

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
SECOND FLOOR CORDELL HULL BUILDING
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243-0488

March 19, 2001

Opinion No. 01-039

Reconsideration Tenn. Atty. Gen. Op. No. 00-94 (May 18, 2000) - Constitutionality of House Bill 1932/Senate Bill 1933 from 101st General Assembly

QUESTION

This Office issued an opinion on May 18, 2000, stating that House Bill 1932/Senate Bill 1933 from the 101st General Assembly would “violate Article XI, § 8 of the Tennessee Constitution since it suspends the general law regarding qualifications of voters under Tenn. Code Ann. § 6-53-102.” Tenn. Atty. Gen. Op. No. 00-94 (May 18, 2000). This Office further stated in that opinion that, “in accordance with Tenn. Code Ann. § 2-2-107, the legislature could amend the City Charter of the City of Spring Hill, 1909 Tenn. Acts ch. 406, by private act to permit nonresident property owners to vote in municipal elections in Spring Hill.” In fact, the City of Spring Hill is now incorporated under the Mayor-Aldermanic form of government, Tenn. Code Ann. §§ 6-1-101, *et seq.* Does the fact that the City of Spring Hill is incorporated under the general law, Tenn. Code Ann. §§ 6-1-101, *et seq.* instead of pursuant to 1909 Tenn. Acts ch. 406, alter this Office’s prior opinion?

OPINION

Since the City of Spring Hill is incorporated under the general law Tenn. Code Ann. §§ 6-1-101 *et seq* instead of pursuant to 1909 Tenn. Acts ch. 406, it is the opinion of this Office that the legislature cannot amend the City Charter of the City of Spring Hill by private act to permit nonresident property owners to vote in municipal elections in Spring Hill as it would conflict with the general law in violation of Article XI, Section 8 of the Tennessee Constitution. Furthermore, the only way in which the General Assembly can enact legislation to permit nonresident property owners in the City of Spring Hill to vote in municipal elections is to amend Tenn. Code Ann. §§ 6-1-101 *et seq* so as to provide that nonresident property owners in all municipalities incorporated under the Mayor Aldermanic charter form of government are permitted to vote in municipal elections.

ANALYSIS

This Office previously addressed the constitutionality of House Bill 1932/Senate Bill 1933 from the 101st General Assembly:

House Bill 1932/Senate Bill 1933, as drafted, would violate Article XI, § 8 of the Tennessee Constitution since it suspends the general law regarding qualification of voters under Tenn. Code Ann. § 6-53-102. However, in accordance with Tenn. Code Ann. § 2-2-107, the legislature could amend the City Charter of the City of Spring Hill, 1909 Tenn. Acts ch. 406, by private act to permit nonresident property owners to vote in municipal elections in Spring Hill.

Tenn. Atty. Gen. Op. 00-94 (May 18, 2000). After the issuance of that opinion, the Governor vetoed House Bill 1932/Senate Bill 1933 on May 18, 2000.

Reconsideration of that opinion has been requested in light of the fact that the opinion was based on an incorrect factual premise, namely, that the charter of the City of Spring Hill is a private act - 1909 Tenn. Acts, ch. 406. Although Chapter 406 was the original basis for the charter of that municipality, it is now incorporated under the general law, *i.e.*, the Mayor-Aldermanic form of government set forth in Tenn. Code Ann. §§ 6-1-101, *et seq.*

This Office's previous opinion stated that House Bill 1932/Senate Bill 1933 was unconstitutional because it suspended the general law regarding qualification of voters under Tenn. Code Ann. § 6-53-102. That statute provides that in order for a person to qualify as a voter in all municipal elections in Tennessee, that person must "liv[e] within such [municipal] corporation and . . . have been [a] resident therefor for three months previous to the election. . . ." House Bill 1932/Senate Bill 1933 attempted to amend that statutory provision by providing for an exception for the City of Spring Hill by population classification¹ to permit nonresident property owners to vote in municipal elections in the City of Spring Hill. This Office concluded that House Bill 1932/Senate Bill 1933, as drafted, violated Article XI, Section 8 of the Tennessee Constitution because there was "no known rational basis" for this population classification. Tenn. Atty. Gen. Op. 00-94 (May 18, 2000).

This Office also previously opined that since the "City Charter of Spring Hill is established by private act not general law . . . , T.C.A. § 2-2-107 would permit the City Charter of Spring Hill to be amended by private act to provide for nonresident property owners to vote in municipal elections." *Id.* Tenn. Code Ann. § 2-2-107(a)(1) states that "[a] person shall be registered as a voter of the precinct in which the person is a resident, and, if provided for by municipal charter or general law, may also be registered in a municipality in which the person owns real property in order to participate in that municipality's elections." Thus, this general law permits nonresident property owners to vote in municipal elections if provided by general law or by the charter of the municipality.

Since the charter of the City of Spring Hill is based on a general law, Tenn. Code Ann. §§ 6-1-

¹Specifically, section 1 of House Bill 1932/Senate Bill 1933 applied to any city "having a population of not less than 1,460 nor more than 1,480 according to the 1990 federal census or any subsequent census. . . ." The City of Spring Hill is the only incorporated municipality falling within that population category.

101, *et seq.*, and not a private act, this Office's prior opinion is amended to state that the only means by which the General Assembly can permit nonresident property owners in the City of Spring Hill to vote in municipal elections is to amend Tenn. Code Ann. §§ 6-1-101, *et seq.* so as to provide that nonresident property owners in all municipalities incorporated under the Mayor Aldermanic charter form of government are permitted to vote in municipal elections. Accordingly, it follows that the legislature cannot amend the City Charter of the City of Spring Hill by private act to permit nonresident property owners to vote in municipal elections in Spring Hill as it would conflict with the general law in violation of Article XI, Section 8 of the Tennessee Constitution. Otherwise, the opinion of this Office remains unchanged.

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