

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 00-018

Inclusion of Federally Owned Land in County Growth Plan

QUESTION

Does 1998 Tenn. Pub. Acts Ch. 1101 regarding development of a county growth plan apply to property owned by the United States Army or the Department of Defense, and may Hawkins County or municipalities bordering the property include it within their urban growth or planned growth areas?

OPINION

It appears that this property may be included within the urban growth boundaries of a city or a planned growth area because such inclusion does not appear to interfere with the federal government's use of the property. Local authorities should consult with federal officials given management authority over the property to confirm this conclusion. Subsequent land use decisions with regard to this property may not interfere with its use by the federal government.

ANALYSIS

This opinion addresses whether federally-owned property, specifically the Holston Army Ammunition Plant and surrounding federally-owned land, may be included within urban growth boundaries or planned growth areas within a countywide growth plan adopted under Tenn. Code Ann. §§ 6-58-101, *et seq.* Under that statutory scheme, enacted as part of 1998 Tenn. Pub. Acts Ch. 1101, counties and municipalities are required to develop a growth plan through a coordinating committee. That statute also sets forth various methods for resolving disputes among counties and cities in the development of a plan.

The purpose of the growth plan is to direct the coordinated, efficient, and orderly development of the local government and its environs that will, based on an analysis of present and future needs, best promote the public health, safety, morals, and general welfare. Tenn. Code Ann. § 6-58-107. After a growth plan is approved, all land use decisions made by the legislative body and the municipality's or county's planning commission must be consistent with the growth plan. *Id.*

Under a local growth plan, territory within a county will be divided into three components: urban growth boundaries, planned growth areas, and rural areas. Generally, the urban growth boundaries of a municipality ultimately included in a growth plan must identify territory contiguous to the existing boundaries of a municipality likely to be developed in the next twenty years and for

which the municipality will be able to provide urban services. Tenn. Code Ann. § 6-58-106(a)(1). Generally, the planned growth area of a county is required to identify unincorporated parts of the county that are not within urban growth boundaries but are likely to develop over the next twenty years and that reflect the county's duty to manage natural resources and urban growth. Tenn. Code Ann. § 6-58-106(b)(1). Finally, each rural area must generally identify unincorporated parts of the county that are not within urban growth boundaries or a planned growth area, and are to be preserved for uses other than high density commercial, industrial or residential development. Tenn. Code Ann. § 6-58-106(c)(1).

Once the local growth plan is adopted, a county may provide or contract for the provision of services within a planned growth area and set a separate tax rate specifically for the services provided within a planned growth area. Tenn. Code Ann. § 6-58-112(a)(2). A county may also establish separate zoning regulations within a planned growth area, for territory within an urban growth boundary, or within a rural area. Tenn. Code Ann. § 6-58-112(a)(3).

The request indicates that the Coordinating Committee for Hawkins County is in the process of developing a growth plan under the statute. The federal government owns properties related to the Holston Army Ammunition Plant in Hawkins County, Kingsport, Church Hill, and Mt. Carmel. The request indicates that disagreements have arisen over areas that the City of Kingsport would like to include in its urban growth boundaries and that Hawkins County, instead, would like to include in the county planned growth area. The request asks whether property owned by the United States Army or United States Department of Defense are subject to 1998 Tenn. Pub. Acts Ch. 1101, specifically whether Hawkins County or cities within the county may include this property within urban growth boundaries or planned growth areas. Since the question comes from the Coordinating Committee, this opinion will assume that the question is limited to whether this property can be included within urban growth boundaries or planned growth areas within a growth plan.

Under Article I, Section 8, Clause 17 of the United States Constitution, Congress is authorized to exercise exclusive legislative jurisdiction in any land upon the cession of jurisdiction by the state and the acceptance of Congress. Research and consultation with the Mobile, Alabama Office of the United States Army Corps of Engineers indicate the federal government owns the Holston Army Ammunition Plan property but that the State of Tennessee never transferred legislative jurisdiction over the property. The federal government therefore has only proprietary jurisdiction with regard to the property. Under Article IV, Section 3, Clause 2 of the United States Constitution, Congress has the power to make all "needful rules and regulations" respecting property belonging to the United States. Tennessee courts have recognized that where the United States merely buys land for its use, the jurisdiction of the state where the land is located remains the same as before, except that the state cannot interfere with the federal government's use of the property. *Divine v. Unaka National Bank*, 125 Tenn. 98, 140 S.W. 747 (1911).

The question then becomes whether local governments where the Holston Army Ammunition Plant property is located may include the property within the county growth plan. Courts have recognized that states can exercise power over federal property within state boundaries, so long as

there is no interference with the jurisdiction asserted by the federal government. *See, e.g., Howard v. Commissioners of Sinking Fund of City of Louisville*, 344 U.S. 624, 73 S.Ct. 465 (1953). In that case, the United States Supreme Court found that the City of Louisville could annex property over which the Secretary of the Navy exercised exclusive jurisdiction. Employees at the plant located on the property challenged the city's authority to annex the area, arguing that it had ceased to be a part of Kentucky when the United States assumed exclusive jurisdiction over it. The Court rejected this argument and stated:

When the United States, with the consent of Kentucky, acquired the property upon which the Ordnance Plant is located, the property did not cease to be a part of Kentucky. The geographical structure of Kentucky remained the same. In rearranging the structural divisions of the Commonwealth, in accordance with state law, the area became a part of the City of Louisville, just as it remained a part of the County of Jefferson and the Commonwealth of Kentucky. A state may conform its municipal structures to its own plan, *so long as the state does not interfere with the exercise of jurisdiction within the federal area by the United States*. Kentucky's consent to this acquisition gave the United States power to exercise exclusive jurisdiction within the area. A change of municipal boundaries did not interfere in the least with the jurisdiction of the United States within the area or with its use or disposition of the property. The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, *so long as there is no interference with the jurisdiction asserted by the Federal Government*. The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim. It is friction, not fiction, to which we must give heed.

344 U.S. at 626-27 (emphasis added). Thus, the United States Supreme Court concluded that the city could annex the property even though the United States exercised exclusive jurisdiction with regard to the property because the annexation would not interfere with the federal government's use of the property.

We think that inclusion of property within a city's urban growth boundaries or a planned growth area is even less likely to interfere with the federal government's use of the property, particularly since the federal government only exercises proprietary jurisdiction over the property. Land included in urban growth boundaries may be more readily annexed than land in a planned growth area. But it is not automatically annexed. For this reason, it does not appear that including the property within urban growth boundaries or a planned growth area would interfere with the use of the property by the federal government. Local authorities should consult with federal officials given management authority over the property to confirm this conclusion. Subsequent land use decisions regarding the property may not impact on its use by the federal government.

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