S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

October 9, 2006

Opinion No. 06-157

Regulating Crosses on Private Property

QUESTIONS

1. Does the State or any local government have statutory authority to regulate crosses erected on private property?

2. Are such crosses regulated by the same standards as billboards erected on private property adjacent to interstates or state highways?

3. If the law is silent on the regulation of monuments erected on private property, may any government entity enforce their removal absent a law granting that authority?

OPINIONS

1. This Office is unable to enumerate all the statutes that might authorize regulation of crosses on private property. This Office has concluded that, under Tenn. Code Ann. § 54-5-136, the Tennessee Department of Transportation has express authority to remove and dispose of personal property encroachments — including crosses and similar materials — upon the rights-of-way of highways under its jurisdiction. Op. Tenn. Att'y Gen. 05-016 (February 3, 2005). Depending on specific facts and circumstances, crosses visible from a state highway or interstate could also fall within the definition of "outdoor advertising" subject to regulation under Tenn. Code Ann. §§ 54-21-101, *et seq.* Questions about the application of the statute to specific facts and circumstances should be directed to the Tennessee Department of Transportation. Depending on the facts and circumstances, crosses could be subject to local regulation under various statutes delegating police powers to city and county governments, or under ordinances or resolutions implementing these powers.

2. As discussed above, depending on specific facts and circumstances, crosses visible from a state highway or interstate could fall within the definition of "outdoor advertising" subject to regulation under Tenn. Code Ann. §§ 54-21-101, *et seq.* Whether crosses would be subject to regulation under city or county laws regulating outdoor advertising would depend on specific facts and circumstances, including the terms of those laws.

3. Depending on the facts and circumstances, crosses could be subject to regulation or removal under any of the statutory schemes discussed above, or any ordinance or regulation enacted under the authority of these statutory schemes.

ANALYSIS

1. Regulation of Crosses on Private Property

This request concerns regulation of crosses on private property. A full answer to this question would depend on all facts and circumstances, particularly the reason for such regulation. The first question is whether the State or a local government has jurisdiction to regulate crosses built on private property. Based on the subsequent questions, we assume this question refers to authority under existing statutes. Of course, certain statutes protect property from vandalism. Tenn. Code Ann. § 39-14-408. Further, state statutes require a cemetery owner to provide for the maintenance of monuments within a cemetery. *See, e.g.,* Tenn. Code Ann. § 46-2-302. More generally, different statutory schemes grant a state agency or local governments the authority to regulate activity on local property to protect the public health and safety. This Office has concluded that, under Tenn. Code Ann. § 54-5-136, the Tennessee Department of Transportation has express authority to remove and dispose of personal property encroachments — including crosses and similar materials — upon the rights-of-way of highways under its jurisdiction. Op. Tenn. Att'y Gen. 05-016 (February 3, 2005). Under Tenn. Code Ann. § 54-21-101, *et seq.,* the Tennessee Department of Transportation regulates "outdoor advertising" on interstate and primary highways. Tenn. Code Ann. § 54-21-112. The term, "outdoor advertising":

> means *any* outdoor sign, display, device, bulletin, figure, painting, drawing, message, placard, poster, billboard or other thing which is used to advertise or inform, any part of the advertising or informative contents of which is located within an adjacent area and is visible from any place on the main traveled way of the state, interstate, or primary highway systems;

Tenn. Code Ann. § 54-21-102(7) (emphasis added). No one may begin construction of a new outdoor advertising device without first obtaining a permit. Tenn. Code Ann. § 54-21-104. Outdoor advertising is also subject to restrictions regarding location and size. Tenn. Code Ann. § 54-21-103. The Tennessee Department of Transportation has promulgated extensive regulations implementing this statutory scheme. Tennessee Rules and Regulations, §§ 1680-2-3-.01, *et seq.* Depending on further facts and circumstances, a cross could be "outdoor advertising" within the meaning of Tenn. Code Ann. § 54-21-102(7). Questions about the application of the statute to specific facts and circumstances should be directed to the Tennessee Department of Transportation.

Local governments lack inherent power to control the use of private property within their boundaries. This power belongs to the State of Tennessee, but the General Assembly may delegate this power to local governments. *Lafferty v. City of Winchester,* 46 S.W.3d 752 (Tenn. Ct. App. 2000), *p.t.a. denied* (2001). Local governments must exercise their delegated power consistently with the statutes from which they derive their power. *Henry v. White,* 194 Tenn. 192, 196, 250

S.W.2d 70, 71 (Tenn. 1952). Cities incorporated under the general act city charters have broad police powers. *See, e.g.*, Tenn. Code Ann. § 6-2-201; § 6-19-101; § 6-33-101. Many private act city charters grant similar powers. Counties also exercise many powers granted to cities. Tenn. Code Ann. § 5-1-118. Cities and counties also have zoning authority over land within their boundaries. Tenn. Code Ann. §§ 13-7-101, *et seq.* Depending on the facts and circumstances, crosses could be subject to local regulation under any of these statutes delegating police powers to city and county governments, or under ordinances or resolutions implementing these powers. Statutes specifically governing local roads could also be applicable. *See, e.g.*, Tenn. Code Ann. § 55-7-201 (removing obstacles from right-of-way).

2. Crosses as "Billboards"

The next question is whether crosses on private property are subject to regulation as "billboards." As discussed above, depending on the facts and circumstances, roadside crosses could be subject to regulation as "outdoor advertising" under Tenn. Code Ann. §§ 54-21-101, *et seq.* Whether crosses would be subject to regulation under other state laws, or city or county laws regulating outdoor advertising would depend on specific facts and circumstances, including the terms of those laws.

3. Authority to Remove Crosses on Private Property

The last question is, if the law is silent on the regulation of monuments erected on private property, whether any governmental entity may enforce their removal absent a law granting that authority. We have found no statute that expressly authorizes a governmental entity to remove crosses erected on private property. But, depending on the facts and circumstances, crosses could be subject to regulation or removal under any of the statutory schemes discussed above, or under any ordinance enacted under the authority of these statutory schemes.

MICHAEL E. MOORE
Acting Attorney General

ANDY D. BENNETT
Chief Deputy Attorney General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Leslie Winningham
State Representative
36 Legislative Plaza
Nashville, TN 37243-0138