November 26, 2003

Dear Madam:

You have three questions that were transmitted to me by TML's Ross Loder. Those questions apparently arise in connection with HB 607, under which Tennessee Code Annotated, ' 4-21-601 would be amended by adding the following language:

> (2) In addition to the remedies provided under this part, any local or municipal government who has enacted a fair housing ordinance in connection with this part may enforce the provisions of the ordinance in the circuit court of the county in which the violation occurred.

I am puzzled as to how, procedurally, the municipality would enforce its fair housing ordinance in the circuit court. I have read Tennessee Attorney General's Opinion 03-061. While that opinion is correct with respect to both its conclusions-(1) that the General Assembly can determine how many and what kind of courts are required for the administration of justice, etc., and (2) that municipal ordinance cases involving "punitive" fines of over $50 are subject to the limitations of Article VI, ' 14 of the Tennessee Constitution (which requires fines of over $50 to be levied by a jury)-there is still a breathtaking leap from House Bill 607 to how a municipal ordinance on fair housing would be enforced in the circuit courts.

But I am even more puzzled as to the connection of the three questions to the bill if the ordinance is somehow to be enforced in the circuit court, unless there is consideration being given to amending the bill to provide for the enforcement of fair housing ordinances in the municipal courts. In that connection, let me point out that appeals from convictions of municipal ordinance violations are already heard in circuit court, and the right to a jury trial attaches to such appeals. More will be said about that below.

QUESTIONS

1. What is the basis for the assertion in the MTAS Hot Topic on the Davis-Barrett ruling that municipal courts are not authorized to hold jury trials?

2. If there is no specific authority for jury trials, does that mean a city is precluded from holding jury trials?

3. Could a city be granted authority to hold jury trials by general state law or could

such authority be derived from a municipal charter?

ANSWERS TO QUESTIONS

Question 1: There is neither a constitutional nor a statutory right to a jury trial with respect to the cases that the municipal courts of the state, including those with concurrent jurisdiction, have the authority to hear.

Question 2: Yes, at least under the present law.

Question 3: Cities could by general state law be granted authority to hold jury trials in their municipal courts, provided that the state law qualified as genuinely "general" legislation. However, the City could not, through an amendment to its home rule charter, acquire the power to conduct jury trials in its municipal courts.

ANALYSIS OF QUESTIONS 1 AND 2

Municipal Courts Under the Tennessee Constitution

Article 6, ' 1 of the Tennessee Constitution provides that:

> 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 the Justice of the Peace. *The Legislature may also vest such jurisdiction in Corporation Courts as may be deemed necessary*. Court to be holden by justices of the Peace may also be established. [Emphasis is mine.]

Municipal courts are the "Corporation Courts" of which Article 6, ' 1 speaks. That is true even when the municipal court is vested by the Legislature with concurrent jurisdiction. [See Hill v. State ex rel. Phillips, 392 S.W.2d 950 (1965); State ex rel. Boone v. Torrence, 470 S.W.2d 356 (1971); City of Knoxville ex rel. Roach v. Dossett, 672 S.W.2d 193 (Tenn. 1984); State ex rel. Town of South Carthage v. Barrett, 840 S.W.2d 895 (Tenn. 1992); Newsom v. Biggers, 911 S.W.2d 715 (Tenn. 1995).] Any vestment of power to hear cases involving the violation of state statutes by the General Assembly in a "Corporation Court" must be express. [See Hill v. ex rel. State v. Phillips, above].

It was common for both general law and private act municipal charters to grant municipal courts with municipal ordinance violation jurisdiction and jurisdiction concurrent with the old

justices of the peace, and it is still common for such municipal charters to grant municipal courts municipal ordinance violation jurisdiction and jurisdiction concurrent with the courts of general sessions. In addition, Tennessee Code Annotated, ' 16-17-103 grants home rule municipal courts municipal ordinance violation jurisdiction, and "all other powers touching upon the arrest and preliminary trial, discharging , binding over, of all persons charged with offenses against the state committed in the city or municipality." But there is not in the general law, nor in any municipal charter, any authority for a municipal court to select juries and hold jury trials. In fact, I have searched in vain for any record showing that a municipal court in Tennessee has ever been granted the authority to conduct jury trials.

