S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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June 11, 2013

Opinion No. 13-45

Referendum on Deannexation

QUESTIONS

1. How is a referendum on deannexation under Tenn. Code Ann. § 6-51-201(a) initiated?

2. Do the provisions of Tenn. Code Ann. § 2-5-151 governing the process for initiating a petition for recall, referendum or initiative allow an incorporated city or town to hold a deannexation referendum under a provision in its charter generally authorizing referenda?

3. Does Article I, Section 1 of the Tennessee Constitution require that Tennessee citizens within a territory proposed to be deannexed from an incorporated city or town be allowed to hold a referendum to approve any such deannexation?

OPINIONS

1. Under Tenn. Code Ann. § 6-51-202, any referendum under Tenn. Code Ann. § 6-51-201(a) is initiated when the incorporated city or town legislative body passes an ordinance providing for it.

2. No. The process for deannexation in an incorporated city or town, including the conducting of any referendum regarding such deannexation, is governed by the specific provisions of Tenn. Code Ann. § 6-51-201 to -204.

3. No.

ANALYSIS

1. The Tennessee Constitution establishes the process for the creation and alteration of municipalities and their boundaries. The "Municipal Boundaries Clause" of the Tennessee Constitution states in pertinent part:

> The General Assembly shall by *general law* provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved *and by which municipal boundaries may be altered.*

Tenn. Const. Art. XI, § 9 (emphasis added).

The General Assembly has established the procedure for changing municipal boundaries at Tenn. Code Ann. §§ 6-51-101 to -410 and specifically addressed the possible contraction or deannexation of territory from an incorporated city or town at Tenn. Code Ann. §§ 6-51-201 to -204. The deannexation of territory from an incorporated city or town is governed by the following procedure:

> (a) Any incorporated city or town, whether it was incorporated by general or special act, may contract its limits within any given territory; provided, that three fourths (3/4) of the qualified voters voting in an election assent thereto.
>
> (b)(1) Any incorporated city or town, whether it was incorporated by general or special act, may after notice and public hearing, contract its limits within any given territory upon its own initiative by ordinance when it appears in the best interest of the affected territory.
>
> (2) Such contraction of limits within any territory shall not occur unless a majority of the total membership of the city legislative body approves such contraction.
>
> (3) Such contraction of limits within any territory shall not occur if opposed by a majority of the voters residing within the area to be deannexed. The concurrence of a majority of the voters shall be presumed unless a petition objection to deannexation signed by ten percent (10%) of the registered voters residing within the area proposed to be deannexed is filed with the city recorder within seventy-five (75) days following the final reading of the contraction ordinance. If such petition is filed, a referendum shall be held at the next general election to ascertain the will of the voters residing in the area that the city proposes to deannex. The ballot shall provide a place where voters may vote for or against deannexation by the city. If a majority of those voting in the referendum fail to vote for the deannexation, the contraction ordinance shall be void and the matter may not be considered again for two (2) years. If a majority vote for deannexation, the ordinance shall become effective upon certification of the result of the referendum.

Tenn. Code Ann. § 6-51-201. The referendum referenced in Tenn. Code Ann. § 6-51-201(b)(3)

> *shall be held under the provisions of an ordinance to be passed for that purpose.* A full report of the [referendum] election shall be spread upon the minutes of the board, if three fourths (3/4) of the voters assent to the contraction, and in the report the metes and bounds of the territory to be excluded must be further set forth.

Tenn. Code Ann. § 6-51-202 (emphasis added).

This Office recently succinctly explained this deannexation process as follows:

> Under current deannexation law, an incorporated city or town may contract its limits upon the approval of three fourths of the qualified voters. Tenn. Code Ann. § 6-51-201(a). The city or town must provide for the election by ordinance. Tenn. Code Ann. § 6-51-202. An incorporated city or town may in the alternative, by ordinance, contract its territorial limits. Tenn. Code Ann. § 6-51-201(b)(1). That contraction may not occur if opposed by a majority of the voters residing within the area to be annexed. Tenn. Code Ann. § 6-51-201(b)(3). *Thus, in either case, the city or town legislative body must pass an ordinance before deannexing territory within its limits.*

Tenn. Att'y Gen. Op. 12-12 at 3 (Feb. 9, 2012) (emphasis added). Thus, as this Office recognized, any election commenced to address deannexation under Tenn. Code Ann. § 6-51-201(a) must be initiated by an ordinance of the city or town legislative body pursuant to Tenn. Code Ann. § 6-51-202. An election to oppose any proposed deannexation under Tenn. Code Ann. § 6-51-201(b) will be held if a proper petition is filed under Tenn. Code Ann. § 6-51-201(b)(3), and any such election will be conducted in accordance with this same subsection.[1]

