

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
P.O. BOX 20207
NASHVILLE, TENNESSEE 37202

August 2, 2007

Opinion No. 07-115

Juvenile Court Youth Services Officers

QUESTIONS

1. What authority, if any, does a municipal police chief have in making personnel decisions regarding the hiring of employees of the Youth Services Office and of the Juvenile Court?

2. Does a conflict of interest exist when employees of the Youth Services Office and of the Juvenile Court report to the police chief as their supervisor?

OPINIONS

1. A municipal police chief has no authority to make personnel decisions regarding the hiring of employees of the Youth Services Office and of the Juvenile Court.

2. Yes. A conflict of interest exists when employees of the Youth Services Office and of the Juvenile Court report to the police chief as their supervisor.

ANALYSIS

1.

Under Tennessee law, certain counties may create the position of youth services officer to assist the Juvenile Court in appropriate cases:

- (a) Each county with a population of more than twenty thousand (20,000), according to the 1980 federal census or any subsequent federal census, may establish a full-time youth services officer to

assist the court sitting as a juvenile court in relation to cases coming before the court. Counties with a population of twenty thousand (20,000) or less, according to the 1980 federal census or any subsequent federal census, may establish a part-time youth services officer.

Tenn. Code Ann. § 37-1-106(a).

Youth services officers' duties are also statutorily prescribed:

(b) The youth services officer shall be paid by the county in which the officer serves and the officer's duties include, but are not limited to, the following:

(1) Intake duties including receiving and examining complaints and allegations of delinquency and unruly behavior for the purpose of considering the commencement of proceedings;

(2) Counseling;

(3) Record keeping and transmitting information as required by this part or by law to the commission on children and youth or the office of the executive secretary of the Tennessee council of juvenile and family court judges;

(4) Make investigations, reports and recommendations to the judge having juvenile jurisdiction;

(5) Make appropriate referrals to other public or private agencies;

(6) Make predisposition studies and submit reports and recommendations to the court as required; and

(7) Perform other functions *as directed by the court* or by law including, but not limited to, those set out in § 37-1-105.

Id. at § 37-1-106(b) (emphasis added).¹

As just noted, youth services officers may be directed by the court to perform the functions set out in Section 37-1-105, which include the functions of a probation officer. The functions of a probation officer consist of the following:

(b) For the purpose of carrying out the objectives and purposes of this part and subject to the limitations of this part or imposed by the court, a probation officer, or other designated officers of the court, shall:

(1) Make investigations, reports and recommendations to the juvenile court;

(2) Receive and examine complaints and charges of delinquency, unruly conduct or dependency and neglect of a child for the purpose of considering the commencement of proceedings under this part;

(3) Supervise and assist a child placed on probation or in such probation officer's protective supervision or care by order of the court or other authority of law;

(4) Make appropriate referrals to other public or private agencies of the community if their assistance appears to be needed or desirable;

(5) Take into custody and detain a child who is under such probation officer's supervision or care as a delinquent, unruly or dependent and neglected child if the probation officer, or other designated officers of the court, have reasonable cause to believe that the child's health or safety is in imminent danger, or that such child may abscond or be removed from the jurisdiction of the court, or when ordered by the court pursuant to this part.

¹When a county accepts certain funds from the Commission on Children and Youth, the Juvenile Court must employ a youth services officer who is "appointed and supervised by the court." *Id.* at § 37-1-162(a).

Except as provided by this part, a probation officer, or other designated officer of the court, does not have the powers of a law enforcement officer. Such probation officer, or other designated officer of the court, may not conduct accusatory proceedings under this part against a child who is or may be under such officer's care or supervision; and

(6) Perform all other functions designated by this part or by order of the court pursuant thereto.

Id. at § 37-1-105(b) (emphasis added).

