

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

July 14, 2015

Opinion No. 15-60

Compensation of Members of Legislative Bodies of Davidson County, Hamilton County, Knox County, and Sullivan County

Question

Are counties in the State of Tennessee that had a population between one hundred thousand (100,000) and six hundred thousand (600,000) as of the 1970 federal census required to pay the members of their respective legislative bodies the twenty-five thousand dollars (\$25,000) per annum salary mandated by Tenn. Code Ann. § 8-24-115, or may these counties fix the salaries of these office holders in a lesser amount?

Opinion

Of the four counties that had a population between one hundred thousand (100,000) and six hundred thousand (600,000) as of the 1970 federal census, Knox County is the only county that has been governed by the compensation requirements of Tenn. Code Ann. § 8-24-115. Knox County was required to pay the members of its legislative body twenty-five thousand dollars (\$25,000) per annum from the time Tenn. Code Ann. § 8-24-115 was enacted until August 31, 1980.

ANALYSIS

This opinion concerns the compensation of members of the legislative bodies of Hamilton, Sullivan, Davidson and Knox counties. We address each one in turn.

Hamilton County. You convey that Hamilton County has paid the members of its legislative body in accordance with Tenn. Code Ann. § 5-5-107, which authorizes the several legislative bodies in this State to fix the compensation of their membership in attending sessions of the county legislative body and duly authorized committees thereof. Under this statute, the annual compensation of the members of Hamilton County's legislative body has incrementally grown to the present amount of twenty-one thousand nine hundred two dollars (\$21,902.00).

A question has arisen, though, as to whether Tenn. Code Ann. § 8-24-115 governs the compensation of these office holders. This statute provides:

The compensation of county commissioners of any county having a population of not less than one hundred thousand (100,000) nor more than six hundred thousand

(600,000), according to the United States census of 1970,¹ shall be not less than twenty-five thousand dollars (\$25,000) a year, but any such county may by private act provide for annual compensation in a larger amount. The salary fixed by this section shall control over the provisions of any prior private or public enactment providing for an automatic salary adjustment for any county commissioner and any such provision is hereby declared to be superseded by this section.

Tenn. Code Ann. § 8-24-115. For the reasons stated below, this statute does not govern the compensation of the members of Hamilton County's legislative body.

Tennessee Code Annotated § 8-24-115 was enacted by the passage of Chapter 344 of the Public Acts of 1975. The original Act includes a phrase that the codified version § 8-24-115 does not contain. The original Act states:

The compensation of county commissioners of any county having a population of not less than one hundred thousand (100,000) nor more than six hundred thousand (600,000), according to the United States census of 1970 *and having a county commission form of government* shall be not less than twenty-five thousand dollars (\$25,000) a year, but any such county may by private act provide for annual compensation in a larger amount. The salary fixed by this Act shall control over the provisions of any prior private or public enactment providing for an automatic salary adjustment for any county commissioner and any such provision is hereby declared to be superseded by this Act.

1975 Tenn. Pub. Acts, ch. 344, § 1 (emphasis added).

When the Act was initially codified in Tenn. Code Ann. § 8-2417 (Supp. 1978), the italicized phrase – “and having a commission form of government” – was included; but this phrase was omitted when the statute was re-codified in Tenn. Code Ann. § 8-24-115 (1980). The omission was not the result of an amendment by the General Assembly, nor is there any indication that the General Assembly intended the removal of the phrase.² Thus, the omission of this phrase appears to be a codification error.³

When the codification process results in a conflict between the original legislation and the codified version of the law, the public act originally passed controls. *State v. Hicks*, 835 S.W.2d 32, 37 (Tenn. Crim. App. 1992). *See, e.g., State v. Ford*, M2007-00431-CCA-R3-CD, 2008 WL

¹ Hamilton County, along with Davidson, Knox, and Sullivan counties, had a population in this range as of the 1970 federal census. 1970 County Population Table, Tenn. Code Ann. Vol. 13, at 1336-37 (2009).

² *See, e.g., Vezolles v. Tennessee Cent. Ry. Co.*, 175 Tenn. 554, 557, 136 S.W.2d 502, 503 (1940) (Court found General Assembly's intent to remove language from Act when codifiers omitted language and noted at the end of code section that Act had been modified).

³ The Code Commission has the authority to “correct manifest misspelling and typographical errors” and make other similar changes to Acts of the General Assembly, but it does not have authority to “alter the sense, meaning or effect of any act of the general assembly.” *See* Tenn. Code Ann. § 1-1-108.

