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Sid Hemsley

Municipal Technical Advisory Service

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Hot Topics for Tennessee cities and towns

February 7, 1994 #3

Annexation Always a "Hot Topic" in Tennessee Cities and Towns

by Sid Hemsley
MTAS Senior Law Consultant

This is a compilation of recent annexation events in Tennessee. It includes information sent in by various municipalities — complaints, briefs, cases, etc. — supplemented by material already in the MTAS annexation files. At MTAS, we're trying to keep track of these events as they occur so information will be available for you when you need it. But we can't be everywhere! Please help us out. If you've got some annexation news, let us know.

Annexation Aired for TACIR Subcommittee

The supporters and opponents of annexation squared off before a subcommittee of the Tennessee Advisory Commission on Intergovernmental Relations. There was an August meeting in Memphis and a December meeting in Knoxville, while a similar one may be held in Nashville this spring.

At Knoxville's gathering, Mayor Victor Ashe and other city officials pointed to their city as the region's vibrant and dynamic center of the arts, transportation, and finance, and defended annexation as a tool essential to the region's growth and prosperity. But the opponents of annexation were numerous, and included county executives from several East Tennessee counties.

It's difficult to measure the impact such meetings have on annexation legislation; most legislative minds are probably already made up, influenced by highly publicized annexation battles all over the state. But the meetings demonstrate that the present annexation law faces strong opposition by county (and some city) residents and officials and by some members of the General Assembly.

In the face of strong local opposition to annexation, one Knoxville approach to the problem is worth looking at. By now it should be no secret that if *one* property owner in an annexed area challenges the annexation, and that property owner asks for the jury trial to which he is entitled, the city has an expensive uphill battle on its hands. There's nothing mysterious about Knoxville's approach: It's annexation by kindness. This observer has quietly watched the careful job the city does to convince county residents that annexation will be to their benefit. The job includes

Mayor Ashe's personal involvement, including walking tours of the area proposed to be annexed and one-on-one meetings with its residents. There's no question that the job the city has done pays dividends. An essential key to the city's strategy is that the city makes promises of services and benefits to county residents — *and keeps them.*

It's tempting to say, "That's all there is to it." Of course, even annexation done by kindness is difficult, and it generally permits only "little" annexations. But it recognizes the reality that *one* disgruntled property owner.... For that reason, it's infinitely superior to the battering-ram approach used in some annexations.

1993 Changes In the Annexation Law

The 1993 General Assembly made the following changes to the annexation law, and certain changes to the general law charters that have annexation implications:

Annexing into another time zone. It's unlawful for a municipality, on its own initiative, to annex by ordinance into any county besides the one in which the city hall sits if the two counties are located in different time zones. This law went into effect on Dec. 31, 1992. (Amended *Tennessee Code Annotated*, title 6, chapter 51, part 1)

Annexation — regional airport. If three or more municipalities and counties jointly create and participate in a regional airport commission and if the commission's property is located outside the boundaries of the participating municipalities, no municipality can annex the airport property without prior consent of the participating municipalities and counties. (Amended *Tennessee Code Annotated*, title 6, chapter 51)

Annexation by municipality with private utility. This law requires a utility district and a private utility providing service to an annexing municipality to attempt to reach an agreement in writing for conveyance of the utility district property in the annexed area to the private utility serving the municipality. If an agreement isn't reached, the utility district continues to service the area. (Public Acts 1993, Chapter 375)

Incorporation requirements. Incorporation requirements under two uniform general law charters were made stricter. The population threshold was increased from 500 to 750 persons under the general law mayor-aldermanic charter, and from 500 to 1,500 persons under the general law city manager-commission charter. All three uniform general law charters were amended to require a broad plan of services, including projected revenues and expenditures, before an incorporation referendum can be held; under the general law mayor-aldermanic charter the plan of services must also include a property tax. Municipalities first incorporated after July 1, 1993, that produce no local revenues in any fiscal years won't receive any state-shared revenues during the following fiscal year. (Public Acts 1993, Chapter 260)

Also, the general law mayor-aldermanic charter and the general law manager-commission charter were amended to flatly prohibit the incorporation of any municipality within three miles of an existing municipality, or within five miles of a municipality with a population of more than 100,000. Eliminated was the 15-month abeyance period during which an existing municipality within certain distances of incorporating municipalities had the right to block the incorporation

pending its annexation of a portion of the territory proposed for incorporation. (A reference to the 15-month abeyance was mistakenly left dangling in *Tennessee Code Annotated*, § 6-18-103(c), but is proposed for elimination in the 1994 session of the Tennessee General Assembly.)

