

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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April 15, 2010

Opinion No. 10-51

Voting under Charter Government Unification Act and Metropolitan Government Act

QUESTION

Under the Charter Government Unification Act, Tenn. Code Ann. §§ 7-21-101, *et seq.*, (the “Unification Act”), and the Metropolitan Government Act, Tenn. Code Ann. §§ 7-1-101, *et seq.*, (the “Metropolitan Act”), voters of the principal city in the county and the voters of the area of the county outside the principal city must each vote to adopt a unified government charter. Does this statutory scheme violate the “one man, one vote” principle because it allows voters in the smaller municipalities in Shelby County to vote on adoption of a government charter unifying the city of Memphis and Shelby County?

OPINION

No, this Office has previously opined that this statutory scheme does not violate the “one person, one vote” principle articulated in *Baker v. Carr*, 369 U.S. 186 (1962), under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

ANALYSIS

This opinion concerns the constitutionality of the voting provisions of the Charter Government Unification Act and the Metropolitan Government Act. Under both of these statutory schemes, the voters of the principal city in the county and the voters of the area of the county outside the principal city, including voters located in smaller municipalities within the county, must each vote to adopt a unified government charter. *See* Tenn. Code Ann. §7-21-205(e) and § 7-2-106(d). You have asked whether these statutory schemes violate the “one person, one vote” rule articulated in *Baker v. Carr*, 369 U.S. 186 (1962). Under this and later cases, the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution has been interpreted to require that, once the geographical unit for which a representative to be chosen is designated, such as a legislative body, all who participate in the election are to have an equal vote – whatever their race, whatever their sex, whatever their

occupation, whatever their income and wherever their home may be in that geographical unit. *Gray v. Sanders*, 372 U.S. 368, 379 (1963).

These cases, however, involve recurring elections for legislative office. By contrast, a vote to adopt the unified county government either under the Unification Act or the Metropolitan Act involves a single referendum in which all the county residents vote on the same issue. The United States Supreme Court, in *Town of Lockport v. Citizens for Community Action at the Local Level, Inc.*, 430 U.S. 259 (1977), has adopted a different standard in analyzing the constitutionality of a referendum vote on a local government charter. In that case, the Supreme Court held that a similar statutory scheme did not violate equal protection principles, because the requirement reflected a valid state legislative judgment that residents of the principal city and remaining residents of the county have different and potentially opposing interests in the adoption of the unified government. *Id.* at 271-72. Based upon this holding and the similar voting schemes, this Office has previously concluded that the voting schemes in the Unification Act and the Metropolitan Act do not violate the Equal Protection Clause of the Fourteenth Amendment or the parallel provisions of the Tennessee Constitution. Op. Tenn. Att’y Gen. 97-096 (July 1, 1997) (copy attached).

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