

UT MTAS Library



37996008608 8

Home Rule

Home Rule

ARCHIVES

An Analysis of the 1953

Tennessee Home Rule Amendments

Number 6 and Number 7

MTAS LIBRARY

AUG 18 1976

by Victor C. Hobday

Home Rule

AN ANALYSIS OF
THE 1953 TENNESSEE
HOME RULE AMENDMENTS

By

Victor C. Hobday
Executive Director

of the

Municipal Technical Advisory Service
Division of University Extension
The University of Tennessee

in cooperation with the
Tennessee Municipal League

Published by

The Bureau of Public Administration
The University of Tennessee
Knoxville

September 1956

FOREWORD

This revision of "An Analysis of Amendments Number 6 and Number 7 to the Tennessee Constitution" is being published and distributed as a service to the Tennessee Municipal League and the municipal officials of Tennessee, as well as others who may be interested in the subject matter.

The author has made an effort to resolve doubtful questions, but municipal officials would be well-advised to obtain formal rulings from the State Attorney-General on specific problems as they arise.

The Bureau of Public Administration, as one of the research agencies of the University interested in publishing material which will be helpful to public officials, is happy to take this opportunity to make this material available in published form.

Lee S. Greene
Director

The Bureau of Public Administration

PREFACE

This is a revision of "An Analysis of Amendments Number 6 and Number 7 to the Constitution of the State of Tennessee," published in July 1954, in which I collaborated with Mr. P. Cliff Greenwood. Most of the revised parts are based on the Journal and Debates of the 1953 Constitutional Convention, which was not available at the time of the original work on this subject. Some additional information and new ideas from other sources have also been included.

I have been partially motivated, perhaps too much so, by an academic interest in the implications and subtleties of the language used, but I have also made an effort to point out problems and considerations to the city official who must operate under these amendments. I hope that my findings and conclusions might help him to avoid some pitfalls.

I gratefully acknowledge the assistance of Mr. Eugene Puett, Consultant on Municipal Law of the Municipal Technical Advisory Service, in reviewing the manuscript and for many constructive suggestions. Others who gave helpful advice and comments were Dr. Nelson M. Robinson, Dr. Wallace Mendelson, and Dr. Edward Overman, of the U. T. Political Science Department, and Mr. Herbert J. Bingham, Executive Secretary of the Tennessee Municipal League. I also wish to thank Dr. Lee S. Greene, Director of the Bureau of Public Administration, for his encouragement in this project and for making its publication possible. I assume, of course, full responsibility for the study.

Victor C. Hobday

TABLE OF CONTENTS

	<u>Page No.</u>
Summary of Amendment 6	1
Summary of Amendment 7	2
Advantages and Disadvantages of Amendments 6 and 7	4
Introduction	11
Text of Amendment No. 6.	17
What is a municipality?	18
Provision prohibiting certain kinds of private acts.	20
Who is a "public officer"?	20
May private legislation alter salaries of employees?	25
What is meaning of word "selected"?	25
Effect on reorganization or change in form of government	26
Effect on charter recall provisions.	31
A possible means of circumventing ban against private acts	32
Salary changes	34
Provision requiring local approval of private acts	36
Delegate authority to city governing body.	37
Alternative methods for local approval	37
What is meaning of "two-thirds vote"?	38
"Pocket veto" by council?	42
Majority when a joint election is held	43
Text of Amendment No. 7.	47
What is a municipality?	49
Provision on calling election to adopt home rule	49
Is legislation needed before holding such an election?	49
State laws on special elections.	52
Who may initiate a home rule election?	57
Frequency of holding elections	58
Meaning of "qualified voters".	58
Provision as to affirmative vote	59
Provision as to repeal of home rule.	59
Provision requiring only general acts as to home rule municipalities	60
Type of legislative action	60
Effect of classifying cities	64
Provision that home rule municipality may continue under existing charter.	67
Provision that home rule municipality may adopt and amend its own charter.	67
Provision that home rule charter cannot be inconsistent with general acts.	68
General acts supersede charters of home rule municipalities.	69
Very limited protection against general acts	73
Meaning of "compensation".	75
Provision regarding increase in home rule municipality's power of taxation	77
Provision requiring general acts for incorporation or annexation	80
Application to all municipalities?	80
Incorporation only under a general act?	86
Annexation only under a general act.	88
Provisions as to initiating new charter or charter amendments.	89
Provision requiring publication of charter proposals	96
Provision as to election on a charter proposal	97
What must appear on ballot?	97
Election at which to be submitted.	99
Provision as to effective date of approved charter change.	101
Provision limiting delegation of taxing power to all municipalities.	102
What taxes may be levied under this limitation?	103
Provision that existing charters are not affected by amendment	114
APPENDIX: Private acts inconsistent with general laws.	116

SUMMARY OF AMENDMENT NUMBER 6

(references are to pages in text of this report)

This amendment applies to counties and cities, and also probably to utility, sanitary, and taxing districts. (18-20).

"Officers" are protected from removal or salary changes by private acts during their terms of office, but "employees" apparently are not covered; various criteria enter into distinction between "officer" and "employee" (20-25).

Officers covered include both elected and appointed officers (25-26).

The ban against removal of an officer or a change in his salary during his term of office might prevent changes in a municipal government which result in abolition of offices (26-30). The inclusion of a recall feature in a charter would seem not to be prohibited (31-32).

The prohibition against "special, local or private acts" might be circumvented by "general" acts applying to particular cities through the device of narrow population classification, but approval of such procedure by the courts is doubtful (32-33).

A salary change by private act for an "officer" may be accomplished only before his term of office begins, providing the city council or the people approve (34-35).

No kind of private act for a county or city can become effective until approved by two-thirds of the legislative body, or by a majority of its registered voters voting in an election thereon (36-38).

The two-thirds vote of a city council approving a private act was intended to mean two-thirds of the total membership. (38-42).

It is possible that the courts would issue a writ of mandamus to compel a city council to act on a private act, following failure by the council to approve or disapprove (42-43).

Only a majority of those voting on approval of a private act is required, not a majority of all those voting in an election on other issues held at the same time (43-47).

SUMMARY OF AMENDMENT NUMBER 7
(references are to pages in text of this report)

This amendment permits "municipalities" to vote to become "home rule municipalities," and it probably applies only to incorporated towns and cities (49).

New legislation does not appear to be needed before an election may be held on the question of becoming a home rule municipality (49-52).

Only the municipality's governing body may initiate a home rule election, except that the people may do so if its charter includes the initiative feature (57).

It is questionable whether the General Assembly could limit the number and frequency of elections to vote home rule in or out (58).

"Qualified voters" eligible to vote in a home rule election means "registered voters" (58-59).

Only a majority of those voting on the adoption (or abandonment) of home rule is required, not a majority of all those voting in an election on other issues at the same time (59).

The General Assembly may deal with home rule municipalities only by general acts; whether general acts with population classifications including single cities would be upheld by the courts is questionable (60-66).

A home rule municipality may continue to operate under its present charter, or may adopt by its own action a new charter or charter amendments (67-68).

Home rule charter provisions cannot be inconsistent with general acts, except as to compensation of municipal personnel; they can be different, however, without being "inconsistent" (68-73).

No general act provision can supersede a home rule charter provision as to compensation of municipal personnel. "Compensation" probably includes any fringe benefits, allowances in kind, etc., as well as salaries and wages (73-76).

A home rule municipality may have its powers of taxation enlarged or increased only by general acts (77-80).

It appears that incorporation of new municipalities and annexation of territory by any municipality can now be accomplished only under general acts (80-89).

Two procedures are available to a home rule municipality to adopt a new charter or charter amendments (89-92). Details of the election procedures involved are analyzed (92-102).

The power of the General Assembly to delegate taxing authority to all municipalities is limited. A ban against taxing of incomes may not bar municipal payroll taxes, dependent on judicial interpretation (102-114).

Charters existing when the amendment was adopted are not affected (114-115).

ADVANTAGES AND DISADVANTAGES OF AMENDMENTS 6 AND 7

AMENDMENT 6

This amendment applies to all municipalities except those that have voted to go under Amendment 7, and a city should consider whether the degree of home rule that it affords is adequate before electing to go under Amendment 7.

Under Amendment 6 no private act may be passed "having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected."

Any other private act must contain a provision that it will not become effective unless approved by two-thirds of the legislative body or by a majority of those voting in an election, in the city or county affected. However, it should be noted that there is a possibility (perhaps remote) that this provision could be circumvented through the device of a so-called general act which by a narrow population classification actually applies to only one city or county.

Advantages of Amendment 6

1. Interference with the term or salary of any municipal officer by private act is prohibited. No such private act can be passed.

2. Needed charter amendments can be obtained by private act very simply through cooperative representatives in the General Assembly.

3. Cases decided by the Tennessee Supreme Court (see Appendix) give non-home rule cities some assurance that private acts within certain limits can be inconsistent with general laws.

4. Taxing powers may be conferred on a city by private act. Numerous taxes have been authorized by private acts sponsored by a local legislative delegation under the usual local bill courtesy system. Proposals for general state-wide tax laws invariably encounter opposition in the Legislature and are very difficult to enact. Cities under Amendment 7 must rely on such general tax laws.

5. The general public may be uninformed or apathetic on charter changes that are complicated and technical. In such cases more reasonable, intelligent action might be taken by a small group (legislative delegation and city legislative body) who can and will devote more time and study to such matters, as compared with the election procedure under Amendment 7.

Disadvantages of Amendment 6

1. Private acts may be passed which affect the tenure or salaries of employees (as distinguished from officers); however, any such act would not be effective until given

local approval as provided in the act, by one of the two methods prescribed in this amendment.

2. No charter amendment can be obtained if the local legislative delegation refuses to sponsor it. Cooperative relationships between a city administration and a legislative delegation will be necessary if the former is to obtain the legislation needed by the city.

3. An irresponsible or hostile legislative delegation could pass numerous private acts for approval by the city legislative body, some of which may be embarrassing to the city administration. Poor legislation could result from an attitude that "the final decision is to be made by the city -- let them worry about it." Multiple elections also could be required by the terms of private acts, which might create undue public controversy having unnecessarily divisive effects on a community.

4. In some cases (see Appendix) private acts affecting tenure and salaries of municipal personnel have been invalidated because they were inconsistent with general acts.

5. The General Assembly could determine the salaries of municipal officers and employees by general acts, and any private acts inconsistent therewith probably would be invalidated.

6. The possibility exists, though remote, that private bills sponsored by a cooperative legislative delegation would not be passed by the General Assembly or would be vetoed by the Governor.

7. The private act method of charter change is less democratic than the election method under Amendment 7. Private acts approved by a legislative delegation and a city legislative body may not always be in accord with the wishes of a majority of the voters in the city.

8. A strict construction of the prohibition against removing an incumbent or abridging the term of an officer could make very difficult, and in some cases might effectively block, reorganization of a municipal government; for example, when it may be desired to transfer functions from a board whose members have staggered terms. It was mentioned in the Constitutional Convention that this would probably be unavoidable, in order to accomplish the major objective of barring "ripper" legislation.

AMENDMENT 7

For Amendment 7 to apply a city must take the initiative by ordinance to call for an election on the question, "Shall this municipality adopt home rule?" If a city's charter provides for initiating ordinances, such an election could probably be called for by the petition procedure if the city legislative body does not act.

After a city has elected to go under Amendment 7, and until it elects to abandon home rule by an election, no private act of any kind may be passed for that city. The

amendment requires the General Assembly to act with respect to the city "only by laws which are general in terms and effect." The possibility also exists here, as under Amendment 6, of the so-called general act with such a narrow population classification that it is in fact a private act, but it would seem to be unlikely that such an act would be sustained by the courts.

Advantages of Amendment 7

1. No private acts of any kind may be passed. Therefore a private act affecting the tenure or salary of an employee, as well as that of an officer, is prohibited.

2. The city may amend its own charter, by popular vote, and is not dependent on the local legislative delegation in the General Assembly. The city legislative body can initiate changes by ordinance.

3. The General Assembly could fix the salaries of municipal officers and employees by general acts, but such general acts would apply in home rule cities only to the extent that they are not inconsistent with charter provisions. However, this provision probably would not prevent the withholding of State educational grants for failure to pay State-prescribed salaries to teachers.

4. Charter changes can be accomplished without requiring approval by the General Assembly and the Governor.

5. It can be said that charter changes are truly democratic, because they must be approved in elections open to all voters in a home rule municipality.

6. Reorganization of a municipal government could be accomplished by locally-approved charter changes, free of the restrictions in Amendment 6 on removing incumbents or abridging terms of officers.

Disadvantages of Amendment 7

1. The city loses the relatively simple procedure of securing desired legislation through private acts.

2. Amendment of the charter is fairly cumbersome, especially if a charter commission is elected instead of proposal by ordinance. The self-executing provision for election of a charter commission is silent on such details as qualifications of candidates, how they shall be nominated (by petition? if so how many signers?), and a deadline for accepting nominations. Such details might be troublesome if not clarified by a general act.

3. In view of the provision that "no charter provision... shall be effective if inconsistent with any general act," and the absence of cases construing this provision, the extent of permissible variation from general acts is uncertain, as compared with the non-home rule city which apparently can rely on past cases for limited exceptions (see Appendix). The Court could limit such inconsistency

to the single exception specified in this amendment, "with respect to compensation of municipal personnel," or it could interpret the word "inconsistent" in this amendment to give the same latitude accorded to non-home rule cities. This doubtful area of interpretation might be regarded as a disadvantage.

4. A city's taxing powers may not be enlarged by private act. For example, had Memphis been a home rule municipality the 1955 private act empowering that city to levy a 3 per cent tax on liquor and a cigarette tax of 1¢ per package could not have been enacted.

5. The lack of court cases interpreting this amendment may cast a shadow of doubt over some actions thereunder. The extent of home rule for cities in some states has been seriously circumscribed by judicial interpretation, while in other states the court decisions have been more favorable toward cities.

6. Public interest is notably apathetic in referendum elections on details of governmental operations. Frequent referendums and low voting percentages can permit special interest groups to dominate such elections.

INTRODUCTION

The people of Tennessee, on November 3, 1953, approved eight constitutional amendments, thus making the first change in the state's Constitution since its adoption in 1870. Two of these amendments, numbers 6 and 7, are especially significant for the municipalities of Tennessee. The sixth limits the power of the state legislature to pass private or special legislation; the seventh is the "optional home rule amendment." This publication is an analysis of the provisions of these two amendments in some detail, primarily from the legal point of view, but with some attention also to practical considerations.

These two amendments were generally referred to in the Convention as the "Home Rule Amendments." There was general agreement on the provisions of Amendment 6 (approved by a vote of 85 to 5), but Amendment 7 was the most controversial issue in the Convention (approved by a vote of 55 to 36). The importance of the former was highlighted by the fact that it was the only issue mentioned by Chief Justice Neil, of the Tennessee Supreme Court, in an address to the Convention.¹ The latter

¹"I doubt the propriety of my undertaking to give any advice to the members of this body....But I am frank to say that certain changes should be made....Over the years there

divided the delegates and provoked a great deal of thought and debate.²

The Tennessee Municipal League took a leading part in sponsoring the movement that culminated in these two amendments. It undertook an extensive publicity campaign and urged the mayors of all cities to assume leadership for constitutional revision in their respective communities.

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." The Journal and Debates of the Constitutional Convention (Knoxville, Bureau of Public Administration, University of Tennessee, 1953), p. 392. Hereinafter referred to as Debates.

²Mr. Fletcher: "...this question of home rule, I spent more study on it than on all of the other five subjects before us, combined." Debates, pp. 949-950.

Mr. Hooper: "We are dealing with the biggest, broadest, most complicated question that has been before this Convention....It affects all the county governments and all the city governments, and you may say that it is not only new, it is rather novel to Tennessee." Debates, pp. 962-963.

Mr. Hill: "I am convinced that there is not a delegate on this floor sufficiently advised of all the complex and far-reaching implications of that most uncertain and illusive term 'home rule' to draft a broad and comprehensive amendment on the subject...the uncertain limits and broad implications of which no one has presumed to be able to describe with any degree of certainty." Debates, p. 964.

Pres. Cooper: "I think the Committee on Home Rule has had more dissension and more disagreement than any committee of the Convention, but....they have had a far more complicated question, a question that involves far more information...." Debates, p. 974.

Materials and suggested drafts for an amendment were furnished by the League, and its representatives maintained close working relationships with members of the Convention. Although its proposals were revised, the League unquestionably was a major influence in the deliberations of the Convention, and it contributed substantially in achieving an acceptable compromise on a very difficult issue.

In view of the interest of the League in this matter, the following statement was obtained from the League's Executive Secretary:³

City officials should proceed cautiously and only for good cause in considering whether to become a home rule municipality under Amendment No. 7. The pros and cons should be carefully weighed in relation to each city's own circumstances.

The League supported Amendment No. 7 as a means of enabling those cities that need to do so to escape harassment by hostile political forces in control of local legislative delegations. Even though subject to local veto under Amendment No. 6, such delegations can still pass private acts that are narrowly partisan, punitive, and disruptive of sound local government. And they can absolutely block amendments to a city's charter by refusing to introduce private bills. In rare instances emergency amendment of a charter may be needed before the next session of the General Assembly. Under such circumstances a city may be well-advised to go under Amendment No. 7. It may then amend its charter entirely by local action, subject to the limitations stated in the Amendment.

As I see it the principal disadvantage of electing to be covered by Amendment No. 7 is the in-

³See also an editorial in Tennessee Town & City (official magazine of the Tennessee Municipal League), March 1954, Vol. V, no. 3, p. 19.

ability of a city to secure amendments to its charter through private acts, especially with respect to taxing powers. Taxes on hotel accommodations in Gatlinburg, on cigarettes and liquor in Memphis, and on amusement admissions in Knoxville, are a few examples of such private acts. New taxing powers can be acquired very easily by private acts through a cooperative legislative delegation, but may be extremely difficult to obtain through general acts. Although this League, through the state-wide cooperation of municipal officials, has been able to win from the General Assembly virtually every necessary authority for municipal governments, its two most notable failures came in efforts to expand the taxing power of municipalities.

The small city may find that going under Amendment No. 7 is the only way to obtain needed charter changes. The typical small town has less than one per cent of the total vote cast for its State Senator, and few cities have over 10 per cent. The voters in these towns and cities are thus completely helpless at the polls and cannot, with their few votes, insure election of legislators with a sound platform for their city or defeat those hostile to their city government. Some senators have as many as 15 towns and 6 counties in their district and can veto (by refusing to enact) a change in any or all of these local governments, however much it may be locally supported.

