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Opinion No. 03-086

Election for Smyrna City Court Clerk under 2000 Charter

QUESTIONS

1. When should the next election for the Smyrna Town Court Clerk take place?

2. When would the term of office begin for the individual elected at that election?

3. When should subsequent elections for the Smyrna Town Court Clerk take place?

4. When would the terms of office begin for the individuals elected to the office of Smyrna Town Court Clerk at subsequent elections?

OPINIONS

1. Current charter provisions authorize the town council to provide for a town judge to exercise general sessions jurisdiction and to be elected "at the next general town election." The current judge was elected in 1998, and his term ends in 2006. No ordinance may be passed under the charter until, at the earliest, immediately following the 2005 town election. The 2000 charter provisions regarding elections of the town judge and the town clerk, therefore, are not yet in effect. The City passed an ordinance authorizing the election of the town clerk to a four-year term beginning in 1998. Under that ordinance and the authorizing statute, an election for a town clerk should have been held in August 2002. No statute authorizes another election for a town clerk until, at the earliest, August 2006. If the town wishes to hold an election before then under its 1998 ordinance — assuming that ordinance is still in effect — it would have to obtain a court order authorizing the election. Under the 2000 charter provisions, which cannot be implemented until 2005, the first election for the Town Court Clerk should be held at the next town election after the ordinance is passed.

2. - 4. The term of the first interim clerk would begin as soon as he or she has been elected and qualified for office. Subsequent elections for the Smyrna Town Court Clerk should take place on the first Thursday of August 2010, and on the first Thursday of August every four years thereafter. We think a court would probably elide the charter language stating that the clerk takes office in December following the town election and conclude, instead, that the clerk should take

office on the first day of September following the August election. But this is not certain. For this reason, the Smyrna Town Charter should be amended to make the provision internally consistent before it is implemented. If, as it now appears, the drafters of the charter intended the clerk to have the same term as other court clerks, then the language providing that the clerk takes office in December following the town election should be deleted from the charter, and language providing that the clerk takes office on the first day of September following the August general election should be substituted.

Before the 2000 charter with regard to town judge and town clerk elections is implemented, the charter should also be amended to address a constitutional problem. The present charter provision provides for an ordinance authorizing the election of a judge at the "next regular town election," that is, in November of odd-numbered years. A town judge with general sessions jurisdiction should be elected on the first Thursday in August in accordance with Article VII, Section 5 of the Tennessee Constitution. Although the clerk of a town court with general sessions jurisdiction does not, constitutionally, have to be elected at the same time as the judge of that court, some confusion could be eliminated if the charter were amended to provide that the first clerk is elected at the August elections at the same time as the first judge.

ANALYSIS

The Smyrna Town Charter was rewritten in 2000. 2000 Tenn. Priv. Acts Ch. 68. Article IX of the charter creates the Smyrna Town Court. Under Section 9.02(a) of the charter, the town council is authorized to appoint a town judge "who shall serve at the will of the council." But the town judge holding office at the time of the adoption of the new charter remains in office until the end of his or her term. The current Smyrna Town Court Judge, who exercised concurrent general sessions jurisdiction under Section 8(3)(1) and (2) of the Town Charter in effect when the charter was rewritten in 2000, was elected to office in 1998. His term does not end until 2006. The council may not appoint a town judge, therefore, until the term of the current elected town court judge expires in 2006.

Section 9.02(b) of the charter provides in part:

> The town council may, by ordinance, determine that the town court shall exercise jurisdiction concurrently with the general sessions court *beginning with the next general town election. Such ordinance must be passed at least six (6) months prior to the next regular town election. Such ordinance shall also provide for the election of a town judge at the next regular town election.*[1] The qualifications for an

[1] This provision is constitutionally suspect. A town judge with general sessions jurisdiction is the judge of an inferior court. *Town of South Carthage v. Barrett*, 840 S.W.2d 895 (Tenn. 1992). Under Article VII, Section 5 of the Tennessee Constitution, elections for all judicial officers must be held on the first Thursday in August. But this Office has concluded that a town judge with general sessions jurisdiction elected at a time other than the biennial August election could continue to serve in the office until the next August biennial election, when he or she could choose to

> elected town judge shall be the same as those for an appointed town judge. The initial term of office for an elected town judge shall be for such period of time as is necessary to align the subsequent elections for the town judge with the state general election for general sessions and other inferior court judges. The term of office for subsequent elected town judges exercising concurrent jurisdiction shall be eight (8) years and they shall hold office until their successors are elected and qualified and have taken their oath of office on the first day of September following their election.

