STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 21-14

Residency Requirements for Members of County Boards of Education and Requirement for Filling a Vacancy on a County Board of Education

Question 1

If, during his or her term, a member of a county school board moves outside the district where he or she was elected but remains a resident of the county, is the office deemed vacant?

Opinion 1

Yes.

Question 2

If the answer to Question 1 is "yes", does the county commission fill the vacant office for the remainder of the term of the member who moved outside the district?

Opinion 2

Yes.

ANALYSIS

1. Vacancy due to member's removal of residence from district but not county.

Tennessee Code Annotated § 49-2-202(a)(1) specifies as one of the qualifications for membership on county boards of education that the members "shall be residents and voters of the county in which they are elected." And, if "any member ceases to reside in the county, the office of the member shall become vacant." *Id.* § 49-2-202(a)(5). That county residency requirement has been part of the statutory scheme governing local boards of education since 1925.[1]

When, in 1992, the legislature amended Tenn. Code Ann. § 49-2-201,[2] it included as an additional qualification that "[m]embers of county boards of education shall be residents of and

[1] 1925 Tenn. Pub. Acts, ch. 115, § 6.

[2] 1992 Tenn. Pub. Acts, ch. 535, § 39.

elected from districts . . . ."[3] Tenn. Code Ann. § 49-2-201(a)(1). The Tennessee Court of Appeals has recognized that this amendment establishes, as a qualification for school board membership, *residency in the district* from which the member is elected. *Whalum v. Shelby County Election Comm'n,* No. W2013-02076-COA-R3CV, 2014 WL 4919601, at *9 (Tenn. Ct. App. Sept. 30, 2014).

As a result, the current statutory scheme governing membership on county boards of education requires that a board member be a *resident of both the county and the district* from which he or she is elected. It follows that, if a member ceases to reside in the district, a vacancy occurs even if the member still resides in the county because that member no longer satisfies *both* requirements for membership on the board.

Tennessee Code Annotated § 8-48-101, which deals generally with vacancies in state offices, does not conflict with this statutory scheme which specifically governs vacancies on boards of education.[4] Section 8-48-101 identifies generally the ways in which an office in the State may become vacant; it provides, among other things, that a vacancy occurs when the incumbent ceases "to be a resident of the state, or of the district, circuit, or county for which the incumbent was elected or appointed." *Id*. § 8-48-101(3). In other words, when an office holder is required to be a resident of a district, a vacancy occurs when he or she ceases to reside in the district, and when an office holder is required to be a resident of a county, a vacancy occurs when he or she ceases to reside in the county. Since a school board member must be a resident of both the relevant county and the relevant district, a vacancy occurs when he or she ceases to be a resident of either the district or the county—or both. *See* Tenn. Att'y Gen. Op. No. 79-368 (Aug. 15, 1979), n. 1 ("pursuant to T.C.A. § 8–2801 once a Board member moves out of his district, he will have vacated this position on the school board representing that district.")

2. County legislative body required to fill vacancy on county school board.

When a vacancy occurs on a county school board because a school board member has ceased to reside in the county, that member's unexpired term must be filled at the next regular meeting of the county legislative body, or at a special meeting of that body. Tenn. Code Ann. § 49-2-202(e)(1). Similarly, when a vacancy occurs because a school board member has ceased to reside in the district, that vacancy "shall be filled by the local legislative body." Tenn. Code Ann. § 49-2-201(a)(1).

These two statutory requirements that vacancies on a county board of education be filled by the county legislative body are consistent with—indeed, are mandated by—article VII, section 2, of the Tennessee Constitution: "Vacancies 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

[3] The legislature is presumed to know of its prior enactments and the state of the law when it enacts legislation, so had it intended to replace the county residence requirement with a district residence requirement instead of adding the district residence requirement for school board membership it could have and would have done so. *Washington v. Robertson County*, 29 S.W.3d 466, 473 (Tenn. 2000).

[4] Even if there were a conflict, the more specific statute would take precedence over the general statute. *Washington v. Robertson County*., 29 S.W.3d 466, 475 (Tenn. 2000) ("As a matter of statutory construction, a specific statutory provision . . . will control over a more general statutory provision.").

election occurring after the vacancy and is qualified." Since county school board members qualify as county officers, *see Jordan v. Knox County*, 213 S.W.3d 751, 782 (Tenn. 2007), the Tennessee Constitution requires that any vacancy on the board must be filled by the county legislative body, such as the county commission. *See also* Tenn. Att'y Gen. Ops. No. 07-22 (Feb. 27, 2007), No. 10-88 (July 28, 2010), and No. 15-25 (Mar. 19, 2015) (vacancies on a county board of education may only be filled by the county legislative body until a successor can be elected, and any statutory provisions to the contrary would violate article VII, section 2 of the Tennessee Constitution).

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