

STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL

February 24, 2017

Opinion No. 17-13

**Fees Payable to Sheriffs and Constables for Services Rendered**

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**Question**

Does a court clerk have discretion to pay fees for service of process to sheriffs and constables that are different from the fees specified in Tenn. Code Ann. § 8-21-901?

**Opinion**

No. Sheriffs and constables are entitled to be paid the fees specified in Tenn. Code Ann. § 8-21-901 for services actually rendered. Court clerks do not have discretion or authority to decrease or increase the statutorily set fees; they may not pay less—nor may they pay more—than the fee set by statute for a specified service.

**ANALYSIS**

The Legislature has authorized and established a schedule of specific fees to be paid to sheriffs and constables for certain services they perform. Tenn. Code Ann. § 8-21-901. The statute lists certain services and specifies a fee for each of the listed services. For example, for serving any process issued by a clerk for a general sessions, criminal, circuit, chancery or any other court, “the sheriff or constable *shall be entitled to*” \$40 for service in person, \$10 for service by mail, \$10 for service by any other authorized method, \$5 for summoning jurors, and \$10 for serving any other process not related to a judicial proceeding and issued by an entity other than a court. Tenn. Code Ann. § 8-21-901(a)(1)(A)-(C). The sheriff or constable is entitled to the specified fee, which is based on the manner in which process is served, “for each item of process that must be served separately per person served.” Tenn. Code Ann. § 8-21-901(a)(1)(A). The statute similarly establishes fees for certain specified services related to the collection of money, storing property, arrest and transportation of prisoners, security, and data processing. Tenn. Code Ann. § 8-21-901(a)(2)-(5).

The fees thus established are the fees which, “[n]otwithstanding any other provision of law to the contrary, the sheriff or constable is *entitled to demand and receive*,” respectively, for the specified services “where services are actually rendered.” Tenn. Code Ann. § 8-21-901(a). As the statute explicitly states, notwithstanding any other provision of law to the contrary, the fees the Legislature has authorized are the fees which the sheriffs and constables are *entitled to* whenever they have rendered a designated service. According to the plain language of the statute, the fees specified in the statute are the fees that must be paid; they are not optional or discretionary.

Moreover, the amount of the fees set by statute is not subject to alteration or adjustment—either downward or upward—by clerks of court. Court clerks may not pay less than the specified

fee for a specified service, nor may they pay more than the specified fee. The Legislature itself does not have the power “to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land.” Tenn. Const. art. XI, § 8. Tennessee Code Annotated § 8-21-901 is a public act, i.e., a general law, fixing fees for specific services. Thus a private act purporting to award to a deputy sheriff compensation in excess of the fee fixed by this same general law was held to violate article XI, section 8, of the Tennessee Constitution because the private act conferred special benefits on an individual. *Remine v. Knox County*, 189 S.W.2d 811, 812, 182 Tenn. 680, 682, (Tenn. 1945). If the Legislature itself cannot suspend the operation of a general law for the benefit of an individual or individuals, it follows that a court clerk does not have the authority, power, or discretion to deviate from the general law to pay individuals amounts in excess of those fixed by the general law.

In sum, sheriffs and constables are entitled to be paid the fees specified in Tenn. Code Ann. § 8-21-901 for services actually rendered. Court clerks do not have discretion or authority to decrease or increase the statutorily set fees; they may not pay less—nor may they pay more— than the fee set by statute for a specified service.

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