

## **The Charter County Form of Government**

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### **Introduction and Background**

The Municipal Technical Advisory Service (MTAS) has been requested to provide information about the home rule charter county form of government as provided in Article VII, Section 1 of the Tennessee State Constitution and Tennessee Code Annotated, Section 5-1-201 et seq. This report summarizes those constitutional and statutory provisions governing county home rule, and outlines the process required for a county to change to this alternate form of county government. A brief summary of the Tennessee Supreme Court decisions relating to term limits in Shelby and Knox Counties, and other problems associated with Knox County's adoption of its home rule charter, are also included.

This report also includes a brief summary of the provisions in the two Tennessee charter counties, Knox and Shelby, and in Palm Beach County, Fla. The Palm Beach Charter County is included to illustrate some of the similarities of charter counties across the Southeast, and the differences in such charter counties related to local conditions, preferences and county control.

The adoption of a county home rule charter in Tennessee is a local decision that can be explored by a charter commission created by the county legislative body, the county mayor, a citizen's initiative, or by private act.

### **What is a Home Rule Charter County?**

Home rule in Tennessee is the power of a local county or city under the Tennessee Constitution to adopt its own charter, including its own system of self-government within limitations prescribed by the Tennessee Constitution and state statute. Article VII, Section 1 of the Tennessee Constitution provides that, "The General Assembly may provide alternate forms of county government including the right to charter and the manner in which a referendum may be called." A county that adopts a charter under Article VII, Section 1, is commonly called a home

rule charter county. (Municipalities also have the authority to adopt home rule under Article XI, Section 9 of the Tennessee Constitution). Generally, the authority of such a Tennessee county to act in local affairs is transferred from the state legislature to the county home rule charter in significant legislative and administrative areas. The charter is adopted and, as need be, amended by the county voters by referendum. It replaces the previous form of county government after its adoption.

### **What is Required to Change the Form of County Government to a Home Rule Charter County?**

There are three steps required for a county to adopt a home rule charter county:

1. A Charter Commission must be created.
2. The members of the commission must be elected or appointed.
3. Voters must approve the change in form of government.

Tennessee Code Annotated, Section 5-1-204 provides that the initial step in a charter form of county government shall be the creation of a charter commission. The commission may be created in four different ways:

1. **The charter commission may be created by the adoption of a charter resolution by the majority of the legislative body of a county.** Under this process the charter commission is to be elected from the same districts and in the same manner as the members of the county legislative body. No more than three (3) members of the charter commission shall be elected from any one (1) district.
2. **Alternatively, the charter commission may be created by proclamation of the county mayor.** The proclamation must identify and appoint the members of the charter commission and must be ratified by a two-thirds (2/3) vote of all members of the county legislative body. Members of the charter commission shall be appointed from the same districts as members of the county legislative body are elected. No more than three (3) members of the charter commission shall be appointed from any one (1) district.

This method is limited in applicability, and based on the population limits prescribed in Tennessee Code Annotated, Section 5-1-204.

3. **A charter resolution creating a charter commission may be initiated by petition of registered voters equal to at least 10 percent of the total number of votes cast in the county for governor at the last preceding gubernatorial election.** Under this process the charter commission is to be elected from the same districts and in the same manner as the members of the county legislative body. No more than three (3) members of the charter commission shall be elected from any one (1) district.
4. In addition to the three methods outlined above, a charter commission may be created by a private act of the General Assembly.

## **Election of Charter Commission Members**

Tennessee Code Annotated, Section 5-1-205 provides direction on how the elections are to be held and funded. The charter resolution adopted by either the legislative body or by voter petition requires an election of the charter commission. Under this process the county election commission is required to call an election to elect members of the commission, to be held concurrently with the next primary or general election in the county occurring 75 days or more after the resolution is adopted or otherwise becomes effective. The cost of the election is to be paid out of county funds.

The number of candidates in each district receiving the highest total vote in the election, as specified in the resolution, shall be elected as members of the charter commission. Any qualified voter of the county shall be eligible for election as a member of such charter commission. Filing deadlines and other details are also included in Tennessee Code Annotated, Section 5-1-205.

