

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

March 16, 2023

Opinion No. 23-006

Removal of Member of Regional Planning Commission

Question 1

If a member of a regional planning commission fails to attend the required training pursuant to Tenn. Code Ann. § 13-3-101(j)(1) or file a written statement with the commission secretary certifying such attendance pursuant to Tenn. Code Ann. § 13-3-101(j)(3), may the member be removed from the commission?

Opinion 1

Yes. A member of a regional planning commission may be removed for cause for failing to meet either of these requirements.

Question 2

If the answer to Question 1 is “yes,” what is the process for removing the member?

Opinion 2

In regional planning commissions in which the Commissioner for the Department of Economic and Community Development designates planning commission members, the Commissioner “may remove a member . . . for cause specified in writing served on the member and after hearing, of which such member shall be given not less than fifteen (15) days’ written notice.” Tenn. Code Ann. § 13-3-101(f). In regional planning commissions in which planning commission members are appointed by the county mayor, subject to confirmation by the county legislative body, the county legislative body may remove a member for cause by following the same notice and hearing process. *Id.* § 13-3-101(i)(5).

Question 3

If a member is removed from the commission, what is the process for filling the vacancy?

Opinion 3

A vacancy in the membership of a regional planning commission that consists of a single county is filled through appointment by the county mayor, subject to confirmation by the county legislative body. Tenn. Code Ann. § 13-3-101(i)(4). And when there is a vacancy in the membership of a regional planning commission that contains territory in more than one county or

a regional planning commission that consists of a single county that participates jointly in the planning region with a municipality or municipalities lying within that county, nominations to fill the vacancy must be submitted “within thirty (30) days after [the] position is vacated” by “the chief elected officer of any county having a metropolitan form of government, the county mayor of any other county, or the chief elected officer of any municipality lying inside of the boundary of the planning region.” *Id.* §§ 13-3-101(b), (c)(3) & (4), (i)(7). The Commissioner of the Department of Economic and Community Development may then designate a nominee as a member of the regional planning commission. *Id.* §§ 13-3-101(b), (c), (i)(7).

ANALYSIS

Regional planning commissions are governed by Tenn. Code Ann. §§ 13-3-101 to -105. Under this statutory scheme, the Tennessee Department of Economic and Community Development (ECD) creates and establishes regional planning commissions that have planning authority over defined geographic areas. A planning region may be composed of the territory of a single county, or it may comprise several counties, or portions of several counties. Tenn. Code Ann. § 13-3-101.¹

When a planning region consists of a single county, the members of the regional planning commission for that region are appointed by the county mayor, subject to confirmation by the county legislative body. *Id.* §§ 13-3-101(b), (i)(1). In all other cases, i.e., when a planning region contains territory in more than one county or the planning region consists of a single county that participates jointly in the planning region with a municipality or municipalities lying within that county, the ECD Commissioner designates the members of the regional planning commission. *Id.* §§ 13-3-101(b), (c), (i)(7).² Any person designated by ECD Commissioner must have been previously nominated by “the chief elected officer of any county having a metropolitan form of government, the county mayor of any other county, or the chief elected officer of any municipality lying inside of the boundary of the planning region.” *Id.* § 13-3-101(c)(3).

Persons who are appointed or designated to regional planning commissions are generally required, each year, to attend a minimum of four hours of training and continuing education on specified planning topics.³ *Id.* § 13-3-101(j)(1). And each planning commissioner is required to “certify by December 31 of each calendar year such individual’s attendance by a written statement filed with the secretary of such individual’s respective planning commission.” *Id.* § 13-3-101(j)(3). The statement must identify “the date of each program attended, its subject matter,

¹ ECD is also authorized to designate municipal planning commissions as regional planning commissions with respect to territory outside the municipality’s boundaries. Tenn. Code Ann. § 13-3-102. Municipal planning commissions that are designated as regional planning commissions under Tenn. Code Ann. § 13-3-102 are beyond the scope of this Opinion. Regional planning commissions created by Private Act are also beyond the scope of this Opinion.

