S T A T E O F T E N N E S S E E
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Opinion No. 01-100

City of Knoxville - Recall Petition - Qualified Voters - Home Rule - Constitutionality

QUESTIONS

1. Does Article VII, Section 708 of the Charter of the City of Knoxville, which is a Home Rule municipality under Article XI, Section 9 of the Tennessee Constitution, conflict with any general law regarding elections?

2. Is any part of Article VII, Section 708 in violation of any provision of the Tennessee Constitution?

3. Are "special elections" included within the meaning of the term "general municipal election" in Tenn. Code Ann. § 2-5-151(e)(2)?

4. If the City of Knoxville redistricts its council districts during the 75 day signature gathering period in Tenn. Code Ann. § 2-5-151(f)(2), how will this affect the requirements of Tenn. Code Ann. §§ 2-5-151(e)(2) and 2-1-107?

OPINIONS

1. To the extent that Section 708 authorizes the Knox County Election Commission to set a special election on a date other than the next available general municipal or county election more than 60 days from certification of the recall petition, it is the opinion of this Office that Section 708 conflicts with and is superceded by Tenn. Code Ann. § 2-5-151(f)(2).

2. It is the opinion of this Office that Section 708 does not violate any provisions of the Tennessee Constitution.

3. It is the opinion of this Office that a recall election under Section 708 is strictly speaking a "special election," but it must be held at the same time as the next "general municipal or county election" more than 60 days from certification of the recall petition.

4. Since Tenn. Code Ann. § 2-5-151(d) requires "at least 15% of those registered to vote

in the municipality" (as opposed to registered voters in the council district) to sign the recall petition, redistricting of the districts for the Knoxville City Council will have no effect upon who is qualified to sign the recall petition during the 75 day signature gathering period in Tenn. Code Ann. § 2-5-151(f)(2).

ANALYSIS

1. Under Article XI, Section 9 of the Tennessee Constitution, the charter of a municipality that adopts "home rule" may not be altered or amended by the General Assembly except "by laws which are general in terms and effect." But that provision was not intended to enable "home rule" municipalities to adopt charter provisions that are inconsistent with the general law. *See* Journal and Proceedings of the 1953 Constitutional Convention regarding Resolution 117, now Article XI, Section 9, p. 1011("[E]ven if you elect to operate at your option under the home rule plan, and you elect to amend your charter, you cannot adopt an amendment that is inconsistent with the general law, with only one exception that the home rule city will have the exclusive right of regulating the pay of its employees.")

Tenn. Code Ann. § 2-5-151(f)(2) provides that:

> [A] petition for recall, referendum or initiative shall be filed at least sixty (60) days before a general municipal or county election may be held on the question contained in such petition. The question contained in a petition filed less than sixty (60) days before an upcoming general municipal or county election will be placed on the ballot of the following general municipal or county election.

On the other hand, Section 708 of Article XI of the Charter of the City of Knoxville states that where a recall petition has been filed with the Knox County Election Commission and the Commission has certified the petition to be sufficient, "it shall at once fix a date for holding the election not less than forty-five (45) days nor more than 60 days from the date of the certificate." This provision is inconsistent with the general law, namely Tenn. Code Ann. § 2-5-151(f)(2), to the extent that the Knox County Election Commission has the authority to set the date of the election at a time other than the dates fixed in that general law. For example, were the Knox County Election Commission to certify a recall petition more than sixty days before the next general municipal or county election, Section 708 gives the Commission the authority to fix a date for a separate and special recall election of between 45 and 60 days from the date of the certification of the petition which is at a time other than the next general municipal or county election. However, Tenn. Code Ann. § 2-5-151(f)(2) clearly only permits the holding of an election on a petition for recall at the next available general municipal or county election. To that extent, Section 708 conflicts with and is superceded by Tenn. Code Ann. § 2-5-151(f)(2).[1]

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[1]It should also be noted that Tenn. Code Ann. § 2-5-151(j) states that "[t]his section shall control notwithstanding any statutory provision or charter provision of a municipality or a county to the contrary. . . ." There is an exception for subsection (d) to Tenn. Code Ann. § 2-5-151 for charter provisions adopted after the effective date

2. The second question concerns whether Section 708 is otherwise constitutional. The only possible constitutional infirmity of Section 708 would arise under Article XI, Section 9 of the Tennessee Constitution, which prohibits the General Assembly from enacting any "special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected. . . ." In *Roberts v. Brown*, 43 Tenn. App. 567, 310 S.W.2d 197 (1957), the Court of Appeals, reviewing the recall provision in the Charter of Union City, Tennessee, a provision very similar to that of the City of Knoxville, held that the Tennessee Constitution does not prohibit the inclusion of recall provisions in city charters which could shorten the term of elected city officials. Thus, it is the opinion of this Office that Section 708 does not violate Article XI, Section 9 of the Tennessee Constitution.

3. The third question concerns whether the term "general municipal or county election" contained in Tenn. Code Ann. § 2-5-151(f)(2) includes a "special election." The term "general" election is not defined in the Election Code. However, Tenn. Code Ann. § 2-1-104(7) defines the term "election" as "a **general election** for which membership in a political party in order to participate therein is not required." (Emphasis added). Obviously, a recall election under Section 708 is a "special election" in that it is not a regularly held election for the office in question. However, by statute [Tenn. Code Ann. § 2-5-151(f)(2)], a recall election must be held at the same time as the next "general municipal or county election."

