

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

February 15, 2024

Opinion No. 24-003

Scope of Tenn. Code Ann. § 6-53-110 as Amended by 2023 Tenn. Pub. Acts, ch. 391

Question

Does Tenn. Code Ann. § 6-53-110 as amended by Chapter 391 of the Public Acts of 2023 apply to a home-rule municipality that is divided geographically (as opposed to being divided by population) into three (3) districts and that elects all the members—e.g., five (5) members—of its Board of Commissioners at-large?

Opinion

Tennessee Code Annotated § 6-53-110 as amended by Chapter 391 of the Public Acts of 2023 applies to all municipalities, including home-rule municipalities, that require candidates to be nominated from districts, regardless of the manner in which the municipalities have established their districts.

ANALYSIS

Tennessee Code Annotated § 6-53-110 addresses election districts in municipal and county elections. Since its enactment in 1983, Tenn. Code Ann. § 6-53-110 has provided that if a municipality or county has an election procedure that requires candidates for boards and commissions to be nominated from districts, those candidates may not be elected at-large. Such a candidate must be elected by that district's voters. Further, the districts must be apportioned according to the one-man, one-vote principle. Specifically, subsection (a) of Tenn. Code Ann. § 6-53-110 states:

(a)(1) *Notwithstanding any other law or charter to the contrary*, no member of the legislative body of a municipality, a popularly elected school board, or any other similarly constituted and elected board or commission of a county or municipality shall be elected to such office through an election procedure requiring candidates to be nominated from a district and elected at-large, but such members shall be elected from districts as established by the appropriate county or municipality, which districts shall:

(A) Assure representation of substantially equal populations and guarantee the principle of one man/one vote in compliance with the Constitution of the United States; and

(B) Be reasonably compact and contiguous and not overlap.

(2) Following the establishment of the districts, such districts shall be reapportioned at least as often as districts for the county legislative body of such county are reapportioned to ensure compliance with the limitations prescribed in this section.

Tenn. Code Ann. § 6-53-110(a) (emphasis added).

As sweeping as this language of subsection (a) is, its impact on municipalities and counties following its enactment was very limited because subsections (b) and (c) provided that subsection (a) applied only to municipalities with a population of more than 50,000 and counties with a population of more than 90,000 that *chose* to adopt the Act. Chapter 391 of the Public Acts of 2023, however, deletes subsections (b) and (c), which means that subsection (a) is no longer so limited and its full impact is realized now.

As set forth above, the provisions of Tenn. Code Ann. § 6-53-110(a) apply “[n]otwithstanding any other law or charter to the contrary.” Consequently, § 6-53-110(a), which prohibits an election procedure that requires candidates to be nominated from districts and elected at-large, operates and is effective in spite of any other law or charter provision that currently allows such a procedure. *See New Oxford American Dictionary* 1201 (3d ed. 2010) (defining “notwithstanding” as meaning “in spite of”). It is well settled that municipalities may exercise only those express or necessarily implied powers that are delegated to them by the General Assembly in their charters or under statutes. *Allmand v. Pavletic*, 292 S.W.3d 618, 625-26 (Tenn. 2009); *City of Lebanon v. Baird*, 756 S.W.2d 236, 241 (Tenn. 1998). Hence, “[it] is elementary that the Legislature . . . may give and take away as it choses [a municipality’s] powers and privileges.” *Highwoods Properties, Inc. v. City of Memphis*, 297 S.W.3d 695, 702 (Tenn. 2009) (quoting *First Suburban Water Util. Dist. v. McCanless*, 177 Tenn. 128, 133, 146 S.W.2d 948, 950 (1941)).

Moreover, a municipality’s adoption of home rule does not prevent the application of Tenn. Code Ann. § 6-53-110(a). Under the “home rule” provisions of article XI, section 9 of the Tennessee Constitution, the General Assembly may not pass local legislation affecting a municipality that has adopted home rule; it must “act with respect to such home rule municipality only by laws which are *general in terms and effect*.” *Civil Serv. Merit Bd. v. Burson*, 816 S.W.2d 725, 727 (Tenn. 1991) (quoting Tenn. Const. XI, § 9) (emphasis original). For the reasons discussed above, Tenn. Code Ann. § 6-53-110(a) is “general in terms” because it prohibits *any* municipality or county from maintaining or establishing an election procedure that requires candidates to be nominated from districts and elected at-large. Tennessee Code Annotated § 6-53-110(a) is also “general in . . . effect” for the reasons that follow.

