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Opinion No. 08-102

School Board Spouse of Assistant Director Voting on School Director's Contract

QUESTION

A member of a school board is married to an assistant director of schools. The assistant director reports to the director of schools. May the school board member vote to terminate or extend the director's contract?

OPINION

In considering this issue, local officials should consult any applicable private acts as well as the local government's ethics policy. No general law would prohibit a school board member whose spouse is an assistant director who reports to the director of schools from voting to terminate or extend the director's contract. If the board member and the spouse commingle assets, we think a court could conclude that the member has an indirect interest in the spouse's contract and the director's contract that must be disclosed under Tenn. Code Ann. § 12-4-101(b).

ANALYSIS

This opinion concerns the authority of a member of a school board to vote to terminate or extend the contract of a director of schools. The member's spouse is an assistant director of schools who reports directly to the director. The question, then, is whether this relationship would disqualify or prevent the member from voting on the contract of the director of schools. This opinion will review general laws. In considering this issue, local officials should also consult any applicable private acts as well as the local government's ethics policy.

Local boards of education are governed by Tenn. Code Ann. §§ 49-2-101, *et seq.* Tenn. Code Ann. § 49-2-203(a)(1)(D) provides:

> No member of any local board of education shall be eligible for election as a teacher, or any other position under the board carrying with it any salary or compensation.

Nothing in the statute, however, prohibits the spouse of a school board member from working for the school board. Under Tenn. Code Ann. § 49-2-203(a)(14), a local school board is required to employ a director of schools under a written contract of up to four years, which may be renewed. Tenn. Code Ann. § 49-2-301 describes the duties of the director of schools. These duties include

employing persons employed in a position for which no teaching license is required on a year-to-year contract. Tenn. Code Ann. § 49-2-301(b)(1)(FF). The director is also authorized to dismiss a nontenured employee under his or her jurisdiction for cause, provided statutory procedures are followed. Tenn. Code Ann. § 49-2-301(b)(1)(GG).

We have found no general law that would prohibit a board member from voting to extend or terminate the director's contract under these circumstances. As a general matter, a school board member may not be directly interested in a contract he or she has the duty to vote for, let out, or supervise. A person has a direct interest in "any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest." Tenn. Code Ann. § 12-4-101(a)(1). Under this statutory definition, the member is not directly interested in the contract between the school board and the director. Nor is the member directly interested in his or her spouse's employment contract within the meaning of this statute.

Under Tenn. Code Ann. § 12-4-101(b), a legislator must publicly acknowledge his or her interest in a contract in which he or she is indirectly interested. The statute provides:

> (b) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be indirectly interested in any such contract *unless the officer publicly acknowledges such officer's interest.* "Indirectly interested" *means any contract in which the officer is interested but not directly so,* but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county.

(Emphasis added). Under this statute, a legislator must disclose his or her interest in any contract in which he or she has an indirect interest and that he or she has a duty to vote for, let out, overlook, or superintend. This Office has stated in the past that an official is indirectly interested in a contract between a governmental agency and the official's spouse if the official and spouse commingle assets. Op. Tenn. Att'y Gen. 05-017 (February 3, 2005); Op. Tenn. Att'y Gen. 00-181 (November 22, 2000). The board member, therefore, is indirectly interested in his or her spouse's employment contract if the two commingle assets. Since the director's compensation and terms of service may greatly impact the board member's personal financial interests, we think a court could conclude that the school board member has an indirect interest in the director's employment contract within the meaning of Tenn. Code Ann. § 12-4-101(b). For this reason, the member should disclose his interest before voting to terminate or extend the director's contract.

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. 08-096 (April 23, 2008); 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, the board member may wish to abstain from voting on this matter. The statute, however, does not require abstention.

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