Article VII, Section 5 of the Tennessee Constitution provides an analogous situation to the present question. That constitutional provision states that "[n]o special election shall be held to fill a vacancy in the office of Judge or District Attorney, but at the time herein fixed for biennial election of civil officers." In *State ex rel Shriver v. Dunn*, 496 S.W.2d 480, 484 (Tenn. 1972), the Tennessee Supreme Court stated that "[t]he election to fill . . . a vacancy [in the office of District Attorney or Judge] is a special election though it must be held at the same time as an August general election." Likewise, a recall election under Section 708 is strictly speaking a "special election," but it must be held at the same time as the next "general municipal or county election." *See also* Tenn. Op. Atty. Gen. No. 00-052 (March 22, 2000)(Recall petition received by Roane County Election Commission "should be placed on the ballot at the next general municipal or county election that occurs more than sixty days after the recall petitions were filed . . . [which] would be the county general election on August 3, 2000.")

4. The fourth question concerns the effect that redistricting of the Knoxville City Council will have upon any recall petitions filed. Specifically, the question is: if the City of Knoxville redistricts its council districts during the 75 day signature gathering period allowed in Tenn. Code Ann. § 2-5-151(f)(2), how will this affect the requirements of Tenn. Code Ann. §§ 2-5-151(e)(2) and 2-1-107? Tenn. Code Ann. § 2-5-151(e)(2) states that "[u]pon filing, each completed petition shall contain . . . the genuine

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of the statute, *i.e.*, July 1, 1997. However, that provision is not applicable in this instance.

signature and address of registered voters only, pursuant to the requirements of § 2-1-107."[2]

The specific fact situation in the fourth question concerns a person who at the time of the signing of a petition is a resident of the council district which the petition seeks to recall, but as a result of redistricting will not be a resident of that district at the time of the certification of signatures for the petition by the Knox County Election Commission. The question is whether that person's signature is still valid for the purpose of determining whether the petition has met the necessary number of qualified signatures in light of the altered council district lines. Tenn. Code Ann. § 2-5-151(d) states that "[p]etitions shall be signed by at least fifteen percent (15%) of those registered to vote in the municipality or county." There is no requirement in that subsection or subsection (f)(2) of Tenn. Code Ann. § 2-5-151 for signers of the petition to be qualified voters or residents of the district in which the recall petition is sought. This Office has previously opined that the above-quoted language "requires that a petition for recall for a member of a city council elected from a district within a municipality must be signed by 15% of the voters of the entire municipality." Tenn. Op. Atty. Gen. No. 97-149 (October 23, 1997). Specifically, this Office noted that the statute "makes no distinction between citywide recall, referendum or initiative elections and recall elections from city council districts within a municipality." *Id.* Thus, redistricting of the Knoxville City Council will have no effect upon who are qualified to sign recall petitions because such individuals may be registered voters from anywhere within the City of Knoxville and are not limited to the council district for which the recall is being petitioned.

This Office realizes that the requirement of Tenn. Code Ann. § 2-5-151 permits voters outside of the council district but within the municipality to sign the petition and further measures the number of signatures on the petition on a municipal-wide instead of district basis. However, the language of the statute clearly states that "[p]etitions shall be signed by at least fifteen percent (15%) of those registered to vote in the municipality or county." Accordingly, effect must be given to the language of the statute. *See State ex rel Sonnenburg v. Gaia*, 717 S.W.2d 883 (Tenn. 1986)("[T]he word 'county' in Article II, Section 9 [of the Tennessee Constitution] refers plainly and unambiguously to counties rather than districts [with regard to the one-year residency requirement for candidates for state representative in multi-district counties].")

Section 708 does state that "[t]o be valid, the petition shall contain the signatures of qualified voters equal in number to at least thirty (30) percent of the total votes cast in the last regular election for the office from which the recall of the official is sought." It is clear that Section 708 imposes a greater requirement upon petition gatherers than Tenn. Code Ann. § 2-5-151. Tenn. Code Ann. § 2-5-151(j) states:

> This section shall control notwithstanding any statutory provision or charter provision of a municipality or county to the contrary; provided,

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[2]Tenn. Code Ann. § 2-1-107(a) states in part that "[a]ny person signing a petition required under this title, whether ro nomination of a candidate, for a referendum or for any other purpose, shall include the address of such person's residence."

> that any contrary charter provision of a municipality or county which is enacted after July 1, 1997, shall control with respect only to the requirements set forth in subsection (d) relating to the statutory minimum number of signatures required in a petition, and to the provisions of subsection (f)(1) relating to the seventy-five-day deadline for filing of a petition after final certification by the county election commission.

Tenn. Code Ann. § 2-5-151 expressly controls over the Knoxville City Charter as to the rules governing qualified signatures for recall petitions of city council members. Under the statute, the signature of a person who is "registered to vote in the municipality . . ." is a qualified signature for purposes of calculating the necessary signatures to hold a recall election. As to the minimum number of signatures necessary to hold a recall election, it is this Office's understanding that Section 708 was adopted before July 1, 1997. *See* Knoxville City Charter, Editor's Note ("Ordinance No. O-177-82, enacted on Aug. 25, 1982, and ratified by the electorate on Nov. 2, 1982, effected a total revision, consolidation and rearrangement of the charter, being ch. 412 of 1923, of the Private Acts of the General Assembly of the State of Tennessee, as amended."). Therefore, Tenn. Code Ann. § 2-5-151(d), which requires "at least 15% of those registered to vote in the municipality" to sign the recall petition, applies to recall petitions for officers of the City of Knoxville, including members of the Knoxville City Council.

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