

A BRIEF DESCRIPTION  
OF MUNICIPAL GOVERNMENT  
IN TENNESSEE

by

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## INTRODUCTION

Every person traveling on our highways has noted the signs at the edges of cities and other communities which gives their names. Many of these signs carry an additional word: "incorporated" or "unincorporated." The former means that the people of the particular area have taken the necessary action to "incorporate," resulting in the formation of a legal entity known as a "municipal corporation." Just as a number of people may form a corporation for business purposes, so the people of a community may form a "municipal corporation" for purposes of local government within its prescribed geographical limits.

"Municipal corporation" is the legal term for what people commonly refer to as a city, town, village, or borough; the latter two terms are seldom used in Tennessee but in some states are in common usage to mean the same as city or town. While there is no exact dividing line as to population, generally "city" refers to a large community and "town" refers to a small community. To illustrate the vagueness of this distinction as to size, there are Tennessee "towns" (officially so designated in their charters) with populations of 11,759, 19,570, 10,896, and 21,332, and "cities" with populations of 53, 551, 458, 399, 449, 461, 358, 448 and 370. Occasionally, when a "town" has grown in size its charter has been amended to make it a "city." There is no legal distinction between the two, however; both a city and a town are municipal corporations, and the term "municipality" is frequently used to mean either.

The predominance of small municipalities in Tennessee is indicated by the following statistics, based on population in 1962:

| <u>Population</u> | <u>No. of cities</u> |
|-------------------|----------------------|
| Over 100,000      | 4                    |
| 20,000 to 35,000  | 6                    |
| 10,000 to 20,000  | 15                   |
| 5,000 to 10,000   | 23                   |
| 1,000 to 5,000    | 99                   |
| 500 to 1,000      | 62                   |
| Under 500         | 74                   |

As the United States has a federal government and each State has a state government, so each city or town has a "municipal government." In this chapter we will undertake to study briefly municipal government in Tennessee.

## THE IMPORTANCE OF MUNICIPAL GOVERNMENT

People have discovered that they can provide themselves with certain services more efficiently and more cheaply by establishing a municipal government than by other means. How else could they provide streets for buses, trucks and automobiles, and sidewalks for pedestrians? They can secure pure water from the city water system—how impossible it would be for each home, business and factory to provide for its own water supply! The city sewer system carries away wastes, replacing the unhealthful outhouse of yesteryear. City garbage collectors perform a very necessary task.

Instead of each person carrying a six-shooter, as they did in the early days of the Wild West, the city has a police force to protect its people from criminal elements. The police also perform the very vital function of regulating traffic and parking, without which chaos would exist on our streets. The fire department is vastly superior to the neighborhood bucket brigade or the use of fire extinguishers.

About half of Tennessee's municipalities are provided with electricity by 59 municipal systems; the other half are served by 22 cooperatives and three county-owned systems. Four cities (Kingsport, Tazewell, New Tazewell, Cumberland Gap) are served by private utility companies, and two (Bells and Franklin) are served by privately-owned companies that distribute TVA power at TVA rates. Imagine having to do without lights and the many electrical appliances that we use every day! We are also safer and can move about at night much more readily because our municipal governments provide street lights.

The schools in many Tennessee municipalities are under the county governments, but in the larger cities, and even in some smaller towns, the municipal government maintains and operates the schools. Proposals

have been made, especially with respect to the four largest cities, that the city and county school systems should be combined into one system under the county, for more efficient operation, to equalize educational opportunities, and to save money, but city officials often say that such consolidation would result in lowering the standards of the city school system.

The foregoing functions might be termed "traditional" for municipal governments in Tennessee. They have been generally accepted over a long period of time as proper functions for a city to perform, with the possible exception of some continuing controversy over public vs. private electric systems. There are other functions that are relatively new, and which sometimes provoke an argument as to whether they should be undertaken by municipalities. Controversy usually accompanies anything new; for example, when public schools were first proposed there was a great debate over whether education should be a public or private function.

In the category of relatively new functions, we might place such activities as low-rent housing, slum clearance and urban renewal, and industrial promotion. In 1955 there were housing authorities in 27 Tennessee municipalities; most of these were probably established to provide low-rent apartments for low-income families, financed partially with funds from the Federal government. It was expected, and generally practiced, that such public housing would be constructed in areas that would accomplish some "slum clearance." A 1949 Act of Congress provided for a much broader program, called "urban redevelopment," to tear down houses and buildings in blighted areas and to rebuild such areas. The 1949 Act was amended by a 1954 Act, which expanded the program still more and introduced the term "urban renewal." This program provides substantial Federal funds, but to qualify a city must have a "workable program" which must include a comprehensive plan of improvement for the entire city, a minimum housing code, and other requirements. By 1963 the number of active housing authorities in Tennessee had increased to 61; this increase has been largely the result

of the Federal urban renewal program, as Tennessee law provides that only a housing authority can carry out such a program. In a 1938 case from Knoxville, brought by people who objected to having their property condemned for a public housing project, the Tennessee Supreme Court said this:

"The courts reason that the primary object of all government is to foster the health, morals and safety of the people. That slum districts with their filthy, congested, weather-exposed living quarters are breeding places of disease, immorality and crime. The character of the houses in such districts make of them a fire hazard. The existence of such districts depresses the taxable value of neighboring property and deprives the State of revenue. The State is also put to great expense in combating disease, crime and conflagration originating in such localities. They menace not only the health, safety and morals of those living therein, but since disease, crime, immorality and fires can with difficulty be confined to points of origin, these districts are a menace to the whole community—indeed, a menace to the State.

"Without dissent, therefore, the courts have reached the conclusion that slum clearance was a public purpose and that Housing Authorities serve a public use."

