S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 Fifth Avenue North
NASHVILLE, TENNESSEE 37243-0497

May 21, 2002

Opinion No. 02-067

House Education Committee authority regarding appointees to State Board of Education.

QUESTIONS

1. What authority does the House Education Committee ("the Committee") have to verify that current board membership is in compliance with the requirements of Tenn. Code Ann. § 49-1-301?

2. What authority does the Committee have to require information from one or more prospective appointees as to their political party affiliation in order to ensure compliance with Tenn. Code Ann. § 49-1-301?

3. Assuming the Committee has the authority to require political party information from prospective appointees, what options or methods may be used to gain this information? Specifically, may the Committee require written confirmation from the appointees themselves as to their political party affiliation?

4. Given the Board has nine (9) members and two (2) *ex officio* members, how many members must be female to satisfy the requirement that board membership reflect the percentage of females in the population?

OPINIONS

1, 2 and 3. The House Education Committee has the authority to conduct investigations in order to collect information for legislative purposes. This authority includes the power to issue subpoenae. The Committee has the authority to inquire into a prospective appointee's party affiliation through reasonable means, including issuing subpoenae for witnesses and/or documents. Written confirmation of a prospective appointee's political party affiliation also constitutes a permissible method of establishing an appointee's affiliation.

4. At least four, and no more than five of the appointed Board members should be female in order to satisfy the requirement set forth in Tenn. Code Ann §49-1-301(a)(2) that Board appointments should alternate until female membership reflect the percentage of females in the population.

ANALYSIS

Tenn. Code Ann. § 49-1-301 provides as follows:

49-1-301. Composition - Chair - Meetings.

(a) (1) The state board of education shall be composed of ***nine (9) appointed members***, one (1) public high school student member and one (1) ex officio member. One (1) appointed member shall be appointed from, and represent, each congressional district. Such member shall reside within the congressional district from which such member is appointed as such district is apportioned at the time of such member's appointment. The position of any member shall become vacant when such member ceases to reside in such district. Appointments from reapportioned congressional districts shall be made as vacancies occur. No incumbent member shall be removed from the incumbent member's seat prior to the expiration of the incumbent member's current term as a result of changes in congressional districts occasioned by reapportionment. The position of any member shall become vacant when such member misses, without cause, more than two (2) consecutive meetings within any twelve-month period. Cause shall be determined by the board.

(2) The terms for all members shall begin April 1, 1984. The terms of the initial nine (9) appointments shall be three (3) years for three (3) members, six (6) years for three (3) members, and nine (9) years for three (3) members as designated by the governor in the governor's appointments. As the terms expire, successors shall be appointed for nine-year terms. Vacancies shall be filled for the remainder of the unexpired term. ***At least three (3) members shall be appointed from both the majority and minority parties, as defined in § 2-1-104.*** [[1]] At least one (1) member shall be a

---

[1] Tenn. Code Ann. § 2-1-104 contains the following definitions:

"(a) In this title, unless a different meaning is clearly intended: . . .

(11) "Majority party" means the political party whose members hold the largest number of seats in the combined houses of the general assembly;

(12) "Minority party" means the political party whose members hold the second largest number of seats in the combined houses of the general assembly; . . . .

(14) "Political party" means an organization which nominates candidates for public office; . . .."

> member of the minority race. Board members may be reappointed. In making appointments to the board, the governor shall strive to ensure that at least one (1) person appointed to serve on the board is sixty (60) years of age or older. ***Appointments made after January 1, 1995, shall alternate such that every other appointment of a new member to the board shall be a female until the membership of the board reflects the percentage of females in the population generally, after which the provisions of this sentence shall cease to be effective.***
>
> **(3)** All appointive members shall be appointed by the governor subject to confirmation by the senate and house of representatives, but appointments shall be effective until adversely acted upon by the senate and house of representatives. Notwithstanding any provision of this section to the contrary, no new member of the board appointed pursuant to the provisions of this section shall commence the new member's term of office until such member is confirmed by the senate and the house of representatives. Members of the existing board of education shall continue to serve until their successors are appointed and confirmed.
>
> * * * * * * *
>
> (Emphasis added).

Your questions concern the authority of the House Education Committee to make inquiries and determinations in order to ensure that certain requirements set forth in Tenn. Code Ann. §49-1-301 are met.

1,2 and 3. In a previous Opinion issued by this Office, we stated:

> The power to conduct investigations is inherent in the legislative process. *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 83 S.Ct. 889, 9 L.Ed.2d 929 (1963). State legislatures have the right to conduct investigations through committees. *Liveright v. Joint Committee of the General Assembly of the State of Tennessee, 279 F.Supp. 205 (M.D.Tenn. 1968).* The theory of a committee inquiry is that the committee represents the parent body in collecting information for a legislative purpose. *Costiglio v. Strelzin*, 98 Misc.2d 548, 414 N.Y.Supp. 430 (N.Y.Sup.Ct. 1978). The scope of the legislature's power of inquiry extends to every proper subject of legislative action.

