

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

April 8, 2005

Opinion No. 05-044

Residency Requirements for Candidates for Election to House of Representatives

QUESTION

House Bill 892 would require a candidate for election to the House of Representatives to have resided in the district to be represented for one year immediately preceding the election. Would this provision be constitutional?

OPINION

No.

ANALYSIS

This request concerns the constitutionality of House Bill 892/Senate Bill 907. This bill would delete the current language of Tenn. Code Ann. § 3-1-104 and replace it with this provision:

A candidate for election to the office of representative shall be required to reside in the representative district from which such candidate seeks to be elected for one (1) year immediately preceding the election.

The statute currently provides:

In those counties entitled to elect two (2) or more direct representatives and divided by § 3-1-103 into representative districts, a candidate for election to the office of representative shall not be required to reside in the representative district from which such candidate seeks to be elected, but shall be a resident of the county.

Tenn. Code Ann. § 3-1-104.

Under the proposed legislation, therefore, a candidate in a multi-district county would need to reside in the district he or she seeks to represent for one year preceding the election, regardless of how long the candidate has lived in the county. We think this requirement would be unconstitutional under the holding of the Tennessee Supreme Court in *State ex rel. Sonnenberg v. Gaia*, 717 S.W.2d 883 (Tenn. 1986). In that case, a candidate for the House of Representatives had been a resident of Shelby County for more than one year, but the county election commission

refused to place her name on the ballot for an election, because she had resided in the 86th District before moving her voter registration to the 97th District in June of that year. The election commission was interpreting Article II, Section 9, of the Tennessee Constitution to require the representative to reside in the area that he or she represents for one year preceding the election. Article II, Section 9, provides:

No person shall be a Representative unless he shall be a citizen of the United States, of the age of twenty-one years, and shall have been a citizen of this State for three years, and a resident in the county he represents one year, immediately preceding the election.

The Tennessee Supreme Court held that this provision requires only that the candidate reside within the county in which the district is located for one year preceding the election. Thus, the Court affirmed a lower court's ruling requiring that the candidate's name be placed on the ballot since she had resided in Shelby County for more than one year, although in the district for less than one year.¹

The *Gaia* decision was issued in 1986, but it states the current law on this issue. Further, this Office considered the constitutionality of a similar bill in Op. Tenn. Att'y Gen. 88-78 (March 29, 1988). Like House Bill 892, the legislation proposed in 1988 would have amended Tenn. Code Ann. § 3-1-104 to require a candidate to have resided in the district — not just the county — for one year. The opinion recognizes that the legislature may add qualifications to an office established by the constitution where those qualifications are reasonable. But the opinion notes that where the constitution has prescribed a particular qualification such as residency, the legislature may not contravene that qualification. Accordingly, the opinion concluded that the legislation proposed in 1988 would violate Article II, Section 9, of the Tennessee Constitution. For the same reason, it is our opinion that House Bill 892 is unconstitutional.

¹ Under Article II, Section 5a, of the Tennessee Constitution, a representative must be a qualified voter of the district. *See, e.g.*, Op. Tenn. Att'y Gen. 04-120 (July 20, 2004) (state senate residency requirements); Op. Tenn. Att'y Gen. 97-133 (Sept. 23, 1997) (residency requirement for state representative).

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

GINA J. BARHAM
Deputy Attorney General

Requested by:

Honorable Chris Crider
State Representative
106 War Memorial Building
Nashville, TN 37243-0134