Short of adoption, Amendment No. 7 may be useful in securing prompt and fair consideration of municipal charter requirements from a local legislative delegation on the basis: if the local charter changes required are not enacted, a community can protect its interests through the adoption of optional home rule and charter change locally. Faced with the possibility of thus losing control over a municipality, a legislative delegation might become more cooperative.

Any city should give this matter careful consideration before electing to go under Amendment No. 7. One good feature is that a decision is not irrevocable, as reverse action may be taken if

experience under this Amendment is unsatisfactory -- home rule status may be terminated by a majority vote in an election for this purpose.

Constitutional and statutory provisions quite often require judicial construction. As stated by one authority, "in those states where home rule has failed, failure has resulted primarily from the attitude of the state courts."⁴

Another authority supplies this excellent example:

Recent Ohio experience is a splendid indication of the importance of a sympathetic judicial approach. The Ohio Home Rule Amendment dates from 1912. While there has been cross-currents, the trend of judicial opinion until quite recently was strongly against municipal autonomy. For the most part the tenor of judicial opinions was strict constructionist. Since 1949, by the decision of five important cases, an atmosphere most friendly to home rule has been created. Home rule power to levy a flat-rate income tax on residents and nonresidents (subject to state pre-emption) was confirmed. Angell v. City of Toledo, 153 Ohio St. 179, 91 N. E. 2d 250 (1950). A 1928 decision denying authority to belong to a municipal association and pay dues was overruled. State ex rel. McClure v. Hagerman, 155 Ohio St. 320, 98 N. E. 2d 835 (1951). A 1927 decision that a councilmanic enactment, as to which the referendum had not been invoked, could not be repealed by initiative was overruled. State ex rel. Sharpe v. Hitt, 155 Ohio St. 529, 99 N. E. 2d 659 (1951). It was determined not only that there was home rule power to establish and operate municipal off-street parking facilities to relieve traffic congestion but also that such projects could be financed by the issuance of simple revenue bonds without enabling legislation, and, in fact, with complete freedom from legislative control. State ex rel. Gordon v. Rhodes, 156 Ohio St. 81 (1951), and companion case. Only this

⁴Wallace Mendelson, "Paths to Constitutional Home Rule for Municipalities," 6 Vanderbilt Law Review 67, December 1952.

year it has been decided that urban redevelopment is within home rule powers. State ex rel. Bruestle v. Rich, 159 Ohio St. 13, 110 N. E. 2d 778 (1953). It must be evident that these cases reflect a great change in judicial approach, a change markedly favorable to municipal autonomy.⁵

It would be difficult to predict the attitude of the Tennessee courts in this respect. Undoubtedly areas of uncertain meaning in Amendments 6 and 7 will require judicial interpretation. Cases will arise in which decisions may favor state authority or municipal autonomy with equal justification, and the bias of the judges may play an important part. The decided cases of the past, in an entirely different constitutional environment, would furnish few, if any, clues as to the probable future trend of decisions. Although liberality and sympathetic treatment of municipal interests has been evident in Tennessee, our courts have zealously sustained the plenary power of the legislature to control municipal corporations.⁶ This, of course, has been in a setting virtually without constitutional restrictions on the legislature's power over cities. We have yet to see what the choice will be, as between state authority and municipal autonomy, under the amendments. A new situation now exists, and only the future

⁵Jefferson B. Fordham, Model Constitutional Provisions for Municipal Home Rule (Chicago, American Municipal Association, 1953), p. 11.

⁶"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." Redistricting Cases, 111 Tenn. 234, 80 S. W. 750 (1903).

will unfold a pattern of judicial interpretation. What this will be is of extreme importance to the municipalities of Tennessee. And its development will be influenced by many other factors.

The political and judicial climates are conditioned by the climate of values of the larger community and by the ideas and other influences which are brought to bear upon the primary policy-making and the judicial branches of state government. Thus, the factor of a climate of opinion favorable to home rule cuts deeper than the legislative or judicial outlook at a particular time. It involves broad popular understanding and sympathy and effective articulation by local leaders and by lawyers. Education has a vital role at this fundamental level. There are hopeful indications that there is a growing (and long overdue) awareness of this in the world of legal education.⁷

* * *

AMENDMENT NUMBER 6

The full text of this amendment is reproduced below. On the following pages its provisions are analyzed in detail, in the order as they appear in the amendment.

Be it resolved, That Article XI, Section 9, of the Constitution of the State of Tennessee be amended by adding at the end of said Section as it now reads, the following:

The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or

⁷Fordham, op. cit., p. 12.

county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

* * *

What is a municipality?

This amendment applies to "any municipal or county office" and to a "municipality or county." No questions should arise as to the meaning of "county office" and "county," but the words "municipal office" and "municipality" may be subject to interpretation. It may be assumed that a "municipal office" would exist only in a "municipality," so attention will be directed to the latter.

A review of the Tennessee statutes and cases indicate that incorporated cities and towns are definitely "municipalities." The following also probably fall in this category: utility districts organized under the Utility District Act of 1937 (secs. 6-2601 to 6-2626, T.C.A.); sanitary districts organized under secs. 6-2501 to 6-2532, T.C.A.; and utility or sanitary districts organized under private acts.⁸

⁸First Suburban Water Utility District v. McCanless, Com'r., 177 Tenn. 128, 146 S. W. 2d 948 (1941); Whedbee v. Godsey, 190 Tenn. 140, 228 S. W. 2d 91 (1950).

Civil districts⁹ and special school districts¹⁰ have been held not to be municipalities.

"A municipal corporation" has been defined as "a body corporate...chiefly to regulate the local or internal affairs of the city, town, or district incorporated."¹¹ In a case arising under the Utility District Act of 1937, it was said: "It is elementary that the Legislature may call such bodies what it pleases....Here it has chosen to make provision for the creation and operation...of a somewhat new and quite limited in scope corporate instrumentality."¹² The City of Memphis is an example of how terminology can vary; as a municipal corporation it was abolished in 1879, but it was immediately recreated as a "taxing district." Subsequently it was granted authority to use the style "City of Memphis."

Cases in other states have held the following to be "municipalities" or "municipal corporations": sewer district, school board or district, housing authority, and utility district. The following have been held not to be in this category: drainage district, improvement district, irriga-

⁹Redistricting Cases, 111 Tenn. 234, 80 S. W. 750 (1903).

¹⁰N. C. & St. L. Railroad v. Marshall County, 161 Tenn. 236, 30 S. W. 2d 268 (1930); Kee v. Parks, 153 Tenn. 306, 283 S. W. 751 (1926).

¹¹State v. Knoxville, 115 Tenn. 175, 90 S. W. 289 (1905).

¹²First Suburban Water Utility District v. McCanless, Com'r., supra.

tion district, school district, board of water commissioners, and board of park commissioners. This is not an exhaustive treatment of this question; it is simply an illustration of the possible scope of the meaning of "municipality."

* * *

The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected,

Who is a "public officer"?

The above provision applies to "any municipal or county office" and to "such public officer" meaning a person filling "any municipal or county office." As Hart says, "the law distinguishes a public officer from a public employee....It is generally assumed that all those employed by government are for all purposes in the one category or the other, and that the problem is to 'discover' the category to which the particular position belongs."¹³

¹³James Hart, An introduction to administrative law (New York, Appleton-Century-Crofts, Inc., 1950), 2d ed., p. 116-117.

The question therefore arises as to which persons in a municipal government are "public officers." The distinction between "officer" and "employee" is not always clear-cut and there may be positions in Tennessee municipalities as to which the answer is in doubt. The Tennessee courts have said that a mayor,¹³ a judge,¹³ a city recorder,¹⁴ a justice of the peace,¹⁵ a paymaster,¹⁶ and a marshal or constable¹⁷ are "officers," to mention only a few typical cases. At one time policemen were held to be "officers,"¹⁸ but a recent decision holds that a "policeman is not an officer," and "certainly it cannot be said that a fireman is an officer."¹⁹ Decisions in other states have classified city attorneys, building inspectors, city engineers, school superintendents, street superintendents, policemen, and firemen as both "officers" and "employees." Members of a municipality's governing body and a city manager have

¹³James Hart, An introduction to administrative law (New York, Appleton-Century-Crofts, Inc., 1950), 2d ed., p. 116-117.

¹⁴Wise v. City of Knoxville, 194 Tenn. 90, 250 S. W. 2d 29 (1952).

¹⁵In re Duff, 3 Tenn. Cas. 721 (1876).

¹⁶Henniger v. Memphis, 120 Tenn. 555, 111 S. W. 1115 (1908).

¹⁷Pesterfield v. Vickers, 43 Tenn. 205 (1866).

¹⁸Porterfield v. State, 92 Tenn. 289, 21 S. W. 519 (1893); Cornet v. City of Chattanooga, 165 Tenn. 563, 56 S. W. 2d 742 (1933).

¹⁹Wise v. City of Knoxville, *supra*.

generally been regarded as "officers."

On the decisions of the courts alone, it would be virtually impossible to state a definition that would answer this question as applied to all positions. The courts have made general statements but they vary considerably. From the Wise case: "An 'officer' when used in the sense of one who holds an 'office' which entitles him to the salary for the entire term, carries with it the idea of tenure for a definite duration, definite emoluments and definite duties which are fixed by statute."¹⁹ Judge Cooley said: "The officer is distinguished from the employee in the greater importance, dignity and independence of his position; in being required to take an official oath, and perhaps give an official bond; in the liability to be called to account as a public offender for misfeasance or nonfeasance in office, and usually, though not necessarily, in the tenure of his position."²⁰ McQuillin, citing authorities, says, "The essential characteristics which differentiate a public office from mere employment are said to be: (1) An authority conferred by law, (2) the power to exercise some portion of the

¹⁹ Wise v. City of Knoxville, supra.

²⁰ McQuillin on Municipal Corporations, 3d ed., vol. 3, p. 149. This has been quoted with approval by courts in Maryland, Michigan, Florida, Missouri, North Carolina and New York.

sovereign functions of government, and (3) permanency and continuity."²¹

Hart lists the following criteria taken from Corpus Juris, "with the warning that none of them is conclusive, and that one may be an officer without having all of them":

1. To a public office is delegated, "some part of the sovereign power or functions of government to be exercised by him for the public benefit" though that part may be broad or narrow.

2. A public office implies "tenure" and "duration or continuance" and the duties of an officer are "permanent" rather than "occasional or incidental," though tenure may be during the pleasure of the appointing officer.

3. An office is generally established or created by a constitutional or statutory provision, while an employment is based on a contract.

4. The requirement of an oath or a bond is "of weight" but not "conclusive."

5. The nature of the duties rather than "official designation" is the test; but designation by law as an officer is "of some significance."

6. Compensation or emoluments are no necessary criterion, but may be considered.

7. In general, an officer has "greater importance, dignity, and independence" than an employee, though an inferior officer is still an officer.

8. A possible criterion is liability as an officer for misfeasance in office.²²

²¹Ibid., p. 149-150.

²²Hart, op. cit., p. 117.

Probably most individuals working for a municipal government would be classified as "employees". "Employees and subordinates having no duties to perform other than those directed by the head of the department or chief officer... do not hold public offices, but their functions are rather in the nature of contracts of employment."²³

In the course of the convention there were two inconclusive exchanges on this point:

Mr. Stair: Under your resolution, if the legislature increases the salaries of eight employees of the city.... [interrupted by Mr. Pope]

Mr. Pope: They could not; it expressly says they could not; the word "selected" is used for a purpose; that would mean appointments; "any employee [sic] selected" is used, instead of elected.²⁴

* * *

Mr. Smith: ...there is a distinction between an elected official and one who is appointed. Is there any doubt in your mind that this merely applies to an elected official?

Mr. Pope: The word "selected" is used advisedly instead of "elected." That is the purpose of it....

Mr. Smith: But there is a distinction between an employee and an official.

Mr. Pope: Oh, yes, undoubtedly so; of course there is.²⁵

²³McQuillin, op. cit., p. 152, citing Cornet v. Chattanooga, supra.

²⁴Debates, p. 926.

²⁵Debates, p. 1122.

May private legislation alter salaries of employees?

It has been a common practice in Tennessee for the General Assembly to enact private legislation raising the salaries of certain personnel, such as teachers, policemen and firemen, in a particular city. Would the language of this amendment prohibit such legislation?

Two approaches to this question indicate a negative answer. Past cases indicate that such personnel would be classified by the courts as "employees," and therefore would not be included within the meaning of "officer" as used in this amendment. Also, most municipal employees do not serve definite "terms" but are employed under civil service regulations or serve at the pleasure of the appointing authority. If the amendment only prohibits "altering the salary prior to the end of the term" and no "term" exists for employees, could this provision apply? Any such act would, of course, be ineffective unless locally approved -- this is discussed on pages 36-47.

The possibility exists, however, that the courts, in construing this language, could broaden the meaning of "officer," for purposes of this amendment, to include many persons normally regarded as "employees."

What is the meaning of the word "selected"?

The word "selected" encompasses popular election, appointment (or election) by a municipality's governing body,

and appointment by a mayor or other official. Cases construing the meaning of "select" make it equivalent to "elect" and "appoint."²⁶ It was indicated in the convention that this was the intended meaning (see exchanges quoted on page 24).

Effect on reorganization or change in form of government

" Certain changes in the form or structure of a municipal government, which might otherwise be accomplished by a private act charter amendment, might be blocked by a prohibition against "removing the incumbent" or "abridging the term" of an officer "prior to the end of the term for which such public officer was selected." For example, would this provision prevent a change from commission to mayor-council government, prior to expiration of the commissioners' terms?

This would be an especially difficult problem where the commissioners, or other officers, serve for overlapping terms. Could a waterworks board be abolished and its functions be transferred to a board responsible for all municipally-owned utilities? If such a board is composed of five members serving overlapping five-year terms, would the effective date have to be postponed to the termination of the longest term remaining to be served, and if so what would be the terms of other members during this time?

²⁶McQuillin, op. cit., p. 272; People v. Fitzsimmons, 68 N. Y. 514 (1877); Bareham v. City of Rochester, 128 Misc. 642, 220 N. Y. S. 66 (1927); Jackson v. Coxe, 208 La. 715, 23 So. 2d 312 (1945).

Would the freedom of choice now enjoyed by voters of a city, to change their form of government, be cancelled by the impossibility of doing so without affecting some officer? It is entirely possible that a literal, rigid application of this provision would have such undesirable and unnecessary effects.

Where such changes are made in good faith and not as punitive measures, it should be possible to sustain them, despite the wording of this provision. "The fact that the officer is appointed or elected for a definite term is no limitation of the power to abolish.... An office usually may be abolished in the public interest although the incumbent is protected by a Tenure of Office Act. But this cannot be done by his mere removal contrary to such act when such removal leaves the office in existence and only results in the creation of a vacancy to which another may be appointed. Offices, places or positions in the public service, of course, may be abolished in good faith in the interest of economy."²⁷

One can only speculate as to the interpretation which may be given to this provision by the courts when applying it to specific cases. Would the courts consider "abridge the term" and "abolish the office" as two different actions, although the latter would have the effect of abridging the term? A distinction could be made between abridging the

²⁷McQuillan, op. cit., p. 427-428.

term of an incumbent, leaving the office in existence, and abolition of an office. Furthermore, the language "removing the incumbent from any...office" could be interpreted to apply only where the office continues to exist, as the incumbent is not removed from an office if the office is no longer in existence! A strict construction could result in a ban only against "removing....from office, abridging the term or altering the salary," and in the upholding of "abolishing an office" since this wording is not included. Several judicial expressions have been noted that indicate that courts may make this distinction; for example, "to abridge the term or abolish the office."²⁸ (Emphasis added).

McQuillin says that a "valid removal may result from the legal abolition of an office, place or position... [but] a statute which merely changes the name of an office and transfers the duties thereof to a person other than the incumbent, and does not in fact abolish the office, cannot have the effect of removing the incumbent."²⁹

The only Tennessee case³⁰ that has been found which seems to be even remotely in point involved a legislative

²⁸State v. Burris, 4 Pennewill (Del.) 3, 49 Atl. 930 (1901).

²⁹McQuillin, op. cit., p. 279-280.

³⁰State v. Leonard, 86 Tenn. 485, 7 S.W. 453 (1888).

act which abolished a county judge's office and transferred its functions to a chairman of the county court. This act was declared invalid, under Art. VI, sec. 4, of the Tennessee Constitution, which set the terms of inferior courts at eight years. That case, however, involved a definite term fixed by the constitution and therefore would appear to be quite different from a case that might arise under Amendment 6. Furthermore, the court's opinion gave prominence to the separation of powers, the "three distinct and independent departments," and the "advantages of courts free from interference and control"; this could be a basis of distinguishing the case from one involving an administrative official.

It may be noteworthy that two early drafts in the Convention (Resolutions 29 and 59, the former by Mr. Pope, the chief architect of Amendment no. 6) limited the power to abolish only if another similar office were created by the same session or if the voters petitioned for a referendum. It may also be significant that later drafts dropped any references to "abolish" or "abolition"; perhaps this was considered superfluous, in that such action would be within the meaning of "having the effect." Many drafts were introduced, and only one after Resolutions 29 and 59 contained any reference to abolition of an office -- this was proposed by Mr. Miller and Mr. Tipps and included the clause "which abolishes or creates an office".

Comments by two delegates in the convention, however, indicated that they viewed this language as a prohibition, under any circumstances, against abolition of an office before the end of the incumbent's term:

Mr. Dodson: And in these boards and commissions, as a general rule, the terms of the selected officers of those boards and commissions are staggered so that one will expire say in 1953, and another one in 1954, and another one in 1955, 1956, and 1957, and so on. Now, Sir, would the effect of this first paragraph be to freeze those men on those commissions and boards for the length of the longest term of the man on the board or not?

Mr. Fletcher: In my opinion, it would.

Mr. Dodson: It would?

Mr. Fletcher: Yes, that is the difficulty. It is one that we saw no way to get around; I can only say this, that the general result of this provision will result in so much benefit that occasional difficulties, and there would be occasional difficulties in some particular city or county, would have to be borne. That is the only answer I can give.

Mr. Dodson: ...no city that adopted optional home rule could obviate that difficulty by making the adoption; is that right?

