

GETTING TO KNOW *and Maybe Love* YOUR MUNICIPAL CHARTER

by Sidney D. Hemsley, Senior Legal Consultant
Revised June 2008

THE UNIVERSITY of TENNESSEE 
MUNICIPAL TECHNICAL ADVISORY SERVICE

In cooperation with the Tennessee Municipal League



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Getting to Know and *Maybe Love* Your Municipal Charter

INTRODUCTION

Go ahead, read it!

It doesn't take a law degree (or even a college degree) to read a municipal charter. You must be willing to read it carefully, sometimes several times. It may contain a bunch of legal-sounding language, including "Be it enacted" several hundred times, but don't let that frighten or discourage you; the ton or so of legal-sounding language found in many charters usually adds nothing to them except length. What you probably do need to read a charter is a good night's sleep beforehand and the patience of Job — they tend to go on forever and are usually as exciting to read as the IRS Code.

After you have read the charter the first time don't be surprised if you don't understand every provision you read. In fact, you might read some provisions 100 times and they still won't make sense. If that happens, there's a good chance the fault lies in the charter, not you. Many charters contain poorly written provisions. A provision that **looks** unclear probably is, or a provision that **seems** to conflict with another provision probably does. If by some chance you do understand every provision you read the first time, be suspicious because you probably overlooked something.

Obsolete charter provisions reflecting things a municipality hasn't done since, say, 1907, clutter charters today. Many obsolete provisions will be obvious. For example, it has been a long time since cities and towns in Tennessee have required all male residents over 21 to work on municipal streets 12 days a year, but such requirements are still in some charters. If a provision in your charter requires

or permits something your municipality hasn't done in a while, determine whether it's obsolete. If it is, get rid of it.

Read the whole charter. Why? Because as a famous baseball philosopher once said, "It ain't over 'til it's over." If you're trying to figure out the powers and duties of the mayor (maybe you are the mayor or somebody who is mad at the mayor), you can't rely on reading only "Powers and Duties of the Mayor." There may not be a section called that, but even if there is, the powers and duties of the mayor are most likely scattered throughout the charter. The same generally is true relative to any other official or subject in the charter.

But we're already ahead of ourselves, so we have to go back to square one. It just seemed important right at the beginning to point out that it doesn't do any good to know what a charter is or the steps from A to Z on how to amend it if you haven't read it.

WHAT'S A MUNICIPAL CHARTER?

To understand what a municipal charter is, you have to know what a municipality is. You may be surprised to learn that, from a legal standpoint, a municipality almost anywhere in the United States, including Tennessee, is not much. Some writers have compared municipalities to children and state legislatures to their parents. But that comparison isn't completely accurate because most children have greater legal protection against their parents than municipalities do against their state legislatures.



The classic statement of a municipality's relationship to its state legislature was made by Judge John F. Dillon speaking for the Iowa Supreme Court in the famous case of *City of Clinton v. Cedar Rapids and Missouri Railroad Company*, 24 Iowa 455 (1868):

Municipal corporations owe their origin to, and derive their powers from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it created, so may it destroy. If it may destroy, it may abridge the control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and a great wrong, sweep from existence all of the municipal corporations of the state, and the corporations could not prevent it. We know of no limitation on this right so far as corporations themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.

There is a "constitutional limitation" against abolishing Tennessee's home rule municipalities found in Article XI, Section 9, of the Tennessee Constitution. In addition, the remaining Tennessee municipalities receive a measure of security from abolition in the same provision of the Tennessee Constitution, which provides that "The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be changed." In any event, the legal subordination of municipalities to their state legislatures is no reason to lock up city hall and go home. Municipalities in every state have been around for a long time; there are more than 340 of them in Tennessee.

But Judge Dillon didn't stop there. In *Merriam v. Moody's Executor*, 25 Iowa 163, 170 (1868),

he achieved everlasting fame among municipal lawyers and students of local government by announcing what is known as Dillon's Rule. Dillon's Rule outlines the kind of powers legislatures give to municipalities and what happens if there is some doubt about a municipality's power:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in **express** words; second, those necessarily or fairly **implied** in or incident to the powers expressly granted; third, those **essential** to the accomplishment of the declared objects and purposes of the corporation — not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.

Dillon's Rule has been abolished in some states, but in the recent case of *Southern Contractors v. Loudon County Board of Education*, 58 S.W.3d (Tenn. 2001), the Tennessee Supreme Court announced that Dillon's Rule still lives in Tennessee and applied it to hold that while a county school board did not have the express authority to arbitrate a contract, it had the implied power to arbitrate the contract at issue. *But, the court also pointed out that Dillon's Rule is only a rule of statutory construction that applies when a statute is ambiguous*, and that "several important exceptions to that rule have diminished its practical importance. The rule:

- Does not apply to home rule municipalities; and
- Where the General Assembly has granted local governments "comprehensive governmental power ... without either enumerating the powers or expressly limiting the scope of that authority," that "general provision" [will] be "liberally construed." The court cited three examples of comprehensive grants of powers



to municipalities from the general law municipal charters *found in Tennessee Code Annotated*, Title 6:

- Section 6-19-102 of the general law manager-commission charter: “The enumeration of particular powers in this charter is not exclusive of others, or restrictive of general words or phrases granting powers, nor shall a grant or failure to grant power in this chapter impair a power granted in any other part of this chapter, and whether powers, objects or purposes are expressed conjunctively or disjunctively, they shall be construed so as to permit the city to exercise freely any one (1) or more such powers as to any one (1) or more objects for any one (1) or more such purposes.”
- Section 6-19-101(33) of the general law city manager commission charter: “[Every city incorporated under chapters 18-22 of this title may] [h]ave and exercise all powers that now or hereafter it would be competent for this charter specifically to enumerate, as fully and completely as though such powers were specifically enumerated in this section.”
- Section 6-2-201(32) of the general law mayor-aldermanic charter: “[Every municipality incorporated under this charter may] [h]ave and exercise all powers that now or hereafter it would be competent for this charter specifically to enumerate, as fully and completely as though these powers were specifically enumerated.”

In addition, you know that governments keep written records, some of which are about the birth and powers of a municipality, at least the express powers. Birth and powers. Now we’re getting close to what a charter is and what it does.

A charter is a municipality’s birth certificate issued by the Tennessee General Assembly. However, it differs from the birth certificate of a child in an

important respect: A municipality’s birth certificate comes with a laundry list of what it can and cannot do. The General Assembly puts the list in the document we call “the charter.” When the General Assembly adds to or takes away from that list, as it has the power to do, we say it has “amended the charter.” Now pay close attention here. There’s a second laundry list of what a municipality can and cannot do. That list is all the general laws passed by the General Assembly that apply to municipalities. They’re found scattered throughout the *Tennessee Code Annotated*. That list is also part of the charter.¹ The General Assembly can add to or take away from that list, too. What isn’t well understood is that when it does so, it also has “amended” the municipality’s charter.

Keep in mind Dillon’s Rule and its exceptions, and remember that you must look two places to figure out what your municipal charter says.

