

June 26, 1997

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Dear Mr. Tucker:

You have the following related questions:

1. Is the present city planning commission legally constituted?
2. Must Mr. Burts resign from the planning commission because he is now a member of the city council?

The answer to question 1 is yes. For that reason, the answer to question 2 is no.

Your question arises from the fact that Mr. Burts, who at the end of one term on the planning commission, was recently re-appointed to another five year term. Subsequent to his re-appointment, he was appointed to fill a vacancy on the city council. The member of the city council whose vacancy Mr. Burts filled was the city council's member on the planning commission. The city council appointed another city council member, Mr. Embry, to be the city council's member of the planning commission. The mayor's delegate also serves on the planning commission. The result is that two members of the city council, and the mayor's delegate, are also members of the planning commission.

Tennessee Code Annotated, section 13-4-104 et seq., authorizes municipalities to establish planning commissions. I see nothing in that statute that suggests the Jefferson City Planning Commission is illegally constituted, or that would otherwise compel Mr. Burts to resign from the planning commission. However, Mr. Burts is the mayor's appointee, and is subject to removal at the will of the mayor, as is any of the mayor's appointees.

Tennessee Code Annotated, section 13-4-101, authorizes municipalities to appoint a planning commission consisting of no less than 5 and no more than 10 members, the number to be determined by the municipal governing body. The members are appointed as follows:

- One member is the mayor or his delegate.
- One member is a member of the governing body of the city appointed by that body.

- All other members are appointed by the mayor.

Under Ordinance No. 688, the city has a seven member planning commission.

Nothing in Tennessee Code Annotated, section 13-4-101, restricts the population from whom the mayor can select the members he is entitled to appoint to the planning commission. I can find no law in Tennessee or any other state on the question of whether Tennessee Code Annotated, section 13-4-101, or similar statute contemplates the mayor's appointment of members from the governing body of the city. However, the cardinal rule of statutory interpretation is the intention of the legislature. When I read Tennessee Code Annotated, section 13-4-102, in the context of other municipal planning statutes, it does not appear to me that the General Assembly intended the mayor to have the authority load the planning commission with members of the city's governing body. In fact, were it otherwise, the mayor could in cases where the number of members of the city's governing body is equal to or greater than the number of members of the planning commission, insure that the planning commission consisted entirely of members of the city's governing body. Surely, that could not have been the intent of the General Assembly when it expressly provided for the limited representation of the city's governing body on the planning commission by the mayor (or his delegate), and a member of the city's governing body appointed by that body.

A city's governing body can under Tennessee Code Annotated, section 13-7-205, appoint the planning commission to be the board of zoning appeals. If Tennessee Code Annotated, section 13-4-101, permits the entire planning commission to consist of the city's governing body, the result is that a city's governing body could also be: (1) the planning commission, and (2) the board of zoning appeals. I would be surprised if the courts would find that it was the intent of the General Assembly to authorize such a mix of the legislative, administrative, and quasi-judicial functions in the city's governing body.

Along the same line, Tennessee Code Annotated, section 13-4-104, provides that the zoning decisions of the planning commission can be overruled by a majority vote of the city's governing body. If the planning commission could be comprised of a majority, or entirely, of the city's governing body, that body would be passing on its own decisions. While that kind of arrangement may not necessarily be illegal on its face, it appears to me that the obvious intent of the General Assembly in authorizing the creation of a planning commission, and giving the city's governing body the power to overrule its zoning decisions, was to create two separate bodies. That is true even though the planning commission itself was to be comprised partially of members of the city's governing body. In fact, the city governing body's influence on the planning commission was to come through, not be totally consumed by, its members on that commission. The entire city governing body would have a crack at the planning commission's zoning decisions.

Tennessee Code Annotated, section 13-4-102, also calls for the appointment of the chairman of the planning commission from "among the appointed members." Needless to say, all members of the planning commission are appointed. Under the rules of statutory construction, every word and phrase means something with respect to ascertaining the legislative intent, and the legislature is not presumed to have done a vain and useless thing. Tennessee Code Annotated, section 13-4-101, does not speak of the mayor (or his delegate) and the member of the city's governing body as being "appointed" to the planning commission; rather, "One (1) of the members shall be the mayor of the municipality or a person designated by the mayor and one (1) of the members shall be a member of the chief legislative body of the municipality selected by that body." Then, in the remainder of that section is found the following language:

All other members shall be *appointed* by such mayor, except as otherwise provided in subsection (b) [which does not pertain to the City of Jefferson City.] All members of the commission shall serve as such without compensation, except membership on the board of zoning appeals. The terms of *appointive* members shall be of such length as may be specified by the chief legislative body; provided, that they shall be so arranged that the term of one (1) member will expire each year. Any vacancy in an *appointed* membership shall be filled for the unexpired term by the mayor of the municipality, who shall also have authority to remove any *appointed* member at the mayor's pleasure. [Emphasis is mine.]

Strongly implied, if not expressly stated, in that language is the proposition that there are two classes of membership on the planning commission: the mayor or his delegate and the member of the city's governing body is the first class; the mayor's appointees is the second class. The General Assembly must have intended the appointment to the chairmanship of the planning commission to come from the second class, the members appointed by the mayor. Was the intention of that arrangement to insure that the chairman of the planning commission be the mayor's appointees, or was it to insure that the chairman of the planning commission *not* be a member of the city's governing body? In the context of Tennessee Code Annotated, section 13-4-101 et seq., I think the latter possibility better reflects the intention of the General Assembly.

But Mr. Burts did not derive his seat from a loading of the planning commission by the mayor with city council members; he was a member of the planning commission before he was appointed to fill the vacancy on the city council. Neither does the total membership of Mr. Burts, Mr. Embry, and the mayor's delegate on the planning commission give the city council a majority on the planning commission. For those reasons, I see nothing in Tennessee Code Annotated, section 13-4-101 et seq. or any other law that indicates the planning commission is illegally constituted or that requires Mr. Burts to resign.

Sincerely,

Sidney D. Hemsley
Senior Law Consultant

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