STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

October 31, 2017

Opinion No. 17-47

Determining the Fees to which a Sheriff is Entitled for a Levy of Execution

Question

Tennessee Code Annotated § 8-21-901(a)(2) establishes the fees to which a sheriff is entitled for executing particular types of processes on money and property. May a sheriff charge the $40 fee provided for a levy of execution on property when the sheriff serves a levy of execution on funds held in a bank account?

Opinion

Yes.

ANALYSIS

Tennessee Code Annotated § 8-21-901 sets out the various fees to which a sheriff is entitled for the performance of particular functions. Several provisions of § 8-21-901 address the fees to which a sheriff is entitled for collecting money or seizing property to satisfy a judgment.

Specifically, § 8-21-901(a)(2) provides:

> (A) For a levy of an execution on property or levy of an attachment or other process to seize property for the purpose of securing satisfaction of a judgment yet to be rendered or for executing a writ of replevin or writ of possession.....$ 40.00
>
> (B)(i) For collecting money to satisfy a judgment, whether by execution, fieri facias, garnishment or other process, in civil cases each time collection is attempted.....$ 20.00

When a sheriff serves a levy of execution on money belonging to an individual, including funds held in a bank, his actions fall within the plain meaning of paragraph (A). A levy of execution on specific funds belonging to an individual is a levy of execution on "property." See Tenn. Code Ann. § 26-1-103 ("All judgments and decrees of any of the judicial tribunals of this state for money may be enforced by execution."); 30 AM. JUR. 2D Executions and Enforcement of Judgments § 128 (2017) ("A writ of execution may be exercised upon any legal or equitable interest possessed by the judgment debtor in any type of property[.]"). Accordingly, as long as the

levy is properly characterized as the "levy of an execution" within the meaning of § 8-21-901(a)(2)(A),[1] a sheriff may charge a $40 fee for providing this service.

Under paragraph (B) of § 8-21-901(a)(2), a sheriff is entitled to a $20 fee for each "attempt[]" to "collect[] money to satisfy a judgment." A levy of execution that a sheriff uses to collect funds to satisfy a judgment would also appear to fit within the more general language of paragraph (B). But paragraph (A) is a specific statutory provision governing the appropriate fee "[f]or a levy of an execution," and, as such, controls the more general provision of paragraph (B). *See State v. Davis*, 173 S.W.3d 411, 415 (Tenn. 2005) ("[S]pecific statutory language will control over general statutory language."). Paragraph (A) thus provides the appropriate fee for a levy of execution: $40. And Paragraph (B) provides for a $20 fee for other attempts to collect money to satisfy a judgment that are not properly characterized as a levy of execution, including garnishment and other processes employed by a sheriff in addition to or instead of a levy of execution.[2]

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

JONATHAN DAVID SHAUB
Assistant Solicitor General

[1] A "levy of execution is the officer's act of appropriating or singling-out the debtor's property for the satisfaction of a debt." *Keep Fresh Filters, Inc. v. Reguli*, 888 S.W.2d 437, 443 (Tenn. Ct. App. 1994); *see also* 30 AM. JUR. 2D § 167 (2017) ("The levy of a writ of execution is an act in the course of a judicial proceeding, which is the process whereby a sheriff or other state official empowered by a judicial directive seizes or brings within his or her control a judgment debtor's property for the purpose of satisfying a judgment."). Under Rule 69 of the Tennessee Rules of Civil Procedure, a levy is effective "when a sheriff with a writ of execution exercises control over the judgment debtor's personalty."

[2] Typically, "money deposited by a judgment debtor into a general account cannot be reached through execution and levy but only through supplemental proceedings." 30 AM. JUR. 2D *Executions and Enforcement of Judgments* § 129 (2017). That is because "funds on deposit . . . are no longer the personal property of the depositor; instead the depositor has a chose in action against the bank for recovery of the deposit." *Johnson v. Serv. Mgmt.*, 459 S.E.2d 900, 902 (S.C. 1995). Accordingly, when a sheriff seeks to satisfy a judgment through funds held by a bank account, the manner in which a bank is holding those funds and the particular process or processes used to levy or seize those funds will determine whether the appropriate fee is $40 for a levy of execution or $20 for an attempt to collect money more generally.

Requested by:

The Honorable Karen D. Camper
State Representative
32 Legislative Plaza
Nashville, TN 37243