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Opinion No. 00-116

Tennessee Private Investigation and Polygraph Commission

On May 26, 1999, the Governor signed 1999 Public Acts, Chapters 252 and 253. Together, these Acts dissolved the Tennessee Board of Polygraph Examiners ("Board") and consolidated the functions and resources of the Board under the Tennessee Private Investigation Commission, which was renamed the Tennessee Private Investigation and Polygraph Commission ("Commission").

QUESTIONS

1. Is the described legislation permissible?

2. Since the legislation contains no severability clause, and since several of the rules promulgated by the previously separate entities appear to conflict, has the combining of these entities legally occurred and do the rules previously promulgated continue or must new rules be passed?

3. The materials included with this opinion request suggest that Chapter 253 resulted in conflicting definitions of the term "Commission" and no definition of the term "Commissioner." The materials further suggest that these conflicts were unilaterally resolved by the codifying authority. Was the Act codified legally and, if not, can the Act stand with conflicting definitions?

4. If these Acts are not permissible and legal, is it necessary for the Governor to reappoint members of the Tennessee Private Investigation Commission and what effect would that have on Tenn. Code Ann. § 62-26-301?

5. Since neither Act contains language continuing the tenure of the Board or Commission members, is it necessary that the Governor reappoint the members of the Private Investigation and Polygraph Commission, or do the previously appointed members of either the Board or Commission continue in office? Again, how does this affect Tenn. Code Ann. § 62-26-301?

6. The Governor has appointed only one member to the Private Investigation and Polygraph Commission and has not acted to reappoint previously serving members of the Private Investigations Commission. Does the Private Investigations and Polygraph Commission currently exist? Does a quorum exist? Tenn. Code Ann. § 62-26-301(d)(5) provides that at least two, but not more than three, of the members of the Commission shall be appointed from each grand division of

the State. It appears that four of the current members are from East Tennessee. Which member must be removed?

OPINIONS

1. Yes. The legislation is entirely permissible and proper.

2. The rules of both former entities remain in effect and shall be administered and enforced by the Commission. The rules do not appear to conflict.

3. Chapter 253 created no conflict, and the Act was accurately codified.

4. There is no reason to question the legality of these Acts; this question is, therefore, moot.

5. The members of the former Private Investigation Commission continue under their previous appointments as members of the renamed Private Investigation and Polygraph Commission; it is not necessary that they be reappointed.

6. The Commission and a quorum exist. Three persons from East Tennessee are currently serving unexpired terms as members of the Commission. The term of a fourth East Tennessee member expired on September 30, 1999; that person is ineligible for reappointment.

ANALYSIS

1. Public Chapters 252 and 253 were properly passed by the General Assembly and were signed by the Speakers of the House and Senate on May 17, 1999. The Governor signed both Acts on May 26, 1999. Nothing within either Act appears illegal or unconstitutional. Thus, the legislation is entirely proper and effective.

2. The Private Investigation Commission was not dissolved, but merely renamed and amended to incorporate the functions and resources of the former Board of Polygraph Examiners. Thus, rules promulgated under the Commission continue in effect. In contrast, the Polygraph Board was entirely dissolved, and its functions and resources were transferred to the Private Investigation and Polygraph Commission. *See* Public Act, 1999, Chapter 252, §§ 3, 7, 8 (terminating the Board of Polygraph Examiners as of January 1, 2000; deleting Tenn. Code Ann. § 62-27-104, which had created the Board; and transferring all Board resources to the Commission). Pursuant to Tenn. Code Ann. § 4-5-226(b), "All rules and regulations issued or promulgated by any department or agency of state government whose functions, duties, or responsibilities have been transferred to another department or agency shall remain in full force and effect, and shall thereafter be administered and enforced by the agency or department assuming responsibility for those functions, duties or

responsibilities as rules of that agency . . . ." Thus, the rules of the former Board also continue in effect as rules of the Private Investigation and Polygraph Commission.

We do not observe any conflict among the rules of the former Board and those of the Commission. However, should a conflict arise, the Commission is competent to promulgate, modify, or rescind its rules, including the rules transferred from the former Board. *See* Tenn. Code Ann. § 4-5-226(b)(2).

3. The materials included with this opinion request indicate that Chapter 253 amended Tenn. Code Ann. § 62-26-202 by replacing the then existing definition of "Commissioner" with a definition of "Commission." The materials further indicate that, prior to the present amendments, § 62-26-202 had included a subsection (12), which contained a conflicting definition of "Commission," and that Chapter 253 did not delete this subsection (12). Finally, the materials suggest that the codifying authority unilaterally reinstated the definition of "Commissioner," renumbered the subsections, and resolved the conflicting definitions of "Commission" by deleting subsection (12).

Having carefully reviewed the previous version of the Code, the amendments enacted by Chapter 253, and the law as currently codified, we are convinced that the Act was codified accurately and that no conflict exists. Contrary to the material submitted with this request, our review indicates that prior to the amendments, § 62-26-202 defined "Commission" in subsection (3); and there was no subsection (12). Section one of Chapter 253 deleted the previous subsection (3) and enacted a new subsection (3), defining "Commission" as the "Private Investigation and Polygraph Commission." Section 62-26-202 did not, and does not, contain any other conflicting definition of "Commission." Moreover, Chapter 253 did not in any way alter the definition of "Commissioner" found in subsection (4) of both the former and amended versions of § 62-26-202, and the remaining subsections have not been renumbered.

This Office has been unable to locate any previous version of the legislation which might have resulted in the problems described. However, as passed, the Act did not create a conflict; and the Act was accurately codified.

4. This Office is of the opinion that this legislation is proper, legal, and effective. Therefore, this question is pretermitted.

5. The Governor need not reappoint the membership of the Commission. The Tennessee Private Investigation Commission was not dissolved; it was merely renamed and invested with the functions and resources of the former Board of Polygraph Examiners. Therefore, the members of the Commission continue under their previous appointments. The Board, on the other hand, was dissolved along with its membership on January 1, 2000.

6. As amended by Chapter 253, Tenn. Code Ann. § 62-26-301 provides that the Commission shall consist of nine members, appointed by the Governor, which shall include seven

private investigators, one polygraph examiner, and one public member. *See* Tenn. Code Ann. § 62-26-301(a-c). In addition, the Code provides that "[a]t least two (2) members, but not more than three (3), shall be appointed from each grand division of the state." Tenn. Code Ann. § 62-26-301(d)(5). With a nine-member Commission and three grand divisions, this obviously requires exactly three members from each division.

Our research indicates that the membership of the Commission currently includes three persons from the middle division, all of whom are investigators; two persons from the western division, both investigators; and three persons from the eastern division, two investigators and a recently appointed polygraph member. The term of the Commission's public member, who was also from East Tennessee, expired on September 30, 1999. Because the code requires that the Commission consist of three persons from each grand division, that member is not eligible for reappointment. Rather, a public member must be appointed from the western division. In the meantime, however, the Commission and a quorum exist.

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