

STATE OF TENNESSEE

OFFICE OF THE
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November 17, 2003

Opinion No. 03-150

Salary Raise for Hamilton County Judicial Commissioners

QUESTION

May Hamilton County legally give its judicial commissioners, appointed under 1996 Tenn.Priv.Acts Ch. 192, annual salary increases as may be approved for all other county employees?

OPINION

Yes, neither the Tennessee Constitution nor the applicable private act would prevent the county from paying its judicial commissioners annual salary increases as may be approved for all other county employees.

ANALYSIS

This opinion concerns the salary of Hamilton County judicial commissioners appointed under 1996 Tenn.Priv.Acts Ch. 192. That act created two new divisions of General Sessions Court in Hamilton County. Section 3 of the act provides:

(a) To assist the general sessions court, the county legislative body may appoint one (1) or more judicial commissioners. The duties of a judicial commissioner shall include, but not be limited to the following:

(1) Issuance of arrest and search warrants upon a finding of probable cause in accordance with the procedures outlined in Tennessee Code Annotated, Title 40, Chapters 5 and 6;

(2) Issuance of mittimus following compliance with the procedures prescribed by Tennessee Code Annotated, § 40-5-103;

(3) Appointing attorneys for indigent defendants in accordance with applicable law and guidelines established by the presiding General Sessions Judge of the County; and

(4) Setting and approving bonds and the release on recognizance of defendants in accordance with Tennessee Code Annotated, Title 40, Chapter 11.

(b) The term of office for a Judicial Commissioner shall be established by the County Legislative Body, but such term shall not exceed four (4) years. A member of the County Legislative Body is not eligible for appointment as a Judicial Commissioner.

(c) *A Judicial Commissioner shall be compensated from the general fund of the county in an amount to be determined by the County Legislative Body.* Fees established and authorized by § 8-21-401 shall be paid to the county general fund upon the services detailed therein being performed by a Judicial Commissioner.

(Emphasis added). Under Article VI, Section 7 of the Tennessee Constitution, compensation for judges of inferior courts may not be increased or diminished during the time for which they are elected. Judicial commissioners appointed under Tenn. Code Ann. § 40-1-111 carry out most of the same duties as Hamilton County judicial commissioners appointed under the private act. A judicial commissioner appointed under Tenn. Code Ann. § 40-1-111 is not a judge within the meaning of Article VI, Section 4 of the Tennessee Constitution. *State v. Bush*, 626 S.W.2d 470 (Tenn. Crim. App. 1981). Similarly, we think a court would conclude that judicial commissioners appointed under 1996 Tenn.Priv.Acts Ch. 192 are not subject to the restrictions on changes in compensation in Article VI, Section 7 of the Tennessee Constitution. Neither the private act nor any other provision of the Tennessee Constitution would prohibit the Hamilton County Commission from giving judicial commissioners appointed under this act the same annual salary increases it gives other county employees.

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