

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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March 13, 2000

Opinion No. 00-041

Transfer of Duties of Knox County Circuit Court Clerk

QUESTION

Under various private acts, the Clerk of the Circuit Court of Knox County acts as the Clerk of the Knox County General Sessions Court and the Clerk of the Knox County Juvenile Court. Knox County is a charter county. Could the Knox County Commission, by enacting an ordinance, transfer the Circuit Court Clerk's duties with regard to criminal cases in Knox County General Sessions Court to the Clerk of the Knox County Criminal Court?

OPINION

No. This transfer should be accomplished by some act of the General Assembly, either private or of general applicability.

ANALYSIS

This opinion concerns the transfer of duties from the Clerk of the Knox County Circuit Court to the Clerk of the Knox County Criminal Court. Under 1939 Tenn. Priv. Acts Ch. 54, Section 14, the Clerk of the Knox County Circuit Court acts as the Clerk of the Knox County General Sessions Court. That section provides in part that "[t]he clerk of said court and his deputies assigned thereto shall have concurrent authority with the judges to issue warrants and other processes and writs, other than those which the law requires shall be issued only by or upon the fiat of a judicial officer." Under 1913 Tenn. Priv. Acts Ch. 277, Section 6, as amended by 1989 Tenn. Priv. Acts Ch. 27, the Clerk of the Circuit and General Sessions Court of Knox County also serves as the Clerk of the Knox County Juvenile Court. The section provides in part that "[t]he office of Juvenile Court Clerk, General Sessions Court Clerk, and Circuit Court Clerk of Knox County shall be held by the same person who shall be elected every four (4) years, beginning with the general election of August, 1990." The Knox County Criminal Court was created under 1907 Tenn. Priv. Acts Ch. 1, as amended. Under Section 5 of this act, the Clerk of the Criminal Branch of the Circuit Court of Knox County became the Clerk of the Knox County Criminal Court.

Knox County has adopted a charter form of government under Tenn. Code Ann. §§ 5-1-201, *et seq.* The Clerk of the Knox County Criminal Court has offered to perform the Circuit Court Clerk's duties with regard to criminal cases heard in the Knox County General Sessions Court. The question is whether the county may accomplish this transfer of responsibilities by enacting an ordinance. We think a charter county lacks the authority to alter the duties of the clerks of the courts

operating in Knox County. Tenn. Code Ann. § 5-1-204, which outlines the creation of a charter commission, provides in part:

Nothing contained within the provisions of this section shall be construed to affect the judicial system in any county adopting a charter form of government except as its charter or ordinances may direct the imposing, levying or collection of fines, penalties, fees or court costs or the procedures for the filling of vacancies as required by law.

Tenn. Code Ann. § 5-1-204(f)(1). Knox County does not fall within the counties excepted by subsection (f)(2). More broadly, this Office has concluded that a county charter adopted under Tenn. Code Ann. §§ 5-1-201, *et seq.*, may not address the judicial power of the State. Op. Tenn. Atty. Gen. 84-165 (May 17, 1984). In that instance, the question was whether a county operating under a home rule charter could abolish or change the pay provision of a Shelby County General Sessions Court created by private act. The opinion concludes that neither Tenn. Code Ann. § 5-1-210, which has not been amended since the opinion was written, nor any other statute, authorizes a county to legislate with regard to courts. As to the clerks concerned in the request, we do not think a court would consider them to be “administrative and executive officers of county government” or “administrative departments, agencies, boards and commissions” subject to creation and regulation under the county charter in Tenn. Code Ann. § 5-1-210(5), (6), and (7). Instead, we think a court would conclude that these officers are judicial officers whose duties the county commission is not authorized to change. *See, e.g.*, Tenn. Const. art. VI, § 13. For this reason, we think the proposed transfer should be accomplished through some act of the General Assembly, either private or of general applicability.

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