

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
P.O. BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 05-162

Security Officer for General Sessions Court Serving as Grand Jury Foreperson in the Same County

QUESTION

Does any conflict of interest arise from the same person serving as grand jury foreperson, pursuant to Rule 6 (g) of the Tennessee Rules of Criminal Procedure, and simultaneously holding the position of court security officer for General Sessions Court in the same county?

OPINION

There is no conflict in the same person acting as both the grand jury foreperson and the security officer for the General Sessions Court in the same county.

ANALYSIS

The qualifications for jurors are set out in Tenn. Code Ann. § 22-1-101, which reads as follows:

Every person of the age of eighteen (18) years, being a citizen of the United States, and a resident of the state of Tennessee, and of the county in which he or she may be summoned for jury service for a period of twelve (12) months next preceding the date of such summons, is legally qualified to act as a grand or petit juror, if not otherwise incompetent under the express provisions of the code.

To impanel a grand jury, the names of all the qualified jurors are printed on a slip of paper and placed in a box or other suitable receptacle and drawn out in open court. Tenn. R. Crim. P. 6(a)(1). The first twelve qualified jurors whose names are drawn, along with the foreperson, shall be the grand jury for the term and shall attend the court until dismissed by the judge or until the next term. *Id.* The grand jury foreperson, who must possess all of the qualifications of a juror, is appointed for a two-year term by the judge of the court authorized by law to charge the grand jury and to receive the report of that body. Tenn. R. Crim. P. 6(g).

A grand juror may be disqualified under certain circumstances, none of which involve disqualification of a grand juror because the juror is a member of law enforcement. Tennessee Code Annotated § 22-1-102 identifies persons who are incompetent to act as jurors. Full-time law enforcement officers are not incompetent to act as jurors; however, they are exempt from liability

to act as jurors. *See* Tenn. Code Ann. § 22-1-103. The statutory exemption from jury service provided to certain occupational and disability groups is personal to the individual, to be claimed or waived by the prospective jurors who are entitled to them. *State v. Boyd*, 867 S.W.2d 330, 336 (Tenn. Crim. App. 1992). In the criminal code, a law enforcement officer is “an officer, employee or agent of government who has a duty imposed by law to: (A) maintain public order; or (B) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and (C) Investigate the commission or suspected commission of offenses.” Tenn. Code Ann. § 39-11-106(a)(21). If a courtroom security officer is considered a law enforcement officer by virtue of the officer’s status as a governmental employee with a duty to maintain order in the courtroom, then the law enforcement officer is not automatically excluded from acting as a juror. If, however, a courtroom security officer is not considered a law enforcement officer, then there is no restriction preventing the security officer from acting as a juror, as long as the security officer is otherwise qualified. If a law enforcement officer is not automatically disqualified to act as a juror, then neither is a security officer.

Every defendant is guaranteed “a trial by a jury free of a disqualification propter affectum; that is, a disqualification on account of some bias or partiality toward one side or the other of the litigation.” *State v. Pamplin*, 138 S.W.3d 283, 285 (Tenn. Crim. App. 2003). (quoting *Toombs v. State*, 270 S.W.2d 649, 650 (Tenn. 1954)). Similarly, the court has the discretion to discharge a grand or petit juror if the juror “does not possess the requisite qualifications, or who is exempt or disqualified from such service, or for any other reasonable or proper cause, to be judged by the court. Tenn. Code. Ann. § 22-1-106. That a state of mind exists on the juror's part toward law enforcement or which will prevent the juror from acting impartially, shall constitute such cause.” *Id.* However, a juror’s status as an law enforcement officer, standing alone, does not automatically lead to the conclusion that the juror is biased or prejudiced and thus must be excluded from service. *Pamplin*, 138 S.W.3d at 286; *see State v. Pender*, 687 S.W.2d 714, 718 (Tenn. Crim. App. 1984).

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

BLIND AKRAWI
Assistant Attorney General

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Requested by:

Honorable Mike Bottoms
District Attorney General
and
Honorable J. Douglas Dicus
Assistant District Attorney General
Twenty Second Judicial District
252 N. Military, Suite 202
P.O. Box 459
Lawrenceburg, Tennessee 38464