No Right To Jury Trials In Municipal Courts Under The Tennessee Constitution

Article VI, '' 6 and 9, of the Tennessee Constitution speak about the right to a jury trial in both civil and criminal cases. Section 6 provides:

> That the right of trial by jury shall remain inviolate, and no religious or political test shall ever be required as a qualification for jurors.

Section 9 provides:

> That in all criminal prosecutions, the accused hath the right [to certain rights enumerated therein but that are not at issue here...., and in prosecutions by indictment or presentment a speedy public trial, by an impartial jury of the County in which the crime shall have been committed....

Article VI, ' 14, of the Tennessee Constitution, provides that:

> No fine shall be laid on any citizen of this State that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers, who shall assess the fine at the time they find the fact, if they think the fine shall be more than fifty dollars.

In City of Chattanooga v. Davis, 54 S.W.3d 249 (Tenn. 2001), the Tennessee Supreme Court held that Article VI, ' 14 applied to fines and civil penalties of over $50, where such fines and penalties were "punitive" rather than "remedial." An earlier line of cases had stood for the proposition that "civil penalties" levied by municipal courts in municipal ordinance violation cases were distinguishable fines, and that the $50 fine limitation in Article VI, ' 14 did not apply to civil penalties.

It has been held that under both '' 6 and 9 of Article I, of the Tennessee Constitution, the

right to a trial by jury exists under those provisions as it existed under the common law when the Tennessee Constitution was adopted. With respect to civil proceedings, it is said in Newport Housing Authority v. Ballard, 839 S.W.2d 86 (Tenn. 1992), that:

> Article I, section 6 of the Tennessee Constitution has never mandated the right to a jury trial in every civil cause. The right of trial by jury sanctioned and secured by this constitutional provision is the right of trial by jury as it existed at common law and was in force and under the laws and Constitution of North Carolina at the time of the foundation and adoption of the Constitution in 1796. [Citations omitted.] Cases not triable by jury at the time of the formation of the Constitution need not be made so now. Memphis & Shelby County Bar Association v. Vick, 40 Tenn. App. 290 S.W.2d 871 (1955). [At 88]

Sasser v. Averitt Express, Inc. 839 S.W.2d 422 (Tenn. Ct. App. 1992), also says that:

> Tenn. Const. art. 1, ' 6 preserves the right to a jury trial as it existed at common law. State v. Hartly, 790 S.W.2d 276 (Tenn. 1990); Harbison v. Briggs Bros. Paint Mfg. Co, 209 Tenn. 534, 541, 354 S.W.2d 464, 467 (1962). Thus, there is no right to a trial by jury in essentially equitable actions unless they were triable by a jury when the Constitution of 1796 was adopted. Town of Smyrna v. Ridley, 730 S.W.2d 318, 321 (Tenn. 1987).[At 434]

[Sasser, at 434-35, also contains a list of some of the cases for which there was no right at common law to a jury trial. That list is by no means an exhaustive one.]

With respect to "criminal" proceedings and other proceedings under which a fine could be levied, it has been held under both '' 6 and 9 of Article I, and ' 14 of Article VI, of the Tennessee Constitution, that, in criminal cases, the defendant has the right to a jury trial, where a jail sentence or a fine of over $50 can be imposed. [State v. Dusina, 764 S.W.2d 766 (Tenn. 1989).] But it has also been held that the defendant has no constitutional right to a jury trial in misdemeanor and petty offense cases that do not involve the loss of life or liberty, and which involve a fine of $50 or less, because no such right existed under the common law. [See Capitol News Company v. Metropolitan Government, 562 S.W.2d 430 (Tenn. 1978). City of Gatlinburg v. Goans, 600 S.W.2d 735 (Tenn. Ct. App. 1980), also held that there was no right to jury trial upon appeal of a municipal ordinance violation conviction to the circuit court, but as will be seen later, that aspect of Goans was later overturned.].

