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Annexation Handbook for Cities and Towns in Tennessee II

Sid Hemsley
Municipal Technical Advisory Service

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ANNEXATION HANDBOOK FOR CITIES AND TOWNS IN TENNESSEE II

2007

Sidney D. Hemsley, Legal Consultant

MTAS
Municipal Technical Advisory Service
In cooperation with the Tennessee Municipal League

THE UNIVERSITY of TENNESSEE

ANNEXATION HANDBOOK FOR CITIES AND TOWNS IN TENNESSEE II

2007

Sidney D. Hemsley, Legal Consultant

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The Municipal Technical Advisory Service (MTAS) was created in 1949 by the state legislature to enhance the quality of government in Tennessee municipalities. An agency of the University of Tennessee Institute for Public Service, MTAS works in cooperation with the Tennessee Municipal League and affiliated organizations to assist municipal officials.

By sharing information, responding to client requests, and anticipating the ever-changing municipal government environment, MTAS promotes better local government and helps cities develop and sustain effective management and leadership.

MTAS offers assistance in areas such as accounting and finance, administration and personnel, fire, public works, law, ordinance codification, and water and wastewater management. MTAS houses a comprehensive library and publishes scores of documents annually.

MTAS provides one copy of our publications free of charge to each Tennessee municipality, county and department of state and federal government. There is a $50 charge for additional copies of "Annexation Handbook for Cities and Towns in Tennessee II."

Photocopying of this publication in small quantities for educational purposes is encouraged. For permission to copy and distribute large quantities, please contact the MTAS Knoxville office at (865) 974-0411.

ACKNOWLEDGMENTS

It is said that success has many mothers, but failure is an orphan. If this *Annexation Handbook for Cities and Towns in Tennessee II* is a success, it truly does have many mothers. If it is a failure, I am its sole "mother."

It is typical for the last breath of an acknowledgment to pay tribute to its typist. But the typist in this case is Armintha Loveday. To those who know her, nothing more need be said. For those who do not, simple justice demands that her name appear first. She nursed and pampered and cajoled the *Handbook...II* into existence and sharpened its image; without her, it would still be in the birthing stage.

Gene Puett, longtime MTAS attorney and a true lawyer's lawyer, wrote *Annexation Handbook for Cities and Towns in Tennessee* [1989], MTAS's first true annexation handbook. It was so comprehensive that the only reason a new one was needed was that *Public Acts 1998*, Chapter 1101, made significant changes in Tennessee's annexation law. Had that not occurred, it is likely that his handbook would have gone on forever, with only updates to reflect new cases. In fact, much of Chapters 9, 10 and 12 in *Handbook...II* reflect, with little change, material from his original. It may seem presumptuous of me to have appropriated the title of Gene's book and simply tacked on "II" to distinguish the two publications, but that was done in tribute to his work; the "II" means added to, not better than.

While he was employed at MTAS, Jim Finane, in response to Chapter 1101, created an outline of a new annexation handbook. I took over the job from him when he left MTAS and borrowed extensively from his outline. It is difficult to calculate the time his outline saved me. I also borrowed liberally from two MTAS publications: Pat Hardy's *Annexation Guidelines: How to Reduce Negative Impacts* [2002], and Harold Yungmeyer's *Doing an Annexation Study: A How to Guide* [April 1992, Revised October 1997], both of which still contain valuable advice and information on how to successfully accomplish annexations.

Many MTAS consultants reviewed *Handbook...II* and made many valuable, and in some cases, critical, suggestions. Worthy of particular mention in that regard are Mike Tallent, Dennis Huffer, and Ron Darden. In addition, Dan Hawk and his staff in the Tennessee State Planning Office made a significant contribution in that area.

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CHAPTER 1

Introduction to Annexation Handbook II

PURPOSE

The annexation law of Tennessee consists of Article XI, Section 9, of the Tennessee Constitution ("The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered."); *Public Acts 1998*, Chapter 1101, the still current statutory annexation law that existed before 1998; and case law interpreting and applying Tennessee's annexation and incorporation statutes. Chapter 1101 is the product of the angry annexation battles between cities and targets of annexation, between cities and counties, and even between cities and cities, that mark the last 25 or so years. It reflects the greatest change in Tennessee's annexation and incorporation laws in more than 50 years. There have been surprisingly few substantive cases interpreting and applying the annexation law found in Chapter 1101, but many of the pre-1998 annexation cases are still pertinent to present annexations.

This handbook has two primary purposes. **First**, to help municipalities determine whether a contemplated annexation makes sense from a number of related perspectives: present and future city growth and development, political, economic, and legal. **Second**, to blend the "old and the new" annexation law so that its readers will have an accurate picture of annexation law in Tennessee today. Annexation activity is expected to accelerate now that cities have had several years to acclimate themselves to Chapter 1101. If that expectation is realized, new legislation and court cases can be expected to clarify and change the annexation law. This publication will be kept current to reflect those clarifications and changes.

OUTLINE OF ANNEXATION HANDBOOK

This handbook is divided into 13 chapters, each of which addresses a discrete subject in the area of annexation. Following those chapters are a number of appendices that contain a joint MTAS-CTAS publication on how comprehensive growth plans are amended, sample forms useful to successfully meet the procedural requirements in the annexation law for annexing territory by ordinance and referendum, and documents that might be useful in providing an annexing municipality guidance in taking over services inside the annexed area.

CHAPTER 1, INTRODUCTION TO ANNEXATION HANDBOOK, explains the purpose of the handbook, briefly details the sources of annexation law in Tennessee, and provides a quick review of what each chapter in the handbook contains.

CHAPTER 2, CHAPTER 1101, covers the basics of *Public Acts 1998*, Chapter 1101, which is the most recent comprehensive amendment to the annexation laws of Tennessee and other statutes related to annexation, including the laws governing the incorporation of new municipalities.

CHAPTER 3, THE RIGHT ANNEXATION DONE RIGHT, gives a city contemplating an annexation the arguments for and against annexation, and a "checklist" for making sure that it touches all the bases that make the annexation both legally and practically sound before and after its effective date.

CHAPTER 4, TAX AND REVENUE IMPLICATIONS OF ANNEXATION, speaks to the "money" issues in annexation, both in terms of what an annexing municipality loses as well as what it gains.

CHAPTERS 5 AND 6, ANNEXATION BY ORDINANCE and ANNEXATION BY REFERENDUM, respectively, discuss the legal and practical nuts and bolts of annexation, both by ordinance and by referendum. Those nuts and bolts hold the annexation machine together. If any of them fall out of the annexation machine, it may grind to a halt before or after the annexation is complete.

CHAPTER 7, PLAN OF SERVICES, discusses the law that now requires both annexation by ordinance and annexation by referendum to be accompanied by a plan of services. That law is much stricter than was the pre-Chapter 1101 plan of services law.

CHAPTER 8, "POPULATION BRACKETS" CONTAINED IN THE ANNEXATION LAW, is a mind-bending analysis of the statutes in the annexation law that by population (and sometimes other) brackets exempt certain municipalities from, or include certain municipalities within, various provisions of the annexation law. Many of those population brackets probably have limited application after Chapter 1101 was adopted, and others appear to have limited practical application, but they are still a part of the annexation law and any city considering an annexation should determine whether any of those brackets potentially apply to the city.

CHAPTER 9, ANNEXATION ORDINANCE AND PLAN OF SERVICES PUBLIC NOTICE AND HEARING ISSUES, considers both the statutory hearing requirements and the cases that have arisen under those requirements. It is separate from the chapters dealing with the annexation and plan of services because of the common incidence of procedural errors in the annexation and plan of services hearing processes, errors that are generally avoidable by the use of a calendar and common sense by the annexing city.

CHAPTER 10, REASONABLENESS OF ANNEXATION, generally deals first with what appears to be the alternative burdens of proof under Chapter 1101, § 12, only one of which may involve the "reasonableness" of the annexation as the courts generally broadly applied that term before Chapter 1101. It deals, second, with the case law that has interpreted the requirement in the pre-Chapter 1101 annexation law that the annexation be "reasonable." That case law undoubtedly still has application to at least some challenges against an annexation on the ground that it is unreasonable.

CHAPTER 11, "PROBLEM" ANNEXATIONS, as its title implies, discusses categories of annexations that stand out as particularly troublesome in Tennessee. Those categories are corridor annexations, donut annexations and annexation by acquiescence. This chapter also discusses the legal issues associated with annexation challenges based on constitutional grounds rather than on the ground of reasonableness.

CHAPTER 12, EFFECT OF ANNEXATION ON OTHER GOVERNMENTS, outlines the statutes and cases governing the rights of annexing municipalities to provide service in the annexed territory, and the limitations under federal and state law limiting that right, particularly with respect to certain utility services.

CHAPTER 13, "DEANNEXATION" AND OTHER BOUNDARY ADJUSTMENTS, deals with the laws governing how municipalities "deannex" territory and make boundary adjustments by contract. It also discusses municipal mergers.

FOOTNOTES AND CASE AND STATUTORY REFERENCES

Footnotes are used sparingly in this publication, and *infra* and *supra* and other esoteric references to cases and statutes not at all. This publication is designed to put statutory and case citations at the fingertips of the reader without him or her being required to travel forward and backward through it.

CHAPTER 2

Chapter 1101

COUNTYWIDE COMPREHENSIVE GROWTH PLAN

Public Acts 1998, Chapter 1101, codified in T.C.A. § 6-58-101 *et seq*., provides for a comprehensive growth policy plan in each county that is, in theory, supposed to guide and direct new development in the county during the next 20 years. But it is probably accurate to say that in most counties the critical issue in the formation of the comprehensive growth plan was where municipalities could—and could not—annex territory during that period.

In each county a coordinating committee whose members included representatives from the county, cities, utilities, schools, chambers of commerce, soil conservation districts, and other entities formulated the initial draft of the growth plan. The county and the cities in the county proposed boundaries for inclusion in the plan. After the growth plan was developed, the committee conducted public hearings and submitted the plan to the county and city governments for ratification. The committee could revise the plan upon objection from any one of these local governments. If the governmental entities could not agree on a plan, any one of them could petition the secretary of state to appoint a dispute resolution panel of administrative law judges to settle the conflict. Once adopted by the July 1, 2001, deadline, a plan could not be amended for three years except in extraordinary circumstances. All counties but one have adopted a growth plan as required by Chapter 1101.

The countywide growth plan identifies three distinct areas in the county:

- Urban Growth Boundaries (UGB)—areas that contain the corporate limits of a municipality and the adjoining territory where growth is expected;
- Planned Growth Areas—areas outside incorporated municipalities where growth is expected and where new incorporations may occur; and
- Rural Areas—territory not within one of the other two categories that is to be preserved for agriculture, recreation, forest, wildlife, and uses other than high-density commercial or residential development. [T.C.A. § 6-58-101.]

The three-year period during which growth plans could not be amended except in extraordinary circumstances has passed, and growth plan amendment activity has occurred in some counties and will likely occur in others. The amendment of comprehensive growth plans is accomplished in the same way the original comprehensive growth plans were adopted. A detailed explanation of that process is found in *Amending Comprehensive Growth Plans*, 2005 (see Appendix A), a joint CTAS-MTAS publication by David Connor and Dennis Huffer.

ANNEXATION BY ORDINANCE AND REFERENDUM PRESERVED

Section 3 of *Public Acts 1998*, Chapter 1101, expressly recognizes annexation as a legitimate municipal growth tool.

With this act, the General Assembly intends to establish a comprehensive growth policy for this state that:

1. Eliminates annexation or incorporation out of fear;
2. Establishes incentives to annex or incorporate where appropriate.

Section 12 of that act also preserves the same methods of annexation that existed before 1998: ordinance and referendum. It authorizes municipalities to annex by ordinance and referendum territory within their urban growth boundaries established under Section 7, and authorizes municipalities to annex territory by referendum outside their urban growth boundaries. **However, *Public Acts 2005*, Chapter 246, amended T.C.A. § 6-58-111, effective January 1, 2006, to prohibit municipalities from annexing outside their urban growth boundaries by referendum except in planned growth areas and rural areas.**

Pre-Chapter 1101 pronouncements about the purpose of annexation appear generally consistent with Chapter 1101. In *State ex rel Collier v. City of Pigeon Forge*, 599 S.W.2d 456 (Tenn. 1980), the Tennessee Supreme Court said:

> The whole theory of annexation is that it is a device by which a municipal corporation may plan for its orderly growth and development. Heavily involved in this is control of *fringe area developments* [the court's emphasis] and zoning measures to the end that areas of unsafe, unsanitary and substandard housing may not "ring" the City to the detriment of the City as a whole. In a word, annexation gives a city some *control over its own destiny* [the court's emphasis.]...The failure of a city to extend its boundaries to embrace contiguous areas of growth and development is an abdication of responsibility. The time to annex is in the incipient stage of growth, lest the basic purpose of annexation be frustrated and the public interest suffer by the annexation of substandard areas. [At 547.]

The court in *Senff v. Columbia*, 343 S.W.2d 888 (1961) said this earlier about another annexation:

> The City of Columbia like so many other municipalities in the United States for the past twenty years had undergone an extensive growth. The metropolitan community which included Columbia and its industrial and residential environs had approximately doubled in population. As a result, the area within the corporate limits of the city had for residential purposes and incidental business, become saturated, compelling its growing population to seek residential sites outside of corporate limits. The great majority of these people and the breadwinners thereof worked in the City of Columbia and used its facilities. The City of Columbia likewise had to expand its waterworks and other facilities. Thus due to all the things that are imaginable that might be placed upon a city that had doubled in population in this length of time, the city fathers decided that it was best to annex many of these suburban areas. [At 889.]

Annexation is a critical tool for most incorporated municipalities. It is their most effective method of controlling, managing, and directing the growth

of urbanized areas. For various reasons, Tennessee counties and special districts generally have difficulty either managing development or providing most urban services, such as police, fire, parks, utilities and refuse collection to urbanized areas outside of city boundaries. Urban areas that exhibit the worst problems of uncontrolled growth, such as poor roads, traffic congestion, water pollution from septic tanks, strip commercial development, and overcrowded public facilities, are frequently those where the central city has not implemented an effective, long-range, annexation policy.

ANNEXATION EASIER FOR CITIES UNDER CHAPTER 1101?

At first glance, Section 12 of Chapter 1101 also procedurally made annexation easier for cities by:

- Imposing on the person challenging the annexation the burden of proving that the annexation is unreasonable or that the health, safety, and welfare of the citizens and property owners of the municipality and territory will not be materially retarded in the absence of the annexation. Prior to Chapter 1101, the burden was on the city to prove that the annexation was reasonable.
- Shifting from the jury to the judge the duty to resolve the question of whether the annexation meets the above standards.

However, Section 12 appears to have created alternative burdens of proof, so that if the opponent of the annexation carries either one of them, the annexation will be defeated. In that respect, it may have made annexation more difficult. [See Chapter 5, Annexation by Ordinance, Trial and Burden of Proof]

OTHER RESTRICTIONS ON ANNEXATION

Chapter 1101 also imposes some serious restrictions on annexation. Sections 19 and 21 increase plans of service requirements on the part of cities annexing territory. Under Section 24, certain tax revenues generated in annexed territories may go to the county for long periods. Section 13 of that act also restricts the incorporation of new cities to territory designated in the county growth plan as planned growth areas and requires the approval of the county governing body before an incorporation election can be held. It also imposes certain tax consequences and other limitations on such incorporations that in some cases will be a deterrent to new incorporations on the fringes of existing cities. Other provisions of Chapter 1101 are designed to make annexation a more thoughtful process on the part of municipal governments and to foster economic cooperation between cities and counties.

CHAPTER 3

The Right Annexation Done Right[1]

ARGUMENTS FOR AND AGAINST THE ANNEXATION

This chapter summarizes some of the most common arguments both for and against annexation. Not all of these arguments arise in every annexation, but the experience of a number of Tennessee cities forms the basis for them.

ARGUMENTS FOR ANNEXATION

1. Following annexation, the new citizens of the city generally receive a broader range of services or better services—or both—than they did when the territory was part of only the county. Some of these services are police, fire, water, wastewater, transit, emergency medical services, and storm drainage.
2. More efficient service often can be obtained less expensively by spreading the delivery and cost of municipal services over a larger area. This helps citizens of the newly annexed area as much as it helps the citizens of the existing city.
3. When the relationship between the city and the fringe area is close, there is a need for unified planning and zoning. By annexing territory, a city's zoning rules can be extended to adjacent areas in a logical way, helping assure orderly growth and improved quality of life for the entire area.
4. Annexation can protect or enhance a city's tax base, while at the same time guaranteeing that the county will continue to receive important revenues from the area for the next 15 years. The increased property value of the city will increase its bonding capacity.
5. Annexation increases a city's land area and population, enhancing its ability to attract further commercial development and possibly qualify for more state and federal grant assistance.
6. Annexation may facilitate the location of new industries and businesses in the city, creating jobs, income, and city revenues.
7. Annexation may result in lower utility rates by reducing surcharges to noncity residents. It also can reduce home insurance premiums by providing a higher level of fire protection. Having municipal fire departments and water systems almost always results in a lower ISO rating for city residential property compared to the surrounding unincorporated areas.
8. Annexation gives suburban area residents a voice in the government of the larger community in which they probably work, bank, and shop. County residents are often directly affected by action of the central city but have no say in its decisions. Annexation provides opportunities for both direct and indirect participation for new residents.
9. Annexation can help rationalize the city/county boundary and clarify which unit of government provides services to a particular area.

[1]For references to sample forms useful in accomplishing the successful adoption of an annexation ordinance (resolution in the case of annexation by referendum) and a plan of services, see the appropriate chapters on those subjects.

ARGUMENTS AGAINST ANNEXATION

1. Annexation may be thought unnecessary if the annexed area's needs or the city's ability to provide services are limited.
2. Residents, industries and businesses may argue that they choose to live outside the city to avoid taxes for services they do not want or need.
3. The increase, or apparent increase, in taxes after annexation may be perceived as not worth the services to be received.
4. There is a necessary waiting period for improvements to a new neighborhood of the city.
5. The city's police regulations, zoning ordinances, and other regulations may be either too strict or not strict enough.
6. Fringe area residents may distrust the government and the politics of the annexing city.
7. A larger municipal government may be less accessible to people in a lower population county area.
8. Interest in annexation may be limited to a select group, and not have general support.

ANNEXATION STUDY

ESSENTIAL TO DETERMINING WHETHER ANNEXATION MAKES SENSE

Before proceeding with any annexation, a city should carefully examine the long-term costs and revenues that will be generated by the newly annexed area. This is not simply optional information; it is required if the city is to properly design and implement the plan of services as required by law. [See Chapter 7, Plan of Services] The potential net cost of a planned annexation should be a major factor in deciding whether to proceed, modify, postpone, or abandon the action.

This process is commonly referred to as an "annexation study," and it is crucial to the annexation decision process. Following is an outline of how to collect and organize this information. It also covers what to expect in tax revenues from an annexation. The law on that subject was drastically changed by Chapter 1101 and is now considerably less favorable to annexing cities.

COSTS: WATER, SEWER, STORMWATER, AND ELECTRIC UTILITIES

If a newly annexed area is not already served by the city or a utility district, water and sewer utilities are likely to consist of individual wells and septic tank systems. Frequently, one of the major expenses of designing and fulfilling a plan of services for an annexed area involves installing new or updated water and sewer mains and distribution lines, in the latter case to replace septic tanks and fields. Even if the city already provides water and wastewater services to the area, water lines may be inadequate to support adequate fire protection, including fire hydrants. Additional demands on both water and wastewater treatment capacity should also be a factor in evaluating costs.

Federal and state stormwater regulations are becoming more intense and may be an immediate city problem in the annexed area. Storm drainage plans will have to be coordinated with decisions on street standards, construction, or reconstruction.

If the annexed area is served by an electric co-op or another municipality's electric system and the city operates its own municipal electric system, the city electric system can either buy out the other system's facilities in the annexed area or grant it a franchise to continue to operate in the city.

COSTS: STREETS AND STREET LIGHTING

The city's standards for street design and construction could well exceed what may be the norm for the surrounding county. Decisions will need to be made regarding expansion of right of way,

pavement upgrades, and replacement of rural ditch lines and culverts with curb, gutter, storm drains, and sidewalks. Most counties provide no street lighting, so the city will have to make decisions about upgrading street lighting to the city's standards.

COSTS: POLICE AND FIRE

Police and fire costs to serve an annexed area often are the largest general fund expense associated with an annexation. The city will need to examine its police and fire staffing and equipment. The fire department will need to see that its equipment is redeployed to provide a response time to the annexed areas that is comparable to that in the rest of the city. Additional staffing and equipment may be necessary in both police and fire services.

COSTS: RECREATION

If the city provides recreation services, it will need to consider the recreation needs of any newly annexed population. Usually, newly annexed areas do not contain a large existing population, so estimating recreation expenditures will become a matter of planning for future growth. At a minimum, the city should consider the impact that any recreation usage by newly annexed residents will have on existing facilities and programs.

COSTS: CODES ENFORCEMENT; ANIMAL CONTROL

If the city provides utility, building, and property maintenance code enforcement, those costs should be estimated for the newly annexed area. Such services can be more costly than anticipated because they can involve determined and extended enforcement activity for long periods in collective and individual cases. Code enforcement also can be difficult to initiate in the newly annexed areas where the surrounding county had less stringent laws or enforcement practices in these areas.

The same thing is true of animal control. Regulatory fees in these areas often do not equal actual expenditures.

COSTS: SOLID WASTE COLLECTION

If the city provides either residential or commercial solid waste collection and has no monthly solid waste collection fees to pay for that service, any new customers will result in a net cost increase and a corresponding impact on the general fund budget.

PUBLIC INFORMATION CAMPAIGN FOR AN ANNEXATION

Annexation is feared by many county residents just outside the city limits. For that reason, it is important that any city undertaking an annexation do its best to communicate to residents in the annexation area the reasons for the annexation and the facts supporting them. Frequently, misinformation or rumor about the city's plans and the cost of city taxes and future services in the area to be annexed needs to be corrected. Some of the information the city should produce and disseminate, and methods for communicating it, include:

- Schedule neighborhood meetings with residents of the proposed area to be annexed to explain why the city is pursuing this annexation. Be prepared with facts and figures, and expect some difficult questions that may require additional research. Get back to residents when that research is done.
- Fire insurance rates for the residents will decrease when the city extends its fire coverage. Be prepared to estimate how much and when by checking with local insurance agents.
- Point out the difference in cost and service level for residential waste collection. Most county residents must either haul their garbage to a drop-off center or pay a company monthly to pick it up curbside. The city's costs and service level may compare favorably.

- If the new residents are paying "outside" city water and sewer rates, tell them how much they will save when they are city residents.
- Contrast the level of police protection they will receive from the city compared to what they receive from the county sheriff's department. The city will almost always provide a significantly higher level of service, both in numbers of officers and response time.
- Discuss the value of zoning, code enforcement, and animal control, and be specific as to precisely what problems those municipal controls will address.
- If city facilities, such as golf courses, meeting rooms, swimming pools, and parks, give use preferences or price breaks to city residents, point this out.
- Most of all, be aggressive in putting the correct facts about an annexation before the public. Consider producing fact sheets, cost comparisons, or other information to be mailed directly to every resident of the proposed annexation area. Use the local newspaper to get the city's message out, either through explanatory feature articles or even through purchase of advertising space.

COMMON MISTAKES TO AVOID IN ANNEXATIONS

Most failed annexations result from poor planning by the city, annexing for reasons other than legitimate management of future growth, or procedural errors caused by not carefully following the requirements of the law. Here are a few pointers:

- Do not violate the Tennessee Open Meeting Law.
- Make sure that the city publishes public notice of the required hearings well in advance of the date required by law.
- Make sure that the map published with the annexation/plan of services notice is accurate. A mistake in describing the area to be annexed could doom the annexation or significantly delay it.
- Make a good effort to accurately compile and distribute the costs and benefits of an annexation to both your own residents and the residents of the proposed annexation.
- Be realistic and accurate when developing the plan of services. The city should not make promises that the city knows or suspects that it cannot deliver. Remember, if a court finds the city out of compliance with a plan of services, it must fulfill all the commitments it made in the plan of services before it can annex additional territory.
- The plan of services should recognize that the new residents, and the courts, will expect the city to provide services in the new annexation that are comparable to the services provided in the rest of the city. In some cases, unequal treatment of newly annexed residents might provide grounds for a court to void the plan of services.
- Even with an approved UGB, be conservative and methodical when planning annexations. While the city may have the authority to annex a large amount of territory, a person challenging an annexation may be able to show that the annexation is unreasonable or that it does not promote the health, safety, and welfare of the citizens and property.
- The timing of an annexation can make a significant difference in the future revenue to the city from sales and beer taxes in the area. If the annexation can be completed four months before any new taxable businesses begin operation in the area, the city can avoid paying the "annexation date revenue" to the county for the next 15 years. [See Chapter 4, Tax and Revenue Implications of Annexation.]

SUGGESTED SCHEDULE FOR ANNEXATION

ANNEXATION BY ORDINANCE

This schedule is also a checklist and proposed schedule for making sure that the annexation "touches all the bases" related to annexation by

ordinance. It is no substitute for ensuring that the city doing the annexation reads all of the material in the handbook related to the particular base to which the checklist points. For example, with respect to the first two actions below, the law related to the map that must accompany the notice of the hearing on annexation is covered in detail in Chapter 5, Annexation by Ordinance. With respect to the third action, below, the law related to the plan of services that is required for both annexation by ordinance and by referendum is covered in detail in Chapter 7, Plan of Services. Cross references in those chapters also refer the reader to any other chapters, or even particular provisions of chapters, related to those bases. The same is true of any other action in the Suggested Schedule for Annexation by Ordinance.

ENTER SUGGESTED OR REQUIRED DATES	ACTION
_____	Obtain appropriate property and topographic maps.
_____	Tour annexation areas. Determine boundaries of annexation areas. Develop *accurate* maps of the areas.
_____	Draft a plan of services.
_____	Estimate the costs of serving the annexed area based on the plan of services.
_____	Estimate any additional revenues from the annexed area.
_____	Prepare an annexation study and report to the city council. Council reviews report, decides whether to proceed, determines the boundaries of the annexation, and modifies the plan of services as necessary.
_____	City council refers plan of services to planning commission and passes a resolution authorizing placing a newspaper notice of public hearing on both the annexation ordinance and the plan of services. The notice for the plan of services must include three locations where the plan can be examined.
_____	Publish the newspaper notice of public hearings on annexation and the plan of services. Notice for the annexation ordinance must be published at least seven days in advance of the hearing and must include a map that meets the requirements of T.C.A. § 6-51-101(3); notice for the plan of services must be published at least 15 days before the scheduled hearing. (Both notices can be published at the same time.)
_____	Planning commission reports in writing to the city council on the plan of services (within 90 days of receipt of the plan of services, unless city council grants a longer time by resolution).
_____	Hold public hearing on the annexation and the plan of services (may be held together or separately).
_____	Council passes a resolution adopting the plan of services after making any changes.
_____	First reading of the annexation ordinance.
_____	Second and third readings of the annexation ordinance (if required by the city's charter).

_____ Start of the 30-day appeal period.

_____ Notify the county mayor in the county in which the annexed property is located of the annexation. Include a copy of the annexation ordinance and a map of the area annexed.

_____ Notify the emergency communications district of the portion of the plan of services dealing with emergency services, and include a map of the annexed area. The map must contain the information required in T.C.A. § 6-51-119. If the annexation is contested and the city plans to immediately begin providing emergency services in the annexed territory, the city must notify the emergency communications district when the annexation becomes final.

_____ Last day of the 30-day appeal period. If a *quo warranto* suit is filed within the 30-day period, the annexation is suspended and the case is heard by the court according to the annexation law. (The city must also notify the county mayor of the city's appeal of a decision in a *quo warranto* suit and of the outcome of litigation in a *quo warranto* suit contesting a proposed annexation.)

_____ Notify the state Department of Revenue before July 1 of the annexation and its boundaries so that the department can calculate the "annexation date revenue" due the county and reallocate local option sales tax collections accordingly after July 1.

_____ Notify beer wholesalers selling beer in the annexed area of the name of each beer retailer in the annexed area to ensure payment of wholesale beer taxes to the city rather than the county, per T.C.A. § 57-6-106(i).

_____ Notify franchise holders for city services and other users of formerly county roads that such roads are now municipal streets.

_____ Take a census of the annexed area in accordance with the regulations of the State Planning Office and submit the results to that office before June 1.

_____ State Planning Office checks the census figures and certifies the count to the state Department of Revenue for shared taxes purposes.

January 1 Annexed property is placed on the city's tax roll on the January 1 assessment date following the annexation.

July 1 Date of recalculation of total Tennessee municipal population for purposes of allocating taxes shared on a per capita basis.

July 1 The city begins to receive its share of local option sales taxes and wholesale beer taxes generated in the annexed area.

ANNEXATION BY REFERENDUM

This schedule is also a checklist and proposed schedule for making sure that the annexation "touches all the bases" related to annexation by referendum. It is no substitute for ensuring that the city doing the annexation understands all of the material in the handbook related to the particular base to which the checklist points. For example, with respect to the first two actions below, the law related to the map that must accompany the notice of the hearing on annexation is covered in detail in Chapter 6, Annexation by Referendum. With respect to the third action, below, the law related to the plan of services that is required for both annexation by ordinance and by referendum is covered in detail in Chapter 7, Plan of Services. Cross references in those chapters also refer the reader to any other chapters, or even particular provisions of chapters, related to that base. The same is true of any other action herein.

ENTER SUGGESTED OR REQUIRED DATES	ACTION
_____	Obtain appropriate property and topographic maps.
_____	Tour annexation areas. Determine boundaries of annexation areas. Develop *accurate* maps of the areas.
_____	Draft a plan of services.
_____	Estimate the costs of serving the annexed area based on the plan of services.
_____	Estimate any additional revenues from the annexed area.
_____	Prepare an annexation study and report to the city council. Council reviews report, decides whether to proceed, determines the boundaries of the annexation, modifies plan of services as necessary. City has the option of referring the plan of services to the planning commission. The planning commission must "expeditiously" make a study of the annexation and report it to the governing body.
_____	Council passes a resolution authorizing a referendum on the annexation. The resolution must include a map of the areas proposed for annexation that meets the requirements of T.C.A. § 6-51-101(3) and the plan of services. The resolution must be posted in three locations in the city and three locations in the area to be annexed, and it must be published at or about the same time in a newspaper of general circulation, if there is one, within the city.
_____	Within 30 to 60 days of the publication, the county election commission holds an election on the question for qualified voters living within the annexation area. A majority vote carries. OR
_____	Within 30 to 60 days of the publication, the county election commission holds an election on the question for qualified voters living within the annexation area and, at the city's request, an election on the question for existing city residents. A majority vote of each group is required to carry.

_____ After the certification of the referendum by the county election commission, notify the county mayor in the county in which the annexed property is located of the annexation. Include a copy of the annexation ordinance and a map of the area annexed.

[The following notice requirement may apply only to annexations by ordinance. However, it is not a burdensome requirement and from precautionary and practical standpoints, should be given.]

Notify the emergency communications district of the portion of the plan of services dealing with emergency services, and include a map of the annexed area. The map must contain the information required in T.C.A. § 6-51-119. If the annexation is contested and the city plans to immediately begin providing emergency services in the annexed territory, the city must notify the emergency communications district when the annexation becomes final.

_____ After a 30-day waiting period, the annexation is final.

Notify the state Department of Revenue before July 1 of the annexation and its boundaries so that the department can calculate the "annexation date revenue" due the county and reallocate local option sales tax collections accordingly after July 1.

_____ Notify beer wholesalers selling beer in the annexed area of the name of each beer retailer in the annexed area to ensure payment of wholesale beer taxes to the city rather than the county, per T.C.A. § 57-6-106(i).

_____ Take a census of the annexed area in accordance with the regulations of the State Planning Office and submit the results to that office before June 1.

_____ State Planning Office checks the census figures and certifies the count to the state Department of Revenue for shared taxes purposes.

January 1 Annexed property is placed on the city's tax roll on the January 1 assessment date following the annexation.

July 1 Date of recalculation of total Tennessee municipal population for purposes of allocating taxes shared on a per capita basis.

July 1 The city begins to receive its share of local option sales taxes and wholesale beer taxes generated in the annexed area.

OFFICIALS AND AGENCIES TO NOTIFY AFTER EFFECTIVE DATE OF ANNEXATION

1. Obtain a listing (names and addresses) of beer wholesalers from the annexed beer retailers. All wholesalers should be mailed an affidavit describing the area annexed and the effective date of the annexation.
2. Send a list of the businesses (names and addresses) in the newly annexed area subject to the local option sales tax and notification of the effective date of the annexation to:
   Director
   Sales and Use Tax Division
   Tennessee Department of Revenue
   Andrew Jackson State Office Building
   500 Deaderick Street
   Nashville, Tennessee 37242
3. Send a certified copy of the annexation ordinance and map showing streets, water mains, valves, and hydrants in the newly annexed area to the Insurance Services Office:
   Insurance Services Office, Inc.
   Community Mitigation Division
   4 B Eves Drive, Suite 200
   Marlton, New Jersey 08053
   (856) 985-5600, Ext. 430
   This will support the city's expectation that the city's ISO classification will be extended to the annexed properties.
4. Send a certified copy of the annexation ordinance (or resolution and referendum certification) and a map to the Tennessee Department of Transportation:
   Chief of Cartography
   Cartography Section
   Suite 700
   James K. Polk Building
   505 Deaderick Street
   Nashville, Tennessee 37243-0349
5. Send a certified copy of the annexation ordinance (or resolution and referendum certification) to the county tax assessor. This will allow the county to include the annexed properties as part of the city for future assessment and tax rolls. The city should check to ensure that the new corporate boundary lines are properly located on the county tax maps.
6. Send a certified copy of the annexation ordinance (or resolution and referendum certification) and a map to the county election commission. This will help the election commission correct its voter registration lists.
7. Send a certified copy of the annexation ordinance (or resolution and referendum certification) and a map to:
   Supervisor of Income Tax
   Tennessee Department of Revenue
   Andrew Jackson State Office Building
   500 Deaderick Street
   Nashville, Tennessee 37242
   This will ensure that the city receives its share of the Hall income tax paid by annexed residents who did not designate the city as their place of residence on their tax returns.
8. Notify businesses subject to the business tax in the annexed area that they are now within the city and must immediately pay the appropriate business taxes. When the due date for that type of business comes around, the businesses will pay the appropriate tax on sales for the portion of the tax year that they have been inside the city.
9. Ensure that the State Local Planning Office has certified the revised population count for the city, including the annexed area. This certification must be made before July 1 following the annexation for the additional population to be included for state shared tax purposes.
10. Send to the appropriate emergency communications district all the notices required by T.C.A. § 6-51-119. Provide the district with any additional information that will help it change the addresses of the newly annexed residents to reflect their city residences for the purpose of emergency services response.

CHAPTER 4

Tax and Revenue Implications of Annexation

COUNTY ENTITLEMENT TO ANNEXATION DATE REVENUE

ENTITLEMENT LASTS 15 YEARS

When a city annexes territory, the county is "held harmless" for 15 years for the loss of certain tax revenues that the county was receiving from the territory on the date of its annexation:

- Local option sales taxes authorized by T.C.A. § 67-6-702;
- Wholesale beer taxes authorized by T.C.A. § 57-3-103; and
- Income tax on dividends authorized by T.C.A. § 67-2-102 (Hall income tax).

That "annexation date revenue" continues to go to the county for 15 years after the date of the annexation. The annexing municipality retains any increases in these revenues generated in the annexed area. (Note that this does not affect the distribution of the first half of the local option sales tax, which continues to go to education funding.) If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county. T.C.A. § 6-51-115.

CALCULATING "ANNEXATION DATE REVENUES"

Any business annexed into a city that produced either local option sales tax revenue or wholesale beer tax revenue is subject to the hold harmless provision for counties. Generally, the county is guaranteed the amount of taxes received in the 12 most recent months prior to the effective date of the annexation, which is termed the "annexation date revenue." The method of calculation varies, depending on how long the business has been paying these taxes.

- If the business paid taxes for the full 12 months preceding the annexation date, then the hold harmless figure is the 12-month total.
- If the business was operating for at least one month but less than 12 months preceding the annexation date, the county is due 12 times the average monthly revenue for the months the business operated.
- If a business operated for less than one month before, or started operations within three months after the annexation date, the county is due 12 times the average of the first three full months that the business operated.
- With both wholesale beer taxes and local option sales taxes, the county is entitled to this annual amount for 15 years following an annexation. This means that for the first 15 years, the city will receive only the tax receipts from the annexed businesses that exceed the county's hold harmless payment, the "annexation date revenue."

Effective July 1, 2005, when the amount of the local option sales tax cannot be determined from the sales tax returns filed by the businesses in the annexed area, the Tennessee Department of Revenue may determine the amount to be distributed for the term of 15 years based on the best information available, including information from business

tax returns or additional information from the businesses involved.

To facilitate the proper distribution of the local option sales tax, the city is required to notify the state Department of Revenue in advance of the effective date of any annexation. T.C.A. § 6-51-115(a)(2).

The county is responsible for reporting a list of taxpaying businesses in the annexed area to the Department of Revenue. T.C.A. § 6-51-115(d)(1).

The city is responsible for collecting and distributing the wholesale beer tax from businesses in the annexed area, which is collected directly by the city from beer distributors. The city is required to remit the proper amount to the county annually.

Effective July 1, 2005, the introductory paragraph of T.C.A. § 6-51-115(a), provides that:

> Notwithstanding any provision of law to the contrary, except that § 67-6-716 shall control the effective date of local jurisdictional boundary changes for sales and use tax purposes, whenever a municipality extends its boundaries by annexation, the county or counties in which the municipality is located shall continue to receive the revenue from all state and local taxes distributed on the bases of situs of collection, generated within the annexation area, until July 1 following the annexation unless the annexation takes effect on July 1.

T.C.A. § 67-6-716 provides that with respect to sales and use taxes, local jurisdictional boundary changes "shall become effective on the first day of calendar quarter and no sooner than sixty-one (61) days after the commissioner has made a reasonable effort to notify dealers of the new tax change in the rate..." (The failure of the dealer or purchaser to receive notice does not relieve them of any tax obligation.)

JANUARY 1 TAX DATE IMPACT ON ANNEXATION TIMING

The timing of annexation is important. An annexation ordinance becomes operational 30 days after its final passage in the absence of a lawsuit challenging the annexation. An annexation by referendum becomes effective 30 days after certification of the election results.

Two dates should be kept in mind in planning the effective date of an annexation ordinance or referendum, taking into account the 30-day waiting period:

1. January 1 is the assessment date for property to be placed on the tax rolls, and June 30 is the deadline for qualifying for state shared taxes in the ensuing fiscal year.
2. The deadline for certifying a special census is June 30. Time must be allowed for taking, holding, and certifying that census. Failure to meet this deadline will result in the loss of state shared taxes for the added residents for an entire year.