## **When must the Commission Develop the Charter, and How are Expenses Funded?**

Each charter commission shall prepare and file the charter proposed by it no later than nine (9) months after the date of its initial meeting, or within such extended limit of time as may be authorized by resolution of the legislative body of the county. (Tennessee Code Annotated, Section 5-1-208)

The expenses incurred by the Charter Commission under any of the above methods are to be paid by the County, up to a maximum of \$50,000.

## **If the Referendum is Successful, When does the Charter become Effective?**

Tennessee Code Annotated, Section 5-1-214 provides that if a charter is approved by referendum as provided in Section 5-1-209, the charter form of government shall take effect in the county on September 1 of the year in which the terms of the incumbent members of the county legislative body expire; provided, that such referendum shall have been held at least 80 days prior to such date.

## **How is a Charter County Different?**

Change to a charter county form of government generally allows county control over county functions; therefore each charter county customizes the government within the allowances of the Tennessee Constitution, Tennessee state law, and the United States Constitution. (See Tennessee Code Annotated Sections 5-1-201 through 5-1-214) Charter counties have the statutory authority to adopt the following changes:

1. Size, method of election, qualification for holding office, method of removal, and procedures of the county legislative body. This includes composition and powers of the legislative or governing body, and terms (and term limits) of members.
2. Form of government, including separation of legislative and executive functions between an elected mayor and legislative body. [TCA 5-1-210 (1)]

3. Assignment of executive responsibilities to the elected mayor or to an appointed county administrator, appointed by and serving at the pleasure of either the mayor or the legislative body. [TCA 5-1-210(5)]
4. Reorganization of the administrative departments, agencies, boards and commissions of the county government, except as outlined for constitutional officers. Development of a civil service system, county employees' retirement and pension systems (although there are limitations on changes to benefits for existing county employees and employee groups).
5. A method for future changes to the charter.
6. A transition plan from the existing county government to the chartered form of county government.
7. Each county government created and established pursuant to this part is empowered to set maximum monetary penalties and forfeitures up to \$1,000 for violation of county ordinances. In counties with a population of more than 700,000 according to the 1990 federal census, no fine over \$50 is allowed unless the ordinance permitting such is approved by a two-thirds (2/3) vote of the county commission. (However, where such fines are imposed by a court, Article VI, Section 14 of the Tennessee Constitution probably restricts those imposed for punitive purposes to \$50. Also see *City of Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn. 2001).]

Under case law in Tennessee, counties have no more authority than can be expressly found, or necessary implied in, a statute. But statutes passed by the General Assembly in recent years, including the County Powers Act, as amended, have given counties the power by resolution to exercise many regulatory powers, including some long exercised by municipalities. In the case of charter counties, they have the broad power to pass ordinances "relating to purely county affairs, but such ordinances shall not be opposed to the general laws and shall not interfere with the local affairs of any municipality within the limits of such county." [Tennessee Code Annotated, Section 5-1-211] But the regulatory powers given to all counties appear to have somewhat diminished the distinction between the powers of counties, including charter counties.

Tennessee Code Annotated, Section 5-1-201(12) makes it clear that the duties of the constitutional county officers as prescribed by the general assembly shall not be diminished (but may be increased) under a charter county form of government. But in *Jordan v. Knox County*, 213 S.W.3d 751 (Tenn. 2006), citing *Bailey v. County of Shelby*, 188 S.W.3d 539 (2006), the Tennessee Supreme Court reaffirmed that it was not required that a charter county government retain the constitutional officers, that their duties could be transferred to other officers, so long as those duties are performed:

In *Bailey*, this Court unequivocally concluded that the third paragraph of Article VII is not controlled by its first paragraph [which provides for certain constitutional county officers]. Therefore, the subsection requires that the "duties" which are clearly essential for a complete county government, not be neglected in an alternate form of government; but as this Court ruled over forty years ago in *Winter*, the duties may be transferred to another county official, so long as the duty is performed. 364 S.W.2d at 790. The decision in *Bailey* implied that Tennessee Code Annotated section 5-1-210(12) provides that it is only when the

charter does not “retain” the constitutional county offices in the alternate form of government that the duties, as already described by our constitution and statute, may not be diminished. The point, of course, is that the offices must first be created under the charter. A comparison of the constitutional terminology and the statutory language compels this interpretation, as does the holding in *Bailey*. *Article VII, [Section 1] paragraph 3 of our constitution grants the power to the counties not to have these officers at all.* [At 773-74] [Emphasis is mine.]