Section 9.02(c) provides that "[i]n the event that the town judge already exercises general sessions jurisdiction at the time of the passage of this charter, said judge shall continue to exercise said jurisdiction until the completion of his/her term." An ordinance enacted under Section 9.02(b) of the charter, therefore, cannot become effective with respect to the town judge until the current judge's term ends in 2006. But, by its terms, the charter provides that the ordinance authorizing the town judge to exercise general sessions jurisdiction must provide for the election of a town judge "at the ***next*** general town election." General town elections are set for the second Tuesday of November 2000, and each *odd-numbered year thereafter*. Smyrna Town Charter, § 4.01. The town council, therefore, is not authorized to enact an ordinance under Section 9.02(b) until a new town judge can be elected at the next town election. This cannot occur until after 2006, when the current judge's term ends. Right now, the next general town election is in 2003, and the next one after that in 2005. No ordinance can be enacted to implement Section 9.02(b), therefore, until after the 2005 town election.

The 2000 charter provision regarding the Town Court Clerk, by its terms, can only be implemented at the same time as Section 9.02(b) regarding the Town Court Judge. Section 9.03 of the Town Charter now provides:

> Town court clerk election, qualifications, oath and compensation. *At the time the town council adopts an ordinance authorizing the town court to exercise its jurisdiction concurrently with general sessions courts, the town council may within that same ordinance authorize the election of a town court clerk at the next regular town election.*[2] Only registered voters who have been residents of the Town of Smyrna for one (1) year shall be eligible to seek the office of town court clerk. *The initial term of office for an elected town court clerk shall be for such period of time as is necessary to align the subsequent elections of the town court clerk with the state general*

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run to fill the remainder of the eight-year judicial term. Op. Tenn. Atty. Gen. 93-69 (November 30, 1993).

[2] There is no constitutional requirement that elections for the office of city court clerk must be held on the first Thursday in August.

> *election for inferior court clerks.* The term of office for subsequent town court clerks shall be four (4) years and *they shall take office on the first day of December following the regular town election in November.* They shall take the same oath of office as required of the town judge and they shall serve until their successors have been elected and qualified. The town court clerk shall be eligible for re-election. The town court clerk's compensation cannot be adjusted during his term of office.

(Emphasis added). This provision, therefore, cannot be implemented until after the 2005 town election.

The question then becomes what governs elections for the current Town Court Clerk. The request indicates that the position of Town Court Clerk was made an elected position by ordinance in 1993. That ordinance provided:

> At the August general election in 1994, and every four years thereafter, the city court clerk shall be elected by the qualified voters of the town for a term of four years, and the city court clerk shall take office on September 1 immediately following his or her election.

This provision was apparently based on the authority of Tenn. Code Ann. § 16-18-207. Op. Tenn. Atty. Gen. 98-180 (September 8, 1998). The last election for the Town Court Clerk was in 1998. Assuming that this ordinance is still in effect, a new Town Court Clerk should have been elected in the August 2002 election. No statute authorizes another election for Town Court Clerk until, at the earliest, August 2006. Only a court of competent jurisdiction, upon the town's petition, could authorize an election for the Town Court Clerk before that time.

We will now address the questions posed regarding interpretation of the 2000 charter provisions. The first question is when an election for a new town court clerk should be held. Assuming that the town council has actually passed an ordinance to provide for a judge with concurrent general sessions powers and an elected town court clerk, the new clerk should be elected at the next town election after the ordinance is passed.

The next question is when the term of the clerk elected at the town election should begin. While the Smyrna Town Charter provides that town elections take place in November of odd-numbered years, it does not specify a date when the term of office for officers elected at that election begins. Nor does Section 9.03 address when the term of the interim clerk begins. It appears, therefore, that the term of the interim clerk would begin as soon as the clerk is elected and qualified for office.

