

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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November 26, 2012

Opinion No. 12-107

County Courthouse Security

QUESTIONS

1. May a general sessions judge refuse to enforce rules for security and dress in the courtroom that were established by the County Court Security Committee created under Tenn. Code Ann. § 16-2-505(d)(2)?
2. Can a general sessions judge find a sheriff or the sheriff's deputies in contempt for enforcing the security and dress rules established by the County Court Security Committee?
3. Does a general sessions judge have authority to control security procedures near the judge's courtroom?

OPINIONS

1. Probably not. While general sessions judges have statutory and inherent authority to exercise all powers reasonably necessary to protect the dignity, independence and integrity of their courts, and to enable their courts to efficiently perform their judicial functions, the exercise of such authority to refuse to follow courthouse security rules properly promulgated by the County Court Security Commission, of which the presiding judge is a member, is likely neither reasonable nor necessary.
2. No. The sheriff is generally the administrator of the county courthouse under Tenn. Code Ann. § 5-7-108(a), and, as such, the sheriff is required to implement and follow all rules properly established by the County Court Security Commission.
3. A general sessions judge has the authority to adopt rules related to conduct and decorum that take place outside the courtroom if such matters occur in areas where they are likely to interfere with the judge's court proceedings, and are not contrary to rules that are reasonably related to courthouse security and were properly promulgated by the County Court Security Committee.

ANALYSIS

This opinion request seeks guidance on who has the primary responsibility for developing rules governing security at a county courthouse. The request specifically focuses on the role of general sessions judges, sheriffs and County Court Security Committees in developing and implementing such rules.

County Court Security Committees derive their authority from Tenn. Code Ann. § 16-2-505(d), which states in relevant part:

(2) Each county shall establish a court security committee composed of the county mayor, sheriff, district attorney general, the presiding judge of the judicial district and a court clerk from the county to be designated by the presiding judge, for the purpose of examining the space and facilities to determine the security needs of the courtrooms in the county in order to provide safe and secure facilities.

(3) Upon completion of the examination of security needs, the following procedure shall be followed:

(A) The administrative office of the courts shall distribute to each court security committee a copy of the minimum security standards as adopted by the Tennessee judicial conference, and each committee shall review and consider these standards in determining court security needs.

(B) No later than May 15 each year, the court security committee shall report its findings to the county legislative body and the administrative office of the courts.

(C) The county legislative body shall review and consider the recommendations of the court security committee in the preparation of each fiscal year budget.

(D) No later than December 1 each year, the county legislative body shall report to the administrative office of the courts any action taken to meet the security needs.

(E) No later than January 15 each year, the administrative office of the courts shall report to the general assembly on the compliance by each county government with the security needs established by the court security committee.

(4) Any recommendation by the court security committee requiring county expenditures shall be subject to approval of the county legislative body.

Unless the county legislative body specifically designates otherwise, sheriffs have charge of the county courthouse and “shall prevent trespasses, exclude intruders, and keep it and the grounds attached thereto in order, reporting from time to time the repairs required, and the expense, to the county legislative body.” Tenn. Code Ann. § 5-7-108(a)(1).

Tenn. Code Ann. § 16-15-406 authorizes general sessions courts to adopt rules governing the handling of cases before them, stating that “[j]udges of the courts of general

sessions shall adopt such rules as may be necessary to expedite the trial and disposal of cases.” General sessions courts, like all trial courts, also have inherent powers to act to protect their dignity, independence, integrity and to effectively conduct their business. *See Anderson County Quarterly Court v. Judges of the 28th Judicial Circuit*, 579 S.W.2d 875, 878-79 (Tenn. Ct. App. 1978). However, the Court of Appeals in *Anderson County* recognized that a court’s inherent powers are “not a license for unwarranted flexing of judicial power” and should only be exercised when “reasonable and necessary.” *Id.* at 879. *See also State v. Reid*, 981 S.W.2d 166, 170 (Tenn. 1998).

This Office has previously addressed the interrelationship of the County Court Security Committee, the sheriff and the general sessions judge regarding setting security protocols at a county courthouse. Tenn. Atty. Gen. Op. 02-052 (April 24, 2002). This Office opined that Tenn. Code Ann. § 16-2-505(d)(2) grants the County Court Security Committee the authority to “put into effect security measures affecting the security of space and facilities provided to state trial judges, as long as these measures do not require county expenditures” and that such measures may affect courtrooms and court personnel “if the measures are reasonably related to ensuring security of space and facilities” provided to judges. *Id.* at 1-2. Any recommendation by the Committee that requires county expenditures must be approved by the county legislative body. Tenn. Code Ann. § 16-2-505(d)(4). As this Office explained:

The first question is whether Tenn. Code Ann. § 16-2-505(d)(2) — (4) applies to general sessions courts, judges, and employees. These provisions were enacted by 1995 Tenn. Pub. Acts Ch. 225 under the caption “AN ACT to amend Tennessee Code Annotated, Section 16-2-505(d), relative to facilities for state trial judges.” General sessions judges are ordinarily considered to be county officials, not state officials. Further, the statute expressly refers to space provided judges elected under Tenn. Code Ann. § 16-2-506. That statute describes judicial districts for circuit and chancery courts and district attorneys general. But we think the committee also may address security measures with regard to general sessions courts and personnel to the extent these measures impact security for the circuit and chancery court facilities. Material included with the request indicates that general sessions courtrooms are in the same building as the state trial judges’ courtrooms in the county in question. In this circumstance, we think the court security committee established by the county under Tenn. Code Ann. § 16-2-505(d)(2) is authorized to include general sessions court space and personnel in reviewing courtroom security needs that it recommends to the county commission.

