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Opinion No. 06-171

Deadline for Registering to Vote

QUESTION

Tenn. Code Ann. § 2-2-109 requires a person to register to vote at least thirty days before an election. How is the thirty day period calculated when the thirtieth day falls on a Saturday, Sunday or legal holiday?

OPINION

It is our opinion that, where the thirtieth day before an election falls on a Saturday, Sunday or legal holiday, the deadline for registering to vote pursuant to Tenn. Code Ann. § 2-2-109(a) is the immediately preceding day that is not a Saturday, Sunday or legal holiday.

ANALYSIS

Tenn. Code Ann. § 2-2-109 (a) provides in pertinent part as follows:

> A qualified voter may register or have the voter's registration altered at the commission office at any time the office is open, except that applications for registration shall not be processed for twenty-nine (29) days before an election; provided, that a qualified voter may file a mail registration form by postmarking the registration form or submitting the registration form thirty (30) days before an election. A mail registration form lacking a postmark, but signed and dated at least thirty (30) days before an election, shall be timely filed if it is received by the county election commission no later than the twenty-seventh day prior to the election. ...

You have asked how this thirty day time period should be calculated when the thirtieth day before an election falls on a Saturday, a Sunday or a legal holiday. While Tennessee courts have not specifically addressed this issue within the context of a person registering to vote, it has addressed it with respect to the filing of a qualifying petition to be a candidate for office. *See Koella v. State ex rel. Moffatt*, 405 S.W.2d 184 (Tenn. 1966). In that case, there was a statute that required

a qualifying petition for a gubernatorial candidate in a party primary to be filed at least sixty (60) days before the election date; however, the sixtieth day before the election fell on a Sunday. There was another statute that addressed the computation of time in general and provided that the time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded. *See* Tenn. Code Ann. § 1-3-102 (formerly § 1-302). Reading the two statutes together, the petitioner filed his petition the following Monday.

The Supreme Court first noted that the general view was that "[i]f the last day for filing a certificate falls on a Sunday or a legal holiday, it must be filed the day before in order to be in time." *Id*. at 187-88. It then held that the statute governing the computation of time was a general statute applicable to a multitude of subjects, whereas the statute establishing the deadline for filing a qualifying petition was a special statute applicable only to that particular situation and, therefore, was an exception to the general statute. Accordingly, the Court held that since the statute requiring the qualifying petition to be filed at least sixty days before the election was mandatory and since the sixtieth day fell on a Sunday, the qualifying petition must be filed the day before in order to be timely. *Id*. at 190.

Thereafter, the Legislature codified this ruling in Tenn. Code Ann. § 2-1-115, which originally provided as follows:

> Notwithstanding the provisions of § 1-3-102 or any other law, for the purposes of computing time within which any act required by this title is to be done, the same shall be computed by excluding the first day and including the last, unless the last day is a Sunday or legal holiday in which cases such act will be due on the first previous day which is not a Sunday or legal holiday.

This statute was later amended to delete the language providing that where the last day is a Sunday or a legal holiday, the act is then due on the first previous day which is not a Sunday or legal holiday, so that the statute now provides only that "[t]he computation of time within which to do any act required by this title shall be in accordance with § 1-3-102." Tenn. Code Ann. § 1-3-102 currently provides that the time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded.

However, we doubt whether this statute actually applies in this situation. The Tennessee Supreme Court has held that this provision applies to those circumstances "when the computation [of time] begins upon the happening of some event, or the performance of some act; and the performance of some act, within a given length of time thereafter, is indispensable in order that some right may be saved, or that some liability may be avoided." *See Dickinson v. Lee*, 42 Tenn. 615, 622 (1866). Under Tenn. Code Ann. § 2-2-109(a), the computation of the thirty day deadline for registering to vote prior to an election does not begin upon the happening of some event and require the performance of an act "within a given length of time ***thereafter***." (Emphasis added). Rather, the

computation of time under Tenn. Code Ann. § 2-2-109(a) begins with an event in the future — election day — and then requires counting backwards in order to determine the thirtieth day before the election. Further, even if Tenn. Code Ann. § 1-3-102 is applicable, it would require that the day of the election — the first day — be excluded and then to count the days consecutively backwards until the thirtieth day is reached. If the thirtieth day falls on a Saturday, Sunday or legal holiday, Tenn. Code Ann. § 1-3-102 would require that day also be excluded. Since that day would not be included as one of the thirty days and the count is being done backwards, then the immediately preceding day that is not a Saturday, Sunday or legal holiday would be the thirtieth and last day for registering to vote before an election. *See, e.g., State ex rel. Earley v. Batchelor*, 15 Wash.2d 149, 154, 130 P.2d 72, 74 (Wash. 1942).

Moreover, to apply Tenn. Code Ann. § 1-3-102 as allowing one to register to vote on the immediately following day that is not a Saturday, Sunday or legal holiday, where the thirtieth day before an election otherwise falls on a Saturday, Sunday or legal holiday, would result in applications for registration being processed less than thirty days before an election. Such a construction would violate the mandatory provisions of Tenn. Code Ann. § 2-2-109(a). Accordingly, it is our opinion that, where the thirtieth day before an election falls on a Saturday, Sunday or legal holiday, the deadline for registering to vote pursuant to Tenn. Code Ann. § 2-2-109(a) is the immediately preceding day that is not a Saturday, Sunday or legal holiday.

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