

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY



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Legal Opinion No. 2006-02

To: Ronal W. Serpas, Chief of Police
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200 James Robertson Parkway
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Date: September 13, 2006

QUESTION

Can Metropolitan Nashville Police Department officers arrest alleged offenders for refusing to sign citation agreements issued for violations of the Metropolitan Code of Laws?

SHORT ANSWER

Yes, if the statutory preconditions are met. If Metropolitan Police officers witness any Metropolitan ordinance violation, then pursuant to T.C.A. § 7-63-104, the officers are authorized to arrest the alleged offender if the alleged offender refuses to sign the citation agreement to appear at the time and place indicated on the citation and to waive the issuance of a warrant. If the officers did not witness the Metropolitan ordinance violation but have made a personal investigation at the scene of a traffic accident or have made a personal investigation at the place of the Metropolitan ordinance violation, and the officers have reasonable and probable grounds to believe that the driver of any vehicle involved in the accident or the owner or occupant of the property violated any Metropolitan ordinance, then the officers are authorized to arrest the alleged offenders if the alleged offenders refuse to sign the citation agreement to appear at the time and place indicated on the citation and to waive the issuance of a warrant.

BACKGROUND

In 1992 the Department of Law opined that Metropolitan Nashville Police Department officers have no authority to arrest persons for violating Metropolitan ordinances since neither the Metropolitan Charter nor state law authorizes them to do so. Department of Law Opinion No. 92-01. (February 28, 1992) The 1992 Opinion concluded that the only lawful response to an offender who refused to sign the citation agreement to appear at the time and place indicated on the citation and waive the issuance of a warrant was to serve the offender with a civil warrant. That Opinion relied heavily on two Tennessee Attorney General opinions [Op. Tenn. Att'y Gen. U88 -63 (June 8, 1988) and Op. Tenn. Att'y Gen. 85-19 (Jan. 28, 1985)] to support its conclusion that the Metropolitan Government is not authorized to arrest someone who violates an ordinance since the offender could not be incarcerated for the underlying offense.

A more recent opinion from the Attorney General reaches a contrary conclusion. Op. Tenn. Att'y Gen. 94-069 (May 17, 1994). The Attorney General opined that Metropolitan police officers may arrest persons suspected of violating ordinances of the Metropolitan Government based on the plain language of T.C.A. § 7-63-104, if the offender refuses to sign the citation agreement to appear at the time and place indicated and waive the issuance of a warrant. *Id.* We agree.

ANALYSIS

State Statutes

Under T.C.A. § 7-63-101, officers may issue citations in lieu of arrests for metropolitan ordinance violations, including traffic citations. The statute provides:

When any person violates any traffic, or other ordinance, law or regulation of any municipal, metropolitan or city government in the presence of a:

- (1) Law enforcement officer of such government;
- (2) Member of the fire department or building department who is designated as a special police officer of the municipality; or
- (3) Transit inspector employed by a public transportation system or transit authority organized pursuant to chapter 56, part 1 of this title;

such officer or inspector may issue, in lieu of arresting the offender and having a warrant issued for the offense, a citation or complaint for such offense. A copy of such citation, which shall contain the offense charged and the time and place when such offender is to appear in court, shall be given to the offender.

T.C.A. § 7-63-101.

The person cited with an offense has an option of whether to sign the citation issued by the officer. T.C.A. § 7-63-102. By signing the citation, the offender has agreed to appear in court on the charge for which he or she is cited and waive the issuance and service of a warrant. *Id.* The statute provides:

In order *to prevent the offender's arrest* and the issuance of the warrant against the offender, the *offender must sign an agreement to appear at the time and place indicated*, and to waive the issuance and service of a warrant upon the offender.

T.C.A. § 7-63-102 (emphasis added).

