

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

September 4, 2024

Opinion No. 24-015

South Central Tennessee Development District—Appointment of Executive Director

Question

Must an elected local official who is a board member of the South Central Tennessee Development District resign from the board, as well as from his or her elected office, before applying for the position of executive director of the district?

Opinion

Yes.

ANALYSIS

The Development District Act of 1965 provides for the creation and functioning of regional development districts. Tenn. Code Ann. §§ 13-14-101, *et seq.* Districts created under this Act are given the responsibility for area-wide economic planning in their respective districts. *See id.* §§ 13-14-102, -103. Tennessee has nine development districts.¹ The districts encompass one or more counties or parts of counties and are formed in a manner “conducive to [the] efficient planning and orderly economic development of the state.” *Id.* § 13-14-102(a).

A board of directors governs each district. The board “shall consist of the county mayor of each county within the district, the mayor of each municipality within the district, the chief executive officer of any metropolitan government within the district, one (1) representative from a local agency in each county dealing with problems of industrial development or promotion appointed by the county mayor, and one (1) state senator and one (1) state representative whose senatorial or representative districts lie wholly or in part in the development district.” *Id.* § 13-14-104.

Among other things, the board can “appoint an executive committee to act for it and determine the authority of such committee.” *Id.* The board is also authorized to “[r]eceive and expend funds . . . for staffing,” *id.* § 13-14-106(a)(2), and “[d]evelop written personnel procedures . . . for the hiring, promotion, demotion and dismissal of all employees,” *id.* § 13-14-106(b)(3).

¹ Governor Ellington established the nine development districts by virtue of Executive Order No. 17 (Oct. 14, 1968), as amended on June 23, 1970. The South Central Tennessee Development District is one of the nine development districts established by Executive Order No. 17.

Pursuant to this authority, the South Central Tennessee Development District has established an executive committee and the position of executive director. See <https://www.sctdd.org>.

The question presented is whether a board member of the South Central Tennessee Development District who sits on the board by virtue of his or her elected local office must resign from the board, as well as from his or her elected office, before applying for the position of executive director.

The Development District Act of 1965 includes no specific conflict-of-interest provisions. Tennessee’s general conflict-of-interest statute, which expressly includes development districts, governs:

It is unlawful for any officer, committee member, director, or other person whose duty it is to *vote for, let out, overlook, or in any manner to superintend* any work or any contract in which any municipal corporation, county, state, *development district*, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, *to be directly interested in any such contract*. “*Directly interested*” means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. . . .

Tenn. Code Ann. § 12-4-101(a)(1) (emphasis added). This statutory language is broad. And the Tennessee Supreme Court has stated that “it should be liberally construed” “to protect the public from official corruption and oppression.” *State ex. rel. Abernathy v. Robertson*, 5 Tenn. Civ. App. 438, 454 (5 Higgins) (1914) (examining statutory predecessors to Tenn. Code Ann. §§ 12-4-101 & 102); see also *Madison Cnty. v. Alexander*, 94 S.W. 604, 604-05 (Tenn. 1906); *Hope v. Hamilton Cnty.* 47 S.W. 487, 488 (Tenn. 1898).

A board member who violates the provisions of § 12-4-101(a)(1) must forfeit all pay or compensation associated with the contract at issue, and he or she must be dismissed from membership on the board and is ineligible to serve in the same or a similar position for ten years. Tenn. Code Ann. § 12-4-102. The severity of these penalties evidences an “intent of the lawmakers to meet a serious menace to public funds by drastic and far-reaching provisions.” *Savage v. Mynatt*, 299 S.W. 1043, 1044 (Tenn. 1927) (examining statutory predecessors to Tenn. Code Ann. §§ 12-4-101 & 102).

While no precedent directly answers the question presented, we believe a court would likely hold that § 12-4-101(a)(1) requires a board member of the South Central Tennessee Development District to resign from the board before applying for the executive director position. A board member applying for the executive director position is “directly interested” in the contract. And liberally construing the conflict-of-interest statute, the board member could be found to be “overlook[ing]” or “superintend[ing]” such a contract even if he or she is never called upon to vote on it. The board member could influence the selection process—exactly what the prohibition against “overlooking” or “superintending” a contract is intended to avoid.

The board member would also have to resign from his or her elected office to apply for the executive director position *if* the elected office is a mayoral or chief executive position. Section 13-14-104 states that the board of directors “shall consist” of certain elected local officials—“the county mayor of *each* county within the district, the mayor of *each* municipality within the district, [and] the chief executive officer of *any* metropolitan government within the district.” As a general rule, “when the word ‘shall’ is used in a statute it is construed to be mandatory, not discretionary.” *Home Builders Ass’n of Middle Tenn. v. Williamson Cnty.*, 304 S.W.3d 812, 819 (Tenn. 2010). By necessity, then, the board member would have to resign from the elected local office to be removed from the board and eligible to apply. Again, this conclusion is in conformity with the statute’s longstanding overarching purpose to avoid conflicts between public officials and their private interests. *See* Tenn. Att’y Gen. 12-37 (Mar. 19, 2012) (opining that board member of a human resource agency must resign from board and his or her elected office before pursuing appointment as the executive director of the agency).

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