The attraction of new industries, to provide employment and to increase local business, is another new function being undertaken by many towns and cities in Tennessee as well as in other states. Some people argue that it is not a proper function for a municipal government to seek new businesses in this manner, but others say that a city should do so as a means of providing jobs for citizens. The method generally used has been the issuance of revenue bonds to build factory buildings, which in turn are rented to manufacturing companies. These bonds are secured only by the rents paid to the city. A law passed in 1955 authorizes counties and municipalities to issue general obligation bonds (payable from taxes if rents are insufficient) after a State agency has

issued a certificate approving the particular industrial company involved, if 3/4 of the votes cast in an election approve such bonds (this vote is required by the Tennessee Constitution). Whether this is a proper use of taxes was argued in the courts; the Tennessee Supreme Court in 1958 upheld the law in a 3-2 decision. The majority of the Court said this:

"It is a widely known fact that the North and East have been losing industry to the South and West in this country; that industry is being located in States where all things are most favorable; that population shift is controlled by the location of industry. The result is, as reflected by the record herein, the matter of inducing industry to locate in this State has become a matter of great public concern, as so made to appear in Section 3 of the questioned Act.

"The modern tendency is to meet that challenge by appropriate legislation. . . . The alternative of the failure to do so is to make probable a gradual lowering of the standard of living of the mass of citizens of this State. An inadequate number of jobs means an oversupply of labor, which usually results ultimately in a lowering of wages. Low wages and unemployment are twin evils that usually lead to a sub-standard diet, hunger, ill health and even crime.

"To provide against such evils is clearly a public or corporate purpose. To accomplish that purpose, the legislature may provide any method or means not prohibited by the Constitution, State or Federal. By the within statute it is sought to be accomplished by authorizing a city or a county, acting under reasonable safeguards provided by the statute, to lend its aid to a private corporation, if approved by vote of the people in accordance with the second section of Art. II, Section 29."

We have mentioned the principal functions of municipal government. The list could be extended—planning and zoning to assure orderly growth, protection of people against disease and pestilence, control of dogs and

other animals, operation of parking lots and garages, inspection of buildings as to safety and proper construction, inspection of electrical and plumbing work to be sure it has been done right, providing libraries, and the operation of airports, gas systems, parks and playgrounds, swimming pools, hospitals, etc. This still is not a complete list, but it is extensive enough to indicate the broad range of services provided by municipal governments.

Most of us probably take these services for granted. We don't think about the water supply system—the reservoirs, filter plant, chlorinating equipment, pipes in the grounds, and the operating personnel always ready to work at any hour to repair breaks in the pipes—that are required if we are to turn the faucet and obtain pure water. Nor do we give any thought, as we flush a commode, to the extensive sewer system that must be maintained in proper condition. Think of all that must be done to make sure that a policeman to protect our lives and a fireman to save our home from fire can be summoned simply by making a telephone call. Back of the electric light switch in our homes are a large number of highly-trained and competent personnel and considerable equipment.

It might be a worthwhile exercise if all of us, every now and then, would identify the many points where we come into contact with our municipal governments in our daily activities. If we would do this we probably would reach the same conclusion as the man who said, "I get more for my municipal tax dollar than any other dollar I spend."

Our city or town government is the closest of all governments to us. We receive more direct services from it than from any other government. The State capitol and Washington, D. C., are many miles distant. We rarely see State or Federal officials, but the office of a city official is within easy reach—simply by telephone if we don't want to make a personal visit. Anyone can attend meetings of the city council (unfortunately, too few people avail themselves of this right). And through our votes and actions we can individually exercise more influence at this level of government than at any other level.

## HOW MUNICIPALITIES ARE CREATED

A municipality is a "creature of the State." Each municipal corporation is created (incorporated) under laws passed by the State legislature.

There are two methods of incorporating municipalities: (1) under a general law, and (2) by private act of the State legislature. A general law (also sometimes called public act) is effective on a state-wide basis, but a private act applies only to one city or town. However, Constitutional Amendment No. 7, adopted in November 1953, now prohibits use of the private act method in Tennessee. This Amendment contains a provision that "the General Assembly shall by general law provide the exclusive methods by which municipalities may be created."

Whichever method is used, the State law—general or private, constitutes the city's "charter." The charter sets out the functions that the municipal government shall or may perform, its obligations to its citizens, the taxes it may impose, how it is to be organized, and other details. The charter is to the city government much the same as the State Constitution is to the State government, with one significant exception: a city may do only what it is authorized to do by its charter, while a State may do anything it is not prohibited from doing by its Constitution or by the U. S. Constitution.

Most Tennessee cities and towns have been created by private acts. Of the 283 active municipal governments in Tennessee at the beginning of 1963, 228 were created by this method. The people of an unincorporated area would request their State Senator(s) and Representative(s) to secure the enactment of a private act to incorporate their community as a municipality. Under a tradition of "courtesy," the General Assembly approved such an act if the Senator(s) and Representative(s) representing the people concerned gave it their approval. As already stated, this method cannot now be used.

There are three general laws in Tennessee under which cities or towns may be incorporated. Two of these laws are available to any community and to any existing city or town; one authorizes the



mayor-aldermen form of government and the other provides for the council-manager form of government; either becomes effective if a majority of the votes cast in an election are in favor of incorporation. A law passed in 1955 requires that at least 200 people live in a community before it may be incorporated, and if the community is within two miles of an existing municipality it must have at least 500 residents. Another restriction was added in 1958: if a proposed new municipality is within five miles of a city of 100,000 or more or within two miles of a city of 5,000 to 100,000 no election on incorporation can be held within 15 months after a petition is filed; the city may prevent the incorporation by annexing, within 15 months, at least 20 per cent of the land area or 35 per cent of the population of the proposed new city; if such annexation does not take place the election on incorporation is held as provided in the law.

The third general law, similar to the council-manager general law just mentioned, is by its terms available only to "unincorporated territory . . . (which) contains not less than 5,000 persons who shall be actual residents of the territory." It was enacted in 1957 especially to authorize incorporation of Oak Ridge, and Oak Ridge became a city under its provisions in 1959.<sup>1</sup>

## STATE CONTROL OF MUNICIPALITIES

The State government controls municipalities primarily through laws passed by the General Assembly. The Tennessee Supreme Court has said, "Incorporated towns and cities are but arms or instrumentalities of the State government—creatures of the legislature, and subject to its control at will. It may establish and abolish at pleasure." However, as we shall soon see, this has been changed somewhat by amendments to the State Constitution adopted in 1953.

