

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

December 12, 2000

Opinion No. 00-183

Application of Tenn. Code Ann. § 39-17-1352(e)(1) & (2) to General Sessions Courts

QUESTIONS

1. Whether the mandatory provisions of Tenn. Code Ann. § 39-17-1352(e)(1) & (2) apply to general sessions courts?
2. If these provisions apply to general sessions courts, should jurisdictions using judicial commissioners require them to make the required inquiry at the time they set bonds in felony cases?

OPINIONS

1. Yes, the mandatory provisions of Tenn. Code Ann. § 39-17-1352(e)(1) & (2) apply to general sessions courts when they have first jurisdiction over the permit holder.
2. No, the mandatory provisions do not apply to judicial commissioners because they function as magistrates, not as courts.

ANALYSIS

1. The two subsections of Tenn. Code Ann. § 39-17-1352(e)(1) & (2) provide, in relevant part:

If a permit holder is arrested and charged with burglary, a felony drug offense or a felony offense involving violence or the use of a firearm, then the court first having jurisdiction over the permit holder with respect to such felony charge shall inquire as to whether such person has been issued a Tennessee handgun carry permit . . .

If a permit holder is arrested and charged with any felony offense other than an offense subject to the provisions of subdivision (e)(1), then the court first having jurisdiction over the permit holder with respect to such felony charge shall inquire as to whether such person has been issued a Tennessee handgun carry permit . . .

General sessions courts are vested with jurisdiction to “try and determine and render final judgment in all misdemeanor cases brought before the court by warrant or information wherein the

person charged with such misdemeanor enters a plea of guilty in writing or requests a trial upon the merits and expressly waives an indictment, presentment, grand jury investigation and jury trial.” Tenn. Code Ann. § 40-1-109. Although a general sessions court does not have jurisdiction to try felony cases unless a plea agreement, with the consent of the State, reduces a felony charge to a misdemeanor, general sessions courts do have jurisdiction over persons charged with felony offenses for purposes of conducting a preliminary examination and/or binding them over to the grand jury. Rule 5, Tenn. R. Crim P. *See also Lewis v. Metropolitan General Sessions Court for Nashville*, 949 S.W.2d 696, 699-702 (Tenn. Crim. App. 1996)(citing with approval *Dunbar v. State*, 4 Tenn. Crim. 310, 470 S.W.2d 846 (1971), which held that general sessions court had no authority to hear felony charges except upon preliminary examination to discharge him or bind him over to circuit or criminal court).

Because the key word in the phrase “the court first having jurisdiction over the permit holder with respect to such felony charge” is *first*, the provision contemplates that general sessions courts would have first jurisdiction over the charged permit holder for purposes of conducting a preliminary examination and/or binding them over to the grand jury. Accordingly, a general sessions court with first jurisdiction over the permit holder would be required to inquire whether that person had been issued a Tennessee Handgun Permit.

2. The provisions of Tenn. Code Ann. § 39-17-1352(e)(1) & (2) do not apply to judicial commissioners because their duties under Tenn. Code Ann. § 40-1-111 are characteristic of a magistrate, not a court. *State v. Bush*, 626 S.W.2d 470, 472 (Tenn. Crim. App. 1981). *See also* Op. Atty. Gen. No. 82-242, (May 3, 1982)(office of judicial commissioner is neither an inferior court nor a corporation court, and judicial commissioner is not a magistrate for purposes of Rule 5, Tenn. R. Crim P.)(copy attached). Thus, a judicial commissioner with first jurisdiction over a permit holder for purposes of setting bonds and appointing counsel would not qualify as a “court first having jurisdiction.”

Based on these authorities, this Office concludes that the mandatory inquiry required by Tenn. Code Ann. § 39-17-1352(e)(1) & (2) would not apply to judicial commissioners at the time they set bonds in felony cases.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ELIZABETH B. MARNEY
Assistant Attorney General

Requested by:

Honorable Bob R. McGee, Presiding Judge
Division III, Court of General Sessions
Suite M-70, City-County Building
400 Main Street, P.O. Box 2404
Knoxville, TN 37901-2404