

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

**July 30, 2018**

**Opinion No. 18-36**

**Duties of a Charter Commission**

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**Question 1**

Once elected, do members of a charter commission have a duty to prepare and file a charter for consideration by the people?

**Opinion 1**

Yes.

**Question 2**

May a county legislative body extend the time period a charter commission has to submit its proposed charter more than once or take other actions if a charter commission fails to perform its duty to prepare and file a charter?

**Opinion 2**

The applicable statutes place no limits on a county legislative body's authority to extend the time a charter commission has to prepare and file its proposed charter. State law does not provide any other specific remedies for a charter commission's failure to fulfill its duty, but a county legislative body has some implied authority over the continued existence of the commission.

**ANALYSIS**

The Limited Constitutional Convention of 1977 amended the Tennessee Constitution to allow the General Assembly to provide for new forms of county government, including the "right to charter." Tenn. Const. art. VII, § 1; *see Jordan v. Knox Cty.*, 213 S.W.3d 751, 766-67 (Tenn. 2007). In 1979, after these constitutional changes had been ratified by the people, the General Assembly enacted legislation "to provide for the right to charter for counties as an alternate form of government" and to establish the procedures and requirements applicable to any county wishing to adopt a charter form of government. Tenn. Code Ann. § 5-1-201; *see also Jordan*, 213 S.W.3d at 767.

Under this statutory scheme, the initial step for a county wishing to adopt a charter form of government is to create a charter commission. *See* Tenn. Code Ann. § 5-1-204(a). A county may create a charter commission in one of three ways: (1) the legislative body may adopt a resolution

to create the commission, *id.* § 5-1-204(b); (2) the county mayor may issue a proclamation creating a commission and appointing its members, so long as the proclamation is ratified by the county legislative body, *id.* § 5-1-204(c); or (3) voters may submit a petition to the legislature for a resolution to establish a charter commission, *id.* § 5-1-204(d). If the county legislative body adopts a resolution creating a charter commission, either on its own initiative or pursuant to a voter petition, the county election commission must hold an election for the members of the charter commission. *Id.* §§ 5-1-204(b)(6), (d)(2); 5-1-205(a).

1. Once established, a charter commission has a duty to prepare and file a charter. Section 5-1-208(a) directs that “[e]ach charter commission *shall* prepare and file the charter proposed by it not later than nine (9) months after the date of its initial meeting, or within such an extended limit of time as may be authorized by resolution of the legislative body of the county.” (emphasis added). “When ‘shall’ is used in a statute or rule, the requirement is mandatory.” *Bellamy v. Cracker Barrel Old Country Store, Inc.*, 302 S.W.3d 278, 281 (Tenn. 2009); *see also Stubbs v. State*, 216 Tenn. 567, 393 S.W.2d 150, 154 (1965) (“When ‘shall’ is used . . . it is ordinarily construed as being mandatory and not discretionary.”). Accordingly, a charter commission “must prepare and file a proposed charter.” Tenn. Att’y Gen. Op. 97-96 (July 1, 1997).

Moreover, the statutes require that a resolution or proclamation creating a charter commission include a provision indicating that the charter commission is established “to propose to the people an alternative form of county government.” Tenn. Code Ann. § 5-1-204(b)(3), (c)(3). In other words, although a charter commission is ultimately governed by the county resolution or proclamation establishing it, state law mandates that “[t]he basic purpose of the Charter Commission” must be “to prepare a proposed . . . charter to be submitted to a special referendum election in a particular county.” Tenn. Att’y Gen. Op. 83-477 (Nov. 8, 1983).

In short, the singular purpose of the creation of a charter commission is to propose a charter form of government. Accordingly, a charter commission has a duty to prepare and file a proposed charter as directed by the resolution or proclamation.

2. If a charter commission fails to prepare and file a proposed charter within nine months of its first meeting as directed by § 5-1-208(a), the county legislative body may extend the time for filing a proposed charter.

Section 5-1-208(a) specifically allows the county legislative body to extend the time the charter commission has to submit its proposed charter. The charter commission must prepare and file the proposed charter within nine months of its first meeting “or within such extended limit of time as may be authorized by resolution of the legislative body of the county.” Tenn. Code Ann. § 5-1-208(a). The statute does not limit the number of times a legislative body may extend the time a charter commission has to propose a charter, nor does it limit the length of any extension. As long as the time period is extended “by resolution of the legislative body of the county,” there are no state law limitations on the number or length of the extensions.

State law does not expressly provide for other remedies that the county legislative body may take if a charter commission fails to perform its duty to prepare and file a charter. Nor does state law provide any specific remedies for a charter commission’s failure to propose a charter.

But the county legislative body may have implied authority to dissolve a charter commission that fails to perform the singular function for which it was created. As a matter of statutory construction, a local government has any authority that is “necessarily implied or necessarily incident to the powers expressly granted” to it. *See Southern Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001). The authority to create a commission and to extend the time it has to perform its statutory duty necessarily implies that the county legislative body has some authority over the continued existence of the charter commission, particularly if the commission was created at the initiative of the legislative body itself. *See State ex rel. Patton v. Mayor & Bd. of Aldermen*, 626 S.W.2d 5, 6 (Tenn. 1981) (holding that a grant of authority to a municipality to create a utility board necessarily included the authority to dissolve the board); 56 Am. Jur. 2d Municipal Corporations § 356 (“The power of a municipal corporation to enact ordinances generally implies the power to repeal them by means of an act of equal dignity.”).

HERBERT H. SLATERY III  
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN  
Solicitor General

JONATHAN DAVID SHAUB  
Assistant Solicitor General

Requested by:

The Honorable Randy McNally  
Lieutenant Governor  
425 5th Avenue North, Suite 700  
Nashville, TN 37243

The Honorable John Ragan  
State Representative  
425 5th Avenue North  
Nashville, TN 37243