injunctive powers and power to imprison, OAG 07-147 (10/19/07).

16-18-303. Administration of oaths.

Notwithstanding any law to the contrary, every popularly elected or appointed judge of a municipal court is authorized to administer oaths.

16-18-304. Court costs as prescribed by municipal law or ordinance -- Allocation of fees -- Training and continuing education for judges and clerks -- Fees when exercising concurrent general sessions court jurisdiction.

- **(a)** Notwithstanding any law to the contrary, municipal court costs shall be set and collected in the amount prescribed by municipal law or ordinance. From such amount, one dollar ($1.00) shall be forwarded by the municipal court clerk to the state treasurer for deposit and shall be credited to the account for the administrative office of the courts (AOC) for the sole purpose of defraying the administrative director's expenses in providing training and continuing education courses for municipal court judges and municipal court clerks. The AOC shall allocate fifty percent (50%) of such funds exclusively for the purpose of providing training and continuing education for municipal court clerks. The AOC is authorized to contract with qualified persons, entities or organizations in order to provide required training or continuing education for municipal court judges. The AOC shall contract with the municipal technical advisory service of the University of Tennessee institute for public service in order to provide required training or continuing education for municipal court clerks and may contract with other qualified persons, entities or organizations to provide additional or alternate training to municipal court clerks.
- **(b)** Notwithstanding any law to the contrary, to the extent that a municipal court is exercising its duly conferred, concurrent general sessions court jurisdiction in a given case, this section does not apply and costs in such case shall be assessed, collected and distributed in the same manner as such costs are assessed, collected and distributed in the court of general sessions.

History

Acts 2004, ch. 914, § 2.

16-18-305. Levy of state privilege tax on litigation -- Collection -- Liability for failure to collect or disburse tax -- Tax when exercising concurrent general sessions court jurisdiction.

- **(a)** Notwithstanding § 67-4-602, or any other law to the contrary, there is levied a state privilege tax on litigation of thirteen dollars and seventy-five cents ($13.75) in all cases in a municipal court. All taxes levied pursuant to this subsection (a) shall be collected in accordance with § 67-4-603 and shall be paid into the state treasury and allocated in accordance with § 67-4-606.
- **(b)** There is also levied a state privilege tax on litigation of one dollar ($1.00) for each and every violation of any municipal law or ordinance governing use of a public parking space. The tax is due and shall be collected even if the offender does not appear before the court. Notwithstanding this section or any other law to the contrary, the only litigation privilege tax collected for a violation of any municipal law or ordinance governing the use of a public parking space shall be the one dollar ($1.00) litigation tax levied by this subsection (b). The revenue generated by the privilege tax levied by this subsection (b) shall be apportioned in accordance with § 67-4-606.
- **(c)** Notwithstanding § 67-4-602, or any other law to the contrary, no other state privilege tax on litigation shall be levied or collected with respect to litigation in a municipal court; provided, however, that this section shall not be construed to repeal existing authority for the levy of a municipal litigation tax, nor shall this section be construed to grant new authority for the levy of a municipal litigation tax.
- **(d)** Any state privilege tax imposed pursuant to this section that the clerk of the court fails to collect and pay over to the department of revenue shall be a debt of the clerk. Any clerk of the court failing or refusing to collect and pay over to the department state litigation taxes imposed pursuant to this section shall be liable for the taxes and the clerk's official bondsman shall also be liable for the taxes, and the commissioner or the commissioner's delegate may collect the amount of the tax from the clerk or the clerk's official bondsman pursuant to title 67, chapter 1, part 14.
- **(e)** Notwithstanding any law to the contrary, to the extent that a municipal court is exercising its duly conferred concurrent general sessions jurisdiction in a given case, this section does not apply and litigation taxes in the case shall be levied and collected in the same manner as taxes are levied and collected in the general sessions court.
- **(f)** For receiving and paying over all privilege taxes on litigation, the clerk of a municipal court is entitled to a commission of two percent (2%).

History

Acts 2004, ch. 914, § 2; 2005, ch. 429, §§ 20, 27.

Annotations - Hide

Notes

Compiler's Notes.

Former part 3, § 16-18-301 (Acts 1999, ch. 149, § 1), concerning administration of oaths by municipal court judges, was repealed and replaced by Acts 2004, ch. 914, § 2, effective March 1, 2005.

Acts 2004, ch. 914, § 8(b) provided that notwithstanding any provision of § 16-17-101(c), or any other law to the contrary, from May 12, 2003, through March 1, 2005, concurrent general sessions jurisdiction shall not be newly conferred upon any existing or newly created municipal court.

Opinion Notes

Attorney General Opinions.

For collecting and paying over litigation taxes on cases heard under the municipal court's concurrent general sessions jurisdiction, a municipal court clerk is entitled to receive a commission of 2%, OAG 06-147 (9/27/06).

16-18-306. Fine for contempt of municipal court.

Notwithstanding any law to the contrary, contempt of a municipal court shall be punishable by fine in the amount of fifty dollars ($50.00), or such lesser amount as may be imposed in the judge's discretion.

History

Acts 2004, ch. 914, § 2.

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

September 27, 2006

Opinion No. 06-147

Municipal Court Clerks' Commission on Litigation Taxes for Cases Heard Under Concurrent General Sessions Jurisdiction

QUESTION

Which clerk's commission provision, Tenn. Code Ann. § 16-18-305(f) or Tenn. Code Ann. § 8-21-401(h), applies to a municipal court clerk when collecting litigation taxes on cases heard under the municipal court's concurrent general sessions jurisdiction?

OPINION

Municipal court clerks are entitled to a commission of two percent for receiving and paying over privilege taxes on litigation pursuant to Tenn. Code Ann. § 16-18-305(f).

ANALYSIS

The instant question is whether the percentage of litigation taxes that a municipal court clerk is entitled to retain for receiving and paying over litigation taxes when the municipal court is exercising its concurrent general sessions jurisdiction is governed by Tenn. Code Ann. § 16-18-305(f) or Tenn. Code Ann. § 8-21-401(h). The answer hinges on the interpretation of subsections (e) and (f) of Tenn. Code Ann. § 16-18-305. The percentage of litigation taxes that a municipal court is entitled to retain is set forth in § 16-18-305(f), which provides for a 2% commission. However, if § 16-18-305(e) creates an exception to § 16-8-305(f) pursuant to which a municipal court clerk is instead entitled to receive the same commission as a general sessions clerk of court, then § 8-21-401(h) governs. If § 8-21-401(h) controls, then a municipal court clerk is entitled to a higher commission than the 2% afforded by § 16-18-305(e).[1]

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[1] Tenn. Code Ann. 8-21-401(h) provides as follows:

(h) CLERK'S COMMISSIONS. (1) Except as provided in subdivisions (h)(2) and (3), for receiving and paying over all taxes, fines, forfeitures, fees and amercements, the clerk of the court is entitled to a five percent (5%) commission.

