

STATE OF TENNESSEE

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Opinion No. 05-039

Amending Tullahoma City Charter Regarding Vacancies

QUESTION

Under Section 5 of the Tullahoma City Charter, the Board of Mayor and Aldermen fills vacancies on the Board. The individual selected to fill the vacancy serves until the next municipal election, at which time a candidate is elected to fill the unexpired term of the office. The present Board includes an individual who was selected to fill a vacancy a few months ago. The Board is seeking a private act to amend the Tullahoma City Charter to provide that an individual selected by the Board to fill a vacancy will serve until the expiration of the full term of office left vacant. If enacted, would the person recently selected to fill the vacancy serve the entire remaining term of office, or must he or she run for election at the next municipal election to fill the unexpired term?

OPINION

As now drafted, the language would not apply to an individual selected to fill a vacancy before the new provision became valid. If this is the desired result, the language should be amended to apply to individuals currently filling vacancies. Extending the term in this manner presents no constitutional problems.

ANALYSIS

This opinion concerns the effect of a proposed amendment to the Tullahoma City Charter. Section 5 of the Charter provides for the election and term of office of the Board of Mayor and Aldermen. With regard to vacancies, this section provides:

In the event of the vacancy by reason of the death, resignation, or removal of the Mayor or any one or more Aldermen, the Board shall have the power to fill the vacancy or vacancies by a majority vote of said Board of Mayor and Aldermen, *said vacancies to be filled until the next municipal election at which time a candidate shall be elected to fill the unexpired term of said office so vacated.*

(Emphasis added). The present Board includes a member who was selected to fill a vacancy a few months ago. Under the current charter, this member would be required to run for election at the next municipal election if he or she wishes to serve the entire unexpired term of the vacated office. The

Board has passed a resolution asking its legislative representatives to sponsor a private act to amend the Tullahoma City Charter. The amendment would delete the language quoted above and substitute the following:

In the event of the vacancy by reason of the death, resignation, or removal of the Mayor or any one or more Aldermen, the Board shall have the power to fill the vacancy or vacancies by majority vote of said Board of Mayor and Aldermen, said vacancies to be filled by the person elected by the Board of Mayor and Aldermen *until the expiration of the term of office so vacated.*

(Emphasis added). The request asks whether the new provision may constitutionally be applied to allow the current member recently selected to fill a vacancy to serve the rest of the term of office he or she was selected to fill without having to run at the next city election. Under the language as presented, the new provision would not apply to someone who has already been selected to fill a vacancy under the previous charter. If this is the desired result, the language should be amended to apply to individuals currently filling vacancies. If it so provides, the new provision may constitutionally apply to all the current members of the Board. Applying the new provision to the member selected to fill the vacancy does not present constitutional problems. Op. Tenn. Att’y Gen. 05-013 (January 26, 2005) (concluding that the General Assembly may amend a private act city charter to extend the terms of current members of the city council).

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