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Opinion No. 02-009

Qualifying to Run for Office of Sheriff

QUESTIONS

1. Is a candidate for sheriff required to have a psychological examination completed?

2. If the answer to Question 1 is yes, is there a time frame in which the examination must be performed?

3. If a candidate for the office of sheriff has had a psychological examination performed within eleven years prior to his candidacy for sheriff, is a new examination required?

OPINIONS

1. A candidate for the office of sheriff must have been certified by a qualified professional in the psychiatric or psychological fields to be free of all apparent mental disorder as described in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM III) or its successor, of the American Psychiatric Association.

2. and 3. The statute does not specify when an examination must be performed. But the candidate must submit the certification on the form specified by the Tennessee Peace Officer Standards and Training Commission (the "POST Commission"). The POST Commission cannot accept a form that does not meet the requirements specified in the statute. The individual signing the form must be able to certify that representations the form includes are accurate as of the date he or she signs the form. Whether that individual may rely on an earlier examination or must perform an additional examination is a matter for that individual's professional judgment, in accordance with current professional standards.

ANALYSIS

1. Requirement of Psychological Evaluation to Run for Office of Sheriff

This request concerns the requirements a candidate for the office of sheriff must satisfy in order to qualify for election. The first question is whether a candidate for sheriff must have a psychological

examination performed in order to qualify for election. Tenn. Code Ann. § 8-8-102(b)(8) provides:

> After May 30, 1997, to qualify for election or appointment to the office of sheriff a person shall:
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> * * * *
>
> (8) Have been certified by a qualified professional in the psychiatric or psychological fields to be free of all apparent mental disorder as described in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM III) or its successor, of the American Psychiatric Association[.]

Tenn. Code Ann. § 8-8-102(b)(8). Thus, under this statute, a candidate for the office of sheriff must have been certified by a qualified professional in the psychiatric or psychological fields to be free of all apparent mental disorder as described in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSM III) or its successor, of the American Psychiatric Association.

2. and 3. Date of Psychological Evaluation

The next question is when a psychological evaluation must be performed in order to satisfy the statutory requirement. Under subsection (c) of Tenn. Code Ann. § 8-8-102, a person seeking the office of sheriff must file information with the Tennessee Peace Officer Standards and Training Commission (the "POST Commission"). Subsection (c) was amended by 2001 Tenn. Pub. Acts Ch. 413. That statute, as amended, provides:

> (c)(1) Any person seeking the office of sheriff shall file with the POST commission, at least fourteen (14) days prior to the qualifying deadline, the following:
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> (A) An affidavit sworn to and signed by the candidate affirming that the candidate meets the requirements of this section; and
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> (B) A confirmation of psychological evaluation form certified by the psychologist/psychiatrist providing psychological evaluation as provided for in § 8-8-102(b)(8) for the purposes of sheriff candidacy qualification. *The form shall be developed by the POST commission* and shall include the examining psychologist's/psychiatrist's license number and state of licensure. *The form shall clearly state in bold face type directly above the signature line that a person who, with intent to deceive, makes any false statement on such application commits the offense of perjury pursuant to § 39-16-702.* The form shall be made available by the POST commission upon request by any candidate for the office of sheriff.

Tenn. Code Ann. § 8-8-102(c)(1) (emphasis added). The POST Commission is authorized to verify the validity of the affidavit and form. Tenn. Code Ann. § 8-8-102(c)(2).

The statute does not specify when the person signing the statement must have performed the evaluation. But the statute clearly requires the certification be documented on a form developed by the POST Commission. That form must include a statement in boldface above the signature line that a person who, with intent to deceive, makes any false statement on such application commits the offense of perjury pursuant to Tenn. Code Ann. § 39-16-702. We think this statute authorizes the POST Commission to require the certification on its most recently developed form. Further, under this statute, the POST Commission may not accept a certification on a form that does not include the language specified in the statute. The individual signing the form must be able to certify that representations the form includes are accurate as of the date he or she signs the form. Whether that individual may rely on an earlier examination or must perform an additional examination is a matter for that individual's professional judgment, in accordance with current professional standards.

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