Mr. Fletcher: That would be my opinion."³¹

* * *

Mr. Pope [explaining Amendment 67]: ...that resolution simply means this, that the legislature cannot under any circumstances pass an act abolishing an office, changing the term of the office or altering the salary of the officer pending the term for which he was selected; that is prohibited, and that kind of an act cannot be passed...³²

³¹Debates, p. 1039.

³²Debates, p. 1113.

Effect on charter recall provisions

A related question is whether this provision would prohibit the General Assembly from passing a special act which includes the recall feature. Logical analysis would seem to indicate no such prohibition. By inserting a recall provision the General Assembly would not be passing an act "having the effect of removing the incumbent...or abridging the term." First, it may never be used; second, it would simply provide a procedure whereby the local electorate could remove an officer; and finally, it would be the votes of local citizens in a recall election, not the legislative act, which would have the effect of removing the officer or abridging his term. "If it were not intended under the Constitution to give cities...the power to recall their officers, then there would have been some express inhibition; and in the absence of such, we are not warranted in holding that such power is by implication inhibited."³³ In another case, "it was strenuously insisted that the attempted recall of a municipal officer, who has been elected to serve in office for a fixed term, is violative of the provisions of the state Constitution regarding tenure of office, removal and impeachments. Manifestly the tenure of office, and the method of removing an

³³ Dunham v. Ardery, 43 Okla. 619, 143 Pac. 331, L. R. A. 1915B 233 (1914).

elected city official, are purely municipal affairs, which in no sense conflict with the constitutional provisions relating to the tenure of office..."³⁴

A possible means of circumventing this provision

It should be noted that this prohibition is against passage of a "special, local or private act." This would not prevent the classification of municipalities according to population and the enactment of general legislation applying only to a particular class.³⁵ The so-called "general" act, applying to a very narrow population bracket including only one city, is a familiar disguise for a private act, and has been sustained by the courts in the past. Will the courts now view this subterfuge differently, in the light of this prohibition? If they do not, and if so-called "general acts" are sustained, it would seem to follow that such acts would be effective without local approval.

The Tennessee Supreme Court, in upholding a "general" act that by a population classification applied only to Montgomery County, said:

However far fetched might seem the rule, and however vicious may be considered the practice which produces laws through legislative courtesy by force of the will of the representatives for a

³⁴Conn. v. City of Richmond, 17 Cal. App. 705, 121 Pac. 714 (1911).

³⁵Luehrman v. Taxing District, 70 Tenn. 425 (1879); Cook v. State, 90 Tenn. 407, 16 S. W. 471, 13 L. R. A. 183 (1891).

single county, the doctrine that classification by reference to the Federal census if otherwise unobjectionable is permissible cannot be repudiated after long adherence of its application in adjudicated cases sustaining certain Statutes upon particular subjects. It could not be repudiated without producing more or less confusion in every county of the State. Personal and property rights would be measurably affected and the resultant confusion would be injurious to the State. The doctrine of stare decisis commands adherence to the rule....³⁶

In another case it was indicated that at least the statute must rest on a particular Federal census and "subsequent Federal censuses," thereby opening the act "with uniformity to all counties which had the requisite population at the time of the passage of the Act, and to all such as hereafter may fall within its provisions."³⁷

It might be hoped that the Tennessee courts will take note of a warning in an old case. "If classification by population were deemed permissible of adoption for every purpose, each county and municipality may for its government be provided with a distinct code of laws, general in mere form, but special or local in substance and fact."³⁸

This point is discussed in greater detail under the analysis of Amendment 7 -- see pages 60-66.

³⁶Williams v. State, 155 Tenn. 364, 293 S. W. 757 (1927).

³⁷Condon v. Maloney, 108 Tenn. 82, 65 S. W. 891 (1901).

³⁸State v. Turnpike Co., 133 Tenn. 446, 450, 181 S. W. 682 (1915).

Salary changes

In order to make any changes in salaries of officers by private acts, it will be necessary to look ahead and to pass new legislation providing that the desired salary adjustments will become effective at the beginning of the next term of office. A very recent case held that a county officer's salary could not be changed during his term of office, even though the private act had been approved by the local governing body; the defense had argued that the latter part of Amendment 6 was an exception to the former part, but the Supreme Court held otherwise.³⁹

A question that may arise is whether the legislation must be enacted before an election is held, rather than after an individual has been elected to an office but before his term begins. In the latter case, technically the salary change would not take place during his term of office but it would obviously be for the benefit of a person already elected.

Another approach to this problem would be the omission of salaries from private act charters and the delegation of this authority to a municipality's governing body, coupled with a like restriction that no salary changes may be made during an officer's term of office. This would place the determination

³⁹Shelby County & Charles Baker v. E. W. Hale et al., 292 S.W. 2d 745 (1956).

of salaries in the hands of the locally elected representatives of the citizens of a municipality. Some advantages that might be claimed for this approach would be greater flexibility, increased responsiveness to local public opinion, and more consistency with the principle of home rule. Furthermore, the General Assembly would be freed from the necessity of having to make numerous policy decisions as to salaries for a large number of municipal offices.

There would seem to be little doubt as to the effect of this provision in prohibiting changes in salary during a term of office. The meaning seems to be plain and subject to one interpretation only. However, an Oklahoma case has been noted in which a charter amendment was upheld which reduced the salary of city commissioners in the middle of their four-year terms, despite a constitutional provision prohibiting any changes in "salary or emoluments... during [any public official's] term of office, unless by operation of law enacted prior to such election or appointment."⁴⁰

⁴⁰Bridgman v. Roberts, 40 Okla. 495, 139 Pac. 518 (1914). The charter amendment was approved by the voters, with no indication of when it was to become effective. The court held that "where no time is expressly fixed...a law takes effect from its passage." It disposed of the constitutional question as follows: "There is no vested right in any municipal office. In the absence of a constitutional limitation to

and any act of the General Assembly
private or local in form or effect
applicable to a particular county or
municipality either in its governmental
or its proprietary capacity shall be void
and of no effect unless the act by
its terms either requires the approval
by a two-thirds vote of the local legis-
lative body of the municipality or
county, or requires approval in an elec-
tion by a majority of those voting in
said election in the municipality or
county affected.

Application

The effect of this provision is to give each municipality a veto power (either by action of its governing body or by a vote of its citizens) over any private legislation affecting it. It applies to all private acts, including any of the type

the contrary, the power that creates a municipal office, and fixes the tenure of the officer holding the same, may, by an amendment of its charter, abolish the office and its tenure at any time, and create another office of like character with different tenure and salary; and a constitutional provision that in no case shall the salary or emoluments of any public officer be changed during his term of office does not impair such right. 28 Cyc. 401; Gilbert v. Paducah, 115 Ky. 160, 72 S. W. 816." The Kentucky case cited does not seem to be in point because it involved a change of the city of Paducah from third-class to second-class status, there being different general laws for these two classes of cities.

mentioned in the foregoing discussion. For example, an act raising employees' salaries could become effective only upon local approval by one of the two methods provided.

Delegate authority to city governing body

A city planning to continue to operate under the private act charter system may be well-advised to secure, whenever possible through friendly legislative delegations, the adoption of charter amendments phrased in general terms. If the powers are expressed in broad and general terms, if the determination of what offices are to be established and their salaries, functions, and the like are left to the governing body of the city, and if, in general, a minimum of restrictions are imposed and maximum authority is delegated to the city council, then the occasions for legislative enactments should be very much reduced. Once a city is in this position, it may resist future intrusions by unfriendly legislative delegations through the power of the legislative body or voters to disapprove private acts.

Alternative methods for local approval

This provision makes any private act for a particular city "void and of no effect" unless it requires approval either by (1) "a two-thirds vote of the local legislative body" or (2) "in an election by a majority of those voting in said election." Which method is to be used is to be specified in each case in "the act by its terms," thus placing this responsibility in the General Assembly and

actually, under the practice of "courtesy" as observed so consistently, in the hands of the local legislative delegation. A council may request one or the other method, but it is solely within the discretion of the General Assembly (local legislative delegation) to decide.

In a few counties, as in Knox County, there has been some controversy as to the respective powers of a county commission established by private act and the quarterly county court. Apparently it would be the quarterly county court in all cases that must approve private acts. The Constitutional Convention voted down a proposal to change the term "local legislative body" to "local governing body," and on this point Mr. Pope had this to say:

...we changed that word advisedly and carefully...there is real controversy in those counties like Hamilton, as to what is the governing body of that county; and the Supreme Court decision has been many times or several times that we know of, that the Quarterly County Court composes and makes up the legislative body for that county.....there would be a controversy in certain counties where they have both of these bodies, and there would be a question as to what was the governing body; and we think that clearly the word "legislative" ought to be written in it.⁴¹

What is meaning of "two-thirds vote"?

The language, "two-thirds vote of the local legislative body," could mean: (1) two-thirds of the total number of places on a council, even though vacancies exist; or (2) two-

⁴¹Debates, p. 1126.

thirds of the existing membership of a council, when vacancies exist; or (3) two-thirds of the members present at a meeting, when one or more are absent but a quorum is present; or (4) two-thirds of those voting when one or more present are recorded as not voting and the favorable vote is two-thirds of a quorum; or (5) two-thirds of those voting when one or more present are recorded as not voting and the favorable vote is less than two-thirds of a quorum.

Cases might be found to support any of the above interpretations. The Supreme Court of the United States, in the case involving the 18th Amendment and an interpretation of the constitutional provision that "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution," said: "The two-thirds vote in each House which is required in proposing an amendment is a vote of two-thirds of the members present -- assuming the presence of a quorum -- and not a vote of two-thirds of the entire membership, present and absent."⁴²

The Supreme Court of Tennessee, passing on a case where eight of nine councilmen were present and voted 4 for,³ against, and 1 not voting, in electing a member of a school board, reached this conclusion: "...by concurrence of text-

⁴² National Prohibition Cases, 253 U. S. 350, 65 L. Ed. 946, 40 S. Ct. 486 (1920).

book, judicial, senatorial, congressional, and legislative authority...the rule is settled that a majority of a definite body present and acting must vote for a candidate in order to elect him, and that it is not sufficient that he receive a plurality of votes cast or a majority if blank ballots are excluded.... The record...shows that eight aldermen were present, and, without reference to their vote, he must have received five votes in order to be elected."⁴³ This reasoning, applied to the provision under consideration, would indicate that two-thirds of members present, rather than merely two-thirds of those voting (with some present not voting), would be required.

However, the interpretation "two-thirds of the entire membership of the legislative body" was clearly the intention of the Convention, as indicated by the following:

Explanation by Mr. Rainwater (of Jefferson County) of his vote: After consideration and discussion of the contents of Amendment No. 4, it is the consensus of opinion of the delegates of the Constitutional Convention that the present language of the Resolution is sufficiently clear and subject to no other interpretation than that the requirement of "approval by a two-thirds vote of the local legislative body" means an approval by two-thirds of all the members duly elected to such local legislative body and not merely a two-thirds vote of any quorum that might be present at any given time when action might be had by the local legislative body on a particular act passed by the General Assembly. In view of

⁴³Lawrence v. Ingersoll, 88 Tenn. 52, 12 S. W. 422, 6 L. R. A. 308, 17 Am. St. Rep. 870 (1889).

such understanding and interest of the delegates,
I withdraw Amendment No. 4 and ask that the
same not be considered.⁴⁴

* * *

Mr. Rainwater: ...Would a two-thirds vote be
sufficient, let us say a vote of a two-thirds of
the quorum that might be present at any time...?

Mr. Pope: No, sir.

Mr. Rainwater: Or is it intended to be two-
thirds of all the members of that body?

Mr. Pope: ...I don't think it could mean any-
thing else than two-thirds of the full membership
of that body.

Mr. Rainwater: ...it might be contended that
two-thirds of any quorum that might be present at
any time would be sufficient.

Mr. Pope: Don't you think that clearly means
two-thirds of the full membership of that body?

Mr. Rainwater: No, I don't.

Mr. Pope: All right; draw your amendment; no-
body objects to that amendment, I am sure.

Mr. Miller: Two-thirds of the members means
two-thirds of all the members?

Mr. Pope: That's right, there isn't a doubt in
the world about it.

Mr. Rainwater: How do you interpret that?

Mr. McGinness: All the membership of the body,
the entire membership.

Mr. Moss: ...I agree with Mr. McGinness....I
think this resolution is rather plain as it reads,
but the remarks that are being made here will be

⁴⁴Debates, p. 307.

on the Journal...and show that we intended it to mean just as Mr. Rainwater thinks....⁴⁵

The foregoing seems to establish a definite intent that this provision should mean two-thirds of all the members, and should not be interpreted to require two-thirds of all places on the legislative body including any vacancies that may exist.

One point on which clarification may be needed is whether approval by the legislative body of a city is to be in the form of an ordinance, resolution, or a simple motion. It might be argued that approval of a private act amending the city's charter is an important policy matter, on a level equal to or higher than the enactment of ordinances, and that the approval must be by ordinance. This might make a difference, in that an ordinance usually must be approved at two (sometimes three) separate meetings, while resolutions and motions may require action at only one meeting. Possibly the private act to be considered should specify the form of the council's approval. In any event, no questions should be raised if the approval (or disapproval) is by ordinance.

"Pocket veto" by council?

Could a private act which requires council approval be made non-effective simply by failure or refusal of a council to vote thereon, even though directed to do so by the act, in a manner similar to the "pocket veto" of the President or a

⁴⁵Debates, pp. 1121-1124.

governor? It is possible that the courts would direct that some action be taken if the terms of the act are mandatory. "Mandamus is the proper remedy to compel public officers or boards to act and pass judgment on matters within their jurisdiction...when they neglect or refuse to take any action at all, although...they cannot be compelled to act or render a decision in any particular way."⁴⁶ Although the courts will not direct action by a state legislature because of the separation of powers principle, they might not be reluctant to do so when dealing with a municipal corporation.

Majority when a joint election is held

The alternative to council approval, which may be specified in the private act, is "approval in an election by a majority of those voting in said election in the municipality or county affected."

When such an election is held simultaneously with another election, the question might arise, as it has arisen in other states, whether this provision would require a majority of all the votes cast on all issues voted upon on the same date, or simply a majority of those votes cast on the question of approving the private act. Some cases can be found which might seem to lend some support to the former view, but they have involved unusual con-

⁴⁶55 C. J. S. Mandamus sec. 135. Winters v. Burford, 46 Tenn. 328 (1869).

stitutional or statutory requirements in most instances. The weight of authority seems to be in favor of the latter view: that only a majority of the votes cast on the question of approving the private act would be required. The following discussion in the Convention also supports this view:

Mr. Miller: ...suppose the legislature submitted this bill for approval in a general election, under your wording would that not require a majority of all voting in that general election to approve, rather than a majority voting on a particular bill?

Mr. Pope: No, sir, it would not; I don't think there is any doubt about that....

Mr. Miller: Aren't we leaving a loophole for the court to construe that to mean you would have to have a majority of all voting in the election to approve that bill?

Mr. Pope: All I could say was if I was on the court I certainly would not construe it that way, but I don't see how there can be any question when you say "said election," that is election to this same thing....

Mr. Miller: To clarify it, couldn't we say voting thereon....

Mr. Pope: Well, it wouldn't hurt, I think.

Mr. McGinness: Let's avoid cluttering it up now with little immaterial amendments....I don't think the suggestion he made is well taken; I think it is clear....⁴⁷

Section 157 of the Kentucky Constitution prohibits any city from incurring an indebtedness above its annual income "without the assent of two-thirds of the voters thereof, voting at an election to be held for that purpose." Construing

⁴⁷Debates, pp. 1122-1123.

this provision, the Kentucky Court of Appeals said: "It is conceded that the proposed bond issue received the assent of two-thirds of those voting on the question, but not the assent of two-thirds of those voting at the election. At first the court was inclined to the view that the assent of two-thirds of those voting at the election was necessary....But that and other cases announcing the same doctrine was subsequently overruled...and it now may be regarded as finally settled that the constitutional requirement is fully met by assent of two-thirds of those voting on the question."⁴⁸

The Missouri court reached the same conclusion. "The first point urged is that two-thirds of all voters of Kansas City 'voting at an election to be held for that purpose' (Const. 1875, sec. 12, art. 10) failed and neglected to vote in favor of the issuance of the bonds. ...two-thirds of all persons who voted at the general election, held at the same time and places, did not vote to issue the bonds. ...[held to] mean two-thirds of those who actually vote for or against the given proposition, whether such two-thirds be two-thirds or not of all the voters taking part in the election otherwise..."⁴⁹

⁴⁸Nall v. Elizabethtown, 20 Ky. 321, 254 S. W. 893 (1923).

⁴⁹State v. Orear, 277 M. 303, 210 S. W. 392 (1919).

It is true that the Kentucky and Missouri constitutions contain the phrase "to be held for that purpose," which is missing from the Tennessee provision. However, the context of the Tennessee amendment and particularly the words "in said election" would seem to indicate a very clear intention that an election would be held for such a purpose. The Kentucky and Missouri "voting at an election" is so close to the Tennessee "voting in said election" that no distinction in meaning would seem to be possible. As the Indiana court said: "If, from the language of the statute or constitution, it is intended that a special vote shall be cast upon a proposition, and the law does not expressly require the majority of the votes cast at the general or regular election to adopt the measure, then it matters not whether the votes are cast at the same poll as is used for the election of officers. All that is necessary in such case is that the measure should receive a majority of the votes cast for or against it..."⁵⁰

Likewise, the Tennessee case of Lawrence v. Ingersoll (see footnote 42) might be relied upon, by implication, because it was there said, "it makes no difference that there are absent voters or blank votes cast." Actually, two elections are being held simultaneously, and only a majority in the one election is required -- votes in the other election, which, except

⁵⁰South Bend v. Lewis, 138 Ind. 512, 37 N. E. 986 (1894).

for reasons of expense, could just as well be held on another day, should not be considered. The cases here cited seem to give solid support to this conclusion.

* * *

AMENDMENT NUMBER 7

This is the "optional home rule amendment," and is reproduced in full below. On the following pages its provisions are analyzed in detail, in the order as they appear in the amendment.

Be it resolved, That the Constitution of Tennessee be amended by adding to Section 9 of Article XI the following:

Any municipality may by ordinance submit to its qualified voters in a general or special election the question: "Shall this municipality adopt home rule?"

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.

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.

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 two (2) years, in a municipal election pursuant to petition for such election signed by qualified voters of a home rule municipality not less in number than ten (10%) per cent of those voting in the then most recent general municipal election.

