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OFFICE OF THE
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February 8, 2000

Opinion No. 00-017

Constitutionality of Municipal Charter Amendment that Extends Term of Elected Officials

QUESTION

May the General Assembly constitutionally amend a municipal charter to change the time for holding elections of municipal officers and contemporaneously extend the terms of currently serving elected officers until the next newly scheduled election.

OPINION

Yes.

ANALYSIS

An amendment to a municipal charter that alters the time for holding elections of municipal officers and provisionally extends the term of currently serving officers until the next newly scheduled election is within the power of the General Assembly and does not offend the Tennessee Constitution.

The Tennessee Supreme Court last directly addressed this issue in 1883 in *State v. Wilson*, 80 Tenn. 246 (1883). There, the General Assembly had passed an act amending the municipal charter of Fayetteville, Tennessee. Prior to the amendatory act, the municipal charter had provided that the corporation's board of aldermen were to be elected each October to one-year terms. The act extended the aldermen's terms to two years, set the next election for October 1884 (rather than October 1883, as it would have otherwise been scheduled), and provided that the existing board would continue in office until the October 1884 election. In rejecting a constitutional challenge to this act, the Tennessee Supreme Court stated, "A provisional continuance of existing officers in office until a new order of affairs is inaugurated, has been uniformly held to be within the competency of the Legislature." *Id.* (citations omitted).

Similarly, in *Luehrman v. Taxing District of Shelby County*, 70 Tenn. 425 (1879), the Supreme Court upheld an act that repealed the municipal charter of Memphis and incorporated a new

municipality. Among other things, the act provided that the new corporation would be locally governed by an eight-member legislative counsel. Four of the counsel members were to be appointed, rather than elected, for an initial two-year term, after which, all members were to be locally elected. Against a challenge that these provisional appointments were contrary to the principles of local self-government, the Tennessee Supreme Court first noted that, generally, “municipal corporations are within the absolute control of the Legislature.” *Id.* Moreover, the Court continued, even if the act’s appointment scheme would not have been permissible in a permanent form, the appointments under the act were expressly temporary and provisional, and the legislature’s “right to make provisional appointments [when necessary to put in motion a new system] is beyond doubt.” *Id.*

Although this issue does not appear to have been more recently addressed, there have been no constitutional or other changes that would cause this office to question the holdings of *Wilson* or *Luehrman*. Thus, based on these authorities, this office is of the opinion that the General Assembly may constitutionally establish a new date for municipal elections and provisionally appointment currently serving municipal officers to continue in office until the next newly scheduled election.

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