A city can influence the property tax impact on an annexation by scheduling it before or after the assessment date of January 1. Before that date, property taxes for that year will be payable by property owners in the annexed areas; after that date, property owners will not be liable for the property tax until the following year. If a lawsuit against an annexation occurs or is expected, the timing of the effective date of the annexation may be less significant. Such lawsuits are often characterized by many delays, which make that date unpredictable. But in some cases, the city's agreement to a delay in the effective date of the annexation with its corresponding delay in when property taxes become due in the annexed property might be helpful in settling the lawsuit in the city's favor.

With respect to annexation by ordinance, cities apparently have the authority to fix the "operative" or effective date of an annexation in the ordinance. In *Bastnagel v. Memphis*, 457 S.W.2d 532 (1970), on October 28, 1968, the city of Memphis adopted an annexation ordinance on final reading. The ordinance fixed the day the annexation would actually take place as December 31, 1969. On December 15, 1969, the plaintiff filed a suit challenging the reasonableness of the annexation. He argued that the "operative" date of the annexation under T.C.A. § 6-309-310 [now T.C.A. § 6-51-102-103] was December 31, 1969, and that he had 30 days before the operative date to challenge the ordinance. The city argued that the "operative" date of the annexation date under those statutes was 30 days after the final passage of the ordinance on October 28, 1968. The court agreed with the city, holding that the challenge to the annexation had not been made within 30 days following October 28, 1968.

SPECIAL CENSUS AND STATE SHARED TAXES

SPECIAL CENSUS AFTER ANNEXATION

In the event any area is annexed to any municipality, the municipality may have a special census and in any county having a population of not less than 276,000 nor more than 277,000 according to the 1970 or any subsequent federal census, the municipality shall have such special census within the annexed area taken by the Federal Bureau of the Census or in a manner directed by and satisfactory to the Tennessee State Planning Office, in which case the population of such municipality shall be changed and revised so as to include the population of the annexed area as shown by the supplemental census. The population of the municipality as so changed and revised shall be its population for the purpose of computing the municipalities' share of all funds and monies distributed by the state of Tennessee among the municipalities of the state on a population basis. The population of the municipality as so revised shall be used to compute the aggregate population of all municipalities of the state, effective on the first day of the next July following the certification of the supplemental census results to the commissioner of finance and administration. T.C.A. § 6-51-114.

STATE SHARED TAXES

The deadline of June 30 to certify a special census of an annexed area in order to secure state shared taxes during the ensuing fiscal year (July 1 to June 30) has already been mentioned. After an annexation is finally effective, a city should make certain that certification is made on time. If time is short, the census could be taken before the final effective date so that the results will be available for certification immediately thereafter.

Two agencies can certify a special census: the Federal Bureau of the Census and the Local Planning Assistance Office of the Tennessee Department of Economic and Community Development. The former will assume full responsibility for supervising and conducting the census, but the request usually must be submitted well in advance of the desired completion date. Full information and an estimate of costs must be obtained from the Director of the Census, Department of Commerce, Washington, DC 20333. Upon completion, the city should make certain that a copy of the results is sent to the Local Planning Assistance Office of the Tennessee Department of Economic and Community Development.

Under the other method a city must arrange to take the census with its own forces or personnel employed locally in the manner prescribed by the Local Planning Assistance Office. After completion, the staff of that office will spot check the census then certify the results to the state. Instructions and an estimate of costs may be obtained from the Local Planning Assistance Office, Department of Economic and Community Development, 312 Eighth Avenue North, 10th Floor, Nashville, Tennessee 37243.

CHAPTER 5

Annexation by Ordinance[2]

GENERALLY

Within their UGBs cities may annex territory by either of the methods contained in T.C.A. Title 6, Chapter 51: ordinance and referendum. Until January 6, 2006, cities could annex territory outside their UGBs by referendum. T.C.A. §§ 6-51-101–114. But *Public Acts 2005*, Chapter 246, amended T.C.A. § 6-58-111 to give each municipality the exclusive authority to annex territory within its UGB and effective January 6, 2006, prohibited municipalities from annexing territory outside their UGBs except in PGAs and RAs. [See Chapter 6, Annexation by Referendum.]

Public Acts 1998, Chapter 1101, made some changes to annexation law that were applicable only before the adoption of each county's countywide growth plan. The following discussion omits those temporary provisions because growth plans have been adopted by all but one county.

For arguments for and against annexation, common mistakes to avoid in annexations, suggested annexation schedules, etc., see Chapter 3, The Right Annexation Done Right.

NOTICE REQUIREMENTS

PRE-ANNEXATION PUBLIC NOTICE

Notice of the annexation, which describes the property to be annexed, must be given in the case of annexation by ordinance [and by referendum]. T.C.A. § 6-51-101, provides that:

> "Notice" means publication in a newspaper of general circulation in the municipality at least seven (7) days in advance of hearing. The notice, whether by ordinance as stipulated in § 6-51-102(a)(1) and (b) or by referendum as stipulated in § 6-51-104(b), shall be satisfied by inclusion of a map which includes a general delineation of the area or areas to be annexed by use of official road names and/or numbers, names of lakes and waterways, or other identifiable landmarks, as appropriate.

NOTICE TO COUNTY MAYOR OF ANNEXATION

Public Acts 2005, Chapter 411, amended T.C.A. § 6-51-102(a)(1) by providing that during the 30-day period following final passage of the annexation ordinance during which the ordinance is not operative, the municipality must notify the county mayor in whose county the territory being annexed is located of the annexation. The notification must include a copy of the annexation ordinance and a map of the area being annexed.

NOTICE TO EMERGENCY COMMUNICATIONS DISTRICTS

Public Acts 2005, Chapter 411, amends T.C.A. § 6-51-119(a) by requiring that upon the final passage of an annexation ordinance the legislative body of the annexing municipality must provide to any affected emergency communications district a copy of the portion of the plan of services dealing with emergency services and a detailed

[2]For a sample resolution for a public hearing on an annexation by ordinance, see Appendix B. For a sample annexation ordinance, see Appendix C.

map designating the annexed area. The map must identify all public and private streets, including street names and direction indicators, in the annexed area. The map must also include or have appended a list of address ranges for each street in the annexed area. For contested annexation ordinances, in cases in which the municipality plans to begin providing emergency services in the annexed territory immediately, the municipality must notify the emergency communications district when the annexation becomes final.

Both *Public Acts 2005*, Chapter 411, and *Public Acts 2005*, Chapter 24, create a new Section 6-51-119, which provides that compliance or noncompliance with this provision is not admissible against the municipality in any case brought under T.C.A. Title 6 [presumably Chapter 51, which governs annexation and challenges to annexation], Title 29, Chapter 14 [the Declaratory Judgments Act, under which challenges against annexations upon grounds other than the reasonableness of the annexation would be brought], or against the municipality or any affected emergency communications district under T.C.A., Title 29, Chapter 20 [the Tennessee Tort Liability Act].

NOTICE TO COUNTY MAYOR OF LAWSUITS AND FINAL JUDGMENTS

Public Acts 2005, Chapter 411, also amends T.C.A. § 6-51-103 by requiring the municipality to notify the county mayor of:

- The municipality's appeal of a decision in a *quo warranto* suit; and
- The outcome of litigation in a *quo warranto* suit contesting a proposed annexation.

Note that this statute does not require notice to the county mayor of appeals and outcomes of *non-quo warranto* annexation suits.

Similar notice provisions apply to the plan of services. [See Chapter 7, Plan of Services.]

RIGHTS OF CITIZENS IN ANNEXED TERRITORY

Residents of an annexed area must be accorded all the "rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as though such annexed territory had always been a part of the annexing municipality. It is the duty of the governing body to put into effect with respect to the annexed area any charter provisions relating to representation on the governing body." T.C.A. § 6-51-108(a).

In *City of Knoxville v. Graves*, 341 S.W.2d 718 (1960), an annexation ordinance was attacked because it did not contain any provision for implementing this requirement. The court could find nothing in the statute to warrant a construction "that the ordinance must contain, as a condition precedent to its validity, a provision setting up such rights," and concluded that "it is enough if the rights of the citizens of that area are provided for by ordinance, as may be done, when the annexation becomes effective. Certainly we cannot declare the ordinance void on the assumption that the City Council will not do their duty. The presumption is that they will do it." [At 720.] The court reiterated its view on this point in *Hardison v. City of Columbia*, 360 S.W.2d 39 (1962), and *Maury County Farmers Co-op Corp. v. City of Columbia*, 362 S.W.2d 219 (1962). In *Cope v. Mayor of Morristown*, 404 S.W.2d 798 (1966), the court refused to invalidate an annexation ordinance based on the ground that the city's governing body would be powerless to change wards established by private act of the General Assembly for election of its members.

ANNEXATION BY ORDINANCE WITHIN THE UGB

GENERALLY

Cities in Tennessee may, upon their own initiative or when petitioned by a majority of the residents and property owners in an area, annex territory

by ordinance within their UGBs. Passage of an annexation ordinance must be preceded by a seven-day advance notice of a public hearing. The actual schedule for final passage will depend on the requirements for preparation and consideration of a plan of services for the annexed territory that are outlined in Chapter 7, Plan of Services. The ordinance does not take effect until 30 days after its final passage. T.C.A. § 6-51-102.

ANNEXATION BY A CITY IN MORE THAN ONE COUNTY T.C.A. § 6-58-108(E)

A city may annex by ordinance upon its own initiative only territory within the county in which the city hall is located. There are three main exceptions:

- A municipality located in two or more counties as of November 25, 1997, may annex in all such counties unless the percentage of the city population residing in the county or counties other than the one in which the city hall is located is less than 7 percent of the total population of the municipality; or
- A municipality may annex in the second county if the legislative body of the county in which the territory proposed for annexation is located approves the annexation by resolution; or
- The city may annex in any county in which, on January 1, 1998, it provided sanitary sewer service to 100 or more residential and/or commercial customers.

These restrictions do not apply to annexation by referendum. Any annexation must also conform to the provisions of the growth plans in both counties.

ANNEXATION OF "SUBSTANTIAL" INDUSTRIAL PROPERTY

T.C.A. § 6-51-103(f), provides that:

> Should the territory hereafter sought to be annexed be the site of substantial industrial plant development, a fact to be ascertained by the court, the municipality shall have the burden of proving that the annexation of the site...is not unreasonable in consideration of the factors above mentioned, including the necessity for or use of municipal services by the industrial plant or plants, and the present ability and intent of the municipality to benefit the industrial plant development by rendering municipal services thereto when and as needed. The policy and purpose of this provision is to prevent the annexation of industrial plants for the sole purpose of increasing municipal revenue, without the ability and intent to benefit the areas annexed by rendering municipal services, when and as needed, and when such services are not used or required by the industrial plants.

City of Kingsport v. State ex rel. Crown Enterprises, Inc., 562 S.W.2d 808 (Tenn. 1978), declared that T.C.A. § 6-51-103(e) applied only when an industrial site was being annexed by a city; it did not apply to an 85-acre industrial site that was part of the annexation of 806 acres.

TRIAL AND BURDEN OF PROOF

CHALLENGES BASED ON "REASONABLENESS" OF THE ANNEXATION ORDINANCE

The following rules govern *quo warranto* challenges to the reasonableness of annexations by ordinance within the UGB, under T.C.A. § 6-51-103:

- Jury trial generally: Chancellor or circuit court judge without a jury tries cases.
- Burden of proof generally: Burden is on the plaintiff to prove:
  - That the annexation is "...unreasonable for the overall well-being of the communities involved," or
  - That "the health, safety, and welfare of the citizens and property owners of the municipality and [the annexed] territory will not be materially retarded in the absence of such annexation." T.C.A. § 6-58-111.

Presumably, T.C.A. § 6-58-111, by implication, repeals the provisions of T.C.A. §§ 6-51-103(a)(1)(A), 6-51-103(c) and 6-51-103(e), which put the burden of proving an annexation ordinance reasonable on the city.

The question is whether the burdens of proof contained in T.C.A. § 6-58-111 are alternative ones has been addressed in *State ex rel. Tipton v. City of Knoxville*, No. E2004-10359-COA-R3-CV (Tenn. Ct. App. filed January 17, 2006). There the city attempted to annex a single piece of commercial property that was already surrounded by the city (a hole in the donut). The annexation would have taken in the hole. The trial court conceded that "there was no evidence presented by the plaintiffs to establish the annexation ordinance is unreasonable for the overall well-being of the communities involved," and that, "In fact, given the circumstances the court is of the opinion that proving such would be an almost impossible burden." [At 4.] But the trial court accepted the plaintiff's argument that T.C.A. § 6-58-111 contained separate and alternative burdens of proof and that the plaintiffs must satisfy only one of those burdens.

With respect to the second burden—that "the health, safety, and welfare of the citizens and property owners of the municipality and [the annexed] territory will not be materially retarded in the absence of such annexation"—the trial court declared:

> The proof showed that this property has been surrounded by the City for over a decade. The proof showed that most, if not all, of the services that the City of Knoxville could provide are already being provided either through Knoxville Utilities Board, Rural-Metro Fire department, Knox County, or private services contracted by plaintiff. The City put on proof to establish that in some instances the services offered by the City might be better than those offered by the County or those which could be contracted by the plaintiffs. Additionally, the City did establish that in the case of dispatching fire or police protection to the property at issue or surrounding properties, it might be more convenient if this particular parcel were a part of the city. [At 3.]

The trial court concluded that the plaintiffs had proved that the health, safety and welfare of the citizens and property owners of the municipality and "territory" would not be materially retarded if the property were not annexed.

The Tennessee Court of Appeals overturned the trial court and upheld the city's annexation of the territory in question, concluding that the plaintiff had not carried the burden of proof that the "health, safety, and welfare of the citizens and property owners of the municipality and territory will not be materially retarded in the absence of such annexation." It reasoned that:

1. The "or" in the alternative burden of proof set forth in T.C.A. § 6-58-111 was not ambiguous, that it was intended by the General Assembly to actually reflect alternative burdens of proof, and that a person contesting an annexation could win the contest by carrying only one of the alternative burdens of proof.
2. Whether annexation is materially beneficial to the affected territory depends not only upon what services the municipality will provide after annexation but also upon the services the municipality already provides to the affected territory. *The fact that an affected territory already receives municipal services demonstrates that the affected territory benefits from those services and that the welfare of the property owners in the affected territory is enhanced by those services.* [Emphasis is mine.] *Bowevil Express, LLC v. City of Henderson*, No. W1999-02137-COA-R3-CV, 2001 WL 204211, at 5 (Tenn. Ct. App. 2001; see also *Cox v. City of Jackson*,

No. 01A01-9701-CH-00001, 1997 WL 777078, at 6 (Tenn. Ct. App. 1997)). [At 7.]

3. The territory will receive improved services after the annexation.
4. "After annexation, the city would be able to guarantee harmonious land uses throughout the area surrounding the Territory. In addition, the city will be able to better respond to emergencies in that area. Based on these facts, the preponderance of the evidence establishes that the City would materially benefit from the annexation.

In summary, said the court:

> ...the preponderance of the evidence shows that (1) the *Territory* currently, materially benefits from services provided by the City, (2) the *Territory* would materially benefit from the additional post-annexation services which the City would provide, and (3) the *City* will materially benefit from the annexation. *If the Territory and the City will materially benefit from the annexation, then it follows that the failure to annex the Territory would materially retard the health, safety, and welfare of the citizens and property owners of the City and Territory*. See *State ex rel. Wood v. City of Memphis*, 510 S.W.2d 889, 893 (Tenn. 1974); *Mulrooney v. Town of Collierville*, No. W1999-04474-COA-Re-CV, 2000 WL 34411151, at 3 (Tenn. Ct. App. 2000...) [At 9-10.]

The facts in *State v. Tipton* are peculiar, involving a large Tennessee city entirely surrounding a small piece of property on a busy highway running through it. But a positive side of this case is that it stands for the general proposition that where a municipality already provides a wide range of services to territory proposed for annexation, the plaintiff will not be able to successfully argue that the health, safety and welfare of the territory will not be retarded if it is not annexed because it does not need municipal services. It also points to the proposition that annexations that clearly materially benefit both the city and the territory proposed for annexation would strengthen a city's hand in an annexation contest.

Public Acts 2005, Chapter 278, gave the Tennessee Advisory Commission on Intergovernmental Relations the duty to conduct a study of, among other things: "(1) *quo warranto* judicial proceedings to challenge annexation. The commission shall specifically examine issues related to the burden of proof and shall also report on the impact of changes to the process made by 1998 Public Chapter 1101, by February 1, 2006."

CHALLENGES TO THE ORDINANCE BASED ON CONSTITUTIONAL AND OTHER GROUNDS

Under *State ex rel. Earhart v. City of Bristol*, 970 S.W.2d 948 (Tenn. 1998), it appears that suits challenging the constitutionality or validity (not reasonableness) of annexation ordinances can be brought under the Declaratory Judgment Act found in T.C.A. §§ 29-14-101 *et seq*. Chapter 11, "Problem" Annexations, points out that it is not clear whether *Earhart* is limited only to cases involving annexations that do not take in people, private property or commercial activity. But in all events, under the Declaratory Judgment Act, "When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions..." T.C.A. § 29-14-108. That provision obviously includes jury trials on issues of fact in annexation cases involving challenges on grounds other than the reasonableness of an annexation under T.C.A. §§ 6-58-111 and 6-51-103. Rule 57 of the *Tennessee Rules of Civil Procedure*, also provides that:

> The procedure for obtaining a declaratory judgment pursuant to Tenn. Code Ann. § 29-14-101 *et seq*. shall be in accordance with this rule, and the right to a trial by jury may

be demanded under the circumstances and in the manner provided in Rules 38 and 39 [which govern the right and demand for a jury trial by either party].

However, it is said in *Goodwin v. Metropolitan Board of Health*, 656 S.W.2d 383 (Tenn. Ct. App. 1983), that "Ideally and ordinarily a declaratory judgment suit does not invoke disputed issues of fact. Although the court has the authority to settle disputed issues of fact in Declaratory Judgment matters, such settlement is ordinarily left to other forums." *Hinchman v. City Water Company*, (1943) 179 Tenn. 545, 167 S.W.2d 986." At 387.

Earhart did not involve a question of fact. There the court declared that even though the trial courts have great discretion in issuing declaratory judgments, it erred in not issuing one in this case, reasoning that:

> *This question does not concern disputed facts* or the delay of another cause of action... In the case before the court, a declaratory judgment would "terminate" the controversy. Where there is presented a significant issue that needs resolving, as in this case, refusing to issue a declaratory judgment cannot be excused on the basis of discretion. *This case involves an important issue of law* which affects the growth of cities throughout this state and which needs to be resolved... [At 955.] [Emphasis is mine.]

But suppose *Earhart* had involved a question of fact on whether the annexation in question actually had taken in people, private property, or commercial activity? It might also be possible for other questions of fact to arise in annexation cases brought under the Declaratory Judgment Act on grounds other than the reasonableness of the annexation ordinance. In either case, one of the parties might demand that the question or questions be resolved by a jury.

WHO MAY CHALLENGE ANNEXATIONS BY ORDINANCE?

"AGGRIEVED OWNERS OF PROPERTY"

Under T.C.A. § 6-51-103(a)(1)(A) any "aggrieved owners of property" that *borders on* or lies within the territory annexed have 30 days to challenge an annexation.

Notwithstanding the statutory language that gives abutting landowners the right to challenge an annexation, *State ex. rel. Cordova Areas Residents for the Environment v. City of Memphis*, 862 S.W.2d 525 (Tenn. App.1992), held that part of the statute unconstitutional. For that reason, only the owners of property that lies within the territory proposed for annexation have standing to challenge the annexation.

An aggrieved owner of property challenging an annexation loses his cause of action upon his transfer of ownership of the property. *McNamee v. City of Knoxville*, 824 S.W.2d 550 (Tenn. Ct. App. 1991).

A county that owned a mere easement in county roads in the territory sought to be annexed was not an "aggrieved owner of property" within the meaning of T.C.A. § 6-51-103(a)(2)(A), held *State ex rel. Kessel v. Ashe*, 888 S.W.2d 430 (Tenn. 1994). In that case, the county admitted that it did not own the fee to its roads. The court distinguished *Spoone v. Mayor of Morristown*, 431 S.W.2d 827 (1968), in which the court had earlier held that a county that owned the roads and a school in the area proposed for annexation was an aggrieved owner of property. The county's interest in the roads in that case was not clear, and the question was whether a legal person as well as a natural person could qualify as an "owner" of property under T.C.A. § 6-51-103(a)(2)(A).

TIME FOR CHALLENGING ANNEXATIONS BY ORDINANCE

QUO WARRANTO CHALLENGES

An annexation ordinance becomes effective 30 days after its final passage. T.C.A. § 67-51-102(a)(1). An "aggrieved owner of property" lying within the annexed territory can, *prior to the operative date of the annexation*, file a *quo warranto* suit to contest the reasonableness of the annexation in accordance with T.C.A. Title 51, Chapter 51, Part 1, T.C.A. § 6-51-301 and T.C.A., Title 29, Chapter 35. T.C.A. § 6-51-103.

After 30 days have passed, a *quo warranto* suit against the annexation is not subject to judicial review and cannot be filed. *Bastnagel v. Memphis*, 457 S.W.2d 532 (1970); *City of Oak Ridge v. Roane County*, 563 S.W.2d 895 (Tenn. 1978). In the unreported case of *Coleman v. City of Memphis*, 2001 WL 1381277 (Tenn. Ct. App.), the court also held that a *quo warranto* suit filed by the plaintiff was not filed within 30 days when on August 1, 1995, the city council passed the annexation ordinance on third and final reading; on August 15, 1995, a motion to reconsider the ordinance passed; on August 29, 1995, the plaintiffs filed a *quo warranto* suit to which they attached the annexation ordinance adopted by the city on August 1, 1995. The ordinance underwent significant changes between August 15 and the date of its final passage on September 19, 1995. "For this reason," concluded the court, "it is apparent that when Plaintiffs filed their suit on August 29, 1995, they were not 'aggrieved property owners' as the ordinance was still being debated and amended throughout the city's legislative process." [At 5.]

The right to commence a new action within one year from the date of a voluntary nonsuit under T.C.A. § 28-1-105 does not apply to *quo warranto* suits against annexation ordinances. *Brent v. Town of Greeneville*, 309 S.W.2d 121 (1958).

CHALLENGES ON OTHER GROUNDS

Constitutional and apparently other challenges based on grounds other than the reasonableness of the annexation ordinance are not subject to the 30-day limit contained in T.C.A. § 6-51-1102(a)(1). *State ex rel. Earhart v. City of Bristol*, 970 S.W.2d 948 (Tenn. 1998). For an analysis of Earhart and other cases that have interpreted that case, see Chapter 11, "Problem" Annexations.

LAWSUIT VENUE

A suit contesting an annexation of territory in a county other than the one in which the municipality's city hall is located shall be filed in the county where the city hall is located. The chancellor must then change the venue to a county adjacent to either the county where the city hall is located or the county where the proposed annexed territory is located. T.C.A. § 6 51 103(g).

MAXIMUM ANNEXATION WITHIN 24 MONTHS

Cities having a population of more than 10,000 according to the 1970 or any later federal census cannot by means of annexation by ordinance upon its own initiative increase its land area more than 25 percent during any 24-month period. T.C.A. § 6-51-102(a)(3)(A). There are two "population bracket" exceptions:

- Cities with a population of less than 12,000 according to the 1980 or later federal census where the city has a private act rather than a general law charter; and
- Cities in any county having a population (according to the 1980 or later federal census) of:
  - Not less than 34,100 nor more than 24, 200;
  - Not less than 37,000 nor more than 37,100; or
  - Not less than 49,400 nor more than 49,500.

For an analysis of the validity of these and other population bracket provisions of the annexation law, see Chapter 8, "Population Brackets" Contained in the Annexation Law.

ABANDONMENT AND REPEAL OF ANNEXATION PROCEEDINGS

T.C.A. § 6-51-106 provides that "Any annexation proceedings initiated under § 6-51-102 or § 6-51-104 may be abandoned and discontinued at any time *by resolution* of the governing body of the municipality." This statute applies only where the annexation has been "initiated" but not finally passed. However, an annexation ordinance finally passed can be repealed even after it has been challenged, *provided the repeal has been done by ordinance* (not by motion or resolution). The repeal of an annexation ordinance renders the ordinance moot. *Lee v. City of Chattanooga*, 500 S.W.2d 917 (Tenn. Ct. App. 1973), cert. denied, 419 U.S. 869 (1974); *City of Bluff City v. Morrell*, 764 S.W.2d 200 (Tenn. 1988); *Schaltenbrand v. City of Knoxville*, 788 S.W.2d 812 (Tenn. Ct. App. 1989).

LIMITATION ON FUTURE ANNEXATION IF ANNEXATION ORDINANCE HELD UNREASONABLE

If the court finds that the annexation ordinance is unreasonable or has been done by the exercise of powers not conferred by law it "shall" issue an order vacating the ordinance, and the city shall be prohibited from annexing any part of the territory proposed for annexation by the vacated ordinance for a period of at least 24 months following the date of the order. If the court finds the ordinance reasonable, it is operative 31 days after the judgment unless an appeal has been taken. A similar rule applies to judgments on the appeal of the annexation ordinance, except that if the ordinance is upheld it is operative "forthwith by court order." T.C.A. § 6-51-103(c). In the unreported case of *Cathey v. City of Dickson*, 2002 WL 970429 (Tenn. Ct. App.), it was held that the 24-month ban does not apply to annexation ordinances that have been repealed; the repeal does not reflect an admission by the city that the ordinance was unreasonable.

PLAN OF SERVICES

A city annexing territory by ordinance or, after January 1, 2006, by referendum, must adopt a plan of services that outlines the services to be provided in the territory proposed for annexation and the timing of those services. [See Chapter 7, Plan of Services.]

CHAPTER 6

Annexation by Referendum[3]

ANNEXATION BY REFERENDUM BY CITY WITHIN ITS UGB

GENERALLY

Cities also are entitled to annex by referendum under T.C.A. §§ 6-51-104 and 105. The referendum process begins when a petition of interested persons is presented to the city council, or when the council on its own initiative decides to proceed without a petition. A resolution is prepared and adopted by the city governing body that defines the area to be annexed and calls for a referendum.

The adopted resolution then must be posted in at least three public places in the proposed annexed area and in three places in the existing city, and it must "at about the same time" be published in the local newspaper of general circulation (if there is one) in both the territory proposed for annexation and in the city.

Between 30 and 60 days after the resolution's posting and publication, a referendum of the voters who live in the area proposed for annexation is held by the county election commission. At its own option, the city may also have the referendum include all voters within the existing city.

The city is not required to initiate any annexation by referendum. The city may, at any time, proceed with an annexation by ordinance of any area that the city has been petitioned to annex by referendum, assuming all the requirements of annexation law and the growth policy law are met.

If the annexation receives a majority vote of the residents of the proposed area or, if submitted to the city's voters a majority of those votes as well, the annexation is approved and takes effect 30 days after the election commission certifies the results.

However, if there are no residents in the territory, annexation must be made by ordinance.

NOTICE REQUIREMENTS

PUBLIC NOTICE BEFORE ANNEXATION

Notice of the annexation, which describes the property to be annexed, must be given in the case of annexation by ordinance and by referendum. T.C.A. § 6-51-101, provides that:

> "Notice" means publication in a newspaper of general circulation in the municipality at least seven (7) days in advance of hearing. The notice, whether by ordinance as stipulated in § 6-51-102(a)(1) and (b) or by referendum as stipulated in § 6-51-104(b), shall be satisfied by inclusion of a map which includes a general delineation of the area or areas to be annexed by use of official road names and/or numbers, names of lakes and waterways, or other identifiable landmarks, as appropriate.

T.C.A. § 6-51-104 also provides that the resolution [calling for an annexation referendum] that describes the territory proposed to be annexed shall be published in:

- Three public places in the territory proposed for annexation;

[3]For a sample resolution for a call for a referendum on annexation, see Appendix D.

- Three public places in the city proposing the annexation; and
- A newspaper of general circulation (if there is one) in the territory proposed for annexation and in the city proposing the annexation.

The same statute provides that the notice must include a plan of services, which "shall address the same services and timing of services as required in T.C.A. § 6-51-101" [which contains the requirements for the content of the plan of services in annexations by ordinance]. [See Chapter 7, Plan of Services.]

NOTICE TO COUNTY MAYOR OF ANNEXATION RESOLUTION

Public Acts 2005, Chapter 411, requires that the resolution calling for an annexation referendum [which includes the plan of services] be forwarded to the county mayor in whose county the territory being annexed is located.

NOTICE TO COUNTY MAYOR OF ANNEXATION CERTIFICATION

Public Acts 2005, Chapter 411, amends T.C.A. § 6-51-105(d) [annexation by referendum] by requiring the municipality, upon receiving the certification from the election commission, to forward a copy of the certification to the county mayor in whose county the territory being annexed is located.

NOTICE TO EMERGENCY COMMUNICATIONS DISTRICTS

Public Acts 2005, Chapter 411, amends T.C.A. § 6-51-119(a) by requiring that the legislative body of the annexing municipality, upon the final passage of an annexation *ordinance*, provide to any affected emergency communications district a copy of the portion of the plan of services dealing with emergency services and a detailed map designating the annexed area, which must contain certain information. In the case of contested annexation ordinances where the city plans to begin providing emergency services in the annexed territory immediately, the municipality must notify the emergency communications district when the annexation becomes final. [See the Notice Provisions contained in Chapter 5, Annexation by Ordinance.]

Arguably, this notice provision does not apply to annexation by referendum. However, it would be a legally and practically wise policy for any municipality annexing territory by referendum to comply with this notice provision.

EFFECT OF FAILURE TO NOTIFY EMERGENCY COMMUNICATIONS DISTRICTS

Both *Public Acts 2005*, Chapter 411, and *Public Acts 2005*, Chapter 24, create a new Section 6-51-119, which provides that compliance or noncompliance with this provision is not admissible against the municipality in any case brought under T.C.A., Title 6 [presumably Chapter 51, which governs annexation and challenges to annexation], Title 29, Chapter 14 [the Declaratory Judgments Act, under which challenges against annexations upon grounds other than the reasonableness of the annexation would be brought], or against the municipality or any affected emergency communications district under T.C.A., Title 29, Chapter 20 [the Tennessee Tort Liability Act].

PLAN OF SERVICE REQUIRED

Public Acts 2005, Chapter 411, amended T.C.A. § 6-51-102(b)(1), to require that the governing body adopt a plan of services for the territory to be annexed by referendum. It is not clear whether that act requires the plan of services to meet all the conditions that apply to plans of services in territory annexed by ordinance. This question is analyzed in Chapter 7, Plan of Services.

Public Acts 2005, Chapter 411, requires the annexation resolution [which must include the plan of services] to be sent to the county mayor before the annexation. [See Chapter 7, Plan of Services.]

CHALLENGING ANNEXATIONS BY REFERENDUM

Tennessee's annexation law makes no provision for court review of an annexation accomplished by referendum. It is said in *Vicars v. Kingsport*, 659 S.W.2d 367 (Tenn. Ct. App. 1983), that *absent some claim of constitutional infirmities in the annexation*, it is not subject to judicial review and that no equal protection or due process argument can be made when the statute is properly followed. The court also said that adjusting the boundaries of the territory proposed for annexation to help the annexation receive a favorable vote in the referendum was not a constitutional infirmity. [Also see *State ex rel. Smith v. Town of Church Hill*, 828 S.W.2d 385 (Tenn. Ct. App. 1991).] Those cases make annexation by referendum a good alternative to annexation by ordinance whenever possible.

However, the *Tennessee Supreme Court in Committee To Oppose Annexation v. City of Alcoa*, 881 S.W.2d 269 (Tenn. 1994), limited the extent to which a city could adjust the boundaries of the territory to help ensure a favorable vote in the referendum. Under T.C.A. § 6-51-104(a) the "qualified voters who reside in the territory proposed for annexation" are entitled to vote in the referendum. The court held that "residency" within the meaning of that statute was not restricted to those whose dwelling houses were located on the property proposed for annexation but to those whose curtilage extended into that property. The difference was an undetermined, but undoubtedly significant, number of voters qualified to vote in the referendum.

ANNEXATION BY REFERENDUM OUTSIDE THE CITY'S UGB

GENERALLY PROHIBITED

Before January 1, 2006, a city could annex territory outside its UGB in either of two ways:

1. By obtaining approval of an amendment to its UGB in the same way that the original growth plan was established; or
2. By referendum under T.C.A. §§ 6-51-104 and 105. T.C.A. section 6-51-111(d).

Public Acts 2005, Chapter 246, amended T.C.A. § 6-58-111, by giving each municipality the exclusive authority to annex territory within its UGB and prohibited municipalities from annexing territory outside their UGBs by referendum except in PGAs and RAs. *That act became effective January 1, 2006*.

RIGHTS OF CITIZENS IN ANNEXED TERRITORY

Residents of an annexed area must be accorded all the "rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as though such annexed territory had always been a part of the annexing municipality. It is the duty of the governing body to put into effect with respect to the annexed area any charter provisions relating to representation on the governing body." T.C.A. § 6-51-108(a).

In *City of Knoxville v. Graves*, 341 S.W.2d 718 (1960), an annexation ordinance was attacked because it did not contain any provision for implementing this requirement. The court could find nothing in the statute to warrant a construction "that the ordinance must contain, as a condition precedent to its validity, a provision setting up such rights" and concluded that "it is enough if the rights of the citizens of that area are provided for by ordinance, as may be done, when the annexation becomes effective. Certainly we cannot declare the ordinance void on the assumption that the City Council will not do their duty. The presumption is that they will do it." [At 720.] The court reiterated its view on

this point in *Hardison v. City of Columbia*, 360 S.W.2d 39 (1962), and *Maury County Farmers Co-op Corp. v. City of Columbia*, 362 S.W.2d 219 (1962). In *Cope v. Mayor of Morristown*, 404 S.W.2d 798 (1966), the court refused to invalidate an annexation ordinance based on the ground that the city's governing body would be powerless to change wards established by private act of the General Assembly for election of its members.

CHAPTER 7

Plan of Services (T.C.A. § 6-51-102; T.C.A. § 6-51-108)[4]

ANNEXATION BY ORDINANCE

PLAN OF SERVICE REQUIRED

Under Chapter 1101, a city annexing territory by ordinance is required to adopt a plan of services that outlines the services to be provided to the annexed area and the timing of those services. (*Public Acts 2005*, Chapter 411, amended T.C.A. § 6-51-104(b) to require that a plan of services be adopted for annexations by referendum.) [See Chapter 6, Annexation by Referendum.]

EFFECTIVE DATE OF PLAN OF SERVICES REQUIREMENT

For an annexation ordinance that was not final on November 25, 1997, where the city had not prepared a plan of services, it had 60 days to prepare one. Chapter 1101, § 20; T.C.A. 6-51102(a)(2). Presumably, such a plan of services must have met the same reasonableness standard as to the scope and implementation schedule as prescribed by T.C.A. § 6-51-102(b) for annexations accomplished by cities after the effective date of Chapter 1101 (May 19, 1998). [See Plan of Services Must Be Reasonable, immediately below.]

PLAN OF SERVICES MUST BE REASONABLE

Under T.C.A. § 6-51-102 [annexation by ordinance] the plan of services must be "reasonable" with respect to both the scope of services and to the implementation schedule. The implementation schedule must provide for delivery of services in the new territory that are comparable to those provided to all citizens of the city. The plan must address the following services, whether or not the city currently provides those services:

- Police and fire protection;
- Water, electrical, and sanitary services;
- Road and street construction and repair;
- Recreational facilities and programs;
- Street lighting; and
- Zoning services.

If the annexing municipality maintains a separate school system, the plan of services must also include "schools and provisions specifically addressing the impact, if any, of annexation on school attendance zones." If the annexing municipality does not maintain a separate school system, it must provide written notice of the annexation to the affected schools systems as soon as practicable, but in no event not less than 30 days prior to the 15-day public notice of the hearing on the plan of services required by T.C.A. § 6-51-102(b)(4). T.C.A. § 6-51-102(b)(2). [See Public Notice and Hearing on Plan of Services.]

The plan may exclude services that are provided by another public or private agency other than those services provided by the county. The city may include services in addition to those required to be addressed. T.C.A. § 6-51-102(b).

SUBMISSION OF PLAN OF SERVICES TO PLANNING COMMISSION

Before its adoption, the plan of services must be submitted to the planning commission (if the city has one), which must issue a written report on it within 90 days. T.C.A. § 6-51-102(b)(4). (The 90-day deadline can be extended by the city governing body by resolution if it chooses to

[4]For a sample resolution for a pubic hearing on adoption of a plan of services, see Appendix E. For a sample resolution adopting a plan of services, see Appendix F.

do so.) In an unpublished opinion, *State ex rel. New Providence Utility District v. Clarksville*, filed November 14, 1966, the Tennessee Supreme Court considered an objection that "approval of the plan of services by the Planning Commission by a resolution, and a certified copy of such resolution" did not comply with the statutory requirement "that a written report of the Commission's study of the plan be furnished the City." In rejecting this contention the court said:

> The submission of the plan of services to the Planning Commission and its report to the legislative body of the municipality is part of the legislative process. The form and sufficiency of the report is a matter for determination by the legislative body and not the courts. The Planning Commission had the alternative of approving, modifying or rejecting the plan of services submitted to it for study. That body adopted the resolution approving the plan and so reported to the City Council by a certified copy of the resolution. There is nothing in the statute that requires the Planning Commission to report to the City Council its findings in any particular form.

PUBLIC NOTICE AND HEARING ON PLAN OF SERVICES

The city's governing body is then required to hold a public hearing on the plan after giving 15 days notice in a newspaper of general circulation in the city. The notice must include at least three locations where copies of the plan are available for public inspection. T.C.A. § 6-51-102(b).

NOTICE OF PLAN OF SERVICES TO SCHOOL SYSTEM

If the annexing municipality does not maintain a separate school system, it must provide written notice of the anexation, the plan of services of the annexation to the affected school systems as soon as practicable, but in no event not less than 30 days prior to the 15 days public notice of the hearing on the plan of services required by T.C.A. § 6-51-102(b)(4). T.C.A. § 6-51-102(b). If the annexing municipality maintains a separate school system, see Plan of Services Must Be Reasonable.

NOTICE OF PLAN OF SERVICES TO COUNTY MAYOR

Public Acts 2005, Chapter 411, amends T.C.A. § 6-51-102(b)(1) [annexation by ordinance] and T.C.A. § 6-51-104 [annexation by referendum] to require that after a plan of services is adopted, the municipality shall forward a copy of it to the county mayor in whose county the territory being annexed is located.

NOTICE OF PLAN OF SERVICES TO EMERGENCY COMMUNICATIONS DISTRICTS

Public Acts 2005, Chapter 411, amends T.C.A. § 6-51-119(a) to require that upon the final passage of an annexation *ordinance* the legislative body of the annexing municipality provide to any affected emergency communications district a copy of the portion of the plan of services dealing with emergency services and a detailed map designating the annexed area. The map must identify all public and private streets, including street names and direction indicators, in the annexed area. The map must also include or have appended a list of address ranges for each street in the annexed area. For contested annexation ordinances, in cases in which the municipality plans to begin providing emergency services in the annexed territory immediately, the municipality must notify the emergency communications district when the annexation becomes final.