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 approval by a majority of the qualified voters voting thereon.

The General Assembly shall not authorize any municipality to tax incomes, estates, or inheritances, 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.

* * *

What is a municipality?

In the analysis of Amendment 6 it was pointed out that "municipality" for the purposes of that amendment could be interpreted to include most local governmental units: utility districts, sanitary districts, taxing districts, and so on. It seems likely, however, that the courts will construe "municipality," for purposes of Amendment 7, to include only incorporated cities and towns. Numerous references in the record of the convention support such an interpretation, and none can be found on the other side.⁵¹ It seems also fairly conclusive that the convention officially designated Amendment 6 "Relating to Home Rule for Cities and Counties as to Local Legislation," and Amendment 7 "Relating to Optional Home Rule for Cities."⁵²

* * *

Any municipality may by ordinance submit to its qualified voters in a general or special election the question: "Shall this municipality adopt home rule?"

Is legislation needed before holding such an election?

A difference of opinion has arisen among attorneys as to whether legislation is necessary to give effect to this

⁵¹Debates, pp. 906, 914, 915, 919, 921, 927, 947, 950, 956, 1009, 1016.

⁵²Debates, p. 319.

provision. The majority opinion seems to be that the constitutional provision is self-executing; that is, no new legislation is needed because the existing election laws of the State are sufficient to regulate any elections held under this amendment.

Two delegates called to the attention of the Convention the need to provide self-executing constitutional provisions:

Mr. Miller: Experience teaches us that the legislature cannot be depended upon to pass any law which would divest itself of its own authority...the only way it can be done is to write it into the Constitution as a restraint upon legislative power, and that is what Resolution No. 105 would do.

The argument has been made that we cannot legislate in this Convention, that we cannot do anything but authorize the legislature to act. That is certainly a strange argument to me, and I believe to the other members of this Convention.

The reason for the length of Resolution No. 118 is to make it clear, and to make it unnecessary to have the workability of the plan implemented by legislation. In other words, it is to make it self-executing so that the legislature would not have to pass an enabling act.⁵³

* * *

Mr. Sims: ...they /the people/ didn't ask us to pass the buck to the General Assembly and give them the right to do that which we should do here today or tomorrow.⁵⁴

No Tennessee case directly in point has been found. A Maryland case involved a home rule amendment by which, in the

⁵³Debates, pp. 931, 932, 1044.

⁵⁴Debates, p. 915.

language of the court, "The local legislative power is transferred from the General Assembly to the County Council, and the General Assembly is forbidden to enact local legislation."⁵⁵ The question before the court was whether Montgomery County could provide for a special election to elect the first County Council, although there was no express constitutional or statutory authority to do so. The court held that "the voters of the county have express power to adopt a charter, providing for an elective council...[and] there can be no 'reasonable or fair doubt' but that they have implied power to carry out such authority by providing for the means and conditions under which such election shall be held.[this] power...does not depend on any legislative grant from the General Assembly, but is derived from Article XIA of the Constitution itself." The Tennessee situation, by comparison, is much stronger: instead of implied authority to hold an election the constitutional provision definitely empowers any municipality by ordinance to submit the question "in a general or special election," and, as will be noted later, the statutes of Tennessee are adequate to govern such an election but none existed in Maryland when that case was decided.

⁵⁵ County Commrs. v. Supervisors of Elections, 192 Md. 196, 63 Atl. 2d 735 (1949).

The following is extracted from a Nevada case:

Many cases [there were no citations] have arisen where the voters have claimed and attempted to exercise such a right under the express provisions of State constitutions, when the statute law had failed to provide for carrying the constitutional provisions into effect, or when the executive had failed to issue the proper proclamation.

There has been great conflict of opinion among judges as to what were the powers of the people at a general election under such circumstances, some holding that merely by force of the general provisions of the Constitution the electors might exercise their right to elect their own officers, and that they could not be deprived of their constitutional rights in this respect by the failure of the legislative or executive departments of the government to do their duty. Other judges have again held that this elective franchise, although guaranteed in general terms by the Constitution, could be exercised only by virtue of special legislative enactment, describing time, place, manner and all the formalities of the election, and under some circumstances that such election must also be preceded by all proper notices and proclamations.⁵⁶

It seems unnecessary to consider whether the Tennessee situation falls under the second line of cases mentioned in the foregoing opinion because, as noted later on, it appears that adequate election laws exist on all such details.

State laws on special elections

Do the state election laws provide sufficient guidance to hold a home rule election as contemplated by Amendment 7? The Tennessee Supreme Court has held that the state election

⁵⁶ Sawyer v. Haydon, 1 Nev. 64 (1865).

laws apply to municipal elections.⁵⁷ Sections 2-1803 to 2-1809 (all references are to Tennessee Code Annotated) provide for special elections to be ordered by the Governor to fill certain vacancies and in "other proper instances," set forth the requirements as to posting and printing of notices, places of holding such elections, and the like, and make the laws on general elections applicable "unless otherwise expressly provided." Section 2-1807 prescribes: "Whenever a special election by popular vote is necessitated under existing or future laws, it shall be the duty of those persons charged with the calling thereof to cause the same to be held...[within 40 days]." In a case⁵⁸ where it was presumed that a city was proceeding under provisions of its private act charter to hold a bond election, it was held that notice must be given as required by section 2-1114.

This statute (sections 2-1803 to 2-1809), if followed, would impose a cumbersome but not impossible procedure: the city would send its ordinance calling for the election to

⁵⁷"The election laws of the State...come within this class of general State-wide laws, applicable to municipalities, as well as other subdivisions and arms of the State government.... To permit enactment of special election laws in the different municipalities of the State would utterly destroy the essential uniformity of our entire election system and machinery." Clark v. Vaughn, 177 Tenn. 76, 146 S. W. 2d 351 (1941).

⁵⁸Tennessee Public Service Co. v. Knoxville, 170 Tenn. 40, 91 S. W. 2d 566 (1936).

the Governor, who would issue a writ of election to the county election commission and cause a proclamation thereof to be published in at least two newspapers, one at the seat of government (Nashville) and one in the county where the election is to be held. Since the municipality would have a constitutional right to the election, the Governor's part would be purely mechanical. This procedure would have to be followed if the courts should hold that the statute must be literally applied.

Another possible interpretation is that the above statute was passed in contemplation of special elections that could not be initiated in any other manner, that the word "laws" as used therein does not include this self-executing constitutional provision, that it was passed before adoption of Amendment 7 which stipulates that "Any municipality may by ordinance submit...the question," that this constitutional provision as to initiating the election supersedes the statute and makes the Governor's order and proclamation wholly unnecessary, and that accordingly a municipality may call on a county election commission directly by ordinance to submit the question in an election.

The question might be stated this way: would the courts construe "may by ordinance submit the question" to be the equivalent of "may by ordinance call for an election on the question"? Under this construction a city could call for an

election under the constitutional provision instead of under the statute. That the contact would be directly with a county election commission would seem to follow from the general law charging county election commissions with the conduct of all elections.

An Oklahoma decision holds that a "provision is self-executing when it can be given effect without the aid of legislation and there is nothing to indicate that legislation is contemplated to render it operative, and when there is a manifest intention that it should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed."⁵⁹ A Kansas case, construing a constitutional provision that "there shall be elected...a district judge...for the term of four years," ruled that special legislation was not needed because the general election laws "provided all requisite machinery for conducting elections, ascertaining their results, and contesting the same."⁶⁰

In the fourth paragraph of Amendment 7 is a specific reference to enabling legislation by the General Assembly. That the Constitutional Convention saw fit to include such language, and in the first paragraph of the same amendment

⁵⁹Latting v. Cordell, 197 Okla. 369, 172 Pac. 2d 397 (1946).

⁶⁰State v. Thoman, 10 Kan. 150 (1872).

to omit any reference to legislation, seems to be strong presumptive evidence that they contemplated that the provision under consideration would be self-executing. Also, as has been noted earlier, comments by Convention delegates indicated an intention that this amendment generally should be regarded as self-executing (see page 50).

It may also be noted that in some instances procedural details as to elections on special proposals may be spelled out in a city's charter, and should be followed insofar as they supplement and do not conflict with the state election laws and the provisions of Amendment 7. For example, section 90 of the Knoxville charter provides that "all elections... whether for the choice of officers, or the submission of questions to the voters, shall be conducted by the election authorities prescribed by general law, and the provision of the general election laws of the state shall apply to all such elections, except as otherwise provided for by this charter," and section 99 sets out a procedure for submitting popularly initiated ordinances to a vote of the people -- compliance with which would seem to be a reasonable procedure for submitting an ordinance calling for a vote on the question of home rule.

Finally, in support of the argument that no legislation is needed, it would seem to be patently unjust and unreasonable to permit a legislature, simply through non-action, to deprive

municipalities of a clear constitutional right. The Ohio Supreme Court quotes with approval the following:

...the presumption now is that all provisions of the constitution are self-executing. As in the case of the question whether a constitutional provision is mandatory or directory, the courts may be influenced in interpreting such provisions as self-executing rather than as requiring legislation, by the knowledge that if not treated as self-executing, the legislature would have the power to ignore and practically nullify the directions of the fundamental law.⁶¹

Who may initiate a home rule election?

In view of the specification that the question of whether to adopt home rule is to be submitted "by ordinance," it would appear that the municipal legislative body (council, commission, board of aldermen, etc.) is the sole authority which may initiate an election. The only exception would seem to be that the people could do so when a city charter provides for initiating ordinances by petition. The language of Amendment 7 is that "Any municipality may by ordinance..."; the Amendment does not stipulate that "the legislative body of a municipality may by ordinance" submit the question. However, Mr. Sims, in explaining this provision to the Convention, said, "it means...an ordinance adopted by its legislative body," and this may have a bearing on the interpretation of these words.⁶²

⁶¹State v. Bliss, 156 Ohio St. 147, 101 N. E. 2d 289 (1951), quoting from 11 American Jurisprudence 689, sec. 72.

⁶²Debates, p. 1010.

Frequency of holding elections

Amendment 7 is silent as to the frequency of holding elections to vote on whether to adopt home rule. It might be said that a municipal governing body, or the people by initiative, could order such elections with excessive frequency to vote home rule in or out (the second paragraph of Amendment 7 provides for "repeal thereof by the same procedure."). The good sense of the citizens and governing body of a municipality, plus the expense of holding such elections, should be a sufficient guarantee against such abuse.

However, the question might arise whether the General Assembly could impose limitations in this respect. No cases have been found that provide a clear answer on whether limitations on frequency of such elections which are reasonable would be upheld.

Meaning of "qualified voters"

Amendment 7 empowers a municipality to submit the question of adopting home rule "to its qualified voters." The words "qualified voter," used as a qualification of a candidate for office, do not mean the same as when used as a prerequisite to voting. In the former sense it has been held that a person need only meet the constitutional requirements and need not be a registered voter.⁶³ The reference in Amendment 7 obviously means the "qualified voters" who are entitled to vote in an election, and in this sense the Tennessee courts

⁶³Trammel v. Griffin, 141 Tenn. 139, 207 S. W. 726 (1918).

have ruled that a person must be a "registered voter."⁶⁴ As in other elections, then, only "registered voters" would be permitted to vote on the question of adopting home rule.

* * *

In the event of an affirmative

vote by a majority of the quali-

fied voters voting thereon,

There seems to be little doubt as to the meaning of this clause, and no possibility of disagreement as to its interpretation. The word "thereon" clearly refers back to "the question: 'Shall this municipality adopt home rule?'" Under the discussion of Amendment 6 cases were cited to the effect that only a majority of those voting on a particular question is needed, if the question is submitted at a general election in which candidates for office and possibly other questions are on the same ballot (see pages 43-47). There should be no doubt that an "affirmative vote by a majority of the qualified voters voting thereon" can mean only a majority of those voting on this particular question. Any other interpretation would be an obvious distortion of the intended meaning.

* * *

and until the repeal thereof

by the same procedure.

⁶⁴State v. Weaver, 122 Tenn. 198, 122 S. W. 465 (1909).

This provision would permit a city to terminate home rule by the same procedure previously outlined for adopting home rule; that is, submission by ordinance to the qualified voters at a general or special election on the question: "Shall this municipality repeal home rule?" An affirmative vote of the qualified (registered) voters voting on this question would result in termination of home rule, and the provisions of Amendment 7 (except the two sentences to be noted later) would no longer apply to the municipality. Its charter would remain the same until amended under the procedure outlined in Amendment 6.

* * *

such municipality shall be a
home rule municipality,

After the favorable vote on the question of adopting home rule, and "until the repeal thereof," the status of the municipality is that of a "home rule municipality." As such it will be subject to, and will be entitled to the rights and privileges, of the provisions of Amendment 7 and any legislation thereunder.

* * *

and the General Assembly shall act
with respect to such home rule mu-
nicipality only by laws which are
general in terms and effect.

Type of legislative action

The words "shall act with respect to" would seem to be all-inclusive, covering any type of action. All legislation

affecting a "home rule municipality" in any way, then, must be "general in terms and effect." These are the key words in the entire amendment, as to the means of legislative control over a "home rule municipality." What meaning will be attached to the words "general in terms and effect"? It seems obvious that the intention was to prohibit private acts altogether. Whether this will necessarily follow depends on the construction given by the courts.

The possibility of a legislature circumventing a prohibition against special legislation through the device of "general" legislation applying to very narrow population brackets has been discussed in the foregoing analysis of Amendment 6 (see pages 32-33). As an example, an act might be drafted as a "general" act to apply to all municipalities having a population of 124,000 to 125,000, according to the 1950 Federal census or any subsequent Federal census. The population of Knoxville, according to the 1950 Federal census, was 124,769, and no other city would fall within this bracket. The act would be "general" in its "terms," because there would be no reference to the City of Knoxville -- here is where the words "and effect" should come into play. Amendment 7 provides that the laws must be "general in terms and effect" (underlining added). Much depends on the attitude of the Tennessee courts as to the meaning and force of these two words: "and effect."

Will the Tennessee Supreme Court take a stand along with the New York Court of Appeals: "We must go farther and inquire whether it [an act] is general or local 'in its effect.' Home rule for cities, adopted by the people with much ado and after many years of agitation, will be...a form of words and little else, if the courts in applying the new tests shall ignore the new spirit that dictated their adoption. The municipality is to be protected in its autonomy against the inroads of evasion."⁶⁵ In another case an act general in its terms, applying to all cities with a population over 1,000,000 (New York City only was affected), was declared invalid under the New York Home Rule Amendment because it was not "general both in terms and in effect."⁶⁶ The words, "in terms and effect," in the Tennessee amendment were borrowed from the New York Home Rule Amendment. It has been pointed out that a state which adopts the law of another state is considered to have adopted the other state's judicial construction of the law.⁶⁷

The Tennessee cases furnish few clues as to the position of the Tennessee courts on this question. Although Article II,

⁶⁵In re Elm Street in City of New York, 246 N. Y. 72, 158 N. E. 24 (1927).

⁶⁶Osborn v. Cohen, 272 N. Y. 55, 4 N. E. 2d 289 (1936).

⁶⁷Wallace Mendelson, 6 Vanderbilt Law Review 73. Dr. Mendelson drafted various versions of this amendment, as a consultant to the Tennessee Municipal League.

Section 8, of the Tennessee Constitution, provides "No corporation shall be created, or its power increased or diminished by special laws, but the General Assembly shall provide by general laws, for the organization of all corporations....," a majority opinion of the Tennessee Supreme Court held that this provision "applies exclusively to private, not to public or municipal corporations."⁶⁸ Two Judges dissented in this case, saying, "If this is not a distinct prohibition forbidding the creation, or increase or diminution of powers of all corporations by special laws, such a prohibition cannot be expressed in the English language.... We look to the proceedings of the Convention and we find a motion was made and urged to amend this clause, so as to make it apply only to private corporations and exclude municipal corporations from the prohibition, and this amendment was rejected."⁶⁹

Later cases⁷⁰ firmly established the doctrine of no constitutional requirement of general legislation dealing

⁶⁸State v. Wilson, 80 Tenn. 246 (1883).

⁶⁹Ibid., pp. 264-265.

⁷⁰"Since the case of State v. Wilson, 12 Lea 246, it has been the settled law of this State that special legislation as to municipal corporations is not within the inhibition of Article XI, Section 8, of the Constitution of 1870." Furnace v. Railroad, 113 Tenn. 697, 87 S. W. 1016 (1903). See also: Ballentine v. Pulaski, 83 Tenn. 633 (1885); and Memphis P. & L. Co. v. City of Memphis, 172 Tenn. 346, 112 S. W. 2d 817 (1937).

with municipalities, so Tennessee cases provide no precedents in relation to a constitutional mandate that only general laws may be enacted. Can this new constitutional prohibition be vitiated by elastic application of the following doctrine? "...all intendments are in favor of the constitutionality of an Act of the Legislature, passed with the forms and ceremonies requisite to give it the force of law.... Every reasonable doubt must be solved in favor of the legislative action."⁷¹

Effect of classifying cities

We have seen that, through the device of classification on a population basis, general legislation may be enacted which would apply only to one city, and that this may be a means of circumventing a constitutional prohibition against special or private legislation, especially if the population bracket is very narrow.⁷²

Early in the Convention several proposals were made to prevent such subterfuges: by fixing the number of classes, the minimum number of cities in any class, or the population

⁷¹Cole Mfg. Co. v. Falls, 90 Tenn. 466, 16 S. W. 1045 (1891), quoted in Condon v. Maloney, 108 Tenn. 82, 65 S. W. 871 (1901).

⁷²Acts applying to counties with populations of 25,000 to 25,100, 12,980 to 13,000, and 25,907 to 25,909, respectively, were sustained in Murphy v. State, 114 Tenn. 531, 86 S. W. 711 (1904), Taylor Theater v. Mountain City, 189 Tenn. 690, 227 S. W. 2d 30 (1950), and Wilson v. State, 143 Tenn. 55, 224 S. W. 168 (1919).

limits of the classes. These were not accepted, primarily because it was felt that this would have unduly circumscribed the discretion of the General Assembly. However, many delegates spoke against the practice, and none defended it, so if the opinions expressed can be taken as representative it was the sense of the Convention that circumvention of this provision through the device of the single city population bracket should not be permitted. If this be so will the courts give it any weight, as they do legislative intent, if confronted with such cases? Or will it be ignored, as was the expressed intention of the 1870 Convention (see pages 62-63)?

