



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

DEPARTMENT OF LAW
204 COURTHOUSE
NASHVILLE, TENNESSEE 37201

LEGAL OPINION 98-02

TO: Frank R. Harrison, Jr.
Councilman, 5th District
200 Metropolitan Courthouse
Nashville, TN 37201

DATE: December 22, 1998

You have requested a legal opinion from the Department of Law on the following questions.

Questions

1. Does Section 1.07(a) of the Metropolitan Charter prohibit a district councilman who has served more than a single term during the previous two terms from holding the office of vice-mayor or councilman-at-large for the term beginning September 1, 1999?
2. Does Section 1.07(a) of the Metropolitan Charter prohibit a councilman-at-large who has served more than one term in the previous two terms from holding the office of vice-mayor or district councilman for the term beginning September 1, 1999?

Answers

1. No. Section 1.07(a) of the Metropolitan Charter does not prohibit a district councilman from holding an elected office different from that which the councilman held for the previous two terms.
2. No. Section 1.07(a) of the Metropolitan Charter does not prohibit a councilman-at-large from holding an elected office different from that which the councilman held for the previous two terms.

Analysis

Section 1.07(a) of the Metropolitan Charter provides that:

[N]o person shall be eligible to serve in any elected office authorized or created by the Charter of the Metropolitan Government of Nashville and Davidson County if during the previous two (2) terms of that office, the person in question has served more than a single term. (Emphasis added).

The primary rule of statutory interpretation is to ascertain, and give effect to, the intent and purpose behind the Charter provision; all other rules of construction are simply aids to achieving that end. *Crowe v. Ferguson*, 814 S.W.2d 721, 723 (Tenn. 1991). When construing the law, it must be assumed that the drafters used each and every word purposefully, so that the use of these words conveyed some intent, and had a meaningful purpose. *Id.* Upon assigning the language in Section 1.07(a) of the Metropolitan Charter its plain and common meaning, one must conclude that this provision prohibits councilmen from serving in the same elected office for more than two consecutive terms, while allowing them to hold a different office immediately thereafter. Thus, the initial inquiry is to determine whether the office of district councilman is separate and distinct from the office of councilman-at-large or vice mayor.

The Metropolitan Charter provides for three separate categories of councilmanic offices i.e., the vice-mayor, councilmen-at-large and district councilmen. Each office is subject to different eligibility requirements.¹ Councilmen-at-large must be 25 years old; have lived in the area of the metropolitan government for at least one year prior to service; must maintain residency in the area of the metropolitan government while holding office; and must be elected by the entire electorate of the metropolitan government. Sections 3.01 and 3.02 of the Metropolitan Charter. Councilmen-at-large comprise five of the seats on the Metropolitan Council. *Id.*

¹ "The legislature with the power to create an office may fix its duties...except as inhibited by the constitution." *Henry v. Abernathy*, 175 Tenn. 512, 136 S.W.2d 51 (Tenn. 1940). And, the legislature has the power to "fix any reasonable qualification upon the privilege of holding office, and to deny the privilege to any citizen who does not possess the qualifications so fixed." *Beasley v. Cunningham*, 171 Tenn. 334, 103 S.W.2d 18 (Tenn. 1937). "An office is the right to exercise a public function or employment, and to take the fees and emoluments belonging to it. (citation omitted). The right embraces the idea the office has been created by adequate authority; that the manner of designation for and the conditions of eligibility to the office, as well as tenure, duration, emoluments, and duties pertaining to it, have been prescribed. ... Whoever, therefore, asserts the right to exercise an office must...show that he combines in himself...all the essential conditions and requirements upon which the right depends." *Gosman v. State ex rel. Schumacher*, 106 Ind. 203, 6 N.E. 349 (Ind. 1886).

