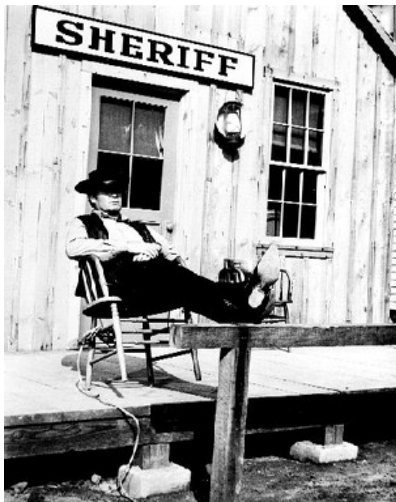


Office of Sheriff

Presented by:
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THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Office of Sheriff



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Office of Sheriff

The office of sheriff is ancient in origin; its beginning can be traced back centuries to medieval England. The office of sheriff has been provided for in each of Tennessee's three constitutions (1796, 1835 and 1870) and was retained in the latest amendment in 1978. The sheriff is elected to a four-year term in the August general election in the same year in which the governor is elected.

Tenn. Const., art. VII, § 1; T.C.A. § 2-3-202. *Smith v. Plummer*, 834 S.W.2d 311, 313 (Tenn.Ct.App. 1992) (Sheriffs are constitutional officers.).

Persons Ineligible for the Office of Sheriff

No person shall engage in the practice of law or serve as a member of the general assembly while serving as sheriff.

T.C.A. § 8-8-101 (Amended 2009).

See Op. Tenn. Atty. Gen. 80-584 (December 9, 1980)(a sheriff must resign his office upon being elected as a state representative).

Qualifications

General

The general qualifications of officeholders are set forth in T.C.A. § 8-18-101.

Specific Qualifications

The specific qualifications for sheriff are set forth in T.C.A. § 8-8-102(a).

See also Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-02-.03 (1).

Newly Elected Sheriffs' School

Every person who is elected to the office of sheriff after August 1, 2006, in a regular August general election for a four year term, and is a first term sheriff, regardless of their previous law enforcement experience, must successfully complete the newly elected sheriffs' school prior to the 1st day of September immediately following their election.

Any sheriff who does not fulfill the obligations of this training course loses the power of arrest.

T.C.A. § 8-8-102(c)(2).

Newly Elected Sheriffs' School

Thereafter, the sheriff must successfully complete 40 hours of annual in-service training appropriate for the rank and responsibilities of a sheriff.

Any sheriff who does not fulfill the obligations of this annual in-service training shall lose the power of arrest.

T.C.A. § 8-8-102(c)(1) and (2).

In-Service Training

All sheriffs are required to complete, on an annual basis, a POST approved 40 hour in-service training course appropriate for the rank and responsibilities of a sheriff.

Any sheriff who does not fulfill the obligations of this annual in-service training shall lose the power of arrest.

T.C.A. § 8-8-102(c)(1)

Oath

The sheriff shall, besides the oaths prescribed for public officers, take an oath that the sheriff has not promised or given, nor will give, any fee, gift, gratuity, or reward for the office or for aid in procuring such office, that the sheriff will not take any fee, gift, or bribe, or gratuity for returning any person as a juror or for making any false return of any process, and that the sheriff will faithfully execute the office of sheriff to the best of such sheriff's knowledge and ability agreeably to law.

T.C.A. § 8-8-104

Bond

An official bond is an instrument that requires the party or parties designated as sureties to pay a specified sum of money if the official who executes the bond fails to perform certain acts or performs wrongful and injurious acts in the office. In other words, an official bond is a written promise, made by a public official

- (1) to perform all the duties of the office,
- (2) to pay over to authorized persons all funds received in an official capacity,
- (3) to keep all records required by law,
- (4) to turn over to his or her successor all records, money, and property, and
- (5) to refrain from anything that is illegal, improper, or harmful while acting in an official capacity.

Sheriff's Liability

Any person who is injured by the failure of the Sheriff to keep this promise may collect from the Sheriff's sureties.

It is important to know that a bond protects the state, the county, and the citizens in the event the Sheriff fails to perform his or her duties properly.

The bond does not protect the Sheriff from liability.

T.C.A. § § 8-19-111 & 8-19-301.

Bond

If the official fails to perform the duties, violates the law, or commits a harmful act, the person who is injured may collect damages from the sureties on the official bond.

The sureties must be surety companies doing business in Tennessee unless the county commission by two-thirds majority vote authorizes two individuals to act as good sureties instead of a surety company.

T.C.A. § § 8-19-111, 8-19-101, 8-19-301.

Sheriff's Bond

The sheriff, before entering on the duties of that office, shall enter into an official bond prepared in accordance with the provisions of Title 8, Chapter 19, in a penalty of not less than one hundred thousand dollars (\$100,000), or in a greater sum as the county legislative body may determine, payable to the state, and conditioned well and truly to execute and make due return of all process directed to the sheriff, and to pay all fees and sums of money received by the sheriff, or levied by virtue of any process, into the proper office or to the person entitled, and faithfully to execute the office of sheriff and perform its duties and functions during such person's continuance therein. This bond shall be acknowledged before the county legislative body, in open session, approved by it, recorded upon the minutes, and recorded in the office of the county register of deeds and transmitted to the office of the county clerk for safekeeping. T.C.A. § 8-8-103

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Filing Bond

Official bonds of officers which must be transmitted to the county clerk must be so transmitted for filing within forty days of election or twenty days after the term of office begins.

T.C.A. § 8-19-115.

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Penalty for Failure to File

Any officer who is required by law to give bond and who fails to file it in the proper office within the time prescribed vacates the office.

In such cases, the officer in whose office the bond is required to be filed must certify this failure to the appointing power.

T.C.A. § 8-19-117.

Acting Before Approval of Bond

Any officer required by law to give bond who performs any official act before the bond is approved and filed as required is guilty of a misdemeanor.

T.C.A. § 8-19-119.

Insurance - T.C.A. § 8-19-101

The county legislative body can chose to use insurance instead of bonds.

The insurance policy must provide government crime coverage, employee dishonesty insurance coverage, or equivalent coverage that insures the lawful performance by officials and their employees of their fiduciary duties and responsibilities.

Any such policy or agreement maintained shall have limits of not less than four hundred thousand dollars (\$400,000) per occurrence.

Insurance - T.C.A. § 8-19-101

A policy or agreement satisfying these requirements shall be deemed to be a blanket official bond for each official or office identified in the policy or agreement for all purposes.

A certificate of insurance evidencing the officials and offices covered, the amount of coverage maintained, and the type of coverage provided shall be filed in the register's office for the county in which the official is located.

A certificate of insurance shall satisfy the requirement for the filing of the official bond by the named officials.

Funding for the Office of Sheriff

Sheriffs receive fees from the public for services they perform.

However, pursuant to T.C.A. § 8-24-103(a)(2), the sheriff must pay over to the trustee, on a monthly basis, all fees, commissions, and charges collected by the sheriff's office during the month.

Funding for the Office of Sheriff

The sheriff must make a charge for all services performed by the sheriff as now provided by law, and the sheriff has no authority to waive, remit, or release any fee for any service or services performed.

T.C.A. § 8-24-103(a)(4).

Funding for the Office of Sheriff

Because the sheriff is no longer on the “fee system,” it is the duty of the county legislative body to make the necessary appropriation and pay to the sheriff the authorized expenses fixed by law for operating of the sheriff’s office, direct from the county trustee in 12 equal monthly installments, irrespective of the fees earned by the sheriff.

T.C.A. § 8-24-103(a)(1).

Funding for the Office of Sheriff

Pursuant to T.C.A. § 8-20-120, the county legislative body is required to fund the operations of the sheriff’s office.

Funding for the Office of Sheriff

Accordingly, the county legislative body is authorized to appropriate moneys to purchase all necessary equipment for use by the sheriff for preservation of the peace and for the service and execution of all process, criminal and civil, and to pay the salaries of deputy sheriffs appointed pursuant to the provisions of Title 8, Chapter 20.

T.C.A. § 5-9-101(21).

Funding for the Office of Sheriff

All necessary books, stationery, office equipment, stamps, and supplies of all kinds used in the conduct of the sheriff's office are to be furnished and paid for by the county.

T.C.A. § 8-22-107(a).

Funding for the Office of Sheriff

Additionally, the sheriff is authorized to include in the sheriff's expense account, as part of the expenses of the office, **the necessary cost of arresting criminals**, of furnishing and operating the county jail and maintaining the state and county prisoners therein, and all other necessary and legitimate expenses incurred in the proper and efficient administration of the sheriff's office.

T.C.A. § 8-22-110(a).

Funding for the Office of Sheriff

In *State ex rel. Doty v. Styke*, 199 S.W.2d 468, (Tenn.Ct.App. 1946), the court held that the depreciation on two automobiles and the expenses of operating them were necessary costs incident to the arrest of criminals which the sheriff could include as part of his office expenses without applying to the county court for the authority to make such expenditures.

Funding for the Office of Sheriff

An examination of what expenses are reimbursable for the sheriff should include an examination of T.C.A. § 8-22-110.

An interpretation of Code § 10729, from which T.C.A. § 8-22-110 was derived, occurred in *State ex rel. Doty v. Styke*, 199 S.W.2d 468 (1946). The court concluded that necessary costs incident to the arrest of criminals included the depreciation of two automobiles and the expense of operating them; further, the sheriff was authorized to include those costs as part of his expenses without application to the county prior to making the expenditures.

Op. Tenn. Atty. Gen. No. 81-380 (June 22, 1981).

FEES

Tennessee Code Annotated § 5-8-101 lists the sources of county revenue.

Tennessee Code Annotated § 8-21-901 lists fees a sheriff may collect (but does not list all the fees a sheriff may collect).

FEES

Four Important Rules

FEES Authority

RULE 1

The sheriff is not allowed to demand or receive fees or other compensation for any service further than is expressly provided by law.

