

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 12-19

Same Individual Serving as County Finance Director and Member of School Board

QUESTION

May an individual serve as county director of finance while also serving on the school board in a county that has adopted the Financial Management System of 1981?

OPINION

Yes. A county finance director is not “financially interested” and does not have a direct or indirect “personal beneficial interest” in county school board contracts that he or she may have approved as a member of the county school board. Thus, the dual service does not violate Tenn. Code Ann. § 5-21-121(a), the specific conflict of interest provision for the Financial Management System of 1981. For the same reason, the arrangement does not violate the general conflict of interest statute, Tenn. Code Ann. § 12-4-101, which prohibits an official from having a personal financial interest in a contract he or she has a duty to vote for, overlook, let out, or supervise. No other statute appears to prohibit this dual service, nor does it violate the common law prohibition against holding incompatible offices.

ANALYSIS

This opinion addresses whether the same individual may serve on the county school board while also serving as the county finance director in counties that have adopted the local option County Financial Management System of 1981 (hereinafter the “Local Option Act”). The Local Option Act creates a financial management committee in a county that adopts it. *See* Tenn. Code Ann. §§ 5-21-101 to -130. The committee consists of the county mayor, supervisor of highways, director of schools, and four members elected by the county legislative body. Tenn. Code Ann. § 5-21-104(b)(1).

The county financial management committee is charged with establishing policies, procedures, and regulations in addition to the act’s specific provisions for implementing a sound and efficient financial system for administering county funds. Tenn. Code Ann. § 5-21-104(e). The system must include budgeting, accounting, purchasing, payroll, cash management, and such other financial matters as are necessary to an efficient system. *Id.* The committee appoints a county director of finance, and “[t]he director shall for all purposes be an employee of the county.” Tenn. Code Ann. § 5-21-106(a)(1) & (3). Subject to the county commission’s

approval, the committee establishes the director's compensation and may dismiss him or her. Tenn. Code Ann. § 5-21-106(a)(2) & (c).

The director's powers and duties are as follows:

(a) The director shall oversee the operation of the department in the functions established by this chapter, and shall be responsible for the implementation of the policies of the committees or such special committees established by the county legislative body.

(b) The director shall, among the director's duties, install and maintain a purchasing, payroll, budgeting, accounting and cash financial management system for the county.

(c) The director shall assist other county officials and employees in achieving an efficient financial management system for the county.

(d) The director has the authority to hire personnel for the finance department; provided, that the positions are funded in the annual budget and the personnel so hired meet the written job requirements as recommended by the director and approved by the committee.

Tenn. Code Ann. § 5-21-107.

The finance director also prepares the proposed county budget, which is then reviewed by the budget committee before being presented to the county commission. Tenn. Code Ann. § 5-21-110. The director must prepare monthly reports for each county department showing its expenditures under the budget. Tenn. Code Ann. § 5-21-114. Other duties of the director are to establish a system for preauditing county invoices and to cosign warrants for disbursements of county funds submitted to the county trustee. Tenn. Code Ann. §§ 5-21-115 & -116. The director, or a deputy appointed by the director, is the county's purchasing agent. Tenn. Code Ann. § 5-21-118.

The Local Option Act's conflict of interest provision is applicable to the director and states as follows:

The director, purchasing agent, members of the committee, members of the county legislative body, or other officials, employees, or members of the board of education or highway commission shall not be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of any supplies, materials or equipment for the county.

Tenn. Code Ann. § 5-21-121(a).

County school board members are elected officials. Tenn. Code Ann. § 49-2-201. A county board of education is authorized, among other powers, to "[m]anage and control all public

schools established or that may be established under its jurisdiction.” Tenn. Code Ann. § 49-2-203(a)(2). The county commission determines the salary of county school board members. Tenn. Code Ann. § 49-2-202(d). Tenn. Code Ann. § 49-2-202(a)(2) provides that “[n]o member of the county legislative body nor any other county official shall be eligible for election as a member of the county board of education.” This statute does not prohibit the finance director from serving on the county board of education since the director is a county employee “for all purposes” under Tenn. Code Ann. § 5-21-106(a)(3), as opposed to a county official. *See* Tenn. Code Ann. § 5-5-120(c)(1) (stating a county employee is not disqualified from holding a county legislative office). *See also* Op. Tenn. Att’y Gen. 05-146 (Sept. 27, 2005); Op. Tenn. Att’y Gen. 01-144 (Sept. 4, 2001) (both concluding a county employee may hold a county legislative office).

