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Opinion No. 10-122

Constitutionality of Captions under Article II, Section 17, of the Tennessee Constitution

QUESTIONS

Article II, Section 17, of the Tennessee Constitution provides in relevant part that “[n]o bill shall become a law which embraces more than one subject, that subject to be expressed in the title.” This provision also requires that, “[a]ll acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended.”

1. Does the term “or otherwise” allow the body of a bill to amend code provisions that are not mentioned in the caption?

2. As an example, consider a bill with the following caption:

“An Act to amend Tennessee Code Annotated, Title 4, relative to lotteries.”

a. Could the body of this act explicitly amend the provisions of the Tennessee Charitable Gaming Implementation Law in Title 3, Chapter 17, of the Tennessee Code Annotated?

b. Could the body of the bill add a free-standing statutory section that is more likely than not to be codified in Title 3 if the bill becomes a law?

OPINIONS

1. The substance of a bill may amend code provisions not expressly mentioned in its caption if the caption does mention the subject matter and is not restricted to a different code section. But generally, if the subject of an act recited in the title is the amendment of a certain statute or statutory scheme, then the body of the act may not amend a different statute or statutory scheme.

2.a. No. An act with this title, the body of which contains an explicit amendment to Tenn. Code Ann. §§ 3-17-101, *et seq.*, would violate Article II, Section 17, because it is broader than its caption.

b. No. An act with this title, the body of which contains an implied amendment to Tenn. Code Ann. §§ 3-17-101, *et seq.*, would violate Article II, Section 17, because it is broader than its caption and because it embraces more than one subject.

ANALYSIS

This opinion concerns the meaning of the phrase “or otherwise” as used in Article II, Section 17, of the Tennessee Constitution. This section provides:

Origin and frame of bills.--Bills may originate in either House; but may be amended, altered or rejected by the other. No bill shall become a law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, *shall recite in their caption, or otherwise*, the title or substance of the law repealed, revived or amended.

(emphasis added).

Article II, Section 17, is to be construed liberally, and a court will presume that the caption adequately expresses the subject of the body of the act. *Tennessee Municipal League v. Thompson*, 958 S.W.2d 333, 336-37 (Tenn. 1997); *Chattanooga-Hamilton County Hospital Authority v. City of Chattanooga*, 580 S.W.2d 322 (Tenn. 1979). Whether the provisions of an act are germane to the subject expressed in the title is largely a question of fact to be determined by applying settled rules of construction and the court’s own knowledge of affairs. *Frazier v. Railroad*, 88 Tenn. 138, 12 S.W. 537 (Tenn. 1889); *House v. Creveling*, 147 Tenn. 589, 250 S.W. 357, 360 (Tenn. 1923); *Tennessee Electric Power Co. v. City of Chattanooga*, 172 Tenn. 505, 114 S.W.2d 441 (Tenn. 1937).

The request asks whether the term “or otherwise” in the third sentence of Article II, Section 17, allows expansion of a bill beyond the code provisions explicitly recited in the caption of the bill. Under Article II, Section 17, of the Tennessee Constitution, every bill must have a single subject expressed in its title. In addition, an amendatory act must recite in its caption or otherwise the title or substance of the law repealed, revived, or amended. Thus, every amendatory act must satisfy two separate requirements under Article II, Section 17: first, it must have a single subject expressed in its title; and second, it must recite in its caption or otherwise the title or substance of the law it is repealing, reviving, or amending. *Shelton v. State*, 96 Tenn. 521, 32 S.W. 967, 967-68 (Tenn. 1895); *Steele v. Louisville & N.R.R.*, 154 Tenn. 208, 285 S.W. 582, 585 (Tenn. 1926).

Whether a particular amendatory act satisfies both the single subject requirement and the requirement that an act recite in its caption “or otherwise” the title or substance of a law it is amending depends on its specific caption and body. An act, the title of which declares it is “An Act to amend” a certain part of the code has as its subject the amendment of that particular statute or statutory scheme. *See, e.g., Tennessee Municipal League v. Thompson, supra* (the subject of the act, as expressed in the caption, was “the amendment of Title 6, Chapter 1, Part 2; Title 6, Chapter 18, Part 1; and Title 6, Chapter 30, Part 1,” followed by a restrictive clause);