T.C.A. § 8-21-101

FEES

Criminal Liability

RULE 2

If any officer demands or receives any other or higher fees than are prescribed by law, such officer is liable to the party aggrieved in the penalty of \$50.00, to be recovered before any judge of the court of general sessions, and the officer also commits a Class C misdemeanor.

T.C.A. § 8-21-103.

FEES

Individual Liability

RULE 3

Any officer who fails to charge or collect from the one liable therefor, every fee, commission, compensation that the county may be entitled to, and which, by the exercise of reasonable diligence could have been collected, or by failing to present the statement of receipts as herein directed, shall be held individually liable to the county for the amount that should have been collected, and the same shall be charged against the officer and be deducted from the officer's salary, or collected from the officer by law.

T.C.A. § 8-22-105.

Fees No Authority to Waive

RULE 4

The sheriff must make a charge for all services performed by the sheriff as now provided by law, and the sheriff has no authority to waive, remit, or release any fee for any service or services performed.

T.C.A. § 8-24-103(a)(4).

Statutory Duties

The Tennessee Constitution does not prescribe the duties of the office of sheriff even though sheriffs are constitutional officers.

In other words – there is no such thing as constitutional duties.

Statutory Duties

The office of sheriff is a most ancient one.

It carries with it, in America, all of its common-law duties and powers except as modified by statute.

State ex rel. Thompson v. Reichman, 188 S.W. 225, 227 (Tenn. 1916), *reh'g denied*, 188 S.W. 597 .

Statutory Duties

As noted, the sheriff's duties were originally defined by the common law but are now largely prescribed by statute.

George v. Harlan, 1998 WL 668637, *3 (Tenn.Ct.App. 1998) *Citing Metropolitan Gov't of Nashville & Davidson County v. Poe*, 383 S.W.2d 265, 273 (1964).

Statutory Duties

Over time, the sheriff's responsibilities have expanded from being primarily ministerial to include peacekeeping functions.

Ministerial

Of or relating to administrative and executive duties and functions of government.

Of, relating to, or being a mandatory act or duty admitting of no personal discretion or judgment in its performance.

Being or having the characteristics of an act or duty prescribed by law as part of the duties of an administrative office.

Relating to or being an act done after ascertaining the existence of a specified state of facts in obedience to legal and esp. statutory mandate without exercise of personal judgment or discretion.

Statutory Duties

Today, the sheriff's statutory duties encompass his common law duties and can be grouped into four broad categories:

- (1) attending the courts,
- (2) serving process,
- (3) operating the jail,
- (4) keeping the peace.

Note: Collecting Taxes (historical)

Statutory Duties Historical Note

Collecting Taxes – Then & Now

The sheriff is the collector of taxes under the laws of this state, and the appointment of any other person by the county court to perform that duty, is void. *Bailey v. Lockhart*, 12 Tenn. 567, (Tenn Err & App 1833)

See T.C.A. § 67-5-2001 (delinquent tax lists).

Statutory Duties Historical Note

Custody and Control of the Workhouse

Anciently and traditionally, the Sheriff has not had this responsibility. In many counties in Tennessee the county highway commission has custody and control of the workhouse because the prisoners therein work on the highways. The director of the street departments of the cities ordinarily has custody and control of the city workhouse because the prisoners therein work on the streets.

Metropolitan Government of Nashville and Davidson County v. Poe, 383 S.W.2d 265 (Tenn. 1964).

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Attending the Courts



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Attending the Courts

The sheriff is charged with the custody and security of the courthouse unless the county legislative body assigns this duty to someone else.

T.C.A. § 5-7-108(a)(1).

Attending the Courts

NOTE

While it is true that the sheriff is charged with the custody and security of the courthouse, unless the county legislative body assigns this duty to someone else, individual county office holders may prescribe rules and regulations with respect to access to their offices, to include but not limited to the times when their office will be open to the public and who may be given access to their offices. Neither the sheriff or the county mayor may dictate to the other county office holders who may or may not have access to their offices.

Attending the Courts

It is the duty of the sheriff to prevent trespasses, exclude intruders, and keep the courthouse and the courthouse grounds in order, reporting from time to time the repairs required and the expense, to the county legislative body.

T.C.A. § 5-7-108(a)(1).

Attending the Courts

Further, it is the duty of the sheriff to see that the state and national flags are properly displayed in each courtroom while the county legislative body is in session.

T.C.A. § 5-7-108(b).

Attending the Courts

The sheriff has a statutory duty to furnish deputies to the courts.

Bane v. Nesbitt, 2006 WL 3694444, *9
(Tenn.Ct.App. 2006).

Attending the Courts

Except in Davidson County, it is the duty of the sheriff to attend upon all the courts held in the county when in session, cause the courthouse or courtroom to be kept in order for the accommodation of the courts, and obey the lawful orders and directions of the court.

T.C.A. § 8-8-201(a)(2)(A). *See* Op. Tenn. Atty. Gen. 10-77 (June 1, 2010).

Attending the Courts

And, unless otherwise provided, it is the duty of the sheriff in every county to provide sufficient bailiffs to serve the general sessions courts.

T.C.A. § 16-15-715.

Attending the Courts

Furthermore, it is the duty of the sheriff to furnish the necessary deputies to attend and dispense with the business of the juvenile courts.

T.C.A. § 37-1-213.

Attending the Courts

Mandatory Training

Beginning July 1, 2008, deputy sheriffs newly assigned to courts pursuant to § § 8-8-201(a)(2)(A), 16-15-715, and 37-1-213 shall participate in 40 hours of basic training in courthouse security within 12 months of assignment to that duty.

Every year thereafter the deputies shall participate in a minimum of 16 hours of training specific to courthouse security that has been approved by the POST commission.

T.C.A. § 5-7-108(a)(2).

Attending the Courts

“Deputy sheriffs who serve as bailiffs, like all other deputy sheriffs, are required to obtain peace-officer certification from the Peace Officer Standards and Training Commission (POST).”

Op. Tenn. Atty. Gen. 10-77 (June 1, 2010).

Attending the Courts

Courtroom Security Committee

Pursuant to T.C.A. § 16-2-505(d), each county must establish a court security committee. In addition to the sheriff, the committee is to be composed of the county mayor, the district attorney general, the presiding judge of the judicial district, and a court clerk from the county designated by the presiding judge. The committee is charged with examining the space and facilities to determine the security needs of the courtrooms in the county in order to provide safe and secure facilities.

Attending the Courts

Summoning Jurors

Another duty of the sheriff, as it relates to both attending the courts and serving process, is summoning the jury.

- (a) The sheriff shall summon jurors by first class mail sent to the regular address of each member of the jury pool, giving notice of such person's selection for jury duty. The summons shall be mailed to the regular address at least ten (10) days prior to the date fixed for such person's appearance for jury service.
- (b) Notwithstanding subsection (a), the sheriff may summon jurors by personal service.
- (c) The jury coordinator shall provide sufficient information regarding the members of the jury pool to enable the sheriff to summon the jurors pursuant to this section.
- (d) Notwithstanding subsections (a)-(c), the jury coordinator may, at the coordinator's discretion, summon the jurors by first class mail without the assistance of the sheriff.

T.C.A. § 22-2-307.

Serving Process

It is the duty of the sheriff to execute and return, according to law, the process and orders of the courts of record of this state, and of officers of competent authority, with due diligence, when delivered to the sheriff for that purpose.

T.C.A. § 8-8-201(a)(1).

Serving Process

It is the duty of the sheriff to execute within the county all writs and other process legally issued and directed to the sheriff and make due return thereof, either personally or by a lawful deputy or, in civil lawsuits only, by a lawfully appointed civil process server.

T.C.A. § 8-8-201(a)(5)(A).

Serving Process

The provisions of T.C.A. § 8-8-201(a)(5)(A) relative to civil process servers do not apply in Hamilton, McMinn, Sullivan and Sumner counties.

T.C.A. § 8-8-201(a)(5)(B).

Serving Process

It is the duty of the sheriff to levy every writ of execution upon a defendant's property, first on the defendant's goods and chattels if there are any and upon the defendant's lands in order to satisfy the plaintiff's judgment, and upon a surety's property in the proper case.

T.C.A. § 8-8-201(a)(13), (14), and (15).

Operating the Jail



**Wilson County Sheriff Perry T. Burnett
in his office at the county jail in May 1939.**

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Operating the Jail

From time immemorial the jail has, of right,
belonged to the office of sheriff. It was so in
Tennessee at the adoption of all the constitutions.

State v. Cummins, 42 S.W. 880, 881 (Tenn. 1897).

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Operating the Jail

Tennessee case law makes it clear that the sheriff, by virtue of his office, is the **jailor** and is entitled to the custody of the jail.

Felts v. City of Memphis, 39 Tenn. 650 (1859);

State ex rel. Bolt v. Drummond, 160 S.W. 1082 (Tenn. 1913).

See also *State v. Cummins*, 42 S.W. 880 (Tenn. 1897).

Operating the Jail

It is the duty of the sheriff to take charge and custody of the jail of the sheriff's county and of the prisoners therein.

T.C.A. § 8-8-201(a)(3).

Operating the Jail

The sheriff is charged with receiving those persons lawfully committed to the jail and with keeping them personally or by **deputies or jailer** until they are lawfully discharged.

T.C.A. § 8-8-201(a)(3).

Operating the Jail

It is the duty of the sheriff to be constantly at the jail or have someone there with the keys to liberate the prisoners in case of fire.

T.C.A. § 8-8-201(a)(3).

Operating the Jail

Under the common law the sheriff had the right to appoint a jailer.

Felts v. City of Memphis, 39 Tenn. 650 (1859).

Operating the Jail

The right of the sheriff to appoint a jailer has been codified in T.C.A. § 41-4-101, wherein it states that the sheriff is authorized to appoint a jailer.

Conservator of the Peace



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Conservator of the Peace 1854

In order to understand the powers and duties of a sheriff, we must know what they were at common law; for it is by the common law that he is governed, except as altered by statute.

Town of Alexandria v. Dearmon, 2 Sneed 104
(Tenn. 1854).