Under *Public Acts 2005*, Chapter 411, the notification must be sent by certified return receipt mail or any other method that assures receipt by the district.

The failure to send notice is not necessarily fatal. Both *Public Acts 2005*, Chapter 411, and *Public Acts 2005*, Chapter 24, create a new Section 6-51-119, which provides that compliance or noncompliance with this provision is not admissible against the

municipality in any case brought under T.C.A., Title 6 [presumably Chapter 51, which governs annexation and challenges to annexation], Title 29, Chapter 14 [the Declaratory Judgments Act, under which challenges against annexations upon grounds other than the reasonableness of the annexation would be brought], or against the municipality or any affected emergency communications district under T.C.A., Title 29, Chapter 20 [the Tennessee Tort Liability Act].

For similar notice provisions that apply to annexations by ordinance, see Chapter 5, Annexation by Ordinance, and for similar notice provisions that apply to annexations by referendum, see Chapter 6, Annexation by Referendum.

ANNEXATION PROHIBITED IF CITY IS IN "DEFAULT" ON PRIOR PLAN/S OF SERVICE

A city cannot annex "any other territory" under T.C.A. § 7-51-102 "if the municipality is in default on any prior plan of services." That limitation appears to apply only to annexations that were not final on November 25, 1997, and forward from that date. Chapter 1101, §§ 19 and 20; T.C.A. § 6-51-102(a); T.C.A. § 6-51-102(b)(5); T.C.A. § 6-51-108(b).

It is not clear whether a plaintiff could bring a *quo warranto* challenge to an annexation on the ground that the annexation is unreasonable because the city is in default on a plan of services from a previous annexation. But, presumably, such a challenge could be brought under the Declaratory Judgments Act found at T.C.A. §§ 29-14-101 *et seq*. on the ground that the annexation violates the annexation statute. [See Chapter 5, Annexation by Ordinance, Challenges to the Ordinance Based on Constitutional and Other Grounds, and Chapter 11, "Problem" Annexations.]

Chapter 1101 does not define what constitutes a "default." The answer probably turns on whether the city is in compliance with the scope of service and/or the implementation schedule provisions contained in the plan of services.

CHALLENGING A PLAN OF SERVICES

BEFORE THE ADOPTION OF A COUNTYWIDE GROWTH PLAN

Chapter 1101, § 20, gave the county, upon a petition filed by property owners subject to a plan of services, the right to challenge the reasonableness of plans of services that were not final on May 19, 1998, and forward from that date, *until the county adopted a growth plan*. It also gave the courts certain remedies during that interim period with respect to plans of services they found unreasonable or that "have been done by an exercise of powers not conferred by law." T.C.A. § 6-51-102(a)(2)(A)–(D). Almost every county has adopted a growth plan.

AFTER THE ADOPTION OF A COUNTYWIDE GROWTH PLAN

After a growth plan has been adopted by the county, it does not appear that Chapter 1101 or existing annexation statutes give either the county or property owners subject to a plan of services the right to challenge the reasonableness of a plan of services separate from their individual rights to challenge the annexation ordinance based upon their status as property owners in the territory proposed for annexation. However, because such property owners have the right to challenge the reasonableness of the annexation, presumably they can argue that the annexation is unreasonable on the ground that the plan of services is unreasonable or that the territory in question does not need the services contained in the plan of services. Chapter 1101, § 20; T.C.A. § 6-51-102; T.C.A. § 6-51-103. [See Chapter 5, Annexation by Ordinance, Trial and Burden of Proof.]

ENFORCING THE PLAN OF SERVICES

A property owner subject to the plan of services can sue the city to enforce the plan of services 180 days following the date the annexation ordinance becomes effective. That right to sue

is extinguished when the plan of services is fulfilled. Chapter 1101, § 21; T.C.A. § 6-51-108(d).

If the court finds that the city has *"materially and substantially"* failed to comply with its plan of services, the city must be given the opportunity to show cause for the failure. If the court determines that the failure is due to natural disaster, act of war, terrorism, or reasonably unforeseen circumstances beyond the control of the city that materially and substantially impeded its ability to carry out the plan of services, the court can alter the *timetable* of the plan. But if the court finds that the city's failure to comply with the plan of services is none of those reasons, it "shall":

- Issue a writ of mandamus to compel the city to provide the services contained in the plan;
- Establish a timetable for providing those services; and
- Enjoin the city from any further annexations until the services subject to the court's order have been provided to the court's satisfaction. T.C.A. § 6-51-109.

PROGRESS REPORT ON PLAN OF SERVICES

Six months after the plan is adopted and annually thereafter until it is fully implemented the city must publish a report on its progress toward fulfilling the plan and must schedule and hold a public hearing on the report. These reporting and hearing requirements apply to any plan of services not fully implemented, and any resident or property owner in the annexed area covered by the plan can file suit to force a city to prepare this report if it has not done so on schedule. T.C.A. § 6-51-108.

AMENDING A PLAN OF SERVICES

A plan of services may be amended under limited conditions:

- An occurrence such as a natural disaster, an act of war, terrorism, or other unforeseen circumstances beyond the city's control; or
- The amendment does not substantially or materially decrease the type or level of services or delay the provisions of such services; or
- The amendment has received approval in writing of a majority of the property owners by parcel in the annexed area.

Before any amendment is adopted, the city must hold a public hearing preceded by at least 15 days notice. T.C.A. § 6-51-108(c).

An aggrieved property owner in the annexed territory can challenge the legality of an amendment to the plan of services within 30 days after the amendment is adopted. If the court finds that the city unlawfully amended the plan, it shall "decree the amendment null and void and shall reinstate the previous plan of services." T.C.A. § 6-51-108(d).

ANNEXATION BY REFERENDUM

Public Acts 2005, Chapter 411, amends T.C.A. § 6-51-104(b) [annexation by referendum] by providing that "the plan of services shall address the same services and timing of services as required in § 6-51-102" [annexation by ordinance].

That act does not indicate to what extent the above statutes that apply to plans of services in annexations by ordinance also apply to annexation by referendum. The act says only that "the plan of services shall address the same services and timing of services as required in § 6-51-102." *It is not clear whether that language embraces statutes governing annexation by ordinance that deal with a broad range of plan of services issues, including the effect of the failure of cities to fulfill prior plans of services, progress reports on plans of services, amending plans of services, and challenging and enforcing plans of services.*

However, a city contemplating annexation by referendum should consider drafting a plan of services that would survive a legal challenge if it had been done in connection with an annexation by ordinance.

CHAPTER 8

"Population Brackets" Contained in the Annexation Law

GENERALLY

Tennessee statutes are rife with various "population brackets" under which cities and counties in Tennessee are excepted from, or included under, a statute or statutes. Article XI, § 8, of the Tennessee Constitution provides that "The Legislature shall have no power to suspend any general law for the benefit of any particular individual...." That provision has repeatedly been interpreted to prohibit the passage of laws containing population brackets and other classifications to benefit specific counties or cities as well as individuals, including private acts that suspend general laws, *unless the classification rests upon a reasonable basis*. [See, among the literally dozens of cases in this area, *Vollmer v. City of Memphis*, 730 S.W.2d 619 (Tenn. 1987); *Mink v. City of Memphis*, 435 S.W.2d 114 (1968); *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439 (Tenn. 1978); *Knoxville's Community Development Corp. v. Knox County*, 665 S.W.2d 704 (Tenn. 1984); *Brentwood Liquors Corp of Williamson County v. Fox*, 496 S.W.2d 454 (Tenn. 1973); *Estrin v. Moss*, 430 S.W.2d 345 (1968); *Pirtle v. City of Jackson*, 560 S.W.2d 400 (1977); *Clark v. Vaughn*, 146 S.W.2d 351 (1941); *Lineberger v. State ex rel. Beeler*, 129 S.W.2d 198 (1939); *State ex rel Smith v. City of Chattanooga*, 144 S.W.2d 1096 (1940); *Town of McMinnville v. Curtis*, 192 S.W.2d 998 (1946); *Prescott v. Duncan*, 148 S.W. 229 (1912); *Board of Education v. Shelby County*, 330 S.W.2d 569 (1960); *Johnson City v. Allison*, 362 S.W.2d 813 (1962); *State ex rel. v. Mayor of Dyersburg*, 235 S.W.2d 814 (1954); *Wiseman v. Smith*, 95 S.W.2d 42 (1936); *Blackwell v. Miller*, 493 S.W.3d 88 (Tenn. 1973); and numerous cases cited therein.]

In addition, Article XI, § 9, of the Tennessee Constitution provides that "The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved *and by which municipal boundaries may be altered*." That provision is a product of Constitutional Amendment No. 7 adopted in November 1953. Prior to that year, the prevailing method of annexation in Tennessee was by private act of the state legislature. In 1955, the General Assembly passed the first general annexation law of the state (*Public Acts 1955*, Chapter 113), the basic form of which is still contained in T.C.A. §§ 6-51-102 *et seq*. Since then several cases have addressed the question of whether various amendments to that law containing population brackets are legal classifications.

In *Frost v. City of Chattanooga*, 488 S.W.2d 370 (Tenn. 1972), the Tennessee Supreme Court held unconstitutional Chapter 420, Public Acts 1971, which amended what is now T.C.A. § 6-51-102(c). That act authorized municipalities having a population of more than 100,000 to annex by ordinance territory without levying property taxes except for services rendered. But the act excluded the application of its provisions in counties having a metropolitan form of government, counties having a population of more than 700,000 according to the 1970 federal census or any subsequent federal census, and counties having a population of not less than 260,000 nor more than 280,000 according to the 1970 federal census or any subsequent federal census. The court said:

> The reasonableness of this classification has to be viewed in the light Chapter 420 has been drafted to exclude all municipalities above one hundred thousand except Chattanooga; and, also, in the light the next largest city in Tennessee would have to increase two and one-half times its 1970 size by the U.S. Census figures to come within the population classification of one hundred thousand. A study of Chapter 420 provides convincing evidence it was not drafted to create a class of municipalities who have similar annexation-taxation problems with fringe population areas, but seeks to clothe a local act for Chattanooga in terms of a general act. [At 372.]

In *Frost*, the court refused to follow those Tennessee cases in which statutes containing a population classification applicable to one county were upheld. It distinguished those cases on the ground that they involved subjects other than annexation, while the constitution now in very clear language prohibited the legislature from altering municipal boundaries except by general law. Going further, the court offered the dicta that "we do not hold that the legislature could not act to alter municipal boundaries by legislation valid as a general law under the classification doctrine, but we are not able to conceive of any circumstances where such would be valid." [At 373.] The court also ruled out the theory that the classification should be upheld because Chattanooga's situation was unique: "Even if it be determined Chattanooga has a unique situation, it would avail nothing as this constitutional provision has invalidated such uniqueness justification." [At 372.]

The annexation statute was amended in several respects by *Public Acts of 1974*, Chapter 753. One of these amendments provided that in a suit to connect the validity of an annexation ordinance the municipality shall have the burden of proving that an annexation ordinance is reasonable for the overall well-being of the communities involved, but it was provided that this amendment not apply in counties having a population of not less than 65,000 nor more than 6,000, in counties having a population of 400,000 or more according to the federal census, and in counties having a metropolitan form of government. In *Pirtle v. Jackson*, 560 S.W.2d 400 (Tenn. 1977), the Tennessee Supreme Court also held the exclusion provision unconstitutional. There was no rational basis to justify the exclusion of a few chosen municipalities from the burden of providing the reasonableness of their annexation ordinances when such a burden is placed upon all other municipalities.

Citing *Frost* and *Pirtle*, the *Tennessee Supreme Court in Vollmer v. City of Memphis*, 730 S.W.2d 619 (Tenn. 1987), struck down *Public Acts 1981*, Chapter 522, as unconstitutional under Article XI, § 9, of the Tennessee Constitution. That act permitted the voters to demand a referendum on annexation ordinances adopted by cities upon their own initiative as authorized by T.C.A. § 6-51-102. But the act also contained a bewildering scheme of exclusion and inclusion of municipalities to which it applied based on population brackets and forms of government.

The court ordered the offending provisions of T.C.A. § 6-51-102 stricken from the code, but the population brackets contained in that statute were not an issue, and *Vollmer* left them intact.

POPULATION BRACKETS CONTAINED IN THE PRESENT ANNEXATION LAW

The first population bracket still contained in the annexation law is found in T.C.A. § 6-51-102(a)(2)(E). The product of *Public Acts 1986*, Chapter 734, it subjects to a referendum the passage of annexation ordinances originating from the initiative of the city. It applies to cities in counties having a population of not less than 319,625 nor more than 319,675 according to the 1980 or later federal census [Knox County]. If the referendum is successful, the ordinance appears to

become operative 30 days after the official canvass of election return but not sooner than 120 days after the final passage of the annexation ordinance.

It is difficult to find a reasonable basis for this population bracket; for that reason, it probably violates Article XI, §§ 8 and 9, of the Tennessee Constitution. Why should annexations upon the initiative of cities be subject to a referendum in cities only in Knox County? Under the dicta in *Pirtle*, above, even if Knox County were unique in some circumstance, that uniqueness would not be sufficient to support the population bracket.

The second and third population brackets are found in T.C.A. § 6-51-102(a)(3)(A) and T.C.A. § 6-51-102 (a)(3)(B). Under T.C.A. § 6-51-102(a)(3)(A), cities having a population of more than 10,000 according to the 1970 or any later federal census cannot, by means of annexation by ordinance upon its own initiative, increase its land area more than 25 percent during any 24-month period. But that statute was amended by Chapter 787, *Public Acts 1988*, which created the following population brackets contained in T.C.A. § 6-51-102(a)(3)(B):

- Cities with a population of less than 12,000 according to the 1980 or later federal census, where the city has a private act rather than a general law charter; and
- Cities in any county having a population of (according to the 1980 or later federal census):
  - Not less than 34,100 nor more than 34, 200;
  - Not less than 37,000 nor more than 37,100; or
  - Not less than 49,400 nor more than 49,500

The population bracket contained in T.C.A. § 6-51-102(a)(3)(A) is arguably a legitimate population classification. It applies to *all* cities of more then 10,000 population and reasonable arguments can probably be found to support the logic of the General Assembly in controlling the amount of land larger cities in Tennessee can annex by ordinance upon the initiative of the city in any given year. But the same is probably not true of the population brackets under T.C.A. § 6-51-102(a)(3)(B). Those appear arbitrary on their faces, similar to those at issue in *Vollmer*, above.

The third population bracket is contained in T.C.A. § 6-51-102(c). It authorizes annexation by ordinance upon the initiative of the city without the levy of property taxes except for services rendered. It applies to cities in counties having a population of more than 66,000 except in counties having a population of more than 700,000. As indicated above, that provision originated with Chapter 420, *Public Acts of 1971*. It applied to cities of more than 100,000 population, excluding municipalities in Shelby and Knox counties by census figures, and to counties having a metropolitan form of government. That act was held in *Frost v. Chattanooga*, 488 S.W.2d 370 (Tenn. 1972), to violate Article XI, § 9, of the Tennessee Constitution. Chapter 944, *Public Acts of 1972*, amended the law to reflect the present population classification in the statute. In light of *Frost*, *Pirtle*, and *Vollmer*, above, it is difficult to argue that the present population bracket in that statute does not also violate Article XI, § 9, of the Tennessee Constitution.

That statute probably suffers another Tennessee constitutional defect. The differential tax rates may also be in violation of the provision in Article II, § 28, of the constitution that "Each respective taxing authority shall apply the same tax rate to all property within its jurisdiction."

Abundant case law in Tennessee stands for the proposition that the unequal taxation of property within municipal boundaries is not permissible. Two of those cases deal directly with differential tax rates in annexed areas but patently apply to unequal taxation for any reason. In

Jones v. Memphis, 47 S.W. 138 (1898), the Tennessee Supreme Court struck down a statute exempting newly annexed territory from taxation for police, fire, and lighting for 10 years (although the annexed area was not to receive those services during that period). Citing Article II, § 28, of the Tennessee Constitution, the court declared that:

> The Court is of the opinion that taxation must always be uniform and equal throughout the extent of the same jurisdiction; that State taxes must be equal and uniform throughout the State; that county taxes must be equal and uniform throughout the county; and that a city tax must be equal and uniform throughout the city, so far as revenues for current expenses of the future are concerned... [Citing earlier Tennessee cases.]
>
> So also, if a portion of a territory is annexed to and becomes a part of a city it is entitled to all of the benefits extended by the city to any other portion and while it may not, in all instances, be necessary to furnish at once the same advantages and conveniences in each and every locality of the city, still an act which prescribes that it shall not have such advantages at all, or for a given time is not valid and cannot be sustained.
>
> The logical result of the contrary holding as to taxation would be that in every city taxes might be different in different wards and on different streets; in every county taxes might be different in every civil district; in the State taxes might be different in every county and in each division–all clearly in violation of the Constitution and our whole theory of equal and uniform taxation. [At 139.]

The Tennessee Supreme Court reached the same result in *American Bemberg Corporation v. City of Elizabethton*, 175 S.W.2d 535 (1943). There the court threw out contracts the city had made with certain corporations not to annex property without their consent and, even if their consent was obtained, to remit to the corporations all city taxes for 10 years. *Jones v. Memphis* was still the law, reasoned the court.

The fourth population bracket contained in the annexation law is found in T.C.A. § 6-51-102(d). It provides that in counties having a population of not less than 700,000, in counties having not less than 260,000 nor more than 280,000 according to the 1970 or later federal census, and in counties that have a metropolitan government, a smaller municipality may, by ordinance, annex contiguous territory within the corporate limits of a larger city if the territory is fewer than 75 acres; is not populated; is separated from the larger city by a limited access expressway, its access ramps or services roads; and is not the site of industrial plant development. No submission of the annexation to the planning commission or the adoption of a plan of services is required for such annexations.

This provision originated with Chapter 136, *Public Acts 1969*. That act amended what are now T.C.A. § 6-51-110 and T.C.A.§ 6-51-102 by adding the above substantive provisions to both sections but without any population brackets. Chapter 420, *Public Acts 1971*, § 1, amended what is now T.C.A. § 6-51-102 by repealing that provision. But section 3 of that act made the provisions of the act inapplicable in counties having the populations or the form of government noted in the above paragraph. For that reason, the repeal of the provisions in what is now T.C.A. § 6-51-102(d) was not affected in counties that fall in those population brackets.

It is not clear whether this act reflects a reasonable basis; it appears to have been designed to accommodate one particular situation. From a practical standpoint its purpose may be

exhausted. But this statute also appears to be inconsistent with Chapter 1101's limitation of annexation by ordinance to territory within a city's UGB.

POPULATION AND OTHER BRACKETS IN ANNEXATION PRIORITIES STATUTE

Population brackets are also found in T.C.A. § 6-51-110, which prescribes the priorities among cities attempting to annex the same territory. These population brackets may also violate Article XI, §§ 8 and 9, of the Tennessee Constitution.

T.C.A. § 6-51-109 provides for the annexation by a larger municipality of all or part of the territory in a smaller municipality upon the petition of 20 percent of the voters of the smaller municipality if the larger municipality annexes by ordinance the territory proposed in the petition and the annexation is approved in a referendum by a majority of voters in the smaller municipality. T.C.A. § 6-51-110(g) authorizes annexation by a smaller municipality of territory within the corporate limits of a larger municipality if the territory is fewer than 75 acres and meets other qualifications.

T.C.A. § 6-51-110(a) contains several questionable population and other brackets that are apparently aimed at T.C.A. § 6-51-109 and T.C.A. 6-51-110(g). Moreover, T.C.A. § 6-51-109 and T.C.A. § 6-51-110(g) should probably be examined to determine whether they serve any useful purpose.

T.C.A. § 6-51-110(a) provides that nothing in this part [T.C.A.,Title 6, Shapter 51, part 1] nor in T.C.A. § 6-51-301 [mutual adjustments provision] shall be construed to authorize a smaller municipality to annex territory within the corporate limits of a larger municipality. It also says the same thing with respect to the annexation by a larger municipality within the corporate limits of a smaller municipality in existence at the time of the proposed *annexation except as to municipalities*:

- In counties with a population of not less than 65,000 nor more than 66,000 according to the 1970 or subsequent federal census;
- In counties with a population of 400,000 or more according to the 1970 or subsequent federal census; and
- In counties having a metropolitan government, by a larger municipality with respect to territory within the corporate limits of a smaller municipality in existence for 10 or more years.

In addition, the same statute provides that, notwithstanding any other provisions in this chapter [T.C.A., Title 6, Chapter 51] in counties having a population of not less than 276,000 nor more than 277,000 according to the 1970 or subsequent federal census, nothing in this part [T.C.A., Title 6, Chapter 51, Part 1] shall be construed to authorize annexation by a larger municipality of territory within the corporate limits of any smaller municipality in existence at the time of the proposed annexation.

T.C.A. § 6-51-110(d) also contains population brackets and another bracket with respect to when an annexation ordinance is initiated as to annexation priorities. The brackets exempt from the application of the statute counties having a population of not less than 65,000 nor more than 66,000 and counties having a population of 400,000 or more according to the 1970 or subsequent federal census. It also exempts counties having a metropolitan government.

There may be reasons for some of those exemptions that satisfy the Tennessee Constitution.

CHAPTER 9

Annexation Ordinance and Plan of Services Public Notice and Hearing Issues[5]

STATUTORY ANNEXATION ORDINANCE AND PLAN OF SERVICES HEARING REQUIREMENTS

GENERALLY

The public notice and hearing requirements for annexation ordinances and plans of services were strengthened by Chapter 1101. However, some of the pre-Chapter 1101 cases interpreting and applying the annexation ordinance public hearing requirements (there are no such cases interpreting and applying the plan of services public hearing requirements) probably apply to the public notice and hearing requirements contained in Chapter 1101. But some of those cases reflect the failure of cities to strictly abide by the public hearing and notice requirements. Such a failure might not necessarily be fatal to an annexation ordinance or to a plan of services, but it invites that result and always gives the person challenging the annexation another issue to present to the court. Such failures are easy to avoid by knowing and strictly obeying public notice and hearing requirements contained in the annexation laws.

Several recent statutes require cities to give notice of annexations and/or plans of services to school systems in certain cases, to the county mayor, and to emergency communications districts. This chapter deals only with statutes and cases dealing with public notice requirements. See Chapter 5, Annexation by Ordinance; Chapter 6, Annexation by Referendum; and Chapter 7, Plan of Services for the above notice requirements.

STATUTORY PUBLIC NOTICE HEARING REQUIREMENTS

ANNEXATION (BY ORDINANCE AND REFERENDUM)

T.C.A. § 6-51-101 provides that the notice of the annexation hearing applies to both annexation by ordinance and annexation by referendum. "Notice" under that statute means:

> Publication in a newspaper of general circulation in the municipality at least seven (7) days in advance of a hearing. The notice, whether by ordinance as stipulated in § 6-51-102(a)(1) and (b) or by referendum as stipulated in § 6-51-104(b), shall be satisfied by inclusion of a map which includes a general delineation of the area or areas to be annexed by use of official road names and/or numbers, names of lakes and waterway, or other identifiable landmarks, as appropriate.

PLAN OF SERVICES

T.C.A. § 6-51-102(b)(4) provides that before the plan of services is adopted, the city must hold a public hearing. Notice of the time, place, and purpose of the public hearing "shall be published in a newspaper of general circulation in the municipality not less than fifteen (15) days before the hearing." The notice must also include the locations of a minimum of three copies of the plan of service, which the municipality must also make available for public inspection during all business hours from the date of notice of the public hearing.

[5]For a sample resolution for a pubic hearing on annexation by ordinance, see Appendix B. For a sample resolution for a public hearing on annexation by referendum, see Appendix D. For a sample resolution for a public hearing on the plan of services, see Appendix E.

PUBLIC NOTICE AND HEARING ISSUES

CITY CHARTER GENERALLY GOVERNS ANNEXATION ORDINANCE PROCEDURE

There are no formal annexation ordinance procedures prescribed by Tennessee's annexation law. Annexation ordinances should be adopted following the ordinance procedures prescribed by the annexing city's charter. It was held in *State ex rel. Balsinger v. Town of Madisonville*, 435 S.W.2d 803 (1968), that an annexation ordinance was not required to be read at three separate meetings because neither the state's annexation law nor the charter required such a procedure.

T.C.A. § 6-51-102(a)(1) provides that a city "after notice and public hearing, by ordinance, may extend its corporate limits by annexation..." In the unreported case of *Gentry v. Bristol* (Tenn., June 5, 1972), an annexation ordinance was attacked on the ground that the ordinance was passed on first reading prior to the public hearing. Under the city's charter, it took two readings to pass the ordinance. The record showed that the ordinance was passed on first reading on December 1, 1970; that notice was thereafter published and a public hearing held on December 15, 1970; and that the ordinance was passed on second and final reading immediately after the public hearing. The court was of the opinion that there was substantial compliance with the statute.

Where the charter of the city provided that no ordinance could be adopted at the same meeting at which introduced, the requirements of T.C.A. § 6-51-102 were met by having the public hearing four days after the introduction but before the ordinance was adopted. *Pirtle v. Jackson*, 570 S.W.2d 400 (Tenn. 1977).

Even irregularities in city ordinance adoption procedures may be "forgiven" in some cases. An annexation ordinance in *Saylors v. City of Jackson*, 575 S.W.2d 246 (Tenn. 1978), was held valid even though it had not received a second as required by *Robert's Rules of Order* (RRO), which the city had adopted to govern its meeting procedures, because the action on the ordinance was unanimous. Even RRO declares that where such action is unanimous, a violation of the rules is without consequence.

CHANGING THE AREA TO BE ANNEXED

The question of whether a city can describe an area being considered for annexation, for purposes of the public hearing, and subsequently annex parts of the area by several ordinances, perhaps in all less than the area on which the hearing was conducted, was raised in *Senff v. Columbia*, 343 S.W.2d 888 (1961). The Tennessee Supreme Court appears to have approved of such procedure:

> As a result of this notice and hearing an ordinance was not drawn immediately to take in the whole area pursuant to the notice but numerous and various ordinances were passed taking in smaller areas within the areas as prescribed in the notice, the very obvious reason being that in many of these other areas the people were asking for it and they knew there would be no contest about it. [At 889.]

In *Maury County Farmers Co-op Corp. v. Columbia*, 362 S.W2d 219 (1962), it was held that an annexation ordinance could annex two separate areas that were not contiguous to each other as long as each is contiguous to the city. To the argument that the annexation of one area might be found to be reasonable and the annexation of the other unreasonable, the court responded that "the part of the ordinance describing that area might be eliminated under the familiar doctrine of elision." [At 221.]

ADEQUACY OF PUBLIC NOTICE AND HEARING

GENERALLY

There are no reported cases involving the adequacy of the public hearing on plans of services. Arguably, the cases involving the adequacy of the public hearing in annexation cases apply to the public hearings on the plan of services. However, those cases point to the political basis for the public hearing on the annexation ordinances. Under T.C.A. § 6-51-102(b) (1)–(3), the plan of services must (1) establish at least the services to be provided and their projected timing, (2) include (but not be limited to) police and fire protection, water, electrical, sanitary sewer service, solid waste collection, road and street construction and repair, recreational facilities, street lighting, and zoning services, and (3) provide a reasonable implementation schedule for the delivery of comparable services in the annexed territory with respect to the services delivered to all the citizens of the municipality. For that reason, the function of that hearing may be broader than to simply allow the public to speak its voice on the plan. If that is so, perhaps the courts would be more inclined to strictly enforce the statutory hearing requirements.

INACCURATE DESCRIPTIONS OF TERRITORY TO BE ANNEXED

The Tennessee Supreme Court has held that an inaccurate description did not invalidate an annexation because an appended map correctly showed the territory to be annexed. *Johnson City v. Maden*, 304 S.W.2d 317 (1957). However, great care should be taken to ensure that the public hearings on annexations reflect maps and boundary descriptions of the territory proposed for annexation that are consistent and accurate.

INADEQUATE NOTICE OF HEARING

In *State ex rel. Robbins v. City of Jackson*, 403 S.W.2d 304 (1966), an official notice published only five days in advance, taken together with a news article referring to the public hearing to be held and setting forth the area proposed for annexation, which appeared in the newspaper seven days prior to the public hearing, was held to be substantial compliance with the statute. But it is not clear how much tolerance the courts will exercise when there has been a failure of adequate notice in terms of time. In *Surgoinsville v. Sandidge*, 866 S.W.2d 553 (Tenn. Ct. App. 1993), 11 days notice of a public hearing on an amendment to a zoning ordinance was held not to be substantial compliance when T.C.A. § 13-7-203 required "at least" 15 days notice.

An annexation ordinance was attacked in *Senff v. Columbia*, 343 S.W.2d 888 (1961), on the ground that the notice was insufficient because it had been given too long (nine months) before the ordinance was adopted. Holding that the notice was adequate, the court reasoned that for approximately nine months after the notice was given the proposed annexation received constant publicity in the newspaper.

LOCATION AND ENVIRONMENT OF PUBLIC MEETING

The location and environment of the meeting involving the passage of an annexation ordinance have also been issues. As to the location of a public hearing, the Tennessee Supreme Court in *Morton v. Johnson City*, 333 S.W.2d 924 (Tenn. 1979), said this:

> The call was for a meeting at the City Hall before the City Commission. This notice did not designate any particular room and of course the very obvious and only place that the meeting should and would be held, unless designated otherwise in the notice, is in the regular chambers of the City Commission. Thus it is that the notice was sufficient to notify the inhabitants that the meeting would be in the Commission room... [At 930.]

In that case 300 people were gathered outside the meeting room, which could hold only 40 people. The city commission refused to adjourn to another room but announced that it would hear everyone who wished to speak, "even if it took all night to do it." Many of those who were present did not stay, but the commission heard anyone who wished to speak. The public hearing was adequate, declared the court. It spoke of the purpose of the public hearing:

> ...The words here in the Statute of a "public hearing" were not used with respect to a proceedings in which the constitutional rights of any person might be affected. The subject before the Commission was the adoption of an ordinance annexing the territory in question. Such a hearing as is required under the political or legislative issue of this kind is a kind of hearing that is to be accorded *so that this body may make up its mind from a political standpoint* [Emphasis is mine.] in their legislative action as to whether or not it is feasible and right to annex this territory.
>
> In *Commonwealth v. Sisson*, 189 Mass 247, 75 NE 619, 1 LRS, NS, 752, 109 Am. St. Rep. 630, the Massachusetts court had before it the question of whether or not the Board of Health acting in a legislative capacity gave a proper kind of hearing under a similar act which required a public hearing. The court held...a board...acting in a legislative capacity...is not required to act on sworn evidence...its action is final as is the action of the legislature in enacting the statute...[and] questions of fact passed on in adopting the provisions cannot be tried over in the courts. In other words the only suggestions and the only requirement under this statute is that it be public; that the City Commission have an open public hearing so that they can hear those who are for or against the proposition and then make up their own minds from a legislative standpoint of whether or not such an ordinance would be feasible in view of their legislative duty to the City.
>
> This presents, under the facts in this case, a question of law for the Court to determine. There was no action being taken at this meeting by the Commission; there was no reason why the Commission should enter into an agreement pro or con with those appearing to speak their piece on behalf of this legislation. The only question was to allow those that wished to stay and say their piece to be allowed to do so and then the Commission could make up its own legislative mind. [At 929.]

Finally, the court also gave clear instructions regarding the time of holding a public hearing:

> The day that this public hearing was called for and held was on a Tuesday night while the regular meetings of the Commission were on Thursday night... The argument is that then this was not properly called because not held on a regular night. Of course this public hearing or hearing as was conducted by the Commission did not have to be on their meeting night... They could have this meeting anytime that they saw fit to have these public hearings. [At 930.]

Morton stands for the clear proposition that the purpose of the public hearing requirement is that the governing body "hear" any person who wishes to speak for or against the annexation proposal. It was cited in *State v. City of Columbia*, 360 S.W.2d 39 (1962), in which the Tennessee Supreme Court also held the public hearing on an annexation ordinance adequate. There, 100 to 125 people were present for the hearing, and all who wished to do so were permitted to speak, "with the possible exception of one man, who jumped up so frequently he was asked to keep quiet." [At 42.] The meeting lasted about 90 minutes with a break of approximately 20 minutes.

In *Stall v. Knoxville*, 364 S.W.2d 898 (1962), the adequacy of the public hearing was also brought under attack. The court referred to the criteria set out in *Morton v. Johnson City*, above, and concluded:

> The Trial Judge found in the instant cases that these requirements were met, and the record clearly supports him in this regard. Proper notice of the hearing was given. It was held at the time and place designated in the notice. The council members were present with the mayor presiding, the doors were opened to the public. The record shows that opinions and discussions were invited and that many opinions were given and much discussion was had. The council chambers might not have seated all who wished to come. However, the record shows that the meeting lasted for several hours and anyone who wished to be heard had the floor. [At 901.]

When an annexation ordinance reaches the stage of a public hearing a majority of the city's governing body is probably a proponent of the annexation, but before and during the hearing the board should not take a hard position that indicates the matter is a "done deal." The purpose of the public hearing is to provide an opportunity for objectors to bring to their attention any facts and relevant considerations that might have escaped their attention. In *Maury County Farmers Co-op v. Columbia*, 362 S.W.2d 219 (1962), the Tennessee Supreme Court considered an objection that "the city commissioners had already made up their legislative minds to annex," based upon certain answers given by one of the commissioners on cross-examination but rejected it on the grounds:

> ...that a reading of the whole of the testimony clearly shows that while the commissioners had proposed such annexation, as shown in the public notice, they had not foreclosed their minds, but afforded a fair and proper hearing and passed the ordinance only after careful consideration of the need and effect of the annexation. [At 221-22.]

Generally, a governing body should simply "hear" persons who wish to speak during public hearings on annexation ordinances and make no effort to justify the annexation proposal; to do so will usually lead to long and meaningless arguments. A good procedure is for the mayor or other presiding officer to recognize each person who wishes to speak and thank him courteously at the conclusion of his remarks. If the crowd is large, the governing body may wish to direct that slips of paper or cards to be signed by persons who desire to speak be circulated among the audience and direct the presiding officer to call on them in some order. It may also direct that a time limit be imposed on each speaker.

CHAPTER 10

Reasonableness of Annexation

WHAT IS THE PRESENT RULE?

Public Acts 1998, Chapter 1101, § 12, shifted the burden of proving the annexation was unreasonable from the city to the property owner contesting the annexation and took from the jury and gave to the circuit court or chancellor the responsibility for making the determination of whether the annexation is unreasonable. [T.C.A. § 6-58-111(a).] With respect to the shift in the burden of proof, T.C.A. § 6-58-111(a) provides that the burden is on the plaintiff to prove that:

- The annexation is "...unreasonable for the overall well-being of the communities involved"; OR
- That "the health, safety, and welfare of the citizens and property owners of the municipality and [the annexed] territory will not be materially retarded in the absence of such annexation." T.C.A. § 6-58-111.

That language appears to give the opponent of annexation the right to treat those two standards as separate alternative ones and to defeat the annexation by showing that the annexation does not meet one of them. For an analysis of this issue, including *State ex rel. Tipton v. City of Knoxville*, No. E2004-01359-COA-R3-CV (Tenn. Ct. App. Filed January 17, 2006), see Chapter 5, Annexation by "Ordinance, Trial and Burden of Proof.

HISTORY OF THE REASONABLENESS RULE

In the initial annexation statute [Chapter 113, *Public Acts of 1955*] aggrieved property owners were given the right to contest the validity of annexation on the ground that "it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole and so constitutes an exercise of power not conferred by law." This provision produced a series of cases articulating the "fairly debatable" standard. Annexation being a legislative power, the function of the court was to determine whether the exercise of the legislative power was arbitrary or clearly unreasonable, and "if it was a fairly debatable question as to whether or not an annexation was reasonable or unreasonable, then the discretion of the legislative body was conclusive." *Morton v. Johnson City*, 333 S.W.2d 924 (1960). There was a presumption in favor of the annexation ordinance, and those contesting it had the burden of proving it to be unreasonable. *Senff v. City of Columbia*, 343 S.W.2d 888 (1961). The preponderance of evidence was not the test in annexation cases, but whether a fairly debatable question as to reasonableness existed. *Hicks v. Chattanooga*, 513 S.W.2d 790 (Tenn. 1974).

In 1974 the annexation statute was amended to provide that in a suit contesting the validity of an annexation ordinance the municipality had the burden of proving that the ordinance was reasonable for the overall well-being of the communities involved. The amendment destroyed all presumptions of validity and demolished the "fairly debatable" rule [*Kingsport v. Crown Enterprises, Inc.*]. The statute placed "the burden of proving the annexation ordinance is reasonable for the overall well-being of the communities involved" upon the municipality. *Wilson v. City of LaFayette*, 572 S.W.2d 922 (Tenn. 1978); *State ex rel. Moretz v. City of Johnson City*, 581 S.W.2d 628 (Tenn. 1979).

Public Acts of 1961, Chapter 220, added T.C.A. § 6-51-103(e), which gave owners of property the right to file suit to contest the validity of an annexation ordinance:

> Should the territory hereafter sought to be annexed be the site of substantial industrial plant development, a fact to be ascertained by the court, the municipality shall have the burden of proving that the annexation of the site of the industrial plant development is not unreasonable in consideration of the factors above mentioned, including the necessity for, or use of municipal services by the industrial plant or plants, and the present ability and intent of the municipality to benefit the said industrial plant development by rendering municipal services when and as needed. The policy and purpose of this provision is to prevent annexation of industrial plants without the ability and intent to benefit the area annexed by rendering municipal services, when and as needed, and when such services are not used or required by the industrial plant.

To trigger the statute, the "territory" to be annexed must "be the site of substantial industrial plant development." It is not enough that it "include" or "involve" or "embrace" an industrial development; it must be the development. This statute has no application in any annexation case wherein an industrial development is included within a larger area or territory annexed in good faith and in accordance with acceptable principles governing annexation. An 85-acre industrial development within an 806-acre annexation was not "the territory sought to be annexed" and the industrial amendment did not apply. *City of Kingsport v. Crown Enterprises, Inc.*, 562 S.W.2d 808 (Tenn. 1978).

As noted above, under State ex rel. *Tipton v. City of Knoxville*, No. E2004-01359-COA-R3-CV (Tenn. Ct. App. Filed January 17, 2006), it is safe to assume that Chapter 1101, § 12, probably changed the reasonableness rule to permit the plaintiff to prove that the annexation is either *"unreasonable for the overall well-being of the communities involved, OR that "the health, safety, and welfare of the citizens and property owners of the municipality and [the annexed] territory will not be materially retarded in the absence of such annexation."* T.C.A. § 6-58-111.

PRE-CHAPTER 1101 CRITERIA OR FACTORS FOR DETERMINING REASONABLENESS

In cases filed and tried under T.C.A. § 6-51-103, the issue has been essentially the reasonableness of the ordinance applying the criteria set out in that statute. *Spoone v. City of Morristown*, 431 S.W.2d 827 (1968). Paragraph (a) of that section speaks of such a suit as one to contest the validity of the ordinance on the ground that it reasonably may not be deemed necessary "for the welfare of the residents and property owners of the affected territory and the municipality as a whole." Paragraph (b) provides that the municipality shall have the burden of proving that an annexation ordinance is reasonable "for the overall well-being of the communities involved." Paragraph (c) states the question as being whether the proposed annexation be or be not unreasonable "in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality."

