

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

May 30, 2024

Opinion No. 24-008

Offices of Sheriff, Trustee, Register, County Clerk, and Assessor of Property Under Shelby County Charter

Question

Does Tenn. Code Ann. § 5-1-202(c) apply to the offices of sheriff, register, county clerk, assessor of property, and trustee in Shelby County?

Opinion

Tennessee Code Annotated § 5-1-202(c) likely does not govern Shelby County’s current offices because the Shelby County Charter explicitly replaced “constitutional county officers” with “county charter officers.”

ANALYSIS

1. Article VII, § 1 of the Tennessee Constitution provides the general framework for the government of counties. Revised in 1978, this constitutional provision states in pertinent part:

The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property. 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.

No officeholder’s current term shall be diminished by the ratification of this article.

Tenn. Const. art. VII, § 1.

The Tennessee Supreme Court has interpreted Article VII, § 1 to allow three types of county government. *State ex rel. Maner v. Leech*, 588 S.W.2d 534, 537 (Tenn. 1979). First, it

authorizes a type of county government “wherein the basic units of government are the county executive and the county legislative body.” *Id.* Second, it authorizes a consolidated form of government, commonly known as a metropolitan government, which is exempt from certain requirements in Article VII. *Id.* Third, it authorizes the General Assembly to statutorily create “alternate,” “diverse forms of county government without regard to the general type established in Article VII.” *Id.*

Acting pursuant to its constitutional authority, the General Assembly has enacted legislation allowing counties to adopt a charter form of government. *See* Tenn. Code Ann. §§ 5-1-201 to -215. If lawfully adopted, a charter “result[s] in the creation and establishment of an alternative form of county government to perform all the governmental and corporate functions previously performed by the county.” *Id.* § 5-1-203(b). “Such charter form of government shall *replace* the existing form if approved by a majority of the voters in a referendum.” *Id.* § 5-1-203(c) (emphasis added). By statute, “no right, power, duty, obligation or function of any officer, agency or office of such county shall be retained and continued unless [the enabling legislation] or the charter of such county expressly so provides, or unless such retention and continuation be required by the Constitution of Tennessee.” *Id.* § 5-1-202(a).

The General Assembly imposed certain requirements on charter forms of government. For example, a charter must operate as “a public corporation, with perpetual succession, capable of suing and being sued.” *Id.* § 5-1-210(1). It must provide “[f]or the assignment of administrative and executive functions to officers of the county government” *id.* § 5-1-210(5), declare the “method of election, qualification for holding office, method of removal, and procedures of the county legislative body,” *id.* § 5-1-210(4), and set out “the names or titles of the administrative and executive officers of the county government, their qualifications, compensation, method of selection, tenure, removal, replacement and such other provisions with respect to such officers, not inconsistent with general law,” *id.* § 5-1-210(6). And, “the duties of the constitutional county officers as prescribed by the general assembly shall not be diminished under a county charter form of government; provided, that such officers may be given additional duties under such charters.” *Id.* § 5-1-210(12).

The Tennessee Supreme Court addressed these statutory requirements and the status of “constitutional county officers” in two significant cases: *Bailey v. County of Shelby*, 188 S.W.3d 539 (Tenn. 2006) and *Jordan v. Knox County*, 213 S.W.3d 751 (Tenn. 2007).

In 2006, *Bailey* held that Article VII, § 1 does not prohibit a county operating under a charter form of government from establishing the “qualifications” of its officers. 188 S.W.3d at 541, 546-48. There, a group of county commissioners challenged a term-limit provision in the Shelby County Charter, *id.* at 541-42, arguing that the first paragraph of Article VII vests the authority to set qualifications in the General Assembly, *id.* at 545. The Court disagreed. It emphasized that Article VII allows “for the creation of a new form of county government that replaces the existing form,” and “reject[ed] the notion that an alternative government formed under the third paragraph of Article VII must conform to the [qualifications] language in the first paragraph of Article VII.” *Id.* at 545-46. With no constitutional constraints and express statutory authorization to impose qualifications, *see* Tenn. Code. Ann. § 5-1-210(4), the Court upheld term-limit restrictions for charter forms of government.

The following year, *Jordan* made clear that Article VII does not require a charter form of government to retain the constitutional county offices set out in the first paragraph of Article VII. 213 S.W.3d at 773. In *Jordan*, a group of county commissioners claimed that Knox County lacked a valid governmental charter. The charter established the office of the county mayor, the county commission, and a law director. *Id.* at 756. But it did not expressly establish the offices of sheriff, trustee, register of deeds, county clerk, and property assessor, nor did it explicitly assign the duties and functions traditionally performed by these officials to any other officers. *Id.* The Court held that neither the Tennessee Constitution nor Tennessee Code required Knox County to retain constitutional county officers.

The Court started its analysis with Article VII. It explained that “[t]he thrust of the *Bailey* holding”—“there is no requirement that the third paragraph of article VII conform to the language of the first paragraph”—means that “the offices named in the first paragraph, including those of sheriff, trustee, property assessor, register of deeds, and county clerk, are not essential to an alternative form of government.” 213 S.W.3d at 773. And “because the constitutional officers of a county are not [constitutionally] necessary in the charter form, then no duty, obligation, or function of these offices and officers is retained unless expressly provided for in the charter or required by the . . . the enabling legislation.” *Id.* (emphasis added).

The Court then turned to the enabling legislation, namely Tenn. Code Ann. § 5-1-203(b) and § 5-1-210(12). Section 5-1-203(b) requires a charter form of government “to perform all the governmental and corporate functions previously performed by the county.” This language, the Court concluded, required Knox County to retain an officer that performs “the duties” of constitutional county officers. *Bailey*, 213 S.W.3d at 773-74.

