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. 03-043

Authority of general sessions and municipal judges to administer oaths of office to county officials

QUESTION

Do Tenn. Code Ann. §§ 8-18-107, 8-18-109(b), and/or 17-1-105 restrict the authority of judges of the general session and municipal courts to administer oaths of office to individuals elected to serve in the positions of County Executive, Sheriff, Trustee, County Clerk, Circuit and Criminal Court Clerks, Register, County Commissioners and County School Board?

OPINION

No. Nothing in these statutes prohibits judges of general sessions and municipal courts from administering oaths of office to county officials, although retired judges from these courts are prohibited from administering such oaths.

ANALYSIS

This opinion concerns whether three statutes prohibit judges of the general sessions and municipal courts from administering oaths of office to county officials. Tenn. Code Ann. § 8-18-107 provides that "[i]n all cases in which it is not otherwise provided by law, the oaths of office may be administered by any officer authorized to administer an oath. . . . Retired judges and retired chancellors of **courts of record** of this state may administer the oaths of office to any elected or appointed public official." (emphasis added). Tenn. Code Ann. § 8-18-109 (b) states "[n]otwithstanding any other law to the contrary, the county executive, the county clerk, or a judge of any **court of record** in the county may administer the oath of office for any elected or appointed official." (emphasis added) Finally, Tenn. Code Ann. § 17-1-105 deals with the authority of judges or chancellors to "perform any functions of attorney or counsel."

The authority of general sessions and municipal court judges to administer oaths is set forth in title sixteen of the Tennessee code. Tenn. Code Ann. § 16-1-101 vests "[t]he judicial power of the state . . . in judges of the courts of general sessions, recorders of certain towns and cities, circuit courts, criminal courts, common law and chancery courts, chancery courts, court of appeals, and the supreme court, and other courts created by law." Tenn. Code Ann. § 16-1-102(5) grants the authority to administer oaths to

all courts "whenever it may be necessary in the exercise of its powers and duties." Tenn. Code Ann. § 16-15-403 notes that as a "conservator of peace in the county" judges of general sessions courts have the "authority therein to administer oaths when required by law, unless the power is expressly intrusted to some other officer. . . ." The power to administer an oath of office is granted to city judges in Tenn. Code Ann. § 16-18-301, "[n]otwithstanding any provision of law to the contrary, every popularly elected or appointed city judge is authorized to administer oaths."

It is the opinion of this office that the general authority of judges of general sessions to administer oaths is not limited by the statutes you cite, despite the fact that Tenn. Code Ann. §§ 8-18-107 and 8-18-109 use the phrase "court of record." It is generally recognized in the state of Tennessee that general sessions courts and municipal courts are not courts of record. *See, e.g., State v. McClintock*, 732 S.W.2d 268 (1987). In 1999, this office opined that language in Tenn. Code Ann. § 40-25-129(2), which limited its coverage to "courts of record" meant that the statute was not applicable to courts of general sessions. Op. Tenn. Atty. Gen. 99-211(October 20, 1999). Similarly, in 1983, we concluded that the elimination of that phrase in Tenn. Code Ann. § 36-415 (now Tenn. Code Ann. § 36-3-301) granted retired general sessions judges the authority to solemnize marriages. Op. Tenn. Atty. Gen. 83-471 (Oct. 26, 1983). Thus, Tenn. Code Ann. § 8-18-107 does restrict the authority of *retired* judges whose courts were not "courts of records," but does not likewise restrict the authority of sitting judges.

As for Tenn. Code. Ann. § 8-18-109, it reads in full:

> (a) Judges of courts of general sessions, revenue commissioners, sheriffs, constables and other officers whose general duties are confined to a single county, shall, unless it is otherwise provided, file such oaths and certificate in the office of the county clerk.
>
> (b) Notwithstanding any other law to the contrary, the county executive, the county clerk, or a judge of any court of record in the county may administer the oath of office for any elected or appointed official. The oath of office for any county official required to file an oath may be administered at any time after the certification of the election returns, in the case of elected officials, or after appointment, in the case of appointed officials. Even though an official may file an oath before the scheduled start of a term of office, the official may not take office until the term officially begins.

Subsection (a) refers to the filing of oaths by county officers, and follows Tenn. Code Ann. § 8-18-107 which provides for the administration of oaths and Tenn. Code Ann. § 8-18-108, which directs the filing of oaths by other officials, including the governor and judges of the supreme court.

Subsection (b) was added to Tenn. Code Ann. § 8-18-109 in 1997. 1997 Pub. Act ch. 125. Although it does contain the words "court of record," it is our opinion that these words are not used to prohibit general sessions or municipal judges from administering the oath of office. The legislative history of subsection (b) shows that it was designed to allow county officials to be sworn in before September 1

in the event that the first of the month fell on a holiday. Representative Bone,

State and Local Government Comm., April 8, 1997 (Tape #1); Senator Graves, Senate Session, May 19, 1997 (Tape S-82).

Finally, nothing in the prohibition of the practice of law in Tenn. Code Ann. §17-1-105 precludes judges or chancellors from administering oaths of office.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

RUTH ANNE THOMPSON
Assistant Attorney General

Requested by:

Ward Crutchfield
State Senator
Suite 13, Legislative Plaza
Nashville, TN 37243-2886