Mr. Sims made this explanation of the Convention, with regard to withdrawal of restrictions on classification of cities:

...that particular part of the resolution was intended merely to prevent a subterfuge, and was completely ancillary to the prohibition of private legislation as affecting municipalities.... the legislature has the right, and has been classifying cities. I felt we went too deeply into that, and this restores to the legislature its own judgment and leaves the question purely one to be determined by the court as to whether or not it is a private or general act....⁷³

It is possible that general laws, incorporating a bona fide classification of home rule municipalities on a

⁷³Debates, pp. 1010, 1014.

population basis, could apply to one city only or to a very few cities in each class. This would be the result if a relatively small number of municipalities vote to become "home rule municipalities." For example, general legislation applying to "home rule municipalities" might be passed for those in population brackets of under 5,000, 5,000 to 15,000, 15,000 to 100,000, and over 100,000, according to the last Federal census or any subsequent Federal census; this certainly would be a classification free of any taint of private legislation in disguise, but if only one city in each bracket had voted to become a "home rule municipality" it necessarily would be the only one affected. But it might be questioned that legislation applying only to "home rule municipalities" is "general" legislation. There could be no objection if general laws apply to all cities in a reasonable population bracket, instead of being restricted to "home rule municipalities."

The extent of protection against legislative action that would be afforded by electing to operate under Amendment 7 seems to depend on two factors: (1) whether the General Assembly would be disposed to pass "general" acts that are actually private through the device of classification by population, and (2) whether the courts would sustain such acts as being "general in terms and effect."

* * *

Any municipality after adopting
home rule may continue to operate
under its existing charter,
This language is clear enough. The existing charter is
left undisturbed. An important point to note is that the
existing charter may no longer be amended or repealed by a
private act of the General Assembly, although it may have
been a charter enacted by private act. Change may take
place only by action of the municipality under subsequent
provisions of this amendment, or by general laws that super-
sede the city's charter (this point is discussed later on).

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 organ-
ization of its government,

This clause empowers a municipality, by following the
procedure outlined in a subsequent section, to determine
on its own initiative its "powers, duties and functions,
and...form, structure, personnel and organization of its

government." This is a broad grant of authority, and would seem to encompass any matters normally found in municipal charters, but it is subject to the important exceptions discussed under the succeeding two clauses. The sweeping nature of this grant was indicated by two Convention delegates.

Mr. McGinness: Now, a municipality has, as I have stated, only such powers as are expressly delegated to it; then, if this resolution be embodied in our Constitution, it would have all power except insofar as it might be restrained by general laws. This is not academic; it is fundamental.⁷⁴ In my view, it is a dangerous innovation....

* * *

Mr. Sims: After you get under the optional plan, you do not acquire any powers except those which are not contrary to the general acts or any future general acts of the legislature.⁷⁵

* * *

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

⁷⁴Debates, p. 959.

⁷⁵Debates, p. 1012.

General acts supersede charters of home rule municipalities

The above clause makes any general law prevail over a home rule municipality's charter to the extent that the latter is "inconsistent" with the former, "except with respect to compensation of municipal personnel." Thus the municipality's charter is supreme as to compensation but must defer to general laws on all other matters.

This reference is to "any general act" and not simply to general acts passed with respect to home rule municipalities. Nor is it limited to general acts passed after adoption of the amendment. Accordingly, it appears that the charter of a home rule municipality cannot be "inconsistent" with any provision of any general act now in force or to be adopted at any time in the future, except as to "compensation of municipal personnel." Said Mr. Miller to the Convention: "I want to make it clear that no municipality can act in regard to any matter either of local or of state-wide concern if the state itself has already entered the field by general law, and preempted that field by an inconsistent provision or regulation."⁷⁶

The word "inconsistent" is subject to interpretation. Direct conflict with a general act would seem to be prohibited, but would a standard in a private act, as in the field of public health, be "inconsistent" if more severe than a public general act? If the general acts are silent

⁷⁶Debates, p. 1045.

on a particular point, may the point be covered by a home rule charter provision? May a new corporate power, such as power to own and operate a municipal bus system, be added?

In one case it was held that a city could not prevent the sale of milk that had passed minimum State tests. "Any ordinance which it may enact...must be reasonable and not in conflict with the general law."⁷⁷

In another case, under a statute authorizing cities to impose higher-than-State standards on milk and milk products sold within their limits, the Court said:

An ordinance enacted in the exercise of police power is not necessarily inconsistent with a State law on the same subject because the city provides for greater restrictions or makes higher standards than is provided or made by statute. Walker v. Missouri Pac. R. Co., 95 Kan. 702, 149 P. 677.... But in doing so the city may not pass an ordinance which ignores the State's own regulatory acts, or deny rights granted by the State or grant rights denied by the State and thus in effect nullify the State law.⁷⁸

The City of Lincoln, Nebraska, governed by a home rule charter adopted under a constitutional grant which permitted it to "frame a charter for its own government, consistent with and subject to the constitution and laws of this state," passed an ordinance prohibiting the sale of liquor to minors.

⁷⁷Nashville Pure Milk Co. v. Town of Shelbyville, 192 Tenn. 194, 240 S. W. 2d 239 (1951).

⁷⁸Beasley v. Town of Fayetteville, 196 Tenn. 407, 268 S. W. 2d 330 (1954).

A state law also prohibited such sales, but had the added qualification "knowing them to be such," so that a vendor might escape on a plea and proof that he did not know the buyer was a minor. The court held that the two provisions were not inconsistent, that both were directed toward the same legislative purpose and the city ordinance was simply a "stricter regulation," and that the word "inconsistent" as "used in a sense applicable to legislation" means "contradictory in the sense of legislative provisions which cannot coexist, not mere lack of uniformity in detail."⁷⁹

An ordinance providing for city tax liens, adopted by Lubbock, Texas, under its home rule charter, was sustained as not being inconsistent with the general laws of Texas which provided for liens only for state and county taxes. [The court held that Lubbock, as a home rule municipality, had authority to write this into its charter because the State Legislature had previously included such a provision in the special act charter for Dallas.⁸⁰] As illustrations, the court said a city could adopt supplementary methods of collecting taxes, or could restrict motor buses to certain streets, or could fix telephone rates in the ab-

⁷⁹Bodkin v. State, 132 Neb. 535, 272 N. W. 547 (1937).

⁸⁰The Dallas special act tax lien provision was upheld in Dallas v. Ryan, 62 F. 2d 959 (1933).

sence of a state law on this subject, but could not fix a different or more extensive penalty for crime than that fixed by general laws. The court defined "inconsistent" to mean "in conflict with" and "repugnant to."⁸¹

A Florida case held that a general law authorizing the governing body of a municipality to issue bonds for street improvements simply by resolution was not "inconsistent" with a provision in the city's special act charter requiring a two-thirds favorable vote of the electors to approve any bond issue.⁸²

In passing on whether a provision in an act repealing all prior laws "inconsistent" therewith actually repealed a prior act on the same subject, the Supreme Court of New Jersey said:

The courts do not favor repealers by implication...when two entirely different schemes or methods of procedure are provided for by the two, it will be presumed that the Legislature was cognizant of that fact....If it was intended...to destroy the one, it would have said so by express words. ...The dictionary meaning of inconsistent is logically incompatible; contradictory; inharmonious. ...The methods of procedure are not inconsistent. They are different, it is true, but they may exist side by side.⁸³

⁸¹In re Robertson, 20 F. Supp. 270 (1936).

⁸²City of Lake Alfred v. Lawless, 102 Fla. 84, 135 So. 895 (1931).

⁸³Oakland v. Board of Conservation and Development, 98 N. J. L. 99, 118 A. 787 (1922).

The supremacy of general acts under this clause would seem not to extend to those general acts which are optional for adoption by municipalities. For example, the provisions of sections 6-1801 to 6-2313, T. C. A., known as the Uniform City Manager-Commission Charter, would not take precedence over a home rule charter, because it is an optional general act which by its own terms becomes effective only when adopted by the voters of a municipality. Such an optional general act could not conceivably be made binding on all cities by the operation of this constitutional provision. On the other hand it seems unlikely that a city could adopt a different provision from that found in section 6-1003, T. C. A., requiring written notice within 90 days after an accident if a suit is to be brought against a city for injuries alleged to be incurred on account of negligent conditions of streets or sidewalks.

Very limited protection against general acts

This clause would enable the General Assembly to pass general acts not inconsistent with other constitutional provisions, affecting home rule municipalities in any way, except as to compensation of municipal personnel. Of course this would not be a result of becoming a home rule municipality, because the General Assembly may do likewise with a municipality that has not elected to come under Amendment 7. The home rule municipality would have the added pro-

tection that no general act could override a charter provision relating to compensation of its personnel, a benefit not enjoyed by the non-home rule municipality. Mr. Sims, in the Convention, gave this explanation: "...the legislature cannot under the amendment pass a law to force the city...to pay minimum salaries to the employees that are hired by that particular city."⁸⁴

This provision probably could not be invoked to suspend the State's practice of prescribing minimum salaries for teachers through the grant-in-aid device. State law does not compel the payment of such salaries -- it simply provides that no State money for education will be paid to a city if it fails to pay the minimum salaries fixed by the State, and the city is free to receive or reject the money on such terms.

It should be noted that it must be a charter provision to benefit from this protection -- a general act could supersede an ordinance provision relating to compensation but it could not override a charter provision. Possibly a charter provision that all salaries shall be fixed by ordinance would assure protection against any general act interference, without actually fixing amounts of compensation in the charter -- generally considered to be an undesirable feature.

⁸⁴Debates, p. 1011.

Meaning of "compensation"

The word "compensation" is universally interpreted to include salaries and wages. Of comparatively recent origin has been the so-called "fringe benefits" provided by employers to employees -- retirement and pension plans, medical and hospitalization plans, group life and accident insurance, sick leave pay, and so on. Unions have given a great impetus to this trend, in their collective bargaining, and employers have no doubt been partially persuaded to grant such benefits because the costs thereof are deductible business expenses for Federal income tax purposes (it has been reported that the U. S. Internal Revenue Service has had under consideration whether to recommend that such fringe benefits be made taxable as income to employees).

General Regulation No. 1 of the U. S. Wage Stabilization Board defined "wages, salaries or other compensation" to include "vacation and holiday payments, ...employer contributions to or payments of insurance or welfare benefits, employer contributions to a pension fund or annuity, payments in kind...." Court cases have held the following to be compensation: an annual cash clothing allowance to firemen; the use of a car that may be withdrawn at the will of the employer; hospital, medical and surgical bills paid by an employer; funeral expenses; weekly payments for scheduled

injuries or for total or partial disability; the right to receive hospitalization or medical treatment; and vacation leave with pay. Retirement and pension plans have usually been included in this term but occasionally have been excluded.

In a leading case involving group insurance, the Tennessee Supreme Court observed that a city without doubt has authority to increase its employees' salaries, and, "This, in effect, is what it did when it took out said policy of group insurance....there can be no objection if, as an economic measure, it is to the best interest of the municipalities to adopt it."⁸⁵

In view of the foregoing it would seem likely that the courts would hold any such fringe benefits to be "compensation," including such items as uniforms and equipment furnished to city employees. If so, it would mean that the governing body of a home rule municipality would have complete and exclusive control in the determination of salaries and any other remunerative benefits for city employees (except teachers -- see page 74).

* * *

⁸⁵ State ex rel. Thompson v. City of Memphis, 147 Tenn. 658, 671, 251 S. W. 46, 27 A. L. R. 1257 (1922).

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.

It is obvious that under this clause "the power of taxation" cannot be "enlarged or increased" by locally adopted amendments to the charter. This may be done only by general act, and we shall see that a subsequent provision in this amendment limits the power of the General Assembly in this respect, even by general act (see pages 102-114).

Apparently the only effect of this provision is to reiterate that the General Assembly may not act on such matters for a home rule municipality by private act. The General Assembly loses none of its power to control taxation by municipalities,⁸⁶ except that it now can exercise such power only by general laws with respect to home rule municipalities.

This is a fairly significant difference, in that a few legislators almost invariably determine the fate of private bills, while general bills are subject to more thorough legislative consideration, the power of pressure groups, etc. For example, a general bill prescribing a

⁸⁶Such power is complete and exclusively within the province of the General Assembly. Luehrman v. Taxing District, 70 Tenn. 425 (1879); Railroad v. Harris, 99 Tenn. 684, 43 S. W. 115 (1897).

maximum property tax rate for all cities no doubt would encounter the organized resistance of cities, but a private bill so affecting a single city probably would pass unnoticed. Similarly, a general bill authorizing a new tax for all municipalities would arouse opposition from various groups, but a single city might obtain the authority relatively easily by private act.

Without a doubt this clause would prevent a city from adding a new tax, such as a municipal sales tax, simply by amending its home rule charter. But would an increase in the maximum ad valorem tax rate on property likewise be prohibited? The answer probably would be "yes," because increasing a maximum rate would seem to be increasing the power of taxation. This could be a serious limitation, as a small town grows into a large city, as new bond issues are required, and so on.

This would be no problem if a private act charter authorizes property taxation with no limit on the tax rate, which is probably the situation in most Tennessee cities. If general acts setting maximum tax rates are to be passed, cities should try to keep them from being unduly restrictive; for example, maximum rates may be prescribed for cities in specified population brackets, and it might also be provided that tax rates to service voted bond issues would not be included within such maximum rates. Still another way out

would be the raising of assessments; at least at the present time assessments are so low in most cities that this would be entirely practicable.

A city, in becoming a home rule municipality, would be giving up the capability of enlarging or increasing its powers of taxation by private act. Numerous private acts have been passed for this purpose in the past; a few will be mentioned by way of illustration. Four cities were authorized to levy a retail tax on beer sales by private acts; in the next session all cities were authorized to do so by general act. A private act empowering Knoxville to levy a tax on theater admissions was the forerunner of the general act permitting all cities to levy a two per cent tax on this source. A 1955 private act authorized the City of Memphis to levy retail sales taxes on liquor and cigarettes. Gatlinburg (and Sevier County) was authorized by a 1953 private act to levy a tax up to two per cent on amounts paid for lodging accommodations at hotels and motels.

The private act system seems to have two virtues in this respect: (1) pioneering by a few cities may lead to a general act that could not be passed as a general act at the outset, and (2) it is adaptable to the peculiar circumstances of a city; the lodging accommodations tax in

Gatlinburg, a summer tourist center, is a good example.

* * *

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.

Application to all municipalities?

The Constitutional Convention shifted gears at this point. The entire amendment, except this and one other sentence, by its terms applies only to "home rule municipalities." This sentence relates to "municipalities," and there is no qualifying language restricting its application to home rule municipalities. It might be contended that Amendment 7 was the "Home Rule Amendment" and that its provisions were intended to apply only to those cities electing to operate thereunder; however, the plain meaning of the words seems to be against such a view. The State Attorney General's office has given an opinion that this provision prohibits annexation by private acts.

In addition to the use of the word "municipalities" without the qualifying words "home rule," there is the fact that this sentence comprehends municipalities being "created."

Obviously an existing municipality, eligible to become a home rule municipality, cannot again be "created." It could be "merged," "consolidated" or "dissolved," but it could not again be "created." This application to municipalities not yet brought into existence and which could not be "home rule municipalities" is some evidence that this sentence was intended to apply to all municipalities.

The Tennessee Supreme Court, however, has declared that "the real intention will always prevail over the literal sense of terms."⁸⁷ Therefore, analysis should go beyond the literal meaning of this sentence. Although agreement on intent is not clearly revealed, the Convention Debates provide some clues as to the thinking of a few delegates on this point.

The first home rule resolution (no. 18) that was introduced by Mr. Sims, the chief proponent of home rule, contained a provision that "Municipal corporations...shall not be created by the General Assembly by special laws.... [and] The General Assembly shall provide by general law the methods by which new municipal corporations may be formed, municipal boundaries may be altered, municipal corporations may be merged or consolidated, and municipal corporations may be dissolved."

⁸⁷ Michie's Digest of Tennessee Reports, Vol. 14, page 240, citing numerous cases.

Numerous resolutions on home rule were introduced and many of them contained language similar to the foregoing -- no material change occurred -- only a condensation to make the sentence shorter. Resolution no. 45, for example, read, "shall provide by law the methods," and otherwise was identical with the sentence finally adopted. The first majority report of the Committee on Home Rule included the same language as was finally adopted, and this sentence reappeared without change in numerous subsequent drafts that eventually became Amendment 7.

Mr. Sims, in a convention speech, made this statement: "I ask you to see if we have not...given to the people in the cities...the exclusive method of handling their own affairs in their municipal corporation, but leaving to the legislature the broader power of creating the method of organizing municipalities, merging them, dissolving them, and extending their boundaries."⁸⁸

Resolution no. 105, revised as Resolution no. 118, eventually became Amendment 7 -- the former covered all municipalities, but the final amendment made home rule optional for each city, to be determined by a city election. No. 105 originally contained the words, "the power of taxation of a municipality," but this was changed in the final amendment

⁸⁸Debates, p. 915.

to "the power of taxation of such municipality" (underlining added). However, the provision under consideration was the same verbatim in both, except that the "and" linking it to the foregoing clause in Resolution no. 105 was dropped, and it became a new sentence in Amendment no. 7.

Resolution no. 118, without any change, was eventually approved by the Convention and by the voters as Amendment 7. This resolution for the first time incorporated the optional feature by an election in each municipality. It may be noteworthy that Mr. Sims did not mention creating, merging, consolidating, and dissolving cities, or altering their boundaries, in his initial explanation that this resolution would "give the cities of Tennessee the option of adopting home rule..., to permit them to regulate their own affairs, to amend their own charter by a vote of the people in the municipality, and...remove themselves from the home rule cities by the same process...."⁸⁹

With respect to the sentence under consideration, Mr. Sims made this statement: "if any city elects under this optional plan to become a home rule city, it still is left with the legislature as to how its boundaries may be altered or as to how new cities which are not incorporated may be

⁸⁹Debates, p. 1010.

incorporated, or as to how two cities may be merged."⁹⁰ His words, "its boundaries" clearly refer to a city that has voted to go under Amendment 7. The balance of his statement is confusing, because there can be no direct connection between his "if" clause and the last two events mentioned.

