S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

March 13, 2000

Opinion No. 00-044

Issuance of citations and arrest warrants by general sessions court clerks

QUESTION

Does the statutory requirement that peace officers shall issue citations for misdemeanor offenses in lieu of continued custody also apply to general sessions court clerks when determining whether to issue an arrest warrant or a summons for a misdemeanor violation under Tenn. Code Ann. §40-6-215.

OPINION

No. By its plain language, Tenn. Code Ann. §40-6-200, *et. seq.* permits a magistrate, judge or general sessions court clerk to issue arrest warrants or criminal summonses for misdemeanor violations.

ANALYSIS

Tenn. Code Ann. §40-6-214 authorizes general sessions court clerks to issue arrest warrants. In the alternative, clerks may also issue a criminal summons. Tenn. Code Ann. §40-6-215.

Under Tenn. R. Crim. P. 4:

> If it appears from the affidavit of complaint or supporting affidavits filed with the affidavit of complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall be issued by a magistrate or clerk to any officer authorized by law to execute it, or a criminal summons for the appearance of the defendant shall issue in lieu thereof. . . .The magistrate or clerk may issue a criminal summons instead of a warrant. The district attorney general may direct the clerk to issue either a criminal summons or a warrant.

Based on the plain language of the statute and rule, general sessions court clerks may issue either an arrest warrant or a criminal summons after a probable cause determination. As recognized in the Advisory Commission Comments to Rule 4, the use of the word clerk is qualified "by the words 'who is neutral and detached and who is capable of the probable cause determination required

by this rule.' *See Shadwick v. City of Tampa,* 407 U.S. 345 (1972)." Conversely, a police officer is not considered a neutral officer. *See Wong Sun v. United States,* 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d441 (1963).

Finally, Tenn. R. Crim. P. 3.5 discusses the use of citations in arrests for misdemeanors. The Advisory Commission Comments point out that use of citations in misdemeanor cases where there is no danger to the public interest "will result in a procedure in keeping with the expressed goal of securing simplicity in procedure and eliminating unjustified expense and delay."[1]

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KIM R. HELPER
Assistant Attorney General

Requested by:

Senator Roy Herron
11A Legislative Plaza
Nashville, TN 37243-0024

[1]Tenn. Code Ann. §40-7-118(b)(1) does not preclude an officer from making an arrest for a misdemeanor offense committed in his or her presence. Rather, the statute addresses the issuance of a citation following the arrest.