

**STATE OF TENNESSEE**

OFFICE OF THE  
ATTORNEY GENERAL  
425 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243

November 22, 2000

Opinion No. 00-180

Adoption of Local Option Act

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**QUESTIONS**

1. The Franklin County Commission has sixteen members. The commission voted recently to adopt the County Financial Management System of 1981, Tenn. Code Ann. §§ 5-21-101, *et seq.* Fourteen members were present. Of these, ten members voted to adopt the act, three voted against, and one abstained for cause. Is this vote sufficient to adopt the act under Tenn. Code Ann. § 5-21-126?

2. The commissioner that abstained is a bookkeeper for the Franklin County Board of Education, and her position could be affected if the county adopts the act. Under these circumstances, does the commissioner have a conflict of interest requiring her to abstain?

**OPINIONS**

1. No. The act must be adopted by an affirmative vote of two-thirds of the entire authorized membership of the commission. The affirmative vote of eleven members is therefore required.

2. Based on these facts, the commissioner does not have a conflict of interest in a vote to adopt the act within the meaning of Tenn. Code Ann. § 12-4-101(c).

**ANALYSIS**

1. Vote Required to Adopt Local Option Act

This request concerns a vote by the Franklin County Commission on whether to adopt the County Financial Management System of 1981, Tenn. Code Ann. §§ 5-21-101, *et seq.* Under Tenn. Code Ann. § 5-21-126, this statutory scheme is local in effect and shall become effective in a particular county “upon a two-thirds (2/3) majority vote of the county legislative body” or on a majority vote of county voters. The request states that fourteen commissioners were present at the meeting. Ten of the members voted to adopt the act, three voted against, and one abstained “for cause.” The first question is whether the county commission has adopted the act as required under Tenn. Code Ann. § 5-21-126. This statute implements Article XI, Section 9 of the Tennessee Constitution. Under that provision:

. . . any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

Tenn. Const. Art. I, § 9. This provision requires a two-thirds vote of the entire authorized membership of the local legislative body. *State ex rel Doyle v. Torrence*, 203 Tenn. 175, 310 S.W.2d 425 (1958); *Kesterson v. McKee*, 527 S.W.2d 144 (Tenn. Ct. App. 1975), *p.t.a. denied* (1975). In the case of a sixteen-member body, therefore, eleven members must vote for adoption. An abstention cannot be treated as a favorable vote. *State ex rel Doyle v. Torrence, supra*. Further, the member who abstained cannot be excluded from determining whether a two-thirds vote of the entire authorized membership of the county commission was cast. Under Tenn. Code Ann. § 12-4-101(c)(3), a member of a local governing body of a county or municipality who abstains from voting for cause on any issue coming to a vote before the body “shall not be counted for the purpose of determining a majority vote.” But since the requirement of a two-thirds vote of the entire authorized membership is a constitutional requirement, this statute cannot change it. Since only ten members of the total authorized membership of sixteen cast affirmative votes for adoption, therefore, the act has not been adopted by a two-thirds vote of the commission as required under Tenn. Code Ann. § 5-21-126.

## 2. Conflict of Interest by County School Board Employee

The request also states that the commissioner who abstained from voting is a bookkeeper for the Franklin County School Board and would be “affected” if the county commission adopted the County Financial Management System of 1981. The request asks whether this commissioner in fact had a conflict of interest in the adoption of the act. Tenn. Code Ann. § 12-4-101(c) sets forth the circumstances under which a member of a local governing body of a county or city who is also employed by the county or city may vote on matters in which the member has a conflict of interest. Our Office has concluded, however, that a county commissioner employed by the county department of education does not have a conflict of interest within the meaning of Tenn. Code Ann. § 12-4-101 in a vote to adopt the County Financial Management System of 1981. Op. Tenn. Atty. Gen. 97-166 (December 16, 1997). This conclusion is based on the reasoning that the act does not single out the education department and that any impact of the adoption of the system upon the commissioner’s employment relationship with the department is remote. For this reason, we think a county commissioner employed by the county board of education does not have a conflict of interest subject to the restrictions set forth in Tenn. Code Ann. § 12-4-101(c) in the county’s decision to adopt the

County Financial Management System of 1981.

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