In considering whether a statute is general in effect, the Tennessee Supreme Court has explained that the “sole constitutional test must be whether the legislative enactment, irrespective of its form, is local in effect and application.” *Farris v. Blanton*, 528 S.W.2d 549, 551 (Tenn. 1975). Specifically, the inquiry must be “whether th[e] legislation [in question] was designed to apply to any other county in Tennessee, for if it is potentially applicable throughout the state it is not local in effect even though at the time of its passage it might have applied to [only one county].” *Id.* at 552.

The legislation at issue here, Chapter 391 of the Public Acts of 2023, now makes the provisions of subsection (a) of Tenn. Code Ann. § 6-53-110 applicable to all municipalities and counties. While apparently only a handful of municipalities currently maintain an election procedure requiring candidates to be nominated from a district and elected at-large—and are therefore affected by the passage of Chapter 391¹--Chapter 391 is not local in effect and application because it is “designed to apply” to all municipalities “throughout the state.” *See Farris*, 528 S.W.2d at 552. In other words, Chapter 391 not only prevents municipalities that have an election procedure that requires candidates to be nominated from a district and elected at-large from maintaining that procedure, but it also prevents all other municipalities from establishing such a procedure.

In sum, Chapter 391 is general in terms and effect, and it applies to home-rule municipalities, as well as to municipalities organized under traditional charters. Therefore, following the passage of Chapter 391, Tenn. Code Ann. § 6-53-110(a) prevents any municipality from having “an election procedure requiring candidates to be nominated from a district and elected at-large.” If a municipality requires candidates to be nominated from a district, Tenn. Code Ann. § 6-53-110(a) demands that such candidates “shall be elected from districts”

For those municipalities choosing to maintain or establish an election procedure requiring candidates to be nominated from districts, Tenn. Code Ann. § 6-53-110(a) establishes requirements for those districts. Section 6-53-110(a)(1)(A) requires the districts to be apportioned according to the one-man, one vote principle; § 6-53-110(a)(1)(B) requires the districts to be reasonably compact and contiguous and not overlap; and § 6-53-110(a)(2) addresses reapportionment requirements.

These district requirements, though, do not mean that Tenn. Code Ann. § 6-53-110(a) applies only to a municipality that currently establishes its districts by population because these district requirements do not come into play *unless* a municipality decides to maintain or establish an election procedure that requires candidates to be nominated from districts. Rather, § 6-53-110(a) applies broadly, “[n]otwithstanding any other law or charter to the contrary,” to provide that “no member of the legislative body of a municipality . . . shall be elected to such office through an election procedure requiring candidates to be nominated from *a district* and elected at-large.” Tenn. Code Ann. § 6-53-110(a)(1) (emphasis added).

In short, the General Assembly did not confine its ban on elections-at-large for candidates nominated by district to only those municipalities with population-based districts or any other type of districts. The statutory language “a district” signifies that Tenn. Code Ann. § 6-53-110(a) applies to all municipalities that have established *any* type of districts from which candidates are to be nominated. *See First Am. Nat’l Bank v. Olsen*, 751 S.W.2d 417, 421 & n. 4 (Tenn. 1987) (finding indefinite article “a” meant “any” within a statutory exception). Accordingly, Tenn. Code Ann. § 6-53-110(a) applies to any municipality that has an election procedure requiring candidates to be nominated from districts regardless of whether the municipality currently establishes its

¹ During the debates leading to the passage of Chapter 391, Knoxville and Morristown were identified as municipalities that would be affected by the legislation, as well as “two or three” others. *See* Hearing on H.B. 817, Before Sen. Sess., 113th Gen. Assem., 1st Sess. (Tenn. Apr. 17, 2023). Research conducted by this Office substantiates that other municipalities are, indeed, impacted by the passage of Chapter 391.

districts by population, geographically, or in some other manner.² *See Worley v. Weigels, Inc.*, 919 S.W.2d 589, 593 (Tenn. 1996) (courts must construe statutes in a manner that “give[s] effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope”).

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² Conversely, Tenn. Code Ann. § 6-53-110(a) has no application to a municipality that is divided into districts but has an election procedure that does not require candidates to be nominated from districts. For example, Tenn. Code Ann. § 6-53-110(a) has no application to a municipality that is divided into districts but provides that candidates are to be nominated at-large and elected at-large.