1968824 (Tenn. Crim. App. May 7, 2008) (no perm. app. filed) (finding public act controlled when language from act was “missing” in statute). A codification error does not circumvent legislative intent. 82 C.J.S. Statutes § 432 (2015). Accordingly, the Act’s original language prevails; thus, Tenn. Code Ann. § 8-24-115 pertains only to counties of a certain size having a “commission form of government.”

As explained below, Hamilton County has never had a commission form of government, and, therefore, Tenn. Code Ann. § 8-24-115 does not apply to Hamilton County. When the Act was passed in 1975, Hamilton County had a county council form of government. 1941 Priv. Acts, ch. 156; *Leech v. Wayne Cnty.*, 588 S.W.2d 270, 277 n. 3 (Tenn. 1979) (Henry, J., dissenting); *Ragon v. Thrasher*, 194 Tenn. 463, 253 S.W.2d 31 (1952). A few years later, this form of government was abolished, and Hamilton County converted to a new form of county government, described below, when article VII of the Tennessee Constitution was amended in 1978.

Prior to the 1978 revision of article VII, the Tennessee Constitution of 1870 was silent as to the structure of county government. Article VII, section 1, enumerated the various county officers, and section 2 set forth the proper method for filling vacancies. The Constitutional Convention of 1977 extensively rewrote these sections and provided a general framework for the government of Tennessee counties. A wholly new office of county executive was created and, the amended Constitution provided for a legislative body in the place of the quarterly court. *State ex rel. Maner v. Leech*, 588 S.W.2d 534, 537 (Tenn. 1979). Article VII, section 1 of the Tennessee Constitution, in pertinent part, now provides:

The qualified voters of each county shall elect for terms of four years a legislative body, a county executive Their qualifications and duties shall be prescribed by the General Assembly.

Any county organized under the consolidated government provisions of Article XI, Section 9, of this Constitution shall be exempt from having a county executive and a county legislative body as described in this paragraph.

The General Assembly may provide alternate 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.

Shortly after article VII was amended, the Tennessee Supreme Court observed that our state constitution now provides for three types of county government:

- a. Article VII government wherein the basic units of government are the county executive and the county legislative body.
- b. A consolidated form of government commonly known as Metropolitan or “Metro.” See Article XI, Section 9, last paragraph. Any county having such a government is exempt from Article VII government.
- c. An alternate form of government either chartered or unchartered created by the General Assembly. Under this proviso the legislature is specifically authorized to

create diverse forms of county government without regard to the general type established in Article VII.

Maner, 588 S.W.2d at 537 (footnote omitted).

The Court also observed that the new provisions of article VII were not self-executing; legislative action was required to give them vitality. *Id.* at 537-38. Thus, the General Assembly responded with a “carefully considered and comprehensive plan of implementation, to wit: Chapter 934 of the Public Acts of 1978, which appears in the Official Code as Chapters 5 and 6 of Title 5.” *Id.* at 538. Part of the plan included the abolishment of old county forms of government.

Effective September 1, 1978, except as provided in Section 35 of this act⁴ and except in any county organized under the consolidated government provisions of Article XI, Section 9, the quarterly court, county council, and any other forms of county legislative bodies are abolished and all legislative powers that remained with such court, council, and other forms of legislative bodies are vested in the county legislative body. . . .

1978 Tenn. Pub. Acts, ch. 934, § 9 (originally codified in Tenn. Code Ann. § 5-501(b) (Supp. 1978); currently codified in Tenn. Code Ann. § 5-5-101(b)).

Consistent with this provision, the county council form of government utilized by Hamilton County was abolished. The county’s legislative power was vested in a county legislative body, known as the “board of county commissioners,” which is the most common form of county legislative body following the amendment of article VII. *See* Tenn. Code Ann. § 5-5-101(a), -102(f); *American Nat’l Bank & Trust Co. v. Auman*, 746 S.W.2d 464, 466 (Tenn. Ct. App. 1987). Thus, at no time has Tenn. Code Ann. § 8-24-115 applied to Hamilton County because Hamilton County has never had a commission form of government.

