

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 00-075

Prior service credits for assistant public defenders

QUESTIONS

This opinion assumes the following facts. On July 1, 1992, an attorney became employed as an assistant public defender under a ten-level pay scale that topped out after nine years of service. Because of budget constraints, the attorney was offered — and he accepted — a position giving him credit for having six years of prior service even though he had been a licensed attorney for more than 35 years, had served 25 years as an FBI agent, seven years as a State Representative and three and one-half years as an Assistant District Attorney General. On April 1, 1993, the attorney's experience rating was adjusted to give him credit for having nine years of service, putting him at the top of the pay scale then available to assistant public defenders. On July 1, 1994, a new pay plan became effective under which an assistant public defender does not top out until after 20 years of service, and the attorney was given credit for having completed 11 years of service. Since then, the attorney has been given no extra prior service credit, but he has progressed up the pay scale with each additional year of service.

1. When the Public Defenders Conference placed the attorney at the top of the old pay scale, did it effectively recognize all of his prior service credits, requiring it to also place him at the top of the new pay scale?

2. If the Public Defenders Conference is not required to place the attorney at the top of the new pay scale, may a District Public Defender and the Conference recognize prior service credits after the initial hiring of an assistant public defender under Tenn. Code Ann. § 8-14-207(b)(3)?

a. If so, must the District Public Defender and the Conference apply the recognition back to the point of hiring, or from the point of recognition forward?

3. If the Conference recognized prior service credits of an assistant public defender without a request to do so by the District Public Defender, must the Conference continue to recognize other prior service credits without a request by the District Public Defender?

4. Under former Tenn. Code Ann. § 8-14-207(b)(3) and (d), if an assistant public defender had previously been employed as an assistant district attorney general, must the District Public Defender and the Conference recognize the same number of prior service credits that had been recognized by the District Attorneys General Conference?

5. Under former Tenn. Code Ann. § 8-14-207(d), how soon after the District Public Defender's recommendation of prior service credits must the Executive Committee of the Public Defenders Conference approve or reject such recommendation?

OPINIONS

1. No.
2. No.
 - a. The previous answer renders this question moot.
3. No.
4. No.
5. The former statutory provision contained no deadline.

ANALYSIS

1. This opinion concerns the compensation of an assistant public defender. Information provided with the opinion request contains a salary history for this individual that indicates it was prepared on February 24, 1999, by the District Public Defenders Conference. According to this information, the assistant public defender was hired on July 1, 1992, with credit for having completed six years of service. Nine months later, on April 1, 1993, the history shows the assistant received an experience adjustment to give credit for having completed nine years of service. This adjustment put the assistant at the top of the pay scale then in effect. *See* 1989 Tenn. Pub. Acts Ch. 588, § 8(b)(1)(J). Nothing in the salary history, however, indicates that the experience adjustment on April 1, 1993, meant to recognize all of the assistant's prior service that might be eligible for recognition at that time, or under a later-adopted pay scale. In our opinion, therefore, nothing required the assistant to be placed at the top of the pay scale that came into effect on July 1, 1994, which requires 20 years of recognized service before an assistant tops out. *See* 1994 Tenn. Pub. Acts Ch. 1007, § 2; *see also* Op. Tenn. Atty. Gen. 96-102 (July 31, 1996) (addressing implementation of new pay plan with respect to an assistant public defender who had previously topped out under the old system).

2. The next question is whether a District Public Defender and the Conference may recognize prior service credits after the initial hiring of an assistant public defender under Tenn. Code Ann. § 8-14-207(b)(3). This provision states:

The executive director of the district public defenders conference shall certify the level of compensation awarded to assistant district public defenders based on prior service credits. Subject to the approval of the district public defender, assistant

district public defenders shall be entitled to the same prior service credits as allowed assistant district attorneys general in § 8-7-227.

Tenn Code Ann. § 8-7-227 provides:

The executive director of the Tennessee district attorneys general conference shall certify the entry level of compensation awarded to assistant district attorneys general based on prior service credits. Assistant district attorneys general shall be entitled to prior service credits as follows:

(1) Any assistant district attorney general who has prior experience as an assistant district attorney, a district attorney general, a criminal investigator for the district attorneys general, a United States attorney, an assistant United States attorney, a district public defender, an assistant district public defender, or one who as a commissioned officer, working as a military attorney in the field of criminal prosecution while on full-time active duty in the judge advocate general's corps of any of the armed services of the United States, shall be eligible to receive year-for-year credit upon the recommendation of the hiring district attorney general, and subject to the approval of the executive committee of the Tennessee district attorneys general conference.

(2) The executive director of the Tennessee district attorneys general conference may certify prior service credits for prior practice of law but not exceeding the assistant's experience as a licensed practicing attorney and, in no case, shall year-for-year credit exceed seven (7) years.

(Emphasis added). Because the statute provides that the Executive Director of the Conference “shall certify the **entry level** of compensation . . . based on prior service credits,” we think the General Assembly meant for an assistant’s prior service credits to be awarded when the assistant is initially hired, and not thereafter. Accordingly, Question 2.a. is rendered moot.

