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Opinion No. 11-64

Certification and Training Requirements for County Sheriffs

QUESTIONS

1. Prior to the enactment of Chapter 370 of the 2011 Public Acts, could a sheriff, who was not certified as a peace officer when he first took office and who did not successfully complete basic recruit training at the Tennessee Law Enforcement Training Academy (TLETA) as required under Tennessee Code Annotated § 8-4-102(d) (repealed May 30, 2011), legally qualify to run for a second term in office?

2. If a sheriff did not qualify for reelection because of a failure to satisfy mandatory training requirements but nonetheless ran for and was reelected to a second term, would the office of sheriff in that county be legally vacant?

3. Does Tennessee Code Annotated § 8-8-102(a)(9), as amended by Chapter 370 of the 2011 Public Acts, permit a sheriff who was reelected to a second term, even though he failed to satisfy the training requirements set forth in Tennessee Code Annotated § 8-8-102(d)(repealed May 30, 2011), to continue to serve without having to satisfy such training requirements?

OPINIONS

1. Before Tennessee Code Annotated § 8-4-102(a) was amended by Chapter 370 of the 2011 Public Acts, a sheriff who was not POST certified upon first assuming office was required to complete basic recruit training at TLETA during the sheriff's first term. If a sheriff did not satisfy this training requirement, then the sheriff was not legally qualified to seek election for another term in office.

2. No. A sheriff under these circumstances would remain in office until removed, and a successor elected or appointed and duly qualified.

3. Yes. Under Tennessee Code Annotated § 8-8-102(a)(9), as amended by Chapter 370 of the 2011 Public Acts, a sheriff who held office on May 30, 2011, the effective date of Chapter 370, shall be deemed to have met the training requirements imposed by Tennessee Code Annotated § 8-8-102(a)(9). Therefore, a sheriff holding office on May 30, 2011 may continue to serve without having to satisfy such training requirements.

ANALYSIS

1. The office of sheriff is a county office established by the Tennessee Constitution. The sheriff is elected by the voters of the county and serves a term of four years. Tenn. Const. Art. VII,§ 1. The Tennessee Constitution authorizes the General Assembly to prescribe the qualifications and duties of the office. *Id.*

Before Tennessee Code Annotated § 8-8-102 was amended by Chapter 370 of the 2011 Public Acts, the qualifications for election or appointment to the office of sheriff included citizenship, age, educational and other requirements related to psychological fitness and the absence of a criminal history and dishonorable or bad conduct military discharge. Tenn. Code Ann. §§ 8-8-102(a)(1)-(8) (repealed May 30, 2011). The statute also required sheriffs to be POST certified. Tenn. Code Ann. § 8-8-102(a)(9) (repealed May 30, 2011).

Tennessee Code Annotated § 8-8-102(d)(i) (repealed May 30, 2011) did however provide an exception for first term sheriffs who lacked POST certification, stating:

> Notwithstanding any provision of subsections (a)-(d) to the contrary, a current and valid peace officer certification issued by the peace officer standards and training commission or training that is approved by or meets the standard on minimum hours required to be certified by the peace officer standards and training commission is not a requirement for a person to initially qualify for election to the office of sheriff. However, if such a person qualifies to run for the office of sheriff and is elected to the office, such person shall be required to enroll, within six (6) months after taking office, in the recruit training program offered by the Tennessee law enforcement training academy. Any cost associated with obtaining such peace officer standards and training certification shall be paid by the county. For such person to qualify for the office of sheriff in any subsequent election, the person must have completed such recruit training program and have obtained peace officer standards and training certification during such person's first term of office as sheriff.

Tenn. Code Ann. § 8-8-102(d)(1)(repealed May 30, 2011).

Thus, under the plain meaning of Tennessee Code Annotated § 8-8-102(d)(i), a sheriff who lacked POST certification when he or she first assumed office was required to complete the basic recruit training course during his first term in office. If the sheriff failed to do so, the sheriff would not be eligible to seek election to a second term.

