S T A T E O F T E N N E S S E E
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March 31, 2008

Opinion No. 08-68

"General County Election" for purposes of Tenn. Code Ann. § 2-5-151

QUESTIONS

1. Whether the November general election constitutes a "general county election" for purposes of Tenn. Code Ann. § 2-5-151(f)(2).

2. Whether Tenn. Code Ann. § 2-3-204 is applicable to county charter amendments proposed by petition.

OPINIONS

1. It is our opinion that the November general election would constitute a "general municipal or county election" for purposes of Tenn. Code Ann. § 2-5-151(f)(2).

2. To the extent the general provisions of Tenn. Code Ann. § 2-3-204(a) and (c) conflict with the specific requirements of Tenn. Code Ann. § 2-5-151(f)(2), the latter statute controls, and the general provisions of Tenn. Code Ann. § 2-3-204(a) and (c) would not be applicable to county charter amendments proposed by petition. However, subsection (b) of Tenn. Code Ann. § 2-3-204 appears to be consistent with the provisions of Tenn. Code Ann. § 2-5-151(f)(2), and, therefore, the provisions of Tenn. Code Ann. § 2-3-204(b) would be applicable to county charter amendments proposed by petition.

ANALYSIS

1. In the November 1988 election, the qualified voters of Knox County adopted a charter form of government pursuant to the provisions of Tenn. Code Ann. §§ 5-1-201, *et seq*. Citizens of Knox County are now considering proposing an amendment to that charter through a petition. Tenn. Code Ann. § 5-1-210(9) requires that a county charter must provide "[f]or the method and procedure by which such charter may subsequently be amended; provided that no such amendment shall be effective until submitted to the qualified voters of the county and approved by

a majority of those voters voting thereon." Pursuant to this provision, Section 8.05 of the Knox County Charter provides that amendments to the charter may be proposed by the Knox County Charter Commission, by the Knox County Commission by ordinance, and by the voters of Knox County by petition. Any such proposed amendments are to be submitted to the qualified voters of Knox County in accordance with the provisions of subsection 8.05.E., which provides as follows:

> The County Election Commission shall submit any Charter amendment certified and delivered to it, in accordance with the provisions of this Section 8.05, to the voters of the County at the next regular State or County election more than forty-five days following the delivery to the County Election Commission of the ordinance or petition proposing the amendment. Not less than three (3) weeks before any election at which a proposed Charter amendment is to be voted on, the Election Commission shall publish a notice of the proposed amendment(s), in the form as provided by law, in a daily newspaper of general circulation in the County. The form of the ballot for submission of proposed Charter amendments shall be governed by the laws of the State of Tennessee concerning referendum elections. If a majority of the voters of the County voting upon a proposed Charter amendment votes in favor of it, the amendment shall become effective at the time fixed in the amendment or, if no time is therein fixed, thirty (30) days after its adoption by the voters of the County. Any Charter amendment shall be published promptly after its adoption in the manner provided in this Charter for adopted ordinances.[1]

In 1997, the Tennessee General Assembly adopted Public Chapter 558, now codified at Tenn. Code Ann. § 2-5-151, which contains uniform requirements for any petition for recall, referendum, or initiative. Tenn. Code Ann. § 2-5-151(a) provides that "[a]ny 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." (Emphasis added). Subsection (j) further provides that "[t]his section shall control notwithstanding any statutory provision or charter provision of a municipality or county to the contrary." Accordingly, to the extent a provision of the Knox County Charter conflicts with the provisions of the general law contained in Tenn. Code Ann. § 2-5-151 with respect to petitions for recall, referendum, or initiative, the general law controls.

Subsection (f) addresses when a petition may be placed on the ballot:

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[1]The state law concerning referendums referenced in Section 8.05.E. is Tenn. Code Ann. § 2-5-208(f)(1), which sets forth the requirements for the arrangement of questions on the ballot.

> (1) Completed petitions shall be filed with the county election commission within seventy-five (75) days after final certification by the county election commission as required by subsection (c).
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> (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.