Court of Appeals 1992-93

Bluff City/Bristol

City of Bristol v. Town of Bluff City, C/A No. 03A01-9303-CH-00147.

Bluff City challenged Bristol's annexation of Highway 11-E. In a decision that panicked many Tennessee cities, the Sullivan County Chancery Court held the annexation illegal because the territory contained no residents or property owners. However, the Court of Appeals overturned the Chancery Court on the grounds that the annexation ordinance became effective on Oct. 11, 1989, and Bluff City didn't challenge the ordinance until Dec. 10, 1991 — obviously long after the 30 days provided in the annexation statute to challenge annexation ordinances had expired.

Appealed to the Tennessee Supreme Court.

Memphis

State ex re. Cordova Area Residents for the Environment, 862 S.W.2d 525 (Tenn. App. 1992).

A citizens group challenged the annexation of certain territory by Memphis. The Shelby County Chancery Court held the citizens group lacked standing to sue because none of the members of the group owned property within the annexed territory. The Tennessee Court of Appeals, Western Section, upheld the Chancery Court, relying on *Tennessee Code Annotated*, § 6-51-103, which provides that the only property owners who can contest an annexation are those who own property in the annexed area.

Piper v. City of Memphis, 861 S.W.2d 832 (Tenn. App. 1992).

The City of Memphis mailed residents of an area annexed in August 1990 a prorated tax bill for 1990. The Shelby County Chancery Court held the tax illegal. The Tennessee Court of Appeals, Western Section, upheld the Chancery Court, reasoning that under *Mayor & Alderman of Chattanooga v. Raulston*, 117 Tenn. 569, 97 S.W. 456 (1906), "the only property subject to tax by a municipality in a given year is property that is within that municipality's boundaries on tax day of that year." The city's tax date was Jan. 10, 1990.

Alcoa

Committee to Oppose the Annexation of Topside and Louisville Road v. City of Alcoa and the Blount County Election Commission, 18 TAM 10-20 (filed Feb. 18, 1993).

Alcoa annexed by referendum following the rights of way of portions of certain Blount County roads — except for a couple of "bumps." The bumps were residences occupied by employees of the city. Needless to say, the referendum was unanimous in favor of annexation. The plaintiff

committee argued that persons who owned property in the right of way should have been permitted to vote in the referendum.

Not so, said the court. Under *Tennessee Code Annotated*, § 6-51-105(a) "the qualified voters who **reside in the territory proposed for annexation**" are entitled to vote in the referendum [the court's emphasis]. One who "merely owns property within the area sought to be annexed does not 'reside in the territory proposed for annexation and is not entitled to vote in a referendum'."

What qualifies as a "residence?" One's dwelling house must lie within the area proposed for annexation.

Adamsville

Hardin County, et al. v. City of Adamsville, et al., 18 TAM 7-6 (filed Jan. 20, 1993).

Adamsville is located in McNairy County. It annexed four areas, one in Hardin County. Hardin County and a private citizen sued to void the annexation. Before the case was tried, the town of Crump was incorporated. Crump was essentially conterminous (having a common boundary) with the area Adamsville sought to annex in Hardin County.

The plaintiffs' principal assertions were that *Tennessee Code Annotated*, § 6-51-102 (annexation by ordinance) violates the Fifth, 14th and 15th Amendments of the U.S. Constitution; Art. 11, §§ 8 and 9 of the Tennessee Constitution; and 42 U.S.C. 1983, and that Crump's incorporation was proper and had priority over Adamsville's annexation ordinance. Besides Adamsville, the defendants included the Tennessee Attorney General and Secretary of State, the former to defend the constitutionality of *Tennessee Code Annotated*, § 6-51-102. The defendants asserted that Crump's incorporation was void *ab initio* (from the beginning). Motions flew right and left. The plaintiffs lost on their principal assertions in the trial court. The court reserved the issue of whether the annexation was reasonable.

The Court of Appeals held that:

- *Tennessee Code Annotated*, § 6-51-102 doesn't violate the Fifth, 14th and 15th Amendments to the U.S. Constitution and Art 11, §§ 8 and 9 because it failed to give the plaintiffs notice of, and the right to vote on, the proposed annexation. The court reasoned that under federal law annexation is exclusively a state matter (with limited exceptions that weren't applicable in this case), and that under state law there's no equal protection or due process argument when the annexation statute is followed. *Tennessee Code Annotated*, § 6-51-104 (annexation by referendum) requires notice be given to citizens in areas proposed for annexation, but there's no such requirement in *Tennessee Code Annotated*, § 6-51-102 (annexation by ordinance).
- Adamsville's pending annexation ordinance had priority over Crump's incorporation. The court adopted the "first in time rule," which "rewards the entity taking the first legal steps to create or expand a municipality with exclusive jurisdiction over the area sought to be incorporated or annexed." That the area to be annexed was across the county line had no bearing on the case; the legislative preference expressed in *Tennessee Code Annotated*, § 6-51-110(c) applied to two municipalities incorporated in different counties.