This is what a charter is and does, according to the Tennessee Supreme Court in two old, but still good, cases:

- The constitution of the local government granted by the General Assembly, with powers that must be consistent with the Constitution of Tennessee (and of the United States, it might have added). *East Tennessee University v. Mayor of Knoxville*, 65 Tenn. (Baxt.) 166 (1873).
- A grant of power from which the city government derives its life and vigor and its limitations and restrictions. *State ex rel. Kercheval v. Mayor of Nashville*, 83 Tenn (1st Lea) 697 (1885).

The fact that these definitions were issued by a court ought to clue everyone in to another important fact about charters: The courts, both state and federal, have a great deal to say about whether something in a charter is legal. The federal courts have even gone so far as to tell some municipalities that the form of government provided in their charter is illegal.



Those definitions also make the point that a municipal charter is the constitution of the town or city, the document that brings it into existence and defines its powers. That's why your charter is so important and why it has to be fed, coddled and changed with loving care.

TYPES OF CHARTERS — WHICH ONE DOES YOUR CITY HAVE?

THERE ARE THREE KINDS OF CHARTERS

It's time to add some confusion. The General Assembly makes grants of power to Tennessee municipalities through two kinds of laws: **private acts** and **general laws**. Private acts apply only to a specific town or city; general laws apply either to all cities and towns or, frequently, to all cities and towns within a certain class (for example, all cities and towns with a population of 1,134 to 1,876 according to the 1980 census or any census thereafter). The latter kind of general law is often called a general law of local application because in reality it usually applies to only one or two specific towns or cities. You've probably guessed by now that there are at least two kinds of municipal charters in Tennessee: **private act** and **general law**. But we have to add a peculiar kind of charter to the list because 14 Tennessee municipalities have this type: **home rule**.

PRIVATE ACT CHARTERS

A private act charter applies only to the city or town with that specific charter. In other words, if your city or town is chartered under, say, Chapter 319, *Private Acts of 1943*, there's only one city or town to which Chapter 319, *Private Acts of 1943*, applies: yours. The city or town next door to yours may also have a private act charter, but it will be chartered under, say, Chapter 27, *Private Acts of 1901*.

Don't get private act charters and general law charters mixed up. If you have a private act charter, **none** of the general law charters we are

about to discuss apply to your municipality. For some reason this is difficult even for some city attorneys to understand. Your private act charter may provide for the mayor-aldermanic form of government, but the **general law** mayor aldermanic charter has nothing to do with your city. Period!

Likewise as to the relationship between private act city manager forms of government and the two general law city manager charters. There isn't any! There are general laws throughout *Tennessee Code Annotated* that apply to both private act and general law municipalities, but the general law charters apply only to municipalities that have those particular general law charters. The private act municipality is like water, and the general law charter municipality is like oil — they don't mix. We beat that subject to death, but it needs it.

GENERAL LAW CHARTERS

There are five general law charters. All of the general law charters are found in Volume 2B of *Tennessee Code Annotated*, as follows:

1. Mayor-Aldermanic Charter (T.C.A., Title 6, Chapters 1-17);
2. Uniform City Manager-Commission Charter (T.C.A., Title 6, Chapters 18-29);
3. Modified City Manager-Council Charter (T.C.A., Title 6, Chapters 30-36);
4. Metropolitan Government Charter (T.C.A., Title 7, Chapters 1-6);
5. Charter Government Unification Act Charter (T.C.A., Title 7, Chapter 21).

Every municipality chartered under Title 6, Chapters 1-17, has the general law mayor-aldermanic charter. If Turtle Creek, Tenn., west of Memphis, has it and if Washboard Flats, Tenn., east of Bristol, has it, they have identical charters found in the same place: T.C.A., Title 6, Chapters 1-17. If they have the uniform city manager-commission charter, they have identical charters found in T.C.A., Title 6, Chapters 18-29. If they have the modified



city manager-council charter, they have identical charters found in T.C.A., Title 6, Chapters 30-36.

But stop right there. The same treatment doesn't exactly apply to a metropolitan government charter or to a charter government unification act charter. Both charters were designed to permit the consolidation of county and city governments. They allow such counties and municipalities considerable freedom to design the contents of their charters. Nashville-Davidson County, Lynchburg-Moore County, and Hartsville-Trousdale County are presently the only counties and municipalities that have consolidated under a general law metropolitan government charter. As you might expect, because Nashville-Davidson County is so large, and Lynchburg-Moore County and Hartsville-Trousdale County are so small, there are considerable differences in the contents of their charters. So far, there have been no county and city government consolidations under a charter government unification act charter. If your city has an irresistible impulse to consolidate with the county, call MTAS for help on its options.

HOME RULE CHARTERS

If that isn't confusing enough, 14 Tennessee cities and towns have home rule charters: Chattanooga, Clinton, East Ridge, Etowah, Johnson City, Knoxville, Lenoir City, Memphis, Mt. Juliet, Oak Ridge, Red Bank, Sevierville, Sweetwater and Whitwell. Remember that municipalities in Tennessee, like municipalities in most other states, are completely subordinate to the state legislature, unless the state constitution says otherwise. The state constitution (Article XI, Section 9) does say otherwise in the form of a home rule provision. Amendment Number 7 of the 1953 amendments to the Tennessee State Constitution provides that by the vote of its people a municipality can adopt home rule. Once a municipality has adopted home rule it can adopt and amend its own charter by referendum, without the approval of the legislature. Amendment

Number 7 also prohibits the legislature from passing any **private** acts governing home rule municipalities. However, the amendment does **not** prohibit the General Assembly from passing general laws governing home rule municipalities. As pointed out in "What's a Municipal Charter?" Dillon's Rule does not apply to home rule cities.

STATE CONSTITUTIONAL PROVISIONS LIMITING STATE CONTROL

TENNESSEE STATE CONSTITUTION, ARTICLE XI, SECTION 9

This is a good place to discuss state constitutional provisions limiting state control over municipalities because we already did part of the job in the last section. However, we briefly mentioned only part of what Amendment Number 7 does. Now we'll discuss both Amendment Number 6 and Amendment Number 7 of the 1953 amendments to the state constitution. The full text of those amendments is found in Article XI, Section 9 of the state constitution.²

AMENDMENT NUMBER 6

Amendment Number 6 put the following controls on changes to municipal charters. It:

- Prevents private acts governing municipalities from becoming effective until they are approved locally, either by a two-thirds vote of the municipal governing body or by a majority of those voting in a referendum held for that purpose. (The private act itself specifies which of the two methods shall be used to obtain local approval.)
- Prohibits entirely (even if approved locally) private acts that remove an incumbent from any municipal office or shorten the term or alter the salary of a municipal officer prior to the end of the term for which the officer was elected or appointed.³



AMENDMENT NUMBER 7

Amendment Number 7 is called the Home Rule Amendment, but it actually did two things that have a bearing on charter amendments, one not necessarily related to home rule. It:

- Gives municipalities the option of adopting home rule, prohibits the General Assembly from passing private acts of any kind applying to home rule municipalities, and allows home rule municipalities to amend their own charters.
- Prohibits the further incorporation of municipalities under private acts and requires that **future** incorporation of municipalities can be done only under **general laws**.

