S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 02-058

Write-In Candidate for Sheriff

QUESTIONS

1. Whether a write-in candidate for the office of sheriff, who is successful in a primary election, may be placed on the ballot for the general election when the candidate has not met the provisions of Tenn. Code Ann. § 8-8-102?

2. If a successful write-in candidate for the office of sheriff is required to comply with the provisions of Tenn. Code Ann. § 8-8-102 in order to be placed on the ballot for the general election, when must that candidate comply with the provisions of the statute?

OPINIONS

1. It is the opinion of this Office that a successful write-in candidate for the office of sheriff must still comply with the requirements of Tenn. Code Ann. § 8-8-102(b) in order to qualify to have such candidate's name placed on the ballot for the general election.

2. We think a court would construe the applicable statutes and require a successful write-in candidate for the office of sheriff to demonstrate that he or she meets the requirements of Tenn. Code Ann. § 8-8-102(b) by filing the sworn and signed affidavit and confirmation of psychological evaluation form required by § 8-8-102(c) with the POST commission at some date prior to the general election held on the first Thursday in August. *See* Tenn. Code Ann. §§ 2-1-104(a)(24) and 2-3-202. What that date would be would depend upon the individual facts and circumstances. Given the Legislature's expressed intent that non write-in candidates must be certified as qualified before their withdrawal deadline, we think a logical and reasonable deadline for successful write-in candidates to comply would also be the withdrawal deadline established for write-in candidates in Tenn. Code Ann. § 2-5-219(b), which is ten days after the primary.

ANALYSIS

1. In order to be a successful write-in candidate in a primary election, an individual must satisfy two thresholds in that election. First, Tenn. Code Ann. § 2-8-113 provides that "in order for any person to receive a party nomination by write-in ballots, such person much receive a number of write-in votes equal to or greater than five percent (5%) of the total number of votes cast in the primary on the day of the election." Second, Tenn. Code Ann. § 2-5-219(a) requires that a county primary write-in candidate must receive at least twenty-five (25) votes to be nominated in the primary. With these statutory provisions, the Legislature has recognized and established an alternative procedure for an individual to obtain a party nomination in a primary election outside of
the procedure established in Tenn. Code Ann. § 2-5-101. This write-in procedure obviously by-passes the filing requirements of Tenn. Code Ann. § 2-5-101 and, therefore, the county election commission does not review the qualifications of a write-in candidate prior to the primary election. Rather, the review of the qualifications of a write-in candidate occurs after the person receives the nomination. Your first question asks whether a successful write-in candidate in a primary election must meet the qualifications for the office of sheriff set forth in Tenn. Code Ann. § 8-8-102 in order to have his or her name appear on the general election ballot.

Tenn. Code Ann. § 8-8-102(b) sets forth the mandatory requirements an individual must meet in order to qualify for election or appointment to the office of sheriff"

> (b) After May 30, 1997, to qualify for election or appointment to the office of sheriff a person shall:
>
> (1) Be a citizen of the United States;
>
> (2) Be at least twenty-five (25) years of age prior to the date of qualifying for election;
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> (3) Be a qualified voter of the county;
>
> (4) Have obtained a high school diploma or its equivalent in educational training as recognized by the Tennessee state board of education;
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> (5) Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances; so long as the violation involves an offense that consists of moral turpitude or a misdemeanor crime of domestic violence;
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> (6) Be fingerprinted and have the Tennessee bureau of investigation make a search of local, state and federal fingerprint files for any criminal record. Fingerprints are to be taken under the direction of the Tennessee bureau of investigation. It shall be the responsibility of the T.B.I. to forward all criminal history results to the Peace Officer Standards

> and Training (POST) commission for evaluation of qualifications;
>
> (7) Not have been released, separated, discharged from the Armed Forces of the United States with a Dishonorable or Bad Conduct discharge, or as a consequence of conviction at court martial for either state or federal offenses;
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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 disorders as described in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition (DSMIII) or its successor, of the American Psychiatric Association; and
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> (9) Possess a current and valid peace officer certification as issued by the Tennessee POST commission as provided in § 38-8-107, and as defined in title 38, chapter 38, within twelve (12) months prior to the close of the qualification for the election for the office of sheriff.
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> In the event that certification for peace officer is inactive or no longer valid, proof of the intent to run for the office of sheriff shall be presented to the POST commission for approval to take the POST certification examination; provided, that all requirements are met as set forth in subdivisions (b)(1)-(8) and those set by the commission.
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> The provisions of this subdivision shall not apply in any county having a metropolitan form of government where the sheriff does not have law enforcement powers.