The only basis for holding that such matters are not to be determined exclusively by general laws is that the Convention intended this provision to apply only to home rule municipalities. Other evidence in the Convention Debates that might lend support to such a view are the following statements by Mr. Sims, made after he had finished explaining the next to last paragraph in the amendment: "So that you have up to now an optional plan which does not apply to your city unless your city wants it. After you get under the optional plan, you do not acquire any powers except those which are not contrary to the general acts...."⁹¹ In concluding his discussion of the whole amendment he said, "This plan will give home rule to those cities who want it and those who do not want it will not be affected in the slightest."⁹¹

One might argue, then, that the sentence under consideration was intended to mean that home rule municipalities could not exercise such powers through charter amendments or by

⁹⁰Debates, p. 1011.

⁹¹Debates, p. 1012.

ordinances but could do so only pursuant to general laws enacted by the General Assembly, instead of as a complete exclusion of private acts on such matters for non-home-rule municipalities.

The proponents of Amendment 7 were chiefly interested in prohibiting all private acts for cities; at least two of them, Mr. Sims and Mr. Miller, did not look with much favor on the veto provision in Amendment 6. Their first drafts would have applied to all cities, requiring the General Assembly to deal with them by general laws, with classification into four classes and not less than four cities in any class permitted. When they shifted to the optional basis, did they intend that the whole plan then would apply only to home rule municipalities, and that all kinds of private acts, including those annexing territory, were prohibited only with respect to such municipalities? Omission of the word "such" before "municipalities" may or may not have been intentional -- it could have been an oversight. But this line of thinking leads to the incongruity of "creating" already existing home rule municipalities, as the word "created" also appears in this sentence.

Although the Convention Debates do not provide a clear answer to the question of intent on this point, on balance it seems that the most defensible view is that this provision applies to all municipalities in the state.

Incorporation only under a general act?

The effect of this provision seems to be that municipalities may be "created" (incorporated) only under a general act. New general legislation may be enacted by future sessions of the General Assembly. At the present time only two general laws are available. One is found in sections 6-101 et seq., T. C. A., which provides for a mayor-council form of government, and the other is the Uniform City Manager-Commission Charter, sections 6-1801 to 6-2313, T. C. A. The prevailing practice of past years, incorporation by private act, appears to be no longer available.

Another procedure might be followed to gain substantially the same end as incorporation by private act: incorporate under a general act and then secure the adoption of private acts containing desired amendments. For example, the city of McMinnville, incorporated in 1901 under a general act, by 1953 had 19 private acts changing its corporate limits, 2 dealing with registration of voters, 1 giving it power to construct and clean sidewalks at the expense of abutting property owners, 1 forgiving delinquent property tax penalties 1929-31, 1 authorizing ownership and operation of a municipal hospital, 1 authorizing construction of an industrial building, 1 fixing the maximum property tax rate, and 1 setting the salaries of the Mayor and Aldermen.

It might appear questionable whether a private act could amend the provisions of a general act under which a city is incorporated. Apparently this can be done under the plenary powers of the Legislature to enact private legislation for a particular city. The language in one opinion, upholding a 1915 Private Act (chap. 688), captioned "An act pertaining to the waterworks of the city of Knoxville, to so amend the charter of said city....," contains dicta to this effect: "A municipal charter obtained under the general law cannot be amended by a recitation of the title, because there is no title to such an incorporation; but, whether it be a charter under the general law or by special act, the substance of the law may be recited. ...Suppose that this charter was one under the general law instead of a special act. It could only be recited by showing the substance of the law...."⁹² Other cases have sustained the amendment or suspension of general laws by private acts.⁹³

⁹²Heiskell v. Knoxville, 136 Tenn. 376, 189 S. W. 857 (1916).

⁹³White v. Callis, 164 Tenn. 462, 51 S. W. 2d 485 (1932); Baker v. State, 191 Tenn. 559, 235 S. W. 2d 435 (1951); N. C. & St. L. Ry. v. Marshall County, 161 Tenn. 236, 30 S. W. 2d 268 (1930); Wilson v. Wilson, 134 Tenn. 697, 185 S. W. 718 (1916); Hancock v. Davidson County, 171 Tenn. 420, 104 S. W. 2d 824 (1937); Wallace v. Lewallen, 186 Tenn. 411, 210 S. W. 2d 684 (1948). These cases are briefly summarized in the Appendix.

It might be argued that the word "shall," as used in this provision, was intended to have a futuristic meaning, and that only general acts passed after adoption of the amendment would apply. Generally it is considered as mandatory, sometimes directory.⁹⁴ It would appear to be unreasonable to hold that the use of "shall" in this amendment would constitute a repeal of an existing general act, which would be the effect under such a limited interpretation. Of course, as in the case of legislative reapportionment, the use of the mandatory word "shall" is no guarantee that the General Assembly will so act, and it is doubtful that the courts would undertake to enforce such a constitutional provision.⁹⁵

Annexation only under a general act

"The General Assembly shall be general law provide the exclusive methods...by which municipal boundaries may be altered." Unless modified by judicial interpretation, this

⁹⁴For example: "...in common parlance shall has always a compulsory meaning; but in law shall and may are often convertible terms." Farmers & Merchants Bank v. Johnson, 22 Tenn. 26 (1842); "the mandatory word, 'shall', and equivalent of the word 'must.'" Home Telegraph Co. v. Nashville, 118 Tenn. 1, 101 S. W. 770 (1906); "It is a general rule of law that the word 'shall' ordinarily is construed as being mandatory and not directory when used in constitutions or statutes." L. & N. Railroad Co. v. Hammer, 191 Tenn. 700, 236 S. W. 2d 971 (1951).

⁹⁵"...a mandatory non-self-executing constitutional provision delegates to the Legislature the execution of a power coupled with a command which, it is true, the Legislature may disregard and the courts are without authority to enforce performance of by affirmative decree." Biggs v. Beeler, 180 Tenn. 198, 173 S. W. 2d 946 (1943).

provision would seem to ban the extension of city limits by private act, and likewise would bar the contraction of city limits by private act.

At the present time there are two general laws on this subject. Sections 6-301 and 6-302, T. C. A., permit an election on the question only after a petition for annexation has been signed by 50 freeholders (land owners) in an area proposed for annexation. Sections 6-304 to 6-307 provide for contracting a city's corporate limits, by a three-fourths majority of those voting in an election called for this purpose. Chapter 113, 1955 Public Acts (sections 6-308 to 6-319, T. C. A.), empowers a city to annex by ordinance or by an election initiated by the city governing body.

* * *

A charter or amendment may be
proposed by ordinance of any
home rule municipality,

This is the first of three procedures for proposing a new charter or an amendment to an existing charter. The governing body may do so by a duly enacted ordinance. The people could also do so if a charter provides for ordinances under the initiative procedure.

* * *

by a charter commission pro-
vided for by Act of the General
Assembly and elected by the
qualified voters of a home rule
municipality voting thereon

The second procedure is the election of a charter commission "provided for by Act of the General Assembly." The word "Act" standing alone raises a question as to whether it could be a private act. Unquestionably the General Assembly could provide by general act for the election of charter commissions in all cities electing to follow this route, but could it pass a private act for a particular city? The language "a charter commission" and "a home rule municipality" might be construed in the singular, as an intention that such an act would apply to only one city, and that this was intended to be an exception to the preceding provision in this amendment that "the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect."

The last part of this clause would seem to require that any such act of the General Assembly provide for election of charter commission members by a majority of the qualified (registered) voters voting thereon in the election -- although "majority" is not spelled out it is clearly implied.

* * *

or, in the absence of such act of the
General Assembly, by a charter commis-
sion of seven (7) members, chosen at
large not more often than once in two
(2) years, in a municipal election
pursuant to petition for such election
signed by qualified voters of a home
rule municipality not less in number
than ten (10) per cent of those voting
in the then most recent general municipal
election.

This, the third procedure, may be used only "in the absence" of an act by the General Assembly providing for a charter commission; if the General Assembly passes an act this procedure would no longer be available.

The question of whether the whole of Amendment 7 can be placed into operation by a municipal election without implementing legislation by the General Assembly has already been considered. Of a similar nature is this provision authorizing local action to effect charter changes, and the answer seems to be the same: no implementing^a legislation is required.

The clause, "in the absence of such act of the General Assembly," should leave no doubt that the Convention intended that this provision should be self-executing. Mr.

Miller, in the Convention, explained that this amendment "puts that power to propose a change in the charter in the city council (and)...in a charter commission elected by the people."⁹⁶ Likewise, Mr. Sims said, "...if the General Assembly fails to authorize a charter commission...ten per cent of those voting in the most recent municipal election may file a petition and propose an amendment or a change in the charter."⁹⁷ Mr. Jones was apprehensive: "...this provision providing for a forced election at any time of a seven-man charter commission is pregnant with highly undesirable possibilities."⁹⁸

The language seems to be self-explanatory. Action would be initiated by a petition signed by qualified (registered) voters of the city not less in number than 10 per cent of the total vote cast in the "then most recent general municipal election." The specification of "general municipal election" would seem to mean a regularly scheduled election, as provided in the charter, for the election of officers; it would appear to rule out any special election to fill a vacancy or to vote on a question such as a bond issue, etc. "A regular or general election is one which recurs at stated intervals as fixed by law; it is one which occurs at stated intervals without any superinducing cause other than the

⁹⁶Debates, p. 932.

⁹⁷Debates, p. 1011-1012.

⁹⁸Debates, p. 1044.

efflux of time."⁹⁹ "The words 'general election'...when used with reference to city elections, without any qualifying words, must mean the election for municipal officers in general."¹⁰⁰

The charter commission members would be elected "at large" (from the entire city instead of by wards of districts), in a "municipal election." The use of these words in the same sentence with the words "general municipal election" would seem to imply that a distinction was intended between the two. We have already noted the apparent meaning of "general municipal election." Any election on a municipal matter would appear to be a "municipal election" at which such charter proposals could be submitted. A special election on whether to construct and operate a water system, under a statute authorizing submission at "a special or general election," has been held to be a "municipal election."¹⁰¹ A special election on the issuance of school bonds has been held to be a "municipal election."¹⁰² One case¹⁰³ holds that an incorporation election is a "municipal election," and another case¹⁰⁴ holds that it is not. An Iowa case held "last

⁹⁹Allen v. Tobin, 51 N. W. 2d 338, 155 Neb. 212 (1952).

¹⁰⁰State v. Schroeder, 113 N. W. 192, 79 Neb. 759 (1907).

¹⁰¹State v. Kidd, 74 Ind. 554 (1881).

¹⁰²Frost v. Central City, 120 S. W. 367, 134 Ky. 434 (1909).

¹⁰³Watson v. Fouch, 205 P. 58, 55 Cal. App. 765 (1922).

¹⁰⁴Johnson v. Luers, 99 A. 710, 129 Md. 521 (1916).

preceding municipal election" to mean the "regular election at which officers are chosen" and to exclude "special elections called for the purpose of authorizing the issuance of bonds."¹⁰⁵

Such a charter commission would propose a complete new charter or one or more charter amendments. Could the charter commission be limited in the scope of its proposals? Could it be restricted to consideration of amendments on specified subjects? If so, the only instrument of imposing such restrictions would seem to be the petition. The restriction of special legislative sessions to subjects specified in a governor's call, and the approval of the 1953 Limited Constitutional Convention might be cited as somewhat parallel situations. If the petitioners want an amendment on only one subject, and the election is held pursuant to the petition, it could be argued that a charter commission would exceed its authority to propose amendments on other subjects.

To whom would the petition be submitted? The amendment is silent on this point. Would the petition go to the city's governing body, which would in turn call on the county election commission to hold the election, or would the petition be presented to the county election commission? The latter

¹⁰⁵Hutchins v. Des Moines, 157 N. W. 881, 176 Iowa 189 (1916).

procedure probably would apply. Section 2-1807, T. C. A., provides: "Whenever a special election by popular vote is necessitated under existing or future laws, it shall be the duty of those persons charged with the calling thereof to cause the same to be held...." It could be held that this self-executing constitutional provision is not a "law" within the meaning of the foregoing statute and therefore the procedure outlined therein would not apply. In any event, upon submission of a proper petition (if no act has been passed by the General Assembly) an election is "necessitated," and since county election commissions conduct all elections in Tennessee it would seem to follow that the commission of the county in which the municipality is located would unquestionably be under a duty to call the election. There is nothing in the amendment indicating that the petition should first go to the governing body of the municipality, and this would seem to be a wholly unnecessary procedure.

Finally, such a charter commission could not be elected more often than once in two years. Thus, if a commission has been elected, let us say to propose a single amendment, and a year later an urgent need develops to adopt another amendment, it could not be done until two years had elapsed. However, a home rule municipality would be "no worse off" in this respect, because regular legislative

sessions to amend private act charters are two years apart.

* * *

It shall be the duty of the legis-
lative body of such municipality to
publish any proposal so made

The legislative body (council, commission, board of mayor and aldermen, etc.) is required to "publish" whatever has been proposed by any of the three methods outlined above. If an entirely new charter has been proposed, it would be the duty of the legislative body to have it published.

What is the meaning of the word "publish"? "By reference to Webster's New International Dictionary, the definition of 'publish' is, in part, as follows: 'To promulgate or proclaim, as a law or an edict. To make public in a newspaper, book, circular, or the like.' ...A book may be printed without being published. It is published only when it is offered for sale or put in general circulation."¹⁰⁶ From another case: "the word 'publish' means, primarily, to make known, and has the same significance as the word 'circulate.'"¹⁰⁷

Although newspaper publication in most instances would probably be the most convenient means to "publish" the proposal, if the foregoing definitions would be adopted by the

¹⁰⁶Buchanan v. Stamper, 272 Ky. 38, 113 S. W. 2d 839 (1938).

¹⁰⁷State v. Elder, 19 N. M. 393, 143 Pac. 482 (1914).

Tennessee courts it would not be required. The language of the amendment does not specify publication in a newspaper. To "circulate" a "circular, or the like," such as a pamphlet setting forth a proposed new charter distributed house to house and posted in conspicuous places, would seem to meet the requirement. A desirable arrangement sometimes used would be to print the proposal as an insert in a newspaper which can be removed and retained in pamphlet form, providing the newspaper publisher will furnish extra copies. Possibly a safe course would be to use whatever means is specified in a city's charter to publish ordinances and public notices.

* * *

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

What must appear on the ballot?

Although "same" refers back to "proposal," which would be the complete proposed amendment, this would not necessarily imply publishing the entire amendment on the ballot. It is customary to summarize on a ballot the matter to be voted upon, and quite often a law will prescribe the exact language; in the absence of any such prescription

in this provision any reasonably clear summary of the proposed amendment should suffice. It would be up to a county election commission to make this decision.

The key word here seems to be "submit." One case holds that "a ballot title...is a clause which submits the proposed measure to the voters for their adoption or rejection.... To submit means to present and leave to the judgment of the qualified voters."¹⁰⁸ From another case: "We get little help from cases...so far as the cited authorities are pertinent they support the idea that to 'submit' may include more than leaving the bare document to the will of the voters. For instance: In re Norton, 75 Misc. 180, 134 N. Y. S. 1030, 1032, says: 'In this election everything necessary to reach the judgment of the qualified voters is a part of the submission; that is, all the proceedings preparatory to the election day, including the count of ballots, and the return.'¹⁰⁹

The obvious purpose of publication in advance of the election is to inform the public. The complete text of an amendment on the ballot could not serve this purpose, and in the context of Amendment 7 it is obvious that this was not intended. Perhaps there could be added to the short ballot title something like the following: "as published in (naming

¹⁰⁸Noland v. Hayward, 192 P. 657, 658, 69 Colo. 181 (1920).

¹⁰⁹State ex rel. News Corp. v. Smith, 184 S. W. 2d 598, 600, 353 Mo. 845 (1945).

newspaper or other media) on (date or dates)." This should establish beyond any doubt a tie between the ballot title and the complete proposal.

Election at which to be submitted

The proposal is to be submitted at the "first general state election" occurring at least 60 days after its publication. "The rule is to exclude the first day and to include the last day of the specified period";¹¹⁰ for example, publication on September 3 would be 60 days ahead of an election on November 2 (27 days in September, plus 31 in October and 2 in November).

Another point to be noted is the meaning of "general state election." Party primaries may be immediately eliminated.¹¹¹ The Dortch Ballot Law (sec. 2-1201, et seq., T. C. A.) defines "state elections" to include "any election held for the choice of national, state, county, or district officer or officers."

Elections of county officers and judges are held concurrently with primaries to nominate candidates for Governor, Railroad and Public Utilities Commissioner, and members of the General Assembly, on the first Thursday in August; primaries only held on this date would not qualify, but when-

¹¹⁰52 Am. Jur. 343.

¹¹¹"A primary election is not an 'election' within the common acceptation of that term." 29 C. J. S. 15 "...primaries are not in reality elections, but merely nominating devices." Ledgerwood v. Pitts, 122 Tenn. 570, 125 S. W. 1036 (1910).

ever county officers or judges are to be elected at the same time the election would seem to qualify as a "general state election" when a municipality could submit a charter proposal.

November elections for Governor, Railroad and Public Utilities Commissioner, and members of the General Assembly could also be used for this purpose.

Mr. Sims, in explaining this provision to the Convention, said, "it further guarantees that amendments cannot be submitted more often than once in every two years, because that is when you have your general elections."¹¹²

In addition to "state election," this provision has the additional qualifying word "general." Although some cases construe a "general election" to be one open to all voters, even though to fill a vacancy or to vote on a particular question, the usual rule seems to be to classify these as "special elections," as distinguished from regularly occurring "general elections." A conservative view would be to regard as "general state elections" only those occurring at stated time intervals for the election of the officers mentioned above, and to rule out all others as "special elections."

¹¹²Debates, p. 908.

and such proposal shall become
effective sixty (60) days after
approval by a majority of the
qualified voters voting thereon.

Only a simple majority of those "voting thereon" is required. It would be expected that many voters casting ballots in the "general state election" would not vote on the charter proposal, but a majority of the total vote would not be needed -- only a majority of those voting on this particular question. As to counting the days, the same general rule as stated above would seem to apply; "generally, time 'after' an act is computed by excluding the day on which the event took place."¹¹³

The question may arise as to when the 60 days begins to run. When does "approval" take place? On the day following the election, or when the vote is finally counted or officially canvassed? The answer would seem to be that "approval" takes place on the day of the election, and that the day following is the first of the 60 days. Construing an Oregon constitutional provision, under which an employers' liability act had been adopted by the initiative procedure, in a case involving an accident on the day following the election, a Federal court said:

¹¹³52 Am. Jur. 352.

