S T A T E O F T E N N E S S E E
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Opinion No. 00-126

Removal of Judicial Commissioner

QUESTIONS

1. On what grounds may a judicial commissioner appointed by the county legislative body under Tenn. Code Ann. § 40-1-111 be removed from office?

2. Does the judge of any court have any supervisory or other authority over a judicial commissioner who performs duties for the court?

3. What is the process for removing a judicial commissioner?

OPINIONS

1. A judicial commissioner may be removed from office by ouster on the grounds listed in Tenn. Code Ann. § 8-47-101. These include knowing or willful misconduct in office, knowing or willful neglect of duty, public intoxication, gambling, or any act constituting a violation of a penal statute involving moral turpitude. An officer may also be removed from office if he or she lacks the requisite qualifications. An action to remove an officer for this reason is brought under the *quo warranto* statutes, Tenn. Code Ann. §§ 29-35-101, *et seq.*

2. The statutes governing judicial commissioners confer no express general supervisory authority on judges for whose courts judicial commissioners perform their duties. We think, however, that a judge has inherent authority to exercise supervisory authority over judicial commissioners who perform functions for that court where such supervision is reasonably necessary to maintain order within that judge's court and to promote the administration of justice.

3. An ouster action may be brought by the Attorney General and Reporter, District Attorney General, county attorney, or city attorney within their respective jurisdictions. The process for an ouster action appears in Tenn. Code Ann. §§ 8-47-101, *et seq.*

ANALYSIS

1. Grounds for Removal

This opinion addresses several questions about the removal of a magistrate appointed by a municipality. Judicial commissioners — also frequently referred to as magistrates — are generally appointed by a county commission under Tenn. Code Ann. § 40-1-111. Under that statute, the county commission of any county with a population of less than two hundred thousand may appoint one or more judicial commissioners. Duties of judicial commissioners include issuing search and felony arrest warrants; issuing a mittimus following compliance with procedures prescribed by Tenn. Code Ann. § 40-5-103; appointing attorneys for indigent defendants in accordance with applicable law and guidelines established by the presiding General Sessions Judge for the county; setting and approving bonds and releasing defendants on recognizance in accordance with applicable law and guidelines established by the presiding General Sessions Judge of the county; and issuing injunctions and other appropriate orders as designated by the General Sessions Judges in cases of alleged domestic violence. Tenn. Code Ann. § 40-1-111(a)(1)(A). The county commission is to establish the term of office for judicial commissioners, not to exceed a four-year term. Tenn. Code Ann. § 40-1-111(a)(1)(B). The statute also provides: "[t]he legislative body of any county, in appointing, evaluating and making decisions relative to retention and reappointment shall take into consideration views, comments and suggestions of the judges of the courts in which the judicial commissioners are appointed to serve." Judicial commissioners are compensated from the general fund of the county in an amount to be determined by the county commission. Tenn. Code Ann. § 40-1-111(a)(2). The statute creates neither an inferior court nor a corporation court, but a magistrate, to which office the requirements of Article VI, Section 4 of the Tennessee Constitution do not apply. *State v. Bush*, 626 S.W.2d 470 (Tenn. Crim. App. 1981).

The Dickson County Commission has appointed three judicial commissioners under this statute. The Dickson City Council has also appointed the same three individuals to act as magistrates for the Dickson City Court. The Dickson City Judge has concurrent general sessions jurisdiction in criminal cases committed within the city limits. Dickson City Charter Art. III, § 3.04(b). The City pays the individuals a salary supplement for the duties performed for the Dickson City Court.

Our Office has been unable to find any explicit authority for this arrangement. Under Article II, Section 2.01(e) of the Dickson City Charter, "The Mayor, with the approval of the Council may appoint a Clerk to the City Judge with the power to issue warrants, accept bonds and commit the defendant to jail in case he can't make bond until a hearing is had." These powers are sometimes referred to as magistrate functions. *See, e.g.*, Tenn. Code Ann. § 40-1-111. But neither the charter nor any other statute authorizes the city to pay a judicial commissioner to perform magistrate functions on behalf of the city court. The statutes under which judicial commissioners are appointed clearly provide that they are to be paid from the county general fund. Further, although the statutes do not expressly state that judicial commissioners act only on behalf of general sessions courts, they do accord the presiding General Sessions Judge authority to set certain guidelines under which the judicial commissioners perform some of their duties. We think a judicial commissioner appointed under Tenn. Code Ann. § 40-1-111 may perform the functions of that office for a city court when that court exercises its concurrent general sessions jurisdiction over criminal cases. But the city is not authorized to provide additional compensation to the judicial commissioners for performing this function.