Some of these laws provide for controls by officers and agencies of the State government. The State Department of Health must approve

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<sup>1</sup>Union City, an existing city, also voted in 1960 to make this law its charter, and the action was approved by Chapter 293 of the 1961 Public Acts.

all water and sewer systems, and this Department also periodically inspects and tests water systems to determine whether they meet minimum standards. The State Stream Pollution Control Board may require municipalities to purify their sewage before discharge into streams. The State Comptroller reviews audit reports to make sure that cities spend their 1¢ share of the State gasoline tax only for street purposes. A 1961 Act requires that all public funds of political subdivisions (which includes cities and towns) be audited once a year and a copy of the audit report be filed with the State Comptroller. This type of control, which might be called "administrative control," involves decisions by State officers requiring or prohibiting certain specified actions.

Most legislative control is probably exercised by the adoption of laws that a city is bound to follow, and if it fails to do so the courts enforce compliance only if an interested party brings a law suit against the city. Two types of such laws are used to control municipalities: general and private. We have already pointed out the difference between these two, in the discussion of how cities are created. The General Assembly has followed a practice of passing, almost without exception, any kind of private act affecting only one city, under the "courtesy" custom, when the Senator(s) and Representative(s) representing the city concerned had requested passage of the act. A city's mayor and aldermen have been ousted from office, and a new mayor and aldermen installed, by this method. Salary raises have been given to teachers, policemen, firemen, and in extreme cases to single employees. New offices have been created, positions abolished, duties changed, and vacations established for particular employees, quite often without any consultation with the officials of the cities affected.

The evils of the private act system had become so obvious that when the Constitutional Convention met in 1953 there was general agreement that something should be done to prevent such abuses. Speaking to this Constitutional Convention, the Chief Justice of the Tennessee Supreme Court observed that it would be improper for him to make suggestions to

the Convention (because his Court might later have to consider cases involving the work of the Convention), but he did say this: "Over the years there has been too much unwise local legislation in which the people affected by it were given little if any voice whatever. Many of these private acts had no merit other than to serve the basest ends in partisan politics. "

In some states, Kentucky for example, the State Constitution prohibits the State legislature from passing private acts affecting only single cities. These are known as "general law states," meaning that the legislature can enact only general laws; however, usually such general laws may be made to apply to cities and towns within certain population ranges (for example, there might be four classes: (1) under 5,000, (2) 5,001 to 25,000, (3) 25,001 to 100,000, and (4) over 100,000). This approach was considered by the 1953 Constitutional Convention, and some delegates argued that Tennessee should become a general law state. However, a compromise was reached, in the form of Amendment No. 6. This amendment prohibits the General Assembly from passing any private acts which would remove, shorten the term of office, or change the salary during a term, of any county or municipal officer. Private acts on other subjects may still be enacted, but before being effective each must be approved either by two-thirds of the governing body, or by a majority of votes cast in an election in the county or city affected; the General Assembly specifies in each act which of these two procedures for local approval shall be used.

Amendment No. 7, also adopted in 1953, goes a little further. It authorizes the people of a city or town to vote to become a "home rule municipality," and provides that thereafter "the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect. " A home rule municipality can also amend its charter or adopt a new charter, simply by a vote of its citizens, but it cannot by this procedure increase its powers of taxation, extend its city limits, or adopt a provision in conflict with any State general law. This amendment also permits cancellation of home rule status, by a

vote of the people, in which case the city reverts to its former status. By the end of 1962 ten cities had voted to be home rule municipalities: East Ridge, Knoxville, Sevierville, Clinton, Lenoir City, Johnson City, Sweetwater, Red Bank-White Oak, Whitwell, and Oak Ridge.

## HOW MUNICIPAL GOVERNMENTS ARE ORGANIZED

In any organization there must be a division of functions among its various parts. Individuals must be given specific assignments and responsibilities, so that all will be working together and not at cross purposes. This might be termed "organizing to do a job." Let us now consider how municipal governments are organized to carry out their functions.

Unlike some other countries of the world, where the central government controls all local governments and prescribes a standard form of organization for all, in the United States our Federal government has no such authority over municipal governments. Only the State governments can exercise these powers. The result is a wide range of variations in the 50 States, and within each State the organization of municipal governments seldom follows a uniform pattern.

The principal forms of municipal government, and all are found in Tennessee, are four in number: (1) weak mayor and board of aldermen (council), (2) strong mayor and council (board of aldermen), (3) commission, and (4) council-manager. Each of these forms will be discussed briefly. The following statistics for the United States, compiled by the International City Managers Association for cities of more than 5,000 in population, indicate the relative number of cities under these forms (no data are available for the weak mayor and strong mayor forms separately):

| <u>Year</u> | <u>Mayor-Council</u> |          | <u>Commission</u> |          | <u>Council-Manager</u> |          |
|-------------|----------------------|----------|-------------------|----------|------------------------|----------|
|             | <u>No. Cities</u>    | <u>%</u> | <u>No. Cities</u> | <u>%</u> | <u>No. Cities</u>      | <u>%</u> |
| 1937        | 1, 161               | 67. 5    | 268               | 15. 6    | 292                    | 16. 9    |
| 1949        | 1, 163               | 59. 3    | 302               | 15. 4    | 495                    | 25. 3    |
| 1961        | 1, 622               | 53. 9    | 259               | 8. 6     | 1, 130                 | 37. 5    |

