

STATE OF TENNESSEE

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

March 28, 2001

Opinion No. 01-049

Alderman as Member of Fayetteville Public Utilities Board

QUESTION

May an alderman serve as a member of the Fayetteville Public Utilities Board?

OPINION

Yes, this service is required by a private act and appears to violate no constitutional provision.

ANALYSIS

This opinion addresses the legality of an alderman's service on the Fayetteville Public Utilities Board. Under 1963 Tenn. Priv. Acts Ch. 8, as amended, which now appears as Section 9b of the Fayetteville City Charter compiled by the Municipal Technical Advisory Service, the City of Fayetteville was authorized to consolidate its electric system with the Lincoln County Electric Membership Corporation to form the "Fayetteville-Lincoln County Electric System." Section 3 of this act provides

[t]hat the Mayor and Aldermen of the Municipality [Fayetteville] shall create and establish a Board of Public Utilities to supervise and control the management and operation of the consolidated system, which Board shall have all the rights, powers, privileges, duties and responsibilities with respect to the consolidated system as a Board of Public Utilities has under TCA 6-1501 through 6-1537, as amended [now Tenn. Code Ann. §§ 7-52-101 - 7-52-135], with respect to the electric system under its control and supervision.

Section 4 of the act provides that the Board will consist of seven members appointed by the Mayor of Fayetteville and approved by the Board of Aldermen. The act provides that "[t]he seventh member of the Board shall be an Alderman of Municipality [Fayetteville], whose term of office shall be fixed by the Mayor, but shall not extend beyond his term as alderman." The private act is in addition and supplemental to any power, authority or right conferred by any other law. Fayetteville City Charter, Section 9b(6).

This Office is unaware of any constitutional provision that this private act would violate. The private act confers upon the Fayetteville Board of Public Utilities “all the rights, powers, privileges, duties and responsibilities” with respect to the consolidated system as a board of public utilities has under Tenn. Code Ann. §§ 7-52-101, *et seq.*, with respect to the electric system under its control and supervision. The Municipal Electric Plant Law of 1935, Tenn. Code Ann. §§ 7-52-101, *et seq.*, authorizes a municipality to appoint a board of public utilities whose members serve without compensation except for limited allowances and benefits as set forth in Tenn. Code Ann. § 7-52-110. The Municipal Electric Plant Law of 1935 also provides:

The board of a municipal electric system may consist of two (2) or four (4) persons who have been for not less than one (1) year preceding the appointment both a customer of the municipal electric system and a resident of the county wherein such municipality is located. No regular compensated *officer* or employee of a municipality shall be eligible for such appointment until at least one (1) year after the expiration of the term of such person’s public office.

Tenn. Code Ann. § 7-52-107(b) (emphasis added). But the Board of Mayor and Aldermen of Fayetteville is authorized to create a seven-member board including an alderman under the private act. The Fayetteville City Code recites that the Fayetteville Public Utilities Board was created under 1963 Tenn. Priv. Acts Ch. 8. Fayetteville City Code Section 2-501. Because the private act provides for different authority to the City of Fayetteville in addition to that in Tenn. Code Ann. § 7-52-107(b), it does not conflict with the statute. Where a statute contravenes a general law that has mandatory statewide application, the classification it creates must be analyzed under Article XI, Section 8 of the Tennessee Constitution regarding equal protection of the laws. *Riggs v. Burson*, 941 S.W.2d 44, 78 (Tenn. 1997), *reh’g denied* (1997), *cert. denied*, 118 S.Ct. 444 (1997). By its own terms, however, Tenn. Code Ann. §§ 7-52-101, *et seq.*, is intended to confer powers in addition and supplemental to the powers conferred by any other law. Tenn. Code Ann. § 7-52-133. For this reason, the fact that this statute prohibits a city officer from serving on a city public utilities board, while the Fayetteville City Charter requires an alderman to serve on its public utilities board, raises no problems under Article XI, Section 8 of the Tennessee Constitution.

The request does not indicate whether the alderman appointed to the utilities board would receive extra compensation for serving in this capacity. We do not think, however, that conflict of interest statutes would prevent the Board of Mayor and Aldermen, including the member so appointed, from voting to give such member additional compensation for carrying out those additional *ex officio* duties. Conflict of interest statutes generally prohibit an official from being directly interested in a contract he or she has the duty to let out or supervise. Tenn. Code Ann. § 12-4-101; Tenn. Code Ann. § 6-54-107. But the city charter expressly requires the Board of Mayor and Aldermen to set their compensation in the ordinance adopting the annual budget and capital program. Fayetteville City Charter, Section 10a. The compensation of the Mayor or Aldermen — including the member serving *ex officio* on the utilities board — may not be reduced during their term of office. We do not think either Tenn. Code Ann. § 12-4-101 or Tenn. Code Ann. § 6-54-107 was intended to prevent members of the city governing body from setting

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their salary in accordance with any applicable public or private act. Op. Tenn. Atty. Gen. U92-91 (July 6, 1992).

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