

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 08-183

City Council Appointing Municipal Court Clerk

QUESTION

Does Tenn. Code Ann. § 16-18-310(a) authorize a city council to appoint a city court clerk?

OPINION

Tenn. Code Ann. § 16-18-310(a), by its terms, requires each municipal court to have a clerk, but it does not specify whether that clerk must be elected by city voters, appointed by the governing body of the city, or otherwise designated. The method by which the city court clerk must be chosen depends, first, on the statute or private act under which that court was created. If the statute or private act requires the city court clerk to be popularly elected, then the city council may not appoint or designate the city court clerk. Under Tenn. Code Ann. § 16-18-207, a city council may provide, by ordinance, for the popular election of a city court clerk where it has also provided for the popular election of the city court judge. The clerk of a city court exercising concurrent general sessions jurisdiction must be popularly elected.

ANALYSIS

This opinion concerns the interpretation of Tenn. Code Ann. § 16-18-310(a), which provides:

(a) Notwithstanding any provision of law to the contrary, at all times there shall be a person elected, appointed or otherwise designated to serve as clerk of the municipal court. Immediately upon each such election, appointment or designation, the chief administrative officer of the municipality shall promptly certify the results of such election, appointment or designation to the administrative office of the courts and shall supply such additional information, concerning the clerk, as shall be required by the administrative director.

The request asks whether this statute authorizes a city council to appoint or designate a municipal court clerk. Tenn. Code Ann. § 16-18-310(a), by its terms, requires each municipal court to have a clerk. It does not specify whether that clerk must be elected by city voters, appointed by the governing body of the city, or designated in some other way. The method by which the city court clerk must be chosen depends, first, on the statute or private act under which that court was created. If the statute or private act requires the city court clerk to be popularly elected, then the city council may not appoint or designate the city court clerk. Similarly, if the statute or private act authorizes the city council to appoint the city court clerk, and the city court does not exercise concurrent general sessions jurisdiction, then the city council may appoint the clerk in the manner described in the statute or private act. Under Tenn. Code Ann. § 16-18-201, a city may, by ordinance, provide for the election of a city judge. Under Tenn. Code Ann. § 16-18-207, the city council may, by ordinance, require the city court clerk serving the popularly elected city judge to be elected by the voters of the city or town for a term of four years. The elected clerk may be an alternative or in addition to the court clerk provided in the charter. A city court that exercises concurrent general sessions jurisdiction is an “inferior court” within the meaning of Article VI. *See, e.g., State by South Carthage v. Barrett*, 840 S.W.2d 895 (Tenn. 1992). Under Article VI, Section 13, of the Tennessee Constitution, the clerk of an inferior court must be popularly elected. *Shelby County Election Commission v. Turner*, 755 S.W.2d 774 (Tenn. 1988) (juvenile court clerk).

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