(2) In counties having a population of more than seven hundred thousand (700,000), according to the 1990 federal census or any subsequent federal census, the commission for receiving and paying over all taxes, fines, forfeitures, fees and amercements, shall be ten percent (10%), except as provided in subdivision (h)(3).

In considering the proper interpretation that should be given to Tenn. Code Ann. §§ 16-18-305(e) and (f), it is helpful to consider § 16-18-305 in its entirety:

> (a) Notwithstanding the provisions of § 67-4-602, or any other law to the contrary, there is levied a state privilege tax on litigation of thirteen dollars and seventy-five cents ($13.75) in all cases in a municipal court. All taxes levied pursuant to this subsection (a) shall be collected in accordance with the provisions of § 67-4-603 and shall be paid into the state treasury and allocated in accordance with the provisions of § 67-4-606.
>
> (b) There is also levied a state privilege tax on litigation of one dollar ($1.00) for each and every violation of any municipal law or ordinance governing use of a public parking space. Such tax is due and shall be collected even if the offender does not appear before the court. Notwithstanding any provision of this section or any other law to the contrary, the only litigation privilege tax collected for a violation of any municipal law or ordinance governing the use of a public parking space shall be the one dollar ($1.00) litigation tax levied by this subsection (b). The revenue generated by the privilege tax levied by this subsection (b) shall be apportioned in accordance with the provisions of § 67-4-606.
>
> (c) Notwithstanding the provisions of § 67-4-602, or any other law to the contrary, no other state privilege tax on litigation shall be levied or collected with respect to litigation in a municipal court; provided, however, that the provisions of this section shall not be construed to repeal existing authority for the levy of a municipal litigation tax, nor shall this section be construed to grant new authority for the levy of a municipal litigation tax.
>
> (d) Any state privilege tax imposed pursuant to this section which the clerk of the court fails to collect and pay over to the department of revenue shall be a debt of the clerk. Any clerk of the court failing or refusing to collect and pay over to the department state litigation taxes imposed pursuant to this section shall be liable therefor and the clerk's official bondsman shall also be liable therefor, and the commissioner or the commissioner's delegate may collect the amount of the tax from the clerk or the clerk's official bondsman pursuant to title 67, chapter 1, part 14.

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(3) For receiving and paying over all privilege taxes on litigation, the clerk of the court is entitled to a six and seventy-five hundredths percent (6.75%) commission. The total amount of commissions receivable by the clerk of the court during any fiscal year shall not be less than the amount received by such clerk during the fiscal year ending June 30, 2005; provided, that if the statewide amount of litigation tax collected during such fiscal year is less than the amount collected during the fiscal year ending June 30, 2005, then the total amount of commissions receivable by the clerk of the court for that fiscal year shall be reduced by a percentage equal to the percentage reduction in statewide litigation tax collections for that fiscal year.

> (e) Notwithstanding any provision of law to the contrary, to the extent that a municipal court is exercising its duly conferred concurrent general sessions jurisdiction in a given case, the provisions of this section do not apply and litigation taxes in such case shall be levied and collected in the same manner as such taxes are levied and collected in the general sessions court.
>
> (f) For receiving and paying over all privilege taxes on litigation, the clerk of a municipal court is entitled to a commission of two percent (2%).

To answer the question presented, two critical components of § 16-18-305(e) require a more in-depth analysis. As previously stated, § 16-18-305(e) provides: "[n]otwithstanding any provision of law to the contrary, to the extent that a municipal court is exercising its duly conferred concurrent general sessions jurisdiction in a given case, the provisions of this section do not apply and litigation taxes in such case shall be levied and collected in the same manner as such taxes are levied and collected in the general sessions court." One critical component is the statement "and litigation taxes in such case shall be levied and collected in the same manner as such taxes are levied and collected in the general sessions court." A second critical component is the phrase "the provisions of this section do not apply . . . ."

The statement "and litigation taxes in such case shall be levied and collected in the same manner as such taxes are levied and collected in the general sessions court" defines the scope of what other provisions of the section (§ 16-18-305) do not apply when the municipal court is exercising its general sessions jurisdiction. That litigation taxes "shall be levied and collected in the same manner as such taxes are levied and collected in the general sessions court" does not mean that the same commission would be received by the municipal clerk of court as the general sessions clerk of court for receiving and paying over litigation taxes. Levying taxes in the same manner as a general sessions court results in the same tax being imposed. Thus, the amount the parties actually owe in taxes will be identical whether the parties are proceeding before a general sessions court or a municipal court exercising its concurrent general sessions jurisdiction. Collecting taxes in the same manner as a general sessions court means that the taxes imposed will actually be gathered using the same procedures as a general sessions court. Neither levying nor collecting litigation taxes in the same manner requires that the same commission be received by a clerk for collecting and paying over the levied taxes.

This understanding of the terms "levied" and "collected" is consistent with their usage throughout § 16-18-305. For example, within § 16-18-305, the term collection does not include paying into the state treasury or paying to the Department of Revenue, allocating litigation taxes, or apportioning litigation taxes. Tenn. Code Ann. §§ 16-18-305(a), (b), (d). This narrows the potential meaning of the term collection. Similarly, in another section of the Municipal Court Reform Act of 2004,[2] the legislature refers to costs being "assessed, collected and distributed in the same manner as such costs are assessed, collected and distributed in the court of general sessions."

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[2] Pursuant to Tenn. Code Ann. § 16-18-301(a), the title of this part of the Code, which is codified as § 16-18-301 through § 16-18-311, is identified as the Municipal Court Reform Act of 2004.

Tenn. Code Ann. § 16-18-304 (b). That the legislature seemingly viewed distribution as distinct from collection distribution in the previous section of the same Act further bolsters the view that the term "collection" in § 16-18-305(e) is not so expansive as to include retaining the same commission for receiving and paying over litigation taxes. Simply stated, the requirement that "litigation taxes in such case shall be levied and collected in the same manner as such taxes are levied and collected in the general sessions court" does not create an exception to the commission percentage established by § 16-18-305(f).

