S T A T E O F T E N N E S S E E
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April 21, 2006

Opinion No. 06-074

Voiding of Election

QUESTION

If a resolution is adopted by the Senate declaring an election void, is the Governor required to announce that the member-elect has been ousted in order for the election to be void?

OPINION

No. This Office has previously opined that an election contest in the Senate pursuant to Article II, Section 11 should be treated as neither an exclusion or expulsion issue, but rather, as a matter of determining the final results of an election. Thus, while the determination of an election contest may have the result of removing a member-elect from the office, this determination is not tantamount to an expulsion requiring the Governor to announce that the member-elect has been ousted.

ANALYSIS

You have asked whether the Governor is required to announce that a member-elect of the Senate has been ousted once a resolution has been adopted by the Senate declaring such election void as a result of an election contest filed pursuant to Article II, Section 11 of the Tennessee Constitution. Article II, Section 11 vests each House of the Tennessee General Assembly with the authority to judge the qualifications and election of its members, and provides in pertinent part, as follows:

> The Senate and House of Representatives, when assembled, shall each choose a speaker and its other officers, be judges of the qualifications and election of its members, and sit upon its own adjournments from day to day.

This section of the Constitution has been construed as vesting sole and exclusive authority in the House and Senate to judge the qualifications and elections of their respective members after each legislative body is constituted as of the day of the November general election. *State ex rel. Ezzell*

v. Shumate, 172 Tenn. 451, 113 S.W.2d 381 (1938); *Gates v. Long*, 172 Tenn. 471, 113 S.W.2d 388 (1938); *Comer v. Ashe*, 514 S.W.2d 730 (Tenn. 1974).

This Office has previously opined that an election contest in the Senate pursuant to Article II, Section 11 should be treated as neither an exclusion or expulsion issue, but rather, as a matter of determining the final results of an election. *See* Op. Tenn. Att'y Gen. 81-297 (May 7, 1981) (copy attached). Thus, while the determination of an election contest may have the result of removing a member-elect from the body to the extent that the member-elect has been permitted to participate in its affairs during the pendency of the contest, this determination is not tantamount to an expulsion of a member requiring the Governor to announce that he or she has been ousted.

Additionally, Tenn. Code Ann. § 8-48-101(4) provides that any office in this State is vacated by "[t]he decision of a competent tribunal, declaring the election or appointment void or the office vacant." Pursuant to this statute, if the Senate adopts a resolution declaring an election void, then a vacancy immediately exists upon adoption of such resolution. *See Stambaugh v. Price*, 532 S.W.2d 929 (Tenn. 1976) and *Shumate v. Claiborne County*, 183 Tenn. 182, 191 S.W.2d 441 (1946).

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