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Opinion No. 09-35

Director of Schools Serving in General Assembly

QUESTION

Is an appointed Director of Schools prohibited statutorily or constitutionally from serving in the Tennessee General Assembly?

OPINION

Yes. While a Director of Schools is not constitutionally prohibited from serving in the Tennessee General Assembly, a Director of Schools is statutorily prohibited from serving in the Tennessee General Assembly.

ANALYSIS

In general terms, a Director of Schools is appointed by a local school board to administer the schools under the governance of the school board. *See* Tenn. Code Ann. § 49-2-301. Tennessee Code § 49-2-301 defines the duties of the Director of Schools.

The Tennessee General Assembly is the State of Tennessee's legislative body and is comprised of a senate and house of representatives. *See* Tenn. Code Ann. § 3-1-101. Members of the Tennessee General Assembly must be eligible for their respective offices as provided in the Tennessee Constitution. *See* Tenn. Const. art. II, §§ 9 and 10. Section 10 of Article II of the Tennessee Constitution also provides, "No Senator or Representative shall, during the time for which he was elected, be eligible to any office or place of trust, the appointment to which is vested in the Executive or the General Assembly, except to the office of trustee of a literary institution." Tenn. Const. art. II, § 10. Because a Director of Schools is appointed by a local school board and not the Executive or General Assembly, this Constitutional prohibition does not bar a Director of Schools from serving in the Tennessee General Assembly.

In addition, Article II, section 26 of the Tennessee Constitution prohibits a person from holding more than one "lucrative office" at the same time, but this provision does not prohibit an

individual from holding a lucrative state and local office simultaneously. *Phillips v. West*, 213 S.W.2d 3 (Tenn. 1948). We thus conclude that the Constitution does not bar a Director of Schools from serving in the legislature.

As previously mentioned, Tennessee Code § 49-2-301 defines the duties of the Director of Schools. Pursuant to Tennessee Code § 49-2-301(b)(1)(X), the Director must "give the director's full time and attention to the duties of the director's position." A Director of Schools would be unable to fulfill this requirement of devoting his full time and attention to his statutory duties if he were also a member of the Tennessee General Assembly. Therefore, a Director of Schools is statutorily prohibited from serving in the Tennessee General Assembly.

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