In addition to the terms "levying" and "collecting" being too narrow to include the commission percentage retained under § 16-18-305 for collecting the levied taxes, the chronology of amendments to § 8-21-401 and § 16-18-305 also supports the conclusion that § 16-18-305(e) does not create an exception to § 16-18-305(f). The commission provision (§ 16-18-305(f)) was an amendment enacted approximately one year after the passage of the other section provisions including § 16-18-305(e). *See* 2004 Tenn. Pub. Ch. 914; 2005 Tenn. Pub. Ch. 429. Thus, when § 16-18-305(e) was originally enacted, there was no § 16-18-305(f) from which to create an exception. The adoption of § 16-18-305(f) essentially amounted to moving former § 8-21-401(a)(6)(A)(vi), which authorized city clerks to charge for their services "for receiving and paying over all privilege taxes on litigation, two percent (2%) on the dollar," to a chapter of the Code directly related to municipal courts. This predecessor commission provision was removed from § 8-21-401 by the same public act that added § 16-18-305(f). 2005 Tenn. Pub. Ch. 429. Section 16-18-305(e) certainly did not create an exception to the predecessor commission provision at § 8-21-401(a)(6)(A)(vi). There is little in the chronology of the amendments to suggest that the legislature intended in enacting § 16-18-305(e) to create an exception to the commission established by § 16-18-305(f), which was not even originally part of the section. Quite to the contrary, the amendment chronology further bolsters the view that § 16-18-305(e) does not create an exception to § 16-18-305(f).

The plain language of § 16-18-305(f) also suggests that this provision sets the only commission amount that a municipal clerk is entitled to receive. "For receiving and paying over ***all*** privilege taxes on litigation, the clerk of a municipal court is entitled to a commission of two percent (2%)." Tenn. Code Ann. § 16-18- 305(f) (emphasis added). Not all taxes are remitted to the Department of the Revenue; rather, the commission is subtracted from what is remitted. *See* Tennessee Department of Revenue Litigation Tax Return PRV 401. Thus, the use of "all" appears to refer to the commission on all privilege taxes on litigation, which would include litigation taxes in cases where the municipal court is exercising its general sessions jurisdiction.

With regard to the other critical component, "the provisions of this section do not apply . . .[,]" this phrase is insufficient to make § 8-21-401(h), rather than § 16-18-305(f), the applicable commission amount. Section 8-21-401(h) is not a default provision for municipal court clerk commissions that would automatically apply if the commission provided for in § 16-18-305(f) were rendered inapplicable by a municipal court exercising its general sessions jurisdiction. Section 8-21-401(h) establishes a clerk commission percentage that is higher than the 2% afforded by § 16-18-305(f). This higher percentage commission provision is set forth in § 8-21-401, which establishes fees in circuit and chancery courts, general session courts, juvenile courts, and criminal

cases in courts of record, which do not include municipal courts.[3] Municipal court clerks are not among the clerks of court entitled to the higher commission percentage under § 8-21-401(h). A separate statutory provision, § 16-18-305(f), unambiguously sets forth the general rule as to the commission that municipal court clerks are entitled to receive. Furthermore, fees for municipal courts are not referenced in § 8-21-401, and lists of "all courts" affected by the provisions of the section do not include municipal courts. *See e.g.*, § 8-21-401(i) (listing "general sessions, juvenile, probate, circuit or chancery" but not municipal courts). Although § 8-21-401(h)(1) establishes a commission percentage for clerks on taxes on litigation, it does not apply to municipal clerks' commissions. Accordingly, the first critical component of § 16-18-305(e), "the provisions of this section do not apply . . .[,]" is insufficient to convert § 8-21-401(h) into the applicable commission percentage.

Simply stated, § 16-18-305(e) does not create an exception to § 16-18-305(f). Rather, for collecting and paying over litigation taxes on cases heard under the municipal court's concurrent general sessions jurisdiction, a municipal court clerk is entitled to receive a commission of 2% under § 16-18-305(f).

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[3] "It is generally recognized in the state of Tennessee that general sessions courts and municipal courts are not courts of record." Tenn. Op. Atty. Gen. No. 03-043 (April 15, 2003).

16-18-307. Appeal of municipal court judgment -- Bond.

Notwithstanding any law to the contrary, any person dissatisfied with the judgment of a municipal court, in any case or cases heard and determined by the court acting pursuant to § 16-18-302(a), may, within ten (10) days thereafter, Sundays exclusive, appeal to the circuit court of the county, upon giving bond in the amount of two hundred fifty dollars ($250) for the person's appearance and the faithful prosecution of the appeal. As used in this section, person includes, but is not limited to, a natural person, corporation, business entity or the municipality.

History

Acts 2004, ch. 914, § 2.

16-18-308. Concurrent holding of any other office or employment.

- **(a)** Notwithstanding any law to the contrary, a judge of a municipal court may not concurrently hold any other office or employment with the municipality. This section does not apply to any municipal official or employee who, on March 1, 2005, concurrently holds office as judge of the municipal court; provided, however, that if the official or employee either discontinues service as a municipal official or employee or discontinues service as judge of the municipal court, then the exemption granted by this section no longer applies.
- **(b)** Notwithstanding the provisions of subsection (a) to the contrary, if a municipal charter provides that the person who serves as judge of the municipal court shall also serve as the recorder for the municipality, then the person may concurrently hold both offices.

16-18-309. Training and continuing education.

- **(a)**
  - **(1)** Except as otherwise provided in subdivision (a)(4), each calendar year, the judge of each municipal court must attend at least three (3) hours of training or continuing education courses provided by, through or with approval of the administrative office of the courts (AOC) and must certify attendance to the administrative director. The three (3) hours of training or continuing education required by this subsection (a) shall consist of material specifically designed for municipal court judges and for training the judges concerning the issues, procedures and new developments relevant to the judges. General legal training or continuing legal education shall not be sufficient to satisfy the requirement. If a municipal court judge fails to timely comply with such requirements, then the judge shall be extended a six (6) month grace period in order to achieve compliance; provided, however, that training obtained to satisfy requirements for the preceding calendar year shall not also be used to satisfy requirements for the current calendar year. The failure of the judge to achieve compliance prior to conclusion of the six (6) month grace period shall render all subsequent judgments of the judge null and void and of

no effect, until such time as the requirements are met. The training and continuing education courses may be offered by the AOC in conjunction with the annual meeting of the Tennessee municipal judges' conference held in accordance with § 17-3-301(c).