A law proposed by the initiative...would take effect from and after the date of its approval, unless otherwise declared therein.... The law is adopted or rejected at the time the vote is cast, and not when the official canvass is made. It may be suggested that under this view a law may in fact be in force without those affected thereby being aware of it; but this may be and often is true of acts of Congress and other law-making bodies which take effect from and after the date of their passage.¹¹⁴

* * *

The General Assembly shall not authorize any municipality to tax incomes, estates or inheritances, or to impose any other tax not authorized by Sections 28 or 29 of Article II of this Constitution.

Application

This is the second sentence in the amendment that applies to all municipalities of the state. The language "any municipality" seems to be explicit enough. The Convention Debates also leave no doubt on this point. Nearly every draft contained such a provision, and every delegate who spoke on this point indicated a definite intention that no municipality should be permitted to levy such nefarious taxes. Said Mr. Manheim, referring to Mr. Pope's argument that the

¹¹⁴Bradley v. Union Bridge & Construction Co., 185 F. 544 (1911). A similar holding is found in State v. Missouri Workmen's Compensation Commission, 318 Mo. 1016, 2 S. W. 2d 796 (1928).

effect of Resolution No. 105 would be to empower the legislature to levy an income tax and to authorize any municipality to levy such a tax: "I assure you that none of us who signed Resolution No. 105 had the slightest intention of granting additional powers of taxation to anybody. So, we can quickly dispose of this objection by redrafting the proposal in language that will leave no doubt whatever as to our intentions."¹¹⁵

What taxes may be levied under this limitation?

First we will consider sections 28 and 29 of the Constitution, since these set absolute limits beyond which even the General Assembly cannot empower municipalities to tax. Section 28 authorizes taxes on the following: real, personal and mixed property; "Merchants, Peddlers, and privileges"; "Merchant's Capital used in the purchase of Merchandise sold by him to non-residents and sent beyond the State" (taxable at ad valorem property tax rate); income from stocks and bonds; and the poll tax. The only reference to a specific tax in Section 29 is that "all property shall be taxed according to its value." Any taxes not classified by the courts as falling under any of these categories may not be authorized by the General Assembly to any municipality.

¹¹⁵Debates, p. 947.

Section 29 provides that the "General Assembly shall have power to authorize the...incorporated towns...to impose taxes for...corporation purposes...in such manner as shall be prescribed by law." There seems to be few cases in Tennessee challenging the delegation of the taxing power to municipalities, possibly because of the broad language "to impose taxes" without any qualification whatsoever of the word "taxes." "The State...having full control of these agencies [municipalities]...may authorize such agents to levy a tax..."¹¹⁶ However, Amendment 7 now limits the legislative power of delegation to those taxes "authorized by Sections 28 or 29," with a further restriction that no municipality may be authorized "to tax incomes, estates, or inheritances."

The prohibition against a tax on estates or inheritances appears to be insignificant; it is probable that no municipality in the United States levies such a tax. But removal of the authority "to tax incomes" could be more important. Would this prevent a Tennessee municipality from levying a "payroll tax" on all persons working within its city limits? In view of the fact that this type of tax has been imposed by many cities and is viewed as an equitable, very productive source of revenue by many municipal leaders, this question will be analyzed at some length.

¹¹⁶Hill v. Roberts, 142 Tenn. 215, 217 S. W. 826 (1920).

The language of Section 28 of Article II of the Tennessee Constitution is that "the Legislature shall have power to tax Merchants, Peddlers, and privileges, in such manner as they may from time to time direct." A long line of Tennessee cases have construed this provision as giving the General Assembly plenary power to tax "privileges." A few quotations will indicate this trend. "We take it the word privilege was intended to designate a larger, perhaps an indefinite class of objects...occupation...avocation, calling, or pursuit, all of which may be declared and have been so held privileges under our constitution,"¹¹⁷ "At the least, any occupation, business, employment, or the like affecting the public, may be classed and taxed as a privilege."¹¹⁸ "A privilege is whatever the Legislature choose to declare to be a privilege and to tax as such."¹¹⁹ "The Legislature has unlimited, and unrestricted power to tax privileges, and this power may be exercised in any manner or mode in its discretion."¹²⁰ "In fact it has been said in two of our cases that, if thought proper, the Legislature might make the business of farming a

¹¹⁷Phillips v. Lewis, 3 Shan. Cas. 230 (1877).

¹¹⁸Railroad v. Harris, 99 Tenn. 683, 43 S. W. 115, 53 L. R. A. 921 (1897).

¹¹⁹Kurth v. State, 86 Tenn. 134, 5 S. W. 593 (1887).

¹²⁰Wilson v. State, 143 Tenn. 55, 224 S. W. 168 (1919).

privilege.... The term 'privilege' embraces any and all occupations that the Legislature may in its discretion choose to declare a privilege and tax as such."¹²¹ "The power to tax privileges is not subject to any constitutional limitation except that the tax levied must not be arbitrary, capricious or wholly unreasonable."¹²² "Taxation of the privilege is upon the occupation or activity carried on amid the social, economic, and industrial environment, under protection of the state."¹²³ (underlining added).

However, both by terms of Amendment 7 and prior judicial rulings, only the General Assembly may empower a municipality to tax privileges; "the Legislature alone can create a privilege and authorize its taxation, and...a municipal corporation cannot make any occupation a privilege, nor impose a tax upon it, unless it has first been so declared by the Legislature."¹²⁴

It is stressed again that a municipality may have its power of taxation enlarged by private act until it becomes a home rule municipality under Amendment 7; thereafter, its power of taxation may be enlarged only by a general act.

We have seen in the foregoing cases that the General Assembly may tax as a "privilege," and may authorize munici-

¹²¹Seven Springs Water Co. v. Kennedy, 156 Tenn. 1, 299 S. W. 792, 56 A.L.R. 496 (1927).

¹²²Hooten v. Carson, 186 Tenn. 282, 209 S. W. 2d 273 (1948).

¹²³Bank of Commerce & Trust Co. v. Senter, 149 Tenn. 569, 260 S. W. 144 (1923).

¹²⁴Trading Stamp Co. v. Memphis, 101 Tenn. 180, 147 S. W. 136 (1898).

palities to tax as a "privilege," any "occupation, avocation, calling, pursuit, business, employment, activity, or the like affecting the public," even the "business of farming," and "whatever the Legislature choose to declare to be a privilege." Under this broad construction of the taxing power may the General Assembly authorize a municipality to impose a privilege tax on all persons working in a city, measured by their income or earnings? Of course the question immediately arises, "Is this not a tax on incomes, prohibited by the explicit terms of Amendment 7?" This precise question was considered in a Kentucky case, in a manner so pertinent that it is quoted extensively below:

The Board of Aldermen of Louisville has imposed an annual tax or license fee for the privilege of engaging in any business, calling, profession or labor [actual wording of the ordinance: "occupation, trade, profession, or other activity"] within the city, with certain exceptions.... The major attack...stems from the fact that the measure of the tax is the earnings from the exercise of the privileges...being one per cent thereof.

The validity of the ordinance is principally questioned upon the ground that it imposes an income tax in fact although it designates the tax as a license fee. ...the ordinance gathers within the sweep of its perimeter everybody who earns any money in any occupation, trade or profession or in the conduct of any business within the limits of the city....

A municipality's power to tax is only that which the legislature has granted it.... Section 181 of the Constitution provides that the General

Assembly may "delegate the power to...cities... to impose and collect license fees on...franchises, trades, occupations and professions." By an Act of 1948...the General Assembly provided: "Cities of all classes are authorized to levy and collect any and all taxes provided for in Section 181 of the Constitution..." "...trades, occupations and professions..." "...is as far-reaching and as sweeping as language could make it. It would be difficult to find three words that cover wider fields of employment." "...that the right to earn a livelihood is an inalienable right guaranteed by the Bill of Rights of the Constitution...is true may be conceded by all. However, the Bill of Rights does not operate to relieve from taxation..."

...The principal storm center...is whether or not this ordinance imposes an income tax, the taxpayers' argument being that the city has no authority to levy such a tax. We need not pass upon the question of the existence or absence of that power. Confusion in the case may arise from placing so much emphasis on the measure of the tax as to subordinate or lose sight of its true character.... Since the levy is primarily for revenue, to speak with technical accuracy, the tax imposed is an "occupation tax."

...This Louisville ordinance lays the tax upon the privilege of working and conducting a business within the city, and only measures the value of the privilege by the amount of earnings or net profits. It is contended that this is but a subterfuge [and]...it is but an income tax.... We... hold the tax is not an income tax....¹²⁵

The Louisville tax was sustained as collectible from all employees of the Federal government working in the city, including those at a Naval Ordnance Plant owned by and under the exclusive jurisdiction of the United States.¹²⁶

¹²⁵City of Louisville v. Sebree, 308 Ky. 420, 214 S. W. 2d 248 (1948).

¹²⁶Cooke v. Louisville, 312 Ky. 1, 226 S. W. 2d 328 (1950).
Howard v. Commissioners, 344 U. S. 624, 97 L. Ed. 621, 73 S. C. 468 (1953).

If the foregoing line of cases is followed, the Tennessee Supreme Court could sustain a privilege tax on all businesses and persons working within a city, measured by net profits, income or earnings, on the grounds that such a tax would be a tax on the privilege and not on the income. On this basis it would not come within the purview of the words "to tax incomes" found in Amendment 7. Compare the following with the Kentucky case: "It [Chapter 31, Public Acts of 1923] is said...to impose a direct tax on the incomes of corporations. ...the act imposes an excise tax [elsewhere in the opinion: "an excise tax is an indirect or privilege tax"]... the measure of the annual tax is a sum equal to 3 per centum of the net earnings for the preceding fiscal year. ...the act is valid unless some other constitutional limitation has been overstepped."¹²⁷ "Section 30 [of Article 2 of the Constitution]...prohibits taxation upon the article manufactured of the produce of this State.... Section 30 does not inhibit the laying of a privilege tax upon the occupation of selling such articles."¹²⁸ It may also be noted that State privilege taxes on insurance companies are calculated as percentages of their gross receipts.¹²⁹

¹²⁷Bank of Commerce & Trust Co. v. Senter, supra.

¹²⁸Kurth v. State, supra.

¹²⁹T. C. A., sec. 56-408 et seq.

Delegates in the Constitutional Convention expressed fears that such dire consequences might flow from this amendment, and others tried to give reassurances. Opinions were so divided that perhaps a consensus of intention on this point was not established.

Mr. Pope thought that the clause, "the power of taxation of a municipality shall not be enlarged or increased except by general act," read in relation to the Article it would amend, would remove any prohibition on the legislature "from passing an act levying an income tax on people in municipalities, or authorizing them to do it, either one.... I don't think the gentlemen meant to do it, but it is in there, and it is clear."¹³⁰

Later, Mr. Pope observed, "They have undertaken to eliminate the objection by providing that the General Assembly shall not authorize any municipality to tax incomes, estates or inheritances, or to impose any other tax not authorized by Section 28 or 29 of Article II of the Constitution."¹³¹ Mr. Pope then quoted this part of Section 28:

No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of the same value, but the legislature shall have power to tax merchants, peddlers and privileges, in such manner as they may from time to time direct.

¹³⁰Debates, p. 921.

¹³¹Debates, p. 1020.

and he followed with these comments:

Now, how has the Supreme Court of Tennessee construed that; the Supreme Court of Tennessee has said on numerous occasions that the legislature has the power and the authority to levy any tax that it sees fit on privileges, and we have a number of privilege taxes in Tennessee today, where the measure of the tax is the income of the individual tax....

...there are a number of taxes in Tennessee exercised by the legislature as a privilege tax; one is called an excise tax. What is the basis, what is the measure of the assessment upon which that excise tax is fixed; it is the income of the party taxed.

...that is exactly what the excise tax is, it is levied upon the grounds of being a privilege, and the measure of the tax, the methods on which the tax is calculated can be the income of the party taxed under that excise law.

...although the Supreme Court of Tennessee had said the legislature could not levy the income tax, it did sustain this excise tax; it was three per cent upon the net profits of the Memphis Natural Gas Company; and in that very suit, I collected some \$65,000 upon the income of the Memphis Natural Gas Company, after the case had gone to the Supreme Court of the United States and there affirmed, having been first decided by our Supreme Court.

Under this amendment, I say that the General Assembly of this State could authorize any town in the State coming under the home rule to enact, through its city council, an excise tax based upon a privilege, they could declare anything they wanted to be a privilege, according to the Supreme Court of Tennessee; ...anything, the Supreme Court, said, can be levied as a privilege tax because the Constitution does not prohibit it, and while it is not called an income tax, in effect it is the same as an income tax because the measure of the tax is the income and of course the same applies to any other taxes, like sales taxes, and so forth.¹³²

¹³²Debates, pp. 1020-1021.

Another delegate, Mr. Miles, agreed: "Mr. Pope has talked considerably about the taxation feature of this proposed Sims amendment; I shall not undertake to repeat, except to say that I believe that Mr. Pope is right in every statement that he has made."¹³³ Two other delegates, however, disagreed:

Mr. Ogle: Now, I am not an authority on taxation, and I don't purport to be, but I don't think that the evil he is trying to inject, or the fear that he is trying to inject, into this Committee relative to taxes exists; and I don't think Mr. Pope deep down in his heart thinks it exists himself. I have talked to a few other people about the various evil taxes that could be imposed; these people are authorities in the field of taxation, and they have convinced me beyond a reasonable doubt that those evils would not be present if the Sims proposal were adopted.¹³⁴

* * *

Mr. Ambrose: I listened with great interest to the opponents of this measure yesterday, and they delineated all of this new taxation that was going to be imposed upon us.... Now, they have been throwing the boogie-man in here; that has no place in this record.¹³⁵

To allay their fears, Mr. Sims, the chief proponent of Amendment 7, said the following:

I would not support any plan of home rule which would make it possible for the legislature to vest in our cities any powers of taxation which it cannot vest in the cities today under the present Constitution. Resolution No. 118 [which later became Amendment 7] leaves to the legislature the right to

¹³³Debates, p. 1028.

¹³⁴Debates, p. 1029.

¹³⁵Debates, p. 1040.

give the cities additional powers of taxation from time to time only by general laws, whereas today additional powers of taxation can be given by special acts as well as by general law. That is an additional safeguard which we have in this resolution, and in addition, we have placed an absolute prohibition on certain kinds of taxes ever being vested in municipalities. For example, any income tax, regardless of what the Supreme Court later holds in regard to an income tax, that right could not be vested in a city in view of this prohibition....¹³⁶

The following exchange in the Convention might be construed as an intention to place inspection fees beyond the reach of this prohibition:

Mr. Smith: In the proviso against taxation, I know that you are and the delegates are familiar with inspection staffs which do not levy a tax, but collect the fee for inspectors, the police power, sanitation, garbage collection, and things of that sort; would that be construed as a tax, or is that an inspection fee that the city would have the right under its police power to exact?

Mr. Sims: Well, of course, every city has a right under its police power to provide for inspections; it cannot produce revenue through that means; but under this provision, if the city elected not to come under home rule, then it would continue under its charter just as it is, and its charter would determine its power to levy local taxes, subject to the general statutes of the State which prohibit the imposition of certain types of taxes by cities.

Mr. Smith: Well, am I correct that an inspection fee has been ruled not to be a tax?

Mr. Sims: An inspection fee for police purposes has been ruled not to be a tax.¹³⁷

¹³⁶ Debates, p. 1045.

¹³⁷ Debates, p. 1014.

It is even possible that the courts would sustain a delegation of authority to a municipality to levy a sales tax. The State Retail Sales Tax Act was upheld on the grounds that it "levies a privilege tax upon retail sales."¹³⁸ A private act imposing an amusements admission tax in Knox County was upheld as a privilege tax.¹³⁹

* * *

Nothing herein shall be construed as
invalidating the provisions of any mu-
nicipal charter in existence at the
time of the adoption of this amendment.

Mr. Sims made this statement with respect to the foregoing: "That was intended to leave no doubt as to what the legal situation would be in your municipalities if this amendment to the Constitution was adopted; it will not invalidate any provision in your charter...that is now in existence. That was requested by the mayors of the cities."¹⁴⁰

At first glance this would appear to be a simple, unequivocal provision about which no question would arise. However, a specific situation has indicated that its effect may not always be plain. A city with a private act charter

¹³⁸Hooten v. Carson, supra.

¹³⁹Knoxtenn Theatres v. Dance, 186 Tenn. 114, 208 S. W. 2d 536 (1948).

¹⁴⁰Debates, p. 908.

provision authorizing annexation by ordinance wanted to know whether this was superseded and invalidated by the 1955 annexation law. Does the operation of this clause sustain the private act, against the preceding clause in Amendment 7: "The General Assembly shall by general law provide the exclusive methods....by which municipal boundaries may be altered"?

The 1955 annexation law (Chapter 113, Public Acts of 1955) in section 12, provides the following: "except as specifically provided in this Act, the powers conferred by this Act shall be in addition and supplemental to, and the limitations imposed by this Act shall not affect the powers conferred by any other general, special or local law." In the light of this language the only means by which Chapter 113 can supersede the private act is by construing the foregoing constitutional provision to make it exclusive, even though the legislative declaration was otherwise. Would this not be construing a part of Amendment 7 as invalidating a provision of a municipal charter?

Although a few such doubtful cases may arise, the general effect of this provision seems to have been clearly set forth in Mr. Sims' explanation. In general, municipal charters as they existed on November 3, 1953, should not be disturbed by any provision in this amendment.

APPENDIX

PRIVATE ACTS INCONSISTENT WITH GENERAL LAWS

Probably in most of the cases involving conflicts between private acts and public acts the former have been declared unconstitutional. However, in some cases they have been upheld. Therefore it cannot be said that all private acts affecting municipalities are invalid if inconsistent with any general law.

Some private acts directly in conflict with general laws have been upheld on the grounds that they affected a city or county in its political or governmental capacity instead of the citizens thereof as individuals. A 1929 private act authorizing a tax rate 15¢ in excess of the rate authorized by general law was upheld in the case of White v. Callis, 164 Tenn. 462 (1932). In a very recent case the court sustained "repeal of this provision of general law by implication by the Private Act of 1931," on grounds that the Act "was not arbitrary nor vicious class legislation...since it affected counties in their governmental capacities." The provision in question was in direct conflict with the general law provision that no person could serve as juror more than one time in each period of two years. Baker v. State, 191 Tenn. 559, 562 (1951).