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Conservator of the Peace 1854

Lord Coke classes the duties of sheriff under three heads, to wit: First, the service of process; second, executing the judgments and decrees of courts of justice; and, thirdly, he is conservator of the peace. 1 Co. 64. The two former of these duties he performed by virtue of writs directed to him; the latter duty was obligatory upon him by virtue of his office.

Town of Alexandria v. Dearmon, 2 Sneed 104
(Tenn. 1854).

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Conservator of the Peace Authority of the Sheriff to Go Armed



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Conservator of the Peace

Carrying of Arms – 1873 - 1880

Those officers who are alone allowed to thus carry arms--that, is, who execute process, or search for and arrest criminals can only do so while bona fide engaged in these duties.

Miller v. State, 65 Tenn. 449 (Tenn. 1873).

Conservator of the Peace

Carrying of Arms – 1873 - 1880

Officers with criminal process to execute may lawfully go armed, but Sheriffs, Constables, Trustees, and other officers with mere civil process to execute, are liable to indictment for carrying a pistol, except as prescribed by statute.

Gayle v. State, 72 Tenn. 466 (Tenn. 1880).

Conservator of the Peace

Carrying of Arms - 1886

Tennessee Code provided:

The carrying of all pistols is forbidden except the army or navy pistol, and these must be carried openly in the hand: Code, sec. 5533.

The exceptions to the mandate of the statute, as given in section 5535, among others, are persons employed in the army, etc., or any officer or policeman, while *bona fide* engaged in his official duties, in the execution of process, or while searching for or engaged in arresting criminals.

Conservator of the Peace

Carrying of Arms - 1886

The policeman, above all officers, requires the protection of arms. **His duty is not like sheriffs and constables, to serve process, and make such arrests as required.** He is a watchman, both by day and night, in our cities, to seek for probable offenders and offenses, and to arrest parties guilty, as the guardian of the homes and business houses of our people living in cities, charged with watching for offenders, both by day and night, and especially at night. He is entitled to the utmost liberality in the construction of the statute in his favor.

State v. Rogers, 84 Tenn. 510, (Tenn. 1886).

Conservator of the Peace

Carrying of Arms - 1985

Tenn. Op. Atty. Gen. No. 85-179

Authority of an officer to carry a firearm.

T.C.A. § § 39-6-1701 – 39-6-1702

“The Tennessee Supreme Court has construed the exemption narrowly, focusing on the statutory authority of the officer involved, as well as the nature of his duties.”

“Furthermore, in those cases where the duties of an officer include the execution of criminal process, the court has strictly required that the officer be actually engaged in that duty at the time he is carrying the weapon.”

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Conservator of the Peace

Carrying of Arms - 1985

Tenn. Op. Atty. Gen. No. 85-179

Authority of an officer to carry a firearm.

T.C.A. § § 39-6-1701 – 39-6-1702

“Of course, a regular police officer on duty may carry a weapon under the exemption, since he is always engaged in watching for criminals, **unlike the sheriff** or constable whose duty it is only to serve process and make such arrests as required. *State v. Rogers*, 84 Tenn. 510 (1886).”

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Conservator of the Peace

Carrying of Arms - 1988

T.C.A. § 39-6-1702

T.C.A. § 39-6-1702(a)(2) provides that the provision of T.C.A. § 39-6-1701, making it a misdemeanor to carry a dangerous weapon, does not apply, inter alia, to the following:

To any officer or policeman, or to any director, commissioner, or similar head of any metropolitan or municipal police department in this state, whether elected or appointed, **while bona fide engaged in his official duties, in the execution of process, or while searching for or engaged in arresting criminals**, nor to persons who may have been summoned by such officer or policeman, in the discharge of his duties, and in arresting criminals and transporting and turning them over to the proper authorities.

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Conservator of the Peace

Carrying of Arms - 1988

T.C.A. § 39-6-1702(c)(2) provides as follows:

Any officer, policeman, bonded and sworn deputy sheriff, director, commissioner, retired law enforcement officer who is bonded and who at the time of receiving the written directive has successfully completed and continues to successfully complete on an annual basis, a firearm training program of at least eight (8) hours duration, or other officers heretofore authorized to carry weapons by this or any other statute of the state of Tennessee may carry such weapons at all times pursuant to a written directive by the executive supervisor of the organization to which he is or was attached or employed regardless of his regular duty hours or assignments; however, a copy of such written directive shall be retained as a portion of the records of the particular law enforcement agency who shall issue such directive.

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Conservator of the Peace

T.C.A. § 39-6-1701 – 39-6-1725
were repealed in 1989.

Get a handgun carry permit now.

Conservator of the Peace

Written Directive and Permit to Carry Handguns

T.C.A. § 39-17-1315

(a) (1) (A) The following persons may carry handguns at all times pursuant to a written directive by the executive supervisor of the organization to which the person is or was attached or employed, regardless of the person's regular duty hours or assignments:

(i) Any bonded and sworn deputy sheriff who, at the time of receiving the written directive, has successfully completed and continues to successfully complete on an annual basis a firearm training program of at least eight (8) hours duration;

Conservator of the Peace

Law Enforcement Officers Permitted to Carry Firearms

T.C.A. § 39-17-1350

- (a) Notwithstanding any law to the contrary, any law enforcement officer may carry firearms at all times and in all places within Tennessee, on-duty or off-duty, regardless of the officer's regular duty hours or assignments, except as provided by subsection (c), federal law, lawful orders of court or the written directives of the executive supervisor of the employing agency.
- (d) For purposes of this section, "law enforcement officer" means a person who is a full-time employee of the state in a position authorized by the laws of this state to carry a firearm and to make arrests for violations of some or all of the laws of this state, or a full-time police officer who has been certified by the peace officer standards and training commission, or a commissioned reserve deputy sheriff as authorized in writing by the sheriff, or a commissioned reserve or auxiliary police officer as authorized in writing by the chief of police, **or a sheriff who has been certified by the peace officer standards and training commission**, or a deputy sheriff employed by a county as a court officer or corrections officer as authorized in writing by the sheriff.

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STATE EMPLOYEES AUTHORIZED BY STATUTE TO CARRY A WEAPON

- **Department of Correction**
- Employees designated by the Commissioner. T.C.A. § 4-3-609(a).
- Internal affairs investigators. T.C.A. § 4-3-609(b).
- Corrections officers. T.C.A. § 39-17-1350(f).
- **Department of Safety**
- State security personnel. T.C.A. § 4-3-2006(b).
- Tennessee highway patrol officers. T.C.A. § 4-7-108.
- Motor vehicle enforcement officers. T.C.A. § 55-5-114(a) and T.C.A. § 65-15-106(c)(1).

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

STATE EMPLOYEES AUTHORIZED BY STATUTE TO CARRY A WEAPON

- **Division of Parks and Recreation** T.C.A. § 11-3-107(b).
Employees of the Division of Parks and Recreation commissioned by the Commissioner of Environment and Conservation as law enforcement officers.
- **Office of Homeland Security** T.C.A. § 38-3-114.
Office of Homeland Security officers commissioned by the Commissioner of the Tennessee Department of Safety as peace officers for the Office of Homeland Security.

STATE EMPLOYEES AUTHORIZED BY STATUTE TO CARRY A WEAPON

- **Tennessee Valley Authority** T.C.A. § 38-3-120.
TVA agents, servants, or employees commissioned by the Commissioner of the Tennessee Department of Safety as peace officers for TVA.
- **Tennessee Bureau of Investigation**
 - TBI uniformed officers. T.C.A. § 38-6-119.
 - TBI drug enforcement officers. T.C.A. § 53-11-405.
- **Board of Regents/Board of Trustees** T.C.A. § 49-7-118.
Police officers, public safety officers, and security officers commissioned by the Board of Regents of the state university and community college system and the Board of Trustees of the University of Tennessee.

STATE EMPLOYEES AUTHORIZED BY STATUTE TO CARRY A WEAPON

- **Department of Revenue**
 - Revenue enforcement officers (beer). T.C.A. § 57-5-415(b).
 - Revenue enforcement officers (tax). T.C.A. § 67-1-1441.
 - Revenue enforcement officers (tobacco tax). T.C.A. § 67-4-1014(c)(1).
- **Alcoholic Beverage Commission**
 - ABC enforcement officers. T.C.A. § 57-9-206(a).
- **Department of Commerce and Insurance**
 - State Fire Marshal & deputies. T.C.A. § 68-102-149(a).
- **Tennessee Wildlife Resources Agency**
 - Commissioned personnel. T.C.A. § 70-1-308(b).

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Conservator of the Peace

State ex rel. Thompson v. Reichman - 1916

To summarize, it is the duty of a sheriff to keep the peace and prevent or suppress crimes and public offenses. In order to do this, he is authorized to arrest, without a warrant, persons known to be or suspected of being armed for the purpose of committing a breach of the peace, and such persons may be required to give security to keep the peace. All other breaches of the peace he is simply commanded to suppress. And, to this end, he is authorized, for such a breach of the peace threatened in his presence, to make an arrest without a warrant. He may likewise arrest for any misdemeanor committed in his presence. In the case of all other misdemeanors, he must have a warrant.

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Conservator of the Peace

State ex rel. Thompson v. Reichman

Now what kind of an officer does this make of a sheriff?

We cannot agree that he is a mere process server, or that he may, if he would discharge the duties of his office, be passive until some one swears out a warrant for him to serve. Nor can he, if he knows in any way that a public offense has been committed or is about to be committed, remain inactive. His duties are not merely to apprehend those who have committed offenses but to prevent such offenses. The sections of the Code quoted make this plain. He is "to keep the peace" and "prevent crime."

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Conservator of the Peace

State ex rel. Thompson v. Reichman

He is to prevent "public offenses" and suppress breaches of the peace. **He is the commander in chief of the law forces of the county. All judicial and ministerial officers of justice and all city officials are required to aid him, and the male population of his county is subject to his command "in the prevention and suppression," not only of violent breaches of the peace, but of all public offenses.** It is idle to say that all this does not imply initiative on the part of the sheriff in the enforcement of the law against public offenses.

