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MUNICIPAL COURTS IN TENNESSEE--A CONSTITUTIONAL AND STATUTORY PRIMER

by

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MUNICIPAL COURTS IN TENNESSEE--A CONSTITUTIONAL AND STATUTORY PRIMER

This paper will first examine the constitutional and statutory underpinnings of municipal courts in Tennessee. Then it will briefly review the jurisdiction of municipal courts, the selection of municipal court judges, and municipal court penalties. Finally, it will take a look at the recent case of Summers v. Thompson, Tenn. Sup. Ct., No. 23, filed May 23, 1988. That case has a significant bearing on all of those topics, and it has some implications for what municipal courts will look like in the future. No pretense is made that every important thing is said or every important case is cited on those topics. A certain amount of picking and choosing goes into every short treatment of any major subject. This paper is, as its title claims, only a primer. Supra, infra, etc., in citations are used sparingly, if at all, and page citations in cases have been omitted.

An interesting observation in The Judicial System of Tennessee, published in 1971 by The Institute of Judicial Administration under a grant from the Law Enforcement Assistance Administration is appropriate here:

In the exercise of judicial power by the incorporated municipalities of the state, almost infinite variety creeps in the treatment of traffic and other petty offenses. Tennessee, like many other states, has authorized municipal officers to try violations of municipal ordinances and minor state offenses. But unlike some of them, it has enshrined the practice in its state constitution and failed to regulate the conduct of these courts by general law. As a result, there is a bewildering variety of part-time officials presiding over municipal courts (usually at odd hours) and there is equally bewildering variety in the state law violations entrusted to their jurisdiction. Some can impose jail sentences while others are limited to imposing fines for violations of city ordinances. Some have committing power in the case of major crimes so that they can bind defendants over for grand jury action; some cannot.

The same observation could have been made in 1988.

The Constitutional and Statutory Basis of Municipal Courts

The Constitutional Basis

Article VI, Section 1 of the Tennessee Constitution provides that

The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior courts as the Legislature shall from time to time, ordain and establish; in the Judges thereof, and in Justices of the peace. The Legislature may also vest such jurisdiction in Corporation Courts as may be deemed necessary. Courts to be holden by Justices of the Peace may also be established. [Emphasis mine].

The "Corporation Courts" referred to in Art. VI, Section 1 are the courts of municipal corporations. Gregory v. City of Memphis, 157 Tenn. 68, 6 S.W.2d 332 (1927); Hill v. State ex rel Phillips, 216 Tenn. 503, 392 S.W.2d 950 (1965). The same is true of the metropolitan court established by the Nashville-Davidson County Metropolitan Charter. State ex rel Boone v. Torrence, 470 S.W.2d 356 (Tenn. Ct. App. 1971).

A municipal court created by the legislature which has jurisdiction to hear only municipal charter and ordinance violation cases is a "corporation court" and not a "constitutional court" State v. Davis, 204 Tenn. 510, 322 S.W.2d 214 (1959); Summers v. Thompson, (Tenn. Sup. Ct., No. 23, filed May 23, 1988).

The Statutory Basis

T.C.A. 16-1-101 provides that

The judicial power of the state is vested in the judges of the courts of general sessions, recorders of certain towns and cities, county courts, circuit courts, criminal courts, common law and chancery courts, chancery courts, Court of Appeals, and the Supreme Court and other courts created by law.

Municipal courts are authorized under this section to be created by the legislature and under Article VI, Section 1 of the Tennessee Constitution. Deming v. Nichols, 135 Tenn. 295, 186 S.W. 113 (1916).

As far as it can be determined, the legislature has authorized every municipality in Tennessee, through its charter or by statute, to establish a municipal court. T.C.A. 16-17-101 authorizes home rule municipalities to establish municipal courts, and in those home rule municipalities which already have a municipal court, to increase the number of divisions of the same. It is not clear whether this statute is supplemental and in addition to the authority granted in the charters of home rule municipalities to establish municipal courts. That issue will be discussed in more detail in the sections on Jurisdiction of Municipal Courts, and Municipal Judges. T.C.A. 16-18-101 authorizes the governing body of any municipality having a mayor's or a recorder's court, and no other provision for a city judge, to provide by ordinance for the office of a city judge.

