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Opinion No. 01-092

Regional Planning and Urban Growth Boundaries

QUESTION

Under Tenn. Code Ann. §§ 6-58-101, *et seq.,* the constituent local governments within a county are authorized to create a growth plan for county territory including urban growth boundaries for the cities. Under Tenn. Code Ann. § 13-3-102, some cities exercise regional planning authority over areas outside the city limits. 1998 Tenn. Pub. Acts Ch. 1101, which included the authorization for a growth plan, also amended Tenn. Code Ann. § 13-3-102 to provide that no part of such territory should be outside the municipality's urban growth boundary if one exists. Was it the intent of the General Assembly in enacting 1998 Tenn. Pub. Acts Ch. 1101 to authorize the Local Government Planning Advisory Committee (the "Committee") automatically to expand the planning region of a municipal planning commission to encompass the entire area of that city's urban growth boundary?

OPINION

The act does not require the Committee to approve such expansion in all cases. If, however, the Committee determines that such expansion, as a policy matter, is appropriate in all cases, the Committee may approve it, subject to the requirements in Tenn. Code Ann. § 13-3-102, including the city's acceptance of the expansion.

ANALYSIS

This request concerns the effect of passage of a county growth plan under Tenn. Code Ann. §§ 6-58-101, *et seq.,* on the regional planning authority of a municipal planning commission that has been designated as a regional planning commission with respect to property outside its city limits. This Office addressed this issue in more detail in Op. Tenn. Atty. Gen. 99-218 (November 4, 1999) and Op. Tenn. Atty. Gen. 99-227 (December 6, 1999). The specific question in this opinion is the scope of the authority given the Local Government Planning Advisory Committee (the "Committee") with regard to approval of designation of a municipal planning commission as a regional planning commission under Tenn. Code Ann. § 13-3-102. Under Tenn. Code Ann. §§ 13-4-101, *et seq.,* the chief legislative body of a city may establish a municipal planning commission. A municipal planning commission is authorized to adopt a plan for city development and regulations governing subdivision of land within the city. Tenn. Code Ann. § 13-4-201 and Tenn. Code Ann. § 13-4-303. A municipal planning commission is also authorized to develop

a zoning plan and ordinance, which may then be enacted by the city legislative body. Tenn. Code Ann. §§ 13-7-201, *et seq.*

Regional planning commissions are created and operate under Tenn. Code Ann. §§ 13-3-101, *et seq.* Under that statutory scheme, the Tennessee Department of Economic and Community Development may create and establish planning regions and define the boundaries of each region. Tenn. Code Ann. § 13-3-102. Generally, a regional planning commission is required to make and adopt a general regional plan for the physical development of the territory of the region. Tenn. Code Ann. § 13-3-301(a). Once a regional planning commission has adopted and filed its plan with the county register of the county or counties that lie in whole or in part in the region, then the regional planning commission must approve any plat of a subdivision of land within the region before the plat may be filed with the county register. Tenn. Code Ann. § 13-3-402.

A regional planning commission is also authorized to certify to the legislative body of a county located in whole or in part in the region a zoning plan, including the text of a zoning ordinance. Tenn. Code Ann. § 13-7-102. The county may then enact zoning ordinances under Tenn. Code Ann. § 13-7-104. A regional planning commission is authorized to adopt a regional plan, including subdivision regulation, and a zoning plan with respect to territory within its regional planning area. Once a regional planning commission has adopted a zoning plan, no local government -- either a city or a county -- may adopt a zoning ordinance with respect to territory in the regional planning area without first submitting the ordinance to the regional planning commission. *See* Op. Tenn. Atty. Gen. 99-150 (August 16, 1999).

