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Opinion No. 12-73

Shelby County Ordinance Creating Private Right of Action for Civil Rights Violations

QUESTION

Does the Shelby County Board of Commissioners have authority to enact an ordinance creating a private cause of action in General Sessions Court against the Shelby County Sheriff or the deputies employed by the sheriff for violation of an individual's civil rights under the United States and Tennessee Constitutions?

OPINION

No. The creation of such a private cause of action by the Shelby County Board of Commissioners is prohibited by Tenn. Code Ann. § 5-1-204(f)(1), which with limited exceptions restricts a charter county's authority to enact ordinances affecting the judicial system.

ANALYSIS

Shelby County does not have authority to create a private cause of action for violations of the United States and Tennessee Constitutions. Initially, Tennessee law is well settled that "counties have no authority other than that expressly given by statute or necessarily implied from the provisions of such statute." *Howard v. Willocks*, 525 S.W.2d 132, 135 (Tenn. 1975) (citing *Bayless v. Knox County*, 286 S.W.2d 579, 588 (Tenn. 1955)). Shelby County has adopted a charter form of county government pursuant to Tenn. Code Ann. § 5-1-201. *See Bailey v. County of Shelby*, 188 S.W.3d 539, 544 (Tenn. 2006); Op. Tenn. Att'y Gen. 11-38 (Apr. 26, 2011). As a charter county, Shelby County is subject to the provisions in the Tennessee Code governing charter forms of government codified at Tenn. Code Ann. §§ 5-1-201 to -215. Section 5-1-204(f)(1) specifically addresses a charter county's power to create ordinances that affect the judicial system, stating:

> Nothing contained within the provisions of this section shall be construed to affect the judicial system in any county adopting a charter form of government except as its charter or ordinances may direct the imposing, levying or collection of fines, penalties, fees or court costs or the procedures for the filling of vacancies as required by law.

Tenn. Code Ann. § 5-1-204(f)(1).

Thus, a charter county cannot affect the judicial system except in the limited area of directing "the imposing, levying or collection of fines, penalties, fees or court costs or the procedures for the filling of vacancies as required by law." Creating a private cause of action does not fall within these very narrow exceptions, and accordingly Shelby County lacks the authority to create any such action against the Shelby County Sheriff or the sheriff's deputies. *See Metropolitan Development and Housing Agency v. Eaton,* 216 S.W.3d 327, 339 (Tenn. Ct. App. 2006) (citing the general rule that exceptions to a statute are strictly construed).

Nor does Tenn. Code Ann. § 5-1-211, which specifically addresses a county's authority to issue ordinances, establish any right of a charter county to create private causes of action. The provisions of Section 5-1-211 are focused on the enforcement of rules and regulations whereby citizens pay the county fines or penalties for violations, in conformity with the limited authority granted by Tenn. Code Ann. § 5-1-204(f)(1). For example, Section 5-1-211(b) states that the maximum penalty or forfeiture for an ordinance violation is $1,000 for counties within certain population limits. Tenn. Code Ann. § 5-1-211(b). Section 5-1-211(i) provides that persons charged with ordinance violations shall be tried in general sessions court and that any fines collected for such violations shall be paid into the county general fund. *Id*. Under Section 5-1-211(h), the enforcement of ordinances is delegated to the chief law enforcement officer. *Id.* Thus, Section 5-1-211 does not authorize charter counties to create causes of actions against county officials.

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