

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

July 6, 2018

Opinion No. 18-29

Voting Age in Municipal Elections

Question 1

Does the Tennessee Constitution prohibit persons under the age of eighteen from voting in municipal elections?

Opinion 1

No. However, current Tennessee law prohibits persons under the age of eighteen from voting in municipal elections.

Question 2

Does the answer to Question 1 change if a municipality has adopted home rule?

Opinion 2

No.

ANALYSIS

Article IV, section 1 of the Tennessee Constitution grants to “[e]very person, being eighteen years of age, being a citizen of the United States,” and meeting the specified residency and registration requirements the right “to vote in all federal, state, and local elections held in the county or district in which such person resides.” Tenn. Const. art. IV, § 1. The Tennessee Supreme Court has long interpreted this suffrage clause to set out the exclusive qualifications of voters, and, accordingly, “the Legislature may not add to these qualifications nor subtract therefrom.” *Vertrees v. State Bd. of Elections*, 141 Tenn. 645, 214 S.W. 737, 739 (1919).

The suffrage clause of section 1, however, has also long been interpreted not to apply to municipal elections. *See id.* at 740 (noting “the conclusion inevitably follows” that article IV, section 1 does not control municipal elections); *Ledgerwood v. Pitts*, 122 Tenn. 570, 125 S.W. 1036, 1042 (1910) (“It has never been supposed that the election and suffrage clause of the Constitution applie[s] to municipal corporations[.]”).¹ *Vertrees* held that the suffrage clause

¹ Both *Ledgerwood* and *Vertrees* addressed the suffrage clause of the 1870 Constitution, which applied to elections “for members of the General Assembly and other civil officers.” Tenn. Const. art. IV, § 1 (1870). *Ledgerwood* found it “very obvious” that the clause encompassed only elections “referred to” in the Constitution and “created by the Legislature” and did not encompass municipal elections. 125 S.W. at 1042. And *Vertrees* affirmed that interpretation.

places “absolutely no restriction upon the power of the Legislature” to set the requirements for voting in municipal elections. 214 S.W. at 740. Relying on this longstanding interpretation, this Office has repeatedly concluded that the residency requirements in the suffrage clause do not apply to municipal elections and thus do not prohibit non-resident property owners from voting in municipal elections. *See* Tenn. Att’y Gen. Op. 13-106 (Dec. 20, 2013); Tenn. Att’y Gen. Op. 08-122 (July 10, 2008); Tenn. Att’y Gen. Op. 85-42 (Feb. 15, 1985); Tenn. Att’y Gen. Op. 81-338 (June 2, 1981); Tenn. Att’y Gen. Op. 78-290 (July 19, 1978).

1. The Tennessee Constitution thus does not itself prohibit individuals under the age of eighteen from voting in municipal elections. Instead, it leaves to the legislature the regulation of all elections not provided for by the Constitution, including municipal elections. Tenn. Const. art. VII, § 4; *City of Memphis v. Hargett*, 414 S.W.3d 88, 114-15 (Tenn. 2013) (citing *Ledgerwood*, 125 S.W. at 1039); *Vertrees*, 214 S.W. at 739-40.

The General Assembly has exercised this constitutional authority and limited the franchise in all elections to individuals who are at least eighteen years old. The Election Code prohibits anyone other than a “qualified voter” from voting in Tennessee elections, *see* Tenn. Code Ann. § 2-1-105, and defines a “qualified voter” as “[a] citizen of the United States eighteen (18) years of age or older who is a resident of this state,” *id.* § 2-2-102. These provisions apply to “[a]ll elections for public office” in the State, including municipal elections. Tenn. Code Ann. § 2-1-103; *see State ex rel. Wise v. Judd*, 655 S.W.2d 952, 955 (Tenn. 1983); *Clark v. Vaughn*, 177 Tenn. 76, 146 S.W.2d 351, 352 (1841). Accordingly, “[i]f one is under eighteen (18) years of age, he cannot vote in the state of Tennessee” under current law. Tenn. Att’y Gen. Op. 80-328 (June 27, 1980). With respect to municipal elections, that prohibition is a statutory one, however, not one required by the Constitution.

2. A municipality’s home rule status has no effect on the application of the suffrage clause to municipal elections or on the ability of the legislature to establish a statewide age requirement for voters. The Tennessee Constitution’s home rule provision requires that any act of the General Assembly which is private or local in form or effect and applicable to a particular county or municipality receive local approval. Tenn. Const. art. XI, § 9. Moreover, once a municipality adopts home rule, the General Assembly lacks authority to enact laws for that municipality that are local in form or effect regardless of local approval. *Id.*; *see* Tenn. Att’y Gen. Op. 03-62 (May 14, 2003); Tenn. Att’y Gen. Op. 88-28 (Feb. 9, 1988); Tenn. Att’y Gen. Op. 80-440 (Sep. 9, 1980).

These two provisions restrict the power of the General Assembly to enact laws that are not general in terms and effect. *Civil Serv. Merit Bd. v. Burson*, 816 S.W.2d 725, 728 (Tenn. 1991); *Farris v. Blanton*, 528 S.W.2d 549, 551 (Tenn. 1975). They do not, however, limit the power of

214 S.W. at 739-40. The language of the suffrage clause was amended in 1953 and then again in 1978, when the limited constitutional convention adopted the current language applying to “all federal, state, and local elections.” Tenn. Const. art. IV, § 1 (1978). The Tennessee Supreme Court has not revisited the application of the suffrage clause to municipal elections since the 1953 and 1978 revisions. Evidence from the Constitutional Conventions responsible for the revisions, however, indicates a desire to preserve the exemption of municipal elections from the suffrage clause. *See* Journal and Debates of the Constitutional Convention of 1953, at 675, 683, 690, 693, 828-29, 834, 846; Journal of the Debates of the Constitutional Convention of 1977, Vol. 1 at 424; *Tennessee Constitutional Convention Records 1834-1977*, Record Group 46, at 17 (June 26, 1985) (documenting the lack of debate at the 1977 Convention on art. IV, § 1 relative to other proposed amendments).

the General Assembly with respect to general laws such as the Election Code. Accordingly, under current law, a municipality may not allow any person under the age of eighteen to vote in a municipal election, regardless of whether the municipality has adopted home rule.

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