Moreover, even if the phrase “and having a county commission form of government” were not reinserted into Tenn. Code Ann. § 8-24-115, this statutory provision would still not govern the compensation of the members of Hamilton County’s legislative body. When Chapter 934 of the Public Acts of 1978 was passed, it not only implemented the new provisions of article VII, but it also amended Tenn. Code Ann. § 5-507 (Supp. 1977), the precursor to Tenn. Code Ann. § 5-5-107, which addresses the compensation of the members of county legislative bodies. Section 15(c) of the Act states:

Tennessee Code Annotated, Section 5-507, is amended by adding the following new paragraph at the end of the section:

Notwithstanding other provisions of this section, the total compensation of each member in counties of the second class according to Tennessee Code Annotated, Section 8-2402, shall be fixed at three hundred dollars (\$300.00) per month;

⁴ Section 35 contains transitional provisions for certain counties. While no county had an article VII government, the General Assembly recognized that the transition to such a government or an alternative government would be more troublesome for the counties addressed in section 35; consequently, it provided more time for these counties to make the transition. *Maner*, 588 S.W.2d at 538; *Leech*, 588 S.W.2d at 272-73.

provided, however, that such compensation shall be effective only for members elected to the office of county delegate created by this act.

1978 Tenn. Pub. Acts, ch. 934, § 15(c).

At the time of this amendment, “counties of the second class according to Tennessee Code Annotated, Section 8-2402” were “[c]ounties having a population of one hundred fifty thousand (150,000) or more, but less than four hundred thousand (400,000).” Tenn. Code Ann. § 8-2402 (Supp. 1972). Hamilton County fell within this population bracket at the time Chapter 934 was passed. 1970 County Population Table, Tenn. Code Ann. Vol. 13, at 1336 (2009). Moreover, subsequent amendments to these statutes that have altered population brackets and compensation provisions have always covered Hamilton County. *See* 1979 Tenn. Pub. Acts, ch. 385, § 1; 1980 Tenn. Pub. Acts, ch. 687, § 1; 1987 Tenn. Pub. Acts, ch. 397, § 2; 1990 Tenn. Pub. Acts, ch. 1001, § 1; 1993 Tenn. Pub. Acts, ch. 121, § 1; 1999 Tenn. Pub. Acts, ch. 174, § 1; 1980, 1990 and 2000 County Population Tables, Tenn. Code Ann. Vol. 13, at 1340, 1344, 1348 (2009); 2010 County Population Table, Tenn. Code Ann. Vol. 13, at 326 (Supp. 2014).

The compensation provision contained in Tenn. Code Ann. § 8-24-115 was enacted prior to the passage of Chapter 934. Importantly, Chapter 934 states that “[a]ny provision of law, private act or general act of local application in conflict with any provision or this act is hereby repealed.” 1978 Tenn. Pub. Acts, ch. 934, § 40. Thus, even if the phrase “and having a county commission form of government” were not reinserted into Tenn. Code Ann. § 8-24-115, this statutory provision would not govern the compensation of the members of Hamilton County’s legislative body because any provision of law in conflict with chapter 5 of title 5, is expressly repealed. Tenn. Code Ann. § 5-5-203(a) (originally codified in Tenn. Code Ann. § 5-553 (Supp. 1978)). Accordingly, the compensation provisions of Tenn. Code Ann. § 5-5-107 apply to Hamilton County.

Sullivan County. A similar analysis applies to Sullivan County. This county’s governing body was a quarterly county court when article VII of the Tennessee Constitution was amended. *See* 1827 Priv. Acts, ch. 65; *Jones v. Sullivan Cnty. Beer Bd.*, 200 Tenn. 301, 306, 292 S.W.2d 185, 187 (1956); *Otis v. Boyd*, 294 F.Supp. 813, 814 (E.D. Tenn. 1968). As set forth above, this form of government was abolished by the General Assembly when it implemented the new provisions of article VII. *See* 1978 Tenn. Pub. Acts, ch. 934, § 9 (originally codified in Tenn. Code Ann. § 5-501(b); currently codified in Tenn. Code Ann. § 5-5-101(b)). Sullivan County, like Hamilton County, converted to a basic article VII form of government. *See* Tenn. Code Ann. § 5-5-101(a); *Dulaney v. McKamey*, 856 S.W.2d 144 (Tenn. Ct. App. 1992). Thus, at no time have the compensation provisions of Tenn. Code Ann. § 8-24-115 applied to Sullivan County because Sullivan County has never had a commission form of government.

