



donati law

November 28, 2017

Sylvia Cox
1688 Sterling Dr.
Memphis, 38119

Re: Instant Runoff Voting

Dear Ms. Cox:

This letter is in response to your request for an opinion on the legal viability of the instant runoff voting plan to be instituted by the City of Memphis. Specifically, we have been asked to respond to each of the concerns raised in the September 26, 2017 letter from State Elections Coordinator Mark Goins to Shelby County Election Administrator Linda Phillips.

QUESTION

Considering the legal issues raised in State Elections Coordinator Mark Goins's September 26, 2017 letter to Shelby County Election Administrator Linda Phillips, can the City of Memphis legally implement its instant runoff voting plan?

OPINION

Yes. Despite State Elections Coordinator Mark Goins's September 26, 2017 letter to Shelby County Election Administrator Linda Phillips regarding the proposal of Instant Runoff Voting (IRV) in Memphis, Tennessee, Instant Runoff Voting does not violate current Tennessee law or the Memphis City Charter. Following Tennessee Supreme Court precedent and accepted statutory construction doctrines, IRV complies with state law and the applicable city charter provisions.

FACTS

The Memphis City Charter includes a provision that explicitly states that Memphis "will use instant runoff voting for City elections." Memphis Charter, Sec. 7(1) ("Instant Runoff Voting"). The full text of the provision states:

- (1) Instant runoff voting for City elections. Consistent with the mandates of Federal and State law, and all applicable court decisions, the City of Memphis will use instant runoff voting for City elections.

Donald A. Donati
Wanda S. Donati
William B. Ryan*‡

Robert A. Donati§‡
Alison T. Ryan†‡**
Bryce W. Ashby

Eleanor Donati Flechas
Janelle C. Osowski
B. Andrew Davis



every client is a cause we believe in

1545 Union Avenue | Memphis, TN 38104 | 901 278-1004 *phone* | 901 278-3111 *fax*
800 521-0578 *toll-free* | donatilaw.com | 901 347-6986 *Español*

- (2) Instant runoff voting defined. Instant runoff voting allows voters to rank candidates in order of preference. Any candidate receiving a majority of the first-preferences for that office wins the election. If no such candidate exists, an instant runoff tabulation shall be conducted in rounds, in each round, each ballot shall count as a single vote for whichever non-eliminated candidate is ranked highest. After each round, the candidate with the fewest votes shall be eliminated, with the votes for that candidate redistributed to the remaining non-eliminated candidates based on the order of preferences indicated on each of the affected ballots. If the redistribution of votes results in a candidate receiving a majority of the votes, that candidate is elected. Otherwise, the candidate then having the fewest votes shall be eliminated, and the votes are redistributed as before, with the process of candidate elimination and vote redistribution continuing until one candidate has a majority of the votes counted for any candidate in that round. The Election Commission shall adopt regulations consistent with the procedure above to facilitate implementation of instant runoff voting.
- (3) Effective date. This section shall go into effect prior to the next municipal election unless the Election Commission certifies that voting machine limitations make its implementation in time for that election unfeasible.

Id. (emphasis added). Despite the requirement that the City of Memphis use Instant Runoff Voting, this voting method has yet to be implemented in Memphis elections.

Our understanding is that County Election Administrator Phillips plans to print off ballot images from the touch-screen voting machines and conduct a manual count of the ballots in multiple rounds, as necessary, to effectuate the IRV procedure outlined in the charter.

In a September 26, 2017 letter from State Election Coordinator Mark Goins (attached), Mr. Goins asserted that this procedure is not permitted under Tennessee law. This memo will discuss in turn each of the six main legal objections raised by Mr. Goins in the order they appear in his letter.

DISCUSSION

1. IRV only permits one vote for a candidate in each round of voting.

Mr. Goins first contends that IRV is not permitted under Tenn. Code Ann. § 2-7-133(b), which provides that “[i]f the voter marks more names than there are persons to be elected to an office . . . the voter’s ballot shall not be counted for such office” Tenn. Code Ann. § 2-7-133(b). This section also provides, however, that a vote “*shall* be counted . . . so far as it is possible to determine the voter’s choice.” Id. (emphasis added).

