

STATE OF TENNESSEE

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Opinion No. 08-93

Appointing Members of the Shelbyville Electric Power, Water and Sewerage Board

QUESTIONS

1. Under Article III, § 14, and Article 5, § 1, of the Shelbyville City Charter, the Mayor presides over City Council meetings, but may only vote in case of a tie. A 1957 charter amendment provides that the Mayor and City Council must approve the appointment of a new member to the Shelbyville Electric Power, Water and Sewerage Board (the “Board”). 1957 Tenn. Priv. Acts Ch. 202. Does the 1957 amendment control over the general charter provisions limiting the Mayor’s power to vote?

2. Under 1957 Tenn. Priv. Acts Ch. 202:

a. How many total votes are required to appoint new Board members?

b. Are four affirmative votes of the City Council required to appoint new Board members?

c. Is the Mayor’s affirmative vote essential for a new Board member to be validly appointed?

OPINIONS

1. Yes, 1957 Tenn. Priv. Acts Ch. 202 governs appointment of Board members.

2. a. - c. Under the 1957 act, appointment of a new Board member requires an affirmative vote by the Mayor and the affirmative vote of four Council members. Therefore, a total of five votes — that of the Mayor and four Council members — is necessary to appoint a new member.

ANALYSIS

1. Law Governing Appointment of Members to the Shelbyville Electric Power, Water and Sewerage Board

This opinion concerns the appointment of members to the Shelbyville Electric Power, Water and Sewerage Board (the “Board”). The first question concerns the law governing this appointment. General provisions of the Shelbyville City Charter limit the Mayor’s right to vote at meetings of the City Council. But a 1957 private act requires the Mayor’s participation in the process of appointing new Board members. 1957 Tenn. Priv. Acts Ch. 202. The first question is whether, in light of this apparent inconsistency, the 1957 act governs the appointment process for Board members. We conclude that the 1957 act governs the appointment process and controls to the extent it is inconsistent with general provisions of the charter regarding City Council meetings.

Article III, § 14, of the Shelbyville City Charter provides in relevant part:

Be it further enacted, That at all meetings of the City Council, each of the six (6) Councilmen shall be entitled to a vote on all matters properly presented to the Council, or before the Council for action, and a majority vote of those present shall be necessary for affirmative or negative action by the Council. The Mayor shall be entitled to a voice at all meetings, but no vote, except in case of a tie in the voting of the Councilmen, in which case the Mayor shall be entitled to a vote and cast the deciding vote.

Article V, § 1, of the Shelbyville City Charter provides in relevant part:

Be it further enacted, that the Mayor shall preside at all meetings of the City Council and perform all such other duties as is consistent with his office, or as may be imposed upon it by ordinance.

The Mayor shall have a seat on the City Council, a voice, but no vote nor veto. It shall be his duty to sign the Journal of all meetings in his official capacity, and all ordinances passed by the Council on third and final passage, to execute all deeds, bonds, contracts, notes and other instruments in the name of the City and to acknowledge execution of the same as Mayor.

The Mayor shall have no power to introduce an ordinance, resolution, or motion before said Council or to take any action at meetings other than is expressly provided herein.

Article III, § 13, of the Charter provides:

Be it further enacted, That a majority of the six (6) Councilmen of the City Council

shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time and may compel the attendance of absentees in such manner and under such penalties as the Council may provide.

The Shelbyville Electric Power, Water and Sewerage Board was initially created as the Electric Power Board in 1939. The Board acquired authority over the city water and sewerage system by later private acts, which changed its name accordingly. 1939 Tenn. Priv. Acts Ch. 465; 1941 Tenn. Priv. Acts Ch. 293; 1953 Tenn. Priv. Acts Ch. 421.

In 1941, the 1939 act was amended to include, among other matters, a provision that the remaining members of the Board would fill vacancies. 1941 Tenn. Priv. Acts Ch. 293, § 11. Section 11 of this act was amended by Section 2 of 1957 Tenn. Priv. Acts Ch. 202. That section provides:

Be it further enacted, That the members of the Electric Power, Water and Sewerage Board of the City of Shelbyville, created under the terms and provisions of Section 3 of Chapter 465 of the 1939 Private Acts of Tennessee, be elected by the Mayor and City Council at the Regular Meetings of the Council in May of each calendar year prior to the expiration of the terms of the respective members of said Board occurring on the following June. The first such election or appointment shall be made *by the Mayor and a majority of the members of said City Council* at the Regular Meeting of the Council in May, 1957, and biennially thereafter, *a like election or appointment shall be made by said Mayor and City Council* of a person to succeed that member whose term of office shall expire as of June 1 next succeeding the election in which the member so elected or appointed shall take office, and when any vacancy occurs on said Board by death, resignation, removal, or other cause, the vacancy or vacancies shall be filled by election or appointment made by the Mayor and City Council, and such vacancy or vacancies shall be filled for the unexpired term or terms only, but in all cases members of said Board shall hold office until their successors are elected and/or qualified.

