

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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July 28, 2010

Opinion No. 10-88

Vacancy on County Board of Education

QUESTIONS

1. Does a member of a county board of education hold a county office within the meaning of Article VII, Section 2 of the Tennessee Constitution so that, upon the occurrence of a vacancy on a county board of education, such vacancy may only be filled by the county legislative body until a successor can be elected and qualified or can the vacancy, if permitted by state law, be filled by the county board of education?

2. House Bill 2759/Senate Bill 3066 (“HB 2759/SB 3066”) of the 106th General Assembly would have amended Tenn. Code Ann. §§ 49-2-201(a)(1) and -202(e) to permit local boards of education, whether county, city or special school district boards, to fill vacancies arising on such boards. If state law were amended as indicated in HB 2759/SB 3066, would such amendment violate Article VII, Section 2 of the Tennessee Constitution with respect to county boards of education?

OPINIONS

1. A member of a county board of education holds a county office within the meaning of Article VII, Section 2 of the Tennessee Constitution so that, upon the occurrence of a vacancy on a county board of education, such vacancy may only be filled by the county legislative body until a successor can be elected and qualified. Vacancies on county boards of education are governed by Article VII, Section 2 which provides, “Vacancies in county offices shall be filled by the county legislative body, and any person so appointed shall serve until a successor is elected at the next election occurring after the vacancy and is qualified.” *See Marion County Bd. of Comm’rs v. Marion County Election Comm’n*, 594 S.W.2d 681, 686 (Tenn. 1980). The vacancy may not be filled by the county board of education.

2. Yes. HB 2759/SB 3066 would have violated Article VII, Section 2 of the Tennessee Constitution with respect to county boards of education. Upon the occurrence of a vacancy on a county board of education, such vacancy may only be filled by the county legislative body until a successor can be elected and qualified.

ANALYSIS

1 and 2. Vacancies in county offices are governed by Article VII, Section 2 of the Tennessee Constitution which provides, “Vacancies in county offices shall be filled by the county legislative body, and any person so appointed shall serve until a successor is elected at the next election occurring after the vacancy and is qualified.” The Tennessee Supreme Court held that “[a] member of the school board is a county officer.” *Marion County Bd. of Comm’rs v. Marion County Election Comm’n*, 594 S.W.2d 681, 686 n.4 (Tenn. 1980). The Court held that vacancies on county boards of education were to be filled by the county legislative body pursuant to Article VII, Section 2 of the Tennessee Constitution and Tenn. Code Ann. § 49-213, which has since been repealed. *Id.* at 686 n.5. The Court held, “We affirm so much of the Chancellor’s decision as provides that the county legislative body fill the vacancy pending the August election. This is the clear mandate of Article VII, Section 2.” *Id.* at 686. Therefore, a member of a county board of education holds a county office within the meaning of Article VII, Section 2 of the Tennessee Constitution so that, upon the occurrence of a vacancy on a county board of education, such vacancy may only be filled by the county legislative body until a successor can be elected and qualified. The vacancy may not be filled by the county board of education.

In a previous opinion, this office opined that vacancies on local boards of education are subject to the statutory provisions governing such vacancies according to Article VII, Section 4 of the Tennessee Constitution which reads, “The election of all officers, and the filling of all vacancies not otherwise directed or provided by this Constitution, shall be made in such manner as the Legislature shall direct.” Op. Tenn. Att’y Gen. No. 10-26 (Mar. 8, 2010). However, this office must clarify that vacancies on *county* boards of education are governed by Article VII, Section 2 of the Tennessee Constitution, as explained above. Vacancies on boards of education for municipalities and special school districts are subject to the statutory provisions governing such vacancies according to Article VII, Section 4 of the Tennessee Constitution, as we previously opined in our March 8, 2010 opinion.

HB 2759/SB 3066 would have amended Tenn. Code Ann. §§ 49-2-201(a)(1) and -202(e) to permit local boards of education, whether county, city or special school district boards, to fill vacancies arising on such boards. As explained above, vacancies on county boards of education are governed by Article VII, Section 2 of the Tennessee Constitution. *See Marion County Bd. of Comm’rs*, 594 S.W.2d at 686. The vacancy may only be filled by the county legislative body until a successor can be elected and qualified and may not be filled by the county board of education. Accordingly, HB 2759/SB 3066 would have violated Article VII, Section 2 of the Tennessee Constitution with respect to county boards of education.

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