### **Tennessee Charter Counties and Palm Beach County, Fla. Charter**

In Tennessee, only Shelby County and Knox County have home rule charter counties. The Shelby County Charter was ratified by the voters of the county on August 2, 1984 and became effective on September 1, 1986. The Knox County charter was approved by referendum on November 8, 1988. That charter became effective beginning September 1, 1990.

MTAS did not do a national search of charter commission reports that include recommendations, the number of charter counties or the number of referendum failures to adopt a charter county. Limited research did indicate that several states’ counties have adopted charter counties and several referendums for adoption of charter Counties have failed. With the exception of Florida, Tennessee and Texas, most other Southeast states do not have charter counties. Florida has 19 charter counties. Oregon has nine (9); Washington and Pennsylvania each have (6); other states having charter counties include, but are not limited to, Michigan, California, Massachusetts, Maryland, Colorado and North Dakota. Los Angeles County in California has a home rule charter county.

A summary of particular charter provisions pertinent to local conditions, preferences, and county control for Knox and Shelby counties in Tennessee and Palm Beach County, Fla., are included below. The Palm Beach County Charter is distinguished by some provisions important to good working relations between the county and its municipalities, such as provisions governing annexation, zoning, service responsibilities, and the resolution of conflicting county and municipal ordinances. Some of those provisions relate to issues governed by state law in Tennessee.

#### **The Knox County, Charter County Provisions:**

1. Powers and Functions - The Knox County Government shall exercise any power or perform any function which is not denied by the Constitution of the State of Tennessee. It is the intent of this charter that limitations on the powers of county government shall be strictly construed, and that grants of power to county government shall be liberally construed;
2. The commission shall consist of nine (9) members elected from nine (9) districts, and two (2) members elected at large through county-wide vote. The terms of office are four (4) years;

3. Removal of members of the commission – A member of the commission may be removed from office according to the laws of the State of Tennessee;
4. Ordinances are approved on two (2) readings and shall take effect 15 days following its passage on final reading;
5. The mayor has veto power over ordinances and resolutions, except: resolutions authorizing the borrowing of money and the issuance of bonds and notes and other evidences of indebtedness of the county. The affirmative vote of a majority plus one shall be required to override the veto. If the ordinance requires a 2/3 vote of the commission, a 2/3 vote is required to override the mayor's veto;
6. Executive and Administrative Powers - The executive and administrative powers of Knox County government shall be vested in, and exercised by, the mayor and under the control and direction, by such subordinate major division, department, boards, offices, officers and agencies as established from time to time;
7. The assessor, sheriff, register of deeds, county clerk, and trustee shall be retained as presently provided;
8. Recall is only applicable to the mayor, county commission, law director, sheriff, county clerk, trustee, register of deeds, and members of the county board of education. Fifteen (15) percent of county registered voters must sign a petition. If it is a county commissioner or board of education member, 15 percent of the voters in the district are required. No petition shall be circulated until the official has served one full year in office, nor if the official has less than one (1) year left on their term of office;
9. Term Limits - No person shall be eligible to serve in any elected office, except judges, if during the previous two terms of that office the person in question has served more than a single term. Service prior to the passage of this measure shall not count in determining length of service.

The Supreme Court of Tennessee in Jordan v. Knox County held that term limits for county officers are legal except with respect to the court system and members of the board of education, which are governed by the Tennessee Constitution and state law, respectively. The court declared that:

In consequence, not only are the Knox County Commissioners subject to term limitations, but that same restriction applies to those other county officers identified in the state constitution under article VII, Section 1. Despite the irony of their election and re-election since 1994 and despite the approval by the voters in 2006 after term limitations became an issue, the Plaintiff commissioners, the sheriff, the county clerk, the trustee, and the register of deeds are all ineligible for another term.... [At 784]

Jordan v. Knox County was preceded a short time earlier by Bailey v. County of Shelby in which the Tennessee Supreme Court held that term limits for Shelby County's legislative body were constitutional.