However, Amendment Number 7 did **not** prohibit the General Assembly from passing general laws governing home rule municipalities, and it didn't disturb the right of existing private act charter municipalities to continue their existence as such and to amend their charters. In fact, about two-thirds of the state's municipalities still have private act charters.

Both Amendment numbers 6 and 7 appear in the next section where they are related to the mechanics of amending charters.

QUESTIONS TO ASK BEFORE YOU START

The mechanics of amending a private act charter are surprisingly simple. However, before you get to the nuts and bolts of the charter change, there are some questions you need to ask yourself.

Is what you have actually the whole charter? All private act municipalities have a basic charter act. A large number of the basic charter acts are old; charter acts more than 50 years old are common, and some date to the 1880s. Most basic charter acts have been amended, some many times. If you try to amend the charter without having the basic charter act and all its amendments carefully integrated into it, you may “amend” a provision that has already

been radically changed or eliminated entirely by prior amendments. The result can be that your amendment makes little or no sense. There are enough of those out there already without your contribution.

AMENDING A PRIVATE ACT CHARTER

But surely someone will catch a non-sensical amendment before it passes, right? Not likely. Charter amendments go through your legislative delegation, the General Assembly, and the governor, then back to you with rarely any consideration for whether the amendment makes any sense in the context of your charter. We'll see how that happens when we discuss how private acts are treated in the legislative process.

It's also common for municipalities to have a basic charter and one or more separate private acts establishing a utility system or giving the municipality some other kind of authority. Those separate private acts also may have been amended. In those cases two or more lines of amendments have to be followed to ensure that all the private acts that form the charter are present.

If you have an MTAS-prepared municipal code it will have an unofficial charter compilation in the front before the code begins, current as of the date the code was prepared or updated. If you read that charter, including the footnotes and the table of charter amendments found at the end, and use it as a departure point, you probably have everything you need to begin amending your charter.

If you don't have an MTAS-prepared code, you need to get a copy of your basic charter and all its amendments from the *Private Acts of Tennessee*. However, *Private Acts of Tennessee* comprises a great number of volumes and isn't available to most municipalities. Call MTAS, and we'll help you obtain the whole bundle of private acts that make up your basic charter.



Does the charter really need changing? “If it ain’t broke, don’t fix it.” The Tennessee General Assembly has given municipalities the power to do many things (and prohibited them from doing others) through general laws that apply to all municipalities or those of a certain class. Those general laws also are a part of your charter. If what your municipality wants to do has already been authorized or prohibited by a general law, you should consider whether it’s even necessary to bother with a charter change. Another reason to take a second look at a charter change is that, while charters aren’t written in stone, they aren’t as easy to change as ordinances and resolutions. Many cities and towns have come to regret prescribing things by charter that could have been prescribed by ordinance or resolution; the latter can be adjusted or eliminated when they no longer serve their purpose, without a trip to the General Assembly.

Is the change in the charter the best way to solve the problem? Your problem may be one that other cities or towns across the state have. If your problem is a general one it may be better addressed by a general law. Bounce your problem off MTAS and the Tennessee Municipal League before you get the charter-change fever.

Is the charter change legal? Remember, the charter can’t conflict with the U.S. or Tennessee Constitution or with general law. Making sure your amendments don’t have conflicts isn’t always an easy job. If you have doubts, it’s a good idea to check with your city attorney or MTAS. This can prevent the rarely fatal (but often embarrassing) condition known as egg-on-the-face.

Who should be involved in drafting the charter amendment? Private act charter amendments must be approved locally, either by a two-thirds vote of the governing body or by the voters in a referendum. Whether the amendment wins local approval often depends on **who** had a part in what

it says. The people involved in drafting the charter amendment depend on several related factors:

- Whether the amendment makes a small or large change in **how** your municipality does something or in **who** does it;
- How many and which people, both inside and outside the municipal government, the amendment affects;
- What the end effect will cost the public;
- The complexity of the amendment;
- The political situation; and
- The required method of local approval of the amendment.

A general rule of thumb is that unless the charter amendment is one that will require approval by referendum, it should be drafted under the direction of the municipal governing body.

However, the governing body should seek help from qualified advisers who can contribute to the drafting process, preferably including an attorney to do the actual writing and legal review of the amendment. This applies even when substantial revisions of the charter are being drafted. MTAS also can help with this process.

This isn’t an endorsement of charter amendment done in closed, smoke-filled rooms. Either of the two methods required for local approval of charter amendments involves an open process. The Tennessee Open Meetings Law (T.C.A., Title 8, Chapter 44) and the Tennessee Open Records Law (T.C.A., §§ 10-7-503 — 10-7-505) apply to the charter amendment process. In addition, if there’s something in the proposed changes that looks, smells, or feels like a mackerel left lying in the July sun for three days, someone on the municipal governing body or elsewhere in the municipal government will relay the news to the public. In fact, these days the best way for the government to make sure that the public knows what it is doing is to do it behind closed doors.



The principle behind the general rule of thumb is the conservation of time and energy. Both are scarce resources. Municipal committees made up of private citizens generally consume a lot of time and energy of those citizens who serve on them, not to mention the time and energy of the municipal governing bodies that form them and have to keep them moving toward their goals. Charter committees are no exception. It's unwise to call upon such scarce resources except when necessary. While all charter changes are important, most of them don't justify appointing a committee of 500 or even five citizens to analyze and draft them. Appoint too many committees for routine charter changes and the pool of private citizens with a high public interest from which such committees are picked will dry up.

However, the municipal governing body should consider appointing a charter committee if the method of local approval will be by referendum, especially if the proposed changes are expected to cause considerable public confusion or controversy. Charter committees can provide valuable service in such cases for two reasons. First, like juries in civil and criminal cases, they have an astonishing collective ability to thoroughly consider issues before them. Dedicated committees may grind slowly, but they can grind exceedingly fine. Second, their charter work may be more acceptable to the public than the work of the municipal governing body. The public is often suspicious of officials and change unless it's thoroughly convinced the change is both needed and good. Therefore, an amendment drafted by a committee of private citizens may have more public support and confidence than one drafted by the municipal governing body.

It's common for the municipal governing body to give the charter committee a blank check in the drafting of the charter amendment, but the municipal governing body may choose to give the committee specific instructions on the character

and dimensions of its job. In either case, the municipal governing body is free to accept, reject or modify any or all of the charter committee's work. However, there may be no practical way to limit the committee if it decides to go further than it was authorized by the municipal governing body. The committee's work may take on a life of its own.

Remember that the U.S. Constitution is the product of a committee that was appointed only to revise the Articles of Confederation. Nothing quite so dramatic is likely to happen to a charter amendment, but it seems worthwhile to point out that what the charter committee produces may be more than the municipal governing body bargained for. Politically, the municipality may have to live with it.

STEPS FOR AMENDING A PRIVATE ACT CHARTER

Now that you've answered the basic questions, here are the steps involved in amending your private act charter:

1. **Figure out precisely what charter provisions are to be changed.** This step is important because one change may require amending more than one provision of the charter to ensure that the charter is consistent. Changing one provision may affect other provisions. This step requires reading the whole charter to make sure you haven't skipped anything that needs changing.
2. **Clear the proposed change with your state legislative delegation.** All charter changes, private act or general law, require the approval of the Tennessee General Assembly, but the General Assembly will rarely interfere with private acts as long as they have the unanimous support of the local legislative delegation. Its attitude is usually, "Let locals take care of local business." But if you decide to sneak or ram your private act through the General Assembly in the teeth of opposition from any member of your



legislative delegation, don't bet more than you can afford to lose that the act will make it.

