

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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March 8, 2010

Opinion No. 10-26

Vacancies on local boards of education

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**QUESTION**

Whether vacancies on local boards of education are subject to the statutory provisions governing such vacancies according to Article VII, Section 4 of the Tennessee Constitution which reads, “The election of all officers, and the filling of all vacancies not otherwise directed or provided by this Constitution, shall be made in such manner as the Legislature shall direct.”

**OPINION**

Yes. The General Assembly has directed that “[v]acancies occurring on the board shall be filled by the local legislative body. . . . Any person so appointed shall serve until a successor is elected and qualifies according to law. The successor shall be elected at the next general election for which candidates have a sufficient time to qualify under the law.” Tenn. Code Ann. § 49-2-201(a)(1).

**ANALYSIS**

Article XI, Section 12 of the Tennessee Constitution vests the Tennessee General Assembly with the responsibility of establishing and regulating a system of free public schools.<sup>1</sup> In the exercise of this authority, the General Assembly has created a system of local boards of education pursuant to Tenn. Code Ann. § 49-2-201, *et seq.* Article VII, Section 4 of the Tennessee Constitution provides, “The election of all officers, and the filling of all vacancies not otherwise directed or provided by this Constitution, shall be made in such manner as the Legislature shall direct.” This Office has previously opined that Article VII, Section 4 of the

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<sup>1</sup> Article XI, Section 12 of the Tennessee Constitution provides, “The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such postsecondary educational institutions, including public institutions of higher learning, as it determines.”

Tennessee Constitution applies to the election of local school board members. Op. Tenn. Att’y Gen. No. 96-150 (Dec. 31, 1996).

The Tennessee General Assembly has directed the method by which boards of education are to be elected and vacancies on the board are to be filled:

Notwithstanding any other law to the contrary, there shall be a board of education elected by the people. Except in counties with a county charter or metropolitan government charter, the board shall consist of no more members than the number of members authorized by general law or private act for boards of education in existence on January 1, 1992, or the number of members actually serving on a board on January 1, 1993, except during transition periods following district reapportionment. In addition to the membership existing on boards as of January 1, 1992, or January 1, 1993, the general assembly may authorize by private act any number of school board members that is no less than three (3) nor more than eleven (11). The members of the board shall be elected for a term of four (4) years, and may succeed themselves. For the first election held pursuant to this section, in order to establish staggered terms of office, the members from even-numbered districts shall be elected for a term of two (2) years, and the members of odd-numbered districts shall be elected for four (4) years. Members of county boards of education shall be residents of and elected from districts of substantially equal population established by resolution of the local legislative body. Members of special school district boards of education shall be elected according to special or private act, but shall be popularly elected on a staggered term basis. Vacancies occurring on the board shall be filled by the local legislative body. In special school districts, vacancies on the board arising from death or resignation shall be filled by the special school district school board. Any person so appointed shall serve until a successor is elected and qualifies according to law. The successor shall be elected at the next general election for which candidates have a sufficient time to qualify under the law. All elections for school board members shall be conducted on a nonpartisan basis, and no person seeking a position on a board shall campaign as the nominee or representative of any political party.

Tenn. Code Ann. § 49-2-201(a)(1).

The General Assembly has directed that “[v]acancies occurring on the board shall be filled by the local legislative body. . . . Any person so appointed shall serve until a successor is elected and qualifies according to law. The successor shall be elected at the next general election for which candidates have a sufficient time to qualify under the law.” *Id.* Accordingly, the General Assembly has complied with Article VII, Section 4 of the Tennessee Constitution with regards to vacancies on local boards of education by the enactment of Tenn. Code Ann. § 49-2-201, which specifically addresses how vacancies occurring on the board are to be filled.

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