

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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December 11, 2008

Opinion No. 08-184

Municipal Regulation of Tree Harvesting

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**QUESTIONS**

1. Has there been any change in the analysis in Opinion No. 94-103?
2. In light of the fact that the words “agriculture” and “forestry” are not listed or mentioned in Tenn. Code Ann. § 13-7-201, does a municipality have the authority to regulate tree harvesting on greenbelt property located within a city through a municipal zoning regulation or through any other regulatory action?

**OPINIONS**

1. No, there has been no change in the analysis in Opinion No. 94-103.
2. No, the state statutes which empower municipalities to regulate land use preclude the regulation of agricultural uses of land through zoning ordinances.

**ANALYSIS**

Local governments lack inherent power to control the use of private property within their boundaries. *See 421 Corp. v. Metropolitan Gov't of Nashville & Davidson County*, 36 S.W.3d 469, 475 (Tenn. Ct. App. 2000). Their power derives from the State through specific delegation by the General Assembly. *See id.*, citing *State ex rel. SCA Chem. Servs. v. Sanidas*, 681 S.W.2d 557, 562 (Tenn. Ct. App. 1984), and *Family Golf of Nashville, Inc. v. Metropolitan Gov't*, 964 S.W.2d 254, 257 (Tenn. Ct. App. 1997). Local governments must exercise their delegated power consistently with the delegation statutes from which they derive their power. *See id.*, citing *Henry v. White*, 250 S.W.2d 70, 71 (Tenn. 1952).

The state statutes which establish the ground rules for regulation of land use by local governments are codified at Tenn. Code Ann. §§ 13-7-101 to -410. These statutes empower counties and municipalities to regulate the use of real property and the structure and design of buildings within their boundaries. Part 1 of Chapter 7 of Title 13 governs land use regulation by counties, while Part 2 governs land use regulation by municipalities.

In Opinion No. 94-103, this Office was asked whether a county has the authority to regulate the clear-cut method of tree harvesting by adding such regulations as amendments to its

zoning ordinance. This Office determined that Tenn. Code Ann. § 13-7-114 precludes the regulation of agricultural uses of land through zoning ordinances. *See* Op. Tenn. Att’y Gen. No. 94-103 (Sep. 9, 1994). Tenn. Code Ann. § 13-7-114 reads, in pertinent part, “Nor shall this chapter be construed as limiting or affecting in any way or controlling the agricultural uses of land.” This Office interpreted the above-quoted language from Section 114 to mean that “once a county has zoned an area for agricultural use, it may not use its zoning authority to regulate the type or method of agriculture in which the landowner participates.” Op. Tenn. Att’y Gen. No. 94-103. This Office further determined that tree harvesting is an agricultural use and is thus excluded from county regulation. There has been no change in the analysis in Opinion No. 94-103.

This Office has now been asked whether municipalities, as opposed to counties, have the authority to regulate tree harvesting on greenbelt property located within a city. As this Office determined in Opinion No. 94-103, tree harvesting is an agricultural use of land. The issue therefore becomes whether municipalities are empowered to regulate agricultural uses of land, even though counties are specifically precluded from doing so. Tenn. Code Ann. § 13-7-201 grants municipalities the power to regulate

the location, height, bulk, number of stories and size of buildings and other structures, the percentage of the lot which may be occupied, the sizes of yards, courts and other open spaces, the density of population, and the uses of buildings, structures and land for trade, industry, residence, recreation, public activities and other purposes, and identify areas where there are inadequate or nonexistent publicly or privately owned and maintained services and facilities when the planning commission has determined the services are necessary in order for development to occur.

Tenn. Code Ann. § 13-7-201(a)(1). This authority must be used “[f]or the purpose of promoting the public health, safety, morals, convenience, order, prosperity and general welfare[.]” *Id.*

As the requestor notes, Tenn. Code Ann. §§ 13-7-201, *et seq.*, do not contain a specific counterpart to Tenn. Code Ann. § 13-7-114. By its plain terms, however, the language at issue in Tenn. Code Ann. § 13-7-114 applies to the entire chapter on zoning, not only to that part of the zoning chapter which governs zoning by counties. When statutory language is clear and unambiguous, courts apply its plain meaning in its normal and accepted use, without a forced interpretation that would limit or expand the statute’s application. *See State v. Hannah*, 259 S.W.3d 716, 721 (Tenn. 2008). Tenn. Code Ann. § 13-7-114 provides:

*This part shall not be construed as authorizing the requirement of building permits nor providing for any regulation of the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, except on agricultural lands adjacent or in proximity to state federal-aid highways, public airports or public parks; provided, that such building or structure is*

incidental to the agricultural enterprise. Nor shall *this chapter* be construed as limiting or affecting in any way or controlling the agricultural uses of land.

(emphasis added). The use of “[t]his part” in the first sentence of Tenn. Code Ann. § 13-7-114 indicates an intention for the first sentence to apply only to Part 1 (County Zoning) of Chapter 7 (Zoning). In contrast, the use of “this chapter” in the second sentence indicates an intention for the second sentence to apply to all of Chapter 7. Therefore, our analysis in Opinion No. 94-103 applies with equal force to municipalities as to counties. Tenn. Code Ann. § 13-7-114 precludes the regulation of agricultural uses of land, including tree harvesting, through municipal zoning ordinances.

The fact that Tenn. Code Ann. § 13-7-201 does not specifically list “agriculture” and “forestry”—as Tenn. Code Ann. § 13-7-101 does—is not relevant to the question presented here. Tenn. Code Ann. § 13-7-201 empowers municipalities to regulate “the uses of buildings, structures and land for trade, industry, residence, recreation, public activities and *other purposes*[.]” Tenn. Code Ann. § 13-7-201(a)(1) (emphasis added). “[O]ther purposes” includes agriculture. A municipality, like a county, is thus empowered to zone an area for agricultural purposes. As explained above, however, once an area has been zoned for agricultural use, Tenn. Code Ann. § 13-7-114 precludes counties and municipalities from regulating the type or method of agriculture in which the landowner participates. Municipalities therefore cannot regulate the practice of tree harvesting on land that is zoned for agricultural purposes. Additionally, municipalities are precluded from rezoning land that was used for agricultural purposes as of May 10, 1998 and continues to be used for agricultural purposes. *See* Tenn. Code Ann. § 6-54-126 (“For any land that is used for agricultural purposes as of May 10, 1998, a municipality may not use its zoning power to interfere in any way with the use of such land for agricultural purposes as long as the land is used for agricultural purposes.”).

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