

STATE OF TENNESSEE
OFFICE OF THE
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March 6, 2013

Opinion No. 13-18

Elected State or County Official Serving on a County Soil Conservation District

QUESTIONS

1. May a person elected to the General Assembly serve as either an elected or appointed member of a county Soil Conservation District?
2. May a person elected to any county public office serve as either an elected or appointed member of a county Soil Conservation District?

OPINIONS

1. A person elected to the General Assembly may not serve as an elected or appointed member of a county Soil Conservation District.
2. There is no law of general applicability preventing a person elected to a county public office from also serving as an elected or appointed member of a county Soil Conservation District. However, common law incompatibility or local laws may prevent the same individual from occupying these two offices.

ANALYSIS

1. The Tennessee Constitution prohibits a person from holding “more than one lucrative office at the same time.” Tenn. Const. art. II, § 26. The term “office” under this provision refers to state offices. *Glasgow v. Fox*, 214 Tenn. 656, 661, 383 S.W.2d 9, 11 (1964); *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495 (1931). A person elected to the General Assembly holds a State office. *Phillips v. West*, 213 S.W.2d 3, 6 (Tenn. 1948); Tenn. Att’y. Gen. Op. 11-58 (July 18, 2011). This Office has previously opined that a member of a Soil Conservation District also holds a State office. *See* Op. Tenn. Att’y. Gen. No. 07-143 (October 11, 2007). Therefore, article II, section 26 of the Tennessee Constitution prohibits a person from simultaneously holding a position in the General Assembly and a position on a county Soil Conservation District.

2. Article II, section 26 does not address the simultaneous holding of State and county offices. *Boswell*, 43 S.W.2d at 495. Thus, a person can hold both a county office and a State office without violating article II, section 26 of the Tennessee Constitution. *Phillips*, 213 S.W.2d at 6. *See also* Tenn. Att’y. Gen. Op. 07-159 (Dec. 6, 2007); Tenn. Att’y. Gen. Op. 02-117 (Oct. 22, 2002);

Tenn. Att’y Gen. Op. 82-529 (Dec. 14, 1982).

Even though the Tennessee Constitution does not prohibit simultaneously holding a State office, such as a position on a Soil Conservation District, and a county office, holding such dual offices may be prohibited under common law principles or by local law. Under common law an individual is prohibited from holding incompatible offices. *State ex. rel. Little v. Slagle*, 89 S.W. 326, 327 (Tenn. 1905). As the Tennessee Supreme Court observed in *Slagle*, the “rule at common law is that, where one accepts a second office incompatible with one already held by him, the office first held is thereby ipso facto terminated without judicial proceedings of any kind.” *Slagle*, 89 S.W. at 327. *See also* Tenn. Att’y Gen. Op. 07-159 at 2. The question of incompatibility depends on the circumstances of each individual case, and asks 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. Tenn. Att’y Gen. Op. 07-159 at 2 (citing 67 C.J.S. *Officers* § 38). For example, an inherent inconsistency exists where one office is subject to the supervision or control of the other. 63C Am. Jur. 2d *Public Officers and Employees* § 59. *See also State v. Thompson*, 246 S.W.2d 59, 61 (Tenn. 1952); Tenn. Att’y Gen. Op. 99-195 (Sept. 28, 1999). The responsibilities of each office must be reviewed to determine whether they are incompatible under the common law.

Local laws or charters may also prevent county officials from holding a county and a State office. *See Hatcher v. Chairman*, 341 S.W.3d 258, 263 (Tenn. Ct. App. 2009) (local law precluded a member of the city council from holding another public office); Tenn. Att’y Gen. Op. 01-152 (Sept. 25, 2001) (noting that a city charter may prohibit an alderman from also serving as constable). Thus local laws must be consulted to determine if such a prohibition applies to the particular county office held by the person seeking a position on a county Soil Conservation District.

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