



Opinion No. 2017-01

Department of Law
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TO: Sheriff Daron Hall

FROM: Jon Cooper, Director of Law

DATE: June 26, 2017

RE: Powers and Duties of Sheriff

I. QUESTIONS PRESENTED

1. Can the Metropolitan Council (“Council”) limit the powers and duties of the Sheriff related to his core function, custody and control of the jails?
2. Will Ordinance No. BL2017-739, if enacted by the Council, prohibit the Sheriff from honoring ICE detainer requests and sharing immigration information with the federal government?

II. SHORT ANSWER

1. No. The Council cannot limit the Sheriff’s exercise of the core duties conferred by Tennessee Law and the Metropolitan Charter.
2. No. Ordinance No. BL2017-739 would not be legally binding on the Sheriff. Under state law, the Council cannot prohibit the Sheriff from cooperating with federal authorities related to immigration.

III. LEGAL ANALYSIS

An ordinance is not enforceable if it violates the Metropolitan Charter, state law, or federal law. *See City of Bartlett v. Hoover*, 571 S.W.2d 291, 292 (Tenn. 1978); *Farmer v. City of Nashville*, 127 Tenn. 509, 515-516, 156 S.W. 189, 190 (Tenn. 1913).

A. Metropolitan Charter and Tennessee State Law Set Forth the Core Duties of the Sheriff. The Council Cannot Limit His Exercise of These Duties.

Under the Metropolitan Charter, “when any power is vested by this Charter in a specific officer, board, commission or other agency, the same shall be deemed to have exclusive jurisdiction within the particular field.” Metropolitan Charter Section 2.01. This provision is key to understanding the Metropolitan Charter, because the purpose of allowing consolidation of city-county government, authorized by TENN. CONST. Art. XI, § 9 and TENN. CODE ANN. §§ 7-1-101, *et seq.*, was to eliminate overlapping governmental responsibilities. *Metropolitan Government v. Poe*, 383 S.W.2d 265, 277 (Tenn. 1964). Government officials may exercise similar jurisdiction only when the language of the Charter itself makes clear that more than one government official has the authority to carry out the same duties. *Renteria-Villegas, et al. v. Metropolitan Government*, 382 S.W.3d 318, 322-323 (Tenn. 2012)

The sheriff’s “particular field” of exclusive jurisdiction is custody and control of the jail; and additional unassigned duties may be added to that core responsibility by Council with the Sheriff’s consent:

The sheriff, elected as provided by the Constitution of Tennessee, is hereby recognized as an officer of the metropolitan government. He shall have such duties as are prescribed by Tennessee Code Annotated, section 8-8-201, or by other provisions of general law; except, that within the area of the metropolitan government the sheriff shall not be the principal conservator of peace. The function as principal conservator of peace is hereby transferred and assigned to the metropolitan chief of police, provided for by article 8, chapter 2 of this Charter. **The sheriff shall have custody and control of the metropolitan jail and of the metropolitan workhouse.** The council may by ordinance authorize the sheriff to provide security within buildings of the metropolitan government and, pursuant to a written agreement between the metropolitan government and a metropolitan agency or authority or judges of the Davidson County Circuit, Chancery, Criminal or General Sessions courts, within any building or at any official meeting of such agency or authority or within any courtroom while such court is in session. The council may by ordinance, upon recommendation of the metropolitan chief of police and sheriff, authorize the sheriff to perform duties as may be unassigned by the charter, or currently assigned to the metropolitan chief of police, relating to the intake, processing, identification and

questioning of arrestees, detainees, prisoners and other persons in official custody.

Charter § 16.05 (Res. No. RS2012-277, § 1(Amdt. 3), 9-18-2012, election of 11-6-2012; Res. No. 88-526, § 30, 10-4-88) (emphasis added).