There were defects in the Knox County Charter adopted in 1988 that the Tennessee Supreme Court addressed in Jordan v. Knox County:

As observed by the chancellor, the Knox County Charter is not a valid (de jure) charter under the law. Because the charter does not provide for the constitutional county offices or otherwise assign their duties to any other office, agency or official it is indeed incomplete. Tennessee Code Annotated, section 5-1-201 requires that the charter contain all necessary governmental functions. The services offered by the constitutional officers must be maintained in some fashion in order to meet the requirements of the law. Absent specific provisions in the charter "no right, power, duty, obligation or function" of any constitutional county officer in the prior government exists in the new alternate form. Because the offices of sheriff, trustee, property assessor, register of deeds and county clerk are not expressly provided in the new charter, there is no basis in the law for those offices in the alternate form of Knox County government. [At 774]

The court met those defects with the doctrine of *de facto* governments and officers, which the court explained is:

The doctrine which gives validity to acts of officers *de facto*, whatever defects they may be in the legality of their appointment or election, is founded upon considerations of policy or necessity, for the protection of the public and individuals whose interests may be affected thereby. Offices are created for the benefits of the public...for the good order and peace of society and their authority is to be respected and obeyed until in some regular mode prescribed by law their title is investigated and determined. It is manifest that endless confusion would result if in every proceedings before such officers their title could be called into question. [citing an earlier U.S. Supreme Court case.] [At 774]

The defects in the charter were subsequently corrected.

## **Shelby County, Tennessee , Charter County**

### (1) Home Rule Charter County

The Charter document states that the Constitutional Home Rule Charter presented herein sets forth the basic issue of home rule for Shelby County, for it is in the true sense a

constitution prepared by the citizens of Shelby County for the operation of Shelby County's government, providing within it a method for amendment by residents of the county. The charter will place in the hands of the people of Shelby County the power to effectively operate its government without going to the state legislature in Nashville for changes.

(2) Legislative, Executive and Judicial Provisions

The Constitutional Home Rule Charter provides for a segregation of the county's legislative, executive and judicial functions. The heart of the charter is a strong elected executive, accountable to all the voters, who has the power to veto ordinances and resolutions, and both the responsibility and the means at hand with which to operate an effective and efficient county government. The legislative is given broad legislative powers inclusive of the rights to adopt county ordinances and is so constructed as to be truly representative of all the people of Shelby County.

(3) Prohibition against Consolidation

The charter contains a strong prohibition section which, among other things, prevents its use in any way to consolidate the governments of Memphis and Shelby County, or to diminish the duties of the elected constitutional officers of Shelby County.

(4) Civil Service Merit System and Conflicts of Interest

To ensure efficient, effective and fair relationships between the county employees and citizens of the county, a civil service merit system and a prohibition against conflicts of interest are provided.

(5) Modern Structure

The charter introduction states that it is appropriate that, after more than 180 years of existence, the county replace the present structure of county government, as it has evolved, with a totally responsive, responsible and modern structure.

**Palm Beach, Fla. County, Charter County**

The Palm Beach, Fla., County, Charter County (Home Rule) approved in 1984 provides:

1. For the establishment of a true home rule;
2. Initiative procedures that allow voters to create new local law and modify or amend local laws;
3. A process to modify or amend the charter itself; and
4. Voters with a process to recall county commissioners.

The charter provides:

1. Municipal ordinances shall prevail over county ordinances to the extent of any conflict, regardless of the time of passage of the municipal ordinances, except that the county ordinances:
  - (a) In matters relating to the protection of wells and well fields.
  - (b) In matters relating to schools, county owned beaches, district parks and regional parks, solid waste disposal, county law enforcement, and impact fees collected for county road programs and public buildings whose properties are taxed by the county for library and/or fire rescue services, respectively.
  - (c) For the adoption and amendment of the county wide land use element adopted in accordance with Article VII of this charter (county wide planning council).
  - (d) In matters relating to the establishment of level of service for collection and arterial roads which are not the responsibility of any municipality, and the restriction of the issuance of development orders which would add traffic to such roads which have traffic exceeding the adopted level of service, provided that such ordinance is adopted and amended by a majority of the board of commissioners.
  - (e) In matters related to voluntary annexation.
  - (f) In matters related to the ethics regulations in accordance with Article III of this charter.
2. Palm Beach County shall operate under a county mayor form of government with separation of legislative and executive functions in accordance with provisions of this home rule charter.
3. The governing body of Palm Beach County shall be a board of county commissioners composed of seven (7) members serving staggered terms of four (4) years. One (1) commissioner residing in each of seven (7) districts shall be elected by the qualified electors residing within the district. No person may appear on the ballot for re-election to the office, the person will have served (or, but for resignations, would have served) as a county commissioner for eight (8) consecutive years.
4. The executive responsibilities and powers of the county, as authorized by the board of county commissioners, shall be assigned to and vested in a county administrator, who shall be appointed by and serve at the pleasure of the board of commissioners.
5. The elected constitutional offices of property appraiser, sheriff, supervisor of elections, tax collector, clerk of circuit court, state attorney and public defender shall remain as presently constituted.
6. The board of commissioners shall make all services provided by its central service department available to the elected constitutional offices.
7. The offices of property appraiser, sheriff, and supervisor of elections shall be non-partisan. No non-partisan candidate shall be required to pay any party assessment or be required to state the party of which the candidate is a member. All candidates' names shall be placed on the ballot without reference to political party.