Under Tenn. Code Ann. § 13-3-102, the Department of Economic and Community Development may designate the municipal planning commission of each city as a regional planning commission with respect to territory outside its boundaries. The statute provides:

> In the event that, acting under the power granted to it in parts 1-3 of this chapter, the department of economic and community development creates and establishes any planning region composed of the territory of a single municipality, *together with territory adjoining but outside of such municipality, no part of which is outside the municipality's urban growth boundary, or,* if no such boundary exists, more than five (5) miles beyond the limits of such municipality, and in the further event that such municipality has a municipal planning commission, then in such event the department, in lieu of creating, designating and appointing a new regional planning commission for such region, may designate the municipal planning commission as the regional planning commission of such region, and when so designated, the commission, when acting as a regional commission for such region, shall have all the powers and be governed by the provisions set forth in parts 1-3 of this chapter, or in any other statutory provision relating to regional planning commissions; provided, that the department shall not have power of appointment or removal of any member of such

> planning commission serving regional areas. The acceptance of any such designation shall not, however, be obligatory upon but shall be subject to the consent of the designated municipal planning commission. *Authority granted under this section to the department shall be exercised with the approval of the local government planning advisory committee.*

Tenn. Code Ann. § 13-3-102 (emphasis added). When designated as a regional planning commission under this statute, a municipal planning commission carries out the role given a regional planning commission with respect to that territory.

Under Tenn. Code Ann. §§ 6-58-101, *et seq.*, adopted as part of 1998 Tenn. Pub. Acts Ch. 1101 ("Chapter 1101"), a county and all the municipalities located in the county are authorized to develop a comprehensive growth plan. That plan must include, at a minimum, borders within the unincorporated territory of a county designating urban growth boundaries, planned growth areas, and rural areas. The initial plan is compiled by a coordinating committee based on proposals from the city and county governments. Tenn. Code Ann. § 6-58-106 describes the characteristics of each of the three areas within a county growth plan and the way in which they should be developed and submitted to the coordinating committee charged with formulating the plan. The statute provides:

> (a)(1) The urban growth boundaries of a municipality shall:
>
> (A) Identify territory that is reasonably compact yet sufficiently large to accommodate residential and nonresidential growth projected to occur during the next twenty (20) years;
>
> (B) Identify territory that is contiguous to the existing boundaries of the municipality;
>
> (C) Identify territory that a reasonable and prudent person would project as the likely site of high density commercial, industrial and/or residential growth over the next twenty (20) years based on historical experience, economic trends, population growth patterns and topographical characteristics; (if available, professional planning, engineering and/or economic studies may also be considered);
>
> (D) Identify territory in which the municipality is better able and prepared than other municipalities to efficiently and effectively provide urban services; and
>
> (E) Reflect the municipality's duty to facilitate full development of resources within the current boundaries of the municipality and to manage and control urban expansion outside of such current boundaries, taking into account the impact to agricultural lands, forests, recreational areas and wildlife management areas.

Before formally proposing urban growth areas to the coordinating committee, each city must develop and report population growth projections and other information regarding development set forth in Tenn. Code Ann. § 6-58-106(a)(2). Each city must also conduct at least two public hearings regarding the proposed urban growth boundaries. Tenn. Code Ann. § 6-58-106(a)(3). Counties are also required to consider the information described in Tenn. Code Ann. § 6-58-106(b)(2) and to hold two public meetings before proposing planned growth areas to the coordinating committee. The county must also hold two public meetings before proposing rural areas to the coordinating committee. The process by which a growth plan is developed and approved is further described in Tenn. Code Ann. § 6-58-104.

Subsection (d) of Tenn. Code Ann. § 6-58-106 provides:

> Notwithstanding the extraterritorial planning jurisdiction authorized for municipal planning commissions designated as regional planning commissions in title 13, chapter 3, nothing in this chapter shall be construed to authorize municipal planning commission jurisdiction *beyond an urban growth boundary*; provided, that in a county without county zoning, a municipality may provide extraterritorial zoning and subdivision regulation beyond its corporate limits with the approval of the county legislative body.

Tenn. Code Ann. § 6-58-106(d) (emphasis added). It should also be noted that Chapter 1101 amended Tenn. Code Ann. § 13-3-102 to add the reference to urban growth boundaries that now appears in the statute. Chapter 1101 also amended Tenn. Code Ann. § 13-3-401, regarding regional planning regulations, so that it now provides in relevant part:

> "Regional planning commission" means any regional planning commission established by the department of economic and community development as provided by law, and includes any municipal planning commission designated by the department as the regional planning commission of a planning region composed of the territory of a single municipality, together with the territory adjoining but outside of such municipality, no part of which is *outside the municipality's urban growth boundary, or if no such boundary exists,* more than five (5) miles beyond the limits of such municipality[.]