- **(2)** Each municipal judge shall be compensated and reimbursed for attending required training or continuing education in accordance with the travel policy of the municipality.
- **(3)** If a municipal court judge attends more than three (3) hours of qualifying training or continuing education in a calendar year, the hours in excess of three (3) hours may be carried over for one (1) calendar year.
- **(4)** If the judge of a municipal court is authorized to practice law in the courts of this state, and if the judge satisfies the annual continuing legal education requirements for practicing attorneys and three (3) of the hours completed in satisfying the continuing legal education requirements are training or continuing education courses required by subdivision (a)(1), then the judge shall not be required to complete three (3) additional hours of training or continuing education courses required by subdivision (a)(1). By March 1 following the year for which the requirements are met, the judge shall submit to the administrative office of the courts a copy of the statement of compliance issued by the commission on continuing legal education verifying the number of continuing legal education hours completed for such year.

- **(b)**
  - **(1)** Each calendar year, the clerk of each municipal court must attend at least three (3) hours of training or continuing education courses provided by, through or with approval of the AOC and must certify attendance to the administrative director; provided, however, that such attendance requirements do not apply to any municipal clerk who is required to be certified pursuant to § 6-54-120.
  - **(2)** Each municipal court clerk shall be compensated and reimbursed for attending required training and continuing education in accordance with the travel policy of the municipality.

History

Acts 2004, ch. 914, § 2; 2006, ch. 1004, §§ 3, 4; 2009, ch. 505, §§ 2, 3.

Annotations - Hide

Notes

Compiler's Notes.

Former part 3, § 16-18-301 (Acts 1999, ch. 149, § 1), concerning administration of oaths by municipal court judges, was repealed and replaced by Acts 2004, ch. 914, § 2, effective March 1, 2005.

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August 22, 2005

Opinion No. 05-127

Education Requirement for City Judges

QUESTIONS

Under Tenn. Code Ann. § 16-18-309(a)(1), the judge of each municipal court must attend at least three hours of training or education provided by, through, or with the approval of the Administrative Office of the Courts. Failure to satisfy this requirement within six months of the next calendar year renders all subsequent judgments of the judge null and void until such time as the requirements are met.

1. Does this provision unconstitutionally modify the existing term of office for incumbent city judges?

2. Does this provision unconstitutionally encroach on the power of the Tennessee Supreme Court to set the standards for attorneys and judges?

3. By providing that judgments by a city judge who has failed to meet the education requirements are null and void, does the statute represent an unconstitutional exercise of judicial power by the General Assembly?

OPINIONS

1. No, the legislature may constitutionally impose additional duties on inferior court judges during their term of office.

2. No, we think a court would conclude that this measure represents a legitimate exercise of the legislative power.

3. No, we think a court would conclude that this measure is a legitimate exercise of the General Assembly's authority to create city courts and determine their jurisdiction.

ANALYSIS

1. Education Requirement: Constitutionality of Application to Incumbent City Judges

This opinion concerns the constitutionality of Tenn. Code Ann. § 16-18-309(a)(1), imposing education requirements on city judges. The statute provides:

> Each calendar year, the judge of each municipal court must attend at least three (3) hours of training or continuing education courses provided by, through or with approval of the administrative office of the courts and must certify such attendance to the administrative director. If a municipal judge fails to timely comply with such requirements, then the judge shall be extended a six (6) month grace period in order to achieve compliance; provided, however, that training obtained to satisfy requirements for the preceding calendar year shall not also be used to satisfy requirements for the current calendar year. The failure of the judge to achieve compliance prior to conclusion of the six (6) month grace period shall render all subsequent judgments of the judge null and void, and of no effect, until such time as the requirements are met. Such training and continuing education courses may be offered by the administrative office of the courts in conjunction with the annual meeting of the Tennessee municipal judges conference held in accordance with the provisions of § 17-3-301(c).

This requirement applies to all city judges, whether or not they are attorneys.

The first question is whether the education requirement unconstitutionally modifies the existing term of office for incumbent city judges. The Tennessee Constitution clearly authorizes the General Assembly to create city courts. Article VI, Section 1, of the Tennessee Constitution provides in relevant part:

> 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.

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). Depending on the jurisdiction it exercises under the act that created it, therefore, a city court may be an inferior court or a corporation court under Article VI, Section 1, of the Tennessee Constitution.

Clearly, the General Assembly may prescribe qualifications for the office of judge, so long as they do not conflict with constitutional requirements and are reasonable. *Perry v. Lawrence*

County Election Commission, 411 S.W.2d 538 (Tenn. 1967), *cert denied*, 389 U.S. 821, 88 S.Ct. 44, 19 L.Ed.2d 73 (1967). The question then becomes whether the General Assembly may constitutionally impose these educational requirements on incumbent judges. Judges of inferior courts must be popularly elected for eight-year terms. Tenn. Const. Art. VI, § 4; *Waters v. State ex. rel Schmutzer,* 583 S.W.2d 756 (Tenn. 1979). The educational requirement, however, does not change the judge's term of office; it adds to his or her duties during the term.

Under Article VI, Section 7, of the Tennessee Constitution, the salary of the judge of an inferior court may not be increased or diminished during the term for which the judge was elected to office. This provision, however, does not prevent the General Assembly from adding to the duties of an incumbent judge. *Boone v. Torrance*, 63 Tenn. App. 224, 470 S.W.2d 356 (1971), *p.t.a. denied* (1971). There, the General Sessions judges in Davidson County sued the metropolitan government director of finance for an increase in salary in accordance with the provisions of a 1969 Act of the General Assembly and the Metropolitan Charter. The Court of Appeals found that the 1969 Act should not be construed as increasing their salary during their terms even though it increased their jurisdiction and responsibilities. The Court stated:

> If it can be plausibly argued that a judge's salary should be correspondingly increased each and every time his jurisdiction and responsibility are increased, then it could also be plausibly argued that whenever a judge's jurisdiction and responsibility are decreased, then his salary could be correspondingly decreased. Such reasoning violates both the letter and spirit of Article 6, Section 7 of the Constitution.

Id., 63 Tenn. App. at 249. Under the reasoning in *Boone,* we think a court would conclude that the General Assembly may constitutionally require incumbent city judges to comply with an additional educational requirement.

