S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

April 27, 2006

Opinion No. 06-078

Constitutionality of Campaign Event by State Legislator

QUESTION

Whether a barbeque event for legislator's re-election campaign violates Article X, Section 3, of the Tennessee Constitution.

OPINION

The holding of a barbeque event as part of a legislator's re-election campaign would not violate Article X, Section 3, of the Tennessee Constitution so long as the providing of "meat and drink" at such an event is not intended to be a reward to the attendees in exchange for their votes.

ANALYSIS

You have asked whether a barbeque event held for your re-election campaign would be in violation of Article X, Section 3, of the Tennessee Constitution. You have not indicated whether this event is also a fund-raiser for your campaign.

Article X, Section 3, provides as follows:

> Any elector who shall receive any gift or reward for his vote, in meat, drink, money or otherwise, shall suffer such punishment as the law shall direct. And any person who shall directly or indirectly give, promise or bestow any such reward to be elected, shall thereby be rendered incapable, for six years, to serve in the office for which he was elected, and be subject to such further punishment as the Legislature shall direct.

The Tennessee Supreme Court addressed this provision in *State ex rel. Anderson v. Fulton*, 712 S.W.2d 90 (Tenn. 1986). In that case, a Ms. Anderson sought to bring a *quo warranto* action against Nashville Mayor Richard Fulton, alleging that Mayor Fulton "was guilty of bribing the

electorate for votes by: (a) giving away butter and cheese belonging to the U.S. Department of Agriculture; (b) giving a bean supper at the Labor Temple; and (c) giving free barbeque and watermelon feasts in the last days of the campaign. *Id*. at 91. In holding that the district attorney had not acted arbitrarily or capriciously in refusing to authorize the quo warranto action under Article X, Section 3, the Supreme Court found that Ms. Anderson had not provided the district attorney with a single instance "wherein it was factually asserted that Mayor Fulton had given anything of value in exchange for a promise to vote for him" and, therefore, the allegations "lack the essential element of bribery, to-wit: that a voter is given food in exchange for his vote, which element was also not present in the distribution of butter and cheese." *Id*. at 93-94.

Relying upon this decision in *State ex rel. Anderson v. Fulton*, subsequent cases have held that evidence of a quid pro quo, *i.e.*, an agreement between the candidate and voter that the "meat, drink, money or otherwise" is being given to the voter as a reward or in exchange for his/her promise to vote for the candidate is necessary in order to constitute a violation of Article X, Section 3. *See Hooker v. Bredesen*, 114 S.W.3d 539 (Tenn.Ct.App. 2002); *Hooker v. Sundquist*, 107 S.W.3d 532 (Tenn.Ct.App. 2002); *Hooker v. McWherter*, Davidson County Chancery Court No. 98-2246-III (July 31, 1998).

Under the decisions in these cases, the holding of a barbeque event as part of your re-election campaign would not violate Article X, Section 3, of the Tennessee Constitution so long as the providing of "meat and drink" at such an event is not intended to be a reward to the attendees in exchange for their votes.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

JANET M. KLEINFELTER
Senior Counsel

Requested by:

Honorable Mike Turner
State Representative
37 Legislative Plaza
Nashville, TN 37243-0151