

Annexation Issues In Tennessee
A Report to the 99th General Assembly

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Background on Municipal Annexation

Annexation is the method most frequently used by municipalities to change their boundaries. The annexation process is generally defined as the expansion of a municipality achieved by extending its corporate limits - boundaries - to include new territory as an integral part of the municipality. It is a process that has been in existence since the late 1700s when state constitutions were being ratified. Early annexation was accomplished in two ways. The first and most often used method was the introduction and passage of a private act of the state's legislative body. In our American federal system, local governments are legal "creatures of the states, established in accordance with state constitutions and statutes."¹ Thus, the power to extend or contract municipal boundaries "is a legislative power." The second most commonly used method was by petition from land owners living adjacent to the municipality and desiring to become part of the municipality.

In Tennessee, until the legislature passed a general annexation law in 1955, annexations were mostly accomplished via private act of the General Assembly. Before cities and counties were granted "home rule" powers, a private act of the General Assembly was about the only way for local governments to bring about needed changes. Unfortunately, at times, the powers of certain legislatures were abused; private acts were passed against the wishes of local government officials and citizens. Annexation accomplished by private acts was described as "an exercise of governmental power of which persons newly taken in could not be heard to complain; they had no voice in the matter, no power to resist, nor was any legal right of theirs infringed thereby."² An example of a private act annexation bill can be found in Appendix 3.

Urban Sprawl and Suburbanization

In the 1950s, Tennessee began to feel the growing pains caused by federal programs implemented in the 1930s and 40s to stimulate economic activity and financially assist veterans returning home from World War II. In 1934, Congress established the Federal Housing Administration (FHA) that instituted a system of low-cost home mortgage insurance. The backing of the FHA permitted banks to lend more money for a longer period of time. The congressional intent of the FHA was to stimulate residential construction and open up home ownership to more families. In time, both of these effects were achieved on a massive scale. Nationwide, housing starts went from 93,000 in 1933 to 619,000 in 1941. The FHA tended to favor new construction in suburban rather than urban developments. Federal intervention in mortgage markets fueled the dash to the suburbs.³

The automobile facilitated the rush to the suburbs. Automobile ownership rose from 25 million in 1945 to about 40 million in 1950, 62 million in 1960, 89 million in 1970, 122 million in 1980 and 190 million in 1990. Table 1 shows historical data on the increase in vehicle registrations in Tennessee.

¹ Quote by Justice John F. Dillon of the Iowa Supreme Court in the 1880s and known as the "Dillon Rule." Quoted in James A. Maxwell and J. Richard Aronson, *Financing State and Local Governments*, 3rd edition (Washington, D.C.: The Brookings Institution, 1977), p. 11.

² Opinion of the Tennessee Supreme Court in *McCallie v. Mayor of Chattanooga*, 1859.

³ John M. Levy, *Contemporary Urban Planning* (New Jersey: Prentice Hall, 1991), pp. 15-20.

Table 1
Motor Vehicle Registration
Tennessee, 1925-1991

Year	Total	Year	Total
1993	5,668,045	1970	2,049,992
1992	5,307,793	1969	1,971,160
1991	4,541,676	1968	1,906,774
1990	4,444,108	1967	1,869,918
1989	4,315,702	1966	1,757,575
1988	4,225,490	1965	1,654,682
1987	4,026,565	1964	1,573,437
1986	3,932,220	1963	1,500,566
1985	3,753,926	1962	1,429,055
1984	3,568,661	1961	1,362,868
1983	3,537,012	1960	1,307,010
1982	3,381,216	1959	1,264,255
1981	3,533,299	1958	1,203,405
1980	3,271,345	1957	1,160,042
1979	2,995,305	1956	1,131,437
1978	2,911,222	1955	1,168,295
1977	2,996,157	1950	858,111
1976	2,804,840	1945	466,677
1975	2,725,569	1940	461,183
1974	2,568,381	1935	359,618
1973	2,466,821	1930	373,534
1972	2,293,635	1925	246,511
1971	2,135,635		

Source: Tennessee Dept. of Safety, Motor Vehicle Division

In 1937, Congress established the Federal Highway Administration to fund highway projects necessitated by the increase in automobile ownership and to build better (safer) roads to the suburbs. Massive highway building programs were encouraged, subsidized by the federal government through a tax on gasoline. In 1956, the National Defense Highway Act funded the beginning of the interstate highway system. Commuting distances increased and a suburban residence for those who worked in the city became more feasible. The rush to the suburbs was followed close behind by strip commercial and residential developments.

