

TENNESSEE

CONSTITUTIONAL AND STATUTORY PROVISIONS

Tennessee Constitution

- TENN. CONST. art. VII, § 1. Counties; elected officers; legislative body; forms of government.

The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property. Their qualifications and duties shall be prescribed by the General Assembly. Any officer shall be removed for malfeasance or neglect of duty as prescribed by the General Assembly.

The legislative body shall be composed of representatives from districts in the county as drawn by the county legislative body pursuant to statutes enacted by the General Assembly. Districts shall be reapportioned at least every ten years based upon the most recent federal census. The legislative body shall not exceed twenty-five members, and no more than three representatives shall be elected from a district. Any county organized under the consolidated government provisions of Article XI, Section 9, of this Constitution shall be exempt from having a county executive and a county legislative body as described in this paragraph.

The General Assembly may provide alternate forms of county government including the right to charter and the manner by which a referendum may be called. The new form of government shall replace the existing form if approved by a majority of the voters in the referendum.

- TENN. CONST. art. XI, § 9. Justice courts; municipal government; home rule.

. . . The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

Any municipality may by ordinance submit to its qualified voters in a general or special election the question: "Shall this municipality adopt home rule?"

In the event of an affirmative vote by a majority of the qualified voters voting thereon, and until the repeal thereof by the same procedure, such municipality shall be a home rule municipality,

and the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect.

Any municipality after adopting home rule may continue to operate under its existing charter, or amend the same, or adopt and thereafter amend a new charter to provide for its governmental and proprietary powers, duties and functions, and for the form, structure, personnel and organization of its government, provided that no charter provision except with respect to compensation of municipal personnel shall be effective if inconsistent with any general act of the General Assembly and provided further that the power of taxation of such municipality shall not be enlarged or increased except by general act of the General Assembly. The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered

The General Assembly may provide for the consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located; provided, such consolidations shall not become effective until submitted to the qualified voters residing within the municipal corporation and in the county outside thereof, and approved by a majority of those voting within the municipal corporation and by a majority of those voting in the county outside the municipal corporation.

Tennessee Statutes

- TENN. CODE ANN. § 5-1-211(a) (2016). Ordinances (counties).

The legislative body of each county that adopts a charter form of county government may 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 limit of such county.

- *Id.* §§ 6-2-101 (mayor-aldermanic charter); 6-19-101 (city manager-commission charter); 6-33-101 (modified city manager-commission charter).

[These separate statutory provisions enumerate the powers of the different forms of city governments. The provisions for the first two forms of city government grant the most powers, including the power to “[h]ave and exercise all powers that now or hereafter it would be competent for this charter specifically to enumerate, as fully and completely as though these powers were specifically enumerated.”]

HOME RULE STRUCTURE

The Tennessee constitution offers home rule to both counties and cities. Neither is especially

robust nor widely utilized. To date, only 2 of 95 counties – Knox (which includes Knoxville) in 1988 and Shelby, the most populous (which includes Memphis), in 1984 – have adopted home rule charters.¹ The primary benefit of county home rule in Tennessee appears to be enhanced freedom to choose the structural form of government.² Statutory grants of regulatory power to non-charter counties since the enactment of the county home-rule amendment have “somewhat diminished the distinction between the powers of counties, including charter counties.”³

With respect to municipal home rule, only 14 of Tennessee’s 348 cities have adopted home-rule charters since the enactment of the municipal Home Rule Amendment in 1953.⁴ These cities include some of Tennessee’s most populous, including three of the top four: Memphis, Knoxville, and Chattanooga.⁵ Municipal home rule, therefore, with 4 % of cities, is slightly more prevalent than county home rule, with just over 2 % of counties. Nashville, the second most-populous city in the state, has a unique form of consolidated metropolitan government with surrounding Davidson County.⁶ The 1953 Home Rule Amendment permitted the legislature to establish a process for creating consolidated city-county governments, which the legislature first enacted in 1957.⁷ Besides Nashville, two other city-counties have availed themselves of the consolidation option.⁸ While the consolidation law allows merged city-counties to hold on to their previously held powers, and the Nashville-Davidson County charter lays claim to vast regulatory authority, it does not appear that merged city-county governments are presumptively

¹ Ron Darden, U. Tenn. Mun. Tech. Advisory Serv., *The Charter County Form of Government 1*, available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjliJCLud7TAhUXz2MKHdqYBJEQFgggtMAE&url=http%3A%2F%2Fwww.mtas.tennessee.edu%2Fknowledgebase.nsf%2F0%2F3e3afa72d5ad7d9d852578a2005f994e%2F%24FILE%2FCounty%2520Charter%2520Form%2520of%2520Government.docx&usg=AFQjCNHI8oAatxIymEMiol8L17Kzy6yN9w&sig2=CCYa0-AbpP5E4NzAepgFkg&cad=rja>.

