

STATE OF TENNESSEE
OFFICE OF THE
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December 8, 2009

Opinion No. 09-184

Constitutionality of Mandatory Workers' Compensation Insurance Coverage

QUESTION

Are the recent changes to Tenn. Code Ann. §50-6-113 effectuated by 2008 Tenn. Pub. Acts ch. 1041, requiring a sole proprietor to carry workers' compensation insurance on himself, constitutional?

OPINION

Yes. We believe a court would likely find the changes to Tenn. Code Ann. §50-6-113 effectuated by 2008 Tenn. Pub. Acts ch. 1041 to be constitutional.

ANALYSIS

As amended by 2008 Tenn. Pub. Acts ch. 1041, Tenn. Code Ann. §50-6-113(f)(1) sets out circumstances under which a sole proprietor performing construction work must carry workers' compensation insurance on himself. This Office has recently opined that this statute requires a sole proprietor with employees to carry workers' compensation insurance on himself, except where the sole proprietor contracts directly with a homeowner or is working on the sole proprietor's own home. Op. Tenn. Att'y Gen. No. 09-173 (Oct. 30, 2009). You have asked whether the recent changes to Tenn. Code Ann. §50-6-113, requiring a sole proprietor to carry workers' compensation insurance on himself, are constitutional.

It is well established that state and local governments possess an inherent police power to enact reasonable legislation to protect the health, safety, welfare, morals, and convenience of the public. See *Nashville, C & St. L. Ry. V. Walters*, 294 U.S. 405 (1935); *Estrin v. Moss*, 430 S.W.2d 345, 348 (Tenn. 1968). When a regulatory measure enacted pursuant to the legislature's police power is challenged as breaching the concept of fundamental fairness, it is reviewed by a court under a rational basis test. *Fritts v. Wallace*, 723 S.W.2d 948, 949 (Tenn. 1987). Accordingly, if a court is able to conceive of a rational basis for the regulatory statute that is reasonably related to the legitimate government interest in protecting the public, the statute must be upheld. *Id.* Furthermore, statutes are presumed constitutional and the burden is on the party attacking the regulatory statute to show that the statute is not reasonably related to a protectable

interest or that it is oppressive in its application. *Goodlettsville Beer Bd. v. Brass A. Saloon*, 710 S.W.2d 33, 36 (Tenn. 1986).

The legislative history of this amended statute reveals that the change was prompted by a need to ensure that all subcontractors and employees working on a construction site are properly covered by workers' compensation insurance, as some employers were avoiding paying for coverage by claiming that their employees or subcontractors were actually sole proprietors. *See, e.g.,* Joint Workers' Comp. Comm. discussion on April 23, 2007, tape 1 at 36-620. The purpose of the Tennessee Workers' Compensation Act is to relieve society of the burden of providing compensation to injured workers. *Scott v. Nashville Bridge Co.*, 143 Tenn. 86, 223 S.W. 844, 849 (1920). The Tennessee Supreme Court has repeatedly upheld the constitutionality of the Workers' Compensation Act. *Lynch v. City of Jellico*, 205 S.W.3d 384, 390 (Tenn. 2006). It is our opinion that the requirement that a sole proprietor carry workers' compensation insurance on himself is rationally related to the purpose of the Workers' Compensation Act. Therefore, we believe a court would likely find the changes to Tenn. Code Ann. §50-6-113 effectuated by 2008 Tenn. Pub. Acts ch. 1041 to be constitutional.

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