STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

February 11, 2014

Opinion No. 14-17

Employee of a State Institution of Higher Education Holding Elected Office

QUESTION

Can an employee of a state institution of higher education seek election or re-election to a local or state office if (1) there are no direct federal funds supervised by or used to fund the department, and (2) said person, outside of state employment, already meets or met the exempted description of "popularly elected official" under Tenn. Code Ann. § 2-19-201(3) prior to employment by the state institution of higher education?

OPINION

Yes. Such an employee is specifically exempted from the provisions of the federal Hatch Act, and the Little Hatch Act does not prohibit a state employee from seeking election or re-election.

ANALYSIS

Two statutory schemes are implicated by this question. The first is 5 U.S.C. §§ 1501 to 1508, known as the federal "Hatch Act." As this Office has previously observed, the Hatch Act prohibits certain state employees from running for office. *See, e.g.,* Tenn. Att'y Gen. Op. 10-94 (Aug. 27, 2010). But 5 U.S.C. § 1501(4)(B)(i) specifically exempts "an individual employed by an educational or research institution . . . which is supported in whole or in part by . . . a State or political subdivision thereof." Therefore, the Hatch Act does not bar an employee of a state institution of higher learning from running for office. *See* Tenn. Att'y Gen. Op. 85-253 (Sept. 30, 1985) (opining that the Hatch Act does not bar a state university faculty member from seeking elective office).

The second statutory scheme is Tenn. Code Ann. §§ 2-19-201 to -208, known as the "Little Hatch Act." The Little Hatch Act includes employees of any educational institution supported primarily by state funds within the definition of "public officers and employees" governed by the Act, but it expressly excludes "popularly elected officials." Tenn. Code Ann. § 2-19-201(3). While the Little Hatch Act contains various prohibitions against a public employee's political activity, it does not bar a public employee from seeking election or re-election, irrespective of whether the employee already meets or met the exempted description of a

"popularly elected official" under Tenn. Code Ann. § 2-19-201(3) prior to employment by the state educational institution. *See* Tenn. Att'y Gen. Op. 85-253 (Sept. 30, 1985).

ROBERT E. COOPER, JR.
Attorney General and Reporter

JOSEPH F. WHALEN
Associate Solicitor General

MICHAEL K. MARKHAM
Senior Counsel

Requested by:

The Honorable John Stevens
State Senator
3 Legislative Plaza
Nashville, Tennessee 37243