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County Charters

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Reference Number: CTAS-445

The 1978 amendments to the Tennessee Constitution revised Article VII, Section 1, of the Tennessee Constitution, including adding the third paragraph as follows:

The General Assembly may provide alternative forms of county government including the right to charter and the manner by which a referendum may be called. The new form of government shall replace the existing form if approved by a majority of the voters in the referendum.

The Tennessee Supreme Court has determined that the Tennessee Constitution allows for three types or forms of county government: (1) the basic form which includes the constitutional offices, (2) consolidated city-county government, and (3) an alternative form, such as a county charter. The alternative form of county government authorized under the third paragraph of Article VII, Section 1 of the Tennessee Constitution may be created by the legislature without regard to the general type established in Article VII provided the legislature's action is ratified by referendum. *State ex rel. Maner v. Leech*, 588 S.W.2d 534 (Tenn. 1979), *Bailey v. County of Shelby*, 188 S.W.3d 539 (Tenn. 2006).

The General Assembly has provided an alternative to the standard form of government provided in the first paragraph of Article VII, Section 1 of the Tennessee Constitution through the means of a county charter. The county charter enabling law is found in *Tennessee Code Annotated*, Title 5, Chapter 1, Part 2. County charters are often referred to as "home rule" charters due to the discretion given by the legislature to the citizens of the county to alter the form or structure of the county government through the charter writing and referendum approval process. The legislature has also granted to counties with charters the power to adopt ordinances in a manner similar to that of a city government. Charter counties may adopt ordinances relating to purely county affairs and cannot interfere with the local affairs of any municipality. The county legislative body is authorized to provide penalties for the violation of ordinances, but these penalties cannot exceed certain statutory maximums. T.C.A. § 5-1-211. The Tennessee Supreme Court has ruled that a county charter may impose term limits on certain county officials although none is required by general law. *Bailey v. County of Shelby*, 188 S.W.3d 539 (Tenn. 2006); *Jordan v. Knox County*, 213 S.W.3d 751 (Tenn. 2007).

Any county wishing to adopt a charter must first create a charter commission by one of four possible methods--

1. Resolution of the county legislative body,
2. Proclamation of the county mayor ratified by a two-thirds majority vote of the county legislative body,
3. Petition by 10 percent of the qualified voters, or
4. Private act of the General Assembly.

Members of the charter commission are elected by popular vote if the resolution or petition method is used. If a proclamation by the county mayor is used, charter commission members are appointed in the proclamation from county legislative body districts with no more than three members from any one county legislative body district. Within nine months the charter commission must present a proposed charter, which is then submitted for approval in a referendum. The state statutes enabling a county charter require that the charter contain provisions assigning the functions and duties of the officers of the county, and state that the duties of the constitutional officers as prescribed by the general assembly cannot be diminished under the new charter government. T.C.A. § 5-1-210. Thus, the county charter must provide for the constitutional county offices or otherwise assign the duties of the constitutional county offices to another office, agency, or official. *Jordan v. Knox County*, 213 S.W.3d 751, 773 (Tenn. 2007).

The statutes authorizing a county charter provide for organizational changes and ordinance powers but do not provide any extension of the authority for home rule in vital areas such as local option taxation. To date, only Shelby and Knox counties have chosen county charters, although other counties have studied the matter.

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