

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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NASHVILLE, TENNESSEE 37202

April 27, 2005

Opinion No. 05-064

General Sessions Judge on Utility Board

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**QUESTION**

May a 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. Membership on the Morristown Utilities Commission is an office of trust or profit within the meaning of this provision.

**ANALYSIS**

This opinion addresses whether a general sessions judge may also serve as a member of the Morristown Utilities Commission. The Tennessee Constitution prohibits this dual service. 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 question then becomes whether serving on the Morristown Utilities Commission is an “office of trust or profit” within the constitutional prohibition. 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). This Office has concluded that an “office of trust or profit” within the meaning of Article VI, Section 7, includes only those positions that require an individual to take an oath of office under Article X, Section 1, of the Tennessee Constitution. Op. Tenn. Att’y Gen. 01-116 (July 20, 2001), citing Op. Tenn. Att’y Gen. 77-75 (March 18, 1977). Under that provision, “[e]very person who shall be chosen or appointed to any office of trust or profit under this Constitution, or any law made in pursuance thereof, shall, before entering on the duties thereof, take an oath to support the Constitution of this State, and of the United States, and an oath of office.” This provision covers local governmental officials appointed or elected under a statute. See, e.g., Op. Tenn. Att’y Gen. 98-118 (June 30, 1998) (utility district commissioners). This Office has also concluded that the term “office of trust or profit under this State” includes a city office. Op. Tenn. Att’y Gen. 98-171 (August 28, 1998) (city judge is an “office of trust or profit under this State” within the meaning of Article VI, Section 7, of the Tennessee Constitution).

The Morrison Utilities Commission was created by private act. 1901 Tenn. Priv. Acts Ch. 392; as replaced by 2001 Tenn. Priv. Acts Ch. 7. Under this act, members of the commission are elected by the Morrison City Commission for five-year terms. Commissioners must be city residents and are required to take an oath before entering upon their duties. Since the utilities commission is created by an act of the General Assembly and requires an oath of office, we conclude that membership on the board of the Morrison Utilities Commission is “an office of trust or profit under this State” within the meaning of Article VI, Section 7, of the Tennessee Constitution. As the judge of an inferior court, a general sessions judge may not also serve as a member of the Morrison Utilities Commission during his or her term of office.

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