

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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NASHVILLE, TENNESSEE 37243

January 4, 2000

Opinion No. 00-002

Powers of Board under Sheriff's Civil Service Law

QUESTIONS

1. Under Tenn. Code Ann. § 8-8-418(c) of the Sheriff's Civil Service Law, an employee who is suspended for more than ten days may request a hearing before the civil service board. Would an employee who is terminated also have the right to appeal?
2. In the event the civil service board finds the sheriff's decision to suspend or terminate the employee was in error:
 - a. Is the board authorized to reinstate the employee?
 - b. If the board is authorized to reinstate the employee, are they authorized to order payment of back wages or other relief?

OPINIONS

1. The Sheriff's Civil Service Law does not expressly confer the right to appeal on any employee who has been terminated. The law does provide that an employee who has served less than six months after his or her initial appointment or his or her promotion to another position in the classified service is not "eligible" for a hearing before the board. By implication, therefore, it could be argued that an employee who has served six months or more after his or her initial appointment to the classified service or his or her promotion to another position in the classified service is "eligible" for a hearing to appeal his or her termination before the board. The word "eligible", however, suggests that an employee's right to a hearing would depend on the board's rules and policies.
2. The statute does not clearly specify the authority of the board, nor are there any reported judicial decisions addressing this issue. We think a court would conclude that the power to reinstate an employee that the board concludes was wrongfully terminated is necessarily implicit in the power of the board to hear the appeal. It could also be argued that the power to order back pay for an employee who has been wrongfully terminated is also necessarily implicit in this power.

ANALYSIS

1. Right to Appeal a Termination

This opinion addresses the powers of a civil service board acting under the County Sheriff's Civil Service Law of 1974, Tenn. Code Ann. §§ 8-8-401, *et seq.* That statutory scheme applies where a county commission has voted by a two-thirds vote to adopt it. The general powers of a civil service board under this law are set forth in Tenn. Code Ann. § 8-8-409. These include the power to “[h]ear and determine appeals and complaints respecting the administration” of the act; to maintain a roster of classified service employees in the sheriff's office; to establish employment lists of eligible individuals for various positions in the sheriff's office, based on competitive exams; and to establish records of performance and a system of service ratings “to be used to determine promotions, the order of layoffs and reemployment and for other purposes[.]” The board is expressly authorized to adopt a classification plan and make rules for its administration. Tenn. Code Ann. § 8-8-411. The board is also expressly authorized to formulate “reasonable rules governing the granting of leaves of absence to members of the classified service in good standing.” Tenn. Code Ann. § 8-8-413. Vacancies in the classified section of the sheriff's office must be filled from a list of eligible applicants under the process in Tenn. Code Ann. 8-8-415. Under subsection (b) of that statute, no appointment or promotion for any position in the classified service is deemed complete until the individual has served six months probationary service, during which time the sheriff may determine the effectiveness of the employee. If, in the sheriff's judgment, the employee does not meet the standards, the sheriff may terminate the employment of that person. *Id.* Tenn. Code Ann. § 8-8-415(c) provides:

Whenever a position of the classified service is filled by promotion, and the services of the person promoted are terminated by the sheriff during the probationary period, such person shall be returned to such person's former position in the classified service unless such person's conduct during the probationary period has given *grounds for dismissal for cause* under this part.

Tenn. Code Ann. § 8-8-415(c) (emphasis added). Subsection (d) of the statute provides that “[a]ny person dismissed *during the probationary period* shall not be eligible for a hearing before the board.” (Emphasis added). Under Tenn. Code Ann. § 8-8-418(a), the sheriff is required to give an immediate report in writing of all appointments, reinstatements, vacancies, absences or other matters affecting the status of any member of the classified service or the performance of the duties of members of the classified service. Tenn. Code Ann. § 8-8-418(b) provides:

The sheriff *may* suspend any employee for not more than ten (10) days *for cause*, and there shall be no right of appeal for such suspension. *The sheriff does not have the authority to suspend any employee for more than one (1) suspension of ten (10) days within any given six (6) month period of time without a right of appeal.*

Tenn. Code Ann. § 8-8-418(b) (emphasis added). Subsection (c) of the same statute provides:

If the sheriff suspends any employee for a period of longer than ten (10) days, the suspended employee shall be notified in writing of the charges. The suspended employee shall thereafter have ten (10) days to request a hearing before the civil service board. Upon receiving the request, the board shall set a hearing, not more than thirty (30) days from the date of the receipt of the request.

Your first question is whether an employee in the classified service who is terminated has the same right to appeal as an employee who has been suspended for more than ten days. The statute does not confer an unconditional right to a hearing on any terminated employee. Under Tenn. Code Ann. § 8-8-415(d), we think an employee who has served less than six months after his or her initial appointment or his or her promotion to another position in the classified service is not “eligible” for a hearing before the board. That individual therefore has no right to appeal his or her termination before the board. The statute is silent regarding whether an employee who has served six months or more after his or her initial appointment or promotion to another position in the classified service has a right to appeal his or her termination before the board. The meaning of a statute is determined by viewing the statute as a whole and in light of its general purpose. *City of Lenoir City v. State ex rel. City of Loudon*, 571 S.W.2d 297 (Tenn. 1978). We think it could be argued that, by expressly providing that an employee terminated during a probationary period is not eligible for a hearing before the board, the General Assembly intended that an employee terminated after he or she has completed the probationary period could be eligible for a hearing. The term “eligible,” however, suggests that such an employee’s right to a hearing would depend on the board’s rules and policies.

2. Remedies of the Board

The second question concerns the power of the civil service board if it determines that an employee in the classified service has been wrongfully terminated. The first question is whether the board may reinstate an employee if it finds the employee has been wrongfully terminated. An administrative agency’s power must be based expressly upon a statutory grant of authority or must arise therefrom by necessary implication. *Wayne County v. Tennessee Solid Waste Disposal Control Board*, 756 S.W.2d 274, 282 (Tenn.Ct.App. 1988). Although we have found no reported court decision addressing this issue under the Sheriff’s Civil Service Law, we think a court would conclude that the power to reinstate an employee, thereby reversing the decision of the sheriff, is “necessarily implied” by the power of the board to hear and determine appeals. The request also asks whether the board may award back pay or other relief to an employee the board finds has been wrongfully terminated. An argument can be made that the power to award adequate remedies is also necessarily implied by the board’s power to hear and determine appeals. Again, however, we have found no case law that addresses this issue.

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