



## **ADVISORY OPINION 14-01**

May 20, 2014

### **INTRODUCTION**

This Advisory Opinion has been requested by Donald L. Scholes, Attorney for the Tennessee Association of Utility Districts.

### **QUESTION**

Are utility district commissioners required to file Statements of Interest with the Tennessee Ethics Commission pursuant to T.C.A. § 8-50-501 et seq.?

### **ANSWER**

Utility district commissioners are not required to file Statements of Interest with the Tennessee Ethics Commission.

### **FACTS**

Utility districts are public corporations governed by the Utility District Law of 1937, T.C.A. §§ 7-82-101 et seq. Utility districts are empowered to provide a wide variety of utility services, including *inter alia*, water, sewer, sewage disposal, natural gas, and garbage collection and garbage disposal. T.C.A. § 7-82-302(a)(1). At present there are approximately 180 utility districts in Tennessee.

Under current law each single county utility district has three commissioners who serve four year terms. When there is a vacancy the board of commissioners (or the remaining commissioners, as the case may be) present a slate of three nominees for each vacancy to the county mayor. The county mayor will fill the vacancy from this list. If the county mayor fails or refuses to make an appointment from this list within a specified time frame, then the board of commissioners will submit a second list of three new nominees for each vacancy. If the county mayor still fails or refuses to make an appointment, a third list of three new nominees is submitted to the county mayor. If the county mayor still fails or refuses to make an appointment, the county legislative body is empowered to make an appointment from the third list. T.C.A. § 7-82-307(a)(4).

Although the law sets forth procedures by which customers may submit names of qualified nominees to the commissioners, the ultimate decision as to who shall be nominees rests with the board of commissioners. T.C.A. § 7-82-307(a)(8).

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The procedure for naming commissioners in multi-county utility districts is slightly different from the procedures used by single county districts. T.C.A. § 7-82-307(a)(5). These differences have no bearing on the conclusions reached in this Opinion, though.

Prior law permitted the customers of certain utility districts to elect the board of commissioners. When the law was amended in 2004, these districts were expressly allowed to continue to elect their boards. T.C.A. § 7-83-307(2)(B)(single county districts), T.C.A. § 7-83-307(2)(C)(multi-county districts). There are approximately twelve utility districts in Tennessee that provide for election of the board of commissioners. Voting in these elections is limited to customers of the utility district, and may include corporations and other business entities, minors, citizens of other states, convicted felons, and resident aliens. By the same token, non-customers residing within a utility district who are qualified voters for the purposes of the general election laws cannot vote for utility district commissioners.

**ANALYSIS**

T.C.A. § 8-50-501(a) specifies by position those officials who are required to file Statements of Interest with the Tennessee Ethics Commission. Utility district commissioners are not among the officials so specified. However, T.C.A. §8-50-501(a)(19) requires “each candidate or appointee to a local public office as defined in T.C.A. § 2-10-102” to file a Statement of Interest with the Tennessee Ethics Commission.

T.C.A. § 2-10-102(13) defines “local public office” as follows:

“(13) “Public office” means any state public office or local public office filled by the voters;”

“(A) “Local public office” means any state, county, municipal, school or other district or precinct office or position, including judges and chancellors, that is filled by the voters . . . “

This section is part of the general election law. Under that law, “registered voter” is defined as “a qualified voter who has fulfilled the registration requirements of this Title.” T.C.A. § 2-1-104(a)(25). A “qualified voter” is defined as:

“A citizen of the United States eighteen (18) years of age or older who is a resident of this state is a qualified voter unless the citizen is disqualified under the provisions of this Title or under a judgment of infamy pursuant to T.C.A. § 40-20-112.” T.C.A. § 2-2-102.

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T.C.A. § 2-10-102(13)(A) makes it clear that in order to trigger the filing requirement the appointee must ultimately be subject to election by registered voters. Based on this we conclude that a utility district commissioner who is appointed to the position by the county mayor is not an “appointee to local public office” for the purposes of T.C.A. § 8-50-501(a)(19).

We reach the same conclusion with respect to utility district commissioners who are elected by the district’s customers. Where there is a statutory ambiguity the statute is construed with statutes “in pari materia,” i.e., those relating to the same subject or having a common purpose. These are to be construed together, and the construction of one such statute, if doubtful, may be aided by considering the words and legislative intent indicated by the language of another statute. Wilson v. Johnson County, Tenn., 879 S.W.2d 807 (1994).

Based on this rule of construction, we look to the rest of Title 2 of the Tennessee Code. Based on that analysis we conclude that the word “voters” in T.C.A. § 2-10-102(13) means “qualified voters” as that term is defined by T.C.A. § 2-2-102. Since the elections for utility district commissioners are open to certain voters who cannot be qualified voters – e. g., business entities, minors, non-residents, resident aliens, and convicted felons – they are not elections for local public office and are therefore beyond the scope of T.C.A. § 8-50-501.

Keith Norman, Chairman  
John Gregory Hardeman  
George P. Jaynes  
Charles Traughber  
Tammy S. White

Commissioners

Commissioner James G. Stranch, III recused himself from voting.

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