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MARK GWYN
Director

Memorandum

To: Tennessee Sex Offender Registering Agencies
Date: August 25, 2009
From: Jason Locke, Assistant Special Agent in Charge
Criminal Intelligence Unit / Sex Offender Registry
RE: Charging for Fingerprint Services

Several agencies have inquired recently as to the ability of a local law enforcement agency to charge a convicted sex offender a fee for obtaining his or her fingerprints as required in the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004.

This question was sent to the legal advisor to the Sex Offender Registry Unit at TBI, who researched the issue both through the State Comptroller's Office and the State Attorney General's Office, which resulted in the following findings:

"It is the position of the comptroller's office that a sheriff cannot charge a fee unless it is authorized by statute."

*OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE
Opinion No. 01-139, 2001 Tenn. AG LEXIS 146, September 4, 2001*

As an arm of a political subdivision of state government, a local law enforcement agency derives its power from statutes passed by the General Assembly and may only exercise powers derived explicitly or by necessary implication from state law. State ex rel. Witcher v. Bilbrey, 878 S.W.2d 567, 571 (Tenn. App. 1994): Thus, a local law enforcement agency must be given the authority through' constitutional mandate or acts of the Legislature to charge a fee to defray the cost of providing a service or benefit. See Op. Tenn. Atty. Gen. 97-077 (May 21, 1997).

There is no such mandate or legislative act authorizing local law enforcement authorities to charge a convicted sex offender for fingerprinting as required in the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004, therefore, local law enforcement agencies may not charge a fee for this service.

JTL: jl

Cc: Jeff Puckett, Deputy Director, TBI
Jerri Powell, Special Agent in Charge, Tennessee Fusion Center