Thus, under Metropolitan Charter Sections 2.01 and 16.05, the Sheriff has exclusive jurisdiction over the custody and control of the jail and the prisoners in Davidson County. Under § 16.05, Council may add additional unassigned duties to the Sheriff's responsibilities with his consent, but there is no authority for removing any responsibilities tied to control of the jail.

The Tennessee Supreme Court has analyzed the Davidson County Sheriff's powers and duties under the Metropolitan Charter and determined that the Sheriff has power over the custody and control of the jail and the prisoners in Davidson County, as established by case law and the Charter.

[T]he Sheriff is a constitutional officer as set out in every Constitution adopted in this State. His duties, however, are prescribed by statute....

[T]he Sheriff has custody and control of the consolidated urban and metropolitan jail, as well as the consolidated urban and metropolitan workhouse.

The Sheriff is obligated to take charge and custody of the jail of his county and of the prisoners therein, and to keep them himself, or by his deputies or jailor until discharged by law. (T.C.A. § 8-810(3))...

The case law of this State is that the Sheriff, by virtue of his office, is the jailor and is entitled to the custody of the jail. *Felts v. Mayor, etc., of City of Memphis*, 39 Tenn. 650 (1859); *State ex rel. Bolt v. Drummond*, 128 Tenn. 271, 160 S.W. 1082 (1913).

The Charter Commission, recognizing the established law of this State, made provisions for the Sheriff to remain as the jailor and the keeper of the jail. By an ordinance implementing this provision of the Charter, the Sheriff now has charge of the urban jail as well as the county jail. This added responsibility is merely an extension of the general duties of the Sheriff as outlined by statute and case law of this State...

It must be remembered that the Sheriff is a duly elected official. His office is provided for by the Constitution of Tennessee. He is also an officer of the Metropolitan Government.

Poe, 383 S.W. 2d at 273- 274.

The Sheriff's exercise of his core duty - custody and control of the jail - cannot be limited by ordinance or by the Charter. *See Poe*, 383 S.W.2d at 273 (reasoning that the Charter did not delegate the custodial duties over the jail because the Sheriff's entitlement to custody of the jail is well established in state law).

Since the Sheriff's core responsibility is custodial control over the jail, the Council does not have the authority to direct how employees of the Sheriff's Office manage their time and resources in the jail.

As explained in *Poe*, the state law related to the duties of the Sheriff (TENN. CODE ANN. § 8-8-201) is incorporated in the Metropolitan Charter provision related to the Davidson County Sheriff. The Sheriff is obligated to perform the duties set forth in TENN. CODE ANN. § 8-8-201 that have not been otherwise assigned to another Metropolitan Government agency (like the Metropolitan Police Department).

TENN. CODE ANN. § 8-8-201 provides:

(a) It is the sheriff's duty to:

(3) Take charge and custody of the jail of the sheriff's county, and of the prisoners therein; receive those lawfully committed, and keep them personally, or by deputies or jailer, until discharged by law; be constantly at the jail, or have someone there, with the keys to liberate the prisoners in case of fire;

TENN. CODE ANN. § 8-8-201. This duty has not been assigned to any other Metro agency. Therefore, the Sheriff has a duty under state law (TENN. CODE ANN. § 8-8-201) and the Metropolitan Charter to take charge of those lawfully committed for detention.

While the Sheriff is bound by certain Metro budgetary and personnel provisions, BL2017-739 cannot be considered simply a budgetary or personnel provision since it attempts to alter the fundamental powers and duties of the Sheriff related to the custody and control of the jail and the detainees therein established by the Charter and state law. Therefore, BL2017-739, if passed, would not be enforceable against the Sheriff.

Further, under TENN. CODE ANN. § 10-7-503(a)(1)(A)(i), public records include "all documents, papers, letters...electronic data processing files and output... or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity." The information related to the transaction of official government business in the jails and courts that falls within TENN. CODE

ANN. § 10-7-503's parameters is public record. Therefore, BL2017-739 cannot prohibit the Sheriff from providing public records information to any requestor, who is a Tennessee citizen, including a federal immigration official.

