

March 24, 2003

Dear City Administrator:

You have the following question: Can the city by private act permit non-resident property owners to vote in city elections?

The answer is no.

Beginning in 1953, Article XI, ' 11, of the Tennessee Constitution, prohibits the incorporation of cities under private act charters. However, Article XI, ' 9 did not disturb the status of private act cities incorporated up to that time. Those cities retain their private act charters, and those charters can still be amended by private acts. Your City was incorporated after 1953 under the general law charter, specifically the general law mayor-aldermanic charter found in Tennessee Code Annotated, ' 6 -1-101 et seq. General law charters generally cannot be amended by private act, although one case suggests that a general law charter can be Asupplemented@ by a private act. However, even if that is true, that case does not apply to non-resident property owner voting rights.

The general law mayor-aldermanic charter does not provide for voting on the part of non-resident property owners. (Presently, there are 70 Tennessee municipalities chartered under the general law mayor-aldermanic charter.) In fact, I myself recall that when that charter was extensively amended in 1991 to the point that it was essentially a new charter, the Tennessee Municipal League committee that drafted the proposed amendments considered the question of whether the charter should include voting rights for non-resident property owners. The committee answered that question no, and the General Assembly did not change the proposed new charter on that point.

The Election Law of the State is clear on the question of how non-resident property owners acquire the right to vote in municipal elections. Tennessee Code Annotated, ' 2-2-107(a), says that:

A person shall be registered as a voter of the precinct in which the person is a resident, and, if provided for by a municipal charter or general law, may also be registered in a municipality in which the person owns real property in order to participate in that municipality=s election.

It has also been held that absent such a provision in a charter or general law, non-residents are not entitled to vote in municipal elections. [Ledgerwood v. Pitts, 125 S.W. 1036 (1909); Clay v. Buchanan, 26 S.W.2d 91 (1931).]

March 24, 2003

Page 2

One case, Kemp v. City of Berry Hill, 9 TAM 7-14 (1985), declares that a private act can supplement a general law charter. But that case is unreported, involved a personnel policy, and, as far as I can determine, has not ever been cited with approval in any other case. Furthermore, in light of the above election statute and cases on non-resident property owner voting rights, Kemp provides little or no authority for the proposition that a private act could supplement general law mayor-aldermanic charter by giving non-resident property owners the right to vote in municipal elections. Tennessee Code Annotated, ' 2-2-107(a), and the cases which support it lead to the conclusion that the provision giving non-resident property owners the right to vote in municipal elections must be *in* the charter or general law, and that such a provision cannot be jury-rigged onto the general law mayor-aldermanic charter via private act.

Actually, there is a general law that authorizes non-resident property owners in certain municipalities designated by population brackets to vote in municipal elections, subject to the approval of the governing body of the municipalities by a 2/3 vote. [Tennessee Code Annotated, ' 6-53-102(b)] There are two problems with that statute that make it a bad candidate to permit non-resident property owners to vote in your City:

First, none of the population brackets apply to the City.

Second, even if that statute were amended to include the City, the statute itself and all the population brackets presently contained therein, are probably unconstitutional. Article XI, ' 8, of the Tennessee Constitution, provides that, AThe Legislature shall have no power to suspend any general law for the benefit of any particular individual....@ That provision has been repeatedly interpreted to prohibit the passage of general laws containing population brackets and other classifications designed to benefit specific counties or cities, as well as individuals, and private acts that suspend general laws, unless the classification rests upon a reasonable basis. [See, among the literally dozens of cases in this area, Vollmer v. City of Memphis, 730 S.W.2d 619 (1987); Knoxville=s Community Development Corporation v. Knox County, 665 S.W.2d 704 (Tenn. 1984); Mink v. City of Memphis, 435 S.W.2d 114 (1968), Stalcup v. City of Gatlinburg, 577 S.W.2d 439 (Tenn. 1978); Brentwood Liquors Corporation of Williamson County v. Fox, 496 S.W.2d 545 (Tenn. 1973); Estrin v. Moss, 430 S.W.2d 345 (1968); Pirtle v. City of Jackson, 560 S.W.2d 400 (1977); Blackwell v. Miller, 439 S.W.2d 88 (Tenn. 1973), and numerous cases cited therein.] I can think of no reason why the insertion by population bracket of the City into that statute can be justified as a reasonable classification.@ None of the municipalities presently in the statute reflect a reasonable classification.@ Indeed, it is difficult to see why non-resident property owner voting rights would ever be a reasonable classification. The same reasons for and against such rights apply to all municipalities to a greater or lesser extent.

Let me now if I can help you further in this matter.

March 24, 2003
Page 3

Sincerely,

Sidney D. Hemsley
Senior Law Consultant

SDH/