It is well-settled that the guiding principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993). In seeking to ascertain legislative intent, courts must look to the entire statute in order to avoid any forced or subtle construction of the pertinent language. *McClain v. Henry I. Siegel Co.*, 834 S.W.2d 293 (Tenn. 1992). Questions involving statutory construction "must be answered in light of reason, having in mind the object of the statute, and the mischief it aims at." *State v. Netto*, 486 S.W.2d 725, 728 (Tenn. 1972). Additionally, statutes relating to the same subject or sharing a common purpose must be construed together ("*in pari materia*") "in order to advance their common purpose or intent." *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn. 1997).

This Office has previously opined that county election commissions have a duty not to put a candidate's name on the ballot if they know that the candidate is unqualified for the office he or she seeks. *See, e.g.*, Op. Tenn. Atty. Gen. 94-108 (September 20, 1994)(county election commission has a duty to investigate when it receives reliable information that a candidate has not met the requisite qualifications for election to public office)(copy attached); Op. Tenn. Atty. Gen. No. 84-182 (June 20, 1984)(a county election commission may not place on the ballot the name of a candidate who does not meet a residency

requirement); Op. Tenn. Atty. Gen. No. 82-179 (June 23, 1982)(same); Op. Tenn. Atty. Gen. 79-115 (June 15, 1979)(duty to exclude as unqualified any candidate who has been convicted of a felony). This Office has also opined that an opposing candidate for sheriff would have standing to bring a civil action in court to seek a declaratory judgment that the challenged candidate is not qualified to hold the office and that such action may be brought prior to the election so as to determine whether the challenged candidate has a right to have his or her name placed on the ballot. *See* Op. Tenn. Atty. Gen. 94-108 and *Comer v. Ashe*, 514 S.W.2d 730, 741-42 (Tenn. 1974)(holding that opposing candidate has standing to bring a declaratory judgment action challenging the right of an underage candidate for the state senate to have his name appear on the ballot).

Tenn. Code Ann. § 8-8-102(b) provides that an individual must meet the requirements of that statute in order to qualify for election or appointment to the office of sheriff. This language clearly indicates that the Legislature intended that all sheriffs in Tennessee, regardless of the manner in which they obtained the office, meet the requirements of § 8-8-102(b). Accordingly, it is the opinion of this Office that a successful write-in candidate in a primary election still must meet the requirements of Tenn. Code Ann. § 8-8-102(b) in order to qualify to have his or her name placed on the ballot for the general election.

2. The second question asks the date by which a successful write-in candidate in a primary election for the office of sheriff is required to comply with the provisions of Tenn. Code Ann. § 8-8-102 in order to be placed on the ballot for the general election. Tenn. Code Ann. § 8-8-102(c) outlines the general process and time frame for candidates to comply with the requirements of § 8-8-102(b). It provides as follows:

> (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.
>
> (2) If such affidavit and form are not filed with the POST commission by the fourteenth day prior to the qualifying deadline for the office of

> sheriff, such candidate's name shall not be placed on the ballot. The POST commission shall have the authority to verify the validity of such affidavit and form.
> (3) The POST commission shall verify POST certification of any person seeking the office of sheriff who meets these requirements.
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> The original notarized verification form from the POST commission shall be filed by the POST commission with the county election commission by the withdrawal deadline. If the POST commission has not certified to the county election commission by the withdrawal deadline a person seeking to qualify as a candidate for the office of sheriff as meeting the qualifications as provided for in this section, such person's name shall not appear on the ballot. In the event that a person seeks election to the office of sheriff by the county legislative body to fill a vacancy in the office, such verification must be filed with the county clerk prior to the election.

Obviously, a write-in candidate in a party primary need not comply with these requirements prior to the primary election. A successful write-in candidate in a party primary would also have considerable difficulty in complying with these requirements prior to the general election. Tenn. Code Ann. § 2-5-101(e) provides that the qualifying deadline for a regular August election (the general election) is twelve (12) noon on the third Thursday in May. The primary election, however, is the first Tuesday that same month. Tenn. Code Ann. § 2-13-203(d). The county election commission has until no later than the second Monday after the election to meet and certify the results of the primary election as shown by the returns. *See* Tenn. Code Ann. § 2-8-101(a). The State Coordinator of Elections then has until the third Thursday after a primary election to publicly calculate and compare the votes received by each person and declare who has been nominated for office in the primary. *See* Tenn. Code Ann. § 2-8-113(a). Thus, a write-in candidate for sheriff may not definitely learn that he or she has successfully obtained the party nomination until the third Thursday after the primary election held on the first Tuesday in May. But, in order to comply with the requirements of § 8-8-102(c), a successful write-in candidate for sheriff in a party primary would have to file qualifying materials with the POST commission fourteen (14) days before the qualifying deadline. For example, under this year's calendar, the qualifying deadline for the regular August election is May 16th and the deadline for complying with § 8-8-102(c) is May 2nd. However, the primary election is not until May 7th - five days after that qualifying deadline. Thus, under this year's calendar, it would be impossible for a successful write-in candidate for sheriff to comply with the requirements of § 8-8-102(c).

