

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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April 27, 2005

Opinion No. 05-062

General Sessions Judge on State Election Commission

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**QUESTION**

May a person appointed to serve as a general sessions judge for the remainder of a term hold a seat on the State Election Commission?

**OPINION**

No, Article VI, Section 7, of the Tennessee Constitution prohibits the judge of an inferior court from holding any other office of trust or profit. Membership on the State Election Commission is an office of trust or profit within the meaning of this provision.

**ANALYSIS**

This opinion addresses whether an individual appointed to serve as a general sessions judge for the remainder of a term may also be a member of the State Election Commission. The Tennessee Constitution prohibits this dual service. Article VI, Section 7, of the Tennessee Constitution provides:

The Judges of the Supreme or Inferior Courts, shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be increased or diminished during the time for which they are elected. They shall not be allowed any fees or perquisites of office *nor hold any other office of trust or profit under this State or the United States.*

(Emphasis added). A general sessions judge is the judge of an “inferior court” within the meaning of this provision. *Franks v. State*, 772 S.W.2d 428 (Tenn. 1989); *see also Barker v. Harmon*, 882 S.W.2d 352 (Tenn. 1994). Under Article VI, Section 7, therefore, a general sessions judge is constitutionally prohibited from holding any other “office of trust or profit under this State or the United States.” By its terms, this prohibition includes any judge of an inferior court, including one who has been appointed to serve for the remaining part of a term.

The question then becomes whether serving on the State Election Commission is an “office of trust or profit” within the constitutional prohibition. The Tennessee Supreme Court has stated

that

[t]he term “office” in its context, must be given its broad meaning, so as to effectuate the apparent intent of the constitutional prohibition against a diversion or division of the time and labor, energies and abilities of judges of our courts, which might destroy or diminish their capacity to discharge the exacting duties of their responsible positions; and also to limit them to one source of compensation.

*Frazier v. Elmore*, 180 Tenn. 232, 238, 173 S.W.2d 563 (1943). This Office has concluded that an “office of trust or profit” within the meaning of Article VI, Section 7, includes only those positions that require an individual to take an oath of office under Article X, Section 1, of the Tennessee Constitution. Op. Tenn. Att’y Gen. 01-116 (July 20, 2001), citing Op. Tenn. Att’y Gen. 77-75 (March 18, 1977).

Members of the State Election Commission are elected to four-year terms by joint resolution of both houses of the General Assembly. Tenn. Code Ann. § 2-11-104. Members are entitled to reimbursement for expenses as well as compensation appropriated by the General Assembly. Tenn. Code Ann. §§ 2-11-107 and -108. Failure to take the oath of office vacates the election of the member. Tenn. Code Ann. § 2-11-106(c). Membership on the State Election Commission, therefore, is an “office of trust or profit” within the meaning of Article VI, Section 7, of the Tennessee Constitution. As the judge of an inferior court, a general sessions judge may not also serve as a member of the State Election Commission during his or her term of office.

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