S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

March 14, 2002

Opinion No. 02-028

Surrender of Memphis City Charter

QUESTIONS

1. Memphis is a home rule city. May the city give up its charter and, if so, by what method?

2. May the General Assembly revoke the city's charter by repealing a private act?

3. May the Memphis City Council give up the charter?

4. May the Memphis City Charter be revoked by a referendum election of the voters?

OPINIONS

1. We assume your question does not refer to consolidation of the city with the county and with other cities within the county to form a metropolitan government under Tenn. Code Ann. §§ 7-1-101, *et seq.*; or under the Charter Government Unification Act, Tenn. Code Ann. §§ 7-21-101, *et seq.*; or to a city adopting one of the general act municipal charters. The Memphis City Charter contains no provision regarding abolition of the charter. Under Article XI, Section 9 of the Tennessee Constitution, the General Assembly must provide the exclusive manner in which a city may be abolished by general law. No general law providing for the abolition of a private act city charter is in effect.

2. The General Assembly may not revoke the Memphis City Charter by private act.

3. The Memphis City Council is not authorized to surrender the city charter.

4. No statute authorizes the Memphis City Charter to be revoked by a referendum election of the voters.

ANALYSIS

You have asked this Office to update an opinion we wrote on the above issues in 1986. Op.Tenn.Atty.Gen. U86-26 (February 18, 1986). That opinion addressed surrender of the Memphis City

Charter. We assume your question does not refer to consolidation of the city with the county and with other cities within the county to form a metropolitan government under Tenn. Code Ann. §§ 7-1-101, *et seq.*; or under the Charter Government Unification Act, Tenn. Code Ann. §§ 7-21-101, *et seq.* We also assume that your question does not refer to a city adopting one of the general act municipal charters.

The City of Memphis adopted home rule in 1963. The General Assembly may act with respect to a home rule municipality only by laws that are general in terms and effect. Tenn.Const. art. XI, § 9. A home rule city charter may be amended by ordinance, which must then be approved by a majority vote of qualified city voters voting on the issue. *Id.* Article XI, Section 9 also provides that, "[t]he General Assembly shall *by general law* provide the *exclusive methods* by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered." (Emphasis added). In our 1986 opinion, this Office concluded that, under this provision, the General Assembly may not, by private act, revoke a private act city charter.[1] The only manner in which a city charter may constitutionally be abolished and the city dissolved is through a process set forth in a general law.

We have reviewed the current Memphis City Charter. The charter contains no provision for its surrender. The language quoted above from Article XI, Section 9, would prevent a home rule city from amending its charter to provide a method for its surrender. As our Office noted in 1986, Tenn. Code Ann. §§ 6-52-201, *et seq.*, is a general law that provides for the abolition of a city charter. But, by its terms, the statutory scheme provides that "[t]he people of any incorporated municipality, *which was chartered or incorporated under the general laws providing for the organization of municipal corporations*, who desire to surrender or abolish their charter, may do so in the following manner." Tenn. Code Ann. § 6-52-201 (emphasis added). Because the City of Memphis was chartered by private act, that statute is inapplicable. The only other general law addressing forfeiture of a city charter applies to a corporation with a population of one hundred inhabitants or less. Tenn. Code Ann. §§ 6-52-301, *et seq.* Therefore, no general law provides a method by which a city chartered under a private act may surrender its charter and dissolve itself.

As discussed above, under Article XI, Section 9, the General Assembly is constitutionally prohibited from revoking a private act city charter by private act. Therefore, the General Assembly may not, by private act, repeal the Memphis City Charter.

For the reasons discussed above, the Memphis City Council is not authorized to revoke the city charter by a vote, nor may the city charter be revoked by a popular referendum.

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[1] This Office had concluded, in an earlier opinion, that a municipality created by private act may be abolished by a private act repealing the charter, so long as the act was approved locally as required under Article 11, Section 9 of the Tennessee Constitution. Op.Tenn.Atty.Gen. 83-115 (March 8, 1983). However, in light of the language in Article XI, Section 9, stating that "[t]he General Assembly shall *by general law* provide the *exclusive methods* by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered," this opinion is incorrect. Accordingly, it is overruled. *See* Op.Tenn.Atty.Gen. 96-032 (March 6, 1996).

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Stephen I. Cohen
State Senator
Suite 8, Legislative Plaza
Nashville, TN 37243-0030