S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

June 7, 2012

Opinion No. 12-62

Resolving Tie Votes for Elections in Single County or Civil Districts

QUESTIONS

1. If there is a tie vote in an election for candidates seeking an office in a single county or civil district, can a run-off election be held between the tied candidates in lieu of the county legislative body casting the deciding vote?

2. If the answer is no, is the county legislative body determining the winner of the election the only available alternative for resolving the tied vote of the electorate?

OPINIONS

1. No.

2. The General Assembly has established that, in the case of a tie vote among candidates seeking an office in a single county or civil district, a vote by the county legislative body to select the winner of the election is the only method whereby a tie vote for such an office may be resolved.

ANALYSIS

Tenn. Code Ann. § 2-8-111(1) expressly provides that if there is a tie vote between two or more persons having the highest number of votes for offices filled by the votes of a single county or civil district, then "the county legislative body shall cast the deciding vote." This statute is unambiguous, and plainly states that tie votes between candidates for a single county or civil district are to be resolved by the county legislative body. *See State v. White*, 362 S.W.3d 559, 566 (Tenn. 2012) (recognizing the general rule of statutory construction that courts will apply the plain meaning of a statute where the language is clear and unambiguous).

This Office has previously opined that Tenn. Code Ann. § 2-8-111(1) is the exclusive means to determine the winner when an election for a single county or civil district results in a tie vote and that the county legislative body cannot under this statute delegate this responsibility by passing a resolution calling for a run-off election between the tied candidates. Tenn. Att'y Gen. Op. 96-150 (Dec. 31, 1996). As this Office explained in addressing this issue in tied elections for a seat on a county board of education:

> The Tennessee Constitution provides at Article VII, § 4 that "[t]he election of all officers, and the filing of all vacancies not otherwise directed or provided by this Constitution shall be made in such manner as the Legislature shall direct." The General Assembly's power to regulate elections includes the power to enact legislation for the purpose of breaking tie votes in elections. The Legislature exercised that power with the enactment of Tenn. Code Ann. § 2-8-111. . . .
>
> . . . .
>
> Members of a county board of education are county officers elected by the people from civil districts of substantially equal population established by the county commission. Accordingly, the method for resolving a tie vote between the two or more persons having the highest number of votes for a district seat on a county school board is governed by subsection (1) of Tenn. Code Ann. § 2-8-111, which mandates that the county legislative body "shall cast the deciding vote."
>
> If there has been a tie vote between the two persons having the highest vote for a seat on the county school board, the county may not cast its "deciding vote" to hold a run-off election. Words of a statute should be taken in their ordinary sense without forced or subtle construction. To "decide" an issue means to bring it to a conclusion or resolution. If the members of the county legislative body were to cast their "deciding vote" in case of a tie vote by putting the matter to a run-off election, they would not be deciding the tie. Rather, they would be doing the opposite – they would be shifting responsibility for decision to the voters, instead of bringing the matter to a conclusion themselves. They would not be casting "the deciding vote" for the office as required by Tenn. Code Ann. § 2-8-111(1); the deciding vote would be the one the voters would make in the run-off. Although the Legislature has granted municipal legislative bodies the power to choose between casting the deciding vote, or calling for a run-off election in the case of a tie vote for a municipal office, Tenn. Code Ann. § 2-8-111(2), the Legislature has not granted that power to counties for county offices.
>
> The county legislative body may not be [sic] resolution call for a run-off election. The right to hold an election does not exist absent an express grant of power by the legislature. The General Assembly has not given the county legislative body the right to hold an election for such a purpose.

Id. at 1-2 (footnotes omitted).

This Office's conclusion is in accord with the common law rule and the rule in Tennessee that run-off elections cannot be held unless the law specifically provides for them. *See State ex rel. Thompson v. Carr*, 166 Tenn. 58, 59 S.W.2d 509 (1932).

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

JANET M. KLEINFELTER
Deputy Attorney General

Requested by:

The Honorable Ken Yager
State Senator
6 Legislative Plaza
Nashville, TN 37243-0212