Where the territory sought to be annexed is the site of substantial plant development, the municipality has the burden of proving that the annexation of the site of the industrial plant development is not unreasonable in consideration of the factors mentioned above, including "the necessity for, or use of municipal services by the industrial plant or plants, and the present ability and intent of the municipality to benefit the said industrial plant development by rendering municipal services thereto when and as needed." T.C.A. § 6-51-103(e).

The basic test must be whether the ordinance is "reasonable for the overall well-being of the communities involved." While other factors may be considered, the primary test of the reasonableness of an annexation ordinance must be the planned and orderly growth and development of the city, taking into consideration the characteristics of the existing city and those of the area proposed for annexation. *Collier v. Pigeon Forge*, 599 S.W.2d 545 (Tenn. 1980).

Factors to be taken into consideration in testing the reasonableness of any annexation ordinance would include:

1. The necessity for, or use of, municipal services;
2. The present ability and intent of the municipality to render municipal services when and as needed; and
3. Whether the annexation is for the sole purpose of increasing municipal revenue without the ability and intent to benefit the annexed area by rendering municipal services. *City of Kingsport v. Crown Enterprises, Inc.*, 562 S.W.2d 808 (Tenn. 1978); *Saylors v. Jackson*, 575 S.W.2d 264 (Tenn. 1978).

The need for city services is not of controlling significance. *Collier v. Pigeon Forge*, 588 S.W.2d 545 (Tenn. 1980).

The whole theory of annexation is that it is a device by which a municipal corporation may plan for its orderly growth and development. Heavily involved in this is control of fringe area developments and zoning measures to the end that areas of unsafe, unsanitary, and substandard housing may not "ring" the city to the detriment of the city as a whole. Annexation gives a city some control over its own destiny. Preserving property values, preventing development of incipient slum areas, providing adequate police protection within a metropolitan area, and extending city services to those who are already a part of the city as a practical proposition are the legitimate concerns of any progressive city. *Kingsport v. Crown Enterprise, Inc.*, 562 S.W.2d 808 (Tenn. 1978).

This reasoning is probably even more pertinent when the annexation deals with an area lying in the growth pattern of a tourist-oriented city. It is a vital concern in guarding against the helter-skelter establishment of commercial activities that may not be in harmony with those already in operation. Indeed, preventing incompatible commercial enterprises is a high municipal duty. The failure of a city to extend its corporate boundaries to embrace contiguous areas of growth and development is an abdication of responsibility. The time to annex is in the incipient stage of growth, lest the basic purpose of annexation be frustrated and the public interest suffer by the annexation of substandard areas. *Collier v. Pigeon Forge*, 599 S.W.2d 545 (Tenn. 1978). Said the court in that case:

> We should emphasize that this is not, as appellants insist, merely a "strip" or "shoestring" or "corridor" annexation, although it is long and lean. (Area one mile long situated astride Highway 441 with 200 feet on each side). Such annexations, so long as they take in people, private property, or commercial activities and rest on some reasonable and rational basis, and are not per se to be condemned. We do not deal with an annexation wherein a city attempts to run its corporate limits down the right-of-way of an established road without taking in a single citizen or a single piece of private property. Such an annexation is perhaps questionable and is not here involved. As in any annexation, and more particularly one wherein a geometrically irregular parcel of land is annexed, the Court must scrutinize the stated and ostensible purpose of the annexation. [At 546-47.]

The record showed that the officials of the city of Pigeon Forge were motivated by a civic-minded

compulsion to control and coordinate the expansion and growth of the city and to ensure that its development was on an orderly basis, in keeping with the character of the existing city. Additionally they were concerned about aesthetic considerations.

PROOF OF REASONABLENESS

In *Cope v. City of Morristown*, 404 S.W.2d 798 (1966), the Tennessee Supreme Court summarized the evidence in the record that was presented on the question of reasonableness of the annexation ordinance. The testimony of experts in the field of municipal government sufficiently familiar with the town of Morristown was said to be proper. This case appeared to provide guidance in the choice of witnesses and the evidence to be presented. In *Senff v. City of Columbia*, 343 S.W.2d 888 (1961), it was held that the mayor of the city has a right to testify. Other cases touching upon witnesses and evidence are *Balsinger v. Madisonville*, 435 S.W.2d 808 (1968); *Spoone v. Morristown*, 431 S.W.2d 827 (1968), and *Vollmer v. City of Memphis*, 792 S.W.2d 446 (Tenn. 1990). In the latter case, the court declared that it was not an error for the chancellor to allow the director of legislative affairs for the city of Memphis to testify as an expert witness in regard to planning matters. He was the liaison between the mayor's office and city council. In that capacity he was involved in, and familiar with, the Cordova annexation, its background, fiscal impact, and the part it played in the growth of the city of Memphis.

Where a territory proposed to be annexed includes farm land, courts in other states have considered the value of the land as a guide in determining the reasonableness or propriety of its annexation, the land having a high value far in excess of its value for farming purposes only because of its prospective use for city purposes. In *Morton v. Johnson City*, 333 S.W.2d 924 (1960), the Tennessee Supreme Court agreed with the reasoning of these courts, upholding the annexation of territory that included a number of small farm tracts valued at far in excess of other like farm land out in the county not contiguous or close to the city. The mere fact that a large percentage of the tract proposed to be annexed consists of agricultural land is not of itself a basis for holding the ordinance annexing the area to be null and void. [Also see *Morton* for the view that a reason for annexation may be to prevent incorporation of a separate corporation right on the edge of the town.]

KIND AND QUALITY OF PROOF

The kind and quality of the proof of the reasonableness (and unreasonableness) of annexation ordinances is reflected in the following cases:

***Hicks v. Chattanooga*, 513 S.W.2d 780 (1974)**

In general, as to the four areas to be annexed, it was shown by the plaintiffs that the county was able to provide health services, a planning commission, police protection through its sheriff's department, pollution control, a landfill operation, county roads, and county schools; that water and electricity were available; that septic tanks were reasonably efficient; that private garbage collection and fire protection were available; that some recreational facilities were available; that the health, safety, and welfare of the citizens of these areas was not endangered; and that the prosperity of the residents of the affected areas in the municipality would not be materially retarded if the annexation were not permitted. The plaintiff's proof was that the city had failed to provide adequately the services mentioned within the present city and that it would not be financially able to provide the services to the annexed areas and that, consequently, it would be unfair to raise their taxes for services not received. It was, therefore, their position that annexation of these four areas was unreasonable under all the circumstances.

On the other hand, it was shown by the city that the areas in question had no fire protection comparable to what the city could offer (and which would ultimately lower insurance rates); that the

city would provide better police protection; that the schools would have available more funds with a smaller teacher-pupil ratio; that the health of these areas was endangered due to septic tank percolation problems and that the city could provide sewers that had never been provided by the county; and that the county does not provide refuse and garbage collection, recreational facilities, street lighting, traffic engineering, or certain inspection services, all of which would be provided by the city. In addition, the vast majority of the people in the proposed areas worked in the city, their economic opportunities were provided by the city, recreational facilities could be better provided by the city, the airport was provided by the city, and cultural advantages were provided by the city and used by county residents. It was necessary and right that the tax burden for all such service shall be equitably distributed. It was shown that the city was financially able to and would provide the usual municipal services in accordance with the schedule of services or before the dates scheduled.

The validity of the annexation ordinance sustained under the "fairly debatable rule" was in effect at that time.

***Pirtle v. City of Jackson*, 560 S.W.2d 400 (Tenn. 1977)**

The Utility Division of the city of Jackson now furnishes the annexed area with gas service, electric service, water service, and bus service. The Bemis area, which has a sewage collection system built by the Bemis Bag Company, has been permitted to tie its system into the waste disposal system of the city of Jackson. The north Bemis area, where septic tanks are used, has a problem with sewage in low-lying areas after heavy rainfall. This condition and its attendant danger to the health of the residents of north Bemis and nearby areas will be corrected by the installation of sewers as called for by the plan of services. Further, the record shows that on annexation, the up-to-date city of Jackson Fire Department will be substituted for the volunteer fire department now serving a large part of the annexed area, and the city police department will be substituted for the limited manpower of the sheriff's office and the private guards of Bemis Bag Company. There will be universal garbage collection rather than pick ups by a private concern on a subscriber basis with nonsubscribers, such as Mr. Pirtle, taking their garbage to remote areas of the county for dumping on private property with permission of the owners. In addition to the services enumerated above, the annexed areas will get building department services, housing services, and health department services.

It also is suggested by appellants that the city failed to carry the burden of showing that its annexation of the Bemis area, which is the site of the Bemis Bag Company, was not "for the sole purpose of increasing municipal revenue, without the ability and intent to benefit the area annexed by rendering municipal services, when and as needed, and when such services are not used or required by the industrial plants." We find no basis for this position. Many municipal services are already being furnished to the residents of Bemis and the Bemis Bag Company. Further the uncontradicted evidence is that for several years the additional revenue received by the city of Jackson as the result of the annexation will be less than the cost of carrying out the plan of service to the annexed areas."

The city carried its burden of proving reasonableness of the annexation ordinance.

***Saylors v. City of Jackson*, 575 S.W.2d 264 (Tenn. 1978)**

A civil engineer and the chief environmentalist of the Jackson-Madison County Health Department testified that most homes in the annexed areas are served by septic tanks and that a health hazard existed because of surface drainage problems. The annexation plans include installation of sewer services and curbs and gutters to protect the area from flooding. Testimony was developed at trial that

the Northside area lacked a full-time fire service; that police service was inadequate for a developing community; and that existing building, electric, fire, gas, and plumbing codes were not being enforced. Mayor Conger testified that the annexed area would be provided regular police protection, a new fire station, and street lights. His testimony was corroborated by that of a city planner, a fire chief, a city commissioner and an insurance agent, who testified that lower home insurance premiums in the Northside area would result from the annexation. There was additional testimony concerning the added benefits to the Northfield area of improved recreational facilities, sanitation services, and highway improvements.

In light of the above, the court found that the appellee has established that the annexation would further the health, safety, and welfare of the property owners of both the municipality and the annexed area. The improved municipal services that will accrue to the citizens of the Northside area and the need for the citizens of Jackson to control a fringe area development point to the obvious reasonableness of the annexation ordinance.

The reasonableness of ordinance clearly shown by a preponderance of the evidence.

***Wilson v. Lafayette*, 572 S.W.2d 922 (Tenn. 1978)**
Most of the testimony was directed to showing a need for services in the annexed area and the ability of the city to furnish those services. For example, there was testimony showing that the annexed area already draws heavily on the city of LaFayette for such needed services as water, fire protection, and garbage disposal. In addition to those services there was evidence that the city will make fire protection more available, will upgrade police protection, will inspect and monitor future construction in the area, and will perform needed maintenance on roads. There also was testimony that without the services provided by the city, property in the annexed area will deteriorate, and its deterioration will adversely affect property within the city.

Further, there was testimony that the annexed area is in need of sewers and that the need will increase as population in the area increases. Even now, residents of the annexed area and of the city are exposed to a potential health hazard from wells in the annexed area contaminated by septic tank flow. Also, a potential health hazard was shown to exist in a part of the city where the septic tank is the only way to disperse sewage. The city of LaFayette has taken affirmative steps to alleviate the health hazard within its city limits by constructing sewers. Engineering studies have been made, plans have been drawn, and an application has been filed with the Environmental Protection Agency for necessary funding. The city's need for sewers has resulted in its being given a "top priority for funding" in the state of Tennessee. The plan of services for the annexed area also calls for the construction of sewers as part of the ongoing efforts of the city to protect the health of its citizens and those in the annexed area.

The evidence clearly demonstrated that the annexation was logical and reasonable and to the best interest of both the citizens and property owners of the city and of those in the annexed area.

***City of Kingsport v. Crown Enterprises, Inc.*, 562 S.W.2d 808 (Tenn. 1978)**
The court agreed with the trial judge that:

1. There are no residential dwellings on the annexed property;
2. Preston Farm Associates intends to develop its 309 acres as a residential subdivision;
3. Sullivan County owns a 63-acre tract where a new high school is to be constructed;
4. Crown Enterprises and Mason and Dixon are substantial corporate entities, employing a large number of people in the Kingsport area and paying substantial taxes;

5. Mason and Dixon has an adequate sewage treatment plan, and its connection with the city sewer line is unnecessary;
6. The annexation study report shows that the 806-acre territory is in need of zoning and other municipal service in order to coordinate an orderly development of the entire area;
7. The city of Kingsport has adequate service in the areas of police protection, fire protection, education, planning, traffic engineering, and refuse collection, all of which could be extended to the annexed area;
8. The city plans to expend approximately $320,000 to extend city sewer and water lines into the annexed area;
9. The total tax revenue accruing to the city from the annexed property would be $85,281, of which appellees would pay approximately 56 percent; and.
10. That "the site in question constitutes a site of substantial industrial development." Mason and Dixon is a site of substantial industrial development.

When consideration is given to the entire record, we are fully persuaded that the annexation ordinance under consideration represents a fair, reasonable and responsible effort of the city of Kingsport to cause its municipal boundaries to keep apace of the growth and development of the city.

The decision of trial judge that the city failed to carry burden of proof was reversed. The ordinance was declared valid.

***Cope v. City of Morristown*,**
404 S.W.2d 798 (1966)

Mr. Carl Cope testified that there was a sinkhole in the area in question, which had been there for some 10 years and that county officials had advised residents that they were unable to satisfactorily rectify the situation; that there was no routine police patrol through the area, either by the county sheriff's office or the highway patrol; and that he has never seen a patrol car in the area. He further stated that in case of fire, the cities of the area would try to put it out, but that he knows of at least one instance when the Morristown Fire Department had sent a fire truck to their assistance; that the county rendered a weekly garbage pick-up service but that the garbage was disposed of at a city-operated and maintained garbage dump, which no resident of the area paid to maintain; and that all of the residents of the area are on septic tanks, some of which have given trouble, his being one of them.

Bud Wolfe, the road superintendent of Hamblen County, testified that he had visited the area in question to look at the so-called sinkhole, but that the county had never done anything about water that collects there.

The Honorable George W. Jaynes, general sessions judge, testified that there were only three salaried deputies for all of Hamblen County, while the town of Morristown 28 policemen. He further stated that teachers in the town of Morristown were paid more than Hamblen County teachers, and that teachers' pay was one element going toward the creation of a better school system.

The city recorder, Charles Smith, testified that in both 1964 and 1965, the city had operated with a surplus over its budgeted expenditures.

Mr. Elwood P. Hastic, chief sanitarian with the Hamblen County Health Department, testified that generally over the county area, garbage was picked up only once a month and that the city maintains a full-time health department employee for city service whose primary duty is insect control. He further testified that water in the Ridgeview area is furnished by the town of Morristown; that percolation tests had never been carried out in the Ridgeview area to ascertain whether that area was adaptable to septic tank usage; and that there had been septic tank failures in the Ridgeview area and

some parts of the Ridgeview area were unsuitable for septic tank usage, the trouble being aggravated by a concentration of septic tanks with a likelihood of increased problems with continued usage. It was his opinion that unsanitary conditions would develop in the area in the future. He also testified at some length concerning the likelihood that problems would develop in the future because of a lack of any program for the control of flies, mosquitos, insects, and vermin.

Mr. W. P. Bell testified that the water lines in the Ridgeview area belong to the Morristown Water System.

Mr. Amos Turley, an employee of the Appalachian Electric Co-operative, which furnished power to Ridgeview, testified that service to the area would be easier if provided by the Morristown Power System.

Mr. Earl Missing, city engineer for the town of Morristown, testified that sewer availability in the city was between 95 percent and 97 percent and that he did not believe other towns of comparable size were sewered to that extent. He further testified that the sinkhole problem could be eliminated; that garbage collection and street maintenance could be extended to the Ridgeview area with existing personnel; and that a street washing service could be extended to the area.

Mr. Ed Tucker, office manager and accountant with the Morristown power and water system testified that the contemplated extension of service to the area was within the financial resources of the system and that present water rates in the area would be reduced by 50 percent.

The following testimony introduced by defendants in error abundantly supports the action of the trial judge. Dr. Lee S. Greene, head of the Political Science Department of the University of Tennessee, testified that he had visited the area and was generally familiar with the growth and industrial development of Morristown. It was his opinion that cities should annex areas before development of the area and that the area in question being partially developed, it was logical that the area be annexed. He expressed his opinion that service and facilities necessary to the prosperity, welfare, health, and safety of both the residents of Morristown and the Ridgeview area would best be provided by annexation. He further testified that the bonded indebtedness of Morristown was not excessive, and the interest rate on the indebtedness was quite good.

Mr. Victor Hobday, a consultant on municipal government, then director of the Municipal Technical Advisory Service, a part of the Extension Division of the University of Tennessee, testified that he was generally familiar with Morristown and its environs and that it would be beneficial to all the people of the community to keep the community under a single municipal government.

Mr. William V. Ricker, city administrator of the town of Morristown, testified that 45 heads of households in the area to be annexed are employed inside the city; that sewer service would be contemplated to be rendered to the annexed area within two years; that a new patrol car had been added to the police force for the purpose of patrolling newly annexed areas and that police protection could and would be rendered to the area with existing patrol cars and officers; that immediate fire protection would be rendered to the area, a new fire hall near the area being planned for 1967; that a savings on fire insurance would follow annexation; that trash and garbage service would be rendered to the area; and that streets in the area would be curbed and guttered, a regular street maintenance program would be carried out, the sinkhole area would be corrected, a storm drain system would be installed, and there would be no need for students to attend

county schools against their will. He further testified that various city inspection services would be rendered in the area; that plumbing codes, health codes, and fire codes would be instituted; that planning and zoning regulations would be effective upon annexation; that the Morristown Power System would take over electrical service; that street lights would be installed; and that the expenses involved for these improvements and operations are within the feasible structure of the city's finances.

The annexation was held reasonable under the "fairly debatable" rule then in effect.

***Vollmer v. City of Memphis*,**
792 S.W.2d 466 (Tenn. 1990)

The evidence at trial was ample to show that the growth of the City of Memphis will be inhibited if Cordova is not annexed and is allowed to incorporate as planned. Annexation of the area to be incorporated into the city limits would place the citizens of that area on the tax rolls of the City of Memphis. Residents of the area would participate in payments for city services and amenities which the majority of them now enjoy without cost, including parks, libraries and other public facilities financed and provided by the city. The great majority of the residents in the area are employed in Memphis and commute by automobiles which do not presently meet the emissions standards required of automobiles owned by Memphis residents. Compliance with these standards will insure cleaner air for citizens of the entire region. Ambulance and fire services would be greatly enhanced by annexation and immediate construction of new facilities in the Cordova area. Sanitary services, street construction and upkeep will improve as well as police protection. Annexation will bring the Cordova area within the Memphis City School System which is better equipped and financed than that currently provided otherwise. It is plain that a great deal of material evidence supports the jury verdict that annexation of the proposed territory by the City of Memphis is reasonable, taking into consideration the health safety and welfare of the citizens and property owners of the area to be annexed, as well as the City of Memphis. [At 449.]

CHAPTER 11

"Problem" Annexations

CORRIDOR ANNEXATIONS

GENERALLY

Chapter 1101 set restrictions on how and when corridor annexations could occur during the period before the countywide growth plan was adopted. Those restrictions expired after the adoption of the countywide growth plans. T.C.A. § 6-58-108(c). But, corridor annexations must still be approached with caution.

In *State ex rel. Collier v. City of Pigeon Forge*, 599 S.W.2d 545 (Tenn. 1980), the Tennessee Supreme Court distinguished between "corridor," "strip," and "shoestring" annexations on one hand, and "long and lean" annexations on the other. In that case, the city annexed an area contiguous to the city about one mile long the width of the main highway through the city. The territory had a population of 47 people. In upholding the annexation as reasonable, the court said:

> *We should emphasize that this is not, as appellants insist, merely a "strip" or "shoestring" or "corridor" annexation, although it is long and lean. Such annexations, so long as they take in people, private property, or commercial activity, and rest on some reasonable and rational basis, is not per se to be condemned. We do not deal with an annexation wherein a city attempts to run its corporate limits down the right-of-way of an established road without taking in a single citizen or a single piece of private property. Such an annexation is perhaps questionable and is not here involved.* As in any annexation, and more particularly one where a geometrically irregular parcel of land is annexed, the Court must scrutinize the stated and ostensible purpose of the annexation. [At 547.] [Emphasis is mine.]

There are two substantive points in *Collier*:

- First, by whatever name they are called, annexations that run down rights of way or other artificial or natural features of land and that take in no other territory or people are "perhaps questionable"; and
- Second, in any annexation, particularly those involving geometrically irregular parcels of land, the court must scrutinize the stated and ostensible purpose of the annexation.

In a broad sense, most annexations are geometrically irregular, but *Collier* applied that description to annexations that are not reasonably consistent with the planned and orderly growth of the city. Also see *Hart v. City of Johnson City*, 801 S.W.2d 512 (Tenn. 1990).

CHALLENGES TO STRIP, SHOESTRING AND CORRIDOR ANNEXATIONS

Generally, T.C.A. § 6-51-103 authorizes challenges to annexation ordinances by *quo warranto* suits by property owners inside the annexed territory within 30 days following the annexation. But in *State ex rel. Earhart v. City of Bristol*, 970 S.W.2d 948 (Tenn. 1998), the Tennessee Supreme Court held that T.C.A. § 6-51-103 applies only to challenges based on the reasonableness of the annexation. *It permitted property owners annexed in 1995 by the city of Bristol to challenge on constitutional grounds by a declaratory judgment suit a corridor annexation adopted in 1989; the territory annexed in 1995 was attached to the corridor annexed in 1989.* Citing *State ex rel. Collier v. City of Pigeon Forge*, 599 S.W.2d 545 (Tenn. 1980), the court frowned

upon corridor annexations, declaring that "the 30 day limitation does not apply to declaratory judgment suits contesting the validity of an ordinance which purports to annex an area that does not include people, private property, or commercial activity and is, therefore, void." [At 954.] [Citing Collier.]

In that connection it also declared that:

> The majority of courts have interpreted the requirement that annexed land be "contiguous" to not allow the annexation of thin strips of land to connect a larger parcel of land to a municipality. [Citation omitted.]... These decisions articulate the principle implicit in the Tennessee statute. [At 953-54.]

It is not clear whether *Earhart* applies only to corridor, strip, or shoestring annexations, or perhaps to other annexations that do not take in people, private property, or commercial property. But the Tennessee Court of Appeals gave it such a limitation in the unreported case of *Snell v. City of Murfreesboro*, 1004 WL 1924032 (2004). There, the territory annexed by the city included several acres and 1,600 feet of *road right of way* that connected those acres to the city. The plaintiffs, who owned property abutting the road (but not in the annexed territory), challenged the annexation under the Declaratory Judgments Act, arguing that the road right of way contained no people, private property, or commercial activity and that the annexed property was not contiguous to the city. They urged the court to find that the annexation was illegal under both T.C.A. § 6-51-101 *et seq*. and *Earhart*.

The court held that the plaintiffs lacked standing to challenge the annexation by ordinance under T.C.A. § 6-51-103(a)(1) because they did not live in the territory annexed as required by that statute as it had been interpreted by *Hart v. City of Johnson City*, 801 S.W.21d 512 (Tenn. 1990). The court also rejected the plaintiff's Earhart claim, declaring that the annexation did include people and private property (in the territory at the end of the road right of way), and reasoning that:

> ...*Earhart* clearly applies only in those situations where a municipality passes an ordinance that "purports to annex an area that does not include people, private property, or commercial activity and is, therefore, void."... Because the annexed territory in this case does include people and private property, the *quo warranto* remedy is available tos challenge the annexation ordinance in question; it is just not available to Appellants. The alternative remedy of declaratory judgment is therefore not available to Appellants under the rationale set out in *Earhart*. Under both T.C.A. § 6-51-103 and *Earhart*, Appellants lack legal standing to challenge the annexation ordinance... [At 5.]

But in the unreported case of *Town of Oakland v. Town of Somerville*, 2003 WL 22309498 (Tenn. Ct. App. 2003), the court allowed the town of Oakland to sue the town of Somerville in a declaratory judgment action on grounds other than whether the territory annexed by the town of Somerville contained people, private property, or commercial activity. In that case, Oakland alleged that the Somerville ordinance was void because it was enacted after Oakland's annexation ordinance on the same property had been passed on final reading [but before the effective date of the ordinance] and that Somerville breached its agreement with Oakland regarding the annexation of property in Oakland's "annexation reserve" area. The court concluded that "Oakland clearly sought to contest the validity of the annexation, not its reasonableness, an action which *Earhart* clearly holds is permissible under the Declaratory Judgment Act and not subject to the time limitations available to *quo warranto* proceedings." [At 8.]

"DONUT HOLE" ANNEXATIONS

GENERALLY

Donut hole annexations rest on legally shaky ground in Tennessee. In *City of Kingsport v. State ex rel. Crown Enterprises, Inc.*, 562 S.W.2d 808 (Tenn. 1978), Crown Enterprises challenged Kingsport's annexation of 806 acres, which included an 85-acre industrial park owned by Crown Enterprises and used by its subsidiary, Mason and Dixon Lines (M&D). The trial court found the annexation unreasonable for several reasons: The 85-acre site used by M&D was industrial, M&D provided virtually all its own services, and annexation of the M&D property was solely for the purpose of obtaining tax revenue in violation of T.C.A. § 6-51-103.

In overturning the trial court, the Tennessee Supreme Court declared that, "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 Enterprise's argument that M&D 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. This 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.* [At 814.] [Emphasis is mine.]

KINDS OF DONUT HOLE ANNEXATIONS

The courts in other states have gone both ways on the question of whether donut hole annexations meet the test of contiguity where, as in the case of Tennessee, the annexation statute does not define the term "contiguity." Two kinds of donuts have been issues in those cases: one where one or more parts of the donut hole actually touches the city (technically, the donut is broken at one or more points) and one where the donut hole is completely surrounded by the city. The weight of authority is that donut hole annexations of the latter kind do not meet the test of contiguity. [See 49 ALR3d 589.] *City of Kingsport v. State ex rel. Crown Enterprises, Inc.*, 582 S.W.2d 808i (Tenn. 1978), points to the prospect that the Tennessee courts could also follow the majority rule and hold that such annexations are not contiguous as well as unreasonable.

Indeed, it would take only a short step for the Tennessee courts to connect *Crown Enterprise* and *Earhart* on that point.

CORRIDOR AND DONUT HOLE ANNEXATIONS BY REFERENDUM

Although Tennessee's annexation statute makes no provision for judicial review for annexations done by referendum, it is said in *State ex rel. Vicars v. City of Kingsport*, 659 S.W.2d 367 (Tenn. Ct. App.1983), that such annexations are subject to judicial review on constitutional grounds. Also see *State ex rel. Earhart v. City of Bristol*, 970 S.W.2d 948 (Tenn. 1998).

DONUT HOLES CREATED BY DEANNEXATION

The Tennessee courts do not appear to have addressed the question of whether donut holes created under the deannexation statute are legal.

ANNEXATION BY ACQUIESCENCE

Two unreported Tennessee cases deal with the question of how the courts might treat an annexation that is procedurally defective in some way but that has been treated by both the municipality and the population in the annexed territory as part of the municipality for a long period.

In *King v. City of Watertown*, 1986 WL 10696 (Tenn. Ct. App.), the city's charter required ordinances to be passed on two readings and to be signed by the mayor. The annexation ordinance at issue in this case was passed only once on January 26, 1976, and never signed by the mayor. The court held that the 30-day limit on the filing of *quo warranto* annexation suits contained in T.C.A. § 6-51-103 did not apply because no annexation ordinance had ever been passed, but it also held that the "annexed" territory was part of the city by acquiescence.

The court reasoned that:

1. The property appeared on the tax rolls of the city in 1978, and the plaintiff's predecessors in title paid city property taxes for the years 1978 through 1982. The plaintiffs purchased the property on November 5, 1982, and paid city property taxes for the year 1983 and business taxes in 1982 and 1983 for the grocery and fruit market they operated there.
2. The city charges outside residents for water at the rate of one-and-one-half times the rate it charges inside residents. The plaintiffs have at all times paid the inside water rate.
3. The city provides free garbage pickup to city residents and to businesses for $6 per month. The plaintiffs turned down city garbage service for their store.
4. The plaintiffs were provided city police protection.
5. All the county and city maps since 1978 showed the property as being located within the city limits of Watertown.
6. The plaintiffs raised no question regarding being a part of the city until 1983 when they applied to the Wilson County Beer Board for a license to sell beer at their grocery store. The sale of beer was prohibited inside the city of Watertown. They were refused a license because the city of Watertown contended the property was within the corporate limits of the city.

Citing Roane County v. Anderson County, 14 S.W. 1079 (1890), *Putnam County v. White County*, 203 S.W. 334 (1918), and *Putnam County v. Smith County*, 164 S.W. 1147 (1914), for the proposition that a county could lose property to another county by laches and long acquiescence, the court also pointed to several cases in other jurisdictions in which it had been held that a local government can lose property to another local government by acquiescence: *City of Whiting v. City of East Chicago*, 359 N.E.2d 536 (1977); *Starry v. Lake*, 28 P.2d.80 (1933) (Calif.); *LaPorta v. Village of Philmont*, 346 N.E.2d 503 (1976) (New York). It also pointed to *Township of Scotch Plains v. Town of Westfield* for the proposition that "It has also been held that maps published by authority of law may be referred to as evidence." [At 4.]

In this case, concluded the court:

> We are of the opinion that acquiescence over the long period of time in the location of the municipal boundary by both the municipality and the inhabitants of the municipality where municipal action and improvements have been done under the assumption that the property is located within the boundary will support the conclusion that the boundaries acquiesced in are the true boundaries...Here, plaintiffs and their predecessors in title have acquiesced in the property being considered inside the city limits of Watertown, Tennessee. The property was

> originally zoned and subdivided to the plaintiffs' and their predecessors' benefit by and according to the zoning codes of the City of Watertown. City services have been provided to and enjoyed by the plaintiffs. City and county maps show the property to be inside the corporate limits of the City of Watertown...Plaintiffs acquiesced in their property being a part of the City of Watertown until such time as it no longer suited their purposes. Then, and only then, did they raise any objection. [At 4.]

It is clear that a similar result would have been reached in *White v. City of Townsend*, 1995 WL 306877 (Tenn. Ct. App.), had not the city held two annexation referenda [the first ended in a tie, the second in a defeat for the annexation] pending the appeal of the trial court's decision in 1994 that the annexation ordinance passed in November 1959, was procedurally defective. The court at length discussed *King v. City of Watertown* and declared that:

> We are of the opinion that under the authority of *King* and under the circumstances here the plaintiffs' property was, prior to this action, located within the corporate limits of the City of Townsend. We are compelled to point out, however that a Rule 11, T.R.A.P., application was made to the Supreme Court for review of *King v. City of Watertown*. Permission to appeal was denied, with the Supreme Court concurring in results only, January 5, 1987. Since we are not privy to the reasons of the Supreme Court for their action, we nevertheless accept *King* as an implicit approval of the principle of "annexation by acquiescence," since in our view, the result reached in *King* could have been reached in no other way except through annexation by acquiescence or some form of estoppel brought about the acquiescence and acceptance of city services. [At 7.]

But the court reasoned that "the action of the city in calling two referenda while asserting the property in question is within the municipal boundaries of the city is contradictory and an effective disclaimer of 'annexation by acquiescence.'" [At 10.]

CHAPTER 12

Effect of Annexation on Other Governments

ANNEXING MUNICIPALITY'S RIGHT TO PROVIDE MUNICIPAL SERVICES

Two statutes generally address the right of an annexing municipality to provide municipal services inside the annexed territory, including utility services: T.C.A. § 6-51-111 with respect to all municipal services except service provided by electrical cooperative and T.C.A. § 6-51-112 with respect to services provided by electrical cooperative.

T.C.A. § 6-51-111 provides that following an annexation accomplished by either ordinance or referendum:

> ...an annexing municipality and any affected instrumentality of the State of Tennessee, such as, but not limited to, a utility district, sanitary district, school district, or other public service district, shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets, and liabilities of such state instrumentality that justice and reason may require in the circumstances. Any and all agreements entered into before March 8, 1955, relating to annexation shall be preserved. The annexing municipality, if and to the extent it may choose, shall have the exclusive right to perform or provide municipal and utility functions and services in any territory which it annexes, subject, notwithstanding § 7-82-301 or any other statute, subject, however, to the provisions of this section with respect to electric cooperatives. [Subsection (a).]

The same statute provides that:

> Subject to the annexing city's exclusive rights under the statute, any matters upon which the parties have not come to a written agreement in 60 days after the operative date of the annexation shall be settled by arbitration and review under the rules set out in the statute. [Subsection (b).]
>
> Where the annexed territory is being provided with utility service by a state instrumentality, the agreement or arbitration award must protect the bondholders and contract rights under the conditions of the statute. [Subsection (c).]

If a private individual or business entity provides utility services within the boundaries of a municipality pursuant to a privilege, franchise, etc., from the municipality, and the municipality annexes territory which includes the service area of a utility district, the private individual or business and the utility district shall attempt to reach an agreement for the latter to convey to the former any or all public functions, rights, duties, property, assets and liabilities of such utility district that reason and justice may require. If an agreement is not reached, then notwithstanding the change of municipal boundaries, the service area of the utility district shall remain unchanged and the private individual or business entity shall not provide utility service in the utility district's service area. [Subsection (d).]

> If at the time of the annexation the annexed territory is being provided with utility service by a municipal utility service or other state instrumentality, including a utility district, the annexing municipality can purchase all or part of the utility system by delivering to the utility system written notice of its election to exercise its right under the statute to be the exclusive service provider. The purchase price and terms of payment shall be those agreed upon by the parties. If the parties cannot agree on a purchase price, a final determination of the fair market value of the properties being acquired and all other outstanding issues related to the provision of utility services in the annexed area shall be made using the arbitration procedures contained in Subsection (b), above. Additional provisions governing arbitration are contained in the statute. [Subsection (e).]

Subsection (e) was added to T.C.A. § 6-51-111 by *Public Acts 1998*, Chapter 922, undoubtedly in response to the case of *Knoxville Utilities Board v. Lenoir City Utilities Board*, 943 S.W.2d 979 (Tenn. Ct. App. 1996). The question in that case was whether T.C.A. § 7-51-111 or T.C.A. § 6-51-112 controlled the taking by the city of Knoxville of utility property owned by the Lenoir City Utilities Board in territory annexed by the city of Knoxville. At the time of the annexation T.C.A. § 6-51-111 contained no provisions for compensation to be paid by an annexing municipality to governmental entities covered by that statute for such property, while T.C.A. § 6-51-112 provided for compensation to be paid by an annexing municipality to electrical cooperatives for the taking of such property. The Lenoir City Utilities Board did not qualify as an electrical cooperative under T.C.A. § 6-51-112; rather, it fell under T.C.A. § 6-51-111 and was not entitled to compensation for the taking of its property by the city of Knoxville. But subsection (e) is limited only to municipal electrical services and state instrumentalities, including utility districts; it does not apply to utilities providing other kinds of utility services or to electrical cooperatives.

The Tennessee Supreme Court in *Hamilton County v. City of Chattanooga*, 310 S.W.2d 153 (1958) held that a county is an affected instrumentality within the statute, and in City of *Lenoir City v. State ex rel. City of Loudon*, 571 S.W.2d 298 (Tenn. 1978), that a municipality is an affected instrumentality within the statute.

T.C.A. § 6-51-112 provides that if the annexing municipality owns and operates its own electric system, it shall either offer to purchase any electric distribution properties and service rights within the annexed area that are owned by an electric cooperative, or grant such cooperative a franchise to serve the annexed area. Procedural details are spelled out in that section.

UTILITY DISTRICTS

Protection of Utility Districts Under State Law

In *Hendersonville v. Hendersonville Utility District*, 506 S.W.2d 149 (Tenn. Ct. App. 1973), it was held that although a city by its offer would acquire all of a utility district's assets and would assume all of its liabilities, arbitration was a necessary prerequisite to filing of suit by the city to be allowed immediately to assume control and operation of the system.

The court outlined some of the items that should be considered as subject to arbitration:

> It is the argument of the City that since the City by its offer will acquire all of the Utility District's assets and will assume all of the liabilities of the Utility District there is simply nothing to arbitrate as the Utility District is a public agency holding property by virtue of a trust in favor of the public and the City occupies the same status. Therefore, it is only

the matter of a successor trustee assuming all the assets, whatever they might be, and liabilities, whatever they might be, of the first trustee. This being true, there can be no disputed issues which would be the subject of a proper arbitration. It is readily admitted, that if only a small portion of the Utility District was taken over by the City and the Utility District were to continue its operation in the non-annexed area, such things as the value of the facilities received, the division of liability for bonded indebtedness, etc., would be the proper subject of arbitration.

We cannot agree with this argument. The statute does not limit its application to cases of a partial take-over. It should be noted that it is required by the statute that the parties "shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets and liabilities of such state instrumentality that justice and reason may require in the circumstances." The statute also contemplates possible disagreements between the parties on the matters to be attempted to be agreed upon for it further provides "any such matters upon which the respective parties are not in agreement in writing within sixty (60) days after the operative date of such annexation shall be settled by arbitration with the laws of arbitration of the state of Tennessee effective at the time of submission to the arbitrators, and subsection (2) of section 23-501 shall not apply to any arbitration arising under sections 6-309–6-320."

We do not here attempt to list or limit in any way items which could be in dispute and the subject of arbitration for such attempt would be beyond the scope of this appeal, but even when the annexing authority is to take over an entire utility district, the date of takeover might very well be the subject of disagreement and arbitration. In the instant case, that problem is present as well as others. For instance, the second paragraph of the statute provides for protection of the bond holders to be an item of the agreement of arbitration. Also, it must be born in mind in this case that the City is going to, or so they say they will provide services for members of the Utility District outside the annexed area. It would seem to us that "justice and reason may require" some sort of written agreement on this subject by the City and release of the Utility District trustees.

We hold the arbitration as set out in the statute is a necessary prerequisite to the filing of such a suit as this. We think it would be somewhat difficult for the Chancellor below to order a take-over of assets when a list of those assets is not before the Court and the Chancellor has no knowledge of what they actually are. This case involves more than underground pipes and fireplugs, it involved service equipment, bonded indebtedness, etc. As we view it, to hold any other way would defeat the purpose of the statute, which no doubt was to relieve the Court of having to supervise the dispute between the parties until some sort of agreement or award had been made through arbitration which the Court could either at that time approve or disapprove. [At 151-52.]

After the city of Memphis annexed an area that included a part of the area served by a utility district, the city entered into an agreement to take over and to assume all obligations of the district. Before the annexation the district had contracted with a subdivision developer, agreeing to build water supplying facilities and to supply water to the subdivision. The developer had deposited $88,456.90 with the district as the estimated cost of construction, and the district agreed to refund the deposit by annual payments equal to 50 percent of water revenues from its customers in the subdivision for a period of 10 years or until

the total amount of the deposit was repaid. The contract contained a provision that in the event the ownership or contract of the district was sold or transferred the balance of refunds would be paid in full at that time. The developer sued to enforce the terms of the contract, and the Court of Appeals of Tennessee, Western Section, held that the city was bound by the acceleration of refund provision of the contract. *Pitts & Company, Inc. v. City of Memphis*, 558 S.W.2d 448 (Tenn. Ct. App. 1977).

