S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 00-036

Annexation after Growth Plan Adopted

QUESTION

Under Tenn. Code Ann. § 6-58-111, after a county growth plan has been adopted, a city may annex territory outside its urban growth boundaries either by proposing an amendment to the growth plan, or by annexing the territory by referendum under Tenn. Code Ann. §§ 6-51-104 and 6-51-105. Could a city annex territory outside its urban growth boundaries and within the urban growth boundaries of another city by referendum?

OPINION

A city could not annex under these circumstances if that action violated an agreement it had entered into with other cities or counties to refrain from annexing territory or setting out territory reserved for future annexation. It could also be argued that a city could not annex under these circumstances if the annexation violated an agreement between another city and a property owner in the territory. Even if the annexation did not violate such agreements, it could be argued that such an action is not authorized under Tenn. Code Ann. §§ 6-58-101, *et seq.*, because it is inconsistent with the purposes of a county growth plan. A court could also conclude that, even if authorized, any annexation by a smaller city within the urban growth boundaries of a larger city is subject to the priorities in Tenn. Code Ann. § 6-51-110.

ANALYSIS

This opinion concerns the interpretation of Tenn. Code Ann. § 6-58-111(d). Under Tenn. Code Ann. §§ 6-58-101, *et seq.*, local governments are authorized to develop a county growth plan through a coordinating committee. That plan divides territory within the county into three areas: territory within urban growth boundaries; planned growth areas; and rural areas. The criteria for including territory within each of these three classifications in a county growth plan are described in Tenn. Code Ann. § 6-58-106. The plan must be approved by the legislative bodies of all the local governments in the county, or through an alternative process before administrative law judges. Tenn. Code Ann. § 6-58-104. Under Tenn. Code Ann. § 6-58-104(a)(6)(A), a city may make binding agreements with other cities and with counties to refrain from exercising any power or privilege granted to the city under Title 6 of Tennessee Code Annotated, including, but not limited to, the authority to annex. The statute also ratifies any agreements between cities or between cities and counties setting out areas reserved for future municipal annexation and in effect on May 19, 1998. Tenn. Code Ann. § 6-58-104(a)(7)(A). Tenn. Code Ann. § 6-58-104(a)(8) expressly states that no

provision of the growth plan law prohibits written contracts between cities and property owners relative to the city's right to annex, or operates to invalidate an annexation ordinance done under such a written contract in existence on May 19, 1998.

Tenn. Code Ann. § 6-58-111 concerns the effect of an adopted growth plan on the power of a city to annex territory. Under Tenn. Code Ann. § 6-58-111(a), a city may annex territory within its urban growth boundaries by any of the annexation methods provided in Tenn. Code Ann. §§ 6-51-101, *et seq.* The party filing a *quo warranto* challenge to the annexation has the burden of proving that the annexation ordinance 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 city and the territory will not be materially retarded in the absence of the annexation. Under Tenn. Code Ann. § 6-58-111(c), a city may not annex territory *by ordinance* beyond its urban growth boundary without following the procedure in subsection (d). Subsection (d) provides:

> (1) If a municipality desires to annex territory *beyond its urban growth boundary,* the municipality shall first propose an amendment to its urban growth boundary with the coordinating committee under the procedure in § 6-58-104.
>
> (2) As an alternative to proposing a change in the urban growth boundary to the coordinating committee, the municipality may annex the territory by referendum as provided in §§ 6-51-104 and 6-51-105.

Tenn. Code Ann. § 6-58-111(d) (emphasis added). Under Tenn. Code Ann. §§ 6-51-104 and 6-51-105, a city may annex territory adjoining to its existing boundaries after the approval of a majority of qualified voters voting in the territory to be annexed. The question is whether this provision would permit a city to annex territory by referendum even if that territory is within the urban growth boundaries of another city. Our Office has addressed this issue as applied within a charter county. Op. Tenn. Atty. Gen. 98-148 (August 12, 1998). In that opinion, we concluded that the power of a municipality to annex territory within the urban growth boundaries of another city could be barred if the annexation violates the terms of any annexation reserve agreements among the local governments, or violates the terms of any annexation agreements between a city and property owners. The extent to which any annexation agreement between a city and property owners can be enforced against a city that is not a party to it can only be determined by a court of competent jurisdiction after reviewing the agreements and other applicable facts and circumstances. In addition, our Office concluded that it is not clear that the statutory scheme establishing the growth plan intended to allow a city to annex territory within the urban growth boundaries of another city by referendum. The opinion notes:

> Allowing such annexation would arguably undercut all the planning process that went into establishing the urban growth boundaries to begin with. Further, allowing such annexation might prompt a city to annex all the property within its urban growth boundaries as quickly as possible to prevent a neighboring city from annexing outlying areas of the urban growth boundaries by referendum. Each of these results

> is inconsistent with the declared legislative purpose of eliminating annexation out of fear, and establishing incentives to annex where appropriate.

Op. Tenn. Atty. Gen. 98-148 at 11. Even if such annexation were permitted, the opinion notes that a court could conclude that the city within whose urban growth boundaries the annexation is sought, if larger in population than the city seeking to annex the territory, could suspend the annexation proceedings under Tenn. Code Ann. § 6-51-110 by initiating its own annexation proceedings.

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