Jurisdiction of Municipal Courts

General

The legislature may vest such jurisdiction in Corporation Courts as it may deem necessary. Article VI, Section 1 of the Tennessee Constitution. The legislature has deemed it necessary to give every municipal court the authority to hear ordinance violation cases. A few municipal courts have the authority to hear charter violation cases, although it is not clear how such cases are heard.

A large group of municipalities, possibly the majority of them, have the additional authority to exercise jurisdiction concurrent with that of justices of the peace or of courts of general sessions in criminal cases. Some charter provisions granting the municipal court concurrent jurisdiction expressly limit the concurrent jurisdiction to jurisdiction to hold preliminary hearings. Many municipal courts which have concurrent jurisdiction do not exercise it.¹ A municipality cannot exercise concurrent jurisdiction absent an express grant of authority by the General Assembly giving it such authority. Hill v. State ex rel Phillips, 216 Tenn. 503, 392 S.W.2d 950 (1965).

Jurisdiction prescribed by the charter

Some private act charters prescribe concurrent jurisdiction, others prescribe jurisdiction only in ordinance violation cases. Each private act municipal charter must be examined to determine the extent of the municipal court's jurisdiction. Under the general law mayor-aldermanic and modified city manager-council charters the municipal court has jurisdiction in ordinance violation cases and concurrent jurisdiction. T.C.A. 6-1-405, 6-2-403 and 6-33-103. There are two classes of courts under the general law uniform city manager-commission charter: a small class falling within certain population brackets has jurisdiction in ordinance violation cases and concurrent jurisdiction, while the larger class has jurisdiction in only ordinance violation cases. T.C.A. 6-21-501. Municipal courts in home rule municipalities have jurisdiction in ordinance violation cases and concurrent jurisdiction (T.C.A. 16-17-101 and 16-17-103), except for the municipal court in Knoxville whose concurrent jurisdiction was abolished by T.C.A. 40-4-121--40-4-124. City of Knoxville ex rel Roach v. Dossett, 672 S.W.2d 193 (Tenn. 1984).

A confusing aspect of municipal court jurisdiction in home rule municipalities is that many such municipalities have established municipal courts under provisions of their charters. Some of those provisions are not consistent with T.C.A. 16-17-101 et seq., which purports to govern the establishment of municipal courts in "all" home rule municipalities, and the selection of municipal judges to staff those courts. What is not clear is whether T.C.A. 16-17-101 supplements the authority granted home rule municipalities in their charters to establish municipal courts or whether it supercedes it. The Tennessee Attorney General has opined that an amendment to the Lenoir City Charter which gave the city judge jurisdiction to hear ordinance and charter violation cases and misdemeanors adopted from state laws is not the exclusive provision granting jurisdiction to municipal courts in home rule municipalities, that such municipalities also have concurrent jurisdiction under T.C.A. 16-17-101. OAG 85-047 (2/21/85). As will be pointed out in the section on Municipal Judges, the same opinion declares that a Lenoir City charter (home rule) amendment providing for the at will appointment of municipal judges was a violation of T.C.A. 16-17-102, and that the latter supercedes the former.

¹In all references to the judicial powers, duties, functions and jurisdiction of justices of the peace in the T.C.A. the term "justice of the peace" and any variation thereof was changed to "court of general session" or "judge of the court of general sessions" by T.C.A. 16-1-112.

The Limited Jurisdiction of Municipal Courts
Without Concurrent Jurisdiction

With respect to those municipal courts which do not have concurrent jurisdiction, the Tennessee Supreme Court said in the important case of Summers v. Thompson, Tenn. Sup. Ct., No. 23, filed May 23, 1988

The jurisdiction of these city courts is wholly limited to traffic violations or violations of city ordinances, as the judges of these courts have no authority to impose fines exceeding \$50 or to impose extensive terms of imprisonment and, as a practical matter, are essentially administrative judges. Such a judge is not cloaked with the powers of a judge of an inferior court within the meaning of Article VI, § 6 [of the Tennessee Constitution].

