

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

**April 24, 2015**

**Opinion No. 15-41**

**Authority of a County Assessor of Property to Hire and Compensate Office Employees**

**Question 1**

Does a county Assessor of Property have the authority to determine the number and compensation of the employees in his or her office, within the funds appropriated for that purpose by the county legislative body?

**Opinion 1**

Yes, except when an Assessor of Property needs approval from the county legislative body to employ and compensate a secretary in accordance with Tenn. Code Ann. § 67-1-506(b)(1).

**Question 2**

Is the county legislative body authorized to adopt a compensation plan and make it mandatorily applicable to employees in the office of the Assessor of Property?

**Opinion 2**

No, except when the county legislative body's approval is required to employ and set compensation for a secretary in accordance with Tenn. Code Ann. § 67-1-506(b)(1).

**Question 3**

What authority does the county have to require compliance with this compensation plan with regard to employees of the Assessor of Property?

**Opinion 3**

See Opinion 2. The county does not have the authority to adopt and enforce a compensation plan for employees of the Assessor of Property, except when the county legislative body's approval is required to employ and set compensation for a secretary in accordance with Tenn. Code Ann. § 67-1-506(b)(1).

**Question 4**

If the county is authorized to adopt and enforce such a compensation plan, would creation of positions and determination of pay grades for employees in the office of the Assessor of Property be at the discretion of the Assessor of Property?

**Opinion 4**

See Opinions 2 and 3. The county does not have the authority to adopt and enforce a compensation plan for employees of the Assessor of Property, except when the county legislative body's approval is required to employ and set compensation for a secretary in accordance with Tenn. Code Ann. § 67-1-506(b)(1). The Assessor of Property therefore has discretion to create positions and determine pay grades for employees within the limits established by Tenn. Code Ann. § 67-1-506 and the budgetary constraints imposed by the county legislative body.

**Question 5**

Does the county legislative body or the county mayor, or any other county official, have approval authority over the creation of new positions and the compensation of those employees within the office of the Assessor of Property, other than budgetary authority?

**Opinion 5**

No, except to the extent that the county legislative body's approval is required to employ and set compensation for a secretary in accordance with Tenn. Code Ann. § 67-1-506(b)(1).

**ANALYSIS**

The authority of a county Assessor of Property to employ staff is governed by Tenn. Code Ann. § 67-1-506, which states in relevant part:

(a)(1) In order to assure that each county assessor of property shall have a minimum staff to assist the county assessor in carrying out the duties and responsibilities required by law, the assessor is authorized to appoint at least one (1) deputy assessor for each four thousand five hundred (4,500) parcels of property, as determined by the division of property assessments, over and above the first four thousand five hundred (4,500) parcels of property within the assessor's taxing jurisdiction.

[ . . . ]

(b)(1) In any county where the assessor does not qualify for a deputy assessor under this section, the assessor is authorized, with the approval of the county legislative body, to employ or appoint a secretary to assist the assessor in the operation of the assessor's office. The compensation of such secretary shall be fixed by the county legislative body and paid out of county funds.

(b)(2) The assessor shall employ such additional staff as the assessor deems necessary and establish rates of compensation for all employees within the appropriation established for the assessor's office by the county legislative body.

Tenn. Code Ann. §§ 67-1-506(a)(1), 67-1-506(b)(1)-(b)(2).

The office of Assessor of Property is a constitutional county office. "The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an *Assessor of Property*." Tenn. Const. Article VII, § 1 emphasis added). Offices commissioned by Article VII, § 1, of the Tennessee Constitution are county offices. The officials elected for those offices work under county authority. *State ex rel. Winstead v. Moody*, 596 S.W.2d 811, 813 (Tenn. 1980). The county legislative body funds the office of the Assessor of Property by determining the office's budget in accordance with Tenn. Code Ann. § 67-1-506. In that respect, the county legislative body has the authority to regulate the funding necessary for the Assessor of Property to carry out his or her duties as required by law.

Although the office of Assessor of Property is a constitutional county office and the county legislative body is granted the authority to fund that office under Tenn. Code Ann. § 67-1-506, no statutory provision grants "any governing body the authority to review the assessor's employment decisions." *Pharris v. Looper*, 6 F. Supp. 2d 720, 729 (M.D. Tenn. 1998).<sup>1</sup> Likewise, no statutory provision grants any other county official such authority. Nevertheless, the budgetary constraints imposed by the county legislative body will impact the ability of an Assessor of Property to employ staff.

In counties where Tenn. Code Ann. § 67-1-506(a)(1) applies, an Assessor of Property has statutory authority to employ "a minimum staff," including deputy assessor(s), as well as to determine the level and amount of compensation for staff from the funds provided by the county legislative body as part of the overall budget of the office. Since an Assessor of Property has singular authority under this section to employ staff, the Assessor "must also be authorized to make all employment decisions concerning them." *Pharris*, 6 F. Supp. 2d at 729. Determining compensation for staff is an employment decision that falls within the statutory authority of an Assessor of Property.

In counties where Tenn. Code Ann. § 67-1-506(b)(1) applies, an Assessor of Property may appoint a secretary only after approval by the county legislative body. The county legislative body also sets the secretary's compensation. *Id.* Once an Assessor receives approval from the county legislative body to employ a secretary in accordance with subsection (b)(1), the Assessor selects the individual for employment. *See Pharris*, 6 F. Supp. 2d at 729 (recognizing that the Assessor has "final decision making authority regarding the employment of personnel in his office"). Under Tenn. Code Ann. § 67-1-506(b)(2), the Assessor maintains exclusive authority to employ additional staff and establish compensation for the additional staff "within the appropriation established for the assessor's office by the county legislative body." The Assessor of Property

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<sup>1</sup> An historical search of the text of Tenn. Code Ann. § 67-1-506, confirms that the language of the statute has not changed since the decision in *Pharris v. Looper*, 6 F. Supp. 2d 720, 729 (M.D. Tenn. 1998).

therefore has discretion to employ and to establish compensation for additional staff under subsection (b)(2), but this discretion is limited by the budgetary constraints of the appropriation the office receives from the county legislative body. *Id.*

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