There are also provisions in the U.S. Constitution that speak of the right to a jury trial that apply in state cases. However, because those provisions do not appear to be essential to the

answer to this question I will not recite or analyze them.

No Right To Jury Trials In Municipal Courts Under The City Charter

The City is a home rule city.

The City Charter, Art. 35, provides for the creation of the city court system consisting of three judges. In Art. 35, ' 251, of the charter, the judges are vested with ordinance violation jurisdiction,

> and shall be cloaked with the same powers and duties possessed by a justice of the peace, touching the arrest and preliminary trial, discharging, binding over, or punishing under the small offense law, of all persons charged with offenses against the state, committed in the city.

In addition, Tennessee Code Annotated, ' 16-17-103, gives municipal courts in home rule municipalities both municipal ordinance violation jurisdiction, and "all other powers touching upon the arrest and preliminary trial, discharging, binding over, of all persons charged with offenses against the state committed in the city or municipality."

Without addressing the question of whether the jurisdiction of the old justices of the peace was even the same as jurisdiction concurrent with that of the courts of general sessions, there is nothing in Article 35 of the City Charter, nor any other provision in that charter, nor in Tennessee Code Annotated, ' 16-17-103, that authorizes the city to conduct trials in the City Court. As was demonstrated in the above section dealing with the constitutional right to jury trials in Tennessee, no such right arises in the case of ordinance violations and "small offenses."

No Statutory Right To Jury Trials In Municipal Courts

Statutes Governing Juries. With respect to the general law on the selection of juries, Tennessee Code Annotated, ' 22-2-101 et seq. "Appl[ies] to all grand and petit juries in all *circuit and criminal courts* of this state" [with the exception of certain counties listed below], "and to any law court in any of the counties." All private acts "touching anyway upon the subject of juries, jurors and jury commissioners" were repealed as of February 3, 1959, except in Davidson, Hamilton and Knox Counties. Juries in those counties are selected pursuant to private acts. [For a list of those private acts and the particular county to which they apply see "Compiler's Note," under Tennessee Code Annotated, ' 22-2-101. At least one of the citations to the private acts in that note appears to be in error. MTAS has made a compilation of all the private acts for most counties in Tennessee, including the indicated counties.]

There is no constitutional right to a jury trial in equity cases, but the General Assembly

gave litigants in chancery court cases the right to a jury trial in Tennessee Code Annotated, ' 21-1-103, in the following language:

> Either party to a suit in chancery is entitled, upon application, to a jury to try and determine any material fact in dispute, save in cases involving complicated accounting, as to such accounting, and those elsewhere excepted by any law or provisions of this Code, and all issues of fact in any proper case shall be submitted to one (1) jury.

Under that statute, as the Tennessee Courts have interpreted it, those litigants have a broad right to a jury trial even in equity cases, but the jury resolves only questions of fact, while the court resolves questions of law. [Smith County Education Association v. Anderson, 676 S.W.2d 328 (Tenn. 1984); Sasser v. Averitt Express, above.]

That statute does not make it clear how chancery court juries are selected, but Tennessee Code Annotated, ' 22-2-102(b) says that, AThe method of selecting jurors and jury panels in the chancery courts of this state shall not be affected in any way by this chapter, except as provided in ' 22-2-311. Tennessee Code Annotated, ' 22-2-311 merely provides that if for any reason a legal venire or panel is not furnished the court, the judge shall have the right to select a venire or panel and such other additional jurors that it needs. Presumably, that provision applies to chancery courts as well as to the circuit and criminal courts.

