STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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March 10, 2010

Opinion No. 10-29

Deputy Sheriff as Candidate for Political Office

QUESTIONS

1. Can a deputy sheriff who is subject to the federal Hatch Act be granted an unpaid leave of absence to seek the office of sheriff?

2. Can a deputy sheriff employed in one county seek the office of sheriff in another county when the election for sheriff in that county is a nonpartisan election?

3. Can an employee of a state or county entity who is subject to the federal Hatch Act seek the office of sheriff while still employed if the election for that office is a nonpartisan election?

4. Does the prohibition contained in the County Sheriff's Civil Service Law of 1974 against soliciting money for a political campaign apply to a deputy sheriff's own campaign if running for office while employed?

5. Whether a deputy sheriff has any rights under the County Sheriff's Civil Service Law of 1974 if released from employment for violating that law?

OPINIONS

1. No, the federal Hatch Act applies even if the covered employee is on approved unpaid leave.

2. A deputy sheriff employed in one county would not be prohibited under the federal Hatch Act from seeking the office of sheriff in another county while still employed if the election for that office is nonpartisan. However, if the county in which the deputy sheriff is employed has adopted the County Sheriff's Civil Service Law of 1974 and the deputy sheriff is subject to the law, then the deputy sheriff would be in violation of Tenn. Code Ann. § 8-8-419 unless he or she first resigned from employment, even though the deputy sheriff is seeking the office of sheriff in another county.

3. As long as the employee is not subject to the prohibitions contained in the County Sheriff's Civil Service Law of 1974, and the election for the office of sheriff is a nonpartisan election, then the employee would be permitted to seek election to the office of sheriff while still employed.

4. Under the plain language of the statute, if a deputy sheriff is subject to the County Sheriff's Civil Service Law of 1974, he or she would be prohibited from soliciting money for his or her political campaign for election to the office of sheriff.

5. If a deputy sheriff is subject to the County Sheriff's Civil Service Law of 1974 and violates the provisions of Tenn. Code Ann. § 8-8-419 by announcing his or her candidacy for the office of sheriff and/or by soliciting money for his or her political campaign, dismissal from employment is mandated by the plain language of the statute.

ANALYSIS

1. This Office has previously opined that, if a deputy sheriff's position or duties are in connection with an activity financed in whole or in part by federal loans or grants, he or she is prohibited by the federal Hatch Political Activity Act, 5 U.S.C. §§ 1501, *et seq*., from being a candidate for elective office unless the election is nonpartisan. *See* Op. Tenn. Att'y Gen. 81-305 (May 11, 1981). You have asked if a deputy sheriff can be granted an unpaid leave of absence to seek the office of sheriff without violating the federal Hatch Act.

This issue was specifically addressed in *Alexander v. Merit Systems Protection Board*, 165 F.3d 474, 482 (6th Cir. 1999) and *Minnesota Department of Jobs and Training v. Merit Systems Protection Board*, 875 F.2d 179, 183 (8th Cir. 1989). In both cases, the court, relying upon the Act's legislative history, held that the Hatch Act applies without regard for an employee's leave status relying upon the Act's legislative history.

> A review of the legislative history of the provisions of the Act makes it unmistakably clear that covered state employees are subject to the prohibitions of the Act regardless of leave status. During hearings on a proposal to extend the Hatch Act to state and local government employees, Congress specifically considered and rejected a provision which would have exempted from the Hatch Act's prohibitions those candidates who had taken a leave of absence without pay. 86 Cong. Rec. 2872-75 (1940). The legislative history of the Act further discloses that the intent of the statute was to prohibit partisan candidacy by any covered employee who had not resigned from his or her employment. See 86 Cong. Rec. 9447 (1940). *Thus, it is clear from the statute and the legislative history that a covered employee is prohibited from*

> *running for public office in a partisan election, even if on approved leave without pay.*

Id. at 183 (Emphasis added).

2. Your second question asks whether a deputy sheriff employed in one county may seek the office of sheriff in another county while still employed, when the election for sheriff in the other county is a nonpartisan election. The federal Hatch Act only prohibits state and local employees from being a candidate for elective office in a partisan election. Nonpartisan candidacies are excepted from this rule by 5 U.S.C. § 1503, which states as follows:

> Section 1502(a) (3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

Accordingly, a deputy sheriff would not be prohibited under the federal Hatch Act from seeking the office of sheriff in another county while still employed if the election for that office is nonpartisan. However, Tennessee's County Sheriff's Civil Service Law of 1974 prohibits any person holding a position in the classified service from making any public endorsement of any candidate in any campaign for elected office. Tenn. Code Ann. § 8-8-419. This Office has previously opined that a deputy sheriff's announcement of his or her candidacy for the office of sheriff would constitute an endorsement of that candidacy for purposes of this law. *See* Op. Tenn. Att'y Gen. 09-167 (October 16, 2009). Accordingly, if the county in which the deputy sheriff is employed has adopted the County Sheriff's Civil Service Law of 1974 and the deputy sheriff is subject to the law, then the deputy sheriff would be in violation of Tenn. Code Ann. § 8-8-419 unless he or she first resigned from employment, even though the deputy sheriff is seeking the office of sheriff in another county.

3. You have also asked whether an employee of a state or county entity who is subject to the federal Hatch Act may seek the office of sheriff while employed if the election for that office is nonpartisan. As discussed above, nonpartisan candidacies are specifically excepted from the prohibitions contained in the federal Hatch Act. Accordingly, as long as the employee is not subject to the prohibitions contained in the County Sheriff's Civil Service Law of 1974, and the election for the office of sheriff is a nonpartisan election, then such employee would be permitted to seek election to that office while still employed.

4.&5. Your final questions concern the application and interpretation of the County Sheriff's Civil Service Law of 1974. First, you ask whether the prohibition in that statute against soliciting money for a political campaign would apply to a deputy sheriff's own campaign if seeking election to an office while still employed. Tenn. Code Ann. § 8-8-419(a) provides that "[n]o person holding a position in the classified service shall take an active part in any political campaign while on duty, *nor under any circumstances shall any employee of the sheriff's department solicit money for political campaigns*." (Emphasis added). This language is clear and

unambiguous on its face. It prohibits any employee of a sheriff's office from soliciting money for any political campaign. Accordingly, if a deputy sheriff is subject to the statute, he or she would be prohibited from soliciting money for his or her campaign for election to the office of sheriff.

Second, you have asked whether a deputy sheriff has any rights under the statute if released from employment for violating it. Tenn. Code Ann. § 8-8-419(c) provides that "[a]ny person violating the provisions of this section *shall* be dismissed from the service of the office of the sheriff." (Emphasis added). The use of the term "shall" indicates that the Legislature intended for this provision to be mandatory. Accordingly, if a deputy sheriff is subject to the County Sheriff's Civil Service Law of 1974 and violates the provisions of Tenn. Code Ann. § 8-8-419 by announcing his or her candidacy for the office of sheriff and/or by soliciting money for his or her political campaign, dismissal from employment is mandated by the plain language of the statute.

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