

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
425 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243

January 6, 2000

Opinion No. 00-003

Utility Districts with Territory in More than One County

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**QUESTIONS**

1. Does a single-county utility district that desires to modify and expand its exclusive service area into an adjacent county create a “multi-county utility district” as described in Tenn. Code Ann. §§ 7-82-601 -- 609, so that the expansion must comply with those statutory provisions?

2. Tenn. Code Ann. § 7-82-609 expressly provides that “nothing in §§ 7-82-601 -- 7-82-608 shall be construed to be retroactive and that the terms and conditions of such sections will in no wise affect or abridge the rights, powers, privileges and duties of utility districts existing March 21, 1955.” Is a utility district whose territory was located in a single county as of March 21, 1955, required to comply with Tenn. Code Ann. §§ 7-82-601 to -609 before it may modify and expand the boundaries of its exclusive service area across the borders of its home county into an adjacent county?

3. If the answer to Question 2 is no, should the petition to expand the service area of such a utility district be filed with the county executive where the utility district currently exists, the county executive of the county into which the utility district desires to expand its service area, or both? Which county executive would have the authority to rule on the petition?

4. May two single-county utility districts, each situated wholly within adjoining counties, merge with one another under Tenn. Code Ann. § 7-82-202(e) without complying with Tenn. Code Ann. §§ 7-82-601 to -609?

**OPINIONS**

1. Yes, a single-county utility district that desires to modify and expand its exclusive service area into an adjacent county creates a “multi-county utility district” as described in Tenn. Code Ann. §§ 7-82-601 -- 609, so that the expansion must comply with those statutory provisions.

2. Yes, we think a court would conclude that a utility district whose territory was located in a single county as of March 21, 1955, must comply with Tenn. Code Ann. §§ 7-82-601 to -609 before it may modify and expand the boundaries of its exclusive service area across the borders of its home county into an adjacent county.

3. Because of the answer to Question 2, Question 3 is moot.

4. No, we think a court would conclude that the merger must comply with Tenn. Code Ann. §§ 7-82-601, *et seq.*

### ANALYSIS

#### 1. Expansion of Utility District Territory into a New County

This opinion addresses the expansion of an existing utility district with territory in one county into a new county. Utility districts generally are created and operate under Tenn. Code Ann. §§ 7-82-101, *et seq.* The general procedure for the creation of a utility district is set forth at Tenn. Code Ann. §§ 7-82-201 -- 7-82-204. Under Tenn. Code Ann. § 7-82-201(a), the petition for the incorporation of a utility district must be submitted to the Utility Management Review Board for review and comment, and forwarded to the county executive of “*any county* in which the proposed district is situated . . .” (Emphasis added). Under Tenn. Code Ann. § 7-82-202(a), the Utility Management Review Board sends its comments on the petition to the county executive of “*any county* in which the proposed district serves.” (Emphasis added). The county executive must then hold a hearing on the convenience and necessity of the incorporation of the district.

The statutes do not expressly provide a general method for amending the charters of districts to expand their territories. Under Tenn. Code Ann. § 7-82-301(a)(1), so long as the district continues to furnish any of the services it is authorized under its charter to furnish, it is the sole public corporation empowered to furnish those services in the district, and no other person, firm or corporation may furnish such services in the area, “unless and until it has been established that the public convenience and necessity requires other or additional services . . .” Courts have concluded that the exclusive franchise area of a utility district can only be modified by the county executive for the county in which the petition for incorporation was presented and granted. *City of Crossville v. Middle Tennessee Utility District*, 208 Tenn. 268, 345 S.W.2d 865 (1961); *Consolidated Gray-Fordtown-Colonial Heights Utility District*, 209 Tenn. 342, 354 S.W.2d 64 (1962). The statutes on the creation of a utility district nowhere expressly provide a general means by which a utility district with territory in a single county can expand its territory into another county.