3. **Adopt a resolution containing the proposed charter change and ask a member of your legislative delegation to introduce the change in the General Assembly.** The part of the resolution containing the proposed change should be in letter perfect form and should specify exactly what and where the charter should be amended. Sample copies of two resolutions are included in Appendix A. The first resolution may be used when a limited number of changes in the charter are contemplated. The second resolution may be used when some of the charter is being deleted entirely and replaced by totally new contents. Appendix B contains some brief tips and examples useful for amending private act charters.

Be sure to include in the proposed change the method of local approval of the private act. Amendment Number 6 of the 1953 amendments to the Tennessee State Constitution requires private acts to be approved in one of two ways:

- By a two-thirds vote of the entire membership of the municipal governing body, or
- By a majority vote in a referendum held on the question of approval of the private act.

Because the private act contains the method of its approval, the method also must have approval of the local legislative delegation. Generally, legislative delegations don't object to approval by a two-thirds vote of the municipal governing body; however, occasionally local political conditions lead legislative delegations to mandate local approval by referendum. But referendums are expensive, and, historically, private acts traveling that track have been derailed by the voters. Carefully weigh the prospects for approval of your private act by referendum before you spend time writing one.

Outline a public campaign to ease its passage if you do write it. Obviously, clearing the **method** of approval of the private act as well as its contents with your legislative delegation is a wise early move.

4. **Give the resolution to your legislative delegation within the time frame it prescribes and check from time to time on its introduction and movement through the Tennessee General Assembly.** Getting the proposed private act to your legislative delegation on time is essential. This gives the General Assembly adequate time to pass the act before it adjourns. Most legislative delegations want the proposed private act at least 30 days before the date set for adjournment of the General Assembly. That date usually can be determined (approximately) by checking with your legislators. Once the proposed private act is in the hands of the General Assembly, its journey through the legislative process is relatively certain and speedy. After passage by the General Assembly, the proposed private act goes to the governor for signature, which usually is a formality.
5. **Read the private act when it comes back to you after its passage by the General Assembly and its approval by the governor.** Your proposed private act goes through certain steps after it leaves your hands and before it actually goes to the General Assembly for a vote, including a check for proper language and form. Most of the time, any changes made in a proposed private act during those steps are beneficial. However, occasionally something is added or taken out of an act that substantially alters its meaning. Make sure that what came out of the General Assembly is what you thought went in.
6. **Obtain approval of the proposed private act by whatever method is prescribed in the act and submit evidence of approval to the Tennessee secretary of state.** As pointed



out earlier, private acts requiring approval by referendum are regularly rejected by the voters. Some get exactly what they deserve from a well-informed electorate, which knows a clunker when it sees one. But a major reason good acts meet the same end is that they frequently don't receive the intense support they need from the individuals and groups interested in their passage.

Members of the municipal governing body and the charter committee members usually have responsibility for convincing the public to vote for the changes. Various civic organizations, clubs and groups often assume some of the responsibility, as well.

A well-planned campaign for public support for the act can be a good investment. Most successful campaigns involve nothing more dramatic than an aggressive public information effort begun early and ended late. Some campaigns succeed because the question of whether the public wants the amendment is answered **before** it's written.⁴ In any event, if your charter amendment requires local approval by referendum, it's only halfway home when it's signed by the governor. Have a good idea by then what it will take to get it all the way home.

The Tennessee secretary of state will give the municipality a copy of the proposed private act passed by the General Assembly and signed by the governor, and a form requesting the chief executive of the municipality to certify that the proposed private act was approved locally by the method prescribed in the act.

If approval by referendum is prescribed in the act, contact the county election commission to schedule an election on the approval. According to T.C.A. § 2-3-204, elections on questions submitted to the people shall be held not less than 45 days nor more than 60 days after the

county election commission is directed to hold the election under the law authorizing or requiring the election. But if the date for the election would fall within 30 days of an upcoming primary or general election, the election commission is authorized to schedule the election on the same day as the primary or general election.

Regardless of what method of local approval is prescribed by the proposed private act, **make sure that any deadline dates for approval contained in the act are met.** To avoid last minute scrambling on the part of the municipal governing body or the county election commission to meet the deadline date, be realistic in setting such dates when the act is written, or don't set any. However, take note that T.C.A. § 8-3-202 provides that:

If any act provides a deadline for local approval or disapproval, within 30 days after approval or disapproval, it shall be the duty of the presiding officer of the local legislative body ... to certify to the secretary of state whether the act was approved or disapproved. If an act does not specify such a deadline, *a failure to approve by December 1 of the year following date of adjournment of the session at which the act was passed shall render it null and void and of no effect whatsoever.* (Emphasis is author's.)

AMENDING A GENERAL LAW CHARTER

AMENDING GENERAL LAW CHARTERS CAN BE DIFFICULT

The role municipalities with general law charters have in amending their charters doesn't compare to the one municipalities with private act charters have. Remember: There are five general law charters, and each of those charters covers every city or town in Tennessee with that particular charter. If the General Assembly amends one of the general law charters, it amends that charter for every one of the cities or towns that have that charter (or all of the cities or towns within a certain class — generally



population). An amendment to a private act charter affects one municipality, while an amendment to a general law charter may affect a substantial number of them, except in the case of the metropolitan government charter and the charter unification act charter.

The consequence is that it's sometimes not as easy to amend a general law charter as it is a private act charter. A city or town with a particular general law charter wanting a charter amendment may find that it's the only city or town with the same general law charter that wants the amendment. But even if a substantial number of cities or towns with a general law charter can agree upon an amendment they may **still** find it difficult to get the amendment through the General Assembly. General laws are more difficult to get through the General Assembly than private acts because legislators look at them more critically. General laws usually involve so much territory, population, and politics that the informal rule of "let the locals take care of local business," which applies to private acts, flies out the window.

OVERCOMING GENERAL LAW CHARTER LIMITATIONS

If you thought you were confused before, listen to this: Even though a general law charter municipality can't obtain a charter amendment in the same way as can a private act municipality, there are apparently two ways it might, in limited circumstances, overcome limitations or restrictions.

First, it might "supplement" its general law charter by private act as long as the act doesn't conflict with the general law charter. For example, let's look at what the Tennessee Court of Appeals said in the unreported case of *Kemp v. City of Berry Hill*, 9 TAM 7-14 (1983). The City of Berry Hill has the **general law** uniform city manager-commission charter. Until 1995, a provision of that charter gave the city manager the authority to appoint and remove all department heads and employees, but

qualified that authority by saying "all appointments to be made upon merit and fitness alone" (T.C.A. § 6-21-108(2)). But the City of Berry Hill also has a **private act** that predates the charter and establishes a civil service system giving city employees certain rights, including a civil service discharge hearing. A police officer challenged his discharge by the city on the grounds that the city manager didn't give him a civil service discharge hearing. The city argued the **private act** was an attempt by the legislature to suspend the **general law** in violation of Article 11, Section 8, of the Tennessee State Constitution, which says:

The legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land ...

