S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
SECOND FLOOR CORDELL HULL BUILDING
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243-0488

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Opinion No. 00-050

Franklin County Constables

QUESTIONS

1. Does a constable elected in Franklin County have law enforcement powers?

2. Is Franklin County liable for the actions of any constables elected in Franklin County?

3. May a Franklin County constable serve as a full-time or part-time Franklin County deputy sheriff?

4. If so, could this service be with constable qualifications?

OPINIONS

1. A constable elected in Franklin County has law enforcement powers unless they have been removed by action of the county legislative body.

2. The county would probably be liable for torts committed by a constable that fall within the Governmental Tort Liability Act, Tenn. Code Ann. §§ 29-20-101, *et seq.*, and for civil rights violations under 42 U.S.C. § 1983.

3. A duly elected constable is not constitutionally prohibited from serving as a full-time or part-time deputy sheriff. The same individual would be prohibited from serving in both positions under the common law if the positions are incompatible. Whether the positions are incompatible depends on the particular facts and circumstances.

4. A constable in Franklin County may not serve as a deputy sheriff without meeting the requirements for that position. The qualifications to serve as a constable and to serve as a deputy sheriff meeting the definition of a police officer are different.

ANALYSIS

1. Your first question is whether a constable elected in Franklin County has law enforcement powers.[1] Tenn. Code Ann. § 8-10-108(b) sets out population brackets describing those counties in which constables possess law enforcement powers. The statute includes all counties with a population of not less than 25,600 and not more than 27,500 according to the 1960 federal census or any subsequent federal census. According to the federal census, the population in Franklin County was 27,289 in 1970. Tenn. Code Ann. Vol. 13 at 1020.

Tenn. Code Ann. § 8-10-109(a) provides that every constable elected in a county falling within the population brackets of section -108(b) is "a conservator of the peace and vested with all the power and authority belonging to the office of constable by common law." We note that section 8-10-109(b)(1) sets forth a procedure whereby a county legislative body may remove the law enforcement powers of a constable enjoying such powers by operation of sections -108(b) and -109(a). But subsection (b)(2) of this statute provides that (b)(1) will not apply in counties within specific population brackets according to the 1990 federal census or any subsequent federal census. According to the federal census of 1990, the population of Franklin County was 34,725. Tenn. Code Ann. Vol. 13 at 1022. This population does not fall within any of the population brackets set forth in § 8-10-109(b)(2). It therefore appears that the legislative body of Franklin County has the authority to remove the law enforcement powers of the constables of that county. We have made no independent factual inquiry and do not know whether this has occurred. Thus, a constable in Franklin County has law enforcement powers by operation of law under Tenn. Code Ann. §§ 8-10-108(b) and 8-10-109(a), unless the county legislative body has removed such powers in accordance with Tenn. Code Ann. § 8-10-109(b)(2).

2. Your second question is whether Franklin County would be liable for the actions of constables elected in the county. This Office has concluded that a county would probably be liable for torts committed by a constable that fall within the Governmental Tort Liability Act, Tenn. Code Ann. §§ 29-20-101, *et seq.*, and for civil rights violations under 42 U.S.C. § 1983. Op. Tenn. Atty. Gen. 91-70 (August 1, 1991) (copy attached).

3. Your third question is whether a Franklin County constable may serve as a full or part-time deputy sheriff of the county. This Office has concluded that a duly elected constable is not constitutionally prohibited from serving as a full-time or part-time deputy sheriff. The same individual would be prohibited from serving in both positions under the common law if the positions are incompatible. Whether the positions are incompatible depends on the particular facts and circumstances. Op. Tenn. Atty. Gen. 99-160 (August 19, 1999) (copy attached).

