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Opinion No. 01-088

Fingerprinting -- Costs of Electronic Equipment

QUESTION

Suppose a county has purchased electronic fingerprinting equipment in accordance with Tenn. Code Ann. § 39-17-420 to be used at the county jail. Suppose also that a municipality within that county has refused to enter into a cooperative agreement for use of that equipment. In light of the provisions of Tenn. Code Ann. § 39-17-420(h), may the county jail refuse to fingerprint persons who are arrested and brought to the jail by municipal officers and leave that responsibility to the municipality as the arresting agency?

OPINION

Tenn. Code Ann. § 39-17-420 does not require the county to process fingerprints from persons arrested by the municipality if there is no agreement to do so. The municipality may either purchase its own equipment or enter into an agreement with another agency. However, the ultimate responsibility for fingerprinting falls upon the municipality as the arresting agency.

ANALYSIS

Tenn. Code Ann. § 39-17-420(h)(1) clearly intends for county and municipal law enforcement agencies to produce and process fingerprints that are compatible with the fingerprint imaging systems used by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation. Tenn. Code Ann. § 39-17-420(h)(1) provides in part:

> Except as provided in subdivision (h)(2), notwithstanding any other provision of this section to the contrary, in order to comply with state and federal fingerprinting requirements such as those in 42 U.S.C.A. § 14071, effective July 1, 1997, twenty percent (20%) of the funds a sheriff or municipal police department receives pursuant to this section shall be set aside and earmarked for the purchase, installation, and maintenance of and line charges for an electronic fingerprint imaging system that is compatible with the federal bureau of investigation's integrated automated fingerprint identification system. Prior

> to the purchase of such equipment, the sheriff or municipal police department shall obtain certification from the Tennessee bureau of investigation that such equipment is compatible with the Tennessee bureau of investigation's and federal bureau of investigation's integrated automated fingerprint identification system. Once the electronic fingerprint imaging system has been purchased, a sheriff or municipal police department may continue to set aside up to twenty percent (20%) of the funds received pursuant to this section to pay for the maintenance of and line charges for the electronic fingerprint imaging system.

The statute does not require each law enforcement agency to buy its own equipment. The agency may instead choose to enter into an agreement for the use of another agency's equipment. Tenn. Code Ann. § 39-17-420(h)(1) continues:

> Instead of purchasing such fingerprinting equipment, a local law enforcement agency may enter into an agreement with another law enforcement agency that possesses such equipment for the use of such equipment. Such agreement may provide that the local law enforcement agency may use the fingerprinting equipment for identifying persons arrested by that agency in exchange for paying an agreed upon portion of the cost and maintenance of the fingerprinting equipment. If no such agreement exists, it shall be the responsibility of the arresting officer to obtain fingerprints and answer for the failure to do so.

This statute does not apply to counties having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census. Tenn. Code Ann. § 39-17-420(h)(2).

Pursuant to Tenn. Code Ann. § 39-17-420(h)(1), a municipality can meet the fingerprint imaging system requirements in one of two ways. The municipality may buy its own equipment for fingerprinting persons it arrests, or it may "enter into an agreement with another law enforcement agency that possesses such equipment for the use of such equipment." While the agreement "*may* provide that the local law enforcement agency may use the fingerprinting equipment for identifying persons arrested by that agency in exchange for paying an agreed upon portion of the cost and maintenance of the fingerprinting equipment," the statute does not require the agreement to contain any specific terms.

If, as the question presupposes, the county and the municipality do not have an agreement, nothing in the statute requires the county to use its equipment to process the fingerprints. The municipality must either buy its own equipment, or reach an agreement with another law enforcement agency that possesses such equipment. Significantly, "[i]f no such agreement exists, it shall be the responsibility of the arresting officer to obtain fingerprints and answer for the failure to do so." Therefore, if no agreement exists between a particular county and municipality, the county is not required to process the fingerprints but may leave the responsibility for fingerprinting to the municipality as the arresting agency.

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