Trial Courts

Murfreesboro

An annexation by Murfreesboro was challenged in both U.S. District Court and the Chancery Court for Rutherford County.

The U.S. District Court Lawsuit

The Citizens for the Incorporation of the City of Florence sought a declaratory judgment that *Tennessee Code Annotated*, § 6-1-201(b) violates the First Amendment and the Equal Protection Clause of the 14th Amendment to the U.S. Constitution. (The section formerly held in abeyance for 15 months an incorporation under the general law mayor-aldermanic charter of a city within a certain distance of an existing city of a certain size. The delay permitted the existing city to annex all or a prescribed part of the disputed territory.) The citizens' complaint alleged the statute denied them "the freedom to vote for one's elected officials and chose one's own form of government," and that it "gives a municipality that borders a city seeking incorporation, and thus political autonomy, veto power over citizens of that unincorporated city..."

The basis of their complaint was that after a group of citizens in the proposed city of Florence filed a petition for incorporation, and the Rutherford County Election Commission set a referendum for the November 1992 general election, the cities of Murfreesboro and Smyrna annexed certain portions of the proposed city.

The Tennessee Attorney General filed a motion to dismiss the lawsuit. On the 14th Amendment's Equal Protection claim, his motion essentially tracks the Tennessee Court of Appeals decision in *Hardin County et al. v. City of Adamsville et al.* (discussed above), and cites a number of federal cases saying the right to vote doesn't include the right to vote on the procedure for changing state districts.

The Rutherford County Chancery Court Suit

The plaintiffs in this case challenged the reasonableness of the annexation and alleged that the new city of Florence could provide municipal services cheaper, healthier, and safer than could Murfreesboro.

Murfreesboro's trial brief argued that its annexation into the proposed municipality of Florence was within two miles of Murfreesboro, triggering:

- *Tennessee Code Annotated*, § 6-1-201, which formerly permitted a city of 1,000 to 100,000 population to block for 15 months an incorporation of a city within two miles of its corporate limits, and
- *Tennessee Code Annotated*, § 6-51-110(b), which gives the larger city priority over a smaller city in annexations involving the same territory.

In weighing the reasonableness of the annexation, the court considered three principal factors:

- the necessity or desirability of municipal services in the area to be annexed;

- the present ability of the annexing municipality to provide the municipal services necessary for the annexed area; and
- whether the annexation was intended by the city for the sole purpose of generating revenue for the use of the city, without the ability to provide services for the annexed area.

The court looked at the necessity and desirability of various city services, including police, fire, ambulance, utilities, garbage disposal, education, parks and recreation, street lights, paving, and zoning and other private property regulation. It thought that many of the services were either already available and would at best be marginally enhanced by annexation, or were not necessary even if they were desirable. But it thought the city could provide the above municipal services in the annexed area either immediately or with little delay. The sole motivation for the annexation was not revenue, concluded the court, because initially the annexation would cost the city more than would be returned in revenues.

The court then turned to the big picture: whether the annexation was "reasonable for the overall community." It noted that prior case law suggests courts shouldn't be overly swayed by an annexed area's need for municipal services. The ability of a city to control its development and destiny would be frustrated if annexation had to wait on the adjoining area to require services.

The court appeared to adopt a "totality of circumstances" test to measure reasonableness. Under that test, the annexation was reasonable "by the slightest of margins."

The court refused to consider whether the annexation might be motivated by the desire of Murfreesboro to prevent the incorporation of the city of Florence, as the plaintiffs alleged. At that time, the annexation statute permitted the annexation of the territory proposed for incorporation as Florence, and gave the larger city (Murfreesboro) precedence over the smaller (Smyrna).

Knoxville

State of Tennessee, ex rel., Dwight Kessel v. City of Knoxville, C/A No. 03A01-9307-CH-00242.

Knox County contested Knoxville's annexation of an industrial park, claiming standing on the basis of its ownership of roads within the industrial park. The city alleges that ownership of roadways obtained by dedication does not create ownership of property in the annexed area within the meaning of the annexation statute. Trial court didn't buy the city's argument.

Appealed to Court of Appeals.

State of Tennessee ex rel., Garyson Pontiac v. City of Knoxville, C/A No. 03A01-9305-CH-189.