But the Court rejected the notion that *only* a constitutional county officer could perform those duties. The challengers had argued that § 5-1-210(12)—which states that “the duties of the constitutional county officers . . . shall not be diminished”—prevented counties from eliminating constitutional county officers. *Id.* at 772-773. According to the Court, though, § 5-1-210(12) applies “only when the charter . . . ‘retain[s]’ the constitutional county offices in the alternate form of government.” *Id.* at 773. “[T]he duties [of constitutional county officers] may be transferred to another county official, so long as the duty is performed.” *Id.*

2. Following the issuance of *Jordan*, the Shelby County Board of Commissioners proposed amendments to address deficiencies in the Shelby County Charter. Shelby County, Tenn., Ordinance 364 (Aug. 27, 2008). The proposed amendments were first published and submitted to the voters of Shelby County during the August 7, 2008, countywide election—but the amendments were not approved. *Id.*

Two months later, the Shelby County Board of Commissioners submitted another set of proposed amendments “that, if approved will create officers to carry out the duties and functions of the former constitutional county officers and meet the state law requirements for establishing a charter form of county government” *Id.* Among other provisions, the amendments proposed to *delete* Section 4.06 of Article IV of the Shelby County Charter, which read as follows:

The sheriff shall be the chief law enforcement officer of the county and is charged with the enforcement of ordinances of the County of Shelby. The sheriff shall be

elected by the qualified voters of Shelby County according to law and all duties, conferred or implied by law, shall expressly continue as they existed prior to the enactment of this charter.

Id.

And the amendments proposed to *add* a new Article VIII entitled “County Charter Officers” to the Shelby County Charter. The initial section of the new proposed article stated:

Section 8.01. Replacement of constitutional county officers.

In addition to the legislative and executive branches created herein, the officers listed in this article shall be officers of the county who shall be known as the “county charter officers” and are hereby created and established to perform the duties and functions of the former constitutional county officers that existed as part of Shelby County government prior to Shelby County adopting a charter form of county government. This article shall become effective September 1, 2010; provided, however, this article shall become effective September 1, 2012 as to the office of the Shelby County Assessor.

*Id.*¹

The remaining sections of the proposed article generally provided that the qualifications, duties, and powers of the “county charter officers”—i.e., the Shelby County Sheriff, Shelby County Trustee, Shelby County Register, Shelby County Clerk, and Shelby County Assessor—that were “created” under Section 8.01 would be the same as those required of the “former constitutional officers.” *Id.* The proposed amendments were approved pursuant to voter referendum in the November 4, 2008, general election. Shelby County Charter, Art. IV, § 4.06, Note 1; Art. VIII, Note 1.

By approving these amendments, Shelby County voters “replace[d] [the Shelby County government’s] constitutional county officers” with county charter officers assigned the “duties and functions of the former constitutional county officers.” *See Jordan*, 213 S.W.3d at 780 (quoting *Pigeon-Thomas Iron Co. v. Shelby Cnty.*, 217 Tenn. 288, 295, 397 S.W.2d 375 (1965)).

3. In 2019, the General Assembly added Tenn. Code Ann. § 5-1-202(c) to the statutory scheme governing charter forms of government. That provision states that “[n]o charter . . . may be interpreted to alter, amend, or reduce the duties, qualifications, or privileges of the constitutional county offices of sheriff, register, county clerk, assessor of property, or trustee in a manner inconsistent with the laws of this state” Tenn. Code Ann. § 5-1-202(c). And it adds that “[t]his subsection (c) must not be construed to affect the terms of the constitutional county offices of sheriff, register, county clerk, assessor of property, or trustee.” *Id.*

¹ September 1, 2010, was selected “so as not to have the effect of removing the incumbent constitutional Sheriff, Trustee, Register, and County Clerk from office, or abridging the term or altering the salary prior to the end of the term for which such incumbent constitutional officers were elected.” Shelby County, Tenn., Ordinance 364 (Aug. 27, 2008). September 1, 2012, was selected with respect to the Assessor for the same reason. *Id.*

This statutory language likely does not govern Shelby County’s current charter officers. For one, the plain text of § 5-1-202(c) applies to “constitutional county offices,” and Shelby County has eliminated those offices from its charter form of government and explicitly created parallel “county charter officers” in their place. *See supra* 3-4. Moreover, while not identical, § 5-1-202(c) is similar in structure to § 5-1-210(12), which states “[t]hat the duties of the constitutional county officers as prescribed by the general assembly shall not be diminished under a county charter form of government.” Both statutes set statutory limits prohibiting changes to certain characteristics associated with “constitutional county offices” or “officers.” *Id.* §§ 5-1-202(c), 5-1-210(12). And, when the *Jordan* Court considered § 5-1-210(12), it concluded that the statute applies “only when the charter . . . ‘retain[s]’ the constitutional county officers in the alternate form of government.” Under that reasoning, it seems likely that a Tennessee court would hold that Tenn. Code Ann. § 5-1-202(c) imposes constraints only when counties have adopted a charter that retains the “constitutional county offices of sheriff, register, county clerk, assessor of property, or trustee.”²

In sum, because Shelby County has replaced its constitutional county officers with county charter officers, it does not appear that Tenn. Code Ann. § 5-1-202(c) governs the offices of sheriff, register, county clerk, assessor of property, and trustee in Shelby County.

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² While the third paragraph of Article VII, § 1 of the Tennessee Constitution does not require the retention of constitutional officers, the General Assembly remains free to impose that requirement. This Office previously reached the same conclusion, *see* Tenn. Att’y Gen. Op. 09-104 (June 1, 2009), but it did not opine—at least not directly—on the question whether the language at issue here actually requires a county to retain its constitutional officers. Under a faithful application of *Jordan*, it likely does not.