Rule 38.01 of the Tennessee Rules of Civil Procedure declares that, "The right of trial by jury as declared by the Constitution or existing laws of the state of Tennessee shall be preserved to the parties inviolate." But there was no right at common law to a trial in petty cases and municipal ordinance violations, at least where the fine was not more than $50. For that reason Rule 38.01does not entitle the defendant in a municipal ordinance violation case a trial in municipal court. In fact, Advisory Commission Comment to Rule 38.01, says:

> The procedures described in this Rule for demanding a trial by jury were not intended or designed to abridge any constitutional or statutory right to a jury trial, the Committee deeming such rights to be a matter of substantive law and not merely procedural.

As it does in civil cases, Tennessee Code Annotated, ' 22-1-101 et seq., authorizes and governs juries and jury selection in the criminal courts of the state, except in those Davidson, Knox and Hamilton Counties, in which jury selection is governed by private acts. Tennessee Code Annotated, ' 40-35-201, also provides that in contested criminal cases there shall be separate findings of guilt or innocence, and a sentencing hearing, then declares that:

> Nothing in this chapter shall be construed to deprive a defendant of a right to a jury trial as to the defendant's guilt or innocence pursuant to Rule 23 of the Tennessee Rules of Criminal Procedure and the appropriate provisions of the Constitution of the United

States or Tennessee.

Rule 23 of the Tennessee Rules of Criminal Procedures provides that "In all criminal cases *except small offenses*, trial shall be by jury unless the defendant waives a jury trial ...." [Emphasis is mine.] There is language in Robinson v. Gaines, 735 S.W.2d 692 (Tenn. Crim. App. 1986), suggesting that any offense that carries a jail sentence of six months or less is a "small offense" within the meaning of Rule 23. However, it is probably not necessary to determine if that is actually what the Court meant, for two reasons:

First, because there was no constitutional right to a jury trial under the common law for petty offenses and ordinance violations, Rule 23 would not embrace such violations.

Second, under Rule 1 of the Rules of the Tennessee Rules of Criminal Procedure, "These Rules govern the procedure in all criminal proceedings conducted in all courts of record in Tennessee," and to the limited extent indicated in that Rule, to the sessions courts. Municipal courts in Tennessee are not courts of record. On that point, Article 35, ' 251, of the City Charter says that the city court, "shall be a court of record...." I am not sure that a home rule municipal charter can denominate its municipal court a court of record, but even if it could, it will be shown below that municipal ordinance violation cases are civil for the purposes of procedure. But even if they were criminal, Rule 23 of the Tennessee Rules of Criminal Procedure, removes "small offenses" from the coverage of those rules.

In all events, nothing in Tennessee Code Annotated, ' 22-1-101 et seq., or 21-1-103, nor in any other general statute I can find, nor in the Tennessee Rules of Civil or Criminal Procedure, authorizes jury trials in municipal courts. However, we shall momentarily see that there is a statutory right to a jury trial in municipal ordinance violation cases appealed to the circuit court.

Statutory Right To A Jury Trial In Circuit Court On Appeal of A Conviction For Municipal Ordinance Violation In Municipal Court

Tennessee Code Annotated, ' 27-5-101 says:

> Any person dissatisfied with the judgment of a recorder or other officer of a municipality charged with the conduct of trials in a *civil action*, may, within ten (10) entire days thereafter, Sundays exclusive, appeal to the next term of circuit court. [Emphasis is mine.]

The Tennessee Supreme Court has held that for some purposes municipal ordinance violation cases are civil, and for other purposes criminal. It is said in the recent case of City of Chattanooga v. Davis, 54 S.W.3d 249 (Tenn. 2001), that:

> Since our decision in City of Chattanooga v. Myers, 787 S.W.2d

> 921 (Tenn. 1990), the law now appears settled that *proceedings for municipal ordinance violations are civil in nature, at least in terms of technical application of procedure and for pursuing avenues of appeal*. [At 259] [Emphasis is mine]

Footnote 14 in Davis declares that:

