

STATE OF TENNESSEE
OFFICE OF THE
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October 10, 2005

Opinion No. 05-153

District Attorney General's Subpoena Authority Under Tenn. Code Ann. § 40-17-123

QUESTIONS

1. Does the provision of Tenn. Code Ann. § 40-17-123, which authorizes a law enforcement officer to obtain a judicial subpoena, authorize the district attorney general or an assistant district attorney to apply for and obtain a judicial subpoena in light of the definition of a law enforcement officer set out in Tenn. Code Ann. § 39-11-106?
2. Does the district attorney general's criminal investigator have the authority to seek and obtain a judicial subpoena under Tenn. Code Ann. § 40-17-123?

OPINIONS

1. Yes. Both district attorneys general and also their assistants qualify as law enforcement officers under the definition set forth in Tenn. Code Ann. § 39-11-106.
2. Yes. A criminal investigator employed by a district attorney general meets the definition of a law enforcement officer in Tenn. Code Ann. § 39-11-106 and thus may obtain a judicial subpoena pursuant to Tenn. Code Ann. § 40-17-123.

ANALYSIS

1. Tenn. Code Ann. § 39-11-106 (21) establishes that government officers, employees, or agents are law enforcement officers only when they have a duty imposed by law to maintain public order or make arrests, and also have the duty to investigate the commission of offenses. At common law, the Attorney General is the chief law enforcement officer of the state and may exercise this authority as the public interest requires. *State v. Heath*, 806 S.W.2d 535, 537 (Tenn. Ct. App. 1991). Likewise, a district attorney general is the chief law enforcement officer of his judicial district and thus may exercise his power in the same fashion. *McLellan v. Crockett*, 1990 WL 148 at *2 (Tenn. Ct. App. 1990).

Tenn. Code Ann. § 8-7-103, which sets forth the statutory duties of a district attorney general, does not grant the authority for district attorneys general to make arrests. The duties outlined by this statute, however, do fall under the broad category of maintaining public order, especially in light of the common law authority of the district attorney general to exercise his authority as the public interest requires. This statute also grants district attorneys general with investigatory powers and the authority to delegate their powers to assistant district attorneys general.

Accordingly, it is the opinion of this office that Tenn. Code Ann. § 40-17-123 authorizes a district attorney general or an assistant district attorney general to obtain a judicial subpoena.

2. Tenn. Code Ann. § 16-2-508(f)(2) provides that criminal investigators for district attorneys general shall “possess the same power and authority as deputies of the county sheriffs.” Tenn. Code Ann. § 8-8-213 establishes that sheriff deputies are “conservators of the peace” and are entitled to prevent crime, keep the peace, and make arrests. Because criminal investigators have the same authority as deputies and, thus, meet the definition of a law enforcement officer provided by Tenn. Code Ann. § 39-11-106(21), it is the opinion of this office that a district attorney general’s criminal investigator may obtain a subpoena pursuant to Tenn. Code Ann. § 40-17-123.

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