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Opinion No. 11-38

Altering Term of County Assessor

QUESTION

Shelby County is governed by a county charter adopted under Tenn. Code Ann. §§ 5-1-201, et seq. May one term of the Shelby County Assessor be altered by referendum to reduce the term from four years to two years in order to make the election cycle for that office coincide with other county offices?

OPINION

Section 8.01 of the Shelby County Charter creates the office of Shelby County Assessor, and Section 8.03.B provides that the next term of that office will begin September 1, 2012, and end September 1, 2014. Beginning September 1, 2014, the Shelby County Assessor will be elected to a four-year term. Paragraph 1 of Article VII, Section 1, of the Tennessee Constitution provides that a county assessor must be elected to a four-year term. But that paragraph does not apply to Shelby County, which operates under a county charter adopted under Paragraph 3 of Article VII, Section 1, of the Tennessee Constitution. Section 8.03.B, therefore, does not violate the Tennessee Constitution or Tenn. Code Ann. §§ 5-2-201, et seq., authorizing the adoption of the Shelby County Charter.

ANALYSIS

This opinion concerns an amendment to the Shelby County Charter changing the term of office of the Shelby County Assessor to be elected in August 2012 from four years to two years. Shelby County operates under a county charter adopted pursuant to Tenn. Code Ann. §§ 5-1-201, et seq. The General Assembly adopted this statutory scheme under the authority of Article VII, Section 1, Paragraph 3, of the Tennessee Constitution. That paragraph authorizes the General Assembly to provide "alternate forms of county government." The current Shelby County Assessor was elected to office in 2008. Most other Shelby County officers, including the Mayor, the Sheriff, and the Register, were elected in 2010.

In 2008, Shelby County amended its Charter to add a new Article VIII entitled "County Charter Officers." The article creates the offices of Shelby County Sheriff, Shelby County Trustee, Shelby County Register, Shelby County Clerk, and Shelby County Assessor. Shelby

County Charter, § 8.01. These officers are to have the same qualifications as those required of the former constitutional Sheriff, Trustee, Register, County Clerk, and Assessor by state law as of the date the provision becomes effective. Shelby County Charter, § 8.02. The Article became effective September 1, 2010, except with respect to the office of Shelby County Assessor. The Article is to become effective September 1, 2012, as to the office of Shelby County Assessor. Shelby County Charter, § 8.01. Section 8.03 of the Shelby County Charter provides:

> A. The county charter officers, with the exception of the Shelby County Assessor, shall be elected each four years by the voters of Shelby County in accordance with the Tennessee Constitution, the general laws of the State of Tennessee and the Charter of Shelby County, commencing with the August 2010 general election.
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> B. Effective September 1, 2012, the Shelby County Assessor shall be elected to a term of two years by the voters of Shelby County in accordance with the Tennessee Constitution, the general laws of the State of Tennessee and the Charter of Shelby County. Effective September 1, 2014, and each four years thereafter, the Shelby County Assessor shall be elected to a term of four years.
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> C. The county charter officers shall not be subject to term limitations unless provided for in Article V herein.

The term of the current Shelby County Assessor began September 1, 2008, and will end September 1, 2012. Under Section 8.03.B, the next Shelby County Assessor will be elected to a two-year term of office, beginning September 1, 2012, and ending September 1, 2014. After that, the term of the Shelby County Assessor will be four years, and the Assessor will be elected at the same time as other Shelby County officers.

Under Paragraph 1 of Article VII, Section 1, of the Tennessee Constitution, "[t]he 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." But the Tennessee Supreme Court has ruled that this paragraph specifying county officers and their terms of office does not apply to a charter county form of government created under Paragraph 3[1] of the same section. *Jordan v. Knox County,* 213 S.W.3d 751, 774 (Tenn. 2007); *Bailey v. County of Shelby,* 188 S.W.3d 539, 546 (Tenn. 2006). Thus, a charter county government is not constitutionally required to have these officers, and, if it provides for them, is free to change their term.

The question then becomes whether the change in the Shelby County Assessor's term complies with the statutory scheme authorizing the county charter form of government. Tenn.

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[1] Paragraph 3 of Article VII, Section 1, 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.

Code Ann. § 5-1-210 lists the provisions that must be included in a county charter adopted under Tenn. Code Ann. §§ 5-1-201, *et seq.* The statute provides in relevant part:

> The proposed county charter shall provide:
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> * * * *
>
> (12) 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 has concluded that, under this statute, a county charter must either create the county offices listed in Paragraph 1 of Article VII, Section 1, or provide for the performance of the duties of these constitutional officers by other officers created under the charter. *Jordan*, 213 S.W.3d at 773-74. Under Tenn. Code Ann. § 5-1-210 (5) and (6):

> The proposed county charter shall provide:
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> * * * *
>
> (5) For the assignment of administrative and executive functions to officers of the county government, which officers may be given, subject to such limitations as may be deemed appropriate or necessary, all or any part of the administrative and executive functions possessed by the county being chartered and such additional powers and duties, not inconsistent with general law or the Constitution of Tennessee;
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> (6) For the names or titles of the administrative and executive officers of the county government, their qualifications, compensation, method of selection, ***tenure,*** removal, replacement and such other provisions with respect to such officers, ***not inconsistent with general law, as may be deemed necessary or appropriate for the county government[.]***

(Emphasis added). Tenn. Code Ann. § 5-1-210(6) must be liberally construed as a utilization of the constitutional power granted by Article VII. Tenn. Code Ann. § 5-1-201(b); *Jordan,* 213 S.W.3d at 780(citing *Bailey,* 188 S.W.3d at 544). Under Tenn. Code Ann. § 67-1-502, a property assessor must be elected to a term of four years. It can be argued that, under Tenn. Code Ann. § 5-1-201(6), a charter county that chooses to retain the constitutional county officers must follow all the statutes governing the qualification, compensation, method of selection, tenure, removal, replacement, and other provisions governing these officers. But the office of Shelby County Assessor is created under the Shelby County Charter, not Article VII, Section 1, Paragraph 1, or Tenn. Code Ann. §§ 67-1-501, *et seq.* Further, Tenn. Code Ann. § 5-1-210(6) includes the qualification, "as may be deemed necessary or appropriate for the county government." Section 8.03.B of the Shelby County Charter clearly intends that Shelby County officers will be elected on the same election cycle. Finally, the opposite interpretation would violate the rule of liberal construction set forth in Tenn. Code Ann. § 5-1-201(b). For all these reasons, we conclude that Section 8.03.B of the Shelby County Charter does not violate the

Tennessee Constitution or Tenn. Code Ann. § 5-1-210(6) and is otherwise authorized under Tenn. Code Ann. §§ 5-1-201, *et seq.*

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