² *Id.* at 3-4 (noting that powers special to charter counties include structural matters like methods of election, size of governing body, qualifications for office, terms and term limits, and other issues related to local separation of powers).

³ *Id.* at 4.

⁴ See *Cities in Tennessee*, Ballotpedia, available at https://ballotpedia.org/Cities_in_Tennessee (last visited May 8, 2017); see also Don Darden, *Home Rule Charters in Tennessee 1*, 6 (May 2005), available at [http://www.mtas.tennessee.edu/Knowledgebase.nsf/0/C9DD85972D740F6B8525702A004EBFCA/\\$FILE/Home%20Rule%20Charters%20in%20Tennessee.pdf](http://www.mtas.tennessee.edu/Knowledgebase.nsf/0/C9DD85972D740F6B8525702A004EBFCA/$FILE/Home%20Rule%20Charters%20in%20Tennessee.pdf).

⁵ Ballotpedia, *supra* note 4.

⁶ See Carol Bucy, *A Short History of the Creation of Metropolitan Government for Nashville-Davidson County*, available at <https://www.nashville.gov/Portals/0/SiteContent/Government/docs/MetroHistoryBucy.pdf> (discussing voters’ adoption of a metropolitan charter in 1962); *Frazer v. Carr*, 360 S.W.2d 449 (Tenn. 1962) (upholding state law by which Nashville and Davidson County adopted metropolitan government).

⁷ See 1957 Tenn. Pub. Acts c. 120, § 3, codified as amended at TENN. CODE ANN. § 7-1-103 (2016) (“[C]onsolidation, when complete, shall result in the creation and establishment of a new metropolitan government to perform all, or substantially all, of the governmental and corporate functions previously performed by the county and by the municipal corporations . . .”).

⁸ See D. Eric Sutterland, Note, *Two Claims, Two Keys – Overcoming Tennessee’s Dual-Majority Voting Mechanism to Facilitate Consolidation Between Memphis City and Shelby County*, 41 U. MEM. L. REV. 933, 946 (2011) (noting that the two other consolidated governments are Lynchburg City-Moore County and Hartsville-Trousdale County).

considered “home rule” entities under Article XI, § 9.⁹

For the fourteen home-rule cities, the effect of home rule appears to be twofold: 1) to provide a firmer foundation of delegated power from the state, liberating them from the strictures of Dillon’s Rule; and 2) to provide limited immunity from preemption in the personnel realm.

With respect to 1), the Tennessee courts have recognized that “the whole purpose of the Home Rule Amendment was to vest control of local affairs in local governments.”¹⁰ The effect of the home rule amendments was “to fundamentally change the relationship between the General Assembly and these types of municipalities, because such entities now derive their power from sources other than the prerogative of the legislature.”¹¹ For example, Memphis’ home rule charter explicitly grants the city the power to engage in collective bargaining, so it does not need express permission from the state legislature.¹² By contrast, non-home rule municipalities and other local governments are still subject to a “reasonabl[e]” application of Dillon’s Rule.¹³

The Home Rule Amendment is clear, however, that even charter cities may not lay claim to broad taxing powers.¹⁴

LIMITED IMMUNITY FROM STATE PREEMPTION

With respect to immunity, municipal home rule is stronger than county home rule. Charter cities enjoy immunity only with respect to “compensation of municipal personnel,” as stated in the Home Rule Amendment. There is no case law interpreting this phrase. All other enactments by a charter city, however, are void “if inconsistent with any general act of the General Assembly.” In applying this provision, the Tennessee courts refer to all intrastate preemption situations as “conflict” analysis; the term preemption is used exclusively in the federal-state context.¹⁵ In contrast to home-rule cities, which enjoy a sliver of immunity under the constitutional text, all

⁹ See TENN. CODE ANN. § 7-1-102 (2016) (“post consolidation retention of functions”); Nashville-Davidson County Charter, art. 2 (“Powers”), available at <http://www.coj.net/city-council/docs/consolidation-task-force/2014-01-09-nashvillecharter.aspx>.

