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Opinion No. 00-158

Municipal Authority to Enact Child Curfew Ordinances¹

QUESTIONS

1. Can a municipality in the State of Tennessee, outside of the two (2) counties specified in Tenn. Code Ann. § 39-17-1703, pass a child curfew law?
2. Can that child curfew law be enforced by the juvenile courts located in the county in which that particular municipality is located?
3. Must a city ordinance be enforced in the city court by fine only?

OPINIONS

1. Yes, municipalities have the authority to enact child curfew laws pursuant to Tenn. Code Ann. §§ 6-2-201(22) and (32); 6-19-101(22) and (33); 6-33-101; and 7-3-101.
2. Yes, if the court is seeking to enforce the child curfew law against a child. If the municipal curfew law in question authorizes enforcement against parents, the city court or, in some cases, the general sessions court would have jurisdiction to enforce the law against the parent.
3. Yes, a child curfew law would be enforceable against a parent in the city court by fine only.

¹This opinion does not address the constitutionality of any particular child curfew law.

ANALYSIS

I.

The first question concerns the authority of municipalities not located in Shelby County or Knox County to pass a child curfew law. Specifically, this concern arises from the language of Tenn. Code Ann. § 39-17-1703(b) which provides that the provisions of § 39-17-1702 shall not apply to a municipality that has a more stringent curfew ordinance. The legislative history of Tenn. Code Ann. §§ 39-17-1701, *et seq.*, indicates that the Child Curfew Act of 1995 was enacted to give Shelby County and, later, Knox County authority a county would not otherwise have, specifically to enact a child curfew ordinance. Senate Judiciary Committee Debate on S.B. 231 (April 4, 1995) (Tape No. S-Jud No. 3); House Children and Family Affairs Committee, Discussion on H.B. 322 (March 2, 1999) (Tape No. H-1). *See also* Tenn. Code Ann. §§ 5-1-118 and 5-1-211(a). This legislation did not remove any authority otherwise possessed by a municipality.

Tenn. Code Ann. §§ 6-2-201, 6-19-101, 6-33-101, and 7-3-101 delineate the authority of municipalities, cities, and metropolitan governments. Tenn. Code Ann. § 6-2-201 provides that:

Every municipality incorporated under this charter may:

(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;
...

(32) Have and exercise all powers that now or hereafter it would be competent for this charter specifically to enumerate, as fully and completely as though these powers were specifically enumerated.

Tenn. Code Ann. §§ 6-19-101(22) and (33), 6-33-101(a), and 7-3-101 grant the same authority to cities and metropolitan governments. This language, as specifically found in Tenn. Code Ann. §§ 6-2-201(22) and 6-19-101(22), is well established in Tennessee law as a legislative grant of police power to local government.

“The police power of a state, or of a municipality as an arm of the state, extends to the making of such laws and ordinances as are necessary to secure the safety, health, good order, peace, comfort, protection, and convenience of the state or municipality. . . .” (Citations omitted). *Porter v. City of Paris*, 184 Tenn. 555, 557, 201 S.W.2d 688, 689 (1947). The right to exercise the police power is an attribute of sovereignty, necessary to protect the public safety, health, morals, and welfare, and is of vast and

undefined extent. *Davis v. Allen*, 43 Tenn. App. 278, 307 S.W.2d 800 (1957). Municipalities have wide discretion and broad powers in exercising this right. *Porter*, 201 S.W.2d at 689.

The authority of a municipality to enact a child curfew law as an exercise of its police power is acknowledged in annotations on the subject and in treatises on municipal law. 6A Eugene McQuillin, *The Law of Municipal Corporations* § 24.111 (3rd Ed 1997); Danny R. Veilleux, Annotation, *Validity, Construction, and Effect of Juvenile Curfew Regulations*, 83 A.L.R.4th 1056 (1991).

Ordinances or statutes may make it unlawful for minors below a certain age to be on the streets not accompanied by a parent or an adult or on lawful and necessary business for their parents or guardians. On the one hand, such a measure has been sustained, as necessary to control the presence of juveniles in public places at nighttime with the attendant risk of mischief. Such ordinances promote the safety and good order of the community by reducing the incidence of juvenile criminal activity. However, a curfew ordinance must not exceed the bounds of reasonableness, and may not be impermissibly vague or overbroad. . . . Curfews which prohibit the presence of a minor on the streets after a certain hour have been held unconstitutional as an overly broad restriction on minors' liberty interests and First Amendment activities. In contrast, curfews which simply prohibit undirected or aimless activity of minors during the curfew hours, but which allow the minor to participate fully in employment, religious, civil, and social activities, have been upheld. (Citations omitted).

McQuillin, § 24.111, at 293-94.

II.

The second question concerns what court has jurisdiction to enforce a child curfew law enacted by a municipality. The answer to the question depends on whether the court is seeking to enforce the statute against a child or against a parent.

Juvenile courts have exclusive original jurisdiction over proceedings in which a child is alleged to be delinquent, unruly or dependent and neglected. Tenn. Code Ann. § 37-1-103(a)(1). Tenn. Code Ann. § 37-1-102(10) defines "delinquent child" as "a child who has committed a delinquent act and is in need of treatment or rehabilitation." Tenn. Code Ann. § 37-1-102(9) defines a "delinquent act," in pertinent part, as "an act designated a crime under the law, including local ordinances of this state. . . ." Tenn. Code Ann. § 37-1-102(23)(A) defines "unruly child," in pertinent part, as "a child in need of treatment and rehabilitation who . . . commits an offense which is applicable only to a child." A child may be dependent and neglected, pursuant to Tenn. Code Ann. § 37-1-102(12) by being "found in any place the existence

of which is in violation of law . . . because of lack of proper supervision.” Thus, the juvenile courts have exclusive jurisdiction for enforcement of a child curfew law against a child.

If the municipal curfew law in question authorizes enforcement against parents, the city courts have jurisdiction to enforce the law against a parent. Tenn. Code Ann. §§ 6-4-301(a)(2), 6-21-501(a), 6-21-501(b)(2), and 6-33-103. In some cases, the general sessions courts may also have this same jurisdiction. Tenn. Code Ann. § 16-15-501(b)(1) provides that “[n]otwithstanding any provision of the law to the contrary, judges of courts of general sessions have jurisdiction to try and dispose of violations of municipal ordinances where the sheriff of the county is acting under the authority of §§ 8-8-201, 12-9-104. . . .” Tenn. Code Ann. §§ 8-8-201 and 12-9-104 permit a municipality to enter into an agreement with the sheriff, general sessions court, and county in which it is located to provide for enforcement of the municipality’s ordinances.

III.

The final question concerns whether city courts are limited to monetary penalties in enforcing curfew violations. The answer to the question is yes. Tenn. Code Ann. §§ 6-4-302 and 6-21-502 permit a city judge to impose fines, costs and forfeitures, and punish by fine violations of city ordinances. Pursuant to Tenn. Code Ann. § 7-3-507, “[a]ll metropolitan governments are empowered to set a penalty of up to five hundred dollars (\$500) per day for each day during which the violation of ordinances, laws and regulations . . . continues or occurs.” However, as previously noted, city courts only have the jurisdiction to enforce a child curfew law against a parent. Therefore, city courts may only assess such monetary penalties against a parent.

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