

LEGAL OPINION NO. 2000-03

TO: David Manning
DATE: November 30, 2000

You have requested a legal opinion from the Metropolitan Department of Law on the following question:

QUESTION

Whether the Metropolitan Employee Benefit Board is required to appoint an executive secretary?

ANSWER

No. The Metropolitan Charter gives the Benefit Board the option to appoint a secretary or utilize the staff of the Director of Personnel.

ANALYSIS

The Metropolitan Charter specifically addresses the staff functions of the Benefit Board. Section 13.03 provides, in pertinent part:

...

In the performance of its staff functions, the board, its investments committee and the study and formulating committee hereinafter created may utilize the office and clerical staff of the director of personnel or there may be employed by the board a secretary who shall have had training and experience in pension and retirement administration.

In 1992, Ordinance 92-159 (codified at 3.08.050 of the Metropolitan Code of Laws) was adopted which provides "The board shall appoint an executive secretary..." This language mandates the appointment of an executive secretary and thus purports to deprive the board of the option given under the Charter to utilize the office and clerical staff of the director of personnel.

The charter is the organic law of the municipality to which all its actions are subordinate. City of Lebanon v. Baird 756 S.W. 2d 236, 241 (Tenn. 1988); Marshall & Bruce Co. v. City of Nashville 71 S.W. 815, 819 (Tenn 1902). It is an elementary principle that ordinances of a city are subordinate to charter provisions. Wilgus v. City of Murfreesboro 532 S.W. 2d 50, 52 (Tenn. App. 1975); Barnes v. Ingram 397 S.W. 2d 821 (Tenn. 1966). Therefore, the ordinance requiring the Benefit Board to appoint an executive secretary is subordinate to the Metropolitan Charter and, to the extent it deprives the Benefit Board of the choice of whether or not to appoint an executive secretary, it is invalid.

Respectfully submitted,

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

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APPROVED:

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/Tdc

cc: Mayor Bill Purcell