STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 17-12

Authority of Local Government to Impose Additional License or Permit Fee

Question

If the state, by law, charges a fee for the issuance of a certain permit or license, does a local government have the authority to increase the state fee or impose a fee additional to the state fee for the issuance of the permit or license to the constituents of the local government?

Opinion

A local government does not have authority to increase the state fee or to impose a local fee in addition to a state fee for the issuance of a permit or license unless the local government is authorized to do so by state law. If explicitly authorized by statute or implicitly authorized within the powers delegated by the state to local governments, a local government may impose a local fee in addition to the state fee, but only if the fee is reasonable and only if imposition of the fee otherwise comports with applicable limitations, restrictions, and conditions.

ANALYSIS

A "fee" is a charge imposed by the state or local government for the purpose of regulating some activity or defraying the cost of providing a service or benefit to the party paying the fee. City of Tullahoma v. Bedford County, 938 S.W.2d 408, 412 (Tenn. 1997). A fee must bear a reasonable relation to the objective to be accomplished or to the expenses involved in providing the service. See Porter v. City of Paris, 184 Tenn. 555, 562, 201 S.W.2d 688, 691 (1947); S&P Enterprises, Inc. v. City of Memphis, 672 S.W.2d 213, 216 (Tenn. Ct. App. 1983).

Imposition by the government, either state or local, of a license or permit fee[1] is generally viewed as an exercise of the government's police power. See Nashville Gas & Heating Co. v. Nashville, 177 Tenn. 590, 152 S.W.2d 229, 233 (Tenn. 1941); Lewis v. Nashville Gas & Heating Co., 162 Tenn. 268, 281, 40 S.W.2d 409 (Tenn. 1931); Harrell v. Speed, 113 Tenn. 224, 229-30, 81 S.W. 840 (Tenn. 1904). This is so because effective exercise of the police power necessarily involves expenditure of resources, which makes it reasonable to require the business, traffic, act, or thing that necessitates policing to bear the expense of regulation. See City of Chattanooga v. Veatch, 202 Tenn. 338, 304 S.W.2d 326 (Tenn. 1957) (upholding annual license fee on passenger vehicles); Tucker Corp. v. City of Clarksville, No. M2002-00627-COA-R3-CV, 2003 WL

[1] Issues relating to a local government's authority to tax activity or persons within its jurisdiction are outside the scope of this Opinion. This Opinion is limited to license and permit fees; it does not address the separate and analytically distinct question of taxes.

21250811 (Tenn. Ct. App. May 30, 2003) (municipality authorized by statute to charge connection fee for new connections to its water and sewer systems).

Sovereignty resides in the state. Local governmental entities, such as counties and municipalities are political subdivisions of the state. They have no authority except the authority expressly delegated to them by the state or necessarily implied from state law and they may exercise only those express or necessarily implied powers delegated to them by the state. *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1988); *Bayless v. Knox County*, 199 Tenn. 268, 281, 286 S.W.2d 579, 585 (1955). Accordingly, police power, including the authority to impose license and permit fees, belongs to the state and only passes to local governments if and to the extent conveyed by the state. *Holdredge v. City of Cleveland*, 218 Tenn. 239, 247-48, 402 S.W.2d 709, 712 (Tenn. 1966); *see also Miller v. City of Memphis*, 181 Tenn. 15, 21, 178 S.W.2d 382, 384 (1944) (generally, "a municipality has no inherent authority to enact ordinances whose validity and enforcement rests upon general police powers . . . but it cannot be doubted that the State may delegate its authority, or some portion of it.").

Thus, local governments may exercise police power, such as imposition of local license fees, if they are expressly or impliedly granted authority to do so by the state. *Draper v. Haynes*, 567 S.W.2d 462, 465 (Tenn. 1978). But even when police power has been appropriately delegated by the state to local government, local governments may only exercise the authority that has been expressly given or may necessarily be implied from state law. For example, local governments that are authorized to exercise certain police powers—including the imposition of fees—by statute, must comply with any statutory conditions and limitations. *See City of Tullahoma, supra*, 938 S.W.2d at 413. Moreover, even when counties and municipalities are delegated authority to impose a license fee in addition to a state fee, they may not exercise that authority in contravention of established principles of common law or applicable statutory or constitutional provisions. *City of Bartlett v. Hoover*, 571 S.W.2d 291, 292 (Tenn. 1978). As long as there is no such conflict, reasonable and nondiscriminatory local regulation of activity is permissible, even if the state regulates the same activity. *Southern Ry. v. City of Knoxville*, 223 Tenn. 90, 98-99, 442 S.W.2d 619, 622 (1968).

On the other hand, just as the legislature may delegate to local governments the authority to impose fees in addition to or in excess of state fees, the legislature may preempt the authority of local governments to impose fees for licenses and permits, either expressly or impliedly. For example, Tenn. Code Ann. § 62-35-131(a)(1) explicitly preempts local fees: "No licensee or registrant [for private protective services] shall be required to obtain any authorization, permit, or license from, or pay any other fee or post a bond in, any municipality, county, or other political subdivision of this State to engage in any business or activity regulated under this chapter." Similarly, if a local license fee or permit requirement would impede accomplishment of the legislature's objectives, then a court may find that a particular statute implicitly prohibits or preempts imposition of a fee by a local governmental entity in addition to the state fee. *See Town of Middleton v. City of Bolivar*, No. W2011-01592-COA-R3-CV, 2012 WL 2865960 at *12 (Tenn. Ct. App., July 13, 2012) ("A municipal ordinance may be preempted by state law to preclude the charge of fees in excess of an authorized rate . . . .").

The legislature also may choose to occupy the entire field on an issue, thereby precluding any additional regulation by local government. For instance, when a profession is

comprehensively regulated state-wide, local governments may not "tack on" additional licensing fees. *See State ex rel. Beasley v. Mayor of Fayetteville,* 196 Tenn. 407, 415, 268 S.W.2d 330, 333 (Tenn. 1954) ("[W]here the subject of the legislation is of State-wide concern and the Legislature has appropriated the field and declared the rule, its declaration is binding throughout the State . . . .").

In sum, a local government does not have authority to increase a state fee or to impose a local fee in addition to a state fee for the issuance of a permit or license unless the local government is authorized to do so by state law. If explicitly authorized by statute or implicitly authorized within the powers delegated by the state to local governments, a local government may impose a local fee in addition to the state fee, but only if the fee is reasonable and only if imposition of the fee otherwise comports with applicable limitations, restrictions, and conditions.

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