Under Tenn. Code Ann. § 7-82-601(a), “[u]tility districts embracing territory in two (2) or more counties may be created in the manner provided in this chapter.” Under this statutory scheme, a petition for creating a multi-county utility district may be submitted to the county executive of any one of the counties situated in whole or in part of the proposed district. Tenn. Code Ann. § 7-82-601(b). The county executive to whom the petition for the district was addressed schedules the time and place for a hearing on the convenience and necessity of the incorporation of the district. If a majority of the county executives notified of the hearing fail to appear, the county executive to whom the petition was addressed may proceed with the hearing and enter appropriate orders regarding creation of the district. If three or more counties are involved and two or more of the county executives attend, a majority vote is required for the creation of the district. Tenn. Code Ann. § 7-82-603(c). The charter of a multi-county utility district is amended by the same process. *White*

*House Gas Utility District v. Cross Plains Natural Gas Utility District*, 445 S.W.2d 459 (Tenn. Ct. App. 1969). Under Tenn. Code Ann. § 7-82-608, a multi-county utility district must publish its financial statements in a newspaper of general circulation in each of the counties situated in whole or in part in the district. Tenn. Code Ann. § 7-82-609 provides:

It is expressly the legislative intent that nothing in §§ 7-82-601 -- 7-82-608 shall be construed to be retroactive and that the terms and conditions of such sections will in no wise affect or abridge the rights, powers, privileges and duties of utility districts existing March 21, 1955 [the date the act became effective].

The request asks several questions concerning the applicability of Tenn. Code Ann. §§ 7-82-601, *et seq.*, the “Multi-County Utility District Law.” The first question is whether a utility district with territory in a single county must comply with the Multi-County Utility District Law if it wishes to expand its territory into another county. The Multi-County Utility District Law provides that a multi-county utility district “may” be created in the manner it provides. Tenn. Code Ann. § 7-82-601(a). It can therefore be argued that the law is merely an alternative, rather than a mandatory method by which a multi-county utility district may be created. But the meaning of a statute is determined by viewing the statute as a whole and in light of its general purpose. *City of Lenoir City v. State ex rel. City of Loudon*, 571 S.W.2d 297 (Tenn. 1978). Further, statutes *in pari materia* -- those relating to the same subject or having a similar purpose -- are to be construed together, and the construction of one such statute may be aided by considering the words and the legislative intent indicated by the language of another statute. *O.H Wilson v. Johnson County*, 879 S.W.2d 807, 808 (Tenn. 1994). As noted above, Tenn. Code Ann. §§ 7-82-201 -- 204 contain no express method by which a single-county utility district may expand its territory into another county. Further, Tenn. Code Ann. § 7-82-609 expressly provides that the Multi-County Utility District Law is not intended to be retroactive or to affect or abridge the rights of utility districts existing when the law became effective. It can be argued that, if the General Assembly intended the law to provide an alternative, rather than the sole method by which a multi-county utility district may be created, this provision would not be necessary. Finally, Tenn. Code Ann. § 7-82-202(d) contains a special provision, applicable to certain utility districts “individually located” in counties within defined population brackets. The statute provides in relevant part:

Whenever two (2) or more utility districts, individually located in counties having a population of not less than thirty-six thousand nine hundred ninety-five (36,995) and not more than thirty-seven thousand five (37,005) or not less than fifty-nine thousand four hundred twenty-five (59,425) nor more than fifty-nine thousand four hundred thirty (59,430) according to the federal census of 1970 or any subsequent federal census, or any county having a metropolitan form of government, by resolution of the respective governing bodies of such utility districts, concur in the contraction of the territory served by one (1) of the utility districts in one (1) county and corresponding expansion of the territory served by the other utility district in another county into the county served by the contracting district, the respective utility districts shall petition the county executive of the county wherein the utility district was created for an order

permitting such modification of territory, if such modification will result in greater efficiency and convenience in the furnishing of the services authorized by the order of creation. Upon being so petitioned, and upon entering an order modifying the boundaries of such district, *the county executive shall proceed in the manner provided in this subsection and may, at such time, waive the provisions of §§ 7-82-602 and 7-82-607, relative to selection and appointment of commissioners in such territory so waived and thereby invoke the provisions of § 7-82-307, relative to selection and appointment of commissioners in such territory, so that the commissioners so selected in the resulting multi-county districts are selected pursuant to § 7-82-307 pertaining only to single county districts.*

