S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 12-74

Lewis County Highway Advisory Commission

QUESTIONS

1. Who may serve as chair for the Lewis County Highway Advisory Commission (the "Advisory Commission"), created by Chapter 395 of the 1937 Tennessee Private Acts, as subsequently amended, and how is the chair selected?

2. Who are the members of the Advisory Commission?

3. If the county mayor is elected chair of the county legislative body under Tenn. Code Ann. § 5-5-103(b), does the county mayor automatically serve as chair of the Advisory Commission?

4. May the mayor appoint the county legislative body chair *pro tempore* to serve as an Advisory Commission member in his or her place?

5. When are new members of the Advisory Commission appointed?

6. What is the proper procedure to challenge an individual's right to hold a seat on a county committee?

7. What is the statutory pay of Advisory Commission members?

OPINIONS

1. The chair of the Advisory Commission is one of the three members of the Advisory Commission, and is elected every two years by a majority vote of the three Advisory Commission members.

2. The Advisory Commission has three members: the county judge (now the county mayor), a member of the quarterly county court (now the county legislative body), and a private citizen and free-holder holding no public office or position and having no official connection with the county. The mayor serves by virtue of his or her office, while the county legislative body elects the two remaining Advisory Commission members.

3. No.

4. Under Tenn. Code Ann. § 5-6-106(b)(2), the county mayor may appoint a staff member or member of the county legislative body to act in his or her stead as an Advisory Commission member. Since, under Tenn. Code Ann. § 5-5-103(b)(1), the county chair *pro tempore* is also a member of the county legislative body, the county mayor may designate the chair *pro tempore* to carry out this function. If the Advisory Commission has elected the county mayor as its chair, then any designee named by the mayor to serve on the Advisory Commission in his or her stead would also serve as chair for any Commission meetings attended in place of the mayor.

5. The county mayor becomes an Advisory Commission member when he or she is elected and qualifies for the office of county mayor. The two remaining members are elected by the county legislative body every two years at its October meeting, beginning in October, 1938. The two members elected by the county legislative body take office on November 1 after the October meeting where they are elected.

6. The proper method by which to challenge the right of a public official to hold office is by *quo warranto* action under Tenn. Code Ann. §§ 29-35-101 to -121.

7. If the Lewis County Commission ratified 1996 Tenn. Priv. Acts, ch. 153 by December 1, 1996, then the members of the Advisory Commission receive $40.00 a day for their services rendered, and the chair receives $300.00 per month. The chair of the Lewis County Commission should provide the Tennessee Secretary of State certified copies of the resolution or minutes reflecting such approval. If the County Commission did not ratify 1996 Tenn. Priv. Acts, ch. 153 by December 1, 1996, then that act never took effect, and the private act then in effect continues to govern. The private act in effect prior to Chapter 155 was 1974 Tenn. Priv. Acts, ch. 334, which provides that members of the Advisory Commission are entitled to not more than $20.00 per day for their services actually rendered and that the chairman of said commission shall receive not more than $100.00 per month. The exact amount of the compensation is to be determined by resolution of the Lewis County Commission.

ANALYSIS

This opinion addresses several questions regarding the Lewis County Highway Advisory Commission (the "Advisory Commission"). The Advisory Commission was created under 1937 Tenn. Priv. Acts, ch. 395, as subsequently amended (hereinafter "Chapter 395").[1] Chapter 395 applies in any county having a population of not less than 5250 and not more than 5265 according to the federal census of 1930 or any subsequent federal census. 1937 Tenn. Priv. Acts,

[1] Chapter 395 has been amended on several occasions since its passage in 1938. *See* 1996 Tenn. Priv. Acts, ch. 153; 1991 Tenn. Priv. Acts, ch. 31; 1990 Tenn. Priv. Acts, ch. 134; 1984 Tenn. Priv. Acts, ch. 177; 1974 Tenn. Priv. Acts, ch. 334; 1973 Tenn. Priv. Acts, ch. 77; 1970 Tenn. Priv. Acts, ch. 323; 1965 Tenn. Priv. Acts, ch. 281; 1963 Tenn. Priv. Acts, ch. 255; 1961 Tenn. Priv. Acts, ch. 69; 1951 Tenn. Priv. Acts, ch. 407; 1949 Tenn. Priv. Acts, ch. 409; 1943 Tenn. Priv. Acts, ch 198. For purposes of simplicity, this opinion refers to Chapter 395 as amended as "Chapter 395".