Recently, this Office issued an opinion on the related issue of the authority of the Juvenile Court system and its employees in which the Office concluded that youth services officers, probation officers and referees “work under the authority of the juvenile judge who appoints them.” Op. Tenn. Att’y Gen. No. 07-04, at 2 (Jan. 4, 2007) (citing Tenn. Code Ann. §§ 37-1-105 through -107).²

The question posed is one of statutory interpretation, requiring us to determine whether the police chief has any authority within the Code to make personnel decisions regarding the hiring of employees of the Youth Services Office and of the Juvenile Court. In construing statutes, we must “ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.” *Wilson v. Johnson County*, 879 S.W.2d 807, 809 (Tenn. 1994). When the statute is unambiguous, legislative intent is determined from the plain and ordinary meaning of the language used in the statute. *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). The statutory language must be “read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning.” *National Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). Statutes that are related to the same subject matter are supposed to be read in *pari materia*. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). We must “construe the statute so that no part

²The Judicial Ethics Committee has opined that a judicial officer violates Canon 2 of the Code of Judicial Conduct by appointing and supervising “the youth services officers appearing in his/her court and/or running the youth probation program.” Judicial Ethics Committee, Advisory Opinion No. 98-5 (1998). The Committee concluded that, by appointing and supervising their officers, the judge is “not acting ‘in a manner that promotes public confidence in the integrity and impartiality of the judiciary.’” *Id.* An ethics opinion, however, is not legally binding. *State v. Jones*, 726 S.W.2d 515, 519 (Tenn. 1987) (holding that an ethics opinion of the Board of Professional Responsibility was not binding); *Wells v. State*, No. M2002-01303-CCA-R3-PC, 2003 WL 21713423 at *4 (Tenn. Crim. App. July 23, 2003) (same as to Judicial Ethics Committee opinions). As such, Tenn. Code Ann. § 37-1-106 controls.

will be inoperative, superfluous, void or insignificant.” *State v. Northcutt*, 568 S.W.2d 636, 637-38 (Tenn. 1978).

Applying the principles of statutory interpretation discussed above, this Office concludes that a municipal police chief lacks any authority to make personnel decisions regarding the hiring of employees of the Youth Services Office and of the Juvenile Court. The relevant statutes unambiguously state that youth services officers act at the direction of the Juvenile Court and that they are also supervised by it. Tenn. Code Ann. §§ 37-1-106, 37-1-162(a). Further, this conclusion is consistent with our recent opinion that youth services officers “work under the authority of the juvenile judge who appoints them.” Op. Tenn. Att’y Gen. No. 07-04, at 2 (Jan. 4, 2007).

2.

This Office has previously addressed a materially similar issue to the one posed in the second question, concluding that a conflict of interest exists when a youth services officer works part time as a member of a city’s police department because “the law enforcement duties of the police officer, particularly for a city located within the county where the relevant juvenile court is located, are incompatible with various functions carried out by youth services officers in aid of the juvenile court.” Op. Tenn. Att’y Gen. No. 93-10, at 1 (Feb. 3, 1993). Recognizing the common law prohibition against a public officer’s holding two incompatible offices at the same time, the opinion identified several potential sources for the existence of a conflict of interest. *Id.* See generally *State ex rel. Little v. Slagle*, 89 S.W. 316 (Tenn. 1905).

We first observed that a conflict of interest may arise given the express statutory prohibition against probation officers’ engaging in prosecutorial functions:

In contrast to the way many [youth service officer] and probation officer duties are compatible or duplicative, it is evident from T.C.A. § 37-1-105(b)(5) that legislators have taken care to note the distinction between powers of probation or other court officers . . . and law enforcement officers and to prevent probation or other court officers from conducting accusatory proceedings against children who are or who may be under the officer’s care or supervision.

Op. Tenn. Att’y Gen. No. 93-10, at 3 (Feb. 3, 1993). Essentially, fundamental differences exist between the roles of youth services officers and law enforcement officers. Further, we noted that the Committee Comments to the Tennessee Rules of Juvenile Procedure express a clear disapproval of a youth services officer’s serving as both a court officer and as a law

enforcement officer. *Id.* at 7-9. For instance, the Committee Comment to Rule 2 states that “it would not be proper for any employee of the court to make an investigation, interrogate witnesses, take statements or otherwise prepare a case for the purpose of prosecuting a petition before his own court.” Tenn. R. Juv. P. 2 cmt. Likewise, the Committee Comment to Rule 32 warns against youth service or probation officers acting as prosecutors:

At both the adjudicatory hearing and the dispositional hearing, it is appropriate that youth services and probation officers be witnesses regarding admissible evidence of which they have knowledge. However, *neither youth services officers nor probation officers should present cases or otherwise act as prosecution for the state in any juvenile court hearing*, except as provided in T.C.A. § 37-1-128 regarding revocation of probation proceedings.

