

STATE OF TENNESSEE

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Opinion No. 10-95

Retroactive Effect of Amendment to Sheriff's Civil Service Law

QUESTIONS

2010 Tenn. Pub. Acts Ch. 1025 ("Chapter 1025") amended Tenn. Code Ann. § 8-8-419 regarding political activity under the Sheriff's Civil Service Law.

1. Does this amendment apply to fundraising or campaign activities that took place before the effective date of the law?
2. Is retroactive application of the amendment consistent with the letter of the act or legislative intent?

OPINIONS

1. Chapter 1025 does not apply to fundraising or campaign activities that took place before it became law.
2. Retroactive application of Chapter 1025 is inconsistent with the language of the act; nor does the legislative history of the act reflect any intent to apply it retroactively.

ANALYSIS

This opinion concerns the retroactive application of 2010 Tenn. Pub. Acts Ch. 1025. Section 1 of this act rewrites subsection (a) of Tenn. Code Ann. § 8-8-419. This statute addresses political activity of employees in a sheriff's office in a county that has adopted the County Sheriff's Civil Service Law of 1974. Before the 2010 amendment, this subsection provided:

(a) No person holding a position in the classified service shall take an active part in any political campaign while on duty, nor under any circumstances shall any employee of the sheriff's department solicit money for political campaigns. A deputy sheriff shall not use such position to reflect the deputy sheriff's personal political feelings as those of the sheriff's department or to exert any pressure on anyone to influence that person's political views. No employee while on duty, nor

any officer while in uniform, shall display any political advertising or paraphernalia on such person's body or automobile. No employee of the sheriff's office shall make any public endorsement of any candidate in any campaign for elected office.

This Office recently addressed the meaning of this language in two opinions. Op. Tenn. Att'y Gen. 10-29 (March 10, 2010); Op. Tenn. Att'y Gen. 10-08 (January 25, 2010). As rewritten by Chapter 1025, Tenn. Code Ann. § 8-8-419(a) now provides:

(a)(1) No person holding a position in the classified service shall take an active part in any political campaign while on duty.

(2)(A) No employee of the sheriff's department shall solicit money for political campaigns; provided that such restriction shall not prohibit an employee, including a deputy sheriff, who is running for an elected office from soliciting and accepting campaign contributions for such person's own election campaign if the person is not on duty or in uniform when such activities occur.

(B) No employee of the sheriff's office shall make any public endorsement of any candidate in any campaign for elected office; provided, that if an employee or deputy sheriff is running for an elected office then such restriction shall not apply to that employee or deputy sheriff's own campaign.

(3) A deputy sheriff shall not use such position to reflect the deputy sheriff's personal political feelings as those of the sheriff's department or to exert any pressure on anyone to influence that person's political views.

(4) No employee while on duty, nor any officer while in uniform, shall display any political advertising or paraphernalia on such person's body or automobile.

Section 2 of the new law amends Tenn. Code Ann. § 8-8-402 to read as follows:

(a) Except as provided in subsection (b), this part shall be local in effect and shall become effective in a particular county upon the contingency of a two-thirds (2/3) vote of the county legislative body approving this law.

(b) *On or after the effective date of this act*, § 8-8-419(a)(2) shall apply in any particular county which has adopted or which after the effective date of this act makes this part applicable to such county, and shall also apply in any other county, notwithstanding any private act, resolution, personnel policy or charter provision to the contrary, which has adopted or which adopts a sheriff's civil service law.

(Emphasis added). Section 3 provides: "This act shall take effect *upon becoming a law*, the public welfare requiring it." (Emphasis added). Chapter 1025 took effect when the Governor signed it on June 9, 2010.

1. Retroactive Effect

The first question is whether Chapter 1025 applies to fundraising or campaign activities that took place before it became law. By its terms, this act became effective on becoming a law. Nothing in the act indicates it was intended to apply retroactively to conduct that took place before its effective date. Statutes are given a prospective effect unless the General Assembly has plainly expressed or necessarily implied that an act should have retroactive force. *Dowlen v. Fitch*, 196 Tenn. 206, 264 S.W.2d 824, 825 (Tenn.), *reh'g denied* (1954). For this reason, based on the language of the act, it does not apply to fundraising or campaign activities that took place before it became law.

2. Legislative Intent

The second question is whether retroactive application of Chapter 1025 is consistent with the letter of the act or legislative intent. Courts should look first to the language of the statute to determine legislative purpose. *Spencer v. Towson Moving and Storage, Inc.*, 922 S.W.2d 508, 510 (Tenn. 1996). Where a statute is ambiguous or when it is not clear what the legislature intended, courts may look to the legislative history to determine the meaning of the statute. *See, e.g., Lucius v. Bayside First Mortgage, Inc.*, 43 F.Supp.2d 868, 871 (W.D. Tenn. 1999). In this case nothing in the language of the act indicates that it was intended to apply retroactively. The legislative history of the act also reflects that it was intended to change the current law, not to apply retroactively. Thus, retroactive application of Chapter 1025 is inconsistent with the language of the act; nor does its legislative history reflect any intent to apply it retroactively.

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