> ...In Allen [Metropolitan Government v. Allen, 529 S.W.2d 699 (Tenn. 1975)], we again held that A[a]n appeal for the violation of a municipal ordinance is a civil action, triable [d]e novo in the circuit court in precisely the same manner and under the same procedural rules as those governing tort actions instituted in General Sessions Courts, to include the right to a jury trial. 529 S.W.2d at 507. [At 261]

In Chattanooga v. Myers, the Court held that a person convicted of a municipal ordinance violation is entitled to a jury trial upon appeal to circuit court, and upon demand for a jury trial under Rule 38.03 of the Tennessee Rules of Civil Procedure, declaring that:

> In summary, for 130 years proceeding to recover fines for the violation of municipal ordinances have been considered civil for the purposes of procedure and appeal, although the principles of double jeopardy have recently been determined to apply in such cases...The basis of the cases accepted in Allen-Briggs, is that an appeal to circuit court of a judgment of a municipal courtBeven where the defendant is the appellant-is an appeal in a civil action brought by a municipality to recover a "debt." *Being such, where requested, the appealing defendant is entitled to a jury trial as in any other civil case, despite the fact that direct penalty of imprisonment or fine greater than $50 is involved*. [At 928] [Emphasis is mine.]

In its analysis of the Allen-Briggs line of cases, the Myers Court, pointed to Meaher v. Mayor and Aldermen of Chattanooga, 38 Tenn. 75 (1858), for the proposition that:

> There was no power [in the city] to indict--the city can only operate by fines, forfeitures and penalties, and then to recover by warrant. If the fine, forfeiture or penaltyBfor the name is not so materialBis fixed by the ordinance, for any particular thing, that may be recovered by warrant, and the only proof required is, that the offense, or act to which such fine or forfeiture is attached, has been committed. Debt is the proper action for penalties prescribed for certain offenses, by acts or ordinances. This is well settled law, and has been recognized at the present term. [At 923] [Emphasis

> supplied by the Meaher Court, and noted as such by the Meyer Court.]

In Footnote 2, found at the end of the above quote, the Meyer Court noted that:

> Slightly over a half-century later, this Court stated in Deming v. Nichols, 135 Tenn.925, 186 S.W. 113, 114 (1916), that there were "two modes" in this country to enforce penal ordinances: an action of debt to recover the penalty and "the ancient and familiar summary proceeding on information and complaint." At common law the action was, in form, either debt or assumpsit and brought merely to recover the penalty imposed for violation of the ordinance. In assumpsit, the theory was that there had been a breach of duty; and by legal fiction it was assumed the defendant had promised the municipal corporation, which in most cases became the plaintiff, to perform the duty. The action of debt was allowable, as the penalty was for a sum certain in the nature of liquidated damages. [At 923]

It is also said in Clark v. Metropolitan Government of Nashville, 827 S.W.2d 312 (Tenn. App. 1991), that, "A prosecution for an act violating a city ordinance is civil and not a criminal proceedings and is governed by rules in civil cases." [At 315] [Citations omitted] The Court also declared that, "Where a warrant charges only the violation of a city ordinance, it is considered only as a civil process, and technical nicety of pleading is not required." [At 315] [Citation omitted.] That case also points to the procedure that applies in sessions courts as an apparent model for the procedure in the municipal courts, and which is civil in nature:

> Pleadings in a civil case before a General Sessions Court are "ore tenus" (oral, in open court), except where the plea is required to be under oath. Craig v. Collins, Tenn. App. 1974, 524 S.W.2d 947. Civil actions are ordinarily brought in General Sessions Court by a "civil warrant" which includes a designation of the type of action and notice to appear for trial. With certain exceptions, civil warrants are not required to be supported by affidavit. In lieu of a civil warrant, metropolitan police officers apparently use a "citation" or "ticket" which serves as a civil warrant. As such, it is not required to be supported by affidavit, either at the time of service or at trial. Therefore, in the present case, the original affidavit and the amendatory affidavit were unnecessary... [At 315]

Rule 1 of the Tennessee Rules of Civil Procedure also declares that:

> Subject to such exceptions as are stated in them, these rules shall govern the procedure in the circuit and chancery courts of

> Tennessee and in other courts while exercising the jurisdiction of the circuit or chancery courts, in all civil actions, whether at law or in equity, including civil actions appealed or otherwise transferred to these courts.