ch. 395, § 1. Lewis County falls within this population bracket. Section 2 of Chapter 395 provides in relevant part:

> That there is hereby created a County Highway Advisory Commission, composed of three members, one of whom shall be the County Judge; one of whom shall be a member of the Quarterly County Court to serve only while he shall be a member of the Quarterly County Court; and the other shall be a private citizen and free-holder holding no public office or position and having no official connection with the county. The Quarterly County Courts of counties coming within the provisions of this Act shall elect the two members of this Commission to serve with the County Judge at the regular session of the Quarterly County Court in April 1937, and said Commission shall serve until November 1, 1938, and shall perform such duties as may be hereinafter set out in this Act. At the regular meeting of the Quarterly County Court in October, 1938, and biennially thereafter, the two members of the Commission mentioned above shall be elected by said Quarterly County Court, and said members along with the County Judge as ex-officio member of said Commission shall take office on November 1, 1938, and biennially thereafter and hold office for a period of two years or until their successors are elected and qualified. It is expressly provided and it is the legislative intent that said County Highway Advisory Commission assume the duties of office from and after the election of the members of said Commission at the regular meeting of the Quarterly County Court in April, 1937, and that said Commission shall work in conjunction with the present Commissioner of Roads, and with the Commissioner who is to be elected by the Quarterly County Court at its regular meeting in January, 1938, to serve until September 1, 1938, and/or any Highway Commissioner duly elected thereafter.

The county judge referenced in Chapter 395 was the title of the chief executive officer of Lewis County when Chapter 395 was enacted. The chief executive officer now has the title of county mayor, who has all the powers and duties formerly exercised by the county judge under general, special, local, or private acts. Tenn. Code Ann. § 5-6-106(a). Similarly, the quarterly county court referenced in Chapter 395 has been abolished and all its legislative powers are now vested in the county legislative body, or county commission. Tenn. Code Ann. § 5-5-101(b). Chapter 395, therefore, must be read together with the current statutes of general applicability governing these county offices. Tenn. Code Ann. § 5-6-106(b)(1) provides in part that "[t]he county mayor or the county mayor's designated representative shall serve as a nonvoting ex officio member of each committee of the county legislative body and of each board, commission or authority of the county government, *except as provided by law* or by action of the county legislative body." (Emphasis added). Since Chapter 395 designates the county mayor a voting member of the Advisory Commission, Tenn. Code Ann. § 5-6-106(b)(1) does not apply.

1. The initial question is who serves as Advisory Commission chair and by what authority the chair is designated. As cited above, Section 2 of Chapter 395 provides that the county mayor serves as a voting member of the Advisory Commission. Section 2 of Chapter 395 provides in relevant part that "[s]aid County Highway Advisory Commission shall meet in the office of the commissioner of highways upon the second Monday in each month and at such

other times as it may be called by the chairman, *who shall be elected biennially by a majority vote of said Commission*." (Emphasis added). The term "Commission" in Chapter 395 refers to the Advisory Commission and not the county legislative body. The chair of the Advisory Commission, therefore, is elected every two years by a majority vote of the Advisory Commission members.

2. The composition of the Advisory Commission is established by Section 2 of Chapter 395, which provides that the Advisory Commission has three members: the county judge (now the county mayor), a member of the quarterly county court (the county legislative body which is now the county commission), and a private citizen who is a free-holder holding no public office or position and having no official connection with the county. The mayor serves by virtue of his or her office, while the county legislative body elects the two remaining Advisory Commission members.

3. Under Tenn. Code Ann. § 5-5-103(b), a county legislative body may elect the county mayor to be its chair. However, under Chapter 395, a county mayor elected as chair of the county legislative body does not automatically become the chair of the Advisory Commission. As discussed above, Chapter 395 provides that the members of the Advisory Commission elect the chair.

4. The county mayor may designate the county legislative body's chair *pro tempore* to serve in his or her stead as an Advisory Commission member. Tenn. Code Ann. § 5-6-106(b)(2) sets forth the general authority of the county mayor as follows:

> (2) In those circumstances not addressed by the provisions of subdivision (b)(1), the county mayor may designate, from time to time, a professional staff member with appropriate training or a member of the county legislative body to sit in the county mayor's place *on any board, authority or commission that the county mayor serves upon by virtue of holding the office of county mayor*. Any such designee shall have the powers, including the power to vote, as are otherwise conferred upon the county mayor when serving upon such board, authority or commission. At any such meeting attended by the county mayor, only the county mayor shall exercise voting power.

