

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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December 30, 2010

Opinion No. 10-120

Sheriff's Disregard of Chancery Court Order

QUESTION

Is a sheriff required to comply with a chancellor's order to send an officer to maintain order at a sale of real estate belonging to a decedent's estate where the sale is conducted by the Clerk and Master acting as a special commissioner?

OPINION

Yes.

ANALYSIS

The question is whether a sheriff must follow a chancellor's order to attend and keep the peace at a sale of real estate pursuant to the court's order even when the sheriff does not receive his usual fees from the sale because the court has appointed a special commissioner to conduct the sale. Under Tenn. Code Ann. § 8-21-801, special commissioners, appointed by the court to sell property, take accounts, make examinations, take depositions, or perform other services, are entitled to demand and receive the same fees and compensation allowed other officers for similar services.

The sheriff is the principal conservator of the peace in the sheriff's county. Tenn. Code Ann. § 38-3-102. Tenn. Code Ann. § 16-1-102(2) provides that, "Every court has the power to: . . . (2) Enforce order before a person or body acting under its authority[.]" The Clerk and Master, as a special commissioner, acts as an officer of the court, but has no law enforcement authority. Had the sale been conducted by the sheriff, he obviously would have performed the concomitant duty of keeping the peace while it was underway. That the sale is being conducted by a special commissioner lacking law enforcement powers in no way alters the duty of the sheriff to keep the peace, especially when expressly ordered to do so by the court. Tenn. Code Ann. § 8-8-201(a)(2)(A) provides that it is a sheriff's duty to "obey the lawful orders and directions of the court[.]" A sheriff's disobedience of the command of any process is a contempt of the court from which it issued, and may be punished accordingly. Tenn. Code Ann. § 8-8-207. It is the

opinion of this Office, therefore, that a sheriff is required to comply with a chancellor's order to send an officer to maintain order at a sale of real estate belonging to a decedent's estate where the sale is conducted by the Clerk and Master acting as a special commissioner.

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