

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 08-134

Sheriff's Duty to Patrol within City Limits

QUESTIONS

1. What duty does a sheriff have to patrol and enforce the laws inside an incorporated area of a county when the incorporated area does not have a police force?
2. What duty does a sheriff have to patrol and enforce the laws of a county within a municipality when the municipality has a police force?
3. Can a county commission require a sheriff to stop providing law enforcement services for the citizens of a municipality unless the municipality pays for the service?
4. Provided a county and a municipality have an interlocal agreement pursuant to Tenn. Code Ann. § 12-9-104, and the sheriff has statutory authority under Tenn. Code Ann. § 8-8-201(34) to enforce municipal ordinance violations, can the costs for such involvement or enforcement be recovered from the municipality?

OPINIONS

1. The sheriff has the same duty to patrol and enforce the laws inside an incorporated area of a county without a city police force that he or she has with respect to unincorporated areas of the county.
2. A sheriff may assume city police officials will do their duty and need not patrol those areas. But if the sheriff has reason to believe that the police force is neglecting its duty, his or her duty to prevent and suppress offenses in that community is the same as it is in unincorporated parts of the county.
3. No. A county commission has no authority to change the duties of the sheriff as described in Tennessee cases and statutes, nor may it direct the sheriff's exercise of his or her duties.
4. Yes, in accordance with the terms of the contract and within the limits defined for such agreements in Tenn. Code Ann. § 12-9-104.

ANALYSIS

1. Sheriff's Duty to Patrol in City that has no Police Force

This opinion addresses the responsibility of a sheriff with respect to law enforcement in parts of the county that have been incorporated as cities. The first question is what duty a sheriff has to patrol and enforce the laws inside an incorporated area of a county when the incorporated area does not have a police force. Our Office has concluded that no statute, except for Tenn. Code Ann. § 8-8-201(34), directly requires a county to provide police service within the boundaries of an incorporated city. Op. Tenn. Att'y Gen. U96-019 (March 11, 1996). Under Tenn. Code Ann. § 8-8-201(34), it is the duty of the sheriff to:

Enforce the ordinances of a municipality; provided, that the municipality has expressed by ordinance its intent to have the sheriff enforce its ordinances, and that the municipality has filed a certified copy of its ordinances with the sheriff and the general sessions court of the county.

Cases indicate, however, that sheriffs retain other law enforcement duties regarding these areas. The office of sheriff carries with it all of its common law duties and powers except as modified by statute. *State ex rel. Thompson v. Reichman*, 135 Tenn. 653, 188 S.W. 225, 227 (1916). In that case, the State Attorney General petitioned to remove the Shelby County Sheriff from office. Among other reasons, the Attorney General alleged that the sheriff had allowed violations of the liquor laws within the city of Memphis. The sheriff argued that he had no duty to enforce these laws within the Memphis city limits. The Court examined the statutes outlining the duties of the sheriff, and noted that these duties were "very much as they existed at common law." *Id.* These statutes made the sheriff the "principal conservator of the peace" within the county and also required all peace officers to arrest offenders for breaches of the peace. The Court noted that these duties include incorporated communities within the county. The Court stated:

Again it is clear that the duties and powers of a sheriff within the limits of an incorporated city are precisely the same that they are in the remainder of the county. The law draws no distinction. The city officials are conservators of the peace. But they do not supplant him. On the contrary, by the express terms of the statute, they are to aid him. He is the chief and they are the assistants. True, there is not ordinarily the same need for vigilance on his part in the city as in the country. One of the chief reasons for the incorporation of towns and cities is to provide, in the more densely populated sections, better police protection, than, in the nature of things, the sheriff's office can afford. When, therefore, a city has patrolling its streets a police force employed expressly to detect crime and apprehend offenders, the sheriff, in the absence of information to the contrary, is justified in assuming that the city officials will do their duty, and hence will not be guilty of any serious neglect of duty if he gives little attention to police matters in such city. But if he has reason to believe that the police force is neglecting its duty, or is in league with offenders, it is his duty to inform himself. And, if he knows that the city officials are

deliberately ignoring or permitting a certain class of offenses, his duty to prevent and suppress such offenses is the same it would be if there was no municipality and no police force.

Id. at 228. The Court ordered the sheriff to be removed from duty for neglect of office. *Id.* at 233.

