S T A T E O F T E N N E S S E E
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Opinion No. 00-135

Challenge to Growth Plan Ratified by Local Governments

QUESTIONS

1. What options are available to residents of a county who are dissatisfied with inclusion of their property within urban growth boundaries under a growth plan ratified by all the cities and the county?

2. What is the process for amending a growth plan in a charter county?

OPINION

1. The Tennessee Local Government Planning Advisory Committee has no authority to change such a plan. Residents of a county or owners of property within the county may challenge the growth plan in an action under Tenn. Code Ann. § 6-58-105. Under that statute, petitioners have the burden of proving, by a preponderance of the evidence, that the urban growth boundaries, planned growth areas and/or rural areas are invalid because the adoption or approval thereof was granted in an arbitrary, capricious, illegal or other manner characterized by abuse of official discretion. Absent a showing of extraordinary circumstances, the growth plan shall remain in effect for three years, after which a county or city may propose an amendment to the growth plan. The amendment procedure is the same as the procedure for establishing the original plan.

2. Once a growth plan applicable to a charter county has been adopted through the adoption process in Tenn. Code Ann. § 6-58-104, the plan must remain in effect for at least three years, absent a showing of extraordinary circumstances, before it can be amended.

ANALYSIS

This opinion addresses methods of challenging a county growth plan once it has been ratified by all the local governments within a county. The request indicates that certain residents of Shelby County are dissatisfied that their land has been included within the urban growth boundaries of a city, and you wish to know what recourse they might have.

1. Challenging a County Growth Plan

A county growth plan is developed and adopted under the procedures set forth in Tenn. Code Ann. §§ 6-58-101, *et seq*. Under Tenn. Code Ann. § 6-58-104, a growth plan is developed and proposed by a coordinating committee after a series of public hearings, and is then presented to the legislative bodies of all the cities and the county for ratification. If the local governments cannot agree on a plan, the statute provides for a three-member panel to mediate disputes or adopt a plan if the impasse continues. Research indicates that the Shelby County growth plan has been ratified by all the cities and the county and filed with the Local Government Planning Advisory Committee (the "Committee"). The requests asks that the Committee consider changing the county's growth plan to provide that the residents' property be made part of the rural area of the plan. But the Committee has no authority to change a plan that has been ratified by the county and each city government within the county. Tenn. Code Ann. § 6-58-104(c)(1).

County residents may obtain judicial review of a growth plan as set forth in Tenn. Code Ann. § 6-58-105. This statute provides the exclusive method for judicial review of the growth plan and its urban growth boundaries, planned growth areas, and rural areas. Tenn. Code Ann. § 6-58-105(a). Proceedings must be instituted by filing a petition for review in the chancery court of the affected county during the sixty-day period after final approval of the urban growth boundaries, planned growth areas and rural areas by the Committee. Copies of the petition must be served on the Committee, the county, and each city. *Id.* The petitioner has the burden of proving, by a preponderance of the evidence:

> that the urban growth boundaries, planned growth areas and/or rural areas are invalid because the adoption or approval thereof was granted in an arbitrary, capricious, illegal or other manner characterized by abuse of official discretion.

Tenn. Code Ann. § 6-58-105(b). If the court finds the petitioner has met this burden, it may vacate the plan in whole or in part and remand it to the county and cities to begin the approval process again. Tenn. Code Ann. § 6-58-105(c). The chancery court's ruling may be appealed to the Court of Appeals. Tenn. Code Ann. § 6-58-105(d).

After approval by the Local Government Planning Advisory Committee, a growth plan shall stay in effect for not less than three years, absent a showing of extraordinary circumstances. The statute provides no definition of "extraordinary circumstances." After that period, a city or county may propose an amendment to the growth plan. Tenn. Code Ann. § 6-58-104(d)(1). The process for amending a growth plan is the same as the process for establishing the original plan.

2. Amending a Growth Plan in a Charter County

The second question is the process for amending a growth plan in a charter county. This question appears to refer to Tenn. Code Ann. § 6-58-104(d)(2), which provides:

> In any county with a charter form of government with annexation reserve agreements in effect on January 1, 1998, any municipality or the county may immediately file a proposed amendment after May 19, 1998, in accordance with this subsection (d).

This provision should be read in conjunction with Tenn. Code Ann. § 6-58-104(a)(7)(b), which provides:

> In any county with a charter form of government, the annexation reserve agreements in effect on January 1, 1998, are deemed to satisfy the requirement of a growth plan. The County shall file a plan based on such agreement with the committee.

"Committee" refers to the Local Government Planning Advisory Committee. Tenn. Code Ann. § 6-58-101(1). We think a court would conclude that Tenn. Code Ann. § 6-58-104(d)(2) allowed the local governments within a charter county with reserve agreements in effect to treat these agreements as a growth plan that could be amended after the effective date of Tenn. Code Ann. §§ 6-58-101, *et seq.* Assuming there were annexation reserve agreements in effect in Shelby County--which has a charter form of government--on January 1, 1998, then the Shelby County growth plan recently submitted to the Committee is technically the original series of reserve agreements amended through the adoption process in Tenn. Code Ann. § 6-58-104. Now that the plan has been approved by the Committee, we think it must remain in effect for at least three years, absent a showing of extraordinary circumstances, before it can be amended.

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