The third and fourth questions are when the next election for the clerk should be held, and when the new clerk will take office. These questions require an interpretation of Section 9.03.[3] This provision contains contradictory statements. The charter provides that the first town clerk will be elected at the next regular town election in November. The charter then provides that the town clerk's *term* "shall be for such period of time as is necessary to align the subsequent elections of the town court clerk with the state general election for inferior court clerks." This sentence implies, therefore, that the town clerk's term would end at the same time as the term of other elected court clerks. Other court clerks are elected in August and take office on the first day of September immediately following the election. The next general election for court clerks is in August 2006. But the charter then states that "[t]he term of office for subsequent town court clerks shall be four (4) years and they shall take office on the first day of December following the regular town election in November." This sentence is inconsistent with the earlier sentence indirectly expressing the intent that the clerk's *term* will line up with the terms and elections for other court clerks.

Words in a statute may be eliminated or disregarded in order to carry out the legislative intent or meaning. *Basham v. Southeastern Motor Truck Lines*, 184 Tenn. 532, 201 S.W.2d 678, 681 (1947) (disregarding words included by obvious oversight in a statute); *see also*, Singer, 2A *Statutes and Statutory Construction*, § 47:37 (6th ed. 2000) and authorities cited therein. But it must be certain that the legislature could not possibly have intended the words to be in the statute, and that the rejection of them serves merely as a correction of careless language and actually gives the true intention of the legislature. Singer, *at* § 47.37. Courts permit the elimination of words, for example, where the use of the words would lead to an absurdity or irrationality or where it is necessary to avoid inconsistencies and to make the provisions of an act harmonize. *Id.*

In this case, the charter first provides that the term of the clerk is to coincide with the election for other court clerks. These clerks all are elected to four-year terms on the first Thursday in August, and they take office on the first day of September immediately following the election. But if the language, "[t]he term of office for subsequent town court clerks shall be four (4) years and they shall take office on the first day of December following the regular town election in November," is literally given effect, a clerk elected in August could not take office until December of the

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[3] The situation also poses a constitutional issue. Under Article VI, Section 13 of the Tennessee Constitution, "[c]lerks of the Inferior Courts holden in the respective Counties or Districts, shall be elected by the qualified voters thereof for the term of four years." A city judge exercising concurrent general sessions jurisdiction is the judge of an inferior court. Where the Smyrna Town Court exercises concurrent general sessions jurisdiction, therefore, the Smyrna Town Clerk is the clerk of an inferior court who must be elected for a term of four years. To the extent that the charter provides for a term of less than four years for the first clerk, it is arguably unconstitutional. But, in an analogous situation, where an inferior court judge had been elected for a term of less than eight years as required by the Tennessee Constitution, the legislation gave way to the eight-year constitutional provision so that an eight-year term was read into the statute, thus saving its constitutionality. *State v. Leonard*, 86 Tenn. 485, 488, 7 S.W. 453 (1888); *State v. Ritzius*, 164 Tenn. 259, 265, 47 S.W.2d 558 (1932); Op. Tenn. Atty. Gen. 93-28 (April 1, 1993). The judge popularly elected to the short term is deemed to be filling an unexpired eight-year term and holds it until the next regular judicial term begins. *State v. Maloney*, 92 Tenn. 62, 69-72, 20 S.W. 419 (1892). Applying this reasoning to the analogous situation of the clerk, we think the interim clerk would be deemed to be filling an unexpired four-year clerk's term, and would hold office until the next regular clerk's term begins, in this case in 2006.

following year. This result is incongruous and contradicts the intent of the earlier provision that the interim clerk's term of office will be "for such period of time as is necessary to align the subsequent elections of the town court clerk with the state general election for inferior court clerks." For this reason, we think a court would probably disregard the sentence providing that the clerk takes office in December after the town election. If this sentence is disregarded, the first clerk elected under the 2000 charter would hold office until the first day of September immediately following the regular election for court clerks in August.

Based on our conclusions regarding the interpretation of the charter and of Article VI, Section 13 of the Tennessee Constitution, we answer Questions 3 and 4 as follows. The first clerk elected under the 2000 charter should hold office until September 1 following the next statewide August election for court clerks. The election for the next clerk should take place at that August election, and the election in August every four years thereafter. The new clerk would take office September 1 immediately following the election. We emphasize, however, that this response is based on our prediction of how a court would interpret Section 9.03 of the charter to address its inconsistencies. A court could be reluctant, however, to disregard legislative language in this way. To avoid confusion, therefore, the charter should be amended to clear up the inconsistency as soon as possible. If, as it now appears, the drafters of the charter intended the clerk to have the same term as other court clerks, then the language providing that the clerk takes office in December following the town election should be deleted from the charter, and language providing that the clerk takes office on the first day of September following the August general election should be substituted.

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