

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 09-117

Reducing Number of Members of County Commission

QUESTION

What is the process for reducing the number of county commissioners in a county?

OPINION

A county that has not adopted a charter form of government may reduce the number of its members as part of a reapportionment plan as required by Tenn. Code Ann. § 5-1-111. A county commission in a non-charter county must have at least nine and no more than twenty-five members. Tenn. Code Ann. § 5-5-102(a)(1). Private acts applicable to a particular county could also affect the process. Changes in the number of members of the county legislative body under a charter form of government must be made in accordance with the county charter.

ANALYSIS

This opinion concerns the process for reducing the number of county commissioners in a county. Our Office addressed this issue with regard to the Dickson County Commission in 2001. Op. Tenn. Att’y Gen. 01-151 (September 25, 2001). While the constitutional provisions cited in that opinion have not changed, we think it would be helpful to address the issue again in light of statutory amendments and cases interpreting Article VII, Section 1, of the Tennessee Constitution issued since that time. Because the request refers to county commissioners, we assume that your question does not refer to any county operating under a consolidated form of government with one or more cities.

Article VII, Section 1, of the Tennessee Constitution provides:

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). Tenn. Code Ann. § 5-5-102(a) provides:

(1) The county legislative body shall be composed of not less than nine (9) nor more than twenty-five (25) members.

(2) There shall be at least nine (9) districts in the county legislative body in any county designated as a Class 2 county before January 1, 1999, as established by § 8-24-101.

Tenn. Code Ann. § 5-1-111(a) provides:

Prior to January 1, 1982, and at least every ten (10) years thereafter, county legislative bodies of the different counties shall meet and, a majority of the members being present and concurring, shall change the boundaries of districts or redistrict a county entirely if necessary to apportion the county legislative body so that the members represent substantially equal populations.

These provisions apply to counties that have not adopted a charter form of government under Article VII, Section 1, Paragraph 3, of the Tennessee Constitution. For non-charter counties, under Tenn. Code Ann. § 5-1-111(b), the county legislative body may increase or decrease the number of districts when the reapportionments are made. In Op. Tenn. Att'y Gen. 01-151 (September 25, 2001), our Office concluded that the authority to increase or decrease the number of members within the statutorily allowable range is implicit in the authority to increase or decrease the number of districts. Private acts applicable to a particular county could also affect the process.

Under Tenn. Code Ann. §§ 5-1-201, *et seq.*, a county may adopt a charter form of government. The Tennessee Supreme Court has recently 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. *Jordan v. Knox County*, 213 S.W.3d 751 (Tenn. 2007); *Bailey v. County of Shelby*, 188 S.W.3d 539 (Tenn. 2006). Neither opinion addresses whether the reapportionment requirements in the

second paragraph apply to a charter county. The charter laws require a county charter to provide:

(3) For a county legislative body, which shall be the legislative body of the county and shall be given all the authority and functions of the legislative body of the county being chartered, with such exceptions and with such additional authority as may be specified elsewhere in this part;

(4) For the size, method of election, qualification for holding office, method of removal, and procedures of the county legislative body with such other provisions with respect to such body as are normally related to the organization, powers and duties of governing bodies in counties[.]

Tenn. Code Ann. § 5-1-210(3)-(4). Changes in the number of members of the county legislative body under a charter form of government, therefore, must be made in accordance with the county charter.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Dale Ford
State Representative
202A War Memorial Building
Nashville, Tennessee 37243-0106