

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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May 21, 2012

Opinion No. 12-57

Sheriff's Civil Service Law

QUESTIONS

1. Is a county mayor authorized to veto appointments made by the county commission to the sheriff's civil service board (hereinafter "the board") created by Tenn. Code Ann. § 8-8-404?

2. Tenn. Code Ann. § 8-8-409 states that the board "as a body" may exercise various powers. Does this phrase require all three members of the board to be present whenever the board takes an action?

3. Tenn. Code Ann. § 8-8-408 provides that "[t]he county mayor shall designate, from the three (3) members thus selected, a chair of the board." Is the county mayor required to designate a new chair each year?

4. Tenn. Code Ann. § 8-8-408 requires the sheriff to appoint from among the sheriff's employees "a personnel officer who shall be the keeper of the sheriff's departmental records, and also shall serve as the secretary of the civil service board." Is the secretary appointed under this provision required to be present at all meetings of the board?

OPINIONS

1. No.

2. The board may act with a quorum of two members. All three members need not be present at a meeting for the board to take an action.

3. Yes, the county mayor must designate the chair each year after the county commission has appointed a new member or reappointed the member whose term has expired.

4. The statute does not require the personnel officer designated as secretary to attend each meeting of the board. By requiring the sheriff to appoint a secretary, however, the statute contemplates that the board's actions will be recorded in written minutes. Therefore, someone in the sheriff's department should be present at meetings of the board to witness the proceedings and prepare the minutes. If the particular individual that the sheriff has appointed as secretary is

unable to attend, the sheriff should designate another employee, preferably another personnel officer, to attend and carry out these functions.

ANALYSIS

This request asks several questions about the operation of the County Sheriff's Civil Service Law of 1974, codified at Tenn. Code Ann. §§ 8-8-401 to -419 (the "Act"). The Act is "local in effect" and becomes effective when approved by a two-thirds vote of the county legislative body. Tenn. Code Ann. § 8-8-402(a). Tenn. Code Ann. § 8-8-404 creates a civil service board composed of three members selected by the county legislative body. The initial members' terms are staggered, so that one member serves for one year, one for two years, and one for three years. Tenn. Code Ann. § 8-8-405. After the initial appointments, each member is appointed to a three-year term. *Id.*

1. Tenn. Code Ann. § 8-8-404 by its unambiguous language states that appointments to the board are made by the county legislative body. The statute provides no role for the county mayor in this selection process. Accordingly the county mayor is provided no authority regarding the selections to the board made by the county legislative body. *See Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 894 (Tenn. 2011) (stating the general rule that, when a statute is clear, a court will apply the plain meaning of the statute without complicating the task); *State v. McNack*, 356 S.W.3d 906, 908-09 (Tenn. 2011) (observing that the primary objective of statutory construction "is to carry out the legislative intent without broadening or restricting the statute beyond its intended scope").

Nor do the statutes establishing a county mayor's right of veto provide a county mayor any role in making these appointments. A county mayor's veto power is established by Tenn. Code Ann. § 5-6-107(a), which states:

- (1) The county mayor has the power of veto with respect to resolutions of the county legislative body.
- (2) Such veto shall apply only to legislative resolutions and shall not apply to resolutions in which the legislative body is exercising administrative or appellate authority.

This Office has previously opined that Tenn. Code Ann. § 5-6-107(a)(2) does not extend a county mayor's veto power to "administrative" functions performed by the county legislative body and that a county commission resolution appointing or electing committee members is "administrative" rather than "legislative" under Tenn. Code Ann. § 5-6-107(a)(2). *Op. Tenn. Att'y Gen.* 98-181, at 2 (Sept. 8, 1998). Accordingly, a county mayor may not veto appointments made by the county commission to a sheriff's civil service board.

2. Tenn. Code Ann. § 8-8-409 lists the powers and duties of a sheriff's civil service board. The first sentence of the statute states that "[t]he board *as a body* shall" and then lists nine subsections. Tenn. Code Ann. § 8-8-409 (emphasis added). The request asks whether, under this language, all three members of the board must be present for any board action. The Act does not specifically state how many members of a board are authorized to act on the

board's behalf. Ordinarily, a multi-member board may act through a quorum of its members. A quorum required to act generally consists of a simple majority of the collective body. *Collins v. Janey*, 147 Tenn. 477, 485, 249 S.W. 801, 803 (1923); *Bedford County Hospital v. Bedford County*, 42 Tenn. App. 569, 584-85, 304 S.W.2d 697, 704 (1957). For this reason, the board may act when two members are present and the board, therefore, has a quorum. All three members need not be present at a meeting for the board to take an action.

3. Tenn. Code Ann. § 8-8-408 provides that “[t]he county mayor shall designate, from the three (3) members thus selected, a chair of the board.” The question posed is whether the county mayor designates the chair of the board each year. The Act does not state the period of time for which the designation lasts. Logically, however, one board member’s three-year term expires each year, and the county commission must appoint a new member or reappoint the member whose term has expired. Thus, a new board is constituted each year. It appears, therefore, that the county mayor must designate the chair each year after the county commission has appointed a new member or reappointed the member whose term has expired. *See In re Samaria S*, 347 S.W.3d 188, 203 (Tenn. Ct. App. 2011) (stating a statute should be read “naturally and reasonably”).

4. Tenn. Code Ann. § 8-8-408 provides in relevant part that “[t]he sheriff shall appoint from among the sheriff’s employees a personnel officer, who shall be the keeper of the sheriff’s departmental records, and also shall serve as secretary of the civil service board.” A secretary for the board is necessary given the board’s statutory directive to keep and maintain all records necessary for the administration of the board. Tenn. Code Ann. § 8-8-409(8). The Act does not require the secretary appointed under this provision to be present at all the meetings of the board. Further, the Act specifies no particular term of office for the personnel officer to serve as secretary. Instead, it appears that the Act simply requires the sheriff to assign recordkeeping functions to the personnel office within the sheriff’s department. It is clear, however, that the board is required to keep written records of its actions. *See* Tenn. Code Ann. §§ 8-8-408 & 8-8-409(8). By requiring the sheriff to appoint a secretary, the statute contemplates that the board’s action will be recorded in written minutes. Therefore, someone in the sheriff’s department should be present at meetings of the board to witness the proceedings and prepare the minutes. If the particular individual that the sheriff has appointed as secretary is unable to attend, then the sheriff should designate another employee, preferably another personnel officer, to attend and carry out these functions.

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