Getting to Know and Maybe Love Your Municipal Charter

Sid Hemsley
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Getting to Know
And Maybe Love
Your Municipal Charter

By Sidney D. Hemsley
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December 1992
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Introduction
Go ahead, read it!

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

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

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

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

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

What’s A Municipal Charter?

To understand what a municipal charter is, you have to know what a municipality is. You may be surprised to learn that from a legal standpoint, a municipality almost anywhere in the United States, including Tennessee, is not much. Some writers have compared municipalities to children, and state legislatures to their parents. But that comparison isn’t completely accurate because most children have greater legal protection against their parents than municipalities do against their state legislatures.
The classic statement of a municipality’s relationship to its state legislature was made by Judge John F. Dillon speaking for the Iowa Supreme Court in the famous case of *City of Clinton v. Cedar Rapids and Missouri Railroad Company*, 24 Iowa 455 (1868):

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

The legal subordination of municipalities to their state legislature is no reason to lock up city hall and go home. Municipalities in every state have been around for a long time. There are 342 of them in Tennessee. But it’s important to remember what Judge Dillon said about the relationship between municipalities and their state legislatures because what he said is the law in Tennessee.

But the judge didn’t stop there. He achieved everlasting fame among municipal lawyers and students of local government by announcing what is known as *Dillon’s Rule*. Dillon’s Rule outlines the kinds of powers legislatures give to municipalities, and what happens if there is some doubt about a municipality’s power:

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

Understand those three principles and you’re far down the road to becoming an expert on municipal charters.

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

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

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

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

• the constitution of the local government granted by the General Assembly, with powers that must be consistent with the Constitution of Tennessee (and of the United States, it might have added). East Tennessee University v. Mayor of Knoxville, 65 Tenn. (Baxt.) 166 (1873).

• a grant of power from which the city government derives its life and vigor and its limitations and restrictions. State ex rel. Kercheval v. Mayor of Nashville, 83 Tenn (1st Lea) 697 (1885).

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

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

Types Of Charters — Which One Does Your City Have?

There Are 3 Kinds Of Charters

Things are going so well that it’s time to add some confusion. The General Assembly makes grants of power to Tennessee municipalities through two kinds of laws: private acts and general laws. Private acts apply only to a specific town or city; general laws apply either to all cities and towns, or frequently to all cities and towns within a certain class (for example, all cities and towns with a population of 1,134 to 1,876 according to the 1980 census or any census thereafter). The latter kind of general law is often called a general law of local application because in reality it usually applies only to one or two specific towns or cities. You’ve probably guessed by now that there are at least two kinds of municipal charters in Tennessee: private act and general law. But we have to add a peculiar kind of charter to the list because 13 Tennessee municipalities have this type: home rule.

Private Act Charters

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

**Don’t get private act charters and general law charters mixed up.** If you have a private act charter, none of the general law charters we are about to discuss apply to your municipality. For some reason this is difficult even for some city attorneys to understand. Your private act charter may provide for the mayor-aldermanic form of government, but the general law mayor-aldermanic charter has nothing to do with your city. Period!

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

**General Law Charters**

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

1. Mayor-Aldermanic Charter (*TCA*, Title 6, Chapters 1-17).
2. Uniform City Manager-Commission Charter (*TCA*, Title 6, Chapters 18-29).
3. Modified City Manager-Council Charter (*TCA*, Title 6, Chapters 30-36).

Every municipality chartered under Title 6, Chapters 1-17 has the general law mayor-aldermanic charter. If Turtle Creek, Tenn., west of Memphis, has it and if Washboard Flats, Tenn., east of Bristol, has it, they have identical charters found in the same place: *Tennessee Code Annotated*, Title 6, Chapters 1-17. If they have the uniform city manager-commission charter, they have identical charters found in *TCA*, Title 6, Chapters 18-29. If they have the modified city manager-council charter, they have identical charters found in *TCA*, Title 6, Chapters 30-36.

