

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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April 5, 2005

Opinion No. 05-043

Authority of Municipal Legislative Body to Extend Its Members' Terms

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**QUESTIONS**

House Bill 910/Senate Bill 1710 would amend state law to provide that no governing body of a municipal corporation, or any member thereof, may extend the term of office of an elected public official without a vote of the citizens affected. The bill further provides that any public official whose term of office is extended by action of the governing body, including extension by private act, shall be without authority or power to conduct business for the municipal corporation during the extended term of office.

1. Could citizens approve an extension of the term of a city official by referendum?
2. Is it currently legal for a city legislative body to extend its terms to realign elections?
3. Would it be legal under House Bill 910/Senate Bill 1710?
4. Would it be legal for an elected body to vote to shorten its terms in order to realign the elections?

**OPINIONS**

1. Yes, so long as the referendum is authorized by the Tennessee Constitution, the city charter or a statute.
2. The three general law municipal charters authorize the city legislative body to change the date of city elections by ordinance, and two of these charters clearly authorize extending the terms of incumbents to accommodate the change. Presumably, many private act charters governing municipal corporations throughout the State contain similar provisions. Further, depending on the terms of the private act, a city council may ratify a private act amending its charter to extend members' terms to accommodate a change in election dates.
3. No, House Bill 910/Senate Bill 1710 expressly prohibits a legislative body from extending its terms for any purpose without approval in a popular referendum.
4. The bill would not affect the power of a legislative body to shorten the terms of

incumbents to accommodate a change in election dates, to the extent this power exists in general acts or in private act city charters. Under Article XI, Section 9, of the Tennessee Constitution, the General Assembly may not shorten the term of an incumbent city officer by a private act.

### ANALYSIS

This request raises several questions arising out of House Bill 910/Senate Bill 1710. That bill would amend the general statutes governing cities to add the following:

Notwithstanding any other provision of law to the contrary, no governing body of any municipal corporation, or any member thereof, shall attempt to extend the term of office of an elected public official without a vote of the citizens affected; and any public official whose term of office is extended by action of the governing body, including the term extension by private act, shall be without authority or power to conduct business for the municipal corporation during the extended term of office.

Although the request refers to “elected bodies” in general, we assume the questions refer specifically to the issues raised by this bill. Since it is confined to municipal legislative bodies, this opinion will be similarly limited. This Office is unaware of any statute that authorizes a municipal legislative body to extend the term of any public official that is already set by the Tennessee Constitution. We assume that the bill addresses the term of office of elected city officials. A judge of a city court that exercises the powers of an inferior court must be elected to an eight-year term in accordance with Article VI, Section 4, of the Tennessee Constitution. With this exception, however, the terms of elected city officers are not set in the Tennessee Constitution but instead are set by various statutes that govern municipal corporations. Many cities are governed by private act charters. A definitive answer to the questions raised in this opinion would require a review of all these private acts. We have reviewed the three general act charters governing municipal corporations, as well as the general principles governing the amendment of a private act city charter.

#### 1. Effect of a Referendum

The first question is whether citizens could approve a measure extending the term of office of a city official in a popular referendum. This Office has stated that cities generally are without authority to place a question on the ballot for the electorate to decide an issue without express authority in either the Tennessee Constitution, the general statutes, or the charter of the municipality. Op. Tenn. Att’y Gen. 96-095 (July 29, 1996). Either the Tennessee Constitution, the city charter or some other statute, therefore, would have to authorize the referendum.

#### 2. Extending Incumbent Members’ Terms under Current Law Governing Realignment

of City Elections

The second question is whether a municipal legislative body, under current law, may vote to extend the term of office of a public official to realign elections. We assume the question refers to the power to extend the term of an official who is currently in office. Under Tenn. Code Ann. § 6-3-104, the board of mayor and aldermen of a city under the mayor-aldermanic charter may by ordinance change the date of municipal elections. The ordinance changing the election date shall provide for the extension of the terms of members of the board necessary to meet the election date, but no term may be extended for more than two years beyond its regular expiration date. Tenn. Code Ann. § 6-3-104. Similarly, the board of commissioners of a city under the city manager-commission charter may by ordinance change the date of its municipal elections to the regular November election. Tenn. Code Ann. § 6-20-102(c)(1). The ordinance may extend the term of an incumbent to coincide with the next regular November election if a term expires six months or less before the regular November election. Tenn. Code Ann. § 6-20-102(c)(2)(A). Council members of a city operating under the modified city manager-council charter form of government may change the city's regular biennial municipal election to coincide with the November elections. Tenn. Code Ann. § 6-31-102(b). But the statute does not clearly authorize the members to extend their term of office. Under Tenn. Code Ann. § 6-31-107, council members under the modified city manager-council charter form of government may shorten or extend the terms of current members for the sole purpose of staggering terms. Presumably, various private act charters allow the city legislative body, by ordinance, to change the date of the city elections to coincide with the November general elections, and to extend the terms of current members to accommodate the change.

In addition, the General Assembly may amend a private act city charter to realign election dates. This act could include a provision extending the terms of current members to accommodate the change. Op. Tenn. Att'y Gen. 00-017 (February 8, 2000). Under Article XI, Section 9, of the Tennessee Constitution, an act that is local in its terms or effect must provide for ratification by the legislative body or by a referendum. Where such an act provides for ratification by the legislative body, the members, by ratifying the act, would be approving an extension of their current terms. Op. Tenn. Att'y Gen. 05-013 (January 26, 2005).

3. Extending Incumbent Members' Terms under House Bill 910/Senate Bill 1710

The next question is whether a city legislative body could extend its terms to accommodate a change in election dates under House Bill 910/Senate Bill 1710. The bill expressly prohibits a legislative body from extending the term of an elected official for any purpose without approval in a popular referendum. The bill expressly nullifies any private act that extends the terms of elected officials for any purpose, if the private act provides for ratification by the city legislative body but does not provide for approval in a referendum.

4. Shortening Incumbent Members' Terms under House Bill 910/Senate Bill 1710

The last question is whether, under the bill, a municipal legislative body could vote to shorten incumbent members' terms to accommodate realignment in election dates. The bill addresses only attempts to lengthen members' terms for any purpose. The bill, therefore, would not affect the power of a municipal legislative body to shorten the terms of incumbents to accommodate a change in election dates, to the extent this power exists in general acts or private act city charters.

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