Radnor District v. Nashville (unreported) grew out of a contract between the First Suburban (Radnor) Water District and Nashville, a condition of which was that the former would withdraw its suit against an annexation ordinance. The contract provided in part as follows:

> Upon receipt of just compensation, as herein defined, the District will allocate and convey to the City the properties and assets of the District, herein described ...
>
> Just compensation is defined as the fair market value in case of the properties and assets to be allocated and conveyed by the District to the City as a going business, together with incidental damage to the remaining property and assets of the District by the severance therefrom of such properties and assets to be allocated and conveyed to the City, as though the properties and assets so to be allocated and conveyed had been taken or condemned in the exercise of the power of eminent domain under the laws of the State of Tennessee; provided, however, that the element of "good will" shall be given no consideration in arriving at just compensation.

The annexed area included about 6,600 of the utility district's customers, and about 2,500 were left outside. The city conceded that this reduction in the number of customers would increase the cost of the remaining part of the utility district. The lawsuit resulted from the city's contention that the utility district should not be compensated for meters (allegedly paid for by customers) nor for water lines installed by subdividers and deeded to the district at no charge, and that deductions should be made for the cost of upgrading the district's facilities to city standards.

The arbitrator (a former chancellor) appointed by the chancellor to hear the case recognized the validity of the arguments on both sides. He ruled, however, that his role was limited strictly to making an award pursuant to the contract, and that therefore he must include "all of the properties and assets of the District used and useful in performing of its utility functions and services to be allocated and conveyed to the city" since this was the requirement of the contract. He noted that this award ($1,585,437) was not determinative of the issues raised by the city, which would be appropriate for consideration by a court of law or equity.

Subsequently, suit was filed to determine the distribution of the arbitrator's award, the city contending that the district was acting as a trustee for the users and that a portion of the award should be allocated to the users or to improving the quality of the system. The chancellor ruled that the award would be allocated as follows: $392,900.79 to a trust fund set up by the city doe water system improvements within the district; $797,500 for assumption of a proportionate share of the system's debt; $268,563.45 for real estate and severance allowance; $42,879.76 for customer deposits assumed by the city; and $83,593 credited to the city for construction.

The city of Knoxville persistently declined to resort to arbitration in a wrangle with the Fountain City Utility District that lasted for more than four years. Practically all of the district had been annexed, and it was conceded by all that acquisition by the city was the only reasonable solution. The utility district refused to go out of business, however,

unless the city would agree to use its surplus funds to reimburse its customers for their "equity" in the system. As the successor public agency, the city of Knoxville was, of course, entitled to assets in the form of surplus funds as well as pipes in the ground and other properties. For that reason, its agreement to this disposition of such funds was the equivalent of it making payment. Finally, to end the long dispute without recourse to the courts, the city in 1966 agreed to a distribution of $387,500 in surplus funds, which the district paid to the customers it was serving on December 31, 1965.

Appendix G contains a resolution of the city of Jackson setting forth the terms and conditions for taking over a utility district and a subsequent ordinance fixing water rates in the acquired area. Appendix H is a contract whereby the city of Memphis took over the utility district in the Frayser area. Appendix I contains resolutions adopted by a utility district and Johnson City for this purpose.

PROTECTION OF UTILITY DISTRICTS UNDER FEDERAL LAW

It is provided by 7 United States Code, § 1926(b) that:

> The *service provided or made available* through any such association shall not be curtailed or limited by inclusion of the areas to be served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event. [Emphasis is mine.]

This law applies even where the municipality has annexed the area in which it wishes to provide utility service. The reason is that many, if not most, utility districts have outstanding FmHA or RECD loans.

However, some recent cases have held or implied that where a utility district does not meet the "service provided or made available" requirement of § 1926(b), it is not accorded the protection of that statute.

The earliest of these cases, *Glenpool Utility Services Authority v. Creek County Rural Water District No. 2*, 861 F.2d 1211 (10th Cir. 1988) (cert. denied by U.S. Supreme Court, 490 U.S. 1067), was resolved in favor of Creek County Rural Water District No. 2. The district had a water line that ran within 50 feet of the property in question, and apparently the district was obligated under Oklahoma state law to provide a line extension or a road bore. The court reasoned that:

> The face of the statute [7 U.S.C. § 1926(b)] makes clear that Congress protected the indebted rural association from curtailment or limitation by impinging municipal corporations. The district court correctly held that District No. 2 came within the purview of Section 1926(b) and had met the statute's threshold requirements, having a continuing indebtedness under Section 1926 and having *"made [service] available" to the area by virtue of a line adjacent to the property* and its responsibilities to applicants within its territory... [At 1214.] [Emphasis is mine.]

The U.S. Sixth Circuit (in which Tennessee is located) denied a water district's claim to the exclusive right to provide service in territory annexed by a city and in territory that lay outside its boundaries. In *Lexington-South Elkhorn Water District v. City of Wilmore, Ky.*, 93 F.3d 230 (1996), the court observed that the water district provided no water service in, and had received no requests for service from, any of the disputed areas; in the annexed area, the water district had no facilities in

or adjacent to the disputed properties; in the 10 areas outside the limits of the annexed territory, only one contained the water district's main, and that main had been constructed after the city had begun providing water service in the area; and in the other nine areas outside the annexed territory that contained no mains, one of the areas had a main within 50 yards; the others ranged in distance from 0.1 to 0.4 miles.

Then, in reviewing earlier cases on the application of § 1926(b), including *Glenpool Utility Services Authority*, above, the court said that:

> These cases teach that whether an association had made service available is determined based on the existence of facilities on, or in the proximity of, the location to be served. *If an association does not already have service in existence, water lines must either be within or adjacent to the property claimed to be protected by Section 1926(b) prior to the time an allegedly encroaching association begins providing service in order to be eligible for Section 1926(b)*. Based on the location of Lexington-South Elkhorn's distribution lines, it had not made service available prior to the time that Wilmore began providing service to the disputed properties... [At 237.] [Emphasis is mine.]

But language in that case suggests that had the district obtained the certificate of necessity that water districts were required under Kentucky law to obtain with respect to territory in which they claimed the right of service, the question of whether service was "available" may have been closer. The court pointed out that Kentucky law required a water district that had obtained such a certificate to make reasonable extensions of water service to all customers at least the first 50 feet and a longer one where the 50-foot extension was unreasonable under the circumstances. But immediately after making that observation, the court declared, "Thus, a key factor in determining whether a water district has made water service available is the proximity of the water district's distribution lines to areas in dispute." [At 235.]

Sequoyah County Rural Water District No. 7 v. Muldrow, 191 F.3d 1192 (10 Cir. 1999), declares that, "Courts are in disagreements about what is required to satisfy the 'made services available' requirement of § 1926(b)." [At 1201.] It divides the cases into three categories based on the kind of test the particular court applied to determine if the service was made available: (1) legal obligation (under state law) to provide utility service test, (2) "pipes in the ground test," and (3) a combination of both tests.

The court in that case decided there was no state (Oklahoma) law duty to provide service but declared that even if there were:

> "....we do not think that such a duty, standing alone, is sufficient to meet the "made service available" requirement. For one thing, to hold that a legal duty is sufficient to meet the requirement would be contrary to the language of the statute, which provides protection only against curtailments of "service provided or made available." 7 U.S.C. § 1926(b). In addition, allowing a water district to meet the requirement simply by showing a legal duty to serve may undermine the principle goals of the statute, which is to "encourage water development by expanding the number of potential users of such systems." [Citations omitted.] "Inherent in the concept of providing service or making service available is the capability of providing service, or, at a minimum, of providing service within a reasonable time." [Citing *Bell Arthur*, below.] If a water association has a legal duty to provide service but has no proximate or adequate facilities or cannot provide them within a reasonable time, it is the customer who suffers. For these reasons, we think that the second prong of § 1926(b) should focus

> primarily on whether the association has *in fact* [emphasis is the court's] "made service available," i.e., on whether the association has proximate and adequate "pipes in the ground" with which it has served or can serve the disputed customers within a reasonable time." [At 1203.]

The court sent this case back to the district court to make a finding of fact on the question of whether the water association had "made service available" under the "pipes in the ground" test.

Whatever confusion the cases create with respect to the question of whether the state law that requires a utility district to provide service to customers in its service area should be weighed in determining whether service is "available" under § 1926(b), Tennessee is among those states whose laws regulating utility districts do not require such districts to provide service as a matter of right. For that reason, the "pipes in the ground" test probably applies to Tennessee under *Lexington-South Elkhorn Water District* and subsequent cases in other federal judicial jurisdictions.

The question of what is "available" utility service was hit almost head on in *Bell Arthur Water Corporation v. Greenville Utilities Commission*, 173 F.3d 517 (4th Cir. 1999). There, in 1994, the Greenville, North Carolina, Utilities Commission agreed to provide sewer service to the Ironwood development. In 1995, the city of Greenville annexed the Ironwood development, following which the Greenville Utilities Commission and Bell Arthur engaged in a dispute over which of them should provide water service to Ironwood. Bell Arthur already had a six-inch water line in the area, which it had paid for with FmHA loans, but those loans had been retired. However, in 1993, Bell Arthur had borrowed money from FmHA to finance the extension of water services in its service area to territory that did not involve Ironwood.

Bell Arthur's own engineers determined that providing water service to Ironwood would require a 14-inch water line at a cost of $650,000. In May 1995, Bell Arthur agreed in writing to provide both temporary and permanent water service to Ironwood and began temporary service to a construction trailer there. However, Bell Arthur took no further steps to provide water service to Ironwood until 1996 when it obtained necessary permits from the state. In August 1996, Bell Arthur's board resolved to borrow the necessary funds to construct the larger water line, and in December 1996 borrowed $1 million from a private bank for that purpose. Apparently, the dispute between Greenville Utilities Commission and Bell Arthur was already in court when Bell Arthur borrowed the $1 million because the loan was "conditioned on the outcome of this litigation." [At 521.]

However, the Greenville Utilities Commission had not been idle. In July 1995, it notified the Ironwood developer that it would provide water service and had already ordered the pipe to provide the service, and by October 1995, had constructed a 12-inch water line to Ironwood. Bell Arthur continued water service to the developer's construction trailer until February 1996.

The U.S. District Court for the Eastern District of North Carolina [972 F. Supp. 1951 (1997)] held that Bell Arthur was not entitled to the protection of 7 U.S.C. § 1926(b), for three reasons:

1. It had paid the FmHA loans with which it had constructed the six-inch water lines into Ironwood;
2. The new FmHA loans it had obtained for water line extensions to an area that did not include Ironwood were not directly related to the service to that area; and
3. Bell Arthur was "not capable of providing the requisite service within a reasonable time after application was made for the service."

With respect to the first two reasons, the Fourth Circuit Court of Appeals held that Bell Arthur could not rely upon retired FmHA loans to invoke the protection of 7 U.S.C. § 1926(b), but held that the 1993 FmHA loans that Bell Arthur had obtained to make water line extensions to areas in its service area, but that did not include Ironwood, triggered the protection of Bell Arthur under 7 U.S.C. 1926(b) for its entire service area, including Ironwood.

With respect the third reason, the court held that:

> ...Bell Arthur is entitled to the protection of § 1926(b) only for that area. On this issue, we agree with the district court that Bell Arthur was not entitled to protection for the Ironwood area because it did not have the capacity to serve that area, nor did it have the capacity to provide such service within a reasonable time after the request for service was made. [At 525.]

The court reasoned that with respect to § 1926(b):

> Inherent in the concept of providing service or making service available is the capacity of providing service or, at a minimum, of providing service within a reasonable time. See *North Alamo Water Supply Corp. v. City of San Juan*, 90 F.2d 910, 916 (5th Cir. 1996) (holding that a water association may establish the availability of service under § 1926(b) by demonstrating, inter alia, that it "has lines and adequate facilities to provide service to the disputed areas." (Emphasis added)); see also *Lexington–South Elkhorn Water Dist. v. City of Wilmore*, 93 F.3d 230, 238 (6th Cir. 1996) (noting that "an association's ability to serve [under 1926(b)] is predicated on the existence of facilities within or adjacent to a disputed property"). Having a six-inch pipeline in the ground when a 14-inch line is necessary provides no support to a claim that a water association has adequate facility to provide service. We conclude that in order to enjoy the protection of § 1926(b) for an area, an association must demonstrate as a threshold matter that it has adequate facilities within or adjacent to the area to provide service to the area within a reasonable time after a request for service is made...We hold that Bell Arthur's inadequate six-inch pipe in the ground coupled with only a general, unfulfilled intent to provide the necessary 14-inch pipe sometime in the future does not amount to "service provided or made available." [At 526.]

In some cases where the utility district has not made the utility at issue "available," a battle over the question of whether 27 U. S. C. § 1926(b) protects the utility district from incursion into its service area may not even be necessary. Recently the county mayor in one Tennessee county gave a city the certificate of convenience to provide sewer service inside the city, which was in the utility district's service area, where the utility district had not provided such service inside the city. It is difficult to see how that action would be envisioned by the holders of the bonds of the utility district when the utility district was not deriving any revenue from service inside the city limits, and there was no likely prospect that it would do so for the foreseeable future. Although annexation was not an issue in that case, there may be instances in which a similar situation exists in a territory proposed for annexation.

SCHOOLS

A city desiring to take over a county school in an annexed area will need to negotiate with the county. The opening sentence in the opinion of *Hamilton County v. Chattanooga*, 310 S.W.2d 153 (Tenn. 1958), is "The sole question in this case is whether under section 9 of chapter 113 of the *Public Acts of 1955*, T.C.A. section 6-318, counties are included within the phrase 'any affected instrumentality of the state of Tennessee.'"

The question was answered in the affirmative, and the case was remanded for further proceedings. The Tennessee Supreme Court *did not prescribe the terms of settlement between the county and the city*. It may be significant that the court noted that Hamilton County in its bill "prayed for… a judgment against the City of Chattanooga for the total amount, supra, expended on said schools," but refused to grant such relief. Subsequently the county and the city reached an agreement that was summarized by the Chattanooga City Attorney as follows:

> In the first annexation, under Chapter 113, *Public Acts of 1955*, the City acquired a new school building from Hamilton County. The County had issued bonds under the provisions of section 49-715 of the Code, the interest and principal being payable only from taxes levied on property outside the corporate limits of the City. The City entered into an agreement with the County to pay to it the amount of bonds and interest as they mature, the bonds being serial bonds.
>
> In the next territory annexed there were two school buildings belonging to the County which had been constructed several years before and bonds issued therefor payable on taxes levied on all property in the County, including property in the City. The bonds issued were divided between the County and City as provided by section 49-711 of the Code. There had been some additions to these buildings made from bonds funds payable only on taxes levied on property outside the City, and also the County has spent some of its capital outlay funds received from sales tax, in making improvements to these schools. The City entered into a contract with the County to reimburse them the amount of the capital outlay funds and to pay to the County annually the balance due on the issue of bonds allocated to the school buildings.
>
> The County in each instance agreed to discontinue levying taxes on property in annexed territories for the payment of the principal of and interest on the urban school bonds.
>
> The City has not paid or agreed to pay any part of the bonds outstanding which were issued for school purposes payable from taxes levied on all the property in the County, including that within the City. The taxpayers of the City will continue to pay on the County bonds, including the bonds used on constructing buildings in the County outside the City.

Where it was alleged that the annexation of territory would reduce the county area liable to taxation for the payment of principal and interest on rural school bonds and thus impair the obligation of contract, it was held that this is not a justifiable issue in a suit in the nature of *quo warranto* attacking the reasonableness of an annexation ordinance. [See *Cope v. Morristown*, 404 S.W.2d 298; *Spoone v. Morristown*, 431 S.W.2d 827 (1968).]

Fairly serious problems developed in Davidson County and Knox County resulting from large annexations by Nashville and Knoxville. The county judges of these two counties were quoted in newspaper stories as saying that annexation without unification of the county and city schools into a single school system would be intolerable, and this position gained substantial support in both communities. The Davidson County problem was submitted to arbitration, but the issue became moot when voters approved a single metropolitan government, including a unified school system, on June 28, 1962.

Several problems arise from the division of a county school district by a new city boundary that cuts off county students from the schools they formerly attended. The area annexed by Nashville included approximately 12,500 students, 2,600 of whom had

been attending schools outside the annexed area; an additional 1,650 students lived outside but had been attending county schools in the annexed areas. Knox County reported that 14,840 students were attending 29 schools in the area annexed by Knoxville, 2,275 of whom lived beyond the new city boundaries.

A Knoxville city school official suggested as a solution to such a situation at one high school that the county pay tuition to the city for the nonresident students and that the city pay the county for transporting students within the annexed areas. If the tuition rate is reasonable, this would seem a sensible solution; such tuition payments may be little more than it would cost the county to educate the children directly, and the county receives state funds for transportation that are not distributed to city systems. In consideration of county transportation for city schools, a city might even agree to accept county students at tuition rates equal to the net cost per student to operate the county system.

The county judge of Knox County proposed that two high schools be retained by the county on a basis of "law and common horse sense." A precedent for such an arrangement exists in Chattanooga, where a large county high school has been located in the city for many years. Davidson County school officials proposed that the county retain four of the 22 schools in the annexed areas because 40 percent of the enrollment in these schools was from beyond the new city boundaries, but the city expressed an intention of taking over all schools.

When an annexation case is in litigation, there usually is a considerable time lag before the annexation is finally effective. During this time a problem arises as to building or enlarging school facilities to take care of an increasing number of students attending schools in the area subject to annexation. A solution for this problem in the Nashville area, formulated by the staff of the city-county planning commission, was accepted by the two school systems. [See Appendix J.] The law now provides that during the time that any annexation ordinance is being contested, the annexing municipality and the county governing body may enter into an agreement to provide for new, expanded and/or upgraded services and facilities. T.C.A. § 6-51-103(f).

Preliminary negotiations between Nashville and Davidson County school officials on existing school properties reflect typical conflicts in points of view. The county places a replacement value of $11,262,732.37 on the buildings, sites, improvements and equipment of 22 schools in the annexed area, which had an original cost of $7,558,752.88, but an "asking price" was not specified. The city had previously offered $6.4 million on the grounds that 40 percent of the total county property assessment was in the annexed area, and this amount represented 40 percent of the total rural school bonds outstanding against these schools. The city proposed no division of outstanding countywide bonds issued for these schools on the grounds that city taxpayers had paid and would continue to pay taxes for their retirement, but this was rejected by the county on the basis that the city had received its ADA share of these bonds when issued.

Knox County officials stated that the loss of the property tax base in areas annexed would make it impossible to issue rural school bonds (amortized by a tax levy outside the city), and to issue countywide bonds to obtain the amount of funds needed by the county would require an unreasonably large issue because of the required ADA sharing with the city. A suggested partial solution to this problem, which received some city and county support, was that the city waive its share of such a bond issue if the county would agree to apply the city share against the amount eventually determined to be chargeable against the city for county school facilities taken over by the city.

Eventually an agreement was worked out between Knoxville and Knox County that covered several of the problems discussed above. [See Appendix K.] The agreement was negotiated by a "school negotiating committee" and ratified by both local governing bodies. The negotiating committee was composed of two members of county court, the county school superintendent, the county solicitor, one city council member, one city school board member, the city school superintendent, and the city law director.

Twenty-eight schools, valued at $12 million, were transferred to the city. One school offering a countywide special education program was continued under county operation. The city agreed to pay the debt service on about $4 million of the outstanding rural school bonds of the county that had been invested in the schools taken over. The city also waived its ADA short of a $2 million countywide school bond issue, the proceeds of which had been spent primarily on the annexed schools. Further, there was provided a cooperative system of financing all future capital improvements. The later provision includes ongoing planning and capital budgeting of all school facilities in both the city and county.

Section V of the agreement covers the question of which pupils can attend which school with or without tuition. Paragraph (D) requires tuition payments for pupils who resided inside the city at the time annexation proceedings were begun and later moved outside the city, including the annexed area. This provision has been cumbersome and virtually impossible to enforce. All of section V has been rendered null and void by a subsequent agreement reached in connection with the adoption of a county sales tax earmarked for schools. The essence of the latter agreement is that tuition payments are entirely eliminated, and the county provides transportation for city pupils on a reimbursable basis.

A byproduct of annexation and the resulting transfer of county school facilities to the city was the desire on the part of the county to raise its teacher salaries to the level of city teachers. The cost of the salary increases would have required a large increase in the tax rate (the county needed about $300,000 but would have had to raise in excess of $1 million to allow for the city's ADA share of the levy). The city school system did not need these additional funds at the time. Section VII of the "Agreement for Transfer of Schools" was amended to provide for an additional payment to the county, permitting an increase in county teacher salaries to the level of city teachers without raising the county tax rate. In exchange, the county agreed to provide transportation for pupils in the annexed areas for one year.

An extensive annexation by Memphis, in four phases (effective on December 31 in each of the years 1968, 1969, 1971, and 1972), resulted in an arbitration proceeding with Shelby County involving 27 county schools located in the annexed areas. The county asked for approximately $17 million, the board of arbitration awarded $1,917,904, and on appeal a chancery court, in a consent order, awarded $8,213,768 to be taken from future ADA funds due the city school system. The city's brief before the arbitration board, the board's memorandum, and the chancellor's consent order are reproduced in Appendix L.

AGREEMENT FOR NEW OR IMPROVED SERVICES AND FACILITIES

During the time that any annexation ordinance is being contested as provided herein, the annexing municipality and the county governing body (and/or affected school, sanitary, or utility district) may enter into an agreement to provide for new, expanded, or upgraded services and facilities (including, but not limited to, equipment, land, and buildings) and capital expenditures (including sale of bonds) to finance such services and facilities,

which agreement shall include an equitable division of the cost and liabilities of such capital expenditures between the annexing municipality and the county governing body (and/or affected school, sanitary, or utility district) upon final determination of such contested annexation ordinance. T.C.A. § 6-51-103(f).

CHAPTER 13
"Deannexation" and Other Boundary Adjustments

CONTRACTION OF BOUNDARIES (DEANNEXATION)

There are two ways for a city to "deannex" territory, both of which are covered in T.C.A. § 6-51-201.

BY REFERENDUM AFTER THE ADOPTION OF AN ORDINANCE BY THE CITY'S GOVERNING BODY

T.C.A. § 6-51-201(a), presently provides that:

> Any incorporated city or town, whether it was incorporated by general or special act, may contract its limits within any given territory; provided that three-fourths (3/4) of the qualified voters voting in an election thereon assent to.

That statute is highly confusing due to several amendments. It is not clear on its face whether the vote must be three-fourths of the city voters voting or three-fourths of the voters voting in the territory to be deannexed. However, in light of the history of T.C.A. §§ 6-51-201(a) and 6-51-202, the three-fourths vote probably means a three-fourth vote of the voters voting in a city election.

The complicated reasoning supporting this conclusion follows. That statute derives from *Public Acts 1875*, Chapter 92, and appears in *Tennessee Code of 1932*, § 3322, which itself was a part of Article III of that code. Under Article III, a city could add territory or contract its limits. With respect to the contraction of limits the city had to adopt an ordinance authorizing a referendum on the contraction. The contraction had to be approved by a three-fourths vote "of the voters qualified to vote in the election of mayor and aldermen or governing body...." For that reason, the three-fourths vote in Article III was, arguably, three-fourths of the voters voting in a city election.

Tennessee Code of 1932, § 3322, was specifically amended by *Public Acts 1955*, Chapter 61, as follows:

Any incorporated city or town, whether the same shall have been incorporated by general or special Act, may contract its limits within any given territory, provided three-fourths of the qualified voters voting in an election thereon assent thereto.

Public Acts 1955, Chapter 113, which is the famous first general annexation law of the state, in Section 10, without mentioning *Tennessee Code of 1932*, § 3322, whether the referendum had to be preceded by an ordinance, and whether the vote was a three-fourths vote of the voters voting in the territory or three-fourths of the voters voting in the city, simply said that:

> Any city incorporated under any Public or Private Act of the State of Tennessee may contract its city limits within any given territory provided three-fourths of the qualified voters voting in an election thereon assent thereto.

Both of those public acts were codified in T.C.A. § 6-51-201(a) as they appear as indicated above. Although the language relative to the "voters qualified to vote in the election of mayor and aldermen or governing body" was dropped, it still did not limit the voters to those residing in the territory to be deannexed.

T.C.A. § 6-51-202 does require that the referendum be held pursuant to an ordinance describing the territory to be deannexed and requires that the deannexation be approved by a vote of three-fourths of the voters. That statute is consistent with the way it appeared in *Public Acts 1875* and in *Tennessee Code of 1932*, § 3323, which, again, applied to both additions of territory to cities and to the contract of city limits.

BY INITIATIVE OF THE CITY'S GOVERNING BODY

T.C.A. § 6-51-201(b) provides a completely separate method of deannexation. It was added by *Public Acts 1984*, Chapter 731. That statute authorizes deannexation by ordinance upon the initiative of the city's governing body, by a majority vote of the "total membership of the city legislative body."

However, a petition of 10 percent of the voters residing in the area to be deannexed that is submitted to the city recorder within 75 days of the final reading of the deannexation ordinance triggers a referendum on the deannexation. The referendum is held at the "next general election." Only voters residing in the territory proposed for deannexation vote. It requires a majority vote of those voters to approve the deannexation.

It is not clear whether the "general election" at which the referendum must be held refers to the next general municipal election or to the next general state election; presumably, it could refer to either. T.C.A. § 2-1-104(a)(7) defines the term "election" as "a general election for which membership in a political party in order to participate therein is not required." General city elections and the "regular November [state] election held on the first Tuesday after the first Monday in November in even-numbered years" appear to meet that definition. See T.C.A. § 2-1-104(25).

Once an area is deannexed, the city may continue to levy and collect taxes in the area to pay the excluded territory's share of any debt contracted prior to the deannexation. T.C.A. §§ 6-51-201 – 204.

BOUNDARY ADJUSTMENTS BY CONTRACT

Two contiguous cities may adjust a common boundary by contract to eliminate confusion and uncertainty about its location or to conform the boundary to certain man-made or natural geographical features. T.C.A. § 6-51-302.

MUNICIPAL MERGERS

T.C.A. §§ 6-51-401 *et seq*. authorizes municipalities that share contiguous boundaries and that are located in the same county to merge using one of two methods.

RESOLUTION AND REFERENDUM

This method requires the governing bodies of municipalities proposing to merge to pass a resolution (or joint ordinance in the case of a proposed merger involving a home rule municipality) requesting a referendum upon the proposed merger. The resolution (or joint ordinance) must be passed by a majority vote of the members to which each of the governing bodies of the municipalities are entitled. The resolution states the name of the municipality that will result from the merger and the charter under which it will operate, which may be the general law mayor-aldermanic charter, the general law manager-commission charter, or one of the charters of the merging municipalities. The resolution may also establish the wards or districts of the new municipality if its new charter provides for such wards or districts. The wording of the merger question that must appear on the ballot is contained in the statute and takes into account the possibility that the merger will involve a home rule municipality and that the charter of the new municipality will be a home rule charter. The referendum must pass by a majority of those voting in each municipality for the merger to become

effective. If the referenda are successful, the merger is effective 120 days after the certification of the election results.

PETITION AND REFERENDUM

Under this method, 10 percent of the registered voters in each municipality may petition for a merger. The petition must contain essentially the same information that must appear on the resolutions (or joint ordinance in the case of a proposed merger involving a home rule municipality). The rules that govern the merger referenda under the resolution and referendum method apply to this method.

T.C.A. §§ 6-51-406—409 govern questions pertinent to the continuation of ordinances of the municipalities that have merged under both methods and the financial integration of the "old" municipalities into the "new" municipality.

APPENDIX A

Amending Comprehensive Growth Plans

David Connor and Dennis Huffer, Legal Consultants, May 2005

EXECUTIVE SUMMARY

The three-year moratorium during which cities and counties (except for Shelby County and its cities) were prohibited from amending their comprehensive growth plans absent extraordinary circumstances has now passed for most cities and counties. Some communities have amended their growth plans and others are considering amendments. The steps to follow in amending the comprehensive growth plan are summarized below. These issues are discussed in more detail following the executive summary.

1. The city or county wanting to amend the plan must do research and examine factors that are appropriate to the area to be designated, and identify territory suitable for inclusion in the area. The city or county must hold two public hearings for which public notice has been published at least 15 days before the meeting.
2. The city or county proposing the amendment must file notice with the mayors of each municipality in the county and the county mayor or executive.
3. The coordinating committee must be reconvened, most likely upon notice from the county mayor or executive.
4. The coordinating committee must hold two public hearings for which at least 15 days notice is published. The burden is on the party proposing the amendment to show it is reasonable.
5. The coordinating committee must vote on whether to recommend the amendment.
6. The coordinating committee shall submit its recommendations regarding any amendments to the governing body of the county and each city in the county for ratification. Each has 120 days to ratify or reject the amendment. Failure to act signifies ratification.
7. If a city or county rejects the amendment, it must submit its objections to the coordinating committee. The coordinating committee then reconsiders its action.
8. After reconsideration, the coordinating committee may recommend a revised amendment and submit it to the local governments for consideration.
9. If this amendment is rejected, the city or county may declare an impasse and request mediation through the secretary of state's office.
10. Approved amendments must be submitted to the local government planning advisory committee for approval. Locally ratified amendments receive automatic LGPAC approval. In all other cases, LGPAC must examine the plan to ensure that it complies with law. After approval the plan is filed in the register's office.

AMENDING COMPREHENSIVE GROWTH PLANS

INTRODUCTION

When the General Assembly passed Tennessee's Comprehensive Growth Policy Law in 1998, it required cities and counties across Tennessee to work together to develop a comprehensive growth plan. For cities and counties that had a completed plan in place by July 1, 2000, there were incentives and benefits. For cities and counties that did not have an approved plan in place by July 1, 2001, there were penalties. Nearly every community in Tennessee that was required by the law to have a plan met the July 1, 2001, deadline.

For all counties under the act except Shelby County, the law provided that once a growth plan was agreed upon by local governments and was approved by the local government planning advisory committee, it was to remain in effect for not less than three years, absent a showing of extraordinary circumstances (T.C.A. § 6-58-104(d)(1)). [For Shelby County, there was no waiting period and amendments could be proposed immediately. See T.C.A. § 6-58-104(d)(2).] For most cities and counties in Tennessee, this three-year window has now passed. A few communities have amended or begun considering amendments to their comprehensive growth plan. The purpose of this brief memorandum is to outline the steps and procedures that local governments should follow when considering amendments to a comprehensive growth plan.

THE LAW

There was very little content in the comprehensive growth policy law that related to the process of amending plans in the future. What direction there is may be found in T.C.A. § 6-58-104(d)(1).

> (d)(1) After the local government planning advisory committee has approved a growth plan, the plan shall stay in effect for not less than three (3) years absent a showing of extraordinary circumstances. After the expiration of the three-year period, a municipality or county may propose an amendment to the growth plan by filing notice with the county executive and with the mayor of each municipality in the county. Upon receipt of such notice, such officials shall take appropriate action to promptly reconvene or re-establish the coordinating committee. The burden of proving the reasonableness of the proposed amendment shall be upon the party proposing the change. *The procedures for amending the growth plan shall be the same as the procedures in this section for establishing the original plan.* (emphasis added)

The key provision is the last sentence which states that the same procedures apply to amending the growth plan as were used to establish the original plan.

DEVELOPING AND PROPOSING AMENDMENTS

When the original growth plan was developed each city went through a statutory process to develop an urban growth boundary and propose it to the coordinating committee. Likewise, each county developed planned growth and/or rural areas and submitted them to the coordinating committee. Since T.C.A. § 6-58-104(d)(1) states that amendments to the growth plan must be adopted in the same manner as the plan was originally established, it is assumed that any city or county proposing an amendment to the plan must follow the same procedures used to originally develop and propose an urban growth boundary, planned growth area, or rural area in developing the proposed amendment. These requirements are found in T.C.A. § 6-58-106(a), (b), and (c). Essentially, they require a city or county to research and examine certain factors that are appropriate to the type of area to be designated, identify the territory suitable to be placed in that area, and conduct two public meetings prior to making recommendations to the coordinating committee. These public meetings must be advertised in a newspaper of general circulation in the municipality or county not less than 15 days before the meeting, with the notice indicating the time, place, and purpose of the public meeting. Cities and counties should follow these same procedures prior to proposing any amendments to the growth plan. According to the attorney general, if one local government is proposing an amendment but another city or the county does not intend to respond formally to the proposed change or propose an alterative amendment to the growth plan of its own, there would be no need for that city or county

to go through the research and public hearing process (Op. Tenn. Att'y Gen. 03-154 (December 2, 2003)). In the same opinion the attorney general also opined that a municipality or county may begin the research and public hearing process for developing amendments prior to the termination of the three-year waiting period, but the new coordinating committee may not be formed or begin considering any proposed amendments until after the three-year period has expired. Even if a city or county does not make a formal proposal to the coordinating committee, nothing would prevent the representative of that local government on the coordinating committee from participating fully in the process and making suggestions or proposals during the deliberations of the coordinating committee.

REQUESTING CONSIDERATION OF AN AMENDMENT

After the three-year waiting period has passed, either the county or any municipality within a county may then propose an amendment to the growth plan. To initiate the process, the local government desiring an amendment must file notice with the mayor of all municipalities in the county and with the county mayor. Upon receipt of that notice, the mayors of the cities and county are directed by law to take action to reconvene or re-constitute the coordinating committee that originally drafted the growth plan for the county.

RECONVENING THE COORDINATING COMMITTEE

If all the original participants in the coordinating committee still hold the same positions or are still amenable to representing the same interests, the committee may be reconvened. If some of the original participants no longer hold the same positions (for example, a mayor who represented a city the first time around is no longer in office), then those positions need to be reappointed by the authorities designated in T.C.A. § 6-58-104(a)(1). While the law requires a party proposing an amendment to provide notice to city and county mayors of the need to reconvene the committee, some of the members of the committee represent interests other than cities and counties. For instance, the board of the local education agency with the largest student enrollment has a representative on the committee. When notice is provided to mayors, someone (most likely the county mayor) needs to contact those other entities represented on the coordinating committee to notify them that the committee is being reconvened and give them the opportunity to designate their representative.

CONSIDERATION BY THE COORDINATING COMMITTEE

Once it is reconstituted or reconvened, the committee may begin consideration of any proposed amendments to the growth plan. The law states that the burden of proving the reasonableness of the proposed amendment shall be upon the party proposing the change (T.C.A. § 6-58-104(d)(1)). Before reaching a final decision on proposed amendments, the coordinating committee must also conduct two public hearings (T.C.A. § 6-58-104(a)(3)). The county is required to give at least 15 days notice of the time, place, and purpose of each public hearing by notice published in a newspaper of general circulation throughout the county. After those hearings are held and the coordinating committee has had adequate time for deliberation, it should vote on whether proposed amendments to the growth plan should be adopted. Once the coordinating committee makes its determination, it should submit its decision and any recommended amendments to the growth plan to the county and all cities in the county for consideration and ratification.

LOCAL CONSIDERATION OF THE AMENDMENTS

Once the recommendations of the coordinating committee are received by the governing bodies of the county and municipalities, each governing

body has 120 days to ratify or reject any proposed amendments (T.C.A. § 6-58-104(a)(4)). There is no requirement for further public hearings during this phase of the process. Failure to act by a governing body within the 120-day period is deemed to constitute ratification of the recommendation of the coordinating committee.

If a city or county rejects the recommendation of the coordinating committee, the law directs it to submit its objections and the reasons therefore to the coordinating committee (T.C.A. § 6-58-104(a)(5)). The coordinating committee then reconsiders its action. After reconsideration, it may recommend a revised amendment and re-submit it to the local governments for consideration.

MEDIATION AND DISPUTE RESOLUTION

If the revised or recommended amendment is rejected, then, as with the original plan, the county or any municipality may declare an impasse and request the secretary of state to provide an alternative method for resolution of disputes. This involves the appointment of a panel of three administrative law judges to mediate the dispute unless the county and all municipalities agree to use a single administrative law judge. The secretary of state certifies the reasonable and necessary costs of the dispute resolution panel. The county and cities are required to reimburse the secretary of state for the costs of dispute resolution on a pro rata basis; provided that, if the panel determines that the process was necessitated or unduly prolonged by bad faith or frivolous actions on the part of the county and/or one or more municipalities, then the secretary of state, upon recommendation of the panel, may reallocate liability of the cost of dispute resolution in a manner that is punitive to the party responsible for the bad faith or frivolous actions.

SUBMISSION OF AMENDMENTS TO THE LOCAL GOVERNMENT PLANNING ADVISORY COMMITTEE

Once any amendments to the growth plan are approved locally, they should be submitted to the local government planning advisory committee (LGPAC) for approval. If the amendment was ratified by all appropriate local governments, then approval by LGPAC is automatic. In all other cases, LGPAC is directed by law to examine the plan to ensure that the boundaries and areas designated in the plan conform to the requirements of the law. After approval of the plan, a copy is sent to the county mayor, who in turn files the plan in the county register's office.

WAITING PERIOD

In 2003, the attorney general was asked whether amended growth plans also have to be left undisturbed through a three-year waiting period before they may be amended again. The attorney general concluded that, although amendments were to go through the same process used to adopt the original plan, the three-year waiting period was not a part of this process, but a condition put in place subsequent to the creation of a plan. Therefore, there would be no waiting period after a plan was amended before additional amendments could be proposed and considered (Op. Tenn. Att'y Gen. 03-154 (December 2, 2003)).

APPENDIX B

Sample Resolution, Public Hearing, Proposed Annexation

A RESOLUTION SCHEDULING A PUBLIC HEARING TO DETERMINE WHETHER CERTAIN TERRITORY SHOULD BE ANNEXED TO THE CITY/TOWN OF _____, TENNESSEE.

WHEREAS, it appears that the prosperity of this City/Town and of the territory herein described may be materially retarded and the safety and welfare of the inhabitants and property thereof endangered if such territory is not annexed; and,

WHEREAS, the annexation of such territory may be deemed necessary for the welfare of the residents and property owners of the said affected territory and this City/Town as a whole; and,

WHEREAS, the annexation of such territory appears to benefit the overall well-being of the communities involved;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City/Town of _____, Tennessee:

The city recorder (or other official) is required to have published in the City/Town on the _____ day of _____, 20 ___, a notice that a public hearing before this body will be held on the (at least 7 days after publication of the notice) _____ day of _____, 20 ___, at (time and place) _____ , to determine whether the following described territory adjoining the present corporation boundaries should be annexed:

Embracing that part of civil district(s) no(s). _____ of _____ County, Tennessee, and reflected on the attached map, and more fully described as:

(NOTE: Use the same description of the area as contained in the plan of services. Include a map of the territory to be annexed that meets the requirements of T.C.A. § 6-51-101.)

