

SENATE JOINT RESOLUTION 545

By McNally

A RESOLUTION to establish a task force to study the distribution of certain library materials.

WHEREAS, Tennessee Code Annotated, Section 39-17-911(a)(1) provides:

It is unlawful for any person to knowingly sell or loan for monetary consideration or otherwise exhibit or make available to a minor: any picture, photograph, drawing, sculpture, motion picture film, video game, computer software game, or similar visual representation or image of a person or portion of the human body, that depicts nudity, sexual conduct, excess violence, or sado-masochistic abuse, and that is harmful to minors; and

WHEREAS, the definition of "person" in the obscenity statute is sufficiently broad to include a public library; and

WHEREAS, an earlier version of the Tennessee obscenity statutes exempted public libraries from the statutory prohibition; and

WHEREAS, it is necessary to inform various regional and local public libraries, librarians, and library employees of the constitutionality of the obscenity statute in its current form as it relates to them, and the propriety of amending the language to provide an affirmative defense from such criminal prohibition for libraries; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED EIGHTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, that there is created a library standards task force, referred to in this resolution as the "task force", to be composed of nine (9) members as follows:

(1) One (1) member to be appointed by the speaker of the senate;

- (2) One (1) member to be appointed by the speaker of the house of representatives;
- (3) Two (2) members to be appointed by the secretary of state;
- (4) One (1) representative of a regional library board in this state, to be appointed by the senate sponsor of the resolution creating the task force;
- (5) One (1) representative of a library board of a public library of any county or city of this state, to be appointed by the house of representatives sponsor of the resolution creating the task force;
- (6) The attorney general and reporter or the attorney general's designee;
- (7) The executive director of the district attorney generals conference or the director's designee; and
- (8) The executive director of the state board of education or the director's designee.

BE IT FURTHER RESOLVED, that the task force shall study the display statute, compiled in Tennessee Code Annotated, Section 39-17-911, which controls the sale, loan or other distribution of obscene materials to minors, as it relates to libraries and shall determine whether its language is unconstitutionally overbroad or whether compliance with the statute imposes any impermissible burden on librarians, in violation of the First Amendment to the United States Constitution and Article I, Section 19, of the Tennessee Constitution.

BE IT FURTHER RESOLVED, that the task force shall also study the necessity and propriety to include an affirmative defense within the obscenity statute to allow librarians to rent some materials that fall under this statute when they have written permission on file or under other circumstances determined necessary or proper by the task force.

BE IT FURTHER RESOLVED, that the speakers shall jointly designate a chair from the membership of the task force, and the chair shall convene an initial meeting of the task force prior to September 1, 2014.

BE IT FURTHER RESOLVED, that the Tennessee State Library and Archives and Tennessee Advisory Council on Libraries shall provide necessary administrative support and other assistance to the task force upon request of the task force.

BE IT FURTHER RESOLVED, that the members shall not receive compensation for serving on the task force and shall not be reimbursed for attendance at meetings.

BE IT FURTHER RESOLVED, that the task force shall complete its duties and make its final report, including its findings and recommendations, to the governor and to the speakers of the senate and house of representatives by February 1, 2015, at which time the task force shall cease to exist.

BE IT FURTHER RESOLVED, that an appropriate copy of this resolution be prepared for presentation with this final clause omitted from such copy.