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Opinion No. 00-035

Release of arrestees who have posted bail

QUESTION

Tenn. Code Ann. § 40-35-118(a) provides that an arrestee "shall" be released from custody subject to the conditions of a bail bond upon posting bail. The Knox County General Sessions Court has ordered the Sheriff's Office to refuse to accept bail bonds and hold arrestees until after an arrestee is arraigned even if bond has been set. Can the Knox County Sheriff's Office proceed in accordance with this order?

OPINION

Yes. If a court has jurisdiction over the person and the subject matter, the order is valid even if it is erroneous.

ANALYSIS

According to your question, it is the practice in Knox County for judicial commissioners[1] to set bail at the time an arrest warrant is issued. Tenn. Code Ann. § 40-35-118(a) creates a statutory entitlement to release for arrestees if bail has been set; it provides in part:

> Any defendant for whom bail has been set may execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money in cash equal to the amount of the bail. Upon depositing this sum the defendant *shall* be released from custody subject to the conditions of the bail bond.

The Knox County General Sessions judges have, however, ordered the Sheriff's Office not to release any arrestees that have not been arraigned and have ordered the Sheriff's Office not to accept bail

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[1] Tenn. Code Ann. § 40-5-201 *et seq.* authorizes general sessions judges to appoint judicial commissioners who are in turn authorized to issue arrest warrants, issue search warrants and set or deny bond.

bonds until arrestees have been arraigned.

Trial courts have the authority to promulgate rules of practice and procedure as long as those rules are not inconsistent with statutory law. Tenn. Code Ann. § 16-2-511; *In re International Fidelity Insurance Co.,* 989 S.W.2d 726, 729 (Tenn. Crim. App. 1998); *Richie v. Liberty Cash Grocers, Inc.,* 63 Tenn. App. 311, 314, 471 S.W.2d 559, 560 (Tenn. App. 1971). To the extent that a local rule or order conflicts with substantive law, it is null and void *ab initio,* or from its inception. *International Fidelity Insurance Co.,* 989 S.W.2d at 729; *Pettus v. Hurst,* 882 S.W.2d 783, 786 (Tenn. App. 1994.) Accordingly, this office is of the opinion that these orders directly conflict with a substantive statutory right and consequently are erroneous.

The fact that a court order is erroneous, however, does not excuse compliance with the order. If the court has jurisdiction over the person and the subject matter, it must be followed until it is set aside, even if it is erroneous. *State v. Jones,* 726 S.W.2d 515 (Tenn. 1987); *Vanvabry v. Staton,* 88 Tenn. 334, 12 S.W. 786 (1890); *Aladdin Industries, Inc. v. Associated Transport, Inc.,* 45 Tenn. App. 329, 323 S.W.2d 222 (1958); *Churchwell v. Callens,* 36 Tenn. App. 119, 252 S.W.2d 131 (1952). The reason for the rule is obvious; individuals do not have the authority to evaluate the propriety of a given judicial order. As the court in *State v. Sammons,* 656 S.W.2d 862 (Tenn. Crim. App. 1982), explained: "[t]he principle underlying the court's contempt power, i.e., that a court must be able to maintain the integrity of its orders, is so strong that under Tennessee Law even erroneous orders must be obeyed, at the risk of a contempt citation." *Id.* at 869. Therefore, because the Knox County General Sessions Courts have jurisdiction over arrestees and their release, the Knox County Sheriff's Office must comply with these orders.

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