



MEDIA RELEASE

OFFICE OF THE SHERIFF

ANDERSON COUNTY, TENNESSEE

SHERIFF PAUL N. WHITE

December 9, 2013

FOR IMMEDIATE RELEASE

Statement On Salary Agreement

Today, Circuit Judge Dale C. Workman entered the final order resolving the staffing dispute between Sheriff Paul White and County Mayor Terry Frank. Sheriff White made the conscious decision not to comment on the matter until the actual completion of the case. Sheriff White is glad that he and Mayor Frank have been able to bring this matter to a conclusion. However, Sheriff White believes that the recent aftermath of the settlement of the salary suit, especially Mayor Frank's recent press releases and public statements, requires a response.

Throughout the case, Sheriff White placed particular reliance upon the Anderson County Commission's express directive that he hire up to 36 new deputies as jailers to operate the soon-to-be-completed expansion of the Anderson County Jail. Unfortunately, State law does not make completely clear whether the County Commission or the County Mayor has the final word to authorize the hiring of new deputies, and Mayor Frank insisted to the Circuit Court that she could unilaterally block new hiring despite the Commission's express directive and the Mayor's approval of the Commission's budget (a power State law expressly allows her to exercise as to budget resolutions). No court has ever decided the issue, and this dispute was at the heart of the court case. Moreover, Anderson County Law Director Jay Yeager is not the source of any "conflicting legal advice" referenced in the joint press release Mayor Frank distributed on December 6, 2013. Rather, Director Yeager did not advise Sheriff White with respect to filing the salary suit. Instead, Director Yeager tried very hard to resolve the matter before and after the lawsuit was filed.

The Order Judge Workman entered today allows Sheriff White to hire all 36 jailers the Commission authorized within the confines of the budget the Commission has appropriated to the Sheriff's Office. To this end, the settlement of the salary suit provides Sheriff White all the relief he requested in his petition to the Circuit Court. In addition, a contemporaneously executed Settlement Agreement between Sheriff White and Mayor Frank provides the Sheriff the authority to maintain the staffing levels Judge Workman has ordered in the event of any future staffing disputes between the Sheriff and the Mayor. As a result, the people of Anderson County will not have to fear a shutdown of the new jail should Mayor Frank continue to assert her unilateral authority to control Sheriff White's staffing next fiscal year.

Sheriff White regrets that Mayor Frank has used the settlement of the salary suit, which Mayor Frank could have used as an event to set a more civil tone in Anderson County politics, as an opportunity to attempt to settle perceived political scores with Director Yeager and Anderson County Commissioner Myron Iwanski. Sheriff White cannot express how much he believes that Director Yeager and Commissioner Iwanski are decent and selfless public servants and that the people of Anderson County are lucky to have such competent and dedicated individuals working for the efficient operation of their government. Notwithstanding the recent rancor, as a lifelong resident of Anderson County, and as a 33-year employee of the Anderson County Sheriff's Office, Sheriff White is hopeful that Mayor Frank will be able to put whatever differences she may perceive between her, Director Yeager, Commissioner Iwanski, and the entire Commission behind her, so they may all continue to dedicate themselves to the service of the people of Anderson County.

Attached are relevant pages concerning employment of deputies and assistants from the Tennessee Sheriff's Handbook, a 338 page document from the University of Tennessee County Technical Assistance Service (CTAS), which all 95 sheriffs in Tennessee rely upon for operational and legal information. These pages detail information concerning salary petitions and letters of agreements along with case law and other facts. Please note the bold and underlined sections are their emphasis, not ours, and are part of the original document.

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CHAPTER 3

DEPUTIES AND ASSISTANTS

Employment of Deputies and Assistants

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 executive; or, if the county executive 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. Gillless, 972 S.W.2d 683 (Tenn. Ct. App. 1997).

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. ***The sheriff must file a salary suit or enter into a letter of agreement. Doing nothing is not an option.***

Salary Suits.

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

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

The statutory scheme enacted by the General Assembly for staffing and compensating the sheriff's office through a salary suit is clear. The sheriff must demonstrate that he or she cannot properly and efficiently conduct the affairs and transact the business of his or her office by devoting his or her entire working time thereto; and, the sheriff must show the

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

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

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

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

The only Tennessee decision directly addressing the question of whether a petition to employ and pay deputies may seek retroactive pay for deputies hired prior to the filing of the petition is *State ex rel. Obion County v. Bond*, 8 S.W.2d 367 (Tenn. 1928). In that case, the court interpreting the predecessor of T.C.A. § 8-20-101, The Public Acts of 1921, chapter 101, section 7, concluded that the intention of the legislature in enacting this legislation was to require the sheriff or other county official named in this

statute to petition the appropriate court to hire additional deputies and for the amount of salary to be paid to the additional deputies in *advance* of the expenditures. Therefore, the court concluded that a petition to employ and pay deputies could not properly seek retroactive pay for deputies hired prior to the filing of the petition. *Id.* at 368. We believe that in light of this interpretation of the statute by the Tennessee Supreme Court, Sheriff Woods was not authorized to petition the Circuit Court at Henderson County for funds to pay the three additional deputies retroactively that he had hired eight months prior to filing the petition. Accordingly, we hold that the trial court erred in granting Sheriff Woods' petition insofar as the petition seeks funds retroactively to pay these three deputies.

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

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

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

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

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

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

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

Letters of Agreement.

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. **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. 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.** The letter is then filed with the court. 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. T.C.A. § 8-20-101(c)(1) and (c)(2). A sample letter is provided in the Appendix.

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). *State ex rel. Ledbetter v. Duncan*, 702 S.W.2d 163, 165 (Tenn. 1985) (We hold that the provision requires the county legislative body to fully fund the salaries of all deputies as set by the circuit or criminal court pursuant to T.C.A. Chapter 20 of Title 8.). **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. 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. 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) (If the county legislative body refuses to appropriate the funds required by the court's order, the sheriff may seek a writ of mandamus to compel it to do so.). See also *State ex rel. Ledbetter v. Duncan*, 702 S.W.2d 163, 165 (Tenn. 1985); *Sapp v. State ex rel. Nipper*, 524 S.W.2d 652, 653-54 (Tenn. 1975); *Atkinson v. McClanahan*, 520 S.W.2d 348, 353 (Tenn. Ct. App. 1974) (It would seem to us that the remedy of the Sheriff, in the event the decree of the Circuit Judge becomes final and is not carried out and its implementation refused, would be to file a bill for mandamus.); Op. Tenn. Atty. Gen. 04-104 (July 2, 2004).

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

Patronage Dismissals.

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

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