Nothing in Rule 1 speaks of the application of those Rules in municipal courts, only to "civil actions appealed or otherwise transferred to those [the circuit and chancery, and courts exercising the jurisdiction of circuit and chancery courts] courts."

ANALYSIS OF QUESTION 3

It has been held in a number of cases that the General Assembly can bestow upon "Corporation Courts" such jurisdiction as it wishes, including the jurisdiction to hear state cases. [Moore v. State, 19 S.W.2d 233 (1929); Hill v. State ex rel. Phillips, above; City of Knoxville ex rel. Roach v. Dossett, 672 S.W.2d 193 (Tenn. 1984); Doyle v. Metropolitan Government, 471 S.W.2d 371 (1971); Carthage v. Barrett, 840 S.W.2d 895 (Tenn. 1992). State ex rel. Boone v. Torrence, 470 S.W.2d 356 (1971).] There is no apparent reason why the General Assembly's authority in that area would not extend to jury trials.

At least three Tennessee constitutional provisions have a bearing on the questions of (1) whether the General Assembly can grant such authority to individual cities, and (2) whether a home rule city can through an amendment to its home rule charter obtain such authority.

First, Article XI, ' 8, of the Tennessee Constitution provides that, "The Legislature shall have no power to suspend any general law for the benefit of any particular individual...."

That provision has repeatedly been interpreted to prohibit the passage of laws containing population brackets and other classifications to benefit specific counties or cities as well as individuals, including private acts that suspend general laws, unless the classification rests upon a reasonable basis. [See, among the literally dozens of cases in this area, Vollmer v. City of Memphis, 730 S.W.2d 619 (Tenn. 1987); Mink v. City of Memphis, 435 S.W.2d 114 (1968); Stalcup v. City of Gatlinburg, 577 S.W.2d 439 (Tenn. 1978); Knoxville's Community Development Corp. v. Knox County, 665 S.W.2d 704 (Tenn. 1984); Brentwood Liquors Corp of Williamson County v. Fox, 496 S.W.2d 454 (Tenn. 1973); Estrin v. Moss, 430 S.W.2d 345 (1968); Pirtle v. City of Jackson, 560 S.W.2d 400 (1977); Clark v. Vaughn, 146 S.W.2d 351 (1941); Lineberger v. State ex rel. Beeler, 129 S.W.2d 198 (1939); State ex rel Smith v. City of Chattanooga, 144 S.W.2d 1096 (1940); Town of McMinnville v. Curtis, 192 S.W.2d 998 (1946); Prescott v. Duncan, 148 S.W. 229 (1912); Board of Education v. Shelby County, 330 S.W.2d 569 (1960); Johnson City v. Allison, 362 S.W.2d 813 (1962); State ex rel. v. Mayor of Dyersburg, 235 S.W.2d 814 (1954); Wiseman v. Smith, 95 S.W.2d 42 (1936); Blackwell v. Miller, 493 S.W.3d 88 (Tenn. 1973); and numerous cases cited therein.]

It is difficult to get a feel for what legislation that has a limited application will pass legal muster under Article XI, ' 8. However, it was held in State v. Turner, 111 Tenn. 597 (1902), that

an entirely new method of selecting jurors applying only to Davidson and Shelby Counties based upon population brackets was held not to violate Article I, ' 8. For support the Court points to earlier cases in which it was held that population brackets that apply to only one or two counties can be legal even when the reason for the limitation is neither contained in the legislation nor apparent. The flavor of those cases suggest that size of the largest cities in Tennessee itself appears to provide fertile ground for justification of legislation. [See Condon v. Maloney, 108 Tenn. 82 (1901).]