> *Commonwealth of Pennsylvania v. Brandamore*, 459 Penn. 48, 327 Atl. 2d 1 (1974). T.C.A. §§ 3-3-108 and 3-4-101 vest legislative committees with subpoena power. "These statutes are a necessary adjunct to the investigative power and are clearly within the constitutional authority of the legislature." *Liveright v. Joint Committee of the General Assembly, supra* at 215.[2]

We continue to adhere to these opinions. Thus, the Committee is empowered to employ any reasonable investigative means, including issuing subpoenae for witnesses and/or documents, in order to inquire into subject matters that are relevant to the legislative tasks of the Committee.

As quoted above, Tenn. Code Ann. § 49-1-301(a)(2) provides, in part, that, "At least three (3) members shall be appointed from both the majority and minority parties, as defined in § 2-1-104." In light of this legislative requirement, it is lawful and relevant for the Committee to inquire into a prospective appointee's political affiliations. As indicated in your third question, the Committee may choose to satisfy itself of the political affiliations of a prospective appointee by requiring written confirmation. Oral testimony, which, pursuant to Tenn. Code Ann. § 3-3-118,[3] is to be given under oath, may also be deemed satisfactory. Relevant documentary evidence pertaining to a prospective appointee's political affiliations may also be found sufficient by the Committee.[4]

4. Your next question concerns the portion of Tenn. Code Ann. § 49-1-301(a)(2) that addresses the gender of prospective appointees:

---

[2]*See* Op. Tenn. Atty. Gen. 84-109 (April 2, 1984)(copy attached).

[3]"(a) All such witnesses, when so subpoenaed, before giving their testimony before the bodies or committees subpoenaing them, shall take an oath or make affirmation as provided by law for witnesses appearing in a court of record of this state to give testimony in such court.

(b) The speaker of the senate, the speaker of the house of representatives, or a chair of a committee of the whole of either or both houses, or the chair or chair pro tem of any committee of either or both houses, is authorized and empowered to administer oaths or affirmations to witnesses appearing before any such committee."

See also, Tenn. Code Ann. § 3-3-120, providing as follows:

"(a) Any person who willfully and corruptly swears or affirms falsely in any material manner, upon any oath or affirmation, in respect of any matter under inquiry before either house, or such committee of either house or joint committee of both houses, commits perjury and shall be subject to indictment, trial and conviction for such perjury.

(b) Any person who corruptly procures another to swear or affirm falsely in any such inquiry commits subornation of perjury and shall be subject to indictment, trial and conviction for such offense.

(c) A violation of this section is a Class E felony."

[4]This is not intended to be an exclusive list of options available to the Committee, but is rather intended to be illustrative of some prominent examples of evidence that the Committee may wish to rely upon in making its inquiries.

> Appointments made after January 1, 1995, shall alternate such that every other appointment of a new member to the board shall be a female until the membership of the board reflects the percentage of females in the population generally, after which the provisions of this sentence shall cease to be effective.

We are informed by the State Board of Education that, since January 1, 1995, there have never been more than three appointed female members of the nine-member appointed Board.[5] Consequently, Tenn. Code Ann. § 49-1-301(a)(2) requires appointments to continue to alternate genders until the Board membership reflects the percentage of females in the population generally.

According to the 2000 Census, the percentage of females in the United States is 50.9%, and the percentage of females in Tennessee is 51.3%. Consequently, half of the nine appointed members of the board should be female in order to reflect the pecentage of females in the general population. And insofar as it is impossible for the membership of a nine-person Board to precisely reflect these population percentages, it is apparent that the intent of this provision is that the Board membership should roughly approximate these percentages. Accordingly, it is the opinion of this Office that the appointment of four female members to the nine-person Board would meet the gender requirement set forth in Tenn. Code Ann. § 49-1-301(a)(2). We hasten to add, however, that the appointment of five female members would also constitute a rough approximation of the percentage of females in the general population, and would thus be consistent with the gender requirement of the statute.

---

[5]This statute draws a distinction between the nine "appointed" members, and the other two members, comprised of a student member and an *ex officio*, non-voting member: "(a) (1) The state board of education shall be composed of nine (9) appointed members, one (1) public high school student member and one (1) ex officio member." The membership to which this gender provision applies is therefore the group of nine appointed Board members, rather than to the total eleven-person Board.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KEVIN STEILING
Deputy Attorney General

Requested by:

Representative Leslie Winningham
36 Legislative Plaza
Nashville, TN 37243-6852