STATE OF TENNESSEE
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Opinion No. 02-052

Court Security Committee

QUESTIONS

Under Tenn. Code Ann. § 16-2-505(d)(2), each county is required to establish a court security committee to determine security needs of the courtrooms in the county to provide safe and secure facilities. In the county in question, the committee has adopted a resolution providing that all persons entering the main door of the courthouse shall be required to pass through the magnetometer and will be subject to search of personal items.

1. Does Tenn. Code Ann. § 16-2-505(d) have any application to general sessions courts, general sessions judges, or general sessions employees?

2. Does the court security committee established by the county under Tenn. Code Ann. § 16-2-505(d)(2) have authority to promulgate security rules and regulations directly affecting general sessions court, including having general sessions judges and their employees screened and searched by courthouse security?

3. If the answer to Questions 1 and 2 is yes:

a. What authority does the court security committee have to enforce its pronouncements upon the general sessions court?

b. What, if any, penalty could be exacted upon the general sessions judges and employees who refuse to comply with the pronouncements of the committee?

4. Is Tenn. Code Ann. § 16-2-505(d)(2) unconstitutionally vague and overbroad or unenforceable for any other reason?

OPINIONS

1. Although the statute does not expressly mention general sessions courts, the statute applies by necessary implication to general sessions courts to the extent that security in those facilities affects

security in facilities provided circuit and chancery court judges, for example, when general sessions court is conducted in the same building as the circuit and chancery courts.

2. The statute does not expressly authorize the committee to adopt any measures with regard to courthouse security, but it is reasonable to infer that the committee may put into effect security measures affecting the security of space and facilities provided to state trial judges, so long as these measures do not require county expenditures. These measures may affect general sessions courtrooms and personnel, as well as the personnel of other offices located in the courthouse, if the measures are reasonably related to ensuring security of space and facilities provided to state trial judges. In addition, depending on the facts and circumstances, the measure may be authorized under statutes according the county commission control over the courthouse, statutes according the sheriff responsibility for courthouse and courtroom security, or inherent judicial authority.

3.a. Possible sources for the authority are listed in the answer to Question 2.

b. No statute authorizes the committee to impose a monetary or other penalty for failure to comply with valid court security measures. Subject to the direction of the county commission, however, the sheriff may exclude individuals from the courthouse who refuse to comply with reasonable security procedures.

4. This Office is unaware of any reason why Tenn. Code Ann. § 16-2-505(d)(2) might be unconstitutional.

ANALYSIS

1. Authority of Court Security Committee

This opinion addresses the authority of a court security committee established under Tenn. Code Ann. § 16-2-505(d). It is the responsibility of the counties comprising each judicial district to provide judges elected under Tenn. Code Ann. § 16-2-506 with sufficient facilities in which to conduct the business and duties of the court. Tenn. Code Ann. § 16-2-505(d)(1). Section 16-2-506 establishes judicial districts for the circuit and chancery courts and the district attorneys general. Under Tenn. Code Ann. § 16-2-505(d)(2), each county is required to establish a court security committee composed of the county executive, the sheriff, the district attorney general, the presiding judge of the judicial district, and a court clerk from the county to be designated by the presiding judge. The purpose of the committee is to examine the space and facilities provided under subsection (d)(1) "to determine the security needs of the courtrooms in the county in order to provide safe and secure facilities." Tenn. Code Ann. § 16-2-505(d)(2). The statute provides:

> (3) Upon completion of the examination of security needs, the following procedure shall be followed:

> (A) The administrative office of the courts shall distribute to each court security committee a copy of the minimum security standards as adopted by the Tennessee Judicial Conference, and each committee shall review and consider these standards in determining court security needs.
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> (B) No later than May 15, each year, the court security committee shall report its findings to the county legislative body and the administrative office of the courts.
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> (C) The county legislative body shall review and consider the recommendations of the court security committee in the preparation of the fiscal year 1995-96 budget and each budget subsequent.
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> (D) No later than December 1, each year, the county legislative body shall report to the administrative office of the courts any action taken to meet the security needs.
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> (E) No later than January 15, each year, the administrative office of the courts shall report to the general assembly on the compliance by each county government with the security needs established by the court security committee.
>
> (4) Any recommendation of the court security committee *requiring county expenditures* shall be subject to approval of the county legislative body.