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

If that isn’t confusing enough, 13 Tennessee cities and towns have home rule charters. Remember that municipalities in Tennessee, like municipalities in most other states, are completely subordinate to the state legislature, unless the state constitution says otherwise. The state constitution (Article XI, Section 9) says otherwise in the form of a home rule provision. Amendment Number 7 of the 1953 amendments to the Tennessee State Constitution provides that by the vote of its people a municipality can adopt home rule. Once a municipality has adopted home rule it can adopt and amend its own charter by referendum, without the approval of the legislature. Amendment Number 7 also prohibits the legislature from passing any private acts governing home rule municipalities. However, the amendment does not prohibit the General Assembly from passing general laws governing home rule municipalities. Home rule has its limits and underlines, rather than erases, Dillon’s Rule.

State Constitutional Provisions Limiting State Control

Tennessee State Constitution, Article XI, Section 9

This is a good place to discuss state constitutional provisions limiting state control over municipalities because we already did part of the job in the last section. However, we briefly mentioned only part of what Amendment Number 7 does. Now we’ll discuss both Amendment Number 6 and Amendment Number 7 of the 1953 amendments to the state constitution. The full text of those amendments is found in Article XI, Section 9 of the state constitution.¹³

Amendment Number 6

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

• prevents private acts governing municipalities from becoming effective until they are approved locally, either by a two-thirds vote of the municipal governing body, or by a majority of those voting in a referendum held for that purpose. (The private act itself specifies which of the two methods shall be used to obtain local approval.)

• prohibits entirely (even if approved locally) private acts which remove an incumbent from any municipal office, or shorten the term, or alter the salary of a municipal officer prior to the end of the term for which the officer was elected or appointed.⁴

Amendment Number 7

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

• gives municipalities the option of adopting home rule, prohibits the General Assembly from passing private acts of any kind applying to home rule municipalities, and allows home rule municipalities to amend their own charters.

• prohibits the further incorporation of municipalities under private acts and requires that future incorporation of municipalities can be done only under general laws.
However, Amendment Number 7 did not prohibit the General Assembly from passing general laws governing home rule municipalities, and it didn’t disturb the right of existing private act charter municipalities to continue their existence as such and to amend their charters. In fact, about two-thirds of the state’s municipalities are still private act ones.

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

Questions To Ask Before You Start

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

Is what you have actually the whole charter? All private act municipalities have a basic charter act. A large number of the basic charter acts are old; ones more than 50 years old are common, and some date in the 1880s. Most basic charter acts have been amended, some many times. If you try to amend the charter without having the basic charter act and all its amendments carefully integrated into it, you may “amend” a provision which has already been radically changed or eliminated entirely by prior amendments. The result can be that your amendment makes little or no sense. There are enough of those out there already without your contribution.

Amending A Private Act Charter

But somebody will catch it before it passes if it makes little or no sense, right? Not likely. Charter amendments go through your legislative delegation, the General Assembly, and the governor, then back to you with rarely any consideration for whether the amendment makes any sense in the context of your charter. We’ll see how that happens when we discuss how private acts are treated in the legislative process.

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

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

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

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

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

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

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

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

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

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

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

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

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

It’s common for the municipal governing body to give the charter committee a blank check in the drafting of the charter amendment, but the municipal governing body may choose to give the committee specific instructions on the character and dimensions of its job. In either case, the municipal governing body is free to accept, reject, or modify any or all of the charter committee’s work. However, there may be no practical way to limit the committee if it decides to go further than it was authorized by the municipal governing body. The committee’s work may take on a life of its own.

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

Now that you've satisfied the basic questions, here are the steps involved in amending your private act charter:
1. **Figure out precisely what charter provisions are to be changed.** This step is important because one change may require amending more than one provision of the charter to ensure that the charter is consistent. Changing one provision may affect other provisions. This step requires reading the whole charter to make sure you haven't skipped anything that needs changing.