If an officer witnesses someone violate a Metropolitan ordinance and that person refuses to sign the citation agreement to appear in court on the charge for which he or she is cited and waive the issuance and service of a warrant, then the alleged violator is subject to arrest:

In the event the offender refuses to sign the agreement to appear in court and to waive the issuance and service upon the offender of a warrant, then it shall be the duty of the officer, in whose presence the offense is committed, forthwith to place the offender under arrest and take the offender before the proper authority, procure a warrant, serve the same upon the offender and book the offender as in other cases of violations. The authority issuing the warrant shall take bail from the accused for appearance in court for trial, or in lieu thereof, commit the offender to jail.

T.C.A. § 7-63-104.

Op. Tenn. Att'y Gen. 94-069 specifically addresses the meaning of T.C.A. § 7-63-104 :

The plain meaning of this section is that the Metropolitan Nashville Police, for example, have the authority to arrest an individual who violates an ordinance of the Metropolitan Government in the officer's presence. The section provides that as an alternative to arresting the individual and having a warrant issued the officer may issue a citation as stated.

The opinion further states:

The statutes confer on the appropriate municipal, metropolitan, or city personnel the authority to arrest individuals who have violated ordinances of such governments in the presence of the officers. And, further, if such individuals refuse to agree to appear in court if the officer issues a citation in lieu of arrest, the statutes require such officers to arrest the individual who refuses to agree to appear.

Id.

If the police officer does not witness the alleged municipal ordinance violation, his authority to arrest is considerably restricted:

All the procedure enumerated in this part as to giving citations or complaints in lieu of making arrests and taking out warrants shall also apply when the officer, as designated in T.C.A. § 7-63-101, makes a personal investigation at the scene of a traffic accident, or makes a personal investigation at the place of violation, as a result

of which the officer has reasonable and probable grounds to believe that the driver of any vehicle involved in the accident has violated any traffic ordinance, law or regulation of any municipal, metropolitan or city government in this state; or in the case of violations other than traffic accidents, the officer has reasonable and probable grounds to believe that the owner or occupant of property involved in a violation has violated any ordinance, law or regulation of any municipal, metropolitan or city government in this state.

T.C.A. § 7-63-106.

Metropolitan Charter

There is no express authority in the Metropolitan Charter to arrest persons for refusing to sign a citation agreement issued for violating a Metropolitan ordinance. The overriding premise of the earlier Opinion (Legal Department Opinion No. 92-01) was that if neither the Metropolitan Charter nor state law granted the Metropolitan Government the authority to arrest someone for violating a Metropolitan ordinance, then Metropolitan Government was powerless to do so. As the Tennessee Supreme Court has stated:

An action which falls outside of a municipality's statutory authority is *ultra vires*, or beyond the scope of its powers, and thus void or voidable." *State v. Godsey*, 165 S.W.3d 667, 671 (Tenn. Crim. App. 2004)(citing *Crocker v. Town of Manchester*, 156 S.W.2d 383, 384 (Tenn. 1941)). 'In the almost 200 years of this State's existence, a substantial and comprehensive body of law controlling the exercise of municipal powers has evolved. Fundamental in this law is that municipalities may exercise only those express or necessarily implied powers delegated to them by the Legislature in their charters or under statutes.'

City of Lebanon v. Baird, 756 S.W.2d 236, 241 (Tenn. 1988)(emphasis added)(citing *Barnes v. City of Dayton*, 392 S.W.2d 813, 817 (Tenn. 1965); *Adams v. Memphis & Little Rock R.R. Co.*, 42 Tenn. (2 Cold.) 645, 654 (Tenn. 1866)).

Limitation of municipal powers is consistent with Dillon's Rule¹ of statutory construction.

¹ In *Southern Constructors* the court stated:

At its most basic level, Dillon's Rule is a canon of statutory construction that calls for the strict and narrow construction of local governmental authority. As originally articulated by its author, then Chief Justice John F. Dillon of the Iowa Supreme Court, Dillon's Rule provides the following regarding the nature and scope of municipal government authority:

'In determining the question now made, it must be taken for settled law, that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation-- not simply convenient, but indispensable; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation--against the existence of the power.'