### Weak mayor and aldermen

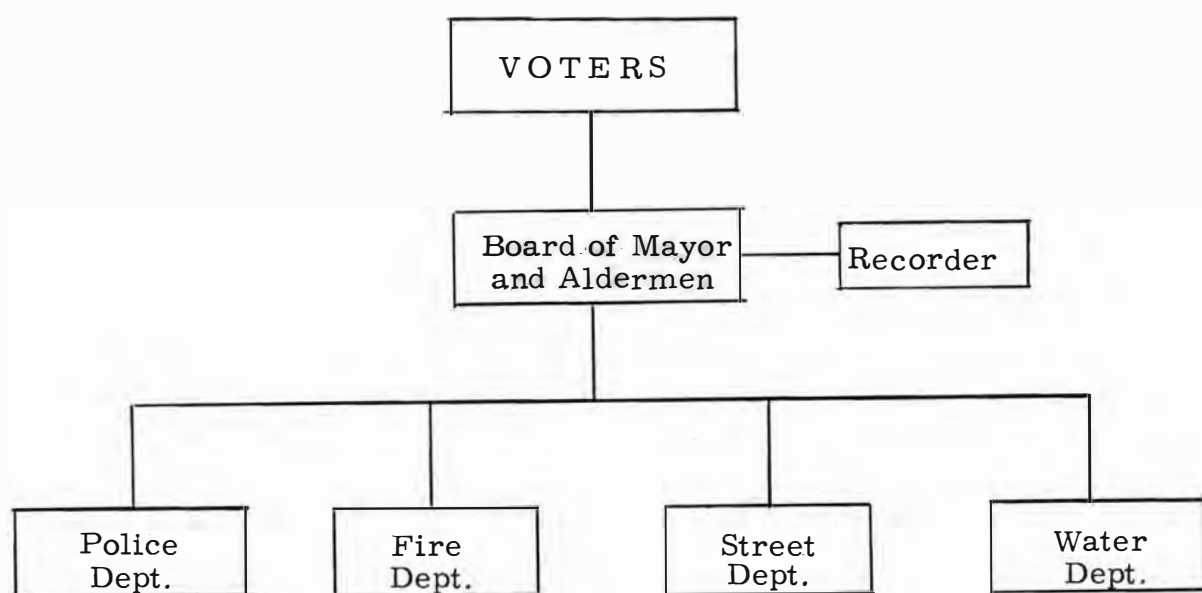
The word "weak" does not apply to the mayor personally but describes the extent of his official powers. This is the oldest form of municipal government, and is still probably most widely used in Tennessee. It had its beginnings in early English history after the people had had their fill of autocratic kings. The experiences of our forefathers with King George III and some of his royal governors reinforced their distrust of strong executive powers; to avoid any such experiences in their municipal governments they drastically restricted the powers of their mayors.

Under this form, the people elect the mayor and a number of aldermen (sometimes called "councilmen"); together they constitute the law-making body, or governing body, usually called the "board of aldermen," "board of mayor and aldermen," or "council." The mayor may have a right to vote on all matters, or he may vote only to break a tie vote among the aldermen. In a small number of municipalities the mayor has veto power, subject to various provisions for over-riding his veto.

In some cities each alderman (councilman) is elected by the voters in a prescribed part of the city, generally called a "ward," and in other cities all aldermen (councilmen) are elected by voters in the entire city, which is known as "at large" election. A small number of cities use both methods, electing some by wards and others at large. Another variation infrequently found is a requirement of residence in wards but a majority of total votes cast in the entire city determines election.

In a few cities the people elect the city recorder, but in most cities under this form the board of aldermen selects all employees of the city, sometimes on recommendation of the mayor. Removal of

employees likewise depends on a vote of the board. In very small towns the aldermen also serve in other capacities; one may be elected as recorder, another as treasurer, another as street superintendent, etc. All employees are accountable to the board of aldermen, not to the mayor, and the board may supervise operations of departments through individual aldermen or through committees. The chart below illustrates a typical organization under this form:

