

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

March 19, 2015

Opinion No. 15-25

County Board of Education Vacancies

Question 1

Why are county commissioners, who have no education requirements and who are not as familiar as a school board with county education issues, allowed to appoint school board members?

Opinion 1

Article VII, Section 2, of the Tennessee Constitution requires local legislative bodies to make appointments to fill vacancies that occur on local school boards until the next election.

Question 2

Would amending Tennessee Code Annotated §§ 49-2-201(a)(1) and -202(e) to allow the members of a county school board to appoint new members to fill vacancies violate Article VII, Section 2, of the Tennessee Constitution?

Opinion 2

Yes.

ANALYSIS

Article VII, Section 2, of the Tennessee Constitution provides that “[v]acancies in county offices shall be filled by the county legislative body, and any person so appointed shall serve until a successor is elected at the next election occurring after the vacancy and is qualified.” A member of a county school board is a “county officer” as that term is used in Article VII, Section 2. *Marion County Bd. Of Commissioners v. Marion County Election Commission*, 594 S.W. 2d 681, 686 n. 5 (Tenn. 1980).

Since county school board members are county officers, and since county officers must be appointed by the county legislative body, it follows that the county legislative body—here the county commission—must fill vacancies that occur on county school boards. *See*, Tenn. Op. Att’y. Gen. 10-88 (July 28, 2010) (vacancies on county boards of education) Tenn. Op. Att’y. Gen. 10-26 (March 8, 2010) (vacancies on school boards in general); Tenn. Op. Att’y. Gen. 81-108 (February 13, 1981) (vacancy on county board where private act conflicts with Tenn. Constitution).

Consistent with Article VII, Section 2, of the Tennessee Constitution, Tenn. Code Ann. § 49-2-201(a)(1) provides that vacancies on a county board of education shall be filled by the local legislative body:

[. . .] Members of county boards of education shall be residents of and elected from districts of substantially equal population established by resolution of the local legislative body. Members of special school district boards of education shall be elected according to special or private act, but shall be popularly elected on a staggered term basis. *Vacancies occurring on the board shall be filled by the local legislative body.* In special school districts, vacancies on the board arising from death or resignation shall be filled by the special school district school board. Any person so appointed shall serve until a successor is elected and qualifies according to law. The successor shall be elected at the next general election for which candidates have a sufficient time to qualify under the law. [. . .].

(Emphasis added).

Likewise consistent with Article VII, Section 2, of the Tennessee Constitution, Tenn. Code Ann. § 49-2-202(e) provides, regarding county boards of education, that “[w]hen a vacancy occurs, the unexpired term shall be filled at the next regular meeting of the county legislative body or at a special meeting of the county legislative body.”

However, amending Tenn. Code Ann. §§ 49-2-201(a)(1) and -202(e) to allow the county school board--rather than the county legislative body--to appoint new members would be totally inconsistent with Article VII, Section 2. Such an amendment would permit members of a county school board to fill vacancies on their own board and would not comply with the Article VII, Section 2, requirement that those vacancies be filled by the local legislative body, in this case the county commission. The proposed amendment would, therefore, be unconstitutional.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

KEVIN STEILING
Deputy Attorney General

Requested by:

The Honorable Dennis Powers
House of Representatives
G-27 War Memorial Building
Nashville, TN 37243-0136