B. Immigration Law Requires Council Approval for Enforcement of Immigration Laws, But Not for Cooperation with Federal Officials. And Under State Law, the Council Cannot Prohibit the Sheriff from Cooperating with Federal Authorities Related to Immigration.

Both state and federal law have long recognized the voluntary cooperation of the local Sheriff and jailer with the federal government regarding the receipt of persons delivered under the authority of the United States. See *Printz v. United States*, 521 U.S. 898, 909 (1997). TENN. CODE ANN. § 41-4-105 specifically provides that “[t]he jailer is liable for failing to receive and safely keep all persons delivered under the authority of the United States, to the like pains and penalties as for similar failures in the case of persons committed under authority of the state...” Thus, if persons are delivered to the Sheriff by the federal government for detention, the Sheriff has a statutory responsibility to cooperate.

Federal immigration law distinguishes between the *enforcement* of immigration laws by local officials and the *cooperation* of local officials with federal agencies.

1. Enforcement.

For the *enforcement* of immigration laws by local officials, a written agreement must be entered by the local government:

(g) Performance of immigration officer functions by State officers and employees

(1) Notwithstanding section 1342 of Title 31, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

(2) An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.

8 U.S.C.A. § 1357.

Thus, local officials are permitted to perform immigration officer functions related to the investigation, apprehension, or detention of aliens, if the United States Attorney General, through Immigration Customs and Enforcement (ICE), authorizes such action and the local agency enters into a written agreement. 8 U.S.C.A. § 1357(g)(1)&(2).

2. Cooperation.

For the *cooperation* of local officials with federal agencies, an agreement with the local government need not be entered:

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State--

(A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

(B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

8 U.S.C.A. § 1357(g)(10)(A)&(B).

Therefore, an agreement is not required for local officials to communicate with the Attorney General, through ICE, regarding the immigration status of any individual or to otherwise cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States. 8 U.S.C.A. § 1357(g)(10)(A)&(B).

To illustrate the difference in scope between *cooperation* with the federal government and *enforcement* of immigration law, the Tennessee Supreme Court's ruling in *Renteria-Villegas* is instructive. In *Renteria-Villegas*, the plaintiffs challenged a Memorandum of Agreement (MOA) between ICE and the Metropolitan Government that permitted trained Sheriff's Office personnel to perform certain

immigration officer duties. This ordinance *added* a duty to the sheriff's responsibilities – it did not *remove* any part of his core duties of custody and control of the jail.

The immigration enforcement duties that were added included interrogating any person believed to be in the country unlawfully as to his/her right to be or remain in the United States; processing those who have been arrested for violating a federal, State, or local criminal offense for immigration violations; serving arrest warrants for immigration violations; administering oaths, taking and considering evidence, and preparing affidavits and sworn statements for ICE supervisory review; preparing charging documents for signature of ICE supervisors; and issuing immigration detainers for processing undocumented persons. The Court determined that the goal of the MOA – adding duties to the Sheriff's core duties through **enforcement of federal immigration law** – did not violate the Charter. *Renteria-Villegas* at 323 (emphasis added). Upon the expiration of the MOA, employees of the Davidson County Sheriff's Office ceased these additional duties (enforcing immigration law).

Consistent with 8 U.S.C.A. § 1357(g)(10)(A)&(B), it is our understanding that the Sheriff's Office continues to *cooperate* with the federal officials on immigration issues. The federal law is unambiguous and expressly authorizes cooperation with federal officials, without the need for a contract. To expand the *Renteria-Villegas* holding as authorizing Council to remove any of the Sheriff's core duties would violate state law and the Metro Charter.

The District Court for the Middle District of Tennessee has recognized that local officials may cooperate with ICE without a contract. *Dionicio v. Allison*, No. 3:09-CV-00575, 2010 WL 3893816, at *17–18 (M.D. Tenn. Sept. 30, 2010).

