

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 03-121

Abolition of Office of Constable in Johnson, Sullivan, McNairy, Stewart, and Lauderdale Counties

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, Johnson County had a population of 17,499. Has the office of constable in Johnson County been abolished?

2. Under Tenn. Code Ann. § 8-10-101(c)(1), “[t]he office of constable is abolished in class 2 counties as established by § 8-24-101.” Under subdivision (2), the provisions of subsection (c) do not apply in any county having a population of not less than one hundred forty thousand (140,000) nor more than one hundred forty-five thousand (145,000), according to the 1990 federal census or any subsequent federal census. Under the 1990 census, Sullivan County had a population of 143,596. Under the 2000 census results, Sullivan County had a population of more than 150,000, making it a class 2 county under § 8-24-101. Has the office of constable in Sullivan County been abolished?

3. Under Tenn. Code Ann. § 8-10-101(h), “[e]ffective September 1, 1990, the office of constable is abolished in any county having a population of:

<u>not less than</u>	<u>nor more than</u>
9,475	9,550
19,500	19,575
24,600	24,700

according to the 1980 federal census or any subsequent federal census.

a. According to the 2000 census, McNairy County had a population of 24,653. Has the office of constable in McNairy County been abolished?

b. According to the 1990 census, Stewart County had a population of 9,479. Was the office of constable abolished in Stewart County in 1990?

4. Under Tenn. Code Ann. § 8-10-101(b)(4), “[i]n counties having a population of not less than twenty-three thousand four hundred seventy-five (23,475) nor more than twenty-three thousand five hundred (23,500) by the 1970 federal census or any subsequent federal census, there shall be one (1) constable elected per county legislative district and in addition one (1) additional constable shall be elected for the county town.” According to the 1990 federal census, Lauderdale County had a population of 23,491. Has the office of constable been abolished in Lauderdale County?

5. Are there any other statutes that contain population bracket classifications into which a county might inadvertently grow?

OPINIONS

1. The 2000 census population brackets became effective when they were published in the Tennessee Code Annotated in October 2002. Johnson County constables were last elected in August 2002 before the new brackets became effective. The office of constable, therefore, has been abolished in Johnson 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. No further elections for the office of constable should be held in Johnson County unless the statute is amended.

2. No. Sullivan County is still exempted from Tenn. Code Ann. § 8-10-101(c)(1) by Tenn. Code Ann. § 8-10-101(c)(2).

3. a. The office of constable in McNairy County has been abolished under Tenn. Code Ann. § 8-10-101(h). The act abolishing the office cannot become effective in McNairy County, however, until the current incumbents vacate the office or their current terms end. No further elections for the office of constable should be held in McNairy County unless the statute is amended.

b. The office of constable in Stewart County was abolished under Tenn. Code Ann. § 8-10-101(h) when the 1990 census results were published in the Tennessee Code Annotated. But, assuming the current incumbent constables hold a valid certificate of election to office, we think they must be presumed to hold title to office until a court of competent jurisdiction holds otherwise. No further elections for the office of constable should be held in Stewart County, however, unless the statute is amended.

4. By its terms, this statute does not purport to abolish the office of constable; it simply contains a special provision regarding the number of constables and the districts from which they are elected in counties that fall within the population bracket. In the future, constable elections in Lauderdale County should comply with this provision.

5. Many different statutory schemes classify counties by population brackets according to the federal census. This Office is unable to provide a complete list of these classifications.

Whether a county has grown into a classification depends on the specific statutory scheme and the classification. Where a statute requires local adoption before it may become effective in a particular county, of course, the county could not inadvertently grow into it.

ANALYSIS

1. Office of Johnson County Constable

This opinion concerns the status of the office of constable in several different counties. The office of constable is governed by Tenn. Code Ann. §§ 8-10-101, *et seq.* Section 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, Johnson County had a population of 17,499. 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 Johnson 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, Johnson 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. Office of Sullivan County Constable

Under Tenn. Code Ann. § 8-10-101(c)(1), “[t]he office of constable is abolished in class 2 counties as established by § 8-24-101.” But under subdivision (c)(2) of the same statute, the provisions of subsection (c) do not apply in any county having a population of not less than one hundred forty thousand (140,000) nor more than one hundred forty-five thousand (145,000), according to the 1990 federal census or any subsequent federal census. Under the 1990 census, Sullivan County had a population of 143,596 and was, therefore, exempted from the provision of (c)(1) abolishing the office of constable in class 2 counties. 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); *State v. Boyd*, 867 S.W.2d 330, 333 (Tenn. Crim. App. 1992), *p.t.a. dismissed* (1993). Sullivan County, therefore, continues to be exempted from (c)(1) under (c)(2).

