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

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Opinion No. 03-096

2003 Tenn. Pub. Acts, Ch. 90 - Office Title - County Mayor 2003 Tenn. Pub. Acts, Ch. 90 - Office Title - County Mayor

QUESTIONS

1. Does Chapter 90 of the Public Acts of 2003 require that "county executives" must use the title "county mayor" beginning July 1, 2003?

2. If so, what penalties may be imposed for failure of a "county executive" to use the title "county mayor"?

3. Are county election commissions and county administrators of elections required to refer to "county executives" as "county mayors" on primary and general election ballots for that office after July 1, 2003?

OPINIONS

1. Those officials elected as "county executives" in 2002 and redesignated as "county mayors" beginning July 1, 2003, are bound by their oath of office to perform their duties of office and refer to themselves henceforth as "county mayors," except to the extent the use of any stationery or other office products with the title "county executive" that was printed prior to the effective date of Chapter 90.

2. There is no penalty for such officials for referring to themselves as "county executives" after July 1, 2003.

3. After July 1, 2003, election officials are required to use the title "county mayors" on primary and general election ballots for that office.

ANALYSIS

1. The title "county executive" made its first appearance in Tennessee law as a result of the 1978 Amendments to the Tennessee Constitution. Specifically, Article VII, Section 1 of the Tennessee Constitution was amended to state:

> The qualified voters of each county shall elect for terms of four years

> a legislative body, **a county executive**, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property. Their qualifications and duties shall be prescribed by the General Assembly. Any officer shall be removed for malfeasance or neglect of duty as prescribed by the General Assembly.

(Emphasis Added)

As a result of this constitutional amendment, the structure of county government in Tennessee was substantially changed from a system with a county judge, who served both judicial and executive functions, and a quarterly county court, which served both judicial and legislative functions, to a system with a county executive, who only serves only an executive function, and a county legislative body, which serves only a legislative function. During the debates at the Constitutional Convention of 1977, the sponsor of the original amendment to Article VII, Section 1, Delegate Walker of Roane County, stated the following as to the use of different titles for "county legislative body" and "county executive":

> If we can, we will begin with Section 1-A. 'Each county shall have one governing body made up of a legislative body, and a county executive who shall perform such duties as set forth by law.'[1]
>
> As stated, it is one governing body. It could be called a council, a commission, a legislative body, a group of magistrates, or whatever; that would be up to the individual county to designate the nomenclature on their own officials. Same way with the county executive, you may desire him to be mayor, chairman, president, or whatever.

Journal of the Debates of the Constitutional Convention of 1977, p. 680.

After the ratification of Article VII, Section 1 by the voters in 1978, the General Assembly enacted Chapter 934 of the Public Acts of 1978 restructuring county government in accord with the constitutional changes. Specifically, Tenn. Code Ann. § 5-6-101, then § 5-601, was amended to provide the following:

> (a) Except in counties organized under the consolidated government provisions of Tenn. Const., art. XI, § 9, the chief executive officer of each county shall be a county executive elected in accordance with § 5-6-102 by the qualified voters of the county for

[1]The Constitutional Convention amended this language to provide the following: "The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property."

> a term of four (4) years or until a successor is elected and qualified.
>
> (b) The term of office for a county executive shall begin on September 1 next succeeding the county executive's election.
>
> (c) References to the chair of the county court and county judge appearing elsewhere in this code shall be deemed references to the county executive.
>
> (d) The county executive may be otherwise appropriately entitled by private act.

Thus, by general law, "county judges" were redesignated as "county executives" with the provisions that a "county executive" may be otherwise appropriately entitled by private act.

During this session of the legislature, the General Assembly enacted Chapter 90 of the Public Acts of 2003 which amends Tenn. Code Ann. §5-6-101 by deleting subsection (d) of that statute and substituting instead the following:

> The chief executive officer of each county shall be redesignated and hereafter referred to as the county mayor. References to the term 'county executive' appearing elsewhere in this code are to be deemed references to the county mayor.

Furthermore, Section 2 of Chapter 90 states that the "Tennessee code commission is directed to revise appropriate references to 'county executive' in the code as supplements are published and volumes are replaced. Provided, however, the chief executive officer shall exhaust his or her existing stock of office products with the former titled before ordering new office products with the new titled authorized by this act."

Quite clearly, Chapter 90 mandates that "county executives" are redesignated as "county mayors" effective July 1, 2003. It is a well-established principle of constitutional law in this state that the Tennessee Constitution is a limitation of powers, not a source of power. *Perry v. Lawrence County Election Comm'*n, 219 Tenn. 548, 551, 411 S.W.2d 538, 539 (1967). Thus, the General Assembly may enact any legislation that is not forbidden by the Tennessee or federal constitutions. *Fentress County Beer Bd. v. Cravens*, 209 Tenn. 679, 687, 356 S.W.2d 260, 263 (1962). Although Article VII, Section I of the Tennessee Constitution refers to "a county executive," the debates at the 1977 Constitutional Convention reveal that the framers of that provision did not intend to require that the person elected to the position use any particular title or to forbid the use of other titles such as "mayor, chairman, president, or whatever." Thus, the General Assembly was free to enact Chapter 90 requiring that, beginning July 1, 2003, "county executives" shall be referred to as "county mayors."

All public officials must take an oath of office pursuant to Article X, Section 1 of the Tennessee Constitution. Although there is no specific statutory provision regarding oath of office for the office of "county executive" or "county mayor," Tenn. Code Ann. § 8-18-107 does impose a general obligation for all public officials to take an oath of office. Furthermore, Tenn. Code Ann. § 8-18-111 sets forth the form of the oath as follows: "I do solemnly swear that I will perform with fidelity the duties of the office to which I have been appointed (or elected, as the case may be), and which I am about to assume." Tenn. Code Ann. § 5-6-101, *et seq.*, sets forth the duties and powers of the newly redesignated "county mayor" in accordance with Chapter 90. Since these officials have been redesignated in these statutes as "county mayors," they are under a duty pursuant to their oaths of office to refer to themselves as "county mayors" and not "county executives" beginning July 1, 2003, except to the extent the use of any stationery or other office products with the title "county executive" that was printed prior to the effective date of Chapter 90.

2. The second question concerns what "penalty" may be imposed for failure of a "county executive" to use the title "county mayor." There is no penalty for such officials who refuse to refer to themselves as "county mayors" beginning July 1, 2003. As previously stated, all such officials are bound by their oaths of office to comply with the law.

3. As for the third question, Tenn. Code Ann. § 2-1-103 states that "[a]ll elections for public office, for candidacy for public office, and on questions submitted to the people shall be conducted under this title." When election officials arrange the order of offices up for election on the ballot, Tenn. Code Ann. § 2-5-208(c)(1)(P), refers to "county executive offices, including popularly elected county executives and mayors of metropolitan county governments." However, Chapter 90 makes clear that after July 1, 2003, "[r]eferences to the term 'county executive' appearing elsewhere in this code are to be deemed references to the county mayor." Thus, election officials are bound by law to use the title "county mayors" and not "county executives" on primary and general election ballots for that office after July 1, 2003.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MICHAEL W. CATALANO
Associate Solicitor General

Requested by:

Honorable Tommy Kilby
State Senator
Suite 3, Legislative Plaza
Nashville, TN 37243