Tenn. Code Ann. § 16-2-505(d)(3) and (4) (emphasis added).

The first question is whether Tenn. Code Ann. § 16-2-505(d)(2) — (4) applies to general sessions courts, judges, and employees. These provisions were enacted by 1995 Tenn. Pub. Acts Ch. 225 under the caption "AN ACT to amend Tennessee Code Annotated, Section 16-2-505(d), relative to facilities for state trial judges." General sessions judges are ordinarily considered to be county officials, not state officials. Further, the statute expressly refers to space provided judges elected under Tenn. Code Ann. § 16-2-506. That statute describes judicial districts for circuit and chancery courts and district attorneys general. But we think the committee also may address security measures with regard to general sessions courts and personnel to the extent these measures impact security for the circuit and chancery court facilities. Material included with the request indicates that general sessions courtrooms are in the same building as the state trial judges' courtrooms in the county in question. In this circumstance, we think the court security committee established by the county under Tenn. Code Ann. § 16-2-505(d)(2) is authorized to include general sessions court space and personnel in reviewing courtroom security needs that it recommends to the county commission.

2. Authority of Court Security Committee to Promulgate Rules Applicable to General Sessions Courts and Personnel

The second question is whether the court security committee established by the county under Tenn. Code Ann. § 16-2-505(d)(2) has the authority to promulgate security rules and regulations directly affecting general sessions courts, including having general sessions judges and their employees screened and searched by courthouse security. As cited above, the statutory scheme explicitly grants this committee only the authority to review security needs and make recommendations to the county commission. It does not directly accord the committee any implementing authority of its own. Ordinarily, statutes granting powers to administrative agencies include only those conferred either expressly or by necessary implication. *Sanifill of Tennessee, Inc. v. Tennessee Solid Waste Disposal Control Board,* 907 S.W.2d 807 (Tenn. 1995). The statute does provide that "[a]ny recommendation of the court security committee *requiring county expenditures* shall be subject to approval of the county legislative body." Tenn. Code Ann. § 16-2-505(d)(4) (emphasis added). It may be inferred, therefore, that the committee is authorized to implement security recommendations that do not require county expenditures, so long as they are reasonably related to ensuring security of the space and facilities that the county provides to the state trial judges. In our opinion, these measures could include provisions directly affecting general sessions judges and personnel if they are reasonably related to ensuring security for the courtrooms and facilities provided state trial judges.

Even if the committee does not, by virtue of the statute providing for its establishment, have the authority to impose any measures on its own, there are other, valid sources of authority for the measures concerned in this request. Tenn. Code Ann. § 16-2-505(d) should be read in conjunction with legal sources of authority for courtroom security. The court security committee includes as its members the sheriff, the county executive, and the presiding judge of the judicial district. Security measures recommended by the committee that require county expenditures must be approved by the county legislative body. This arrangement reflects prior statutes regarding control of the county courthouse. Generally, county legislative bodies are authorized to build and maintain the county courthouse. Tenn. Code Ann. § 5-5-121; Tenn. Code Ann. § 5-7-106. Under Tenn. Code Ann. § 5-7-108(a):

> The sheriff has charge of the courthouse, unless some other person is specially appointed by the county legislative body for that purpose, and shall prevent trespasses, exclude intruders, and keep it and the grounds attached thereto in order, reporting from time to time the repairs required, and the expense, to the county legislative body.

Under these statutes, the sheriff acts as an agent or administrator of the county commission. *Driver v. Thompson,* 49 Tenn. App. 646, 651, 358 S.W.2d 477, *p.t.a. denied* (Tenn. 1962). Thus, "[t]here is neither express or implied authority for the Sheriff to dictate to the other elected officials of the County what space they shall occupy in the Courthouse and other such matters affecting them in the discharge of their official duties. This is peculiarly a function of the [county legislative body] as to matters in its jurisdiction."

