

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

February 14, 2024

Opinion No. 24-002

Validity of a Ticketing System for Public Access to the House of Representatives

Question

Is a ticketing system to access the House of Representatives chamber gallery permissible under article II, section 22 of the Tennessee Constitution?

Opinion

Article II, section 22 of the Tennessee Constitution does not prohibit the House of Representatives from using a ticketing system to manage public access to the chamber galleries.

ANALYSIS

We assume that the “ticketing system” referred to in the question implements a requirement that a member of the general public obtain a ticket to enter and be present in the legislative chamber galleries while legislative business is being conducted.

Article II, section 22 of the Tennessee Constitution contemplates that sessions during which the General Assembly conducts its business will be open to the public, but it does not guarantee the public a right of access to legislative sessions. It provides that “[t]he doors of each House and of committees of the whole shall be kept open, unless when the business shall be such as ought to be kept secret.” Thus, according to its unambiguous language, the “open door” provision of article II, section 22 is expressly subject to any decision of the General Assembly to close the meetings during which business is conducted.

As the Tennessee Court of Appeals has held, the Tennessee Constitution “does not provide a right of access to all legislative meetings.” *Mayhew v. Wilder*, 46 S.W.3d 760, 772 (Tenn. Ct. App. 2001), perm. to appeal denied Mar. 19, 2001 and Mar. 30, 2001. That is, neither article II, section 22, nor any other provision of the Tennessee Constitution gives the public a right to be present during legislative meetings. *Id.*

On the most basic level, a “ticketing system” would not run afoul of the “open door” provision of section 22 because it would not close the doors to the public; it would merely manage public access to the limited space that is available. The chamber galleries in the Capitol Building provide seating from which visitors can view legislative proceedings taking place in the chamber.

The galleries have a fixed seating capacity. So even though the doors “shall be kept open,” public access to the proceedings is inherently limited to the seating capacity in the galleries. That space limitation necessitates a system for managing access and allocating the space available for the public in the galleries. A ticketing system is a common¹ and reasonable way of allocating the available seating.

A ticketing system for access to the chamber galleries would comport with the constitutional and statutory authority vested in the General Assembly to regulate and manage access to the Capitol Building. The Tennessee Constitution empowers “Each House” to establish “the rules of its proceedings” and vests the General Assembly with “all other powers necessary for a branch of the Legislature of a free State.” Tenn. Const. art. 2, § 12. Indeed, state law obligates the “speaker of the senate” and the “speaker of the house” to “take care of and preserve” the Capitol Building—including the chambers, galleries, rooms, and hallways—and to keep them “in good order.” Tenn. Code Ann. § 4-8-101(a)(2). And to ensure that the General Assembly can conduct business in an orderly way free of disruptions, Capitol security guards “are vested with police powers,” *id.* § 4-8-104(a), and the Department of General Services “has the authority to preserve order among visitors who may be in and around the capitol and annexes,” *id.* § 4-8-101(c).

These statutory and constitutional provisions support the proposition that the House of Representatives has authority to implement a ticketing system to manage access to the chamber galleries as a “rule of its proceedings.” Tenn. Const. art. 2, § 12. In particular, the residual clause in article 2, section 12, which grants the General Assembly “all other powers necessary for a branch of the Legislature,” would authorize the House to have rules to ensure order and decorum during legislative proceedings so that it may conduct its business efficiently.

And, in any event, the legislature’s decision to hold closed sessions or restrict public access—whether by a ticketing system or otherwise—is not subject to court review. *Mayhew*, 46 S.W.3d at 773 (agreeing that article II, section 22 of the Constitution “contemplates openness in legislative deliberations but holding that “the [legislature’s] decision to hold closed sessions is non-reviewable by the courts”).

As the court explained in *Mayhew*, a legislative decision to limit public access is non-reviewable by the courts under the doctrine of the separation of powers. Article II, section 2 of the Tennessee Constitution prohibits each one of the three branches of government—i.e., the executive, the legislative, and the judicial branches—from exercising the powers delegated to any other one of the three branches.

¹ For example, tickets—“passes”—are required for members of the public who want to enter the U.S. Senate and House Galleries while Congress is in session. See <https://www.visitthecapitol.gov/visit/know-before-you-go/watching-congress-in-session>.

Accordingly, under the separation-of-powers doctrine, purely “political questions”—i.e., questions within the purview of the legislature—are not subject to review by the judicial branch. *Mayhew*, 46 S.W.3d at 773-74. And “the question of when to close sessions of the Legislature is a purely political question.” *Id.* at 773. That is because

[t]here is a “textually demonstrable constitutional commitment” of this issue to the legislative department. Not only is it contained in the legislative article, but to hold that the court must judge when the legislative business ought to be kept secret would greatly diminish the Legislature’s granted power to make its own rules, and to exercise “all the powers necessary for a branch of the Legislature of a free State.”

Id.

Since “the Constitution gives the Legislature the sole right” to decide if and when to close sessions of the Legislature, the Legislature will not be “require[d] . . . to satisfy the judiciary when the Legislature wishes to close its doors.” *Id.* Accordingly, even if a legislative “ticketing system” is deemed to close a session or sessions of the Legislature, a court would not review or undertake to rule on the legislative decision to adopt that ticketing system.

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