



County Technical Assistance Service

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Constitutional Limitations

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Constitutional Limitations

Reference Number: CTAS-568

As with all government action, regulations passed under this new authority must be both written and enforced in such a manner that they do not violate the constitutional rights of people affected by the regulations. For example, the county could not pass a regulation that prohibited passing out literature of a political nature. This would obviously violate a citizen's First Amendment right to freedom of speech.

The county could not pass regulations prohibiting religious ceremonies or the ownership of guns. The regulations could not discriminate on the basis of race, gender, or other protected classes. These limits are obvious. Issues that are more likely to arise would involve challenges that a regulation resulted in taking property without just compensation or failed to provide due process. If the regulation is so burdensome on a property owner that the owner can no longer get use, enjoyment, or value out of the property, a court may find that the regulation effectively "took" the value of the property from the owner without providing compensation. In that case, the regulation may be struck down, or the county may be required to compensate the injured property owner. Due process problems may arise if citizens are not provided a means to dispute or appeal a penalty under the regulation. Part of providing due process in a regulation also involves giving the public adequate notice of the regulation. This standard of adequate notice requires a regulation to be clear in its language and application so that those affected understand the regulation. If a county regulation is so vague that the public cannot ascertain what conduct is regulated or how it is regulated, it may be struck down as unconstitutional.

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