

STATE OF TENNESSEE

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Opinion No. 02-110

Change to Utility District Service Area

QUESTIONS

1. Does a municipality that proposes to supply services to areas inside the territory of a utility district have standing to petition the county executive to limit the service area of the utility district or otherwise allow the municipality to serve the area on the basis that public convenience and necessity require the change?
2. Does the municipality have standing to petition the county executive for the dissolution of the utility district?
3. If the answer to Question 2 is yes, what is the proper procedure for making such a petition?

OPINIONS

1. Yes. Such a municipality may petition the county executive to limit the service area of a utility district or otherwise allow the municipality to serve the area. The petitioner must establish that the public convenience and necessity requires the change. Otherwise, the statute specifies no particular form or procedure the city must follow in filing the petition.
2. No. There is no statute that expressly authorizes third parties to petition the county executive for the dissolution of a utility district.
3. Because of the answer to Question 2, Question 3 is moot.

ANALYSIS

1. Standing of Municipality to Petition to Provide Utilities Within Utility District Service Area

This opinion addresses a change to the service area of a utility district created under Tenn. Code Ann. §§ 7-82-101, *et seq.* Tenn. Code Ann. § 7-82-201 describes the process by which a utility district is established. Under the statute as amended, a petition for the incorporation of a utility district is submitted to the Utility Management Review Board for review and comment and to the

county executive of any county in which the proposed district is situated. The petition must be signed by not less than twenty-five owners of real property who reside within the boundaries of the proposed district. The Utility Management Review Board must then attach its comments to the petition and forward them to the county executive of the county where the proposed district would serve. The county executive must fix a time and place for a hearing upon the convenience and necessity of the incorporation of the district to perform the services stated in the petition. Tenn. Code Ann. § 7-82-202(a). Once a utility district has been incorporated, it is a municipality or public corporation in perpetuity under its corporate name. Tenn. Code Ann. § 7-82-301(a). This statute provides:

So long as the district continues to furnish any of the services which it is herein authorized to furnish, it shall be the sole public corporation empowered to furnish such services in the district, and no other person, firm or corporation shall furnish or attempt to furnish any of the services in the area embraced by the district, unless and until it has been established that the public convenience and necessity requires other or additional services; . . .

The first question is whether a municipality that wishes to furnish services within the service area of a utility district has standing to petition a county executive either to change the service area of the utility district or allow the municipality to furnish services within the service area of the utility district. Tennessee courts have concluded that Tenn. Code Ann. § 7-82-301(a), formerly codified at Tenn. Code Ann. § 6-2607, provides the only method by which the service area or exclusive franchise of a utility district may be modified. *Consolidated Gray-Fordtown-Colonial Heights Utility District of Washington and Sullivan Counties, Tennessee v. O' Neill*, 209 Tenn. 342, 354 S.W.2d 63 (Tenn. 1962); *Chandler Investment Co. v. Whitehaven Utility District*, 44 Tenn. App. 1, 311 S.W.2d 603, 613 (Tenn. Ct. App. 1957), *p.t.a. denied* (1958). In each of these cases, the court found that residents in the service area of a utility district had a right to petition the county to change the service area or to allow another utility to provide a service in the area. But neither case states that such a petition may only be brought by residents.

By its terms, the statute states that a utility district has the sole right to provide services within its service area “unless and until *it has been established* that the public convenience and necessity requires other or additional services[.]” (Emphasis added). The statute, therefore, does not limit which parties can request the county executive for the change. For this reason, we think a city that wishes to provide services within the service area of a utility district may petition the county executive under Tenn. Code Ann. § 7-82-301(a) to change the service area of the utility district or to allow it to furnish services within the service area of the utility district. The petitioner must establish that “the public convenience and necessity requires” the change sought. Otherwise, the statute specifies no particular form or procedure the city must follow in filing the petition.

2. and 3. Petition to Dissolve a Utility District

The last two questions are whether a municipality would have standing to petition a county executive to dissolve a utility district and, if so, by what process such a petition would be brought. A utility district may petition the county executive to be dissolved and consolidated with a city as a separate department. Tenn. Code Ann. § 7-82-202(f). A financially distressed utility district may agree to consolidate with another utility district or with a municipal utility. Tenn. Code Ann. § 7-82-704. But no statute authorizes third parties to petition a county executive to dissolve a utility district. Accordingly, we conclude that a municipality is not authorized to petition for the dissolution of a utility district. Question 3 is moot in light of the answer to Question 2.

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