

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

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Opinion No. 05-075

Powers of Legislature to Delegate Power to an Executive Committee

QUESTION

If enacted, would the proposed amendment to Senate Bill No. 707 (HB 122) violate separation of powers principles considering that rule-making authority with regard to the creation of child support guidelines has already been delegated to the Department of Human Services (the “Department”) under Tenn. Code Ann. § 71-1-132(a)(1)?

OPINION

No. The proposed amendment to Senate Bill No. 707 would not violate separation of powers principles provided that “approval” of a “majority and a minority report” by a Senate or House Committee does not entail allowing, disallowing, approving, disapproving, or suspending the Department’s existing or proposed rules or regulations without legislation.

ANALYSIS

The proposed amendment to Senate Bill No. 707 states in pertinent part:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 5, Part 1, is amended by inserting the following as a new, appropriately designated section thereto:

(a) There has been created, by the department of human services, a committee known as the department of human services income shares advisory committee. The committee shall review the child support guidelines proposed by the department of human services with an effective date of January 18, 2005, the child support guidelines in effect as of January 17, 2005, and any other policy, rule, regulation or guideline adopted by or used previously by this state in order to draft, revise, and recommend to the general assembly those child support guidelines that the committee recommends to be used

in Tennessee courts. The committee shall have as its goal the recommendation of guidelines that are simple to apply, easy to administer and enforce, fair to both parents, and that provide adequate support for children.

(b) The department of human services shall provide a meeting place for the committee and shall be responsible, out of the department's budget, for such expenses associated with the meeting as the department deems appropriate.

(c) The committee shall present to the senate judiciary committee and the house children and family affairs committee, for their approval, no later than January 15, 2006, both a majority and a minority report.

The proposed amendment to Senate Bill No. 707 would require the "income shares advisory committee," an existing rule-making committee within the Department of Human Services, to review the child support guidelines (among other things) and present to the senate judiciary committee and the house children and family affairs committee a minority and majority report for approval. *Id.* The threshold issue is whether the proposed legislation would violate separations of powers provisions of the Tennessee Constitution in unlawfully delegating legislative power to the executive branch. Tenn. Const. Art II, § 3.¹

The test for determining whether a legislature's delegation of power to an administrative agency is constitutional under separation of powers principles is "whether the statute contains sufficient standards or guidelines to enable both the agency and the courts to determine if the agency is carrying out the legislature's intent." *Gallaher v. Elam*, 104 S.W.3d 455, 464 (Tenn. 2003) (citing *Bean v. McWhorter*, 953 S.W.2d 197, 199 (Tenn. 1997)). The delegation that would be accomplished by the proposed amendment to Senate Bill No. 707 is within the Department of Human Services' area of expertise. Furthermore, the amendment to the Senate Bill is crafted in a manner in which the will of the legislature can be determined and implemented by administrative officials and determined by the courts. *Bean*, 953 S.W.2d at 199.

¹Article II, Section 3, of the Tennessee Constitution states that "legislative power" is "the authority to make, order, and repeal law."

In *Gallaher*, the Tennessee Supreme Court determined that Tenn. Code Ann. § 71-1-132(a)(1), which delegates rule-making authority to establish rules necessary for the administration of the child support program in Tennessee operated pursuant to Title IV-D of the Social Security Act, was a constitutional delegation of legislative power.² Hence, the legislature has already delegated rule-making authority with respect to Tennessee’s child support program. Therefore, the question now posed is whether, once the General Assembly has lawfully delegated rule-making authority to an administrative agency, may it control the rule-making process by delegating authority to an executive committee such as the income shares advisory committee to review proposed child support guidelines and by requiring that committee to submit majority and minority reports for approval.³

There are no Tennessee cases addressing the specific question. However, the Attorney General has opined that “once the General Assembly grants an administrative agency rule-making authority, the General Assembly may only interfere with the rule-making process through the enactment of subsequent laws . . .” Op. Tenn. Att’y Gen. 82-115 (March 11, 1982); *see also* Op. Tenn. Att’y Gen. 01-086 (“Once the General Assembly delegates rule-making authority to an agency of the executive branch, it may not interfere with the rule-making process except through legislation enacted in compliance with Article II, § 18 of the Tennessee Constitution”).

The income shares advisory committee exists as part of “the rule-making process” authorized under Tenn. Code Ann. § 71-1-132(a)(1). The amendment to Senate Bill 707 proposes that the income shares advisory committee review the child support guidelines via legislation enacted in compliance with Article II, § 18, of the Tennessee Constitution (governing passage of bills). Therefore, the proposed amendment to Senate Bill 707 would be a constitutional exercise of legislative power insofar as it would not purport to affect the rule-making process by means other than legislation.

However, to the extent that “approval” of “a majority and a minority report” by a senate or house committee entails allowing, disallowing, approving, disapproving, or suspending the Department’s existing or proposed rules or regulations (short of legislation), such a requirement would violate separation of powers doctrine. This is because the General Assembly has already

²Tennessee Code Annotated § 71-1-132(a)(1) states:

[DHS] shall have rulemaking authority to establish any rules necessary for the administration of the child support program operated pursuant to Title IV-D of the Social Security Act and shall have rulemaking authority to establish any rules to carry out the requirements of any title or part of any title which the department administers and which are necessary to implement the provisions of the Title IV-D child support program and to effectuate any federal legislative or regulatory changes.

³ Specifically, this addresses proposed requirement for approval of majority and minority reports by the senate judiciary committee and/or the house children and family affairs committee as set forth in Section 1(c) of the proposed amendment.

properly delegated rule-making authority to the Department in this regard. *See* Tenn. Code Ann. § 71-1-1-132(a)(1); *see also* Op. Tenn. Att’y Gen. 01-086 (“Under the Separation of Powers doctrine as set forth in Article II of the Tennessee Constitution, a legislative committee lacks authority to disallow and/or suspend rules promulgated by a state agency”); Op. Tenn. Att’y Gen. 82-115 (“[A] legislative ‘veto’ may not be delegated to a single House [sic] or Committee of the General Assembly without contravening the Doctrine of Separation of Powers”).

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

WARREN A. JASPER
Assistant Attorney General

Requested by:

Honorable Joe M. Haynes
State Senator
Senate Chamber
5 Legislative Plaza
Nashville, TN 37243-0220