Tenn. R. Juv. P. 32 cmt. (emphasis added); *see also* Tenn. R. Juv. P. 19 cmt.

In light of these admonitions, this Office determined that youth services officers may be “witnesses, although not prosecutors, of the children or proceeding coming before the juvenile court.” Op. Tenn. Att’y Gen. No. 93-10, at 9 (Feb. 3, 1993). We concluded that the youth services officer’s role “could be impaired by the law enforcement role of affirmatively assisting in prosecution of offenders apprehended by that officer or others within his or her employer’s law enforcement agency.” *Id.* We also observed that a conflict arises when the youth services officer acts as an occasional counselor to the children and families who are involved in Juvenile Court proceedings. *Id.* at 10. We concluded that “the need for frank communication would be hampered” if the youth services officer also functioned as a law enforcement officer with the duty to report crimes, reasoning that

[w]ithout adequate communication, the [youth services officer] might not get the information needed to counsel the individuals, to make proper recommendations to the judge about treatment or rehabilitation, or to make referrals to other public agencies. The court employee’s affiliation with law enforcement could hurt the perception that the juvenile court is impartial.

Id.

Turning to the question posed, we conclude that for the reasons set forth in Opinion 93-10, a conflict of interest exists when employees of the Youth Services Office and of the Juvenile Court report to the police chief as their supervisor. Just as we previously concluded that an inherent conflict of interest existed when a youth services officer is *employed* as an

auxiliary sheriff or a part-time police officer, Op. Tenn. Att’y Gen. No. 93-10, at 7 (Feb. 3, 1993), we also conclude that it is equally a conflict for a youth services officer to be *supervised* by the city’s chief of police. The police chief’s main role is law enforcement. Tenn. Code Ann. § 38-3-103 (“[P]olice of cities and towns . . . are also conservators of the peace, and are required to aid in the prevention and suppression of public offenses. . . .”). Presumably, if the chief of police supervised youth services officers, he would oversee, direct, or manage them. They would, in effect, act under his direction and control. As such, youth services officers would, in their law enforcement-related duties of suppressing public offenses, inevitably engage in “accusatory proceedings against children who are or who may be under the officer’s care or supervision” in violation of Tenn. Code Ann. § 37-1-105(b). Op. Tenn. Att’y Gen. No. 93-10, at 3 (Feb. 3, 1993).

The youth service officer’s role of assisting the Juvenile Court is incompatible with that of a law enforcement agent. The chief of police would have a clear interest in directing youth services officers under his supervision to present as much inculpatory evidence as possible about an offender to the Juvenile Court. Such direction, however, would violate the admonitions made in the Comments to the Rules of Juvenile Procedure against youth service or probation officers’ preparing a case for prosecution before the very court for which they are employed. Tenn. R. Juv. P. 2 & 32 cmts. While the youth services officer’s duties “include several interfaces with law enforcement officers,” they also require that the youth services officer independently evaluate “information from law enforcement agencies to aid the juvenile court.” Op. Tenn. Att’y Gen. No. 93-10, at 5 (Feb. 3, 1993). As we noted, a youth services officer’s “affiliation with law enforcement,” either by direct employment with, or by supervision of, the chief of police, would “hurt the perception that the juvenile court is impartial.” *Id.* at 10.

ROBERT E. COOPER, JR.
Attorney General & Reporter

MICHAEL E. MOORE
Solicitor General

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JUAN G. VILLASEÑOR
Assistant Attorney General

Requested by:

Honorable Paul R. Wohlford
Juvenile Court Judge
104 Eighth St.
Bristol, TN 37620