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Deputy Sheriffs

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Deputy Sheriffs

Reference Number: CTAS-1225

A deputy sheriff may be deemed a full-time police officer under the laws pertaining to peace officers. "Full-time police officer" means any person employed by any municipality or political subdivision of the state of Tennessee whose primary responsibility is to prevent and detect crime and to apprehend offenders, and whose primary source of income is derived from employment as a police officer. T.C.A. § 38-8-101(1). See Op. Tenn. Atty. Gen. No. 85-224 (July 30, 1985).

Minimum Qualifications

Reference Number: CTAS-1226

After July 1, 1981, any person employed as a full-time deputy sheriff shall:

1. Be at least 18 years of age;
2. Be a citizen of the United States;
3. Be a high school graduate or possess its equivalency which shall include a general educational development (GED(R)) certificate;
4. Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor, controlled substances or controlled substance analogues;
5. Not have been released or discharged under any other than honorable discharge from any of the armed forces of the United States;
6. Have their fingerprints on file with the Tennessee Bureau of Investigation;
7. Have passed a physical examination by a licensed physician;
8. Have a good moral character as determined by a thorough investigation conducted by the employing agency; and
9. Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the applicant's ability to perform an essential function of the job, with or without a reasonable accommodation.

T.C.A. § 38-8-106. See *also* Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.03 (1).

The minimum standards set forth in T.C.A. § 38-8-106 and in Rule 1110-2-.03 (1) are mandatory and are binding upon the county. Any person who appoints an applicant, who, to the knowledge of the appointor, fails to meet the minimum standards as set forth in T.C.A. § 38-8-106 and in Rule 1110-2-.03 (1), and any person who signs the warrant or check for payment of salary of a person who, to the knowledge of the signer, fails to meet the qualifications as a deputy sheriff as provided in T.C.A. § 38-8-106 and in Rule 1110-2-.03 (1), commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding \$1,000. T.C.A. § 38-8-105(a) and (b). This provision does not apply to any officer hired by a county prior to July 1, 1982. T.C.A. § 38-8-105(c). See *also* Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.01 and Rule 1110-2-.02. Nothing in Title 38, Chapter 8, precludes an employing agency from establishing qualifications and standards for hiring and training deputy sheriffs that exceed those set by the POST Commission. T.C.A. § 38-8-109.

Recruit Training and Certification

Reference Number: CTAS-1227

Pursuant to T.C.A. § 38-8-107, all deputy sheriffs employed after July 1, 1983, must successfully complete recruit training within one year of the date of their employment. However, pursuant to POST rules, any officer seeking certification under the POST rules must satisfactorily complete the basic course within six months of initial employment as a law enforcement officer. During this initial six-month period prior to

attending the basic course, the recruit must be paired with a field training officer or other certified senior officer. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.03 (3).

The POST Commission will issue a certificate of compliance to any person who meets the qualifications for employment and satisfactorily completes an approved recruit training program. The commission may issue a certificate to any person who has received training in another state provided that the commission makes a determination that the training was at least equivalent to that required by the commission for approved police education and training programs in this state. In addition, the person seeking certification must satisfactorily comply with all of the other requirements of Title 38, Chapter 8. T.C.A. § 38-8-107. *See also* Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.03 (1).

Bond-Deputy Sheriff

Reference Number: CTAS-1228

There is no general law requirement that regular deputy sheriffs be bonded. However, in 2013, the Legislature amended T.C.A. § 8-19-101 to require county governments to obtain and maintain blanket surety bond coverage for all county employees not covered by individual bonds referenced elsewhere in statute. The minimum amount of such blanket bonds is one hundred fifty thousand dollars. T.C.A. § 8-19-101(e).

In-Service Training Requirements

Reference Number: CTAS-1229

All deputy sheriffs, except those who have attended the Basic Law Enforcement School within the calendar year must successfully complete a POST-approved 40-hour in-service training session appropriate for their rank and responsibilities each calendar year. The failure of an individual deputy to successfully complete the annual in-service training requirement will result in the deputy's loss of eligibility for the pay supplement provided for in T.C.A. § 38-8-111. The failure of this individual deputy to successfully complete another in-service training session within one year will result in the loss of that deputy's certification. Each sheriff's office participating in the POST Commission's training program must file a letter of intent with the commission stating its commitment to mandatory training for all law enforcement officers. The failure of several deputies from one sheriff's office will be cause for the commission to examine that sheriff's office training policy and may result in the office being declared out of compliance with state standards and thereby not eligible to participate in the commission's training programs at no cost. Any travel expense is the responsibility of the individual sheriff's office. T.C.A. § 38-8-107; Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.01 (1) and Rule 1110-4-.12.