Some Statutory Contractions or Expansions of Jurisdiction

The legislature has also seen fit to restrict the jurisdiction of municipal courts in certain traffic cases. Under T.C.A. 55-10-307, the following offenses are exclusively state offenses and must be tried in state court or a court having concurrent jurisdiction: driving while intoxicated or drugged, as prohibited by T.C.A. 55-10-401; failing to stop after a traffic accident, as prohibited by T.C.A. 55-10-101 et seq.; driving while license is suspended or revoked, as prohibited by T.C.A. 55-7-116; and drag racing, as prohibited by T.C.A. 55-10-501.

Judges of juvenile courts are authorized to waiver jurisdiction over traffic offenders over the age of sixteen and allow such cases to be heard by traffic courts having jurisdiction of adult traffic violations. T.C.A. 37-1-146. Such courts undoubtedly include municipal courts presiding over the area in which the traffic offense occurred.

Municipal Judges

General

The appointment and terms of municipal judges are prescribed by the municipal charter. However, as the last section in this paper, titled Summers v. Thompson, reflecting the important Tennessee Supreme Court opinion of the same name, handed down May 23, 1988 will point out, the at will appointment of municipal court judges, particularly those with concurrent jurisdiction, is under legal attack.

Private Act Charters

Presently, under private act charters the municipal judge may be the mayor or the recorder, or another person selected by the governing body. In a few cases the municipal judge is elected by the voters, usually for a short term. Some municipal judges appointed under private act charters are appointed

for a definite term and are removable only for cause; others serve at the will of the governing body. The private act charter may or may not prescribe qualifications for the office. A common qualification is that the appointee be a licensed attorney.

General Law Charters

Under the general law mayor-aldermanic charter the mayor or "The recorder or some other proper designated officer" is the municipal judge. T.C.A. 6-1-406 and T.C.A. 6-2-403. No term of office is specified.

A city court is required to be established under the general law uniform city manager-commission charter, presided over by a city judge. T.C.A. 6-21-501. In those cities having city courts with concurrent jurisdiction, the city judge is appointed by, and serves at the will of, the board of commissioners, and must be an attorney. T.C.A. 6-21-501(b). In those cities with a city court having jurisdiction only over ordinance violations, the city judge also serves at the will and pleasure of the board of commissioners, but the board sets his qualifications; or, if the board appoints no other person to fill the office of city judge, the recorder serves that function. T.C.A. 6-21-501(a). The duties of the city judge and the operation of the court under the general law uniform manager-commission charter are set out in considerable detail in T.C.A. 6-21-502 through 6-21-508.

Under the general law modified city manager-council charter the city judge must be a licensed attorney and be elected by popular vote for a term of four years. He can be removed for cause for the same causes and in the same manner provided for under the Ouster Law (T.C.A. Title 8, Chapter 47), and the city council fills vacancies in the office of the city judge between elections. T.C.A. 6-33-102--6-33-103.

Home Rule Charters

T.C.A. Title 16, Chapter 17 contains provisions governing city courts in home rule municipalities, including their establishment, the creation of additional court divisions, and for the appointment and election of city judges. As was pointed out in the preceding section titled Jurisdiction of Municipal Courts, it is not clear whether those provisions are supplemental to, or supercede, those provisions in home rule charters governing municipal courts. It can be argued that they apply only to those municipal courts established under the authority of T.C.A., Title 16, Chapter 17. The problem with that argument is that the statute provides that it applies to "all" home rule municipal courts.

One of the provisions directs that the city judge "shall be appointed on the nomination of the mayor or chief executive officer, concurred in by the city council or other legislative body, but said judges so appointed shall run for election in the next general election." T.C.A. 16-17-102. No term of office is prescribed. The Tennessee Attorney General has opined that an amendment to the Lenoir City Charter providing that the municipal court judge be appointed by, and serve at the pleasure of, the city council, violates T.C.A. 16-17-102. OAG 85-047 (2/21/85).

