

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 02-030

House Redistricting Plan - 2002 Tenn. Pub. Acts Ch. 468 - Representation of New Districts

QUESTIONS

1. Do members of the House of Representatives continue to represent districts as they were configured when members were elected, or do they now represent the districts as described in Chapter 468 of the Public Acts of 2002?
2. May members of the House of Representatives use their postage and printing allowance to send letters of introduction to residents of counties and parts of counties that they will represent pursuant to Chapter 468 of the Public Acts of 2002?

OPINIONS

1. Chapter 468 takes effect immediately but only for the purpose of conducting the 2002 August primary and November general elections; therefore, members of the House of Representatives continue to represent the districts from which they were elected in November 2000 until the November general election in 2002.
2. The policy of the Joint Legislative Services Committee is silent on the issue of whether members of the General Assembly may use their postage and printing allowance to send letters of introduction to residents of counties and parts of counties in districts they will represent under chapter 468; accordingly, this question should be addressed to that Committee.

ANALYSIS

On January 17, 2002, Chapter 468 of the Public Acts of 2002, which redistricts the Tennessee House of Representatives in accordance with the 2000 Federal Decennial Census, became law upon the signature of Governor Don Sundquist. Specifically, subsection (c) of Section 1 of Chapter 468 states that, “[u]ntil the next enumeration of qualified voters and apportionment of representatives, the state house of representatives shall be composed as follows: . . .” What follows is a description of each of the ninety-nine districts for the House of Representatives based upon the 2000 Federal Decennial Census. Section 2 of Chapter 468 then provides that “[t]his act shall take effect upon becoming law, the public welfare

requiring it.”

Under the prior redistricting plan for the House of Representatives enacted in 1994, Tenn. Code Ann. § 3-1-103(d) provided the following:

Nothing in this section shall be construed as depriving any member of the House of Representatives of the Ninety-eighth General Assembly of such member’s office, or as affecting or modifying the constitutional requirements of the provisions of Article II, Section 3 of the Constitution of Tennessee. At the November, 1994, general election, and thereafter until changed by law, representatives shall be elected to represent the districts as constituted and provided by this section. If the seat of a member of the House of Representatives becomes vacant prior to the general election in which a representative is to be elected to represent the district as constituted and provided by this section, in accordance with Article II, Section 15 of the Constitution of Tennessee, a successor shall be elected by the county legislative body to represent the district.

The General Assembly did not include language similar to the above-quoted subsection in Chapter 468.

However, the absence of such language does not necessarily reflect a legislative intent to immediately reconfigure the districts in accordance Chapter 468 effective January 17, 2002, such that representatives now represent constituents in the new districts. Such an interpretation would result in the absurd consequence of changing district boundaries in the middle of a legislative session, resulting in members of the House of Representatives representing voters who had no voice in their election. It is a general rule of statutory construction that “[i]t is presumed that the Legislature in enacting this statute did not intend an absurdity, and such a result will be avoided if the terms of the statute admit of it by a reasonable construction.” *Epstein v. State*, 211 Tenn. 633, 640, 366 S.W.2d 914, 940 (1963). Accordingly, it is the opinion of this Office that, although Chapter 468 took effect immediately on January 17, 2002, for the purpose of conducting the 2002 August primary and November general elections, the district lines for the House of Representatives do not change until the election of representatives in 2002.¹

¹While there may be instances when the enactment of a redistricting plan in a staggered term system at the beginning of a new decade will result in voters being represented by senators for whom they did not vote and will delay their opportunity to vote for two years, the courts have held that such a situation is an unavoidable consequence of reapportionment in a staggered term system, and “the temporary disenfranchisement of these voters violates neither the equal protection clause nor any other constitutional provision.” *Mader v. Crowell*, 498 F. Supp. 226, 231 (W.D. Tenn. 1979). See also *Ferrell v. Oklahoma*, 339 F.Supp. 73, 82 (W.D.Okla.), *aff’d mem. sub nom. Ferrell v. Hall*, 406 U.S. 939, 92 S.Ct. 2045, 32 L.Ed.2d 328 (1972); *Stout v. Bottorff*, 249 F.Supp. 488, 495 (S.D.Ind.1965). On the other hand, the House of Representatives is not elected on a staggered terms basis, as their terms of office under Article II, Section 3 of the Tennessee Constitution are only two years. Given that circumstance, it cannot be presumed that the General Assembly intended Chapter 468 to shift the district lines on January 17, 2002, such that representatives would represent constituents from the new districts during the present legislative session.

The second question concerns whether members of the House of Representatives may use their postage and printing allowance to send letters of introduction to residents of counties and parts of counties of the new districts created by Chapter 468 of the Public Acts of 2002. Article II, Section 23 of the Tennessee Constitution provides that in addition to their annual salary, legislators shall be provided “such other allowances for expenses in attending sessions or committee meetings as may be provided by law.” Tenn. Code Ann. §§ 3-1-106 and -107, which establish the expenses and salary for members of the General Assembly, does not expressly address postage and printing expenses. However, Tenn. Code Ann. §§ 3-10-101, *et seq.*, establishes the Joint Legislative Services Committee, which has the power to “make recommendations on management, policies and procedures to be employed in providing services to the general assembly or either house thereof.” Tenn. Code Ann. § 3-10-304. This Committee has established a policy regarding postage and printing allotment which was recently restated in the minutes of a meeting of the Committee on January 27, 2000:

The existing policy for postage and printing includes expenditures for actual postage for mail processed through the print shop; printing letterhead, envelopes, business cards, letters and other approved printed materials; print shop services including the drilling of paper and folding and stuffing of mail; charges for photographic services from the State Photographic Services Office; maps from the Departments of Transportation and Environment and Conservation; State of Tennessee and United States Flag sets; framing resolutions and proclamations (only); resolution covers; rubber stamps; approved lapel pins from Executive Branch agencies; ceramic state seals; wireless PA receivers; UPS and Federal Express shipping charges; and stamps.

However, this policy does not address the question of whether a member of the General Assembly is limited to using his/her postage and/or printing allotment to constituents within the legislative district from which he/she was elected.² Since the policy of the Joint Legislative Services Committee is silent on the issue of whether members of the General Assembly may use their postage and printing allowance to send letters of introduction to residents of counties and parts of counties in districts they will represent, this question should be addressed to that Committee.

²The Compiler’s Note in the supplement to Title 3 does state that “Effective January 1, 1999, expenses for members of the general assembly members are as follows: per diem allowance, \$114; mileage allowance, \$.26 (effective 11/3/98) per mile; home office expenses, \$525 per month; postage and printing, \$4,225 (senate members) and \$1,955 (house members).” It is this Office’s understanding that the amounts for postage and printing are set by the Joint Legislative Services Committee.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MICHAEL W. CATALANO
Associate Solicitor General

Requested by:

Randy S. Rinks
State Representative
18 Legislative Plaza
Nashville, TN 37243