

May 8, 2002

Re: Inquiry concerning potential waiver of salary by Aldermen

Last week I received an inquiry concerning the proposed waiver of salaries by the Board of Aldermen. I have conducted research, and, when viewed together with the clear language of the city's charter, I am convinced that an agreement for one or more public officers to waive their salaries is unenforceable and void as against public policy.

Draper v. Putman County and Moore v. White are Tennessee Court of Appeals and Supreme Court cases addressing this issue as it applies to candidates for public office. In the Moore case, a candidate for office promised not to collect a salary, and after his election a party to whom the candidate was indebted sued for the salary owing, as at least a portion of the salary would be used to satisfy the debt. The Supreme Court ruled that a candidate for public office cannot legally waive the salary fixed by law for such office, so the candidate's agreement could not be used to stop the creditor from pursuing payment of such funds. In the Draper case, the candidate himself changed his mind, and determined that he wanted to receive the salary payable to him as road supervisor.

My further research reveals that the Court has ruled similar agreements by public officers to be against public policy and void, and has not limited application of the rule to candidates pursuing office. In Carmichael v. Hamby, 217 S.W.2d 934 (Tenn. 1948), the Supreme Court ruled that an agreement by a court clerk to accept a cap on his compensation, notwithstanding the fees collected in excess of that amount to which the clerk was entitled to a portion under law, was void as a violation of general law. The case Lane v. Sumner County, 298 S.W.2d 708 (Tenn. 1957) involves very similar facts and the same conclusion is reached in the Court's ruling. This same logic is followed by the Attorney General in Opinion No. 89-51 (April 10, 1989), in which he opines that a general sessions judge may not refuse the compensation established by law.

As the city is a private act municipality, the Charter is actually an Act of the General Assembly and is the law under which the city operates. Article II, Section 2.02(b) states "each alderman shall receive a salary of one hundred dollars (\$100.00) each month." By using the word "shall," instead of "may" or some other word indicating that receipt of salary may be optional, this provision can only be interpreted as requiring aldermen to accept the \$100 salary monthly. As we discussed, the aldermen may return all or a portion of such funds to the city after it has been paid, but cannot refuse payment of the salary by the city.

I hope this information is helpful. Please let us know if you have further questions.

Thank you for consulting with MTAS.

Sincerely,

Melissa A. Ashburn
Legal Consultant