Additionally, thirty-five district councilmen serve on the Metropolitan Council. Section 3.01 of the Metropolitan Charter. District councilmen must meet the same age and residency-prior-to-service requirements as councilmen-at-large. Section 3.02 of the Metropolitan Charter. However, district councilmen have the additional eligibility requirements that they must have resided in their councilmanic district for at least six months prior to service and must be elected by a smaller pool of constituents, their district's electorate. *Id.*

Finally, the Metropolitan Council has a vice-mayor who acts as the presiding officer. The vice-mayor must meet the more extensive eligibility qualifications required of the mayor, including residency in the area of the metropolitan government for at least three years prior to service and a minimum age of 30 years. Sections 5.02 and 5.05 of the Metropolitan Charter. Persons holding the office of vice-mayor are compensated at a higher rate of pay than councilmen-at-large or district councilmen. *Id.*

Thus the Charter identifies three distinct councilmanic offices and establishes different eligibility criteria for each. These distinctions in the eligibility requirements for the three councilmanic offices would be rendered meaningless if Section 1.07(a) of the Metropolitan Charter was interpreted to prohibit a council member from holding an office different from that which the councilman had held for the previous two terms.

Provisions which comprise a common statutory scheme, such as the Metropolitan Charter, must be interpreted "*in pari material.*" *Roseman v. Roseman*, 890 S.W.2d 27, 29 (Tenn. 1994). Individual sections must be construed so as to give the greatest possible effect to the scheme as a whole. *Id.* Articles 3 and 5 of the Metropolitan Charter clearly distinguish one councilmanic office from another. Interpreting Section 1.07(a) of the Metropolitan Charter to preclude councilmen from serving in the same elected office for more than two consecutive terms, while allowing them to hold a different office thereafter, reaches the only possible result which remains harmonic with the Metropolitan Charter as a whole.

In addition to the rules of statutory construction, public policy dictates that constraints on an individual's right to hold office must be interpreted in favor of those seeking office. *Crowe v. Ferguson*, 814 S.W.2d at 724-725 (Tenn. 1991) (court disfavors statutory interpretations that unduly restrict the election process and the individual's right to participate as a candidate). *See also Jarnagin v. Harris*, 138 Ga.App. 318, 226 S.E.2d 108 (Ga. Ct. App. 1976), citing *Gazan v. Heery*, 183 Ga. 30(4), 187 S.E.2d 371 (statute limiting an individual's right to hold office must be

construed to the benefit those seeking office); *Vieira v. Slaughter*, 318 So.2d 490 (Fla. Dist. Ct. App. 1975), citing *Ervin v. Collins*, 85 So.2d 852 (Fla. 1956) (restrictions on the right to hold office should receive a construction in favor of the candidates and the people exercising their freedom of choice in selecting their public officers), and also citing *Hurt v. Naples*, 299 So.2d 17 (Fla. 1974) (discouragement of candidacy for public office should be frowned upon since widening the field of candidates is the rule, not the exception, and it should not be done absent express statutory disqualification). The purpose behind the election process is to provide the electorate with a field of worthy candidates from which to choose, and any law regulating this process must be mindful that encouraging qualification is an integral component thereof. *Williams v. Ragland*, 567 So.2d 63, 66 (La. 1990) (action seeking to disqualify incumbent judicial candidate from re-election dismissed; interpretation of statutes that restrict the right to run for public office should be avoided).

Thus, absent express language that councilmen may not serve in other councilmanic seats after reaching the limit on their current term of office, Section 1.07(a) of the Metropolitan Charter should not be interpreted to impose such a burdensome disqualification on officeholders. *Boyles v. Steine*, 224 Ga. 392, 396, 162 S.E.2d 324, 327 (Ga. 1968); *Jarnagin v. Harris*, 138 Ga.App. 318, 226 S.E.2d 108 (Ga. Ct. App. 1976), citing *Patten v. Miller*, 190 Ga. 123, 139, 8 S.E.2d 757, 769 (right of citizen to hold office is general rule and citizen may not be deprived of this right without proof of some disqualification specifically declared by law).

