

What is the “Police Power”?

Any examination of governmental powers necessarily involves a discussion of the term “police power.” It is considered one of the most essential of governmental powers and is subject to the least limitations. Attempts to define the term are somewhat elusive and include the following:

- The power of government to promote the public health, morals or safety, and the general well-being of the community.
- The inherent power of government to enact and enforce laws for the promotion of the general welfare.
- The inherent power by which the state regulates private rights in the public interest.
- A power of government that extends to all the great public needs.

Admittedly, these definitions are sweeping, but the following list of some examples of governmental use of the police power may assist in understanding the extent of its practical application:

- Protection of property
- Use of property in general (zoning)
- Building regulations
- Regulation of billboards, signs, and other structures or devices for advertising purposes
- Prevention of and protection against fire
- Keeping and use of animals
- Prohibition of nuisances in general
- Restriction of smoke and offensive or noxious odors
- Removal and disposition of garbage, refuse and filth
- Removal of dead animals
- Regulation of occupations and employment

The Commonwealth delegates limited police power to municipalities, and a local government’s police power may be said to be subject to its enabling legislation or home rule charter. The municipal codes authorize municipalities to exercise their police power not only pursuant to specific grants of authority, but also pursuant to a general welfare clause or a general grant of powers clause. The delegation of the police power to municipalities through a general welfare

clause does not mean that municipalities have unlimited police power or even the same degree of police power as the Commonwealth.¹

Clearly there are limits on a municipality's ability to use its police power to control the persons and property of citizens. The general rule is that the means employed in the exercise of the police power can be neither arbitrary nor oppressive, and there must be a reasonable and substantial relationship between the means employed and the end to be attained.² Moreover, the end to be attained must be a public one, specifically the public health, public safety or public morals, or some other facet of the "general welfare." Also, the exercise of delegated police power by a municipality is limited to its municipal functions. Municipal corporations have been granted limited police power over matters of local concern and interest, but the scope of such power does not extend to subjects inherently in need of uniform treatment or to matters of general public interest that necessarily require exclusive state policy.

A government's exercise of its police power is presumed to be constitutional, and anyone challenging an exercise of the police power has the burden of establishing that the use of the police power was arbitrary and unreasonable and unrelated to the public health, safety, morals or general welfare. Courts will not scrutinize the wisdom of the policy that impelled the government's decision to exercise its police power and will not substitute their judgment as to whether the best means of achieving the desired result were used. Thus, although the exercise of police power often causes tensions between the government and its citizens, if a challenge is raised, a court should examine only whether the statute, ordinance or regulation was promulgated for a legitimate "police power" purpose, and whether it is carried out in an unreasonable and arbitrary manner.

¹ See the *Deskbook* article entitled "Dillon's Rule – State Primacy Over Local Governments."

² *Gambone v. Commonwealth*, 375 Pa. 547, 101 A.2d 634 (1954).