

**STATE OF TENNESSEE**  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
**PO BOX 20207**  
**NASHVILLE, TENNESSEE 37202**

April 12, 2010

Opinion No. 10-46

School Board Member Conflicts of Interest

---

**QUESTIONS**

1. May a citizen serve on a school board if:
  - a. the citizen is employed by the school board;
  - b. the citizen has a service contract with the school board; or
  - c. the citizen is employed by a business that has a service contract with the school board.
  
2. If the answer to Question 1 is yes, at what point is there a conflict of interest in which the citizen school board member must recuse himself from voting?

**OPINIONS**

- 1.a. Under Tenn. Code Ann. § 49-2-203(a)(1)(D), a school board member may not continue as an employee of the board after becoming a board member.
  
- b. Under Tenn. Code Ann. § 12-4-101(a), assuming the school board member is not a “sole supplier” of the services within the city or county, the member may not supervise a contract in which he or she is directly interested. An individual would be directly interested in a contract between the school board and that individual. The member should refrain from voting or otherwise acting on a pre-existing contract between that member and the board, and the contract should not be renewed.
  
- c. Under Tenn. Code Ann. § 12-4-101(a), assuming the school board member is not a “sole supplier” of the services within the city or county, a school board member would be directly interested in a contract between the school board member and a business in which the member has a controlling interest. “Controlling interest” includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation. If the member owns such an interest in the business, then the member should refrain from voting or otherwise acting on a pre-existing contract between that business and the board, and the contract should not be renewed. Where an individual merely works for a business that contracts with the school board, that individual may be indirectly interested in the contract.

The individual is not forbidden from being a school board member, but must disclose the indirect interest.

In addition, Tennessee law prohibits “any member of a municipal or county legislative body, member-elect of a municipal or county legislative body, or other elected county or municipal official” from knowingly receiving compensation for consulting services from any entity other than the city or county that the official represents. Tenn. Code Ann. § 2-10-124(a). School board members are generally elected. Tenn. Code Ann. § 49-2-201. If the school board involved in this question is a county or city school board, then it appears that all the members of that board would be subject to this statute. The term “consulting services” includes, among other activities, “services to advise or assist a person or entity in maintaining, applying for, soliciting or entering into a contract with the municipality or county represented by that official.” Tenn. Code Ann. § 2-10-122(2). A school board member who works for a company that does business with the school board would violate this statute if his or her employment duties include “consulting services” as defined in Tenn. Code Ann. § 2-10-122(2) relative to the particular county or city the school board member represents.

2. A member should recuse himself or herself from voting on any contract in which the member is directly interested but which existed before he or she became a member. A member is not required to recuse himself or herself from voting on any contract in which the member is indirectly interested, but must disclose the interest.

### ANALYSIS

#### 1.a. School Board Member as School Board Employee

This opinion addresses under what circumstances a citizen may be prevented from serving on a school board because of a conflict of interest. The request does not specify the particular school board in question. This opinion, therefore, will not address private acts or local option acts.

The first question is whether a citizen who is employed by a school board may serve as a member of that board. Tenn. Code Ann. § 49-2-203(a)(1)(D) provides:

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.

This Office has concluded that, under this statute, a school board member may not continue as an employee of the board after becoming a board member. Op. Tenn. Att’y Gen. U90-124 (August 29, 1990). The member must resign as an employee prior to assuming his or her responsibilities as a board member. Op. Tenn. Att’y Gen. 08-180 (December 1, 2008); Op. Tenn. Att’y Gen. 87-136 (August 6, 1987).

b. School Board Member Contracting Personally with School Board

The next question is whether a citizen who has a service contract with a school board may serve as a member of that board. Tenn. Code Ann. § 12-4-101(a)(1), the general conflict of interest statute, provides in relevant part:

It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any 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. “Controlling interest” includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation.* The provisions of this subdivision (a)(1) shall not be construed to prohibit any officer, committee person, director, or any person, other than a member of a local governing body of a county or municipality, from voting on the budget, appropriation resolution, or tax rate resolution, or amendments thereto, unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which such person is directly interested.

(Emphasis added).

