S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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October 17, 2000

Opinion No. 00-159

Lucrative Offices; Article II, Section 26

QUESTION

Is it unconstitutional under Article II, Section 26 of the Tennessee Constitution for a county commissioner to also serve on the Road Board and receive money from both elected positions?

OPINION

It is not unconstitutional under Article II, Section 26 of the Tennessee Constitution for a county commissioner to also serve on the Road Board and receive money from both elected positions.

ANALYSIS

Article II, Section 26, of the Tennessee Constitution, in pertinent part, prohibits any person in this State from holding more than one lucrative office at the same time. As used in that section, the term "office" has been construed by Tennessee courts to mean a "state office." *Phillips v. West*, 187 Tenn. 57, 213 S.W.2d 3 (1948); *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495 (1931).

It is clear that the office of county commissioner is a local office, not a state office, for purposes of Article II, Section 26. *See* Op. Tenn. Atty. 98-213 (November 23, 1998). Therefore, a county commissioner may hold either another local office or a state office without violating Article II, Section 26.

We caution, however, that holding two such offices might be prohibited by legislation. *See, e.g.*, Op. Tenn. Atty. Gen. 99-044 (March 1, 1999) (an individual was prohibited from serving on the Lake County Board of Highway Commissioners and the Lake County Commission by the private act that created the Board) and Tenn. Code Ann. § 5-5-102(c)(2) and (3) (statutory prohibitions against county commissioners holding certain other offices). Moreover, as addressed in a number of previous opinions issued by this Office, there is a well-recognized common law prohibition against a public officer holding two incompatible offices at the same time; the question of incompatibility depends upon the facts and

circumstances of the particular situation. *See* Op. Tenn. Atty. Gen. 99-195 (September 28, 1999) and the opinions cited therein.

Thus, it is the opinion of this Office that Article II, Section 26, of the Tennessee Constitution does not itself prohibit a county commissioner from serving on the Road Board and receiving money from both elected positions. However, an individual's having two such offices may be prohibited by legislation or, under certain facts and circumstances, the common law prohibition against holding incompatible offices.

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