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Opinion No. 06-116

Filling of Vacancy on Supreme Court

QUESTION

Under the Tennessee Plan, if the Governor chooses to reject the first panel of three nominees submitted by the Judicial Selection Commission to fill a vacancy on the Supreme Court, may the second panel of nominees include any or all of the nominees from the first panel?

OPINION

No.

ANALYSIS

You have asked for an opinion regarding the manner in which nominees to fill a vacancy on the Tennessee Supreme Court are to be submitted to the Governor. The filling of a vacancy on the Tennessee Supreme Court is governed by the provisions of "The Tennessee Plan," Tenn. Code Ann. §§ 17-4-101, *et seq.* Tenn. Code Ann. § 17-4-109 provides that when a vacancy occurs in the Supreme Court, the Judicial Selection Commission shall, at the earliest practicable date, hold a public meeting in Nashville. The Commission is further required to make independent investigation and inquiry to determine the qualifications of possible nominees for the vacancy. Finally, the Commission is required, as soon as practicable and not later than 60 days from written receipt from the Governor that a vacancy has occurred, to select three persons whom it deems best qualified and certify their names to the Governor as nominees for the judicial vacancy. In compiling this list of three nominees, the Commission must make sure that the requirements of Article VI, Section 2, of the Tennessee Constitution are satisfied (*i.e.*, no more than two justices shall reside in any one of the grand divisions of the State).

Upon receipt of the three nominees from the Judicial Selection Commission, the Governor must either appoint one of the three individuals to fill the vacancy or require the Commission to submit another panel of three nominees. Specifically, Tenn. Code Ann. § 17-4-112(a) provides as follows:

> When a vacancy occurs in the office of an appellate court after September 1, 1994, by death, resignation or otherwise, the governor shall fill the vacancy by appointing one (1) of the three (3) persons nominated by the judicial selection commission, or the governor may require the commission to submit one (1) other panel of three (3) nominees. If the governor rejects the first panel of nominees, the governor shall select one (1) of the nominees in the second panel. If the governor rejects the first panel, the governor shall state in writing for the judicial selection commission the reasons for the rejection of the panel.

Thus, if the Governor does not wish to appoint anyone from the first panel, he may reject the panel. He must, however, state to the Judicial Selection Commission, in writing, the reasons for the rejection, and he must choose one of the nominees from the second panel.

You have presented the situation where the Judicial Selection Commission has submitted a panel of three nominees to the Governor, and one of the nominees withdraws his name from consideration before the Governor makes a decision to either appoint one of the nominees or reject the panel pursuant to Tenn. Code Ann. § 17-4-112(a). The Governor then chooses to reject the panel and request that the Commission submit a second panel . In such a situation where the Governor has rejected the first panel, you have asked whether the nominees from the first panel are prohibited by statute from reapplying and/or being re-nominated by the Judicial Selection Commission on the second panel.

While the Tennessee Plan does not explicitly address this issue, implicit in the appointment system established under the Plan and in the use of the language "one (1) *other* panel of three (3) nominees" is a requirement that the second panel be composed of three new nominees. Such an interpretation is supported by the legislative history. The requirement of a second panel was proposed by the Senate Judiciary Committee. In the Senate debate on April 4, 1994, the Judiciary Committee Chairman, Senator Person, explained it as follows:

> Presently the governor has the power to reject the slate from the Appellate Nominating Commission. Of course, the new selection committee replaces the Appellate Nominating Commission, but comprehensive amendment number one takes that power away from the governor. This amendment restores that power to the governor. He could reject an entire slate from the Judicial Selection Committee and *require the commission to submit a new slate.*

Senate Debate, April 4, 1994 (Tape S-55) (emphasis added). Thus, it is our opinion that a rejection of the first panel by the Governor is a rejection of each of the nominees on that panel, since the Governor could have appointed any one of them but has chosen not to do so. It follows, therefore, that the second panel submitted by the Judicial Selection Commission may not contain any of the nominees from the first panel.

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