(NOTE: The notice requirements for public hearings on the annexation itself and the plan of services are different. The annexation public hearing requires a seven-day prior notice while the plan of services public hearing requires a 15-day prior notice. If your city combines the two hearings, the longer 15-day notice must be used.)

(NOTE: The public hearing on the annexation and on the plan of services can be held at the same time. In that case, the notice would need to be modified to provide for both hearings. See APPENDIX E.)

APPENDIX C

Sample Annexation Ordinance

AN ORDINANCE TO ANNEX CERTAIN TERRITORY AND TO INCORPORATE THE SAME WITHIN THE CORPORATE BOUNDARIES OF THE CITY/TOWN OF _____, TENNESSEE.

WHEREAS, a public hearing before this body was held on the _____ day of _____, 20__, pursuant to a resolution adopted on _____, 20__, and notice thereof published in the (name of newspaper) on _____, 20__; and,

WHEREAS, it appears that the prosperity of this City/Town and of the territory herein described may be materially retarded and the safety and welfare of the inhabitants and property thereof endangered if such territory is not annexed; and,

WHEREAS, the annexation of such territory may be deemed necessary for the welfare of the residents and property owners of the said affected territory and this City/Town as a whole; and,

WHEREAS, a plan of services for this area was adopted by resolution of _____, 20__ as required by *Tennessee Code Annotated* Section 6-51-102;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City/Town of _____, Tennessee:

Section 1. In accordance with T.C.A. Sections 6-51-101 to 6-51-118, there is hereby annexed to the City/Town of _____, Tennessee, and incorporated within the corporate boundaries thereof, the following described territory adjoining the present corporate boundaries:

Embracing that part of civil district(s) no(s). _____ of _____ County, Tennessee, and more fully described, and reflected on the attached map which is incorporated by reference as if fully set out herein, to wit:

Section 2. This ordinance shall be effective from and after its passage, the public welfare requiring it. (This section should conform to the city charter's requirements governing effective date of ordinances.)

APPENDIX D

Sample Resolution, Annexation Referendum Call

A RESOLUTION CALLING FOR A REFERENDUM OF ANNEXATION OF CERTAIN TERRITORY TO THE CITY/TOWN OF _____ , TENNESSEE.

BE IT RESOLVED by the City Council of the City/Town of _____ , Tennessee:

Section 1. As provided in *Tennessee Code Annotated* §§ 6-51-104 and 6-51-105, it is proposed to annex the following described territory adjoining the present corporate boundaries:

Embracing that part of civil district(s) no(s). _____ of _____ County, Tennessee, and reflected on the attached map, and more fully described as:

(Attach a map of the area that meets the requirements of T.C.A. § 6-51-101)

Section 2. The city recorder (or other official) is directed to have copies of this resolution posted in three public places in this City/Town and in three public places in the above-described territory, and to have the resolution published in the (name of newspaper of general circulation in the City/Town) on the _____ day of _____ , 20__. All copies of this resolution shall be so posted on or before the date of publication in said newspaper. The city recorder (or other official) shall immediately file with this body and with the _____ County Election Commission a certificate showing the date(s) on which such posting and publication took place.

Section 3. The _____ County Election Commission is requested to hold an election in said territory proposed for annexation **and in this City/Town** (add this language if the city chooses to exercise its option of calling for an election in the existing city), at least 30 days and not more than 60 days after the foregoing date of newspaper publication.

APPENDIX E

Sample Resolution, Public Hearing, Plan of Services

A RESOLUTION SCHEDULING A PUBLIC HEARING
ON THE PLAN OF SERVICES FOR A PROPOSED ANNEXATION

WHEREAS, a plan of services for the proposed annexation hereinafter described has been prepared and referred to the city planning commission for review; and,

WHEREAS, three copies of said plan of services are available for public inspection during regular business hours in the office of the city recorder (or another official), at _____ , and at _____;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City/Town of _____, Tennessee:

That the city recorder (or other official) be hereby required to have published in the City/Town on the _____ day of _____, 20 ___, a notice that a public hearing before this body will be held on the (at least 15 days after publication of the notice) _____ day of _____, 20 ___, at (time and place) _____ , to consider the plan of services for the following described area proposed for annexation:

Embracing that part of civil district(s) no(s). _____ of _____ County, Tennessee, and more fully described as:

(NOTE: Use the same description of the area as contained in the plan of services. Include a map of territory to be annexed that meets the requirements of T.C.A. § 6-51-101.)

(NOTE: The hearings on the proposed annexation and the plan of services can be held at the same time. Where that is proposed to be done, modify the resolution accordingly.)

APPENDIX F

Sample Plan of Services

A RESOLUTION ADOPTING A PLAN OF SERVICES FOR THE ANNEXATION OF (general description of the area) BY THE (CITY/TOWN) OF _____, TENNESSEE.

WHEREAS, *Tennessee Code Annotated* § 6-51-102 requires that a plan of services be adopted by the municipal governing body prior to passage of an annexation ordinance [or prior to the passage of a resolution calling for a referendum of an annexation]; and

WHEREAS, the area proposed for annexation to the (City/Town) is within the (City/Town's) Urban Growth Boundary, as required by law, and is described as follows:

(Insert description of the area to be annexed)

NOW, THEREFORE BE IT RESOLVED BY THE (Governing Body) OF THE (City/Town) OF_____ , TENNESSEE:

Section 1. Pursuant to the provisions of T.C.A. § 6-51-102, there is hereby adopted, for the area bounded as described above, the following plan of services:

A. Police
   1. Patrol, response to calls, and other routine police services, using present personnel and equipment, will be provided on the effective date of annexation.
   2. Within _____ months, _____ additional personnel and _____ patrol car(s) will be added to continue the present level of police services throughout the city, including the newly annexed area.
   3. Traffic signals, traffic signs, street markings, and other traffic control devices will be installed as the need is established by appropriate study and traffic engineering standards.

B. Fire Services
   1. Fire protection by the present personnel and equipment of the fire department, within the limitations of available water and distances from fire stations, will be provided on the effective date of annexation.
   2. Within _____ months, _____ additional personnel and _____ fire engines and auxiliary equipment will be added to the fire department to maintain present standards within the entire city, including the annexed area.
   3. Within _____ months (years), _____ additional station(s) will be constructed to serve the annexed area.

C. Water

1. Water for domestic, commercial, and industrial use will be provided at current city rates, from existing city lines, on the effective date of annexation, and thereafter from new lines as deemed necessary under current city policies and procedures concerning density, development patterns, and future development plans.
2. Water for fire protection will be available within _____ months (years), the time estimated to be required to install adequate water lines and hydrants in the annexed area.
3. In those parts of the annexed area currently served by the _____ Utility District, the above time periods will begin on the date of acquisition by the city of said District or parts thereof, which may be delayed by negotiations and/or litigation.

D. Wastewater

1. The necessary interceptor and trunk sewer lines to serve the substantially developed annexed areas will be completed in _____ years.
2. Construction of collector lines in the substantially developed annexed areas will be completed within _____ years. Residences, commercial, and industrial properties will then be connected to the wastewater system in accordance with current policies of the city.

E. Refuse Collection

The same regular refuse collection service now provided within the city will be extended to the annexed area (within one week after the effective date of the annexation) OR (as soon as additional personnel and equipment can be obtained, estimated to require _____ months.

F. Streets

1. Emergency maintenance of streets will begin on the effective date of annexation.
2. Routine maintenance, on the same basis as in the existing city, will begin in the annexed area when state shared street aid funds begin to be received based on the annexed population. (July 1 following the annexation effective date.)
3. Reconstruction and resurfacing of streets, installation of storm drainage, and construction of curbs, gutters, and sidewalks will be accomplished under existing city policies.
4. Regular cleaning of streets with curbs and gutters will begin within _____ week(s) after the effective date of annexation on the same basis as in the existing city.

G. Schools

County schools in the annexed area will become part of the city school system as soon as necessary negotiations and arrangements with the county can be completed. Normally, this change will take place at the beginning of the school year following the effective date of annexation. Thereafter the curriculum offered in the annexed area will be the same as in other schools in the city school system.

H. Inspections and Code Enforcement

Any inspection services now conducted by the city (building, plumbing, electrical, gas, housing, sanitation, etc.) will begin in the annexed area on the effective date of annexation.

I. Planning and Zoning

The planning and zoning jurisdiction of the city will extend to the annexed area on the effective date of annexation. City planning jurisdiction and regulation will thereafter encompass the entirety of the annexed area. (Study will be required before specific zoning can be adopted, which should be completed within _____ months.) The annexation ordinance will temporarily zone all property in the annexed area as _____, _____ District.

J. Street Lighting

Street lights will be installed in substantially developed commercial and residential areas within _____ months after the effective date of annexation, using the prevailing standards in the existing city.

K. Recreation

Residents of the annexed area may use all city recreational facilities, parks, ball fields, etc., on the effective date of annexation. The prevailing standards and policies now used in the existing city will be applied in expanding the recreational and program facilities in the enlarged city. Approximately _____ acres will be developed as parks, playgrounds, etc., in the annexed area.

L. Miscellaneous

(Include any other service not covered by the foregoing categories.)

Section 2. This resolution shall become effective from and after its adoption.

APPENDIX G

City of Jackson Resolution to Acquire Jackson Suburban Utility District

WHEREAS, Jackson Suburban Utility District of Madison County, Tennessee, has been and is now furnishing water to the residents in certain territory of which a part was recently annexed by the City of Jackson, Tennessee, under the authority of *Tennessee Code Annotated*, sections 6-308 to 6-319, inclusive; and,

WHEREAS, The City of Jackson has as the result of negotiations with Jackson Suburban Utility District of Madison County, Tennessee, as authorized and required by *Tennessee Code Annotated*, section 6-318, reached a mutually satisfactory and acceptable agreement whereby the City of Jackson shall purchase* all the assets and properties of said District, and assume and operate only a part of said water system now owned by the District; and,

WHEREAS, the Commissioners of said Jackson Suburban Utility District of Madison County, Tennessee, have agreed to transfer all the assets of said District, real and personal, and otherwise, to the City of Jackson, Tennessee, on condition that the City agree to operate the entire utility system of said district, and to assume the payment of outstanding bonds of said District in accordance with their terms, and to pay all other obligations of said District outstanding as of the effective date of transfer of the assets, and subject to the further understanding and agreement that of the cash on hand of the District and its investments in U.S. Government Bonds which are to be transferred to the City, there shall be earmarked or set aside in a reserve account a sum equal to such cash on hand and investments in bonds, after deducting therefrom a sum equal to the requirements for the payments of interest due August 1, 1961, on the outstanding bonds of the District and both principal and interest due February 1, 1962, and a further deduction in an amount equal to any outstanding liability for customers deposits and current accounts payable or other liabilities (except bond indebtedness) of the district, including any unpaid water accounts payable to the City of Jackson, as of the effective date of the transfer of the assets; and that such reserve funds (as adjusted), or at least the cash equivalent thereof, shall be used for an elevated water storage tank designed for use in the area presently served by the District, or for such other equipment or facilities, and at such time or times, as may be deemed feasible within the best judgment and discretion of the City, or its representatives, to provide adequate water service to areas; and

WHEREAS, it appears advisable and in the best interests of The City of Jackson, Tennessee, to enter into said agreement and thereby acquire the assets of said District, assume the obligations thereof and take over the operation of its entire water system.

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*Although the word "purchase" is used here, a careful reading of the resolution will disclose that this was not a purchase transaction. It was a transfer of functions, assets, and liabilities from one governmental unit to another governmental unit. A formal agreement between two such units could closely parallel the language of this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, AS FOLLOWS:

1. That, in consideration of the transfer to the City of Jackson Suburban Utility District of Madison County, Tennessee, of all of its assets, real and personal, the same being described and set forth in Schedule No. 1, annexed hereto, and made a part hereof, The City of Jackson shall assume and take over the management and operation of the entire utility or water system of Jackson Suburban and Utility District of Madison County, Tennessee, and accept title thereto.

2. That The City of Jackson hereby assumes and agrees to pay from the revenues of its water and sewerage departments all outstanding bonds and other obligations of the Jackson Suburban Utility District of Madison County, Tennessee, as such bonds and obligations may mature, and in accordance with their terms, and to otherwise perform all covenants contained in the bonds required of the District, said bonds being described and set forth in Schedule No. 2, annexed hereto, and made a part hereof; said bonded indebtedness consisting of an issue of water works revenue bonds of said District in the original total amount of $75,000.00, dated February 1, 1951, in the denomination of $100.00 each, bearing interest at three and one-half percent (3-1/2%), payable semi-annually on August 1st, and February 1st, of each year commencing August 1, 1951, maturing serially in numerical order, without option of prior redemption, on February 1st of each year from February 1, 1953, to February 1, 1970, inclusive; and provided further, that the City agrees, as a consideration for the transfer of all assets of said District, to earmark or set aside in a reserve account all of the cash on hand and the cash equivalent of the present redemption value of U.S. Government Bonds in the face sum of $10,000.00 which are being transferred by the District to the City, after having deducted therefrom a sum equal to the requirements for the payment of interest on the outstanding bonds issued by the District due August 1, 1961, and both interest and principal due February 1, 1962, and a further deduction in an amount equal to outstanding customers' deposits and current accounts payable or otherwise liabilities (except bond indebtedness) of the district as of the effective date of the transfer of assets, and to use said reserve fund, or at least the cash equivalent thereof, for the purposes hereinabove set forth at such time or times as may be deemed feasible within the best judgment and discretion of the City or its representatives.

3. That this Resolution be effective June 1, 1961, upon delivery to the City of Jackson of deeds, bills of sale, and other instruments of writing necessary to transfer all assets of the Jackson Suburban Utility District of Madison County, Tennessee, to The City of Jackson, Tennessee, and to vest title to same in The City of Jackson.

NOTICE

The foregoing resolution was introduced, read and approved by the Board of Commissioners of the City of Jackson, Tennessee, the 27th day of June, 1961, and will be considered for adoption at the regular meeting of said board to be held June 30, 1961, in the Board Room of the City Hall, Jackson, Madison County, Tennessee at 10 A.M. at which time any and all suggestions pertaining to the adoption of said resolution will be considered.

Published by the order of the Board of Commissioners of the City of Jackson, Tennessee, this 27 day of June, 1961.

ATTEST: B. F. Graves
City Recorder

Schedule No. 1 To Resolution For Transfer Of Jackson Suburban Utility District Of Madison County, Tennessee

Assets of Described to be transferred to the City of Jackson, Tennessee.

FIXED ASSETS

Real Estate, consisting of a parcel of land and building together with all other improvements thereon described in deed from Jackson Suburban Utility District to The City of Jackson, Tennessee, dated June 1, 1961.

All Machinery and Equipment, Meters, Underground Lines, together with all other personal property, including the entire water distribution system, mains, services and meter connections, valves, hydrants, supplies, accessories and inventory on hand as of effective date of this transfer as per resolutions.

CURRENT ASSETS

All cash on hand and in banks; including cash in the National Bank of Commerce of Jackson, Tennessee, as of effective date of this transfer as per resolutions, consisting of the following accounts:

Operating Account	$25,417.25
Customer Account	- 0 -
Construction Account	209.82
Total	$25,627.07

All accounts receivable, including current and unbilled customer water accounts.

Accrued interest receivable.

Investments—U.S. Government Bonds (or redemption value or cash realized therefrom as, if and when redeemed, same now being in face amount of $10,000.00).

Any unexpired insurance premiums.

All permits and licenses from The State of Tennessee, Madison County, Tennessee, and any others now held or enjoyed by said District.

Together with, and including, any and all other assets of said District, real or personal, tangible or intangible, which are on hand and to the extent of the District's interest therein as of the effective date of this transfer as per resolutions and agreements in reference thereto.

Provided, however, of the cash on hand and investments in U.S. Government Bonds (or cash equivalent at redemption), there shall be established by The City of Jackson a reserve account for use to improve the water system in the area presently served by said District as provided in resolutions in reference to this transfer.

Schedule No. 2 To Resolution For Transfer Of Jackson Suburban Utility District Of Madison County, Tennessee

Liabilities and Obligations of Jackson Suburban Utility District of Madison County, Tennessee, Assumed by The City of Jackson, Tennessee.

Bonds Payable, dated February 1, 1951, of issue in original principal amount of $75,000.00, bearing interest at three and one-half percent (3-1/2%) per annum, payable semi-annually on August 1st and February 1st of each year, of which the principal amount of $26,000.00 has been paid together with interest due February 1, 1961, thereby leaving an outstanding principal amount of $49,000.00 due and payable on February 1st of each year as follows:

Year	Amount	Bond Numbers
1962	$4,000	27 to 30, inc.
1963	5,000	31 to 35, inc.
1964	5,000	36 to 40, inc.
1965	5,000	41 to 45, inc.
1966	5,000	46 to 50, inc.
1967	6,000	51 to 56, inc.
1968	6,000	57 to 62, inc.
1969	6,000	63 to 68, inc.
1970	7,000	69 to 75, inc.

Together with all unpaid accrued interest and the interest hereafter due and payable on said bonds; and to duly and punctually perform all covenants of said bond issue remaining unpaid and to protect all contract rights vested in the holders of said outstanding bonds.

Customers' deposits to secure payment of customers' obligations for water bills.

All outstanding unpaid accounts, bills and other obligations at the District, including final water bill due The City of Jackson, Central Service for billing customers and Arnold & Badgett for final audit.

An existing contract dated March 9, 1951, between the District and The City of Jackson for furnishing water to the District; said contractual obligations to be assumed or else rendered void and of no further force and effect.

AN ORDINANCE ESTABLISHING WATER RATES FOR WATER SERVICE SUPPLY FROM DISTRIBUTION SYSTEM OF JACKSON SUBURBAN UTILITY DISTRICT OF MADISON COUNTY, TENNESSEE OUTSIDE AND INSIDE THE CORPORATE LIMITS OF THE CITY OF JACKSON, TENNESSEE.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE:

Section 1. That water rates of the Jackson Utility Division for water service from the Jackson Suburban Utility District of Madison County, Tennessee, inside the corporate limits of the City of Jackson, Tennessee, be the same rates charged all other consumers inside the corporate limits of the City of Jackson, Tennessee.

Section 2. That water rates of the Jackson Utility Division for water service from the Jackson Utility District of Madison County, Tennessee, outside the corporate limits of the City of Jackson, Tennessee, be and remain the same rates as are now being charged by the Jackson Suburban Utility District of Madison County, Tennessee.

Section 3. That this ordinance take effect June 1, 1961, upon its adoption, the Public Welfare requiring it.

NOTICE

The foregoing ordinance was introduced, read and approved by the Board of Commissioners of the City of Jackson, Tennessee, the 27th day of June, 1961, and will be considered for adoption at the regular meeting of said board to be held June 30, 1961, in the Board Room of the City Hall, Jackson, Madison County, Tennessee, at 10 A.M. at which time any and all suggestions pertaining to the adoption of said ordinances will be considered.

APPENDIX H

Contract of Sale* for Acquisition of Memphis Suburban Utility District

THIS AGREEMENT, made and entered into this 30th day of April, 1957 by and between THE MEMPHIS SUBURBAN UTILITY DISTRICT OF SHELBY COUNTY, TENNESSEE, a public corporation of the State of Tennessee (hereinafter called "District") and the MEMPHIS LIGHT, GAS AND WATER DIVISION OF THE CITY OF MEMPHIS, a Division of Government of the City of Memphis, (hereinafter called "Division")

WITNESSETH:

WHEREAS, the District now owns, operates and maintains a water supply and distribution system, fire protection facilities and sanitary sewer system within the territorial limits of said District as shown on the plat annexed hereto as Exhibit "A"; and

WHEREAS, in order to finance said water supply and distribution system and said fire protection facilities and to refund certain obligations of the District issued for the foregoing purpose, the District has issued and sold and now has outstanding $1,572,000.00 Utility Revenue Refunding Bonds, dated April 1, 1957, represented by Interim Receipts therefor, as described in a resolution adopted by the District on April 29, 1957, annexed hereto as Exhibit "B"; and

WHEREAS, in anticipation of the annexation to the City of Memphis of the territorial area of the District and the practical necessity for combining the water system of the Division, the District and the Division, duly authorized by the Board of Commissioners of the City, have conducted negotiations for the acquisition by the Division of the water supply and distribution system of the Division, and the parties hereto, for valuable considerations, the receipt and sufficiency whereof being acknowledged, have agreed and do hereby agree and bind themselves as follows:

1. The District hereby agrees to transfer and deliver to the Division and the Division hereby agrees to accept and take over from the district, on the terms and conditions and on or before the time herein set forth, all of the water supply and distribution system and priorities relating thereto now or hereafter owned by the District, together with all of the real estate belonging to the District, and the District agrees to convey to the City of Memphis for the use and benefit of the Division by good and valid conveyances, with the usual covenants of warranty and quiet possession, the real estate described in Exhibit "C" annexed hereto, and all of the personal property of every kind and character owned and used by the District in the operation of said water supply and distribution system at the date of closing under this contract, including all easements, wells, pumping plants, water treatment works, water storage facilities, water ines and mains,

*Actually, no "sale" occurred. The contract simply provided for a transfer of functions, assets and liabilities to the Memphis Light, Gas and Water Division.

meters, contracts, accounts receivable and bank deposits and cash on hand except the sum of $10,000.00 which is hereby determined by the parties hereto to be the sum that will be required by the District for the operation of its fire protection system until the annexation of the territorial area of the District by the City of Memphis and said sum shall be retained by the district for such purpose.

The District and the division agree that consummation of the transactions provided for above in this paragraph 1 will take place on or before January 1, 1958. The actual date of consummation of such transactions is herein referred to as the "Closing Date."

Upon annexation of the territorial area of the district by the City of Memphis, the District, for the consideration herein set forth, agrees to transfer and convey to the City of Memphis all of its property, both real and personal constituting, and used in connection with, its fire protection system, including all money on deposit to banks and on hand, which shall be paid over to the Division.

2. The Division agrees to assume and pay, from and after the Closing Date, all obligations of the District, secured and unsecured, relating to or incurred in connection with the ownership and operation by the District of its water supply and distribution system, including the Utility Revenue Refunding Bonds described in Exhibit "B"; provided, however, that the obligation of the Division aforesaid shall be conditioned upon the financial condition of the District as of the Closing Date being as favorable as the financial condition of the District evidenced by the Accountant's Report of Balch, Pratt, Priddy & Co., dated as of May 31, 1956. The District agrees to furnish the Division, not later than June 25, 1957, with an Accountant's Report of its financial condition as of May 31, 1957, and covering its preceding fiscal year prepared by a firm of certified public accountants acceptable to the Division and to furnish on the Closing Date a supplemental report of such accountants showing the true financial condition of the district as of the Closing Date. The Division reserves the right to waive any or all of the foregoing requirements.

3. The Division binds itself to operate said water supply and distribution system in an efficient manner, to make all necessary additions and extensions as may be needed from time to time, and to charge water rates in accordance with its applicable rate schedules for customers in like circumstances as such schedules may be amended from time to time; all in accordance with the Rules and Regulations of the Division as they presently exist, or may be hereafter amended.

4. The Division agrees and binds itself to assume the obligations of all executory contracts entered into by the District with subdivision developers and other property owners covering the installation and maintenance of water services, and to pay such refunds as may be required under the terms of said contracts.

5. The Division further agrees and binds itself to carry out the terms of the contract of the District with International Harvester Company, as set forth in Exhibit "D" hereto, until such time as the Division and said International Harvester Company may enter into superseding contracts covering water services to be furnished said Company.

6. The Division agrees to employ such of the personnel now employed by the District as may desire employment by the Division and as may be equipped to perform the duties required of them by the Division; and the Division agrees to accept into the Retirement & Pension System for Employees of Memphis Light, Gas & Water Division, City of Memphis, all such employees who desire to participate therein and make the payments hereinafter referred to, with full rights in said employees to retirement benefits beginning with the dates of their respective employments by the district, provided, the District pays the cost as an operating expense account on or before the Closing Date to said retirement and pension fund of the Division the sum set out in Exhibit "E" hereto for those employees who elect to enter said retirement system and who personally pay to said retirement and pension fund of the Division, as the employees contribution, 4% of the total compensation of such employee from the District from the time of his employment to January 1, 1956, and 5% of his total compensation from the District or the Division after January 1, 1956, such payments by the employee and application for participation in said retirement and pension fund of the Division to be made within six months from their employment by the Division.

7. The Division further agrees to bill the charges made by the District for sewer services furnished to the present District customers, as certified by the District to the Division, provided the customers so certified are being billed for electric, gas or water service by the Division. The Division shall remit to the district monthly the sewer rentals paid to the Division as above provided until the area so served sewer service is annexed to the City of Memphis, or until the City of Memphis shall take over the operation of the sewer systems now operated by the District.

8. Each party shall cooperate and take such action as may be reasonably requested by the other in order to carry out the provisions and purposes of this agreement; and the district shall continue in existence for the operation of the fire protection system and sewer systems now under its jurisdiction until annexation of the territorial area of the District by the City of Memphis.

9. The Division hereby consents and agrees that this contract may be assigned or pledged by the District in such form or manner as the District may provide.

10. This contract is contingent upon approval thereof by the board of commissioners of the City of Memphis, as required by law.

IN WITNESS WHEREOF, the parties hereto duly authorized and by their lawfully authorized officers and agents, have executed this agreement on the day and in the month and year first hereinabove written.

The Memphis Suburban Utility District of Shelby County, Tennessee

By _____

Memphis Light, Gas and Water Division of the City of Memphis, Tennessee

By _____

RESOLUTION

IT IS HEREBY RESOLVED by the Mayor and Board of Commissioners of the City of Memphis that the action taken by the Board of Light, Gas & Water Commissioners on April 25, 1957, as evidenced by the attached excerpts from that meeting authorizing the execution of contract of sale with Memphis Suburban Utility District, be and is hereby ratified and approved.

APPENDIX I

Resolution for Acquisition of North Johnson City Utility District

On motion of Commissioner Floyd Bolton, seconded by Commissioner P. J. Humphries, the following resolution was presented for adoption. The motion was carried by a vote of 3 to 0.

WHEREAS, the City of Johnson City, Tennessee, heretofore has annexed certain territory on the westerly side of said City, commonly known as "West Hills," which territory at the time of its annexation was being served by the North Johnson City Utility District of Washington County, Tennessee; and

WHEREAS, the City of Johnson City, Tennessee, has elected to exercise its right under section 6-318 of the *Tennessee Code Annotated*, to assume the operation of the entire Utility system and to pay all outstanding bonds and other obligations of said North Johnson City Utility District of Washington County, Tennessee, in accordance with their terms;

NOW, THEREFORE, be it resolved by the Commissioners of the North Johnson City Utility District of Washington County, Tennessee as follows:

That all of the assets of the North Johnson City Utility District of Washington County, Tennessee, be, and they hereby are, transferred to the City of Johnson City, Tennessee, and title thereto vested in said City in consideration of said City's agreement to pay all outstanding obligations of the North Johnson City Utility District of Washington County, Tennessee, in accordance with the terms and to protect the contract rights vested in the holders of all outstanding bonds and other obligations of the District.

RESOLUTION

On Motion of Commissioner McDowell, seconded by Commissioner Spears, the following resolution was presented for adoption. The motion was carried by a vote of 4 to 1.

WHEREAS, the North Johnson City Utility District of Washington County, Tennessee, is and has been furnishing water to certain inhabitants of the territory commonly known as "West Hills," which was recently annexed by the City of Johnson City, Tennessee; and

WHEREAS, the City of Johnson City, Tennessee, has entered into negotiations with the said North Johnson City Utility District of Washington County, Tennessee, as required by section 6-318 of the *Tennessee Code Annotated* and as a result of said negotiations it appears that it will be to the advantage of the City of Johnson City to assume the operation of the entire Utility system of said North Johnson City Utility District of Washington County, Tennessee, rather than to purchase a part thereof;

NOW, THEREFORE, be it resolved by the Board of Commissioners of the City of Johnson City, Tennessee, as follows:

Section 1. That the City of Johnson City, Tennessee, hereby assumes the operation of the entire Utility system of the North Johnson City Utility District of Washington County, Tennessee, and accepts title thereto.

Section 2. That the City of Johnson City, Tennessee, hereby assumes and will pay all outstanding bonds and other obligations of said North Johnson City Utility District of Washington County, Tennessee, in accordance with their terms. Said indebtedness consisting of 1952 series bonds of $985,000.00; 1956 series bonds in the amount of $265,000.00; 1958 Certifications of Indebtedness in the amount of $550,000.00; East Tennessee Water Corporation bonds in the amount of $160,000.00, totaling $1,960,000, all payable from revenues of said system.

APPENDIX J

Nashville City/Davidson County

WHEREAS, the Nashville City and Davidson County school systems exist to provide the best educational opportunity for the children and youth of the total community within the limits of the people's ability to pay for the services, and

WHEREAS, continuous progress in education is the primary goal and objective of a school policy for the City of Nashville and Davidson County, and

WHEREAS, the coordination of community participation in the furtherance of education must be based on a plan of action directing efforts toward the common goal, and

WHEREAS, a plan of action to provide, maintain and improve the quality level of educational opportunity for the children and youth of the community requires the establishment of a statement of policies, and

WHEREAS, the promotion of maximum efficiency of education facilities requires that the creative and productive capacities of all concerned must be encouraged, utilized, and coordinated within a framework of mutual respect and understanding;

NOW, THEREFORE, BE IT RESOLVED by the Nashville City Board of Education and the Davidson County Board of Education:

1. That they shall coordinate their efforts to secure the decisions necessary to achieve the public purpose of education within the total Nashville-Davidson County community.

2. That the Nashville City Board of Education hereby enters into an agreement with the Davidson County Board of Education whereby:

   A. The Davidson County Board of Education will operate the school facilities during the 1961-62 fiscal year in all areas served by them during the 1960-61 fiscal year;

   B. The Davidson County Board of Education shall proceed with its capital improvements program in the annexed areas and in the areas affected by the annexation, said program for the 1961-62 being described in Appendix A of the *Davidson County Capital Improvements Program*, 1961-67;

   C. The Nashville City Board of Education shall proceed with its capital improvements program in the areas affected by the annexations, said program for the 1961-62 being described in Appendix A of the *Davidson County Capital Improvements Program*, 1961-67;

   D. It is proposed that the County shall authorize and sell a $4,000,000 countywide General Obligation Bond issue to finance school construction.

E. The formula for the distribution of a proposed $4,000,000 countywide General Obligation Bond issue shall be on the basis of the proposed formula shown on page ____ of the *Davidson County Capital Improvements Program*, 1961-67; and shall be specifically allocated, as follows:

TENTATIVE FORMULA FOR DISTRIBUTION OF A $4,000,000 COUNTYWIDE GENERAL OBLIGATION BOND ISSUE FOR 1961-62*

I. Assuming an issue of $4,000,000 Countywide General Obligation Bond

II. A.	County Program for 1961-62		$3,150,000
	Less: Undivided Program		
	John Early Elementary	$ 90,000	
	Glengarry Elementary	285,000	
	John Overton High	250,000	625,000
	Total remaining for divided program		2,525,000
B.	City Program for 1961-62		
	Less: Undivided Program		
	Highland Heights Junior High	287,000	287,000
	Total remaining for divided program		1,979,000
III. A.	County A.D.A.		
	Less: Undivided Program A.D.A.		
	John Early Elementary	439	
	Glengarry Elementary (est)	400	
	John Overton High	817	1,656
	Net County A.D.A.		42,844
B.	City A.D.A.		
	Less: Undivided Program A.D.A.		
	Highland Heights Junior High	492	492
	Net A.D.A.		27,008
C.	Percentage Relationship of Net A.D.A.		
	Net County A.D.A.	42,844*	61.3354%
	Net City A.D.A.	27,008*	38.6646%
	Total	69,582*	100%

*The final 1960-61 Average Daily Attendance of the City and County School systems will be used in computing the final and exact distribution.

IV. Undivided Program

John Early Elementary		90,000
Glengarry Elementary		285,000
John Overton High		250,000
Highland Heights Junior High	287,000	912,000

V. Divided Program

$4,000,000 issue less undivided program	3,088,000
Issued to County by percentage in No. III C	1,984,037
Issued to city by percentage in No. III C	1,393,963

VI. Summary of Divided and Undivided Programs

County:		
Divided	1,894,037	
Undivided	625,000	2,529,037
City:		
Divided	1,193,963	
Undivided	287,000	1,480,963
Total:		
Divided	3,088,000	
Undivided	912,000	4,000,000

F. It is recognized that the project costs shown in the Capital Improvements Budget and Program are estimated costs and that the actual costs can only be determined through the letting of bids. In the event that the bids for the construction of the proposed facilities or the cost acquiring proposed sites for projects within the undivided bond program differ from the estimated figures whom in the City Capital Improvements Budget and Program, 1961-67 and the County Capital Improvements Program, 1961-67, the City and County School Boards shall resolve the difference within the spirit of this agreement.

BE IT FURTHER RESOLVED THAT:

3. The Nashville City and Davidson County Boards of Education shall cooperate in a comprehensive examination of public education needs within the Nashville-Davidson County Community. This study shall include an examination of administration, school zoning policies, pupil transportation, school debt administration, finance and capital outlay programming and such other subjects as may be deemed appropriate to the furtherance of education opportunity.

*The final 1960-61 Average Daily Attendance of the City and County School systems will be used in computing the final and exact distribution.

4. The Nashville City Board of Education and the Davidson County Board of Education shall prior to May 1, 1962, develop a mutually acceptable plan for the acquisition and/or transfer of school priorities located within the areas annexed by the City of Nashville. During the period prior to the transfer of such priorities they shall continue to be maintained at County standards.

BE IT FURTHER RESOLVED THAT as part of this agreement between the Nashville City Board of Education and the Davidson County Board of Education:

5. That consistent with the principle that pupils should be disturbed as little as possible with respect to the school they attend:

   A. The Boards jointly study the problems of rezoning along the boundary areas of the two school systems on an annual basis; and

   B. That pupils be permitted to attend schools as presently assigned or as determined by agreement between the City and County Boards of Education without regard to corporate lines.

6. That no tuition be charged except for county students attending Hume-Fogg Technical High School and Pearl High Vocational School.

BE IT FURTHER RESOLVED THAT:

7. The Superintendent of the County Board of Education shall advise the Superintendent of the City Board of Education as to the status of all school personnel for schools within the areas annexed to the City of Nashville as of the effective date of such annexation.

8. The Superintendent of the County Board of Education and/or his representative shall advise with the Superintendent of the City Board of Education and/or his representative prior to personnel transfers or the assignment of new personnel concerning schools within the areas annexed to the city of Nashville but subsequent to the effective date of such annexation.

9. That all rights of all school personnel shall be protected in accordance with existing law.

10. That the County Board of Education, under policies which the County Board transports pupils throughout the County, will continue to transport pupils living within the annexed area during the 1961-62 and the 1962-63 school years.

APPROVED BY DAVIDSON COUNTY BOARD OF EDUCATION
May 25, 1961

APPROVED BY NASHVILLE CITY BOARD OF EDUCATION
June 9, 1961

APPENDIX K

Knoxville and Knox County Agreement for Transfer of Schools

THIS AGREEMENT, made and entered into this 19 day of June 1963, by and between the CITY OF KNOXVILLE, a municipal corporation with situs in Knox County, Tennessee, of the first part, hereinafter called "CITY," and the COUNTY OF KNOX, a governmental division of the State of Tennessee, of the second part, hereinafter called "COUNTY,"

WITNESSETH

WHEREAS, by Ordinances Nos. 2947, 3049, 3050, 3052, 3053, 3054, the City annexed certain territory pursuant to the authority of Title 6, Chapter 30 TCA so that the said territory is now within the corporate limits of the City, and

WHEREAS, certain public schools of a value of approximately $12,000,000 now owned and operated by the County are located within the area so annexed, and

WHEREAS, the parties are empowered by law to effect a transfer of annexed school properties by contract between them,

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinbelow contained, it is agreed between the parties as follows:

I

On or before July 1, 1963, the County will give and convey absolutely to the City the following County Schools:

1. Alice Bell School
2. Anderson School
3. Bearden Elementary School
4. Bearden High School
5. Cedar Grove School
6. Central High School
7. Chilhowee School
8. Fountain City Grammar School
9. Galbraith School
10. Happy Home School
11. Holston High School
12. Inskip Elementary School
13. Lyons View School
14. Mooreland Heights School
15. Norwood School
16. Oakland School
17. Pleasant Ridge School
18. Pond Gap School
19. Ridgedale School
20. Robert Huff School
21. Rocky Hill School
22. Shannondale School
23. Smithwood School
24. Spring Hill School
25. Sterchi School
26. West Haven School
27. West Hills Elementary School
28. Young High School

Such conveyance shall include all land and buildings comprising the school properties of the above schools, together with all equipment, furniture, fixtures, books and other items of personal property now in use or present and available for use at any of the above schools, excepting however items of equipment used by or available for the use of all County Schools without designation to a particular school, such as but not limited to special projectors, film strips, special scientific equipment and special musical instruments and equipment. County agrees that it will, on or before the said date, execute and deliver all deeds, assignments and other instruments of transfer necessary or appropriate to effectuate such conveyance or conveyances.

II

Effective July 1, 1963, all employees of the Knox County Board of Education assigned to the above schools shall be and become employees of the Board of Education of the City if they choose to do so, providing that as concerns teachers, such employment rights shall exist only for those who are at that time certified or otherwise approved by the State of Tennessee Department of Education. An appropriate proportionate number of maintenance employees, clerical employees, and supervisory personnel of the County Board of Education, not assigned to any particular school, whose employment by the County will no longer be necessary by reason of the reduction of the number of County Schools shall similarly become employees of the Board of Education of the City if they choose to do so. All such persons thus becoming employees of the City shall be entitled to the following rights, which the City hereby agrees to preserve and protect:

A. They shall acquire tenure rights under the City Charter as if they had been employees of the City for the period of time they have been employees of the County Board of Education.

B. They shall be placed on the salary scale of the City Board of Education as if they had been employees of the City Board of Education for the time they have been employees of the County Board of Education. If the County shall have granted credit for pay purposes for experience in employment by other Boards of Education, the City Board of Education shall likewise grant credit for such experience not to exceed three years, provided however that compensation of no Knox County employee shall be decreased by reason of the three year limitation for non-Knox County experience.

C. Such employees may elect to continue membership in any pension plan of which they are members. In absence of such election, they shall acquire the same pension rights as new employees of the City Board of Education.

III

County represents that Exhibit "A" attached hereto is a complete listing of the proportion of the outstanding Rural Bonds of the County applicable to the schools above listed, and that the same accurately reflects the principal and interest requirements to maturity of such proportion of such bonds. City agrees that it will provide funds sufficient to meet all payments to principal and interest due and accruing on the above listed bonds from and after July 1, 1963, as follows:

A. Not less than thirty days before any date on which a payment on principal or interest is due to be delivered by the County, the County's general accounting office shall give written notice to the Mayor and Finance Director of the City, advising them of the due date and the amount of such payment and such other information respecting the same as they may reasonably request.

B. Not less than fifteen days preceding such due date, the City shall transmit and deliver to the Trustee of the County funds sufficient to meet such payment to principal and interest.