You have asked whether the upcoming November general election constitutes a "general county election" for purposes of Tenn. Code Ann. § 2-5-151(f)(2). 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 [Title 2]." 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(7). There is no definition, however, of a "general election" or a "general county election." This Office has previously opined that we believe the term "general election" refers to any election in which all registered voters in the city are eligible to participate. *See* Tenn. Att'y. Gen. Op. 98-172 (citing Tenn. Att'y. Gen. Op. 82-223) (copies attached). We believe this to be a reasonable interpretation of the statute that would similarly apply to any election in which all registered voters in the county are eligible to participate. Certainly, the upcoming November general election is an election in which all registered voters in Knox County are eligible to participate. Accordingly, it is our opinion that the November general election would constitute a "general municipal or county election" for purposes of Tenn. Code Ann. § 2-5-151(f)(2).

2. Your second question asks whether the provisions of Tenn. Code Ann. § 2-3-204 are applicable to county charter amendments proposed by petition. That statute provides as follows:

> (a) Elections on questions submitted to the people shall be held on dates set by the county election commission but not less than forty-five (45) days nor more than sixty (60) days after the county election commission is directed to hold the election under the law authorizing or requiring the election on the question. If the election is to be held in more than one (1) county, the county election commission shall meet and set the date jointly.
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> (b) Resolutions, ordinances or petitions requiring the holding of elections on questions submitted to the people which are to be held with the regular August election, the regular November election, any regularly scheduled municipal election or the presidential preference primary shall be filed with the county election commission not less than sixty (60) days prior to such election.

> (c) If the date for an election on a question, as set by a county election commission or by two (2) or more commissions jointly, falls within thirty (30) days of an upcoming regular primary or general election being held in the jurisdiction voting on the question, the commission or commissions may reset the date of the election on a question to coincide with the regular primary or general election, even though this may be outside of the time period established herein. All dates dependent on the date of the election shall be adjusted accordingly, and any acts required to be done by these dates shall be performed timely if done in accordance with the adjusted dates.

Subsections (a) and (c) of this statute appear to conflict with the provisions of Tenn. Code Ann. § 2-5-151(f), as they appear to authorize elections on questions submitted to the people to be held at times other than those required by Tenn. Code Ann. § 2-5-151(f)(2). It is well settled that a statute that is specific in nature controls over a statute that is general in nature. *Matter of Harris*, 849 S.W.2d 334, 337 (Tenn. 1993).

> "Where there are two acts or provisions, one of which is special and particular, and certainly include the matter in question, and the other general, which if standing alone, would include the same matter and thus conflict with the special act or provisions, the special must be taken as intended to constitute an exception to the general act or provisions, especially when such general and special acts or provisions are contemporaneous, as the legislature is not to be presumed to intended a conflict."

State v. Safely, 172 Tenn. 185, 112 S.W.2d 831, 833 (1938) (quoting *Rodgers v. United States*, 185 U.S. 83, 89 (1902)).

Tenn. Code Ann. § 2-3-204(a) and (c) contain general provisions as to when elections on questions submitted to the people may be held, regardless of whether the question is proposed by resolution, ordinance, or petition. Tenn. Code Ann. § 2-5-151(f) contains specific provisions on when an election on a question *pursuant to a petition* must be held. Accordingly, this provision must be construed as intended to constitute an exception to the general provisions, thereby superseding and prevailing over such general provisions. Accordingly, it is our opinion that, to the extent the general provisions of Tenn. Code Ann. § 2-3-204(a) and (c) conflict with the specific requirements of Tenn. Code Ann. § 2-5-151(f), the latter statute controls and the general provisions of Tenn. Code Ann. § 2-3-204(a) and (c) would not be applicable to county charter amendments proposed by petition.[2]

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[2]As discussed, *supra*, the Knox County Charter authorizes amendments to the charter pursuant to resolution of the Knox County Charter Commission, ordinance by the Knox County Commission, and by petition. Thus, these provisions would still be applicable to questions proposed by resolution or ordinance.

However, subsection (b) of Tenn. Code Ann. § 2-3-204 appears to be consistent with the provisions of Tenn. Code Ann. § 2-5-151(f), as both statutes require that a petition requiring the holding of an election on questions submitted to the people shall be filed at least sixty (60) days prior to such election.[3] As there is no conflict between the two statutes, the provisions of Tenn. Code Ann. § 2-3-204(b) would be applicable to county charter amendments proposed by petition.

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[3]Tenn. Code Ann. § 2-5-151(f) requires the question to be submitted at the next "general municipal or county election." The regular August, November, and presidential preference primary are all elections in which all the qualified voters in the jurisdiction are eligible to participate and, in accordance with our opinion, *supra*, would constitute "general municipal or county elections" for purposes of Tenn. Code Ann. § 2-5-151(f).