

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 05-088

Service of a Police Chief as a Member of the Peace Officer Standards and Training Commission
After Retirement From The Position of Police Chief

QUESTION

May a POST commissioner, appointed based on his status as a municipal police chief as set forth under Tenn. Code Ann. § 38-8-102, continue to serve in such capacity following retirement from the position as chief of police?

OPINION

No. Tenn. Code Ann. § 38-8-102 requires a specific composition of members to include “[t]wo (2) sheriffs and two (2) municipal chiefs of police who shall be appointed by the governor and serve at the governor’s pleasure.”

ANALYSIS

Tenn. Code Ann. § 38-8-102 establishes the Peace Officer Standards and Training (POST) Commission and defines its composition:

- (a) There is hereby established the Tennessee peace officer standards and training commission, hereafter referred to as the “commission.”
- (b)(1) The commission shall consist of:
 - (A) Two (2) police officers below the rank of assistant chief, or equivalent rank;
 - (B) The attorney general and reporter;
 - (C) Two (2) sheriffs and two (2) municipal chiefs of police who shall be appointed by the governor and serve at the governor’s pleasure;
 - (D) Two (2) nonsupervisory police officers;
 - (E) One (1) member of the senate and one (1) member of the house of representatives who shall be appointed by the respective speakers and who shall be nonvoting members of the commission to serve for terms of two (2) years;
 - (F) Three (3) citizens who are not connected with law enforcement, one (1) of whom shall be appointed by a resolution of the house of representatives and one (1) of

whom shall be appointed by a resolution of the senate and the third shall be appointed by the governor; and

(G) Four (4) additional members to be appointed by the governor.

(2) The commission shall include at least one (1) person who is of a racial minority.

(c) The members of the commission shall elect the chair of the commission.

The provisions of the statute provide for appointment of eighteen persons of various status. The statute specifically provides for the appointment of eight law enforcement officers, four of whom are sheriffs or municipal chiefs of police, appointed by the governor to serve on the commission at the governor's pleasure. Each of the remaining members of the commission are appointed by the governor or by other state governmental entities, i.e., the Senate, the House of Representatives, or the speakers of the Senate or House of Representatives.

The members of the POST Commission are selected to serve based on their specific roles as set forth in the statute. The statute provides for the specific appointment of the members of the Commission, except for the two police officers below the rank of assistant chief and the two nonsupervisory police officers, under subparagraphs (b)(1)(A) and (D).

The statute establishing the POST Commission does not address the circumstances under which a position should be considered vacant and likewise fails to address the viability of the Commission in the event of a change of status of a commissioner. Tenn. Code Ann. § 8-48-101 lists several situations where a position of public office is to be considered vacated but does not include the retirement of a person from the position which served as the basis for that person's appointment. The Code provision states the following:

Any office in this state is vacated by:

(1) The death of the incumbent;

(2) The incumbent's resignation, when permitted by law;

(3) Ceasing to be a resident of the state, or of the district, circuit, or county for which the incumbent was elected or appointed;

(4) The decision of a competent tribunal, declaring the election or appointment void or the office vacant;

(5) An act of the general assembly abridging the term of office, where it is not fixed by the constitution;

(6) The sentence of the incumbent, by any competent tribunal in this or any other state, to the penitentiary, subject to restoration if the judgment is reversed, but not if the incumbent is pardoned; or

(7) Due adjudication of the incumbent's insanity.

Neither this office nor the courts of this state have addressed the continuing authority of a person to serve in a position after the person retires from the position which served as the basis for the person's appointment. However, the Attorney General of the State of Texas addressed a similar question related to the continued service of a person appointed by the governor to serve on a State Board of Trustees. Tex. Atty. Gen. Op. H-1224, 1978 WL 24479 (Tex.A.G.) The specific question

addressed by the Texas Attorney General was: “Does retirement under the Teacher Retirement System vacate the office of Trustee of the Retirement System if the Trustee was a member of TRS appointed pursuant to Section 3.59(c)(1), Texas Education Code?” The opinion considered the provisions of the Texas Education Code which set forth the composition of the board. The position in question was by gubernatorial appointment with a stated qualification that “the appointee be a member of the retirement system.” The Texas Attorney General reasoned that the appointed trustee’s qualification to serve on the Board expired when the trustee ceased to be a member of the retirement system.

In the current case, the qualification for a commissioner to serve by appointment of our governor is the commissioner’s status as a police chief. Moreover, because the language of the statute states that the Commission “shall consist of” members who occupy specifically designated positions under Tenn. Code Ann. § 38-8-102(b)(1), it is reasonable to conclude that the legislature intended that a commissioner who leaves his or her designated position is no longer qualified for service on the Commission.

It is therefore the opinion of this office that, when a person appointed or otherwise serving as a commissioner experiences a change of status whereby he/she no longer fits the criteria set forth by law, he/she is no longer eligible to serve as a member of the POST Commission, and that position becomes vacant by that commissioner’s ineligibility. Even though that person serves “at the governor’s pleasure,” the appointment is limited by the statutory requirement of the commissioner’s role as a sheriff or municipal chief of police. Under such circumstances, the vacancy should be refilled as soon as possible by appointment of the governor as set forth under the statute.

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