The question then becomes whether Tenn. Code Ann. § 5-21-121(a), the Act’s specific conflict of interest provision, prohibits the same person from serving as the county finance director and as a member of the county board of education. Under this statute, a director may not be “financially interested” or have a “personal beneficial interest, either directly or indirectly,” in the purchase of any supplies, materials, or equipment for the county. A county finance director oversees and implements the day-to-day financial operations of all county departments, including the county school board. The director, thus, is in a position to supervise and implement contracts and other transactions that he or she voted on as a school board member. This authority would include contracts for the purchase of supplies, materials, or equipment for the school board. But the mere voting by a school board member on such contracts does not give rise to the member actually having a “financial interest” in the contract, which refers to the existence of an actual personal pecuniary interest. *See Carter v. Bell*, 279 S.W. 3d 560, 564 (Tenn. 2009) (stating that when statutory language is clear and unambiguous courts will apply the plain meaning of the words used and not force an interpretation that would extend the meaning of the language).

This Office further is on the opinion that the director has no “personal beneficial interest” in contracts solely because he or she votes on such contracts as a school board member. The Court of Criminal Appeals considered the meaning of the term “personal beneficial interest” as used in Tenn. Code Ann. § 5-14-114, another local option county purchasing law. *State v. Whitehead*, 43 S.W.3d 921 (Tenn. Crim. App. 2000). The Court found that the statute prohibited a county official “from having any *personally favorable interest* in a county contract, regardless of whether that interest is direct or circuitous.” *Id.* at 929 (emphasis added). A finance director does not gain a personally favorable interest, either direct or indirect, in a contract by voting on the contract in his or her official capacity as a school board member. Accordingly, a county finance director is not “financially interested” and does not have a “personal beneficial interest, either directly or indirectly” in county school board contracts that he or she may have approved as a member of the county school board.

Nor does any conflict exist under the general conflict of interest law. Tenn. Code Ann. § 12-4-101 (a)(1) states it is unlawful for a person “whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract” in which a governmental entity may be interested to be directly interested in such contract. “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.” Tenn. Code Ann. § 12-4-101(a)(1).

“Controlling interest” includes “the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation.” *Id.* Under Tenn. Code Ann. § 12-4-101(b), a state or local officer must disclose any indirect interest in a contract that he or she has the official duty to vote for, let out, overlook, or superintend. The statute includes any contract in which the officer is interested, but not directly so. This Office has stated that the term “indirectly interested” refers to a pecuniary interest. Op. Tenn. Att’y Gen. 09-175 (November 6, 2009).

For the reasons discussed above, a county finance director does not have a personal, pecuniary interest in contracts solely because he or she may have voted on such contracts as a member of the school board. It is possible that the finance director may play some role in approving payment of his or her compensation as a school board member. But service as an elected official does not create an employment contract which would invoke the provisions of Tenn. Code Ann. § 12-4-101, and again under Tennessee law county employees are expressly allowed to hold a county legislative office. *See* Tenn. Code Ann. §5-5-102(c)(1). *See also* Op. Tenn. Att’y Gen. 00-153 (Oct. 9, 2000) (membership in a county legislative body is not “employment” as that term is generally defined by state law). For these reasons, one person holding both of these positions does not violate Tenn. Code Ann. § 12-4-101. Nor does any other statute appear to prohibit this arrangement.

Finally, in addition to the conflict of interest statutes, there is a common law prohibition against a public officer’s holding two incompatible offices at the same time. *State ex rel. Little v. Slagle*, 115 Tenn. 336, 341, 89 S.W. 326, 327 (Tenn. 1905). The question of incompatibility depends on the circumstances of each individual case, and the issue is whether the occupancy of both offices by the same person is detrimental to the public interest, or whether the performance of the duties of one interferes with the performance of those of the other. 67 C.J.S. *Officers* § 38 (2011). Tennessee courts have recognized that an inherent inconsistency exists where one office is subject to the supervision or control of the other. *State ex rel. v. Thompson*, 193 Tenn. 395, 399, 246 S.W.2d 59, 61 (Tenn. 1952). In *Thompson*, the Tennessee Supreme Court concluded that the offices of city manager and member of the city council were incompatible because the council had the authority to appoint, remove, and supervise the city manager, and no statute then in effect permitted the same individual to hold these offices. The Court found, therefore, that the common law principle of incompatible offices prohibited the same individual from acting as city manager and city council member. *Id.*

Serving as the county director of finance and as a member of the county school board in a county that has adopted the Local Option Act does not violate this prohibition. First, under the statute creating the position, the director of finance is not an official but instead is a county employee. Second, while the functions of the two positions overlap, neither directly supervises or appoints the other. Thus, the dual service does not violate the common law prohibition against the same individual serving in incompatible offices.

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