STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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August 27, 2010

Opinion No. 10-94

Local Employee Running for Elective Office

QUESTION

Whether any state or federal law prohibits a city or county employee from running for an elective office?

OPINION

State law would not prohibit a local employee from running for an elective office. Additionally, pursuant to Tenn. Code Ann. § 7-51-1501, a local employee would not be prohibited by any city or county charter provisions from running for elective office. If, however, a local employee's position or duties are in connection with an activity financed in whole or in part by federal loans or grants, he or she would be prohibited by the federal Hatch Political Activity Act, 5 U.S.C. §§ 1501, *et seq*., from being a candidate for elective office unless the election is nonpartisan.

ANALYSIS

You have asked whether there is any state or federal law that would prohibit a city or county employee from running for an elective office. State law would not prohibit a local employee from running for an elective office. The "Little Hatch Act," Tenn. Code Ann. §§ 2-19-201, *et seq*., only applies to public officers and employees who are defined as "all employees of the executive branch of the state government, or any department, division, or agency thereof, and all appointed officers and employees of any education institution, establishment, corporation or agency supported principally by state funds." Thus, the Little Hatch Act only limits the political activities of state employees.

Additionally, this Office has previously opined that Tenn. Code Ann. § 7-51-1501 effectively overrules every local governmental charter provision or ordinance that purports to limit the listed political activities of its employees, including the right to run for or be a candidate for any state or local elective office. *See* Op. Tenn. Att'y Gen. 96-106 (August 20, 1996). Thus, pursuant to this statute, local employees are not prohibited by any city or county charter provision from running for elective office. However, unless authorized by law or local ordinance, an employee of a municipal or metropolitan government is not qualified to run for elected office in

the local governing body of the local governmental unit in which the employee is employed. Tenn. Code Ann. § 7-51-1501.

This Office has also opined that if a local employee's position or duties are in connection with an activity financed in whole or in part by federal loans or grants, he or she is prohibited by the federal Hatch Political Activity Act, 5 U.S.C. §§ 1501, *et seq*., from being a candidate for elective office unless the election is nonpartisan. *See* Op. Tenn. Att'y Gen. 81-305 (May 11, 1981). The federal Hatch Act does not prohibit a local employee whose employment is federally funded from being a candidate in a nonpartisan election. 5 U.S.C. § 1503. The Office of Special Counsel is authorized to issue advisory opinions about the political activity of state or local employees. 5 C.F.R. § 1800.3; *see Special Counsel v. Alexander*, 71 M.S.P.R. 636 (1996), *aff'd*, 165 F.3d 474 (6th Cir. 1999). The Merit Systems Protection Board has the authority to determine whether a violation of the federal Hatch Act has occurred; to determine whether a violation warrants the removal of the employee; and to notify the employee and affected agency of the determination. 5 U.S.C. §§ 1504 and 1505.

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