S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

September 4, 2001

Opinion No. 01-144

State Employee as School Board Member

QUESTION

Under Tennessee law, can a person be a state employee, a member of the Democratic Party Executive Board and a member of the school board concurrently?

OPINION

Yes. There is no statute barring a state employee and a member of the Democratic Party Executive Board from becoming a member of the school board. Members of the school board are subject to conflict of interest laws, but none of these laws bars a state employee from becoming a member of the school board.

ANALYSIS

State statute provides that "[n]o member of the county legislative body nor any other county official shall be eligible for election as a member of the county board of education." Tenn. Code Ann. § 49-2-202(a)(2)(2000). While this statute prevents one person from holding an elected county office and being a member of the school board, it does not prevent someone from being an employee of a governmental entity and a member of the school board at the same time. In fact, Tennessee law expressly allows a county employee to hold a concurrent county legislative office. Tenn. Code Ann. § 5-5-102(c)(1) (2000). Furthermore, a federal district court has ruled that, for the purposes of determining FMLA eligibility "in Tennessee, a county board of education is a separate and distinct governmental entity from that county's county government. This assertion is borne out by an examination of the creation of the two entities by differing acts of the State of Tennessee, by the differing governmental functions performed by the two

entities, and by the separate administration of the two entities." *Rollins v. Wilson Co.*, 967 F.Supp. 990, 996 (M.D. Tenn. 1997).[1]

If a county employee is therefore allowed to hold office not only as a member of the school board but also as a member of the county legislative body, a state employee being even further removed from the county system should be equally eligible for election to a school board office. State employment is not the equivalent of a county or state elected office and therefore the restriction in Tenn. Code Ann. § 49-2-202(a)(2) does not apply in the present case.

In addition, the prohibition in Tenn. Code Ann. § 49-2-203(a)(1)(D), which provides that "[n]o member of any local board of education shall be eligible for election as a teacher, or any other position under the board carrying with it any salary or compensation," does not apply to the case at hand because the person wishing to run for the school board is not a teacher and presumably does not intend to accept any other compensated position under the school board.

Conflict of interest problems generally arise when a school board member has pecuniary interests that would interfere with that member's ability to vote objectively on matters before the board. Tenn. Code Ann. §§ 12-4-101(a)(1) and (b) provide that it is unlawful for any official whose duty it is to vote for any contract in which the county is concerned to be directly or indirectly financially interested in any such contract.

For example, a member of a school board who was an insurance agent and had written policies covering public school property over a course of years could have a conflict of interest. *State ex rel. Abernathy v. Anthony*, 206 Tenn. 597, 335 S.W.2d 832 (Tenn. 1960). The Court found that this situation could create a conflict of interest in violation of state statute. *Id.* at 600, 833. Tenn. Code. Ann. § 12-4-101 (a)(1) forbids such direct conflicts of interest which it defines as contracts "with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest."

In the present situation, this Office has no information to suggest that as a state employee,[2] the member would have any pecuniary conflict of interest with county school board membership. Even if there were some benefit flowing to the state from county budgetary appropriations, the benefit accruing to any single employee of a state agency would be minuscule at best. If the situation were such that the member

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[1]Although the two entities are tied together by budget with the county legislative body having the authority to appropriate county funds pursuant to requests and budgets submitted by the county board of education, the county legislative body has no supervisory authority over the board of education. *State of Tennessee v. Ayers*, 756 S.W.2d 217, 225 (Tenn. 1988) (citing *State ex rel. Boles v. Groce*, 152 Tenn 566, 570, 280 S.W. 27, 28 (1925)). *See also* Op. Tenn. Atty. Gen. 80-521 (October 30, 1980) (county board of education is a separate and distinct entity from that of a county legislative body and the county legislative body has no supervisory jurisdiction over the county board of education).

[2] Your office has informed us that the individual is an employee of the Tennessee Department of Transportation.

would enjoy some appreciable benefit flowing from a contract with the school board, it would have to be determined whether the member had a direct or indirect conflict of interest. School board members are prohibited from entering into contracts creating direct conflicts. Tenn. Code Ann. § 12-4-101(a)(1) (2000). Indirect conflicts of interest are allowed but must be publicly acknowledged before a vote under the provisions of Tenn. Code Ann. § 12-4-101(b).[3] Whether the conflict of interest is direct or indirect depends on the ownership interest the member possesses in the company and the extent of the financial benefit to the official and to the company. Op. Tenn. Atty. Gen. U90-40 (March 2, 1990) (copy attached); Op. Tenn. Atty. Gen. (March 16, 1982) (copy attached).

Lastly, there is no statute barring a person from being a county school board member while simultaneously being a member of the Democratic Party Executive Board.

Therefore, it is the opinion of this Office that there are no statutes barring one person from being a state employee, a member of the Democratic Party Executive Board and a member of the school board and holding these positions concurrently.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KATE EYLER
Deputy Attorney General

Requested by:

The Honorable Micheal R. Williams
State Senator
310 War Memorial Building
Nashville, TN 37243-2061

[3] *See, e.g.*, Op. Tenn. Atty. Gen. U90-40 (March 2, 1990). For a more detailed explanation of how the conflict of interest statute operates, *see* Op. Tenn. Atty. Gen. 99-209 (October 20, 1999).