Unfortunately, in enacting the provisions of Tenn. Code Ann. § 8-8-102(c), it appears that the Legislature did not take into account the possibility of there being a successful write-in candidate in a county

primary.[1] Both the statute and the legislative history are silent on this issue. However, to construe Tenn. Code Ann. § 8-8-102 as requiring all candidates for the office of sheriff to comply exactly with all of its requirements would place that statute in conflict with the write-in candidacy provisions of Tenn. Code Ann. §§ 2-5-219 and 2-8-113 and essentially render these statutes meaningless, at least with respect to candidates for the office of sheriff. Tennessee courts have recognized that a construction which places one statute in conflict with another must be avoided; therefore, courts must resolve any possible conflict between statutes in favor of each other, so as to provide a harmonious operation of the laws. *State by and Through Pierotti ex rel. Boone v. Sundquist*, 884 S.W.2d 438, 444 (Tenn. 1994). In the event two acts conflict and cannot be reconciled, the prior act will be repealed or amended by implication to the extent of the inconsistency between the two. *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). Repeals by implication are not favored, however, and will be recognized only when no fair and reasonable construction will permit the statutes to stand together. *Id.* Thus, as the Tennessee Supreme Court has said:

> When the Court can gather the paramount intention of the legislative action, such intention will be given effect, although there may exist some apparent obstacles.

Still v. First Tennessee Bank, N.A., 900 S.W.2d 282, 284 (Tenn. 1995)(citing *Rawlins v. Braswell*, 191 Tenn. 285, 231 S.W.2d 1021 (1950)).

As stated above, it is apparent that the Legislature intended that all sheriffs in Tennessee meet the qualification requirements of Tenn. Code Ann. § 8-8-102(b), regardless of how they obtain the office. It is further apparent that the Legislature intended that candidates for the office of sheriff must meet these qualifications before the ballots may be printed. Tenn. Code Ann. § 2-6-310(b) provides that ballots shall be printed "from immediately after the deadline established for withdrawal of candidates but not less than thirty (30) days before the day of election." It is also apparent, however, that the Legislature intended that the write-in candidacy provisions of Tenn. Code Ann. §§ 2-5-219 and 2-8-113 be available as an alternative method for an individual to obtain a party nomination in a primary election outside of the procedure established in Tenn. Code Ann. § 2-5-101.

In light of this clearly expressed intent, we think a court would construe these statutes together and reconcile the apparent obstacles by requiring a successful write-in candidate for the office of sheriff to demonstrate that he or she meets the requirements of Tenn. Code Ann. § 8-8-102(b) by filing the sworn and signed affidavit and confirmation of psychological evaluation form required by § 8-8-102(c) with the

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[1]It should be noted that a similar problem exists in the event that an incumbent sheriff who is a candidate for a primary election dies or properly withdraws on the last day for qualifying or prior to twelve (12) noon on the seventh day after the qualifying deadline, which is the deadline for withdrawal pursuant to Tenn. Code Ann. § 2-5-204(b)(1). Tenn. Code Ann. § 2-5-101(i)(2) (the "Anti-Skullduggery Act") provides that in such a situation, additional candidates have until twelve (12) noon on the seventh day after the original withdrawal deadline within which to qualify. These time frames clearly make it extremely difficult, if not impossible, for a new candidate for the office of sheriff to comply with the requirements of Tenn. Code Ann. § 8-8-102(c).

POST commission at some date prior to the general election held on the first Thursday in August. *See* Tenn. Code Ann. §§ 2-1-104(a)(24) and 2-3-202. What that date would be would depend upon the individual facts and circumstances. Given the Legislature's expressed intent that non write-in candidates must be certified as qualified before their withdrawal deadline, we think a logical and reasonable deadline for successful write-in candidates to comply would also be the withdrawal deadline established for write-in candidates in Tenn. Code Ann. § 2-5-219(b), which is ten (10) days after the primary election. Although this deadline may present some of the same problems discussed above, we think it provides a more reasonable time period and is also consistent with the statutes.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

JANET M. KLEINFELTER
Senior Counsel

Requested by:

The Honorable Jerry N. Estes
District Attorney General
10th Judicial District
93 N. Ocoee St., 2nd Floor
P.O. Box 1351
Cleveland, TN 37364-1351