County Technical Assistance Service
INSTITUTE for PUBLIC SERVICE

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Removal of Deputies and Assistants

Dear Reader:

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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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Removal of Deputies and Assistants

Reference Number: CTAS-1224

The sheriff may terminate, at will, any and all deputies and assistants in his or her office. T.C.A. § 8-20-109. However, in any county having a civil service system for the sheriff's office pursuant to Title 8, Chapter 8, Part 4, or other provision of general law or the provisions of a private act, or a civil service system for all county employees pursuant to the provisions of a private act, the employment or termination of employment of any deputy or assistant in any offices covered by Title 8, Chapter 20 shall be pursuant to the provisions of such civil service system. The provisions of T.C.A. § 8-20-109 do not apply to counties with civil service. T.C.A. § 8-20-112. *See Patterson v. Rout*, 2002 WL 1592674 (Tenn. Ct. App. 2002).

Patronage Dismissals

A sheriff may not dismiss a nonpolicymaking employee for political reasons. Such an unlawful firing may subject the sheriff and the county to liability under the federal civil rights laws.

> At the same time that the [United States Supreme] Court has held that "the practice of patronage dismissals is unconstitutional under the First and Fourteenth Amendments," *Elrod v. Burns,* 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), it has held that this protection does not extend to public employees who occupy "policymaking" positions in the government, *id.* at 367; *see also Rutan v. Republican Party,* 497 U.S. 62, 110 S.Ct. 2729, 111 L.Ed.2d 52 (1990) (extending *Elrod*' s reasoning to promotions and demotions). Where the effective performance of a particular office demands affiliation with a particular party or subscription to a particular policy, the Constitution permits dismissal based on political grounds. *See Branti v. Finkel,* 445 U.S. 507, 518, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980).

Cagle v. Headley, 2005 WL 2108367, *2 (6th Cir. 2005). *See also Garvey v. Montgomery*, 128 Fed.Appx. 453, 463 (6th Cir. 2005) (The First Amendment protection against political discharges does not extend to public employees who hold positions in which "an employee's private political beliefs would interfere with the discharge of his public duties." This principle is known as the *Branti/Elrod* exception to the general rule that public employees may not be discharged on account of their political affiliations.); *Justice v. Pike County Bd. of Educ*., 348 F.3d 554, 559 (6th Cir. 2003) ("Limiting patronage dismissals to policymaking positions is sufficient to achieve the valid governmental objective of preventing holdover employees from undermining the ability of a new administration to implement its policies." *Id.* In contrast, " '[n]onpolicymaking individuals usually have only limited responsibilities and are therefore not in a position to thwart the goals of the in-party.'") (citations omitted).

The Sixth Circuit Court of Appeals has held "that a deputy sheriff does not fall within the policymaking exception where 'the position of deputy sheriff was at the bottom of the chain of command in the [department],' the primary duty of the deputy sheriff was 'to patrol the roads of the county' and the record did not indicate that the deputy had 'the amount of discretion or policymaking authority[ ] that would make political affiliation an appropriate requirement for employment.'" *Cagle* at *3 (6th Cir. 2005) *quoting Hall v. Tollett,* 128 F.3d 418, 429 (6th Cir. 1997). *See also Heggen v. Lee,* 284 F.3d 675, 684 (6th Cir. 2002) (noting that serving civil and arrest warrants, transporting prisoners and providing courtroom security did not make a deputy sheriff a policymaker); *Sowards v. Loudon County,* 203 F.3d 426, 438 (jailer was not a policymaker where her duties included "providing for the needs and safety of the jail's inmates, such as providing food, bedding, and support for the inmates, taking precautions to ensure their safety, and arranging communications between inmates and the public"); *Ruffino v. Sheahan*, 218 F.3d 697, 700 (7th Cir. 2000) ("We note as well that it would be a remarkable extension of the policymaker line of cases to hold that the hundreds of deputy sheriffs in Cook County are all policymakers, for whom the Sheriff has a legitimate interest in insisting on personal and political loyalty.").

By contrast, the Court has held that the position of a chief deputy does qualify as a policymaking position where the employee "assumed the sheriff's duties in the sheriff's absence, supervised the deputies, scheduled their shifts, and recommended employees for dismissal to the sheriff." *Hall v. Tollett,* 128 F.3d 418, 425 - 426 & n. 4 (6th Cir. 1997). "A sheriff, no less than a governor, is 'entitled to select a person whom he kn[ows] to share his political beliefs to occupy a position with such high levels of discretion and policymaking authority.'" *Cagle* at *4 *quoting Hall* at 426. In *Cagle*, the Court found that the position of lieutenant in the sheriff's office qualified as a policymaking position and held that "political affiliation" was an appropriate requirement for employment where the employee attended weekly and often confidential meetings, possessed the authority to discipline other employees and had managerial power over a division. *Cagle* at *4. The Court noted that although lieutenants in the sheriff's office were required to

handle pedestrian tasks as well as substantial ones and that they were required to "pursue the goals and objectives" of the sheriff, these facts did not prevent their position from being a policymaking one. *See also Garvey v. Montgomery*, 128 Fed.Appx. 453, 463 (6th Cir. 2005) (Former county employee's position of administrative officer was one in which an employee's private political beliefs would interfere with the discharge of his public duties, and thus, the First Amendment protection against political discharges did not extend to the employee); *Fuerst v. Clarke*, 389 F.Supp.2d 1042 (E.D. Wis. 2005) (Promotion to sergeant sought by deputy sheriff was for a policymaking position exempt from First Amendment protections, and thus deputy sheriff could not maintain claim against county sheriff, alleging retaliatory failure to promote due to deputy's political activities; sergeants in position at issue worked autonomously and operated with some discretion when performing their duties and had meaningful input into implementation of department policy.).