Certified or recognized courses must be at least 40 hours in duration and established by the sheriff's office to meet the educational requirements normal to the deputy's position and responsibility in accord with the course curriculum requirements established by the POST Commission. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.01 (2). Each in-service training session must include at least eight hours of firearms training requalification with the deputy's service handgun and any other firearm authorized by the sheriff's office. Each deputy must score at least 75 percent to qualify. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.02. Each in-service training session must also include training in child sexual abuse. This training is mandatory for a deputy to be eligible for the salary supplement authorized in T.C.A. § 38-8-111. T.C.A. § 37-1-603(b)(4)(B); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.05 (4). In addition, pursuant to Public Chapter 243 of the Acts of 2005, each deputy who operates an emergency vehicle must receive no less than two hours of annual training and pass a comprehensive examination covering all applicable laws pertaining to emergency vehicles, the operation of the vehicle in emergency and nonemergency situations, and response to actions of nonemergency vehicles. Each deputy must obtain a passing grade of at least 75 percent on all tests, 75 percent on the firearms qualification, and 75 percent on the defensive driving qualification. The in-service training session is not complete until the officer has taken the test and qualified with his firearm. Any deputy who fails the test or firearms or driving qualification must make up the failing score during the calendar year in order to keep their certification. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.12.

Attendance records must be maintained on each deputy and must be submitted to the POST Commission. An attendance roster listing the names of all deputies attending a scheduled block of training on a

particular day must be maintained and kept on file by the sheriff's office. The sheriff and the instructor must certify to the POST Commission those deputies who successfully complete the in-service training. The certification must include the name of the reporting sheriff's office and the name, rank, and Social Security number of each deputy along with their test scores and firearm qualification score. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.06.

If a deputy attends a specialized school appropriate to his or her rank and responsibility, the eligibility of the school must be approved by the commission. Only schools of a law enforcement related nature will be considered for in-service credit toward meeting the 40 hour training requirement. A curriculum of each school and proof of successful completion by the individual attendee is required. See Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.09.

Any deputy who successfully completes a law enforcement course at any accredited institution of higher education, college, or university may be considered for annual fulfillment of all or a portion of the required 40 hours in-service credit hours, not including firearms training. See Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.11.

Requests for waivers of in-service training for a calendar year on the basis of medical disability must be submitted to the POST Commission by the chief administrative officer of the sheriff's office explaining the individual case. A doctor's statement must accompany the request. Each request will be considered individually. Requests for the waiver of in-service training for a calendar year on the basis that a deputy will retire during that year must be submitted by the deputy to his or her chief administrative officer stating the intention to retire prior to completion of in-service training for the calendar year. If the request is approved by the sheriff's office, then a letter must be forwarded to the POST Commission for approval. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.10.

Authority to Carry Handguns

Reference Number: CTAS-1230

Pursuant to T.C.A. § 39-17-1315(a)(1), the sheriff has the authority to authorize the carry of handguns by bonded and sworn deputy sheriffs who have successfully completed and continue to successfully complete on an annual basis a firearm training program of at least eight hours duration. The sheriff's authorization must be made by a written directive, a copy of which must be retained by the sheriff's office. Pursuant to the sheriff's written directive, POST certified deputy sheriffs may carry their handgun at all times, regardless of the deputy's regular duty hours or assignments. Nothing in T.C.A. § 39-17-1315(a)(1) prohibits the sheriff from placing restrictions on when or where a deputy may carry his or her service handgun. See *also* Op. Tenn. Atty. Gen. No. 99-024 (February 16, 1999).

POST-certified deputy sheriffs and commissioned reserve deputy sheriffs may carry firearms at all times and in all places within Tennessee, on-duty or off-duty, regardless of the deputy's regular duty hours or assignments except as provided by T.C.A. § 39-17-1350(c), federal law, lawful orders of court or the written directive of the sheriff. T.C.A. § 39-17-1350(a) and (d).

The authority conferred by T.C.A. § 39-17-1350 does not extend to a deputy sheriff or commissioned reserve deputy sheriff:

1. Who is not engaged in the actual discharge of official duties as a law enforcement officer and carries a firearm onto school grounds or inside a school building during regular school hours unless the officer immediately informs the principal that the officer will be present on school grounds or inside the school building and in possession of a firearm. If the principal is unavailable, the notice may be given to an appropriate administrative staff person in the principal's office;
2. Who is consuming beer or an alcoholic beverage or who is under the influence of beer, an alcoholic beverage, or a controlled substance or controlled substance analogue; or
3. Who is not engaged in the actual discharge of official duties as a law enforcement officer while attending a judicial proceeding.

T.C.A. § 39-17-1350(c). See Op. Tenn. Atty. Gen. No. 10-111 (November 3, 2010). See *also* T.C.A. § 39-17-1321 prohibiting the possession of a handgun while under the influence of alcohol or any controlled substance or controlled substance analogue.