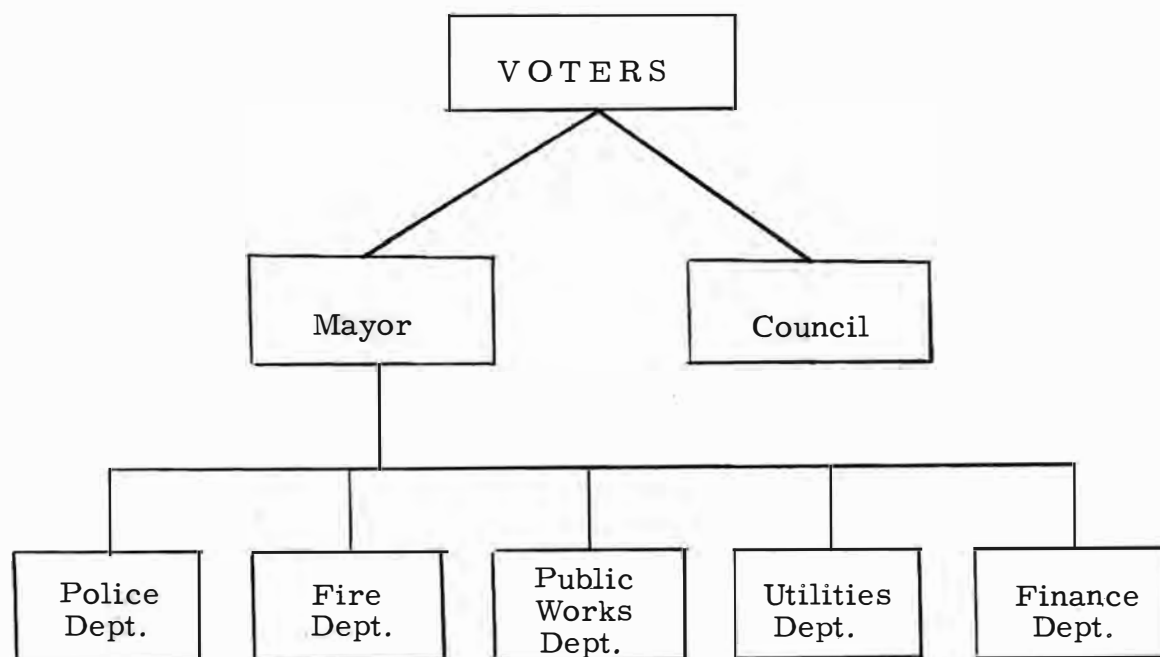


### Strong mayor and council

This, the second oldest form, developed when it was found, particularly in the larger cities, that one person rather than a board could more efficiently direct the day-to-day work of a city. Of Tennessee's 283 towns and cities, approximately 210 have mayor and council (or aldermen) government; the weak mayor form is unquestionably more numerous, but we have not attempted to enumerate the number of weak mayor and strong mayor forms because the distinction between these two is sometimes difficult to make. Confusion also sometimes arises when the municipal governing body is called a "commission" or "board of commissioners," causing it to be mistaken as a commission form of government, which we will discuss next. In many cities where this terminology is used the "commission" or "board

of commissioners" has much the same responsibilities as a "council" or "board of aldermen;" such cases are not properly classified under the commission form of government but fall in the mayor and council category.

The primary difference between the strong mayor form and the weak mayor form is the power of the mayor; under the former he is the executive head of the municipal government, and all city employees (sometimes certain employees are excepted) are responsible to him, usually through department heads, for the proper performance of their work. The mayor may hire and fire such employees without needing the approval of the council, sometimes subject to rules prescribed in the charter or by ordinance. The following chart illustrates this form.



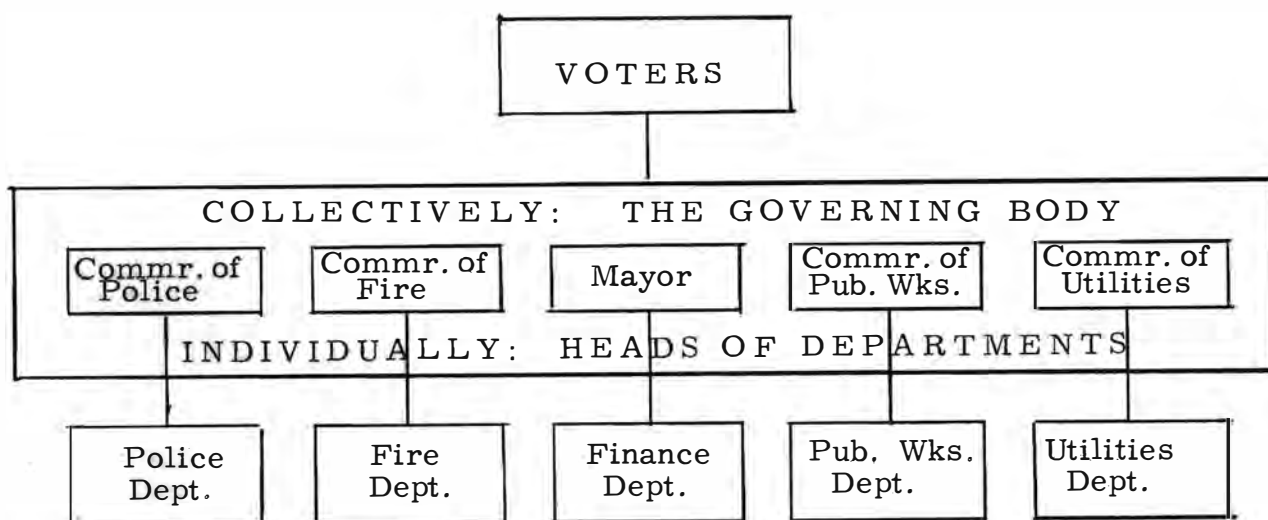
### Commission

About 25 Tennessee towns and cities have this form of government. It was first adopted by Galveston, Texas, in 1901 following a disastrous flood, and a few years later by Des Moines, Iowa. Under the Galveston plan, the commission appointed heads of departments, but under the

Des Moines plan, which has been most widely used, the members of the commission also serve as heads of departments.

The voters elect members of the commission, usually three or five who are designated by such titles as Commissioner of Fire and Police, Commissioner of Finance and Taxation, and Commissioner of Streets. In the Tennessee cities using this form, each commissioner also serves as head of a department (in a very small town each one may be responsible for a particular function, without setting up a "department"). In some cities the people elect a mayor and commissioners who run for specific posts, while in other cities the commission as a whole, by majority vote, decides which commissioner will be in charge of each department. The people may elect the mayor, as in Memphis, Chattanooga and Jackson, or the commission by majority vote may elect one of its members to be mayor, as in Crossville and LaFollette. Frequently, the mayor is in charge of a department of finance or administration, but occasionally he may be assigned to another department. In addition to their duties individually as department heads, the commissioners and mayor also constitute the city commission, which is the city's governing body with authority to pass ordinances, fix taxes, etc., in the same manner as the council or board of aldermen perform such duties in the mayor and council cities. The mayor has only one vote, the same as each commissioner, and rarely does he have veto power.

The following chart illustrates this form.





### Council-manager

Fifty Tennessee municipalities (18 under 1,000 in population) have this form, but several small towns have not appointed managers, apparently preferring to carry out municipal functions through employees responsible to the council (or commission). Some small towns adopted this form because of the relative ease of incorporation; prior to 1959 a 2/3 majority of all qualified voters, whether they voted or not, was required to incorporate under the mayor-aldermen law.