In any event, some home rule charters have adopted some or all of the provisions of the general law charters, including those governing the appointment of municipal court judges; others may have adopted different provisions for the selection of the municipal judge. Probably under most home rule charter provisions, the municipal judge is appointed by, and serve at the will and pleasure of the municipal governing body.

Miscellaneous

Municipal judges are magistrates under a statute that defines the term to include "the mayor or city or municipal judge or chief officer and the recorder of any incorporated city or town." T.C.A. 38-4-101.

Where the municipal judge is also the mayor, recorder or other municipal official, that combination of the executive and the judiciary may be subject to constitutional challenge. In Ward v. Village of Monroeville, 490 U.S. 57 (1972), the U.S. Supreme Court held that it was a violation of the Fourteenth Amendment to the U.S. Constitution for the mayor to sit as city judge where the city derived a major portion of its income from fines, forfeitures, costs and fees. The financial responsibilities of the mayor may deprive him of the neutrality essential to impartial judgments.

The city judge in municipalities over 160,000 population must be a lawyer licensed to practice law in Tennessee. T.C.A. 17-1-106(d).

Penalties and Punishment

Private Act Charters

Some private act municipal charters restrict municipal courts to levying a fine of not to exceed fifty dollars and make no provision for a jail sentence for the violation of municipal ordinances; some provide for a fine exceeding fifty dollars and/or a jail term of a certain period for such offenses.

General Law Charters

The general law mayor-aldermanic charter contains a list of corporate powers, one of which is "To impose and collect fines and forfeitures for breaches and violations of its ordinances..." No jail term is provided. T.C.A. 6-2-201(17).

The general law uniform city manager-commission charter provides for a fine of fifty dollars and imprisonment not to exceed ninety days! T.C.A. 6-19-101(29). A subsequent provision of the same charter gives the city judge the authority to "punish by fine or imprisonment or both for violation of city ordinances." That provision limits the fine to fifty dollars, but somewhat inconsistent with the term of imprisonment authorized above, provides that in default of payment of fines, costs and forfeitures the city judge is authorized to commit the offender to the workhouse for a maximum of thirty days for any one offense. T.C.A. 6-21-502.

The general law modified city manager-council charter, in a left-handed fashion, provides for the same penalties as the general law uniform city manager-commission charter. T.C.A. 6-33-101.

Home Rule Municipalities

Home rule municipalities have the authority to impose a thirty day jail sentence and a fifty dollar fine for the violation of municipal ordinances. T.C.A. 6-54-306. Some home rule municipalities have conflicting charter provisions which provide for more or less severe authority.

The Question of Fines or "Penalties Over \$50 for Municipal Violations

It is doubtful that any municipal court can levy a fine over \$50 on a municipal ordinance violator. Article 6, Section 14 of the Tennessee Constitution provides that

No fine shall be laid on any citizen of this State that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers, who shall assess the fine at the time they find the fact, if they think the fine should be more than fifty dollars.

A trial court judge in a felony case has the authority to levy a fine exceeding fifty dollars on a defendant who has waived his right to have the fine assessed by a jury. State v. Durso, 645 S.W.2d 753 (Tenn. 1983); State v. Purkey, 689 S.W.2d 196 (Tenn. Crim. App. 1984). But there is no provision in the Tennessee Constitution or statute for a trial by jury in municipal court. The Tennessee Attorney General has opined that in the absence of such authority a municipal court judge may not levy a fine exceeding fifty dollars for a municipal ordinance violation. OAG 84-291 (10/31/84).

