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Opinion No. 03-119

"Chief Executive Officer" under Tenn. Code Ann. § 7-52-107

QUESTION

Under Tenn. Code Ann. § 7-52-107, any municipality operating an electric plant may appoint a board of public utilities. The "chief executive officer" of the municipality appoints two or four members with the consent of the governing body of the municipality. Under Tenn. Code Ann. § 7-52-108(c), the "chief executive officer" of the municipality, with the consent of the governing body, "shall . . . designate a member of such governing body, or, in the chief executive officer's discretion, the city manager, to serve as a third or fifth member of the board, as the case may be." Does the term "chief executive officer" refer to the mayor or to the city manager of Johnson City?

OPINION

In the context of the statute, the term "chief executive officer" refers to the Mayor of Johnson City, not the city manager.

ANALYSIS

This opinion concerns the definition of the term "chief executive officer" under state statutes authorizing a municipality to appoint a board of public utilities to operate an electric plant. Tenn. Code Ann. § 7-52-107 provides:

> (a) Any municipality, excepting those which employ a city-manager or which have a population of less than two thousand (2,000), issuing bonds under the provisions of this part for the acquisition of an electric plant *shall*, and any municipality now or hereafter owning or operating an electric plant under this part or any other law *may*, appoint a board of public utilities (hereinafter called the "board").
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> (b) The board shall be created in the following manner: at the time the governing body of a municipality issuing bonds hereunder determines that a majority of the qualified voters voting on the election resolution have assented to the bond issue for the acquisition of an electric plant, the chief executive officer of the municipality shall, or if no such bonds are issued, or *if the municipality employs a*

> *city-manager or has a population of less than two thousand (2,000), then at any time the chief executive officer may,* with the consent of the governing body of the municipality, appoint two (2) or four (4) persons from among the property holders of such municipality who are residents of the municipality and have resided therein for not less than one (1) year next preceding the date of appointment to such board. The board of a municipal electric system may consist of two (2) or four (4) persons who have been for not less than one (1) year preceding the appointment both a customer of the municipal electric system and a resident of the county wherein such municipality is located. No regular compensated officer or employee of a municipality shall be eligible for such appointment until at least one (1) year after the expiration of the term of such person's public office.

(Emphasis added). As used in the statute, "municipality" means any county, metropolitan government, incorporated city or town in the State of Tennessee. Tenn. Code Ann. § 7-52-102(10). Tenn. Code Ann. § 7-52-108(c) authorizes the appointment of a tie-breaking member. This statute provides:

> (a) The original appointees, if two (2) are appointed, shall serve two (2) and four (4) years respectively, or if four (4) are appointed, shall serve for one (1), two (2), three (3) and four (4) years respectively, from July 1 next succeeding the date of appointment, *as the chief executive officer* shall designate.
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> (c) In addition to the members so appointed, *such chief executive officer* shall also, with the consent of the governing body of the municipality, designate a member of such governing body, *or, in the chief executive officer's discretion, the city manager,* to serve as a third or fifth member of the board, as the case may be. The term of such member shall be for such time as the appointing officer may fix, but in no event to extend beyond the member's term of office in such governing body or the member's *employment* as city manager, as the case may be. Appointments to complete unexpired terms of office shall be made in the same manner as original appointments.

Tenn. Code Ann. § 7-52-108(a) & (c) (emphasis added).

The Johnson City Power Board was established under Tenn. Code Ann. §§ 7-52-101, *et seq.*, previously codified at Tenn. Code Ann. §§ 6-1501, *et seq. Johnson City v. Allison,* 50 Tenn.App. 532, 362 S.W.2d 813 (1962), *p.t.a. denied* (1962). 1949 Tenn. Pub. Acts Ch. 856, applicable in Washington County, added other members to the board. The Tennessee Court of Appeals upheld the constitutionality of this law. *Johnson City v. Allison, supra.* The original positions on the board

and the statutory criteria for filling those original positions were retained unchanged by the terms of the 1949 act. Op. Tenn. Atty. Gen. 82-400 (August 13, 1982).

Johnson City is a home rule municipality. Material included with the request indicates that the official designated as the Mayor of Johnson City is a member of the city Board of Commissioners elected by the Board of Commissioners. The Mayor presides at meetings of the Board of Commissioners. Most executive functions, however, are carried out by a city manager appointed by the Board of Commissioners. The question is whether, under Tenn. Code Ann. § 7-52-107, the "chief executive officer" of Johnson City is the mayor or the city manager.

We think this statute must be construed in conjunction with Tenn. Code Ann. § 7-52-108. Under that statute, the chief executive officer may appoint a member of the city governing body, or, in that officer's discretion, the city manager, to serve as the third or fifth member of the board. We think a court would conclude that, by authorizing the chief executive officer to appoint the city manager to this post, the General Assembly intended to distinguish between the "chief executive officer" and the city manager. Under this provision, therefore, the "chief executive officer" of Johnson City is the mayor, and not the city manager.

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