

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 08-160

State Licensing of Halfway Houses

QUESTION

Is it constitutional to require that all halfway houses be licensed by the State, regardless of whether they provide additional services other than housing?

OPINIONS

Yes, the State has the authority to require licensing of halfway houses under the State's general police power to enact reasonable regulations to promote the public safety, health, morals and welfare.

ANALYSIS

This opinion addresses the question of whether the State can require that all halfway houses be licensed. Generally, a license requirement, such as the proposed licensing of halfway houses, is imposed for the purpose of regulating an activity under the police power of the State, and a licensing fee is established to cover the cost of such regulation. *See Memphis Retail Liquor Dealers' Association, Inc. v. City of Memphis*, 547 S.W.2d 244, 246 (Tenn. 1977). The question posed thus concerns the nature and extent of the State's police power. The State of Tennessee possesses an inherent power as an attribute of sovereignty, i.e. the police power, to enact reasonable legislation to protect the public safety, health, morals and welfare. *See State v. Booher*, 978 S.W.2d 953, 956 (Tenn. Crim. App. 1997). As early as 1912, our Supreme Court described the State's police power, as follows:

The police power is a necessary one, inhering in every sovereignty, for the preservation of the public safety, the public health, and the public morals. It is of vast and undefined extent, expanding and enlarging in the multiplicity of its activities as exigencies demanding its service arise in the development of our complex civilization. It is a function of government solely within the domain of the Legislature to declare when this power shall be brought into operation, for the protection or advancement of the public welfare. It is said that the courts have the right to determine whether such law is reasonable. By this expression, however, it is

not meant that they have power to pass upon the act with a view to determining whether it was dictated by a wise or a foolish policy, or whether it will ultimately redound to the public good, or whether it is contrary to natural justice and equity. These are considerations solely for the Legislature. In determining whether such act is reasonable the courts decide merely whether it has any real tendency to carry into effect the purposes designed—that is, the protection of the public safety, the public health, o[r] the public morals—and whether that is really the end had in view, and whether the interests of the public generally, as distinguished from those of a particular class, require such interference, and whether the act in question violates any provision of the state or federal Constitution.

Motlow v. State, 145 S.W. 177, 188 (Tenn. 1912).

The State's police power includes the power to regulate businesses to promote the public safety, health, morals and welfare. In *Ford Motor Co. v. Pace*, the Court explained that

Legislative power is not static and helpless but arises to adjust and face new conditions as they appear to affect the people of the State. Of course, the Legislature of the State cannot prohibit an ordinary business but it may, however, regulate the business to promote the health, safety, morals or general welfare of the public. The guarantees of the Constitution imply the absence of arbitrary restraint, but not immunity from reasonable regulations and prohibitions imposed in the interest of the people of the State.

335 S.W.2d 360, 362 (Tenn. 1960).

The test used to determine the validity of statutes enacted through the State's police power is whether or not the ends sought to be attained are appropriate and the regulations prescribed are reasonable. See *Booher*, 978 S.W.2d at 956. The exercise of the police power for the protection or advancement of the public welfare is solely within the domain of the legislature. See *Motlow*, 145 S.W. at 188. Courts do not make policy judgments; instead, courts are limited to determining the reasonableness and relation of the legislation to the public interest. See *Campbell v. McIntyre*, 52 S.W.2d 162, 164 (Tenn. 1932) (“all questions of policy, involving the wisdom or folly of the legislation, are beyond and outside the scope of judicial review”); *Motlow*, 145 S.W. at 188. To be a valid exercise of the police power, legislation must have a real tendency to promote or protect the public interest, bear a reasonable relation to such end, and protect the interests of the public generally, rather than those of a particular class. See *Campbell v. McIntyre*, 52 S.W.2d at 164; *Motlow*, 145 S.W. at 188.

The opinion of this Office is that the legislature has inherent police power to enact legislation requiring halfway houses to be licensed by the State. A “halfway house” is generally defined as “[a] rehabilitation center where people who have left an institution, as a prison or

hospital, are helped to readjust to the outside world.” *Webster’s II New College Dictionary* (Houghton Mifflin 2001). It is reasonable to conclude that persons transitioning from an institution such as a prison or mental health facility could pose a threat to the general public if they are not properly monitored or restricted by the halfway house that is responsible for aiding in their transition. Moreover, the State has a legitimate interest in ensuring that halfway houses provide adequate rehabilitation and related services to the persons residing there. A system of licensure enables the State to oversee the quality of services provided by such facilities, for the benefit of the persons served and ultimately for the public as a whole. Requiring halfway houses to obtain licenses from the State bears a reasonable relation to the ends both of protecting the general public from persons who might pose a threat and of assuring the quality of rehabilitative services offered. Requiring halfway houses to obtain licenses is not unlike requiring drivers (*State v. Booher*, 978 S.W.2d 953 (Tenn. Crim. App. 1997)), automobile salesmen and dealers (*Ford Motor Co. v. Pace*, 335 S.W.2d 360 (Tenn. 1960)), and land surveyors (*Chapdelaine v. Tennessee State Board of Examiners for Land Surveyors*, 541 S.W.2d 786 (Tenn. 1976)) to obtain licenses. Each of these regulations is a policy determination which tends to promote or protect the public interest, bears a reasonable relation to that end, and protects the interests of the entire public.

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