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. 01-153

Election of City Judge in Home Rule City

QUESTIONS

1. Johnson City is a home rule municipality. The charter creates a city court and provides for a single judge, to be appointed for a two-year term. Under Tenn. Code Ann. §§ 16-17-101, *et seq.*, the governing body of a home rule municipality may establish a city court, whose judge or judges, initially appointed, must run for election in the next general election. Did this statutory scheme abrogate the Johnson City Charter to the extent that charter provides for an appointed judge?

2. If the answer to Question 1 is yes, would the recent reappointment of the Johnson City Judges be valid under Tenn. Code Ann. § 16-17-102 and allow them to continue to exercise concurrent state jurisdiction, subject to running for election in the August 2002 general election?

OPINIONS

1. The effect of Tenn. Code Ann. § 16-17-102 on the Johnson City Municipal Court depends on whether the city created an entirely new court or merely expanded its existing city court into two divisions. If, when the city acted under Tenn. Code Ann. §§ 16-17-101, *et seq.*, it intended to create a new city court with two divisions, then the judges of the city court must be elected. If, on the other hand, the city merely expanded its existing court into two divisions, then, under Tenn. Code Ann. § 16-17-104, both judges would continue to be selected as provided under the charter. The resolution or ordinance under which the city acted should be examined to determine whether it intended to create an entirely new court or to expand the existing court.

Your request refers to a decision by the United States District Court for the Eastern District of Tennessee granting a motion to suppress the fruits of a search because the Associate City Judge of Johnson City, who signed the warrant, was not elected to an eight-year term as required by the Tennessee Constitution. *United States of America v. Rashaan Pierre Hall*, United States District Court for the Eastern District of Tennessee at Greeneville, No. 2:01-CR-27 (order issued August 6, 2001). It is the policy of this Office not to comment on pending litigation.

2. This question is only applicable if the city created an entirely new court with two divisions under Tenn. Code Ann. §§ 16-17-101, *et seq.* Under Tenn. Code Ann. § 16-17-102, interim city judges must be nominated by the mayor with the concurrence of the commission. Assuming that the current city judges were selected by the city commission, then they have not been appointed as required under Tenn. Code Ann. § 16-17-102. Further, the judge of a court exercising concurrent general sessions jurisdiction must be elected to an eight-year term. It appears that judges of the Johnson City Municipal Court are appointed to a two-year term. Under Tenn. Code Ann. §§ 16-18-201, *et seq.*, any city may, by ordinance, provide for the election of a city judge to an eight-year term.

ANALYSIS

1. Effect of Tenn. Code Ann. §§ 16-17-101, *et seq.*, on Johnson City Municipal Court Judge

This opinion concerns the status of the judges of the Johnson City Municipal Court. The Johnson City Municipal Court was created under the city's private act charter. That charter appears to provide for a single city judge. The charter provides:

> That there be, and hereby is, established and constituted for said City of Johnson City a city court with exclusive jurisdiction to try all offenses for the violation of the city ordinances and bylaws; *and said court shall have all of the power and exercise all of the functions of, and concurrent jurisdiction with, justices of the peace within the corporate limits of the city with respect to cases or actions involving violations of the state criminal laws, but not otherwise.*

Johnson City Charter, Art. 22, § 100; 1939 Tenn. Priv. Acts Ch. 189 (emphasis added). The judge of the municipal court is to be elected by the board of commissioners for a two-year term. Johnson City Charter, Art. 22, § 108; 1939 Tenn. Priv. Acts Ch. 189.

Although the charter only provides for one city judge, the request indicates that the municipal court currently has more than one judge. Johnson City is now a home rule municipality. Under Tenn. Code Ann. § 16-17-101:

> (a) In *all* home rule municipalities, the governing bodies are authorized to establish city courts to try violations of municipal ordinances, and in those municipalities which now have city courts, the governing bodies may increase the number of divisions of same.
>
> (b) The governing bodies of all home-rule municipalities may also *decrease* the number of divisions of city courts by ordinance, but no such

> division shall be eliminated except when a term of a city court judge expires or when a vacancy in the office of city court judge exists.

Tenn. Code Ann. § 16-17-101 (emphasis added). It therefore appears that, under this provision, a home rule city with an existing city court may choose to abolish its existing court by eliminating all its divisions and establish an entirely new court, or to expand its existing court.[1] It is not clear whether the Johnson City commissioners chose to create an entirely new court, or to expand its existing court. The city action regarding the city court should be examined to determine the commission's intent. As discussed below, this determination is crucial to the provisions that govern the selection of the judges and the jurisdiction they exercise.