It has been held that municipal courts can impose a "penalty," as opposed to a fine, exceeding fifty dollars on the grounds that municipal ordinance violation cases are civil actions rather than criminal prosecutions. O'Dell v. Knoxville, 54 Tenn. App. 59, 388 S.W.2d 150 (1964). O'Dell is probably not good law today in the face of Metropolitan Government of Nashville and Davidson County v. Miles, 524 S.W.2d 656 (1975). That case involved the question of whether a de novo retrial in circuit court of a case tried and dismissed in municipal court would constitute double jeopardy in violation of both the U.S. and Tennessee Constitutions. Declaring that O'Dell had already been impliedly overruled in earlier cases, the Tennessee Supreme Court declared that

...a proceeding in a municipal court for the imposition of a fine upon a person for allegedly violating a city ordinance is criminal rather than civil in substance, in that, it seeks punishment to vindicate public justice and, therefore, constitutes jeopardy under the double jeopardy clauses of the Tennessee and Federal Constitutions...

Presumably, Miles also repudiates O'Dell's theory that "a penalty is not a fine" in municipal ordinance violation cases.

The Question of Jail Sentences for Municipal Violations

It is generally believed that municipal judges have no authority to impose a jail sentence for the violation of a municipal ordinance, notwithstanding municipal charter provisions to the contrary. Article I, Section 6 of the Tennessee Constitution provides that "The right of trial by jury shall remain inviolate..." and Article I, Section 9 of the Tennessee Constitution declares "That in all criminal prosecutions, "the accused has certain rights, including, "in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury..." There are no provisions for a trial by jury in municipal courts in Tennessee. But it is not necessarily the absence of such provisions that represent an impediment to the imposition of jail sentences for the violation of municipal ordinances. Those offenses which were "petty offenses" at common law are not subject to the constitutional mandate of a jury trial. The impediment is that an offense for which a jail term can be imposed was not a petty offense at common law. The Tennessee Supreme Court in Willard v. State, 174 Tenn. 642, 130 S.W.2d 99 (1939) said

Our decisions hold that this constitutional provision [Article I, Section 6 of the Tennessee Constitution] protects the right of trial by jury only as it existed at common law insofar as it had been adopted and was in force in North Carolina, when the territory embraced in Tennessee was ceded by North Carolina to the Federal Government. [Citations omitted] ... Misdemeanors not involving life or liberty may be tried under the constitution without a jury because such misdemeanors were triable under the common law without a jury.

The Court went on to explain that in earlier cases it had distinguished between "misdemeanors generally and petty misdemeanors." The latter were misdemeanors "punishable by a fine of not more than \$50 without imprisonment, except for non-payment of fine and costs." Willard stands for the proposition that if life and liberty can be taken by a municipal judge, the constitutional right to a jury trial attaches under Article I, Section 6. The corollary is that because there is no right to a jury trial in municipal court in Tennessee, a municipal judge cannot impose a jail sentence for the violation of a municipal ordinance. However, there is no apparent reason why the legislature could not authorize and provide for jury trials in municipal courts in Tennessee.

In the more recent case of City of Gatlinburg v. Goans, 600 S.W. 735 (Tenn. Ct. App. 1980), a defendant, relying upon both Sections 6 and 9 of Article I of the Tennessee Constitution, demanded a jury trial on appeal to circuit court from two convictions in municipal court for which he had been fined \$20 in one case and \$25 in another. Under the Gatlinburg City Charter an ordinance violator could be fined only fifty dollars; no jail sentence could be imposed. The Court of Appeals, citing O'Dell and other cases, declared that "Our courts have consistently held that persons charged with petty offenses and violation of city ordinances are not, as a matter of right, entitled to a trial by jury under the provisions of the State or Federal Constitutions." The liberty of the defendant in that case was not in jeopardy.

What makes the answer to the question of whether a municipal judge can impose a jail sentence for the violation of a municipal ordinance slightly uncertain is that the Tennessee Supreme Court in Summers v. Thompson, without disapproval, declared that because municipal judges "have no authority to impose fines exceeding \$50 or to impose extensive terms of imprisonment" they are essentially administrative judges. The Court had before it the general law municipal charters, one of which permits a municipal judge to jail a defendant for ninety days! But what the Court was considering when it made that statement was whether such authority constituted an exercise of judicial power under Article 6 of the Tennessee Constitution, not whether such authority triggered the right to a jury trial under Article 1 of the Tennessee Constitution. But that statement opens a crack on a door thought closed; perhaps on reflection the Court would close it again.

