

Dear Mayor,

I read in the local newspaper last week the following news article:

**“City residents to vote on trash pick-up fee.**

City residents will vote next year whether to have an additional trash fee. The City Council narrowly approved last week a referendum on the 2012 election ballot for a \$5 trash pick-up fee.”

I felt that I should make you, and the Board of Mayor and Alderman, aware of the Tennessee laws regarding the use of referendums in communities in Tennessee. There are a very limited number of situations in which the State of Tennessee allows for the use of referendums by municipalities in the state. MTAS does highlight those specific situations in our publication “Municipal Handbook”, which is available through our website. In Chapter Two (2) of that publication there is a section that covers “Referenda Elections”, which I have attached a portion of as an attachment to this letter. Specifically I have included those items that the State of Tennessee has allowed for local referendums to be used. The list includes thirteen (13) specific instances that a local referendum can be used.

In reviewing the thirteen (13) items that are authorized by State law to hold referendums on, trash pick-up fees in a community are not one of those things that a City in Tennessee may hold a referendum on. In fact, the city is not authorized to hold either a binding, or non-binding, referendum on the issue of raising any fee whether it is solid waste, water and sewer rates, or any other fee that a city imposes as a component of doing the city’s business.

There may be alternative avenues that the city can utilize to gauge the support for instituting, or changing, the fees that are charged for various City services. One such opportunity may be to use a survey that could include questions about the services provided by the city and the general willingness of residents to pay for such services.

However, any decision to increase any fees being charged by the City will have to be voted on, and approved by, the Board of Mayor and Aldermen for the City. If I can provide any further assistance to you and the Board please feel free to call me.

Sincerely,

Gary Jaeckel  
Municipal Management Consultant  
Municipal Technical Advisory Service

## Referenda Elections

The Tennessee Supreme Court has held that "the right to hold an election does not exist absent an express grant of power by the legislature." (See *Brewer v. Davis*, 28 Tenn. 208 (1848); *McPherson v. Everett*, 594 S.W.2d 677, 680 (Tenn. 1980).) The Tennessee Attorney General's office has consistently concluded under those cases that referenda are elections for which there must be statutory authorization (Op. Tenn. Atty. Gen. No. 86-146; 95-013).

### **Local Referenda Permitted**

The following referenda are authorized under Tennessee law:

- General obligation bonds (T.C.A. §§ 9-21-201, *et seq.*);
- Liquor retail sales (package stores) or selling alcoholic beverages for consumption on the premises (T.C.A. §§ 57-3-101, *et seq.*, T.C.A. §§ 57-4-101, *et seq.*);
- Annexation (T.C.A. §§ 6-51-104, *et seq.*);
- Local sales tax (T.C.A. §§ 67-6-701, *et seq.*);
- Adopting or surrendering the general law mayor-aldermanic charter (T.C.A. § 6-1-201), the city manager-commission charter (T.C.A. § 6-18-104), and the modified city manager-council charter (T.C.A. § 6-30-106);
- A private act passed by the General Assembly (Article XI, Section 9, of the Tennessee Constitution);
- Creating an emergency communications (911) district (T.C.A. §§ 7-86-101, *et seq.*);
- Recalling a city official if the charter permits (T.C.A. § 2-5-151);
- Adopting or amending home rule charters (Article XI, Section 9, of the Tennessee Constitution);
- Popular election of the mayor in cities incorporated under the uniform city manager/commission charter (T.C.A. § 6-20-201(b));
- Consolidating city and county government (T.C.A. §§ 7-1-101, 7-3-312, and 7-21-101, *et seq.*);
- Increasing the number of commissioners from five to seven for cities with a population greater than 20,000 incorporated under the uniform city manager-commission charter (T.C.A. § 6-20-101); and
- Approval of the issuance of retail liquor licenses to alcoholic beverage manufacturers. (T.C.A. § 57-3-204).