STATE OF TENNESSEE
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December 31, 2008

Opinion No. 08-196

Residency in Aldermanic District

QUESTIONS

1. Tenn. Code Ann. § 8-48-101(3) provides that "[a]ny office in this state is vacated by . . . [c]easing to be a resident of the state, or of the district, circuit, or county for which the incumbent was elected or appointed[.]" Does this statute conflict with private act charters that have aldermanic districts extending beyond the city boundaries, enabling an individual who is not a city resident to be elected alderman?

2. If the answer to Question 1 is yes, does the general law supersede private act charters that conflict with it?

OPINIONS

1. A definitive answer would depend on the language of the particular charter. Our Office is unaware of any city charter that provides for aldermanic districts outside the city boundaries. But the term "district" as used in the statute would ordinarily be defined by the charter governing the particular office. As a result, Tenn. Code Ann. § 8-48-101(3) would not cause an alderman to vacate his or her office so long as he or she continues to reside in the district as defined in the governing charter.

2. Because of the answer to Question 1, Question 2 is moot.

ANALYSIS

This opinion addresses the meaning of Tenn. Code Ann. § 8-48-101(3). That statute provides:

> Any office in this state is vacated by:
>
> * * * *
>
> (3) Ceasing to be a resident of the state, or of the district, circuit, or county for which the incumbent was elected or appointed[.]

The request asks whether this provision conflicts with private act city charters that describe aldermanic districts to include territory outside the city boundaries. Under these charters, an individual in an aldermanic district could be elected as an alderman even if he or she resides outside the city boundaries. Of course, a definitive answer would depend on the language of the particular city charter. Our Office is unaware of any city charter that provides for aldermanic districts including territory outside the city boundaries. Information obtained from the requestor's staff indicates that the question concerns the City of Winchester. That city's charter was recently amended to allow individuals owning property in Winchester to vote in city elections. 2008 Tenn. Priv. Acts Ch. 71. Before it becomes effective, that act must be locally approved. *Id.* at § 2. Even if it has been approved, however, the mayor and councilmen must still be city residents. Under the Winchester City Charter, the mayor and council members are elected from the city at large. Only a voter who has been a resident of the city for at least two years may qualify as a candidate. Winchester City Charter, § 2.01. The office of mayor or councilman becomes vacant if the incumbent moves out of the city. Winchester City Charter, § 2.06. Thus, under that city's charter, the mayor and council members must be residents of the city, but not of any particular district within the city. The 2008 amendment does not change this requirement.

A city charter that includes aldermanic districts with territory outside the city boundaries, however, would not necessarily conflict with Tenn. Code Ann. § 8-48-101(3). That statute does not refer to residence within a city's boundaries. Instead, it provides that an office is vacated where the incumbent ceases to be a resident of the state, or of the "district, circuit, or county for which the incumbent was elected or appointed." In the case of a city alderman, the district for which the incumbent was elected or appointed would ordinarily be defined by the charter. Thus, if the charter provides for aldermanic districts that include territory outside the city boundaries, then an incumbent alderman would not vacate his or her office under Tenn. Code Ann. § 8-48-101(3) so long as he or she continues to reside within that district as defined in the charter.

The second question is whether, assuming Tenn. Code Ann. § 8-48-101(3) conflicts with private act charters, the general law would supersede them. Because of the answer to Question 1, Question 2 is moot.

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