2. **Clear the proposed change with your state legislative delegation.** All charter changes, private act or general law, require the approval of the Tennessee General Assembly, but the General Assembly will rarely interfere with private acts as long as they have the unanimous support of the local legislative delegation. Its attitude is usually, “Let locals take care of local business.” But if you decide to sneak or ram your private act through the General Assembly in the teeth of opposition from any member of your legislative delegation, don’t bet more than you can afford to lose the act will make it.

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

Be sure to include in the proposed change the method of local approval of the private act. Amendment Number 6 of the 1953 amendments to the Tennessee State Constitution requires private acts to be approved in one of two ways:
- by a two-thirds vote of the entire membership of the municipal governing body, or
- by a majority vote in a referendum held on the question of approval of the private act.

Because the private act contains the method of its approval, the method also must have approval of the local legislative delegation. Generally, legislative delegations don’t object to approval by a two-thirds vote of the municipal governing body; however, occasionally local political conditions lead legislative delegations to mandate local approval by referendum. But referendums are expensive, and historically private acts traveling that track have regularly been derailed by the voters. Carefully weigh the prospects for approval of your private act by referendum before you spend time writing one. Outline a public campaign to ease its passage if you do write it. Obviously, clearing the method of approval of the private act as well as its contents with your legislative delegation is a wise early move.
4. **Give the resolution to your legislative delegation within the time frame it prescribes and check from time to time on its introduction and movement through the Tennessee General Assembly.** Getting the proposed private act to your legislative delegation on time is essential. This gives the General Assembly adequate time to pass the act before it adjourns. Most legislative delegations want the proposed private act at least 30 days before the date set for adjournment of the General Assembly. That date can usually be determined (approximately) by checking with your legislators. Once the proposed private act is in the hands of the General Assembly, its journey through the legislative process is relatively certain and speedy. After passage by the General Assembly, the proposed private act goes to the governor for signature, which is usually a formality.

5. **Read the private act when it comes back to you after its passage by the general assembly and its approval by the governor.** Your proposed private act goes through certain steps after it leaves your hands and before it actually goes to the general assembly for a vote, including a check for proper language and form. Most of the time any changes made in a proposed private acts during those steps is beneficial. However, occasionally something is added or taken out of an act that substantially alters its meaning. Make sure that what came out of the general assembly is what you thought went in.

6. **Obtain approval of the proposed private act by whatever method is prescribed in the act and submit evidence of approval to the Tennessee secretary of state.** As pointed out earlier, private acts requiring approval by referendum are regularly rejected by the voters. Some get exactly what they deserve from a well-informed electorate, which knows a clunker when it sees one. But a major reason good acts meet the same end is that they frequently don’t receive the intense support they need from the individuals and groups interested in their passage.

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

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

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

If approval by referendum is prescribed in the act, contact the county election commis-
sion to schedule an election on the approval. According to *Tennessee Code Annotated*, Section 2-3-204, elections on questions submitted to the people shall be held not less than 45 days nor more than 60 days after the county election commission is directed to hold the election under the law authorizing or requiring the election. But if the date for the election would fall within 30 days of an upcoming primary or general election, the election commission is authorized to schedule the election on the same day as the primary or general election.

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

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

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**Amending A General Law Charter**

**Amending General Law Charters Is Difficult**

The role municipalities with general law charters have in amending their charter doesn’t compare to the one municipalities with private act charters have. Remember: There are five general law charters, and each of those charters covers every city or town in Tennessee with that particular charter. If the General Assembly amends one of the general law charters, it amends that charter for every one of the cities or towns which have that charter (or all of the cities or towns within a certain class — generally population). An amendment to a private act charter affects one municipality, while an amendment to a general law charter may affect a substantial number of them, except in the case of the metropolitan government charter and the charter unification act charter.

