STATE OF TENNESSEE
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Opinion No. 10-77

Appointment of Court Officer Authorized to Carry Weapon In Courtrooms

QUESTIONS

1. Tenn. Code Ann. § 39-17-1306(c) authorizes a "bailiff, marshal or other court officer who has responsibility for protecting persons or property or providing security" to carry a weapon in a courtroom while in the discharge of their official duties. Who is authorized to appoint a person as a bailiff, marshal or other court officer?

2. May the judge appoint a person to serve as court officer?

3. What training, qualifications, bond or other issues surround the appointment of that person?

OPINIONS

1. Under Tenn. Code Ann. § 8-8-201(a)(2)(A), Tenn. Code Ann. § 16-15-715, and Tenn. Code Ann. § 37-1-213, the sheriff for each county[1] is required to furnish court officers for the county's courts.

2. Judges in Davidson County are the only judges who have the authority to appoint their own court officers. Tenn. Code Ann. § 8-8-201(a)(2)(B)(i).

3. Deputy sheriffs are required to be certified as peace officers by the Peace Officer Standards and Training Commission (POST). Tenn. Code Ann. §§ 38-8-102 to 38-8-122. Deputy sheriffs assigned to the courts must also successfully complete forty hours of POST-approved basic training in courthouse security and sixteen hours of annual training. Tenn. Code Ann. § 5-7-108(a)(2). Deputy sheriffs are not required to post surety bonds.

ANALYSIS

1. Tenn. Code Ann. § 39-17-1306 prohibits persons from carrying weapons into any room where judicial proceedings are in progress. Tenn. Code Ann. § 39-17-1306(c)(1) provides

[1] The only exception is "any municipality having a metropolitan form of government and a population of over four hundred fifty thousand (450,000) according to the 1990 federal census or any subsequent federal census…" Tenn. Code Ann. § 8-8-201(a)(2)(B)(i). At this time, only Davidson County satisfies these criteria.

an exception for a "bailiff, marshal, or other court officer who has responsibility for protecting persons or property or providing security."[2] You have asked who is responsible for appointing a bailiff, marshal, or other court officer.

Tenn. Code Ann. § 8-8-201(a)(2)(A) states that it is the sheriff's duty to "attend upon all the courts held in the county when in session." Tenn Code Ann. § 16-15-715 states that: "The sheriff shall, unless otherwise provided, provide sufficient bailiffs to serve the general sessions courts." Tenn. Code Ann. § 37-1-213, when referring to juvenile courts, states: "The sheriffs of the various counties shall furnish the necessary deputies and special deputies to attend and dispense with the business of such courts."

The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. *Auto Credit v. Wimmer*, 231 S.W.3d 896 (Tenn. 2007). If a statute is clear and unambiguous, courts will find the intent in the plain and ordinary meaning of its language. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918 (Tenn. 2007). Tenn. Code Ann. § 8-8-201(a)(2)(A), Tenn. Code Ann. § 16-15-715, and Tenn. Code Ann. § 37-1-213 clearly and unambiguously specify that the sheriff is responsible for providing adequate personnel to attend to the courts for the purposes of security and to act as bailiffs.[3] Tenn. Code Ann. § 16-15-715 states that the sheriff is responsible for providing bailiffs to general sessions courts "unless otherwise provided."

2. Tenn. Code Ann. § 8-8-201(a)(2)(B)(i) states that trial judges may appoint their own court officers in any municipality having a metropolitan form of government and a population of over four hundred fifty thousand (450,000) according to the 1990 federal census or any subsequent federal census…" At the present time, only Davidson County meets this exception. Under the rules of statutory construction, the express inclusion of one thing normally means the exclusion of all other things not mentioned. *State v. Hawk*, 170 S.W.3d 547 (Tenn. 2005). The granting of such authority to trial judges in a county in the specified classification indicates that the legislature did not intend to confer such authority upon judges in any other county.

3. Deputy sheriffs who serve as bailiffs, like all other deputy sheriffs, are required to obtain peace-officer certification from the Peace Officer Standards and Training Commission (POST). Tenn. Code Ann. § 38-8-105. In addition, deputies who are newly assigned to courts are required to successfully complete POST-approved basic training in courtroom security and thereafter obtain additional continuing education in POST-approved courses on an annual basis. Tenn. Code Ann. § 5-7-108(a)(2).

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[2] Other classes of persons who are authorized to carry weapons into rooms where judicial proceedings are in progress while discharging their official duties include members of the military and national guard who are on duty and are carrying such weapons pursuant to applicable regulations, law enforcement officers, and guards employed by penal institutions. Tenn. Code Ann. § 39-17-1306(c)(1) and 39-17-1350(a). Off-duty law enforcement officers may not carry firearms into courtrooms. Tenn. Code Ann. § 39-17-1350(c)(4).

[3] This does not apply to Davidson County, where trial judges are authorized to select their own court officers. Tenn. Code Ann. § 8-8-201(a)(2)(B)(i).

There is no statutory requirement for deputy sheriffs to post a surety bond.[4]

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[4] A sheriff is required to post a surety bond upon assuming office. Tenn. Code Ann. § 8-8-103.