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City of Chattanooga

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July 14, 2008

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Re: City of Chattanooga Charter

Dear Mr. Thompson:

This is in response to your letter of June 20, 2008, concerning the application of the City of Chattanooga's Charter to a residency requirement for a potential candidate for the Office of Mayor. Unfortunately, the circumstances concerning the re-codification of the City of Chattanooga's Charter preclude a simple answer to your inquiry. A brief factual history and legal analysis will follow.

Chattanooga changed from the Commission form of government to a Mayor-Council form of government by virtue of the ruling in *Brown, et al vs. Board of Commissioners of the City of Chattanooga, Tennessee, et al*, Civil Action No. 1-87-388, (E.D. TN). Paragraph 6 of the Plan adopted as the Judgment of the Court follows:

No person shall be elected to the office of Mayor unless he or she has been a resident of the City of Chattanooga for at least one year prior to his or her election and unless he or she shall be at least thirty (30) years of age.

A similar residency requirement and minimum age of twenty-five (25) years in paragraph 15 of the Judgment applied to City Council members.

Chattanooga is a home-rule city. Accordingly, its charter can be amended by an ordinance adopted by the City Council and approved by the voters in a referendum. Ordinance Number 9432 adopted by the City Council on August 21, 1990, was subsequently ratified by the

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voters in the November 6, 1990 election. The operative section of this ordinance amended the City's Charter with respect to age and residency qualifications for Mayor and Council as follows:

The residency and age requirements must be met at the time (s)he qualifies to run for office. Each candidate, at the time of qualification, shall sign an oath that (s)he meets the residence and age requirements.

Ordinance No. 9432 effectively changed paragraphs 6 and 15 of the Court order which are now codified as Section 8.2 for the qualifications of City Council members and Section 8.27 for the Mayor. Following enactment of Ordinance Number 9432, candidates for council and mayor must meet the residency and age requirements at the time they qualify to run for office rather than at election day.

In 2002, the City Council enacted Ordinance Number 11272 "so as to amend and restate the Charter of the City in its entirety so as to conform it to the decision of the United States District Court in *Brown vs. Board of Commissioners, et al*, and subsequent amendments thereto." The purpose of this re-codification was to remove references to the commission form of government and to replace with appropriate references to the City Council or the Mayor.

In what can probably be best described as a clerical oversight the changes adopted by Ordinance Number 9432 were not included within the re-codification of Section 8.2 relating to the qualification of Council members and 8.27 relating to the qualifications of the Mayor.

The initial discussion about the re-codification of the City's Charter to include changes brought about by the Court order occurred in the minutes of the Legal and Legislative Committee on January 8, 2002, and contain City Attorney Nelson comments about charter changes as follows:

He explained that when the government changed form in 1990 that the City Attorney's office put in changes that they felt were appropriate that have never been adopted officially - that it was their interpretation, and they thought it had gone pretty well. He stated that they needed to make an official decision, and the Charter needed to be gone through section by section in conjunction with the Mayor's office. He stated that this needed to be done by May and on the August ballot. He stated that he would rather than we not make any substantial changes, other than the required changes to incorporate the new government terminology, until November.

Subsequent minutes of the Legal and Legislative Committee reflect this advice about changing terminology but not substance was followed.

Common changes included changing "board" to "council" and deleting reference to former commissioners such as "commissioner of the department of public works, streets, and airports" and replacing with "mayor." These types of changes became so common in the process

