

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

February 28, 2019

Opinion No. 19-02

Authority of Judicial Commissioners and Magistrates to Administer Oaths of Office

Question

Does Tenn. Code Ann. § 8-18-109(b) authorize a judicial commissioner or a magistrate of a general sessions court to administer the oath of office to an elected or appointed official?

Opinion

No.

ANALYSIS

Pursuant to Tenn. Code Ann. § 8-18-109(b), an oath of office for an elected or appointed official may be administered by county mayors, county clerks, and, relevant here, “judges of courts of general sessions, or a judge of any court of record in the county.”

Judicial commissioners and magistrates of general sessions courts do not fall within the plain language of that grant of authority. Neither a judicial commissioner nor a magistrate is a judge of a court.

As this office has recognized in the past, a judicial commissioner is a “judicial officer[] *without a court.*” Tenn. Att’y Gen. Op. 96-139 (Nov. 26, 1996) (emphasis added); *see also State v. Bush*, 626 S.W.2d 470, 473 (Tenn. Crim. App. 1981) (“The duties fixed by the legislation for Judicial Commissioners are characteristic of those of a ‘magistrate’ and not of a ‘court.’”). Accordingly, we have concluded that a grant of authority to a “court” to alter a defendant’s bail does not authorize a judicial commissioner to alter it; only the “court” has that authority. *See* Tenn. Att’y Gen. Op. 12-82 (Aug. 23, 2012).

Nor are magistrates of general sessions courts “judges” of those courts. The judges of general sessions courts must be elected. *See* Tenn. Const. art. VI, § 4; Tenn. Code Ann. § 16-15-202(a). Magistrates may perform certain judicial functions, such as releasing defendants on bail, *see* Tenn. Code Ann. § 40-11-104, but they are not necessarily judges elected to the court, *see id.* § 40-1-106 (defining “magistrates” to include both judges *and* judicial commissioners, county mayors, and presiding officers of municipal and city courts). A magistrate of a general sessions court is a judicial officer who assists the court in performing judicial functions, but the magistrate is not a “judge” of that court.

Accordingly, neither a judicial commissioner nor a magistrate of a general sessions court is a “judge” of a “court” under the established meaning of those terms. And § 8-18-109(b), unlike

other statutory provisions, does not expressly provide for judicial commissioners and magistrates to perform the functions of a judge of a court if a judge is unavailable. *Contrast* Tenn. Code Ann. § 36-3-601(3)(D) (defining “court” to include “judicial commissioners, magistrates, and other officials” in limited circumstances).

Section 8-18-109(b) thus does not authorize a judicial commissioner or a magistrate of a general sessions court to administer an oath of office to an elected or appointed official.

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