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Opinion No. 06-120

Conflict of Interest in the Director of the Tennessee Law Enforcement Training Academy Acting as Executive Secretary of the Tennessee Peace Officer Standards and Training Commission.

QUESTIONS

1. Is there a conflict or other legal impediment created in the Director of the Tennessee Law Enforcement Training Academy (TLETA) acting as the Executive Secretary of the Tennessee Peace Officer Standards and Training Commission (POST) as provided in Tenn. Code Ann. § 38-8-103(a)?

2. Is there a conflict or other legal impediment in the staff for the POST Commission being provided through TLETA as provided in Tenn. Code Ann. § 38-8-103(b)?

OPINIONS

1. No. The duality of function created by the Director of the TLETA acting as the Executive Secretary of the POST Commission does not violate the intent or the mandate of any law or constitutional provision regarding a conflict of interest. To the contrary, the interests of both governmental entities are better served by the duality of function set forth under the statute.

2. No. The expansion of the duties of the TLETA staff does not create a conflict or pose a threat to the integrity of TLETA or the POST Commission and the interests of both entities are better served by the duality of function.

ANALYSIS

The employment and training of police officers in Tennessee is governed by statute under Tenn. Code Ann. § 38-8-101 *et seq*. Under Tenn. Code Ann. § 38-8-102, the Tennessee Peace Officer Standards and Training Commission (POST) is established, consisting of eighteen members, two of whom are non-voting members of the state legislature and eight of whom are law enforcement officers. Under mandate of Tenn. Code Ann. § 38-8-103, the director of the Tennessee Law Enforcement Training Academy serves as the executive secretary of the POST Commission. Additionally, that Code section directs that the "[s]taff for the commission shall be provided through the law enforcement training academy." The powers and duties of the POST Commission are set forth under Tenn. Code Ann. § 38-8-104 and include the development of training programs, administration of funds to further the training of peace officers, and the certification of peace officers throughout the State of Tennessee. As executive secretary of the POST Commission, the

Director of the Tennessee Law Enforcement Academy is not a voting member of the Commission. However, the director and staff of the Training academy often provide valuable information and insight for the Commission's consideration on issues of training curriculum and the practical application of policies and practices that the Commission may implement. The executive secretary and staff of the POST Commission provide necessary administrative support, which consists of establishing monthly agendas for POST Commission meetings, drafting correspondence to agencies and individuals who may be the subjects of action by the POST Commission, investigating matters regarding training and qualification of peace officers that are reported to the Commission, and the detailed review of training curricula submitted by law enforcement agencies for Commission approval. As experts in the field of law enforcement training, the executive secretary and staff are in the best possible position to provide efficient and effective support to accomplish the mission of the POST Commission.

The Tennessee Constitution, Article II, Section 26, prohibits a person from "holding more than one lucrative office at the same time." The term "office" has been construed by Tennessee courts to mean "state office." *Phillips v. West*, 213 S.W.2d 3 (1948); *Boswell v. Powell*, 43 S.W.2d 495 (1931). "A lucrative office is one whose pay is affixed to the performance of its duties." *Hodge v. State*, 188 S.W. 203, 206 (Tenn. 1916) (quoting *State v. Kirk*, 44 Ind. 401 (Ind. 1873)). Although, technically, the offices of Director of the Tennessee Law Enforcement Training Academy and Executive Secretary of the Peace Officer Standards and Training Commission are separate and distinct, the office of Executive Secretary of the Commission does not entitle the office holder to any additional compensation. The statutorily mandated imposition of the additional duties of the POST executive secretary upon the director of the law enforcement training academy is, in essence, a simple expansion of the responsibilities of the Director of TLETA without additional compensation. In this respect, no conflict exists.

Tennessee's general conflict of interest statute prohibits a public official from being directly interested in a contract that he or she has a duty to vote for, let out, or supervise. Tenn. Code Ann. § 12-4-101. No such contract exists in this case, and no such conflict as defined under that Code section exists.

A common-sense examination of the dual roles of POST Executive Secretary and Director of TLETA suggests that the legislature contemplated a synergy of effort between the two offices that would well serve the interests of both the POST Commission and TLETA, as well as the other law enforcement training entities across the State of Tennessee. The interjection of ideas for discussion from the perspective of the Academy is a benefit to both the Academy and the POST Commission that is both immediate and direct. The goals and interests of the training academies of Tennessee are not divergent with the goals and purposes of the POST Commission. Both are established to maintain the effectiveness and credibility of the law enforcement community and to serve the best interests of the people of Tennessee. As currently established, the functions of the two offices are not in conflict. It is the opinion of this office that the duality of function does not violate the intent or the specific mandate of the law and economically serves the best interests of the State.

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