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Opinion No. 03-071

Criminal contempt as a conviction under Tenn. Code Ann. § 38-8-106(4)

## QUESTION

Whether a finding of criminal contempt by a civil court may be considered a conviction of a "violation of any federal or state laws or city ordinances relating to force, violence, theft, [or] dishonesty . . ." as set forth under Tenn. Code Ann. § 38-8-106(4), establishing qualifications for police officers.

## OPINION

No. A finding of criminal contempt may not be considered a criminal conviction for the violation of a law relating to force, violence, theft or dishonesty, as contemplated under Tenn. Code Ann. § 38-8-106(4).

## ANALYSIS

Tenn. Code Ann. §29-9-102 establishes the scope of a court's power to inflict punishments for contempts of court:

> The power of the several courts to issue attachments, and inflict punishments for contempts of court, shall not be construed to extend to any except the following cases:
>
> (1) The willful misbehavior of any person in the presence of the court, or so near thereto as to obstruct the administration of justice;
>
> (2) The willful misbehavior of any of the officers of such courts, in their official transactions;
>
> (3) The willful disobedience or resistance of any officer of the such courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of such courts;
>
> (4) Abuse of, or unlawful interference with, the process or proceedings of the court;

(5) Willfully conversing with jurors in relation to the merits of the cause in the trial of which they are engaged, or otherwise tampering with them; or

(6) Any other act or omission declared a contempt by law.

Although the misconduct serving as a basis for criminal contempt may also be a commission of a separate offense involving force, violence, theft, or dishonesty, a conviction of criminal contempt under Tenn. Code Ann. § 29-9-102 itself does not include any such element.[1]

Accordingly, it is the opinion of this office that a finding of criminal contempt may not be considered a criminal conviction for the violation of a law relating to force, violence, theft or dishonesty, under Tenn. Code Ann. § 38-8-106(4).

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[1]The courts of Tennessee have established that the acts serving as a basis for criminal contempt may be punished as a separate offense, independent of the criminal contempt. In *State v. Winningham*, 958 S.W.2d 740 (Tenn. 1997), the defendant's prosecution for arson did not violate double jeopardy where he had previously been held in contempt for violating a protective order by burning down the house of his estranged wife. In *State v. Wyche*, 914 S.W.2d 558 (Tenn. Crim. App. 1995), a father previously held in contempt for failure to comply with a court's child support order could properly be prosecuted for flagrant nonsupport. In *State v. Sammons*, 656 S.W.2d 862 (Tenn. Crim. App. 1982), the defendant was convicted of burglary and kidnapping after having previously been cited for contempt of court for unlawfully removing his daughter from the custody of his former wife. In *Maples v. State*, 565 S.W.2d 202 (Tenn. 1995), a defendant's conviction for perjury was upheld although he was previously held in contempt for instituting a fraudulent divorce proceeding in chancery court.