

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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March 22, 2000

Opinion No. 00-052

Scheduling Recall Election

QUESTION

The Roane County Election Commission has received and certified recall petitions for four aldermen in the City of Oliver Springs. When should an election on the recall petitions be scheduled?

OPINION

Under Tenn. Code Ann. § 2-5-151(f)(2), the recall petitions should be placed on the ballot at the next general municipal or county election that occurs more than sixty days after the recall petitions were filed. The next such election would be the county general election on August 3, 2000, assuming such an election has been set for Roane County.

ANALYSIS

This opinion concerns when a recall petition should be placed on the ballot. The request indicates that the Roane County Election Commission has received and certified recall petitions for four aldermen in the City of Oliver Springs. Under Section 7 of the City Charter of Oliver Springs, the county election commission must call an election on a recall petition to be held within forty-five days from the date the petition is filed. But, Tenn. Code Ann. § 2-5-151(a) expressly provides:

Any governmental entity having a charter provision for a petition for recall, referendum, or initiative or any person acting pursuant to such charter provision *shall meet the requirements of this section.*

(Emphasis added). Tenn Code Ann. § 2-5-151(f) provides:

(1) Completed petitions shall be filed with the county election commission within seventy-five (75) days after final certification by the county election commission as required by subsection (c).

(2) In addition, a petition for recall, referendum or initiative shall be filed *at least sixty (60) days before a general municipal or county election may be held on the question contained in such petition.* The question contained in a petition filed *less*

than sixty (60) days before an upcoming general municipal or county election will be placed on the ballot of the following general municipal or county election.

Tenn. Code Ann. § 2-5-151(f)(emphasis added). Tenn. Code Ann. § 2-5-151(j) expressly states, “This section shall control notwithstanding any statutory provision or charter provision of a municipality or county to the contrary;....” Subsection (j) then contains a proviso that a contrary charter provision of a city or county enacted after July 1, 1997 will control only with regard to the statutory minimum number of signatures required in a petition under subsection (d) and the seventy-five day deadline for filing a petition under subsection (f)(1). No subsequent charter provision could therefore affect the scheduling provisions in subsection (f)(2).

Under subsection (f)(2), then, the recall petitions should be voted on at the next general municipal or county election that falls more than sixty days after the petitions were filed. Under the City Charter, elections for mayor and alderman are held in odd-numbered years. Oliver Springs City Charter, Section 4. The next “general municipal or county election” therefore appears to be the next county general election, assuming such an election has been set for Roane County. Such election would be scheduled for August 3, 2000. Tenn. Const. Art. VII, § 5.

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