STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL
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Opinion No. 00-039

State Park Entrance Fees and Parking Fees - Authority To Establish By Rulemaking

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QUESTION

Does the Commissioner of the Tennessee Department of Environment and Conservation have authority to promulgate a rule establishing entrance fees and parking fees at state parks?

OPINION

Yes. It is the opinion of this Office that the Commissioner has such authority under Tenn. Code Ann. §§ 11-1-101(e) and (f), and -108(b). These statutes grant broad, discretionary rulemaking power to the Commissioner, including the authority to promulgate rules establishing fees.

ANALYSIS

The Commissioner of the Tennessee Department of Environment and Conservation (TDEC) has proposed promulgating Rule 0400-2-2-.32 (copy attached), which would establish entrance fees and parking fees at state parks. The purpose of the rule is "to provide funding to maintain and improve the quality of facilities and services offered to all patrons of the Tennessee State Parks System." Proposed Rule 0400-2-2-.32(1). The rule provides that "[i]t is the commissioner's intent that funds raised pursuant to this part will remain exclusively within the Tennessee State Parks System." *Id.*

The proposed rule provides for "Designated Fee Areas" to be created within the state parks, and all persons who enter these areas must have an "entrance permit." Proposed Rule 0400-2-2-.32(2) and (3). There are three types of entrance permits: (1) a complimentary permit that is available free-of-charge in certain specified circumstances; (2) an unlimited entry "Pioneer Passport" permit, valid for a year for $20, and valid for a lifetime for $40 to those age 65 and older; and (3) a $2 single-visit permit. Proposed Rule 0400-2-2-.32(4).

The proposed rule also provides that a fee may be charged by the Commissioner for parking motor vehicles upon state park property. Proposed Rule 0400-2-2-.32(6)(a). State park areas in which a parking fee is charged will be posted, along with the rate and directions for making payment.

Proposed Rule 0400-2-2-.32(6)(b). Finally, the proposed rule provides that neither an entrance fee nor a parking fee authorizes use of any facility for which a recreation fee is charged, *e.g.*, green fees, boat slip fees. Proposed Rule 0400-2-2-.32(7).

"Every action taken by an agency must be grounded in an express statutory grant of authority or must arise by necessary implication from an express statutory grant of authority." *Sanifill of Tennessee, Inc. v. Tenn. Solid Waste Disposal Control Bd.*, 907 S.W.2d 807, 810 (Tenn. 1995) (citations omitted). The statutes addressing the state park system are found in Title 11 of the Tennessee Code Annotated. Under Title 11, the TDEC Commissioner is responsible for administering the state parks. Tenn. Code Ann. § 11-3-103(a) ("[a]ll parks, monuments and other areas used primarily for recreational purposes shall be properly classified under the supervision of the department of environment and conservation").

The Commissioner is given broad, discretionary rulemaking authority in Title 11. This includes the power to promulgate rules "for the management and control" of state park property, as well as any "rules and regulations necessary to carry out such commissioner's duties and responsibilities." Tenn. Code Ann. §§ 11-1-101(e), -108(b). The Commissioner also is authorized to promulgate rules "establishing fees and charges for departmental services including, but not limited to, licenses, permits, or authorizations rendered pursuant to or required by any statute administered by the department." Tenn. Code Ann. § 11-1-101(f).

The General Assembly may validly delegate to state agencies broad rulemaking authority to be exercised upon discretion. *Bean v. McWherter*, 953 S.W.2d 197, 199-200 (Tenn. 1997). A rule is within an agency's authority if there is "a rational relationship between the regulation imposed and the legitimate goals of the empowering statutes." *Sanifill*, 907 S.W.2d at 812.

Under Title 11, the state parks are administered by the TDEC Commissioner "for the recreational and cultural use and enjoyment of the people." Tenn. Code Ann. § 11-3-101. To make the state parks available for public use, TDEC must provide the services necessary for the parks' operation and maintenance. Such services are part of the Commissioner's "management and control" of the parks. Tenn. Code Ann. § 11-1-108(b). The entrance and parking fees to be established by proposed Rule 0400-2-2-.32 are intended to help defray the costs of providing these "departmental services." Tenn. Code Ann. § 11-1-101(f). It is the opinion of this Office that Tenn. Code Ann. §§ 11-1-101(e) and (f), and -108(b) authorize the Commissioner to promulgate a rule establishing entrance fees and parking fees at state parks. Such a rule relates directly and reasonably to the statutory authority to administer state parks given the Commissioner in Title 11.

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