

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

July 5, 2000

Opinion No. 00-118

Legality of Full-time County Attorney for Cocke County

QUESTION

Is the Cocke County Commission authorized to appoint a full-time county attorney?

OPINION

Yes.

ANALYSIS

This opinion addresses whether the Cocke County Commission may elect an attorney to serve as the county attorney on a full-time, as opposed to a part-time basis. Under Tennessee law, a county legislative body possesses only the powers vested in it by the Tennessee Constitution or by state law. *State v. Bilbrey*, 878 S.W.2d 567, 571 (Tenn. Ct. App. 1994). The office of county attorney is not provided for in the Constitution. *State ex rel. Cummings v. Trehwitt*, 113 Tenn. 561, 82 S.W. 480 (Tenn. 1904). The General Assembly has not seen fit to create the office of county attorney as a general law applicable to all counties. *State v. Jones*, 726 S.W.2d 515, 520 (Tenn. 1987). In Cocke County, the position is provided for by Chapter 179 of the Private Acts of 1939, as amended by Chapter 579 of the Private Acts of 1945. Section 1 provides:

That there is hereby created the office of County Attorney for Cocke County. Said Attorney shall be elected by the Quarterly County Court of Cocke County at its April Term, 1939, and for a term of two years and biennially thereafter. His salary shall be \$360,000 per annum. And said salary shall not be increased or diminished during the term for which said Attorney is selected and said salary shall be paid with a warrant drawn by the County Chairman out of funds in the county treasury.

Section 2 of the legislation provides that any member of the Cocke County Bar duly licensed to practice law in the State of Tennessee is qualified to hold "the office of County Attorney." This official's duties are set forth in Section 3:

That it shall be the duty of the County Attorney to advise the county officials upon legal matters affecting their office and no officials of said county shall employ any other attorney save at his own personal expense, unless he shall be first authorized

and empowered by the Quarterly County Court of the County to do so. The compensation of county attorney as set out in Section 2 of this bill is not intended to include litigation which may be instituted by or against the County.

This legislation does not address whether the Cocke County Attorney is a part-time or full-time county official. The private act does not prohibit a full-time attorney and is silent on the issue. Accordingly, it is our opinion that the Cocke County Commission has the discretion to appoint an attorney to serve as the Cocke County Attorney on a full-time basis.

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