Moreover, Tenn. Code Ann. § 8-24-115 would not apply to Sullivan County even if the statute’s application were not limited to counties with a commission form of government. When Chapter 934 was passed, Tenn. Code Ann. § 5-507 (Supp. 1977) governed the compensation of the members of the quarterly county courts for “counties of the third class” through “counties of the eighth class.” At that time, Sullivan County was a “county of the third class” under Tenn. Code Ann. § 8-2402 (Supp. 1972) because it had a “population of fifty thousand (50,000) or more, but less than one hundred fifty thousand (150,000).” 1970 County Population Table, Tenn. Code

Ann. Vol. 13, at 1336 (2009). Chapter 934 amended Tenn. Code Ann. § 5-507 by substituting “county legislative bodies” for “quarterly county courts,” thereby causing Tenn. Code Ann. § 5-507 to govern the compensation of the members of Sullivan County’s legislative body. *See* 1978 Tenn. Pub. Acts, ch. 934, § 15(b).

Furthermore, amendments to these statutes have always covered Sullivan County. *See* 1979 Tenn. Pub. Acts, ch. 385, § 1; 1987 Tenn. Pub. Acts, ch. 397, §§ 1, 2; 1990 Tenn. Pub. Acts, ch. 1001, § 1; 1980, 1990 and 2000 County Population Tables, Tenn. Code Ann. Vol. 13, at 1340, 1344, 1348 (2009); 2010 County Population Table, Tenn. Code Ann. Vol. 13, at 326 (Supp. 2014). As previously explained, the General Assembly expressly repealed any provision of law in conflict with Chapter 934. Thus, the earlier enacted compensation provision of Tenn. Code Ann. § 8-24-115 would not apply to Sullivan County even if the statute’s application were not limited to counties with a commission form of government because any provision of law in conflict with chapter 5 of title 5 is repealed. Accordingly, the compensation provisions of Tenn. Code Ann. § 5-5-107 apply to Sullivan County.

Knox County. Knox County, unlike Hamilton County and Sullivan County, did have a commission form of government when Tenn. Code Ann. § 8-24-115 was originally enacted in 1975. 1937 Priv. Acts, ch. 183; *Bayless v. Knox Cnty.*, 199 Tenn. 268, 281, 286 S.W.2d 579, 585 (1955). While the commission form of government was abolished by the General Assembly when it implemented the new provisions of article VII, this form of government was not immediately terminated on September 1, 1978, as were other existing forms of county government. 1978 Tenn. Pub. Acts, ch. 934, §§ 9, 35(b). As mentioned earlier, the General Assembly provided additional time for certain forms of county government to transition to article VII government.⁵ The transition provision codified in Tenn. Code Ann. § 5-551(b) (Supp. 1978) addressed the commission form of government that existed in Knox County. *Maner*, 588 S.W.2d at 539. At the time, Knox County was considering the adoption of a metropolitan form of government; thus, the General Assembly announced its intention to alter the form of government on September 1, 1980. *Id.* at 540 (citing Tenn. Code Ann. § 5-551(b)). If Knox County did not adopt a metropolitan government or another alternative form of government before January 1, 1980, an article VII government would be established and a county executive and a county legislative body would be elected at the August election in 1980. *Id.* A metropolitan charter was not adopted; thus, Knox County’s commission form of government continued until August 31, 1980. *Id.* at 540, 542. At that time, Chapter 183 of the Private Acts of 1937 and all acts amendatory thereto were repealed, and Knox County converted to a basic article VII form of government. *Id.*; 1978 Tenn. Pub. Acts, ch. 934, § 40. Thereafter, the voters of Knox County adopted a charter form of government on November 8, 1988, which became effective on September 1, 1990. *Jordan v. Knox Cnty.*, 213 S.W.3d 751, 756, 777 (Tenn. 2007).

Accordingly, Knox County was governed by the compensation requirements of Tenn. Code Ann. § 8-24-115 from the time of its enactment through August 31, 1980. But after August 31, 1980, Knox County was no longer subject to the requirements of this statute because it had ceased to have commission form of government. The statutory construction principles discussed above dictate this conclusion. Moreover, this conclusion is consistent with the directive that statutes are

⁵ *See* note 4, *supra*, and accompanying text.

to be construed “with the saving grace of common sense.” *Maner*, 588 S.W.2d at 540. When Tenn. Code Ann. § 8-24-115 was enacted in 1975, a salary of \$25,000.00 had the same buying power as \$109,071.56 does today, according to the Bureau of Labor Statistics.⁶ A salary of this magnitude made sense for a commission form of government like Knox County had. There were three commissioners, and they essentially were the managers of the county. There was a highway commissioner, a welfare commissioner, and a finance commissioner. 1937 Tenn. Priv. Acts, ch. 183, §§ 3-6. Other forms of county government had commissioners who did not serve full-time or in a managerial capacity. Common sense dictates that the General Assembly did not intend that counties pay a \$25,000.00 salary to this type of commissioner in 1975.