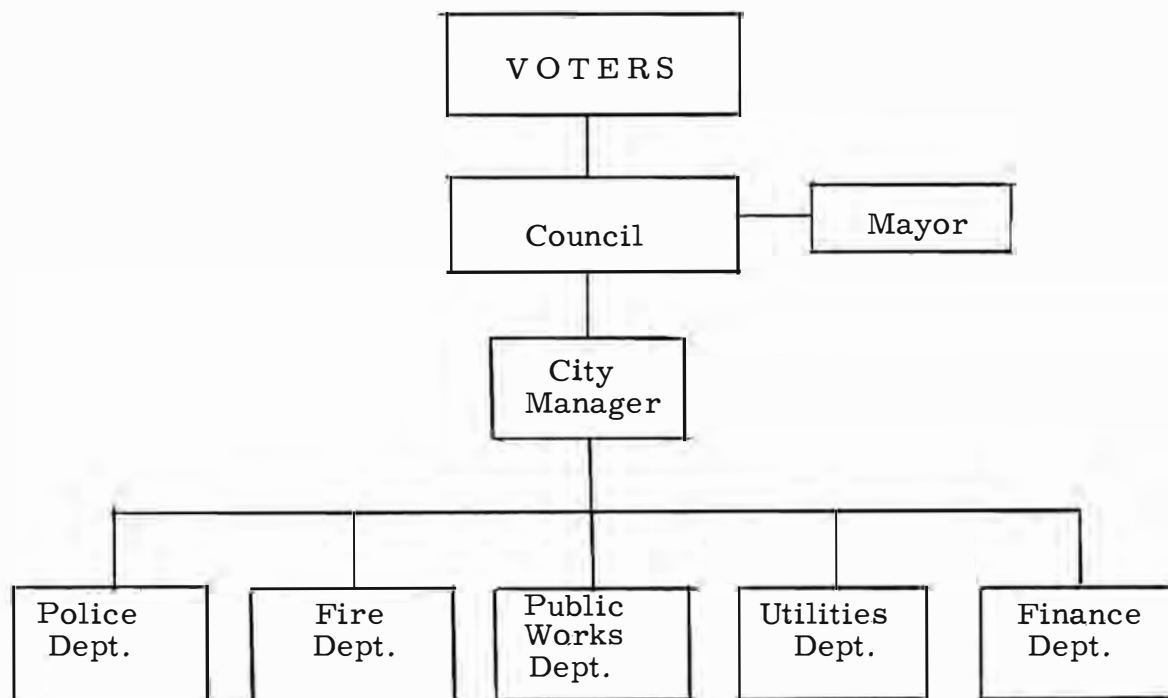
This is the youngest of the four forms. Staunton, Virginia, in 1908 was the first city to adopt a plan that was similar to the council-manager form, but Sumter, South Carolina, in 1912, and Dayton, Ohio, in 1914, were the first cities to adopt the form as it is generally found in American cities today. Kingsport (1917) and Alcoa (1919) were the first Tennessee cities to use this form.

The council-manager form represents an effort to transfer to municipal government a plan of organization that has been successful in the business world. As the stockholders of a private corporation elect a board of directors, which in turn appoints a general manager to manage the activities of the corporation, so the citizens of a municipality elect a council, which in turn appoints a city manager to direct the day-to-day work of the city. The council passes ordinances, determines the tax rate, allocates the money to various municipal functions, establishes the general policies of the city, and hires and fires the city manager at its pleasure. The city manager is responsible for carrying out such policies, appoints and removes employees working under him, and is expected to recommend to the council new policies and programs for betterment of the city.

In some cities the governing body is called the "commission" or "board of commissioners," instead of "council." The Tennessee general law providing for this form uses the term "board of commissioners," and its members are called "commissioners" instead of "councilmen." However, it is only the words that are different; the form is the same, and in such cases there should be no confusion with the commission form, discussed above.

The mayor may be elected by the people or by the council; of 1,115 cities in the United States over 5,000 in population, in 1961 48.6% were elected by the voters and 50.2% were elected by the council (1.2% gave this office to the councilman who received the largest number of votes).

The following chart illustrates this form.



### Boards and commissions

In most cities, whatever their form of government may be, we usually find some municipal functions under boards and commissions more or less independent of the governing body. Some cities will have a large number, while others may have only one or a few, and small towns may have none.

The most familiar is probably the board of education, in charge of schools. Its members may be elected by the people, or may be appointed by the city's governing body. As we have already mentioned, in many Tennessee cities and towns the schools are under the county board of education. Of those cities operating school systems, only two have no school board: Jackson and Alcoa.

Other boards and commissions, composed of persons usually appointed by the mayor or by the municipality's governing body (occasionally elected by the people), are often responsible for such functions as planning and zoning, electric service, water supply, sewage disposal, recreation, parks and playgrounds, public housing, and urban renewal. A single utilities board may be in charge of the electric, water, and gas systems (in a few cases also sewers).

One justification for creating boards is to eliminate "politics." It is said that this assures a higher standard of service, protects employees in their jobs, lowers interest rates on bonds, and attracts public-spirited persons to serve their cities as members of such boards. On the other hand, it is argued that the "splintering" of municipal functions among independent boards is undesirable, that cooperation and coordination is reduced, that the viewpoints of such boards are restricted to their narrow fields instead of taking in the entire city government as a city council must do, and that operation of such functions by a city department can be efficient and just as satisfactory to all concerned.