¹⁰ Civil Service Merit Bd. of City of Knoxville v. Burson, 816 S.W.2d 725, 729 (Tenn.1991) (quoting Farris v. Blanton, 528 S.W.2d 549, 551 (Tenn. 1975)).

¹¹ S Constructors, Inc. v. Loudon Cty. Bd. of Educ., 58 S.W.3d 706, 714 (Tenn. 2001).

¹² AFSCME Local 1733 v. City of Memphis, No. 11-2577, 2013 WL 12043551 at *9 (W.D. Tenn. Mar. 26, 2013).

¹³ S. Constructors, Inc., 58 S.W.3d at 714. The Tennessee Supreme Court has stated that in applying Dillon’s Rule, “where the legislature grants local governments broad authority to provide for the general welfare, Dillon’s Rule cannot be used to challenge the exercise of that authority as beyond the scope of the delegated power.” *Id.* at 713 (citing two earlier cases).

¹⁴ TENN. CONST. art. XI § 9 (“[T]he power of taxation of such municipality shall not be enlarged or increased except by general act of the General Assembly.”)

¹⁵ See also Southern Ry. Co. v. City of Knoxville, 442 S.W.2d 619 (Tenn. 1968) (“Municipal ordinances in conflict with and repugnant to a State law of a general character and state-wide application are universally held to be invalid.”).

home-rule county enactments are subject to consistency with “general law.”¹⁶

The constitution’s text constrains the legislature from singling out any counties or cities in legislation.¹⁷ Hence, the requirement of preemption by “general law” in Tennessee appears to have some substantive, judicially enforceable meaning. In reviewing the constitutionality of a state statute alleged to be “local” in nature and therefore an impermissible interference with the general purpose of “local control of local affairs,” the Tennessee Supreme Court noted that the “sole constitutional test must be whether the legislative enactment, irrespective of its form, is local in effect and application.”¹⁸ Specifically, the inquiry is “whether th[e] legislation [in question] was designed to apply to any other county in Tennessee, for if it is potentially applicable throughout the state it is not local in effect even though at the time of its passage it might have applied to [only one county].”¹⁹ The legislature may classify cities and counties as long as the classification is reasonable, but a class of one may or may not be permissible.²⁰

Many of the cases questioning whether a law is “general” apply to legislation re-organizing local court systems, and in this context the court has deferred to the legislature.²¹ The supreme court has also upheld as “general” a state statute that overrode the structure of Knoxville’s civil service merit protection board.²²

In sum, Tennessee is not a strong home-rule state, both due to the nature of the provisions and the relative paucity of cities and counties that have availed themselves of the option.

¹⁶ *Cty. of Shelby v. McWherter*, 936 S.W.2d 923, 934 (Tenn. 1996).

¹⁷ TENN. CONST. art. XI § 9 (“[A]ny act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void” unless approved by the municipality or county).

¹⁸ *Civil Serv. Merit Bd. of City of Knoxville v. Burson*, 816 S.W.2d 725, 729 (Tenn. 1991) (citing *Farris v. Blanton*, 528 S.W.2d 549, 551 (Tenn. 1975)).

¹⁹ *Burson*, 816 S.W.2d at 729 (citing *Farris*, 528 S.W.2d at 552).

²⁰ Compare *Frazer v. Carr*, 360 S.W.2d 449, 452 (Tenn. 1962) (upholding statutory procedures for the creation of a metropolitan government that applied only to Davidson County/Nashville); *Burson*, 816 S.W.2d at 729 (upholding state law that applied only to Knoxville), with *Lawler v. McCannless*, 417 S.W.2d 548, 553 (Tenn. 1967) (striking down alteration of a county court system that applied only to one county).

²¹ *State ex rel. Cheek v. Rollings*, 308 S.W.2d 393 (Tenn. 1957) (Article XI, Section 9 did not require local ratification for an act that discontinued all meetings of the circuit and chancery courts in one city and transferred all causes pending in such court to another city in the same county); *City of Knoxville ex rel. Roach v. Dossett*, 672 S.W.2d 193 (Tenn. 1984) (Article XI, Section 9 did not prevent the General Assembly from removing jurisdiction over state criminal offenses from the municipal courts of Knoxville, a home rule municipality, by an act applicable to counties falling within a specified population bracket).

²² *Burson*, 816 S.W.2d at 729.