C. The City's liability under this Article III shall be only to the County and shall be limited to the amounts stated in Exhibit "A," plus interest on any amount not paid when otherwise due.

D. County agrees that the funds to be transferred will be applied to the payment of such bonds according to the terms of the notice given the City as above.

IV

Pursuant to the authority of TCA 49-711 the parties agree as follows respecting the issuance of school bonds and the division between them of funds from school bonds:

A. City hereby waives its right to all or any part of funds due it from County bonds sold during 1962.

B. In lieu of its rights to demand a proportional payment from each county-wide school bond issue, the City agrees that from and after the execution of this agreement all County bonds for school purposes shall be issued and sold according to the following terms:

1. Funds raised at the request of the County Board of Education for school construction outside the City shall be expended by the County without a proportional payment from such funds.

2. County shall issue county-wide bonds to meet the capital needs of the City School System as follows:

   a. City shall make request or requests for funds from time to time by delivery to the County Court Clerk and the County Judge of a certified copy of a Resolution by the City Council authorizing expenditure of such funds by the City School Board. Such request for requests shall be made on or before January 1 of each year in which funds will be needed so that necessary bond resolution may be prepared for presentation to the County Court at its regular January meeting and the bonds marketed by April 1.

   b. The County shall upon receipt of such request or requests issue without delay sufficient County bonds to produce the amount of funds requested.

   c. Upon receipt of the proceeds of such bonds, the County Trustee shall forthwith transfer said funds to the Treasurer of the City free of any control of the County as to the use of such funds, provided that the same shall be expended by the City in accordance with the terms of TCA 49-713.

   d. The City School Board and the County School Board will develop by mutual agreement a county-wide budget of capital expansion and improvement funds, projecting the needs for school facilities over a ten year period, and specifying the recommended order of such expansion and improvements year by year. In developing such budget the respective Boards may make such use of population studies and school studies as may be available from the Metropolitan Planning Commission. The Capital Budget and projection of needs so developed shall annually be extended by the Boards for one year, and may be adjusted from time to time as circumstances shall require.

When a majority of each of the respective Boards agrees upon such a budget, it is agreed that such budget shall form the basis for each Board's request to its respective legislative body for capital funds.

Nothing herein is intended to limit or in any wise restrict the right of County Court to issue or refuse to issue bonds for school construction outside the City in such amounts and at such times as it may see fit, whether consistent or inconsistent with the request of the County Board of Education. Neither is anything herein intended, except as provided in paragraph 3 hereinbelow, to limit or in any wise restrict the right of City Council to request or refuse to request the issuance of county-wide bonds for school construction inside the City in such amounts as it may see fit, and County court shall be bound to issue such bonds upon proper request by City Council in accordance with Article IV, C, a, b, c, above, irrespective of any agreements or lack of agreement between the Boards of Education.

3. The City may not in the first three years hereafter be entitled to more than 60 percent of the total bonds issued by the County under this agreement. In the next three years thereafter the City may not be entitled to more than 65 percent of the total bonds issued by the County under this agreement. After these two periods of three years have expired the limitation of division of bonds sold by the County shall be upon the basis of average daily attendance for each year thereafter.

4. Nothing herein shall be construed to give to the County or its School Board any right to direct or control the management or operation of the City School System or any part thereof.

5. The provision of this Article IV shall continue in full force and effect until the City shall have paid to the County the total requirements of principal and interest on Rural bonds as set out in Exhibit "A" hereto, provided, that the parties may by mutual agreement sooner terminate the same. After the said total requirements of principals and interest have been paid by the City to the County the parties shall review the fiscal problems of each with reference to schools existing at that time to determine whether the provisions of Article IV shall be terminated or not.

   If after review it appears to either party upon reasonable grounds that it would be inequitable to continue in force the provisions of this Article IV, then such party may terminate the provisions of this Article IV upon six months notice to the Chief Executive Office of the other, assigning reasons for such termination.

V

The Parties agree as follows respecting the attendance at the above schools by a student living outside the corporate limits of the City.

A. Pupils now attending such schools may continue to do so tuition-free.

B. New first graders, new high school students, and other pupils hereafter moving into a county school district may attend the nearest of the above listed schools located within two miles of his residence, tuition-free.

C. Pupils not now attending one of the above listed schools who move hereafter into a different county school district, and whose residence is more than two miles from all of the above listed schools, may attend one of the above listed schools nearer to his residence than the nearest county school if he would have attended said school had it remained a part of the County School System.

D. No pupil may attend a City School without payment of tuition if he or his parents or guardian have moved their residence from within the present corporate limits of the City to a place outside the present corporate limits of the City at any time after November 22, 1960.

E. The City reserves the right to transfer pupils attending under paragraphs A, B, and C above if transfer shall seem advisable to alleviate crowded conditions.

F. Attendance tuition-free under paragraphs A, B, and C above shall cease after June 1969, following which time all County Students attending City Schools must pay tuition or attend under an exchange agreement then in effect.

VI

In event of consolidation of the two school systems the above agreement respecting the city's payment of principal and interest on rural bonds and the above agreements respecting waiver of the division of bond proceeds shall be void and of no effect. If such consolidation shall become effective at a time less than one year following any remittance by the City to the County of funds for payment of bonds as provided in Article III above, the County shall return to the city the same proportion of such remittance as the time elapsed between such remittance and the effective date of consolidation bears to one year, less the amount of funds the County would have received during such period from beer tax, capital outlay, etc., and which the County had previously pledged for retirement of said rural school bonds had annexation not been voted.

VII

As additional consideration for the transfer and conveyance of the school properties aforesaid, City agrees to pay to the County the sum of Three Hundred Twenty-Eight Thousand Dollars ($328,000) cash, the same to be paid as follows: Fifty Thousand Dollars ($50,000) on the l5th day of October, November and December, 1963, Fifty Thousand Dollars ($50,000) on the 15th day of January and February 1964, and Seventy-Eight Thousand Dollars ($78,000) on the 15th day of March, 1964.

County agrees, as additional consideration, that during the school year ending June 1964, it will provide transportation to and from school for all pupils who would have been entitled to such transportation by the County for the transfer and conveyance provided in this Agreement.

VIII

The provisions of this agreement may be enforced by suit for specific performance to the Chancery Court for Knox County, Tennessee, or in the alternative by suit for damages in any Court of this State having jurisdiction. It is specifically agreed that in event of breach of Article IV, B, 2, any funds borrowed by the City and applied to school construction pending outcome of the suit for specific performance may be repaid by the City with proceeds of the bonds thereafter issued by the County whether the same be issued in conformity with a decree of specific performance or otherwise.

IN WITNESS WHEREOF, parties have caused this agreement to be executed on the day and year first above written by their duly authorized authors and officials.

Approved as to form and correctness:

_____
Director of Law

CITY OF KNOXVILLE

By _____
Mayor

COUNTY OF KNOX

By _____
County Judge

APPENDIX L

Arbitration Brief for Memphis Board of Education

SHELBY COUNTY AND
THE SHELBY COUNTY BOARD OF EDUCATION
Petitioners

and

BOARD OF EDUCATION
OF THE MEMPHIS CITY SCHOOLS
Respondent

MEMORANDUM OF POINTS AND AUTHORITIES

Comes the respondent, Board of Education of the Memphis City Schools, and respectfully submits this Memorandum of Points and Authorities to the Board of Arbitration:

I.

THE LAW DOES NOT REQUIRE THAT AN ANNEXING MUNICIPALITY COMPENSATE ANOTHER AGENCY OF GOVERNMENT FOR PUBLIC PROPERTIES WHICH HAVE BEEN **TAKEN AS A RESULT OF ANNEXATION**

At the threshold of this controversy, there is a fundamental difference of view between the parties as to the basic function of the Board of Arbitration. In the one hand, petitioners view the law as requiring that compensation be paid for annexed schools, and they would limit this arbitration to the sole issue of the value of the school properties taken into the City. Respondent on the other hand very earnestly contends that the Board is confronted by a much broader range of issues than the mere appraisal of real estate. It is responsible for arriving at a **just** and **reasonable** decision which takes into account the overall realignment of governmental functions, rights and responsibilities resulting from the annexation. Obviously, since the results of the Board's decision will ultimately be borne by the residents and taxpayers of the community, the final criterion must be one of fairness to the various groups of taxpayers involved.

It is appropriate to consider, at the outset of this discussion, the language of the statute which authorizes this arbitration:

> **Municipal Property And Service**s—Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as hereinabove provided, an annexing municipality and any affected instrumentality of the State of Tennessee, such as, but not limited to, a utility district, sanitary district, school district, or any other public service district, *shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets and liabilities of such state instrumentality that justice and reason may require in the circumstances*. Provided, however, that any and all agreements entered into before March 8, 1955 relating to annexation shall be preserved. The annexing municipality, if and to the extent that it may choose, shall have the exclusive right to perform or provide municipal and utility functions and services in any territory which it annexes, notwithstanding Sec. 6-26-7 or any other statute, subject, however, to the provisions of this section with respect to electric cooperatives. Subject to such exclusive right any such matters upon which the respective parties are not in agreement in writing within sixty (60) days after the operative date of such annexation shall be settled by arbitration with the laws of arbitration of the state of Tennessee effective at the time of submission to the arbitrators and Subsection (2) of Sec. 23-501, shall not apply to any arbitration arising under Subsection 6-308--6-320. The award so rendered shall be transmitted to the chancery court of the county in which the annexing municipality is situated, and thereupon shall be subject to review in accordance with Subsection 23-513–23-515 and 23-518. T.C.A. 6-318. (Emphasis supplied)

There are no court decisions construing this statute which are particularly helpful in dealing with the issues raised by this arbitration. The case of *Whitt v. McCanless*, 200 Tenn. 360 (1956), simply upholds the constitutionality of the 1955 annexation law, of which this statute forms a part. In *Hamilton County v. City of Chattanooga*, 203 Tenn. 85 (1958), the court held that a county was an "affected instrumentality" within the meaning of the statute and, therefore, arbitration would be required. However, the court did not expand on the language of the statute to throw any light on what the result of the arbitration might be.

No language in this statute suggests that the standard applied by the Board should be one of monetary compensation according to either the value or the cost of the properties taken. On the contrary, the statute recognizes that an annexation does not involve a simple transfer of property but results in an indivisible transfer of numerous "public functions, rights, duties, property, assets and liabilities" and, as we shall later discuss, we doubt that the statute authorizes a monetary award.

The statute leaves the Board of Arbitration free to reach a decision which is fair to all agencies and all taxpayers and which takes into account the entire governmental reorganization which results from the changed boundaries. "Reason and justice" are the only measures by which the ultimate result is to be evaluated, and the word "compensation" does not appear in any place in the statute. The language of the statute, therefore, lends no support to the simplistic approach of the petitioners: an approach which assumes that monetary compensation must be paid and leaves as the only question for the Board the issue of "how much."

In weighing the intent of this statute, it is also significant to note that the Chancery Court is designated as the reviewing body for this arbitration proceeding. This is the court where all considerations of general equity to the parties and taxpayers can be evaluated. If, as petitioners contend, the act was tantamount to a condemnation statute, it would have been more logical to designate the Circuit Court as the reviewing tribunal.

II.

THE COUNTY TAXPAYER HAS SUFFERED NO LOSS AS A RESULT OF THE ANNEXATION OF SCHOOLS IN THE WALKER HOMES AND WHITE HAVEN AREA

In weighing the economic impact of annexation on the various groups of taxpayers involved, the Board has had the benefit of the testimony of Dr. Wilbur R. Thompson. Dr. Thompson is a pioneer in the field of urban economics and, in addition to his academic work, has had personal experience with various intergovernmental authorities. He is therefore, eminently, and perhaps uniquely, qualified to express an opinion with regard to the dictates of fairness and reason in the type of intergovernmental transfer of duties and properties which confronts this Board.

At pages 218 through 224 of the record of the October 4th hearing, Dr. Thompson discussed his general opinion with respect to the transfer of property and responsibilities from one governmental agency to another. He pointed out that an annexation is not a taking of property from its owners but a taking of both the owners and their property into a new governmental jurisdiction. Applying this reasoning to an annexation of school properties, it is obvious that if the annexation takes both the school buildings and the children served by those schools, there has been on gain or less ["no gain or loss"] which would justify one group of taxpayers being compensated at the expense of another. Stated another way, the county held the school property which is the subject of this arbitration for the sole purpose of performing its responsibility of educating the children in the annexed areas. When the respondent relieves the county of this responsibility, the respondent is entitled to take charge of these properties and should not be required to pay additional compensation.

Dr. Thompson's opinion was based in part on the fact that a governmental agency is regarded, not as a private property owner, but as a trustee which holds property for the benefit of the citizens or taxpayers. At page 221, he carefully drew a distinction between condemnation proceeding in which the owner is divested of his property and an annexation, in which property and owners alike pass into the jurisdiction of a new governmental agency. This view of the transaction is not only supported by Dr. Thompson's personal expertise, but has been confirmed by the Supreme Court of this state. In *Prescott v. Town of Lennox*, 100 Tenn. 591 (1898), the Court held that the organization of a special school district for the town of Lennox divested title to the school in that town of the 18th school district of Shelby County and into the newly created municipality. The Court confirmed Dr. Thompson's opinion by stating:

> "In the present case it is evident that the property in question cannot now be used for school purposes, unless by the Board of Education, representing such uses within the limits of the new corporation, and if complainants were permitted to control at all, it would be only on the idea of an ownership which could alone be divested by grant or by express Legislative enactment. Such theory, however, would ignore the fact that the title to such property is only held in trust for the public, and that by the change of municipal conditions the cestui que trust has become that public constituting the new corporation of Lennox." 100 Tenn. 594 (Emphasis added).

Of course, as both the Court in Lennox and the City Board's witnesses pointed out, an injustice would be worked in particular situations. This might occur if the annexed area did not include all of the school children served by the annexed schools, resulting in the county's being obliged to construct new school buildings. T.C.A. 6-318 would allow a Board of Arbitration to make adjustments for such situations. In the present case, however, no such inequity exists. At page 372 of the hearing of June 7th, the petitioner's witness, Mr. George Barnes, testified that the County Board had not been obliged to construct any additional school facilities as a result of the annexation. In fact, all of the proof at the hearing was to the effect that the children served by these schools had been taken into the city along with the school buildings.

The witness, John P. Freeman, speaking with the benefit of vast experience in school finance and in the relationship of the City and County school systems in this community, confirmed Dr. Thompson's testimony. Beginning on page 402 of the transcript of the hearing of June 7th, Mr. Freeman pointed out that those taxpayers remaining outside the city have suffered no loss as a result of these annexations. To illustrate this point, he showed that the taxpayers in Shelby County may be divided into three groups for purposes of this arbitration: (1) Taxpayers residing within the city of Memphis prior to the annexation, (2) taxpayers continuing to reside outside the city of Memphis, and (3) taxpayers residing in the annexed area. The taxpayers in Group (1), who live within the old boundaries of Memphis and who send their children to schools located within those boundaries, have not reaped any benefit from the fact that other schools located in the Whitehaven-Walker Homes areas are now under the jurisdiction of the City Board of Education. The taxpayers in Group (2), who have always sent their children to schools that remain outside the city and whose schools are still a part of the Shelby County system, have suffered no loss by the detachment of other schools from the system. The situation of these taxpayers is unchanged and there is no equity in the county's property that the schools of these taxpayers should be subsidized by the remainder of the citizens of Shelby County. Taxpayers in Group (3), who have come into the city along with the annexation of their schools, are in the same position as they were when these schools were in the county. They have been taxed as county taxpayers to build the schools in question, and it would be a gross injustice to require them to be taxed again as city taxpayers to pay for the schools a second time.

In terms of the analysis used by the Tennessee Supreme Court in Lennox, the taxpayers in Group 3 are the beneficial owners of the annexed schools and petitioners are their trustee. If petitioners' theory of this arbitration were upheld, it would result in a legal absurdity: the requirement that a *cestui que trust* must purchase his own property from his trustee.

The validity of this analysis was further confirmed by Mr. Gary Head, a professional in the field of local government:

> "In addition, I have a strong conviction that when one government Unit accepts the responsibility of another Governmental Unit, and, consequently the assets, that no payment should be required." (Page 57, Hearing of September 13th)

The petitioners themselves furnish no basis on which to challenge the conclusions of these witnesses. No loss or inequity was shown to exist by the petitioners, and no expert testimony in the field of governmental relations was presented to suggest that one agency of government should receive financial compensation for the mere process of turning over certain of its functions to another governmental agency. Moreover, when the petitioners' witness, Mr. George Barnes, was invited on cross examination to give his opinion as to the requirements of "justice and reason" with regard to this transaction, he declined the opportunity. (See Page 344,*et seq*. Hearing of June 3rd). He also failed to indicate any financial loss which the petitioners would sustain in the course of turning over to the respondents the schools and education responsibilities in the annexed areas. In fact, to the extent that the County's situation has changed at all, the remaining portion of the County School System has realized a net gain in this transaction. This is because non-severable assets of the petitioners have remained entirely in the hands of the County School Board. The County, for example, will now have a greater per capita amount of administrative and transportation facilities with which to serve the remaining students.

Based on the facts set out above, respondents submit that justice and reason do not require any compensation whatsoever for the school properties in the annexed areas. These properties were acquired and held by petitioners in order to discharge their responsibility of educating the children living in those areas. Respondents, having relieved petitioners of that responsibility to the beneficial owners of the property, are entitled—as part of the overall transfer of governmental duties—to assume control of the properties used in the performance of these duties. To require respondents to go further and to pay the County for the privilege of taking over these functions would be manifestly unjust and unreasonable. It would require taxpayers living within the City limits to simply subsidize the operation of a school system in other parts of Shelby County.

III.

EVEN IF PAYMENT FOR THE SCHOOLS WERE REQUIRED,
THE INEQUITIES SUFFERED BY THE CITY TAXPAYER
HAVE MORE THAN OFFSET THE CLAIM OF PETITIONERS

Although, as discussed above, it is respondent's position that neither law nor equity would require a payment for assets transferred between governmental bodies, the proof disclosed a number of areas in which the City taxpayer has already suffered inequities. These areas more than offset the entire claim of the County for compensation.

A. The Illegal Division of County School Funds

Prior to the decision of the *Tennessee Supreme Court in Board of Education v. Shelby County*, et al., 207 Tenn. 330 (1960), bond proceeds and County school levies were divided on a fifty-fifty basis between the City and the County Boards of Education. Since more children attended the Memphis City School system, this resulted in an inequitable distribution of school funds, which was held by the Supreme Court to be illegal and unconstitutional. At page 398 of the Hearing of June 7th, Mr. John Freeman testified that the total amount of bond funds wrongfully withheld from the City Board as a result of this arrangement was approximately $13,000,000. It is the position of respondent that this amount should be offset against any claim which the City might otherwise be awarded. This was substantiated by the testimony of Mr. Harvey on pages 165-7 (May 26th). He shows that the city received $17,950,000 from bond issues of l948-60. Based on the 75-25 pupil population, the City Board should have received $32,175,000 of the $42,950,000 issued during these years.

The petitioners seek to evade this issue by relying on the refusal of the Supreme Court to make a cash award in favor of the City Board. This overlooks the well-recognized principle that even a claim which has been barred so that it can no longer be the basis of an affirmative action may be raised as a defense. This is particularly true where the claim is in the nature of a recoupment arising out of the same transaction (51 A, Jr. 2d "Limitation of Action", Sec. 77). Many of the site purchases and construction payments on which the County bases its claim were made out of these very school funds which over the years were illegally withheld from the City Board. The County's claim, therefore, arises directly out of the same transaction as the barred claim of the City Board for the recovery of these funds. While the Supreme Court declined to award the City a recover for these past injustices, it does not follow that expenditures made of illegally-obtained money should be allowed as a basis of affirmative recovery of the County against the City Board. This would allow the County to take advantage of the past wrong-doing and to receive the illegal funds a second time.

B. The Construction of the Shelby County Administration Building

In the course of the present hearing, another example of illegal appropriation of funds to the County School Board came to light. The testimony of Mr. Ward Harvey showed that the new Administration Building of the Shelby County Board of Education was built with funds which had not been divided on an a/d/a basis with the City School system (Pages 226-8, Hearing of May 31st). This building is used entirely for school purposes by the County board and its construction, therefore, represents an expenditure of County funds for education purposes. Under the rule of *Board of Education v. Shelby County et al., supra*, the County was obligated to give the City Board an a/d/a share of any educational appropriations. The County expenditure on this building was $895,000.00. Based on a 3:1 a/d/a ratio, the County is obligated to pay the City $2,685,000 and this amount of money, which has not been received by the City of Memphis, should be offset against any County claim.

C. The Physical Needs of the Annexed Buildings

In addition to incurring the general liabilities and responsibilities associated with the duty of educating children in the annexed areas, the City Board has incurred various extraordinary expenses in maintaining and

improving the annexed schools. Mr. John Freeman testified to the pressing facility needs in these areas and to the regrettable state of most of the annexed buildings. Exhibits Number 1 and 2 to his testimony set out the extensive needs in the annexed areas. At page 410 of the Hearing of June 7th, Mr. Freeman testified that there were approximately $1,000,000 in maintenance costs required of these funds, of which $310,000.00 had already been committed. Capital needs in these areas were estimated at an additional $3,000,000.

These expenses were over and above the normal expenditures incurred in extending the city school system, such as the increase in the amount of the supplement which is paid out of City property taxes. In the present year, for example, the City of Memphis has contributed $9,982,758.93 to the City Board's budget, for an average contribution of $75.51 per pupil. This amount is raised purely from the City property tax. If this amount were capitalized at 8 percent, the result would be a capital outlay of $948.88 for each pupil taken into the City as a result of these annexations. This amount multiplied by the 8,406 pupils in the Westwood area would result in a capitalized expenditure of $7,934,255.38 and multiplied by the 11,907 annexed students in Whitehaven would result in a capitalized expenditure of $11,238,779.16, or a total of $19,173,034.44. In light of these increased expenses incurred by the City Board with regard to capital expenditures and to increased operating expenses, it would be unreasonable, both legally and practically, to require the City Board to bear additional expenses resulting from this annexation.

D. Overall Inequities Suffered By The City Taxpayer

In addition to the above matters which relate directly to school expenditures, the respondent has shown that the City taxpayer is already subsidizing the general operation of county government to an inequitable degree. The principal proof on this issue was the Memphis-Shelby County Fiscal Relationship Study (Exhibit 2 to the testimony of Mr. Gary Head) and the supporting testimony of the witnesses, Messrs. Head and Thompson. This study covers the fiscal years of 1968, 1969 and 1970 and it is pointed out at Page 2 of the Study that during this period $17,000,000 in "spillover" benefits flowed from the City taxpayer to the County taxpayer. This phenomenon is the result of a system of double taxation by which the City resident pays 100 percent of the amount required to operate the City government and also pays approximately 85 percent of the property taxes required to operate the County government.

The method used in the Fiscal Relationship Study was to determine the amount of benefits received by the City taxpayer as a result of each Shelby County program and to deduct from that amount the total costs of the proper paid for by the city taxpayer. If the cost of the City taxpayer exceeded the benefit of the program, the excess amount was noted as a "spillover" benefit from the City taxpayer to the County. It was noted at Page 3 of the Study that no County service produced a contrary spillover in the City's favor while virtually every County function resulted in a spillover from the City taxpayer to the County.

As described by Mr. Head, the Study adopted as its hypothetical theory the assumption that the benefits of most city and County services should be allocated equally among the taxpayers. Mr. Head pointed out that this basic method was a means of assuring absolute fairness to the County taxpayer, since the contrasting audit approach would have showed an increased spillover from the City taxpayer to the County (Pages 28-30, Hearing of September 13th).

A second area in which the Head study bent over backward to assure fairness to the County was the computation of the trade spillover. The fact that a preponderance of commercial property is located in the City was adjusted by allowing the County full credit for all commercial benefits which were not identifiable as stemming from City residents (Page 34, Hearing of September 13th). The study, therefore, shows the minimum amount of benefit spillover from the City resident to the County and, in Mr. Head's opinion, the true amount of County benefit would exceed the $17,000,000 which was identified by the study (Pages 23-4, Hearing of September 13th).

Although the County's witness, Mr. John Thomas, indicated that various other studies on the City-County fiscal relationship had been conducted, the petitioners did not attempt to present any evidence which would refuse the findings of respondent's analysis as reflected in the Head study. It can only be assumed from this that other studies would either support the respondent's case or would not stand the scrutiny to which Mr. Head's study was subjected. Mr. Thomas did suggest two different approaches which might be made in another study. The first suggestion was that an adult approach should be used. Such approach, however, would result in a showing of greater inequity in favor of the County taxpayer. This is true because such County services as the construction and maintenance of the road system and the operation of the sheriff's department outside the city limits would then be attributed to non-city residents. Under the approach of Mr. Head's study, these services, although performed outside the City limits, were attributed equally to all residents of Memphis and Shelby County. Thus, the first suggestion of Mr. Thomas would result in a finding of spillover benefits to the County government which would greatly exceed the $17,000,000 indicated by Mr. Head's study.

The second approach suggested by Mr. Thomas was the unique theory of removing the tax produced by commercial and other income-producing property from the amounts credited to the City taxpayer. This suggestion overlooks the fact that the concentration of commercial property in an urban area is offset by the greater need for services to the poor that exists in such area. Even more important, Mr. Thomas' application of this principal was inconsistent if commercial and industrial assessments are to be excluded on the ground that they reflect a fortuitous distribution of income-producing property, since it would seem to naturally follow that farm properties which are also income producing, non-residential uses should be removed from the credits attributed to the non-city taxpayer. Thus, the consistent application of Mr. Thomas' second suggestion would undoubtedly lead to the finding of additional spillover benefit in favor of the County.

On the basis of the evidence, therefore, the $17,000,000 in spillover benefits identified by Mr. Head must be taken as the minimum amount of inequity suffered by the City taxpayer. The Board of Arbitration, which is charged with considering the full range of issues relating to the annexation, should take into account the existence of this inequity. Even though it falls outside the scope of school expenditures, it is a direct subsidy provided to the County by the same group of taxpayers who would bear the ultimate expense of any award which the petitioners might receive, and respondent submits that any award of this Board should attempt to deal equitably with all of the economic realities faced by the taxpayers involved.

IV.

RESPONDENT SHOULD NOT BE REQUIRED TO ASSUME OUTSTANDING BONDED INDEBTEDNESS ARISING FROM COUNTY-WIDE BOND ISSUES

Although there is superficial plausibility in the claim that the City Board should assume the obligation of retiring outstanding bonded indebtedness with respect to the annexed schools, a careful analysis would show that such action should not equitably be required for the reason that those bonds are being retired from tax levies imposed by the County on all County taxpayers.

The County had authority under TCA 49-715 to issue bonds which would be retired solely from taxes levied on property from areas outside the City. Had this been done, it would clearly be equitable to require that the outstanding obligations of these bonds be assumed by the City upon the annexation of the schools. The County, however, chose to disregard this opportunity and to finance the schools by a bond issue which is to be retired from General County Funds. Since 1961, the proceeds of such bond issues have been divided equitably on a per capita basis for the benefit of the school children in the County. The bonds are retired by a tax levy which falls equally over all of the assessed property in the County, with the City taxpayer already retiring 80 to 85 percent of these bonds. So long as the buildings and equipment which were purchased by these bond issues continue to be enjoyed upon an equitable and per capita basis by the citizens of the County, no inequity results even through control of particular schools may be transferred from one jurisdiction to another.

The same reasoning applies to the County's claim of cash payment for equipment in these school buildings. The funds used to purchase this equipment have been divided on a per capita basis among the school children through the County. If, for example, a particular tax levy was used to buy desks or books on an equal basis for all children in both school systems, there would be no equity in requiring annexed school children either to abandon their per capital share of these assets or to pay a part of their costs a second time.

It should also be noted that TCA 6-318 not only fails to require that a cash award be made for annexed school property, but does not even authorize such an award. No clause of this statute confers on the Board of Arbitration any power to direct a cash award with respect to properties which have already been paid for by the County. The only refill which the statute would authorize the Board to give to the petitioners would be the allocation of "liabilities" to the City Board if such an allocation were acquired [required] by justice and reason. Based on the language of the statute, respondent submits that the maximum relief which could be granted the County would be the assumption of existing liabilities by the City Board although, as discussed above, this relief would not be appropriate in light of the county-wide nature of these liabilities.

CONCLUSION

The respondent, Board of Education of Memphis City Schools, therefore, submits to the Board of Arbitrators that it is not liable to reimburse the County in any amount whatsoever for the schools involved in this annexation. This is true for the following reasons:

1. The entire process of annexation has resulted in no more than a transfer of trust in the annexed schools together with their beneficial owners—the people of Whitehaven and Walker Homes areas—from one governmental agency as Trustee to another.

2. The claim of compensation has been more than offset by the numerous inequities suffered by the City taxpayer and the City Board.

3. The compensation sought by the petitioners is neither required nor authorized by the terms of TCA 6-318, and no inequities have been suffered by the petitioners which would warrant a departure from the Act.

Respectfully submitted,

EVANS, PETREE, COBB & EDWARDS

By _____
Attorneys for Respondent
Board of Education of the
Memphis City Schools

CERTIFICATE OF SERVICE

Copy of the foregoing Memorandum of Points and Authorities served on Lee Winchester, Jr., Esq., Attorney for Petitioners, by forwarding same copy by United States mail, postage prepaid, addressed to said attorney at this business address in Memphis, Tennessee, this the 7th day of January, 1972.

Board Of Arbitration Award, Shelby County vs.
Memphis Board of Education

SHELBY COUNTY AND
THE SHELBY COUNTY BOARD OF EDUCATION

Petitioners

and

BOARD OF EDUCATION
OF THE MEMPHIS CITY SCHOOLS

Respondent

After a full hearing before the Board of Arbitration, duly impaneled pursuant to the provisions of TCA 6-318 and after consideration of all of the evidence presented to the Board, it is the finding and opinion of the majority of the Board of Arbitration that the Petitioner, Shelby County Board of Education, should be granted a total sum of $1,917,904.00 without interest thereon as a full and final settlement with respect to the school sites, school buildings, and other school properties passing to the Board of Education of the Memphis City Schools by reason of the 1969 and 1970 annexations.

Payment of this amount shall be made by the Board of Education of the Memphis City Schools as follows: $127,296.00 shall be paid in cash with respect to the equipment and furnishings of the annexed schools. The balance of the award, or $1,790,608.00, shall be credited to the Shelby County Board of Education for use as future construction funds in the same manner as the credit prescribed in Item 3 of the Settlement Agreement previously entered into by the parties with respect to the school properties annexed in 1965, except that the Average Daily Attendance percentage used in that agreement shall be adjusted to reflect the Average Daily Attendance at 21.74 percent for the Shelby County Board of Education with regard to the funds awarded by reason of the 1969 annexations and 13.33 percent with regard to funds awarded by reason of the 1970 annexations.

The computation of the above amount was made in the following manner:

1. The total acquisition cost of each parcel of land was computed with respect to each of the annexed areas. This amount was $143,187.00 with respect to the 1969 annexation and $397,866.00 with respect to the 1970 annexation.

   To this amount was added the cost of improvements depreciated over a thirty-year period. This amount was $4,022,748.00 with respect to the 1969 annexation and $6,240,792.00 with respect to the 1970 annexation.

   The content value of each of the annexed schools was then added less a depreciation figure of 50 percent, said 50 percent depreciation figure having been agreed to as reasonable by officials of the respective Boards. This depreciated content value was $330,866.00 with respect to the 1969 annexation and $415,350.00 with respect to the 1970 annexation.

   2. The total thus obtained was $4,496,801.00 for the 1969 annexation and $7,054,088.00 for the 1970 annexation. This total was then multiplied by the percentage which the Average Daily Attendance of pupils in the County School System bore with respect to the Average Daily Attendance of students in Shelby County as a whole. The period used for the computation of the a/d/a was the period immediately following the assumption of control of the annexed schools by the Board of Education of the Memphis City Schools. With respect to the 1969 annexation, the percentage factor was 21.74 percent. With respect to the 1970 annexation, the percentage factor was 13.33 percent.

3. The result thus obtained represented the final award which is set out above. The award consists of a total award of $977,604.00 with respect to the 1969 annexation, including $71,930.00 for contents. The award also consists of a total of $940,300.00 with respect to the 1970 annexation including $55,666.00 for contents. Further itemization of these figures can be obtained by reference to the computation sheet which is attached as an appendix to this award.

IT IS FURTHER ADJUDGED by the Board of Arbitration that this award would be submitted to the Chancery Court of Shelby County pursuant to the terms of TCA 6-318.

The undersigned members of the Board of Arbitration concur in the foregoing finding and opinion, this the 15th day of March, 1972.

/a/ George M. Houston, Chrm.
/a/ Walter P. Armstrong, Jr.

To the majority finding and opinion of the Board of Arbitration the Honorable Ed Gibbons respectively excepts and reserves the right to file a minority finding and opinion in the Chancery Court of Shelby County pursuant to TCA 6-318.

/a/ Ed Gibbons

Chancellor's Consent Order, Shelby County Vs. Memphis Board of Education

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

SHELBY COUNTY BOARD OF EDUCATION,
Complainant

vs. No. 76380-3 R. D.

BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS,
Defendant

CONSENT ORDER APPROVING SETTLEMENT AGREEMENT AND DISMISSION CAUSE

This cause came on to be heard on the joint report of the parties to this lawsuit advising the Court that a settlement agreement heretofore filed as an exhibit to this report has been executed by all of the parties hereto.

And it appearing that this settlement agreement concludes all of the matters in controversy between the parties, including the annexation of schools in two areas which were involved in the original arbitration and litigation.

It further appears to the Court that the settlement agreement should be approved pursuant to the *Tennessee Code Annotated* 6-318; and that the trustee of Shelby County should be authorized and directed to carry out the terms of the settlement agreement; and that the provisions of the arbitration award should be completely set aside and superseded by the settlement agreement.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the contract dated the ____ day of _____ _____, 1974, between the Shelby County Board of Education and the Board of Education of the Memphis City Schools be, and the same is hereby, approved as a final settlement of all liability arising from the annexations covered therein, and the Trustee of Shelby County, Tennessee, the Chairman of the Shelby County Court and others charged with distributing funds to the Shelby County Board of Education and Board of Education of the Memphis City Schools are authorized to carry out the terms of the said contract.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the arbitration award heretofore filed in this cause is forever set aside and held for naught and is superseded by the aforesaid contract. The costs of this cause are assessed fifty (50%) percent against the defendant, Board of Education of the Memphis City Schools, and fifty (50%) percent against the plaintiff, Shelby County Board of Education.

_____
Chancellor

Approved:

_____
R. LEE WINCHESTER, JR.
Attorney for Plaintiff,
Shelby County Board of Education

EVANS, PETREE, COBB & EDWARDS

By_____
Attorneys for Defendant,
Board of Education of the Memphis City Schools

CONTRACT

THIS INSTRUMENT entered into this 4th day of June, 1974, by and between the SHELBY COUNTY BOARD OF EDUCATION, party of the first part, hereinafter referred to as the "County Board of Education" and THE BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS, party of the second part, hereinafter referred to as the "City Board of Education."

WITNESSETH

WHEREAS, effective December 31, 1968, the City of Memphis annexed into its corporate boundaries additional territory containing the following schools owned by the County Board of Education: Ford Road School, Geeter School, Lakeview School, Levi School, Mitchell Road High School, Walker Elementary School, Weaver Elementary School, and Westwood High and Elementary School; and

WHEREAS, effective December 31, 1969, the City of Memphis annexed into its corporate boundaries additional territory containing the following schools owned by the County Board of Education: Fairley Elementary and High School, Gardenview Elementary School, Graceland Elementary School, Graves Elementary School, Havenview Elementary School, Hillcrest High School, Oakshire Elementary School, Raineshaven Elementary School, Westhaven Elementary School, Whitehaven Elementary and High School and Winchester Elementary School; and

WHEREAS, effective December 31, 1971, the City of Memphis annexed into its corporate boundaries additional territory containing the following schools owned by the County Board of Education: Coro Lake Elementary School and White's Chapel Elementary School; and

WHEREAS, effective December 31, 1972, the City of Memphis annexed into its corporate boundaries additional territory containing the following schools owned by the County Board of Education: Scenic Hills Elementary School, Raleigh-Bartlett Meadows Elementary School, and Coleman Elementary School.

WHEREAS, in the case of each of the above annexations, the Shelby County Board of Education subsequently transferred the operation of the aforesaid schools to the City Board of Education and included in said transfer the furniture, fixtures and equipment located in and about the aforesaid properties; and

WHEREAS, being unable to agree upon the terms upon which the aforesaid school properties, furniture, fixtures and equipment are to be transferred to the City Board of Education, the parties have heretofore transmitted the matter to arbitration in accordance with the provisions of Section 6-318, etc., *Tennessee Code Annotate*d, with respect to the 1968 and 1969 annexation resulting in an annexation award which has not been accepted and implemented by the parties and which has been appealed to the Chancery Court of Shelby County, Tennessee in case Number 76380-3; and

WHEREAS, both Boards as a result of continued negotiations, subject to the ratification by the Shelby County Quarterly Court, have resolved their differences and reached agreement both as to the amount and method of payment by the City Board of Education of the County Board of Education for all school properties, furniture, fixtures and equipment contained in all four of the above listed annexations:

NOW, THEREFORE, in consideration of the mutual promises of the parties and the further consideration as hereinafter set forth, it is agreed as follows:

1. That the total amount of bond proceeds creditable to the County in the manner hereinafter set forth with respect to all school properties, furniture, fixtures and equipment contained in the 1968 annexation shall be: $2,354,428.60;

   that the total amount of bond proceeds creditable to the County in the manner hereinafter set forth with respect to all school properties, furniture, fixtures and equipment contained in the 1969 annexation shall be: $4,555,798.17;

   that the total amount of bond proceeds creditable to the County in the manner hereinafter set forth with respect to all school properties, furniture, fixtures and equipment contained in the 1972 annexation shall be: $272,504.22; and

   that the total amount of bond proceeds creditable to the County in the manner hereinafter set forth with respect to all school properties, furniture, fixtures and equipment contained in the 1973 annexation shall be: $1,031,037.02.

2. It is agreed that the total balance of payments for these four annexations in the amount of $8,213,768.01 shall bear no interest and shall be credited to the County Board of Education by the City Board of Education only in the following manner: Shelby County or the Shelby County Board of Education shall have the right to issue County School Bonds or to use any other local funds subject to A.D.A. distribution as required by state laws for constructing purposes without participation by the City Board of Education in the proceeds until such time as the County Board shall have received $8,213,768.01 of the said bond issues or other capital improvement funds that would otherwise have been paid to the City Board of Education. In other words, Shelby County or the Shelby County Board of Education shall have the right to issue County School Boards [bonds] or to use any other local funds subject to A.D.A. distribution as required by state laws for capital improvement purposes without the necessity of making any average daily attendance distribution to the City Board of Education other than as a credit against the obligation established herein, until such time as the City Board's A.D.A. share of such proceeds shall equal $8,213,768.01.

3. The County Board agrees that, as the above credit is expended, it will promptly give notice to the City Board of the amount of bond credit and of the purpose for which it has been expended and of the source of County funds utilized whether they be bond or other county revenues.

