

STATE OF TENNESSEE

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March 19, 2012

Opinion No. 12-38

Collecting Sheriff's Fee for Bail Bond

QUESTIONS

1. Does Tenn. Code Ann. § 8-21-901(a)(3)(C) grant authority to sheriffs in Tennessee to charge and collect a \$5 fee on a bail bond at the time the bond is initially made, and, if so, when is this fee assessed and collected?

2. Does Tenn. Code Ann. § 8-21-901(a)(3)(C) grant authority to sheriffs in Tennessee to charge and collect a \$5 fee from a surety on a bail bond before the sheriff will release the defendant on a bail bond?

3. Is a surety on a bail bond liable for payment of the \$5 fee authorized by Tenn. Code Ann. § 8-21-901(a)(3)(C) if the surety has not agreed in writing to be liable for such costs in a criminal case?

OPINIONS

1. Tenn. Code Ann. § 8-21-901(a)(3)(C) authorizes sheriffs to collect a \$5 fee for every bail bond, which may be collected by the sheriff upon issuance and acceptance of the bail bond.

2. Yes.

3. Yes.

ANALYSIS

1. Tennessee law provides a sheriff may collect various fees for specified official acts, including a \$5.00 fee for every bail bond, stating in relevant part:

a) Notwithstanding any other provision of law to the contrary, the sheriff or constable is entitled to demand and receive the respective fees for the following services where services are actually rendered:

...

(3)(C) For every bail bond: 5.00

Tenn. Code Ann. § 8-21-901(a)(3)(C).

The sheriff is “entitled to demand and receive” this fee “where services are actually rendered,” in this case upon the issuance and acceptance of a bail bond for a defendant. Tenn. Code Ann. § 8-21-901(a). *See also* Op. Tenn. Att’y Gen. 02-113 (Oct. 10, 2002); Op. Tenn. Att’y Gen. 01-145 (Sept. 11, 2001) (both opinions state that a sheriff is entitled to demand and receive the fees enumerated in Tenn. Code Ann. § 8-21-901 upon rendition of the service performed). Any disputes regarding the collection of any fee are resolved under Tenn. Code Ann. § 8-21-105, which states that the courts have a duty “to decide, upon application by the officer entitled to compensation, any question arising under the law, and such decision will protect the officer acting under it.” *See also* Op. Tenn. Att’y Gen. 02-113.

2. As specifically stated in Tenn. Code Ann. § 8-21-901(a), the \$5.00 fee assessed and collected by a sheriff for the issuance and acceptance of a bail bond is intended to defray the administrative services rendered by sheriffs in the bail bond process. The duties performed by sheriffs related to the acceptance of bail bonds are catalogued at Tenn. Code Ann. § 40-11-106, § 40-11-108, and § 40-11-109. These duties include determining the sufficiency of the surety and the validity of any bond, providing a numbered receipt to the defendant, and depositing the bail with the clerk of the court having jurisdiction over the offense. Tenn. Code Ann. § 40-11-106. The sheriff’s fee, applicable to all bail bonds and set at a de minimis amount of \$5.00 per bail bond, is a reasonable fee intended to defray partially the sheriff’s administrative costs. Accordingly the collection of this fee does not violate any provision of the Tennessee or United States Constitutions, including the prohibitions against “excessive bail.” *See Schilb v. Kuebel*, 404 U.S. 357, 365 (upholding an Illinois policy retaining one percent of the bond amount as a fee, stating the validity of the fee satisfies a rational basis review given it “smacks of administrative detail and of procedure and is hardly to be classified as a ‘fundamental’ right or as based upon any suspect criterion.”). *See also Broussard v. Parish of Orleans*, 318 F.3d 644, 660 (5th Cir. 2003); *Payton v. County of Kane*, 301 F. Supp. 2d 835, 838 (N.D. Ill. 2004). Therefore, a sheriff may lawfully condition acceptance of a bail bond upon payment of the \$5 fee.

3. As discussed above, the sheriff is entitled to demand this fee at the time service is rendered pursuant to Tenn. Code Ann. § 8-21-901(a). Therefore, non-payment of the required fee by the defendant or the defendant’s surety constitutes grounds for the sheriff to reject the bond as not valid. *See* Tenn. Code Ann. § 40-11-106(a) (granting the sheriff or the judicial commissioner authority to determine the sufficiency of the surety and the validity of the bond). *See also* Op. Tenn. Att’y Gen. 03-050 (April 22, 2003) (stating a surety may be deemed insufficient and rejected by the sheriff or judicial commissioner). Thus, while the surety may refuse to pay the administrative fee when seeking a bail bond from the sheriff, the sheriff can nonetheless require payment of the fee as a condition for validating the bond under Tenn. Code Ann. § 40-11-106(a).

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