STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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November 13, 2009

Opinion No. 09-178

County Election Commission Vacancy

QUESTIONS

1. Whether the State Election Commission may appoint an individual to fill a vacancy on a county election commission if such individual has a relative employed by the county election commission as a voting machine technician?

2. Can a retired county employee be appointed to serve on a county election commission?

OPINIONS

1. Yes.

2. Yes.

ANALYSIS

1. A vacancy currently exists on the Shelby County Election Commission. A candidate under consideration to fill that vacancy has a relative employed by the Commission as the appointed voting machine technician representing the Democratic Party, pursuant to Tenn. Code Ann. § 2-9-103. You have asked whether the State Election Commission would be prohibited from appointing such individual to fill the vacancy on the Shelby County Election Commission.

Tennessee's election laws place certain restrictions on the employment of relatives of county election commission members. See Tenn. Code Ann. § 2-12-116(a)(14) and § 2-12-

201(a)(1). In general, these statutes prohibit the employment of commissioners, their spouses, parents, siblings or children as clerical assistants, absentee voting deputies, poll officials or members of the absentee counting board except in the case of an emergency. However, there are certain specific restrictions that apply to Shelby County contained in Tenn. Code Ann. § 2-12-201(b). That statute provides in pertinent part as follows:

> (b) In any county having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 federal census or any subsequent federal census: . . .
>
> (2) County election commissioners may not employ themselves or the spouse, parent, brother, sister, or children of any of them as administrators or clerical assistants under this section.

This statute only prohibits the employment of county election commissioners and certain of their relatives as "administrators or clerical assistants." It does not prohibit the employment of relatives of commissioners as voting machine technicians. The appointment of voting machine technicians by a county election commission is governed by Tenn. Code Ann. § 2-9-103. This statute does not contain any prohibition on the appointment of relatives of county election commission members as voting machine technicians. Accordingly, it is our opinion that the State Election Commission could appoint an individual to fill the vacancy on the Shelby County Election Commission where such individual has a relative currently employed by the county election commission as a voting machine technician.

2. Your next question asks whether a retired county employee may be appointed to serve as a member of a county election commission. Tenn. Code Ann. § 2-1-112(a) provides that

> [n]either an elected official nor an employee of a state, county, municipal or federal governmental body or agency or of an elected official may serve as a member of a county election commission or as a member of a county primary board or as an election official. No candidate in an election may act in connection with that election as a member of any board or commission established under this title or as an election official.

This statute only prohibits current employees of a county from serving as a member of a county election commission. While a retired county employee may receive certain retirement benefits from the county, he or she is not otherwise an employee of the county. Accordingly, a retired county employee may be appointed to serve as a member of a county election commission.

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