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May 17, 2006

Opinion No. 06-093

Political Campaigning by Sheriffs' Employees

QUESTIONS

In a county that has adopted the County Sheriff's Civil Service Law, Tenn. Code Ann. §§ 8-8-401, et seq.:

1. a. May the sheriff dismiss an employee who becomes a candidate for elected office?

b. Is the sheriff required to dismiss such a person?

c. Would it matter whether the employee holds a position in the classified service, such as a deputy, or not, such as the sheriff's personal secretary?

2. a. May the sheriff require an employee who is a candidate for elected office to take an unpaid leave of absence in order to run for office?

b. Would it matter whether the employee holds a position in the classified service, such as a deputy, or not, such as the sheriff's personal secretary?

3. a. May an employee of the sheriff's office actively campaign for any candidate for elected office?

b. Does it matter if the candidate is running for office in a neighboring county?

c. Would it matter whether the employee holds a position in the classified service, such as deputy, or not, such as the sheriff's personal secretary?

In a county that has not adopted the Sheriff's Civil Service Law:

4. May an employee of the sheriff's office campaign for the sheriff or for any other candidate for public office while on duty?

5. May an employee of the sheriff's office campaign for the sheriff or for any other candidate for public office while in uniform, whether on or off duty?

6. a. May the sheriff require an employee who is a candidate for elective office to take an unpaid leave of absence in order to run for office?

b. If so, must the personnel policies for the office adopted under Tenn. Code Ann. §§ 5-23-101, *et seq.*, contain a provision authorizing unpaid leaves of absence before this leave may be required?

7. May the sheriff dismiss an employee if he or she becomes a candidate for elected office, including the office of sheriff?

8. Are the answers to questions 4, 6, and 7 the same for employees in all county offices, or only those in the sheriff's office?

OPINIONS

1. The Sheriff's Civil Service Law does not prohibit an employee in the sheriff's office from becoming a candidate for public office. Thus, an employee, whether in the classified service or not, may not be fired simply because he or she becomes a candidate. But no employee of the office may engage in any political fundraising, including for his or her campaign. Further, no employee, whether classified or not, may display political advertising or paraphernalia on such persons' body or automobile while on duty; or make any public endorsement of any candidate in any campaign for elected office. Under Tenn. Code Ann. § 8-8-419(c), a sheriff's employee, whether in the classified service or not, must be fired if he or she violates these provisions. Under the same statute, the following persons must be dismissed for the following conduct: a classified employee for taking an active part in any political campaign while on duty; a deputy sheriff if he or she uses his or her position to reflect the deputy's personal political feelings as those of the sheriff's department or exert any pressure on anyone to influence that person's political views; and any officer in uniform --whether on duty or not--for displaying any political advertising or paraphernalia on such person's body or automobile

2. A sheriff is not authorized to require an employee, whether classified or not, to take unpaid leave of absence to campaign for elected office. Of course, any such individual may be subject to dismissal if his or her campaign activities violate Tenn. Code Ann. § 8-8-419.

3. The statute does not prohibit "actively campaigning;" but, as discussed above in the answer to question 1, the act does restrict certain employees from engaging in particular types of political activity in certain circumstances. These restrictions apply to any campaign, including one taking place in another county.

4. Under Tenn. Code Ann. § 38-8-351, no employee of a sheriff's office who is a "law enforcement officer" may campaign for the sheriff or any other candidate for public office while on duty. Whether other employees may engage in these activities while on duty would depend on applicable private acts and the personnel policy or other policies adopted in the particular county.

5. Clearly, under Tenn. Code Ann. § 38-8-351, any employee of the sheriff's office who is a law enforcement officer may not campaign for a political candidate when on duty and in uniform. We think the statute also prohibits a law enforcement officer from campaigning for a political candidate whenever in uniform, whether on duty or not. Whether other employees in the sheriff's office may engage in these activities while on duty would depend on applicable private acts and the personnel policy or other policies adopted in the particular county.

6. a. Such action would conflict with Tenn. Code Ann. § 7-51-1501, which preserves the right to local governmental employees the "same rights of other citizens of Tennessee to be a candidate for any state or political office." Such a measure could be authorized under a private act of the General Assembly, however, as Tenn. Code Ann. § would not supersede a private act that is not part of a local government's charter.

b. Because of the answer to Question 6.a, Question 6.b is moot.

7. Such action would conflict with Tenn. Code Ann. § 7-51-1501, which preserves the right to local governmental employees the "same rights of other citizens of Tennessee to be a candidate for any state or political office." An employee who is a law enforcement officer, however, is still subject to the restrictions in Tenn. Code Ann. § 38-8-351. Such a measure could be authorized under a private act of the General Assembly, however, as Tenn. Code Ann. § would not supersede a private act that is not part of a local government's charter.