But the state Court of Appeals held that because the city manager's employee appointment and removal authority qualified "all appointments to be made upon merit and fitness alone ...," the establishment of certain employee rights by private act wasn't in conflict with, but supplemental to, the general law. Based on the reasoning in that case, if a general law charter municipality objects to some provision of its charter or finds the charter lacking in some respect, it might resolve the problem by writing a private act "supplementing" but **not conflicting** with its charter.

An alternative to supplementing a general law charter by a private act might be an ordinance or resolution that "supplements" the general law charter. There is probably no reason why Berry Hill couldn't have passed a personnel merit ordinance or resolution containing the same provisions as the private act at issue in *Kemp*. Such an ordinance or resolution would have "supplemented," not conflicted with, the charter.



Writing private acts supplementing general law charters probably applies only to narrow legal circumstances. That kind of writing is an area in which angels, let alone municipal officials and lawyers, should fear to tread without doing a lot of homework and being very careful.

The second way a municipality might overcome general law charter limitations and restrictions is to pass a general law of local application. In an earlier section discussing the difference between private and general acts, we mentioned general laws of local application that apply to all municipalities within a certain class, such as all municipalities within certain population brackets. Most such general laws apply to only one, or at most a very few, municipalities. For example, in a general law providing for the distribution of the state sales tax, a “premiere type tourist resort” can elect to receive a tax distribution different from other municipalities’ tax distribution. However, that law defines a “premiere type tourist resort” as “A municipality having a population of one thousand one hundred (1,100) or more persons, according to the federal census of 1970 or any subsequent federal census, ... ”

That same law further sets apart by certain real estates uses within its boundaries characteristic of tourist towns (T.C.A. § 67-6-l03 (a)(3)(B)(i)).

Technically, that general law applies to **all** municipalities in Tennessee that now, or later, meet both the population and property valuation requirements, but the reality is it was written for **a very small number** of municipalities. Clearly, such a general law is one in name only; it has limited local application. A general law of local application represents the state legislature passing what amounts to a private act disguised as a general law. The result of such a law is really an “amendment” to the general law charter of the municipality or municipalities for which it is written.

But look back at Article II, Section 8, of the Tennessee State Constitution — carefully! The courts have had trouble with some general laws of local application because of that provision; with others it hasn’t. You’re whistling Dixie on a Yankee flute if you think you can reconcile the cases on the subject, so it’s tough to predict whether a particular general law of local application will survive a legal challenge. Generally, for one to survive a legal challenge, it must be supported by a reasonable basis for the state legislature to treat the municipality or municipalities for which it was written differently than others. Why should **your** municipality be favored or discriminated against by special legislation?

Think about that question for a little while and you’ll see that drafting special legislation (disguised as a general law) that is supported by a “reasonable basis” that will satisfy the courts may not be an easy job. But the fact that it is done is proof that in some cases it **can** be done.

However, if your city or town sees a problem with its general law charter it should bring the problem to the Tennessee Municipal League. The solution may be to pass an amendment to the charter itself, a general law covering all municipalities in Tennessee, or a general law of local application. It may be that TML won’t see a problem with your general law charter or that it will decide a cure is worse than the disease — perhaps curing your municipality’s problems will kill 25 other cities.

AMENDING HOME RULE CHARTERS **HOME RULE CHARTER MUNICIPALITIES** **AMEND THEIR OWN CHARTERS**

Home rule charter municipalities in Tennessee are peculiar — they amend their own charters. Amendment Number 7 of the 1953 amendments to the state constitution prohibits the General Assembly power to pass general laws governing home rule municipalities and says that no charter



shall be inconsistent with the general law (except with respect to employee compensation).

THE HOME RULE CHARTER AMENDMENT REFERENDUM

Home rule municipalities amend their charters by local referendum. Amendment Number 7 provides three ways amendments to home rule charters are proposed and formulated for submission to voters in a referendum:

- By passage of an ordinance by the governing body of the municipality;
- By a charter commission established by an act of the General Assembly and elected by the qualified voters of the home rule municipality; or
- By a charter commission of seven members chosen at large (not more than once every two years) in a municipal election held pursuant to a petition of not less than 10 percent of the voters of the home rule municipality voting in the latest general municipal election.

The 14 home rule municipalities usually use the first method, by ordinance of the municipal governing body, to propose charter amendments for referendum. The second method has never been used, and the third method apparently has been used only rarely.

However, charter commissions have been established even by municipal governing bodies using the ordinance method to submit home rule charter changes to the voters. Many of those home rule charter commissions play an important part in drafting new charters and other charter changes, some to the extent that their work has been accepted with little or no change by the governing bodies that appointed them. However, from a strictly legal standpoint, the work of those home rule charter commissions represented only recommendations for charter changes. That point isn't made to diminish the value of the work of

home rule charter commissions or to discourage their use.

Even where the home rule municipality is using the ordinance method for submitting a charter amendment to the voters, a home rule charter commission can perform important — sometimes essential — service in drafting charter amendment proposals. Everything we said in the section “Who Should Be Involved in Drafting The Charter Amendment” applies to home rule charters except, of course, the information about the methods of local approval of private acts.

The purpose of outlining the legal relationship between the home rule municipality's governing body and the charter commission is to make sure that everyone understands that the legal trigger of the home rule charter amendment method (which requires proposed amendments to be submitted to the voters in ordinance form) is the ordinance. Without that, proposed amendments can have the charter commission's unanimous support and a good conduct medal and still not make it to the voters. Everyone who participates in the home rule charter amendment process using that method should understand this point from the beginning. After a proposed charter amendment is created by one of the three methods in Amendment Number 7, the municipal governing body is required to publish the proposed amendment. No particular form of publication is given in Amendment Number 7, but publication in a newspaper of general circulation is probably the best method.

The referendum on adopting the proposed charter amendment must be held during the first general state election falling at least 60 days after publication of the proposed charter amendment. A general state election is apparently either the primary election in August or the following general election in November, both of which are held every even-numbered year. That definition



restricts referendums on charter changes in home rule municipalities to once every two years at fixed times. To pass the proposed charter amendment, a majority vote from those voting on the question is required, not a majority of those voting in the election in which the question was presented to the voters.

WARNING – UNCONSTITUTIONAL HOME RULE CHARTER CHANGE “AUTHORIZED” BY STATUTE

T.C.A. § 6-53-105(a) provides that:

In any municipality that has adopted home rule, where any question subject to local approval, under the provisions of the Constitution of Tennessee, Article XI, Section 9, has not been approved by a two-thirds (2/3) vote of the local governing body, a petition signed by the qualified voters of the municipality in a number amounting to at least ten percent (10%) of the votes cast in the last election for mayor may be filed with the appropriate election commission officials not later than sixty (60) days prior to the day of the next regular election or primary and the question shall be placed on the ballot of the next regular election. Where the total cost of conducting a special election pursuant to the Constitution of Tennessee, Article XI, Section 9, is defrayed completely by private financial contributions, a special election may be held for the purpose of approving or disapproving the question.