8. The county attorney, internal auditor, and initially the fire rescue administrator, shall be appointed by the county administrator, with advice and consent of the board of commissioners; and shall be responsible to the county administrator.
9. The initial county departments and offices shall be:
  - a. Central Service Departments: Budget, employee relations and personnel, financial management, general services, office of management and program evaluation, purchasing and risk management.
  - b. General Operations Departments: Airports, community services, engineering and public works, libraries, parks and recreation, zoning and building, public safety, surface transportation and water utilities.
10. The people shall have the right to initiate county ordinances by filing with the board of county commissioners a copy of the proposed ordinance and a petition containing the signatures and addresses of not less than seven (7) percent of the number of voters qualified to vote in the last general election. None of the above provisions for initiating county ordinances shall be available to the public for initiative, change or modification of county budgetary provisions.
11. The board of commissioners shall be subject to recall as provided by Florida statutes.
12. Amendments of the home rule charter may be proposed by the board of county commissioners by an affirmative vote of four (4) members. The charter also may be initiated by seven (7) percent of the number of voters qualified to vote in the last general election, and the initiated amendment shall be presented and verified in the manner and time set forth in Article V, Section 5.1.
13. Nothing in this charter shall prevent a municipality from annexing an unincorporated area into its municipal boundaries, except that:
  - a. Voluntary annexation in an unincorporated protection area requires approval by an affirmative vote of at least five (5) members of the board of commissioners.
  - b. Voluntary annexation in an unincorporated rural neighborhood requires approval by an affirmative vote of at least five (5) members of the board of commissioners and a majority of the registered electors residing within the boundaries of the unincorporated rural neighborhood voting on the question.
  - c. The unincorporated protection area is defined as all unincorporated lands located outside of the urban service area established in the Palm Beach County Comprehensive Plan.
  - d. Areas eligible to be designated by ordinance as unincorporated rural neighborhoods must be located in the unincorporated protection area and are limited to recorded subdivisions and antiquated subdivisions as defined in the Palm Beach County Comprehensive Plan located in the exurban or rural tiers of the Palm Beach County Comprehensive Plan and other residential

neighborhoods located in the exurban and rural tiers with at least 25 dwelling units as of the effective date of this charter amendment.

14. The county shall, by ordinance, adopt a Palm Beach County Code of Ethics for public officials and employees. The county shall by ordinance establish an independent commission on ethics, comprised of a minimum of five (5) members not appointed by or subject to removal by the county commission or by any other entity subject to the jurisdiction of the commission on ethics, with the authority to review, interpret, render advisory opinions and to enforce the Palm Beach County code of ethics, and to provide ethics training to local governments, citizen groups and the general public of Palm Beach County.
15. The county shall by ordinance establish an office of Inspector General to provide independent oversight of public funded transactions, projects, and other local government operations.

## **Summary**

This report summarizes provisions governing county home rule, outlines the process required for a county to change to an alternative form of government and presents a brief summary of the Tennessee Supreme Court decisions relating to term limits in Shelby and Knox County decisions relative to term limits in Shelby and Knox Counties. It includes a brief summary of the Tennessee charter counties and the Palm Beach, Fla. charter.

Citizens of Tennessee counties, including city residents, interested in more local control and flexibility of their government should become familiar with state and constitutional provisions that permit an alternative form of home rule charter county government provided for in Article VII, Section 1 of the Tennessee Constitution, and Tennessee Code Annotated, Section 5-1-201 et seq. as well as the County Powers Law of 1995.