S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 00-150

Duties of Public Housing Authority Officers

QUESTIONS

1. According to Tenn. Code Ann. §13-20-419, do public housing authority officers have a legal obligation to act if they observe criminal conduct?

2. Are public housing authorities legally considered "government" agencies? If so, are they considered federal, state, or local government agencies?

3. What is the legal definition of "transport" as it applies to transportation of prisoners to jail, etc.?

4. According to Tenn. Code Ann. §13-20-419, do any other law enforcement agencies have a legal obligation to transport public housing arrestees to jail?

5. According to Tenn. Code Ann. §13-20-419, are public housing authority officers legally considered federal, state, or local officers?

6. Do law enforcement officers, including public housing authority officers, have a legal obligation to transport their prisoners to jail within a certain time period?

7. Are law enforcement officers, including public housing authority officers, criminally or civilly liable if they don't transport their prisoners to jail within a certain time frame?

8. According to Tenn. Code Ann. §13-20-419, are public housing authority officers under a civil service system?

9. According to Tenn. Code Ann. §13-20-419, do public housing authority officers have all of the police powers necessary to enforce all laws of the State of Tennessee within their jurisdiction?

OPINIONS

1. Yes, public housing authority officers have a duty to act if they observe criminal conduct in the area of their jurisdiction.

2. Yes, a public housing authority created pursuant to Tenn. Code Ann. §§29-20-401, *et. seq.* is a government agency. Because it was created by residents within the city, it would be considered a local government agency.

3. The legal definition of "transport" is to carry from one place to another. Thus, transport would require carrying an arrestee from the place of arrest to the jail.

4. No, Tenn. Code Ann. §13-201-419 does not provide for law enforcement officers from another agency to transport public housing authority arrestees.

5. Public housing authority officers are considered local officers.

6. Yes, law enforcement officers, including public housing authority officers, have an obligation to transport their arrestees without unnecessary delay for appearance before a magistrate.

7. Public housing authority employees are covered by the Governmental Tort Liability Act. However, depending on the circumstances, a federal civil rights violation may be cognizable under 42 U.S.C. §1983.

8. The statute does not include a specific provision discussing civil service coverage. However, the nature of the local civil service system and/or the agreement between the authority and the municipality may provide for coverage.

9. Yes, under Tenn. Code Ann. §13-20-419, public housing officers have the police powers necessary to enforce the laws of the State of Tennessee within their jurisdiction.

ANALYSIS

1. According to Tenn. Code Ann. §13-20-419(b), an officer for a public housing authority has the authority to make arrests for offenses committed on the property of the public housing project. The statute also states that a public housing officer has the same authority as a law enforcement officer. Under Tenn. Code Ann. §39-11-106(a)(21), a law enforcement officer means "an officer, employee or agent of government who has a duty imposed by law to: (B) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; . . ."

Although §13-20-419(b) gives law enforcement officers the authority to make an arrest and §39-11-106(a)(21) imposes a duty on housing authority officers, a court would likely conclude that

the legislature intended to impose the duties of a law enforcement officer upon public housing authority officers.

2. Public housing authorities are considered government agencies. As stated by the Tennessee Supreme Court, a housing authority, though incorporated, "is still a mere agency or instrumentality of the city." *Knoxville Housing Authority, Inc. v. City of Knoxville*, 174 Tenn. 76, 123 S.W.2d 1085, 1088 (1939). Therefore, the authority would be considered a local government agency.

3. Black's Law Dictionary defines transport as to "carry or convey (a thing) from one place to another." BLACK'S LAW DICTIONARY 1505 (7th ed. 1999). Under this definition, the housing authority officers would need to carry or convey an arrestee from the place of arrest to the local jail.

4. Tenn. Code Ann. §13-20-419 applies only to public housing authority officers. Thus, under this section, no other law enforcement officer has an obligation to transport a housing authority arrestee to the jail.

5. Tenn. Code Ann. §13-20-419 does not specifically state whether public housing authority officers are federal, state or local officers. However, Tenn. Code Ann. §§13-20-401, *et seq.* provides for the creation of city housing authorities. Therefore, officers employed by the authority would be local officers.

6. Tenn. R. Crim. P. 5(a) requires "a person arrested except upon a capias pursuant to an indictment or presentment" to be taken without necessary delay before a magistrate. The Tennessee Supreme Court has stated that absent a bona fide emergency or extraordinary circumstance, "a judicial determination of probable cause is 'prompt' if it occurs within 48 hours." *State v. Carter*, 16 S.W.3d 762, 765-66 (Tenn. 2000). Therefore, housing authority officers have a duty to transport their arrestees to jail promptly so that a probable cause hearing occurs within 48 hours.

7. This office has previously opined that a city housing authority is a governmental entity for purposes of the Tennessee Governmental Tort Liability Act, codified at Tenn. Code Ann. §§29-20-101, *et seq.* Tenn. Op. Atty. Gen. No. 97-072. (copy attached) However, depending on the circumstances, an arrestee may be able to pursue a claim under 42 U.S.C. §1983 if detained for an extended period without a probable cause hearing. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 111 S.Ct.1661, 114 L.Ed.2d 49 (1991).

8. Tenn. Code Ann. §13-20-401, *et seq.* does not include a specific provision for civil service coverage for public housing authority officers. *Compare* Tenn. Code Ann. §8-30-201 (establishing civil service system for state employees); Tenn. Code Ann. §42-7-107 (allowing metropolitan airport authorities to enter into agreements with the creating municipality for civil service plan); Tenn. Code Ann. §68-221-613 (authorizing water and wastewater treatment authorities to come under the civil service plan of the creating governmental entity).

However, depending on the language of the Act creating the civil service system and/or the nature of the agreement between the municipality and the housing authority, authority employees may by covered by a civil service system.

9. A law enforcement officer is defined as having a duty imposed by law to maintain public order or to "make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses." Tenn. Code Ann. §39-11-106(a)(21)(B). Tenn. Code Ann. §13-20-419 states that a public housing authority officer has "the same authority as a law enforcement officers as defined in §39-11-106(a)(21)." This section does not limit the authority of a public housing officer. Therefore, the officer has the necessary authority to enforce all of the laws of the State of Tennessee in the area under the officer's jurisdiction.

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