STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

August 27, 2014

Opinion No. 14-78

Procedures for Filling a Vacancy in the State Senate

QUESTIONS

1. A vacancy will occur in Senate District 30 on August 29, 2014. What statute governs the process for filling this vacancy?

2. When would an election to fill the vacancy occur?

3. What would be the procedure for nominating candidates?

4. Are members of the House of Representatives who have been nominated to be on the ballot in November 2014 by winning the August primary election eligible to be a candidate to fill the vacancy in Senate District 30?

OPINIONS

1. Because there will be more than two years remaining in the term but less than 12 months before the November general election when the vacancy occurs, Tenn. Code Ann. §§ 2-14-201(b) and -202(d) govern the process for filling the vacancy in Senate District 30.

2. An election to fill the vacancy in Senate District 30 would occur as part of the November 2014 general election.

3. Pursuant to Tenn. Code Ann. § 2-14-202(d)(3), political-party candidates would be nominated by the members of the party's county executive committee who represent the precincts composing Senate District 30; however, if the members of a party's county executive committee are selected at large, the party's candidate would be nominated by the full executive committee.

4. Tenn. Code Ann. § 2-5-101(f)(5) prohibits a candidate from qualifying for or being nominated or elected to more than one office of member of the general assembly. But any candidate for the House of Representatives who has won the August primary election and thus been nominated to represent a political party may withdraw from being the political-party House nominee as long as such withdrawal occurs before the political party's county executive committee convenes for the

purpose of selecting a nominee to fill the Senate vacancy. Such a withdrawal would mean that the political party may make no further nomination for the House position.

ANALYSIS

1. to 3. This Office understands that a vacancy will occur in Senate District 30 on August 29, 2014, upon the resignation of the current senator and that more than two years will remain in the term. The procedure for filling a vacancy in the office of member of the general assembly is governed by the provisions of Tenn. Code Ann. §§ 2-14-201 and -202. Tenn. Code Ann. § 2-14-201 provides as follows:

> (a) If twelve (12) months or more remain prior to the next general election for members of the general assembly and the seat of a member of either house becomes vacant, a successor shall be elected pursuant to § 2-14-202(a)-(c) by the qualified voters of the district in which the vacancy occurred. The successor shall serve the remainder of the original term.
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> (b) If a vacancy occurs with more than two (2) years remaining in a term in the state senate, but less than twelve (12) months prior to the next general election for members of the general assembly, then a successor shall be elected pursuant to § 2-14-202(d) by the qualified voters of the district in which the vacancy occurred. The successor shall serve the remainder of the original term.

Since the vacancy will occur with more than two years remaining in the term but less than 12 months before the November general election, the provisions of Tenn. Code Ann. § 2-14-201(b) govern the process for filling the vacancy. That statute provides that a successor shall be elected pursuant to § 2-14-202(d), which provides as follows:

> (1) If a vacancy occurs in the state senate in a seat with more than two (2) years remaining in the term, but less than twelve (12) months before the next general election for members of the general assembly, candidates for the primary elections and independent candidates shall qualify at the regular qualifying deadline for state elections.
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> (2) If a vacancy as described in subdivision (d)(1) occurs after the seventh day before the regular qualifying deadline for statewide offices, candidates for the primary elections and independent candidates shall file the necessary qualifying petitions before twelve o'clock (12:00) noon, prevailing time, on the sixth Thursday before the day of the primary election. Any candidate wishing to withdraw shall do so before twelve o'clock (12:00) noon, prevailing time, on the fourth day after the qualifying deadline.

