

STATE OF TENNESSEE

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

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Opinion No. 05-115

Interpretation of Tenn. Code Ann. § 7-2-106 regarding referendum on metropolitan charter

QUESTION

In a referendum held under Tenn. Code Ann. § 7-2-106 on the question of whether to ratify or reject a metropolitan charter, may a person who owns property in the principal city but who lives in the outlying county vote in both the election for the principal city and for the county outside of the principal city?

OPINION

No. Such an interpretation is inconsistent with the language of Tenn. Code Ann. § 7-2-106. Moreover, even if the statute were deemed to be ambiguous, i.e., susceptible of either interpretation, we think that the courts would construe the statute to permit such a voter to cast only one vote in order to avoid raising questions concerning the statute's constitutionality under the "one person, one vote" principle.

ANALYSIS

Tenn. Code Ann. § 7-2-106, which governs elections on the question of becoming a metropolitan form of government, provides in pertinent part as follows:

The date of the election and the form of ballot shall be uniform throughout the entire county; but the county election commission shall canvass the returns and certify the results *as if separate elections were being held for the principal city and for the area of the county outside of the principal city thereof*. For the purpose of determining whether the proposed charter has been accepted or rejected, the county election commission shall canvass the returns and certify the results:

- (1) For the principal city; and
- (2) For the entire area of the county outside of the principal city, including in such area the smaller cities, if any, within the county.

Tenn. Code Ann. § 7-2-106(b) (emphasis added). A few jurisdictions in this State have established charter commissions to create a metropolitan form of government. The principal municipalities

within these jurisdictions have, either through private act or by ordinance, authorized non-resident property owners to vote in municipal elections. You have asked whether Tenn. Code Ann. § 7-2-106 can be interpreted so that in those jurisdictions, a nonresident property owner, who is also a resident of the outlying county, is authorized to vote in both the election for the principal city and for the county outside of the principal city, without violating the principle of “one man, one vote.”

Such an interpretation is not supported by the plain language of the statute. Tenn. Code Ann. § 7-2-106 states that “[t]he date of the election and the form of ballot shall be uniform throughout the entire county.” This language clearly contemplates that only one election takes place, not two separate elections. Thus, even though the statute requires county election commissions to canvass the returns and certify the results *as if* two separate elections were held, there is still only one election authorized to be held under this statute. Accordingly, we believe that a court would construe Tenn. Code Ann. § 7-6-102 as not authorizing a non-resident property owner, who is also a resident of the outlying county, to vote in both the municipal and county referendum election on becoming a metropolitan form of government.

Furthermore, it is a well-settled rule of statutory construction that courts have a duty to construe a statute to avoid a constitutional conflict. *State v. Burkhart*, 58 S.W.3d 694, 697-98 (Tenn. 2001). This rule is known as the doctrine of constitutional avoidance. *See Rosales-Garcia v. H.T. Holland*, 322 F.3d 386, 408 (6th Cir. 2003) (“when an Act of Congress raises ‘a serious doubt’ as to its constitutionality, ‘this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.’” (quoting *Crowell v. Benson*, 285 U.S. 22, 62, 52 S.Ct. 285, 76 L.Ed. 598 (1932))); *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 529-30 (Tenn. 1993) (Courts should adopt the plausible construction that avoids undermining the statute’s constitutionality.).

In a series of landmark cases in the 1960’s, the United States Supreme Court held that where state government officials are elected, the Equal Protection Clause of the Fourteenth Amendment requires that the votes of citizens be of equal weight. *See, e.g., Gray v. Sanders*, 372 U.S. 368, 381, 83 S.Ct. 801, 809, 9 L.Ed.2d 821 (1963) (“the conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth and Nineteenth Amendments can mean only one thing — one person, one vote”). The Supreme Court subsequently extended the requirement of one person/one vote to local governments in *Avery v. Midland County*, 390 U.S. 474 (1968).

In *Reynolds v. Sims*, the Supreme Court held that no person’s vote may be reduced in value, compared to the vote of others, because of where he or she happens to live in the electoral district. 377 U.S. 533, 567, 84 S.Ct. 1362, 1384, 12 L.Ed.2d 506 (1964). It further recognized that a citizen’s right to vote can be abridged “by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Id.* at 555, 84 S.Ct. at 1378. In our opinion, an interpretation of Tenn. Code Ann. § 7-2-106 that would allow a non-resident property owner who is a resident of the outlying county to vote in both the municipality and in the county would potentially dilute the weight of the vote of either the resident voters of the municipality or the resident voters of the county, depending upon how such individual voted,

thereby raising a serious doubt as to the constitutionality of the statute under the Equal Protection principle of one person/one vote. Accordingly, we believe that a court would construe Tenn. Code Ann. § 7-2-106 to permit such a voter to cast only one vote in order to avoid raising questions concerning the statute's constitutionality under the "one person, one vote" principle.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

JANET M. KLEINFELTER
Senior Counsel

Requested by:

Brook Thompson
State Coordinator of Elections
312 Eighth Avenue North, 9th Floor Snodgrass Building
Nashville, TN 37243