While there is no Tennessee case law directly on point, *Boyles v. Steine*, 224 Ga. 392, 162 S.E.2d 324 (Ga. 1968), is instructive. In this case, Georgia's Supreme Court held that, where each councilmanic district was allotted two council seats, a candidate was not disqualified by the city of Augusta's term limits provision from holding the district's second seat after exhausting the allowable term of service in the district's first seat. *Steine*, 224 Ga. 392, 395, 162 S.E.2d 324, 327 (Ga. 1968).

Steine involved a challenge, by quo warranto proceeding, to a city of Augusta councilman's eligibility to run for office where the councilman declared his candidacy for his district's second seat even though he had been out of office in the first seat for less than a full term. The Augusta charter's term limits provision is similar to Section 1.07(a) of the Metropolitan Charter. It provides that:

The mayor and members of the city council of Augusta...shall be eligible to succeed themselves in office; provided no member...shall be eligible to succeed himself after the expiration of a second term for a period of one term of three years... .

The *Steine* court, finding the candidate eligible to run for and hold office in the district's second seat, opined as follows:

Applying the foregoing rules of statutory construction to the statute in question, it is manifest that it was the intention of the legislature, in enacting the law, to bar one who had served as a member of the City Council of Augusta for two successive three year terms from again succeeding himself in the same identical position until after the lapse of three full years from the expiration of his second term. It is likewise manifest that the legislature did not intend to bar such person from serving in the City Council of Augusta in any other post if he were otherwise qualified. Each Council post is a separate office... If the legislature had intended to utterly bar one who had served two full terms in the city council from again serving on the council in any post or position it would have been a very simple matter for it to have used the [such] language...But the legislature did not use such language and this court is not authorized to revise the statute for the legislature when in is apparent that the legislature by not adopting some such language, intended that this would not be the result. *Steine*, 224 Ga. 392, 395-396, 162 S.E.2d. 324, 327 (Ga. 1968).

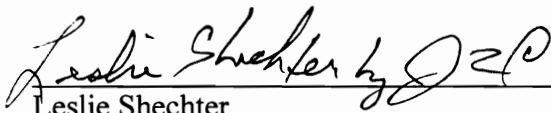
The *Steine* court's reasoning is persuasive. Applying the rules of statutory construction, interpreting the Metropolitan Charter language as a whole, and weighing public policy considerations should lead a Tennessee court to conclude that Section 1.07 of the Metropolitan Charter only precludes council members from serving in the same councilmanic office for more than two consecutive terms.

Therefore, it is the opinion of the Department of Law that those who have served as district councilmen for two consecutive terms are not precluded from running for the office of vice mayor or councilmen-at-large in the 1999 election. Similarly, those who have served for two previous consecutive terms as councilmen-at-large may seek the offices of vice mayor or district councilman.²

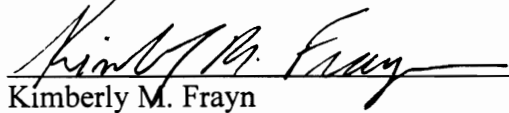
² As with any election, the court retains the ultimate authority to determine whether a candidate has the proper qualifications and is otherwise eligible to hold office. *Comer v. Ashe*, 514 S.W.2d 730 (Tenn. 1974). Upon filing a qualifying petition for candidacy, a candidate's right to hold office becomes subject to challenge either prior

This opinion is limited to the question presented and should not be interpreted to apply to any other matter.

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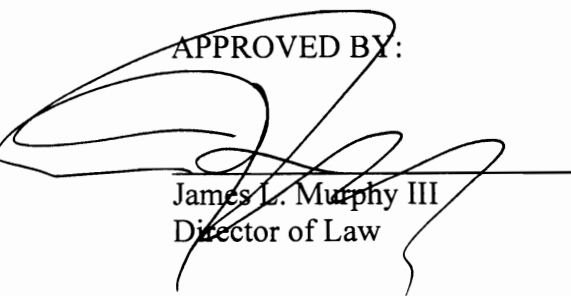


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to an election through an action for declaratory judgment, or following the successful completion of an election through an election contest under Tennessee's election code. *Id.*