

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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November 9, 2006

Opinion No. 06-167

Arrest Based on Refusal to Sign Citation or Provide Identification Following a Violation of City Code or Ordinance

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**QUESTIONS**

1. Whether a municipal officer may constitutionally arrest a person who refuses to sign a citation for a city code or ordinance violation.
2. Whether a municipal officer may arrest a person for violation of a city code or ordinance when that person fails to provide the officer with proper identification.

**OPINIONS**

1. Yes, Tenn. Code Ann. § 7-63-101, et seq., provides that a municipal officer may arrest a person who refuses to sign a citation for a city code or ordinance violation, and there is no authority in Tennessee to suggest that such an arrest is unconstitutional.
2. Yes, a municipal officer may arrest a person who violates a city code or ordinance and is unable or unwilling to provide proper identification for the issuance of a citation.

**ANALYSIS**

1. Tenn. Code Ann. § 7-63-101 confers on the appropriate municipal, metropolitan, or city personnel the authority to arrest individuals who have violated ordinances of such governments in the presence of the officers. Further, Tenn. Code Ann. § 7-63-104 provides that if an offender refuses to sign the agreement to appear in court and waive service of a warrant, the officer has the duty to arrest that offender. *See also* Op. Tenn. Att’y Gen. 94-069, at \*1 (Tenn. A.G. 1994).

The Fourth Amendment to the United States Constitution and Article I, Section 7, of the Tennessee Constitution protect against unreasonable searches and seizures. *See Sneed v. State*, 423 S.W. 2d 857, 859 (Tenn. 1968). The United States Supreme Court has held that it does not violate the Fourth Amendment for an officer, who has probable cause, to arrest an offender who has committed only a very minor criminal offense in his presence. *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001). Furthermore, the Fourth Amendment does not prohibit warrantless arrests for minor offenses, even where an officer has the option of issuing a citation in lieu of arrest. *Id.* In

Tennessee, an officer may arrest a person without a warrant “[f]or a public offense committed or a breach of the peace threatened in the officer’s presence.” Tenn. Code Ann. § 40-7-103. An officer “may arrest upon seeing such acts as show a reasonable ground for making the arrest; and an act done in his presence which is violative of a general law, or of a municipal ordinance, or which reasonably threatens such violation, authorizes arrest without warrant.” *Thompson v. Reichman*, 188 S.W. 597, 603 (Tenn. 1916).

Accordingly, it is the opinion of this Office that a municipal officer may properly and constitutionally arrest a person for violating a city code or ordinance when that person refuses to sign the citation.

2. It is also the opinion of this Office that an officer has the authority to arrest a person in lieu of issuing a citation if that person fails to provide proper identification. The foregoing analysis indicates an officer is authorized to issue a citation in lieu of arrest for a minor offense committed in the officer’s presence if the offender signs the citation agreeing to appear in court and waive the issuance of a warrant. Tenn. Code Ann. § 7-63-104. Moreover, “[i]t is well established that an officer may ask a [person] to identify himself in the course of a Terry stop” based on reasonable suspicion. *Hiibel v. Sixth Judicial District of Nevada*, 542 U.S. 177 (2004)(citing *United States v. Hensley*, 469 U.S. 221, 229 (1985)). Without proper identification, an officer cannot be assured that the signature on the citation is correct or that the offender will appear in court. Consequently, an officer may arrest a person who has committed an offense in that officer’s presence if the offender fails to provide proper identification.

Furthermore, Tenn. Code Ann. § 40-7-118, the “cite and release” statute, generally provides that an officer who observes the commission of certain misdemeanors must cite and release the misdemeanant, rather than effecting a custodial arrest. However, that statute further provides that an officer shall arrest an offender instead of issuing a citation when “[t]he person arrested cannot or will not offer satisfactory evidence of identification, including the providing of a field-administered fingerprint or thumbprint which a peace officer may require to be affixed to any citation.” Tenn. Code Ann. § 40-7-118(c)(3). In *State v. Walker*, 12 S.W.3d 460 (Tenn. 2000), the Tennessee Supreme Court applied the cite and release statute to determine whether an officer was justified in arresting a defendant based on his failure to provide adequate identification after the officer attempted to cite him for violation of a municipal noise ordinance. Thus, the identification requirement appears equally applicable to cases involving city ordinances.

This Office would also note that, in the case of metropolitan governments, the legislature has clearly provided that an officer shall arrest a person for violating a city ordinance when the person fails to present adequate identification. Tenn. Code Ann. § 7-3-505. That statute provides:

When any police or peace officer of a metropolitan government or any employee of a metropolitan government authorized to enforce ordinances, laws or regulations of the metropolitan government or charged with the duty to serve civil or criminal process, asks the violator for identification for the purpose of issuing a citation or civil warrant to that person, the failure to produce or give such identification shall

be grounds for the violator to be arrested by an officer authorized to make arrests pursuant to title 40, chapter 7. In such event, the violator shall be arrested, transported to the police station or jail, booked, photographed and fingerprinted for identification purposes and, thereafter, shall be served with the citation or civil warrant and released from custody without being required to post a bond.

Tenn. Code Ann. § 7-3-505.

Based on the foregoing, it is the opinion of this Office that when a person has clearly violated a city code, ordinance, or other state law, an officer of that government has the authority to arrest that person in lieu of issuing a citation when the offender fails to provide proper identification.

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