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Conservator of the Peace

State ex rel. Thompson v. Reichman

The duties imposed cannot be performed without some degree of activity and diligence to inform himself of conditions in his county. Certainly they preclude the idea that he may, without dereliction, shut his eyes to what is common knowledge in the community, or purposely avoid information, easily acquired, which will make it his duty to act.

Conservator of the Peace

State ex rel. Thompson v. Reichman

We do not mean that it is his duty to patrol the county as the streets of the city are patrolled by the police, or to maintain a detective force to ferret out crimes.

All we now decide is that it is the duty of the sheriff and his deputies to keep their eyes open for evidence of public offenses, and that it is a distinct neglect of duty for them to ignore common knowledge of law violations or to intentionally avoid being where they have reason to believe that such offenses are being committed.

Conservator of the Peace

State ex rel. Thompson v. Reichman

Again it is clear that **the duties and powers of a sheriff within the limits of an incorporated city are precisely the same that they are in the remainder of the county. The law draws no distinction.** The city officials are conservators of the peace. But they do not supplant him. On the contrary, by the express terms of the statute, they are to aid him. He is the chief and they are his assistants.

State ex rel. Thompson v. Reichman, 188 S.W. 225, 227-228 (Tenn. 1916).

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Conservator of the Peace

Other Cases - 1940

[Tennessee] Code, § 11418, which denominates the sheriff as “the principal conservator of the peace in his county,” is followed by Section 11419, which reads:

“The judicial and ministerial officers of justice in the state, and the mayor, aldermen, marshals, and police of cities and towns, are also conservators of the peace, and required to aid in the prevention and suppression of public offenses, and for this purpose may act with all the power of the sheriff.”

Vickers v. State, 142 S.W.2d 188 (Tenn. 1940).

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Conservator of the Peace

Other Cases - 1972

It is the duty of all county sheriffs to maintain law and order in parts of the county which the sheriff knows are not being adequately policed by local authorities, which calls for the exercise of a reasonable degree of activity and diligence on the part of the sheriff to keep informed of conditions in his county, **but does not require him 'to patrol all roads all highways in the County regularly.'**

State ex rel. Windham v. LaFever, 486 S.W.2d 740 (Tenn. 1972), citing *State ex rel. Thompson v. Reichman*, 188 S.W. 225 (Tenn. 1916).

Conservator of the Peace

Other Cases - 1989

Tennessee Code Annotated § § 8-8-213 and 38-3-102 require the sheriff to be the "principal conservator of the peace in his county." **While he does not have the duty to ferret out crime**, he has the duty to investigate reports that a crime has been committed or is about to be committed.

Jones v. Mankin, 1989 WL 44924 (Tenn.Ct.App. 1989).

Conservator of the Peace

Other Cases - 1989

The statutes embodying the sheriff's peacekeeping duties do not require him to patrol the county. *State ex rel. Windham v. LaFever*, 486 S.W.2d 740, 744 (Tenn. 1972); *State ex rel. Thompson v. Reichman*, 135 Tenn. at 665, 188 S.W. at 228. **They require only that he respond to calls and complaints when he receives them.** See 70 Am.Jur.2d *Sheriffs, Police, and Constables* § 47 (1987).

Jones v. Mankin, 1989 WL 44924 (Tenn.Ct.App. 1989).

Conservator of the Peace

Other Cases - 1992

The peace-keeping duties of the Sheriff do not include regular patrol of all highways and reducing response time for responding to calls.

Smith v. Plummer, 834 S.W.2d 311 (Tenn.Ct.App. 1992).

Conservator of the Peace

Other Cases - 1992

While the duty of the Sheriff to “keep the peace” includes the duty to prevent and suppress crime of which he has notice, *State ex rel, Thompson v. Reichman*, 135 Tenn. 653, 188 S.W. 225 (1916), **no statute is cited or found to require a sheriff to maintain a criminal investigator.**

Smith v. Plummer, 834 S.W.2d 311 (Tenn.Ct.App. 1992).

Conservator of the Peace

Other Cases - 1996

In *Smith, supra*, at 314, the Court held that “**the peace-keeping duties of the sheriff do not include regular patrol of all highways and reducing response time for responding to calls,**” citing *State ex rel. Windham v. Lafever*, 486 S.W.2d 740 (Tenn. 1972). Under the reasoning of *Smith*, the sheriff’s power to keep the peace does not extend to the regulation of wreckers. **Certainly shortening response time and regularly patrolling county highways furthers the public peace, as does arranging for public roads to be cleared after an accident, but that does not mean that either act is within the sheriff’s authority.**

Op. Tenn. Atty. Gen. 96-013 (February 08, 1996).

Conservator of the Peace

Other Cases - 1996

The statutory basis for the sheriff's peace-keeping authority is Tenn. Code Ann. § § 8-8-213 and 38-3-102. Those statutes read as follows:

8-8-213. Conservator of peace - Summoning posse.

The sheriff and the sheriff's deputies are conservators of the peace, and may call any person, or summon the body of the county to their aid, in order to keep the peace, prevent crime, arrest any person lawfully, or to execute process of law.

Op. Tenn. Atty. Gen. 96-013 (February 08, 1996).

Conservator of the Peace

Other Cases - 1996

38-3-102. Duties of sheriff.

The sheriff is the principal conservator of the peace in the sheriff's county, and it is the sheriff's duty to suppress all affrays, riots, routs, unlawful assemblies, insurrections, or other breaches of the peace, to do which the sheriff may summon to such sheriff's aid as many of the male inhabitants of the county as such sheriff thinks proper.

Op. Tenn. Atty. Gen. 96-013 (February 08, 1996).

Conservator of the Peace

Other Cases - 1996

Neither statute suggests that the sheriff possesses any regulatory authority incident to his peace-keeping powers. **Under *Smith*, those peace-keeping powers do not even include the regular patrol of county roads.** Accordingly, this Office has no basis upon which to conclude that the sheriff of Hamblen County may regulate wrecker services, and it is our opinion that he may not.

Op. Tenn. Atty. Gen. 96-013 (February 08, 1996).

Conservator of the Peace

T.C.A. § 8-8-213 (2004)

The sheriff and the sheriff's deputies are conservators of the peace, and may call any person, or summon the body of the county to their aid, in order to keep the peace, prevent crime, arrest any person lawfully, or to execute process of law.

Conservator of the Peace

T.C.A. § 38-3-102 (2004)

The sheriff is the principal conservator of the peace in the sheriff's county, and it is the sheriff's duty to suppress all affrays, riots, routs, unlawful assemblies, insurrections, or other breaches of the peace, to do which the sheriff may summon to such sheriff's aid as many of the inhabitants of the county as such sheriff thinks proper.

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Conservator of the Peace

T.C.A. 8-8-213 (2005)

(a) The sheriff and the sheriff's deputies are conservators of the peace, and it is the sheriff's duty to suppress all affrays, riots, routs, unlawful assemblies, insurrections, or other breaches of the peace, **detect and prevent crime**, arrest any person lawfully, execute process of law, **and patrol the roads of the county**.

(b) **The sheriff shall furnish the necessary deputies to carry out the duties set forth in subsection (a)**, and, if necessary, may summon to the sheriff's aid as many of the inhabitants of the county as the sheriff thinks proper.

[Code 1858, § 362; Shan., § 452; Code 1932, § 699;
T.C.A. (orig. ed.), § 8-822; Acts 2005, ch. 142, § 1.]

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Conservator of the Peace

T.C.A. 38-3-102 (2005)

(a) The sheriff is the principal conservator of the peace in the sheriff's county. It is the sheriff's duty to suppress all affrays, riots, routs, unlawful assemblies, insurrections, or other breaches of the peace, to do which the sheriff may summon to such sheriff's aid as many of the inhabitants of the county as such sheriff thinks proper.

(b) **It shall be the duty of the sheriffs, in their respective counties, by themselves or deputies, to patrol the roads of the county, to ferret out crimes, to secure evidence of crimes, and to apprehend and arrest criminals.**

[Code 1858, § 4933; Shan., § 6894; Code 1932, § 11418; T.C.A. (orig. ed.), § 38-202; Acts 2005, ch. 142, § 2.]

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COUNTY TECHNICAL ASSISTANCE SERVICE

Statutory Duties Review

Today, the sheriff's statutory duties encompass his common law duties and can be grouped into four broad categories:

- (1) attending the courts,
- (2) serving process,
- (3) operating the jail,
- (4) keeping the peace.

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COUNTY TECHNICAL ASSISTANCE SERVICE

Discussion

What does all this mean?

Discussion

Is the sheriff a police officer?

Police Officer Defined

TCA § 38-8-101

Tenn. Code Ann. § 38-8-101 defines a full time police officer as “any person employed by any municipality or political subdivision of the State of Tennessee whose primary responsibility is the prevention and detection of crime, apprehension of offenders, and whose primary source of income is derived from employment as a police officer.”

Op. Tenn. Atty. Gen. No. 90-21 (Feb 23, 1990)

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COUNTY TECHNICAL ASSISTANCE SERVICE

The Sheriff

Is Not A Police Officer

Pursuant to Tenn. Code Ann. § 38-8-110, dealing with the application of Title 38, Chapter 8, it states that the provisions of this chapter shall not apply to any elected officials or to any employees of the State of Tennessee. **As such, this Office has previously opined that sheriffs do not come within the definition of a “police officer” under Tenn. Code Ann. § 38-8-101.**

Op. Tenn. Atty. Gen. No. 90-21 (Feb 23, 1990)

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Additional Statutory Duties

Tennessee Code Annotated section 8-8-201(b)(1) sets forth a list of statutes that include additional statutory duties of the office of sheriff.

In addition, T.C.A. § 8-8-201(b)(2) charges the sheriff with performing such other duties as are, or may be, imposed by law or custom.

Statutory Powers

In addition to the sheriff's statutorily mandated duties, the *Tennessee Code Annotated* sets forth numerous statutory powers that the sheriff may exercise.