The clear intent of Tenn. Code Ann. § 2-7-133(b) is to prevent what are commonly referred to as “overvotes.” Overvotes are instances in which a voter has indicated a preference for more than one candidate per office, or, stated another way, more candidates than are permitted be selected on that part of the ballot. See Tenn. Op. Atty. Gen. No. 01-012 (Tenn. A.G.), 2001 WL 138929 (to Rep. L. Mike Williams), at *6-7. The listing of multiple candidates in IRV does not constitute an “overvote” because indications of a 2nd and 3rd choices are in the alternative—that is, the 2nd choice selection counts only if the voter’s 1st choice is eliminated, and the 3rd choice only counts if the voter’s 1st and 2nd choices are eliminated. See Memphis Charter, Sec. 7(2) (“in each round, each ballot shall count as a single vote for whichever non-eliminated candidate is ranked highest”). The language of Tenn. Code Ann. § 2-7-133(b) resolves any doubt about the above-argument as this section of code states that any ballot “*shall* be counted . . . so far as it is possible to determine the voter’s choice.” Tenn. Code Ann. § 2-7-133(b) (emphasis added). This language comports with the general rule in Tennessee case law that even when a ballot arguably fails to comply with the technical requirements of a statute, a vote must be counted if the voter’s will can be ascertained.

In Hall v. Pate, the Tennessee Supreme Court affirmed that honoring the choice of the voter was of the utmost importance. Hall v. Pate, 611 S.W.2d 577, 581 (Tenn. 1981). That case concerned write-in votes on paper ballots, which were not marked in strict compliance with the applicable statutes. Those ballots that evidenced the intention of the voter, however, were counted despite their statutory shortcomings. The Court affirmed the counting of these ballots and held that under Tenn. Code Ann. § 2-7-133(b) the “the intention of the voter is paramount and should be honored if it can be reasonably ascertained.” Hall, 611 S.W.2d at 579, 581.

County Election Administrator Linda Phillips’s contemplated procedure allows the intention of the voter to be fully ascertained. Additionally, when coupled with the procedures outlined in the Memphis City Charter Instant Runoff Voting Amendment, the contemplated system does not require voters to cast more than one vote. As such, Ms. Phillips’s proposed procedure would not conflict with the provisions of Tenn. Code Ann § 2-7-133(b).

2. IRV only allows for a single vote for a candidate in each “round” of calculations thus no over-votes as envisioned in Promulgated Rule No. 1360-2-13-.07(a) exist.

Mr. Goins next raises Tennessee Promulgated Rule No. 1360-2-13-.07 as a potential impediment to IRV. Tennessee Promulgated Rule No. 1360-2-13-.07 provides that no computerized voting machine will be certified by the state unless that machine “may be programmed” to “reject all votes . . . when the number of votes . . . exceeds the number which the voter is *entitled* to cast.” Tenn. Comp. R. & Regs. 1360-2-13-.07 (Lexis Advance through October 2017) (emphasis added.) Based on information provided by Election Administrator Phillips, the computerized voting machines currently used in Shelby County have this capacity.

The procedures for Instant Runoff Voting, codified in Section 7 of the Memphis City Charter, do not conflict with this rule. Memphis Charter, Sec. 7(1) (“Instant Runoff Voting”). While no case law yet exists on the issue, the plain language of the Instant Runoff Voting Amendment avoids the problem of over-votes. The section entitles voters to *rank* candidates in order of preference and further provides that if no candidate receives a majority of first preferences, “an instant runoff tabulation shall be calculated in rounds” *Id.* Significantly, in those rounds, “each ballot *shall count as a single vote* for whichever non-eliminated candidate is ranked highest.” *Id.* (emphasis added). The text of Instant Runoff Voting Amendment provides that each voter is entitled to only one vote and thus does not create the problem of over-votes envisioned in Promulgated Rule No. 1360-2-13-.07.

3. Memphis’s nonpartisan elections render the requirement of Tenn. Code Ann. § 2-3-206(a)—that a “runoff” election following a “primary” election occur at least 30 days after the “primary”—irrelevant.

