

**STATE OF TENNESSEE**  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
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Opinion No. 09-127

Warren County's Authority to Provide for Variances from Requirements in Private Act

**QUESTION**

Would procedures adopted by Warren County, which allow for the county planning commission to give variances from the requirements of 2000 Tenn. Priv. Acts, ch. 75, which regulates junkyards, scrapyards, and landfills in the county, be in violation of the general law or the private act?

**OPINION**

Yes. The procedures adopted by the county, which allow for variances from the requirements of 2000 Tenn. Priv. Act, ch. 75, would be in violation of the private act because the private act does not give the county the express or the implied authority to provide for such variances. In addition, the provisions of the private act regulating landfills are inconsistent with the general law in Part Seven of the Tennessee Solid Waste Disposal Act, Tenn. Code Ann. §§ 68-211-701 to -708, ("Jackson Law"), and are unconstitutional unless supported by a rational basis.

**ANALYSIS**

This request seeks an opinion regarding the validity of language in the Operational Procedures and Penalties ("procedures") adopted by Warren County which gives the Warren County Planning Commission the authority to provide for variances from the requirements of 2000 Tenn. Priv. Acts, ch. 75, known as the Warren County Junkyard/Scrapyard and Landfill Regulations Act of 2000 ("private act"). According to the request, section 4(1) of these procedures gives the Warren County Planning Commission the authority to give variances to persons who have failed to comply with the private act if "literal application or enforcement of these regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the Junkyard/Scrapyard Act." Warren County adopted these procedures pursuant to section 7 of the private act which provides that "[t]he Legislative Body of Warren County shall have the authority to establish operational procedures for administering the provisions of this act and to establish reasonable fees for the administration thereof."

The procedures adopted by Warren County giving it the authority to grant variances from the requirements of the private act would be in violation of the private act if the county

acted without adequate authority under the private act in establishing such procedures. “[W]ithout some form of constitutional authorization, local governments in Tennessee possess only those powers and authority as the General Assembly has deemed appropriate to confer upon them.” *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 711-712 (Tenn. 2001). Determining if the General Assembly intended for section 7 of the private act to give authority to Warren County to provide for variances from the requirements of the private act is a matter of statutory construction. “The most basic principle of statutory construction is to ascertain and give effect to legislative intent without broadening the statute beyond its intended scope.” *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009) (citing *State v. Sherman*, 266 S.W.3d 395, 401 (Tenn. 2008)). If the statutory language is clear, a court “must apply its plain meaning in its normal and accepted use, without a forced interpretation that would extend the meaning of the language.” *Id.* at 564 (citing *Overstreet v. TRW Commercial Steering Div.*, 256 S.W.3d 626, 630 (Tenn. 2008)). If statutory language is not clear, courts can rely on established canons of statutory construction. *State v. Sherman*, 266 S.W.3d 395, 401 (Tenn. 2008).

In this case, “operational procedures” is not defined and the private act does not explicitly give Warren County the authority to grant variances from the requirements of the private act. Because the private act is not clear as to whether it authorizes variances, and the matter concerns the amount of authority given to a local government by the General Assembly, Dillon’s Rule is applicable to aid in interpreting the statutory language of the private act. “Dillon’s rule is a canon of statutory construction that calls for the strict and narrow construction of local governmental authority.” *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001). It provides that a local government may act only when the authority is expressly provided for in a statute, private act, or charter, the power can be implied from the express power, or the power is implied as being “essential to the declared objects and purposes of the corporation.” *See id.* at 710-711 (citing *Mayor & City Council v. Linck*, 80 Tenn. (12 Lea) 499, 504 (1883)). This rule “has been consistently applied to all forms of local government, including those of cities, counties, and special districts.” *Id.* at 711.

The private act provides no express authority for Warren County to provide for variances from the requirements of the private act. There is also nothing in the private act to suggest that the authority to create variances should be necessarily implied. In section 7 of the private act, the General Assembly gives the legislative body of Warren County “the authority to establish operational *procedures* for administering the provisions of this act.” A variance cannot fairly be viewed as a procedural mechanism but is more appropriately characterized as substantive authority because it allows the county to determine that the substantive requirements in the private act should not apply to certain individuals or businesses. By limiting the county’s authority to establishing operational procedures, it is evident that the General Assembly did not intend to confer upon Warren County substantive authority such as the ability to grant variances. Because there is no express or implied authority in the private act for variances, Dillon’s Rule dictates the conclusion that the language in section 4(1) of the procedures regarding variances is not authorized by and would be in violation of the private act.

Section 5 of the private act authorizes the county to regulate landfills. The landfill provisions in the private act are inconsistent with the general law, Tenn. Code Ann. §§ 68-211-701 to -708 (“Jackson Law”). Section 5 of the private act gives the Warren County Planning

Commission the authority to disapprove of the construction of landfills within the county if certain conditions in the private act, such as setback requirements, are not met. The Jackson Law is a law of general application. *Profill Dev. Inc. v. Dills*, 960 S.W.2d 17, 32 (Tenn. Ct. App. 1997) (the Jackson law “affects all citizens in all counties and municipalities of the State”). The Jackson Law requires parties seeking to construct or operate a new landfill for solid waste disposal or for solid waste processing in a county or municipality that has opted into the law to submit construction plans to and obtain local approval from the appropriate municipal or legislative body before commencing construction of the project. Tenn. Code Ann. § 68-211-701. After there has been notice and an opportunity for a public hearing, the local legislative body must approve or disapprove the project taking into consideration certain specific criteria in the Jackson Law, which deal with such considerations as the type of waste being disposed of, method of disposal, and impact on the local community. Tenn. Code Ann. § 68-211-704.

The Jackson Law essentially gives special land use authority to counties and municipalities in Tennessee, whether they have zoning authority or not, when dealing with landfills and establishes the process whereby local governments can approve or disapprove of the construction and operation of new solid waste landfills within their boundaries. Section 5 of the private act is inconsistent with the Jackson Law because it gives special land use authority to Warren County to disapprove of the construction and operation of landfills within its boundaries which is not given to other similarly situated counties.<sup>1</sup> The Jackson Law provides a uniform approach which all counties can utilize to approve or disapprove of landfills. Providing one county with additional zoning type authority through a private act to approve or disapprove of landfills would upset the uniform approach intended by the General Assembly when it passed the Jackson Law. Private acts that suspend the general laws are not valid unless there is a reasonable basis for the discrimination. *Brentwood Liquors Corp. of Williamson County v. Fox*, 496 S.W.2d 454, 457 (Tenn. 1973). Section 5 of the private act is inconsistent with the Jackson Law and therefore is unconstitutional unless supported by a reasonable basis to justify the decision to vest Warren County with the authority to regulate landfills not given to other counties.<sup>2</sup>

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<sup>1</sup> This Office previously opined that Warren County could legally use the private act to enforce junkyard/scrapyard restrictions along county roads. Op. Tenn. Att’y Gen. 04-105 (July 2, 2004). That opinion, however, did not address enforcement of the landfill provisions of the private act. Unlike the general law regulating junkyards in Title 54, the Jackson Law has no similar provisions allowing counties to have more stringent or otherwise different standards for when landfills will be allowed to be constructed or operated within their boundaries.

<sup>2</sup> Other provisions of the private act would remain valid because section 8 of the private act provides that “[i]f any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.”

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