

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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July 1, 2013

Opinion No. 13-49

Term of Shelby County General Sessions Court Clerk

QUESTION

May the General Assembly amend Chapter 123 of the 1941 Private Acts to extend the term of the Shelby County General Sessions Court Clerk who is serving upon the effective date of such amendment to August 2018 and move the election for this position to the first Thursday in August 2018 so that this position will be on the same election cycle as other elected officials in Shelby County?

OPINION

Yes, provided that the legislation, by its terms, requires approval by either a two-thirds vote of the county commission or a majority vote of the citizens of Shelby County.

ANALYSIS

Chapter 123 of the 1941 Tennessee Private Acts (“Chapter 123”) establishes the General Sessions Courts for Shelby County.¹ Section 13 of this Act, as amended by Section 1 of Chapter 113 of the 1957 Tennessee Private Acts (“Chapter 113”), defines the process for electing the Clerk of the Court of the Shelby County General Sessions Court in relevant part as follows:

Vance Griffin, a citizen of Shelby County, is hereby designated and appointed as Clerk of said Court of General Sessions, to serve from and after the first day of the month following the enactment hereof, at and after which time the Clerk of the Circuit Court of Shelby County shall no longer act as Clerk of the said Court of General Sessions.

The said Vance Griffin shall serve as such Clerk until the next general election held pursuant to law and until his successor is duly elected and qualified. At such election a Clerk of said Court of General Sessions shall be elected to serve until the general election to be held on the first Thursday in August, 1960, at which time and every four years thereafter a Clerk of said Court of General Sessions shall be elected for a term of 4 years. Such Deputy Clerks and assistants

¹ A copy of Chapter 123, as amended through 2006 by the Tennessee General Assembly, is available at the website of the County Technical Assistance Service (“CTAS”). See <http://www.ctas.tennessee.edu>.

to the Clerk as may be necessary for the proper operation and administration of the duties of said office of the Clerk of the Court of General Sessions shall be appointed and their compensation fixed in the same manner as is now provided by law for the appointment and the fixing of compensation of Deputy Circuit Court Clerks upon petition by the Clerk to a Judge of the Circuit Court.

Tenn. Priv. Acts, ch. 113, § 1 (1957).

The General Assembly possesses the authority to amend Section 13 to extend the current term of the Shelby County General Sessions Court Clerk who is serving on the effective date of such amendment to August 2018 and to move the election for this position to the first Thursday in August 2018. The General Assembly has unlimited power of legislation, except so far as it is restrained, expressly or by necessary implication, by the Constitution of the United States and the Constitution of Tennessee. *Mayhew v. Wilder*, 46 S.W.3d 760, 770 (Tenn. Ct. App. 2001) (citing *Prescott v. Duncan*, 126 Tenn. 106, 148 S.W. 229 (Tenn. 1912)); *Motlow v. State*, 125 Tenn. 547, 566, 145 S.W. 177, 182 (Tenn. 1912). No constitutional barrier exists to the General Assembly making the aforementioned changes to Section 13. The Tennessee Constitution vests the General Assembly with the power “to ordain and establish” inferior courts, such as General Sessions Courts. Tenn. Const. art. VI, § 1. This power would include the creation of positions supporting these courts, such as the Shelby County General Sessions Clerk. *See Hodge v. State*, 135 Tenn. 525, 530-37, 188 S.W. 203, 204-05 (1916).

Nor does Article XI, Section 9, of the Tennessee Constitution prevent the General Assembly from extending the Court Clerk’s term. This provision provides in relevant part that “[t]he General Assembly shall have no power to pass a special, local or private act having the effect of *removing* the incumbent from any municipal or county office or *abridging* the term or altering the salary prior to the end of the term for which such public officer was selected.” Tenn. Const. art. XI, § 9 (emphasis added). This Office has previously opined that while this constitutional provision prevents the General Assembly from abridging or shortening the term of a county or municipal office, it does not prevent the General Assembly from altering the terms of any such office by *extending* it. *See* Tenn. Att’y Gen. Op. 05-013 at 1-2 (Jan. 26, 2005).

Article XI, Section 9, of the Tennessee Constitution does nonetheless require that “any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval of a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.” Thus, the General Assembly to amend Section 13 must require that any such amendment be approved by either a two-thirds vote of the county commission or a majority vote of the citizens of Shelby County.

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