Next, Mr. Goins contends that IRV violates Tenn. Code Ann. § 2-3-206 because the runoff in question would not occur at least 30 days after the first round of voting. Tenn. Code Ann. § 2-3-206, however, states that “in any municipality in which the charter...provides for a runoff election following a *primary election* for municipal office, such runoff election may be held not less than thirty...days following the primary election.” Tenn. Code Ann. 2-3-§ 206(a) (emphasis added). The Tennessee Election Code defines “primary election” as “an election held for a political party for the purpose of allowing members of that party to select a nominee or nominees to appear on the general election ballot.” Tenn. Code Ann. § 2-1-104(a)(19). This section of the code does not apply to the nonpartisan Memphis City Council elections.

The April 23, 2008 County Attorney Memorandum by John Ryder made this exact point, stating that “this statute referred to a partisan primary and thus did not apply to Memphis.” Ryder Memo. at 3. Mr. Ryder’s memo emphasized this distinction between partisan and non-partisan elections under Tennessee law by noting that Tenn. Code Ann. § 2-13-208 provides generally for nonpartisan municipal elections, but allowed home rule municipalities to provide in their charter for partisan primary elections. Tenn. Code Ann. § 2-3-206 would apply to those cities that chose to conduct partisan municipal elections, but not to Memphis because Memphis’s charter provides for nonpartisan municipal elections. Memphis City Charter, Sec. 175. As such, the requirements of Tenn. Code Ann. § 2-3-206 are inapplicable to Memphis City Council elections.

4. IRV effectively repealed prior Memphis Charter and Municipal Code Provisions that required a separate runoff election.

Mr. Goins also contends that IRV is not permitted because the Memphis Charter and Municipal Code require separate runoff elections. It is true that provisions within the Memphis Charter and Memphis Municipal Code refer to separate runoff elections. For example, Ordinance No. 1794 (“Municipal Runoff Elections”) provides:

If no candidate receives such a majority of votes, then a municipal runoff election shall be held four weeks thereafter, wherein the two candidates receiving the highest number of votes in the municipal election shall be the only candidates and the candidate receiving the majority of the votes case in said runoff election shall be elected.

Memphis City Charter, Ordinance No. 1794 (“Municipal Runoff Elections”) (emphasis added). The 2008 amendment to the Charter, which states that “the City of Memphis will use instant runoff voting for City elections,” superseded these provisions. Memphis Charter, Sec. 7(1) (“Instant Runoff Voting”).

As a general rule, when a later legislative provision governs the same subject matter and sets forth additional and different procedures for the same action, the subsequently enacted legislative provision effectively repeals the contradictory provision. Steinhouse v. Neal, 723 S.W.2d 625, 627 (Tenn. 1987) (holding that the later enacted statute repeals the prior statute by implication when the two statutes cover the same subject); Malone v. Williams, 103 S.W. 798, 812 (Tenn. 1907) (noting that if subsequent acts fully legislate the same subject, they act as repeals of prior acts on the same subject); Joe Cooper’s Café, Inc. v. Memphis, NO. 02A01-9209-CH-00269, 1993 Tenn. App. LEXIS 180, 8 (Tenn. Ct. App. Mar. 3, 1993) (holding that a later act that governs the same subject, but provides an additional and different procedure repeals a prior act).

Joe Cooper’s Café is an instructive example. In that case, the plaintiffs argued that Memphis Charter, Sec. 40 provided that a resolution became law when the mayor did not veto it and Sec. 38 required the mayor to sign the resolution. Id. at 6. However, the court ruled Memphis, Tenn., Ordinance No. 1852, § 4 repealed Memphis, Tenn., City Charter § 40 because it had an inconsistent and conflicting provisions. Id. at 8. The court noted that the two sections governed the same subject, and both sections “set forth a procedural scheme that the mayor must follow to veto an ordinance.” Id. Thus, the subsequently passed legislation repealed the prior inconsistent law. As with the conflicting acts in Joe Cooper’s Café, the current conflicting sections of the Memphis City Charter regarding municipal elections pertain to the same subject and provide different procedural schemes for the same action. Thus, the later ratified scheme—IRV—served to repeal the earlier contradictory provisions.

Other cases illustrate the same general point that if a later legislative provision sets out conflicting procedures for the same subject matter, the last enacted provision repeals the earlier provision. See, e.g., Erwin v. State, 93 S.W. 73 (Tenn. 1905) (noting that when a second act contains a full scheme of legislation on the same subject, that act should be treated as a repeal of the prior act on the subject). Similarly, all things being equal, when an earlier provision and a later provision conflict, to resolve the conflict, courts will look to the later provision. Pacific E. Corp. v. Gulf Life Holding Co., 902 S.W.2d 946, 955-56 (Tenn. Ct. App. 1995) (finding that the doctrine of repeal by implication can be used to resolve explicitly conflicting statutes). Accordingly, IRV effectively repeals prior contradictory provisions of the Charter or Municipal Code.

