

**STATE OF TENNESSEE**

OFFICE OF THE  
ATTORNEY GENERAL  
425 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243

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Opinion No. 01-050

Private Act Addressing County Zoning of Industrial and Commercial Development Areas and  
Mobile Home Parks

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**QUESTIONS**

1. Would a private act which authorizes a county legislative body, or a regional planning commission created in such county, to direct and control industrial and commercial developments within the county be a suspension of the general law?
2. Would a private act which authorizes a county, or a regional planning commission created in such county, to establish guidelines for the operation and location of mobile home parks be a suspension of the general law?
3. Would a private act addressing the activities in question 1 or 2 be a suspension of the general law if the county has adopted county-wide zoning?
4. If a regional planning commission has been created within a county, does the regional planning commission have the authority to direct and control the activities identified in question 1 or 2 without further action by the county legislative body or the general assembly through enacting a private act?
5. Can a county legislative body or a regional planning commission in this state address or control any type of growth or development activities within the county without enacting county-wide zoning?
6. Is there any mechanism available to a county to control any type of growth or development activities other than county-wide zoning?

**OPINIONS**

1. Yes, a private act authorizing a county legislative body to direct and control industrial and commercial developments within the county would constitute a suspension of the general law if it authorized

the county to regulate land use without complying with existing statutes that delegate this authority to counties.

2. Yes, a private act that authorized a county legislative body to regulate the operation and location of mobile home parks would constitute a suspension of the general law if it authorized the county to do so without complying with the delegation statutes.

3. Yes, even where a county legislative body has properly adopted zoning regulations, a private act addressing the activities in question 1 or 2 would constitute a suspension of the general law if the private act contained provisions that were inconsistent with the delegation statutes or other statutory provisions.

4. No, a regional planning commission possesses the authority to perform planning functions related to land use within a county, but the planning commission lacks the authority to perform legislative functions related to zoning matters. Legislation that attempted to delegate such legislative functions to a regional planning commission would conflict with the statutes that delegate these functions to county legislative bodies.

5. No, in the absence of properly enacted county-wide zoning regulations, neither a county legislative body nor a regional planning commission possesses the authority to regulate the use of land within the county.

6. No, in the absence of properly enacted county-wide zoning regulations, a county has no authority to control land use within its borders.

### ANALYSIS

Counties do not possess the “inherent power to control the use of land within their boundaries.” *Family Golf of Nashville, Inc. v. Metropolitan Gov’t*, 964 S.W.2d 254, 257 (Tenn. Ct. App. 1997). Instead, a county’s right to enact “zoning regulations is based upon powers delegated to it by the state legislature by specific enabling acts.” *State ex rel. Browning-Ferris Indus. v. Knox County Bd. of Comm’rs*, 806 S.W.2d 181, 187 (Tenn. Ct. App. 1990). The delegation statutes, originally enacted by the Legislature in 1935 and presently codified as Tenn. Code Ann. §§ 13-7-101 to -115 (1999), empower county legislative bodies to enact zoning regulations

for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the state and of its counties, including, among other things, lessening congestion on the roads or reducing the wastes of excessive amount of roads; securing safety from fire and other dangers; promoting adequate light and air, . . . ; promoting such distribution of population and such

classification of land uses and distribution of land development and utilization as will tend to facilitate and conserve adequate provisions for transportation, water flowage, water supply, drainage, sanitation, educational opportunity, recreation, soil fertility, food supply and the protection of both urban and nonurban development.

Tenn. Code Ann. § 13-7-103 (1999). Pursuant to this grant of zoning power, county legislative bodies may

regulate, in the portions of such county which lie outside of municipal corporations, the location, height and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation or other purposes.

Tenn. Code Ann. § 13-7-101(a)(1) (1999). If a county has failed to enact zoning regulations pursuant to the procedures outlined in the delegation statutes, the county lacks the power to regulate land use within its borders. Op. Tenn. Att’y Gen. 98-185 (Sept. 11, 1998).

The delegation statutes do not require counties to enact zoning regulations. *Robertson County v. Browning-Ferris Indus.*, 799 S.W.2d 662, 666 (Tenn. Ct. App. 1990). When they do enact zoning regulations, however, counties must comply with and “exercise their delegated powers consistently with the delegation statutes.” *Family Golf*, 964 S.W.2d at 257. Counties may not enact zoning regulations that conflict with the delegation statutes or with other provisions of state law. *Id.* at 258; Op. Tenn. Att’y Gen. 83-403 (Dec. 6, 1983).