This statute clearly contravenes Article XI of the Tennessee Constitution. The third through eighth paragraphs of Article XI, Section 9, is the product of the 1953 Limited Constitutional Convention, and was submitted to, and approved by the people, as Amendment No. 7. It reads as follows:

Any municipality may by ordinance submit to its qualified voters in a general or special election the question: “Shall this municipality adopt home rule?” [Para. 3]

In the event of an affirmative vote by a majority of the qualified voters voting thereon, and until the repeal thereof by the same procedure, such municipality shall be a home rule municipality, and the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect. [Para. 4]

Any municipality after adopting home rule may continue to operate under its existing charter, or amend the same, or adopt and thereafter amend a new charter to provide for its governmental and proprietary powers, duties and functions, and for the form, structure, personnel and organization of its government, provided that no charter provision except with respect to compensation of municipal personnel shall be effective if inconsistent with any general act of the General Assembly and provided further that the power of taxation of such municipality shall not be enlarged or increased except by general act of the General Assembly. The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered. [Para. 5]

A charter or amendment may be proposed by ordinance of any home rule municipality, by a charter commission provided for by act of the General Assembly and elected by the qualified voters of a home rule municipality voting thereon or, in the absence of such act of the General Assembly, by a charter commission of seven (7) members, chosen at large not more often than once in every two (2) years, in a municipal election, pursuant to petition for such election signed by the qualified voters of a home rule municipality not less in number than ten (10%) percent of those voting in the then most recent general election. [Para. 6]



It shall be the duty of the legislative body of such municipality to publish any proposal so made and to submit the same to its qualified voters at the first general state election which shall be held at least sixty (60) days after such publication and such proposal shall become effective sixty (60) days after such approval by a majority of the qualified voters voting thereon. [Para. 7]

The General Assembly shall not authorize any municipality to tax incomes, estates or inheritance, or to impose any other tax not authorized by Sections 28 or 29 of Article II of this Constitution. Nothing herein shall be construed as invalidating the provisions of any municipal charter in existence at the time of the adoption of this amendment. [Para. 8]

The genesis of Amendment No. 7 was Resolution No. 118, introduced on Wednesday, June 3, 1953, in the 1953 Limited Constitutional Convention by Rep. Sims et al. [See Journal and Proceedings of the Limited Constitutional Convention, p. 261; hereinafter referred to as "Journal."]

Article XI, Section 9, of the Tennessee Constitution provides for the means by which a municipality can adopt home rule. There are at least two reasons that T.C.A. § 6-53-105, is fatally flawed under Article XI, Section 9. The first reason is that Article XI, Section 9, expressly and unequivocally proves the exclusive ways by which a home rule charter can be amended:

- By passage of an ordinance by the governing body of the municipality;
- By a charter commission established by an act of the General Assembly and elected by the qualified voters of the home rule municipality; or
- By a charter commission of seven members chosen at large (not more than once every two years) in a municipal election held pursuant to a petition of not less than 10% of the voters of

the home rule municipality voting in the latest general municipal election.

None of the three methods for amending a home rule charter expressly prescribed by Article XI, Section 9, of the Tennessee Constitution remotely includes the method contained in T.C.A. § 6-53-105(a). In fact it is clear from Rep. Sims' explanation of Resolution 118 to the 1953 Limited Constitutional Convention that those methods were the exclusive methods by which amendments to home rule charters could be accomplished and that even the General Assembly could not add to, nor change, those methods.

The Journal reflects that in his introduction to Resolution 118, on Wednesday, June 3, 1953, Mr. Sims says with respect to home charter amendments:

The next paragraph is the simple procedure that was in Resolution 105; it provides that a home rule municipality may propose by an ordinance or through a charter commission which has been authorized by an act of the General Assembly, and elected by the qualified voters of the home rule municipality, changes in the charter and require a vote thereon; the changes in the city charter may be initiated in that manner.

Now, the next provision is that if the General Assembly fails to authorize a charter commission to be elected by the people, then in that event only, ten percent of those voting in the most recent municipal election may file a petition and propose an amendment or a change in the charter; but that ten per cent would not have the right to do so if there has been a charter commission authorized by the General Assembly, and it is to be elected by the people. [Journal, at 1011-12]



Following Mr. Sims' introduction of Resolution 118, there followed a question-and-answer period relative to home rule that included the following exchange between Mr. Sims and one of the delegates:

MR. FRIERSON: Mr. Sims, under your proposal if a municipality adopts the home rule under this charter, and then they sought to change the charter by an amendment to the charter, by a petition of the people, that is on your second page there, you say not less than ten per cent of those voting in the most recent general election. Now, if a municipality wants to adopt this plan, can they increase that percentage to say twenty-five percent or fifty percent?

MR. CECIL SIMS OF DAVIDSON: No.

MR. FRIERSON: In these smaller cities?

MR. CECIL SIMS: It has to be changed here and now.

MR. FRIERSON: You say it isn't in this, but I wonder if we vote to come under this home rule, if there could be a provision put in there whereby we could in smaller cities have twenty-five percent of the people petitioning it. In some of our smaller cities we don't have many that go to the polls, a very few, and ten percent would be extremely few.

MR. CECIL SIMS OF DAVIDSON: As it stands there, if the legislature by a general act provided for a different charter commission, in the absence of this charter commission, you would have to do it by not less than ten percent of those voting; some delegates want to make it fifteen or twenty percent.

MR. FRIERSON: Could a city adopting this make a provision of say twenty-five percent of those?

MR. CECIL SIMS OF DAVIDSON: It would be all right with me if the delegates want to make that twenty-five percent, but you would have to do it now.

MR. FRIERSON: By amendment to this?

MR. CECIL SIMS OF DAVIDSON: Yes.

MR. FRIERSON: We could do that to the charter, couldn't we?

MR. CECIL SIMS OF DAVIDSON: Not if you want the people in Columbia to have the right in that contingency to propose an amendment; if you want to have at least twenty-five percent, then you must change that figure now from ten to twenty-five percent. [At 1015-16]

Mr. Sims never suggested or even intimated in his introduction of Resolution 118, or in his exchange with Mr. Frierson, that the General Assembly could after the adoption of Amendment 7 go back and legislate a change in the methods for amending home rule charters. Although the exchange between Mr. Sims and Mr. Frierson applied to the third method, the obvious corollary is that the exchange applied to all three methods.

In *Washington County Election Commissioners v. City of Johnson City*, 350 S.W.2d 601 (1961), the Tennessee Supreme Court analyzed Article XI, Section 9, with respect to the above three methods outlined therein for amending a home rule charter, and declared that:

Thus, a charter or amendment may be proposed by such a municipality itself, by "ordinance," or by a "charter commission," provided for by Act of the Legislature and elected by the voters of the municipality; or if there is no such Act, chosen in the municipal election by the voters in the manner set out in section (3) above ... [At 603]



That case dealt with the question of whether the methods prescribed by Article XI, Section 9, for amending a home rule charter were self-executing. In holding that the answer was yes, the Court declared that:

So, when it says a charter change may be proposed by “ordinance” of such municipality, it refers to action by the legislative body of the municipality; when it says such a change may be proposed by charter commission as set out in (2) above, it refers to action by the Legislature and by the voters of the municipality; likewise when it says such change may be proposed by such commission chosen as set out in (3) above, it contemplates action by the voters in a municipal election to be called and held according to existing laws.