5. IRV does not violate the requirement that the election commission compare the votes from the tally tapes with the tabulated election results.

Tenn. Code Ann. § 2-8-104 states, “The commission, or such persons as it may designate, shall, as soon as possible after the election, compare the votes from the tally tapes of all appropriate sources to the tabulated election results.” Tenn. Code Ann. § 2-8-104. Tenn. Code Ann. § 2-8-101(a) further provides:

The county election commission shall meet at its office upon completion of its duties under § 2-8-104, but no later than the third Monday after the election to compare the returns on the tally sheets, to certify the results as shown by the returns in writing signed by at least the majority of them, and to perform the duties prescribed by this chapter.

Tenn. Code Ann. § 2-8-101(a).

The contemplated instant runoff voting system does not violate these election laws. According to Election Administrator Phillips, the contemplated plan does indeed involve comparing tally tapes to tabulated results, and it is expected that certification can be met by the applicable deadline.

To the extent, Mr. Goins’s opinion challenges the constitutionality of IRV, it is worth noting that instant runoff voting “has survived a variety of constitutional challenges brought by voters who assert that either IRV either generally, or specific local provisions, burdens their right to vote and their rights of political association.” 6-87 Antieau on Local Government Law, Second Edition § 87.10 (2nd 2017). In Dudum v. Arntz, the plaintiff challenged a three-rank system of restricted instant runoff voting in San Francisco, California. Dudum v. Arntz, 640 F.3d 1098, 1107 (9th Cir. 2011). The court found that “the ballots, each representing three or fewer preferences, are the initial inputs; the sequence of calculations mandated by restricted IRV is used to arrive at a single output—one winning candidate. The series of calculations required by the algorithm to produce the winning candidate are simply steps of a single tabulation, not separate rounds of voting.” Id. While the Ninth Circuit decision is not binding on Tennessee courts, it certainly informs the likely outcome of any similar challenge.

6. IRV is not a “recount” under Tenn. Code Ann. § 2-8-101(b)

Lastly, Mr. Goins contends that Tenn. Code Ann. § 2-8-101(b) prohibits Memphis from conducting Instant Runoff Voting because it does not allow for a recount of any paper ballots. While it is true that Tenn. Code Ann. § 2-8-101(b) states that the election commission “may not recount any paper ballots,” the Instant Runoff Voting plan is not a “recount.” The Tennessee Code clearly contemplates that a “recount” occurs after the initial count, and only when a close margin of victory or other election problem raises uncertainty as to the accuracy of the initial count. Under Tenn. Code Ann. § 2-17-117, for example, a “recount of the ballots” occurs under listed circumstances, including a tie vote, “indication of fraud,”

“malfunction of a voting machine,” or other instance relevant to an election contest. *See* Tenn. Code Ann. § 2-17-117(a).

The IRV procedure spelled out in the Memphis Charter does not occur as a result of any of the listed circumstances. Instead, the failure of a candidate to receive a majority of the votes triggers the IRV procedure. Thereafter, under the IRV procedure, the candidates having the lowest number of votes are eliminated, and the votes are redistributed by using the voter’s second or subsequent choices. The winner is then chosen after the distribution of these votes and when a candidate receives a majority of those votes. Thus, IRV does not involve a recount as envisioned under Tenn. Code Ann. § 2-8-101(b).

CONCLUSION

Based on this analysis, none of the legal objections raised by Coordinator Goins in his September 26, 2017 letter should serve as a basis to impede the implementation of the Instant Runoff Voting plan chosen by the voters.

