

STATE OF TENNESSEE
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Opinion No. 08-24

Home Rule Charter Amendments

QUESTION

The Memphis Charter Commission proposes to consolidate into one document the original City Charter along with all later-adopted home rule amendments and other amendments to the Charter. The Commission also intends to propose new substantive amendments to the City Charter. Can the Memphis Charter Commission place non-substantive revisions of the Memphis City Charter, i.e., the consolidation of the Charter and amendments into one document, on the August 2008 ballot, and subsequently place the substantive amendments on the November 2008 ballot?

OPINION

It is our opinion that, once the Charter Commission has completed its task of consolidating the original Charter provisions and all later-adopted amendments, Article XI, Section 9 of the Tennessee Constitution would not require the Charter Commission to submit that consolidated Memphis City Charter to the qualified voters of Memphis for approval. With respect to any new substantive amendments proposed by the Commission, as long as such amendments are published at least sixty (60) days prior to the November 2008 election, then they may be placed on that ballot pursuant to Article XI, Section 9.

ANALYSIS

Under Article XI, Section 9 of the Tennessee Constitution, qualified voters of a city may vote to become a home rule municipality. After adopting home rule, a 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 . . .” This section further provides with respect to the adoption or amendment of a charter as follows:

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.

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.

In 1963, a majority of the qualified voters in the City of Memphis voted to become a home rule municipality. The Memphis Charter Commission has undertaken the task of consolidating the Memphis City Charter into one comprehensive document. The original City Charter is currently contained in one document, while various later-adopted home rule amendments and other amendments to the Charter are set forth in a number of other documents. The Charter Commission proposes to consolidate into one document the original Charter provisions and all applicable updates. Upon consolidation of the Charter document, the Commission then proposes to submit to the public certain new substantive amendments to the Charter. The question is whether, pursuant to Article XI, Section 9 of the Tennessee Constitution, the Charter Commission may place the consolidated City Charter document on the August 2008 ballot for approval and subsequently place the proposed new substantive amendments to the Charter on the November 2008 ballot.

Article XI, Section 9 of the Tennessee Constitution only requires that a new charter or an amendment to an existing charter of a home rule municipality be submitted to the qualified voters of that municipality for approval. According to the information provided in the request, the Memphis Charter Commission seeks to consolidate the City Charter and all amendments thereto into one document. Such a consolidation does not result in either the creation of a new charter or an amendment of the existing charter by the Commission, as the Commission is simply combining into one documents provisions previously approved by a majority of the qualified voters. Accordingly, it is our opinion that, once it has completed its task of consolidating the original Charter provisions and all applicable updates, Article XI, Section 9 would not require the Charter Commission to submit that consolidated Memphis City Charter to the qualified voters of Memphis for approval.

With respect to the new substantive amendments proposed by the Commission, Article XI, Section 9 specifically provides that charter amendments may be proposed by a Charter Commission. It further provides that once the Commission has proposed any such amendments, the Memphis City

Council shall publish the proposed amendments and “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.” Accordingly, as long as the proposed Charter Commission amendments are published at least sixty (60) days prior to the November 2008 election, then these amendments may be placed on that ballot pursuant to Article XI, Section 9.¹

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¹Because the August 2008 election is considered to be a “general state election,” these charter amendments could also be placed on the August 2008 ballot if they are published at least sixty (60) days prior to that election.