

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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October 24, 2005

Opinion No. 05-163

Legislative Discipline

QUESTIONS

1. Under Article II, Section 12, of the Tennessee Constitution, each House of the General Assembly may determine the rules of its proceedings, punish its members for disorderly behavior, and expel a member by a two-thirds vote. Are there any other constitutional or statutory provisions that directly or indirectly compel or could compel a member to resign from office upon pleading guilty to, or being convicted of, a felony offense related to the performance of official duties?

2. If the answer to Question 1 is no, could such a provision be statutorily enacted or adopted by rule of the Senate or House of Representatives, or would a constitutional amendment be required to achieve such result?

3. Are there any constitutional or statutory provisions that could be utilized to prevent a member of the General Assembly, who is indicted for alleged misconduct related to the performance of official duties, from voting on pending legislation and matters related thereto?

4. If not, could such a provision be statutorily enacted or adopted by rule of the Senate or House of Representatives, or would a constitutional amendment be required to achieve such result?

OPINIONS

1. and 2. Although each House has various means at its disposal to discipline its members, those means do not include the power to compel a member to resign. For example, state legislators are constitutionally entitled to an annual salary of \$1,800. This salary may not be reduced. Any reduction in the statutory compensation of a legislator must be accomplished by statute, and may not take effect until after the next general legislative election. In addition, state law provides that a state official — including a legislator — elected after 1982 forfeits his or her pension when convicted of a felony arising out of his or her public office. This Office has concluded that the General Assembly may, by statute, provide that public officials — including legislators — are deemed upon reelection to consent to forfeiture of their public retirement benefits if they are convicted of a felony arising out of their public employment. This Office has also concluded that

the Generally Assembly may also, by statute, remove insurance benefits by Tenn. Code Ann. § 8-27-203 for legislators leaving office that are found guilty of crimes involving public office.

Each House may impose other sanctions on a member pleading guilty to, or being convicted of, a felony offense related to the performance of official duties. For example, the member could be censured or deprived of chairmanship or membership on legislative committees. Imposition of the sanctions could be governed by a rule of either House. A court would probably conclude that a statute imposing these penalties is a “rule of proceeding” that later General Assemblies may ignore. As with statutes governing legislative compensation, rules imposing sanctions on members should be consistent with their constitutional rights.

3. No.

4. We think a court would conclude that the only constitutional way to deprive a legislator of his or her right to vote on legislation is through expulsion by a two-thirds vote.

ANALYSIS

1. Sanctions Against Member of the General Assembly

This opinion addresses the power of each House of the General Assembly to discipline its members. Article II, Section 12, of the Tennessee Constitution provides:

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the Legislature of a free State.

Under this provision, each House is the sole judge of its rules. *Mayhew v. Wilder*, 46 S.W.3d 760 (Tenn. Ct. App. 2001), *p.t.a. denied* (2001); *State v. Cumberland Club*, 136 Tenn. 84, 188 S.W. 583 (1916). But, as discussed below, the state constitution limits the legislature’s right to reduce a member’s compensation; further, the authority to discipline members should be exercised in accordance with protections and rights guaranteed under the Tennessee and United States Constitutions.

The first question is whether there are any other constitutional or statutory provisions that directly or indirectly compel or could compel a member to resign from office upon pleading guilty to, or being convicted of, a felony offense related to the performance of official duties. Article II, Section 12, of the Tennessee Constitution is the only constitutional provision that directly addresses the power of each House to discipline its members. Article II, Section 23, of the Tennessee Constitution addresses the compensation of state legislators and provides in relevant part:

Each member of the General Assembly *shall* receive an annual salary of \$1,800.00 per year payable in equal monthly installments from the date of his election, and in addition, such other allowances for expenses in attending sessions or committee meetings as may be provided *by law*. . . . The compensation and expenses of the members of the General Assembly may from time to time be reduced or increased *by laws enacted by the General Assembly*; however, no increase or decrease in the amount thereof shall take effect until the next general election for Representatives to the General Assembly. . . . However, no member shall be paid expenses, nor travel allowances for more than ninety Legislative days of a regular session, excluding the organizational session, nor for more than thirty Legislative days of any extraordinary session.

(Emphasis added). Under this provision, members of the General Assembly are entitled to receive an annual salary of \$1,800 per year. The General Assembly has no authority to reduce or withhold this payment. Other compensation for state legislators must be provided by statute. Further, no increase or decrease in compensation and expenses may take effect until after the next general election for legislators. Legislators' salary is fixed by Tenn. Code Ann. § 3-1-107. This statute includes no authority to withhold the salary of a legislator for any reason.

Tenn. Code Ann. § 8-35-124 mandates a forfeiture of the retirement benefits of state employees and officials who are "convicted . . . of a felony arising out of the employee's or official's employment or official capacity, constituting malfeasance in office." Any statute reducing compensation must also be consistent with the member's constitutional rights. For example, the statute providing that a convicted member forfeits his or her pension may not be applied to employees or officials — including state legislators — who became members of the Tennessee Consolidated Retirement System before that statute was enacted. Op. Tenn. Att'y Gen. 05-114 (July 19, 2005). This Office has concluded that the General Assembly may, by statute, provide that public officials — including legislators — are deemed upon reelection to consent to forfeiture of their public retirement benefits if they are convicted of a felony arising out of their public employment. Op. Tenn. Att'y Gen. 05-152 (October 4, 2005). This Office has also concluded that the General Assembly may also, by statute, remove insurance benefits under Tenn. Code Ann. § 8-27-203 for legislators leaving office that are found guilty of crimes involving public office. Op. Tenn. Att'y Gen. 05-136 (August 30, 2005).

Under Article II, Section 12, of the Tennessee Constitution, each House has the sole authority to discipline its members. Each House, therefore, may impose other sanctions on a member pleading guilty to, or being convicted of, a felony offense related to the performance of official duties. For example, the member could be censured or deprived of chairmanship or membership on legislative committees. Imposition of the sanctions should be authorized and governed by a rule of either House. Op. Tenn. Att'y Gen. 81-564 (October 13, 1981) (rules of the Senate in effect at the time did not provide for the removal of the chairman of a standing committee upon conviction of a felony). A court would probably conclude that a statute imposing these

penalties is a “rule of proceeding” that later General Assemblies may ignore. *Mayhew v. Wilder, supra*. As with statutes governing legislative compensation, rules imposing sanctions on members should be consistent with their constitutional rights.

3. and 4. Depriving a Legislator of the Right to Vote on Legislation

The next question is whether there any constitutional or statutory provisions that could be utilized to prevent a member of the General Assembly, who is indicted for alleged misconduct related to the performance of official duties, from voting on pending legislation and matters related thereto. No such provision exists.

The last question is whether the General Assembly could, by rule or statute, provide that a member of the General Assembly indicted for alleged misconduct related to the performance of his official duties may not vote on pending legislation and matters related thereto. We have found no case law in Tennessee addressing this issue. But we think a court would conclude that the right to vote on legislation is central to the office of state legislator and that removing it, even temporarily, is tantamount to expulsion. For this reason, we think a court would conclude that, under the Tennessee Constitution, the only way either House could deprive a member of the right to vote is by expelling him or her by a two-thirds vote. *See also* Op. Tenn. Att’y Gen. 90-27 (February 27, 1990) (suspension of a constitutional officer whose removal is governed by the Tennessee Constitution is unconstitutional).

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