IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT KNOXVILLE

DEBBRA MATTHEWS,	)	
QUENSTON COLEMAN,	)	
NAACP, CHATTANOOGA CHAPTER,	)	
	)	
Plaintiffs/Appellants,	)	**Hamilton Chancery No. 94-75144**
	)	
VS.	)	**Appeal No. 03A01-9505-CH-00141**
	)	
STEVE CONRAD,	)	
GENE ROBERTS, MAYOR	)	
CITY OF CHATTANOOGA,	)	
CITY COUNCIL MEMBERS,	)	
	)	
Defendants/Appellees.	)	

FILED

February 26, 1996

Cecil Crowson, Jr.

Appellate Court Clerk

APPEAL FROM THE CHANCERY COURT OF HAMILTON COUNTY
AT CHATTANOOGA, TENNESSEE
THE HONORABLE R. VANN OWENS, CHANCELLOR

MYRON BERNARD MCCLARY
Chattanooga, Tennessee
Attorney for Appellants

RANDALL L. NELSON
WM. SHELLEY PARKER, JR.
Chattanooga, Tennessee
Attorneys for Appellees

AFFIRMED

ALAN E. HIGHERS, J.

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

DAVID R. FARMER, J.

Plaintiffs-Appellees, Debbra Matthews, Quenston Coleman, and the NAACP,

Chattanooga Chapter, filed suit alleging that Ordinance #10079, which amended the Chattanooga City Charter, is void. Defendants-Appellees, Steve Conrad, Mayor Gene Roberts, and the City Council Members, moved to dismiss the Appellants' suit for failure to state a claim upon which relief can be granted pursuant to Tenn. R. Civ. P. 12.02(6) and for failure to join indispensable parties pursuant to Tenn. R. Civ. P. 19. The chancellor granted the Appellees' motion[1] and Appellants perfected the present appeal.

In the general election held in the City of Chattanooga on November 8, 1994, a majority of the electorate voted for Ordinance #10079, which amended the Chattanooga City Charter ("Charter"). Before the amendment, the Charter provided for the maintenance of two school systems in Hamilton County; one by the City of Chattanooga and one by Hamilton County. The Ordinance amended the Charter, prohibiting the city's operation of a school system separate from that of Hamilton County after June 30, 1997.

Appellants allege that the November 8, 1994 amendment to the Charter is void because of the city's failure to comply with T.C.A. § 2-5-208 (1994 & Supp. 1995). That statute requires that a proposed Ordinance be printed on the ballot in a question format which calls for the voter to respond "yes" or "no":

> **Arrangement of material on ballots**
>
> (a) The requirements of this section apply to all ballots.
> . . . .
> (f)(1) Whenever a question is submitted to the vote of the people, it shall be printed upon the ballot before or at the top right of the list of candidates, followed by the words "yes" and "no," so that the voter can vote a preference by making a cross mark (x) opposite the proper word . . . . Any question submitted to the people shall be worded in such a manner that a "yes" vote would indicate support for the measure and a "no" vote would indicate opposition.

Appellees contend that T.C.A. § 6-53-105 (1992 & Supp. 1995), rather than T.C.A. § 2-5-208, controls elections in which residents in a home rule municipality vote to amend the city charter. Appellees argue, and Appellants do not disagree, that the November 8, 1994 ballot fully complied with T.C.A. § 6-53-105, which provides:

> **Home rule municipalities--Elections on questions requiring local approval and on amendments to charter.**
>
> (c) On any ballot on which an amendment to the charter of a home rule municipality appears for approval or disapproval by the electorate, a

[1]It is clear from the chancellor's memorandum opinion that Appellants' suit was dismissed for failure to state a claim upon which relief can be granted. The chancellor's treatment of Appellees' motion to dismiss for failure to join indispensable parties is not clear from the record.

> statement certified by the chief financial officer of the municipality shall appear immediately after the language describing the amendment, but before the questions "For the amendment" and "Against the amendment." The statement shall indicate the chief financial officer's estimate of the net cost savings, net cost increase, or net increase or decrease in revenues, on a yearly basis, if any, that will be effected if the amendment is approved. The statement by the financial officer shall be made readily distinguishable from the language describing the amendment itself.

The lower court granted the Appellees' motion to dismiss for failure to state a claim upon which relief can be granted. A motion to dismiss pursuant to Tenn. R. Civ. P. 12.02(6) admits the truth of all relevant and material averments contained in the complaint but asserts that such facts do not constitute a cause of action. Cornpropst v. Sloan, 528 S.W.2d 188, 190 (Tenn. 1975). In considering whether to dismiss a complaint for failure to state a claim upon which relief can be granted, the court should construe the complaint liberally in favor of the plaintiff, taking all of the allegations of fact therein as true. Huckeby v. Spangler, 521 S.W.2d 568, 571 (Tenn. 1975). A complaint should not be dismissed upon such a motion "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Fuerst v. Methodist Hosp. S., 566 S.W.2d 847, 848 (Tenn. 1978).

