S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 01-031

Different Private Acts Rewriting City Charter

QUESTIONS

1. Assume two different versions of a local bill are submitted to the General Assembly. Each bill rewrites the Lawrenceburg City Charter in exactly the same way, but one requires approval by a two-thirds vote of the local legislative body and the other requires approval in a referendum.

a. What is the effect if the General Assembly passes both?

b. What happens if the legislative body approves one bill and the other is rejected in a referendum?

2. Article XI, Section 9 provides in relevant part that "any act of the General Assembly private or local in form or effect applicable to a . . . municipality . . . shall be void and of no effect unless the act by its terms *either* requires the approval by a two-thirds vote of the local legislative body of the municipality . . . , *or* requires approval in an election by a majority of those voting in said election in the municipality . . . affected." (Emphasis added).

a. May a local bill require approval both by the local legislative body *and* by referendum?

b. May a local bill contain language stating that if the legislative body did not approve the bill within a set number of days, then there would be a referendum on the bill?

OPINIONS

1.a. We think a court would conclude that two such acts are in irreconcilable conflict and that, by passing the later act, the General Assembly repealed the act enacted earlier.

b. Only the act enacted later in time could become effective if approved by the method specified in that act.

2.a. A local bill may require approval both by the local legislative body and by referendum.

b. A local bill may contain language stating that if the legislative body does not approve the bill within a set number of days, then there will be a referendum on the bill.

ANALYSIS

1. Identical Charter Revisions Requiring Different Methods of Approval

Based on the request, we assume local legislation may be submitted to the General Assembly to rewrite the Lawrenceburg City Charter. The request asks this Office to consider the effect of two local bills that adopt identical revisions to the charter, but require different methods of adoption. One bill would require adoption by a two-thirds vote of the local legislative body; the other bill would require adoption in a local referendum.

The first question is the effect of passing both bills. We think that a court would conclude two acts that provide for local adoption by two different methods are in irreconcilable conflict, regardless of the fact that each provides for identical charter amendments. Where two acts conflict and cannot be reconciled, the act passed earlier will be repealed by implication to the extent the two are inconsistent. *Cronin v. Howe*, 906 S.W.2d 910 (Tenn. 1995). Thus, for example, a statute repeals by implication the repugnant provisions of another statute passed on the same day, but at an earlier hour. *Bailey v. Drane*, 96 Tenn. 16, 33 S.W. 573, 573-574 (Tenn. 1896). For this reason, we think a court would conclude that the act passed later by the General Assembly repealed the act passed earlier.

The second question is the effect of one such act being approved by the local legislative body in accordance with its terms and the other being rejected by a referendum in accordance with its terms. As discussed above, we think a court would conclude that these acts irreconcilably conflict, and that the one passed later repeals the act passed earlier. For that reason, only the act enacted later could become effective, if it is adopted locally by the method it specifies.

2. Cumulative or Alternative Adoption Methods in the Same Bill

The second question requires an interpretation of Article XI, Section 9 of the Tennessee Constitution. That provision provides in relevant part:

> [A]ny act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms *either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.*

Tenn. Const. Art. XI, § 9 (emphasis added). Clearly this provision applies to a private act revising the Lawrenceburg City Charter. The first issue is whether, under this provision, a local act may require approval both by the local legislative body and by referendum. Under Article XI, Section 9, a local bill is valid if it provides for local approval by either method. Thus, a local bill that requires local approval by both methods complies with Article XI, Section 9.

The final issue is whether, under this provision, a local bill may contain language providing that if the local legislative body did not approve the bill within a set number of days, then there would be a referendum on the bill. This Office reviewed the constitutionality of a local act providing that it must be approved by the county legislative body on or before a specified date, but if the county legislative body had failed to act by that time, the election commission was directed to call a special election to allow the voters to approve or disapprove the act. Op. Tenn. Atty. Gen. 81-261 (April 22, 1981). That opinion concludes that this provision for alternative methods of approval did not violate Article XI, Section 9 of the Tennessee Constitution. We do not think that a provision stating that if a private act has not been adopted by a local legislative body by a specified date (that is, the body has failed to act or has rejected the act), then the act must be submitted for a referendum, is materially different from the provision considered in the 1981 opinion. Review of the proceedings of the 1953 Constitutional Convention, which adopted the requirement for local approval of private acts now in Article XI, Section 9, does indicate that the convention rejected a resolution that would have made every private act subject to alternative methods of approval in the manner the request proposes. But we do not think this action means that the final language the convention did adopt precludes the General Assembly from providing for alternative methods of approval in a particular bill.

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