STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

May 11, 2020

Opinion No. 20-09

Authority of the Capitol Police and Sergeants-at-Arms to Make Arrests in the State Capitol

Question 1

Do the capitol police or the respective sergeants-at-arms for the Tennessee House of Representatives and Senate need authorization from the Lieutenant Governor and Speaker of the House of Representatives to make arrests on the second floor of the Tennessee State Capitol, including arrests for violations of Tenn. Code Ann. § 39-17-306?

Opinion 1

The capitol police have general authority to make arrests in and around the State Capitol and other state buildings. They do not need any additional authorization or approval to exercise that arrest authority on the second floor of the Capitol.

Sergeants-at-arms are legislative officials subject to the control of their respective legislative houses. They do not have any freestanding statutory authority to make arrests absent authorization by their respective houses.

Question 2

Are capitol police and sergeants-at-arms prohibited from making arrests for apparent violations of Tenn. Code Ann. § 39-17-306 when a chamber of the General Assembly is in session?

Opinion 2

No.

ANALYSIS

The legislature has created within the Tennessee Department of Safety and Homeland Security a "division of protective services" to provide police services by sworn officers for the State Capitol, the Legislative Plaza, the War Memorial Building and all state office buildings in Davidson County." Tenn. Code Ann. § 4-3-2006. These capitol police are state law enforcement officers. Tenn. Att'y Gen. Op. 88-15, p.2 (Jan. 15, 1988). They have the same police duties and powers as the capitol "security guards" formerly appointed by the General Services Commissioner, Tenn. Code Ann. § 4-3-2006(a)(1)-(2), which powers and duties include the authority to arrest anyone committing nuisances, misdemeanors, or other violations of the law in or around the capitol, annexes, or on the grounds of the Capitol, see id. §§ 4-8-103, -104(a)-(b); see also Tenn. Att'y Gen. Op. 88-15.

The Protective Services Division of the Tennessee Highway Patrol currently exercises the authority granted by § 4-3-2006(a), and, within that division, the Capitol Protection Unit is "charged with the external and internal security tasks for the Tennessee State Capitol, Legislative Plaza, Tennessee Supreme Court, and the War Memorial Building." *See* Capitol Protection Unit, Tenn. Dep't of Safety & Homeland Security, www.tn.gov/safety/tnhp/psspb/cpunit.html. The Capitol Protection Unit "consists of specially trained and selected State Troopers." *Id.*

These state law enforcement officials assigned to protect the Capitol have authority under § 4-3-2006 and § 4-8-104 to arrest individuals for violations of the law. Tennessee Code Annotated § 39-17-306 makes it a Class B misdemeanor to "substantially obstruct[] or interfere[] with" a "lawful meeting, procession, or gathering by physical action or verbal utterance" with the "intent to prevent or disrupt" the meeting. Since the arrest authority of the capitol police applies to the State Capitol, as well as other state buildings and their surrounding areas, the capitol police have the authority to arrest anyone who, anywhere in the State Capitol, violates Tenn. Code Ann. § 39-17-306.

Tennessee Code Annotated § 4-8-101 does not limit or restrict the authority of the capitol police to make arrests for violations of Tennessee law on the second floor of the Capitol, and the capitol police do not need authorization from the Lieutenant Governor or the Speaker of the House of Representatives to make arrests on the second floor of the Tennessee State Capitol, including arrests for violations of Tenn. Code Ann. § 39-17-306. Section 4-8-101(a) generally gives the Department of General Services the duty to "take care of and preserve the state capitol or capitol annexes and all the furniture, fixtures and the capitol grounds, and to keep the same in good order." But it exempts the second floor of the Capitol from this general duty and provides instead that the Department's duty "to take care of and preserve the second floor of the state capitol" is subject to the "approval of the speaker of the senate and speaker of the house of representatives." Tenn. Code Ann. § 4-8-101(a)(2).

But subjecting the Department's care and preservation of the second floor of the Capitol to the approval of the Speakers of the House and Senate on the second floor of the Capitol has no bearing on the police powers of the state law enforcement officials assigned to protect the Capitol. The authority to "take care of and preserve" the furnishings and fixtures of the Capitol granted to the Department of General Services in § 4-8-101(a) is distinct from the authority exercised by the capitol police. The statutory authority of the protective services division is the authority formerly "imposed upon the department of general services *to provide police services . . . for the Capitol*," i.e., the authority formerly imposed on the Department of General Services by §§ 4-8-103 and 4-8-104. Tenn. Code Ann. § 4-3-2006(a)(2) (emphasis added). Unlike the conservation and caretaker authority granted by § 4-8-101, the police authority granted by § 4-8-103 does *not* distinguish between the second floor of the Capitol and other areas. Accordingly, the distinction between the second floor of the Capitol and other areas of the Capitol for purposes of caretaker and preservation functions does not apply to law enforcement activities. State law enforcement officials do not need authorization or approval from the Speaker of the House of Representatives or the Lieutenant Governor and Speaker of the Senate to perform their statutory authority to make arrests on the second floor of the Capitol.

In sum, the capitol police have general statutory authority to make arrests in and around the State Capitol and other state buildings, and they do not need any additional authorization or approval to exercise that arrest authority on the second floor of the Capitol.

On the other hand, the authority of the sergeants-at-arms to make arrests anywhere in the State Capitol, including on the second floor, would be subject to the authorization and approval of their respective houses. In contrast to the capitol police, who are state law enforcement officials governed by state statute, the sergeants-at-arms for the House and Senate are legislative officials with no express powers of arrest. *See* Senate Rule 5, 111th Gen. Assem. (providing that the "Speaker shall appoint such employees as . . . sergeants at arms . . . and all other Senate employees as are necessary for the proper transaction of the business of the Senate"); House Rule 9, 111th Gen. Assem. (providing that the Speaker shall appoint the "Chief Sergeant-At-Arms"). State law does not grant the sergeants-at-arms any specific duties or authorities other than noting that sergeants-at-arms perform certain duties on behalf of the legislature, such as serving legislative subpoenas and warrants. *See, e.g.*, Tenn. Code Ann. § 3-3-109 (providing that the sergeants-at-arms serve legislative subpoenas); *id.* § 3-3-117 (providing that sergeants-at-arms may take into custody any person on whom an attachment has been served for violating a subpoena, rule, or order issued by a legislative investigative committee); *id.* § 2-18-102(d) (providing that the sergeants-at-arms execute warrants to compel the attendance of absentee legislators to form a quorum). Nor do the Rules of the House or Senate expressly grant the sergeants-at-arms authority to make arrests.

As state law enforcement officers, the capitol police have authority to make arrests in or around the State Capitol regardless of whether the General Assembly is in session. No relevant statutory provision or applicable rule or regulation distinguishes between the periods during which the legislature is in session and out of session. To the extent the House or the Senate authorize their respective sergeants-at-arms to make arrests, each individual house may determine whether that authority applies only during session or applies when the legislature is out of session as well.

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