

STATE OF TENNESSEE

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March 29, 2005

Opinion No. 05-037

City Commissioner Serving on Board of Utility District

QUESTION

May a city commissioner for the City of Soddy-Daisy serve on the Union Fork-Bakewell Utility District Board of Commissioners?

OPINION

No state statute prohibits a city commissioner from serving on the board of commissioners of a utility district. If the city contracts with the utility district for utility services, however, the offices could be incompatible if facts and circumstances indicate that having the same individual vote on the contract as a member of the city commission and as a member of the utility board is detrimental to the public interest.

ANALYSIS

This opinion concerns whether a city commissioner for the City of Soddy-Daisy may legally serve on the Union Fork-Bakewell Utility District Board of Commissioners. Soddy-Daisy operates under the city manager-commission charter, Tenn. Code Ann. §§ 6-18-101, *et seq.* The Union Fork-Bakewell Utility District is a utility district created and operating under Tenn. Code Ann. §§ 7-82-101, *et seq.* Utility board commissioners are selected under Tenn. Code Ann. § 7-82-307, and a utility district operates independently of the city government that is located in the utility district's service area.

The Tennessee Constitution, Article II, Section 26, prohibits a person from "holding more than one lucrative office at the same time." The term "office" has been construed by Tennessee courts to mean "state office." *Phillips v. West*, 187 Tenn. 57, 213 S.W.2d 3 (1948); *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495 (1931). The offices of city commissioner and utility district commissioner are local offices and, therefore, are not covered by the prohibition of Article II, Section 26.

No state statute expressly forbids a city commissioner from also serving on the board of a utility district, nor does this service appear to violate the state's general conflict of interest statute, Tenn. Code Ann. § 12-4-101. That statute prohibits a public official from being directly interested in a contract that he or she has a duty to vote for, let out, or supervise. No such contract exists in

this case. It is possible that the city may contract for utility services with the utility district. In that case, however, the individual serving as a city commissioner and a utility district commissioner would have no personal financial interest in the contract. For this reason, Tenn. Code Ann. § 12-4-101 does not appear to be applicable. Further, since a utility district commissioner is neither a city employee nor a city official, Tenn. Code Ann. § 6-54-107 is also inapplicable.

Assuming that the city does contract with the utility district, it is possible that the positions of city commissioner and utility district commissioner could be incompatible offices. There is a common law prohibition against a public officer holding two incompatible offices at the same time. *State ex rel. Little v. Slagle*, 115 Tenn. 336, 89 S.W. 316 (1905). This prohibition is generally applied when an individual occupies two inherently inconsistent offices. 63C Am.Jur.2d *Public Officers and Employees* § 62 (1997). The question of incompatibility depends on the circumstances of each individual case, and the issue is whether the occupancy of both offices by the same person is detrimental to the public interest, or whether the performance of the duties of one interferes with the performance of those of the other. 67 C.J.S. *Officers* § 27 at 279-80 (1978). For example, an inherent inconsistency exists where one office is subject to the supervision or control of the other. *State ex rel. v. Thompson*, 193 Tenn. 395, 246 S.W.2d 59 (1952). In *Thompson*, the Tennessee Supreme Court concluded that the offices of city manager and member of the city council were incompatible because the council had the authority to appoint, remove, and supervise the city manager, and no statute then in effect permitted the same individual to hold these offices. We have found no provision authorizing the city commission of Soddy-Daisy to appoint commissioners to the Union Fork-Bakewell Utility District or to exercise any other authority over the utility district. Further, the mere fact that the city may contract with the utility district for utility services does not, of itself, make the two offices incompatible, particularly if the city receives services on the same basis as other district customers. *See* Op. Tenn. Att’y Gen. U88-46 (April 19, 1988)(concluding that, under the federal Job Training Partnership Act and state law, a local official may vote on a contract submitted by a human resources agency for which he or she serves as a director if the official is only representing the public interest and circumstances do not indicate a bias or a personal interest).

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