Id., 358 S.W.2d at 479. The sheriff is also required to attend upon all courts held in the county when in session; cause the courthouse or courtrooms to be kept in order for the accommodation of the courts; furnish them with fire and water; and obey the lawful orders and directions of the court. Tenn. Code Ann. § 8-8-201(2)(A). Thus, if the county commission has entrusted courthouse security matters to the security committee, that committee may implement a policy of searching all individuals who enter the courthouse consistent with the delegation of authority from the county commission. Further, the sheriff is a member of the court security committee. Subject to the direction of the county commission, the sheriff is authorized to take reasonable measures to maintain court security. Assuming the sheriff agreed with the security committee's decision, and that decision is in accord with policies set by the county commission, then the measure is authorized.

The presiding judge of the judicial district also is a member of the court security committee. The duties of a presiding judge include promoting the orderly and efficient administration of justice within the district. Tenn. Code Ann. § 16-2-509(c)(3). Tennessee law has recognized that judges have inherent powers included within the scope of a court's jurisdiction irrespective of specific grant by the constitution or legislation. 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. App. 1978). But 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. *Id.* at 881. Presumably, therefore, state court judges possess some inherent authority with regard to measures necessary to ensure security within their courts. Assuming the presiding judge is acting on behalf of all the state trial judges within the judicial district in proposing the measure, the security measure would represent a valid exercise of the inherent authority of the judges to ensure the security of their courts.

3. Enforcement of Court Security Committee Rule

The next question is the authority of the court security committee to enforce a rule against general sessions judges. As discussed above, this authority may stem from the statute establishing the committee; the statute according the county legislative body control over the courthouse; the statute delegating courthouse and courtroom security to the sheriff; and inherent judicial authority.

The request also asks what penalties could be exacted upon the general sessions judges and employees who refuse to comply with the pronouncements of the committee. No statute authorizes the committee to impose a monetary or other penalty for failure to comply with valid court security measures. Based on the discussion above, however, and subject to the direction of the county commission, we think the sheriff may exclude individuals from the courthouse who refuse to comply with reasonable security procedures.

4. Constitutionality of Tenn. Code Ann. § 16-2-505(d)

Finally, the request asks whether Tenn. Code Ann. § 16-2-505(d)(2) is unconstitutional, either because it is vague, overly broad, or for any other reason. There is a strong presumption in favor of the constitutionality of acts passed by the legislature. *See, e.g., Bozeman v. Barker*, 571 S.W.2d 279, 282 (Tenn. 1978); *West v. Tennessee Housing Development Agency*, 512 S.W.2d 275, 279 (Tenn. 1974). The burden of proof rests on the one challenging the constitutionality of the statute to rebut the presumption that the act is constitutional. *State Personnel Recruiting Services Board v. Horne*, 732 S.W.2d 289, 291 (Tenn. Ct. App. 1987).

We are unaware of any constitutional provision this statute might violate. The statute is not unconstitutionally vague. A statute is void for vagueness if the conduct it prohibits is not clearly defined. *Grayned v. City of Rockford*, 408 U.S. 104. 108 (1972). To survive a challenge for vagueness, a statute must meet two criteria. First, the statute must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Id*. Second, the statute "must provide explicit standards" to prevent "arbitrary and discriminatory enforcement." *Id.* Thus, the language of a penal statute must be clear and concise to give sufficient warning so that people may avoid the conduct that is forbidden. The "void for vagueness" doctrine "is not designed to convert into a constitutional dilemma the practical difficulties inherent in drafting statutes." *Phillips v. State Board of Regents*, 863 S.W.2d 45, 49 (Tenn. 1993). Based on this standard, Tenn. Code Ann. § 16-2-505(d)(2) is not unconstitutionally vague. The statute does not purport to prohibit or penalize any conduct; it merely directs the establishment of court security committees and describes their responsibilities.

Nor is the statute unconstitutionally over broad. The statute should be interpreted together with other statutes and legal authority regarding court security to authorize a court security committee to recommend measures that it deems reasonably related to maintaining the security of courtrooms used by state trial courts in the county, and to adopt reasonable measures that do not require county expenditures. Plainly, the legislature's authority to enact measures reasonably calculated to enhance public safety encompasses the authority to provide for safe and secure court facilities, and the means chosen by the legislature in this instance constitute a reasonable exercise of that authority.

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