It is well established that a statute that is specific in nature controls over a statute that is general in nature. Matter of Harris, 849 S.W.2d 334, 337 (Tenn. 1993); Watts v. Putnam County, 525 S.W.2d 488, 492 (Tenn. 1975). In Valley Fidelity Bank & Trust Co., v. Ayers, 861 S.W.2d 366, 369 (Tenn. Ct. App. 1993), this Court stated: "A specific statute or a special provision of a particular statute controls a general provision in another statute or a general provision in the same statute." Moreover, the Legislature amended T.C.A. § 6-53-105 in 1993, adding subsection (c), the portion of the statue relevant in the case at bar. The language to which Appellant cites in T.C.A. § 2-5-208(f)(1), which conflicts with T.C.A. § 6-53-105(c), was codified in 1972. See 1972 Tenn. Pub. Acts, Ch. 740, §5. It is well settled that a statute adopted later in time controls over a conflicting statute adopted earlier in time. Steinhouse v. Neal, 723 S.W.2d 625, 627 (Tenn. 1987); Stewart Title Guar. Co. v. McReynolds, 886 S.W.2d 233, 236 (Tenn. Ct. App. 1994).

The present case involves a home rule municipality's amendment of its charter, precisely the subject matter with which T.C.A. § 6-53-105 is concerned. T.C.A. § 2-5-208, on the other hand, is a general election statute. We disagree with Appellants' argument

that T.C.A. § 6-53-105 applies only to proposed amendments concerning property taxes. Although T.C.A. § 6-53-105(b) concerns property taxes, a plain reading of T.C.A. § 6-53-105(c) indicates that the statute applies to a broad range of proposed amendments. That subsection begins "On any ballot on which an amendment to the charter of a home rule municipality appears for approval or disapproval by the electorate . . . ." (emphasis added). Because T.C.A. § 6-53-105 is more specific than T.C.A. § 2-5-208, and because it was adopted later in time, we hold that T.C.A. § 6-53-105 is controlling in the present case. That statute establishes that a proposed amendment to a home rule municipality's charter requiring the voter to select "For the amendment" or "Against the amendment," rather than "Yes" or "No," is not invalid.

Appellants further contend that the amendment is void because the Ordinance was not printed verbatim on the election ballot. Although T.C.A. § 6-53-105 does not address this issue, T.C.A. § 2- 5-208(f)(2) clearly provides:

> If the full statement of a question is more than three hundred (300) words in length, the question shall be preceded by a brief summary of the proposal written in a clear and coherent manner using words with common everyday meanings. Such summary shall not exceed two hundred (200) words in length.

See also Rogers v. White, 528 S.W.2d 810, 813 (Tenn. 1975) (finding no legislative support for the requirement that every proposal placed on a ballot be copied there verbatim and, if greater that 300 words, preceded by a 200 word summary). Although a copy of Ordinance #10079 is not a part of this record, Appellants do not dispute the fact that the proposed amendment exceeded 300 words. T.C.A. § 2-5-208(f)(2) *requires* summarization of proposed amendments where the amendment exceeds 300 words. Thus, it was not only proper that a summary of the proposed amendment appeared on the ballot, it was mandatory. We find no merit in this portion of Appellants' argument.

Appellants' second issue on appeal is whether the amendment to the Charter is void because it was not read three times, on three separate days. The relevant provision of the Chattanooga City Charter provides:

> **Sec.11.2 Required readings; subject matter**
> No ordinance shall be valid unless passed on three (3) separate readings after an opportunity for free discussion thereof; however, this prohibition shall not apply to a motion, a motion in a nature of a resolution or a resolution not having the force and effect of an ordinance, and such motions and resolutions shall be effective upon passage by the board of commissioners. No ordinance shall be valid if passed on the first and final reading on the

> same day. This section shall not apply to a franchise ordinance. No ordinance of any kind shall be invalid if it should embrace more that one (1) subject. All resolutions heretofore passed by the city which were motions in the nature of a resolution, or were resolutions not having the force and effect of an ordinance, are hereby validated notwithstanding they were passed and executed after one (1) reading. (Priv. Acts 1901, Ch. 432, § 9; Priv. Acts 1911, Ch. 10 §§13, 15; Priv. Acts 1969, Ch. 82, § 3)

The Charter clearly states that no ordinance shall be valid *if passed on the first and final reading on the same day.* The effect of this provision is to assure that all ordinances are read on at least two separate occasions. The Charter does not require, as Appellants contend, that an ordinance be read both three times and on three separate days; rather, it makes invalid any ordinance that is read three times, and passed, on a single day. We find no error in the chancellor's dismissal of this claim.

In conclusion, we hold that the chancellor did not err in granting Appellees' motion to dismiss for failure to state a claim on which relief may be granted. Appellees' additional issues are pretermitted. The judgment of the trial court is affirmed in all respects. Costs on appeal are taxed to appellants.

HIGHERS, J.

CONCURS:

CRAWFORD, P.J., W.S.

FARMER, J.