The first question is on what grounds a judicial commissioner appointed under this section may be removed. Judicial commissioners are appointed to office for a term set by the county. The statute providing for the appointment of judicial commissioners does require the county commission to seek comments from the judges of the courts in which the judicial commissioners are appointed to serve, "in appointing, evaluating and making decisions relative to *retention* and reappointment . . .." Tenn. Code Ann. § 40-1-111(a)(1)(B) (emphasis added). In this context, particularly in the light of the fact that a judicial commissioner is appointed to a specific term of office, we think a court would conclude that the term "retention" refers to retention of the system or the number of judicial commissioners, and not to removing a particular commissioner from office before the end of his or her term. The only grounds generally on which a state or local officer may be removed from office before the end of his or her term are set forth in the ouster statutes in Tenn. Code Ann. §§ 8-47-101, *et seq*. Section 8-47-101 provides:

> Every person holding any office of trust or profit, under and by virtue of any of the laws of the state, either state, county, or municipal, . . . who shall knowingly or willfully commit misconduct in office, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any of the laws of the state, or who shall in any public place be in a state of intoxication produced by strong drink voluntarily taken, or who shall engage in any form of gambling, or who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit such office and shall be ousted from such office in the manner hereinafter provided.

An officer may also be removed from office if he or she lacks the requisite qualifications. An action to remove an officer for this reason is brought under the *quo warranto* statutes, Tenn. Code Ann. §§ 29-35-101, *et seq*.

2. Authority of Judge over Judicial Commissioners

The next question is whether the judge of any court for which a judicial commissioner performs duties has any authority, whether supervisory or otherwise, over a judicial commissioner. The statutes contain no express general supervisory authority. Under Tenn. Code Ann. § 40-1-111(a), judicial commissioners have the duty to appoint attorneys for indigent defendants "in accordance with applicable law and guidelines established by the presiding general sessions judge of the county;" to set and approve bonds and release defendants on recognizance "in accordance with applicable law and guidelines established by the presiding general sessions judge of the county;" and to issue injunctions and other appropriate orders "as designated by the general sessions judges in cases of alleged domestic violence." Thus, the presiding General Sessions Judge of the county establishes guidelines that judicial commissioners must follow in appointing attorneys for indigent defendants and in setting and approving bonds and releasing defendants on recognizance. In addition, judicial commissioners are authorized to issue injunctions and other appropriate orders as designated by the General Sessions Judges in cases of alleged domestic violence. In appointing, evaluating, and making decisions relative to retention and reappointment of judicial

commissioners, the legislative body of the county is also required to take into consideration the views, comments, and suggestions of the judges of the courts in which the judicial commissioners are appointed to serve. Tenn. Code Ann. § 40-1-111(a)(1)(B).

The statutes governing judicial commissioners do not grant the judges of the courts that the judicial commissioners serve any further explicit supervisory authority. But, irrespective of specific grant by the Constitution or legislation, judges have inherent powers included within the scope of a court's jurisdiction. Inherent power is that power essential to the existence, dignity, and functions of a court from the very fact that it is a court. *Anderson County Quarterly Court v. Judges of the 28th Judicial Circuit,* 579 S.W.2d 875, 878 (Tenn. Ct. App. 1978). Because the invocation of inherent powers can interfere with the legitimate constitutional prerogatives of the other branches of government, however, courts reviewing exercises of these powers are sensitive to the encroachment on county legislative bodies over such matters. Thus, in Tennessee, the use of inherent powers is limited by the requirement that the court asserting the power must establish reasonable necessity by clear, cogent, and convincing proof. *Anderson County,* 579 S.W.2d at 881. Courts recognize that inherent judicial authority includes the authority to maintain order within the court and take other measures to promote the administration of justice. Therefore a judge may exercise supervisory authority over judicial commissioners who perform functions for the judge's court where such supervision is reasonably necessary to maintain order within that judge's court and to promote the administration of justice. That authority would not include the authority to remove a judicial commissioner from office, however.

3. Process of Removing a Commissioner

The last question concerns the process by which a judicial commissioner may be removed. As discussed above, it appears that a judicial commissioner could be removed from office only by an ouster action. Ouster actions are governed by Tenn. Code Ann. §§ 8-47-101, *et seq.* An ouster action may be brought by the Attorney General and Reporter, District Attorney General, county attorney, or city attorney within their respective jurisdictions. Tenn. Code Ann. § 8-47-102. These officers must investigate any written complaint that an officer is guilty of the acts justifying ouster. Tenn. Code Ann. § 8-47-103. The Governor may also direct one of these officers to file a petition or complaint for ouster. Tenn. Code Ann. § 8-47-108. The court may suspend an officer from office while an ouster proceeding is pending, subject to a right to a hearing. Tenn. Code Ann. § 8-47-116, § 8-47-117. The defendant in an ouster proceeding has a right to a jury trial. Ten. Code Ann. § 8-47-119. Liability for costs is governed by Tenn. Code Ann. § 8-47-122. Either party may appeal from the trial court's final judgment or decree. Tenn. Code Ann. § 8-47-123.

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