STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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September 8, 2003

Opinion No. 03-109

Election of Chattanooga City Judge

QUESTIONS

1. When must an election to fill the vacancy in the office of Chattanooga City Judge be held?

2. Whether the election to fill a vacancy in the office of city judge and/or the state primary would constitute "a general municipal or county election" within the meaning of Tenn. Code Ann. § 2-5-151?

OPINIONS

1. The election to fill the vacancy in the office of Chattanooga City Judge should be held at the February 10, 2004 Presidential Preference Primary.

2. This Office concurs with the State Election Coordinator's opinion of August 5, 2003, stating that "if the timely filed petition satisfies all the requirements of T.C.A. § 2-5-151 and the applicable requirements of the city charter, then the Hamilton County Election Commission shall conduct the referendum with the general city-wide judicial election on February 10, 2004."

ANALYSIS

1. A vacancy currently exists in the position of Chattanooga City Judge, Division 1. Although the City of Chattanooga has filled this position by appointment on an interim basis, you have asked when the election to fill this vacancy should occur. Specifically, you have asked whether the election should be held along with the Presidential Preference Primary on February 10, 2004, or whether it should be held with the August 5, 2004, county regular general election.

Section 4.21 of the Chattanooga City Charter currently provides with respect to vacancies in the office of city judge as follows:

> Any vacancy occurring in the office of the city judge shall be filled by appointment of the mayor, concurred in by the city council, which appointment shall be valid only *until the next primary or general election or referendum which is held in the city after the vacancy occurs.*

(Emphasis added)

Tenn. Code Ann. § 6-53-106 further provides as follows with respect to filling certain vacancies:

> (a) Notwithstanding the provisions of any other law or municipal charter, whenever a vacancy occurs in the membership of any city board of education whose members are elected by vote of the people or in the office of city judge who is elected by vote of the people in any city having a population in excess of one hundred thousand (100,000) within counties, excepts those counties with the metropolitan form of government, having a population in excess of two hundred thousand (200,000), each according to the United States census of 1970 or any subsequent United States census, any appointment made pursuant to law or charter provisions shall be an interim appointment, valid only until the next primary or general election or referendum which is held in such city after the vacancy occurs.
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> (b) At such primary or general election or referendum, the vacancy shall be filled for the remainder of the unexpired term by the election of some qualified candidate.
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> (c) In any city to which this section applies, for those offices for which by charter or other law a special election is provided for the filling of vacancies, the provisions of such charter or other law shall be controlling, but if no special election is so provided for the filling of vacancies, the provisions of this section shall control.

The City of Chattanooga falls within the class of cities to which subsection (a) of this statute applies. However, the provisions of this statute and Section 4.21 of the City Charter are identical in that both provide that any vacancy shall be filled by appointment that is only valid until the next primary or general election or referendum which is held in the city after the vacancy occurs. The next primary or general election or referendum to be held in the City of Chattanooga is the Presidential Preference Primary on February 10, 2004. Thus, it is our opinion that the election to fill

the vacancy in the position of Chattanooga City Judge, Division 1 should be held at that primary election.

2. You have indicated that a citizens group wishes to initiate a referendum or initiative pursuant to Tenn. Code Ann. § 2-5-151. This statute contains the requirements for any petition for recall, referendum or initiative, including when such petition shall be placed on the ballot. The statute expressly provides as follows:

> (a) Any governmental entity having a charter provision for a petition for recall, referendum or initiative or any person acting pursuant to such charter provision shall meet the requirements of this section.
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> (f)(2) In addition, 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.
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> (j) This section shall control notwithstanding any statutory provision or charter provision of a municipality or county to the contrary; . . ..

You have asked whether the election to fill the vacancy in the position of city judge constitutes a "general municipal or county election" for purposes of Tenn. Code Ann. § 2-5-151. Tenn. Code Ann. § 2-1-103 provides 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." An "election" is defined as "a general election for which membership in a political party in order to participate therein is not required." Tenn. Code Ann. § 2-1-104(a)(7). A "primary election" is defined as "an election held for a political party for the purpose of allowing members of that party to select a nominee or nominees to appear on the *general election* ballot." Tenn. Code Ann. § 2-1-104(a)(19). There is, however, no definition of a "general election" in the election statutes. This Office has previously stated, however, that we believe the term "general election" refers to any election in which all registered voters in ths city would be eligible to participate." *See* Atty.Gen.Op. 98-172 (citing Atty.Gen.Op. 82-223)(copies attached).

We would note that the State Election Coordinator has issued an opinion on this issue to the Hamilton County Election Commission stating that "if the timely filed petition satisfies all the requirements of T.C.A. § 2-5-151 and the applicable requirements of the city charter, then the Hamilton County Election Commission shall conduct the referendum with the general city-wide judicial election on February 10, 2004." (Copy attached) This is a reasonable interpretation of the statute. Furthermore, pursuant to Tenn. Code Ann. § 2-11-202(a)(4) and (5), the State Coordinator

of Elections "shall [a]dvise election commissions, primary boards, and registrars-at-large as to the proper methods of performing their duties" and shall "[a]uthoritatively interpret the election laws for all persons administering them." In light of this statutory authority and the reasonable interpretation by the State Election Coordinator, this Office concurs with that opinion.

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