S T A T E O F T E N N E S S E E
OFFICE OF THE
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January 10, 2001

Opinion No. 01-006

Payment of salary and benefits to former city judge

QUESTION

May Lenoir City continue paying salary and benefits through April 2001 to its former municipal judge and, if not, is it appropriate for the city to pay for the former judge's COBRA benefits?

OPINION

The former city judge is not entitled to salary or benefits, including payment by the city for COBRA coverage, after his successor assumed office September 1, 2000.

ANALYSIS

Material supplied with the opinion request states that the voters of Lenoir City elected a city judge to an eight-year term in April 1993 that would have ended in April 2001. The information also states that the law mandating the election time for city judge was changed after the judge took office. Reportedly, the Municipal Technical Advisory Service (MTAS) rendered an opinion through the city attorney that the election of city judge had to be held in August 2000, with the newly-elected judge taking office on September 1, 2000. According to the material, the incumbent city judge agreed with the MTAS legal opinion and did not seek re-election. A new city judge took office, therefore, on September 1, 2000. The question has now arisen whether the former city judge may continue to receive salary and benefits since he did not complete the term to which he was elected, through no fault of his own.

Lenoir City is a home rule municipality. Tenn. Code Ann. Vol. 13 (Supp. 2000) at 114. The Lenoir City Charter establishes the City Court. 1933 Tenn. Priv. Acts Ch. 127, as amended, § 11. In 1988, the charter was amended by ordinance to provide that "[t]he City Judge shall be elected by the voters of the City of Lenoir City, Tennessee, in accordance with the laws of the State of Tennessee governing the election of judges in home rule municipalities." *Id.* The statute governing the election of city judges in home rule municipalities provides:

> The judges of the city court hereinafter established by the governing body of home rule municipalities shall be appointed on the nomination of the mayor or chief

> executive officer, concurred in by the city council or other legislative body, but the judges so appointed shall run for election in the next *general election*.

Tenn. Code Ann. § 16-17-102 (emphasis added).

We think the election referred to in that code section would have occurred in August 1992, rather than April 1993. *See* Tenn. Code Ann. § 2-3-202(8) (elections for the judges of all courts shall be held at the regular August election when the election immediately precedes the commencement of a full term). The April date appears to have been the date for a regular city election established by the Lenoir City Charter. Under Section 7 of the Charter, regular city elections are held on the third Thursday in the month of April.

Before the Lenoir City election occurred, however, new legislation became effective April 12, 1993, that was enacted after the Tennessee Supreme Court's decision in *Town of South Carthage v. Barrett*, 840 S.W.2d 895 (Tenn. 1992). In *Town of South Carthage*, the Court held that city judges exercising concurrent jurisdiction with General Sessions Court over state criminal offenses committed within their municipalities had to be elected in accordance with Article VI, Section 4, of the Tennessee Constitution. The legislation, Chapter 115 of the Public Acts of 1993, appears designed, in part, to regularize the election schedule for those city judges in order that they would be elected along with other Article VI judges every eight years in the August general election:

> The term of office of the city judge elected pursuant to this part shall be eight (8) years, *except for any initial term that may be shorter*. Once the ordinance is adopted providing for the popularly elected judge, the municipal governing body may appoint a qualified person to serve in that position until the next regular August general state election. The first city judge popularly elected pursuant to this part shall be elected at the next regular August general state election that takes place at least thirty (30) days after the ordinance is passed calling for the judge's election. The person elected at this election shall serve only until replaced by a successor to be chosen at the next regular judicial election held in accordance with article VII, § 5 of the Constitution of Tennessee. All subsequent elections for city judge shall be held in accordance with article VII, § 5 of the Constitution of Tennessee.

Tenn. Code Ann. § 16-18-203 (emphasis added). Title 3, Chapter 1, of the Lenoir City Code appears patterned after the city ordinance contemplated by Public Chapter 115.

Material included with the request recites that the law mandating the election time for city judge was changed (from April to August) after the former city judge took office. But it appears, as previously stated, that the judge was elected in the regular Lenoir City election on the third Thursday of April 1993. Chapter 115 of the Public Acts of 1993, which enacted § 16-18-203, became effective April 12, 1993, several days before the Lenoir City election. That inconsistency aside, the statute providing for the election of city

judges in home rule municipalities was already in effect, § 16-17-102 having been enacted by Chapter 778 of the Public Acts of 1972. Because the former city judge should have been elected in August 1992, instead of April 1993, under the city charter and § 16-17-102, and because § 16-18-203 became effective before the former judge was actually elected in April 1993, we think it is reasonable to view his term as the "initial term" that may be shorter than eight years under Tenn. Code Ann. § 16-18-203. Accordingly, it is our opinion that the former city judge's term ended when his successor assumed the city judgeship September 1, 2000, and the former judge therefore is entitled to neither compensation nor benefits nor payment by the city for COBRA coverage after that date.

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