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

Overcoming General Law Charter Limitations

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

First, it might “supplement” its general law charter by private act as long as the act doesn’t conflict with the general law charter. For example, let’s look at what the Tennessee Court of Appeals said in the unreported case of Kemp v. City of Berry Hill, 9 TAM 7-14 (1985). The City of Berry Hill has the general law uniform city manager-commission charter. Until 1995, a provision of that charter gave the city manager the authority to appoint and remove all department heads and employees, but qualified that authority by saying “all appointments to be made upon merit and fitness alone” (Tennessee Code Annotated, Section 6-21-108(2)). But the City of Berry Hill also has a private act which predates the charter and establishes a civil service system giving city employees certain rights, including a civil service discharge hearing. A police officer challenged his discharge by the city on the grounds that the city manager didn’t give him a civil service discharge hearing. The city argued the private act was an attempt by the legislature to suspend the general law in violation of Article 11, Section 8 of the Tennessee State Constitution, which says:

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

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

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

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

The second way a municipality might overcome general law charter limitations and restrictions is to pass a general law of local application. In an earlier section discussing the difference between private and general acts, we mentioned general laws of local application which apply to all municipalities within a certain class,
such as all municipalities within certain population brackets. Most such general laws apply only to one, or at most a very few, municipalities. For example, in a general law providing for the distribution of the state sales tax, a "premiere type tourist resort" can elect to receive a tax distribution different from other municipalities' tax distribution. However, that law defines a “premiere type tourist resort” as:

A municipality having a population of one thousand one hundred (1,100) or more persons, according to the federal census of 1970 or any subsequent federal census, ...

That same law further sets apart by certain real estates uses within its boundaries characteristic of tourist towns(Tennessee Code Annotated, Section 67-6-103 (a)(3)(B)(i)).

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

But look back at Article II, Section 8 of the Tennessee State Constitution — carefully! The courts have had trouble with some general laws of local application because of that provision, with others it hasn’t. You’re whistling Dixie on a Yankee flute if you think you can reconcile the cases on the subject, so it’s tough to predict whether a particular general law of local application will survive a legal challenge. Generally, for one to survive a legal chal-
Amending Home Rule Charters

Home Rule Charter Municipalities Amend Their Own Charters

Home rule charter municipalities in Tennessee are peculiar — they amend their own charters. Amendment Number 7 of the 1953 amendments to the state constitution prohibits the General Assembly power to pass general laws governing home rule municipalities and says no charter shall be inconsistent with the general law (except with respect to employee compensation).

The Home Rule Charter Amendment Referendum

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

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

The 13 home rule municipalities usually use the first method to propose charter amendments for referendum: by ordinance of the municipal governing body. The second method has never been used and the third method has apparently been used only twice.

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

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

The purpose of outlining the legal relationship between the home rule municipality's governing body and the charter commission is to make sure everyone understands that the legal trigger of the home rule charter amendment method (which requires proposed amendments to be submitted to the voters in ordinance form) is the ordinance. Without that, proposed amendments can have the charter commission's unanimous support and a good conduct medal and still not make it to the voters. Everyone who participates in the home rule charter amendment process using that method should understand this point from the beginning.

After a proposed charter amendment is created by one of the three methods in Amendment Number 7, the municipal governing body is required to publish the proposed amendment. No particular
form of publication is given in Amendment Number 7, but publication in a newspaper of general circulation is probably the best method.

The referendum on the adoption of the proposed charter amendment must be held during the first general state election falling at least 60 days after publication of the proposed charter amendment. A general state election is apparently either is apparently either the primary election in August or the following general election in November, both of which are held every even numbered year. That definition restricts referendums on charter changes in home rule municipalities to once every two years at fixed times. To pass the proposed charter amendment, a majority vote from those voting on the question is required, not a majority of those voting in the election in which the question was presented to the voters.

Parting Advice

When all else fails, and preferably before that, call MTAS if you need help with your charter amendments. Now, go forth and do good to your charter - and do good with it, too.
Appendix A - Sample Forms for Private Act Charter Amendments

Amendments to Specific Provisions of the Private Act Charter

RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

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

ADOPTED THIS ___________ DAY OF ____________________, 20___.