Respectfully Submitted,

DONATI LAW, PLLC

/s/Donald A Donati

Donald A. Donati
Attorney at Law

/s/Bryce W. Ashby

Bryce W. Ashby
Attorney at Law

Tennessee Secretary of State
Tre Hargett



Elections Division
312 Rosa L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243-1102

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

September 26, 2017

Linda Phillips, Administrator of Elections
Shelby County Election Commission
150 Washington Ave
Shelby County Office Bldg., Suite 205
Memphis, TN 38103-2009

RE: Proposal of Ranked-Choice Voting for the City of Memphis Elections

Dear Linda:

The City of Memphis has a charter provision which states that “the City of Memphis will use instant runoff voting for City elections.” Specifically, Article 2, Section 7 of the Memphis City Charter states the following:

- (1) *Instant runoff voting for City elections.* Consistent with the mandates of Federal and State law, and all applicable court decisions, the City of Memphis will use instant runoff voting for City elections.
- (2) *Instant runoff voting defined.* Instant runoff voting allows voters to rank candidates in order of preference. Any candidate receiving a majority of the first-preferences for that office wins the election. If no such candidate exists, an instant runoff tabulation shall be conducted in rounds, in each round, each ballot shall count as a single vote for whichever non-eliminated candidate is ranked highest. After each round, the candidate with the fewest votes shall be eliminated, with the votes for that candidate redistributed to the remaining non-eliminated candidates based on the order of preferences indicated on each of the affected ballots. If the redistribution of votes results in a candidate receiving a majority of the votes, that candidate is elected. Otherwise, the candidate then having the fewest votes shall be eliminated, and the votes are redistributed as before, with the process of candidate elimination and vote redistribution continuing until one candidate has a majority of the votes counted for any candidate in that round. The Election Commission shall adopt regulations consistent with the procedure above to facilitate implementation of instant runoff voting.

(3) *Effective date.* This section shall go into effect prior to the next municipal election unless the Election Commission certifies that voting machine limitations make its implementation in time for that election unfeasible.

(2008 Referendum No. 5, 8-21-2008, election of 11-4-2008)

Article 2, Section 7(3) stipulates that the ranked-choice voting is not required if the election commission certifies that voting machine limitations make it unfeasible to go into effect prior to the next municipal election. Thus far, the election commission has maintained that the limitations of the voting machines do not permit the City elections to be conducted using ranked-choice voting.

However, recently you have researched various options which are available to accomplish ranked-choice voting. Your research has led you to propose a manner of setting up the ballot on the voting machine and paper ballots which does not require the voter to rank the candidates within the same column, but allows the voters to rank the candidates using separate columns. Based upon my understanding, the sample ballot below shows an example of the proposed ballot layout and instructions.

Mayor Rank your first, second and third choices in the columns below. One to be elected

<p>Make your first choice in this column</p> <p>↓</p> <p>1st Choice</p> <p>1</p> <p>Select one</p> <ul style="list-style-type: none"> <input type="radio"/> THEODORE WIRTH PARK Parks Party <input type="radio"/> MINNEHAHA PARK & FALLS Parks United <input type="radio"/> NORTH MISSISSIPPI PARK Parks Party <input type="radio"/> CHAIN OF LAKES Parks Party <input type="radio"/> DOWNTOWN RIVERFRONT Parks Party 	<p>Make your second choice in this column</p> <p>↓</p> <p>2nd Choice, if any. Must be DIFFERENT from your first choice</p> <p>2</p> <p>Select one</p> <ul style="list-style-type: none"> <input type="radio"/> THEODORE WIRTH PARK Parks Party <input type="radio"/> MINNEHAHA PARK & FALLS Parks United <input type="radio"/> NORTH MISSISSIPPI PARK Parks Party <input type="radio"/> CHAIN OF LAKES Parks Party <input type="radio"/> DOWNTOWN RIVERFRONT Parks Party 	<p>Make your third choice in this column</p> <p>↓</p> <p>3rd Choice, if any. Must be DIFFERENT from your 1st and 2nd choice</p> <p>3</p> <p>Select one</p> <ul style="list-style-type: none"> <input type="radio"/> THEODORE WIRTH PARK Parks Party <input type="radio"/> MINNEHAHA PARK & FALLS Parks United <input type="radio"/> NORTH MISSISSIPPI PARK Parks Party <input type="radio"/> CHAIN OF LAKES Parks Party <input type="radio"/> DOWNTOWN RIVERFRONT Parks Party
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Once you've selected your top 3 choices press vote:

Vote

Under this proposed system, election officials would use the results from the voting machines to sort out candidates based upon the rankings provided by the voter and would involve rounds of eliminating votes and counting votes. This process would be done manually and would be repeated until a candidate has a majority of the votes.