The aspect of this case that lifts it above the typical annexation challenge is that the plaintiffs also allege an unconstitutional antecedent annexation: the 1981 "strip" annexation of a part of Kingston Pike and adjoining commercial property. The trial court denied them relief.

Appealed to Court of Appeals.

Mt. Juliet

An annexation by the city of Mt. Juliet has been challenged on the grounds of unreasonableness by a development company. Mt. Juliet has filed a motion to dismiss based on the allegation that the plaintiff isn't the legal owner of the property annexed by the city and, therefore, isn't "an aggrieved owner of property or resident" within the meaning of *Tennessee Code Annotated*, § 6-51-103.

Jonesborough and Collegedale

Annexations by the cities of Jonesborough and Collegedale have also been challenged on the grounds of reasonableness. An interesting aspect of a paragraph of the plaintiff's complaint against Collegedale is that the territory annexed was arbitrarily and discriminatorily selected, *...in that the City of Collegedale, in previous annexations, has declined to annex properties which the owners thereof did not wish to have annexed. The result of this policy is that the City of Collegedale completely surrounds several large unincorporated parcels of land which appear as islands upon the City's map.*

Because of that arbitrary and discriminatory treatment, complains the plaintiff, the city is estopped to annex the plaintiff's property over his objections.

Regarding the allegation that previous annexations by Collegedale left unannexed islands within the city, think twice about that kind of thing. In *City of Kingsport et al. v. State ex rel. Crown Enterprises, Inc. et al.*, 562 S.W.2d 808 (1978), Crown Enterprises challenged Kingsport's annexation of 806 acres, which included an 85-acre industrial park wholly within the 806 acres and owned by Crown Enterprises and used by its subsidiary, Mason and Dixon Lines (M&D). The trial court found the annexation unreasonable because:

- the 85-acre site used by M&D was industrial,
- M&D provided virtually all of its own services, and
- the annexation of the M&D property was solely for the purpose of obtaining tax revenue, in violation of *Tennessee Code Annotated*, § 6-310 [now § 6-51-103].

In overturning the trial court, the Tennessee Supreme Court said, "The basic fallacy in the trial judge's conclusion is that he treated the controversy as if the Crown-M&D Property were the only territory being annexed as opposed to being but a small portion of a substantially larger territory being annexed in good faith." The court was "not impressed" with Crown Enterprises and M&D's argument that they didn't need city services, because

The whole process of annexation would be frustrated if the city could only annex those properties then in need of city services. The result of this would tend to create islands of unincorporated areas within a city and the archipelagic monstrosity thus created would thwart the rendition of essential city services and would not be in the public interest.

Appellees do not contest the annexation of the remaining property. Should we uphold their contention the result would be the creation of an 85 acre island or enclave, completely surrounded by the City of Kingsport. The area thus omitted would be within, but not a part of a city. Absent the most compelling considerations, such a situation would be intolerable and an annexation that produced such a result would not meet the test of reasonableness [emphasis is mine].

That language ought to discourage any city from the kind of annexation gerrymandering that leaves holes in the donut.

Other Items of Interest

A city has the power to repeal annexation ordinances that are the subject of pending quo warranto suits challenging the reasonableness of the ordinances, and the repeal renders the suits moot [*State ex rel. Schaltenbrand v. City of Knoxville*, 788 S.W.2d 812 (Tenn. App. 1989)].

Three owners of property annexed by Knoxville brought suit against the city challenging the reasonableness of the annexation. But they had sold their property prior to the trial (one before the next scheduled trial after a jury deadlock produced a mistrial) and were therefore held not qualified as an "aggrieved property owner" within the meaning of *Tennessee Code Annotated*, § 6-51-103 [*State ex rel. McNamee v. Knoxville*, 824 S.W.2d 550 (Tenn. App. 1991)].

Among the materials recently sent to MTAS are excellent briefs from the cities of Alcoa, Bristol, Bluff City, Kingston Springs, and Murfreesboro that cover a wide variety of annexation issues, and a list of cases in which Knoxville is involved and that contain peculiar annexation issues. MTAS probably has all of the reported, and most of the unreported, Tennessee annexation cases. In addition, we have all the materials mentioned in this publication. They are available upon request.

MTAS' *Annexation Handbook* is undergoing an update and should be complete this spring or summer.

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**The University of Tennessee
Municipal Technical Advisory Service**

600 Henley Street, Suite 120
Knoxville, TN 37996-4105
(615) 974-0411
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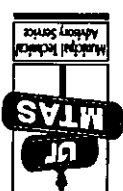
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The University of Tennessee
 Municipal Technical Advisory Service
 600 Henley Street
 Suite 120
 Knoxville, Tennessee 37996-4105



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