. . . .

The second question is whether the court security committee established by the county under Tenn. Code Ann. § 16-2-505(d)(2) has the authority to promulgate security rules and regulations directly affecting general sessions courts, including having general sessions judges and their employees screened and searched by courthouse security. As cited above, the statutory scheme explicitly grants this committee only the authority to review security needs and

make recommendations to the county commission. It does not directly accord the committee any implementing authority of its own. Ordinarily, statutes granting powers to administrative agencies include only those conferred either expressly or by necessary implication. *Sanifill of Tennessee, Inc. v. Tennessee Solid Waste Disposal Control Board*, 907 S.W.2d 807 (Tenn. 1995). The statute does provide that “[a]ny recommendation of the court security committee *requiring county expenditures* shall be subject to approval of the county legislative body.” Tenn. Code Ann. § 16-2-505(d)(4) (emphasis added). It may be inferred, therefore, that the committee is authorized to implement security recommendations that do not require county expenditures, so long as they are reasonably related to ensuring security of the space and facilities that the county provides to the state trial judges. In our opinion, these measures could include provisions directly affecting general sessions judges and personnel if they are reasonably related to ensuring security for the courtrooms and facilities provided state trial judges.

. . . .

The next question is the authority of the court security committee to enforce a rule against general sessions judges. As discussed above, this authority may stem from the statute establishing the committee; the statute according the county legislative body control over the courthouse; the statute delegating courthouse and courtroom security to the sheriff; and inherent judicial authority.

The request also asks what penalties could be exacted upon the general sessions judges and employees who refuse to comply with the pronouncements of the committee. No statute authorizes the committee to impose a monetary or other penalty for failure to comply with valid court security measures. Based on the discussion above, however, and subject to the direction of the county commission, we think the sheriff may exclude individuals from the courthouse who refuse to comply with reasonable security procedures.

Tenn. Att’y Gen. Op. 02-052 at 3-4.

1. Applying these principles to the questions posed, the General Assembly by virtue of Tenn. Code Ann. § 16-2-205(d) has generally placed the responsibility for developing security measures at a county courthouse with the County Court Security Committee, although any adopted standard requiring an expenditure of county funds also requires the approval of the county legislative body. The General Assembly’s action thus places this responsibility with a body that includes representation of the various interests using and responsible for the courthouse – those being the county mayor, sheriff, district attorney general, the presiding judge of the judicial district and a court clerk from the county to be designated by the presiding judge. Rules duly adopted by this Committee that are reasonably related to ensuring the security of the

courthouse are binding upon all court personnel, including the judges utilizing the courthouse. *See* Tenn. Att’y Gen. Op. 02-052 at 3-4.¹

2. A judge may not find the sheriff or any of the sheriff’s staff guilty of contempt solely for following and implementing rules reasonably related to the security of the courthouse that were duly adopted by the County Court Security Committee. *See State v. Beeler*, No. E2010-00860-SC-R11-CD, at 11 (Tenn. Nov. 15, 2012) (copy attached); *Reed v. Hamilton*, 39 S.W.3d 115, 117-18 (Tenn. Ct. App. 2000) (both stating that a Tennessee court’s contempt authority is limited in that courts may only punish as contemptuous the types of acts described by Tenn. Code Ann. § 29-9-102). *See also State v. Maddux*, 571 S.W.2d 819, 821 (Tenn. 1978) (Supreme Court finding that defense attorney’s good-faith arguments made in an effort to be relieved of a criminal appointment could not constitute a basis for contempt).

3. In response to the third question posed, as previously discussed a general sessions court, like any other court, has the authority to adopt rules and procedures to protect its dignity and to expedite the transaction of court business. *See* Tenn. Code Ann. § 16-15-405. Certain types of conduct that occur outside the courtroom during court proceedings, such as excessive noise in a corridor or entranceway, can be just as disruptive as noise and other conduct that occurs within the courtroom. A general sessions court, therefore, has the authority to adopt rules and directives related to conduct that occurs outside the courtroom during court proceedings if such rules and directives cover areas where noise or other disruptive conduct is likely to interfere with the court’s ability to conduct its business. However, as previously noted, any such rule or directive should conform with any rules reasonably related to the security of the courthouse duly promulgated by the County Court Security Committee.

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¹ The materials provided to this Office with this opinion request included security rules apparently adopted by the sheriff rather than the County Court Security Committee. The sheriff is only authorized to implement, not adopt, security protocols, and therefore any protocols adopted must be approved by the Committee and may not be authorized solely by the sheriff. *Compare* Tenn. Code Ann. § 16-2-5-5(d) with Tenn. Code Ann. § 5-7-108. *See also Keough v. State*, 356 S.W.3d 366, 371 (Tenn. 2011) (citing the general rule of statutory construction that a specific or special statute will prevail over a general provision in another statute).

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