Finally, T.C.A. §§ 39-17-1315(b)(2) and 39-17-1359 authorize private entities and governmental entities to prohibit the possession of weapons by any person at meetings conducted by, or on premises owned, operated, managed or under the control of the private entity or governmental entity. Notice of such prohibition must be posted and must be displayed in prominent locations. The attorney general has opined that T.C.A. § 39-17-1359 does not allow private entities or governmental entities to prohibit the

possession of weapons by law enforcement officers on their property. The Attorney General has also opined that T.C.A. § 39-17-1315(b)(2) does not allow private entities or governmental entities to prohibit the possession of weapons by state law enforcement officers or POST- certified local law enforcement officers on their property. See Op. Tenn. Atty. Gen. No. 00-161 (October 17, 2000). Based upon the attorney general's reasoning, T.C.A. § 39-17-1315(b)(2) does allow private entities or governmental entities to prohibit the possession of weapons by off-duty non-POST certified local law enforcement officers (i.e., reserve, auxiliary, part-time and temporary deputy sheriffs and police officers) on their property.

Salary Supplement-Deputy Sheriffs

Reference Number: CTAS-1231

Every county that requires all deputy sheriffs to complete an annual 40-hour in-service training course appropriate to the deputy's rank and responsibility at a school certified or recognized by the POST Commission is entitled to receive 5 percent of each qualified deputy's annual salary, but not more than \$600 for any one deputy in any one year, from the commission to be paid to each deputy in addition to the deputy's regular salary. In the event that 5 percent of a qualified deputy's annual salary does not amount to \$600, the deputy is nevertheless entitled to receive the full amount of \$600 as is any other qualified deputy, subject only to the specific appropriation of funds in the general appropriations act for the purpose of implementing the provisions of Title 38, Chapter 8. T.C.A. §§ 38-8-111(a)(1) and 38-8-111(c); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-6-.01. *Carter v. McWhorter*, 859 S.W.2d 343 (Tenn. Ct. App. 1993).

To be eligible to receive the salary supplement, a deputy sheriff must successfully complete 40 hours of in-service training during the calendar year. A deputy who has not completed eight months of full-time service during the calendar year is not eligible to receive the salary supplement except in the case of the deputy's death, retirement, or medical disability provided that the 40 hours of in-service training was completed prior to the death, retirement, or medical disability. Upon the submission of the proper documentation by a deputy, the commission will include time spent in active military service when calculating the required eight months of full-time service. Deputies who attend the Basic Law Enforcement School are not eligible to receive the salary supplement during that calendar year and are not required to attend in-service training during that year. These deputies are eligible to receive the salary supplement the following calendar year after successfully completing 40 hours of in-service training. Deputies terminated for cause or decertified during the calendar year are not eligible to receive the salary supplement. Notwithstanding any other provision of law, rule or regulation to the contrary, any deputy sheriff who served or serves on active duty in the armed forces of the United States during Operation Enduring Freedom or any other period of armed conflict prescribed by presidential proclamation or federal law that occurs following the period of Operation Enduring Freedom will receive the cash salary supplement if his or her service prevented or prevents attending the in-service training program. T.C.A. § 38-8-111(a)(2) and (a)(3); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-6-.02.

POST Commission funds made available to the county under T.C.A. § 38-8-111(a) and (b) must be received, held and expended in accordance with the provisions of T.C.A. § 38-8-111(a)-(c), the rules and regulations issued by the commission, and the following specific restrictions:

1. Funds provided shall be used only as a cash salary supplement to deputy sheriffs;
2. Each deputy sheriff shall be entitled to receive the state supplement which the deputy's qualifications brought to the county;
3. Funds provided shall not be used to supplant existing salaries or as substitutes for normal salary increases periodically due to deputy sheriffs; and
4. The cash salary supplement shall be considered as a bonus for the successful completion of training and shall not be considered as salary for subsequent years' determination of supplement or retirement purposes.

T.C.A. § 38-8-111(b). See *also* Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-6-.03. All accounts are subject to audit by the state comptroller, and all records pertaining to salary supplements are subject to inspection by personnel of the POST Commission. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-6-.04.

Off-Duty Status

Reference Number: CTAS-1232

There is no statute or rule of law in this state that places a mandatory duty upon police officers to keep the peace when "off duty." "To the contrary, when officers are 'off duty,' our statutes generally treat the officer as an ordinary private citizen and not as an agent or employee of the municipal police department under a general duty to keep the peace." *White v. Revco Discount Drug Centers, Inc.*, 33 S.W.3d 713, 720-721 (Tenn. 2000). "Of course, to say that officers do not continuously function in an official capacity is not to say that off-duty officers are prevented from assuming a duty to remedy a breach of the peace, or that officers are incapable of being summoned to official duty by the municipality. Nevertheless, it is clear that officers are not under a general duty to enforce the law while 'off duty,' and a blanket rule declaring that police officers are under a never-ending duty to keep the peace is contrary to existing Tennessee law." *Id.* at 721.