Signed: __________________________________________________________

Attested: _________________________________________________________

Getting to Know Your Charter
Replacement Of The Entire Text Of The Charter

RESOLUTION

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

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

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

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

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

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

(Remainder of charter here)

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

ADOPTED THIS ______________ DAY OF __________________, 20__.  

Signed: _________________________________________________________________________

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

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

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

2. If a particular charter provision is to be extensively amended, delete it in its entirety and replace it with an entirely new provision. This eliminates the high possibility of drafting and reading error inherent in an amendment that looks like a puzzle. An example is a provision that reads:
   On the first Thursday in April, 1929, a nonpartisan election shall be conducted to elect a mayor and six aldermen, and a city judge from the city at large. The current incumbent mayor, aldermen, and city judge shall serve until their successors are elected and qualified. Any elector who is 21 or over and has been a resident of the city for at least two years may be qualified as a candidate for the Board of Mayor and Aldermen. Any elector who is 30 or over and who meets the same residency requirements as a candidate for alderman may be qualified as a candidate for city judge.

**DO NOT:** Chapter 28 of the *Private Acts of Tennessee for 1929* is amended as follows: Section 6 is amended by deleting from the first sentence the words “first Thursday in April, 1929” and substituting the words “second Tuesday in May, 1982” and deleting the words “and a city judge”; by deleting from the second sentence the words “mayor, aldermen and city judge shall serve until their successors are elected and qualified.” and substituting the words “mayor and aldermen shall serve until their successors are elected and qualified and the current incumbent city judge shall serve until the end of his term.”; by deleting from the third sentence the words “twenty-one (21)” and substituting the words “eighteen (18)” and deleting the words “two (2) years” and substituting the words “six (6) months”; and by deleting in its entirety the fourth sentence.

**DO:** Chapter 28 of the *Private Acts of Tennessee for 1929* is amended by deleting in its entirety the text of Section 6 and replacing it with the following language:
   On the second Tuesday in May, 1982, a nonpartisan election shall be conducted to elect a mayor and six aldermen from the city at large. The current incumbent mayor and aldermen shall serve until their successors are elected and qualified and the current incumbent city judge shall serve to the end of his term. Any elector who is eighteen (18) years of age and has been a resident of the city for at least six (6) months may be qualified as a candidate for the Board of Mayor and Aldermen.
3. Make sure the amendment grammatically fits into the text of the charter. This can be accomplished by simply integrating the amendment into the charter and reading it to see if the resulting sentences are complete, have subject and verb agreement, etc.

Endnotes

1. For only a small sample of cases on the application of Dillon’s Rule in Tennessee see Mayor of Nashville v. Linck, 80 Tenn. (12 Lea) 499 (1883); City of Elizabethton v. Carter County, 204 Tenn. 452, 321 S.W. 2d 882 (1959); Penn-Dixie Cement Corporation v. Kingsport, 189 Tenn. 450, 225 S.W.2d 270 (1949).

2. Penn-Dixie Cement Corp. v. Kingsport, 189 Tenn. 450, 225 S.W.2d 270 (1949).


4. This provision may apply to some appointed as well as elected municipal officials.

5. For an excellent article on the various methods one municipality used to obtain passage of a comprehensive charter amendment after it had failed in two previous referenda, including the extensive use of citizen surveys on what should be in the charter, see David G. Houghton and Helenan S. Robin, “City Charter Revision: How Citizen Surveys Can Help.” National Civic Review, June 1985, pp. 270-274.
The Municipal Technical Advisory Service (MTAS) is a statewide agency of The University of Tennessee’s Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League in providing technical assistance services to officials of Tennessee’s incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, communications, ordinance codification, and wastewater management.

All MTAS publications are free to Tennessee city, county, state, and federal officials. There is a charge for all private sector requests. *Getting To Know (And Maybe Love) Your Municipal Charter* is $15.

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