Under Tenn. Code Ann. § 8-24-101(a)(2), counties having a population of one hundred fifty thousand or more, but less than four hundred thousand, are counties of the second class. Under the 2000 census results, Sullivan County had a population of more than 150,000, making it a class 2 county under § 8-24-101. Since, however, Sullivan County was exempted from the statute abolishing the office of constable in class 2 counties, the office has not been abolished in Sullivan County as a result of its population growth under the 2000 census.

3. a. Office of McNairy County Constable

Under Tenn. Code Ann. § 8-10-101(h):

Effective September 1, 1990, the office of constable is abolished in any county having a population of:

<u>not less than</u>	<u>nor more than</u>
9,475	9,550
19,500	19,575
24,600	24,700

according to the 1980 federal census or any subsequent federal census.

According to the 2000 census, McNairy County had a population of 24,643. As discussed in the answer to question 1, the results of the 2000 census did not become effective with respect to statutory classifications by population bracket until October 2002, when the 2000 results were published in the Tennessee Code Annotated. Therefore, they did not affect constable elections held before that time. Unlike Tenn. Code Ann. § 8-10-101(m), 1990 Tenn.Pub.Acts Ch. 678, which added the third population bracket above, does not expressly provide that it does not affect incumbents in office when the act became effective. This was probably because new constables’ terms were scheduled to begin September 1, 1990, the date the act was to become effective. Constitutionally, however, a private act may not remove an incumbent from a county office or

abridge the term or alter the salary before the end of the term for which such public officer was selected. Tenn. Const. Art. XI, § 9. The act abolishing the office may not become effective in McNairy County, therefore, until the current incumbents vacate the office or their current terms end. No further elections for the office of constable should be held in McNairy County unless the statute is amended.

b. Office of Stewart County Constable

As the request indicates, according to the 1990 census, Stewart County had a population of 9,479. Therefore, when the 1990 census results were published in the Tennessee Code Annotated, Tenn. Code Ann. § 8-10-101(h) abolished the office of constable in Stewart County. The act could not have become effective until the incumbents in office at that time vacated the office or their current terms ended, presumably on September 1, 1994. Research indicates, however, that constables continue to hold office in Stewart County.

The question then becomes the status of the individuals holding office as constable after 1994, including those currently in office. We assume these individuals were all duly elected and qualified to hold the office of constable, and that each holds a certificate of election issued by the county election commission. Tenn. Code Ann. § 2-18-106(e). The holder of a certificate of election issued by election officials holds *prima facie* title to the office. *Hagan v. Henry*, 168 Tenn. 223, 76 S.W.2d 994, 995 (1934). Without a ruling by a court of competent jurisdiction concerning their status, we think the Stewart County constables must be presumed to have valid title to the office. But no further elections for the office of constable should be held unless the statute is amended.

4. Office of Lauderdale County Constable

Under Tenn. Code Ann. § 8-10-101(b)(4), “[i]n counties having a population of not less than twenty-three thousand four hundred seventy-five (23,475) nor more than twenty-three thousand five hundred (23,500) by the 1970 federal census or any subsequent federal census, there shall be one (1) constable elected per county legislative district and in addition one (1) additional constable shall be elected for the county town.” According to the 1990 federal census, Lauderdale County had a population of 23,491. This provision was added to the Tennessee Code as part of 1978 Tenn. Pub. Acts Ch. 934, § 23. It does not contain a local adoption provision. By its terms, this statute does not purport to abolish the office of constable; it simply contains a special provision regarding the number of constables and the districts from which they are elected in counties that fall within the population bracket. In the future, constable elections in Lauderdale County should comply with this provision.

5. Other Statutory Schemes

The last question is whether there are other statutory schemes that classify counties by population bracket into which a county could inadvertently grow. Many different statutory schemes classify counties by population brackets according to the federal census. For example, statutes governing county officers’ salaries divide counties into 17 classes by population bracket. Tenn.

Code Ann. § 8-24-102. This Office is unable to provide a complete list of these classifications. Whether a county has grown into a classification depends on the specific statutory scheme and the classification. Where a statute requires local adoption before it may become effective in a particular county, of course, the county could not inadvertently grow into it.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Jason E. Mumpower
State Representative
212 War Memorial Building
Nashville, TN 37243-0103