S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 09-81

Authority to Employ and Terminate a Judicial Commissioner

QUESTION

Does state law vest the General Sessions Judge for Smith County with the authority to employ and terminate judicial commissioners without the county commission's approval, notice, or knowledge?

OPINION

If the judicial commissioner was appointed to a specific term of office by the county commission, the judge may not remove that official from office before the end of his or her term. But a general sessions judge may terminate a temporary or part-time judicial commissioner that the judge has appointed under Tenn. Code Ann. § 40-1-111(a)(1)(B)(i) without the approval, notice, or knowledge of the county commission. The reason for termination must not violate the Tennessee Constitution or the United States Constitution.

ANALYSIS

This opinion addresses whether the General Sessions Judge for Smith County may employ and remove a judicial commissioner without the approval, notice, or knowledge of the Smith County Commission. The Smith County General Sessions Court was created under 1959 Tenn. Priv. Acts Ch. 34. Neither this act nor any other private act appears to address appointment and removal of a judicial commissioner.

The request specifically refers to a "duly appointed judicial commissioner serving at will in Smith County." The request indicates that this officer has been found guilty of misdemeanors and placed on supervised probation with a suspended sentence. The request does not specify whether this officer was appointed by the Smith County Commission or by the Smith County General Sessions Judge. Judicial commissioners are generally appointed under Tenn. Code Ann. § 40-1-111:

> The chief legislative body of any county having a population of less than two hundred thousand (200,000) . . . according to the 1970 federal census or any subsequent federal census, may initially appoint one (1) or more judicial

> commissioners whose duty or duties shall include, but not be limited to, the following:
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> This subdivision (a)(1)(B)(i) applies to any county having a population of less than two hundred thousand (200,000) . . . according to the 1970 federal census or any subsequent federal census. ***The term or terms of the officers shall be established by the chief legislative body of the county to which this subdivision (a)(1)(B)(i) applies but shall not exceed a four-year term.*** No member of the county legislative body of any county to which this subdivision (a)(1)(B)(i) applies shall be eligible for appointment as a judicial commissioner**.** ***Notwithstanding the provisions of this subdivision (a)(1)(B)(i) to the contrary, the presiding general sessions criminal judge of a county to which this subdivision (a)(1)(B)(i) applies may appoint a temporary or part-time judicial commissioner to serve at the pleasure of the presiding judge in case of absence, emergency or other need.*** The legislative body of any county to which this subdivision (a)(1)(B)(i) applies, in appointing, evaluating and making decisions relative to retention and reappointment, shall take into consideration views, comments and suggestions of the judges of the courts in which the judicial commissioners are appointed to serve.

(Emphasis added). Thus, under this statute, a county commission may appoint one or more judicial commissioners and establishes the term of office, which may not exceed four years. The statute also authorizes the presiding general sessions criminal judge of a county to appoint a temporary or part-time judicial commissioner to serve at the pleasure of that judge in case of absence, emergency, or other need.

Under Tenn. Code Ann. § 40-1-111(a)(2)(A) and (B):

> (A) On an annual basis the county legislative body shall conduct a public hearing to examine and evaluate the program of judicial commissioners and to determine if the program is being conducted in accordance with law and is contributing to the orderly, effective and fair administration of justice. As a part of the public hearing the county legislative body shall examine the effectiveness of the system of judicial commissioners and hear the opinions of the public concerning the system. The county legislative body shall give notice of the public hearing at least thirty (30) days prior to the meeting.
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> (B) Following the hearing and not later than April 1 of each year, the county legislative body shall cause to be submitted to the judges of the general sessions criminal court of the county, the chair of the judiciary committee of the senate and the chair of the judiciary committee of the house of representatives a written report setting forth findings and the overall evaluation of the use of judicial commissioners.

Judicial commissioners are compensated from the general fund of the county in an amount to be determined by the chief legislative body. Tenn. Code Ann. § 40-1-111(a)(3). Subsections (b), (c), (d), and (e) of this statute apply to counties within particular population brackets. Based on census results published in Volume 13 of the Tennessee Code Annotated, Smith County does not fall within any of those brackets.

This Office has addressed removal of a judicial commissioner appointed to a term of office by the county commission under Tenn. Code Ann. § 40-1-111(a). Op. Tenn. Att'y Gen. 00-126 (August 7, 2000). The statute has not been materially amended since that time. In that opinion, this Office concluded that Tenn. Code Ann. §§ 8-47-101, *et seq.*, the state ouster statutes, list the only grounds generally on which a state or local officer may be removed from office before the end of his or her term. The opinion also notes that an officer may be removed under the *quo warranto* statutes, Tenn. Code Ann. §§ 29-35-101, *et seq.*, if he or she lacks the requisite qualifications. Thus, assuming the judicial commissioner in question was appointed by the county commission to a term of office, the general sessions judge may not remove that individual from office before the end of his or her term.

The same opinion notes that a general sessions judge has some authority to supervise judicial commissioners. This authority is part of the judge's inherent authority essential to the existence, dignity, and functions of a court. Thus, a judge may exercise supervisory authority over judicial commissioners who perform functions for the judge's court where such supervision is reasonably necessary to maintain order within that judge's court and to promote the administration of justice. This authority, however, does not include the authority to remove a judicial commissioner before the end of his or her term of office.

As noted above, however, Tenn. Code Ann. § 40-1-111(a)(1)(B)(i) expressly authorizes a presiding general sessions criminal judge to appoint a "temporary or part-time judicial commissioner ***to serve at the pleasure of the presiding judge*** in case of absence, emergency, or other need." (Emphasis added). As a general matter, officials who serve at the pleasure of the appointing authority may be removed for any reason that does not violate the Tennessee Constitution or the United States Constitution. 63C Am.Jur.2d *Public Officers and Employees* § 175 (2008); Op. Tenn. Att'y Gen. 04-164 (November 10, 2004) (concerning judicial commissioners in a county with metropolitan government). Thus, a general sessions judge may employ or terminate a temporary or part-time judicial commissioner that the judge has appointed under this section without the approval, notice, or knowledge of the county commission. The reason for termination must not violate the Tennessee Constitution or the United States Constitution.

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