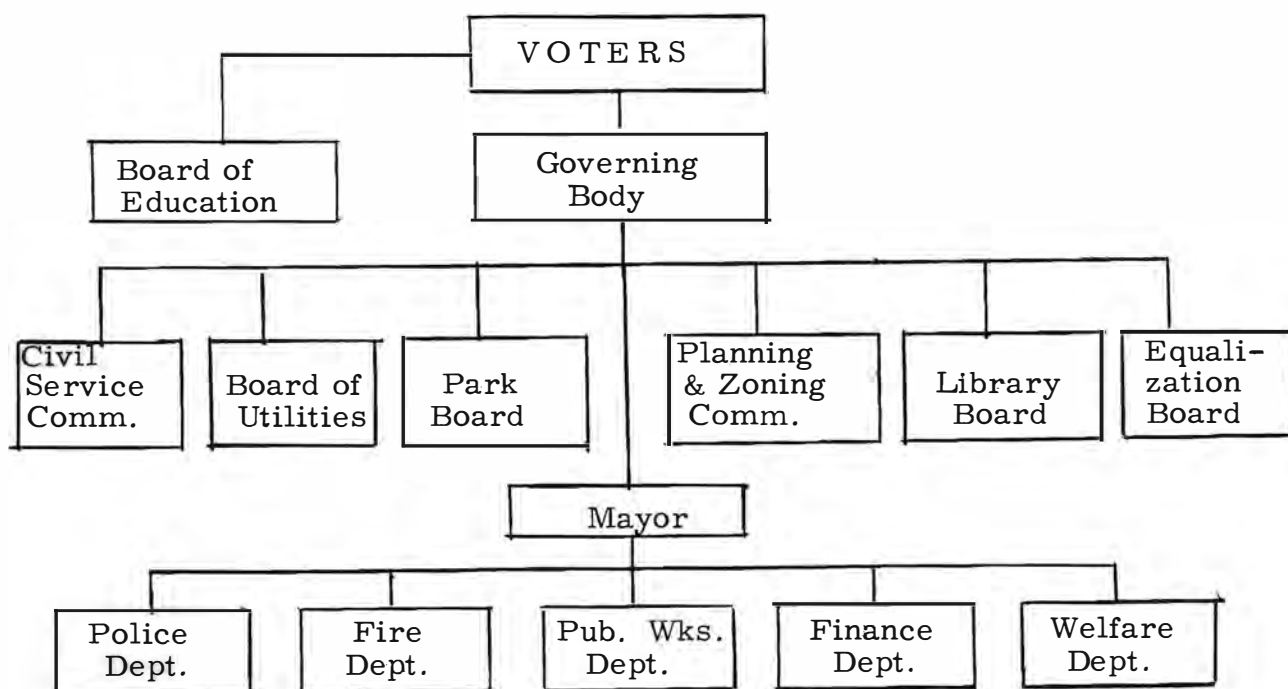
For some purposes there is general agreement that board and commissions should be used. Planning commissions should make surveys and studies to prepare a comprehensive plan for future growth and development, to include such matters as minimum street and lot widths and the reservation of land for parks and playgrounds. Planning commissions under Tennessee law are also empowered to adopt subdivision regulations which specify the types of streets, sidewalks, water and sewer lines, etc. that a subdivider of land must provide.

Tennessee law also empowers a municipal planning commission to recommend a zoning plan which becomes effective when adopted by an ordinance of the governing body. Such a plan prescribes the areas of a city that may be used for various purposes, such as the areas of a city that may be used for industrial plants, stores and business offices, and residential houses. Zoning assures a family that the lot next door cannot be put to commercial use—for example, a filling station; if so zoned it may be used only for a single family house. The governing body may

also establish a board of zoning appeals, with authority to make exceptions; in some cities the governing body exercises this authority. It is said that "there are exceptions to all rules," and in this field there are instances when exceptions are justified. However, this can be overdone, to the point where "spot zoning" (excepting one or a few lots) destroys much of the protection that zoning should provide; in some cases the courts have condemned such practice as a violation by a city government of its own zoning ordinance.

A board of equalization is found in many cities. Its function is to review the assessed valuations of land, buildings and other property, made by the city tax assessor, and to make such adjustments as appear necessary to "equalize" such valuations—that is, to treat everyone fairly so that one person's property is not valued higher than another person's property. Usually such boards act only on complaints of property owners who think that their property is valued too high. It is apparent that this is a very difficult task and in most cities such equalization is imperfectly done. This is generally considered to be a proper function for an independent board to perform.

The following chart illustrates the organization of a city with typical boards and commissions.



### The city (town) recorder

This office merits a special note, because of its significance in Tennessee municipal government. The recorder in the average Tennessee town or small city should be a very versatile person. As his title implies, he is expected to record the minutes of meetings, and to keep the official records of ordinances, resolutions, and other actions of the governing body. As the chief accountant he is responsible for the financial records and reports, showing revenues and expenditures. He is often the treasurer, having custody of all money and paying all bills after approval by the governing body.

Often he is also charged with another duty: acting as the city or town judge. Persons arrested by the police for violating the municipality's ordinances are brought before the recorder, and he acts as any other judge in hearing the cases and deciding whether they are guilty or not guilty. He may impose fines up to \$50 on those found guilty but he cannot give jail sentences; however, if a person fails to pay a fine he may be confined until the fine is "worked out."

In many municipalities, especially those with the weak mayor and aldermen form of government, the recorder acts somewhat as a city manager. The mayor and aldermen usually find that they cannot attend to all the details involved in the daily work of the city or town. So they rely, in varying degrees, on the recorder to look after such matters. Although he has no real authority, to hire or fire employees or to direct their work, in practice he often exercises considerable influence.

## MUNICIPAL LAW MAKING

We have already noted that the mayor and aldermen (councilmen), commissioners, etc. together constitute the "governing body" of a city or town. As the General Assembly is the legislative body of the State of Tennessee, sometimes the term "legislative body" is used. The term "governing body" is more commonly used in municipal government.

The governing body establishes the policies of the city, usually by ordinances and resolutions. An ordinance is a city law, and has the same effect within a city as State laws have within a state. Ordinances fix speed limits, the tax rate, water rates, sewer service charges, the appropriation of money to be spent, the salaries of city employees, and minimum standards for constructing buildings (building code), doing electrical work (electrical code), and doing plumbing work (plumbing code). Other examples of ordinances are: requiring dogs to be vaccinated against rabies, prohibiting outhouses and requiring connections to sewers or other approved sewage disposal (such as septic tanks), and levying privilege licenses on persons operating stores or engaging in other commercial activities.

A resolution is of lesser status than an ordinance, and generally does not have the same binding effect on the citizens of a municipality. It usually expresses a policy or an intention to take certain action; for example, to issue bonds and to specify how they will be repaid, for what the money will be spent, and the procedure for taking competitive bids. If the governing body wishes to oppose any matter, such as a proposal to make the interest on municipal bonds subject to the Federal income tax (such interest is now exempt), or to support a proposal, such as a legislative bill to prohibit the sale and use of fireworks, it would usually make its stand known by adopting a resolution.

