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Opinion No. 09-172

Composition of Assessment Appeals Commission

## QUESTIONS

Considering that the Assessment Appeals Commission's decisions will be precedents affecting assessments, classification, and value of property for all counties, including an assessor member's county, is it an unavoidable or inherent conflict of interest, or a violation of the oath of office, for an assessor of property to serve as a member of the Commission?

## OPINIONS

No, a local assessor's service on the Assessment Appeals Commission does not present an unavoidable or inherent conflict of interest or a violation of his oath of office as an assessor. But if a local assessor has a substantial pecuniary interest in the outcome of a particular case, he should be disqualified from hearing a matter. Of course, a local assessor serving on the Assessment Appeals Commission may not participate in hearings on appeals from his own jurisdiction.

## ANALYSIS

Pursuant to Tenn. Code Ann. § 67-5-1502, the State Board of Equalization has created the Assessment Appeals Commission to

> hear and act upon all complaints and appeals regarding the assessment, classification and value of property for purposes of taxation, including, but not limited to, complaints and appeals from assessments made by the comptroller of the treasury, complaints and appeals from actions of local boards of equalization, complaints and appeals concerning exemption of property from taxation, complaints and appeals from assessments made by the division of property assessments, and complaints in inheritance tax cases that concern only the valuation of property in the estate.

Members of the Assessment Appeals Commission are appointed by the State Board for one-year terms. See Tenn. Code Ann. § 67-5-1502(b)(1), (d) (Supp. 2008). The only membership limitations are that members must be adult residents of Tennessee and that at least one member must not be a full-time state official. See § 67-5-1502(b)(2), (4) (Supp. 2008). In

addition to their service on the State Board of Equalization, members of the State Board may be appointed to the Commission, as may the Board's executive secretary and the director of property assessment. *See* Tenn. Code Ann. § 67-5-1502(b)(3) (Supp. 2008).

The statute governing the appointment of members to the Commission specifically provides that "local and state officials shall not be precluded from appointment to the assessment appeals commission by virtue of their positions." *Id.* Accordingly, the governing statutes do not prevent local property assessors from serving on the Assessment Appeals Commission. Nevertheless, you have questioned whether serving on the Commission creates an inherent conflict of interest for property assessors because the Commission, through its members, sets precedents that may affect the assessment, classification, and value of properties within the assessors' respective jurisdictions.

"Members of a commission are presumed to be fair and impartial." *General Motors Corp. v. Capitol Chevrolet Co.*, 645 S.W.2d 230, 236 (Tenn. 1983) (quoting *General GMC Trucks, Inc. v. General Motors Corp.*, 237 S.E.2d 194, 195-96 (Ga. 1977)). This presumption applies even where a commission is composed of members of the profession regulated by the commission, *see General Motors Corp.*, 645 S.W.2d at 236, or where a commission consists of members of the executive branch of government. *See Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 847 (Tenn. 2008). Despite their sometimes overlapping roles, "[a]dministrative decision-makers are presumed to carry out their duties with honesty and integrity." *Id.* (quoting *Jones v. Greene*, 946 S.W.2d 817, 825 (Tenn. Ct. App. 1996)).

A commission member's mere association with a particular profession or government office does not create a conflict of interest or require his disqualification. Only where a commission member has a substantial pecuniary interest in the outcome of a case should he be disqualified from hearing the matter. *See General Motors Corp.*, 645 S.W.2d at 237-38 (citing *Gibson v. Berryhill*, 411 U.S. 564, 579, 93 S. Ct. 1689, 1698, 36 L. Ed. 2d 488 (1973)). Absent a showing of such pecuniary interest, a commission member will not be disqualified from serving.

Accordingly, local property assessors are not disqualified from serving as members of the Assessment Appeals Commission, absent a showing that they have a substantial pecuniary interest in the result of a particular case. As your request suggests, a local assessor should not hear property tax appeals from his own jurisdiction. A local assessor also may be disqualified from hearing a particular matter if it will set a precedent for a particular case pending in his jurisdiction. As the governing statutes indicate, however, local assessors are not generally precluded from serving on the Assessment Appeals Commission merely by virtue of their positions as local assessors.

Serving in these dual positions does not violate the general state law on conflicts of interest. *See* Tenn. Code Ann. § 12-4-101(a) (Supp. 2008). That law, which prohibits a public official from being personally interested in a contract that he or she has a duty to vote for, let out, or supervise, is not implicated by the situation described in your request.

We further observe that an assessor's duties are not inherently incompatible with his service on the Assessment Appeals Commission. The common law prohibits a public officer

from holding two incompatible offices at the same time. *See State ex rel. Little v. Slagle*, 115 Tenn. 336, 341, 89 S.W. 326, 327 (1905). This prohibition is generally applied when an individual occupies two inherently inconsistent offices. *See* 63C Am. Jur. 2d *Public Officers and Employees* § 62 (1997). By statute, assessors have the duty to "appraise, classify, and assess all taxable property of [their respective counties] according to the Constitution of Tennessee and the laws of the state." Tenn. Code Ann. § 67-1-507(a) (2006).[1] This duty does not conflict with the Commission's duty to "hear and act upon all complaints and appeals regarding the assessment, classification and value of property for purposes of taxation," which, of course, must be accomplished in accordance with the Constitution and laws of this state. Tenn. Code Ann. § 67-5-1502(a) (Supp. 2008).

By statute, the State Board of Equalization consists of, *inter alia*, "[o]ne (1) person named by the governor who has knowledge of and experience in tax assessments at the county level," and "[o]ne (1) person named by the governor who has knowledge of and experience in tax assessments at the city level." Tenn. Code Ann. § 4-3-1501(a) (2005). At various times, these appointments have been filled by active and former local property assessors. Their expertise assists the Board in deciding property tax appeals and, absent an actual conflict of interest, they should not be prohibiting from hearing such appeals as either a Board or Commission member.

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[1] Unlike the statutes governing assessors and county boards of equalization, the statutes governing the appointment of the Assessment Appeals Commission contain no membership oath. *See* Tenn. Code Ann. §§ 67-1-402, 67-1-507 (2006).