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Opinion No. 06-073

Immunity of Members of the General Assembly from the Criminal Offense of Perjury

QUESTION

Under what specific circumstances is an elected member of the Tennessee General Assembly immune from the criminal offense of perjury?

OPINION

The only circumstance in which an elected member of the General Assembly is immune from prosecution for the criminal offense of perjury is if a member is required to testify before an investigative committee of the General Assembly about his or her previous commission of perjury. This immunity only exists, however, if the member expressly states a claim or objection to any question(s) the member believes will tend to incriminate him or her, and where thereafter the member is nevertheless directed to answer the question(s) and does so accordingly.

ANALYSIS

Tenn. Code. Ann. §3-3-119 (a) provides that the testimony of *any person* before an investigative committee of the General Assembly "shall not be used in evidence against such person in any criminal prosecution in the courts of this state, seeking conviction for any offense about which such person has been required to testify, except for perjury in giving the testimony." Therefore, immunity from criminal prosecution for the commission of a *previous* perjurious statement exists for any person required to testify regarding such offense before an investigative committee. Tenn. Code. Ann. §3-3-119 (b). However, one is not immune from criminal prosecution for a perjurious statement given *while* testifying before an investigative committee. Tenn. Code. Ann. §3-3-119 (a).

Tenn. Code Ann. §3-3-119 (b) provides that the aforementioned immunity "shall be claimed by such person and witness declining to answer the particular question or questions which such person may think has a tendency to incriminate such person, upon the expressly stated claim or objection that an answer or answers may tend to incriminate the witness." "When, after making such claim and objection, the witness is nevertheless directed to make answer, and obeys such direction and makes answer accordingly, then the full immunity hereinbefore given and declared shall be possessed by such person and witness." Tenn. Code Ann. §3-3-119 (c).

For all the foregoing reasons, it is the opinion of this office that the only circumstance wherein an elected member of the General Assembly is immune from the criminal offense of perjury is when such member testifies before an investigative committee of that body as discussed above.

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