

STATE OF TENNESSEE

OFFICE OF THE
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Opinion No. 05-048

Proposed Amendment to House Bill 476 (Senate Bill 853) Relative to Engine Compression Brakes on Trucks or Truck Tractors

QUESTIONS

1. Does the proposed amendment to House Bill 476 (Senate Bill 853) permitting local or municipal governments to proscribe the use in their jurisdictions of engine compression brakes without mufflers on trucks or truck tractors violate the Federal or State Constitutions?
2. Does Tenn. Code Ann. § 55-8-152 allowing counties and municipalities to establish special speed limits on highways or roads within their jurisdictions adjacent to school grounds violate either the Federal or State Constitutions?
3. Does the State or a local government have the authority to post on an interstate highway a sign describing a criminal offense and the punishment for same?

OPINIONS

1. It is the opinion of this Office that the proposed amendment violates Article I, Section 8, Article II, Section 3, and Article XI, Section 8, of the Constitution of the State of Tennessee. The amendment attempts to delegate to local or municipal governments the power of the legislature to make a criminal law. The amendment would create a criminal offense which would only apply in those counties adopting it, and it contravenes the general law.
2. Tenn. Code. Ann. § 55-8-152 does not violate the Federal or State Constitutions. It neither delegates the power of the legislature to pass a criminal law nor contravenes the general law.
3. Pursuant to Tenn. Code. Ann. § 54-5-108, the Tennessee Department of Transportation has the authority to post traffic regulations on interstate highways within its jurisdiction.

ANALYSIS

1. The proposed amendment to House Bill 476 (Senate Bill 853) would allow local or municipal governments to ban trucks or truck tractors without engine compression brake mufflers

from the highways and roads in its jurisdiction. Violation of the ban would be a Class B misdemeanor punishable by fine only. It is unenforceable until the local or municipal government posts notice of the ban on street signs.

Currently, the Commissioner of the Tennessee Department of Transportation is authorized to promulgate rules not inconsistent with federal law regulating the equipment required for trucks or truck tractors and establishing particular highways upon which they may operate. Tenn. Code Ann. § 55-7-112. The proposed amendment would create an exception to the general law and permit local or municipal governments, at their option, to require engine compression brake mufflers on trucks or truck tractors as a condition to operate on highways and roads within their jurisdiction.

Article I, Section 8, of the Constitution of Tennessee provides:

That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or any manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land.

The term "law of the land" means a general and public law, operating equally upon every member of the community. *Jones' Heirs v. Perry*, 18 Tenn. 59, 71 (1836).

Article XI, Section 8, of the Constitution of Tennessee, provides:

The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals rights, privileges, immunities or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

The "law of the land" clauses of these two sections of the Constitution of Tennessee are substantially equivalent to those contained in the "due process" and "equal protection" clauses of the federal constitution. As a general rule, that which violates the one would also violate the other. *Leech v. Wayne County*, 588 S.W.2d 270, 279 (1979). Inasmuch as the amendment permits local or municipal governments to require mufflers on engine compression brakes and to ban trucks or truck tractors without such equipment from the streets, the amendment creates a partial law in contravention of the general law authorizing the Commissioner of the Department of Transportation to make those decisions.

The legislative authority of the State is vested in the General Assembly, and that power may not be delegated indiscriminately to other bodies. Article II, Section 3, of the Constitution of Tennessee. While the General Assembly may delegate rulemaking and administrative authority to governmental agencies, *see, e.g., McQueen v. McCanless*, 182 Tenn. 453, 460 S.W.2d 630 (1945),

the delegation by the legislature of the power to make laws is unconstitutional. *Richardson v. Reese*, 165 Tenn. 661, 667, 57 S.W.2d 797 (1933). This proposed amendment authorizes a local or municipal government to declare conduct that is valid in other local or municipal jurisdictions to be criminal in that local or municipal jurisdiction and, by this process, to circumvent not only the rule against delegation of powers peculiarly within the province of the legislature (that of creating crimes) but also to circumvent the requirements of Article I, Section 8, that the “law of the land” be general.

The proposed amendment plainly delegates to local or municipal governments the power to impose by resolution a criminal law regarding the operation of trucks or truck tractors with engine compression brakes without mufflers. It would, in effect, suspend the general law within the jurisdiction of any local or municipal government in which such a regulation may be promulgated. Accordingly, it is the opinion of this Office that the proposed amendment is violative of Article I, Section 8, Article II, Section 3, and Article XI, Section 8, of the Constitution of Tennessee.

2. Tenn. Code Ann. § 55-8-152 governs the speed limits of any highway or public road in the state. An exception permits counties and municipalities to establish speed limits upon any highway or public road within their jurisdiction which is adjacent to school grounds devoted primarily to normal school day activity. This exception does not apply to school entrances and exits to and from controlled access highways on either the state system of highways or the state system of interstate highways. If a county or municipality does not act to establish special speed limits, the statute fixes the speed limit at 15 miles per hour and defines the effective duration. The statute also fixes penalties for the violation of the speed limits set forth therein.

Tenn. Code Ann. § 55-8-152, unlike the proposed amendment, does not delegate the authority to counties and municipalities to enact criminal penalties for violation of the special speed limits. Likewise, the statute is general in its application statewide and, therefore, does not offend Article I, Section 8, Article II, Section 3, or Article XI, Section 8, of the Constitution of Tennessee.

3. Tenn. Code Ann. § 54-5-108 governs the posting of traffic regulations on or along all streets and highways in the state of Tennessee. It provides in pertinent part as follows:

(a)(1) The Department [of Transportation] has full power, and it is made its duty, acting through its Commissioner, to cooperate with the federal government in formulating and adopting a uniform system of numbering or designating roads of interstate character, within this state, and in the selection and erection of uniform danger signals and safety devices for the protection and direction of traffic on such highways . . .

(b) The Department has full power, and it is made its duty, acting through its Commissioner, to formulate and adopt a manual for the

design and location of signs, signals, markings, and for posting of traffic regulations on or along all streets and highways in Tennessee, and no signs, signals, markings, or postings of traffic regulations shall be located on any street or highway in Tennessee regardless of the type or class of the government agency having jurisdiction thereof except in conformity with the provisions contained in such manual.

Tenn. Code Ann. § 54-5-108. The Department of Transportation, acting through the Commissioner, has the authority to post traffic regulations on interstate highways.

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