Thus, this provision gives the right and supplies the rule for its enforcement, in each of the three ways set out; and it assumes the existence of the functionaries that are to act in each case and the laws and ordinances under which they are to act. Though these may differ in different municipalities, this provision is nonetheless self-executing in all of them without the aid of supplemental legislation.

It is true that though the language in (3) above states in some detail the rule governing the choice of the charter commission in the municipal election, it does not specify the qualifications of the candidates for, or members of, such commission. It assumes, as the Chancellor held, that this may be done by the legislative body of the municipality involved.

As we have seen, the self-executing nature of this constitutional provision is not impaired by reason of its omission to set forth such minor details as to when and where the charter

commissioners shall meet and how and to whom they shall report their proposals, if any.

This provision is immediately followed by the provision that it “shall be the duty of the legislative body of such municipality to publish any proposal so made and to submit the same to its qualified voters,” etc. So, the plain implication is that the commissioners shall report their proposals to the City’s legislative body. [At 604-605]

It was held in *State v. Dunn*, 406 S.W.2d 480 (1973), that:

... a self-executing constitutional provision does not necessarily exhaust legislative power on the subject, but any legislation must be in harmony with the constitution and further the exercise of constitutional right and make it more available. [At 488]

There is not the slightest hint in the records of the Limited Constitutional Convention of 1953, or in any of the above cases, that any method for amending a home rule charter can be gleaned from Article XI, Section 9, except the three methods contained therein. Indeed, they point to the proposition that of the three methods contained in Article XI, Section 9, for amending a home rule charter, only the second method contemplates any action by the General Assembly. *State v. Dunn* stands for the proposition that even if the General Assembly were free to legislate with respect to the three methods contained in Article XI, Section 9, T.C.A. § 6-53-105(a) plainly fails because it is not in harmony with any of those methods.

Article XI, Section 9, of the Tennessee Constitution pertinent to the amendment of home rule charters provides that such charters “may” be amended by one of the three methods listed. It can be argued that the “may” reflects discretionary language that



gives the General Assembly the authority to add to the methods by general legislation that is an extremely weak argument. Article XI, Section 3, of the Tennessee Constitution, on its face, provides two ways the Tennessee Constitution can be amended.

First, “Any amendment or amendments to this Constitution *may* [emphasis is author’s] be proposed in the Senate or House of Representatives ... ” Where this method and the procedures prescribed for this method are followed, the amendment or amendments is/are finally submitted to the people for a vote.

Second, “The Legislature shall have the right by law to submit to the people, at any general election, the question of calling a convention to alter, reform, or abolish this Constitution [or any part or parts of it].” Where this method, and the procedures prescribed for this method, are followed, the amendment or amendments is/are also finally submitted to the people.

Notwithstanding the “may” language contained in the first method, it was declared in *Metropolitan Government of Nashville & Davidson County v. Poe*, 383 S.W.2d 265 (1964), that “The only method by which the Constitution may be amended is set out in Article XI, Section 3 of the Constitution itself.” [At 268] The “may” creates discretion only as to which of the two enumerated methods can be used to amend the Tennessee Constitution. The same thing is unquestionably true with respect to the “may” language contained in Article XI, Section 9, relative to amendments to home rule charters; there the “may” creates discretion only as to which of the three methods can be used to amend such charters.

That brings us to the second reason T.C.A. § 6-53-105(a) is fatally defective. Under Article XI, Section 9, of the Tennessee Constitution it is not possible for a home rule charter amendment to receive the approval at the local level by

a two-thirds vote of the local governing body. Whoever proposed that statute apparently did not understand the distinction between how private act charters and home rule charters are amended.

As pointed out above, Article XI, Section 9, permits the continued existence of municipalities chartered under private acts [Para. 8], but not the future creation of new private act municipalities. [Para. 5] Approximately two-thirds of Tennessee cities continue to be chartered under private acts. Under Article XI, Section 9, the General Assembly has no power to pass private acts that alter the salary of incumbent local public officers or that shorten the term of such officers. In addition Article XI, Section 9, requires that private or local acts applicable to counties and municipalities receive local approval, either by a two-thirds vote of the local government’s governing body, or by a majority vote in the affected municipality or county, as provided by the private act itself. [Para. 2]

But Article XI, Section 9, provides that in the event home rule is adopted by a municipality, “such municipality shall be a home rule municipality, and the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect.” [Para. 4] While T.C.A. § 6-53-105(a) is ostensibly a general law that applies to all home rule municipalities, we have seen above that Article XI, Section 9, itself provides the three exclusive methods by which home rule charters are amended, and that T.C.A. § 6-53-105 (a) is inconsistent with each and every method. None of them remotely provide for a two-thirds vote of the governing body, the failure of which triggers a voters’ initiative upon petition of 10 percent of the voters. The third method provides for a charter commission of seven members to be elected by the people, upon a petition of 10 percent of the voters. That method cannot possibly be stretched so far as to include T.C.A. § 6-53-105(a).



It is elementary law that where a statute clearly contravenes a provision of the Tennessee Constitution, the statute must yield to the Constitution. In fact, it has been held that legislation that is unconstitutional is no law at all. [See State ex rel. *Knight v. McCann*, 72 Tenn. 1 (1879). Also see *Smith v. Isenhour*, 43 Tenn. 214 (1866); *Bank of Tennessee v. Woodson*, 45 Tenn. 176 (1867); *Shaw v. Woodruff*, 156 Tenn. 529, 3 S.W.2d 167 (1928); *Matill v. City of Chattanooga*, 132 S.W.2d 201 (1939) *Hart v. City of Johnson City*, 801 S.W.2d 512 (Tenn. 1990); *Vollmer v. City of Memphis*, 730 S.W.2d 619 (Tenn. 1987); *Bufford v. State*, 845 S.W.2d 204 (Tenn. 1992).]

PARTING ADVICE

When all else fails, and preferably before that, call MTAS if you need help with your charter amendments. Now, go forth and do good to your charter — and do good with it, too.



Appendix A - Sample Forms for Private Act Charter Amendments Amendments to Specific Provisions of the Private Act Charter

RESOLUTION

WHEREAS, the City of Turtle Creek, Tennessee, incorporated by Chapter 22 of the Private Acts of Tennessee for 1939, as amended, of the General Assembly of the State of Tennessee; and

WHEREAS, the interest of the *City of Turtle Creek*, Tennessee, will be served if the charter of the city is further amended; and now, therefore;

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN (*OR OTHER GOVERNING BODY*) OF THE CITY OF TURTLE CREEK, TENNESSEE, THAT:

The Honorable Name of Legislator(s) is hereby requested to introduce the following act to the General Assembly of the State of Tennessee:

AN ACT to amend the charter of the City of Turtle Creek, Tennessee, being Chapter 22 of the Private Acts of Tennessee for 1939, as amended:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

Section 1. Section 6 is amended by deleting from it in its entirety paragraph one (1) and replacing it with the following language:

(1) BE IT FURTHER ENACTED, That the mayor shall have the power to appoint a chief of police at a salary to be set by the board of mayor and aldermen.