Second, Article XI, ' 9 of the Tennessee Constitution contains two provisions, the first of which appears to relate to all cities, the second to private act cities, the latter to home rule cities:

The first provision:

> ...any act of the General Assembly private or local in for or effect applicable to a particular county or municipality....shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body....or requires approval in an election by a majority of those voting in said election....

This provision does not diminish the power of the General Assembly to pass general legislation pertinent to Tennessee cities, even when the legislation obviously has a "local" affect on private act or metropolitan charter cities. [Metropolitan Government v. Reynolds, 512 S.W.2d 6 (Tenn. 1974); Bozeman v. Barker, 571 S.W.2d 279 (Tenn. 1979).] The same is true of legislation that affects the *state* court system, and the Corporation Courts. [Jones v. Haynes, 424 S.W.2d 197 (1968); Cheek v. Rollings, 308 S.W.2d 393 (1957); State ex rel. Boone v. Torrence, 470 S.W.2d 356 (1971); Doyle v. Metropolitan Government, 471 S.W.2d 371 (1971) and other cases that will be considered in detail below that probably apply to both private act and home rule cities.]

Those cases support the proposition that the General Assembly could pass general legislation giving all or even a certain class of municipalities the right to hold jury trials in municipal court violation cases without running afoul of the above provision of Article XI, ' 9, of the Tennessee Constitution. However, the classification would still need to be reasonable under both '' 8 and 9 of Article XI, of the Tennessee Constitution.

The second provision:

> [After a city has adopted home rule], ... the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect.

City of Knoxville v. Dossett, 672 S.W.2d 193 (Tenn. 1984), involves a home rule city, but impliedly addresses the question of what laws are general in effect for both home rule and

non-home rule cities in Tennessee. There the Tennessee Supreme Court held that the municipal courts of the City of Knoxville did not have criminal jurisdiction. The reason was that a 1970 public act [codified as Tennessee Code Annotated, ' 40-4-122] extinguished the criminal jurisdiction of municipal courts in counties of not less than 375,000 nor more than 400,000 population. In 1970 the only municipality that fell into that population bracket was the City of Knoxville. The City of Knoxville argued that a 1972 public act expressly gave home rule municipalities the authority to create municipal courts with both municipal ordinance and state criminal cases. The act of which the city spoke is Tennessee Code Annotated, ' 16-17-103, which, provides that:

> The judges [of home rule municipalities] so appointed or elected shall have full power and authority to try and dispose of violations of municipal ordinances and have all other powers touching upon the arrest and preliminary trial, discharging, binding over, of all persons charged with offenses against the state committed in the city or municipality.

However, the Court rejected the city's argument, reasoning that the 1970 public act was amended in both 1972 and 1980, and for that reason, superceded the 1972 act giving home rule municipalities the authority to establish courts with both municipal ordinance and state criminal jurisdiction.

The Dossett Court implied that the population bracket in the statute at issue, met the test of being general legislation under Article XI, ' 9, of the Tennessee Constitution. That Court observed that the trial court had concluded that the population brackets contained in the 1970 statute were not private nor local in nature, reasoning that while the statute applied only to one municipal court in one city [Knoxville] the municipal courts in other cities could come within its population brackets in the future, and for that reason the statute was a general law. The Dossett Court simply declared that the trial court's conclusion "may have been a sufficient basis to support the statute," then veered off to what it deemed a more important reason why the statute was valid.

With respect to similar population bracket legislation, in Civil Service Merit Board v. Burson, 816 S.W.2d 725 (Tenn. 2001), the same Court upheld a civil service board statute passed was not local legislation under Article XI, ' 9, even though its population brackets applied only to cities in Shelby, Davidson and Knox Counties (the state's most populous counties) and "potentially" applied to other cities that might grow into the population brackets.

