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Opinion No. 07-138

Constitutionality of Statutory Provisions Increasing Governor's Salary

QUESTION

Whether the Governor's salary may be adjusted annually to reflect an increase in the consumer price index in accordance with state statutes in light of Article III, Section 7, of the Tennessee Constitution, providing that the Governor's compensation "shall not be increased or diminished during the period for which he shall have been elected."

OPINION

Adjusting the Governor's salary each July 1 in accordance with statutory provisions would not violate Article III, Section 7, of the Tennessee Constitution because the provisions were passed before the Governor's election in November 2006, and any increase during his four-year term will occur independent of further legislative action.

ANALYSIS

Before the enactment of Chapter 982 of the Public Acts of 2006 ("Chapter 982"), Tenn. Code Ann. § 8-1-102 provided that "[t]he salary of the governor shall be eighty-five thousand dollars (\$85,000) a year[.]" On May 27, 2006, the General Assembly passed Chapter 982 to amend the statute, effective January 20, 2007, to provide that "[t]he salary of the governor shall be the same as the chief justice of the supreme court[.]" The salary of the Chief Justice of the Tennessee Supreme Court is set forth in Tenn. Code Ann. § 8-23-103:

(1)(B)(i) Chancellors, circuit court judges, and criminal court judges shall receive a base salary of one hundred forty thousand dollars (\$140,000) per annum beginning September 1, 2006. Judges of the court of appeals and the court of criminal appeals shall receive a salary that is five thousand dollars (\$5,000) per annum in excess of that received by the trial judges effective September 1, 2006. *Justices of the supreme court shall receive a salary that is ten thousand dollars (\$10,000) per annum in excess of that received by trial judges effective September 1, 2006. Beginning on July 1, 2007, and on each July 1 thereafter, the provisions of subdivision (2) shall be applied to determine what, if any, adjustments are to be made to the base salaries set out in this subdivision (1)(B)(i).*

(ii) *In addition to the base salary effective September 1, 2006, as set out in subdivision (1)(B)(i), the chief justice of the supreme court shall receive five thousand dollars (\$5,000) per annum, and the presiding judges of the court of appeals and the court of criminal appeals shall receive two thousand five hundred dollars (\$2,500) per annum.*

(2) On July 1, 1991, the base salaries fixed in this section shall be adjusted in accordance with the formula contained in § 8-23-101 (d)(3) reflecting the percentage of change between calendar year 1989 and calendar year 1990. *Each succeeding July 1, a similar adjustment shall be made based upon the percentage of change in the average consumer price index between the two (2) calendar years preceding July 1 of the year in which the adjustment is made.* However, no reduction shall be made by way of adjustment on account of any decrease in the average consumer price index between two (2) successive calendar years. No adjustment provided for herein shall exceed five percent (5%) per annum except when the change in the average consumer price index exceeds ten percent (10%), in which event the adjustment shall be equal to five percent (5%) plus one percent (1%) for each one percent (1%) or fraction thereof beyond ten percent (10%).

Tenn. Code Ann. § 8-23-103(1)(B) & (2) (emphasis added).

Under subsection (1)(B) of this statute, the Chief Justice of the Tennessee Supreme Court was entitled to a salary of \$155,000.00 beginning September 1, 2006. This compensation consists of a base salary of \$150,000.00 under Tenn. Code Ann. § 8-23-103(1)(B)(i), plus an extra \$5,000.00 under (1)(B)(ii). Under subsection (2), the base salary fixed in the statute is to be adjusted each July 1 to reflect change in the average consumer price index in accordance with that statute and § 8-23-101(d)(3). Under the latter provision, the annual adjustments “reflect the percent of change in the average consumer price index (all items-city average) as published by the United States department of labor, bureau of labor statistics . . . based on the percent of change . . . between the two (2) calendar years preceding July 1 of the year in which the adjustment is made.” Subsection (d)(3) has not been amended since the November 2006 election.

The issue is whether the Governor’s salary may be adjusted in accordance with these statutes in light of the Tennessee Constitution, which provides:

He [the Governor] shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the period for which he shall have been elected.

Tenn. Const. art. III, § 7. This language is almost identical to that governing the compensation of the “Judges of the Supreme or Inferior Courts” contained in Article VI, Section 7, of the Tennessee Constitution. These judicial officers shall “receive a compensation for their services, to be ascertained by law, which shall not be increased or diminished during the time for which they are elected.” Tenn. Const. art. VI, § 7.

In *Overton County v. State ex rel. Hale*, 588 S.W.2d 282 (Tenn. 1979), the Tennessee Supreme Court decided an issue very similar to the one raised in the opinion request. Nine county officials, including the General Sessions Court Judge, brought suit to collect statutory salary adjustments tied to the consumer price index. Overton County argued that giving the annual adjustments to the General Sessions Judge would violate the constitutional provision against increasing the judge's compensation during the time for which he had been elected. 588 S.W.2d at 287. The Judge had taken office on September 1, 1974; the legislation providing for the annual salary adjustments had been enacted by 1974 Tenn. Pub. Acts ch. 808, effective September 1, 1974; and the annual salary adjustments in question all fell within the eight-year term to which the Judge had been elected. *Id.*

The Court noted that the rationale behind the constitutional provision is to promote judicial independence from legislative action to punish or reward judges for their decisions. 588 S.W.2d at 288. Because the legislation had been passed before the beginning of the judicial term, the Court determined it did not provide an unconstitutional increase during the time for which the judge had been elected, even though the salary could conceivably rise in number each year. The Court stated:

The theory behind hinging an annual change in salary to the consumer price index is that the index accurately measures the change in the purchasing price of the dollar, with the result that by "indexing" judicial salaries, the "compensation" remains constant. That theory has a solid foundation in fact. The Tennessee Legislature has no power over the amount of the index change and thus no power over the will of judges. In our opinion, the annual salary adjustment provided [in the statute] as applied to the General Sessions Judge of Overton County, who took office on September 1, 1974, does not violate Tennessee Constitution Article VI, Section 7.

Overton, 588 S.W.2d at 289-90.

Based on this reasoning, we think a court would reach the same conclusion with respect to the Governor's salary. Article III, Section 7's language prohibiting an increase or decrease in the Governor's compensation "during the period for which he shall have been elected" is very similar to that regarding judicial salaries in Article VI, Section 7. The legislation providing for annual salary adjustments was passed before the Governor's election in November 2006. Further, because any increases are tied to the consumer price index, they will occur independent of legislative action during the Governor's four-year term. Accordingly, it is our opinion that adjusting the Governor's salary as provided by Chapter 982 each July 1 to equal that of the Chief Justice would not violate Article III, Section 7, of the Tennessee Constitution.

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