

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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January 25, 2010

Opinion No. 10-08

Deputy Sheriff as Candidate for County Commission

QUESTION

Whether a county-employed deputy sheriff would be required to resign from that position in order to run for election to the County Commission?

OPINION

There is no across-the-board requirement that a deputy sheriff resign in order to run for the county commission. Under certain circumstances, however, resignation would be necessary. If the deputy sheriff's position or duties are in connection with an activity financed in whole or in part by federal loans or grants, and if election to the County Commission is a partisan election, then the deputy sheriff would be subject to the provisions of the federal Hatch Act and would be required to resign from that position in order to run for such partisan elective office. Additionally, a deputy sheriff in a county that has adopted the County Sheriff's Civil Service Law of 1974 is prohibited from making any public endorsement of any candidate in any campaign for elected office. A deputy sheriff's announcement of his or her candidacy for the office of county commissioner would constitute an endorsement of that candidacy. Accordingly, in a county that has adopted the 1974 Act, the deputy sheriff would be in violation of Tenn. Code Ann. § 8-8-419 unless he or she first resigned from employment.

ANALYSIS

You have asked whether an individual employed by a county as a deputy sheriff may continue to hold that position while also seeking election to the County Commission. There is no requirement that in all instances a deputy sheriff must resign that position to run for the county commission. But this Office has previously opined that an individual who is employed by a state or local agency whose position is funded in whole or in part by federal funds is prohibited by the federal Hatch Political Activity Act, 5 U.S.C. §§ 1501, *et seq.*, from being a candidate for elective office unless said election is nonpartisan. *See* Op. Tenn. Att'y Gen. 81-305 (May 11,

1981) (copy attached). A deputy sheriff is a local employee and, therefore, if his position or duties are in connection with an activity financed in whole or in part by federal loans or grants, and if election to the County Commission is a partisan election, then he would be subject to the provisions of the federal Hatch Act. Accordingly, the deputy sheriff would be required to resign from that position in order to run for such partisan elective office.

Additionally, for those counties that have adopted the "County Sheriff's Civil Service Law of 1974," Tenn. Code Ann. § 8-8-419 provides as follows:

- (a) No person holding a position in the classified service shall take an active part in any political campaign while on duty, nor under any circumstances shall any employee of the sheriff's department solicit money for political campaigns. A deputy sheriff shall not use such position to reflect the deputy sheriff's personal political feelings as those of the sheriff's department or to exert any pressure on anyone to influence the person's political views. No employee while on duty, nor any officer while in uniform, shall display any political advertising or paraphernalia on such person's body or automobile. No employee of the sheriff's office shall make any public endorsement of any candidate in any campaign for elected office.
- (b) However, nothing in this part shall be construed to prohibit or prevent any such employee from becoming or continuing to be a member of a political club or organization and enjoying all the rights and privileges of such membership or from attending any political meetings, while not on duty. Such employee shall not be denied freedom in the casting of a vote.
- (c) Any person violating the provisions of this section shall be dismissed from the service of the office of the sheriff.

"Classified service" is defined as all positions and employees in the sheriff's department, except for the sheriff, the sheriff's personal secretary, and the cook for the jail facility, and, in some counties, the chief deputy sheriff. Tenn. Code Ann. § 8-8-403.

This Office has previously opined that a deputy sheriff's announcement of his or her candidacy for the office of sheriff would constitute an endorsement of that candidacy and, if subject to the County Sheriff's Civil Service Law of 1974, such deputy sheriff would be in violation of Tenn. Code Ann. § 8-8-419 unless he or she first resigned from employment. *See* Op. Tenn. Att'y Gen. 09-167 (October 16, 2009) (copy attached). Similarly, a deputy sheriff's announcement of his or her candidacy for the office of county commissioner would constitute an endorsement of that candidacy. Accordingly, that deputy sheriff, if subject to the County Sheriff's Civil Service Law of 1974, would also be in violation of Tenn. Code Ann. § 8-8-419 unless he or she first resigned from employment.

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