MTAS

technical bulletin

Municipal Technical Advisory Service
Institute for Public Service, The University of Tennessee
In cooperation with the Tennessee Municipal League

April 5, 1978

PROPERTY OWNERSHIP AS BASIS FOR VOTER ELIGIBILITY IN MUNICIPAL ELECTIONS

Is a person who owns property in a municipality, but resides outside that municipality, eligible to vote in municipal elections where he owns the property on the basis of property right ownership as granted in the City Charter? The Office of the State Attorney General, responding to a question from the coordinator of elections for the state, on February 28, 1978, rendered the following opinion which may be of interest to city officials:

"It is the opinion of this office that the mere ownership of property in a municipality does not give the owner(s) of the property a right to vote in the municipal elections. Before a person may vote in the municipal elections, he must reside within the corporate limits of the municipality, and otherwise be a qualified and registered voter in a voting precinct within the municipality.

"Prior to the adoption of our present 'Election Code' (T.C.A. Title 2) by the General Assembly by Chapter 740, Public Acts of 1972, and effective as to elections on and after January 15, 1973, many of our municipal charters and general laws pertaining to municipal elections and referendums contained provisions that permitted the owners of property located within municipal boundaries to vote in the municipal elections and referendums. This fact was recognized in the superseded law pertaining to the registration of voters in T.C.A. Section 2-302 which provided in part that:

'[I]n a municipality where non-residents are authorized to vote on account of their ownership of realty inside said municipality, such voter not otherwise qualified to vote in such municipal elections may be registered on his said ownership of realty in the same manner as if he maintained actual or legal residence at the site of such property, such registration to be valid only in municipal elections, and provided further that he shall have acquired title to said property six(6) months prior to said election.' (Emphasis added).

The present law pertaining to the place of voter registration is T.C.A. Section 2-207, which provides that:

'A person may only be registered as a voter of the precinct in which he is a resident. If a voter moves his habitation outside the precinct where he is a registered voter but continues to be a resident of the precinct, the county election commission shall determine his rights and duties on the basis of the location of his last residence in the precinct before his change of habitation.' (Emphasis added).

It should be noted that this section contains no provision for non-resident owners of property within a municipality to vote in the municipal elections.

"Chapter 740 of the Public Acts of 1972, also made many other changes in the Tennessee Code Annotated, and repealed 'all acts and parts of acts, both public and private, inconsistent' with the Act. A review of the Act shows that it was the apparent intent of the General Assembly to consolidate most of the election provisions throughout the Tennessee Code into a consolidated Election Code to provide that registered voters, rather than persons having the necessary qualifications to be qualified voters, are permitted to vote as provided for in the Election Code. See, e.g., the changes made by Subsections 1 and 4, the specific acts repealed by Section 2, and the acts repealed by Section 3 of Chapter 740. This is particularly true when it is noted that in many instances the detailed provisions for conducting elections for the counties and municipalities were changed to provide that the elections would be conducted as provided for in the Election Code, or T.C.A., Title 2, and that the term 'qualified voter' was changed to 'registered voter.'

"In State v. Weaver, 122 Tenn. 198, 122 S.W. 465 (1909), our Supreme Court held that registration laws prescribe no qualifications of voters, prescribe a mode of ascertaining and determining whether a person possesses the necessary qualifications of a voter, and regulates the exercise of the elective franchise, and that a voter must register in the precinct where he proposes to vote. See also the case of Nelson (Sullivan) v. Crowell, ___ F. Supp. ___ (W.D. Tenn., Feb.3, 1978).

"You are therefore advised that:

1. The ownership of property in a municipality does not in itself give the owners any right to vote in any municipal election.
2. Before a person may vote in a municipal election he must be a bonafide resident and otherwise qualified and registered voter in a precinct within the geographic boundaries of the municipality."

Municipal Technical Advisory Service
The University of Tennessee
Knoxville, TN 37916

Non-Profit Org.
U.S. POSTAGE
PAID
Knoxville, TN
Permit No. 481