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Opinion No. 03-092

Abolition of Office of Constable in DeKalb County

## QUESTIONS

1. Under Tenn. Code Ann. § 8-10-101(m), "[t]he office of constable is abolished in any county having a population of not less than seventeen thousand two hundred fifty (17,250) nor more than seventeen thousand five hundred fifty (17,550) according to the 1990 census, or any subsequent federal census." According to the results of the 2000 census published in the Tennessee Code Annotated in October 2002, DeKalb County had a population of 17,423. Has the office of constable in DeKalb County been abolished?

2. If the position of constable has been abolished in DeKalb County, may the current incumbents fulfill their terms of office? If so, do they have any authority?

3. If the office of constable still exists in DeKalb County, do constables in that county possess police powers? Are they authorized to carry handguns or use blue lights?

## OPINIONS

1. The 2000 census population brackets became effective when they were published in the Tennessee Code Annotated in October 2002. DeKalb County constables were last elected in August 2002, before the new brackets became effective. The office of constable, therefore, has been abolished in DeKalb County, but under the terms of the relevant act the abolition of the office will become effective only when the current incumbents vacate the office or their current terms end.

2. Tenn. Code Ann. § 8-10-101(m) does not affect the ability of the current incumbents of the office of constable to serve out their terms, or their authority in office.

3. The current incumbents of the office of constable in DeKalb County retain law enforcement powers and, therefore, the authority to operate a constable patrol car equipped with blue lights and to carry a firearm so long as they meet the applicable statutory requirements.

## ANALYSIS

1. Office of DeKalb County Constable

This opinion concerns the status of the office of constable in DeKalb County. The office of constable is governed by Tenn. Code Ann. §§ 8-10-101, *et seq.* Tenn. Code Ann. § 8-10-101(m) provides that "[t]he office of constable is abolished in any county having a population of not less than seventeen thousand two hundred fifty (17,250) nor more than seventeen thousand five hundred fifty (17,550) according to the 1990 census, or any subsequent federal census." According to the results of the 2000 census published in the Tennessee Code Annotated in October 2002, DeKalb County had a population of 17,423. This statute was passed in 1996. 1996 Tenn. Pub. Acts Ch. 797. Section 2 of the act provides:

> Nothing in this act shall be construed as having the effect of removing any incumbent from office or abridging the term of any official prior to the end of the term for which such official was elected.

1996 Tenn. Pub. Acts Ch. 797, § 2. Constables were elected in DeKalb County in August 2002. Under Tenn. Code Ann. § 1-3-116(a):

> Except as provided in subsection (b), references in this code to the federal censuses of population or brackets based on such censuses *shall be deemed references to or based on the population figures contained in Volume 13 of this code,* or its replacement volume which are reproduced from publications of the United States bureau of the census as specified below, and shall not be affected by revisions, corrections, or alterations to such population figures by the United States bureau of the census subsequent to the publication of these publications:

(Emphasis added). The statute then lists federal census publications from 1900 to 1990. Subsection (b) does not except the constable statutes from subsection (a). According to the publication notice, the 2002 Supplement to Volume 13 of the Tennessee Code Annotated, in which 2000 population figures for Tennessee cities and counties first appear, was published in October 2002. Therefore, DeKalb County did not fall into the population bracket in Tenn. Code Ann. § 8-10-101(m) until after constables were elected in August 2002. For this reason, the statute does not affect the individuals elected to the office of constable in August 2002. Abolition of the office will become effective when the current incumbents vacate the office or their current terms end.

2. and 3. Powers of DeKalb County Constables

The next question is whether DeKalb County constables have law enforcement authority, and are authorized to wear uniforms and use blue lights. According to the Tennessee Code

Annotated, the population of DeKalb County under the 1960 census was 10,774. Under Tenn. Code Ann. § 8-10-108(b), counties that fell within listed population brackets according to the 1960 federal census or any subsequent federal census have law enforcement authority. The brackets include counties having a population of not less than 10,770 nor more than 10,780 according to the 1960 federal census. The statutory wording "or any subsequent federal census" allows a particular county to grow into, but not out of, the population classification so established. Op. Tenn. Atty. Gen. 96-114 (September 5, 1996); *Hall v. State*, 124 Tenn. 235, 137 S.W. 400 (1910). For this reason, the current incumbent constables in DeKalb County continue to have law enforcement authority.

Tenn. Code Ann. § 8-10-120 provides that constables may operate a constable patrol car. Under subsection (b) of the statute, "[c]onstable patrol cars which conform to the description in subsection (a) [white with a brown horizontal stripe], which are being operated as provided in § 55-9-414, and which are used as emergency vehicles, may be equipped with blue lights and/or red lights and sirens." Subsection (f) of the statute states that "the provisions of this section shall not apply in any county which has removed from constables any law enforcement powers." Since DeKalb County constables still have law enforcement power, they may operate a constable patrol car equipped with blue lights.

Tenn. Code Ann. § 8-10-203 states that "[c]onstables must be range-qualified prior to being authorized to carry a firearm." This statute does not apply, however, to constables whose law enforcement powers have been removed but who have retained the authority to serve lawfully issued process. Tenn. Code Ann. § 8-10-206(b). Constables with law enforcement authority are authorized, therefore, to carry a firearm provided they satisfy other statutory requirements. Since DeKalb County constables still have law enforcement power, they may carry a firearm provided they satisfy other statutory requirements.

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