This Office has indicated in the past that the interest referred to in Tenn. Code Ann. § 12-4-101 is a pecuniary interest. Op. Tenn. Att’y Gen. 09-175 (November 6, 2009). Under (a)(1) of this statute, a school board member may not supervise a contract in which he or she is directly interested. The only exception is where the member is the sole supplier of goods or services in a municipality or county. Tenn. Code Ann. § 12-4-101(b). In that case, the individual is indirectly interested in the contract and must disclose his or her interest as discussed below. Assuming the member is not the sole supplier of goods or services in the city or county, a school board member would be directly interested in a contract between the school board and that individual. The member should refrain from voting or otherwise acting on a pre-existing contract between that member and the board, and the contract should not be renewed. Op. Tenn. Att’y Gen. 99-209 (October 20, 1999).

c. Contract between School Board and Business where the School Board Member is Employed

The next question is whether an individual who is employed by a business that contracts with the school board may be a school board member. Under Tenn. Code Ann. § 12-4-101(a), assuming the school board member is not a “sole supplier” of the services within the city or county, a school board member would be directly interested in a contract between the school

board and a business in which the member has a controlling interest. “Controlling interest” includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation. If the member owns such an interest in the business, then the member should refrain from voting or otherwise acting on a pre-existing contract between that business and the board, and the contract should not be renewed.

Where an individual merely works for a business that contracts with the school board, that individual may be indirectly interested in the contract. Tenn. Code Ann. § 12-4-101(b) provides:

It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges such officer’s interest. “Indirectly interested” means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county.

The member would have an indirect interest in contracts between the employing company and the school board if the member, as an employee, receives any benefit from the contracts. Op. Tenn. Att’y Gen. U93-86 (August 9, 1993). The individual is not forbidden from being a school board member, but must disclose the indirect interest.

In addition, Tennessee law prohibits “any member of a municipal or county legislative body, member-elect of a municipal or county legislative body, or *other elected county or municipal official*” from knowingly receiving compensation for consulting services from any entity other than the city or county that the official represents. Tenn. Code Ann. § 2-10-124(a) (emphasis added). The statute does not further define the term “other elected county or municipal official.” School board members are generally elected. Tenn. Code Ann. § 49-2-201. If the school board involved in this question is a county or city school board, then it appears that all the members of that board would be subject to this statute. Violation of this statute is a Class A misdemeanor. Tenn. Code Ann. § 2-10-124(c)(2). The term “consulting services” is defined as follows:

“Consulting services” with respect to an elected municipal or county official, including a member-elect of a municipal or county legislative body, means services to advise or assist a person or entity in influencing legislative or administrative action, as that term is defined in § 3-6-301, relative to the municipality or county represented by that official. *“Consulting services” with respect to an elected municipal or county official, including a member-elect of a municipal or county legislative body, also means services to advise or assist a person or entity in maintaining, applying for, soliciting or entering into a*

*contract with the municipality or county represented by that official.* “Consulting services” does not mean the practice or business of law in connection with representation of clients by a licensed attorney in a contested case action, administrative proceeding or rule making procedure.

Tenn. Code Ann. § 2-10-122(2) (emphasis added). Tenn. Code Ann. § 3-6-301 provides in relevant part:

(13) “Influencing legislative or administrative action” means promoting, supporting, influencing, modifying, opposing or delaying any legislative or administrative action by any means, including, but not limited to, the provision or use of information, statistics, studies, or analyses, but not including the furnishing of information, statistics, studies, or analyses requested by an official of the legislative or executive branch to that official or the giving of testimony by an individual testifying at an official hearing conducted by officials of the legislative or executive branch.

A school board member who works for a company that does business with the school board would violate this statute if his or her employment duties include “consulting services” as defined in Tenn. Code Ann. § 2-10-122(2). The member would also violate the statute if he or she receives compensation for consulting services from any other source besides the county or city represented.

## 2. Recusal

The next question is, assuming that an individual with any of the above contractual interests may serve as a member of the school board, whether he or she must recuse himself or herself from voting on matters before the board. A member should recuse himself or herself from voting on any contract in which the member is directly interested but which existed before he or she became a member. A member is not required to recuse himself or herself from voting on any contract in which the member is indirectly interested, but must disclose the interest.

ROBERT E. COOPER, JR.  
Attorney General and Reporter

MICHAEL E. MOORE  
Solicitor General

ANN LOUISE VIX  
Senior Counsel

Requested by:

Honorable Harry Brooks  
State Representative  
212 War Memorial Building  
Nashville, TN 37243-0119