

STATE OF TENNESSEE
OFFICE OF THE
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January 19, 2007

Opinion No. 07-07

Filling County Offices

QUESTION

The Tennessee Supreme Court recently ruled that charter term limits apply to county offices in Knox County. *Diane Jordan, et. al. v. Knox County, Tennessee, et. al.*, No. E2006-01377-SC-RDM-CV (Tenn. January 12, 2007). The Court ruled that the offices to which individuals not qualified by reason of term limits are now vacant, although these individuals will hold over in office until their successors have been appointed or elected. Does the Knox County Commission have the power or right to hold a special election to fill these offices declared vacant under this opinion?

OPINION

No. No statute authorizes such an election. Under Tennessee law, the county commission appoints individuals to fill vacancies in these offices. These individuals hold office until the next general election, when their successors are elected.

ANALYSIS

You have requested advice on how Knox County officials may proceed in light of *Diane Jordan, et. al. v. Knox County, Tennessee, et. al.*, No. E2006-01377-SC-RDM-CV (Tenn. January 12, 2007). In *Jordan*, the Supreme Court ruled that the Knox County Charter is invalid because it fails to meet the applicable statutory requirements. The Court found, however, that the persons holding office under the invalid charter are *de facto* officers and the charter a *de facto* charter. The Court also found that the county had validly placed term limits on the county commissioners, the sheriff, the county clerk, the trustee, and the register of deeds. *Id., slip op. at 34.*

The Court then stated:

The terms of these public servants who are ineligible for another term do not, however, end with the filing of this opinion. Pursuant to Article VII, section 5 of the Tennessee Constitution, every officer shall hold office until a successor is elected or appointed and qualified. In order to assure the continuous representation of all the people of Knox County in local governmental affairs and as a means of preserving, without interruption, the continuation of essential government services, those county commissioners and state constitutional officers otherwise precluded from holding the

offices to which they were recently elected may continue as de facto officers until their successors are named in accordance with law [FN 13]. See *Hogan v. Hamilton*, 179 S.W. 128, 129 (Tenn. 1915); see also *Cook v. State*, 8 So. 686, 688 (Ala. 1890)(holding that a circuit clerk who was no longer qualified to serve was a de facto officer until his successor qualified).

[FN 13]: Article VII, section 2 provides that “[v]acancies in county offices shall be filled by the county legislative body, and any person so appointed shall serve until his successor is elected at the next election occurring after the vacancy [and] is qualified.” See *State ex rel. Winstead v. Moody*, 596 S.W.2d 822, 812 (Tenn. 1980).

Id. The request asks whether the Knox County Commission has the power or right to hold a special election to fill the offices declared vacant under this opinion. The County Commission does not have this power. The right to hold an election does not exist absent an express grant of power by the legislature. *McPherson v. Everett*, 594 S.W.2d 677, 680 (Tenn. 1980). No statute grants this power to the Knox County Commission. As the Court noted in footnote 13 of the *Jordon* opinion, Article VII, § 2, of the Tennessee Constitution provides that:

Vacancies in county offices shall be filled by the county legislative body, and any person so appointed shall serve until a successor is elected at the next election occurring after the vacancy and is qualified.

Tenn. Const. Art. VII, § 2. The phrase “next election” as used in this provision means the regular August general election. *McPherson, supra*. Similarly, Tenn. Code Ann. § 5-1-104 (b)(1) provides:

Vacancies in county offices required by the Constitution of Tennessee or by any statutory provision to be filled by the people shall be filled by the county legislative body, and any person so appointed shall serve until a successor is elected at the next general election, as defined in § 2-1-104, in the county and is qualified; provided, that all the candidates have sufficient time to qualify for the office, as provided for in § 2-14-106.

Tenn. Code Ann. § 5-5-102(i) provides:

If a vacancy shall occur in the office of a member of the county legislative body, the vacancy shall be filled as provided for in § 5-1-104(b).

Under these provisions, the Knox County Commission is not authorized to call a special election to fill the offices declared vacant by the Tennessee Supreme Court. Instead, the County Commission should appoint individuals to fill vacancies in these offices. These individuals hold

office until the next general election, when their successors are elected.

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