STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 18-44

Authority of POST Commission to Charge Fees for Firearm Certification

Question

What fees, if any, may the Peace Officer Standards & Training (POST) Commission charge to an applicant for statewide certification to carry a firearm, see Tenn. Code Ann. § 38-8-116, or to an applicant for nationwide certification, see Tenn. Code Ann. § 38-8-123?

Opinion

The POST Commission has authority to impose a fee for both statewide and nationwide certification and, in its discretion, to determine a reasonable fee for the issuance of firearm certifications. The Commission may also establish such rules and regulations as are necessary to administer its duties.

ANALYSIS

Retired law enforcement officers who wish to carry a firearm in the same manner and to the same extent as authorized for active law enforcement officers must be certified as eligible to do so by the Peace Officer Standards & Training (POST) Commission. Tenn. Code Ann. § 38-8-116(b). Certification pursuant to § 38-8-116 allows a retired officer to carry a firearm only within the state of Tennessee because it does not meet the certification requirements of the federal Law Enforcement Officer Safety Act, 18 U.S.C. § 926C. See Tenn. Code Ann. § 38-8-116(c)(9). A retired officer who wishes to be certified to carry a firearm nationwide must satisfy the requirements of Tenn. Code Ann. § 38-8-123. Id. § 38-8-123(b)(1).

The POST Commission has express authority to charge a fee for certifying retired law enforcement officers to carry a firearm within Tennessee. It is expressly authorized by § 38-8-116 "to establish and charge a fee for issuing a certification under th[at] section." Id. § 38-8-116(f). Although § 38-8-116 limits the amount of other fees for which it provides, see, e.g., id. § 38-8-116(c)(3)(A) (providing that a "sheriff may charge a fee not to exceed six dollars" for taking fingerprints), it does not set a limit on the fee that the POST Commission may establish and collect for issuing certifications. That fee, like all regulatory fees, however, must "bear some reasonable relation to the expenses involved." S & P Enter. v. City of Memphis, 672 S.W.2d 213, 216 (Tenn. Ct. App. 1983) (citing Memphis Retail Liquor Dealers' Ass'n v. City of Memphis, 547 S.W.2d 244 (Tenn. 1997)).

The POST Commission may also charge a fee for nationwide certification under its general authority "to adopt and enforce such rules and regulations as may be necessary" to carry out its statutory responsibilities, including the issuance of firearms certifications. Id. § 38-8-104(c).

Accordingly, although § 38-8-123 does not expressly grant the Commission authority to impose a fee for the issuance of a nationwide certification, the Commission may adopt rules and regulations—including imposition of reasonable fees—it deems necessary.

A retired officer seeking certification may also have to pay fees to third parties in connection with preparing his application to the Commission. Section 38-8-123(b)(1), for example, requires an applicant for nationwide certification to submit "two (2) full sets of classifiable fingerprints" to the Post Commission, and a retired law enforcement officer may be required to pay a fee to a private fingerprint vendor to procure an adequate set of fingerprints. Under its general authority, the Commission may require the use of a particular vendor or third-party service if it deems such a requirement necessary to the fulfillment of its statutory duties. [1]

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[1] Although § 38-8-116 requires a retired officer seeking certification to go to his local sheriff to have fingerprints taken, *see* Tenn. Code Ann. § 38-8-116(c)(3)(A), it does not limit the Commission's authority to require applicants to submit fingerprints via a different method if the Commission determines that doing so is necessary.