A county generally may not enact zoning regulations that totally exclude otherwise lawful businesses from the county. *Robertson County v. Browning-Ferris Indus.*, 799 S.W.2d at 666. Pursuant to the delegation statutes, however, a county may enact zoning regulations that classify and limit the uses of buildings, structures, and land for trade, industry, and other purposes. *Fallin v. Knox County Bd. of Comm’rs*, 656 S.W.2d 338, 342 (Tenn. 1983); *Nance v. Memphis City Council*, 672 S.W.2d 208, 211 (Tenn. Ct. App. 1983); Tenn. Code Ann. § 13-7-101(a)(1) (1999). In this manner, a county may divide “land into districts according to the character of the land and buildings, their suitability for particular uses, and the uniformity of these uses.” *Family Golf*, 964 S.W.2d at 258. Pursuant to this authority, counties have enacted zoning regulations that limit the placement of mobile homes, designate mobile home districts, and establish minimum standards for mobile home parks. *See Town of Surgoinsville v. Sandidge*, 866 S.W.2d 553, 554 (Tenn. Ct. App. 1993); *Mobile Home City of Chattanooga v. Hamilton County*, 552 S.W.2d 86, 87 (Tenn. Ct. App. 1976), *cert. denied*, 431 U.S. 956 (1977); *Harrell v. Hamblen County*

*Quarterly Ct.*, 526 S.W.2d 505, 506 (Tenn. Ct. App. 1975). Similarly, counties have enacted zoning regulations that restrict commercial and industrial uses to certain areas and that impose requirements on such uses. See *State ex rel. SCA Chem. Waste Servs., Inc. v. Konigsberg*, 636 S.W.2d 430, 433 (Tenn. 1982); *Laidlaw Env'tl. Servs. v. Metropolitan Bd. of Health*, 934 S.W.2d 40, 44 (Tenn. Ct. App. 1996); *State ex rel. SCA Chem. Servs., Inc. v. Sanidas*, 681 S.W.2d 557, 559-60 (Tenn. Ct. App. 1984); *Davis v. Metropolitan Gov't*, 620 S.W.2d 532, 533 (Tenn. Ct. App. 1981).

The delegation statutes place “the authority to plan and the authority to zone with different local governmental entities.” *Family Golf*, 964 S.W.2d at 258. As its name implies, an appointed regional planning commission performs the planning functions related to land use control in a county, such as recommending zoning plans and reviewing proposed zoning amendments. *Id.*; Tenn. Code Ann. §§ 13-3-301 to -304 (1999). In contrast, the county legislative body exercises the legislative functions related to land use control, such as enacting zoning regulations and amendments and making final decisions on all zoning matters. *Family Golf*, 964 S.W.2d at 258; Tenn. Code Ann. §§ 13-7-101 to -105 (1999).

1. A private act authorizing a county legislative body to direct and control industrial and commercial developments within the county would constitute a suspension of the general law if it authorized the county to regulate land use without complying with the delegation statutes. A county legislative body may regulate land use only if it has properly enacted zoning regulations in accordance with the delegation statutes. Thus, a private act that excepted a county legislative body from this requirement would constitute a suspension of the general law.

2. For the same reason, a private act that authorized a county legislative body to regulate the operation and location of mobile home parks would constitute a suspension of the general law if it authorized the county to do so without complying with the delegation statutes.

3. Regardless of whether a county legislative body has properly adopted zoning regulations, a private act addressing the activities in question 1 or 2 would constitute a suspension of the general law if the private act contained provisions that were inconsistent with the delegation statutes or other statutory provisions.

4. If a regional planning commission has been created within a county, the regional planning commission is authorized to perform planning functions related to the use of land for industrial and commercial developments and mobile home parks. In accordance with the delegation statutes, however, only the county legislative body has the authority to enact zoning regulations and to make final decisions on all zoning matters. If a county legislative body attempted to delegate these legislative functions to a regional planning commission, such a delegation would conflict with the statutes that delegate these functions to county legislative bodies. Likewise, a private act attempting to delegate these functions to a regional planning commission would constitute a suspension of the general law.

5. In the absence of properly enacted county-wide zoning regulations, neither a county legislative body nor a regional planning commission possesses the authority to regulate the use of land within the county.

6. A county's sole authority to regulate land use derives from the delegation statutes. Accordingly, in the absence of properly enacted county-wide zoning regulations, a county has no authority to control land use within its borders.

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