4. Finally, you ask whether a constable may serve as a deputy sheriff with the same qualifications as those of a constable. A constable may not serve as a deputy sheriff without meeting

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[1] This opinion assumes the office of constable has not been abolished in Franklin County as authorized by Tenn. Code Ann. § 8-10-101(a)(4)(A).

the qualifications for that position. Depending on the duties of the deputy sheriff, that person may need to be qualified as a police officer under Tenn. Code Ann. §§ 38-8-101, *et seq.* A police officer is defined under Tenn. Code Ann. § 38-8-101 as "any person employed by any municipality or political subdivision of the state of Tennessee whose primary responsibility is the prevention and detection of crime, and the apprehension of offenders . . .."[2] The statute defines both full-time and part-time police officers. Tenn. Code Ann. § 38-8-101(1) & (2). The qualifications of police officers are set forth in Tenn. Code Ann. § 38-8-106, which provides:

> After July 1, 1981, any person employed as a full-time police officer, and after January 1, 1989, any person employed/utilized as a part-time/temporary/reserve/auxiliary police officer or as a special deputy, shall:
> (1) Be at least eighteen (18) years of age;
> (2) Be a citizen of the United States;
> (3) Be a high school graduate or possess equivalency;
> (4) Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances;
> (5) Not have been released or discharged under any other than honorable discharge from any of the armed forces of the United States;
> (6) Have such person's fingerprints on file with the Tennessee bureau of investigation;
> (7) Have passed a physical examination by a licensed physician;
> (8) Have a good moral character as determined by a thorough investigation conducted by the employing agency; and
> (9) Be free of all apparent mental disorders as described in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM-III) of the American Psychiatric Association. An applicant must be certified as meeting these criteria by a qualified professional in the psychiatric or psychological field.

In addition, a full-time police officer needs to obtain certification from the Peace Officer Standards and Training Commission ("POST Commission"), which requires basic police training. *See* Tenn. Code Ann. § 38-8-105(a); POST Commission Rules 1110-1-.01(1), 1110-2-.01, 1110-2-.03(1) & 1110-2-.03(3). The provisions of Title 38, Chapter 8, however, do not apply to constables. Tenn. Code Ann. § 38-8-110; Op. Tenn. Atty. Gen. 92-18 (February 28, 1992). To qualify for the office of constable in most counties, a person shall:

> (A) Be at least twenty-one (21) years of age;
> (B) Be a qualified voter of the district;
> (C) Be able to read and write;

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[2] This Office has opined that sheriffs' deputies meeting this definition are "police officers." Op. Tenn. Atty. Gen. 85-224 (July 30, 1985).

(D) Not have been convicted in any federal or state court of a felony; and
(E) (i) Not have been separated or discharged from the armed forces of the United States with other than an honorable discharge.

Tenn. Code Ann. § 8-10-102(a)(1). Further, a constable must meet the training requirements set forth in Tenn. Code Ann. §§ 8-10-201, *et seq.* *See* Op. Tenn. Atty. Gen. 99-025 (February 16, 1999). Finally, we note that with respect to Franklin County, a previous opinion of this Office indicates that the county has adopted the County Sheriff's Civil Service Law of 1974, Tenn. Code Ann. §§ 8-8-401, *et seq*. Op. Tenn. Atty. Gen. 98-044 (February 17, 1998). As discussed in that opinion, the sheriff's civil service board is required to adopt a classification plan and make rules for its administration. Under Tenn. Code Ann. § 8-8-411, the board "shall determine the requirements of each position and class thereof as to education, experience, capabilities, knowledge and skill." Thus, Franklin County may have adopted stricter requirements for its sheriff deputies than are set forth in Title 38, Chapter 8 of Tennessee Code Annotated and the Rules of the POST Commission. *See* Tenn. Code Ann. § 38-8-109 (allowing stricter requirements).

Accordingly, a constable in Franklin County may not serve as a deputy sheriff without meeting the requirements for that position. The qualifications to serve as a constable and to serve as a deputy sheriff meeting the definition of a police officer are different.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

GINA J. BARHAM
Deputy Attorney General

Requested by:

Honorable George W. Fraley
State Representative
202 War Memorial Building
Nashville, TN 37243-0139