STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 11-74

County Medical Examiner and Coroner Serving on County Commission

QUESTION

May a person who serves as county medical examiner, and performs the duties of county coroner, serve as a county commissioner?

OPINION

A county medical examiner in whom the county commission has vested the duties of county coroner may not serve as a county commissioner.

ANALYSIS

This opinion addresses whether an individual who serves both as the county coroner and the county medical examiner may also serve as a county commissioner.

The county medical examiner is appointed by the county mayor, subject to confirmation by the county legislative body. Tenn. Code Ann. § 38-7-104(a). The examiner is elected from a list of a maximum of two doctors of medicine or osteopathy nominated by convention of the physicians, medical or osteopathic, resident in the county. The county mayor calls the convention for this purpose. A county medical examiner serves a five-year term and is eligible for reappointment by the county mayor with confirmation by the county legislative body. Id.

The office of county coroner is governed by Tennessee Code Annotated §§ 8-9-101, et seq., which provides in relevant part:

> The county legislative body is hereby granted discretionary authority to create the office of county coroner. If such office is created, the county legislative body shall elect a coroner who shall hold office for two (2) years, and until a successor is qualified. However, in those counties that have a county medical examiner, the county legislative body may vest the duties of the county coroner in the county medical examiner and shall not be required to elect a county coroner.

Tenn. Code Ann. § 8-9-101 (emphasis added). This opinion assumes that an individual selected as county medical examiner under Section 38-7-104(a) has also been vested with the duties of the county coroner by the county commission under Section 8-9-101.

The Tennessee Constitution, Article II, Section 26, prohibits a person from "hold[ing] more than one lucrative office at the same time[.]" The term "office" has been construed by Tennessee courts to mean "state office." *Phillips v. West*, 187 Tenn. 57, 65-66, 213 S.W.2d 3, 7 (1948); *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495 (1931). The offices of county medical examiner/coroner and county commissioner are local offices and, therefore, are not covered by the prohibition of Article II, Section 26. No other constitutional provision would prohibit the dual office holding addressed in this request.

However, by statute, the Legislature has placed the following limitations on who can serve on a county commission:

> No person elected or appointed to fill the office of county mayor, sheriff, trustee, register, county clerk, assessor of property, *or any other county-wide office filled by vote of the people or the county legislative body*, shall also be nominated for or elected to membership in the county legislative body. After June 18, 2005, a director of schools shall not be qualified to serve as a member of the county legislative body.

Tenn. Code Ann. § 5-5-102(c)(2) (emphasis added).

The question posed is whether the office of medical examiner carrying out the duties of the county coroner is "filled by vote of . . . the county legislative body" within the meaning of this statute. Under Tennessee Code Annotated § 8-9-101, the county commission may either create a separate office of coroner or vest the duties of coroner in the medical examiner. In either case, the county commission determines the official to carry out the duties of coroner and in effect "fills" the position. Accordingly, the office of medical examiner carrying out the duties of the county coroner is "filled by vote of . . . the county legislative body" within the meaning of Tennessee Code Annotated § 5-5-102(c)(2). A medical examiner carrying out the duties of the county coroner, therefore, may not serve as a county commissioner.[1]

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[1] In 1979, this Office concluded that an individual may simultaneously hold the offices of county commissioner and county coroner. Op. Tenn. Att'y Gen. No. 79-104A (March 12, 1979). This opinion, however, was issued before the prohibition on dual office holding in Section § 5-5-102(c)(2) became effective. 1979 Tenn. Pub. Acts Ch. 175 (effective June 1, 1979).

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