

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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September 8, 2003

Opinion No. 03-110

Residence of Judicial Commissioner

QUESTION

Where a judicial commissioner performs his or her official duties on behalf of a city court with concurrent general sessions jurisdiction, must he or she be a resident of that city?

OPINION

No, absent some private act to the contrary.

ANALYSIS

This opinion concerns the residence of a judicial commissioner. We assume your question refers to a judicial commissioner appointed under Tenn. Code Ann. § 40-1-111, and that no private acts apply. With a few statutory exceptions, this statute provides that judicial commissioners are appointed by the county commission. Under the statute, the county commission of any county with a population of less than two hundred thousand may appoint one or more judicial commissioners. Duties of judicial commissioners include issuing search and felony arrest warrants; issuing a mittimus following compliance with procedures prescribed by Tenn. Code Ann. § 40-5-103; appointing attorneys for indigent defendants in accordance with applicable law and guidelines established by the presiding General Sessions Judge for the county; setting and approving bonds and releasing defendants on recognizance in accordance with applicable law and guidelines established by the presiding General Sessions Judge of the county; and issuing injunctions and other appropriate orders as designated by the General Sessions Judges in cases of alleged domestic violence. Tenn. Code Ann. § 40-1-111(a)(1)(A). The county commission is to establish the term of office for judicial commissioners, not to exceed a four-year term. Tenn. Code Ann. § 40-1-111(a)(1)(B). Judicial commissioners are compensated from the general fund of the county in an amount to be determined by the county commission. Tenn. Code Ann. § 40-1-111(a)(2).

Under Tenn. Code Ann. § 8-48-101(3), “[a]ny office in this state is vacated by . . . [c]easing to be a resident of the state, or of the district, circuit, or county for which the incumbent was elected or appointed[.]” Based on this statute, this Office concluded that a person must be a resident of the county to hold the office of judicial commissioner in that county under Tenn. Code Ann. § 40-1-111. Op. Tenn. Atty. Gen. 97-016 (February 20, 1997). The question is whether a judicial commissioner who performs his or her official functions on behalf of a city court with concurrent general sessions

jurisdiction must be a resident of the city. This Office has concluded that a judicial commissioner appointed under Tenn. Code Ann. § 40-1-111 may perform the functions of that office for a city court when that court exercises its concurrent general sessions jurisdiction over criminal cases. Op. Tenn. Atty. Gen. 00-126 (August 7, 2000). But such a judicial commissioner is still a county official and, under Tenn. Code Ann. § 8-48-101(3), need only be a resident of the county for which he or she was appointed.

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