2. Separation of Powers

The next question is whether the education requirement violates the Separation of Powers Clause because it regulates the conduct of judges and attorneys. The Tennessee Constitution, Article II, Section 1, expressly states that "[t]he powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial," and Article II, Section 2, provides that "[n]o person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in cases herein directed or permitted." The Constitution does not define in express terms what are legislative, executive, or judicial powers, but the Tennessee Supreme Court has said that the legislative power is to make, order, and repeal laws; the executive power is to administer and enforce laws; and the judicial power is to interpret and apply laws. *Underwood v. State,* 529 S.W.2d 45, 47 (Tenn. 1975); *Richardson v. Young,* 122 Tenn. 471, 493, 125 S.W. 664 (1909).

The Tennessee Supreme Court has observed that the three branches of government are interdependent. *State v. Mallard*, 40 S.W.3d 473, 481 (Tenn. 2001). There, the Court found that an evidentiary statute unconstitutionally encroached on the authority of the judiciary to control court practice and procedure. But the Court noted:

> Despite the clear expression of the separation of powers doctrine in Article II and elsewhere, however, "it is impossible to preserve perfectly the 'theoretical lines of demarcation between the executive, legislative and judicial branches of government.' Indeed there is, by necessity, a certain amount of overlap because the three branches of government are interdependent."

Id., quoting *Petition of Burson,* 909 S.W.2d 768, 774 (Tenn. 1995). *See also Anderson County Quarterly Court v. Judges of the 28th Judicial Circuit,* 579 S.W.2d 875, 878 (Tenn. Ct. App. 1978):

> [U]nless . . . [the three branches of government] be so far connected and blended as to give each a constitutional control over the others, the degree of separation which the maxim requires, can never in practice be duly maintained.

citing The Federalist No. 48 (J. Madison).

The Tennessee Supreme Court has previously recognized that areas exist in which both the legislative and judicial departments have an interest. *See, e.g.,Petition for Rule of Court Activating, Integrating and Unifying the State Bar of Tennessee,* 199 Tenn. 78, 282 S.W.2d 782 (1955) (both the legislative and judicial departments have an interest in prescribing the qualifications of attorneys; the legislature, under its police powers. could prescribe reasonable conditions and qualifications to which the Supreme Court could add). Similarly, "[a] legislative enactment which does not frustrate or interfere with the adjudicative function of the courts does not constitute an impermissible encroachment upon the judicial branch of government." *Underwood,* 529 S.W.2d at 47 (statute permitting one who has successfully defended a criminal charge to have all public records of the case expunged upon filing a petition is not a violation of the separation of powers doctrine). Based on this reasoning, this Office has concluded that the General Assembly may constitutionally prohibit all elected officials, including judges, from accepting honoraria for any activity performed in that individual's official capacity. Op. Tenn. Att'y Gen. 02-004 (January 2, 2002). The Office concluded that this measure is a legitimate exercise of the legislature's police powers in preserving the integrity of, and public confidence in, all elected officials, and does not interfere with the adjudicative functions of judges.

Similarly, the General Assembly is charged with the constitutional authority to create courts and has the authority to establish judicial qualifications. Both the legislative and the judicial branches have an interest in ensuring a minimal level of training among city court judges, at least some of whom are not required to be attorneys. Nor does this measure interfere with the adjudicative function of the courts. Of course, where the Tennessee Supreme Court imposes a

higher standard of conduct, that rule controls over a statute prescribing a lower standard. *State v. Lipford*, 67 S.W. 3d 79 (Tenn. Ct. Crim. App. 2001). But the statute does not conflict with any existing rule of the Tennessee Supreme Court regarding educational requirements for all city court judges. Supreme Court Rule 21 prescribing continuing legal education requirements for attorneys does not apply to city court judges who are not attorneys. We think a court would conclude that the General Assembly may, by statute, prescribe continuing education requirements applicable to all judges of city courts. The measure ensures a minimal level of uniform training and practice among these judges across the State. For these reasons, the educational requirement does not represent an illegal exercise of judicial authority by the General Assembly.

3. Effect of Failure to Meet Continuing Education Requirements

The last question concerns the consequences under the statute for failing to meet the educational requirements. Tenn. Code Ann. § 16-18-309(a)(1) provides in relevant part:

> If a municipal judge fails to timely comply with such requirements, then the judge shall be extended a six (6) month grace period in order to achieve compliance; provided, however, that training obtained to satisfy requirements for the preceding calendar year shall not also be used to satisfy requirements for the current calendar year. *The failure of the judge to achieve compliance prior to conclusion of the six (6) month grace period shall render all subsequent judgments of the judge null and void, and of no effect, until such time as the requirements are met.*

(Emphasis added). Thus, under the statute, a city court judge must meet the educational requirement each calendar year. A judge has six months after the end of the calendar year to meet this requirement. If a judge has not met this requirement by the end of the six-month grace period, the judge's subsequent judgments are null and void until he or she satisfies the requirement. The question is whether this provision violates the separation of powers clause because it interferes with the adjudicative function of the judiciary.

As discussed above, the Tennessee Supreme Court concluded that the General Assembly may not constitutionally pass a statute that unduly interferes with the power of the judiciary to weigh evidence and interpret laws. *State v. Mallard*, 40 S.W.3d 473, 481 (Tenn. 2001). Thus, the Court of Criminal Appeals cited a considerable line of Tennessee cases invalidating statutes that directed how pending cases should be dealt with, particular cases addressed, or particular statutes construed in *State v. Fleming,* 21 S.W.3d 203, 209-210 (Tenn. Ct. Crim. App. 1999), *p.t.a. denied* (2000). But the statute on educational requirements does not attempt to interfere with the manner in which city judges weigh evidence and hear and decide cases. Instead, it in effect suspends the jurisdiction of the court if the judge fails to meet continuing education requirements. We think a court would conclude that this measure is a legitimate exercise of the General Assembly's authority to create city courts and determine their jurisdiction. For this reason, this provision does not unconstitutionally encroach upon the judicial power.

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Acts 2004, ch. 914, § 8(b) provided that, notwithstanding any provision of § 16-17-101(c), or any other law to the contrary, from May 12, 2003, through March 1, 2005, concurrent general sessions jurisdiction shall not be newly conferred upon any existing or newly created municipal court.

Amendments.

The 2009 amendment added "Except as otherwise provided in subdivision (a)(4)," to the beginning of the first sentence of (a)(1); and added (a)(4).

Effective Dates.

Acts 2009, ch. 505, § 4. June 25, 2009.

Opinion Notes

Attorney General Opinions.

Constitutionality of education requirement for city judges under T.C.A.§ 16-18-309(a)(1), OAG 05-127 (8/22/05).

16-18-310. Clerk of the municipal court.

