

STATE OF TENNESSEE

Office of the Attorney General



JONATHAN SKRMETTI
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615)741-3491
FACSIMILE (615)741-2009

June 6, 2024

The Honorable Vincent Dixie
State Representative
425 Rep. John Lewis Way N.
Suite 408, Cordell Hull Building
Nashville, Tennessee 37243

Re: Opinion Request Regarding Tenn. Code Ann. § 40-20-114(a)

Dear Representative Dixie:

Our Office has received and carefully considered your request for an Attorney General opinion regarding the enforcement of Tenn. Code Ann. § 40-20-114(a). We cannot, however, provide the requested opinion. The Attorney General's statutory authority is limited to providing "written legal opinions" on matters submitted by officials "*in the discharge of their official duties.*" Tenn. Code Ann. § 8-6-109(6) (emphasis added). And Tennessee's election officials—not individual members of the General Assembly—enforce § 40-20-114(a) in specific factual scenarios.

Your letter also rests on an incorrect premise—that § 40-20-114(a)'s reference to "*a public office in this state*" somehow includes the U.S. President. Tenn. Code Ann. § 40-20-114(a) (emphasis added). The U.S. Presidency is not a public office *in Tennessee*. And any State effort to add new qualifications for the U.S. President would raise serious constitutional questions. In *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), all nine Justices agreed that States cannot impose qualifications for the U.S. Presidency. *See id.* at 799 ("It is not competent for any State to add to or in any manner change the qualifications for a Federal office, as prescribed by the Constitution or laws of the United States" (quoting George W. McCrary, *American Law of Elections* § 322 (4th ed. 1897))); *id.* at 803-04 (noting that the President represents "the entire Union" and indicating that the States therefore lack the power to condition the Presidency); *id.* at 855 n.6 (Thomas, J., dissenting) ("[T]he people of a single State may not prescribe qualifications for the President of the United States"). "Such a state-imposed restriction [would be] contrary to the fundamental principle of our representative democracy, embodied in the Constitution, that the people should choose whom they please to govern them." *Id.* at 783 (internal quotation marks omitted).

We appreciate your inquiry and hope that these insights prove helpful notwithstanding our inability to provide a formal written legal opinion in response to your request.

Sincerely,

MATT RICE
Solicitor General

cc: Jonathan Skrmetti, Attorney General and Reporter