The Tennessee Valley Authority (TVA), established in 1933, provided a combined approach to flood control, power generation, and natural resource conservation. The TVA power program facilitated rural electrification and brought industry and jobs into the valley.

Transition from a “Rural” to an “Urban” State

The combination of new highways, low cost energy and pools of low cost laborers rapidly shifted the state from an agricultural to an industrial economy during the two decades following World War II. By 1964, 31.4 percent of Tennesseans earned their living from industrial jobs as compared to 29.3 percent of the nation as a whole; only 5.7 percent received their major income from farming.⁴

It was in the 1950s that Tennessee began its transition from a rural to an urban state. Table 2 shows the urban growth pattern of the state from 1790 to 1990. The distribution of Tennessee’s urban and rural population by county, as of 1990, is shown in Appendix 4. It was also in the 1950s when citizens of municipalities and the unincorporated areas went to the polls to change the state’s annexation procedures.

⁴ Stanley J. Folmsbee, Robert E. Corlew, and Enoch L. Mitchell, *Tennessee: A Short History* (The University of Tennessee Press, 1969), p. 508.

Changing these procedures - from private act to general law - took place in this period of both rapid urban growth and suburbanization. While always present, economically segregated settlement patterns of urban and municipal development became more pronounced. This pattern of settlement combined with an ever expanding urban fringe has been dubbed "the metropolitan problem" by urban planners and sociologists. The "metropolitan problem" occurs when the residents of a municipality, for whatever reason, have the ways and means to leave the city and move to the urban fringe. Those remaining in the city are there because they either desire to stay or lack the ways and means to leave. The large migration of people and businesses from municipalities all across the nation is described as "urban sprawl." How cities handle this type of growth is identified as the most critical determinant of municipal stagnation versus progress.

From Private Act to General Law Annexation

In 1953, the people of Tennessee voted for a constitutional amendment requiring all future changes in municipal boundaries be made under terms of a general statute. The new "municipal boundary clause," Article XI, Section 9 of the Tennessee Constitution, states 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..."

The legislature passed the "general law" in 1955. Public Chapter No. 113 allowed municipalities two primary and distinct methods of annexation: by ordinance and by referendum. As enacted, the legislation contained the following key features:

1. A municipality could annex territory on its own initiative "...when it appears that the property of the municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property endangered...as may be necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole..."
2. A territory to be annexed had to be "adjoining" the municipality but no definition of this term was included.
3. An ordinance could not become operative until thirty days after final passage to allow quo warranto actions contesting the ordinance before it became operative.
4. Larger municipalities had precedence when two municipalities were attempting to annex the same territory.
5. Remedies to an aggrieved instrumentality of the state were limited to arbitration subject to Chancery Court review.

Table 2
Urban and Rural Population, Tennessee, 1790-1990
Decennial Census Years

Year	Total	Urban	Rural	Urban As % of Total	Rural As % of Total
1990	4,877,185	2,969,948	1,907,237	60.9	39.1
1980	4,591,120	2,773,573	1,817,547	60.4	39.6
1970	3,926,018	2,318,458	1,605,229	59.1	40.9
1960	3,567,089	1,864,828	1,702,261	52.3	47.7
1950	3,291,718	1,452,602	1,839,116	44.1	55.9
1940	2,915,841	1,027,206	1,888,635	35.2	64.8
1930	2,616,556	896,538	1,720,018	34.3	65.7
1920	2,337,885	611,226	1,726,659	26.1	73.9
1910	2,184,789	441,045	1,743,744	20.2	79.8
1900	2,020,616	326,639	1,693,977	16.2	83.8
1890	1,767,518	238,394	1,529,124	13.5	86.5
1880	1,542,359	115,984	1,426,375	7.5	92.5
1870	1,258,520	94,237	1,164,283	7.5	92.5
1860	1,109,801	46,541	1,063,260	4.2	95.8
1850	1,002,717	21,983	980,734	2.2	97.8
1840	829,210	6,929	822,281	0.8	99.2
1830	681,904	5,566	676,338	0.8	99.2
1820	422,823	0	422,823	0.0	100.0
1810	261,727	0	261,727	0.0	100.0
1800	105,602	0	105,602	0.0	100.0
1790	35,691	0	35,691	0.0	100.0

