S T A T E O F T E N N E S S E E
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August 19, 2008

Opinion No. 08-139

Vacancy in Office of General Sessions Judge

QUESTIONS

1. If a vacancy in the office of General Sessions Court Judge occurs on September 1, 2008, how is that vacancy to be filled.

2. If the answer to question No. 1 requires a special election to be held on November 4, 2008, with each respective party conducting a convention to nominate its candidate, must those party conventions occur after September 1, 2008, when the vacancy actually occurs.

OPINIONS

1. The vacancy in the office of General Sessions Court Judge should be filled by appointment of the County Commission with such appointee to serve until a successor is elected at the biennial election in August 2010 and qualified.

2. In light of the answer to question no. 1, this question is moot.

ANALYSIS

Your question concerns the filling of a vacancy in the office of Knox County General Sessions Court Judge. It assumes that a sitting General Sessions Court Judge is elected to the office of Knox County Circuit Court Judge in the August 2008 general election and assumes the office on September 1, 2008. On that date, a vacancy occurs in the office of Knox County General Sessions Court Judge. You have asked how that vacancy should be filled. Specifically, you have asked whether the vacancy should be filled by an appointee of the Knox County Commission who would serve until a successor is elected at the August general election in 2010 and qualified, or, whether the vacancy should be filled by an appointee of the Knox County Commission who would serve until a successor is elected at the November 4, 2008, general election.

Article VII, Section 2, of the Tennessee Constitution provides that "[v]acancies in county offices shall be filled by the county legislative body, and any person so appointed shall serve until a successor is elected at the next election occurring after the vacancy and is qualified." The office of General Sessions Judge is a county office. *State ex rel. Winstead v. Moody*, 596 S.W.2d 811 (Tenn. 1980). Pursuant to the provisions of Article VII, Section 2, the Legislature has enacted Tenn. Code Ann. § 16-15-210(a), which provides that "any vacancy in the office of judge of the court of general sessions shall be filled by the county legislative body as provided in § 5-1-104." Tenn. Code Ann. § 5-1-104(b)(1) provides as follows:

> (b)(1) Vacancies in county offices required by the Constitution of Tennessee or by any statutory provision to be filled by the people shall be filled by the county legislative body, and any person so appointed shall serve until a successor is elected at the *next general election, as defined in §2-1-104*, in the county, and is qualified; provided, that the candidates have sufficient time to qualify for the office, as provided for in § 2-14-106. (Emphasis added.)

Initially, it would appear that the next general election would be the November 2008 general election, pursuant to Tenn. Code Ann. § 5-1-104(b)(2), which provides:

> (2) If the vacancy occurs after the time for filing nominating petitions for the party primary election and more than sixty (60) days before the party primary election, then nominees of political parties shall be selected in such primary election and a successor elected in the August general election. If the vacancy occurs less than sixty (6) days before the party primary election but sixty (60) days or more before the August election, then nominees of political parties shall be selected by party convention and a successor elected in the August election. If the vacancy occurs less than sixty (60) days before the August election but sixty (60) days or more before the November election, then nominees of political parties shall be selected by party convention and a successor elected in the November election.

However, this provision must be read in conjunction with Article VII, Section 5, of the Tennessee Constitution. That section provides:

> Elections for Judicial and other civil officers shall be held on the first Thursday in August, one thousand eight hundred and seventy, and forever thereafter on the first Thursday in August next proceeding the expiration of their respective terms of service.… *No Special election shall be held to fill a vacancy in the office of Judge or District Attorney but at the time herein fixed for the*

> *biennial election of civil officers; and such vacancy shall be filled at the next Biennial election recurring more than thirty days after the vacancy occurs.* (Emphasis added).

This Office has previously opined that, since the word "Judge" in Article VII, Section 5, is not linked to any particular court, general sessions judges are judges within the scope of Article VII, Section 5, and, therefore, Article VII, Section 5, prohibits special elections for general sessions judges at any time other than the August biennial election. *See* Op. Tenn. Att'y Gen. 84-257 (September 10, 1984) (copy attached). This is consistent with the Tennessee Supreme Court's rulings in *McPherson v. Everett*, 594 S.W.2d 677 (Tenn. 1980), and the companion case of *Marion County Board of Commissioners v. Marion Election Commission*, 594 S.W.2d 681 (Tenn. 1980). In *McPherson*, the Supreme Court recognized that while the Legislature is empowered to provide for special elections to fill all other vacancies, "[n]o special election shall be held to fill a vacancy in the office of Judge" but at the August biennial election. 594 S.W. 2d at 680. *See also State ex rel. Shriver v. Dunn*, 496 S.W.2d 480, 484 (Tenn. 1973) ("An election of a Judge or a District Attorney General to fill a vacancy can be held at no other time than at a biennial election."). Accordingly, it is our opinion that the vacancy in the office of Knox County General Sessions Judge should be filled by appointment of the Knox County Commission, and the appointee shall serve until a successor is elected at the biennial election in August 2010 and qualified.

In light of our answer to your first question, a response to your second question is not necessary.

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