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

December 23, 2010

Opinion No. 10-118

Amendment of Private Act by Charter County

QUESTION

1983 Tenn. Priv. Acts Ch. 148 (the "1983 Act") creates the Tennessee Technology Corridor Development Authority ("the Authority") to operate in Knox County. Knox County adopted a county charter form of government under Tenn. Code Ann. §§ 5-1-201, et seq., in 1990. Is the Knox County Commission now authorized to amend the 1983 Act by ordinance?

OPINION

No. While Knox, as a charter county, may pass ordinances through its Commission "relating to purely county affairs," the organization and functioning of the Authority is not purely a county matter. This is reflected in the Governor's authority to nominate five of the seven members of the Authority's governing board (subject to local approval) and to appoint one member who need not reside in Knox County. This is also reflected in the provisions that the Technology Corridor may be extended into other counties and that the Authority is subject to audit by the Comptroller of the Treasury in the manner established for audit of state agencies. The Knox County Commission, therefore, may not amend the 1983 Act by ordinance. Instead, it must be amended by the General Assembly, subject to the local approval requirements in Article XI, Section 9, of the Tennessee Constitution.

ANALYSIS

This opinion addresses whether the Knox County Commission is authorized, by ordinance, to amend a 1983 private act applicable to Knox County. The private act in question is 1983 Tenn. Priv. Acts ch. 148, the "Tennessee Technology Corridor Development Authority Act" (the "1983 Act"). The Act creates the Tennessee Technology Corridor Development Authority (the "Authority"). The Authority is a public and governmental body acting as an agency and instrumentality for Knox County. 1983 Act, § 2.b. The Authority is established for the purpose of developing and implementing a comprehensive development plan for a Technology Corridor, the boundaries of which are set forth in section 5.b. That section provides, "Any modification of the boundaries of the corridor shall be made by amendment of the act upon concurrence of the governing body and the approval of the Authority." 1983 Act, § 5. The General Assembly amended this portion of the 1983 Act to change the boundaries of the corridor in 1984. 1984 Tenn. Priv. Acts ch. 229.

The geographic description of the corridor describes it as land situated in Knox County. Other parts of the 1983 Act suggest that at least some of the land within the corridor is within the corporate boundaries of the cities of Knoxville and Farragut, or that the Authority exercises some power over use of land within these cities. For example, section 10.c. of the 1983 Act exempts land use within the incorporated areas of Farragut and Knoxville at the time the act was enacted from the requirement of obtaining a certificate of appropriateness from the Authority. Areas later annexed are not exempt.

The Authority is to work jointly with the Knoxville/Knox County Metropolitan Planning Commission. 1983 Act, § 4.b.(1). Section 5 of the 1983 Act requires the Knox County Commission to establish a High Technology Overlay Zone within which the Authority will exercise powers to effect the Act's purposes. The Commission must amend its zoning resolution to establish the overlay zone. *Id.*

Under section 6, the Authority is governed by a board of commissioners "charged with the promotion and support of high technology-based economic growth for the Tennessee Technology Corridor in the State of Tennessee" (the "Board"). 1983 Act, § 6.a. The Board is made up of seven members. Five of the members are nominated by the Governor upon recommendations received from the Tennessee Technology Foundation, "a not-for-profit corporation chartered in cooperation with the State of Tennessee,"[1] and approved by a majority vote of the Knox County Commission. One member is appointed by the Governor. One member must be a Knox County commissioner appointed by the Knox County Commission. 1983 Act, § 6.b. All commissioners must be Tennessee residents, and all except the commissioner appointed by the Governor must be residents of Knox County. *Id*.

The Board is given broad authority to develop land within the Tennessee Technology Corridor. 1983 Act, § 7. Decisions of the Board may be appealed to the Knox County Commission. *Id.* at § 11. Section 13 of the 1983 Act contains several provisions regarding its construction. Section 13.b. provides:

> This act is remedial in nature, and shall be liberally construed to effect its purposes of promoting high technology-based economic development within and in proximity to the Tennessee Technology Corridor as defined herein, facilitating the attraction, siting, and support of high technology industries in Knox County, and encouraging the effective utilization of the natural, educational, and technological resources therein to the ultimate growth and development of commerce and industry ***in said counties and throughout the State of Tennessee***.

(emphasis added). Section 13.d. provides:

> Nothing in this chapter shall be construed to prevent the extension of the Technology Corridor ***into other counties by adoption of similar legislation for***

[1] The Tennessee Code does not further define the "Tennessee Technology Foundation." Tenn. Code Ann. §§ 4-14-301, *et seq.*, create the Tennessee Technology Development Corporation, but the statutes were not passed until 1997. The Secretary of State's Office has records of an organization that informally uses the name Tennessee Technology Foundation, Inc.; its official name is East Tennessee Economic Development Agency, Inc.

> ***such counties,*** and upon adoption of such legislation this act should be amended to provide for participation by representatives of that county or those counties on the Board of Commissioners by the appointment of additional members of the Board from either that county or those counties, and by providing for the governing body of such county to serve in all respects as the governing body for the development in such county.

Section 14 provides:

> The Tennessee Technology Corridor Development Authority shall be subject to audit by the Comptroller of the Treasury in the manner established by the provisions of Tennessee Code Annotated, Section 8-4-109, for audit of state agencies.

Under section 15, the 1983 Act has no effect unless approved by a two-thirds vote of the governing body of Knox County. This provision is constitutionally required for all local acts under Article XI, Section 9, of the Tennessee Constitution.

Since 1990, Knox County has operated under a county charter.[2] Paragraph 3 of Article VII, Section 1, of the Tennessee Constitution provides:

> 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.

