STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

September 14, 2011

Opinion No. 11-66

Failure to Appoint Successor Utilities Commissioner

QUESTION

If a utilities commission, formed by a private act, fails to elect a commissioner through the method established by such private act, does the commissioner whose term has expired continue in office until a successor is appointed, or is the position vacant?

OPINION

Under Article VII, § 5, of the Tennessee Constitution, "[e]very officer shall hold his office until his successor is elected or appointed, and qualified." An incumbent utilities commissioner, therefore, continues to hold office beyond the expiration of his or her term and until his or her successor is elected and qualified. Such commissioner's office is not vacant.

ANALYSIS

This opinion concerns the effect of a failure to elect a utilities commissioner to a utilities commission under the method established by the private act that created the commission. The request includes a copy of Chapter 7 of the 2001 Tennessee Private Acts, governing the Morristown Utilities Commission. This act increased the membership on the commission from three members to five. It modified the terms of the commissioners then in office, and provided for election of two additional commissioners. Under the 2001 Act, the mayor appoints commission members from a list of three nominees submitted by the commissioners. A majority of the city council must then elect the nominee. A nominee is deemed elected if the council fails to take action to approve or disapprove the nominee within thirty days following notice of the nomination to the city council. If a nominee is disapproved by a majority vote of the city council, or is not approved by a majority vote of the council, a modified nomination procedure takes place.

We assume this request concerns an incumbent commissioner whose term has expired, but whose successor has not been elected under the Act. The Act does not address the status of

such commissioner. But, under Article VII, § 5, of the Tennessee Constitution, "[e]very officer shall hold his office until his successor is elected or appointed, and qualified." *See also* Op. Tenn. Att'y Gen. 11-64 (September 1, 2011) (opining that an elected sheriff possibly subject to removal continues to hold office until a successor is duly appointed and qualified). Thus, an incumbent utilities commissioner continues to hold office beyond the expiration of his or her term and until his or her successor is elected and qualified. The commissioner's office is not vacant.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

The Honorable Steve Southerland
State Senator
10 Legislative Plaza
Nashville, Tennessee 37243-0201