Moreover, as in the case of Hamilton County and Sullivan County, Tenn. Code Ann. § 8-24-115 would not govern the compensation of the members of Knox County’s legislative body after August 31, 1980, if the phrase “and having a county commission form of government” were not reinserted into the statute. In 1980, Knox County was a “county of the second class” under Tenn. Code Ann. § 8-24-101 (1980)⁷ and therefore was governed by the compensation provisions of Tenn. Code Ann. § 5-5-107 (1980) once it converted to a basic article VII form of government. As discussed earlier with respect to Hamilton County, the General Assembly amended Tenn. Code Ann. § 5-5-107 (Supp. 1977), the precursor to Tenn. Code Ann. § 5-5-107, when Chapter 934 of the Public Acts of 1978 was passed, and the amendment specifically provided for the compensation of members of legislative bodies of the second class. 1978 Tenn. Pub. Acts, ch. 934, § 15(c). Then, in 1990, at the same time that Knox County adopted a charter form of government, the General Assembly amended the compensation provision governing counties of the second class, causing it to apply only to Hamilton County. 1990 Tenn. Pub. Acts, ch. 1001, § 1. Accordingly, the statute authorized Knox County to set compensation for the members of its legislative body without restrictions. *See* Tenn. Code Ann. § 5-5-107(a) (county legislative bodies are authorized to set their own compensation, subject to certain limitations on counties of classes three through eight and certain counties in class two); *Cobb v. Shelby Cnty. Bd. of Comm’rs*, 771 S.W.2d 124, 127-28 (Tenn. 1989) (county of the first class permitted to set compensation for its legislative members because Tenn. Code Ann. § 5-5-107 places no limitations on it).

As explained earlier, the General Assembly expressly repealed any provision of law in conflict with Chapter 934. Accordingly, the earlier-enacted compensation provision of Tenn. Code Ann. § 8-24-115 would not apply to Knox County after August 31, 1980, even if the statute’s application were not limited to counties with a commission form of government because any provision of law in conflict with chapter 5 of title 5 is repealed. Consistent with the authority granted to it by Tenn. Code Ann. § 5-5-107(a), Knox County has set compensation for the members of its legislative body in its charter. Knox County Charter, § 2.04.

Davidson County. Finally, Davidson County has never been governed by Tenn. Code Ann. § 8-24-115. Before the enactment of this statute, the City of Nashville and Davidson County had adopted a metropolitan form of government in 1963,⁸ and the General Assembly had declared

⁶ http://www.bls.gov/data/inflation_calculator.htm (last visited May 15, 2015).

⁷ 1980 County Population Table, Tenn. Code Ann. Vol. 13, at 1340 (2009).

⁸ *See Sitton v. Fulton*, 566 S.W.2d 887, 888 (Tenn. Ct. App. 1978).

that “[t]he minimum salary payable to city and metropolitan council members in all municipalities having a population greater than one hundred seventy (170,000), according to the 1970 federal census⁹ or any subsequent federal census, shall be three hundred dollars (\$300) per month.” 1971 Tenn. Pub. Acts, ch. 345, § 3 (currently codified in Tenn. Code Ann. § 7-51-302). Consistent with this authority, compensation of the metropolitan council is set forth in the Charter of the Metropolitan Government of Nashville and Davidson County. Metropolitan Charter, §§ 3.02, 18.05.

Conclusion. In sum, Hamilton, Sullivan, and Davidson Counties are not and never have been subject to the compensation requirements of Tenn. Code Ann. § 8-24-115. Knox County is the only county that has been governed by the compensation requirements of Tenn. Code Ann. § 8-24-115. Knox County was required to pay the members of its legislative body twenty-five thousand dollars (\$25,000) per annum from the time Tenn. Code Ann. § 8-24-115 was enacted until August 31, 1980.

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⁹ In 1970, the population of the City of Nashville was 250,887. Joe C. Carr, Secretary of State, Tennessee Blue Book 1971-1972 283 (1972).