

STATE OF TENNESSEE

OFFICE OF THE
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Opinion No. 04-062

Constitutionality of Proposed Amendment to HB 2543 Regarding Marriage License Fee Exception

QUESTION

Is the proposed amendment to HB 2543, which creates an exception for Shelby County from the additional fee of \$60.00 for marriage licenses if both applicants are not Tennessee residents, violative of Article XI, Section 8, of the Tennessee Constitution or any other provision of constitutional law?

OPINION

No, the proposed amendment is constitutionally defensible under Article I, Section 8, and Article XI, Section 8, of the Tennessee Constitution.

ANALYSIS

Under the provisions of Tenn. Code Ann. § 36-6-413(b)(2), an additional fee of \$62.50 is imposed on the issuance of marriage licenses. The revenue from these additional fees is used to fund various domestic programs. There is an exemption from payment of \$60.00 of this fee if both applicants provide the county clerk with a valid and timely certificate of completion of a pre-marital preparation course. In addition, there is currently an exemption from payment of \$60.00 of this fee if both applicants are not Tennessee residents.

This office has previously opined that proposed HB 2543, which provided that the exemption if both applicants are not Tennessee residents would apply only in counties having a municipality defined as a “premier type tourist resort” pursuant to Tenn. Code Ann. § 67-6-103(a)(3)(B), is constitutional. *See* Op. Tenn. Att’y Gen. No. 04-045 (March 18, 2004). Under the proposed amendment to HB 2543, the exemption if both applicants are not Tennessee residents would also apply to Shelby County.

The Legislature has the power to enact class legislation as long as such legislation does not violate applicable constitutional provisions such as Article I, Section 8, and Article XI, Section 8, of the Tennessee Constitution. Analysis of statutes under these provisions is similar to analysis

under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. *State v. Smoky Mountain Secrets, Inc.*, 937 S.W.2d 905, 911 (Tenn. 1996).

As this office previously opined, this exemption does not significantly interfere with the right to marry or any other fundamental right and does not involve a suspect class. Op. Tenn. Att’y Gen. No. 04-045 (March 18, 2004). Therefore, it will be upheld as long as there is a “rational basis” between this classification and a legitimate state purpose. *Id.*

No rationale for the proposed amendment to HB 2543 has been provided. Assuming, however, that there is a similar need for tourist business through wedding chapels in Shelby County as in Sevier County, this proposed amendment would be constitutionally defensible as rationally related to the legitimate state purpose of encouraging tourism to the State.

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