

**STATE OF TENNESSEE**  
OFFICE OF THE  
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September 27, 2005

Opinion No. 05-146

County Employee as School Board Member

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**QUESTION**

Is it legal for a county legislative body to appoint a county employee to the school board?

**OPINION**

Yes. No statute bars a county legislative body from appointing a county employee to the county school board.

**ANALYSIS**

The following information comes from the opinion request and from an article in *The Chattanooga Times Free Press*, dated September 20, 2005. There is a vacancy on the county school board. The Hamilton County Commission wishes to appoint an interim school board member to fill the vacancy. One Commissioner has nominated a juvenile court probation officer, who is a county employee, not a county official.<sup>1</sup> To date, the Commission has made no decision on how to fill the vacancy.

School board members are elected by the people. The local legislative body appoints a new board member to fill any vacancy. Tenn. Code Ann. § 49-2-201(a)(1). School board members' qualifications are set out in Tenn. Code Ann. § 49-2-202. To remain on the board, the newly appointed board member must stand for election at the next general election for which candidates have a sufficient time to qualify under the law. Tenn. Code Ann. § 49-2-201(a)(1).

State law provides that “[n]o member of the county legislative body nor any other county official shall be eligible for election as a member of the county board of education.” Tenn. Code Ann. § 49-2-202(a). While this statute prevents one person from holding an elected county office and being a member of the school board, it does not prevent someone from being an employee of a governmental entity and a member of the school board at the same time. *See* Op. Tenn. Att’y Gen.

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<sup>1</sup>County officials include the county legislative body, a county executive, a sheriff, a trustee, a register, a county clerk and an assessor of property. Tenn. Const. Art. VII § 1. Thus, a probation officer is not a “county official.” A probation officer is appointed by a juvenile court judge and receives a salary fixed by the county legislative body, or as otherwise provided by law. Tenn. Code Ann. § 37-1-105(a).

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01-144 (September 4, 2001). Thus, assuming the person nominated meets all requirements for the position of school board member, the person may be considered by the county legislative body for appointment to a vacancy on the board .

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