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June 20, 2003

Opinion No. 03-078

Process Servers Appointed under Tenn. Code Ann. § 8-8-108(b) and (c)

QUESTIONS

1. Under Tenn. Code Ann. § 8-8-108(d), any county may adopt subsection (b) or (c) of the statute to govern the service of process in courts of general sessions in such county. Are process servers appointed under either of these provisions authorized to levy an execution or serve a garnishment in aid of execution in a county other than the county in which they were appointed?

2. If a person is appointed only to serve leading process by the local government, may that person also levy executions and serve garnishments in aid of execution without the permission of the local government?

OPINIONS

1. No.

2. The county clerk may not limit the types of general sessions process to be served by a process server appointed under Tenn. Code Ann. § 8-8-108(c). If the initial appointment was limited, however, the individual should seek modification of the original appointment before acting outside its terms.

ANALYSIS

1. Authority of Process Servers Appointed under Tenn. Code Ann. § 8-8-108(b) and (c) to Serve Process Outside the County of Appointment

This opinion concerns the authority of individuals appointed to serve process under either Tenn. Code Ann. § 8-8-108(b) or (c). Under subsection (b)(1), the judge of a court of record or a general sessions judge may, upon petition filed by five attorneys, appoint a person to serve any process or other papers issued by the court. Under subsection (b)(3), "[t]he person so appointed shall have *the same power conferred upon* such person and proceed *in the same manner prescribed by law for the sheriff in the performance of like duties.*" (Emphasis added). A sheriff is authorized to execute all writs and other process legally issued and directed to the sheriff within the county. Tenn. Code Ann. § 8-8-201(5). An individual authorized to serve process under Tenn. Code Ann. § 8-8-

108(b), therefore, may not levy executions or serve garnishments outside a county in which the individual is appointed.

2. Effect of Limited Appointment by County Clerk under Tenn. Code Ann. § 8-8-108(c)

The second question is whether a person appointed only to serve leading process by the local government may also levy executions or serve garnishments in aid of execution without the permission of the local government. Because the question refers to the "local government," and subsection (b) provides for the appointment of process servers by a judge, we assume that the question refers to process servers appointed by the county clerk under Tenn. Code Ann. § 8-8-108(c). That subsection provides in relevant part:

> (1) A person to serve process shall be appointed upon the petition of five (5) attorneys practicing before the general sessions court requesting appointment of persons to serve process. Such petition shall be filed with the county clerk and shall attest to the fact that the attorneys are unable to obtain reasonable, prompt service from the general sessions court. *A person requesting appointment to serve process must file a petition with the county clerk requesting such appointment.* A *person appointed to serve process must be of legal age and be qualified to serve any process or other papers issued by the general sessions court or to do any act which the sheriff might do in serving process, except that such person shall not be authorized to serve process requiring the arrest of any person. The county clerk shall approve the petition to allow a person to serve process after a background check by the Tennessee bureau of investigation and the county sheriff's office has been completed.* The county clerk shall administer an oath to the petitioner to uphold the laws of this state and the constitutions of the United States and Tennessee. A petitioner shall pay a fee not to exceed one hundred dollars ($100) to the county clerk for the cost of the background checks.
> (2) *Such appointment shall be made in writing under the hand of the county clerk.*

(Emphasis added). The real question is whether the county clerk, in approving a petition by an individual to serve process under this statute, may limit the types of process the person may serve beyond the limit on arrest warrants already in the statute. By its terms, the statute provides that "[a] person appointed to serve process must . . . be qualified to serve any process or other papers issued by the general sessions court . . .." Further, the statute provides that the county clerk "shall approve" a petition by an individual to serve process after the background checks have been completed; it does not authorize the clerk to limit or condition the appointment. For this reason, we think that a court would conclude that the statute does not authorize a county clerk to limit the types of process an individual may serve to only leading process. On the other hand, an individual has no authority to

serve process until the county clerk has approved his or her petition. If the initial appointment was so limited, therefore, the individual should ask the county clerk to approve the individual's original petition to serve process before acting outside the scope of the initial appointment.

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