

STATE OF TENNESSEE

Office of the Attorney General



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August 27, 2020

The Honorable Bo Watson
State Senator
425 5th Avenue North
706 Cordell Hull Building
Nashville, Tennessee 37243

Re: Opinion Request regarding Grand Jury Foreperson Selection in Hamilton County

Dear Chairman Watson:

This Office has received and carefully considered your request for an opinion as to the propriety of reappointing the foreperson of the grand jury for successive terms by the judges of the criminal court. We must respectfully decline to issue the requested opinion.

We are unable to provide the requested opinion because this Office represents the State in pending litigation that involves the questions posed in your opinion request. In compliance with our ethical obligations and to avoid intruding inappropriately into the administrative or judicial process, this Office has a longstanding policy of not opining on questions concerning matters or issues pending before administrative or judicial bodies or matters involving potential or threatened litigation. In particular, this Office may not issue opinions, such as the one you have asked for, related to matters in litigation in which the Office is itself involved or matters in which it has been or may be called upon to provide counsel to a client.

Moreover, while we are not able to issue the requested opinion, it appears that the Tennessee Court of Criminal Appeals has in the past ruled on the issue that is the subject of the opinion request. As that court itself has stated, it

has consistently held that a grand jury foreperson may serve longer than the requisite two-year term. *See Teague v. State*, 529 S.W.2d 734, 736 (Tenn. Crim. App. 1975) (holding that the long, uninterrupted tenure of a grand jury foreman did not deprive the defendant of due process or equal protection under the law); *Nelson v. State*, 499 S.W.2d 956, 956 (Tenn. Crim. App. 1972) (finding no authority

indicating that a grand jury foreman appointed for two years was disqualified to serve a longer period either by reappointment or holding over); *Joseph B. Thompson v. State*, No. E2004-00920-CCA-R3-PC, 2005 WL 2546913, at *25 (Tenn. Crim. App. Oct. 12, 2005) (reiterating the rule announced in *Nelson*); see also David Louis Raybin, *Tennessee Criminal Practice & Procedure* § 9:8 (2014) (asserting that although a grand jury foreperson's term of office is two years, the grand jury foreperson may be reappointed).

State v. Crenshaw, No. W201401367CCAR3CD, 2015 WL 2447717, at *14 (Tenn. Crim. App. May 22, 2015). A copy of the full opinion in *State v. Crenshaw* is enclosed.

We regret that we will not be able to issue an opinion in response to the captioned request, but we trust that you understand our position and that you find the enclosed Court of Criminal Appeals opinion and the cases cited therein of assistance in addressing the question central to the captioned request.

Sincerely,

/s/Andrée Sophia Blumstein
ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

cc: Herbert H. Slatery III, Attorney General and Reporter

Enclosure: *State v. Crenshaw*, No. W201401367CCAR3CD, 2015 WL 2447717 (Tenn. Crim. App. May 22, 2015).