

Charter Amendments Proposed by Shelby County Board of Commissioners

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Shelby County Charter

The voters of Shelby County, Tennessee approved the Shelby County Charter on August 2, 1984 and, as a result, Shelby County became a charter form of government effective September 1, 1986. Because the 1984 County Charter Commission recognized that the offices of the Sheriff, Trustee, Register, County Clerk, and Assessor firmly existed in the Tennessee Constitution, these offices were not “recreated” under the Shelby County Charter. Further, the Charter Commission sought to comply with the state law that authorizes counties to adopt a charter form of government wherein “the duties of the constitutional county officers [mayor, legislative body, sheriff, trustee, register, county clerk, and assessor] as prescribed by the general assembly shall not be diminished.” This was the prevailing view in Tennessee for more than 25 years.

On January 12, 2007, the Tennessee Supreme Court held that where a county adopts a charter form of government, Knox County in this case, the charter document must specifically create offices to perform the duties and functions of the former constitutional county officers, or newly titled administrative officers, and specifically assign the duties and functions to those offices. In that case, the Court found the Knox County Charter was deficient because it failed to do this and, therefore, Knox County has been governed by a “de facto” charter since September 1, 1990 – meaning the government and its officers have a valid existence, but they do not exist as required by law. The Shelby County Charter was used as a model for drafting the Knox County Charter.

The Shelby County Attorney’s Office issued an opinion on January 26, 2007 to the County Mayor recommending that an amendment to the Shelby County Charter be proposed to cure any potential deficiencies similar to those found in the Knox County Charter by the Tennessee Supreme Court. Essentially, an amendment should be proposed that either specifically creates the elected offices of, and assigns the duties and functions to, the Sheriff, Trustee, Register, County Clerk, and Assessor; or creates newly titled appointed administrative officers to carry out the duties and functions of these offices; or creates a combination of these two options.

Shelby County Board of Commissioners

After advising the County Mayor and explaining the potential impact of the Knox County decision to the affected County elected officials, the Shelby County Attorney’s Office briefed the Shelby County Board of Commissioners on the charter amendment options during a January 31, 2007 public meeting. The Board of Commissioners immediately took action to become informed on this issue so as to be in the best position possible to propose an amendment to the Shelby County Charter. First, the Board of Commissioners held a retreat on April 20, 2007. During that retreat, employees of Shelby County from the areas of finance, legislation, and law made presentations. A member of the 1984 County Charter Commission and a representative from County Technical Assistance Service were also present. Next, the Chairman of the Board of Commissioners created the Ad Hoc Committee on Shelby County Charter Amendments,

comprised of all thirteen Commissioners, to receive and analyze additional information relative to the financial implications that may result from each amendment option, the effect each amendment option would have on the entire Charter, and the time constraints faced when submitting a question to the voters.

The Ad Hoc Committee utilized extraordinary efforts to seek public comment and input on possible amendments to the Shelby County Charter and developed a “Register of Issues” which listed all amendments suggested by both the public, County Administration, and County Commissioners. The Committee published the “Handbook for Proposing Amendments to the Shelby County Charter” which contained information on the amendment process and extensively mailed these Handbooks to community and political leaders together with notices of public hearings held by the Committee. The Committee also established a website on the Shelby County Government portal which contained extensive information relating to the Charter amendment issues and provided a method for citizens to submit comments by email. Advertisements were placed in The Commercial Appeal and most weekly newspapers circulated throughout Shelby County so as to notify the public of the Charter amendment process and of how to participate in the process by emails, letters, and attendance at public hearings.

Thirteen public hearings were held by the Committee throughout Shelby County and hundreds of citizens attended. Thereafter, the Committee held five meetings to approve the Register of Issues and held eight meetings jointly with the General Government Committee to formulate the amendments and recommend approval of the ordinances. Seven meetings of the Shelby County Board of Commissioners were held before Ordinance No. 360 and No. 361 were finally approved.

August 7, 2008 Election - Ordinance No. 360 and No. 361

On June 2, 2008, the Shelby County Board of Commissioners adopted Ordinance No. 360 which directly addresses any potential deficiencies in the Shelby County Charter similar to those identified in the Knox County Charter by the Tennessee Supreme Court. With the Charter being adopted twenty-four years ago, the Commission also adopted Ordinance No. 361 in an effort to bring some of the Charter’s language in line with current state law and today’s practices and policies within Shelby County Government. The Shelby County Election Commission published the full text of both ordinances in The Commercial Appeal on Friday, July 11, 2008. Early voting began on Friday, July 18, 2008. Election Day was Thursday, August 7, 2008. The County Attorney’s Office prepared a summary of both ordinances and the Election Commission placed them on the August 7, 2008 ballot. Ordinance 361 [create hyperlink] was approved by the voters, but Ordinance No. 360 failed.

November 4, 2008 Election – Proposed Charter Amendments

Due to the failure of Ordinance No. 360 during the August 7, 2008 election, the Shelby County Board of Commissioners is in the process of proposing further amendments to the Shelby County Charter for the November 4, 2008 election. As of August 18, 2008, two ordinances have been approved on second reading and third and final reading is scheduled for August 27, 2008.

The first ordinance [create hyperlink] is a duplication of Ordinance No. 360, except it does not impose term limits of the County charter offices for the Shelby County Sheriff, Trustee, Register, County Clerk, and Assessor. A second ordinance [create hyperlink] has been proposed which will allow the voters to vote separately on whether to impose term limitations on these five offices. As of second reading, the second ordinance proposes to limit these officers to two consecutive four-year terms, the same term limits that apply to the Shelby County Mayor and members of the County Commission.

Due to the length of the proposed Charter amendment in the first ordinance, a summary [create hyperlink] will be placed on the November ballot instead of the full text of the ordinance. The full text of the proposed Charter amendment in the second ordinance will appear in its entirety on the November ballot. Both amendments will appear on the ballot in a yes/no question format. A “yes” vote will indicate the voter supports the amendment and a “no” vote will indicate the voter is not in favor of the amendment. If a majority of the voters cast a “yes” vote on a particular question, the amendment will be approved and the Shelby County Charter will be changed. If a majority of the voters cast a “no” vote on a particular question, the amendment will fail and the Shelby County Charter will not be changed.