- **(a)** Notwithstanding any law to the contrary, at all times there shall be a person elected, appointed or otherwise designated to serve as clerk of the municipal court. Immediately upon each such election, appointment or designation, the chief administrative officer of the municipality shall promptly certify the results of the election, appointment or designation to the administrative office of the courts and shall supply such additional information concerning the clerk as required by the administrative director.
- **(b)** Notwithstanding any law to the contrary, the clerk of the municipal court shall maintain an accurate and detailed record and summary report of all financial transactions and affairs of the court. The record and report shall accurately reflect all disposed cases, assessments, collections, suspensions, waivers and transmittals of litigation taxes, court costs, forfeitures, fines, fees and any other receipts and disbursements. An audit of the financial records and transactions of the municipal court shall be made each year as part of any audit performed pursuant to § 6-56-101 or § 6-56-105.

History

Acts 2004, ch. 914, § 2.

Annotations - Hide

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December 11, 2008

Opinion No. 08-183

City Council Appointing Municipal Court Clerk

QUESTION

Does Tenn. Code Ann. § 16-18-310(a) authorize a city council to appoint a city court clerk?

OPINION

Tenn. Code Ann. § 16-18-310(a), by its terms, requires each municipal court to have a clerk, but it does not specify whether that clerk must be elected by city voters, appointed by the governing body of the city, or otherwise designated. The method by which the city court clerk must be chosen depends, first, on the statute or private act under which that court was created. If the statute or private act requires the city court clerk to be popularly elected, then the city council may not appoint or designate the city court clerk. Under Tenn. Code Ann. § 16-18-207, a city council may provide, by ordinance, for the popular election of a city court clerk where it has also provided for the popular election of the city court judge. The clerk of a city court exercising concurrent general sessions jurisdiction must be popularly elected.

ANALYSIS

This opinion concerns the interpretation of Tenn. Code Ann. § 16-18-310(a), which provides:

> (a) Notwithstanding any provision of law to the contrary, at all times there shall be a person elected, appointed or otherwise designated to serve as clerk of the municipal court. Immediately upon each such election, appointment or designation, the chief administrative officer of the municipality shall promptly certify the results of such election, appointment or designation to the administrative office of the courts and shall supply such additional information, concerning the clerk, as shall be required by the administrative director.

The request asks whether this statute authorizes a city council to appoint or designate a municipal court clerk. Tenn. Code Ann. § 16-18-310(a), by its terms, requires each municipal court to have a clerk. It does not specify whether that clerk must be elected by city voters, appointed by the governing body of the city, or designated in some other way. The method by which the city court clerk must be chosen depends, first, on the statute or private act under which that court was created. If the statute or private act requires the city court clerk to be popularly elected, then the city council may not appoint or designate the city court clerk. Similarly, if the statute or private act authorizes the city council to appoint the city court clerk, and the city court does not exercise concurrent general sessions jurisdiction, then the city council may appoint the clerk in the manner described in the statute or private act. Under Tenn. Code Ann. § 16-18-201, a city may, by ordinance, provide for the election of a city judge. Under Tenn. Code Ann. § 16-18-207, the city council may, by ordinance, require the city court clerk serving the popularly elected city judge to be elected by the voters of the city or town for a term of four years. The elected clerk may be an alternative or in addition to the court clerk provided in the charter. A city court that exercises concurrent general sessions jurisdiction is an "inferior court" within the meaning of Article VI. *See, e.g., State by South Carthage v. Barrett,* 840 S.W.2d 895 (Tenn. 1992). Under Article VI, Section 13, of the Tennessee Constitution, the clerk of an inferior court must be popularly elected. *Shelby County Election Commission v. Turner,* 755 S.W.2d 774 (Tenn. 1988) (juvenile court clerk).

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Notes

Compiler's Notes.

Former part 3, § 16-18-301 (Acts 1999, ch. 149, § 1), concerning administration of oaths by municipal court judges, was repealed and replaced by Acts 2004, ch. 914, § 2, effective March 1, 2005.

Acts 2004, ch. 914, § 8(b) provided that, notwithstanding any provision of § 16-17-101(c), or any other law to the contrary, from May 12, 2003, through March 1, 2005, concurrent general sessions jurisdiction shall not be newly conferred upon any existing or newly created municipal court.

Opinion Notes

Attorney General Opinions.

The method by which the city court clerk must be chosen depends on the statute or private act under which that court was created, OAG 08-183 (12/11/08).

16-18-311. Compliance with the procedures and requirements for concurrent general sessions jurisdiction -- Feasibility study committee to determine need of additional court to exercise general sessions jurisdiction.

- **(a)** Notwithstanding any law to the contrary, on or after May 12, 2003, concurrent general sessions jurisdiction shall be newly conferred upon an existing or newly created municipal court only in compliance with the procedures and requirements set forth in this section.
  - **(1)** A majority of the total membership of the municipal legislative body must vote in favor of seeking concurrent general sessions jurisdiction for an existing or newly created municipal court.
  - **(2)** The municipal legislative body must notify, by petition, the county legislative body of the municipality's intention to seek concurrent general sessions jurisdiction for the municipal court.
  - **(3)** The petition must contain the following:
    - **(A)** A plan for an adequate and secure courtroom;
    - **(B)** Agreement to comply with state mandated technical computer support comparable with the Tennessee court information system (TnCIS) program specifications and requirements;
    - **(C)** Agreement to comply with state laws governing general sessions court litigation taxes, costs, fees and assessments and to legally remit such items to the state department of revenue or to the county government, if appropriate; and
    - **(D)** Agreement to comply with state laws subjecting the financial transactions of the court to annual public audits.