Tenn. Code Ann. § 7-82-202(d) (emphasis added). Thus where this statute applies, two single-county utility districts may agree that the territory of one district will contract, and the territory of the other district will expand across the county border and into the territory formerly occupied by the contracting district. Each district must then petition the county executive in the county where that district was created for the modification. Each county executive may enter an order modifying the boundaries of each district as the two districts have agreed. The statute expressly authorizes each county executive -- including the executive of the county where the expanding utility district was first created -- to waive the provisions of the Multi-County Utility District Law with regard to appointment of commissioners in the newly expanded, resulting multi-county utility district. It can be argued that the authority to waive the Multi-County Utility District Law in this limited circumstance reflects the General Assembly's intent that the law would otherwise apply where a single-county utility district expands into an adjacent county. For all these reasons, we think a court would conclude that a single-county utility district that desires to modify and expand its exclusive service area into an adjacent county creates a "multi-county utility district" as described in Tenn. Code Ann. §§ 7-82-601 -- 609, so that the expansion must comply with those statutory provisions.

## 2. Single-County Utility Districts Existing on March 21, 1955

The next question is whether a utility district operating within a single county on March 21, 1955, the date the Multi-County Utility District Law became effective, must comply with that law if it wishes to expand its territory to include territory in an adjacent county. As discussed above, Tenn. Code Ann. § 7-82-609 expressly provides that the Multi-County Utility District Law "will in no wise affect or abridge the rights, powers, privileges and duties of utility districts existing March 21, 1955." It can be argued that a single-county utility district that existed on that date may therefore expand its territory into another county without complying with the Multi-County Utility District Law. As noted above, however, the general statute governing the creation of a utility district does not provide any mechanism for such expansion, nor does it expressly provide for the creation of a multi-county utility district. The statute does provide that a petition for incorporation must be forwarded to the county executive of "any county" where the district would be located. We think this language reflects legislative intent that the county executive of any county where a utility district territory is to be located must play a role in its creation and, by implication, its expansion. As noted above, courts have concluded that the charter of a utility district must be amended through the same

process by which it was created. Where the creating petition was not filed with the county executive of the county into which the district wishes to expand, it appears that the only way to accomplish an expansion across county lines outside the Multi-County Utility District Law would be to reincorporate a single-county utility district as a multi-county utility district. The resulting utility district would be a new district, not one “existing” in 1955. For this reason, we think the General Assembly intended Tenn. Code Ann. § 7-82-609 to apply only to utility districts whose charters included territory in more than one county as of March 21, 1955. Thus, a utility district operating as a single-county utility district must comply with the Multi-County Utility District Law if it wishes to expand its territory into another county.

Question 3 concerns the process that a single-county utility district existing on March 21, 1955, must follow to expand if it is not subject to the Multi-County Utility District Law. Because we conclude that its expansion must comply with that law, Question 3 is moot.

#### 4. Merger of Utility Districts under Tenn. Code Ann. § 7-82-202(e)

The last question is whether two single-county utility districts, each situated wholly within adjoining counties, may merge with one another under Tenn. Code Ann. § 7-82-202(e) without complying with the Multi-County Utility District Law. Under that statute, where two or more utility districts concur in a merger or consolidation of the districts, they may petition the county executive of the county where they were created for an order permitting the merger. The statute provides that “[u]pon such petition being filed, the county executive or executives shall proceed in exactly the same manner as provided *in this chapter* for the creation of a utility district.” (Emphasis added). The statute also provides:

Upon a finding that the public convenience and necessity requires merger . . . and that the same is economically sound and feasible and in the public interest, an order shall be entered approving the merger . . . . If the petition is for a consolidation of the utility districts, it shall be designated as the \_\_\_\_\_ Utility District of \_\_\_\_\_ County or Counties, Tennessee, defining its territorial limits and appointing the commissioners of the district, all in accordance with the requirements *of this chapter* for the creation of a utility district.

Tenn. Code Ann. § 7-82-202(e) (emphasis added). The statute thus refers to a creation of a utility district under Chapter 82, which includes the Multi-County Utility District Law. Further, as discussed above, subsection (d) of this same statute expressly allows county executives to waive the Multi-County Utility District Law in narrowly described circumstances. Interpreting these provisions together, we think a court would conclude that utility districts that wish to merge across county lines under Tenn. Code Ann. § 7-82-202(e) must comply with the Multi-County Utility District Law.

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