

PROS AND CONS OF HOME RULE CHARTERS IN TENNESSEE

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In Tennessee “home rule” is a term provided for in Article XI, Section 9, of the Constitution of the State of Tennessee, in which a city writes or prepares its own charter that is approved by the city’s voters in a referendum. A home rule charter is distinguished from a general law, or private act charter in that the local government or citizens approve their own charter without approval by the General Assembly of the State of Tennessee.

A home rule charter may be adopted or amended by:

- Ordinance passed by the governing body and then a referendum of the city’s voters.
- A charter commission established by the General Assembly and appointed by the local government.
- A charter commission of seven (7) members chosen at large pursuant to petition of not less than 10% of the voters in the latest general municipal election.

MTAS records indicate that of these three methods of adoption or amendment, the General Assembly has never established a charter commission for a city and in only two cities have the citizens established a charter commission by petition. [Oak Ridge has done it twice by petition]. The most commonly used procedure has been by ordinance and referendum.

In reviewing home rule provisions in other states, it is noted that many states provide home rule that includes the right to levy almost any local tax. There is, therefore, much concern among residents in these states that adoption of home rule will ultimately result in increased taxes. Home rule in Tennessee is much more limited. Home rule cities in Tennessee do not have the authority to establish taxes, except as provided by general laws of the State of Tennessee.

The most definitive source of information on home rule in Tennessee is An Analysis of the 1953 Tennessee Home Rule Amendment, (MTAS, 2d ed.1976). This authoritative work by Dr. Victor Hobday was first published in 1956, and its 1976 update is still considered up to date, because the Tennessee Constitution has been changed only twice since its adoption in 1796, in 1870 and in 1953. In Dr. Hobday’s analysis, former TML Executive Director, Herbert J. Bingham urged cities to proceed cautiously and only for

good cause in considering whether to become a home rule municipality under Amendment No. 7, commonly referred to as the Home Rule Amendment.

The Tennessee Municipal League supported Amendment No.7 as a means of enabling those cities that need to do so to escape harassment by hostile political forces in control of local legislative delegations. Even though subject to local veto under Amendment No. 6, such delegations can still pass private acts that are narrowly partisan, punitive, and disruptive of sound local government. And they can absolutely block amendment to a city's charter by refusing to introduce private bills.

Advantages of Home Rule:

1. Greater local control. Local officials or citizens write the home rule charter without having to ask for approval of the state legislature.
2. Eliminates the necessity for private acts that apply to the home rule city.
3. A home rule charter may include a provision that a property tax may not be levied without being approved by referendum. There is no general law tax statute that deposits a city's authority to set the tax rate with the city governing body. A home rule charter can provide that the tax rate be set by the governing body, subject to referendum. Conceivably a city's property tax rate in a home rule city could be set exclusively by referendum.

Disadvantages of Home Rule:

1. The process of amending a home rule charter is cumbersome in that it requires a special election to make changes in the charter and such election may be conducted only in August or November of even years. Home rule charters sometimes contain outdated provisions, and the city often ignores the need to update because of the difficulty in obtaining approval in a referendum. "Housekeeping" changes are often not made, and sometimes housekeeping changes are turned down by voters, leaving city officials and staff with antiquated charter provisions.
2. A home rule charter that prohibits a property tax, except by referendum, may limit a city's ability to deal with complex municipal issues and deprive the city of a tax source that is one of the more significant tax revenues for full service cities in Tennessee.
3. If a city were to lose all or a significant part of State shared taxes and was, therefore, by necessity required to seek other local revenue to replace the lost State shared taxes, it would be faced with a cumbersome procedure for

levying a property tax. Conceivably a city might be required to wait up to two years to implement a needed revenue source.

4. Opponents of home rule often maintain that the latest attempts to implement home rule amount to a disguised effort to subject taxing decisions to a vote of the people and that such a notion is “foreign to representative government”, according to the State Attorney General [OAG No. 83-389, November 17, 1983].
5. Opponents of home rule often point out that only 13 of 348 cities have adopted home rule. If home rule is so great, they maintain, why have only 3.7% of Tennessee cities adopted it? This may not be a valid argument. All but six states authorize some form of home rule. The fact that many cities have not adopted Home Rule may mean that they do not even know what home rule is about. That is probably the case in most small cities in Tennessee.

In Dr. Hobday’s publication, it is noted that 30 officials from the 13 cities that have adopted home rule were contacted by telephone and asked to respond to five questions:

1. Why did your city elect home rule status?
2. Have you perceived any disadvantages of home rule status?
3. Has your city considered repeal of home rule status?
4. Do you recommend continuation of home rule status for your city?
5. Has your city experienced any problems with alleged general acts that were private in effect (effecting only your city)?

Some officials did not answer the first question because their tenure began some time after adoption of home rule. Of the 18 who did answer this question, 12 said the primary reason was to avoid dependence on the State legislature. The other six mentioned that the purpose was to gain protection from adverse private acts. Sixteen felt that there are no disadvantages of home rule status, while 13 had perceived one primary disadvantage: greater difficulty of amendment by the referendum process. This disadvantage was viewed as critical in several cities with charter provisions limiting the salaries of top officials.

Five respondents would recommend repeal of home rule status, but 23 favored continuation. Two cities have considered repeal.

The responses indicated that four cities have had some problems with adverse “general acts of local application” which were private in effect, and it was reported that several such acts had been declared unconstitutional by the courts. Three cities were not averse to accepting such acts that were beneficial to them.

Although there are some negative aspects of home rule status, as noted by Dr. Hobday, on balance the experience of Tennessee cities appears to be favorable. The principal problem seems to be one inherent in the democratic process: persuading the voters to approve charter changes.

Sources Consulted:

1. An Analysis of the 1953 Tennessee Home Rule Amendment (MTAS, 2d ed. 1976).
2. Legal Opinions, MTAS Website, March 7, 2005