

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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June 29, 2009

Opinion No. 09-124

Payment of County Election Commission's Fees and Expenses

QUESTION

Who has the responsibility to pay for fees and expenses associated with the legal representation of a county election commission in a lawsuit arising out of the hiring or firing of a county administrator of elections?

OPINION

Pursuant to Tenn. Code Ann. § 2-12-109(a), the county has the responsibility to pay for the fees and expenses associated with such a lawsuit against the county election commission.

ANALYSIS

Two statutes bear on the authority of county election commissions to hire legal counsel. The first, Tenn. Code Ann. § 2-12-101(c), addresses legal representation for county election commissions in lawsuits arising out of elections. This statute provides that, if the commissioners are sued in a proceeding involving a municipal election, the municipality concerned shall furnish counsel; if the proceeding involves a county election, the county shall furnish counsel; and if the proceeding involves a state or federal election or an attack upon a state law, the Attorney General and Reporter represents the commission or designates counsel to do so. Tenn. Code Ann. § 2-12-101(c)(1) and (2). When furnished by a municipality or county in such proceedings, “the counsel furnished . . . shall be that chosen by the election commission.” Tenn. Code Ann. § 2-12-101(c)(3). The second such statute, Tenn. Code Ann. § 2-12-116(a)(4), more generally imposes a duty upon the county election commission to hire counsel “if necessary to conduct the business of the commission.”

You have asked who has the responsibility to pay for the fees and expenses associated with the legal representation of a county election commission in a lawsuit arising out of the

hiring or firing of a county administrator of elections. Under Tenn. Code Ann. § 2-12-116(a)(1), the county election commission has a duty to “appoint an administrator of elections, who shall be the chief administrative officer of the commission and shall be responsible for the daily operations of the commission office and the execution of all elections.” Thus, a suit against a county election commission arising out of its hiring or firing of an administrator of elections would be one involving “the business of the commission” in connection with which the commission is directed by Tenn. Code Ann. §2-12-116(a)(4) to hire counsel to defend itself.

Tenn. Code Ann. § 2-12-109(a) places upon the county the obligation to fund the operating expenses of a county election commission:

Except as otherwise provided by law, *it is the responsibility of the county to fund the operations of its election commission.* If a county fails to appropriate funds sufficient to pay expenses that are *reasonably necessary for the discharge of the statutorily mandated duties of its county election commission*, such commission may petition the chancery court of the county in which such election commission is located to compel the appropriation of such funds.

(emphasis supplied). As stated above, the county election commission is directed by statute to hire counsel when necessary to defend itself in a lawsuit arising out of the hiring or firing of the county administrator of elections, and reasonable expenses incurred for that purpose would therefore qualify as “reasonably necessary for the discharge of the statutorily mandated duties of” the commission. Accordingly, it is the opinion of this Office that, pursuant to Tenn. Code Ann. § 2-12-109(a), the county has the obligation to pay for the fees and expenses associated with legal representation of a county election commission in such a lawsuit.

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Requested by:

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