2. The aforementioned specific process for conducting elections on referendums concerning deannexation would control and supersede any governmental entity's charter provisions generally allowing referendum elections as well as the more general provisions of Tenn. Code Ann. § 2-5-151(a) setting forth the process a governmental entity must follow to conduct a referendum or recall authorized by that entity's charter. *See, e.g., Keough v. State*, 356 S.W.3d 366, 371 (Tenn. 2011) (stating the general rule of statutory construction that a special statute will prevail over a general provision in another statute). Thus, any election to vote on a deannexation proposal must be conducted in the manner established by the General Assembly in Tenn. Code Ann. §§ 6-51-201 to -204. Furthermore, the statutory provisions on elections regarding deannexation by their terms apply to all incorporated cities and towns and thus are not dependent upon the city or town having a charter provision generally authorizing referenda. *See* Tenn. Code Ann. §§ 6-51-201, -202.

3. Any referendum on deannexation must be conducted as required by Tenn. Code Ann. §§ 6-51-201 to -204. Article I, Section 1 of the Tennessee Constitution does not grant to Tennessee citizens the constitutional right to initiate a different type of referendum to determine whether their property should be allowed to be deannexed and placed back within the unincorporated county territory. This section provides:

> That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.

Tenn. Const. Art. I, § 1.

[1] Tenn. Code Ann. § 6-51-202 does not impact an election conducted under Tenn. Code Ann. § 6-51-201(b). The provisions of Tenn. Code Ann. § 6-51-202 only concern an election where "three fourths (3/4) of the voters assent to the contraction," which is the criteria governing an election under Tenn. Code Ann. § 6-51-201(a) and not the criteria for an election under Tenn. Code Ann. § 6-51-201(b) where a majority vote determines the outcome.

The Tennessee Supreme Court has specifically concluded that neither Article I, Section 1 nor Article XI, Section 16[2] of the Tennessee Constitution creates a constitutional right for citizens to vote on annexation questions. *Vollmer v. City of Memphis*, 792 S.W.2d 446, 448 (Tenn. 1990). The Court observed that the General Assembly had enacted the annexation statute at issue in *Vollmer* in accord with the express provisions of the Municipal Boundaries Clause of the Tennessee Constitution, which grants the General Assembly the authority "by general law" to "provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered." *Vollmer*, 792 S.W.2d at 448 (*quoting* Tenn. Const. Art. XI, § 9). The Court then noted that this express grant of discretionary authority to the General Assembly to develop the appropriate process for annexation matters took precedence over the general language of Article I, Section 1 and Article XI Section 16, explaining:

> In construing the Constitution, the whole instrument must be taken into consideration, and no part so construed as to impair or destroy any other part. Legislative powers enumerated in one clause must be defined and exercised with reference to limitations and requirements made in other clauses. Every clause should be given effect. The general language of one clause should not be permitted to render ineffective the express or specific provisions of another clause.

Id.

More broadly, both federal and Tennessee courts have held that in annexation cases, absent some showing of invidious discrimination, there is no equal protection or due process argument that can successfully be made when the statute is properly followed. *Hunter v. Pittsburgh*, 207 U.S. 161, 178-79 (1907); *Deane Hill Country Club, Inc. v. Knoxville*, 379 F.2d 321, 325 (6th Cir. 1967), *cert. denied*, 389 U.S. 975 (1967); *State ex rel. Wood v. City of Memphis*, 510 S.W.2d 889, 892 (Tenn. 1974); *State ex rel. Vicars v. Kingsport*, 659 S.W.2d 367, 369-70 (Tenn. Ct. App. 1983). *See also Williams v. City of Nashville*, 89 Tenn. 487, 493, 15 S.W. 364, 365 (1891) (stating that "[p]lacing property within the corporate limits of a given town or city, where it will be subjected to the additional burden of municipal taxation and supervision, is not a taking of the property at all" since "[t]he ownership is in no degree changed, and the increased burden is presumed to be equaled by the increased advantages.")

[2] Article XI, Section 16 of the Tennessee Constitution provides:

> The declaration of rights hereto prefixed is declared to be a part of the Constitution of this State, and shall never be violated on any pretence whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted out of the General powers of government, and shall forever remain inviolate.

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