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Schools-Conflict of Interest

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Like other county officials, school board members are subject to the general conflict of interest statute, T.C.A. § 12-4-101.

Conflict of interest problems generally arise when a school board member has pecuniary interests that would interfere with that member's ability to vote objectively on matters before the board. Tenn. Code Ann. §§ 12-4-101(a)(1) and (b) provide that it is unlawful for any official whose duty it is to vote for any contract in which the county is concerned to be directly or indirectly financially interested in any such contract.

Op. Tenn. Atty. Gen. 01-144 (September 4, 2001).

Employment

Tenn. Code Ann. § 49-2-203(a)(1)(D) provides as follows:

(D) No member of any local board of education shall be eligible for election as a teacher, or any other position under the board carrying with it any salary or compensation;

The Attorney General has opined that this provision prohibits a school board member from serving as a substitute school teacher in the same school system, notwithstanding the fact that the school board contracts with a third party employment agency to obtain substitute teacher services, rather than employing substitute teachers directly. Op. Tenn. Atty. Gen. 08-180 (December 1, 2008).

"Nothing in the statute, however, prohibits the spouse of a school board member from working for the school board." Op. Tenn. Atty. Gen. 08-102 (May 6, 2008). In this situation the school board member would have an indirect conflict of interest under T.C.A. § 12-4-101(b) if the school board member and his spouse commingle their assets. Op. Tenn. Atty. Gen. 05-017 (February 3, 2005) (an official is indirectly interested in a contract between a governmental agency and the official's spouse if the official and spouse commingle assets); Op. Tenn. Atty. Gen. 00-181 (November 22, 2000).

The Attorney General has opined that "a non-instructional employee of a school system may run for election to the school board without leaving his job, but if elected to the board this individual must quit his job for the school system in order to serve as a school board member." Op. Tenn. Atty. Gen. 02-070 (May 23, 2002). See also Op. Tenn. Atty. Gen. U90-124 (August 29, 1990) (school bus driver prohibited from continuing employment by the school system after he was elected to school board).

No member of the county legislative body nor any other county official shall be eligible for election as a member of the county board of education. T.C.A. § 49-2-202(a)(2). This statute prevents one person from holding an elected county office and being a member of the school board. Op. Tenn. Atty. Gen. 01-144 (September 4, 2001). Note also that pursuant to T.C.A. § 5-5-102(c)(2) a director of schools is not qualified to serve as a member of the county legislative body.

Purchasing

School officials are prohibited from having a direct or indirect pecuniary interest in providing tangible personal property to public schools. The statute applicable to school systems provides:

It is unlawful for any teacher, supervisor, commissioner, director of schools, member of a board of education or other school officer in the public schools to have any pecuniary interest, directly or indirectly, in supplying books, maps, school furniture or apparatus to the public schools of the state, or to act as agent for any author, publisher, bookseller or dealer in such school furniture or apparatus on promise of reward for the person's influence in recommending or procuring the use of any book, map, school apparatus or furniture of any kind, in any public school; provided, that nothing in this section shall be construed to include authors of books.

T.C.A. § 49-6-2003(a).

The statute does not define the term "apparatus." Addressing the statute, the Attorney General opined that "a court would conclude that the term 'apparatus,' as used in Tenn. Code Ann. § 49-6-2003(a), includes school equipment and other tangible personal property, but does not apply to a contract for services." Op. Tenn. Atty. Gen. 09-48 (April 2, 2009).

The statute further provides that a spouse or family member of a principal, teacher or other school administrative employee is not precluded from participating in business transactions with the school system where a sealed competitive bid system is used, as long as the principal, teacher or other school administrative employee does not have discretion in the selection of bids or specifications. T.C.A. § 49-6-2003(b).

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