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Salary Suits

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Reference Number: CTAS-1219

"[T]he sheriff has sole discretion to request the number of assistants he believes are 'actually necessary to the proper conducting' of his office, as well as the salaries he feels are necessary to attract and retain them." *Shelby County Deputy Sheriff's Ass'n v. Gillless*, 972 S.W.2d 683, 686 (Tenn. Ct. App. 1997).

If the sheriff chooses to petition a court for additional deputies or assistants or for greater salaries than the budget adopted by the county legislative body allows, the sheriff must file the petition with the state trial court exercising criminal jurisdiction in the county, either criminal court or circuit court. The petition or application for authority to appoint or employ one or more additional deputies or assistants must be heard and determined by a judge (or chancellor) serving the judicial district in which the petition or application is filed. Public Chapter 276 of the Acts of 2005.

The statutory scheme enacted by the General Assembly for staffing and compensating the sheriff's office through a salary suit is clear. The sheriff must demonstrate that he or she cannot properly and efficiently conduct the affairs and transact the business of his or her office by devoting his or her entire working time thereto; and, the sheriff must show the necessity for the number of deputies and assistants required and the salary that should be paid each. *Boarman v. Jaynes*, 109 S.W.3d 286, 291 (Tenn. 2003). The sheriff is not required to demonstrate an inability to maintain his or her office by using the efforts of his or her staff as constituted and compensated at the time of the filing of the salary suit. *Boarman* at 291. Once the necessity of employing deputies or assistants is established, the appropriate trial court is empowered to determine the number of deputies and assistants needed and their salaries. *Id.* T.C.A. § 8-20-101(a) and (a)(2). See also *Shelby County Deputy Sheriffs' Ass'n v. Shelby County*, 1998 WL 74314, *3 (Tenn. Ct. App. 1998) (The sheriff has an absolute right to petition the court pursuant to T.C.A. § 8-20-101.); *Roberts v. Lowe*, 1997 WL 189345 (Tenn. Ct. App. 1997); *Easterly v. Harmon*, 1997 WL 718430 (Tenn. Ct. App. 1997).

The petition must be filed by the sheriff within 30 days after the date of final adoption of the budget for the fiscal year. No order increasing expenditures shall be effective during any fiscal year if the petition is filed outside the 30-day window unless the order is entered into by agreement of the parties. Also, a new officeholder has 30 days from taking office to file a petition and any order entered with respect to such petition may be effective during the fiscal year in which the petition was filed. T.C.A. § 8-20-101(b).

In the petition, the sheriff must name the county mayor as the party defendant. The county mayor is required to file an answer within five days after service of the petition, either admitting or denying the allegations of the petition or making such answer as the county mayor deems advisable under the circumstances. The petition and the answer are to be docketed, filed, and kept as permanent records of the court. The court must promptly in term or at chambers have a hearing on the application, on the petition and the answer. The court will develop the facts, and the court may hear proof either for or against the petition. The court may allow or disallow the application, either in whole or in part, and may allow the whole number of deputies or assistants applied for or a less number, and may allow the salaries set out in the application or smaller salaries, all as the facts justify. T.C.A. § 8-20-102. See *Moore v. Cates*, 832 S.W.2d 570, 572 (Tenn. Ct. App. 1992) (These statutes do not authorize the Trial Court to identify deputies by name and award them salary increases for a fixed period in the nature of a judgment against the county. Rather, the Trial Judge under the statutes is limited to authorizing the required number of deputies and fixing salaries for the positions.); *Roberts v. Lowe*, 1997 WL 189345 (Tenn. Ct. App. 1997).

The trial court does not have the authority to order retroactive pay for personnel hired by the sheriff prior to the filing of the petition to hire and employ deputies.

The only Tennessee decision directly addressing the question of whether a petition to employ and pay deputies may seek retroactive pay for deputies hired prior to the filing of the petition is *State ex rel. Obion County v. Bond*, 8 S.W.2d 367 (Tenn. 1928). In that case, the court interpreting the predecessor of T.C.A. § 8-20-101, The Public Acts of 1921, chapter 101, section 7, concluded that the intention of the legislature in enacting this legislation was to require the sheriff or other county official named in this statute to petition the appropriate court to hire additional deputies and for the amount of salary to be paid to the additional deputies in *advance* of the expenditures. Therefore, the court concluded that a petition to employ and pay deputies could not properly seek retroactive pay for deputies hired prior to the filing of the petition. *Id.* at 368. We believe that in light of this interpretation of the statute by the Tennessee Supreme Court, Sheriff Woods was not authorized to petition the Circuit Court at Henderson County for funds to pay the three additional

deputies retroactively that he had hired eight months prior to filing the petition. Accordingly, we hold that the trial court erred in granting Sheriff Woods' petition insofar as the petition seeks funds retroactively to pay these three deputies.