2. The next question posed is whether under the facts presented the sheriff's office would be legally vacant. Under Tennessee law, if a sheriff who did not qualify for reelection ran for and was reelected to a second term, his or her failure to satisfy the mandatory training requirements would not result in an immediate removal from office. In such a case, the sheriff would continue to hold office until a legal proceeding was commenced to remove the sheriff pursuant to Tennessee Code Annotated §§ 29-35-101 *et seq*. Even if such an action were initiated and succeeded, the sheriff would continue to hold the office until a successor is duly appointed and

qualified. *See Hilliard v. Park,* 212 Tenn. 588, 370 S.W.2d 829, 838-39 (Tenn. 1963), *citing Conger v. Ray,* 151. Tenn. 30, 267 S.W. 122 (Tenn. 1924); *State ex. rel Gann v. Malone,* 131 Tenn. 149, 171; 174 S.W. 257, 263(Tenn. 1914).[1]

3. In 2011, the General Assembly enacted Chapter 370 which amended Tennessee Code Annotated § 8-8-102 by deleting the former provision in its entirety and substituting an entirely revised version of the statute. The eligibility requirements previously set forth in subsections (a)(1) through (a)(8) remained substantially the same. The major revisions related to subsections (a)(9) and (d). Subsection (d), which dispensed with certification requirements for first term sheriffs, was repealed in its entirety. Subsection (a)(9), which sets forth the certification requirements, was rewritten to state as follows:

> Except as provided in subdivision (B), have at least three (3) years of full-time experience as a peace officer standards and training commission certified law enforcement officer in the previous ten (10) years or at least three (3) years of full-time experience as a state or federal certified law enforcement officer with training equivalent to that required by the peace officer standards and training commission in the previous ten (10) years; *provided that any person holding the office of sheriff on the effective date of this act shall be deemed to have met the requirements of subdivision (9).*

Tenn. Code Ann. § 8-8-102(a)(9)(A) (emphasis added).[2]

Thus, upon the passage of this statute effective May 30, 2011, a sheriff, who may not be qualified to serve a second term because the sheriff did not satisfy the training requirements set forth in former Tennessee Code Annotated § 8-8-102(d) but was nonetheless reelected and in office on May 30, 2011, could continue to serve in office without having to satisfy the certification requirements set forth in Tennessee Code Annotated § 8-8-102(a)(9) as amended by Chapter 370. The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature. *Graham v. Caples,* 325 S.W.3d 578, 582 (Tenn. 2010). When the statutory language is clear and unambiguous, courts find that intent in the plain meaning of the language of the statute. *Waters v. Farr,* 291 S.W.3d 873 (Tenn. 2009). The language of Tennessee Code Annotated § 8-8-102(a)(9) as amended by Chapter 370 clearly and unambiguously provides that all sheriffs who held office on May 30, 2011, the effective date of the amendment, shall be treated as if they satisfied the certification requirements set forth in that subsection. Such language reflects a clear legislative intent to grandfather in all sheriffs who were in office on that date. Therefore, as long as such a sheriff satisfies the other statutory requirements, the sheriff may continue to serve in office and seek reelection.

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[1] *See also Shumate v. Claiborne Co.,* 183 Tenn. 182, 185, 191 S.W. 2d 441, 442 (Tenn. 1946); *Hagan v. Henry*, 168 Tenn. 223, 227, 76 S.W.2d 994, 995 (Tenn. 1934) (a person who is certified the winner of an election and receives a certificate of election has acquired *prima facie* title to that office).

[2] The effective date of the Act was the date it was signed into law. 2011 Tenn. Pub. Acts. Ch. 370, § 2. The Act was signed by the Governor on May 30, 2011. Subdivision (B) stated this provision was not applicable in any county having a metropolitan form of government where the sheriff does not have full law enforcement powers. Tenn. Code Ann. § 8-8-102(a)(9)(B).

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