- **(4)** The municipal legislative body and the county legislative body must appoint a feasibility study committee. The membership of the committee shall consist of the county mayor, the municipal mayor, one (1) member of the municipal legislative body, one (1) member of the county legislative body, the district attorney general who serves the county and the district public defender who serves the county. The membership of the committee shall also consist of three (3) members appointed by the municipal legislative body from the following list: the chief of police, the city recorder/clerk, the city judge, the city attorney, and one (1) citizen member. The membership of the committee shall also consist of three (3) members appointed by the county legislative body from the following list: the sheriff who serves the county, a general sessions judge who serves the county, the general sessions court clerk, the county attorney, and one (1) citizen member.
- **(5)** The feasibility study committee shall determine whether the county requires an additional court to exercise general sessions jurisdiction. In making the determination, the committee shall consider and evaluate the following factors:
  - **(A)** The economic, administrative and personnel impact of the proposal upon the existing general sessions court;
  - **(B)** The impact of the proposal upon existing judicial services and law enforcement resources;
  - **(C)** The extent, if any, to which the proposed plan is necessary to promote and ensure the efficient administration of justice in relation to county and municipal populations, county population density, geographic logistics and distances, caseloads, the number of judges, and the current caseload burden on the existing system;
  - **(D)** The plan's provision of adequate secure and comparable courtroom facilities for the hearing of cases in that location;
  - **(E)** The extent, if any, to which the proposed plan would unduly burden the existing staffs of the district attorney general or district public defender and the extent, if any, to which the plan proposes adequate funding for additional staff requirements; and
  - **(F)** The extent, if any, to which the proposed plan would provide for compliance with state mandated technical computer support.
- **(6)** By majority vote of its total membership, the feasibility study committee must agree upon written findings and recommendations and must submit the findings and recommendations to the municipal legislative body and to the county legislative body. The findings and recommendations must include one of the following alternatives:
  - **(A)** There is a clearly demonstrated need for a new general sessions court in the county, and the court would best be administered by the county;
  - **(B)** There is a clearly demonstrated need for a new general sessions court in the county, and the court would best be administered by the municipality, either as a new or existing municipal court with concurrent general sessions jurisdiction; or
  - **(C)** There is no clearly demonstrated need, at the time, for any of the alternatives set forth in subdivisions (a)(6)(A) and (B).
- **(7)** If the feasibility study committee determines that there is no clearly demonstrated need for any of the alternatives set forth in subdivisions (a)(6)(A) and (B), then for one (1) year thereafter, neither the county nor the municipality may pursue further implementation of any of the alternatives set forth in subdivision (a)(6)(A) or (a)(6)(B). After passage of one (1) year, if the majority of the total membership of the municipal legislative body again votes in favor of seeking concurrent general sessions jurisdiction for an existing or newly created municipal court, then a petition must again be submitted to the county legislative body and the procedures set forth in this section must again be followed.

- **(8)** If the feasibility study committee recommends any one (1) of the findings set forth in subdivision (a)(6)(A) or (a)(6)(B), and if the county wishes to pursue creation of a new general sessions court in the county or if the municipality wishes to pursue extension of concurrent general sessions jurisdiction to a newly created or existing municipal court, then the county or municipality, as appropriate, shall:
  - **(A)** Submit the written findings and recommendations of the feasibility study committee to the judiciary committee of the senate, the civil justice committee of the house of representatives and the judicial council;
  - **(B)** Cause legislation to be timely prepared and submitted for review and evaluation by the judicial council in accordance with procedures set forth in § 16-21-107(a)(3)for a judicial district seeking creation of a state trial court; and
  - **(C)** Cause legislation to be timely introduced for consideration by the general assembly.

- **(b)** Notwithstanding any law to the contrary, any legislation proposed to create a new general sessions court or to create a new municipal court with concurrent general sessions jurisdiction or to confer concurrent general sessions jurisdiction on an existing municipal court must be approved by a majority of the total membership of the judiciary committee of the senate prior to passage by the senate and must be approved by a majority of the total membership of the civil justice committee of the house of representatives prior to passage by the house of representatives.
- **(c)** Notwithstanding any law to the contrary, if a municipality is located in two (2) or more counties of this state, then, as used in this section, "county" means the county of this state containing the largest geographical portion of the municipality.

History

Acts 2004, ch. 914, § 2; 2013, ch. 236, § 32.

Annotations - Hide

Notes

Compiler's Notes.

Former part 3, § 16-18-301 (Acts 1999, ch. 149, § 1), concerning administration of oaths by municipal court judges, was repealed and replaced by Acts 2004, ch. 914, § 2, effective March 1, 2005.

Acts 2004, ch. 914, § 8(b) provided that, notwithstanding any provision of § 16-17-101(c), or any other law to the contrary, from May 12, 2003, through March 1, 2005, concurrent general sessions jurisdiction shall not be newly conferred upon any existing or newly created municipal court.

Amendments.

STATE OF TENNESSEE
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ATTORNEY GENERAL
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May 11, 2006

Opinion No. 06-087

Private Act Creating Part III of Rutherford County General Sessions Court

QUESTION

Tenn. Code Ann. § 16-18-311(b), passed in 2004, provides in relevant part that, "any legislation proposed to create a new general sessions court . . . must be approved by a majority of the total membership of the judiciary committee of the senate prior to passage by the senate and must be approved by a majority of the total membership of the judiciary committee of the house of representatives prior to passage by the house of representatives." In 2005, the General Assembly passed 2005 Tenn. Priv. Acts Ch. 59, creating a new Part III of the Rutherford County General Sessions Court. Is this act valid if it was not approved by the two judiciary committees as required under Tenn. Code Ann. § 16-18-311(b)?

OPINION

Yes.

ANALYSIS

Tenn. Code Ann. § 16-18-311(b) provides in relevant part:

> Notwithstanding any provision of law to the contrary, any legislation proposed to create a new general sessions court . . . must be approved by a majority of the total membership of the judiciary committee of the senate prior to passage by the senate and must be approved by a majority of the total membership of the judiciary committee of the house of representatives prior to passage by the house of representatives.

Preliminary research indicates that Chapter 59 of the Private Acts of 2005, creating Part III of the Rutherford County General Sessions Court, was not approved by the judiciary committee of either the House or the Senate as required by the statute. Even if this is the case, failure to comply with Tenn. Code Ann. § 16-18-311(b) does not affect the validity of the act so long as it was adopted in compliance with constitutional requirements. Chapter 59 was adopted by the 104th session of the General Assembly. Tenn. Code Ann. § 16-18-311(b) was part of legislation adopted in 2004 by the 103rd session of the General Assembly. 2004 Tenn. Pub. Acts. Ch. 914. We think a court would

conclude that Tenn. Code Ann. § 16-18-311(b) is a rule of proceeding applicable to the 103rd General Assembly, but not binding on subsequent sessions of the General Assembly. The Tennessee Supreme Court has long recognized that "'each successive General Assembly is a law unto itself in this regard. It is constitutional, and not statutory, prohibitions which bind the legislature.'" *Mayhew v. Wilder*, 46 S.W.3d 760, 770 (Tenn. Ct. App. 2001), *p.t.a. denied* (2001), quoting *Daughtery v. State*, 159 Tenn. 573, 20 S.W.2d 1042, 1043 (1929). Thus, one General Assembly may not bind a subsequent General Assembly.

