

April 2, 2014

Town of Petersburg
Ms. Angie Taylor
Town Recorder
120 Eastside Square
Petersburg, Tennessee 37114

VIA ELECTRONIC MAIL

Dear Ms. Taylor:

In response to your inquiry regarding the upcoming municipal election and the potentiality that an insufficient number of candidates will qualify for the four open board seats, please be advised that TCA § 2-7-133(i) provides a scheme wherein a write-in candidate can be elected to the office of alderman:

(i) Any person attempting to be elected by write-in ballots shall complete a notice requesting such person's ballots be counted in each county of the district no later than twelve o'clock (12:00) noon, prevailing time, fifty (50) days before the general election. Such person shall only have votes counted in counties where such notice was completed and timely filed. The notice shall be on a form prescribed by the coordinator of elections and shall not require signatures of any person other than the write-in candidate requesting ballots be counted. The coordinator of elections shall distribute such form to the county election commissions. Upon timely receiving the notice required by this subsection (i), the county election commission shall promptly inform the state coordinator of elections, the registry of election finance, as well as all other candidates participating in the affected election. A write-in candidate may withdraw the notice by filing a letter of withdrawal in the same manner as the original notice was filed no later than the fifth day before the election.

In the event that no write-in candidate (or a sufficient number of write-in candidates) are elected in this manner, we next turn to Tennessee case law that provides that an elected officer continues to hold office until his successor is elected and sworn in {(Lynch v. Lafland. 44 Tenn. 96 (1867); State v. Wilson. 80 Tenn. 246. (1883)}. While it is possible that the alderman in question could resign and essentially abandon the office, this would still require the remaining board members to accept the resignation for it to be effective. Without acceptance, an alderman that chose not to run, but whose office was not filled at the election, still legally remains on the board. This of course has practical problems if the member doesn't attend meetings, leaving the town with an open board seat that cannot be filled until the next regular municipal election.

You have further asked if you are prohibited from running for office and holding both positions (city recorder and alderman) simultaneously. Under the common law a public officer cannot hold incompatible offices [State ex rel. v. Thompson, 246 S.W.2d 59 (Tenn. 1952)]. It seems clear that the positions of alderman and recorder are incompatible offices as you would serve as a voting

Ms. Angie Peters
April 2, 2014
Page 2

member on a board that also provides oversight to you as an employee, and thus if elected you would be precluded from continuing to serve as recorder.

Please let me know if you require any additional assistance on this or any matter.

Very truly yours,



Jeffrey J. Broughton
Municipal Management Consultant