Your question concerns the effect of Tenn. Code Ann. § 16-17-102. That statute 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.

(Emphasis added). The question is whether this provision abrogates Article 22, Section 108 of the City Charter regarding appointment of the city judge.

Tenn. Code Ann. § 16-17-104 provides:

> In those home rule cities which have city courts *and in which the legislative body increases the number of divisions thereof*, the legislative body shall authorize the same power as other divisions, *and the newly created divisions shall be under the same direction and control as presently provided in the municipal charter*.

These two statutes must be read together. We think that Tenn. Code Ann. § 16-17-102 applies only to a court newly created under the authority of the statute, not to additional divisions added to an existing court under the statute. Thus, if the city created an entirely new court with two divisions, then both judges would have to be elected under Tenn. Code Ann. § 16-17-102. But if the city merely expanded the existing municipal court into two divisions, then the judges of both divisions would be selected in accordance with the city charter.

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[1] It could also be argued that, under this provision, a city could retain its existing court and create a new court in addition to its existing court. We think it is unlikely, however, that the General Assembly intended to authorize a city to operate two different courts, operating under different provisions and selected by different methods.

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We note, however, that the request indicates that the Johnson City Municipal Court exercises concurrent general sessions jurisdiction over criminal offenses committed within the city boundaries. But under the city charter, the Johnson City Municipal Court is given concurrent authority with *justices of the peace,* not general sessions courts, over violations of state law within city limits. *See Town of South Carthage v. Barrett,* 840 S.W.2d, 895, 898 (Tenn. 1992); *City of Elizabethton v. Carter County,* 204 Tenn. 452, 321 S.W.2d 822, 828 (1958), *commented on unfavorably in concurring opinion, Summers v. Thompson,* 764 S.W.2d 182, 196 (Tenn. 1988), *reh'g denied* (1988), *appeal dismissed,* 488 U.S. 977, 102 S.Ct. 524, 102 L.Ed.2d 556 (1988). *See also* Op. Tenn. Atty. Gen. 93-29 (April 1, 1993); Op. Tenn. Atty. Gen. 95-20 (March 27, 1995).

Under Tenn. Code Ann. § 16-17-103, judges appointed or elected under Tenn. Code Ann. § 16-17-102 are accorded "full power and authority to try and dispose of violations of municipal ordinances and have all other powers touching upon the arrest and preliminary trial, discharging, binding over, of all persons charged with offenses against the state committed in the city or municipality." Tenn. Code Ann. § 16-17-103. This Office has concluded that this jurisdiction is essentially concurrent with the county general sessions court. Op. Tenn. Atty. Gen. 85-279 (November 6, 1985). If the Johnson City Municipal Court was newly created under Tenn. Code Ann. § 16-17-102, then that court exercises concurrent general sessions jurisdiction under Tenn. Code Ann. § 16-17-103. But if the Johnson City Municipal Court was merely expanded into two divisions and still operates under the city charter, it is not clear that Tenn. Code Ann. § 16-17-103 applies. This Office is unaware of any other statute under which the Johnson City Court could have acquired concurrent general sessions jurisdiction over criminal offenses.

2. Interim Provision

The second question is relevant only if the Johnson City Municipal Court was newly created under Tenn. Code Ann. § 16-17-102. As quoted above, that statute states,

> 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.*

(Emphasis added). The request asks whether the current city judges, who were recently reappointed by the city commissioners, may now satisfy the requirement of Tenn. Code Ann. § 16-17-102 by running for election in the next general election. We think this course of action presents two problems. First, Tenn. Code Ann. § 16-17-102 requires the judges to be appointed on the nomination of the mayor or chief executive officer, with the concurrence of the city council. The city charter, on the other hand, provides for election of the city judge by the city commissioners. Assuming that the city judges were elected by the city commissioners, rather than nominated by the mayor with the concurrence of the city council, then the city judges were not initially selected as required under Tenn. Code Ann. § 16-17-102. Second, the city charter provides for a two-year term, while the provisions of Tenn. Code Ann. §§ 16-17-101, *et seq.*, are silent on the judge's term of office of a court newly created under that statute. The judge of a court that exercises concurrent general sessions jurisdiction must be elected to an eight-year term. *Town of South Carthage v. Barrett*, 840 S.W.2d, 895, 898 (Tenn. 1992). Under Tenn. Code Ann. §§ 16-18-201, *et seq.*, any city may, by ordinance, provide for the election of a city judge to an eight-year term.

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