

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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August 13, 2007

Opinion No. 07-119

Recall Elections

QUESTION

Is a constitutional amendment necessary in order to authorize recall elections for county commissioners and other county officers (*i.e.*, sheriff, trustee, etc.)?

OPINION

No. The legislature already has the authority to enact provisions for recall elections for county commissioners and other county officers.

ANALYSIS

While Art. VII, § 1, of the Tennessee Constitution provides for the election of the members of the county legislative body and other county officers and states that such officers “may be removed for malfeasance or neglect of duty as prescribed by the General Assembly,” it does not mention recall elections as a mechanism for removing incumbent county office holders. Indeed, there is no express mention of recall elections in the Tennessee Constitution. This Office has previously opined, however, that the silence of the Constitution on this point does not mean that the legislature is prohibited from enacting provisions authorizing recall elections; rather, the legislature can do all things not prohibited by the Tennessee or United States Constitutions. *See* Op. Tenn. Atty. Gen. 89-59 (April 20, 1989) (copy attached). We noted in that opinion that this principle is based upon the concept that the state is a government of general powers, and the Constitution of Tennessee is a “limitation on and not the source of the power of the people acting through their representatives, the legislature.” *Id.* (citing *Perry v. Lawrence Co. Election Comm.*, 219 Tenn. 548, 551, 411 S.W.2d 538, *cert. denied*, 389 U.S. 821 (1967)). We concluded that, in the absence of any express constitutional prohibition against legislation authorizing recall elections, recall elections may be permitted by the legislature. Accordingly, a constitutional amendment authorizing recall elections for county commissioners and other county officers is not necessary. The legislature already has the authority to enact provisions for such recall elections.

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