Incidentally, under Rule 23, Tenn. R. Crim. P. "small offenses" may also be tried without a jury. Such offenses may include criminal contempt for which a jail term may be imposed. Robinson v. Gaines, 725 S.W.2d 692 (Tenn. Cr. App. 1986), and other cases cited therein as well as in City of Gatlinburg v. Goans. However, if the offense is punishable by imprisonment for over six months a U.S. Constitutional right to a jury trial attaches. Duncan v. Louisiana, 391 U.S. 145 (1968); Baldwin v. New York, 399 U.S. 66 (1970).

Although municipal courts probably cannot impose a jail term for the violation of municipal ordinances, it is generally agreed that they may impose a jail sentence for the willful refusal or neglect to pay a fine. The maximum practical sentence a municipal judge can impose for the refusal to pay a fine for the violation of a municipal ordinance is ten (10) days or one day for each five dollars of the fine. T.C.A. 40-24-104(a)(4) and (5)). However, the U.S. Supreme Court has held that an indigent defendant cannot be jailed for failure to pay a fine. Tate v. Short, 401 U.S. 395 (1971); Bearden v. Georgia, 461 U.S. 660, (1983).

Collection of fines

The Tennessee Attorney General has opined that a *capias* may be issued for a defendant who has refused to respond to a summons to show cause for failing to pay a fine previously imposed for the violation of a municipal ordinance. OAG U-87-28 (3/12/87). An unpaid municipal court fine may also be collected in the same manner as a judgment in a civil action. T.C.A. 40-24-105. A municipal court may also issue execution on judgments for fines and costs which remain unpaid for thirty days. T.C.A. 6-54-303. If those processes are ever used, they are used infrequently.

Contempt Powers

A municipal court has the power, as do other courts, to punish for contempt. T.C.A. 16-1-103 contains a list of powers held by "every court," including the power to enforce order necessary to prevent interruption, disturbance or hinderance of its proceedings, and to compel obedience to its orders, judgments and process. T.C.A. 16-1-103 provides that "For the effectual exercise of its powers, every court is vested with power to punish for contempt, as

provided for in this code." Also see May v. Krichbaum, 152 Tenn. 416, 278 S.W. 54 (1925). The power of any court, including a municipal court, to punish for contempt is limited to the conduct listed in T.C.A. 29-9-102. Among other things, the conduct generally involves willful misbehavior in court, the willful disobedience to the commands of the court. T.C.A. 29-9-102. But the power of municipal courts to punish for contempt is limited to a fine of \$10. T.C.A. 29-9-103.

Summers v. Thompson

The At Will Status of Municipal Court Judges Under Attack

The at will status under the general law uniform commission-manager form of government was challenged in Summers v. Thompson, (Tenn. Sup. Ct., No. 23, filed May 23, 1988). In that case, the Soddy-Daisy city judge was summarily removed by the Soddy-Daisy board of commissioners after a feud between the board and the judge over the operation of the court and the disposition of DUI cases. The city judge challenged his dismissal on the grounds that the at will employment of city judges violated the separation of power provisions of Article II, Section 1 of the Tennessee Constitution.

In a narrow ruling the Tennessee Supreme Court upheld the authority of the Soddy-Daisy Board of Commissioners to terminate the city judge at will. It bypassed the constitutional issue raised by the city judge, and resolved the case on the construction of T.C.A. 6-21-501 and 16-18-101--102 (although it is difficult to figure out why the latter statute was even at issue). The Court was careful to note that

Moreover, the holding of this case is expressly limited to those city courts that are not vested with concurrent jurisdiction with a General Sessions Court, which is an inferior court, under T.C.A. § 6-21-501(b) or T.C.A. § 16-18-101 (Supp. 1987). The jurisdiction of these city courts is wholly limited to traffic violations or city ordinances, as the judges of these courts have no authority to impose fines exceeding \$50 or to impose extensive terms of imprisonment and, as a practical matter, are essentially administrative judges. Such a judge is not cloaked with the powers of a judge of an inferior court within the meaning of Article VI [of the Constitution of Tennessee].

