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Opinion No. 07-19

Delegation of Authority by the General Assembly to State Wildlife Agencies

## QUESTION

Does the General Assembly have the right or authority to delegate powers assigned to it by the state constitution to state agencies such as the Tennessee Wildlife Resources Agency and the Tennessee Wildlife Resources Commission?

## OPINION

The General Assembly may not delegate to a state agency the power to determine what the law shall be. But the legislature may delegate to an agency the authority to implement policies expressed by statute. In so doing, the law must contain sufficient standards or guidelines to enable both the agency and the courts to determine if the agency is carrying out the legislature's intent.

## ANALYSIS

Under Article II, section 3, of the Tennessee Constitution, the General Assembly exercises the state's legislative power. Tenn. Const., art. II, § 3. "In general, 'legislative power' is 'the authority to make, order, and repeal law.'" *Gallaher v. Elam*, 104 S.W.3d 455, 464 (Tenn. 2003) (quoting *State v. King*, 973 S.W.2d 586, 588 (Tenn. 1998)). In addition to this general grant of legislative authority, Article XI, section 13, of the Constitution specifically empowers the General Assembly to "enact laws for the protection and preservation of game and fish, within the state, and such laws may be enacted for and applied and enforced in particular counties or geographical districts, designated by the General Assembly." Tenn. Const., art. XI, § 13. *See Tennessee Conservation League v. Cody*, 745 S.W.2d 854 (Tenn. 1987).

The legislature has given the Tennessee Wildlife Resources Agency exclusive jurisdiction to administer the laws "relating to the management, protection, propagation, and conservation of wildlife, including hunting and fishing, except those powers and duties conferred upon the wildlife resources commission as provided in § 70-1-206." Tenn. Code Ann. § 70-1-301(a) (2004). *See also* Tenn. Code Ann. § 70-1-305 (2004). The Tennessee Wildlife Resources Commission has been

authorized by the General Assembly to "[p]romulgate necessary rules, regulations, and proclamations." Tenn. Code Ann. § 70-1-206(a)(1) (2004).

While the legislature may not delegate its power to determine what the law shall be, it "may delegate to an administrative agency the authority to implement the expressed policy of particular statutes." *Gallaher*, 104 S.W.3d at 464 (citation omitted). In determining whether the General Assembly has made a lawful delegation, the Tennessee Supreme Court has framed the test as "whether the statute contains sufficient standards or guidelines to enable both the agency and the courts to determine if the agency is carrying out the legislature's intent." *Bean v. McWherter*, 953 S.W.2d 197, 199 (Tenn. 1997).

These standards need not be expressed as long as they "can be reasonably ascertained from the statutory scheme as a whole." *Id*. at 199. *See also Tasco v. Long*, 212 Tenn. 96, 105, 368 S.W.2d 65, 69 (1963) (legislature "may constitutionally delegate to administrative bodies powers to be exercised upon discretion"). In fact, the Court has concluded that "[d]etailed or specific legislation may be neither required nor feasible when the subject matter requires an agency's expertise and flexibility to deal with complex and changing conditions." *Bean*, 953 S.W.2d at 199. The Court has also concluded that the requirement for expressed standards may be relaxed when "the discretion to be exercised relates to or regulates for the protection of the public's health, safety, and welfare." *Id*.

The Supreme Court has considered the validity of a legislative delegation in the context of the wildlife laws. Under review in *Bean v. McWherter* was a statute classifying and regulating captive wildlife. *See* Tenn. Code Ann. § 70-4-403 (2004). At issue was the validity of the delegation to the Tennessee Wildlife Resources Commission (TWRC) to promulgate rules adding species to and deleting species from the statutory list. *Bean*, 953 S.W.2d at 199. The Court held that because this law "concerns issues of public safety and welfare, the requirement of expressed or specific standards is relaxed." *Id*. at 200. In ruling the delegation to be constitutional, the Court held "that the statute implies a standard of reasonableness." *Id*. The Court further held that "the statute's guidelines are that animals possessing characteristics consistent with the legislature's listed examples and statutory definitions are to be classified pursuant to the legislative scheme." *Id*. The Court thus concluded that these "standards are clearly adequate to allow both us and the TWRC to determine whether the legislature's intent is being furthered." *Id*.

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