8. Generally, Tenn. Code Ann. §§ 7-51-1501, *et seq.* and the personnel and other county policies, as well as applicable local acts in the particular county would govern the result. Thus, whether a particular county employee may campaign for public office while on duty would depend on the applicable county policies and private acts, as well as statutes applicable to particular county offices. Generally, under Tenn. Code Ann. § 7-15-1501, a county employee could not be required to take leave of absence or be dismissed for becoming a candidate for office. Local acts or statutes applicable to particular county offices would also govern this result.

ANALYSIS

This opinion addresses state law governing political activities by sheriffs' personnel. As an initial matter, federal law may also restrict partisan political activities by local officers of employees. Under 5 U.S.C. § 1502(a)(3), a local officer or employee whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by a United States or a Federal agency may not engage in a variety of partisan political activities, including becoming a candidate for office in a partisan political campaign. The law is enforced by federal agencies. The law is discussed in further detail in Op. Tenn. Atty. Gen.. 05-151 (September 12, 2005), a copy of which is attached.

1. Running for Office under Sheriff's Civil Service Act

This opinion addresses several questions about political activities by county employees. The first question is whether, in a county that had adopted the County Sheriff's Civil Service Law, Tenn. Code Ann. §§ 8-8-401, *et seq.*, the sheriff may dismiss am employee who becomes a candidate for elected office. This law is local in effect, and, therefore, only effective in counties where the county legislative body has approved it. Tenn. Code Ann. § 8-8-402. The act creates a civil service board to administer the law and adopt a classification plan for positions in the classified service. Tenn. Code Ann. § 8-8-409; Tenn. Code Ann. § 8-8-411. Under the law:

> As used in this part, "classified service" includes all positions and employees in the sheriff's department, except for the sheriff, the sheriff's personal secretary, and the cook for the jail facility, and, in those counties deciding to do so, the chief deputy sheriff.

Tenn. Code Ann. § 8-8-403.

With regard to political activity, the Sheriff's Civil Service Law provides:

> **Political activity restricted**. — (a) No person holding a position in the classified service shall take an active part in any political campaign while on duty, ***nor under any circumstances shall any employee of the sheriff's department solicit money for political campaigns***. A deputy sheriff shall not use such position to reflect the deputy sheriff's personal political feelings as those of the sheriff's department or to exert any pressure on anyone to influence that person's political views. No employee while on duty, nor any officer while in uniform, shall display any political advertising or paraphernalia on such person's body or automobile. ***No employee of the sheriff's office shall make any public endorsement of any candidate in any campaign for elected office.***
>
> (b) However, nothing in this part shall be construed to prohibit or prevent any such employee from becoming or continuing to be a member of a political club or organization and enjoying all the rights and privileges of such membership or from attending any political meetings, while not on duty. Such employee shall not be denied freedom in the casting of a vote.
>
> (c) Any person violating the provisions of this section shall be dismissed from the service of the office of sheriff.

Tenn. Code Ann. § 8-8-419 (emphasis added).

The statute does not explicitly prohibit an employee in the sheriff's office from becoming a candidate for elected office. Rather, it prohibits an employee of the sheriff's office from making any public endorsement of any candidate in any campaign for elected office. In 1978, this Office concluded that, under this statute, an individual, by publicly announcing his intention to qualify as a candidate for office, has publicly endorsed himself within the meaning of this section. Op. Tenn.

Atty Gen. 78-135 (March 22, 1978). However, in 1996 the Legislature enacted Tenn. Code Ann. § 7-51-1501, which in general protects certain political rights to local government employees.

> Notwithstanding the provisions of any county, municipal, metropolitan, or other local governmental charter to the contrary, and notwithstanding the provisions of any resolution or ordinance adopted by any such county, municipality or other local governmental unit to the contrary, every employee of every such local governmental unit shall enjoy the same rights of other citizens of Tennessee *to be a candidate for any state or local political office, the right to participate in political activities by supporting or opposing political parties, political candidates, and petitions to governmental entities;* provided, further, the city, county, municipal, metropolitan or other local government is not required to pay the employee's salary for work not performed for the governmental entity; and provided, further, that unless otherwise authorized by law or local ordinance, an employee of a municipal government or of a metropolitan government shall not be qualified to run for elected office in the local governing body of such local governmental unit in which the employee is employed.

(Emphasis added).

It should be noted that this statute does not supersede a private act that is not part of a local government's charter, and it does not supersede other statutes of general applicability. In general, however, with this statute the Legislature has specifically preserved the right of local government employees, including employees of a sheriff's department in a county that has not adopted the County Sheriff's Civil Service Law, "to be a candidate for any state or local political office."

