



KRAMER RAYSON LLP  
ATTORNEYS AT LAW

Robert L. Bowman  
Partner

Post Office Box 629  
Knoxville, Tennessee  
37901

DIRECT DIAL (865) 342-  
0430

FAX (865) 522-5723

[rlbowman@kramer-rayson.com](mailto:rlbowman@kramer-rayson.com)

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E-mail: [rlbowman@kramer-rayson.com](mailto:rlbowman@kramer-rayson.com)

Direct Dial: 865.342.0430

VIA E-MAIL: [BigRed495@aol.com](mailto:BigRed495@aol.com)

Henry J. Cullen, Chairman  
Loudon County Board of Commissioners  
206 Tansai Place  
Loudon, TN 37774

**Re: Opinion Letter | Authority Regarding Veto of Resolutions and Conflicts**

Dear Chairman Cullen:

We have been asked for an opinion regarding the following issues:

1. Does a County Mayor “have the power to veto the tax levy” resolution?
2. Is it legal for an “employee” of the Loudon County School System to vote on the tax levy resolution, without reading a conflict of interest statement?

The power of a County Mayor to veto a resolution is set forth in T.C.A. § 5-6-107.<sup>1</sup> It says:

(a)(1) The county mayor has the power of veto with respect to resolutions of the county legislative body.

(2) Such veto shall apply only to legislative resolutions and

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<sup>1</sup> A County Mayor’s veto power is extremely weak compared to a Presidential veto. A veto by a County Mayor can be quickly overridden by a simple majority of the same body that had just passed the resolution. A Presidential veto, however, requires a super majority of two-thirds (2/3) of Congress to override it.

shall not apply to resolutions in which the legislative body is exercising administrative or appellate authority.

(b)(1) Every resolution shall be submitted to the county mayor.

(2) If the county mayor signs it, the resolution shall become effective immediately or at a later date if the resolution so provides.

(3) If the county mayor vetoes the resolution, the county mayor shall return it to the county legislative body for action on the county mayor's veto, in which case it shall become effective only upon subsequent passage by a **majority** of all the members comprising the county legislative body.

(4) Such passage must take place **within twenty (20) days** of receiving the county mayor's message of veto **or at the next regular meeting of the county legislative body**, whichever is later.

(5) If the county mayor fails either to sign or to veto a resolution and to report the county mayor's action to the county legislative body within ten (10) days after the resolution is submitted to the county mayor, the resolution shall become effective without the county mayor's signature upon the expiration of the ten-day period or at a later date if the resolution so provides.

(c) The veto may not be exercised with respect to specific items or parts of items in the **annual county budget**, and may only be exercised with respect to the whole.

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(emphasis added).

Although the statute specifically mentions a County Mayor's power to veto "the annual county budget," it is silent as to the tax levy resolution. We are unable to locate any legal authority expressly stating that a County Mayor has authority to veto a tax levy. Moreover, the statute states the veto power is limited to legislative resolutions and does not apply to administrative or appellate matters. Those terms are not defined in the statute, and the Tennessee Attorney General has noted a dearth of case law on this issue stating, "No Tennessee case has interpreted the meaning of the terms legislative, administrative, or appellate under this statute." Tenn. Op. Atty. Gen. No. 98-181 (Tenn. A.G.) 1998 WL 661355.

The County Technical Assistance Service has issued a guidance on the powers of a County Mayor (CTAS – 24). It discusses the veto power, but it is limited to the veto applying only to the “entire county budget.” It does not state that a County Mayor may veto the tax levy resolution.

Based on the foregoing, we are unable to find any legal authority stating that a County Mayor may veto the “tax levy” resolution. Absent some legal precedent authorizing such an act, it would not be advisable for a County Mayor to do so, as it may be unlawful.

The second issue, conflict of interest of an “employee,” is addressed in T.C.A. § 5-5-112. It says:

(a) No member of the legislative body of a county who is also an employee of the same county or whose spouse is an employee of the same county may vote on matters in which such member has a conflict of interest. **A conflict of interest is created under this section when a member is voting on a matter which, if approved by the legislative body, would increase the pay or benefits of that member or that member’s spouse.** The vote of any member having a conflict of interest shall be void if challenged in a timely manner. As used in this subsection (a), “timely manner” means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.

**(b)(1) Subsection (a) shall not prohibit a member of a local governing body of a county 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 the member has a conflict of interest.

(2) If a member of a county governing body who is voting on a proposed budget, appropriation resolution, or tax rate resolution, or amendments thereto, has a conflict of interest under subsection (a) or another existing conflict of interest, then the member must declare the conflict of interest at the meeting prior to casting the member’s vote.

(c) Any member of a local governing body of a county who abstains from voting for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote. This subsection (c) shall not apply to any county having a metropolitan form of government and having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census.

Henry J. Cullen, Chairman

July 1, 2024

Page 4

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(d) Nothing in this section alters, amends, or otherwise affects § 12-4-101(a). In the event of any conflict between this section and § 12-4-101(a), § 12-4-101(a) shall prevail.

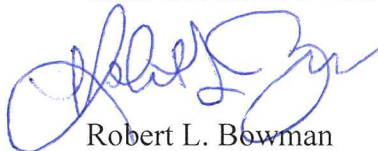
I have not been provided with any evidence that a member of the Loudon County Board of Commissioners is an “employee” of the Loudon County School System or that the Commissioner’s pay or that of a spouse would “increase” because of the vote. Nevertheless, a conflict is created only if the vote “would increase the pay or benefits of that member or the member’s spouse.”

The statute is clear, however, that a member is permitted to vote on the “budget appropriations resolution,” or “tax rate resolution.” There is no conflict of interest to do so, unless there is a “specific amendment” which creates a conflict under section (a).<sup>2</sup>

We trust the foregoing has been responsive to the request from a number of Board of Commissioners. Our opinions herein are based solely on the facts presented to us as set forth above, and we reserve the right to amend our opinion based on new or additional facts that may develop. Once you have had a chance to review this letter, please contact us with any questions or concerns.

Sincerely yours,

**KRAMER RAYSON LLP**



Robert L. Bowman

RLB:ec

cc: Mayor Buddy Bradshaw (via email)

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<sup>2</sup> Although section (b) requires a member to disclose “another existing conflict of interest . . . prior to casting the member’s vote,” we have not been provided any information regarding such a conflict.