Duties Upon Leaving Office

T.C.A. § 8-8-214

Upon leaving office, the sheriff must deliver to the sheriff's successor:

- all books and papers pertaining to the office
- all property attached and levied on and in the sheriff's hands unless authorized by law to retain the same, and
- all prisoners in the jail

The departing sheriff is entitled to a receipt.

Duties Upon Leaving Office

T.C.A. § 41-4-102

Upon the expiration of the sheriff's term, it is the duty of the sheriff to deliver the jail and the prisoners therein, with everything belonging or pertaining thereto, over to the sheriff's successor or any person duly authorized by law to take charge of the jail.

The failure to discharge this duty is a misdemeanor.

Deputies & Assistants

Presented by:
Stephen Austin, Legal Consultant
University of Tennessee
County Technical Assistance Service
August 2018

THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Deputies and Assistants



THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Employment of Deputies and Assistants

Two things are needed to hire deputies and assistants:

- * Budgetary authority (county budget)
- * Legal authority (court order or letter of agreement)

This class will focus on the **legal authority** needed to hire deputies and assistants.

Employment of Deputies and Assistants

Tennessee Code Annotated section 8-20-101 provides that when the sheriff cannot properly and efficiently conduct the affairs and transact the business of the sheriff's office by devoting his or her entire working time thereto, he or she may employ such deputies and assistants as may be actually necessary to the proper conducting of the sheriff's office. T.C.A. § 8-20-101(a).

Like other county officials, the sheriff may employ deputies and other staff under a letter of agreement or a court order.

Two Options to Obtain Legal Authority

The county Sheriff has two options through which he may obtain authority to employ and compensate personnel to assist him to "properly and efficiently conduct the affairs and transact the business" of his office. T.C.A. § 8-20-101(a) (Supp.1996). The Sheriff may either file a salary petition, which is an adversary proceeding between himself and the county mayor; or, if the county mayor and the Sheriff agree on the number of deputies and assistants to be employed and the salary to be paid to them, a letter of agreement may be prepared and submitted to the court for approval. T.C.A. § 8-20-101(a)(2) & (c) (Supp.1996).

Shelby County Deputy Sheriff's Ass'n v. Gilless, 972 S.W.2d 683 (Tenn.Ct.App. 1997).

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COUNTY TECHNICAL ASSISTANCE SERVICE

Two Options to Obtain Legal Authority

*The sheriff must file a salary suit or
enter into a letter of agreement.*

Doing nothing is not an option.

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

The Salary Suit

“[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).

The Salary Suit Where to File

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.

T.C.A. § 8-20-101(a)(2).

The Salary Suit Where to File

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.

T.C.A. § 8-20-101(d).

The Salary Suit

The statutory scheme enacted by the General Assembly for staffing and compensating the sheriff's office through a salary suit is clear.

See Boarman v. Jaynes, 109 S.W.3d 286, 291 (Tenn. 2003) (suit filed by the clerk and master).

The Salary Suit

- (1) 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,
- (2) the sheriff must show the necessity for the deputies and assistants,
- (3) the number of deputies and assistants required, and
- (4) the salary that should be paid each.

See Boarman v. Jaynes, at 291.

Important Note

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.

See Boarman v. Jaynes, at 291.

The Salary Suit

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.

See Boarman v. Jaynes, at 291.
T.C.A. § 8-20-101(a) and (a)(2).

The Salary Suit Timing

The petition must be filed by the sheriff within 30 days after the date of final adoption of the budget for the fiscal year.

T.C.A. § 8-20-101(b).

Important Note

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.

T.C.A. § 8-20-101(b).

The Salary Suit Timing

A new officeholder shall have 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.

T.C.A. § 8-20-101(b).

The Salary Suit

Procedure T.C.A. § 8-20-102

In the petition, the sheriff must name the county mayor as the party defendant.

The county mayor is required to file an answer within 5 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 Salary Suit

Procedure T.C.A. § 8-20-102

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 Salary Suit Procedure T.C.A. § 8-20-102

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.

Important Note

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.

See Moore v. Cates, 832 S.W.2d 570, 572
(Tenn.Ct.App. 1992).

The Salary Suit Retroactive Pay Not Authorized

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.

State ex rel. Obion County v. Bond, 8 S.W.2d 367 (Tenn. 1928)
Woods v. Smith, 1992 WL 151443 (Tenn. Ct. App. 1992)
Roberts v. Lowe, 1997 WL 189345 (Tenn. Ct. App. 1997)

The Salary Suit Retroactive Pay IS Authorized

“We respectfully disagree with those holdings having concluded that the Tennessee Supreme Court’s ruling in *Boarman v. Jaynes* provides the authority to make an award retroactive to the beginning of the fiscal year and therefore requires a different conclusion.” See *Boarman v. Jaynes*, 109 S.W.3d at 290.

Dorning v. Bailey, 223 S.W.3d 269, 276 (Tenn.Ct.App. 2007).
Farthing v. Rial, 2014 WL 793709 (Tenn.Ct.App. 2014).

The Salary Suit Court Order

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.

T.C.A. § 8-20-104.

The Salary Suit Court Order

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.

The Salary Suit Appeal of Court Order

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.

T.C.A. § 8-20-106.

The Salary Suit Appeal of Court Order

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 Salary Suit Costs

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.

Ramey v. Perry County, 2009 WL 2357081 (Tenn.Ct.App. 2009)

Patterson v. Wharton, 2006 WL 1237266 (Tenn.Ct.App. 2006)

Moore v. Cates, 832 S.W.2d 570, 572 (Tenn.Ct.App. 1992)

Duty to Reduce the Number of Deputies

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.

Duty to Reduce the Number of Deputies

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.

T.C.A. § 8-20-105

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.

Acts 1921, ch. 101, § 8; Shan. Supp., § 6428a45; mod. Code 1932, § 10734; Acts 1949, ch. 36, § 1; C. Supp. 1950, § 10734; Acts 1953, ch. 130, § 1; 1959, ch. 326, § 1; impl. am. Acts 1979, ch. 68, § § 2, 3; T.C.A. (orig. ed.), § 8-2003; Acts 1989, ch. 264, § 1.

FIELD DEPUTIES

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).

FIELD DEPUTIES

Neither the current nor former version of T.C.A. § 8-20-103 define the term “field deputy sheriffs.”

FIELD DEPUTIES

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.

Carter v. Jett, 370 S.W.2d 576, 581 (Tenn. Ct. App. 1963).

FIELD DEPUTIES

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.

FIELD 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.

FIELD DEPUTIES

Instead the courts 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.

Letters of Agreement

T.C.A. § 8-20-101(c)

In 1993, the General Assembly amended T.C.A. § 8-20-101, adding the language that is now codified in subsection (c), in order to provide county elected officials with an alternate method of obtaining the authority to employ and compensate personnel.

Letters of Agreement

T.C.A. § 8-20-101(c)

If the sheriff agrees with the number of deputies and assistants and the compensation and expenses related thereto, as set forth in the budget adopted by the county legislative body, **a court order is not necessary.**

Letters of Agreement

T.C.A. § 8-20-101(c)

Instead of filing a petition in court, the sheriff can enter into a letter of agreement with the county mayor using a form prepared by the comptroller of the treasury, setting forth the fact that they have reached an understanding in this regard.

Letters of Agreement

T.C.A. § 8-20-101(c)

The letter is then filed with the court, however, no court costs, litigation taxes or attorneys fees are assessed.

Sheriffs must file their letters of agreement with the circuit court except in counties where criminal courts are established, in which case the sheriff must file the letter of agreement with the criminal court.

Funding for Salaries WRIT of MANDAMUS

The county legislative body is required by law to fund authorized expenses fixed by law for the operation of the sheriff's office, including the salary of all the sheriff's deputies.

T.C.A. § 8-24-103(a)(1).

Funding for Salaries WRIT of MANDAMUS

The county legislative body may not adopt a budget that reduces below current levels the salaries and number of employees in the sheriff's office without the sheriff's consent.

T.C.A. § 8-20-120.

Funding for Salaries WRIT of MANDAMUS

In the event the county legislative body fails to budget any salary expenditure that is a necessity for the discharge of the statutorily mandated duties of the sheriff, the sheriff may seek a writ of mandamus to compel such appropriation.

T.C.A. § 8-20-120.

Funding for Salaries WRIT of MANDAMUS

The writ of mandamus authorized by T.C.A. § 8-20-120 “is the same writ that has been recognized by the courts for many years. It can only be sought after the sheriff has gone through the local budget process and the application procedure required by” T.C.A. § 8-20-101(a)(2). *Jones v. Mankin*, 1989 WL 44924, *3 (Tenn.Ct.App. 1989).

Recent Cases

Dorning v. Bailey, 223 S.W.3d 269
(Tenn.Ct.App., Jan. 3, 2007)

Bane v. Nesbitt, 2006 WL 3694444
(Tenn.Ct.App., Dec. 14, 2006)

Dorning v. Bailey, 2006 WL 287377
(Tenn.Ct.App., Feb. 6, 2006)

Removal of Deputies and Assistants

The sheriff may terminate, at will, any and all deputies and assistants in his or her office.

T.C.A. § 8-20-109.

However, the provisions of T.C.A. § 8-20-109 do not apply to counties with civil service.

T.C.A. § 8-20-112.

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.

Patronage Dismissals

Monroe County Workers Win \$500K First Amendment Settlement

Seventeen former Monroe Co. road department workers, who said they were fired for supporting their boss's opponent in the August 2010 county election for road superintendent, have won a major settlement in a federal civil rights lawsuit after three days of trial.

Patronage Dismissals

June 12, 2014 – Knoxville, TN – Today, seventeen road workers who brought a federal civil rights lawsuit against their former employers, Monroe County, Tennessee government and its Road Superintendent, Steve Teague, reached a \$500,000 settlement.

Following the August 2010 county elections, on September 1, 2010, newly elected Monroe County Road Superintendent Steve Teague eliminated the jobs of workers who had supported his political opponent. Shortly thereafter, 17 of these workers who lost their jobs filed a lawsuit in federal court in Knoxville alleging that their First Amendment right to political speech was violated by Mr. Teague retaliating against them for supporting his political opponent.