Although it is commendable that you have found a process which supports a ranked-choice voting system, I must advise that, for the reasons set out below, the current laws of Tennessee do not support and allow this system of ranked-choice voting.

Regarding the proposed ballot format, Tenn. Code Ann. §§ 2-5-206 and 2-5-207 describe the ballot format for voting machines and paper ballot and do not include a description of repeating the names of the same candidates in multiple columns. Tenn. Code Ann. § 2-5-208 describes how the ballot names are to be arranged and subsection (b) of this statute states that “immediately following the title of each office shall be printed the words ‘Vote for one (1),’ ‘Vote for two (2),’ *according to the number to be elected*” (emphasis added).

Regarding the process for counting ballots, Tenn. Code Ann. § 2-7-133(b) states that:

If the voter marks *more names than there are persons to be elected to an office*, or if for any reason it is impossible to determine the voter's choice for any office to be filled or on a question, the voter's ballot shall not be counted for such office and shall be marked Uncounted beside the office and be signed by the judges. It shall be counted so far as it is properly marked or so far as it is possible to determine the voter's choice” (emphasis added).

Based on your proposed sample ballot, to accomplish ranked-choice voting, the voter must mark more names than there are persons to be elected to the office.

When examining the use of the electronic voting machines, Promulgated Rule No. 1360-2-13-.07(a) requires voting machines to “reject all votes for any office or measure when the number of votes therefore exceeds the number which the voter is entitled to cast.” This promulgated rule applies to electronic voting machines and prohibits the electronic voting machine from allowing the voter to cast over votes.

Furthermore, Tenn. Code Ann. § 2-3-206(a) states, “notwithstanding any provision of this title to the contrary, in any municipality in which the charter of such municipality provides for a runoff election following a primary election for municipal office, such runoff election may be held not less than thirty (30) days following the primary election.” Based upon the Memphis City Charter, Ordinance No. 1794 was adopted and incorporated into its charter by referendum in November of 1966. Ordinance No. 1794 requires a candidate to receive a majority of the votes cast in order to be elected, and “if no candidate receives such a majority of votes, then a municipal runoff election shall be held *four weeks thereafter...*” (emphasis added). Given this charter provision, Tenn. Code Ann. § 2-3-206(a) requires that the election commission hold a separate runoff election to be held whenever there is not a candidate which receives a majority of the votes.

The fact that the City charter contains Ordinance No. 1794 and Article 2, Section 7 lends itself to still another question which this office does not have the authority to resolve. Namely, although Article 2, Section 7 of the Memphis City Charter is the most recent amendment to the city charter, the language in Ordinance No. 1794 has not necessarily been repealed and may represent a conflict within the city charter.

Returning to the statutory limitations for conducting ranked-choice voting, when considering how the election commission would count the votes for the candidates, a number of issues arise. The process of manually distributing votes and having multiple rounds of re-allocating votes to determine the winner is not authorized by any of the current statutes in

Tennessee law. Rather, the governing statutes compel the election commission to compare the votes from the tally tapes with the tabulated election results and prohibit the election commission from recounting any paper ballots. Tenn. Code Ann. § 2-8-101(b) specifically states, “[t]he commission **may not recount** any paper ballots, including absentee ballots” (emphasis added).

Tenn. Code Ann. § 2-8-101(a) states that:

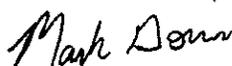
The county election commission shall meet at its office upon completion of its duties under 2-8-104, but no later than the third Monday after the election to compare the returns on the tally sheets, to certify the results **as shown by the returns** in writing signed by at least the majority of them, and **to perform the duties prescribed by this chapter** (emphasis added).

Under the proposed counting system for ranked-choice voting, the returns from the tally tapes will not readily provide the results of the election. To engage in a process of redistributing and allocating votes using a system of ranking candidates by the voter to determine a winner would require guidelines and procedures which have not yet been adopted by the General Assembly. Without having a procedure set out in the statute, there will be questions regarding the uniformity, the reliability and the trustworthiness of the process.

Given the reasons stated above, it is my opinion that ranked-choice voting is not currently permitted in Tennessee.

If you have further questions regarding the duties of the county election commission, please do not hesitate to contact me.

Sincerely,



Mark Goins
Coordinator of Elections