

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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September 12, 2005

Opinion No. 05-140

Part-Time General Sessions Judge on Utility Board

QUESTION

May a part-time general sessions judge also serve as a member of the Morristown Utilities 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. For the reasons discussed in Op. Tenn. Att’y Gen. 05-064 (April 27, 2005), this Office has concluded that membership on the Morristown Utilities Commission is an office of trust or profit within the meaning of this provision. The Constitution contains no exception for an inferior court judge whose position is part-time. The fact that a continuing part-time judge is not subject to compliance with Canon 4C(2) prohibiting service on governmental committees does not change the constitutional prohibition.

ANALYSIS

This opinion responds to a request to clarify Op. Tenn. Att’y Gen. 05-064 (April 27, 2005). That opinion concludes that a general sessions judge is prohibited from serving as a member of the Morristown Utilities Commission. The request asks if this rationale applies to a part-time general sessions judge, particularly since part-time judges are expressly exempted from Supreme Court Rule 10, Canon 4C(2).

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.”

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). In Opinion 05-064, we reviewed earlier opinions of this Office interpreting the term “office of trust or profit.” In light of *Frazier* and the acts governing the Morristown Utilities Commission, the opinion concluded that membership on this commission, which requires the individual to take an oath, 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, therefore, a general sessions judge may not also serve as a member of the Morrison Utilities Commission during his or her term of office. The Constitution provides no exception for part-time judges.

As the request points out, Supreme Court Rule 10, the Code of Judicial Conduct, distinguishes between full-time and “continuing part-time” judges. Under Canon 4C(2):

A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

But a continuing part-time judge is not required to comply with Canon 4C(2). Supreme Court Rule 10, Application of the Code of Judicial Conduct C. We do not think that this provision may be read to permit an activity that the Constitution prohibits. Since, for the reasons discussed in Op. Tenn. Att’y Gen. 05-064, membership on the Morristown Utilities Commission is an “office of trust or profit” within the meaning of Article VI, Section 7, of the Tennessee Constitution, a part-time general sessions judge may not serve as a Commission member during his or her term in judicial

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office, notwithstanding the exemption appearing in Canon 4C.

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