STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

March 27, 2014

Opinion No. 14-36

Municipal Board of Education Elections

QUESTION

May a municipality cancel its board-of-education elections where only one candidate has successfully qualified for each of the board-of-education positions?

OPINION

No. Tenn. Code Ann. § 49-2-201(a)(1) requires that a local board of education be elected by the people, and an election need not be contested.

ANALYSIS

In 2012, the General Assembly enacted legislation authorizing a municipality to create a city school system. *See* Tenn. Code Ann. § 49-2-127(a). Under Tenn. Code Ann. § 49-2-127(b),

> the governing body of the municipality shall, by ordinance, establish a city board of education in compliance with § 49-2-201; however, there shall be not less than three (3) nor more than eleven (11) members, and the members may be elected in the same manner, either from districts or at large, or a combination of both, used to elect members of the governing body of the municipality. . . . If a special election is requested to elect members of the initial board of education, then the municipality shall pay the costs of the election. The members shall take office on the first day of the first month following certification of the election results.

Tenn. Code Ann. § 49-2-201(a)(1) provides that "[n]otwithstanding any other law to the contrary, there shall be a board of education *elected by the people*" (emphasis added). This Office has previously opined that this statutory provision supersedes any private act or county charter provision providing otherwise with respect to the election of local school-board members. *See* Tenn. Att'y. Gen. Op. 12-103 (Nov. 2, 2012); Tenn. Att'y. Gen. Op. 12-08 (Jan. 18, 2012). The language of Tenn. Code Ann. § 49-2-201(a)(1) mandates that the members of a local board of education be elected

by the people. And as a Tennessee Special Supreme Court recently observed, "elective offices in Tennessee do not depend upon opposition from another candidate." *Hooker v. Haslam*, No. M2012-01299-SC-R11-CV, 2014 WL 1010367, at *15 (Tenn. Mar. 17, 2014).

> A candidate who does not draw opposition, whether on the ballot or as a write-in, is nevertheless elected; a lack of opposition does not negate the exercise of the vote by the electorate. In other words, one may be elected to public office even though the election was uncontested.

Id. Therefore, a municipality may not cancel its elections for school-board members where only one candidate has qualified for each school-board position.

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