State ex rel. Tipton v. City of Knoxville, 205 S.W.3d 456 (Tenn. Ct. App. 2006), *p.t.a. denied* (2006) (the subject of an act was the amendment of eight different titles of the Tennessee Code with the restrictive clause “relative to growth”). In that case, the body of the act must fall within the subject expressed in the caption. Generally, if the body of an act with such a title amends a statute that is not specified in the title, then it is subject to challenge as violating the single subject requirement of Article II, Section 17, of the Tennessee Constitution.¹ This would be the case even though it meets the separate requirement that an amendatory act recite in its caption “or otherwise” the title or substance of the law it amends. In other words, when a bill would amend a former law, that law does not necessarily have to be mentioned in the caption, if the caption is otherwise adequate to give notice of the subject. But the former law, if not mentioned in the caption, must be recited in the body of the bill, either by title or substance.

2. Examples Presented

a. The request provides the following caption as an example:

“An Act to amend Tennessee Code Annotated, Title 4, relative to lotteries.”

The question is whether the body of this act may explicitly amend the provisions of the Tennessee Charitable Gaming Implementation Law in Title 3, Chapter 17, of the Tennessee Code Annotated. In this case, the subject of the act is the amendment of Title 4 of the code “relative to lotteries.” While they fall within the restrictive clause “relative to lotteries,” the laws on charitable gaming are not in Title 4. The subject, the amendment of Title 4 “relative to lotteries,” suggests that the act is intended to address the Tennessee Education Lottery Corporation, governed by Tenn. Code Ann. §§ 4-51-101, *et seq.* When any section of the code is amended, the members of the Legislature are presumed to know the nature of the section sought to be amended.” *Pharr v. Nashville C. & St. L. Ry.*, 186 Tenn. 154, 159, 208 S.W.2d 1013 (Tenn. 1948).

The Tennessee Supreme Court addressed a similar issue in *State v. Chastain*, 871 S.W.2d 661 (Tenn. 1994). In that case, the district attorney general and the state attorney general challenged the constitutionality of 1991 Tenn. Pub. Acts ch. 344. This act had the following caption:

An Act to amend Tennessee Code Annotated, title 55, Chapter 10, Part 4, and Title 53, Chapter 11, relative to the confiscation of motor vehicles of certain offenders.

The body of the act directly amended the statutes addressed in the caption. But the amendments irreconcilably conflicted with, and therefore effectively amended, the statute of limitations and jurisdictional provisions of the Post Conviction Procedure Act, Tenn. Code Ann. § 40-30-102 and -103. The Court concluded that the caption of the act failed to comply with the notice

¹ But an act may be defensible against a single subject challenge if, in addition to amending a single statute specified in the title, it adds sections to the same statutory scheme that are germane to the subject of the act. Op. Tenn. Att’y Gen. 01-106 (June 27, 2001).

requirements of Article II, § 17. The Court stated:

The members of the General Assembly were given no indication by the language of the bill that additional statutes not mentioned in the caption . . . were being amended without being repealed in their entirety.

871 S.W.2d at 666-67.

The caption and body of the bill addressed in *Chastain* differ from those in the example addressed here. In *Chastain*, the body of the bill indirectly amended statutes outside the caption. Neither the caption nor the body of the bill cited these statutes. In the example, the body of the bill would explicitly amend a statute outside the statutory scheme addressed in the title. In both cases, however, the subject, stated in the caption, is the amendment of a specific statutory scheme. In both cases, the body of the act amends statutes not included in the subject. For this reason, the example would violate Article II, § 17.

b. The request then asks whether the result would differ if the body of the bill added a free-standing statutory section that is more likely than not to be codified in Title 3 if the bill becomes a law. As an example, the request proposes a bill with the following language immediately preceding the effective date section of the bill:

Section 5. Notwithstanding any provision of § 3-17-110(b) to the contrary, all cash prizes or awards awarded at an annual event, as defined by § 3-17-102(2), exceeding twenty-five dollars (\$25.00) shall be paid by check from a designated account of the organization to a named individual.

For slightly different reasons, adding this provision would create the same deficiencies as the direct amendment discussed above. The subject of the act is the amendment of Title 4 of the Tennessee Code Annotated, “relative to lotteries.” The caption, read as a whole, suggests it is intended to address the Tennessee Education Lottery Corporation. But section 5 directly refers to a statute in Title 3 that addresses charitable gaming. Thus, the body of the Act is broader than its caption, which indicates that it amends only Title 4. Further, the Act would embrace more than one subject. For these reasons, the act would violate Article II, § 17.

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