1957 Tenn. Pub. Acts Ch. 202, § 2 (emphasis added).

Material included with the request points out that the 1957 act contains no provision repealing inconsistent acts. The material appears to suggest that, because the 1957 act is inconsistent with the general Charter provisions governing Council meetings, it did not effectively amend those provisions. We find no basis for this conclusion. The 1957 act, by its terms, amends 1941 Tenn. Priv. Acts Ch. 293. The 1941 act, by its terms, amends the Charter of the City of Shelbyville. 1941 Tenn. Priv. Acts Ch. 293, § 1. Section 14 of the 1941 act provides:

Be it further enacted, That any Acts or parts of Acts in conflict with the provisions of this Act are to the extent of such conflict hereby repealed.

The 1957 act, therefore, was intended to amend the Shelbyville City Charter, and repeal any provisions in the existing charter that were inconsistent. Rules of statutory construction also

support this conclusion. “Tennessee courts recognize that a specific statute will apply rather than a general statute when there is a conflict between the two statutes.” *Johnson v. John Hancock Funds*, 217 S.W.3d 414, 423 (Tenn. Ct. App.), *p.t.a. denied*, (Tenn. 2006). For these reasons, 1957 Tenn. Priv. Acts Ch. 202 governs appointment of Board members.

2. Requirements under the 1957 Act

The last three questions involve interpretation of 1957 Tenn. Priv. Acts Ch. 202. The first question is how many total votes are required to appoint Board members; the second, whether there must be four affirmative City Council votes; and the third, whether the Mayor’s affirmative vote is necessary for the member to be validly elected. The act provides that the Board members will be elected by the Mayor and City Council, and then states:

The first such election or appointment shall be made *by the Mayor and a majority of the members of said City Council* at the Regular Meeting of the Council in May, 1957, and biennially thereafter, *a like election or appointment shall be made by said Mayor and City Council* of a person to succeed that member[.]

(Emphasis added). Under this language, each election should be made by the Mayor and a majority of the members of the City Council. As discussed above, the Shelbyville City Charter ordinarily requires only a majority of the quorum present at a Council meeting to approve a measure. But if the term “majority of the members” in the 1957 act means merely a majority of the quorum present, then the phrase is redundant. This result is inconsistent with principles of statutory construction. A statute must be construed so as to ascertain and give effect to the intent and purpose of the legislature considering the statute as a whole and giving words their common and ordinary meaning. *State v. Levandowski*, 955 S.W.2d 603, 604 (Tenn. 1997). A court should assume that the legislature used each word in the statute purposely and that the use of these words conveyed some intention. *Ki v. State*, 78 S.W.3d 876, 879 (Tenn. 2002); *State v Levandowski*, 955 S.W.2d at 604. In construing statutes, courts must presume that the legislature has knowledge of its prior enactments and knows the state of the law at the time it passes legislation. *State v Levandowski*, 955 S.W.2d at 604. Finally, “[a] statute should be construed so that effect is given to *all* its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error.” *Shelby County v. Hale*, 200 Tenn. 503, 292 S.W.2d 745, 748 (1956) (quoting 2 Sutherland Statutory Construction § 4705)(emphasis added).

We think a court would apply these principles of statutory construction and conclude that the term “majority of the members” used in the 1957 act means a majority of the entire membership of the Council, and not just a majority of the quorum present. Further, as discussed earlier, the Mayor is not ordinarily authorized to vote at Council meetings. We think that, by mentioning this official in this provision and using the phrase “the Mayor *and* a majority of the members,” the General

Assembly intended to require the Mayor to vote for the appointment, separately from a majority of the members of the Council. Under the 1957 act, therefore, appointment of a new Board member

requires an affirmative vote by the Mayor and the affirmative vote of four Council members. Thus, a total of five votes — that of the Mayor and four Council members — is necessary to appoint a new Board member.

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