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Opinion No. 01-116

Claiborne County General Sessions Judge as Juvenile Center Administrator

QUESTION

Claiborne County is a county of the fourth class under Tenn. Code Ann. § 16-15-5001, and its general sessions judge is part-time. May the general sessions judge also be employed to work in another position with the county, specifically juvenile center administrator, and receive separate or additional pay for serving as juvenile center administrator?

OPINION

A definitive answer to this question depends on the status and responsibilities of the position of juvenile center administrator. The responsibilities of the juvenile center administrator and those of the general sessions judge should be examined to determine whether the positions are incompatible, especially since it appears that the Claiborne County General Sessions Judge has juvenile court jurisdiction. If, for example, the juvenile court center is a detention facility or exercises other responsibilities with regard to juvenile offenders, we think such service would conflict with the judge's performance of his official duties. Further, under Article VI, Section 7, a judge may not serve in another office of trust or profit. If the position of juvenile center administrator is an office of trust or profit, therefore, the judge would be constitutionally prohibited from serving as juvenile center administrator. In addition, holding both positions could conflict with the Tennessee Code of Judicial Conduct requiring a judge to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The judge may wish to consult with the Judicial Ethics Committee regarding this issue.

ANALYSIS

You ask whether the Claiborne County General Sessions Judge may also be employed to work as juvenile center administrator by the county. Under the results of both the 1990 and 2000 census, Claiborne County is a county of the fourth class for purposes of determining the general sessions judge's salary and responsibilities. Tenn. Code Ann. § 16-15-5001. By statute, general sessions judges in class four counties are part-time judges and "shall not be prohibited from the practice of law or other gainful employment while serving as judge *except to the extent such practice or employment constitutes a conflict of interest.*" Tenn. Code Ann. § 16-15-5002(b) (emphasis added). We think this statute either

incorporates or has not replaced the common law prohibition against the same individual serving in incompatible offices. Op. Tenn. Atty. Gen. 98-131 (July 27, 1998). Our own research indicates that the Claiborne County General Sessions Judge exercises juvenile jurisdiction. This is based on the fact that no private act creates a separate juvenile court in Claiborne County. General sessions courts exercise juvenile court jurisdiction in all counties except in counties where juvenile courts are specially provided by law. Tenn. Code Ann. § 37-1-203.

The question of incompatibility depends on the circumstances of each individual case, and the issue is whether the occupancy of both offices by the same person is detrimental to the public interest, or whether the performance of the duties of one interferes with the performance of those of the other. 67 C.J.S. *Officers* § 27 at 279-80 (1978). For example, an inherent inconsistency exists where one office is subject to the supervision or control of the other. *State ex rel. v. Thompson*, 193 Tenn. 395, 399, 246 S.W.2d 59 (1952). There, the Tennessee Supreme Court concluded that the offices of city manager and member of the city council were incompatible because the council had the authority to appoint, remove, and supervise the city manager, and no statute then in effect permitted the same individual to hold these offices.

We think the responsibilities of the position of juvenile center director should be examined to determine whether they would interfere with the judge's performance of his judicial duties. For example, if the center serves as a detention facility for juvenile offenders, or carries out counseling or other duties with regard to juvenile offenders, we think a court would probably conclude that the offices of general sessions judge with jurisdiction over juvenile cases and juvenile center director are incompatible.

In addition, Article VI, Section 7 of the Tennessee Constitution provides:

> The Judges of the Supreme or Inferior Courts, shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be increased or diminished during the time for which they are elected. They shall not be allowed any fees of perquisites of office *nor hold any other office of trust or profit under this State or the United States*.

Tenn. Const. art. VI, § 7 (emphasis added). General sessions courts are inferior courts under Article VI of the Tennessee Constitution. *Franks v. State*, 772 S.W.2d 428 (Tenn. 1989); *see also State v. Harmon*, 882 S.W.2d 352 (Tenn. 1994). Under Article VI, Section 7, a general sessions judge is therefore constitutionally prohibited from holding any other "office of trust or profit under this State or the United States."

The case of *Frazier v. Elmore*, 180 Tenn. 232, 173 S.W.2d 563 (1943), defined "office" as used under this constitutional provision as follows:

> The term "office" in its context, must be given its broad meaning, so as to

> effectuate the apparent intent of the constitutional prohibition against a diversion or division of the time and labor, energies and abilities of judges of our courts, which might destroy or diminish their capacity to discharge the exacting duties of their responsible positions; and also to limit them to one source of compensation. Webster defines "office" as an "assigned duty or function." Synonyms are post, appointment, situation, place, position; and "office commonly suggests a position of (especially public) trust or authority." Bouvier defines "office" as "a right to exercise a public function or employment, and to take the fees and emoluments belonging to it;" again, "a public charge or employment." 2 Bouv. Law Dict, Rawles Third Revisions, p. 2401. The opinion of this Court in *Jones, Purvis & Co. v. Hobbs*, 63 Tenn. 113 at page 120, quotes Blackstone's definition of office as "a right to exercise a public or private employment, and to take the fees and emoluments thereto belonging."

Frazier v. Elmore, 180 Tenn. at 238. In that case, the Court concluded that active service in the military was an office of trust or profit within the prohibition of Article VI, Section 7. This Office has concluded, however, that an "office of trust or profit" within the meaning of Article VI, Section 7 includes only those positions that require an individual to take an oath of office under Article X, Section 1 of the Tennessee Constitution. Op. Tenn. Atty. Gen. 77-75 (March 18, 1977). The tenure, method of selection, and responsibilities of juvenile center director should be examined to determine whether the position constitutes an "office of trust or profit" within the meaning of Article VI, Section 7 of the Tennessee Constitution.

Finally, the position of juvenile center director should be examined to determine whether, by holding it, a judge would violate the Tennessee Code of Judicial Conduct. Rule 10 of the Tennessee Supreme Court Rules, Canon 2A provides:

> A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

This Office does not interpret the Code of Judicial Conduct. The judge may wish to consult the Judicial Ethics Committee to determine whether holding the position of juvenile center director would cause the judge to violate this provision of the Code of Judicial Conduct. *See, e.g.,* Judicial Ethics Committee Advisory Opinion No. 98-5 (juvenile court judge appointing juvenile probation officers).

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