In light of this express preservation of the right to be a candidate for political office to local government employees in general, we think that the prohibition against public endorsements by employees of a sheriff's office in the County Sheriff's Civil Service Law should be construed as only prohibiting such employees from endorsing candidates other than themselves. Such a construction would also more closely follow the common ordinary meaning and understanding of the terms "endorse" and "endorsement." Accordingly, it is our opinion that the County Sheriff's Civil Service Law does not prohibit an employee of a sheriff's office, whether classified or not, from becoming a candidate for public office and to the extent that Op. Tenn. Atty. Gen. 78-135 states otherwise, it is withdrawn.

We would note, however, that under Tenn. Code Ann. § 8-8-419, no employee of the office, whether classified or not, may engage in any political fundraising, including for his or her campaign. Further, no employee, whether classified or not, may display political advertising or paraphernalia on such persons' body or automobile while on duty; or make any public endorsement of any candidate in any campaign for elected office. Under Tenn. Code Ann. § 8-8-419(c), a sheriff's employee, whether in the classified service or not, must be fired if he or she violates these provisions. Under the same statute, the following persons must be dismissed for the following conduct: a classified employee for taking an active part in any political campaign while on duty; a deputy sheriff if he or she uses his or her position to reflect the deputy's personal political feelings

as those of the sheriff's department or exert any pressure on anyone to influence that person's political views; and any officer in uniform — whether on duty or not — for displaying any political advertising or paraphernalia on such person's body or automobile.

2. Leave of Absence under the County Sheriff's Civil Service Law

The second question is whether the sheriff may require an employee who is a candidate for elected office to take an unpaid leave of absence in order to campaign for office. With regard to leave of absence, the County Sheriff's Civil Service Law provides:

> (a) The board shall formulate reasonable rules governing the granting of leaves of absence to members of the classified service in good standing. ***The board shall seek the advice of the sheriff upon any request for leave of absence*** before acting thereon and shall be guided by the requirements of adequate law enforcement and the operational efficiency of the office of sheriff when considering any such request for a leave.
>
> (b) Any persons coming under the classified service who shall hereafter be inducted into the armed forces of the United States, or who shall hereafter enter the service voluntarily in a time of war or other national emergency, shall, upon application of the sheriff, receive a military leave of absence for the duration of the period of service required. The employee shall retain all rights of seniority and shall be entitled to re-employment in the same capacity and position held at the time of entering military service; however, an application for reinstatement in such position must be made by or on behalf of such employee within three (3) months after termination of active service in the armed forces.

Tenn. Code Ann. § 8-8-413 (emphasis added). Nothing in the act authorizes a sheriff to require a classified employee to take an unpaid leave of absence in order to campaign for office. The statute, instead, contemplates that a classified employee may request leave of absence. Further, the act does not address unpaid leave of absence for an unclassified employee under any circumstances. For this reason, a sheriff is not authorized to require an employee, whether classified or not, to take unpaid leave of absence to campaign for elected office. Of course, any such individual may be subject to dismissal if his or her campaign activities violate Tenn. Code Ann. § 8-8-419.

3. Active Campaigning under the County Sheriff's Civil Service Law

The next question is whether an employee of the sheriff's office may actively campaign for any candidate for elected office. The statute does not prohibit "actively campaigning;" but, as discussed above in the answer to question 1, the act does restrict certain employees from engaging in particular types of political activity in certain circumstances. These restrictions apply to any campaign, including one taking place in another county.

4. Campaigning by Sheriff's' Employees in Counties that have not adopted the Sheriff's

Civil Service Law

The remaining questions concern political activity in counties that have not adopted the Sheriff's Civil Service Law. Several statutes of general application are relevant to these issues, including Tenn. Code Ann. § 7-51-1501, discussed in question 1. Additionally, Tenn. Code Ann. § 7-51-1503 provides:

> Any time off from work used by the employee for participation in political activities shall be limited to earned days off, vacation days, or by any other arrangements worked out between the employee and the municipal or county governmental body.

Under Tenn. Code Ann. §§ 5-23-101, *et seq.*, counties are required to adopt written personnel policies. Each policy must include, at a minimum, among other requirements, "Whether employees are entitled to paid vacation or annual leave, sick leave, or other leave, policies for accrual and use of such leave, policies for compliance with state and federal family and medical leave laws, and provisions for maintaining leave records." Tenn. Code Ann. § 5-23-104(1). We think that, under this statute, read in conjunction with Tenn. Code Ann. § 7-51-1503, a county may adopt reasonable personnel policies restricting political activities by county employees when on duty. Further, we think that counties may adopt reasonable policies regarding the use of county buildings for political purposes.

