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Opinion No. 05-081

Amendment of City Charter

QUESTION

May the General Assembly constitutionally amend a private act to require that an alderperson resign upon qualifying as a candidate for mayor?

OPINION

Yes. The General Assembly may amend a municipal charter by private act regarding public officials' candidacies for a second public office. 2005 Tenn. Priv. Acts, ch. 32 does not contravene any uniform statewide legislation or policy. In addition, there is no suggestion that the Act is intended to remove a particular individual from public office or abridge a public official's term of office.

ANALYSIS

The General Assembly created the Dresden city charter by enacting 1986 Tenn. Priv. Acts, ch. 146, and has recently amended it. 2005 Tenn. Priv. Acts, ch. 32. The amendment adds new language to section 5 of the charter, reading as follows:

A person then holding the office of alderman shall resign such office upon qualification with the election commission as a candidate for election to the office of mayor.

2005 Tenn. Priv. Acts, ch. 32 § 1. The amendment applies the new requirement to aldermen elected after the effective date of the act, and specifically states that the amendment is not intended to remove an incumbent from office or abridge the term of any official before the end of his term. 2005 Tenn. Priv. Acts, ch. 32, §§ 2, 3. To become effective, the amendment has to be approved by a two-thirds (2/3) vote of Dresden's legislative body. 2005 Tenn. Priv. Acts, ch. 32, § 4.

The General Assembly may enact a special law affecting a municipality by amendment of its charter, as to a matter which has not been made the subject of uniform statewide legislation and applicable to all municipalities alike.¹ See *Rector v. Griffith*, 563 S.W.2d 899, 904 (Tenn 1978). Such an act also should not remove an incumbent from office nor abridge his term. Tenn. Const., Art. XI, § 9.

The Tennessee Supreme Court has upheld acts similar to the one in question. For example, it upheld an act that altered the number and the method of selection of a utility district's Board of Commissioners. *Rector v. Griffith*, 563 S.W.2d at 904. In that case, the Court tested the act's constitutionality by considering the following factors: (1) whether the act contravened general law on the subject; (2) whether the act violated state policies under the general state law; and (3) whether the Act was merely a colorable device to remove particular individuals from office. *Rector*, 563 S.W.2d at 903-04.

2005 Tenn. Priv. Acts, ch. 32, passes these tests. We have researched state statutes regarding municipal elections and candidate qualifications. Tenn. Code Ann. §§ 6-53-101, *et seq.* The statutes establish a minimum age requirement for candidacy. Tenn. Code Ann. § 6-53-109. Other than the minimum age requirement, however, the statutes do not cover candidate qualifications. Thus, the amendment of the Dresden charter by enactment of 2005 Tenn. Priv. Acts, ch. 32, does not contravene general law or statewide policies on the subject. In addition, there is no suggestion that the General Assembly passed the Act to remove particular individuals from office. To the contrary, the Act specifically states that “[n]othing in this act shall be construed as having the effect of removing any incumbent from office or abridging the term of any official prior to the end of the term for which official was elected.” 2005 Tenn. Priv. Acts, ch. 32, § 3.

¹ The Legislature's authority is different for “home rule” municipalities. The Tennessee Supreme Court has held that “once a municipality adopts home rule, the General Assembly cannot pass local legislation affecting it, whether subject to local approval or not but can ‘act with respect to such home rule municipalities only by laws which are general in terms and effect.’” *Civil Serv. Merit Bd. of Knoxville v. Burson*, 816 S.W.2d 725, 729 (Tenn. 1991). Dresden is not a home rule municipality.

The General Assembly's enactment of 2005 Priv. Acts, ch. 32, was a valid exercise of its powers.

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