Further, under Article II, Section 12, of the Tennessee Constitution, each House of the General Assembly has the right to make its own rules, and it must be the judge of those rules. *State v. Cumberland Club,* 136 Tenn. 84, 188 S.W. 583, 585 (1916). In reviewing the passage of an act, all the court can do is to ascertain whether the Constitution has been complied with; if this has been done, the court will look no further. *Id.* For this reason, a court would not invalidate Chapter 59 simply because it was not approved by the judiciary committee of each House as required by Tenn. Code Ann. § 16-18-311(b).

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Senior Counsel

Requested by:

Honorable W. Kent Coleman
State Representative
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Nashville, TN 37243-0149

The 2013 amendment substituted "the civil justice committee of the house of representatives" for "the judiciary committee of the house of representatives" in (a)(8)(A) and (b).

Effective Dates.

Acts 2013, ch. 236, § 94. April 19, 2013.

Opinion Notes

Attorney General Opinions.

Failure to comply with T.C.A. § 16-18-311(b) would not affect the validity of a private act creating new part of a county general sessions court so long as it was adopted in compliance with constitutional requirements, OAG 06-087 (5/11/06).

16-18-312. Sitting by interchange for other judges.

Municipal court judges and general sessions court judges are empowered to sit by interchange for other municipal court judges.

History

Acts 2006, ch. 1004, § 5. 16-18-312. Sitting by interchange for other judges.

Municipal court judges and general sessions court judges are empowered to sit by interchange for other municipal court judges.

History

Acts 2006, ch. 1004, § 5.

Overview of the Municipal Court Reform Act of 2005

Presentation by
Aaron J. Conklin

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History of the Act

- City/County dispute
  - Weakley County vs. City of Martin
- All about the money
- 2003 Public Chapter 113
  - Moratorium on municipal courts with GS jurx
  - Judicial Council Study Committee
- Report submitted with proposed legislation
- Reform Act signed June 8, 2004
  - Effective March 1, 2005

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T.C.A § 16-18-301

- Definition section
- “Any law to the contrary”
  - Becomes a very important phrase as it allows this act to trump any other act addressing municipal courts
- “Municipal Court”
  - Broad definition

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T.C.A § 16-18-302

- JURISDICTION
  - Violation of municipal ordinances
  - Arising under municipal ordinances
  - Mirrors language of state criminal statute, IF AND ONLY IF, said statute is punishable as a class C Misdemeanor and max penalty under ordinance is a civil fine of not more than $50
    - Handicap parking
    - Move Over law

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T.C.A § 16-18-302 continued

- For municipalities over 150,000
  - Chattanooga, Knoxville, Memphis, Nashville
  - Only others close – Clarksville (132,000), Murfreesboro (109,000)
- Additional state criminal statutes, A and B Misdemeanors
  - Underage purchase, consumption or possession of alcoholic beverages (A Misd.)
  - Reckless driving (B Misd.)

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T.C.A § 16-18-302 continued

- Cities over 150,000 continued
  - Driving without a valid license (B Misd. via TCA § 55-50-603)
    - TCA § 55-50-301 (driving w/o valid license)
    - TCA § 55-50-351 (driving w/o license on person)
- Concurrent GS jurisdiction – exercise if had it prior to May 2003 or if conferred via procedure
- Juvenile Court waiver
- *City of Knoxville v. Brown* - red light camera

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T.C.A § 16-18-303 & 304

- 303 – Municipal judge can administer oath
- 304 – Municipal Court Costs
  - Must be set by ordinance
  - $1.00 of court cost sent to treasurer for municipal court education – split 50/50 between judges and clerks
  - Provision not applicable to exercise of GS jurisdiction. Costs for GS courts imposed in such cases.

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T.C.A § 16-18-305

- Privilege Taxes
- $13.75 in all cases (except parking)
- $1.00 tax in all parking violations whether appears or not
- Authorizes adoption of local litigation tax up to $13.75
- Clerk liable for unpaid taxes
- Not applicable to GS cases
- 2% Clerk’s commission – AG’s opinion

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T.C.A § 16-18-306 & 307

- 306 - Contempt of court - $50.00

- 307 – Appeal bond - $250
  - Appeal to Circuit Court
  - Appeal within 10 days (excluding Sundays)
  - Where to pay bond

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T.C.A § 16-18-308

- Concurrent Office holder/city employment
  - Prohibits judge from holding another city position of employment or office concurrently
  - Grandfathering of such persons at time of passage of act
- Oliver Springs exception – if city charter provides that judge shall also serve as recorder, may hold both offices

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T.C.A § 16-18-309

- Municipal Judge Continuing Education Requirement
  - 3 hours per year
  - Approved by AOC
  - Specifically designed for municipal court judges concerning issues, procedures and new developments relevant to judges
  - General legal CLE does not suffice
  - 6 months grace to comply, after which all subsequent judgments are null and void

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T.C.A § 16-18-309 continued

- Requirement for city to reimburse for attending training (AOC typically covers)
- 1 year carryover
- Can count toward CLE hours
- AG Opinion – Constitutionality
- CLERK TRAINING
  - 3 hours per year
  - AOC approved courses
  - Reimbursed for attending training

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T.C.A § 16-18-310

- Must be someone designated to serve as municipal court clerk
  - No restrictions on who may serve. It CAN BE a city employee who has other duties
  - Must provide clerk information to AOC
  - AG Opinion – How selected
- Clerk duties
  - Maintain accurate and detailed records of all financial transactions
  - Maintain records on disposed cases

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T.C.A § 16-18-311

- Obtaining concurrent GS jurisdiction
  - Process makes it a virtual impossibility
    - City council must vote to seek jurisdiction
    - City notifies county by petition which must include a plan for provision of services and compliance with laws concerning GS operations
    - Feasibility study committee comprised of both city and county representatives
    - Committee determines need and impact and reports findings: GS needed in county, or city or not needed

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T.C.A § 16-18-311 continued

- If need is determined, report to appropriate legislative committees and file legislation

– Must be approved by Senate Judiciary and House Civil Justice Committees (normal part of the legislative process for public acts)

– GS courts in general are often created by private act. See AG Opinion concerning compliance with legislative process

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T.C.A § 16-18-312

- Interchange
  - Where a municipal court judge must be absent or has a conflict:
    - Another municipal judge may sit by interchange
    - A general sessions judge may sit by interchange
    - Enter an order designating interchange by case for a conflict, or by docket when absent
- NOTE – no other designated procedure for substitute judge

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QUESTIONS?

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