Finally, Tenn. Code Ann. § 38-8-351 provides:

> No law enforcement officer shall engage in political activity, support or opposition to any candidate, party or measure in any election when on duty or acting in such officer's official capacity. When off duty and acting as a private citizen, no officer shall be prohibited from engaging in political activity or denied the right to refrain from engaging in such activity.

The statute excludes chiefs of police and sheriffs and any probationary member of any agency affected by the statute. Tenn. Code Ann. § 38-8-301(2). The statute does not define the term "law enforcement officer." The term "police officer" means police officer as defined by law. Tenn. Code Ann. § 38-8-301(2). Tenn. Code Ann. § 38-8-101 defines the term "full time police officer" as follows:

> "Full-time policy officer" means any person employed by any municipality or political subdivision of the state of Tennessee whose primary responsibility is the prevention and detection of crime, and the apprehension of offenders, and whose primary source of income is derived from employment as a police officer;

Under Tenn. Code Ann. § 39-11-106, the term "Law enforcement officer":

> means an officer, employee or agent of government who has a duty imposed by law to:
>
> (A) Maintain public order; or
>
> (B) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and
>
> (C) Investigate the commission or suspected commission of offenses.

We think this definition should be used in determining who is a "law enforcement officer" under Tenn. Code Ann. § 38-8-351.

The first question is whether an employee of the sheriff's office may campaign for the sheriff or any other candidate for public office while on duty. Under Tenn. Code Ann. § 38-8-351, no employee of a sheriff's office who is a "law enforcement officer" may campaign for the sheriff or any other candidate for public office while on duty. Whether other employees may engage in these activities while on duty would depend on the applicable private acts and the personnel policy adopted in the particular county.

5. Campaigning in Uniform

The next question is whether an employee in the sheriff's office may campaign for the sheriff or for any other candidate for public office while in uniform, whether on or off duty. Clearly, under Tenn. Code Ann. § 38-8-351, any employee of the sheriff's office who is a law enforcement officer may not campaign for a political candidate when on duty and in uniform. The statute does not specifically address whether an officer is on or off duty when in uniform. We think, however, that the statute is intended to forbid political activity by law enforcement officers when in uniform, whether on or off duty. The statute forbids political activity when "on duty or acting in such officer's official capacity." By contrast, the statute provides that an officer may engage in political activity, "[w]hen off duty and acting as a private citizen." Where an officer remains in uniform, it is not clear whether or not he or she is acting as a private citizen. In order to comply with the statute, therefore, law enforcement officers should not engage in political activity while in uniform. Whether other employees may engage in these activities while on duty would depend on the applicable private acts and the personnel policy adopted in the particular county.

6. Candidate Taking Leave of Absence

a. The next question is whether the sheriff may require an employee who is a candidate for elected office to take an unpaid leave of absence in order to run for office. Such action would conflict with Tenn. Code Ann. § 7-51-1501, which preserves the right to local governmental employees the "same rights of other citizens of Tennessee to be a candidate for any state or political office." Furthermore, while Tenn. Code Ann. §§ 5-23-101, *et seq*., read in conjunction with Tenn. Code Ann. § 7-5-1503 may authorize a county to adopt reasonable personnel policies restricting political activities of county employees when on duty, there is nothing in these statutes that would

authorize a sheriff to require an employee who is a candidate for elected office to take an unpaid leave of absence. However, such a measure could be authorized under a private act of the General Assembly, as Tenn. Code Ann. § 7-51-1501 would not supersede a private act that is not part of a local government's charter.

b. The next question is whether, if the answer to question 6.a is yes, the county's personnel policies must authorize such leave of absence. Because of our answer to question 6.a., question 6.b is moot.

7. Dismissal of Employee Who Becomes Candidate

The next question is whether the sheriff may dismiss an employee if he or she becomes a candidate for elected office, including the office of sheriff. Again, such an action would conflict with Tenn. Code Ann. § 7-51-1501, which preserves the right to local governmental employees the "same rights of other citizens of Tennessee to be a candidate for any state or political office." An employee who is a law enforcement officer, however, is still subject to the restrictions in Tenn. Code Ann. § 38-8-351. Additionally, such a measure could be authorized under a private act of the General Assembly, as Tenn. Code Ann. § 7-5-1501 would not supersede a private act that is not part of a local government's charter.

8. Other County Offices

The next question is how questions 4., 6., and 7 would apply to other county offices. Generally, Tenn. Code Ann. §§ 7-51-1501, *et seq.* and the personnel and other county policies as well as applicable local acts in the particular county would govern the result. Thus, whether a particular county employee may campaign for public office while on duty would depend on the applicable county policies and private acts, as well as statutes. Generally, under Tenn. Code Ann. § 7-15-1501, a county employee could not be required to take leave of absence or be dismissed for becoming a candidate for office. Local acts or statutes applicable to particular county offices would also govern this result.

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