

STATE OF TENNESSEE

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Opinion No. 07-02

Security Guards Issuing Criminal Summons/Citation

QUESTIONS

1. Whether a hospital security guard has the authority to issue a criminal summons or citation for an offense committed on hospital property.
2. Whether a security guard making an arrest must deliver the offender to a law enforcement officer if a summons would be required pursuant to Tenn. Code Ann. § 40-6-215.
3. Whether a local law enforcement agency may authorize private security guards to issue criminal summonses or citations bearing the name of the law enforcement agency.
4. Whether a law enforcement agency would incur liability by allowing private security guards to issue criminal summonses or citations bearing the name of the law enforcement agency.
5. What is the consequence of destroying or concealing a summons or citation issued by a private security guard?

OPINIONS

1. No. A security guard may not issue a criminal summons because he is not a “magistrate or clerk” as set forth in Tenn. Code Ann. § 40-6-215(a)(1) and Tenn. R. Crim. P. 4(a). A security guard is without authority to issue a citation because he is not a “peace officer” as defined at Tenn. Code Ann. § 40-7-118(a)(3).
2. Yes. A security guard, like any private person who effects an arrest for a public offense, must take the arrested person before a magistrate or deliver the arrested person to an officer pursuant to Tenn. Code Ann. § 40-7-113(a), regardless of whether a criminal summons would be required by § 40-6-215.
3. No. The authority to issue criminal summonses and citations is statutorily derived. No local law enforcement agency may independently convey that statutory authority to a private security guard.

4. A law enforcement agency's attempt to allow private security guards to issue summonses and citations is illegal and could lead to the law enforcement agency's incurring liability for the actions of the security guard.

5. Because a private security guard is without legal authority to issue either a summons or a citation, there would be no consequence to destroying or concealing the summons or citation.

ANALYSIS

1. Tenn. Code Ann. § 40-6-215(a)(1) provides that a "magistrate or clerk may issue a criminal summons instead of an arrest warrant." Likewise, Tenn. R. Crim. P. 4(a) states, "the magistrate or clerk . . . shall issue a criminal summons for the appearance of the defendant." As recognized in the Advisory Commission Comments to Rule 4, the use of the words "magistrate" and "clerk" are qualified "by the words 'who is neutral and detached and who is capable of the probable cause determination required by this rule.' See *Shadwick v. City of Tampa*, 407 U.S. 345 (1972)." A police officer is not considered a neutral officer. See *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). Therefore, a hospital security guard is without authority to issue a criminal summons because he is not a neutral and detached magistrate or clerk.

A security guard is also without authority to issue a citation, which is "a written order issued by a peace officer requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time." Tenn. Code Ann. § 40-7-118(a)(1).

(A) "Peace officer" means an officer, employee or agent of government who has a duty imposed by law to:

(i) Maintain public order;

(ii) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and

(iii) Investigate the commission or suspected commission of offenses; and

(B) "Peace officer" also includes an officer, employee or agent of government who has the duty or responsibility to enforce laws and regulations pertaining to forests in this state.

Tenn. Code Ann. § 40-7-118(a)(3). Because a privately employed security guard is not a peace officer, he does not have authority to issue a citation.

2. Tenn. Code Ann. § 40-7-113(a) states, "A private person who has arrested another for a public offense shall, without unnecessary delay, take the arrested person before a magistrate or deliver the arrested person to an officer." Thus, a security guard, as a private person, is obligated by statute to deliver any person he arrests to a law enforcement officer or magistrate. A private citizen's statutory right to make a warrantless arrest is unaffected by the requirement in Tenn. Code Ann. § 40-6-215 for a magistrate or clerk to issue a criminal summons instead of an arrest warrant in certain situations. See Tenn. Op. Att'y Gen. No. 04-036, 2004 WL 596699 (Mar. 12, 2004)

(Tenn. Code Ann. § 40-6-215 “does not affect a private citizen’s authority . . . to make a citizen arrest without a warrant.”); Tenn. Op. Att’y Gen. No. 03-153, 2003 WL 23099753 (Dec. 1, 2003). It follows that the private citizen’s obligation to take a person whom he has arrested before a magistrate or to a law enforcement officer is likewise unaffected by § 40-6-215. Thus, a security guard is statutorily obligated to deliver any person he arrests pursuant to the citizen’s arrest statute to either a magistrate or a law enforcement officer, regardless of whether a criminal summons would be required under § 40-6-215.

3. As stated above, only a magistrate or clerk may issue a criminal summons, and only a peace officer may issue a citation. *See* Tenn. Code Ann. §§ 40-6-215(a)(1), 40-7-118(a)(1); Tenn. R. Crim. P. 4(a). Thus, the authority to issue both summonses and citations is derived from statutes. Local law enforcement agencies may not *sua sponte* convey that statutory authority to private security guards.

4. The determination of whether a law enforcement agency could “incur any liability” by allowing a security guard to issue a summons or citation in violation of statutory law would depend upon the facts of the case. Such a question may not properly be addressed in a vacuum. However, it is entirely possible that an agency engaging in such actions, which are outside the scope of the agency’s authority, would lose its immunity and become liable for the actions of the security guard, who arguably would be acting as an agent of the law enforcement agency.

5. As discussed above, a security guard has no authority to issue either a criminal summons or a citation. Because any summons or citation issued by a security guard would therefore be invalid, there would be no legal consequence to the act of destroying or concealing the summons or citation.

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Page 4

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