Moreover, other federal courts have used similar reasoning:

Ovando–Garzo also argues state and local officials “generally have no authority to arrest aliens on the basis of possible removability which Congress has given to trained federal immigration officers.” This argument is meritless. **Although a formal, written agreement is sometimes required for a state official to perform certain functions of a federal immigration officer, no written agreement is required for a state official to cooperate with the Attorney General in identifying, apprehending, and detaining any individual unlawfully present in the United States.** See 8 U.S.C. § 1357(g)(10).

Here, Trooper Pulver's acts—identifying Ovando–Garzo, communicating with the Border Patrol, and detaining Ovando–

Garzo until the Border Patrol agent could take custody—were not unilateral and, thus, did not exceed the scope of his authority. See *Arizona v. United States*, — U.S. —, 132 S.Ct. 2492, 2507, 183 L.Ed.2d 351 (2012) (discussing 8 U.S.C. § 1357(g)(10)); *United States v. Quintana*, 623 F.3d 1237, 1242 (8th Cir.2010) (holding state trooper was authorized to assist federal agent in detaining individual suspected of being unlawfully present in the United States); cf. *Santos v. Frederick Cnty. Bd. of Comm'rs*, 725 F.3d 451, 466–67 (4th Cir.2013) (recognizing local police may detain and transport an alien after express direction of federal officials) (citing *1165 *United States v. Guijon–Ortiz*, 660 F.3d 757, 765 (4th Cir.2011) and *United States v. Soriano–Jarquin*, 492 F.3d 495, 496–97 (4th Cir.2007)).

United States v. Ovando-Garzo, 752 F.3d 1161, 1164–65 (8th Cir. 2014) (emphasis added).

C. State Law Mirrors Federal Immigration Law.

Tennessee state law mirrors the federal law by distinguishing between enforcement and cooperation with federal officials related to immigration and requiring a written contract for a county to engage in enforcement of immigration laws:

(a) For purposes of enforcing federal immigration laws, including, if applicable, federal laws relating to the employment of illegal aliens, the legislative body of a municipality or county, or the chief law enforcement officer of the county upon approval by the governing legislative body, may enter into a written agreement, in accordance with federal law, between the municipality or county and the United States department of homeland security concerning the enforcement of federal immigration laws, detention and removals, and investigations in the municipality or county.

TENN. CODE ANN. § 50-1-101 (emphasis added).

But local governments may *not* prohibit cooperation with federal authorities regarding immigration if such cooperation is in compliance with federal law:

(a) A local governmental entity or official shall not adopt any ordinance or written policy that expressly prohibits a local governmental entity, official or employee from complying with applicable federal law pertaining to persons who reside within the state illegally.

(b) An official shall not materially interfere with the ability of a local governmental entity, official or employee of a municipality or a county to comply with applicable federal law pertaining to persons who reside within the state illegally.

TENN. CODE ANN. § 7-68-103.

Since federal law contemplates cooperation with local authorities regarding the detention of individuals unlawfully present in the United States, preventing such cooperation would likely violate TENN. CODE ANN. § 7-68-103.

Conclusion

The Metropolitan Charter was approved by the citizens of Davidson County. The Charter incorporates the state law duties of the Sheriff, including the duty to take charge and custody of the jail, and the prisoners therein, and to receive those lawfully committed, and keep them personally, until discharged by law. These core powers and duties, enumerated in the Charter and state law, cannot be abrogated by the Council.

Under TENN. CODE ANN. § 7-68-103 and § 8-8-201, the Council cannot prohibit the Sheriff from cooperating with federal authorities related to immigration.

Further, under federal law, local officials are expressly authorized to cooperate with federal officials related to immigration. If federal officials present the Sheriff with lawfully committed persons for detention, he is authorized to receive and control their custody until they are discharged. The Council cannot by ordinance alter this duty that is established by state law and the Charter.