Section 2. Section 8 of the charter is amended by deleting the words "city marshal" and replacing them with the words "chief of police."

Section 3. Section 11 of the charter is amended by adding a paragraph thirty-six (36) which shall read as follows:

(36) To exercise and have all other powers, functions, rights, and privileges necessary to promote or protect the safety, health, peace, security, good order, comfort, morals, convenience, and general welfare of the city and its inhabitants.

Section 4. This act shall become effective when it has been approved by the board of mayor and aldermen (or other governing body) of the *City of Turtle Creek* by a vote of not less than two-thirds of the entire membership of the board (or other governing body) (alternatively, by a majority vote in a referendum held for the purpose of approval of the act) within _____ days of its signing by the governor of this state. The approval or nonapproval of the act by the board of mayor and aldermen (or other governing body) shall be certified by the mayor (or other chief executive) of the *City of Turtle Creek* to the Tennessee Secretary of State.

ADOPTED THIS _____ DAY OF _____, 20_____.

Signed: _____

Attested: _____



Replacement of the Entire Text of the Charter

RESOLUTION

WHEREAS, the *Town of Washboard Flats*, Tennessee, is incorporated by Chapter 99 of the Private Acts of Tennessee for 1913, as amended, of the General Assembly of the State of Tennessee; and

WHEREAS, it now appears that the interest of the *Town of Washboard Flats* will be served if the charter is further amended; and now, therefore;

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN (OR OTHER GOVERNING BODY) OF THE *TOWN OF WASHBOARD FLATS*, TENNESSEE, THAT:

The Honorable Name of Legislator(s) is hereby requested to introduce the following act in the General Assembly of the State of Tennessee:

AN ACT to delete in its entirety the present charter of the *Town of Washboard Flats*, Tennessee, which is Chapter 99 of the Private Acts of Tennessee for 1913, and all acts amendatory thereto, and to replace it with the following charter as follows:

Section 1. Chapter 99 of the Private Acts of Tennessee for 1913, and all acts amendatory thereto, are deleted and replaced in their entirety by the following charter:

Section 1 Corporate Boundaries, General Corporate Powers

Be it further enacted, That this act shall constitute the charter of the *Town of Washboard Flats*, Tennessee, deleting and replacing in its entirety the charter provided by Chapter 99 of the Private Acts of Tennessee for 1913, and all subsequent amendments thereto ...

(Remainder of charter here)

Section 2. This act shall become effective when it has been approved by the board of mayor and aldermen (or other governing body) of the *Town of Washboard Flats* by a vote of not less than two-thirds of the entire membership of the board (or other governing body) (alternatively, by a majority vote in a referendum held on the question of approval of the act) within _____ days of its signing by the governor of this state. The approval or nonapproval of the act by the board of mayor and aldermen (or other governing body) shall be certified by the mayor (or other chief executive) of the *Town of Washboard Flats* to the Tennessee Secretary of State.

ADOPTED THIS _____ DAY OF _____, 20_____.

Signed: _____

Attested: _____



Appendix B — Basic Tips for Amending Private Act Charters

1. Make sure the amendment amends the charter by **specific** language by reference to specific numbers of articles, sections, titles, etc., depending upon how the charter is constructed. This eliminates the need for the reader to guess where an amendment fits into the charter or what it did to existing provisions of the charter.

DO NOT: Chapter 28 of the Private Acts of Tennessee for 1929 is amended by adding a provision giving the mayor authority to appoint a person to fill a vacancy on the board of mayor and aldermen.

DO: Chapter 28 of the Private Acts of Tennessee for 1929 is amended by deleting from Section 5, paragraph 4, the sentence, “The Board of Mayor and Aldermen shall by a majority vote of its membership fill vacancies on the board” and replacing it with the sentence “A vacancy in the office of alderman shall be filled by the mayor for the unexpired term of the alderman whose office is vacant.”

2. If a particular charter provision is to be extensively amended, delete it in its entirety and replace it with an entirely new provision. This eliminates the high possibility of drafting and reading error inherent in an amendment that looks like a puzzle. An example is a provision that reads:

On the first Thursday in April, 1929, a nonpartisan election shall be conducted to elect a mayor and six aldermen and a city judge from the city at large. The current incumbent mayor, aldermen, and city judge shall serve until their successors are elected and qualified. Any elector who is 21 or over and has been a resident of the city for at least two years may be qualified as a candidate for the Board of Mayor and Aldermen. Any elector who is 30 or over and who meets the same residency requirements as a candidate for alderman may be qualified as a candidate for city judge.

DO NOT: Chapter 28 of the Private Acts of Tennessee for 1929 is amended as follows:

Section 6 is amended by deleting from the first sentence the words “first Thursday in April, 1929” and substituting the words “second Tuesday in May, 1982” and deleting the words “and a city judge”; by deleting from the second sentence the words “mayor, aldermen and city judge shall serve until their successors are elected and qualified” and substituting the words “mayor and aldermen shall serve until their successors are elected and qualified and the current incumbent city judge shall serve until the end of his term”; by deleting from the third sentence the words “twenty-one (21)” and substituting the words “eighteen (18)” and deleting the words “two (2) years” and substituting the words “six (6) months;” and by deleting in its entirety the fourth sentence.

DO: Chapter 28 of the Private Acts of Tennessee for 1929 is amended by deleting in its entirety the text of Section 6 and replacing it with the following language:

On the second Tuesday in May, 1982, a nonpartisan election shall be conducted to elect a mayor and six aldermen from the city at large. The current incumbent mayor and aldermen shall serve until their successors are elected and qualified and the current incumbent city judge shall serve to the



end of his term. Any elector who is eighteen (18) years of age and has been a resident of the city for at least six (6) months may be qualified as a candidate for the Board of Mayor and Aldermen.

3. Make sure the amendment fits grammatically into the text of the charter. This can be accomplished by simply integrating the amendment into the charter and reading it to see if the resulting sentences are complete, have subject and verb agreement, etc.

ENDNOTES

1. *Penn-Dixie Cement Corp. v. Kingsport*, 189 Tenn. 450, 225 S.W.2d 270 (1949).
2. For an outstanding treatment of the advantages and disadvantages of Amendments 6 and 7, see Victor C. Hobday, *An analysis of the 1953 Tennessee Home Rule Amendments* (Bureau of Public Administration and MTAS, The University of Tennessee, Knoxville), Second Edition, May 1976.
3. This provision may apply to some appointed as well as elected municipal officials.
4. S. Robin, "City Charter Revision: How Citizen Surveys Can Help." *National Civic Review*, June 1985, pp. 270-274.
5. For an excellent article on the various methods one municipality used to obtain passage of a comprehensive charter amendment after it had failed in two previous referenda, including the extensive use of citizen surveys on what should be in the charter, see David G. Houghton and Helenan S. Robin, "City Charter Revision: How Citizen Surveys Can Help." *National Civic Review*, June 1985, pp. 270-274.



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