The Tennessee Supreme Court relied on *Reichman* in *State ex rel. Windham v. LaFever*, 486 S.W.2d 740 (Tenn. 1972). In this case, a sheriff sought additional compensation under a private act. The private act imposed on him “the additional duty” of patrolling all rides and highways in the county regularly. The act provided that the sheriff would receive additional compensation for carrying out this duty. The parties stipulated that the act was passed to insure police protection in several small cities within the county that were unable to provide their own law officers. The county executive argued that the act unconstitutionally provided for payment to the sheriff in a manner different from that authorized by general law. The Tennessee Supreme Court upheld that act. The Court found that, under the general law, a sheriff maintained the responsibilities outlined in *Reichman*. The Court concluded:

The foregoing language [from *Reichman*] supports the determination we now make; that is, it is the duty of all county sheriffs to maintain law and order in parts of the county which the sheriff knows are not being adequately policed by local authorities, which calls for the exercise of a reasonable degree of activity and diligence on the part of the sheriff to keep informed of conditions in his county, but does not require him ‘to patrol all roads all highways in the County regularly.’

LaFever, 486 S.W.2d at 744. The Court concluded, therefore, that the private act imposed duties beyond those imposed on other sheriffs within the State. For that reason, the Court found the act constitutionally provided additional salary. *Id.*; see also *Smith v. Plummer*, 843 S.W.2d 311, 314 (Tenn.Ct.App. 1992), *p.t.a. denied* (1992)(peace keeping duties of the sheriff that county commission must fund do not include regular patrol of all highways and reducing response time for responding to calls).

The statutes relied on in these cases have not been materially altered since they were decided. Thus, under Tenn. Code Ann. § 38-3-102(a), rewritten in 2005, the sheriff is the principal conservator of the peace in the sheriff’s county. 2005 Tenn. Pub. Acts Ch. 142. Subsection(b) of the statute states:

(b) It shall be the duty of the sheriffs, in their respective counties, by themselves or deputies, to ferret out crimes, to secure evidence of crimes, and to apprehend and arrest criminals.

Tenn. Code Ann. § 38-3-102(b). Under Tenn. Code Ann. § 38-3-103, city officials and police officers, among others, “are *also* conservators of the peace, and are required to aid in the prevention and suppression of public offenses, and for this purpose may act with all the power of the sheriff.” (Emphasis added). For these reasons, we think a court would conclude that the sheriff has the same

duty to patrol and enforce the laws inside an incorporated city without a police force that he or she has with respect to unincorporated areas of the county.

2. Sheriff's Duty to Patrol in City that has Police Force

The second question is what duty a sheriff has to patrol and enforce laws inside of an incorporated area of a county that has a city police force. We think a court would conclude that, under *LaFever* and *Reichman*, a sheriff may assume city police officials will do their duty and need not patrol incorporated areas. But if the sheriff has reason to believe that the police force is neglecting its duty, his or her duty to prevent and suppress offenses in that community is the same as it is in unincorporated parts of the county.

3. County Authority to Require Sheriff to Stop Providing Law Enforcement Services in City

The next question is whether a county commission may require a sheriff to stop providing law enforcement services for the citizens of a municipality unless the municipality pays for the service. A county commission has no authority to change the duties of the sheriff as described in Tennessee cases and statutes. Further, no statute authorizes a county commission to direct a sheriff in the exercise of his or her duties. As discussed above, a sheriff retains some law enforcement duties with respect to cities within the county. A county, therefore, may not require a sheriff to stop providing law enforcement services to a city with no police force unless the city pays for the service. Further, a county may not require a sheriff to neglect his duty with regard to a city with a police force unless the city pays for the service. Thus, whether or not the city pays for the service, a sheriff must keep informed about law enforcement within a city that has a police force and carry out his or her duty to prevent and suppress offenses in the community if that city police force is neglecting its duty.

4. Costs for Enforcing City Ordinances

The last question is whether a sheriff may recover costs for enforcing municipal ordinances through a contract entered into under Tenn. Code Ann. § 12-9-104. As discussed above, a sheriff is authorized to enforce city ordinances provided the conditions under Tenn. Code Ann. § 8-8-201(34) have been met. Under Tenn. Code Ann. § 12-9-104, a city may enter into an agreement to provide for these services and the cost of enforcement. The statute provides in relevant part:

...Notwithstanding any provision of law to the contrary, any municipality may enter into an agreement with the sheriff, court of general sessions, and the governing body of any county in which it is located to provide for the enforcement of the municipality's ordinances according to the provisions of §§ 8-8-201(34) and 16-15-501. The agreement between the municipality and the county governing body shall be limited to provide that the cost of such enforcement will be borne by the municipality where the court costs paid over to the county, as provided by § 16-15-501, are not adequate.

Tenn. Code Ann. § 12-9-104(a)(1)(emphasis added). Thus, the agreement may provide that the cost of enforcement will be borne by the municipality where court costs paid over to the county under Tenn. Code Ann. § 16-15-501 are not adequate. Enforcement costs, therefore, may be recovered under the contract in accordance with the statute, provided that the contract provides for the recovery.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Mark Norris
State Senator
303 War Memorial Building
Nashville, TN 37243