**S T A T E O F T E N N E S S E E**
OFFICE OF THE
**ATTORNEY GENERAL**
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**NASHVILLE, TENNESSEE 37202**

September 25, 2001

Opinion No. 01-152

Alderman Serving as Constable

## QUESTIONS

1. May an alderman run for a county constable seat and still retain his or her present position on the city board of mayor and aldermen?

2. What is the minimum age for a person to seek the office of constable for a county with a population of 12,826 according to the 2000 federal census?

## OPINIONS

1. No statute of general applicability forbids an alderman from also serving in the office of constable. The city charter should be consulted to determine whether it contains such a prohibition.

2. The minimum age in such a county is twenty-one.

## ANALYSIS

1. Alderman Serving as Constable

The first question is whether a city alderman may also run for the office of constable and retain his or her seat on the board of mayor and aldermen. Article II, Section 26 of the Tennessee Constitution prohibits a person from holding "more than one office at the same time." The term "office" under this provision, however, has been construed to refer to state offices. *Phillips v. West,* 187 Tenn. 57, 65-66, 213 S.W.2d 3 (1948). Both the office of city alderman and the office of constable, under current law, are local offices, and this constitutional prohibition does not apply to them.

The city charter should be consulted to determine whether it would prohibit an alderman from holding both offices. It is assumed that the position of alderman is a part-time position. This Office has also concluded that the statutes creating the office of constable do not require a constable to serve full-time in his or her official capacity. Op. Tenn. Atty. Gen. 97-43 (April 7, 1997).

This Office has found no statute of general applicability that would prohibit a city alderman from running for and serving in the office of constable. Statutes do place some restrictions on the right of a member of a city legislative body who is also a city employee to vote on matters relative to his or her employment. Tenn. Code Ann. § 6-54-107; Tenn. Code Ann. § 12-4-101. But this Office has concluded that the office of constable is a county office. Op. Tenn. Atty. Gen. 91-70 (August 1, 1991). Therefore these restrictions are not applicable to a city alderman who is also a constable. These statutes also prohibit an officer, including a member of a city legislative body, from being directly interested in any contract he or she has a duty to vote for, let out, or supervise. Again, since the office of constable is a county office to which an individual is elected, and, in any case, since a member of a city legislative body ordinarily does not supervise the contracts of a county, these restrictions are inapplicable.

It should also be noted that, under the common law, an individual is prohibited from holding incompatible offices. Op. Tenn. Atty. Gen. 00-159 (October 17, 2000); *State ex rel. v. Thompson*, 193 Tenn. 395, 246 S.W.2d 59 (1952). Thus, an alderman would be prohibited under the common law from holding the office of constable if the two offices are incompatible. The question of incompatibility depends on the circumstances of each individual case, and the issue is whether the occupancy of both offices by the same person is detrimental to the public interest, or whether the performance of the duties of one interferes with the performance of those of the other. 67 C.J.S. *Officers* § 27 at 279-80 (1978). For example, an inherent inconsistency exists where one office is subject to the supervision or control of the other. *State ex rel. v. Thompson, supra.* In *Thompson*, the Tennessee Supreme Court concluded that the offices of city manager and member of the city council were incompatible because the council had the authority to appoint, remove, and supervise the city manager, and no statute then in effect permitted the same individual to hold these offices.

The responsibilities of each office should be reviewed to determine whether they are incompatible under the common law. This Office, however, is unaware of any facts or circumstances that would make the offices of city alderman and constable incompatible under the common law. This Office reached a similar conclusion in 1987. Op. Tenn. Atty. Gen. U87-102 (October 9, 1987).

2. Minimum Age for Constable

The second question is the minimum age for a person to seek the office of constable for a county with a population of 12,826 according to the 2000 federal census. Review of 2000 census results indicates your question refers to Cannon County. Under Tenn. Code Ann. § 8-10-102(a)(1)(A):

Except as provided in subdivision (a)(2), to qualify for election or appointment to the office of constable, a person shall:

(A) Be at least twenty-one (21) years of age[.]

Under subdivision (a)(2), subsection (a) does not apply to a county having a population of not less than 14,650 nor more than 15,000 according to the 1990 federal census or any subsequent federal census. In

counties falling within this population bracket, the minimum age is eighteen years. Tenn. Code Ann. § 8-10-102(c). Research indicates that Cannon County did not fall within the specified bracket under the 1990 federal census, and does not fall within it under the 2000 census, nor have we found any private act that would exclude Cannon County from the general age requirement. For this reason, the minimum age for a person to seek the office of constable in Cannon County is twenty-one years.

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