Ordinances are passed at public meetings of the governing body, which may be attended by any person. At these meetings the members of the governing body discuss proposed ordinances and hear any objections or favorable comments from persons in attendance. For example, people might be present to object to a proposed zoning ordinance that would permit business establishments in their residential neighborhood, or they might ask that the city appropriate more money for schools.

For some types of ordinances, such as a zoning or annexation ordinance, a city's charter or a general State law requires public notice of the proposal to pass the ordinance, usually by newspaper publication, so that interested persons may be present to state their views. A public

hearing on the annual budget—which fixes the manner of spending the city's money—is usually required by law. On other matters, although not legally required, a municipality's governing body frequently decides to hold a public hearing to ascertain whether the people generally support or oppose a proposal under consideration and to obtain information that will help them to make a proper decision.

Most municipalities employ a lawyer to act as city attorney, and he advises the governing body in such matters. He usually writes the ordinances and resolutions, making sure that they are in proper legal form. He must always anticipate the possibility that someone will be adversely affected by an ordinance and will ask the courts to declare it invalid. Occasionally he must advise the governing body that a policy which they would like to adopt by passing an ordinance would be illegal and invalid—perhaps because it is not authorized by the city's charter, or is prohibited by the State Constitution or general laws, or is contrary to past decisions of the Tennessee courts.

## MUNICIPAL FINANCE

A municipal government must collect enough money, in taxes and other revenues, to pay its expenses: salaries, equipment, materials, etc. Each year it should collect at least as much as it spends; in other words, the city should have a balanced budget, and this is usually a charter requirement. For unusually large expenditures, such as additions to a water or sewer system, a sewage disposal plant, building a hospital or school, or constructing or resurfacing streets, a city may issue bonds to obtain enough money to pay for such a project; it must then obtain enough revenue each year, from taxes, water rates, or by other means, to pay the annual principal and interest on such bonds until all have been paid off. Although it may be desirable to follow a "pay-as-you-go" policy, making all expenditures from current revenues to save interest expense, usually a bond issue is the only way to finance such improvements that the people want and must have.

Obtaining enough revenue to pay for city services is one of the most critical problems confronting municipal governments. Years ago the bulk of a city's income came from taxes on property: homes, business buildings, industrial plants, railroads, etc. There has been a nation-wide trend away from such heavy reliance on the property tax, and this is evident from the following data for Tennessee, showing percentages for property taxes in relation to total general revenues of Tennessee cities over 25,000 in population (except over 50,000 for 1961):

|      |       |
|------|-------|
| 1948 | 47.5% |
| 1951 | 45.3% |
| 1954 | 36.5% |
| 1957 | 31.4% |
| 1959 | 28.2% |
| 1961 | 27.5% |

The 1957 Census of Governments, conducted by the U. S. Bureau of the Census, reported for nearly all municipalities in Tennessee the following revenues from their own sources (total general revenues as used in the foregoing table of percentages include Federal, State and county-shared revenue) in the year 1957:

| <u>Source</u>                               | <u>Amount</u> | <u>%</u> |
|---------------------------------------------|---------------|----------|
| Property taxes                              | \$44,143,000  | 51.2     |
| Selective sales and<br>gross receipts taxes | 7,231,000     | 8.4      |
| Licenses                                    | 6,513,000     | 7.5      |
| Current charges                             | 19,265,000    | 22.3     |
| Special assessments                         | 273,000       | .3       |
| Sale of property                            | 683,000       | .8       |
| Interest earnings                           | 3,993,000     | 4.6      |
| Other                                       | 4,211,000     | 4.9      |

A law passed in 1963 empowers a county, city or town to levy a sales tax not to exceed one-third of the State sales tax if such a tax is first approved by a majority vote in an election. This law was requested by



counties and cities to enable them to reduce somewhat the burden on property taxpayers.

The governing body of a municipality may levy license taxes on stores and businesses (not to exceed maximum amounts prescribed by State general law), service charges for use of sewers, garbage collection charges, parking and traffic fines, automobile registration fees, parking meter charges, etc. If the electric and water systems are not under boards, the governing body also fixes the electric and water rates. All of such sources are not used by all towns and cities; the smaller towns use very few sources, perhaps only a tax on property in the very small towns, while the larger cities will have these and many more. Some very small towns levy no taxes, spending only the money they receive from State-shared taxes.

In addition to such local revenues, Tennessee cities and towns receive money from the State government. City school systems are given substantial sums to aid in paying teachers' salaries and other current expenses, based on the average daily attendance of pupils, and to assist in the construction of school buildings. The money collected from one cent of the State's seven cents tax on gasoline is distributed to municipalities on a per capita basis, to be spent only on streets; in 1962 each city and town received about \$6.30 per person from this source. Municipalities also receive 12 1/2 per cent of the State's 2¢ retail sales tax (they do not share in the third cent added in 1955); in 1962 this amounted to about \$5.10 per person. From the State tax on beer each city and town is paid about 19¢ per person. A small part of the State income tax on dividends and interest from stocks, bonds and notes is paid to those cities where the taxpayers reside. The amounts received for schools depend upon appropriations made by the General Assembly, and receipts from the State-shared taxes vary according to the amounts collected by the State, which are affected by economic conditions.

It is good practice to make up a budget for each year, and charters usually require that this be done. Before the beginning of a new fiscal year, the mayor, recorder, or city manager prepares a budget, which consists

of an estimate of money likely to be received during the year from all sources, and his recommendations as to how the money should be spent: the amount for each department, and within each department for salaries, equipment and materials; payments of principal and interest on bonds; and expenditures to meet other obligations of the city. This budget is usually publicized and a public hearing is held by the governing body, at which any person may speak for or against the budget or any part of it. After it has been approved by the governing body, perhaps with some revisions, an appropriation ordinance is passed, and expenditures during the year are made in accordance with this ordinance unless it is amended by the governing body.