

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

**April 22, 2015**

**Opinion No. 15-39**

**Constitutionality of the Healthy Workplace Act of 2014**

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**Question**

Does the Healthy Workplace Act of 2014 constitute an unlawful delegation of legislative authority in violation of the Tennessee Constitution?

**Opinion**

No.

**ANALYSIS**

The Healthy Workplace Act (“the Act”), enacted in 2014, directs the Tennessee Advisory Commission on Intergovernmental Relations (“TACIR”) to create a model policy for the use of public employers.

- (a) No later than March 1, 2015, the Tennessee advisory commission on intergovernmental relations (TACIR) shall create a model policy for employers to prevent abusive conduct in the workplace. The model policy shall be developed in consultation with the department of human resources and interested municipal and county organizations including, but not limited to, the Tennessee municipal league, the Tennessee county services association, the municipal technical advisory service (MTAS), and the county technical assistance service (CTAS).
- (b) The model policy created pursuant to subsection (a) shall:
  - (1) Assist employers in recognizing and responding to abusive conduct in the workplace; and
  - (2) Prevent retaliation against any employee who has reported abusive conduct in the workplace.
- (c) Each employer may adopt the policy created pursuant to subsection (a) as a policy to address abusive conduct in the workplace.

Tenn. Code Ann. § 50-1-503.

The legislative power of the State of Tennessee is vested exclusively in the General Assembly. Tenn. Const. art. II, § 3. Under Article II, Section 3, the General Assembly may not

delegate powers that are “purely legislative.” *Gallaher v. Elam*, 104 S.W.3d 455, 459 (Tenn. 2003). The General Assembly may, consistent with Article II, Section 3, delegate discretion to administrative agencies or local governments to promulgate rules and enforce laws. *Bean v. McWherter*, 953 S.W.2d 197, 199 (Tenn. 1977); *Lobelville Special Sch. Dist. v. McCanless*, 381 S.W.2d 273, 274 (1964) (holding that the legislature may constitutionally delegate to officials or agencies powers of administration to be exercised upon discretion); *Tasco Developing & Bldg. Corp. v. Long*, 368 S.W.2d 65, 68-69 (1963) (“the enactment of reasonable rules and regulations, and their enforcement, is more or less an administrative function and not the exercise of a legislative power or function”).

The Tennessee Supreme Court has held that the test for determining whether a legislative delegation of power is constitutional is “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*, 953 S.W.2d at 199. The Supreme Court also explained that “the requirement of 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” in which case “minutely detailed standards” are not necessary. *Id.* at 199-200 (citing *Tasco*, 368 S.W.2d 65). *Bean* involved a challenge to the constitutionality of a statute that delegated to the Tennessee Wildlife Resources Commission rule-making authority to add or delete species from the statutory list of protected wildlife. Because the statute concerned issues of public safety and welfare the court applied the more relaxed test for constitutionality of the delegation of legislative power and found that, even though the statute did not provide specific details, it provided sufficient guidance to enable the agency to carry out the legislature’s intent. Therefore, the delegation of power was constitutional.

As in *Bean*, here the General Assembly has authorized TACIR to draft a policy that relates to public safety and welfare—specifically, the safety and welfare of public employees. Therefore, the more relaxed standard of review applies: the statute need not contain minute details in order to provide sufficient guidance to enable TACIR to determine if it is carrying out the legislature’s intent when it creates the model policy. The Act does not contain “minutely detailed standards,” but it does expressly and clearly articulate the purpose and required objectives of the model policy, Tenn. Code Ann. § 50-1-503(a) and (b), so that TACIR knows and can further the legislature’s intent in drafting the model policy. It is especially worth noting that the Act does not delegate to TACIR authority to create a policy that employers are then required to adopt. Rather, it merely calls for the development of a *model* policy that employers may adopt, modify, or even ignore.<sup>1</sup> In this respect, the delegation to TACIR is not a delegation of power to make rules or regulations that have mandatory or binding effect.

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<sup>1</sup> Employers are not required to adopt the model policy, but employers who do adopt the model policy or a substantially similar policy are immune from suit for an employee’s abusive conduct resulting in negligent or intentional infliction of mental anguish. Tenn. Code Ann. § 50-1-504.

Accordingly, The Healthy Workplace Act of 2014 does not amount to an unconstitutional delegation of legislative power. Like the statute in *Bean*, the Act implies a standard of reasonableness and is sufficiently specific to allow TACIR—and the courts—to determine whether the legislature’s intent is being furthered by whatever model policy TACIR develops.

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