3. The third question assumes that the Public Defenders Conference has previously recognized certain prior service credits without a request by the District Public Defender and asks whether, if that occurred, the Conference must recognize other prior service credits without a request by the District Public Defender. As noted above, Tenn. Code Ann. § 8-14-207(b)(3) provides that an award of prior service credit is “[s]ubject to the approval of the district public defender . . .” The opinion request appears to be referring to an earlier version of this statute, which provided that prior service credit could be “given only upon the recommendation of the district public defender making the appointment and the approval of the Executive Committee of the Tennessee District Public Defenders Conference . . .” 1989 Tenn. Pub. Acts Ch. 588, § 8(d). The courts are clear that “public agencies are not subject to equitable estoppel . . . to the same extent as private parties and very exceptional circumstances are required to invoke the doctrine against the State and its governmental subdivisions.” *Bledsoe County v. McReynolds*, 703 S.W.2d 123, 124 (Tenn. 1985). The opinion

request discloses no exceptional circumstances of the type discussed in *Bledsoe County*. In our opinion, therefore, if the Conference previously awarded certain prior service credits without the recommendation or approval of the District Public Defender, it would not be required to recognize other prior service credits without approval of the District Public Defender.

4. The next question assumes an assistant public defender had previously been employed as an assistant district attorney general and asks if the District Public Defender and the Conference were required under former Tenn. Code Ann. § 8-14-207(b)(3) and (d) to recognize the same number of prior service credits for the assistant that had been recognized by the District Attorneys General Conference. Tenn. Code Ann. § 8-14-207 was first enacted as Section 8 of Chapter 588 of the Public Acts of 1989, and the statute was not amended until 1994. When the attorney in question was hired as an assistant public defender with prior experience as an assistant district attorney general, Tenn. Code Ann. § 8-14-207 contained no subsection (b)(3), and subsection (d) stated:

In computing the number of years of service under the salary scale applicable to full-time assistants and district investigators, credit **may** be given for an assistant's prior experience as a licensed attorney, full-time, salaried law enforcement officer or criminal investigator for a district attorney general. Such credit shall be given only upon the recommendation of the district public defender making the appointment and the approval of the executive committee of the district public defenders conference, and may be for any period of time up to, but not exceeding, the assistant's experience as a licensed attorney or district investigator.

See former Tenn. Code Ann. § 8-14-207 (1993 Replacement) (emphasis added). When the assistant public defender was hired, therefore, nothing in Tenn. Code Ann. § 8-14-207 mandated the Public Defenders Conference to give the attorney credit for the same number of years of service that may have been recognized by the District Attorneys General Conference when the attorney was employed as an assistant district attorney general.

Subsection (b)(3), which is referred to in the opinion request, was added to the statute by Section 2(b)(3) of Chapter 1007 of the Public Acts of 1994. This provision stated:

The Executive Secretary of the Tennessee District Public Defenders Conference shall certify the level of compensation awarded to Assistant District Public Defenders based on prior service credits. Assistant District Public Defenders shall be entitled to the same prior service credits as allowed Assistant District Attorneys General.

That same year, the General Assembly enacted Chapter 704 of the Public Acts of 1994, and Section 3 of the legislation governed prior service credits:

The Executive Secretary of the Tennessee District Attorneys General Conference shall certify the entry level of compensation awarded to assistant district attorneys

general based on prior service credits. Assistant district attorneys general shall be entitled to prior service credits as follows:

(A) Any assistant district attorney general who has prior experience as an assistant district attorney general, a district attorney or a criminal investigator for the district attorneys general **shall be eligible** to receive year-for-year credit upon the recommendation of the hiring district attorney general, and **subject to the approval of the executive committee of the Tennessee District Attorneys General Conference**.

(B) The Executive Secretary to the Tennessee District Attorneys General Conference **may** certify prior service credits for prior practice of law but not exceeding the assistant's experience as a licensed practicing attorney and in no case shall year-for-year credit exceed seven (7) years.

1994 Tenn. Pub. Acts Ch. 704, § 3 (emphasis added). Neither public chapter amended the language in subsection (d) of Tenn. Code Ann. § 8-14-207, providing that prior service credit for an assistant public defender “shall be given only upon the recommendation of the district public defender making the appointment and the approval of the executive committee of the district public defenders conference” When these statutory provisions are read together, we think the General Assembly meant for assistant public defenders to be eligible for the same prior service credits as assistant district attorneys general. Because the Legislature gave each conference discretion in awarding prior service credits, however, we do not think one conference's pre-1994 decision about prior service credits for a particular assistant would bind the other conference if that individual resigned employment as a prosecutor and then accepted employment on different terms as an assistant district public defender. *See generally* Op. Tenn. Atty. Gen. 95-110 (November 21, 1995) (addressing when award of prior service credits for assistant district public defenders is mandatory or discretionary).

5. Finally, you ask how soon after the District Public Defender's recommendation of prior service credits must the Executive Committee of the Public Defender's Conference approve or reject such recommendation under former Tenn. Code Ann. § 8-14-207(d). This provision is quoted above. The statutory language did not address when the Executive Committee of the Conference was required to respond to a District Public Defender's recommendation of prior service credits.

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