STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

October 11, 2016

Opinion No. 16-39

Automatic Removal of Ex Officio Emergency Communications District Board Members

Question

Do the automatic removal provisions of Tenn. Code Ann. § 7-86-314(a) apply to ex officio emergency communications district board members, i.e., members serving pursuant to Tenn. Code Ann. § 7-86-105(b)(3) by virtue of the office they hold?

Opinion

Yes.

ANALYSIS

An emergency communications district ("ECD") is "a 'municipality' or public corporation." Tenn. Code Ann. § 7-86-106. If established by a referendum within all or part of a municipality or county, see Tenn. Code Ann. § 7-86-104(a), an ECD is responsible for the creation of an emergency communications service to respond to emergency calls within that district. See Tenn. Code Ann. § 7-86-107.

The authority and powers of the ECD are "vested in and exercised by a majority of the members of the board of directors of the district." Tenn. Code Ann. § 7-86-106. The composition of the board is governed by statute. As relevant here, for ECDs established by counties with a population greater than 300,000 and less than 750,000, except for counties with a metropolitan form of government,

> the mayor, the chief of police and the fire chief of the municipality, or their representatives, with the largest population in the district, the county sheriff in the district, and the county mayor in the district, or their representatives, shall be members of the board of directors of the district.

Tenn. Code Ann. § 7-86-105(b) (emphasis added). In other words, the individuals who hold these offices, or their respective representatives, are, by virtue of the office, automatically members of ECD boards that have been established in the specified counties.

Effective July 1, 2016, a board member who does not attend a requisite number of board meetings is automatically divested of board membership.

> [*A*]*ny* member of the board of directors of an emergency communications district with four (4) consecutive unexcused absences or who fails to attend at least fifty percent (50%) of regularly scheduled meetings within any twelve-month period *shall automatically be removed from the board*. The chair of the board of directors or acting chair shall notify the appointing authority in writing that a member has been removed and that a vacancy exists on the board. Upon the removal of a member pursuant to this subsection (a), *a successor* shall be appointed to serve the remainder of the term of the member being replaced.

Tenn. Code Ann. § 7-86-314(a) (emphasis added). "Any such board member so removed under [section 314] shall be ineligible for reappointment for a period of not less than forty-eight (48) months." Tenn. Code Ann. § 7-86-314(d).

Nothing in Tenn. Code Ann. § 7-86-314(a) limits its application to particular board members. On the contrary, the indefinite article/determiner "any" indicates inclusion of all members of the specified class. *See "Any," New Oxford American Dictionary*, 3d ed. Accordingly, the plain meaning of the phrase "any member of the board of directors" includes all members of the board without limit and regardless of the basis of a member's appointment to the board. Thus, pursuant to the plain meaning of the statute, a board member who is serving *ex officio* is subject to automatic removal if he does not fulfill the statutory attendance requirements, just as is a board member who is serving pursuant to appointment by the county mayor.

This automatic removal provision of Tenn. Code Ann. § 7-86-314(a) does not conflict with the automatic *ex officio* membership provision of Tenn. Code Ann. § 7-86-105(b)(3); the two statutory provisions are easily harmonized. Section 7-86-105(b)(3) does require that five specified officials be members of an ECD board, but the statute allows any of those *ex officio* membership positions to be filled either by the specified official *or* by a representative of that official: "the mayor, the chief of police and the fire chief of the municipality, *or their representatives*," and "the county sheriff in the district, and the county mayor in the district, *or their representatives*, shall be members of the board of directors of the district." (Emphasis added.) It follows that, when an *ex officio* member is automatically removed by operation of Tenn. Code Ann. § 7-86-314(a), that *ex officio* position can and should be filled by a representative of the official who was removed. And if an *ex officio* position is filled by a representative who is then automatically removed by operation of Tenn. Code Ann. § 7-86-314(a), that *ex officio* position can and should then be filled by another representative of the official or by the official himself.

In fact, the statute itself makes clear that a board member—including an *ex officio* member— who is automatically removed may not serve on the board again for at least four years. Tenn. Code Ann. § 7-86-314(d) ("any" board member removed pursuant to section 314 is expressly "ineligible for reappointment for a period of not less than . . . 48 months"). And consistent with that provision, § 7-86-314(a) requires that a "successor" be appointed when a member is automatically removed. Since "successor" refers to someone who takes over from another person, *see New Oxford American Dictionary*, 3rd ed., the statute clearly contemplates that a membership position made vacant by automatic removal will be filled by someone *other* than the person who was automatically removed.

In sum, the automatic removal provisions of Tenn. Code Ann. § 7-86-314(a) apply, by their plain language, to *ex officio* ECD board members. This does not create any conflict with the requirement of § 7-86-105(b)(3) that certain officials serve *ex officio* as ECD board members. The statute allows those *ex officio* membership positions to be filled either by the specified official or by a representative of that official. Thus, when an *ex officio* membership position is vacant because the specified official was automatically removed from the board, the statutory *ex officio* membership requirement is nevertheless fully satisfied when that position is filled by a representative of the official.

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