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Opinion No. 06-124

Home Rule Charter Amendments on Ballot

QUESTION

Under Article XI, Section 9, of the Tennessee Constitution, a city may adopt a home rule charter. Voters may later elect a charter commission to propose amendments to the charter. These amendments are presented to the voters for ratification. In a ratification vote, must each proposed change to the home rule charter be voted on separately, or may all proposed changes be voted on as a single amendment?

OPINION

Neither Article XI, Section 9, nor the applicable statutes require that separate changes to a home rule charter proposed by a charter commission each be ratified by a separate vote. At the same time, we do not think a court would conclude that a charter commission may only adopt a single proposal that includes all recommended changes that must be voted up or down. Thus, the commission may in its discretion frame many changes as part of a single measure subject to a single vote, or may frame each change as part of a separate measure subject to a separate vote, as it deems appropriate.

ANALYSIS

This opinion concerns voter ratification of proposed amendments to a home rule city charter. The City of Memphis will elect a charter commission at the August 2006 elections. The question is how ratification of any amendments proposed by the charter commission must take place — that is, whether proposed amendments must all be grouped together on the ballot and subject to a single ratification vote, or whether each amendment must be placed on the ballot for a separate ratification vote. Under Article XI, Section 9, of the Tennessee Constitution, qualified voters of a city may vote to become a home rule municipality. A home rule municipality "may continue to operate under its existing charter, or amend the same, or adopt and thereafter amend a new charter to provide for its governmental and proprietary powers, duties and functions, and for the form, structure, personnel and organization of its government . . .." The same section provides in relevant part:

> A charter or amendment may be proposed by ordinance of any home rule municipality, by a charter commission provided for by act of the General Assembly and elected by the qualified voters of a home rule municipality voting thereon or, in

> the absence of such act of the General Assembly, by a charter commission of seven (7) members, chosen at large not more often than once in two (2) years, in a municipal election pursuant to petition for such election signed by qualified voters of a home rule municipality not less in number than ten (10%) percent of those voting in the then most recent general municipal election.
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> It shall be the duty of the legislative body of such municipality to publish any proposal so made and to submit the same to its qualified voters at the first general state election which shall be held at least sixty (60) days after such publication and such proposal shall become effective sixty (60) days after approval by a majority of the qualified voters thereon.[1]

The General Assembly has not enacted any statutes regarding the creation or operation of a charter commission. In the absence of such statutes, city voters may elect a charter commission of seven members, chosen at large. *Washington County Election Commission v. City of Johnson City*, 209 Tenn. 131, 350 S.W.2d 601 (1961).

The Tennessee Constitution does not expressly require that charter amendments under Article XI, Section 9, be confined to a particular subject. For this reason, we think a court would conclude that an "amendment" under this provision may include more than one change and encompass more than one subject.

The question then becomes whether the Tennessee General Assembly has enacted statutes imposing any limitation. Tenn. Code Ann. § 6-53-105 addresses elections to amend the charter of a home rule municipality.[2] Subsection (b) expressly authorizes the local governing body of a home rule municipality to submit an amendment "to be limited in its substance and applicability to the establishment of a property tax rate, or the increasing or reduction thereof" to the voters for ratification. Subsection (c) provides:

> On any ballot on which an amendment to the charter of a home rule municipality appears for approval or disapproval by the electorate, a statement certified by the chief financial officer of the municipality shall appear immediately after the language describing the amendment but before the questions "For the amendment" and

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[1] The "home rule" charter provision was adopted by the 1953 Tennessee Constitutional Convention and ratified by the Tennessee voters. It was proposed as Resolution 118. Cecil Sims from Davidson County sponsored the amendment. Mr. Sims moved its adoption on June 3, 1953. *Journal and Proceedings of the Limited Constitutional Convention of 1953*, 1009. Debates regarding the resolution do not directly address the issues raised in this opinion.

[2] In an unreported opinion, the Tennessee Court of Appeals found that the requirements of this statute governed over conflicting requirements in the more general law at Tenn. Code Ann. § 2-5-208 on the measure to appear on the ballot. *Matthews v. Conrad*, No. 03A01-9505-CH-00141, 1996 WL 79843 (Tenn. Ct. App. Feb. 26, 1996).

> "Against the amendment." The statement shall indicate the chief financial officer's estimate of the net cost savings, net cost increase, or net increase or decrease in revenues, on a yearly basis, if any, that will be effected if the amendment is approved. The statement by the financial officer shall be made readily distinguishable from the language describing the amendment itself.

Under the statute, only an amendment regarding the tax rate must be limited in substance to a single subject. No such limit applies to other amendments under Tenn. Code Ann. § 6-35-105(c). For this reason, an amendment to be proposed for ratification under Article XI, Section 9, may include more than one change and cover more than one subject.

At the same time, we do not think that, under Article XI, Section 9, a charter commission is limited to adopting a single proposal including all amendments it recommends. As quoted above, the provision states that "*[a]* charter or amendment" may be proposed by a city legislative body by ordinance or by a charter commission. (Emphasis added). Obviously, where a legislative body proposes an amendment by ordinance, it is free to determine what changes that ordinance will bring about. Thus, the legislative body could pass a single ordinance including many changes, or separate ordinances proposing separate amendments subject to separate votes. We think the provision was intended to give the same flexibility to a charter commission. Under rules of statutory construction, the singular includes the plural and the plural the singular, except when the contrary intention is manifest. Tenn. Code Ann. § 1-3-104(c); 2A *Sutherland Statutory Construction* § 47.34 (6th ed. 2000). Courts in other states have used rules of statutory construction when construing a state constitution. *See, e.g., Kottel v. State*, 312 Mont. 387, 60 P.3d 403, 407 (2002); *Matter of Retirement Benefits of Yetka*, 554 N.W.2d 85, 91 (Minn. Ct. App. 1996). Under this rule, authority to propose "a charter or amendment," in Article XI, Section 9, includes the authority to propose more than one amendment.

Further, Article XI, Section 9, requires the legislative body to publish "any proposal so made" and submit "the same" to its qualified voters. Again, under the rule of construction stated above, the term "proposal" would include more than one. Further, the provision refers to "*any*" proposal so made. The Tennessee Supreme Court has found that the word "any" as used in a statute is often synonymous with "all." *Storey v. Bradford Furniture Co., Inc.*, 910 S.W.2d 857, 860 (Tenn. 1995) (quoting *Black's Law Dictionary* 94 (6th ed.1990); *Roddy Manufacturing Co. v. Olsen*, 661 S.W.2d 868, 871 (Tenn. 1983). We think a court would conclude, similarly, that the duty to publish "any proposal" made by the legislative body or a charter commission under Article XI, Section 9, includes the duty to publish all proposals and implies that a commission may propose more than one. Thus, the commission may in its discretion frame many changes as part of a single measure subject to a single vote, or may frame each change as part of a separate measure subject to a separate vote, as it deems appropriate.

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