

October 20, 2008

Mr. Bobby Johnson
City Recorder
City of Lenoir City
600 East Broadway
P.O. Box 445
Lenoir City, Tennessee 37771

Dear Mr. Johnson:

You have the following question: Is the city judge authorized to appoint the city court clerk, notwithstanding the provision of the city charter that make the city recorder/treasurer the city court clerk?

In my opinion, the answer is no.

Article VIII, § 7, of the Lenoir City Charter plainly provides that, "The Recorder/Treasurer shall be the Clerk of the City Court." Article XIII of the Lenoir City Charter provides for a city judge, but that article, nor any other provision of the charter that I can find, gives the city judge the authority to appoint the city court clerk.

I assume that the argument that the city judge can appoint a city court clerk rests on Tennessee Code Annotated, § 16-18-301(a), which provides for a city court clerk in the following language:

Notwithstanding any provision of the law to the contrary, at all times there shall be a person elected, appointed or otherwise designated to serve as a clerk of the municipal court. Immediate upon such election, appointment or designation, the chief administrative officer of the municipality shall promptly certify the results of such election, appointment or designation to the administrative officer of the courts...

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The phrase "Any provision of the law to the contrary," is defined in Tennessee Code Annotated, §16-18-301(b)(1) as "includes, but is not limited to, any conflicting provision of any general statute, local law, private act, charter provision, municipal law or municipal ordinance..."

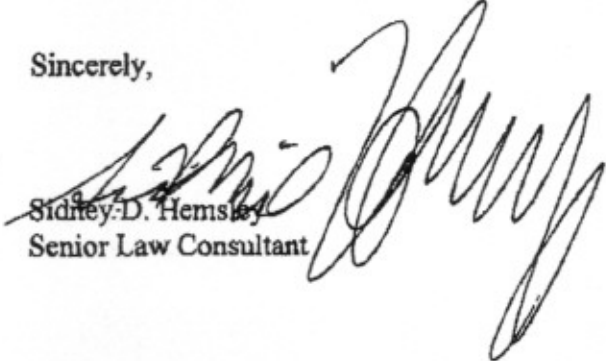
It seems to me an extremely weak argument to suggest from that language that there is a conflict between Tennessee Code Annotated, § 16-18-310 and the Lenoir City Charter. Tennessee Code Annotated, § 16-18-310(a) simply recognizes that in Tennessee, under city charters, city court clerks derive their positions from election or appointment, and it insures that if there is no provision for the election or appointment of a city court clerk, one will be designated. Where, as in the case of Lenoir City, the city charter provides that the city recorder/treasurer, which is an elective position, shall be the court clerk, there is no leeway for the appointment of the clerk by the city or any other body or person.

Had it been the intent of the General Assembly to give the city judge (or any other body or person) the right to appoint the city court clerk, it could have easily done so by clearly and cleanly giving the city judge (or other person or body) that authority in Tennessee Code Annotated, § 16-28-301, or someplace else in the Municipal Court Reform Act of 2004, or even some other place. It did not, and has not, done so.

It has repeatedly been held that the provisions of charters are mandatory and that ordinances (and presumably other municipal actions) that conflict with the charter must surrender to the charter. [See Sitton v. Fulton, 566 S.W.2d 887 (Tenn. Ct. App. 1978); State ex rel. Lewis v. Bowman, 814 S.W.2d 369 (Tenn. Ct. App. 1991); Tusant v. City of Memphis, 56 S.W.3d 10 (Tenn. Ct. App. 2001).] At the same time, city charter provisions and municipal actions cannot conflict with state law, and where they do, they must give way to the state law. But as I pointed out above, there is nothing in Article VIII, § 7, making the city recorder/treasurer the city court clerk that conflicts with Tennessee Code Annotated, § 16-18-301, any other provision of the Municipal Court Reform Act of 2004, or any other provision of state law that I can find.

I told you that I thought I had written something on this question to someone in Lenoir City, but apparently I was wrong. As far as I can tell, that express question has not come up, or if it has, I can find nothing I have written on it.

Sincerely,


Sidney D. Hemsley
Senior Law Consultant