4. Shelby County and the County Board of Education hereby agree that title to all school properties annexed by the City of Memphis shall be vested indefeasibly and in fee simple absolute in the Board of Education of the Memphis City Schools. Shelby County and the Shelby County Board of Education further agree that they will, upon request of the City Board, make formal conveyance of any or all of the said properties to the city Board by appropriate quit claim deed.

5. It is further agreed that the amount of credit due for the anticipated annexation of the North Raleigh Area which includes Brownsville, Spring Hill, Raleigh Egypt Elementary and High School shall be determined by the basis used in establishing the amounts in this settlement.

6. It is further agreed and understood by the parties that this contract is intended to supersede and supplant the arbitration award presently before the Chancery Court of Shelby County, Tennessee, in case Number 76380-3. Upon the conclusion of this agreement, that case shall be dismissed and the arbitration award therein set aside by consent of the parties. Shelby County, the Shelby County Board of Education, and the City Board of Education hereby mutually release each other from any further liability of any nature growing out of the four annexations covered by this agreement.

IN WITNESS WHEREOF, the aforesaid parties, the Shelby County Board of Education and the Board of Education of the Memphis City Schools, have hereto set their hands by their duly authorized officers the day and year above written.

SHELBY COUNTY BOARD OF EDUCATION

By _____

Attest:

_____

Secretary

BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS

By _____

Attest:

_____

Secretary

APPENDIX M

Tennessee Annexation Law (Current through the 2006 Session of the Tennessee General Assembly)

TENNESSEE CODE
TITLE 6. CITIES AND TOWNS
MUNICIPAL GOVERNMENT GENERALLY
CHAPTER 51. CHANGE OF MUNICIPAL BOUNDARIES
PART 1—ANNEXATION

§ 6-51-101. Definitions

As used in this part and § 6-51-301 unless the context indicates otherwise:

(1) "Larger" and "smaller" refer to population and not area;

(2) "Municipality" or "municipalities" means any incorporated city or cities, or town or towns, and does not include any utility district, sanitary district, school district, or other public service district, whether organized under public or private acts; and (3) "Notice" means publication in a newspaper of general circulation in the municipality at least seven (7) days in advance of a hearing. The notice, whether by ordinance as stipulated in § 6-51-102(a)(l) and (b) or by referendum as stipulated in § 6-51-104(b), shall be satisfied by inclusion of a map which includes a general delineation of the area or areas to be annexed by use of official road names and/or numbers, names of lakes and waterways, or other identifiable landmarks, as appropriate.

§ 6-51-102. Ordinance

(a)(l) A municipality, when petitioned by a majority of the residents and property owners of the affected territory, or upon its own initiative when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property endangered, after notice and public hearing, by ordinance, may extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole; provided, that the ordinance shall not become operative until thirty (30) days after final passage thereof.

(2)(A) If an annexation ordinance was not final on November 25, 1997, and if the municipality has not prepared a plan of services, the municipality shall have sixty (60) days to prepare a plan of services.

(B)(I) For any plan of services that is not final on May 19, 1998, or for any plan of services adopted after May 19, 1998, and before the approval of the growth plan by the committee, the county legislative body of the county where the territory subject to the plan of services is located may file a suit in the nature of a *quo warranto* proceeding to contest the reasonableness of the plan of services.

(ii) If the county is petitioned by a majority of the property owners by parcel within the territory which is the subject of the plan of services to represent their interests, a county shall be deemed an aggrieved owner of property giving the county standing to contest the reasonableness of the plan of services. In determining a majority of property owners, a parcel of property with more than one (1) owner shall be counted only once and only if owners comprising a majority of the ownership interests in the parcel petition together as the owner of the particular parcel.

(iii) A petition by property owners under this section shall be presented to the county clerk, who shall forward a copy of such petition to the county executive, county assessor of property and the chair of the county legislative body. After examining the evidence of title based upon the county records, within fifteen (15) days of receiving the copy of the petition, the assessor of property shall report to the county executive and the chair of the county legislative body whether or not in the assessor's opinion a majority of the property owners by parcel have petitioned the county according to this section.

(iv) Notwithstanding any other provision of this chapter, a petition by property owners to the county under this section to contest the reasonableness of the plan of services shall be brought within sixty (60) days of the final adoption of the plan of services, and if the county legislative body adopts a resolution to contest the plan of services, the county shall file suit to contest the plan of services pursuant to this section within ninety (90) days of the final adoption of the plan of services.

(C) If the court finds the plan of services to be unreasonable, or to have been done by exercise of powers not conferred by law, an order shall be issued vacating the same, and the order shall require the municipality to submit a revised plan of services for the territory within thirty (30) days; provided, that by motion the municipality may request to abandon the plan of services, and in such case the municipality is prohibited from annexing by ordinance any part of such territory proposed for annexation for not less than twenty-four (24) months. In the absence of such finding, an order shall be issued sustaining the validity of such plan of services ordinance, which shall then become operative thirty-one (31) days after judgment is entered unless an abrogating appeal has been taken therefrom.

(D) If a municipal plan of services has been challenged in court under this section and if the court has rendered a decision adverse to the plan, then a municipality may not annex any other territory by ordinance until the court determines the municipality is in compliance.

(E) The provisions of subsection (a) which are in conflict with this subdivision do not apply to any county having a population of not less than three hundred nineteen thousand six hundred twenty-five (319,625) nor more than three hundred nineteen thousand seven hundred twenty-five (319,725) according to the 1980 federal census or any subsequent federal census. In such county, if the proposal to extend the corporate limits by the annexation of territory adjoining the existing boundaries of a municipality is proposed by the municipality upon its own initiative by ordinance, the ordinance shall not become operative until an election is held at the expense of the proposing municipality for approval or disapproval of such annexation by the qualified voters who reside in the territory proposed for annexation. The operation of the ordinance shall be subject to approval of the voters who reside in such territory. The county election commission shall hold an election thereon, providing options to vote "For" or "Against" the ordinance, not less than forty-five (45)

days nor more than sixty (60) days after the receipt of a certified copy of such ordinance, and a majority vote of those voting in the election shall determine whether the ordinance is to be operative. A vote "For" the ordinance shall be a vote "For Annexation" and a vote "Against" the ordinance shall be a vote "Against Annexation." If the vote is for the ordinance, the ordinance shall become operative thirty (30) days after the date that the county election commission makes its official canvass of the election returns; such ordinance shall not become operative before the expiration of one hundred twenty (120) days following the final passage of the annexation ordinance. If the ordinance is rejected, all relevant provisions in this chapter shall apply to the question of annexation in such county.

(3)(A) No municipality having a population greater than ten thousand (10,000), according to the 1970 federal census or any subsequent federal census shall, by means of annexation by ordinance upon its own initiative, increase the land area contained within its boundaries by more than twenty-five percent (25%) during any twenty-four-month period.

(B)(I) The provisions of subdivision (a)(3)(A) shall not apply to any municipality having a population of less than twelve thousand (12,000) according to the 1980 federal census or any subsequent federal census, and the charter of which is provided for by a private act of the general assembly, and not under the general law of this title.

(ii) The provisions of this subdivision (a)(3)(B) shall not apply to any municipality located in any county having a population of not less than thirty-four thousand one hundred (34,100) nor greater than thirty-four thousand two hundred (34,200), or located in any county having a population of not less than thirty-seven thousand (37,000) nor greater than thirty-seven thousand one hundred (37,100), or located in any county having a population of not less than forty-nine thousand four hundred (49,400) nor greater than forty-nine thousand five hundred (49,500), each according to the 1980 federal census or any subsequent federal census.

(b)(l) Before any territory may be annexed under this section by a municipality, the governing body shall adopt a plan of services establishing at least the services to be delivered and the projected timing of the services. The plan of services shall be reasonable with respect to the scope of services to be provided and the timing of the services.

(2) The plan of services shall include, but not be limited to: police protection, fire protection, water service, electrical service, sanitary sewer service, solid waste collection, road and street construction and repair, recreational facilities and programs, street lighting, and zoning services. The plan of services may exclude services which are being provided by another public agency or private company in the territory to be annexed other than those services provided by the county.

(3) The plan of services shall include a reasonable implementation schedule for the delivery of comparable services in the territory to be annexed with respect to the services delivered to all citizens of the municipality.

(4) Before a plan of services may be adopted, the municipality shall submit the plan of services to the local planning commission, if there is one, for study and a written report, to be rendered within ninety (90) days after such submission, unless by resolution of the governing body a longer period is allowed. Before the

adoption of the plan of services, a municipality shall hold a public hearing. Notice of the time, place, and purpose of the public hearing shall be published in a newspaper of general circulation in the municipality not less than fifteen (15) days before the hearing. The notice shall include the locations of a minimum of three (3) copies of the plan of services which the municipality shall provide for public inspection during all business hours from the date of notice until the public hearing.

(5) A municipality may not annex any other territory if the municipality is in default on any prior plan of services.

(6) If a municipality operates a school system, and if the municipality annexes territory during the school year, any student may continue to attend such student's present school until the beginning of the next succeeding school year unless the respective boards of education have provided otherwise by agreement.

(c) Anything contained in this chapter to the contrary notwithstanding, a municipality in any county having a population of over sixty-six thousand (66,000) (except in those counties having a population of more than seven hundred thousand (700,000) according to the federal census of 1970 or any subsequent federal census; or in those counties which have the metropolitan form of government) shall have the supplemental right and authority to annex upon its own initiative by ordinance any territory without levying any municipal ad valorem taxes except for actual municipal services rendered, and that the residents of, and persons owning property in, annexed territory shall be entitled to rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as though such annexed territory had always been a part of the annexing municipality; and it shall be the duty of the governing body to put into effect with respect to an annexed area any charter provisions relating to representation on the governing body. Any municipality that exercises such right to annex is hereby authorized, required and shall levy separate ad valorem taxes for each municipal purpose and/or service within the existing limits of the city and shall levy only such taxes, if any, in any territory annexed hereunder when and if the municipal service or purpose for which such taxes have been imposed is actually being rendered; provided, that in the case of sanitary sewers, such sewers shall be furnished within thirty-six (36) months after ad valorem taxes become due.

(d) In counties having a population of more than seven hundred thousand (700,000), or having a population of not less than two hundred sixty thousand (260,000) nor more than two hundred eighty thousand (280,000) according to the United States census of 1970 or any subsequent federal census, or in those counties which have the metropolitan form of government, a smaller municipality may by ordinance, extend its corporate limits by annexation of any contiguous territory, when such territory within the corporate limits of a larger municipality is less than seventy-five (75) acres in area, is not populated, is separated from the larger municipality by a limited access express highway, its access ramps or service roads, and is not the site of industrial plant development. The provisions of this chapter relative to the adoption of a plan of service and the submission of same to a local planning commission, if there is such, shall not be required of the smaller municipality for such annexation.

§ 6-51-103. Ordinance contest; suit in nature of *quo warranto* proceeding

(a)(l)(A) Any aggrieved owner of property which borders or lies within territory which is the subject of an annexation ordinance prior to the operative date thereof, may file a suit in the nature of a *quo warranto* proceeding in accordance with this part, § 6-51-301 and title 29, chapter 35 to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole and so constitutes an exercise of power not conferred by law. Notwithstanding the provisions of any other section in this chapter, for purposes of this section, an "aggrieved owner of property" does not include any municipality or public corporation created and defined under title 7, chapter 82 which owns property bordering or lying within the territory which is the subject of an annexation ordinance requested by the remaining property owner or owners of the territory and whose property and services are to be allocated and conveyed in accordance with § 6-51-111, § 6- 51-112 or § 6-51-301, or any contractual arrangement otherwise providing for such allocation and conveyance.

(B) The provisions of this subdivision (a)(l) do not apply to the counties covered by subdivision (a)(2).

(2)(A)Any aggrieved owner of property, lying within territory which is the subject of an annexation ordinance prior to the operative date thereof, may file a suit in the nature of a *quo warranto* proceeding in accordance with this part, § 6-51-301 and title 29, chapter 35 to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole, and so constitutes an exercise of power not conferred by law.

(B) The provisions of this subdivision (a)(2) shall apply only in counties having a metropolitan form of government and in counties having populations of:

not less than	nor more than
4,000	4,300
14,940	15,000
43,700	44,700
49,400	49,500
58,000	59,000
67,300	67,400
74,500	74,600
100,000	250,000
475,000	480,000
700,000	

according to the 1980 federal census or any subsequent federal census, and in any county with a population of not less than two hundred eighty-five thousand (285,000) and not more than two- hundred ninety thousand (290,000) based upon the 1980 federal census.

(b) The municipality shall have the burden of proving that an annexation ordinance is reasonable for the overall well-being of the communities involved.

(c) If more than one (1) suit is filed, all of them shall be consolidated and tried as one (1) in the first court of appropriate jurisdiction in which suit is filed. Suit or suits shall be tried on an issue to be made up there, and the question shall be whether the proposed annexation be or be not unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality. Should the court find the ordinance to be unreasonable, or to have been done by exercise of powers not conferred by law, an order shall be issued vacating the same and the municipality shall be prohibited from annexing, pursuant to the authority of § 6-51-102, any part of the territory proposed for annexation by such vacated ordinance for a period of at least twenty-four (24) months following the date of such order. In the absence of such finding, an order shall be issued sustaining the validity of such ordinance, which shall then become operative thirty-one (31) days after judgment is entered unless an abrogating appeal has been taken therefrom.

(d) If on appeal judgment shall be against the validity of such ordinance, an order shall be entered vacating the same and the municipality shall be prohibited from annexing, pursuant to the authority of § 6-51-102, any part of the territory proposed for annexation by such vacated ordinance for a period of at least twenty-four (24) months following the date of such order. If judgment shall be in favor of the validity of such ordinance, it shall become operative forthwith by court order and shall not be subject to contest or attack in legal or equitable proceeding for any cause or reason, the judgment of the appellate court being final.

(e) Should the territory hereafter sought to be annexed be the site of substantial industrial plant development, a fact to be ascertained by the court, the municipality shall have the burden of proving that the annexation of the site of the industrial plant development is not unreasonable in consideration of the factors above mentioned, including the necessity for or use of municipal services by the industrial plant or plants, and the present ability and intent of the municipality to benefit the industrial plant development by rendering municipal services thereto when and as needed. The policy and purpose of this provision is to prevent annexation of industrial plants for the sole purpose of increasing municipal revenue, without the ability and intent to benefit the area annexed by rendering municipal services, when and as needed, and when such services are not used or required by the industrial plants.

(f) During the time that any annexation ordinance is being contested as provided herein, the annexing municipality and the county governing body (and/or any affected school, sanitary or utility district) may enter into an agreement to provide for new, expanded, and/or upgraded services and facilities (including, but not limited to, equipment, land and buildings), and capital expenditures (including sale of bonds) to finance such services and facilities, which agreement shall include an equitable division of the cost and liabilities of such capital expenditures between the annexing municipality and the county governing body (and/or affected school, sanitary, or utility district) upon final determination of such contested annexation ordinance.

(g) When territory is annexed that is located in a county other than one in which the city hall of the annexing municipality is then located, any suit filed pursuant to this section for the purpose of contesting the annexation ordinance shall be filed in the county where the city hall of the annexing municipality is located. The chancellor, however, shall change the venue to a county that is adjacent to either the county where the annexing municipality's city hall is located or the county where the proposed annexation is located.

§ 6-51-104. Resolution; notice

(a) A municipality, when petitioned by interested persons, or upon its own initiative, by resolution, may propose extension of its corporate limits by the annexation of territory adjoining to its existing boundaries.

(b) Such resolution, describing the territory proposed for annexation, shall be published by posting copies of it in at least three (3) public places in the territory proposed for annexation and in a like number of public places in the municipality proposing such annexation, and by publishing notice of such resolution at or about the same time, in a newspaper of general circulation, if there is one, in such territory and municipality.

§ 6-51-105. Election or referendum

(a) At least thirty (30) days and not more than sixty (60) days after the last of such publications, the proposed annexation of territory shall be submitted by the county election commission in an election held on the request and at the expense of the proposing municipality, for approval or disapproval of the qualified voters who reside in the territory proposed for annexation.

(b) The legislative body of the municipality affected may also at its option submit the questions involved to a referendum of the people residing within the municipality.

(c) In the election or elections to be held, the questions submitted to the qualified voters shall be "For Annexation" and "Against Annexation."

(d) The county election commission shall promptly certify the results of the election or elections to the municipality.

(e) If a majority of all the qualified voters voting thereon in the territory proposed to be annexed, or in the event of two (2) elections as above stated, a majority of the voters voting thereon in the territory to be annexed and a majority of the voters voting thereon in the municipality approve the resolution, annexation as provided therein shall become effective thirty (30) days after the certification of the election or elections.

(f) The mode of annexation provided in this section is in addition to the mode provided in § 6-51-102.

§ 6-51-106. Abandonment resolution

Any annexation proceeding initiated under § 6-51-102 or § 6-51-104 may be abandoned and discontinued at any time by resolution of the governing body of the municipality.

§ 6-51-107. Planning agency study

The governing body of a municipality shall, if its charter so provides, and otherwise may, refer any proposed annexation to the planning agency of the municipality for study of all pertinent matters relating thereto, and the planning agency expeditiously shall make such a study and report to the governing body.

§ 6-51-108. Rights and privileges following annexation; plan of service progress report; publication

(a) Residents of, and persons owning property in, annexed territory shall be entitled to rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as though such annexed territory had always been a part of the annexing municipality. It shall be the duty of the governing body to put into effect with respect to an annexed area any charter provisions relating to representation on the governing body.

(b) Upon the expiration of six (6) months from the date any annexed territory for which a plan of service has been adopted becomes a part of the annexing municipality, and annually thereafter until services have been extended according to such plan, there shall be prepared and published in a newspaper of general circulation in the municipality a report of the progress made in the preceding year toward extension of services according to such plan, and any changes proposed therein. The governing body of the municipality shall publish notice of a public hearing on such progress reports and changes, and hold such hearing thereon. Any owner of property in an annexed area to which such plan and progress report are applicable may file a suit for mandamus to compel the governing body to comply with the requirements of this subsection.

(c) A municipality may amend a plan of services by resolution of the governing body only after a public hearing for which notice has been published at least fifteen (15) days in advance in a newspaper of general circulation in the municipality when:

(1) The amendment is reasonably necessary due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality;

(2) The amendment does not materially or substantially decrease the type or level of services or substantially delay the provision of services specified in the original plan; or

(3) The amendment:

(A) Proposes to materially and substantially decrease the type or level of services under the original plan or to substantially delay those services;

(B) Is not justified under subdivision (c)(l); and

(C) Has received the approval in writing of a majority of the property owners by parcel in the area annexed. In determining a majority of property owners, a parcel of property with more than one (1) owner shall be counted only once and only if owners comprising a majority of the ownership interests in the parcel petition together as the owner of the particular parcel.

(d) An aggrieved property owner in the annexed territory may bring an action in the appropriate court of equity jurisdiction to enforce the plan of services at any time after one hundred eighty (180) days after an annexation by ordinance takes effect and until the plan of services is fulfilled, and may bring an action to challenge the legality of an amendment to a plan of services if such action is brought within thirty (30) days

after the adoption of the amendment to the plan of services. If the court finds that the municipality has amended the plan of services in an unlawful manner, then the court shall decree the amendment null and void and shall reinstate the previous plan of services. If the court finds that the municipality has materially and substantially failed to comply with its plan of services for the territory in question, then the municipality shall be given the opportunity to show cause why the plan of services was not carried out. If the court finds that the municipality's failure is due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality which materially and substantially impeded the ability of the municipality to carry out the plan of services, then the court shall alter the timetable of the plan of services so as to allow the municipality to comply with the plan of services in a reasonable time and manner. If the court finds that the municipality's failure was not due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality which materially and substantially impeded the ability of the municipality to carry out the plan of services, then the court shall issue a writ of mandamus to compel the municipality to provide the services contained in the plan, shall establish a timetable for the provision of the services in question, and shall enjoin the municipality from any further annexations until the services subject to the court's order have been provided to the court's satisfaction, at which time the court shall dissolve its injunction. If the court determines that the municipality has failed without cause to comply with the plan of services or has unlawfully amended its plan of services, the court shall assess the costs of the suit against the municipality.

§ 6-51-109. Smaller municipalities; annexation

(a) Upon receipt of a petition in writing of twenty percent (20%) of the qualified voters of a smaller municipality, voting at the last general election, such petition to be filed with the chief executive officer of the smaller municipality who shall promptly submit the petition to the chief executive officer of the larger municipality, such larger municipality may by ordinance annex such portion of the territory of the smaller municipality described in the petition or the totality of such smaller municipality if so described in the petition only after a majority of the qualified voters voting in an election in such small municipality vote in favor of the annexation.

(b) The county election commission shall hold such an election on the request and at the expense of the larger municipality, the results of which shall be certified to each municipality.

(c) If a majority of the qualified voters voting in such election are in favor of annexation, the corporate existence of such small municipality shall end within thirty (30) days after the adoption of the ordinance by the larger municipality, and all of the choices in action, including the right to collect all uncollected taxes, and all other assets of every kind and description of the smaller municipality shall be taken over by and become the property of the larger municipality. All legally subsisting liabilities, including any bonded indebtedness, of the smaller municipality shall be assumed by the larger municipality, which shall thereafter have as full jurisdiction over the territory of the smaller municipality as over that lying within the existing corporate limits of the larger municipality.

§ 6-51-110. Priority between municipalities

(a) Nothing in this part and §6-51-301 shall be construed to authorize annexation proceedings by a smaller municipality with respect to territory within the corporate limits of a larger municipality nor, except in counties having a population of not less than sixty-five thousand (65,000) nor more than sixty-six thousand (66,000) and counties having a population of four hundred thousand (400,000) or more according to the federal census of 1970 or any subsequent federal census and except in counties having a metropolitan form of government, by a larger municipality with respect to territory within the corporate limits of a smaller municipality in existence for ten (10) or more years. Notwithstanding any provisions of this chapter to the contrary, in counties of this state having a population of not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000) according to the federal census of 1970 or any subsequent federal census, nothing in this part shall be construed to authorize annexation proceedings by a larger municipality with respect to territory within the corporate limits of any smaller municipality in existence at the time of the proposed annexation.

(b) If two (2) municipalities which were incorporated in the same county shall initiate annexation proceedings with respect to the same territory, the proceedings of the municipality having the larger population shall have precedence and the smaller municipality's proceedings shall be held in abeyance pending the outcome of the proceedings of such larger municipality.

(c) If two (2) municipalities which were incorporated in different counties shall initiate annexation proceedings with respect to the same territory, the proceedings of the municipality which was incorporated in the same county in which the territory to be annexed is located shall have precedence and the other municipality's proceedings shall be held in abeyance pending the outcome of the proceedings of the municipality which was incorporated in the same county as the territory to be annexed.

(d) Except in counties having a population of not less than sixty-five thousand (65,000) nor more than sixty-six thousand (66,000) and counties having a population of four hundred thousand (400,000) or more according to the federal census of 1970 or any subsequent federal census and except in counties having a metropolitan form of government, annexation proceedings shall be considered as initiated upon passage on first reading of an ordinance of annexation.

(e) If the ordinance of annexation of the larger municipality does not receive final approval within one hundred eighty (180) days after having passed its first reading, the proceeding shall be void and a smaller municipality shall have priority with respect to annexation of the territory; provided, that its annexation ordinance shall likewise be adopted upon final passage within one hundred eighty (180) days after having passed its first reading.

(f) When a larger municipality initiates annexation proceedings for a territory which could be subject to annexation by a smaller municipality, the smaller municipality shall have standing to challenge the proceedings in the chancery court of the county where the territory proposed to be annexed is located.

(g) A smaller municipality may, by ordinance, extend its corporate limits by annexation of any contiguous territory, when such territory within the corporate limits of a larger municipality is less than seventy-five (75) acres in area, is not populated, is separated from the larger municipality by a limited access express highway, its access ramps or service roads, and is not the site of industrial plant development. The provisions of this chapter relative to the adoption of a plan of service and the submission of same to a local planning commission, if there be such, shall not be required of the smaller municipality for such annexation.

§ 6-51-111. Agreements with affected districts; arbitration; agreements between utility districts and private service providers

(a) Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as herein above provided, an annexing municipality and any affected instrumentality of the state of Tennessee, including, but not limited to, a utility district, sanitary district, school district, or other public service district, shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets and liabilities of such state instrumentality that justice and reason may require in the circumstances. Any and all agreements entered into before March 8, 1955, relating to annexation shall be preserved. The annexing municipality, if and to the extent that it may choose, shall have the exclusive right to perform or provide municipal and utility functions and services in any territory which it annexes, notwithstanding § 7- 82-301 or any other statute, subject, however, to the provisions of this section with respect to electric cooperatives.

(b) Subject to such exclusive right, any such matters upon which the respective parties are not in agreement in writing within sixty (60) days after the operative date of such annexation shall be settled by arbitration with the laws of arbitration of the state of Tennessee effective at the time of submission to the arbitrators, and § 29-5-101(2) shall not apply to any arbitration arising under this part and § 6-51-301. The award so rendered shall be transmitted to the chancery court of the county in which the annexing municipality is situated, and thereupon shall be subject to review in accordance with §§ 29-5-113--29-5-115 and 29-5-118.
(c)(1) If the annexed territory is then being provided with a utility service by a state instrumentality which has outstanding bonds or other obligations payable from the revenues derived from the sale of such utility service, the agreement or arbitration award referred to above shall also provide that:

(A) The municipality will operate the utility property in such territory and account for the revenues therefrom in such manner as not to impair the obligations of contract with reference to such bonds or other obligations; or

(B) The municipality will assume the operation of the entire utility system of such state instrumentality and the payment of such bonds or other obligations in accordance with their terms.

(2) Such agreement or arbitration award shall fully preserve and protect the contract rights vested in the holders of such outstanding bonds or other obligations.

(d)(l) Notwithstanding the provisions of any law to the contrary, if a private individual or business entity provides utility service within the boundaries of a municipality under the terms of a privilege, franchise,

license, or agreement granted or entered into by the municipality, and if the municipality annexes territory which includes the service area of a utility district, then such private individual or business entity and the utility district shall attempt to reach agreement in writing for allocation and conveyance to such private individual or business entity of any or all public functions, rights, duties, property, assets, and liabilities of such utility district that justice and reason may require in the circumstances. If an agreement is not reached, then notwithstanding the change of municipal boundaries, the service area of the utility district shall remain unchanged, and such private individual or business entity shall not provide utility service in the service area of the utility district.

(2) Nothing in this subsection shall be construed to diminish the authority of any municipality to annex.

(e)(l) If at the time of annexation, the annexed territory is being provided with electric service by a municipal electric system or other state instrumentality, the annexing municipality shall, by delivering written notice of its election to the municipal electric system or other state instrumentality, have the right to purchase all or any part of the electric distribution system of the municipal electric system or other state instrumentality then providing electric service to the area being annexed that the annexing municipality has elected to serve under this section. The purchase price shall be the fair market value of the properties comprising the electric system, or part thereof, that is being acquired and payment of such purchase price shall be on terms agreed to by the parties. In the event the parties cannot agree on a purchase price, the acquiring municipality and the municipal electric system or other state instrumentality whose properties are being acquired shall each select a qualified appraiser and the fair market value of the properties being acquired shall be determined using the Uniform Standards of Professional Appraisal Practice and agreed upon by the two (2) qualified appraisers who are selected. In the event the two (2) qualified appraisers are unable to agree on the fair market value of the properties being acquired, they shall jointly select a third qualified appraiser whose determination of the fair market value of the properties being acquired shall be based on the aforementioned standards and shall control.

(2) For the purpose of this subsection, “qualified appraiser” means any individual having demonstrated experience in the appraisal of utility properties who has been certified by a nationally recognized appraisal or assessment association that is a member of The Appraisal Foundation.

(3) This subsection shall be the sole means to resolve a disagreement between the parties as to the purchase price paid by an annexing municipality to a municipal electric system or other state instrumentality for facilities acquired by the annexing municipality, but any issues other than price not agreed to by the parties shall be determined in accordance with subsection (b). In the absence of an agreement between the parties, the sole means by which an annexing municipality can acquire the facilities of a municipal electric system or other state instrumentality located in the annexed territory is by purchase at a price determined pursuant to this subsection.

§ 6-51-112. Electric cooperatives; purchase offers or franchises

(a) Notwithstanding the provisions of any other statute, if the annexing municipality owns and operates its own electric system, it shall either offer to purchase any electric distribution properties and service rights within the annexed area owned by any electric cooperative, or grant such cooperative a franchise to serve the annexed area, as hereinafter provided:

(1) The municipality shall notify the effected electric cooperative in writing of the boundaries of the annexed area and shall indicate such area on appropriate maps;

(2) The municipality shall offer to purchase the electric distribution properties of the cooperative located within the annexed area, together with all of the cooperative's rights to serve within such area, for a cash consideration which shall consist of:

(A) The present-day reproduction cost, new, of the facilities being acquired, less depreciation computed on a straight-line basis; plus

(B) An amount equal to the cost of constructing any necessary facilities to reintegrate the system of the cooperative outside the annexed area after detaching the portion to be sold; plus

(C) An annual amount, payable each year for a period of ten (10) years, equal to the sum of:

(I) Twenty-five percent (25%) of the revenues received from power sales to consumers of electric power within the annexed area, except consumers with large industrial power loads greater than three hundred (300) kilowatts, during the last twelve (12) months preceding the date of the notice provided for in subdivision (a)(l); and

(ii) Fifty percent (50%) of the net revenues (gross power sales revenues less wholesale cost of power including facilities rental charge) received from power sales to consumers with large industrial power loads greater than three hundred (300) kilowatts within the annexed area during the last twelve (12) months preceding the date of the notice provided for in subdivision (a)(l);

(3) The electric cooperative, within ninety (90) days after receipt of an offer by the annexing municipality to purchase the cooperative's electric distribution properties and service rights within the annexed area, shall signify in writing its acknowledgment of the offer, and the parties shall proceed to act. The annexing municipality shall then be obligated to buy and pay for, and the cooperative shall be obligated to sell to the municipality, such properties and rights free and clear of all mortgage liens and encumbrances for the aforementioned cash consideration computed and payable as provided in subdivision (a)(2);

(4) The annexing municipality, if it elects not to make the offer to purchase as provided for above, shall grant to the cooperative a franchise to serve within the annexed area, for a period of not less than five (5) years, and the municipality shall thereafter renew or extend the franchise or grant new franchises for similar subsequent periods; provided, that upon expiration of any such franchise, the municipality may elect instead

to make an offer to buy the cooperative's electric distribution properties and service rights as they then exist in accordance with and subject to the provisions of subdivisions (a)(l) and (2); provided further, that, during the term of any such franchise, the annexing municipality shall be entitled to serve only such electric customers or locations within the annexed area as it served on the date when such annexation became effective;

(5) If any annexing municipality contracts its boundaries so as to exclude from its corporate limits any territory, the cooperative may elect within sixty (60) days thereafter to purchase from such municipality, and such municipality shall thereupon sell and convey to the cooperative, the electric distribution properties and service rights of the municipality in any part of the excluded area which the electric cooperative had previously served, upon the same procedures set forth in subdivisions (a)(l)-(4) for acquisitions by municipalities;

(6) Nothing contained herein shall prohibit municipalities and any cooperative from buying, selling, or exchanging electric distribution properties, service rights and other rights, property, and assets by mutual agreement;

(7) The territorial areas lying outside municipal boundaries served by municipal and cooperative electric systems will remain the same as generally established by power facilities already in place or legal agreements on March 6, 1968, and new consumers locating in any unserved areas between the respective power systems shall be served by the power system whose facilities were nearest on March 6, 1968, except to the extent that territorial areas are revised in accordance with the provisions of this section; and

(8) "Electric distribution properties," as used in this section, means all electric lines and facilities used or useful in serving ultimate consumers, but does not include lines and facilities which are necessary for integration and operation of portions of a cooperative's electric system which are located outside the annexed area.

(b) The above methods of allocation and conveyance of property and property rights of any electric cooperative to any annexing municipality shall be exclusively available to such annexing municipality and to such electric cooperative notwithstanding § 7-52-105 or any other title or section of the code in conflict or conflicting herewith.

§ 6-51-113. Other powers

Except as specifically provided in this part, the powers conferred by this part shall be in addition and supplemental to and the limitations imposed by this part shall not affect the powers conferred by any other general, special or local law.

§ 6-51-114. Special census

In the event any area is annexed to any municipality, the municipality may have a special census and in any county having a population of not less than two hundred seventy-six thousand (276,000) nor more than

two hundred seventy-seven thousand (277,000) according to the 1970 federal census or any subsequent federal census the municipality shall have such special census within the annexed area taken by the federal bureau of the census or in a manner directed by and satisfactory to the state planning office, in which case the population of such municipality shall be changed and revised so as to include the population of the annexed area as shown by such supplemental census. The population of such municipality as so changed and revised shall be its population for the purpose of computing such municipality's share of all funds and moneys distributed by the state of Tennessee among the municipalities of the state on a population basis, and the population of such municipality as so revised shall be used in computing the aggregate population of all municipalities of the state, effective on the next July 1 following the certification of such supplemental census results to the commissioner of finance and administration.

§ 6-51-115. Tax revenues; receipt and distribution

(a) Notwithstanding any provisions of law to the contrary, whenever a municipality extends its boundaries by annexation, the county or counties in which the municipality is located shall continue to receive the revenue from all state and local taxes distributed on the basis of situs of collection, generated within the annexed area, until July 1 following the annexation, unless the annexation takes effect on July 1.

(1) If the annexation takes effect on July 1, then the municipality shall begin receiving revenue from such taxes generated within the annexed area for the period beginning July 1.

(2) Whenever a municipality extends its boundaries by annexation, the municipality shall notify the department of revenue of such annexation prior to the annexation becoming effective for the purpose of tax administration.

(3) Such taxes shall include the local sales tax authorized in § 67-6-702, the wholesale beer tax authorized in § 57-6-103, the income tax on dividends authorized in § 67-2-102, and all other such taxes distributed to counties and municipalities based on the situs of their collection.

(b) In addition to the preceding provisions of this section, when a municipality annexes territory in which there is retail or wholesale activity at the time the annexation takes effect or within three (3) months after the annexation date, the following shall apply:

(1) Notwithstanding the provisions of § 57-6-103 or any other law to the contrary, for wholesale activity involving the sale of beer, the county shall continue to receive annually an amount equal to the amount received by the county in the twelve (12) months immediately preceding the effective date of the annexation for beer establishments in the annexed area that produced wholesale beer tax revenues during that entire twelve (12) months. For establishments that produced wholesale beer tax revenues for at least one (1) month but less than the entire twelve-month period, the county shall continue to receive an amount annually determined by averaging the amount of wholesale beer tax revenue produced during each full month the establishment was in business during that time and multiplying this average by twelve (12). For establishments which did not produce revenue before the annexation date but produced revenue within three (3) months after the annexation date, and for establishments which produced revenue for less than a full

month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of wholesale beer tax revenue produced during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision are subject to the exceptions in subsection (c). A municipality shall only pay the county the amount required by this subdivision, for a period of fifteen (15) years.

(2) Notwithstanding the provisions of § 67-6-712 or any other law to the contrary, for retail activity subject to the Local Option Revenue Act, the county shall continue to receive annually an amount equal to the amount of revenue the county received pursuant to § 67-6-712(a)(2)(A) in the twelve (12) months immediately preceding the effective date of the annexation for business establishments in the annexed area that produced Local Option Revenue Act revenue during that entire twelve (12) months. For business establishments that produced such revenues for more than a month but less than the full twelve (12) month period, the county shall continue to receive an amount annually determined by averaging the amount of local option revenue produced by the establishment and allocated to the county under § 67-6-712(a)(2)(A) during each full month the establishment was in business during that time and multiplying this average by twelve (12). For business establishments which did not produce revenue before the annexation date and produced revenue within three (3) months after the annexation date, and for establishments which produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of Local Option Revenue produced and allocated to the county under § 67-6-712(a)(2)(A) during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision are subject to the exceptions in subsection (c). A municipality shall only pay the county the amount required by this subdivision, for a period of fifteen (15) years.

(c) Subsection (b) is subject to these exceptions:

(1) Subdivision (b)(l) ceases to apply as of the effective date of the repeal of the wholesale beer tax, should this occur;

(2) Subdivision (b)(2) ceases to apply as of the effective date of the repeal of the Local Option Revenue Act, should this occur;

(3) Should the general assembly reduce the amount of revenue from the Wholesale Beer Tax or the Local Option Revenue Act, accruing to municipalities by changing the distribution formula, the amount of revenue accruing to the county under subsection (b) will be reduced proportionally as of the effective date of the reduction;

(4) A county, by resolution of its legislative body, may waive its rights to receive all or part of the revenues provided by subsection (b). In these cases, the revenue shall be distributed as provided in §§ 57-6-103 and 67-6-712 of the respective tax laws unless otherwise provided by agreement between the county and municipality; and

(5) Annual revenues paid to a county by or on behalf of the annexing municipality are limited to the annual revenue amounts provided in subsection (b) and known as "annexation date revenue" as defined in subdivision (e)(2). Annual situs-based revenues in excess of the "annexation date revenue" allocated to one (1) or more counties shall accrue to the annexing municipality. Any decrease in the revenues from the situs-based taxes identified in subsection (b) shall not affect the amount remitted to the county or counties pursuant to subsection (b) except as otherwise provided in this subsection. Provided, a municipality may petition the department of revenue no more often than annually to adjust annexation date revenue as a result of the closure or relocation of a tax producing entity.

(d)(l) It is the responsibility of the county within which the annexed territory lies to certify and to provide to the department a list of all tax revenue producing entities within the proposed annexation area.

(2) The department shall determine the local share of revenue from each tax listed in this section generated within the annexed territory for the year before the annexation becomes effective, subject to the requirements of subsection (b). This revenue shall be known as the "annexation date revenue."

(3) The department with respect to the revenues described in subdivision (b)(2), and the municipality with respect to the revenues described in subdivision (b)(l), shall annually distribute an amount equal to the annexation date revenue to the county of the annexed territory.

§ 6-51-116. Annexation in another county in different time zone

Notwithstanding any provision of law to the contrary, after December 31, 1992, it is unlawful for any municipality to annex, by ordinance upon its own initiative, territory in any county other than the county in which the city hall of the annexing municipality is located, if the two (2) counties involved are located in different time zones.

§ 6-51-117. Regional airport commission property; consent to annexation

If three (3) or more municipalities and counties jointly create and participate in a regional airport commission and if the property of the regional airport commission is located outside the boundaries of the participating municipalities, then no municipality shall annex any property of the regional airport commission without the prior consent of the legislative bodies of the participating municipalities and counties.

§ 6-51-118. Applicability

No provision of Acts 1998, ch. 1101, applies to an annexation in any county with a metropolitan form of government in which any part of the general services district is annexed into the urban services district; provided, that any section of this part specifically referenced on May 19, 1998, in the charter of any county with a metropolitan form of government shall refer to the language of such sections in effect on January 1, 1998.

MTAS
Municipal Technical Advisory Service

In cooperation with the Tennessee Municipal League

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