

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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December 1, 2008

Opinion No. 08-180

Service of School Board Member as a Substitute Teacher: Tenn. Code Ann. § 49-2-203(a)(1)(D)

**QUESTION**

Does Tenn. Code Ann. § 49-2-203(a)(1)(D), or any other provision of state law, allow a local school board member to serve as a substitute teacher through a third party contractor in the same system where she serves as a board member?

**OPINION**

No.

**ANALYSIS**

You have provided the following background to your question:

Clarksville Montgomery County School System (CMCSS) has a new school board member who has been working as a substitute teacher in the system. CMCSS contracts with a third party for its substitute teachers, so that substitutes are employees of the third party for compensation, benefits, etc. The third party contractor recruits, interviews, selects, hires and assigns employees to CMCSS. However, the contract between the third party and CMCSS further provides that services to be performed by employees provided by the contractor will be performed under the direction, supervision and control of CMCSS. CMCSS is to provide a suitable workplace, adequate instruction, training, assistance, supervision and time to perform the services. CMCSS is responsible for placement of employees and curriculum, and retains the right to reject employees.

Tenn. Code Ann. § 49-2-203(a)(1)(D) provides as follows:

**(D) 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;**

(Emphasis added).

It is the opinion of this Office that Tenn. Code Ann. § 49-2-203(a)(1)(D) prohibits the school board member described in your opinion request from serving as a substitute school teacher in the same school system, notwithstanding the fact that the school board contracts with a third party employment agency to obtain substitute teacher services, rather than employing substitute teachers directly. Although they are not, strictly speaking, employees of the school system, substitute teachers under this arrangement are, nevertheless, “compensated” by the local board of education, albeit through a third party contractor. The substitute teacher therefore holds a position “under the board carrying with it . . . compensation” as stated in Tenn. Code Ann. § 49-2-203(a)(1)(D).

Furthermore, as indicated in your opinion request, substitute teachers are “under the direction, supervision and control of CMCSS,” and CMCSS provides a “suitable workplace, adequate instruction, training, assistance, supervision and time to perform the services.” Moreover, “CMCSS is responsible for placement of employees and curriculum, and retains the right to reject employees.” Thus, substitute teachers are clearly in a position under the board of education’s direction, supervision and control.<sup>1</sup> Consequently, substitute teachers in this system do not fit the definition<sup>2</sup> of independent contractors.<sup>3</sup>

Accordingly, it is the opinion of this Office that Tennessee law prohibits local school board members from serving as substitute teachers in the same system where they serve as a board member, by acting through a third party contractor that provides substitute teachers.

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<sup>1</sup>See also Tenn. Code Ann. § 49-2-203(a)(15): “[It is the duty of the local board of education to:] Adopt policies on the employment of substitute teachers. Such policies shall, at a minimum, address qualifications and training and shall ensure substitute teachers are subject to investigation pursuant to §49-5-413. Such policies shall also prohibit hiring any substitute teacher whose records with the state department of education indicate a license or certificate currently in revoked status.”

<sup>2</sup>See *Potter v. Tucker*, 688 S.W.2d 833, 836 (Tenn. App. 1985) (“An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to control of his employer, except as to the result of his work”). See also *Clower v. Memphis Light, Gas and Water Div. of City of Memphis*, 394 S.W.2d 718, 723-724 (Tenn. App. 1965).

<sup>3</sup>We note that, because the local school board contracts with a third party agency to obtain the services of substitute teachers, the Tennessee conflict of interest statute, Tenn. Code Ann. § 12-4-101, is implicated by this arrangement. That is, the school board member described in your opinion request is a member of a county board of education that contracts with the employment agency that employs that school board member, and through which that school board member is compensated for her services as a substitute teacher. In her role as board member, the substitute teacher therefore “votes for, lets, overlooks, and superintends” the contract through which she is indirectly compensated. Tenn. Code Ann. § 12-4-101 provides, in pertinent part, as follows:

“(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).

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