

January 8, 2002

Re: Vacancy on Board of Mayor and Aldermen

Dear Alderman:

You have asked whether a vacancy is created on the Board of Mayor and Aldermen when an alderman moves outside the City. You have also asked how the Board should proceed if this does create a vacancy.

The charter of the City (Chapter No. 176 of the Private Acts of 1935 as amended) does not have a clear residency requirement for aldermen. Section 4(b) as compiled in the Municipal Code contains a requirement that a candidate for alderman or a person elected to that position must have been domiciled in your city before the election but none that he or she must continue to reside or be domiciled there after the election:

BE IT FURTHER ENACTED, That no person shall be qualified to run for and hold the office of mayor or alderman in the city of unless he or she shall have been domiciled in your city for as much as one (1) year prior to the date of such election, shall have reached the age of twenty-five (25) years prior to the date of the said election, and unless he or she meets other requirements provided by law as qualifications for running for representative in the general assembly.

Article II, ' 9 of the Tennessee Constitution sets out requirements for running for state representative:

No person shall be a Representative unless he shall be a citizen of the United States, of the age of twenty-one years, and shall have been a citizen of this State for three years, and a resident of the county he represents one year, immediately preceding the election.

This provision also does not contain a continuing residency requirement. There are other statutory provisions, however, that apply to state representatives and that by virtue of the charter requirement in ' 4(b) would also apply to your aldermen unless the language "running for state representative" is strictly construed as applying only to running for and not holding the office. One of these provisions is Tennessee Code Annotated, ' 8-48-101, which provides that:

Any office in this state is vacated by:

\* \* \*

(3) Ceasing to be a resident of the state, or of the district, circuit, or county for which the incumbent was elected or appointed;

\* \* \*

The state Attorney General has ruled, questionably in my opinion that this provision applies to municipal office holders. I am enclosing a copy of these opinions. The city charter requirement that aldermen must meet the same requirements as state representatives makes it more likely than in the situations on which the Attorney General opined that a court would apply this statute to an alleged vacancy in your city.

In determining whether an alderman is or is not still a resident of the city, the Board should consider T.C.A. ' 2-2-122, which sets out principles for determining residence under the state election code. I am enclosing a copy of this code section. If after investigation the board determines that the alderman no longer resides in the city, the Board by resolution could declare the vacancy and proceed to fill it under ' 10(b) of the charter as compiled in the municipal code. The affected alderman, of course, could contest this action and file a lawsuit. I am enclosing a copy of a sample resolution.

I hope this information is helpful. If you have further questions, please call.

Sincerely,

Dennis Huffer  
MTAS Legal Consultant