But the main reason that Dossett held the population bracket legislation that applied only to the City of Knoxville's municipal court was valid is reflected in the following language, which appears to apply to municipal courts in general:

> As stated in Hill v. State ex rel. Phillips, 216 Tenn. 503, 508, 392 S.W.2d 950 (1955):

> It appears, therefore...that a municipal or corporation court has no jurisdiction to hear cases based upon violation of State statutes unless the Legislature has expressly conferred such jurisdiction upon such court.
>
> In State ex rel. Boone v. Torrence, 63 Tenn. App. 224, 470 S.W.2d 356 (1971) the distinction between corporation courts and other "inferior" courts, such as courts of general sessions, was discussed. As stated there:
>
> ...the primary function of Corporation or Municipal Courts is enforcement of municipal ordinances and the primary function of General Sessions Courts is enforcement of State laws and the judicial determination of civil disputes within the confines of limited jurisdiction. [Citations omitted.]....
>
> The Home Rule provisions contained in Article XI, ' 9 of the state constitution do impose limitations upon the power of the General Assembly with respect to municipalities electing to come within them. *Nevertheless these limitations do not apply to the authority of the Legislature over the general state judicial system*. [Citing State ex. rel. Cheek v. Rollings, above]
>
> In the case of Jones v. Haynes, 221 Tenn.50, 424 S.W.2d 197 (1968) it was held that the Home Rule Amendment has no relation to the enactment of criminal statutes, nor can it be left to the vote of the people in a particular county as to whether a specified criminal statute shall be operative therein.
>
> In many of the forgoing authorities and in numerous others it has been stated that cities and towns are arms of the state government and exist for the convenience of the State for purposes of local government. *These are given certain protection from interference by the General Assembly under the Home Rule Amendment with respect to local matters, but not with respect to the general judicial power of the state nor with respect to jurisdiction over violation of the state's general criminal laws*...[At 195-96] [Emphases are mine.]

That language suggests that the General Assembly has near plenary power over the "general state judicial system;" it can bestow criminal jurisdiction generally on all Corporation Courts, or selectively upon Corporation Courts, even in the case of home rule municipalities. Indeed, the vestment of power in municipal courts of criminal jurisdiction has been selective; not all municipal courts have that power. At first glance, then, a logical conclusion is that because

the civil courts are undoubtedly part of the general state judicial system, the General Assembly has the power to authorize or provide for jury trials in municipal courts in both criminal and civil cases.

But that logical conclusion may fail where the statute gives only a particular home rule municipality the power to try municipal ordinance violations by jury in its municipal court. Dossett also speaks of legislation that might be local in effect and fall within the scope of Article XV, ' 9, of the Tennessee Constitution:

> In our opinion, if the General Assembly could validly confer such [criminal] jurisdiction upon the municipal courts in Knoxville as it did years ago in the early charter provisions, it could also remove that jurisdiction without violating the Home Rule Amendment or any other provisions of the state constitution. It has plenary power in conferring jurisdiction of criminal offenses against the State, and may add this to corporation courts or withdraw it in its discretion, under Article VI, ' 1 of the constitution. *The statutes in question do not deal with the administration of local affairs or the violation of local ordinances, as to which an entirely different question would be presented*. [At 196]

The emphasized language immediately above indicates that had the General Assembly passed a statute dealing with how the City of Knoxville dealt with the administration of *ordinance violations rather than state cases*, Article XI, '9, may have been triggered. A statute providing for a jury trial in ordinance violation cases might be a statute dealing with the administration of ordinance violations.

The City cannot through an amendment to its home rule charter provide for jury trials in its municipal courts because it seems a foregone conclusion that giving municipal courts the authority to hold jury trials in municipal courts is an extension of the jurisdiction of such courts. The jurisdiction of Corporation Courts must be enlarged only by an express act of the General Assembly. [Doyle v. Metropolitan Government, 471 S.W.2d 371 (1971); Hill v. State ex rel. Phillips, 392 S.W.2d 950 (1965)].

Sincerely,

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SDH/