T.C.A. 6-21-501 is one of the provisions of the general law uniform city manager-commission charter governing the city court. It contains two subsections: Subsection (a) provides for a city court presided over by a city judge who has jurisdiction only over ordinance violations and who serves at the will and pleasure of the board of commissioners; Subsection (b) provides for those city court which fall into certain population brackets to be presided over by a city judge who has concurrent jurisdiction with courts of general session and who also serves at the will and pleasure of the board of commissioners.

T.C.A. 16-18-101 authorizes the governing body of any municipality having a mayor's court or a court presided over by a recorder, and no other provision for a city judge, to provide by ordinance for the office of city judge. However, it does not confer concurrent jurisdiction on the court. T.C.A. 16-18-102(3) provides that the city judge serves at the pleasure of the municipal governing body.

Thus, Summers is legal authority to terminate city judges at will in only those T.C.A. 6-21-501(a) courts and in those city courts established under T.C.A. 16-18-101. Neither class of courts has jurisdiction concurrent with that of a court of general sessions. But presumably, under the logic of Summers, municipal judges who do not have concurrent jurisdiction under private act charters can be terminated at will.

The Summers Court could find only two municipalities under the general law uniform city manager-commission charter which fall within the population brackets required under T.C.A. 6-21-501(b) to give their city courts jurisdiction concurrent with that of a court of general sessions: St. Joseph and Loretto, in Lawrence County. In other words, Soddy-Daisy had a T.C.A. 6-21-501(a) city court, which had no concurrent jurisdiction, rather than a T.C.A., Section 6-21-501(b) city court, which does have concurrent jurisdiction. "[W]ithout any concurrent jurisdiction, a city judge of a subsection (a) court does not exercise constitutional judicial power," declared the Court.

Summers And The Future of Municipal Courts

That is the limit of Summers. Technically, that case leaves until another day the question of whether city judges who have concurrent jurisdiction under any city charter can be removed at will, but it unquestionably serves blunt notice that in any future case involving a challenge to the removal of a city court judge who has concurrent jurisdiction, municipal judges with such jurisdiction will be found to be judges of inferior courts within the meaning of Article VI of the Tennessee Constitution.

The significance of such a holding is seen in Article VI, Section 4 of the Tennessee Constitution, which provides that

The judges of the Circuit and Chancery Courts, and of other inferior courts shall be elected by the qualified voters of the district or circuit to which they are to be assigned. Every Judge of such Courts shall be thirty years of age, and shall before his election, have been a resident of the State for five years and of the circuit or district one year. His term of service shall be eight years. [Emphasis mine]

The logical outcome of that language is that where the constitutional issues raised in Summers are met squarely in a future case, the Court will hold that municipal judges having concurrent jurisdiction with that of a sessions

court judge must be elected to an eight year term and meet the other qualifications contained in Article VI, Section 4. In fact, in a strong concurring opinion, Justice Drowota (who also wrote the majority opinion) declared that he would hold that city judges who exercise concurrent jurisdiction with inferior courts "must be elected for a term of eight (8) years as required by Article VI, Section 4, and may not be removed except pursuant to the Constitution of Tennessee." That holding appears to merely await the right case.

It is difficult to predict the practical implications such a ruling would have for municipal courts in Tennessee. None of the general law charters and probably none of the private act and home rule charters provide for a term of office and qualifications for the city judge consistent with that required of judges of inferior courts under Article VI, Section 4 of the Tennessee Constitution. Because there is presently no legislative authority in the general law or in any charter, perhaps excepting the home rule charter, for a municipal judge to be elected to an eight year term and meet the other qualifications of Article VI, Section 4 of the Tennessee Constitution the Tennessee General Assembly would have to legislate such authority. A home rule municipality might, under the authority of T.C.A. Title 16, Chapter 17, or by an amendment to its charter by ordinance, provide that the municipal judge be elected to an eight year term and meet the other terms of Article VI, Section 4. T.C.A. Title 16, Chapter 17, while it provides for the election of the city judge (after the initial appointment), it provides for no term of office; therefore, an eight year term would be open to the municipality under that statute.