"We approve the insistence of counsel...that 'where a statute, public or private, general or special, applies to a

county (or municipality) not in its governmental capacity as an arm of the State, etc., the constitutional prohibitory provisions invoked apply. But the contrary is true, where the statute, as here, applies to a county in its governmental capacity. In our late cases...the special acts...were found to affect the officers as individuals, and not the counties in their governmental capacity. It was for this reason that the validity of the acts was denied as violative of the Constitution." N.C. & St. L. Ry. v. Marshall County, 161 Tenn. 236, 245 (1930).

An Act applying only to counties over 100,000, which provided for certain procedures varying from the general divorce laws, was attacked under Section 8, Article 11. It was sustained as a special law "affecting particular counties as governmental or political agencies...(and) was not designed immediately to affect the rights of the citizen." Wilson v. Wilson, 134 Tenn. 697, 701 (1916).

Those private acts viewed by the Court as primarily affecting individual citizens, officers or employees generally have been invalidated. Striking down a private act requiring employment of teachers strictly on a seniority basis, the court said, "There is a distinction...between legislation designed to affect the governmental agency as such and legislation designed primarily to affect the employees or citizens of such governmental agency as individuals." Gilliam v. Adams,

180 Tenn. 74, 79 (1943). A private act prescribing minimum salaries for teachers was held unconstitutional as "a special act in conflict with the general law...imposing a burden on Hamilton County placed on no other county." State ex rel. Bales v. Hamilton County, 170 Tenn. 371, 375 (1936).

A private teachers tenure act applying only to Knox County was held "in no way in conflict with the (public) Act of 1925...except insofar as Section 3 thereof contains grounds for the dismissal of teachers, principals, supervisors, or other employees not appearing in...the 1925 Act. To the extent of such excess grounds, Section 3 is unconstitutional under Section 8, Article 1, and Section 8, Article 11, of the State constitution, because in contravention of a general law of the State." Knox County v. Nighbert, 177 Tenn. 171, 175 (1940).

The provisions of private acts, although different from those of general laws, have been sustained on the grounds that there is no conflict. This was the basis of upholding a private act establishing a civil service system for public school employees in the City of Knoxville. City of Knoxville v. State ex rel. Hayward, 175 Tenn. 159 (1939). A private act annexing territory, when a general law set out a procedure, was held "not inconsistent with the general laws of the land, because by these laws, the power to create or abolish, enlarge, or diminish, municipalities, is reposed in the legislature."

Williams v. Nashville, 89 Tenn. 486, 491 (1891). A private act transferring the jurisdiction and authority of justices of the peace, as provided by general law, in civil and criminal cases to a three-judge court of general sessions was upheld, the court saying, in answer to the "intimation that (such) a statute...could only be sustained if applicable to the whole state," that "such an idea, however, was long ago rejected in this state." Hancock v. Davidson County, 171 Tenn. 420, 431 (1937).

Some cases contain language that could be construed as a sweeping ban on all private acts in conflict with the general laws. Declaring special election procedures for the city of Athens to be invalid, the Court said: "The distinction running through our authorities appears to be that these special charter provisions may be lawfully enacted only as to such matters and in such particulars as have not been made the subject of uniform Statewide legislation." Clark v. Vaughn, 177 Tenn. 76, 78 (1941). A private act exempting voters in municipal elections from the poll tax requirement in the general law was struck down. "...should it be considered or assumed that the act is designed primarily to affect McMinnville as a governmental agency, rather than being primarily designed to confer a special privilege upon its citizens, still the act

must be held in violation of the Constitutional provision mentioned." Town of McMinnville v. Curtis, 183 Tenn. 442, 446 (1946).

Other cases indicate that a reasonable classification can be a basis of a valid private act suspending a general law for the benefit of a particular city. "It is, of course, settled law that special legislation affecting particular counties or municipalities in their governmental or political capacities may be enacted without violating Article XI, Section 8 of the Constitution.... Many such acts had been upheld by this Court. But in those cases the special act either was not in conflict with the provisions of the general law, or the classification was upon a reasonable basis."

(underlining added) Town of McMinnville v. Curtis, 183 Tenn. 442, 446 (1946). Speaking of a private act authorizing amusement admissions taxes in Knox County, the Court said: "the fact that it affects only Knox County and Knoxville does not render the act unconstitutional unless it suspends a general law applicable to all other counties and cities of the state, in which event it must be predicated upon a reasonable basis." (underlining added) Knoxtenn Theatres v. Dance, 186 Tenn. 114, 126 (1948).

Approving a higher salary provided by private act, the Court said: "The distinction between this clerk and other circuit court clerks throughout the state rests upon a sound

basis. Additional duties are imposed upon the circuit court clerk in Davidson County and for the performance of these duties it is not improper that he have some additional advantage over other circuit court clerks." Hancock v. Davidson County, 171 Tenn. 420, 431 (1937). Recognizing the need for longer voting hours in the populous unincorporated area of Oak Ridge, the Court sustained a private act keeping the polls open until 7:00 p.m., although the general law required closing at 4:00 p.m. except in cities with a population of 15,000 or more. "The right granted is upon a population basis and is...a reasonable and special classification...(Other private acts invalidated) clearly suspended the general law by conferring material benefits which were denied to others by the general law." Wallace v. Lewallen, 186 Tenn. 411, 416 (1948).

Summarizing, it appears that private acts for municipalities, inconsistent or in conflict with general laws, may be sustained when (1) their primary effect is upon the municipality in its political or governmental capacity instead of upon citizens or employees as individuals, or (2) they contain an inconsistency or conflict which is only apparent and not real, amounting to a permissible variation from the general law, or (3) the inconsistency or conflict can be justified on a basis of a reasonable classification.

PUBLICATIONS OF
THE BUREAU OF PUBLIC ADMINISTRATION

*THE ADMINISTRATIVE RELEASE SYSTEM OF THE TENNESSEE VALLEY AUTHORITY, by Herbert F. Gough. Tennessee Valley Authority, October, 1945. Pp. 62, mimeo. Revised April, 1947, and Reissued December, 1947. Pp. 71, mimeo.

*THE DEVELOPMENT OF LABOR LEGISLATION IN TENNESSEE, by Virginia Holmes Brown. The University of Tennessee Record, November, 1945, Vol. 48, No. 6. Pp. 79.

*MAJOR FACTORS IN FINANCING LOCAL SEWERAGE WORKS IN TENNESSEE, by Vernon Morrison. Tennessee Valley Authority, August, 1946. Pp. 12, mimeo.

*PUBLIC ADMINISTRATION OF PUBLIC LIBRARY SERVICE IN THE KNOXVILLE-KNOX COUNTY AREA, by Gerald W. Shaw. October, 1946. Pp. 73, mimeo.

*TWENTY-FIVE YEARS OF THE CITY MANAGER PLAN, by Lee S. Greene. The University of Tennessee Record, Extension Series, October, 1946, Vol. XXII, No. 4. A reprint from an earlier publication.

PROCEEDINGS OF THE SIXTH ANNUAL SOUTHERN INSTITUTE OF LOCAL GOVERNMENT, January, 1947. Pp. iv, 68.

PAPERS ON CONSTITUTIONAL REVISION. Vol. 1. The University of Tennessee Record, Extension Series, April, 1947, Vol. XXIII, No. 1. Pp. v, 93.

PAPERS ON CONSTITUTIONAL REVISION. Vol. 2. The University of Tennessee Record, Extension Series, July, 1947, Vol. XXIII, No. 3. Pp. v, 109.

*MUNICIPAL FINANCE STUDY, Paris, Tennessee Planning Commission. Prepared for the Tennessee State Planning Commission with the assistance of the Tennessee Valley Authority. October, 1937. Pp. 21, mimeo.

PUBLIC CARES A HISTORY OF PUBLIC WELFARE LEGISLATION IN TENNESSEE, by Virginia Ashcraft. The University of Tennessee Record, November, 1947, Vol. 50, No. 6. Pp. vii, 91.

*Out of print

PROCEEDINGS OF THE SEVENTH ANNUAL SOUTHERN INSTITUTE OF LOCAL GOVERNMENT. The University of Tennessee Record, January, 1948, Vol. 51, No. 1. Pp. vii, 33.

*AVIATION AND AIRPORT LEGISLATION IN TENNESSEE. In co-operation with The University of Tennessee Airport Development Laboratory. March, 1948. Pp. 79, mimeo.

GUIDE TO TECHNICAL SERVICES AVAILABLE TO STATE AND LOCAL AGENCIES IN TENNESSEE. Published jointly by The Bureau of Public Administration and the Tennessee State Planning Commission. The University of Tennessee Record, Extension Series, April, 1948, Vol. XXIV, No. 2. Pp. ix, 168.

BUDGET ADMINISTRATION IN THE TENNESSEE VALLEY AUTHORITY, by Donald C. Kull. The University of Tennessee Record, Extension Series, May, 1948, Vol. XXIV, No. 3. Pp. vii, 64.

THE UNIFORM CITY MANAGER AND COMMISSION LAW: PUBLIC ACTS OF TENNESSEE, 1921, Chapter 173. July, 1948. Pp. iv, 33, mimeo.

RESCUED EARTH: A STUDY OF THE PUBLIC ADMINISTRATION OF NATURAL RESOURCES IN TENNESSEE, by Lee S. Greene, Virginia Holmes Brown, and Evan A. Iverson. Knoxville: The University of Tennessee Press, 1948. Pp. x, 204. Cloth-bound, \$2.25.

NEW HOMES FOR OLD: PUBLICLY OWNED HOUSING IN TENNESSEE, by William F. Larsen. The University of Tennessee Record, Extension Series, November, 1948, Vol. XXIV, No. 7. Pp. ix, 83.

*COOKEVILLE'S GOVERNMENT: A STUDY OF THE ORGANIZATION AND ADMINISTRATION OF THE GOVERNMENT OF COOKEVILLE, TENNESSEE. Prepared by The Bureau of Public Administration, The University of Tennessee; The Bureau of Research, College of Business Administration, The University of Tennessee; in co-operation with the Tennessee State Planning Commission and the Tennessee Municipal League. December, 1948. Pp. xii, 118, multilithed.

*Out of print.

RIVERFRONT: THE PROTECTION OF MUNICIPAL WATERFRONTS IN TENNESSEE, by Edith Foster Howard. The University of Tennessee Record, Extension Series, March, 1949, Vol. XXV, No. 1. Pp. ix, 59.

THE FIRST FIFTEEN YEARS: A HISTORY OF THE TENNESSEE STATE PLANNING COMMISSION, by Eleanor Keeble Guess. The University of Tennessee Record, Extension Series, June, 1949, XXV, No. 5. Pp. xi, 102.

*HOME RULE FOR MUNICIPALITIES, by Edith Foster Howard. October, 1949. Pp. iv, 39, multilithed.

*FORMS OF GOVERNMENT AVAILABLE TO TENNESSEE COMMUNITIES. February, 1950. Pp. iv, 28, multilithed.

*CITY-COUNTY EDUCATIONAL RELATIONSHIPS IN TENNESSEE, by George C. Howard, Jr., and Edith Foster Howard. February, 1950. Pp. v, 32, multilithed.

*SOIL AND SKY: THE DEVELOPMENT AND USE OF TENNESSEE VALLEY RESOURCES, by M. H. Satterfield. The University of Tennessee Record, Extension Series, May, 1950, Vol. XXVI, No. 3. Pp. ix, 120.

*GREENEVILLE'S GOVERNMENT: A STUDY OF THE ORGANIZATION AND ADMINISTRATION OF THE GOVERNMENT OF GREENEVILLE, TENNESSEE. In co-operation with the Bureau of Research, College of Business Administration, The University of Tennessee; the Tennessee State Planning Commission; and the Tennessee Valley Authority. October, 1950. Pp. ix, 160, multilithed.

*TWO CITY CHARTER DRAFTS: MAYOR-COUNCIL FORM OF GOVERNMENT, COUNCIL-MANAGER FORM OF GOVERNMENT, by Victor C. Hobday, Lee S. Greene, and Gerald W. Shaw. Published jointly by The Bureau of Public Administration and the Municipal Technical Advisory Service, The University of Tennessee, in cooperation with the Tennessee Municipal League. November, 1950. Part I, Pp. iii, 43; Part II, Pp. ii, 43, multilithed.

SERVICE AND SECURITY: MUNICIPAL RETIREMENT IN TENNESSEE, by Fred A. Lewis and Thomas Payne. Published jointly by The Bureau of Public Administration and the Municipal Technical Advisory Service, The University of Tennessee. February, 1951. Pp. xii, 150, multilithed.

*Out of print.

*COOKEVILLE, THE CITY'S REPORT, 1950, in co-operation with the Municipal Technical Advisory Service, The University of Tennessee. April, 1951. Pp. 24.

ANALYSIS OF TECHNICAL SERVICES AVAILABLE TO STATE AND LOCAL AGENCIES IN TENNESSEE, by Virginia Holmes Brown and Hoyt Crider. Published jointly by The Bureau of Public Administration and the Tennessee State Planning Commission. The University of Tennessee Record, Extension Series, May, 1951, Vol. XXVII, No. 2. Pp. xv, 48.

SHADOW OVER THE CITY, by Catherine Fox Siffin. Published jointly by The Bureau of Public Administration and the Municipal Technical Advisory Service. The University of Tennessee Record, Extension Series, June, 1951, Vol. XXVII, No. 3. Pp. xiv, 80.

*LEISURE HOURS: STATE ADMINISTERED RECREATIONAL FACILITIES AND SERVICES IN TENNESSEE, by Luther Johnson and John C. Gill. The Bureau of Public Administration in co-operation with the Tennessee Interdepartmental Committee on Recreation. November, 1951. Pp. vii, 49, multilithed.

VALLEY OF TOMORROW: THE TVA AND AGRICULTURE, by Norman I. Wengert. The Bureau of Public Administration. The University of Tennessee Record, Extension Series, July, 1952, Vol. XXVIII, No. 1. Pp. xvi, 151. \$1.50.

*MATERIALS FOR DELEGATES TO THE TENNESSEE CONSTITUTIONAL CONVENTION, 1953 prepared by the Committee for Constitutional Research.

RETIREMENT SYSTEMS FOR PUBLIC EMPLOYEES, by Nelson M. Robinson and Milton Greenberg. Prepared for the Tennessee Legislative Council. February, 1954. Pp. iv, 14, multilithed.

INHERITED DOMAIN: POLITICAL PARTIES IN TENNESSEE, by William Goodman. The Bureau of Public Administration. The University of Tennessee Record, Extension Series, Vol. XXX, No. 1. 1954. Pp. vii, 88. \$1.50.

AN ANALYSIS OF AMENDMENTS NUMBER 6 AND NUMBER 7 TO THE CONSTITUTION OF THE STATE OF TENNESSEE adopted November 3, 1953, by P. Cliff Greenwood and Victor C. Hobday. Published by the Bureau of Public Administration and the Municipal Technical Advisory Service, The University of Tennessee, in cooperation with the Tennessee Municipal League. July 1954.

*Out of print.

THE PROBLEM OF ANNEXATION IN CROSSVILLE, by A. B. Winter.
In co-operation with the Municipal Technical Advisory
Service and the Tennessee Municipal League. 1954.
Pp. vi, 50, multilithed.

A SAMPLE COUNCIL-MANAGER LAW FOR TENNESSEE, by Lee S. Greene,
Victor C. Hobday, and Gerald W. Shaw. (revised.) 1954.
Pp. 109, multilithed.

ONE RIVER-SEVEN STATES: TVA-STATE RELATIONS IN DEVELOPMENT
OF THE TENNESSEE RIVER SYSTEM, By Elliott Roberts. \$1.50.

THE PROBLEM OF ANNEXATION IN SEVIERVILLE, Nelson M. Robinson.
In co-operation with the Municipal Technical Advisory Service
and the Tennessee Municipal League. 1955. Pp. vii, 54,
multilithed.

FORMS OF GOVERNMENT AVAILABLE TO TENNESSEE COMMUNITIES, revised
edition: August, 1955, Pp. iv, 35.

SURVEY OF LIBRARY SERVICES -- KNOXVILLE PUBLIC LIBRARY AND
KNOX COUNTY PUBLIC LIBRARY, In co-operation with the
Municipal Technical Advisory Service and the Tennessee
Municipal League, 1956. Pp. Multilithed.

EXPERIMENT IN MANAGEMENT: PERSONNEL DECENTRALIZATION IN THE
TENNESSEE VALLEY AUTHORITY, By Robert S. Avery. The Uni-
versity of Tennessee Press. 1954. Pp. xi, 212. \$4.50.

PERIODICALS

EAST TENNESSEE ASPA NEWSLETTER, news bulletin of the East
Tennessee Chapter of The American Society for Public
Administration, multilithed.

S RTP IN-SERVICE TRAINING NEWSLETTER, news bulletin of the
Southern Regional Training Program, 6 pages, multilithed.

(IN PREPARATION)

TWENTY YEARS OF TVA (To be published jointly by the Universi-
ty of Tennessee Press and University of Alabama Press.)

SPECIAL DISTRICTS IN TENNESSEE, by A. B. Winter. (To be
published jointly by The Bureau of Public Administration
and the Municipal Technical Advisory Service, The Uni-
versity of Tennessee).

INDUSTRIAL INDUCEMENTS, THE PROVISION OF URBAN-TYPE SERVICES, AND INDUSTRIAL LOCATION IN TENNESSEE, by John Larson. (To be published in cooperation with The Bureau of Research, College of Business Administration, The University of Tennessee, and the Municipal Technical Advisory Service, The University of Tennessee.)

THE TENNESSEE CONSTITUTIONAL CONVENTION OF 1953, by Milton Greenberg.

REPORT ON ANNEXATION OF TERRITORY TO THE CITY OF KINGSPORT (To be published jointly by the Bureau of Public Administration and the Municipal Technical Advisory Service, The University of Tennessee.)

(DISTRIBUTOR OF)

A FUTURE FOR NASHVILLE: A REPORT OF THE COMMUNITY SERVICES COMMISSION FOR DAVIDSON COUNTY AND THE CITY OF NASHVILLE (Nashville, Tennessee, June, 1952). Pp. x, 201. \$2.00.

JOURNAL AND DEBATES OF THE LIMITED CONSTITUTIONAL CONVENTION (Nashville, Tennessee, 1953), Pp. viii, 1235. \$6.00.