(Emphasis added). Chapter 395 does not address the mayor's authority to designate anyone to act in his or her stead as an Advisory Commission member. Thus, under Tenn. Code Ann. § 5-6-106(b)(2), the county mayor may appoint a staff member or member of the county legislative body to act in his or her stead as an Advisory Commission member. Since, under Tenn. Code Ann. § 5-5-103(b)(1), the county chair *pro tempore* is also a member of the county legislative body, the county mayor may designate the chair *pro tempore* to carry out this function. Should the Advisory Commission elect the county mayor as its chair and the mayor appoint someone to act in his or her stead pursuant to Tenn. Code Ann. § 5-6-106(b)(2), then the mayor's designee would act as chair of the Advisory Commission when attending meetings of the Advisory Commission in place of the county mayor. *See* Tenn. Code Ann. § 5-6-106(b)(2) (stating that "[a]ny such designee shall have the powers, including the power to vote, as are otherwise conferred upon the county mayor when serving upon such board, authority or commission").

5. Section 2 of Chapter 395, as previously quoted, addresses the election of members of the Advisory Commission. Under Section 2, the county mayor becomes an Advisory Commission member when he or she is elected and qualifies for the office of county mayor. The two remaining members are elected by the county legislative body every two years at its October meeting, beginning in October, 1938. The two members elected by the county legislative body take office on November 1 after the October meeting where they are elected.

6. Tennessee's *quo warranto* statutes, codified at Tenn. Code Ann. §§ 29-35-101 to -121, set forth the procedure to seek to challenge an individual's right to hold a seat on a county committee. Under Tennessee law, a public officer's title to office may be tried under the *quo warranto* statutes. *Id*. A *quo warranto* action regarding local public officials is ordinarily brought by the district attorney general. *See* Tenn. Code Ann. § 29-35-109. *See also Snow v. Pearman*, 222 Tenn. 458, 463, 436 S.W.2d 861, 864 (1968).

7. The final question regards the statutory pay of members of the Advisory Commission. Under 1996 Tenn. Priv. Acts, ch. 153, members of the Advisory Commission receive $40.00 per day for their services rendered, and the chair of the Advisory Commission receives $300.00 per month. This act, however, was subject to approval by a two-thirds vote of the legislative body of Lewis County. 1996 Tenn. Priv. Acts, ch. 153, § 2. The Secretary of State's compilation of 1996 private acts does not indicate that the act was locally approved. This Office has, however, received copies of the Lewis County Commission minutes showing that the Commission approved the act on December 16, 1996.

Under Tenn. Code Ann. § 8-3-202, in effect when Chapter 153 was enacted, where an act requiring local approval and notification of the Secretary of State under Tenn. Code Ann. § 8-3-205 contains no deadline for such action, "a failure to approve by December 1 of the year the act was passed shall render it null and void and of no effect whatsoever." [2] Chapter 153 of the 1996 Private Acts contains no deadline for its local approval and, therefore, needed to be locally approved by December 1, 1996. If the Lewis County Commission ratified Chapter 153 by December 1, 1996, then the members of the Advisory Commission receive $40.00 a day for their services rendered, and the chair receives $300.00 per month. The chair of the Lewis County Commission should provide the Secretary of State with certified copies of the resolution or minutes reflecting that the Commission did approve Chapter 153 by the required December 1, 1996 date. [3]

If the County Commission did not ratify 1996 Tenn. Priv. Acts, ch. 153 by December 1, 1996, then that act never took effect, and the prior private act that was in effect at that time continues to govern. Under 1974 Tenn. Priv. Acts, ch. 334, § 1, (the prior act in effect), members of the Advisory Commission are entitled to "not more than $20.00 per day for their services actually rendered and the chairman of said commission shall receive not more than

[2] This deadline was enacted as part of 1957 Tenn. Pub. Acts, ch. 379, and thus was in effect in 1996.

[3] As noted above, the Lewis County Commission minutes provided to this office indicate that Commission approval did not occur until December 16, 1996.

$100.00 per month with the exact amount of the compensation of the members and chairman to be determined by resolution of the quarterly county court." The Secretary of State has certified that Chapter 153 of the 1974 Tennessee Private Acts was locally approved.

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