

SENATE BILL 1108

By Campfield

AN ACT to amend Tennessee Code Annotated, Title 38,
Chapter 3, Part 1, relative to the authority of
certain federal employees in this state.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 38, Chapter 3, Part 1, is amended by adding the following as a new section:

38-3-124.

In accordance with the U.S. Constitution, the Federal government is denied the power to establish laws within this State which are beyond the authority specifically delegated to the Federal government by this State and its citizens.

Therefore, pursuant to the Tenth Amendment to the United States Constitution, the General Assembly declares that any Federal law, order, rule or regulation purporting to assert authority beyond that authority specifically granted to the Federal government within the United States Constitution, or purporting to give Federal agents authority to enforce such unconstitutional Federal laws within this State, is not recognized by this State and is specifically rejected by this State and is declared to be invalid in this State.

SECTION 2. Tennessee Code Annotated, Section 38-3-113, is amended by deleting the section in its entirety and substituting instead the following:

- (a) Any federal employee who intends to conduct an arrest, seizure or search in the process of enforcing a federal statute, regulation or court order within Tennessee shall first notify the sheriff of the state jurisdiction within which the arrest, seizure, or search is to be conducted. This notice shall serve to obviate any inappropriate response by local

law enforcement to suppress any reported disturbance of the peace that might result from the federal action.

- a. Exceptions: No such notice shall be required for any federal action to be taken:
 - i. within a federal enclave for which jurisdiction has been expressly ceded to the United States by a Tennessee statute; or
 - ii. if the federal employee witnesses the commission of a crime the nature of which requires an immediate arrest; or
 - iii. the intended subject of the arrest, search, or seizure is an employee of the sheriff's office or is an elected county or state officer; or
 - iv. the federal employee has probable cause to believe that the subject of the arrest, search, or seizure has close connections with the sheriff, which connections are likely to result in the subject being informed of the impending arrest, search, or seizure.
- b. A federal employee who desires to make an arrest or conduct a search or seizure under subdivisions (a)(iii) or (a)(iv) shall notify the Tennessee attorney general of the planned arrest, search, or seizure unless the resulting delay would probably cause serious harm to one or more individuals or to a community or would probably allow time for flight of the subject of the arrest, search, or seizure in order to avoid prosecution.
- c. The notice shall be served in writing by the federal officer in charge of the planned action or a designated representative of the agency taking the action;
- d. The notice shall be served to the sheriff or previously designated deputy sufficiently in advance of the planned federal action to allow the sheriff's personnel to be prepared to respond appropriately.
- e. The notice shall contain at a minimum the following information.

- i. The name of the subject of the arrest, search, or seizure;
 - ii. A description of the specific things to be searched for or seized;
 - iii. A statement of the date and time that the arrest, search, or seizure is to occur; and
 - iv. The address or location where the intended arrest, search, or seizure will be attempted.
 - v. A clear statement of probable cause for the arrest, search, or seizure or a federal arrest, search, or seizure warrant that contains a clear statement of probable cause;
 - vi. A clear statement of the Constitutional power and federal statute or regulation authorizing the federal action.
- (b) The sheriff receiving such notice shall review the content of the notice and ascertain to his /her satisfaction the following:
- a. The time and location of the planned federal action.
 - b. The nature of the action and likely local effects on traffic, commerce, public alarm, potential citizen calls for local law enforcement intervention, and other factors necessary to insure keeping of the peace.
 - c. The Constitutional and legal validity of the planned action.
- (c) If the Sheriff finds the federal action to be valid as the exercise of an enumerated federal power and an appropriate federal statute or regulation, then
- a. The Sheriff shall issue orders to his department to avoid any conflict or inappropriate response to public alarm or calls for intervention.
 - b. The sheriff shall accumulate and retain such notices and any reports of action resulting therefrom.

- (d) If the Sheriff questions any operational aspect of the planned federal action, he shall inquire immediately with the federal person or agency giving the notice to ascertain such additional facts as necessary to avoid operational conflicts.
- (e) If the Sheriff questions the Constitutional or legal authority for the federal action, he shall immediately notify the District Attorney General of
 - a. All materials contained in the notice given to him by the federal personnel or agency,
 - b. Any additional information available to the Sheriff regarding the location, or persons involved, or other relevant factors,
 - c. His questions regarding the validity of the federal authority asserted in the notice.
- (f) If the sheriff is notified of an injunction against the planned federal action by any Tennessee court of appropriate jurisdiction, the sheriff shall take the action decreed by the court.
- (g) It shall be a violation of this section for any official, agent, or employee of the United States government to enforce or attempt to enforce any Federal law, order, rule or regulation that is beyond the authority granted to the Federal government pursuant to the United States Constitution.
- (h) Any person in violation of subsection (g) shall be guilty of a felony and upon conviction must be punished by a fine not exceeding two thousand dollars (\$2,000.00), or a term of imprisonment not exceeding two (2) years, or both;
- (i) In addition to the penalties set forth in subsection (h) any person in violation of subsection (g) shall also be prosecuted for kidnapping if an arrest or attempted arrest occurred, for trespass if a search or attempted search occurred, for theft if a seizure or attempted seizure occurred, and for any applicable homicide offense if loss of life

occurred in connection with the violation of subsection (g). The persons involved shall also be charged with any other applicable criminal offense.

- (j) The county attorney shall prosecute once a claim of violation of subsection (g) has been made by the county sheriff or designee of the sheriff.
- (k) Any county sheriff, designee of the sheriff, or other person acting under authority of the sheriff, enforcing or attempting to enforce this section shall, upon a showing of good faith reliance upon this section, be immune from criminal prosecution and civil liability for any actions taken to enforce or attempt to enforce this section.
- (l) The State of Tennessee shall indemnify and defend all county sheriffs, local government agencies, designees of a sheriff, or other person acting under authority of a sheriff to enforce or attempt to enforce this section, against all criminal prosecutions and civil lawsuits. This subsection shall be effective regardless of whether said criminal prosecution or civil lawsuit is brought by any individual, company, state, federal, local, or foreign government or subdivision thereof.

SECTION 3. Tennessee Code Annotated, Title 8, Chapter 7, is amended by adding the following as a new subsection:

8-7-103 (8) Shall immediately review any notice by a sheriff of a pending federal arrest, seizure, or search to ascertain whether the action is authorized by the enumerated powers cited by the federal persons or agency taking action as granted in the United States Constitution and the statutes and regulations under it.

- (a) If the District Attorney General finds that the foundation for the action is questionable for either failure to cite a proper power granted or as inappropriate under the statutes or regulations cited, then he/she shall file an injunction with the court of proper jurisdiction, asking for an immediate Temporary Restraining Order.

(b) Upon adjudication of the request for an injunction, the District Attorney General shall immediately notify the sheriff who submitted the notice for review of the action required.

SECTION 4. Tennessee Code Annotated, Section 38-3-114, is amended by deleting the section in its entirety and substituting instead the following:

(a) The Commissioner of Safety shall not commission any officer of any other state, of the federal government, or any agency thereof, or of any foreign nation or international authority to act with the authority of a state or local peace officer within Tennessee.

(b) Pursuant to the tenth amendment to the United States constitution and this state's compacts with other states, the general assembly declares that any federal law purporting to give federal employees the authority of a county sheriff, or of any other state or local law enforcement office in this state, is not recognized by and is specifically rejected by this state and is declared to be invalid in this state.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.