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Opinion No. 01-162

Juvenile court referees also serving as appointed counsel in criminal cases

QUESTION

May juvenile court referees also serve as appointed counsel in criminal cases?

OPINION

Yes. An individual may serve and be compensated as both a juvenile court referee and as appointed counsel in criminal cases.

ANALYSIS

The question raised has been interpreted as pertaining to several prohibitions of the Tennessee Constitution. First, Article VI, § 7 does not permit a judge to "hold any other office of trust or profit," but this constitutional limitation does not apply to juvenile court referees. Referees are not judges as they can not issue findings or recommendations that are binding absent judicial approval and serve only at the pleasure of the judge. Tenn. Code Ann. § 37-1-107(a) & (f).

Second, Article II, § 26 does not allow "any person in this State [to] hold more than one lucrative office at the same time." Because this prohibition applies to only the contemporaneous holding of lucrative state offices, it also inapplicable. *See Phillips v. West*, 213 S.W.2d 3 (1948). As previously indicated in Attorney General Opinion No. 84-268, juvenile court referee is a county, not a state, office since it is by appointment of a juvenile court judge, who is a county official. See *Stambaugh v. Price*, 532 S.W.2d 929, 933 (Tenn. 1976); Tenn. Code Ann. § 37-1-107(a). Accordingly, absent any contractual limitations, an individual serving as a juvenile court referee is

not prohibited from simultaneously holding a lucrative state office - a conclusion that extends to appointed counsel if this position were deemed to be a lucrative state office.

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