S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 04-105

Effect of Special Legislation Extending County's Authority Over Activities Regulated by State Agency

QUESTION

Would a private act that purports to give a single county expansive zoning and regulatory authority over business activities and property uses, which are already subject to regulation by the Tennessee Department of Environment and Conservation under Titles 68 and 69, contravene general laws having mandatory statewide application and/or lack a rational basis in violation of Article XI, Section 8 of the Tennessee Constitution?

OPINION

It is the opinion of this Office that the proposed private act would be inconsistent with general laws in Tennessee defining the authority of counties and delegating power to the Department of Environment and Conservation. Since no rational basis for the classification is apparent on the face of the legislation, and this Office cannot conceive of any, the proposed special law would constitute invalid class legislation.

ANALYSIS

This request seeks an opinion regarding the validity of pending private legislation that would authorize Johnson County, Tennessee, to exercise certain powers granted to municipalities under Tenn. Code Ann. § 6-2-201, specifically the power to define, regulate or even prohibit activities or businesses deemed detrimental to the health, safety or general welfare of county residents. Significantly, the proposed law would appear to give the county authority to regulate activities that are already subject to regulation by the Tennessee Department of Environment and Conservation (TDEC) under, *inter alia*, the Water Quality Control Act, Tenn. Code Ann. §§ 69-3-101 through 69-3-137. The proposed legislation, House Bill No. 3622/Senate Bill No. 3529, provides in pertinent part:

> SECTION 1. Notwithstanding any provision of Tennessee Code Annotated, Title 5, Chapter 1, to the contrary, in addition to those

> powers granted to counties by Tennessee Code Annotated, Section 5-1-118, Johnson County, may, by the adoption of a resolution by two-thirds (2/3) vote of the Johnson County Commission, *exercise those powers granted by Tennessee Code Annotated, Section 6-2-201 (22) and (23) by application of such powers to those activities, businesses or uses of property and business occupations and practices which are subject to regulation pursuant to* title 57, chapter 5; title 57, chapter 6; title 59, chapter 8; title 60, chapter 1; *title 68, chapters 201 through 221; or title 69, chapters 3, 8, 11 and 12*.

(Emphasis supplied.)

Tenn. Code Ann. §§ 6-2-201(22) and (23) expressly authorize municipalities to exercise the following powers:

> (22) Define, prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, businesses, occupations, callings, trades, uses of property and all other things whatsoever detrimental or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the municipality, and exercise general police powers;
>
> (23) Prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of the people may lawfully be established, conducted or maintained.

First, we note that while counties are accorded broad regulatory authority under Title 5, Chapter 1, of the Code, the General Assembly has repeatedly amended Tenn. Code Ann. § 5-1-118 in order to refine the types of powers that counties could share with municipalities. Beginning in 2000, the legislature amended Tenn. Code Ann. § 5-1-118 to extend to counties the powers granted to municipalities by Tenn. Code Ann. § 6-2-201(22) and (23), as cited above, but it also made the following exceptions:

> (b) Nothing in this part shall be construed as granting counties the power to prohibit or regulate normal agricultural activities.
> . . .
>
> (c) (2) The powers granted by § 6-2-201(22) and (23) shall not apply to those activities, businesses, or uses of property and business occupations and practices which are subject to regulation

> pursuant to title 57, chapter 5; title 57, chapter 6; title 59, chapter 8; title 60, chapter 1; *title 68, chapters 201 through 221; or title 69, chapters 3, 8, 11 and 12*.

2000 Tenn. Pub. Acts, ch. 969, § 1, codified at Tenn. Code Ann. § 5-1-118 (b) and (c) (emphasis supplied). The legislature, therefore, in amending this general law that has statewide application, expressly determined that counties should not have the authority to regulate activities and practices that are subject to regulation under the Code provisions cited above, including activities expressly regulated by TDEC. Title 59, Chapter 8, Title 68, Chapters 201 through 221, and Title 69, Chapters 3, 8, 11 and 12, all relate to environmental statutes governing matters from surface mining and landfills to water quality control and dams. Furthermore, we have previously opined that counties are prohibited under Tenn. Code Ann. § 13-7-114 from using their zoning authority to regulate agricultural uses of land, which include concentrated animal feeding operations (CAFOs). Op. Tenn. Att'y Gen. 99-071 (March 22, 1999). In that opinion, we remarked that CAFOs are already regulated by TDEC under Tenn. Code Ann. § 69-3-108(7) of the Water Quality Control Act.

The preamble language contained in the proposed private act appears to be directed at giving Johnson County expanded zoning authority in light of the apparent growth in development of the county. But we find that some of the language in the preamble, and certainly the body of the proposed law itself, presages a broader purpose. For example, the preamble states the following in pertinent part:

> WHEREAS, the county's present zoning authority is limited by state legislation and leaves some regulatory authority with state agencies located outside the county, which are not subject to local control, which imposes standards that do not necessarily reflect those deemed absolutely necessary to provide for the health, safety and general welfare of the citizens and residents of Johnson County. . . .

We believe that there is a conflict between the provisions of the proposed private act in question here and the general state statutes governing county authority, as well as the environmental statutes, such as the Water Quality Control Act in Title 69. Article XI, Section 8, of the Tennessee Constitution requires that "[g]eneral laws only are to be passed" by the legislature, and it prohibits the passage of any law conferring benefits or rights on particular individuals, without affecting others similarly situated. When there is a general law of mandatory statewide application, it cannot be suspended by a private act affecting a county or municipality in the exercise of its governmental functions, unless there is a reasonable basis for such classification. *Knox County ex rel. Kessel v. Lenoir City*, 837 S.W.2d 382, 383 (Tenn. 1992); *Brentwood Liquors Corp. of Williamson County v. Fox*, 496 S.W.2d 454, 457 (Tenn. 1973).

The proposed private act suggests that Johnson County has unique geological, hydrological and topographical characteristics, as well as rich resources that "require a higher standard of husbandry in order to protect and preserve the lands, waters, and the quality of life" for its residents. But we do not believe that these circumstances are sufficient to distinguish Johnson County from other counties in this region of East Tennessee, so as to warrant expansive zoning and regulatory power beyond those conferred by the general law upon all other counties. No other rational basis is stated. While the law does not require that a reasonable basis for the classification appear on the face of the legislation, *Shelby County Civil Service Merit Board v. Lively*, 692 S.W.2d 15, 18 (Tenn. 1985), we cannot conceive of any possible reason why Johnson County should merit broader zoning and regulatory power than any other county in the State. It is the opinion of this Office, therefore, that the proposed private act would violate of Article XI, Section 8, as invalid class legislation.

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