

STATE OF TENNESSEE

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June 4, 2004

Opinion No. 04-097

Criminal Law - - Propriety of increased law enforcement activities and stops based on probable cause.

QUESTIONS

1. May a county that experiences increased traffic resulting from an entertainment event in an adjacent county increase law enforcement activity and personnel solely because of the increase in traffic?
2. If probable cause exists, can law enforcement personnel stop vehicles and pedestrians traveling to and exiting from the event for criminal activity?

OPINION

The county has the authority to increase law enforcement activities because of the increased need due to the entertainment event. When reasonable suspicion or probable cause exists, law enforcement personnel are constitutionally authorized to stop vehicles and/or pedestrians.

ANALYSIS

1. Research has disclosed no statutory prohibition regarding increased law enforcement. Relevant constitutional principles of law, however, do apply.

The Fourth Amendment to the United States Constitution guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . .” This amendment is applicable to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367, 643, 655 (1961). Article I, Section 7, of the Tennessee Constitution similarly provides “that the people shall be secure in their persons, houses, papers and possession, from unreasonable searches and seizures. . . .”

Before either the federal or state constitutions are implicated, however, there must be a search or “seizure” that would serve to trigger the guarantees in question. See *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 450 (1990); *State v. Vineyard*, 958 S.W.2d 730, 733 (Tenn. 1998). Where the police stop a vehicle or a pedestrian, even if for a brief period or a limited purpose, a

constitutionally recognized “seizure” under both the state and federal constitutional provisions is said to have occurred. *Delaware v. Prouse*, 440 U.S. 648, 654 (1979); *State v. Pulley*, 863 S.W.2d 29, 30 (Tenn. 1993). Where the police do not detain individuals, however, no constitutional protections are implicated. *See California v. Hodari D*, 499 U.S. 621, 626 (1991); *State v. Darnell*, 905 S.W.2d 953, 957 (Tenn. Crim. App. 1995).

Here, the decision to increase law enforcement personnel because of the increased volume of traffic does not, in and of itself, implicate a constitutional search or seizure since there is no detention. Accordingly, the county has authority to increase law enforcement activities as described.

2. As discussed above, once an individual is stopped by police while traveling in a vehicle or as a pedestrian, a “seizure” implicating the protection of both the state and federal constitutions occurs. *See Whren v. United States*, 517 U.S. 806 (1996); *Terry v. Ohio*, 392 U.S. 1 (1968); *Pulley, supra*, 863 S.W.2d at 30. It is well settled, however, that the stop of an automobile, or a pedestrian, is constitutionally reasonable under both the state and federal constitutions if the police have probable cause or reasonable suspicion that a crime occurred or may be occurring. *Vineyard*, 958 S.W.2d at 734. A reasonable suspicion must be based on specific and articulable facts. *Pulley*, 863 S.W.2d at 30.

Accordingly, any law enforcement personnel that have “probable cause” or “reasonable suspicion” of criminal activity may stop vehicles and/or pedestrians traveling to or exiting from an entertainment event.

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