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Opinion No. 10-55

Four Lake Regional Industrial Development Authority: Appointing Executive Director

QUESTION

The Four Lake Regional Industrial Development Authority (the “Authority”) is established under Tenn. Code Ann. §§ 64-5-201, *et seq.* May an active member of the Authority board vote for himself or herself for the position of executive director?

OPINION

If, as established by the Authority, the position of executive director is an office with a specific term, then the Authority board may not appoint one of its members as executive director. If, as established by the Authority, the executive director is an Authority employee, any member of the Authority’s board would have a prohibited conflict of interest in an employment contract between that member and the Authority under Tenn. Code Ann. § 12-4-101(a)(1). The member may not vote on this contract and should resign before the Authority votes on it.

ANALYSIS

This opinion addresses whether an active member of the board of the Four Lake Regional Industrial Development Authority (the “Authority”) may vote for himself or herself for the position of executive director of the Authority. The Authority is established under Tenn. Code Ann. §§ 64-5-201, *et seq.* The purpose of the Authority is to develop the resources of the region in Macon, Smith, Sumner, Trousdale, and Wilson counties. Tenn. Code Ann. § 64-5-201. Membership of the board of directors of the Authority is set forth in Tenn. Code Ann. § 64-5-203 and includes local officials and individuals appointed by a variety of officials and organizations. This statute was recently amended relative to any county in the region that adopts a metropolitan form of government. 2010 Tenn. Pub. Acts Ch. 619.

Tenn. Code Ann. § 64-5-202 provides in relevant part that, “[t]he board shall make policy, which shall be implemented by the executive committee *and executive director, if such position is established.*” (Emphasis added). Among its other powers, the Authority is authorized to:

Appoint such managers, officers, employees, attorneys and agents as the board deems necessary for the transaction of its business, fix their compensation, define their duties, and require bonds of such of them as the board may determine[.]

Tenn. Code Ann. § 64-5-208(6). The governing statutes are otherwise silent about the position of executive director and his or her appointment, status, and tenure. Tennessee follows the common law rule that it is a violation of public policy for an appointing officer to use his or her power of appointment to confer office upon himself or herself, or for an appointing body to confer office upon one of its own members. *State ex rel. v. Thompson*, 193 Tenn. 395, 246 S.W.2d 59 (1952); Op. Tenn. Att’y Gen. U92-129 (December 14, 1992). If, as established by the Authority, the position of executive director is an office with a specific term, then the Authority may not appoint one of its members as executive director.

Further, a board member may not also serve as an employee of the Authority. Under Tenn. Code Ann. § 12-4-101(a)(1), it is unlawful for an official “whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract” in which a governmental entity may be interested to be “directly interested” in such contract. “Directly interested” means “any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest.” *Id.*

In this case, any Authority board member has a duty to vote for or let out the employment contract between the Authority and its executive director. Subsection (c) of Tenn. Code Ann. § 12-4-101 contains an exception for a county commissioner or city council member who is also a county or city employee and who follows the rules in that subsection. But since the Authority is not a local governing body of a county or municipality within the meaning of the statute, that exception would not apply to a member of the Authority’s board. Under Tenn. Code Ann. § 12-4-101(a)(1), therefore, any member would have a prohibited conflict of interest in an employment contract between that member and the Authority. The member may not vote on this contract and should resign before the Authority votes on it.

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