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Opinion No. 09-104

Proposed Amendment to County Charter Statutes

QUESTION

Would legislation requiring that alternate forms of county government retain the constitutional officers specified in Article VII, Section 1, of the Tennessee Constitution and prohibiting any curtailment of the statutory duties, qualifications, or privileges associated with such offices violate Article VII, Section 1, or any other constitutional provision?

OPINION

No. Under Article VII, Section 1, the General Assembly is authorized to amend the county charter statutes to prohibit a charter from reducing, altering, or amending the statutory duties, privileges, and qualifications of the sheriff, register of deeds, county clerk, property assessor, or trustee. The proposed amendment implicates no other constitutional provision.

ANALYSIS

This opinion concerns the constitutionality of a proposed amendment to Tenn. Code Ann. § 5-1-202. This statute addresses adoption of a county charter and currently provides:

> (a) After adoption of a charter pursuant to this part, no right, power, duty, obligation or function of any officer, agency or office of such county shall be retained and continued unless this part or the charter of such county expressly so provides, or unless such retention and continuation be required by the Constitution of Tennessee.
>
> (b) The adoption of a charter shall not have the effect of removing the incumbent from any county office or abridging the term or altering the salary prior to the end of the term for which such public officer was elected.

The proposed amendment, included with the request, would add a new subsection (c):

> No charter, whether existing or adopted after the effective date of this act, shall be construed, or attempt to, alter, amend or reduce the duties, qualifications, or privileges of the constitutional county offices of sheriff, register of deeds, county clerk, property assessor, or trustee. However, a charter may increase the duties of

> the constitutional offices named in this subsection, provided the additional duties are consistent with state law.

The only constitutional provision that this proposal implicates is Article VII, Section 1, which states:

> The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property. Their qualifications and duties shall be prescribed by the General Assembly. Any officer shall be removed for malfeasance or neglect of duty as prescribed by the General Assembly.
>
> The legislative body shall be composed of representatives from districts in the county as drawn by the county legislative body pursuant to statutes enacted by the General Assembly. Districts shall be reapportioned at least every ten years based upon the most recent federal census. The legislative body shall not exceed twenty-five members, and no more than three representatives shall be elected from a district. Any county organized under the consolidated government provisions of Article XI, Section 9, of this Constitution shall be exempt from having a county executive and a county legislative body as described in this paragraph.
>
> ***The General Assembly may provide alternate forms of county government including the right to charter and the manner by which a referendum may be called. The new form of government shall replace the existing form if approved by a majority of the voters in the referendum.***
>
> No officeholder's current term shall be diminished by the ratification of this article.

Tenn. Const. Art. VII, § 1 (emphasis added). The third paragraph of this provision is not self-executing. *Jordan v. Knox County*, 213 S.W.3d 751, 767 (Tenn. 2007). Thus, this provision cannot become operative without the aid of legislation. *Id.* Tenn. Code Ann. §§ 5-1-201, *et seq.*, provides the statutory framework within which a county may adopt a charter form of government.

There is a strong presumption that acts by the legislature are constitutional. *Bailey v. County of Shelby*, 188 S.W.3d 539 (Tenn. 2006). In that case, the Tennessee Supreme Court upheld the constitutionality of Tenn. Code Ann. § 5-1-210, authorizing a county charter to provide for the "qualification for holding office" of members of the charter county's legislative body. The Court found that the limitations in the first paragraph of Article VII, Section 1, requiring the General Assembly to prescribe the qualifications and duties for the listed county officers, were inapplicable to a statute the General Assembly passed authorizing a charter county under the third paragraph of the same provision. The Court stated:

> Today's decision is also consistent with our observation made shortly after Article VII was modified to its present form in 1978 that "[t]he powers which ***the General Assembly*** previously possessed respecting local governments were

> reinforced and strengthened as to county governments by the 1978 amendment to Article VII" permitting alternate forms of local government.

188 S.W.3d at 547 (emphasis added) (quoting *Leech v. Wayne County*, 588 S.W.2d 270, 274 (Tenn. 1979)).

The Tennessee Supreme Court later affirmed its conclusion in *Jordan, supra.* In that case, several Knox County Commissioners challenged the Knox County Charter and a provision within it setting term limits on county officers. The charter was adopted under Tenn. Code Ann. §§ 5-1-201, *et seq.* Subsection (12) of Tenn. Code Ann. § 5-1-210 provides:

> That the duties of the constitutional county officers as prescribed by the general assembly shall not be diminished under a county charter form of government; provided, that such officers may be given additional duties under such charters.

The Tennessee Supreme Court upheld the trial court's ruling that the charter was incomplete under the enabling legislation because it had failed to provide for the functions of government exercised by the constitutional county officers. The Court affirmed its ruling in *Bailey* that a charter adopted under legislation passed under the third paragraph of Article VII, Section 1 was not subject to the limitations in the first paragraph. The Court found that, under Tenn. Code Ann. § 5-1-210(12), the county charter needed either expressly to create or retain the county offices listed in the first paragraph of Article VII, Section 1, or to transfer their duties to another officer. 213 S.W.3d at 773-774. Because the Knox County Charter failed to do either, the Court found it was incomplete under the statute. The Court stated:

> A comparison of the constitutional terminology ***and the statutory language*** compels this interpretation, as does the holding in *Bailey*. Article VII, paragraph 3 of our constitution grants the power to the counties *not* to have these officers at all. As indicated by the opinion in *Leech*, the third paragraph is an alternate form created "without regard to the general type established in [the first paragraph] in Article VII."

Id. at 774 (boldface added; italics in original) (quoting *Leech*, 588 S.W.2d at 537).

Thus, under the third paragraph of Article VII, Section 1, the General Assembly may authorize Tennessee counties to adopt a charter form of government. The new form of government need not, under the Constitution, conform to the requirements of paragraph 1 of the same article. But the General Assembly remains free, by statute, to impose similar requirements. For this reason, the General Assembly is authorized to amend the county charter statutes to prohibit a charter from reducing, altering, or amending the statutory duties, privileges, and qualifications of the sheriff, register of deeds, county clerk, property assessor, or trustee.

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