The General Assembly has enacted Tenn. Code Ann. §§ 5-1-201, *et seq.*, authorizing counties to adopt a charter form of government. Tenn. Code Ann. § 5-1-210 addresses the contents of a county charter. The statute provides in relevant part:

> The proposed charter shall provide:
>
> (1) For the creation of an alternative form of county government vested with any and all powers that counties are, or may hereafter be, authorized or required to exercise under the Constitution and general laws of the state of Tennessee, ***and any and all powers and duties of such county that are required or authorized by private acts effective on the date of ratification*** of such charter, as fully and completely as though the powers were specifically enumerated therein;
>
> * * * *

[2] The Tennessee Supreme Court found the Knox County Charter invalid because it failed to provide for the offices listed in Paragraph 1 of Article VII, Section 1. *Jordan v. Knox County,* 213 S.W.3d 751 (Tenn. 2007). Since that time, amendments to the Knox County Charter to address this issue have become effective. This opinion will assume that Knox County now operates under a charter validly adopted under Tenn. Code Ann. §§ 5-1-201, *et seq.*

> (7) For such administrative departments, agencies, boards and commissions as may be necessary and appropriate to perform the functions of county government in an efficient and coordinated manner and for this purpose ***for the alteration or abolition of existing county offices, departments, boards, commissions, agencies and functions, except where otherwise provided in this part or prohibited by the Constitution of Tennessee;***

(emphasis added). Tenn. Code Ann. § 5-1-211(a) provides:

> The legislative body of each county that adopts a charter form of county government may pass ordinances relating to ***purely county affairs***, but such ordinances shall not be opposed to the general laws and shall not interfere with the local affairs of any municipality within the limit of such county.

(emphasis added).

The request asks whether the Knox County Commission may now amend the 1983 Act by ordinance. Ordinarily, any act of the General Assembly, general or local in effect, must be amended by the General Assembly. The text of the 1983 Act reflects no legislative intent to change this rule. Section 5.b. describes the area included within the Tennessee Technology Corridor and states: "Any modification of the boundaries of the corridor shall be made by ***amendment of the act*** upon ***concurrence*** of the governing body and the approval of the Authority." (emphasis added). Further, the General Assembly explicitly retains the right to amend the 1983 Act to extend the Technology Corridor into other counties "by adoption of similar legislation for such counties." 1983 Act, § 13.d.

The question then becomes whether Knox County is authorized to amend the 1983 Act by ordinance because it has become a charter county. The Knox County Charter does not explicitly address the Authority. The Knox County Commission has adopted an ordinance that, while it largely tracks the 1983 Act, differs from it in some respects. Knox County Code of Ordinances, Title 14, Article II. Section 14.-30 of the ordinance, for example, provides that the geographic area of the corridor may be amended "upon concurrence of the governing body and the approval of the Authority." Thus, the ordinance deletes the requirement that the General Assembly first amend the act. Similar discrepancies appear in other parts of the ordinance.

This Office addressed the effect of adoption of a county charter under Tenn. Code Ann. §§ 5-1-201, *et seq.*, in 1988. Op. Tenn. Att'y Gen. 88-04 (January 5, 1988). In that opinion, this Office concluded that earlier private acts dealing with the form of county government and "purely county affairs" would be superseded upon adoption of the charter. This conclusion is based on two provisions of the county charter statutory scheme. First, Tenn. Code Ann. § 5-1-202(a) provides that, upon adoption of a charter, "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." Second, Tenn. Code Ann. § 5-1-211(a) authorizes the legislative body of a charter county to pass ordinances "relating to purely county affairs[.]" The opinion notes that private acts that do not deal with the areas of county government covered

by the charter are still in place and may be amended by the legislature. A later opinion notes that Tenn. Code Ann. § 5-1-210 sets forth the topics and forms of government for which a county charter may make provisions that are different from those that exist in other counties under the general statutes and private acts. Op. Tenn. Att'y Gen. 94-008 (January 14, 1994).

As cited above, Tenn. Code Ann. § 5-1-210(7) explicitly authorizes a county charter to provide "for the alteration or abolition of existing county offices, departments, boards, commissions, agencies and functions, except where otherwise provided in this part or prohibited by the Constitution of Tennessee[.]" But the Knox County Charter does not attempt to reorganize the Authority. Because the Charter is silent on the Authority and its powers, the 1983 Act remains in place and is subject to change by the General Assembly.

The question presented, however, is whether the Knox County Commission is authorized to amend the 1983 Act by ordinance. Tenn. Code Ann. § 5-1-211(a) authorizes a charter county to pass ordinances "relating to purely county affairs[.]" At least three features of the 1983 Act indicate that the Authority's operation implicates state interests. First, the 1983 Act provides that the Governor will select six of seven members of the Board, with the guidance of an independent non-profit corporation. Second, the Act reserves the General Assembly's right to extend it to apply to other counties. Finally, Section 14 of the act subjects the Authority to audit by the State Comptroller "in the manner established by the provisions of Tennessee Code Annotated, Section 8-4-109, for audit of state agencies." For these reasons, it is the opinion of this Office that the Knox County Commission may not amend the 1983 Act by ordinance. Instead, it must be amended by the General Assembly, subject to the local approval requirements in Article XI, Section 9, of the Tennessee Constitution.

ROBERT E. COOPER, JR.
Attorney General and Reporter

CHARLES L. LEWIS
Deputy Attorney General

ANN LOUISE VIX
Senior Counsel

Requested by:

The Honorable Ryan A. Haynes
State Representative
203 War Memorial Building
Nashville, Tennessee 37243-0188