S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

November 20, 2000

Opinion No. 00-174

Term limits for county commission chair

QUESTION

May the Sumner County Commission impose a limit on the number of one-year terms a member may serve as chair?

OPINION

The Sumner County Commission may restrict the number of one-year terms a member may serve as commission chair.

ANALYSIS

For counties electing a county executive, as provided in Tenn. Code Ann. § 5-6-102, §§ 5-5-101, *et seq.*, provide, among other things, for the establishment of county legislative bodies, the requirements of their membership, and the annual election of their chairs. Section 5-5-102(e)(1) prescribes that the county commissioners serve a four (4)-year term, or serve until their successors are elected and qualify. Section 5-5-103(b)(1) provides for the chair's election by the commission "at its first session on or after September 1 of each year . . .." By the language of that code section, then, the chair serves a one-year term, at the end of which another election is held by commission members to elect, from the membership, a chair to serve a new one-year term. That section enables the commission to elect the county executive as chair, if it chooses, but removes the veto power of such individual during the term as chair and confers no additional power or authority, not otherwise provided by law, other than the power and authority held by virtue of being the commission's presiding officer. But while the statute provides for the length of the chair's term and offers guidance as to who may be elected to serve as chair, it does not specifically set limits on the number of terms a commissioner may hold that office.

Tennessee case law, however, recognizes that county legislative bodies may make reasonable rules that are not arbitrary or capricious for the conduct of their business as to matters on which the statutes are silent. "It is well settled that, where the matter is not covered by statute, a board of commissioners has power to make reasonable rules and regulations for the government of its proceedings." *State ex rel. Davis v. County Commissioners of Shelby County*, 154 Tenn. 141, 285 S.W. 45 (Tenn. 1926). In our

opinion, the imposition of limits on the number of one-year terms a county commissioner may serve as chair is reasonable and is neither arbitrary nor capricious.

Although counties are political subdivisions of the State and have no authority except that given by statute, such authority extends to acts necessarily implied from statutory provisions. *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567, 571 (Tenn. Ct. App. 1994). Thus, if a county commission has the statutory authority to elect a chair for a specified term, it would seem, by implication, to have the power to impose restrictions on the number of terms as chair a commisioner may serve when the statute is silent on that issue.

The opinions of Attorneys General in other states have addressed similar issues and cite similar conclusions. In 1980, Florida's Attorney General was asked whether a school board could adopt a rule providing that after a member has served as chairman for two consecutive years he is not eligible for re-election until another board member had served as chair for at least one year. The Attorney General opined that such term limitations could indeed be imposed, noting that the Florida statutes did not limit or restrict the board in the regulation of its own organization or procedures, except to require that a school board chairman be elected at a particular meeting each year. The opinion further noted that any such rule of procedure would be subject to revocation or modification at the pleasure of the body creating it. Op. Fla. Atty. Gen. 080-42 (May 7, 1980), 1980 WL 100584.

Similarly, the Texas Attorney General was asked whether the Texas Youth Council could adopt rules limiting the chair to a one-year term and providing that the chair may not serve more than two successive terms. "[A]bsent legislative direction," the Attorney General concluded, "the Council may . . . restrict the number of successive terms an individual may serve as chairman." Op. Tex. Atty. Gen. H-955 (March 14, 1977), 1977 WL 26294.

Further, these opinions are consistent with *Robert's Rules of Order*, which states as a general principle that an organization's bylaws may contain a provision that "No person shall be eligible to serve more than ____ consecutive terms in the same office." *Robert's Rules of Order* § 46 at 439 (1990).

No Tennessee statute or Sumner County private act expressly imbues the Sumner County Commission with the power to limit the number of terms that the chair may serve. We think that power may be implied, however, from the statutes providing for the creation of the county commission, the terms of the commissioners, the selection and length of the term of the chair, and the absence of any guidance regarding the number of terms a chair may serve. Because the commissioners have the power to make reasonable, non-arbitrary, non-capricious rules to govern their proceedings when the matter is not covered by statute, it is our opinion that the Sumner County Commission may impose a limit on the number of one-year terms a member may serve as commission chair.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

GARY R. THOMPSON
Assistant Attorney General

Requested by:

Hon. Jo Ann Graves
State Senator
6 Legislative Plaza
Nashville, Tennessee 37243-0218