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Opinion No. 11-11

Authority of City Manager and Commissioners under City Manager-Commission Charter

QUESTIONS

The City Manager-Commission Charter (the "Charter") is codified at Tenn. Code Ann. §§ 6-18-101, et seq.

1. Under the Charter, does the city manager have exclusive authority over personnel matters with city department heads and individual city employees?

2. Under the Charter, does a city commissioner or a group of city commissioners have any authority unilaterally to decrease or increase the salary of any city employee besides the city manager and the city judge?

3. Under the Charter, may an individual city commissioner or a group of city commissioners demand that the city manager take specific actions regarding the day-to-day operations of the city government?

OPINIONS

1. Yes. The city manager has exclusive power to appoint, promote, demote, suspend, transfer, remove, and discipline all department heads and subordinate employees, as well as to set their salaries, within the rules, appropriations, and comprehensive pay plan adopted by the board of commissioners.

2. No. An individual commissioner is not authorized to lower the salary of any city officer or employee, nor may the board of commissioners change the salary of any city officer or employee besides that of the city manager and city judge.

3. No. The Charter gives no authority to any individual commissioner; the board of commissioners must exercise its authority as a governing body. The city manager is legally obligated, in conducting the day-to-day affairs of the city, to comply with any policy expressed in a resolution or ordinance adopted by the city commission but the city manager is not legally required to comply with detailed instructions or demands addressed to a specific daily matter. Of

course, the city manager, after he or she has been in office for twelve months, serves at the pleasure of the board.

ANALYSIS

This opinion addresses several questions about the City Manager-Commission Charter, which is codified at Tenn. Code Ann. §§ 6-18-101, *et seq.* (the "Charter"). The Charter provides for a board of city commissioners under Tenn. Code Ann. § 6-20-101. The board either elects one of its members as the mayor, or the mayor is popularly elected to a designated commissioner position on the board. Tenn. Code Ann. § 6-20-201. The mayor presides at all meetings of the board of commissioners. Tenn. Code Ann. § 6-20-209. The mayor also signs deeds, bonds, and contracts made in the name of the city and may introduce ordinances to the board of commissioners. Tenn. Code Ann. § 6-20-213. But the principal executive and administrative powers under this form of government are vested, not in the mayor, but in the city manager.

The first question is whether, under the Charter, the city manager has exclusive authority over personnel matters with city department heads and individual city employees. The answer is that the city manager does have such authority, although he or she must act within the appropriations ordinance and comprehensive pay plan adopted by the board of commissioners. The city manager is the administrative head of the city government "under the direction and supervision of the board of commissioners." Tenn. Code Ann. § 6-21-107(a). The city manager or an officer appointed by the city manager also serves as finance director to carry out the duties under Tenn. Code Ann. §§ 6-22-101, *et seq.* The city manager appoints all department heads and other municipal employees and has the power to promote, transfer, discipline, and remove them as well. Under Tenn. Code Ann. § 6-21-101(a), the board of commissioners appoints and fixes the salary of the city manager, who serves at the will of the board. Under subsection (b)(1) of the statute, the manager may not be removed within twelve months from the date he or she assumed the duties of city manager except for incompetence, malfeasance, misfeasance, or neglect of duty.

While the city manager's powers are great, the board of commissioners has some general control over personnel matters. Tenn. Code Ann. § 6-21-102 provides:

> (a) The city manager may appoint, promote, suspend, transfer and remove any officer or employee of the city responsible to the city manager; or the city manager may, in the city manager's discretion, authorize the head of a department or office responsible to the city manager to take such actions regarding subordinates in such department or office. The city manager shall appoint such heads of administrative offices or organizational units as the city manager deems necessary. The city manager may combine, or personally hold, any such administrative offices established pursuant to this subsection (a) or otherwise established or may delegated parts of the duties of the city manager's office to designated subordinates.
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> (b) Except as otherwise provided in this chapter, the compensation of all officers and employees of the city shall be fixed by the city manager *within the limits of*

> *the appropriations ordinance and in accordance with a comprehensive pay plan adopted by the board of commissioners.*

(emphasis added). Thus, the board of commissioners is responsible for passing the city appropriations ordinance, as well as a comprehensive pay plan. Tenn. Code Ann. § 6-21-108(2) provides:

> The powers and duties of the city manager are to:
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> * * * *
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> (2) Except as otherwise provided in this charter, appoint, promote, demote, suspend, transfer, remove, and otherwise discipline all department heads and subordinate employees at any time, *subject only to any personnel rules and regulations adopted by ordinance or resolution by the commission.* Any hearings on, or appeals from, the city manager's personnel decisions provided for in the personnel rules and regulations shall be exclusively before the city manager or a hearing officer designated by the city manager[.]

(emphasis added). Thus, the board of city commissioners is authorized to adopt personnel rules and regulations by ordinance or resolution. The city manager's power to appoint, promote, demote, suspend, transfer, remove, and discipline all department heads and subordinate employees is subject to these rules and regulations. But, acting within the rules, appropriations, and comprehensive pay plan adopted by the board of commissioners, the city manager does have exclusive authority over personnel matters concerning department heads and city employers.

2. Salaries of City Officers and Employees

The next question is whether, under the Charter, a city commissioner or a group of city commissioners has any authority unilaterally to decrease or increase the salary of any city employee besides the city manager and the city judge. As quoted above, under Tenn. Code Ann. § 6-21-102(b), the city manager is authorized to fix the compensation of all city officers and employees unless otherwise provided in the Charter, "within the limits of the appropriations ordinance and in accordance with a comprehensive pay plan adopted by the board of commissioners." Thus, the Charter contemplates that the city manager, working within the framework of the appropriations ordinance and the comprehensive pay plan adopted by the commissioners, will set the compensation for most city employees and officers. Under the Charter, the board of commissioners is directly authorized to fix the salary of the city manager and the city judge. Tenn. Code Ann. § 6-21-101(a); Tenn. Code Ann. § 6-21-501(a). The Charter gives no authority to any individual commissioner; the board of commissioners must exercise its authority as a governing body. Thus, an individual commissioner is not authorized to lower the salary of any city officer or employee. Nor may the board of commissioners, acting through a vote of the entire board, lower the salary of any city officer or employee besides that of the city manager or city judge. Of course, the salary must comply with the appropriations ordinance and the comprehensive pay plan. Further, since the city manager works "under the

direction and supervision of the board of commissioners," the board of commissioners may recommend a change in salary, or request the manager to change a salary.

3. City Commissioners' Demands to City Manager

The last question is whether, under the Charter, an individual city commissioner or a group of city commissioners may demand that the city manager take specific actions regarding the day-to-day operations of the city government. Of course, members of the commission, individually or collectively, are free to express their wishes regarding the city manager's management of day-to-day city affairs. But the commissioners can act officially only by majority vote of the board.

The question then becomes whether the city commissioners may, by enacting a resolution or some other legislative action, legally require the city manager to take specific actions regarding the day-to-day operations of the city government. Under the Charter, the city commission is authorized to hire and fire the city manager and to set his or her salary. The Charter explicitly provides that the city manager is the administrative head of the city government under the direction and supervision of the board of commissioners. Tenn. Code Ann. § 6-21-107. But the Charter entrusts responsibility for various day-to-day aspects of city management to the city manager. As a general matter, therefore, the city manager is legally obligated, in conducting the day-to-day affairs of the city, to comply with any policy expressed in a resolution or ordinance adopted by the city commission but the city manager is not legally required to comply with detailed instructions or demands addressed to a specific daily matter.

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