Note: 1790 population is that of territory south of the Ohio River, including area now constituting parts of Mississippi, Alabama, and Georgia. Definition of urban population before 1950: All persons living in incorporated places of 2,500 or more inhabitants and in areas (usually minor civil divisions) classified as urban under special rules relating to population size and density. Current definition of urban population:

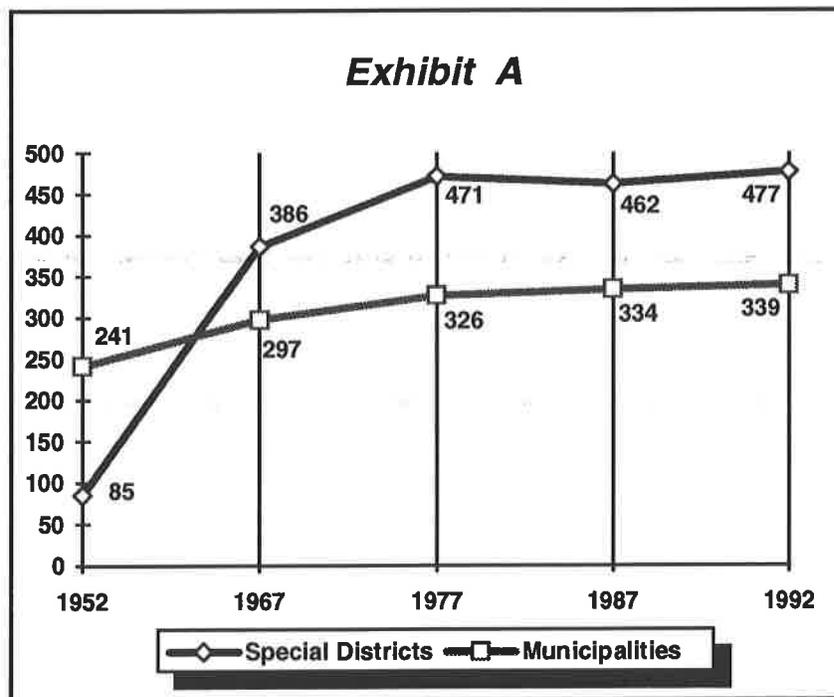
- 1) All persons living in places of 2,500 or more inhabitants but excluding those in rural portions of extended cities.
- 2) All persons living in any territory within urbanized areas.

Source: U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population, General Population Characteristics, Tennessee*, and earlier editions.

Public Chapter 113 contained provisions that greatly favored municipal annexation interests. However, aggrieved citizens could file quo warranto suits and challenge annexations in trial court. The term “quo warranto” dates back to the old English writ used to inquire by what authority the king exercised certain powers. As used in Tennessee, the quo warranto suit allows the plaintiff to contest the validity of an annexation on the ground that it reasonably may not be necessary to protect the safety and welfare of either the municipality or the area to be annexed. However, in many cases where there was a reasonable difference of opinion for the necessity of an annexation, the courts refused to interfere. In not interfering, the courts reasoned that such differences of opinion should be resolved only by the legislative actions of city councils. In cases that did go to trial, the burden of proving an annexation to be unwarranted was placed on those persons filing suit. Except for minor changes, Tennessee’s 1955 annexation law persevered for nearly twenty years. During this time, a considerable amount of annexation occurred in the state. From 1955 to 1968, annexation by referendum was effected eighteen times while annexation by ordinance was used seven hundred and sixteen times.

