S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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October 30, 2002

Opinion No. 02-121

Franklin County Civil Service Board Member as Franklin County Election Commission Member

QUESTION

May a member of the Franklin County Election Commission also serve as a member of the Franklin County Civil Service Board?

OPINION

No.

ANALYSIS

This opinion addresses whether a member of the Franklin County Election Commission may also serve as a member of the Franklin County Civil Service Board. County election commissioners are appointed by the State Election Commission. Tenn. Code Ann. § 2-12-101. Each county election commission supervises the election process, including registering voters, qualifying candidates for local office, and polling and reporting election results. The Franklin County Civil Service Board was created under the County Sheriff's Civil Service Law, Tenn. Code Ann. §§ 8-8-401, *et seq.* Under that statute, the civil service board is made up of three members selected by the county commission. Tenn. Code Ann. § 8-8-404. Members of the civil service board may not hold any elected or appointed office within the county. Tenn. Code Ann. § 8-8-406. Board members receive a salary to be determined by the county commission. Tenn. Code Ann. § 8-8-407.

It is not clear whether membership on the county election commission is an "elected or appointed office within the county" within the meaning of Tenn. Code Ann. § 8-8-406. This Office has concluded that membership in a county election commission is a state office for some purposes. Op. Tenn. Atty. Gen. 79-72 (February 20, 1979). But a county election commission is extensively involved in every part of the election process within the county. This Office has noted that Tenn. Code Ann. § 8-8-406, when read literally, seems to include any office — city, county, or state — within the county limits. Op. Tenn. Atty. Gen. U94-95 (July 8, 1994). Further, the county commission is generally required to fund the operations of the election commission, except for expenses related to certain city, state, and federal elections. Tenn. Code Ann. § 2-12-109. When the General Assembly amended the county election commission statutes in 1986, it expressly provided that county election commissions were subject to county purchasing and budgetary laws, and also stated that "[n]othing in this act shall be construed as conferring upon any county election

commission . . . status as a state employee." 1986 Tenn. Pub. Acts Ch. 930, Section 5 (now codified at Tenn. Code Ann. § 2-12-210). For all these reasons, a court could well conclude that Tenn. Code Ann. § 8-8-406 prohibits a member of the Franklin County Election Commission from serving on the Franklin County Civil Service Board.

In addition, we think Tenn. Code Ann. § 2-1-112(a) also prohibits a member of the Franklin County Election Commission from serving on the Franklin County Civil Service Board. Tenn. Code Ann. § 2-1-112(a) provides:

> Neither an elected official nor an employee of a state, county, municipal or federal governmental body or agency or of an elected official may serve as a member of a county election commission or as a member of a county primary board or as an election official. No candidate in an election may act in connection with that election as a member of any board or commission or an election official.

The statute does not define the term "employee." But we think that members of the Franklin County Civil Service Board are county employees, even if they are not full-time. Under Tenn. Code Ann. § 8-8-407, members of a civil service commission receive a salary to be determined by the county commission. We think this is sufficient to make the members of the civil service commission employees of the county within the meaning of Tenn. Code Ann. § 2-1-112(a), even though they are not full-time. *See* Op. Tenn. Atty. Gen. U93-46 (April 5, 1993)(the City Judge of Cumberland City, who is appointee by the Board of Mayor and Aldermen, is a city employee prohibited from serving as a member of a county election commission under Tenn. Code Ann. § 2-1-112). Under Tenn. Code Ann. § 2-1-112(a), therefore, a member of the Franklin County Election Commission may not serve as a member of the Franklin County Civil Service Board.

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