S T A T E O F T E N N E S S E E
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Opinion No. 03-099

Authority of the State Capitol Commission

QUESTIONS

1. May the State Capitol Commission pursuant to TENN. CODE ANN. § 4-8-302(a)(3) establish a policy to:

A. Prohibit smoking in the Capitol Building?

B. Permit smoking at certain functions held inside the Capitol Building, but prohibit smoking at other times?

C. Permit smoking in office areas within the Capitol building, but prohibit smoking in all public areas within the Capitol Building?

2. In order to prohibit smoking in the Capitol Building, is the general assembly required to enact legislation?

OPINIONS

1(A). Yes, the State Capitol Commission may establish a policy that prohibits smoking in the Capitol subject to (i) the concurrence of the State Building Commission and (ii) compliance with the requirements of Tenn. Code Ann. § 4-4-121.

1(B). Yes, but any such smoking policy is subject to the requirements above described.

1(C). Yes, but any such smoking policy is subject to the requirements above described.

2. No, existing statutes authorize the establishment of a smoking policy in the Capitol. The general assembly, however, may enact legislation to modify the existing statutes.

ANALYSIS

1(A). The State Capitol Commission has authority to take certain actions that are described in Tenn. Code Ann. § 4-8-302:

> (a) The state capitol commission has the following duties and responsibilities:
> (1) To formulate and develop a plenary master plan and program for the adaptive restoration and preservation of the state capitol, including the building and contiguous grounds;
> (2) Consistent with the master plan required in subdivision (a)(1), the commission shall establish policy controlling the furnishings, including, but not limited to, wall, floor and window coverings of the state capitol;
> (3) To establish policy governing maintenance of the state capitol;
> (4) To establish policy governing the use of the state capitol for any nongovernmental activities; and
> (5) To establish a policy relative to historical commemorative additions and improvements on the Bicentennial Mall, such as statues and monuments, and to approve such historical commemorative additions and improvements as may come with such policy; provided, that all other aspects of the administration of the Bicentennial Mall shall remain within the control and jurisdiction of the department of environment and conservation.
> (b) All actions of the commission pursuant to subsection (a) shall be subject to the concurrence of the state building commission.

The State Capitol Commission has the authority to establish a smoking policy that prohibits smoking at the Capitol if it finds that smoking is detrimental to the preservation of the Capitol and its furnishings pursuant to subsections (a)(1) and (2) of the statute. The policy, however, would be subject to the concurrence of the State Building Commission pursuant to subsection (b) of the statute.

It should also be noted that specific statutory authority to establish smoking policies is found at TENN. CODE ANN. § 4-4-121 and states as follows:

> (a) The administrative head of each state department, agency, board, commission and other entity of the state, and the administrative head of each public institution of higher education, may establish a policy on smoking in the building or buildings under such administrative head's control or supervision.
> (b) Such policy shall protect the rights of people who smoke and people who do not smoke.
> (c) Each such policy shall provide at least one (1) area indoors in each such building where smokers are permitted to smoke. If a policy is established that permits smoking in the workplace, such policy shall also provide a nonsmoking area in the workplace.

This Office has addressed this statute in an analysis regarding children's exposure to environmental smoke in state owned or controlled property:

> Tenn. Code Ann. § 4-4-121, passed in 1990, does not prohibit smoking nor does it require a state agency to adopt a smoking policy. It authorizes administrative heads of state agencies to create smoking policies for buildings the administrative heads supervise or control. Tenn. Code Ann. § 4-4-121(a). If an agency adopts a smoking policy, the agency must provide smokers with at least one designated indoor smoking area. Tenn. Code Ann. § 4-4-121(c). This statute does not have an enforcement mechanism.

Op. Tenn. Atty. Gen 02-111 (October 7, 2002).

A rule of statutory interpretation is that a special statute or a special provision of a particular statute controls a general provision in another statute or a general provision in the same statute. *Woodroof v. City of Nashville,* 183 Tenn. 483, 488; 192 S.W.2d 1013, 1015 (Tenn. 1946). Also, statutes in *pari materia* that are related to the same subject or that have a common purpose are to be construed together so that the construction of one statute may be assisted by considering the words and legislative intent evidenced by the language used in the other statute. *Marion County Board of Education v. Marion County Education Association,* 86 S.W.3d 202, 215 (Tenn. Ct. App. 2001). Accordingly, we believe that if the State Capitol Commission establishes a smoking policy pursuant to its authority in Tenn. Code Ann. § 4-8-302 then it must provide a space for smokers and nonsmokers pursuant to the specific requirements of TENN. CODE ANN. § 4-4-121, the most recent statute passed that addresses the specific topic of smoking. This policy would be subject to the approval of the State Building Commission.

If the State Capitol Commission does not establish a smoking policy pursuant to the authority found in Tenn. Code Ann.§ 4-8-302, the Commissioner of the Department of General Services has the authority to establish such a policy pursuant to Tenn. Code Ann. § 4-4-121(a) since the Capitol is under the control or supervision of the Commissioner pursuant to Tenn. Code Ann. § 4-8-101.

1.(B) The State Capitol Commission has the authority to establish policy governing the use of the Capitol for any nongovernmental activities pursuant to Tenn. Code Ann. § 4-8-302 (a)(4). If a smoking policy is established that permits smoking at certain functions held inside the Capitol but prohibits public smoking at other times, such policy must protect the rights of smokers and nonsmokers as required by Tenn. Code Ann. § 4-4-121(b). Any such policy shall provide for at least one area indoors for smokers in buildings where smoking is permitted. Tenn. Code Ann. § 4-4-121(c). Also, a nonsmoking area in the workplace must be provided if smoking is permitted in the workplace. *Id.*

1.(C) As discussed above, Tenn. Code Ann. § 4-4-121 (c) requires (i) a smoke free area in a workplace where smoking is allowed and (ii) at least one indoor smoking area in buildings where

smoking is allowed. Therefore, these requirements must also be met in any policy that permits smoking in office areas within the Capitol (nonsmoking area must be established) but prohibits smoking in all public areas within the Capitol (smoking area must be established).

2. Based on the foregoing statutes, the general assembly does not need to enact legislation authorizing the prohibition of smoking in the Capitol building because authority to establish a smoking policy already exists. Of course, the general assembly may enact legislation to modify the existing statutes.

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