STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 11-50

County Commissioner Employed by the County

QUESTIONS

1. Does a county commissioner who also works as an employee of a county department have a conflict of interest in matters concerning the department?

2. If a county commissioner was employed by a county department prior to his or her initial election to the commission and then changes jobs to work for a different county department following that election, does the commissioner have a conflict of interest in matters concerning the new department?

OPINION

1. Yes, under 12-4-101(c), this individual has a conflict of interest. But the effect of the conflict depends on when the commissioner's employment with the county began. If the commissioner was employed by the county before he or she was initially elected to the commission, then, under Tenn. Code Ann. § 12-4-101(c)(1), the commissioner may vote on matters concerning his or her department in which the commissioner has a conflict of interest, but must disclose the conflict. If the commissioner was employed by the county after he or she was initially elected to the commission, then, under Tenn. Code Ann. § 12-4-101(c)(2), that commissioner may not vote on the county budget if it includes the commissioner's salary as an employee, and may not vote on other county matters in which the commissioner may have a direct or indirect pecuniary interest because of his or her employment.

2. Yes, this individual has a conflict of interest, but is still subject to Tenn. Code Ann. 12-4-101(c)(1). Under Tenn. Code Ann. 12-4-101(c)(1), this individual's employment with the county began before he or she was initially elected to the commission. The fact that he or she is now employed by a different department does not change this result. Thus, in this case, the commissioner must disclose his or her conflict when voting on matters concerning the commissioner's current department.

ANALYSIS

This opinion concerns conflict of interest statutes governing a county commissioner who is also a county employee. Tenn. Code Ann. § 12-4-101, the general conflict of interest statute

and, more specifically, subsection (c), impose restrictions on city council members and commissioners who are also city and county employees. Under Tenn. Code Ann. § 12-4-101(a)(1)(Supp. 2010), it is unlawful for a county commissioner to be directly interested in any contract with the county. "Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. Under Tenn. Code Ann. § 12-4-101(b)(Supp. 2010), a county commissioner must disclose any indirect interest in contracts with the county. This Office has indicated in the past that the interest referred to under the statute is a pecuniary interest. Op. Tenn. Att'y Gen. 09-175 (November 6, 2009).

Tenn. Code Ann. § 12-4-101(c)(1) and (2) (Supp. 2010) address the authority of a county commissioner or a city council member who is also a county or city employee to vote on matters in which he or she may have a conflict of interest. These sections provide:

> (c)(1) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality *and whose employment predates the member's initial election or appointment to the governing body of the county or municipality* may vote on matters in which the member has a conflict of interest if the member informs the governing body immediately prior to the vote as follows: "Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents." The vote of any such member having a conflict of interest who does not so inform the governing body of such conflict shall be void if challenged in a timely manner. As used in this subdivision (c)(1), "timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.
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> (2) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality *and whose employment began on or after the date on which the member was initially elected or appointed to serve on the governing body of the county or municipality shall not vote on matters in which the member has a conflict of interest.*

(Emphasis added). Tenn. Code Ann. § 5-5-102(c)(4) is another statute that addresses voting by a county commissioner who is also an employee. But, for the reasons discussed in Op. Tenn. Att'y Gen. 09-175 (November 6, 2009), this Office has previously concluded that Tenn. Code Ann.§ 12-4-101(c) controls over Tenn. Code Ann. § 5-5-102(c)(4) to the extent the statutes conflict. The rest of this opinion, therefore, will discuss only Tenn. Code Ann. § 12-4-101(c).

1. County Commissioner Employed by the County

The first question is whether a county commissioner who works for a county department has a conflict of interest under this statute. Under 12-4-101(c), this individual has a conflict of

interest. But the effect of the conflict depends on when the commissioner's employment with the county began. If the commissioner was employed by the county before he or she was initially elected to the commission, then that commissioner's conduct is governed by Tenn. Code Ann. § 12-4-101(c)(1). Under that statute, the commissioner may vote on matters concerning his or her department in which he or she has a conflict of interest, but must disclose the conflict. If the commissioner was employed by the county after he or she was initially elected to the commission, then that commissioner's conduct is governed by Tenn. Code Ann. § 12-4-101(c)(2). Under this statute, the commissioner may not vote on the county budget if it includes the commissioner's salary as an employee, and may not vote on other county matters in which he or she may have a direct or indirect pecuniary interest because of his or her employment.

2. County Commissioner Employed by a Different County Department after Election to Office

The second question concerns a commissioner who was employed by a county department before his or her initial election to office and later changes jobs and works for another county department. In this case, the commissioner has a conflict of interest in matters concerning his or her employment with that department. The question then becomes whether the commissioner's employment with the county must now be measured from the date when he or she changed jobs. If so, then the commissioner would be subject to the more stringent standard in Tenn. Code Ann. 12-4-101(c)(2). Under that provision, he or she would be prohibited from voting on any matter concerning the department in which he or she has a conflict by reason of his or her employment. We conclude that, in this case, the standard in Tenn. Code Ann. § 12-4-101(c)(1) still applies. The statute refers only to the date the commissioner was first employed by the county. The commissioner's employment began before he or she was elected to office. It was not interrupted when he or she went to work for a different county department.

This interpretation conforms with well established rules of statutory construction. Tennessee courts determine legislative intent from the natural and ordinary meaning of statutory language, without any forced or subtle construction that would extend or limit the statute's meaning. *E.g.*, *Austin v State*, 222 S.W.3d 354, 357 (Tenn. 2007); *Biscan v Brown*, 160 S.W.3d 462, 473 (Tenn. 2005). When interpreting statutes, Tennessee courts routinely follow the Latin maxim of "espressio unius est exclusio alterius," meaning the expression of one thing implies the exclusion of all things not mentioned. *State v Alder*, 92 S.W.3d 397,400 (Tenn. 2002).

Accordingly a county commissioner who was employed by the county prior to the commissioner's election, and has a change in the commissioner's county employment after the election whether by promotion or change in position or otherwise, has a conflict of interest in matters concerning the new department. The commissioner must disclose the interest as required under Tenn. Code Ann. 12-4-101(c)(1).

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