S T A T E O F T E N N E S S E E
OFFICE OF THE
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September 24, 2007

Opinion No. 07-136

Constable Rescinding Resignation

QUESTION

May a constable legally rescind his resignation and resume the duties of his office almost a month after submitting the resignation?

OPINION

Ordinarily, an officer's resignation becomes effective once it is accepted by the tribunal authorized to fill the vacancy. Conversely, an officer's resignation is not complete and may be withdrawn until accepted by competent authority. Under Tennessee statutes, the county commission is authorized to fill a vacancy in the office of constable. If the county commission accepted the resignation before the constable withdrew it, the resignation may not be rescinded. If the county commission had not accepted the resignation before the constable withdrew it, the withdrawal is effective and the resignation is deemed rescinded.

ANALYSIS

This opinion addresses whether an elected county official may rescind a letter of resignation almost a month after submitting it and resume the duties of the office. Material included with the request indicates that on August 9, 2007, a constable submitted a letter of resignation, effective immediately, to the county attorney, the county executive, and the chairman of the county commission. On September 4, the same individual submitted a letter, presumably to the same authorities, rescinding his August 9 letter of resignation.

Under Tenn. Code Ann. § 8-48-101(2), any office in this state is vacated by the incumbent's resignation, when permitted by law. Tenn. Code Ann. § 8-48-104 provides:

> The resignation of senators and representatives in congress and members of the general assembly shall be transmitted to the governor; *and in all other cases the resignation of officers shall be transmitted to the officer or tribunal authorized to fill the vacancy.*

(Emphasis added). Any vacancy in the office of constable is filled by appointment of the county legislative body, and by election of the people under Tenn. Code Ann. § 5-1-104. Tenn. Code Ann. § 8-10-118.

Under Tennessee law, the resignation of a county official is binding and not subject to withdrawal once it is accepted by the proper authority. *Murray v. State ex rel. Luallen*, 115 Tenn. 303, 89 S.W. 101 (1905); *State ex rel Bergschicher v. Grace*, 113 Tenn. 9, 82 S.W. 485 (1904); *Bailey v. Greer*, 63 Tenn. App. 13, 468 S.W.2d 327 (1971); Op. Tenn. Att'y Gen. 80-366 (July 17, 1980). Conversely, an officer's resignation is not complete and may be withdrawn until accepted by competent authority. *State ex rel. Wilson v. Bush*, 141 Tenn. 229, 208 S.W. 607 (1919); Op. Tenn. Att'y Gen. 78-29 (January 17, 1978). Under Tennessee statutes, a constable must submit his or her resignation to the county commission. If the county commission accepted the resignation before the constable withdrew it, the resignation is binding and may not be rescinded. If the county commission had not accepted the resignation before the constable withdrew it, the withdrawal is effective and the resignation is deemed rescinded.[1]

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[1]This Office has noted that, in *Murray v. State ex rel. Luallen*, cited above, the Tennessee Supreme Court found that a justice of the peace could properly tender his resignation to a county judge (now county mayor). For this reason, the Office found that there was a "substantial question" as to whether a county tax assessor's resignation is binding when submitted, announced, and accepted by the county executive. Op. Tenn. Att'y Gen. 80-79 (February 7, 1980). We have found no other Tennessee authority besides *Murray* that takes this position. Further, the Court based its conclusion on a statutory distinction between the "quarterly county court" and the "quorum court" that no longer exists under Tennessee statutes. While an argument can be made, therefore, that acceptance by the Roane County Executive would make the resignation binding, a court would probably follow the statutes and conclude that the resignation must be accepted by the county commission before it may become binding.