Woods v. Smith, 1992 WL 151443 (Tenn. Ct. App. 1992). See also *Roberts v. Lowe*, 1997 WL 189345 (Tenn. Ct. App. 1997) (T.C.A. § 8-20-101, *et seq.* (1993 & Supp. 1996), contains no provision for an award of retroactive raises, nor has Roberts cited any authority in his brief to support the trial court's action. We therefore conclude that the trial court abused its discretion in making the salaries effective retroactively.).

The order of the court is to be spread upon the minutes of the court and may from time to time, upon application, be amended or modified by increasing or decreasing the number of deputies and the salaries paid each. However, the sheriff may, without formal application to the court, decrease either the number of deputies or assistants and the salaries of any of them where the facts justify such course. T.C.A. § 8-20-104. See *Moore v. Cates*, 832 S.W.2d 570 (Tenn. Ct. App. 1992).

Either party dissatisfied with the decree or order of the court in the proceedings set out above has the right of appeal as in other cases. Pending the final disposition of the application to the court, or pending the final determination on appeal, the sheriff may appoint deputies or assistants to serve until the final determination of the case, who shall be paid according to the final judgment of the court. T.C.A. § 8-20-106.

The cost of the suit is paid out of the fees of the sheriff's office. The sheriff is allowed a credit for the same in settlement with the county trustee. T.C.A. § 8-20-107. See *Moore v. Cates*, 832 S.W.2d 570, 572 (Tenn. Ct. App. 1992) (Finally, the judgment against the county for attorney's fees is not authorized. While the Trial Court would have jurisdiction to approve fees for the filing of the application, such fees could only be ordered paid out of the Sheriff's funds, with the proviso that he receive credit for such items of cost in his settlement with the trustee.).

Pursuant to T.C.A. § 8-20-105, it is the duty of the sheriff to reduce the number of deputies and assistants and the salaries paid them when it can be reasonably done. The court or judge having jurisdiction may, on motion of the county mayor and upon reasonable notice to the sheriff, have a hearing on the motion and may reduce the number of deputies or assistants and the salaries paid any one or more when the public good justifies.

FIELD DEPUTIES. Pursuant to T.C.A. § 8-20-103, if the sheriff cannot establish that he or she is unable to personally discharge the duties of the sheriff's office by devoting his or her entire working time thereto, no deputy or deputies or assistants shall be allowed except for field deputy sheriffs. In addressing the former version of T.C.A. § 8-20-103, the Tennessee Court of Appeals noted that the "sheriff must apply to the court for the appointment of field deputy sheriffs, but need not show a necessity for their appointment." *Carter v. Jett*, 370 S.W.2d 576, 581 (Tenn. Ct. App. 1963).

Neither the current nor former version of T.C.A. § 8-20-103 define the term "field deputy sheriffs." However, the former version of the code, T.C.A. § 8-2003, stated that "the sheriff in each county may appoint all necessary field deputies for misdemeanor and criminal work and civil work before the justices of the peace; said field deputies to be appointed as provided under §§ 8-2001 and 8-2002. And in *Jones v. Mankin*, 1989 WL 44924 (Tenn. Ct. App. 1989), the court, in addressing the provisions of T.C.A. § 8-20-103, refers to field deputies as patrol deputies. Recent appellate court cases dealing with salary suits filed by sheriffs have overlooked or failed to address the clear and unambiguous language of T.C.A. § 8-20-103, which does not require the sheriff to demonstrate an inability to discharge the duties of his or her office by devoting his or her entire working time thereto before the court is authorized to award the sheriff additional field deputies, and instead have focused on the language of T.C.A. § 8-20-101 which does require the sheriff to meet the aforementioned threshold showing before the court is authorized to award the sheriff additional field deputy sheriffs.

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