

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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October 17, 2002

Opinion No. 02-115

Authority to Hire Attorney

QUESTION

1939 Tenn. Priv. Acts Ch. 179 creates the office of Cocke County Attorney. Section 3 of the act provides that “no officials of said county shall employ any other attorney save at his own personal expense, unless he shall be first authorized and empowered by the Quarterly County Court of the County to do so.” The Cocke County Commission passed a budget that includes a line item in the Sheriff’s Department for “legal services.” Where the Cocke County Attorney has declined to represent the Sheriff’s Office because of a conflict, is the Sheriff authorized to hire an attorney other than the Cocke County Attorney without the express authority of the Cocke County Commission?

OPINION

No, the Commission should approve the contract for legal services before it becomes effective.

ANALYSIS

This request concerns the interpretation of 1939 Tenn. Priv. Acts Ch. 179. That act creates the office of Cocke County Attorney. Section 1 of the act creates the office and provides for an annual salary. Section 3 of the act provides:

That it shall be the duty of the County Attorney to advise the county officials upon legal matters effecting [sic] their office and no officials of said county shall employ any other attorney save at his own personal expense, *unless he shall be first authorized and empowered by the Quarterly County Court of the County to do so.* The compensation of county attorney as set out in Section 2 of this bill is not intended to include litigation which may be instituted by or against the County.

1939 Tenn. Priv. Acts Ch. 179, § 3 (emphasis added).

The request indicates that the Cocke County Commission passed a budget that includes a specific line item for “legal expenses” for the budget of the Sheriff’s Department. A deputy sheriff

was ordered to defend contempt of court charges in connection with the release of a county jail inmate. The Cocke County Attorney declined to accept the case, citing a conflict of interest. The Sheriff then hired a private attorney without consulting with the County Commission. The Sheriff has presented a bill for the attorney's services to the Cocke County Executive.

The Sheriff's authority to hire an attorney without presenting the legal services agreement to the County Commission depends on whether, by including the line item for "legal expenses" in the budget for the Sheriff's Department, the County Commission "authorized and empowered" the Sheriff to select a private attorney and negotiate the terms of the agreement under these circumstances. We do not think the line item constitutes such authority. Under the private act, the Cocke County Attorney is entitled to additional compensation for defending the county in litigation. The line item can be interpreted as representing additional compensation due the Cocke County Attorney for representing the county and the Sheriff in actions against the Sheriff or members of the Sheriff's Department. For this reason, where the Cocke County Attorney declines to represent a member of the Sheriff's Department, the Sheriff is not authorized to select a private attorney and negotiate the terms of an agreement for legal services without the prior approval of the County Commission.

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