After three days of trial, the parties reached this settlement that Plaintiffs and their counsel hope will send a powerful message to all government officials in Tennessee – that government workers have the right to participate in elections without fear of retaliation from those elected to serve the public.

The Plaintiffs are represented by David Garrison and Scott Tift of the Nashville, Tennessee law firm, Barrett Johnston, LLC, and by Ned Pillersdorf of Pillersdorf, DeRossett & Lane of Prestonsburg, Kentucky – lawyers who specialize in civil rights litigation and the representation of employees.

"When employees like these county road workers band together to enforce their rights, our system of justice works – by achieving a just settlement for these workers and disclosing their struggle to the public," said Scott Tift, lead trial counsel for the workers. "We hope that this case will ensure that government officials in Tennessee don't let their politics trump their oath to abide by our Constitution when it comes to employing those who serve the public," added David Garrison.

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Patronage Dismissals

Former Employee Sues Sheriff, County For \$400,000

Monday, April 4, 2011

A woman who was relieved of her duties by Cannon County Sheriff Darrell Young on his first day on the job is suing the sheriff and the county.

The woman, Loretta Bailey, worked as a receptionist at the department under former Sheriff Billy Nichols.

She is suing the county for \$250,000 and Young individually for \$150,000.

Bailey claims in the lawsuit that Sheriff Young allegedly violated her First Amendment and civil rights when he terminated her.

Bailey is asserting Sheriff Young fired her because she supported Nichols in both the 2006 and 2010 elections.

Commissioners Approve Lawsuit Settlement Funds

Monday, 6 February 2012

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Deputy Sheriffs



THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Deputy Sheriffs A Little History

At common law the officers of the sheriff are his under-sheriff, bailiffs, jailer, replevin clerks, and county clerks, all of whom are appointed by letter of attorney under seal, or by entry on the records of the county court. Watson's sheriff, 25, 28, 34, 350; 5 Law Lib.

Crockett v. Latimer, 20 Tenn. 272 (1839).

THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Deputy Sheriffs A Little History

The under-sheriff has general plenary power to perform all the ministerial duties of the sheriff. Id. 31. He may appoint the other officers of the sheriff, as a bailiff. Id. 57, etc. Common bailiffs are the ordinary officers of the sheriff, and are bound in an obligation with sureties for the faithful discharge of their duties.

Crockett v. Latimer, 20 Tenn. 272 (1839).

Deputy Sheriffs

A deputy sheriff is deemed a police officer under the laws pertaining to police officers.

“Full-time police officer” means any person employed by any municipality or political subdivision of the state of Tennessee whose primary responsibility is to prevent and detect crime and to apprehend offenders, and whose primary source of income is derived from employment as a police officer.

T.C.A. § 38-8-101(2).

See Op. Tenn. Atty. Gen. No. 85-224 (July 30, 1985).

Minimum Qualifications

The minimum qualifications for deputy sheriffs are set forth in T.C.A. § 38-8-106 and Rule 1110-02-.03 (1) of the Tennessee Peace Officer Standards and Training Commission.

Minimum Qualifications

The minimum standards set forth in T.C.A. § 38-8-106 and in Rule 1110-02-.03 (1) are mandatory and are binding upon the county.

T.C.A. § 38-8-105(a).

Minimum Qualifications

Any person who appoints an applicant, who, to the knowledge of the appointor, fails to meet the minimum standards, commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding \$1,000.

T.C.A. § 38-8-105(b).

Minimum Qualifications

Any person who signs the warrant or check for the payment of the salary of a person who, to the knowledge of the signer, fails to meet these standards commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding \$1,000.

T.C.A. § 38-8-105(b).

Recruit Training

Pursuant to T.C.A. § 38-8-107, all deputy sheriffs employed after July 1, 2017, must:

- (1) Enroll in an approved recruit training program within 6 months of their date of employment;
- (2) Successfully complete an approved recruit training program as required by this part; and
- (3) Successfully complete an annual in-service training session appropriate for their rank and responsibilities.

Recruit Training

Any officer seeking certification under these rules who conforms to pre-employment requirements shall, within six months of initial employment as a law enforcement officer, satisfactorily complete the Basic Law Enforcement Course as established in accordance with these rules.

Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-02-.03 (2).

Recruit Training

During this initial six-month period prior to attending the Basic Law Enforcement Course, the recruit must be paired with a Field Training Officer or other Certified senior officer.

Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-02-.03 (2).

Oath

Deputy sheriffs must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the Sheriff's.

T.C.A. § 8-18-112.

Bond

There is no general law requirement that regular deputy sheriffs be bonded.

However, in 2013, the Legislature amended T.C.A. § 8-19-101 to require county governments to obtain and maintain blanket surety bond coverage for all county employees not covered by individual bonds referenced elsewhere in statute. The minimum amount of such blanket bonds is one hundred fifty thousand dollars.

T.C.A. § 8-19-101(e).

Insurance - T.C.A. § 8-19-101

The county legislative body can chose to use insurance instead of bonds.

The insurance policy must provide government crime coverage, employee dishonesty insurance coverage, or equivalent coverage that insures the lawful performance by officials and their employees of their fiduciary duties and responsibilities.

Any such policy or agreement maintained shall have limits of not less than four hundred thousand dollars (\$400,000) per occurrence.

In-Service Training

All deputy sheriffs, except those who have attended the Basic Law Enforcement School within the calendar year must successfully complete a POST-approved 40-hour in-service training session appropriate for their rank and responsibilities each calendar year.

T.C.A. § 38-8-111

Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-04-.01.

THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Salary Supplement

T.C.A. § 38-8-111(a)(1) sets the police officers in-service training salary supplement at a flat rate of \$600.

Only certified officers who successfully complete the forty (40) hour in-service training session are eligible to receive supplement pay provided their agency is in compliance with minimum standards.

Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-04-.01.

THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Deputy Sheriffs Road Deputies



**Davidson County Sheriff's Patrol Car
1950**

THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Deputy Sheriffs Road Deputies



**Madison County Sheriff's Patrol Car
1978**

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COUNTY TECHNICAL ASSISTANCE SERVICE

Deputy Sheriffs Road Deputies



**Williamson County Sheriff's Patrol Car
2006**

THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Deputy Sheriffs Road Deputies

It is the duty of the sheriff to patrol the roads of the county. Pursuant to statute, the sheriff must furnish the necessary deputies to carry out these duties.

T.C.A. § 8-8-213 (Acts 2005, ch. 142, § 1)

T.C.A. § 38-3-102 (Acts 2005, ch. 142, § 2)

THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Deputy Sheriffs Detectives & Investigators



THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Deputy Sheriffs Detectives & Investigators

It is the duty of the sheriff to ferret out, detect, and prevent crime; to secure evidence of crimes; and to apprehend and arrest criminals. Pursuant to statute, the sheriff must furnish the necessary deputies to carry out these duties.

T.C.A. § 8-8-213 (Acts 2005, ch. 142, § 1)

T.C.A. § 38-3-102 (Acts 2005, ch. 142, § 2)

THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Authority to Carry Handguns

Pursuant to T.C.A. § 39-17-1315(a)(1)(A)(i), the sheriff has the authority to authorize the carry of handguns by bonded and sworn deputy sheriffs who have successfully completed and continue to successfully complete on an annual basis a firearm training program of at least eight hours duration.

Authority to Carry Handguns

The sheriff's authorization must be made by a written directive, a copy of which must be retained by the sheriff's office.

T.C.A. § 39-17-1315(a)(1)(B).

Authority to Carry Handguns

Nothing in T.C.A. § 39-17-1315(a)(1) prohibits the sheriff from placing restrictions on when or where a deputy may carry his or her service handgun.

See also Op. Tenn. Atty. Gen. No. 99-024 (February 16, 1999).

Authority to Carry Handguns The Rule

Pursuant to the sheriff's written directive, POST certified deputy sheriffs, commissioned reserve deputy sheriffs, and deputy sheriffs employed by a county as a court officer or corrections officer, as authorized in writing by the sheriff, may carry firearms at all times and in all places within Tennessee, on-duty or off-duty, regardless of the deputy's regular duty hours or assignments **except** as provided by T.C.A. § 39-17-1350(c), federal law, lawful orders of court or the written directive of the sheriff.

T.C.A. § 39-17-1350(a) and (d).

Authority to Carry Handguns Exceptions to the Rule

The authority conferred by T.C.A. § 39-17-1350 does not extend to a deputy sheriff:

(1) Who is not engaged in the actual discharge of official duties as a law enforcement officer and carries a firearm onto school grounds or inside a school building during regular school hours unless the officer immediately informs the principal that the officer will be present on school grounds or inside the school building and in possession of a firearm. If the principal is unavailable, the notice may be given to an appropriate administrative staff person in the principal's office;

Authority to Carry Handguns Exceptions to the Rule

(2) Who is consuming beer or an alcoholic beverage or who is under the influence of beer, an alcoholic beverage, or a controlled substance or controlled substance analogue; or

(3) Who is not engaged in the actual discharge of official duties as a law enforcement officer while attending a judicial proceeding.

T.C.A. § 39-17-1350(c)(1) – (3).

Off – Duty Status

There is no statute or rule of law in this state that places a mandatory duty upon police officers to keep the peace when “off duty.” “To the contrary, when officers are ‘off duty,’ our statutes generally treat the officer as an ordinary private citizen and not as an agent or employee of the municipal police department under a general duty to keep the peace.”

White v. Revco Discount Drug Centers, Inc.,
33 S.W.3d 713, 720-721 (Tenn. 2000).

Off – Duty Status

“Of course, to say that officers do not continuously function in an official capacity is not to say that off-duty officers are prevented from assuming a duty to remedy a breach of the peace, or that officers are incapable of being summoned to official duty by the municipality. Nevertheless, it is clear that officers are not under a general duty to enforce the law while ‘off duty,’ and a blanket rule declaring that police officers are under a never-ending duty to keep the peace is contrary to existing Tennessee law.”

White v. Revco at 721.