Off-Duty Employment

Reference Number: CTAS-1233

The current state of the law regarding off-duty employment by law enforcement officers indicates that law enforcement agencies may constitutionally restrict or prohibit their law enforcement officers from engaging in secondary employment during off-duty time if, at the time in question, the agency had a clear policy restricting or prohibiting such employment and if the agency can articulate how its policy is rationally related to a legitimate government interest (the "rational basis" test). Courts treat cases involving the issue of secondary employment of law enforcement officers on a case-by-case basis. However, generally speaking, if the two requirements stated above are met, courts have upheld restrictions or even prohibitions on secondary employment set by law enforcement agencies. Op. Tenn. Atty. Gen. No. 01-075 (May 8, 2001).

In two cases, the plaintiffs had worked in the outside employment positions before that employment was prohibited by the public employer, "yet the courts nevertheless held that the plaintiffs' due process rights were not violated by the prohibition." *Allen v. Miami-Dade County*, 2002 WL 732108, *3 (S.D. Fla. 2002) citing *Ammon v. City of Coatesville*, 1987 WL 15032, *4 (E.D. Pa.) and *Ft. Wayne Patrolmen's Ben. Assoc. v. City of Ft. Wayne*, 625 F.Supp. 722, 730 (N.D. Ind. 1986). See also *Shelby County Deputy Sheriffs' Ass'n v. Gilles*, 2003 WL 21206067 (6th Cir. 2003) (Sheriff's regulation prohibiting full-time deputy sheriffs from wearing uniform while performing off-duty work was not unconstitutional.); *Campbell v. City of Fort Worth*, 69 Fed.Appx. 657 (5th Cir. 2003) (Prohibition on off-duty work by a suspended police officer did not infringe on any interest protected by the Due Process Clause.); *Davis v. Carey*, 63 F.Supp.2d 361 (S.D. N.Y. 1999) (The regulation of police officers' off-duty employment is commonplace and lawful.); *McEvoy v. Spencer*, 49 F.Supp.2d 224, 227 (S.D. N.Y. 1999) (holding that "plaintiff does not have any interest of constitutional dimension in being a private investigator in his off-duty hours" and therefore dismissing the plaintiff's due process claim); *Puckett v. Miller*, 821 S.W.2d 791 (Ky. 1991) (It is widely recognized that the rights of public employees may be abridged in the interest of preventing conflicts with official duties or promoting some legitimate interest of the governmental employer.); *Decker v. City of Hampton*, 741 F.Supp. 1223 (E.D. Va. 1990) (City police department regulation limiting types of off-duty work in which officers could engage did not deny due process to police detective who wanted to moonlight as private investigator.); *Bowman v. Township of Pennsauken*, 709 F.Supp. 1329 (D. N.J. 1989) (While it may be true that economic factors have forced police officers into the practice of moonlighting, a township has a legitimate interest in regulating its police department, including the off-duty activities of its officers. It is clear that such goals as reducing mental and physical fatigue, limiting litigation and lessening liability insurance expenses serve as legitimate government interests supporting regulation. Because of these legitimate goals, it is also clear that a municipality can regulate and even prohibit off-duty work.) (citations omitted); *Ammon v. City of Coatesville*, 1987 WL 15032 (E.D. Pa.), *aff'd* 838 F.2d 1205 (3d Cir. 1988) (The majority of courts considering the validity of regulations that in some way restrict the outside employment of government employees have upheld the regulations.); *Allison v. Southfield*, 432 N.W.2d 369 (Mich. 1988) (holding that secondary employment rule was not void for vagueness and did not violate due process or equal protection, where police officers were unambiguously prohibited from secondary employment unless prior approval had been obtained); *Rhodes v. Smith*, 254 S.E.2d 49 (S.C. 1979) (Regulations prohibiting all outside employment have been upheld.).

"[P]rivate employers may be held vicariously liable for the acts of an off-duty police officer employed as a private security guard under any of the following circumstances: (1) the action taken by the off-duty officer occurred within the scope of private employment; (2) the action taken by the off-duty officer occurred outside of the regular scope of employment, if the action giving rise to the tort was taken in obedience to orders or directions of the employer and the harm proximately resulted from the order or

direction; or (3) the action was taken by the officer with the consent or ratification of the private employer and with an intent to benefit the private employer." *White v. Revco Discount Drug Centers, Inc.*, 33 S.W.3d 713, 724 (Tenn. 2000).

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