It is unlikely that the Tennessee Supreme Court would declare sitting municipal judges having concurrent jurisdiction "elected" for terms of eight years. Such a declaration would intrude on the rights of the legislature and the electorate, respectively, to create inferior courts, and to elect the judges of such courts.

A possible course open to the Tennessee Supreme Court would be to hold unconstitutional and void the grant of concurrent jurisdiction to municipal courts whose judges are not elected for terms of eight years and meet the other requirements of Article VI, Section 6 of the Tennessee Constitution. See Waters v. State ex rel Schmutzer, 583 S.W.2d 756 (1979). That would be Justice Drowata's approach.

What would be the status of all the cases adjudicated by the municipal courts in Tennessee under the exercise of concurrent jurisdiction found to have been unconstitutionally bestowed upon them? Arguably the judges of those courts would be de facto judges and the adjudications would stand. In Waters the Tennessee Supreme Court was faced with resolving a competing claim to the office of juvenile court judge by Larry Waters, the Sevier County executive, and Henry Ogle, a local attorney. Waters, who was 26 years of age, claimed the office by virtue of holding the office of county executive. Henry Ogle claimed the office through his appointment as judge pro tempore by Harold Atchley, the county judge pro tempore. Upon the death of the county judge, Atchley had been appointed county judge pro tempore by the county court to serve until the next general election. Atchley, who was not an attorney, declared himself incompetent to serve as juvenile court judge, and requested the Sevier County Bar association to assist in the election of a juvenile court judge pro tempore pursuant to T.C.A. 17-225 [now T.C.A. 17-2-118]. The Sevier County Bar Association elected

Henry Ogle, who, by order of Atchley, assumed the office of Sevier County Juvenile Judge. Ogle served as the juvenile judge from April 23, 1978 until September 1, 1978 when Waters assumed office as the county executive. But even after Waters assumed office, Ogle claimed to hold the office of juvenile court judge, on the grounds that Waters was constitutionally disqualified from holding that office.

The Court pointed to T.C.A. 5-601 through 5-606 [now 5-6-101 through 5-6-106] which govern the qualifications and term of county executives in Tennessee. They provide, among other things, that county executives must be at least 25 years of age, meet certain residency requirements, and are elected for a term of four years. In addition, under T.C.A. 5-606, the county executive was vested with "the judicial authority formerly exercised by the county judge, county chairman, or other such elected official of county government..." [That statute, now T.C.A. 5-6-106, was subsequently amended to delete that authority in response to the holding in this case]. But a juvenile court is an inferior court within the meaning of Article VI of the Tennessee Constitution, and judges of inferior courts must be elected for a term of eight years and be thirty years of age under Article VI, Section 4 of the Tennessee Constitution. Neither the term of office for county executive established under T.C.A. 5-601 [now 5-6-101] nor Waters age (26), met those constitutional requirements; therefore, the grant of "judicial authority formerly exercised by the county judge, county chairman, or other elected official of county government," was unconstitutional.

But while Waters was not a de jure juvenile court judge he was a de facto juvenile court judge by virtue of his induction into the office of county executive, and in that capacity his acts as juvenile court judge were valid, declared the Court.

The Court treated Ogle's "election" to the office of juvenile court judge as if it were valid, but had "grave doubts" whether Atchley's declaration that he was not competent to serve as juvenile court judge justified holding the election. However, the Court declined to specifically decide both that issue, and what it called the "secondary question" of whether Ogle "if not a de jure juvenile court judge pro tempore, was, in view of his election by the bar and his apparent acceptance as juvenile court judge by the bar, and the quarterly county court ... a de facto juvenile court judge pro tempore." Those issues would be decided when and if they were raised by litigants who had appeared before Ogle during the period April 23, 1978 to September 1, 1978.

The de facto judge approach of Waters seems both a legally sound and practical way to handle jurisdictional challenges to the decisions of municipal judges operating under an unconstitutional grant of concurrent jurisdiction.