However, there are exceptions to the rule, such as its application to “home rule” municipalities:

The effect of the home rule amendments [Tn. Const. art. XI, § 9] was to fundamentally change the relationship between the General Assembly and these types of municipalities, because such entities now derive their power from sources other than the prerogative of the legislature. Consequently, because the critical assumption underlying application of Dillon's Rule is no longer valid as to home rule municipalities, Dillon's Rule simply cannot be applied to limit any authority exercised by them.

Southern Constructors, Inc. v. Loudon County Bd. of Educ., 58 S.W.3d 706, 714 (Tenn. 2001). “[C]hartered counties ‘possess broad authority for the regulation of their own local affairs.’” *Bailey v. County of Shelby*, 2006 WL 782433, at *6 (Tenn. Mar. 29, 2006)(quoting *Southern Constructors*, 58 S.W.3d at 713).

The significance of Dillon’s Rule of statutory construction for a consolidated government such as the Metropolitan Government is a question that need not be addressed in this opinion. Actions by metropolitan governments may be in accordance with *either* their governing charter *or* state statutory authority. While opinions of the Attorney General’s Office are not controlling authority on the Department of Law, Op. Tenn. Att’y Gen. 94-069 is persuasive.

The Department of Law focused on the legislative history of T.C.A § 7-63-101 et seq. (1969 Tenn. Pub. Acts Chap. 208) in the earlier opinion and determined that the Tennessee General Assembly never intended for this statute to be an original grant of authority for municipalities to arrest someone for a municipal ordinance violation if the municipality did not already have such authority. (Legal Department Opinion No. 92-01, p. 9.) In retrospect, the more correct statutory interpretation methodology is the one employed by the Attorney General in Op. Tenn. Att’y Gen. 94-069. If the language used in the statute is clear and unambiguous, then the language should be applied using its plain meaning without a forced interpretation that would either expand or limit its meaning. *Eastman Chemicals Co. v. Johnson*, 151 S.W. 3d 503, (Tenn. 2004); *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000); *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 16 (Tenn. 1997).

Here the language is plain and unambiguous. Consequently, it was unnecessary to delve into the legislative history of the statute in order to determine the General Assembly’s intent in adopting the statute. This is not a situation where there is a conflict between the Charter and state law, but rather a situation where the Metropolitan Charter is silent. The failure to sign a citation does not constitute a criminal offense and it does not affect the underlying municipal code violation, it merely prescribes an alternative method of procedure - booking rather than citation.

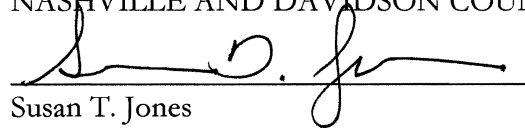
Id. at 714. (Tenn. 2001) (citing *Merriam v. Moody’s Ex’r*, 25 Iowa 163, 170 (1868).

CONCLUSION

If Metropolitan Police officers witness any Metropolitan ordinance violation, then pursuant to T.C.A. § 7-63-104, the officers are authorized to arrest the alleged offender if the alleged offender refuses to sign the citation agreement to appear at the time and place indicated on the citation and to waive the issuance of a warrant. If the officers do not witness the Metropolitan ordinance violation but have made a personal investigation at the scene of a traffic accident or have made a personal investigation at the place of the Metropolitan ordinance violation, and the officers have reasonable and probable grounds to believe that the driver of any vehicle involved in the accident or the owner or occupant of the property violated any Metropolitan ordinance, then the officers are authorized to arrest the alleged offenders if the alleged offenders refuse to sign the citation agreement to appear at the time and place indicated on the citation and to waive the issuance of a warrant.

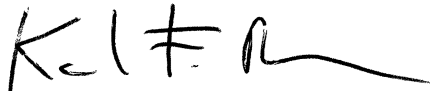
This opinion is limited to the scope of the question presented and should not be applied to any other factual situation.

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY



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APPROVED BY:



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