> (3) If a vacancy as described in subdivision (d)(1) occurs after the sixth Thursday before the primary election, the members of the county executive committees who represent the precincts composing such senate district may nominate a candidate to appear on the November election ballot by any method authorized under the rules of the party. The procedure to be followed by an executive committee shall be the same as set forth in § 2-13-204(b)(4). Persons so chosen shall be certified to every county election commission wholly or partially in the district by twelve o'clock (12:00) noon, prevailing time, on the forty-fifth day prior to the regular November election. Independent candidates shall qualify by filing petitions as provided for in § 2-5-104 by twelve o'clock (12:00) noon, prevailing time, on the forty-fifth day prior to the regular November election. Any candidate wishing to withdraw shall do so before twelve o'clock (12:00) noon, prevailing time, on the fourth day after the qualifying deadline.
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> (4) If a vacancy as described in subdivision (d)(1) occurs within forty-five (45) days of the next general election for legislators, the candidate receiving the highest number of write-in votes at such election shall be elected.

Because this vacancy will occur after the sixth Thursday before the primary election but more than 45 days before the November general election, the provisions of § 2-14-202(d)(3) govern the manner in which political-party candidates are nominated. Pursuant to this statute, members of a political party's county executive committee who represent the precincts composing Senate District 30 "may nominate a candidate to appear on the November election ballot by any method authorized under the rules of the party" in accordance with the procedures set forth in Tenn. Code Ann. § 2-13-204(b)(4).

Tenn. Code Ann. § 2-13-204(b)(4) provides that if the office to be filled is a seat in the general assembly, it is to be filled by the members of the party's county executive committee who represent precincts within the district, and in counties with two or more districts, only members of the party's county executive committee who represent precincts in a particular district would nominate the party's candidate.[1] If, however, the members of a party's county executive committee are selected at large, then the party's candidate would be nominated by the full executive committee. Tenn. Code Ann. § 2-13-204(b)(4) also requires that a convention for the purpose of selecting a nominee must occur within 10 days of the date the vacancy occurs.

Once the convention is held in accordance with Tenn. Code Ann. § 2-13-204(b)(4) and a nominee is selected, the political party would then need to certify its candidate to the county election commission by the 45th day before the November

[1] Tenn. Code Ann. § 2-13-204(b)(4) does not contain any requirements as to the residency of the members of a party's county executive committee.

general election in order for the candidate's name to appear on the ballot for that election. Similarly, any individual who wishes to run as an independent candidate would have to qualify by filing a nominating petition that complies with the requirements of Tenn. Code Ann. § 2-5-101(b) with the county election commission by the 45th day before the November general election. A successor to fill the vacancy in Senate District 30 would then be elected at the November general election.

4. Tenn. Code Ann. § 2-5-101(f)(5) provides that

> [n]o candidate, whether independent or represented by a political party, may be permitted to submit and have accepted by an election commission, more than one (1) qualifying petition, or otherwise qualify and be nominated, or have such candidate's name anywhere appear on any ballot for any election or primary, wherein such candidate is attempting to be qualified for and nominated or elected to more than one (1) state office as described in either § 2-13-202(1) or (2) or in article VI of the Constitution of Tennessee or more than one (1) constitutional county office described in article VII, § 1 of the Constitution of Tennessee or any other county-wide, voted on by voters during any primary or general election.

The State offices described in Tenn. Code Ann. § 2-13-202(1) and (2) are the offices of governor and of member of the general assembly. Thus, pursuant to this provision, members of the House of Representatives who have been nominated to be on the ballot in November 2014 by winning the August primary election would be prohibited from also qualifying or otherwise appearing on the November 2014 general-election ballot as a candidate to fill the vacancy in Senate District 30.

Any candidate for the House of Representatives who has been nominated to represent a political party may, however, withdraw from being the political-party nominee. *See* Tenn. Code Ann. § 2-13-204(a). Such withdrawal must occur before the political party's county executive committee convenes for the purpose of selecting a nominee to fill the vacancy in Senate District 30 in order to comply with the provisions of Tenn. Code Ann. § 2-5-101(f)(5). As previously stated, such convention must occur within 10 days of the date the vacancy occurred. Tenn. Code Ann. § 2-13-204(b)(4). Withdrawal under such circumstance would mean that "the political party may make no further nomination for the position in question." *Id.* § 2-13-204(a).

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