

Attorney General and Judicial Limitations on the Tennessee Board of Probation and Parole

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October 11, 2008

Abstract: Tennessee law limits the power of the Tennessee Board of Probation and Parole because of the inherent wide ranging discretionary power of that Board.

The Tennessee Board of Probation and Parole (hereinafter referred to as BOARD) is limited by state law and by constitutional law in the fulfillment of its duties, primarily because of concerns about the wide ranging discretionary power of that Board (no requirement of probable cause, no automatic notice and hearing, etc).

The Board has recently asserted the right to file its own court cases without prior authorization by the state Attorney General. Such expansion of the legal powers of the Board should be stopped as an unwarranted expansion of their jurisdiction.

First, the Board is not currently authorized to file or pursue such an appeal as this unless they first obtain the express approval of the Tennessee Attorney General and Reporter. TCA 4-5-322 (a) (2) states that the Board must request the approval of the Attorney General and Reporter before the Board can file a petition for review: “judicial review under this chapter is permitted upon the request of the agency head and the approval of the Attorney General and Reporter.”

Second, the Board is not the proper party with standing to file or pursue a court appeal.

Tennessee case law is clear that the wrong party may not seek judicial review. *Roberts v. State Bd. of Equalization*, 557 S.W.2d 502 (Tenn. 1977); *East Tenn. Health Imp. Council, Inc. v.*

Tennessee Health Facilities Comm'n, 626 S.W.2d 272 (Tenn. Ct. App.1981); and Tennessee Env'tl. Council v. Solid Waste Disposal Control Bd., 852 S.W.2d893 (Tenn. Ct. App. 1992).

Further, the Board may be found guilty of "unclean hands" in a proceeding where the Board has filed without proper authorization. C.F. Simmons Med. Co. v. Mansfield Drug Co., 23 S.W. 165, 168 (Tenn. 1893). The doctrine of unclean hands states the principle that a party must show their conduct has been fair, equitable, and honest as to the controversy in issue. 27A Am. Jur. 2d Equity § 126 (1996).