Off – Duty Employment

The current state of the law regarding off-duty employment by law enforcement officers indicates that law enforcement agencies may constitutionally restrict or prohibit their law enforcement officers from engaging in secondary employment during off-duty time if, at the time in question, the agency had a clear policy restricting or prohibiting such employment and if the agency can articulate how its policy is rationally related to a legitimate government interest (the "rational basis" test).

Off – Duty Employment

Courts treat cases involving the issue of secondary employment of law enforcement officers on a case by-case basis. However, generally speaking, if the two requirements stated above are met, courts have upheld restrictions or even prohibitions on secondary employment set by law enforcement agencies.

Op. Tenn. Atty. Gen. No. 01-075 (May 8, 2001).

Off – Duty Employment Liability

“[P]rivate employers may be held vicariously liable for the acts of an off-duty police officer employed as a private security guard under any of the following circumstances:

(1) the action taken by the off-duty officer occurred within the scope of private employment;

Off – Duty Employment Liability

(2) the action taken by the off-duty officer occurred outside of the regular scope of employment, if the action giving rise to the tort was taken in obedience to orders or directions of the employer and the harm proximately resulted from the order or direction;

Off – Duty Employment Liability

or (3) the action was taken by the officer with the consent or ratification of the private employer and with an intent to benefit the private employer.”

White v. Revco Discount Drug Centers, Inc., 33 S.W.3d 713, 724 (Tenn. 2000).

Off – Duty Employment Use of County Property

The use of county property by deputy sheriffs for personal monetary gain is prohibited.

There is no case law that is directly on point.

However, the Attorney General has opined that it is improper for a county employee to use publicly owned equipment for private gain.

Op. Tenn. Atty. Gen. No. U93-48 (April 6, 1993).

Off – Duty Employment Use of County Property

The Attorney General has also previously opined that public funds provided by taxation may only be used for public purposes and that public equipment and other property paid for by public funds cannot properly be applied to a private use.

Op. Tenn. Atty. Gen. No. 84-166 (May 17, 1984).

Off – Duty Employment Use of County Property

Public funds provided by taxation may be used only for public, not private, purposes.

Azbill v. Lexington Mfg. Co., 188 Tenn. 477,
483, 221 S.W.2d 522 (1949).

Off – Duty Employment Use of County Property

The Attorney General has also opined that a law enforcement officer should not perform services that are not part of his or her official responsibilities while wearing his/her uniform or driving a patrol car in a way that might convey that any services performed for a private individual are, in fact, being carried out as part of the officer's official duties.

Op. Tenn. Atty. Gen. No. 97-043 (April 7, 1997).

Off – Duty Employment Use of County Property

Depending on the facts and circumstances, such a practice could constitute official misconduct in violation of T.C.A. § 39-16-402.

Reserve, Auxiliary, Part-Time, & Temporary Deputies



**Williamson County Sheriff's Office
Reserve Officers**

THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Reserve, Auxiliary, Part-Time, & Temporary Deputies



**Montgomery County Sheriff's Office
Reserve Officers**

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COUNTY TECHNICAL ASSISTANCE SERVICE

Reserve, Auxiliary, Part-Time, & Temporary Deputies

Reserve, auxiliary, part-time and temporary deputy sheriff means any person **employed** by the county whose primary responsibility is to support the sheriff in preventing and detecting crime, apprehending offenders, and assisting in the prosecution of offenders for appropriate **remuneration** in measure with specifically assigned duties or job description.

T.C.A. § 38-8-101(3).

Reserve, Auxiliary, Part-Time, & Temporary Deputies

Two Key Words

Employed & Remuneration

Reserve, Auxiliary, Part-Time, & Temporary Deputies

Remuneration

Money paid for work or a service.

Synonyms: pay, salary, wages; earnings

Reserve, Auxiliary, Part-Time, & Temporary Deputies

Federal Minimum Wage

The federal minimum wage for covered nonexempt employees is \$7.25 per hour effective July 24, 2009. The federal minimum wage provisions are contained in the Fair Labor Standards Act (FLSA).

<https://www.dol.gov/general/topic/wages/minimumwage>

Reserve, Auxiliary, Part-Time, & Temporary Deputies

Federal Minimum Wage

Willful violations of the FLSA may be prosecuted criminally and the violator fined up to \$10,000. A second conviction may result in imprisonment.

Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to \$1,000 for each violation.

<https://www.dol.gov/general/topic/youthlabor/enforcement>

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COUNTY TECHNICAL ASSISTANCE SERVICE

Reserve, Auxiliary, Part-Time, & Temporary Deputies

Tennessee Code Annotated § 38-8-101 distinguishes between part-time and reserve police officers employed for remuneration from special deputies who are defined as volunteers.

Op. Tenn. Atty. Gen. 05-029 (March 21, 2005)

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COUNTY TECHNICAL ASSISTANCE SERVICE

Reserve, Auxiliary, Part-Time, & Temporary Deputies

These deputies may not work more than 20 hours per week for a total of not more than 100 hours per month. Any deputy who works in excess of the prescribed maximum hours must be reclassified to full-time status and must meet all the requirements for standards and training as mandated under the law and the POST Commission rules.

T.C.A. § 38-8-101(3). Rules of the Tennessee POST Commission, Rule 1110-08-.01.

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Reserve, Auxiliary, Part-Time, & Temporary Deputies

In any situation where a deputy is assigned temporarily for a period of one month or less to work more than 20 hours per week for a total of not more than 100 hours per month, the deputy does not need to be reclassified to full-time status.

T.C.A. § 38-8-101(3). Rules of the Tennessee POST Commission, Rule 1110-08-.01.

THE UNIVERSITY of TENNESSEE 
COUNTY TECHNICAL ASSISTANCE SERVICE

Minimum Qualifications

Any person employed as a reserve, auxiliary, part-time or temporary deputy sheriff shall have the same minimum qualifications as a full-time deputy sheriff.

T.C.A. § 38-8-106; Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-08-.02.

Training Requirements

Any person newly employed as a reserve, auxiliary, part-time or temporary deputy sheriff must receive 80 hours of training in whatever duties they are required by the sheriff's office to perform.

This training must be accomplished during the first calendar year of employment.

Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-08-.03.

Training Requirements

During this initial period, prior to receiving 80 hours of training, reserve, auxiliary, part-time or temporary deputy sheriffs must be paired with a field training officer or other certified officer.

Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-08-.03.

Training Requirements

Any reserve, auxiliary, part-time or temporary deputy sheriff who is hired within 5 years of having served as a full-time, certified law enforcement officer will continue to be exempt from the requirement that he/she be paired with a full-time, certified officer as long as he/she completes in-service training each year and has no break in service.

Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-08-.03.

In-Service Training

After the initial training has been completed, all reserve, auxiliary, part-time and temporary deputy sheriffs are required to attend 40 hours of in-service training each calendar year. This training may be spread over a 12-month period, but must be completed during the calendar year.

Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-08-.04.

Oath

Reserve, auxiliary, part-time and temporary deputy sheriffs must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff's.

T.C.A. § 8-18-112.

Bond

There is no general law requirement that reserve, auxiliary, part-time or temporary deputy sheriffs be bonded.

However, in 2013, the Legislature amended T.C.A. § 8-19-101 to require county governments to obtain and maintain blanket surety bond coverage for all county employees not covered by individual bonds referenced elsewhere in statute. The minimum amount of such blanket bonds is one hundred fifty thousand dollars.

T.C.A. § 8-19-101(e).

Insurance - T.C.A. § 8-19-101

The county legislative body can chose to use insurance instead of bonds.

The insurance policy must provide government crime coverage, employee dishonesty insurance coverage, or equivalent coverage that insures the lawful performance by officials and their employees of their fiduciary duties and responsibilities.

Any such policy or agreement maintained shall have limits of not less than four hundred thousand dollars (\$400,000) per occurrence.

Special Deputies



THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Special Deputies Appointed Under T.C.A. § 8-8-212

On urgent occasions, or when required for particular purposes, the sheriff may appoint as many special deputies as the sheriff deems proper.

T.C.A. § 8-8-212(a).

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COUNTY TECHNICAL ASSISTANCE SERVICE

Special Deputies Appointed Under T.C.A. § 8-8-212

Special deputy means any person who is assigned specific police functions as to the prevention and detection of crime and general laws of this state on a volunteer basis, whether working alone or with other deputies.

T.C.A. § 38-8-101(6)(A); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-08-.01 (2).

Special Deputies Appointed Under T.C.A. § 8-8-212

A special deputy working on a volunteer basis does not receive pay or benefits, except for honoraria, and may be used for an unlimited number of hours.

T.C.A. § 38-8-101(6)(B); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-08-.01 (2).

Special Deputies Appointed Under T.C.A. § 8-8-212

The **minimum qualifications**, initial training requirements, oath, and in-service training requirements are the same for this class of special deputy as they are for reserve, auxiliary, part-time and temporary deputy sheriffs.

Rules of the Tennessee POST Commission,
Rule 1110-08-.02 & Rule 1110-08-.03.

Special Deputies Appointed Under T.C.A. § 8-8-212

No person may serve as a special deputy unless that person proves to the appointing sheriff financial responsibility, as evidenced by a corporate surety bond in no less amount than \$50,000 or by a liability insurance policy of the employer in no less amount than \$50,000.

T.C.A. § 8-8-303(c).

Special Deputies Appointed Under T.C.A. § 8-8-212

“The purpose of this provision is to protect third parties who may be injured by the special deputy.”

State v. Epps, 1989 WL 28906 (Tenn. Crim. App. 1989).

Special Deputies Appointed Under T.C.A. § 8-22-110

Emergency Requirement

Pursuant to T.C.A. § 8-22-110(b), the sheriff is authorized to make emergency appointments of special deputies when there is an immediate need for an additional number of deputies to deal efficiently with an emergency situation, such as in the case of a strike, riot, putting down a mob, or other like emergencies.

Special Deputies Appointed Under T.C.A. § 8-22-110

Oath

Special deputies appointed pursuant to T.C.A. § 8-22-110(b) are not required to take an oath.