A Change in Momentum: A Change in the Law

Even though Tennessee’s urban growth was outstripping that of our rural areas, annexations were becoming harder to accomplish in the early 1970s. There were a number of reasons for this, including those political and those of a socio-economic nature. Suburban areas in Tennessee were becoming more densely populated and the demand for certain services and regulations began to increase. The number of special districts had been growing with Tennessee’s population during the 1950s and 60s. By 1977 special districts outnumbered municipal incorporations by 471 to 326. (See Exhibit A).



Source: Bureau of the Census, 1992 Census of Government, Volume 1, Number 1 Government Organization, 1994.

The special districts were used to carry out functions that existing units of government were not well suited to provide. Some county governments began providing urban-like services but not to the extent of special districts. Concerning annexation issues, the most powerful districts were those funded by the Consolidated Farmers Home Administration Act of 1961.

In 1961, Congress passed Public Law 87-128, the Agricultural Act of 1961. Title III, Section 301(b) of the Act is the relevant section. Three provisions of that section are of most importance to this study. This Act:

1. consolidated and brought up to date the authorities administered by the FmHA for real estate, operating, emergency and water facilities loans;
2. increased authority for water facilities loans to associations serving non-farm rural residences (emphasis added); and
3. prohibited curtailment of a water association borrowers service as a result of inclusion of its service area within the boundaries of any public body or as a result of the granting of any private franchise for similar services in the area.

Prior to the passage of this Act, loans to rural water associations could be made only if the majority of service provided went to farmers.

Lenient requirements for the establishment of utility districts encouraged their formation. In some instances, districts were formed where population density was not sufficient to support even a federally subsidized system.⁵ At the same time, many of the districts flourished and provided quality water at a reasonable rate.

During the 1970s wealthy suburbanites, county governments, and utility districts were making municipal annexation more and more difficult to achieve. These interests were putting pressure on the Legislature to change the law. A resolution passed by the 88th General Assembly in 1973 directed the now defunct Legislative Council Committee to make a comprehensive study of the entire matter of the adjustment to municipal boundaries in Tennessee. House Joint Resolution No. 159 made the following key points:

- annexation issues were a source of “continuing controversy” within the General Assembly; and
- the main source of controversy was the need for healthy growth and prosperity in the urban areas balanced against an equal need for the considerations of fairness and equity to residents of the suburbs.

The final report from the Committee acknowledged the following:

- inadequate planning in the urban fringe resulted in poor services and threats to health and safety;
- inadequate planning in the urban fringe promoted a duplication of facilities and a waste of taxpayers money;

⁵ East Tennessee Development District, *Goals and Policies for Utility Districts*, (1975), p.10.

- a proper balance between the interests of the municipality and the fringe area is a necessity; and
- basic to the adjustment of boundaries is determining who will decide - who should control the process.⁶

Thus, in 1974, the General Assembly made the first major revisions to the 1955 act. Public Chapter 753 made the following changes of relevance to the TACIR study:

1. A [municipal] plan of service was required to include elements pertaining to police and fire protection, water and electrical services, sewage and waste disposal systems, road construction and repair, and recreational facilities.
2. A public hearing on the plan of service had to be properly conducted before a municipality could adopt its plan of service. Notice of the public hearing had to be published in a newspaper of general circulation seven days prior to the hearing.
3. The burden of proving the reasonableness of an annexation ordinance was removed from the plaintiff and placed on the municipality.

Placing the burden of proof on the municipality instead of those parties challenging the annexation ordinance is one of the two revisions to the statute most repulsive to municipal interests. Municipal legal staffs argue that this particular amendment “reverses the presumption of constitutionality of legislation in favor of a presumption of unconstitutionality.”

Annexation Decided by Jury

In 1979, the Tennessee Supreme Court held that quo warranto plaintiffs were entitled to have the issue of reasonableness submitted to a jury. *The State ex rel. Moretz v. City of Johnson City* is described as the most devastating judicial blow to municipal annexation in the history of the act. This important case is discussed in relation to the annexation by ordinance issue on page 14 of this report.

⁶ “Study on the Adjustment of Municipal Boundaries”; *Final Report of the Legislative Council Committee*, (State of Tennessee, Legislative Council Committee, 1973), 30-33. Recommendations of the committee are included in Appendix 5. These recommendations set the stage for legislative action in 1974.