

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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April 23, 2008

Opinion No. 08-96

Lenoir City Council Member also Serving as City Board of Education Member

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**QUESTION**

May a member of the Lenoir City Council also serve as a member of the Lenoir City Board of Education?

**OPINION**

This arrangement appears to be permissible under state law. We suggest the city councilman abstain from voting on the salary for city school board members. But the statute does not require such abstention.

**ANALYSIS**

This opinion addresses whether a member of the Lenoir City Council may also serve as a member of the Lenoir City Board of Education. The Tennessee Constitution, Article II, Section 26, prohibits a person from “hold[ing] 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*, 187 Tenn. 57, 213 S.W.2d 3 (Tenn. 1948); *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495 (Tenn. 1931). The offices of city council member and city school board member are local offices and, therefore, are not covered by the prohibition of Article II, Section 26.

No general state law expressly forbids a member of a city council from also serving on the city school board. State law prohibits a county commissioner from also serving on the county school board. Tenn. Code Ann. § 49-2-202(a)(2). That statute provides:

No member of the county legislative body nor any other county official shall be eligible for election as a member of the county board of education.

Our Office has stated in the past that the Education Improvement Act of 1992 provided for a uniform system of governance of county, municipal, and special school districts. Op. Tenn. Att’y Gen. 96-123 (October 15, 1996); Op. Tenn. Att’y Gen. 96-135 (November 22, 1996); Op. Tenn. Att’y Gen. 97-054 (April 23, 1997); and Op. Tenn. Att’y Gen. 98-235 (December 15, 1998). From these opinions, it might be argued that Tenn. Code Ann § 49-2-202(a)(2) also prohibits a member of a city council from serving on a city school board.

We do not think, however, that the word “county” as used anywhere in Tenn. Code Ann. §§ 49-2-101, *et seq.*, should be interpreted to include cities unless some other statutory provision provides further support for this interpretation. Three of the cited opinions address Tenn. Code Ann. §§ 49-2-301, *et seq.* By their terms, those statutes refer to local boards of education, not county school boards. Clearly, a statute that refers to local boards of education includes county, city, and special school districts. By contrast, Tenn. Code Ann. § 49-2-202(a)(2) explicitly refers only to county boards of education. Another part of the statute refers to the “local board of education.” Tenn. Code Ann. § 49-2-202(b). The same statute, therefore, distinguishes between a county board of education in (a)(2) and a “local board of education.” In *Op. Tenn. Att’y Gen. 98-235* (December 15, 1998), this Office suggested that a court would construe a reference to the “county board” in Tenn. Code Ann. § 49-2-202(d) to include a city. But the opinion found that the Cleveland City Council had the same authority under its charter in any case. For the reasons discussed above, we think it is unlikely that a court would find the prohibition in (a)(2) of the same statute to extend to a city council member’s service on the city school board.

The Lenoir City School Board is governed by Article XIV, § 1, of the Lenoir City Charter. This section provides:

City, school board; borrowing for school purposes. The City Council shall provide for the election of a city school board in the same way and in the same manner and on the same ticket as that provided for other city officials. Such election shall be held thereafter biennially. The school board shall consist of five members, each of whom shall be elected to serve for a term of four years. In addition to the five elected members, the Mayor of the City of Lenoir City, Tennessee, shall be an ex officio, non-voting member of the school board. Each school board member shall be elected for a term of four (4) years at every regular election. All members of the school board, including those members holding office at the time of the adoption of this charter, may be elected to succeed themselves in office. The school board shall choose one of its elected members to serve as chairman of the school board. The city school board is hereby authorized to make rules and regulations for the government of the schools of Lenoir City, Tennessee, including plans of instruction and organization, and is hereby empowered to employ all persons necessary for proper conduct of the public schools. Said school board shall have the management and control of all schools now established or that may hereafter be established by the City of Lenoir City, Tennessee.

We can find no prohibition against a member of the Lenoir City Council also serving as a member of the Lenoir City School Board. There is a common law prohibition against a public officer holding two incompatible offices at the same time. *State ex rel. Little v. Slagle*, 115 Tenn. 336, 89 S.W. 316 (Tenn. 1905). This prohibition is generally applied when an individual occupies two inherently inconsistent offices. 63C Am.Jur.2d *Public Officers and Employees* § 62 (1997). The question of incompatibility depends on the circumstances of each individual case, and the issue is whether the occupancy of both offices by the same person is detrimental to the public interest, or whether the performance of the duties of one interferes with the performance of those of the other.

For example, an inherent inconsistency exists where one office is subject to the supervision or control of the other. *State ex rel. v. Thompson*, 193 Tenn. 395, 246 S.W.2d 59 (Tenn. 1952). In *Thompson*, the Tennessee Supreme Court concluded that the offices of city manager and member of the city council were incompatible because the council had the authority to appoint, remove, and supervise the city manager, and no statute then in effect permitted the same individual to hold these offices. In this case, however, the Lenoir City Council does not appoint members to the Lenoir City School Board. Instead, school board members are independently elected officials. Nor are we aware of any other reason why having the same individual serving as a Lenoir City Council Member and a Lenoir City School Board member would be detrimental to the public interest.

Nor does this dual occupancy violate the general state law on conflicts of interest. Tenn. Code Ann. § 12-4-101(a) 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. In this case, however, neither a council member nor a city school board member is directly interested in a contract that he or she supervises. Each of these officials is independently elected. Neither, therefore, has an employment contract with the city. Op. Tenn. Att’y Gen. 00-153 (October 9, 2000) (generally, membership on a county commission is not a position of “employment” under state statutes). Thus, even assuming the city council sets the salary for members of the school board, the arrangement does not violate Tenn. Code Ann. § 12-4-101(a). This Office has subscribed to the common law view that a public officer should not place himself in a position in which personal interests may conflict with public duty. Op. Tenn. Att’y Gen. 05-017 (February 3, 2005) (official should abstain from voting or participating in official acts or proceedings that directly affect contracts with a relative); Op. Tenn. Att’y Gen. 03-120 (September 24, 2003) (a county commissioner should abstain from voting on an appropriation of county funds to a nonprofit corporation for which he serves as a director). For this reason, we suggest that a city councilman abstain from voting on the salary for city school board members. But the statute does not require such abstention.

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