² The authority granted to the ECD Commissioner must be exercised with the approval of the local government planning advisory committee. Tenn. Code Ann. § 13-3-101(h). The local government planning advisory committee is created by Tenn. Code Ann. § 4-3-727.

³ The legislative body (or bodies) of a regional planning commission may opt out of the requisite training. *See* Tenn. Code Ann. § 13-3-101(j)(9).

location, sponsors, and the time spent in each program.” *Id.*

1. “If a planning commissioner fails to complete the requisite number of hours of training and continuing education within the [statutorily allotted time] *or* fails to file the [requisite] statement . . . this shall constitute *a cause* for the removal of the planning commission member from the planning commission.” *Id.* § 13-3-101(j)(8) (emphasis added). Hence, a planning commission member who fails to meet either requirement may be removed for cause. *See id.*

2. The power to remove a planning commissioner for cause rests with the ECD Commissioner in regional planning commissions in which the ECD Commissioner designates planning commission members. The ECD Commissioner “may remove a member . . . for cause specified in writing served on the member and after hearing, of which such member shall be given not less than fifteen (15) days’ written notice.” *Id.* § 13-3-101(f).⁴ In those regional planning commissions in which planning commission members are appointed by the county mayor, subject to confirmation by the county legislative body, the county legislative body may remove a member for cause by following the same notice and hearing process. *Id.* § 13-3-101(i)(5).

In short, the statute provides that a planning commissioner must be provided due process before that planning commissioner may be removed for cause. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *State v. Pearson*, 858 S.W.2d 879, 884 (Tenn. 1993) (the touchstones of due process are notice and an opportunity to be heard). The ECD Commissioner or the county legislative body—whichever the case may be—must serve written notice on the planning commissioner explaining that removal of the planning commissioner is sought for failure to attend the required training and continuing education courses and/or for failure to file the requisite statement that indicates that the planning commissioner attended the required training and continuing education courses. *See* Tenn. Code Ann. §§ 13-3-101(f), (i)(5). The written notice must be given not less than fifteen days before the date on which the hearing is scheduled. *See id.* The hearing then provides the planning commissioner the opportunity to present any objections to removal. *See Mullane*, 339 U.S. at 314; *Pearson*, 858 S.W.2d at 884.

3. If a planning commissioner is duly removed for cause, that person’s office becomes “vacant.” *See Ashcroft v. Goodman*, 139 Tenn. 625, 630, 202 S.W. 939, 940 (Tenn. 1918) (“The term ‘vacancy,’ as used in legal phraseology, means a place unfilled, and when applied to an office, it means the state of being destitute of an incumbent, or a want of a proper or legally qualified officer to officiate.”); *State ex rel. Witcher v. Bilbrey*, 878 S.W.2d 567, 573-74 (Tenn. Ct. App. 1994) (a “vacant” office is one that is unoccupied or without an incumbent).

A vacancy in the membership of a regional planning commission that consists of a single county is filled through appointment by the county mayor, subject to confirmation by the county legislative body. Tenn. Code Ann. § 13-3-101(i)(4). And when there is a vacancy in the membership of a regional planning commission that contains territory in more than one county or a regional planning commission that consists of a single county that participates jointly in the planning region with a municipality or municipalities lying within that county, nominations to fill the vacancy must be submitted “within thirty (30) days after [the] position is vacated” by “the chief elected officer of any county having a metropolitan form of government, the county mayor of any

⁴ *See* note 2, *supra*.

other county, or the chief elected officer of any municipality lying inside of the boundary of the planning region.” *Id.* §§ 13-3-101(b), (c)(3) & (4), (i)(7). The ECD Commissioner may then designate a nominee as a member of the regional planning commission. *Id.* §§ 13-3-101(b), (c), (i)(7).⁵

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⁵ *Id.*