T.C.A. § 8-18-112.

Special Deputies Appointed Under T.C.A. § 8-22-110

Limited Appointment

Special deputies appointed under T.C.A. § 8-22-110 may serve only during the term of the emergency.

Bailiffs (Court Officers)



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COUNTY TECHNICAL ASSISTANCE SERVICE

Bailiffs - Court Officers

The sheriff has a statutory duty to furnish deputies to the courts.

Bane v. Nesbitt, 2006 WL 3694444, *9
(Tenn.Ct.App. 2006).

THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Bailiffs - Court Officers

It is the sheriff's responsibility to assign deputies to wait upon the courts.

The judge cannot, however, order the sheriff to assign specific personnel to the courtroom.

Op. Tenn. Atty. Gen. No. 92-55 (Oct. 6, 1992)

Bailiffs - Court Officers

Except in Davidson County, it is the duty of the sheriff to attend upon all the courts held in the county when in session, cause the courthouse or courtroom to be kept in order for the accommodation of the courts, and obey the lawful orders and directions of the court.

T.C.A. § 8-8-201(a)(2).

Bailiffs - Court Officers

And, unless otherwise provided, it is the duty of the sheriff in every county to provide sufficient bailiffs to serve the general sessions courts.

T.C.A. § 16-15-715. *See also* Op. Tenn. Atty. Gen. No. 05-026 (March 21, 2005)

Bailiffs - Court Officers

Furthermore, it is the duty of the sheriff to furnish the necessary deputies and special deputies to attend and dispense with the business of the juvenile courts.

T.C.A. § 37-1-213.

Court Officers Mandatory Training

Deputy sheriffs newly assigned to courts pursuant to T.C.A. § § 8-8-201(a)(2)(A), 16-15-715, and 37-1-213 shall participate in 40 hours of basic training in courthouse security within 12 months of assignment to that duty.

T.C.A. § 5-7-108.

Court Officers Mandatory Training

Every year thereafter the deputies shall participate in a minimum of sixteen 16 hours of training specific to courthouse security that has been approved by the POST commission.

T.C.A. § 5-7-108.

Civil Process Servers & Warrant Officers

Civil Process Servers & Warrant Officers

It is the duty of the sheriff to execute and return, according to law, the process and orders of the courts of record of this state and of officers of competent authority, with due diligence, when delivered to the sheriff for that purpose.

T.C.A. § 8-8-201(a)(1).

Civil Process Servers & Warrant Officers

And, it is the duty of the sheriff to execute all writs and other process legally issued and directed to the sheriff, within the county, and make due return thereof either personally or by a lawful deputy or, in civil lawsuits only, by a lawfully appointed civil process server.

T.C.A. § 8-8-201(a)(5)(A).

THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Jail Administrator



THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Jail Administrator

The sheriff is charged with keeping the prisoners personally or by deputies or **jailer** until they are lawfully discharged.

T.C.A. § 8-8-201(a)(3).

Jail Administrator

Under the common law the sheriff had the right to appoint a jailer.

Felts v. City of Memphis, 39 Tenn. 650 (1859).

Pursuant to T.C.A. § 41-4-101 the sheriff has the authority to appoint a jailer.

Jail Administrator

The Tennessee Corrections Institute defines a jailer as “one who is charged by an institution to detain or guard prisoners.”

Rules of the Tennessee Corrections Institute, Rule 1400-01-.03 (40).

Jail Administrator

The attorney general has opined that a jailer is one whose primary duty is to confine and control persons held in lawful custody.

Op. Tenn. Atty. Gen. 85-222 (July 29, 1985).

Jail Administrator Oath & Bond

The jail administrator must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff's. T.C.A. § 8-18-112.

The jail administrator must be bonded in accordance with T.C.A. § 8-19-101.

Jail Administrator Statutory Duties

The jailer is charged with the following statutorily mandated duties:

(1) To receive and safely keep convicts on their way to the state or federal penitentiary;

T.C.A. §§ 41-4-104, 41-4-105

Jail Administrator Statutory Duties

(2) To file and keep safe under the sheriff's direction the mittimus or process by which a prisoner is committed or discharged from jail;

T.C.A. § 41-4-106

Jail Administrator Statutory Duties

(3) To provide support to the prisoners and to determine within his discretion what type of precautions to take for guarding against escape and to prevent the importation of intoxicants or narcotics;

T.C.A. § 41-4-108

Jail Administrator Statutory Duties

(4) To furnish adequate food and bedding;

T.C.A. § 41-4-109

(5) Enforce cleanliness in the jail, keep the jail clean, and remove all filth from each cell once every 24 hours;

T.C.A. § 41-4-111

Jail Administrator Statutory Duties

(6) Furnish the necessary apparatus for shaving once a week and provide bathing facilities separate for males and females;

T.C.A. § 41-4-111

Jail Administrator Statutory Duties

(7) Furnish hot and cold water, clean and sufficient bedding, and laundering once a week to those prisoners who are not able to provide such for themselves.

T.C.A. § 41-4-111

Jail Administrator Statutory Duties

(8) Convey letters from prisoners to their counsel and others, and to admit persons having business with the prisoner.

T.C.A. § 41-4-114

Jail Administrator Statutory Duties

A violation of any of the provisions of T.C.A. § § 41-4-108 — 41-4-116, whether by the sheriff or by any person selected as jailer or guard by the sheriff, is a Class A misdemeanor.

T.C.A. § 41-4-117

Minimum Qualifications

Any person employed as a jail administrator must meet statutorily mandated minimum qualifications.

These minimum standards are binding upon the county.

T.C.A. § 41-4-144

Minimum Qualifications

Any person who appoints any applicant who, to the knowledge of the appointor, fails to meet the minimum qualifications and any person who signs the warrant or check for the payment of the salary of any person who, to the knowledge of the signer, fails to meet the minimum qualifications commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding \$1,000.

T.C.A. § 41-4-144

THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Deputy Jailers - Guards



THE UNIVERSITY of TENNESSEE **UT**
COUNTY TECHNICAL ASSISTANCE SERVICE

Deputy Jailers - Guards

The sheriff is authorized by statute to employ guards to:

(1) Protect a defendant from violence, and to prevent the defendant's escape or rescue in all cases where a defendant charged with the commission of a felony is committed to jail, either before or after trial, and the safety of the defendant, or the defendant's safekeeping, requires a guard;

Deputy Jailers - Guards

(2) Transport a prisoner to another jail when the county jail is insufficient for the safekeeping of the prisoner; and

(3) Transport a prisoner charged with a crime from one county to another for trial or safekeeping.

T.C.A. § § 41-4-118, 41-4-121, and 41-4-126.

Minimum Qualifications

Any person employed as a jail administrator, jailer, corrections officer, or guard in a county jail or workhouse must meet statutorily mandated minimum qualifications.

These minimum standards are binding upon the county.

T.C.A. § 41-4-144

Minimum Qualifications

Any person who appoints any applicant who, to the knowledge of the appointor, fails to meet the minimum qualifications and any person who signs the warrant or check for the payment of the salary of any person who, to the knowledge of the signer, fails to meet the minimum qualifications commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding \$1,000.

T.C.A. § 41-4-144

Oath

Deputy sheriffs must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff's.

T.C.A. § 8-18-112.

Bond

There is no general law requirement that regular deputy sheriffs be bonded.

However, in 2013, the Legislature amended T.C.A. § 8-19-101 to require county governments to obtain and maintain blanket surety bond coverage for all county employees not covered by individual bonds referenced elsewhere in statute. The minimum amount of such blanket bonds is one hundred fifty thousand dollars.

T.C.A. § 8-19-101(e).

Insurance - T.C.A. § 8-19-101

The county legislative body can chose to use insurance instead of bonds.

The insurance policy must provide government crime coverage, employee dishonesty insurance coverage, or equivalent coverage that insures the lawful performance by officials and their employees of their fiduciary duties and responsibilities.

Any such policy or agreement maintained shall have limits of not less than four hundred thousand dollars (\$400,000) per occurrence.

Additional Jail Personnel

Nurse

The sheriff is authorized to hire a female registered nurse and a male registered nurse who are authorized to make complete physical examinations of all people committed to the custody of the sheriff for the purpose of preventing the spread of any contagious disease.

T.C.A. § 41-4-138.

Additional Jail Personnel

Cook

Pursuant T.C.A. § 41-4-109, the jailer has a duty to furnish adequate food to prisoners in the jail.

Tennessee courts have recognized that cooks are necessary for the operation of a jail.

See Jones v. Mankin, 1989 WL 44924,
*7 (Tenn. Ct. App. 1989).

Jail Personnel Training

Each facility is required to offer jail personnel a pre-service orientation program designed to familiarize each person with the functions and mission of the facility.

Rules of the Tennessee Corrections Institute,
Rule 1400-01-.06 (4).

Jail Personnel Training

All personnel whose duties include the industry, custody, or treatment of prisoners are required to complete a 40-hour basic training program during the first year of employment.

Rules of the Tennessee Corrections Institute,
Rule 1400-01-.06 (8).

Jail Personnel In-Service Training

All personnel whose duties include the industry, custody, or treatment of prisoners are required to complete 40 hours of in-service training each year covering the specific skill areas of jail operations.

Rules of the Tennessee Corrections Institute,
Rule 1400-01-.06 (9).

Jail Personnel In-Service Training

At least 16 hours will be provided by the Tennessee Corrections Institute.

The remaining 24 hours may be provided by the facility if course content is approved and monitored by the Tennessee Corrections Institute.

Rules of the Tennessee Corrections Institute, Rule 1400-01-.06 (9).

Use of Firearms & Chemical Weapons

All jail personnel who are authorized to use firearms and less lethal weapons shall receive basic and ongoing in-service training in the use of these weapons.

Training shall include decontamination procedures for individuals exposed to chemical agents. All such training shall be recorded with the dates completed and kept in the employee's personnel file.

Rules of the Tennessee Corrections Institute, Rule 1400-01-.06 (11).

The End



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COUNTY TECHNICAL ASSISTANCE SERVICE