Tenn. Code Ann. § 13-3-401(2) (italicized language added by Chapter 1101).

The request specifically concerns the case where the urban growth boundaries of a city under the county growth plan take in territory for which the municipal planning commission has not been designated a regional planning commission. With respect to such territory, our Office concluded that the municipal planning commission may not exercise authority as a regional planning commission until it has been

designated as a regional planning commission for that additional area by the Department of Economic and Community Development and the Committee under Tenn. Code Ann. § 13-3-102. Op. Tenn. Atty. Gen. 99-218 (November 4, 1999). The request asks whether the Committee is authorized "automatically" to expand the planning region of a municipal planning commission to encompass the entire area of that city's urban growth boundary.

The Committee is created and operates under Tenn. Code Ann. § 4-3-727. Among its other responsibilities, the Committee is authorized to "[e]xercise the powers over regional planning commissions provided for in §§ 13-3-101 and 13-3-102." Tenn. Code Ann. § 4-3-727. Under Tenn. Code Ann. § 13-3-102, both the Commissioner of Economic and Community Development (the "Commissioner") and the Committee are given considerable discretion in determining whether to designate a municipal planning commission as a regional planning commission, and on setting up the boundaries within which the municipal planning commission will exercise regional planning commission authority. The question appears to focus on instances where a county planning commission and a municipal planning commission each exercise regional planning authority over unincorporated territory in the county. Based on a growth plan adopted within the county, a city may then request that its regional planning area be expanded to include all of the area within its urban growth boundaries. Expanding the boundaries of the municipal planning commission regional authority will, correspondingly, reduce the area within the regional planning authority of the county planning commission.

Based on consultation with Committee staff, it appears that, until recently, the Committee required a city making this request to obtain the county commission's agreement to the change in the boundaries. If the city did not obtain this agreement, the city could request the change and the Committee would allow both the city and the county to present documentation and appear before the Committee to support or oppose the expansion. The Committee would hold an informal fact-finding hearing to consider all the documentation before making its decision to change or retain the planning region boundaries.

The Committee has now changed its practice where a city requests the Committee to approve expanding its regional growth authority to include territory within its urban growth boundaries under the county growth plan. The Committee has decided that, in the event that the city requests a planning region that crosses into a county planning commission's area, the request will be granted if the requested change falls within or is congruent with the city's urban growth boundary shown on that county's growth boundary plan. This decision is based on the characteristics of an urban growth boundary as defined under Tenn. Code Ann. § 6-58-106, the planning process behind development of a county growth plan, and the ability of a city to annex territory within its urban growth boundaries as provided under Tenn. Code Ann. § 6-58-111. The question is whether it was "the intent" of the General Assembly, in enacting 1998 Tenn. Pub. Acts Ch. 1101, including provisions for a growth plan under Tenn. Code Ann. §§ 6-58-101, *et seq.*, to authorize the Committee to adopt this practice.

Tenn. Code Ann. § 13-3-102 grants considerable discretion to the Commissioner of Economic and Community Development and the Committee in deciding whether to designate a municipal planning

commission as a regional planning commission with respect to territory outside the city limits. The statute does not require either the Commissioner or the Committee to require county agreement to the change, or to hold any hearings or review any particular material before reaching a decision. The decision of the Commissioner or the Committee would probably be subject to narrow review by common law writ of certiorari. In a review by common law writ of certiorari, it is the function of the Court to review the record to determine if there was any material or substantial evidence to support the action of the board whose order is under review. *Goodwin v. Metropolitan Board of Health,* 656 S.W.2d 383, 386 (Tenn. Ct. App. 1983). The scope of review under the common law writ is very narrow. It covers only an inquiry into whether the inferior board or tribunal has exceeded its jurisdiction or is acting illegally, fraudulently or arbitrarily. *Powell v. Parole Eligibility Review Board,* 879 S.W.2d 871, 873 (Tenn. Ct. App. 1994), *p.t.a. denied* (1994).

Whether or not any particular decision of the Commissioner and the Committee could be sustained on a challenge by writ of certiorari would, of course, depend on the particular facts and circumstances surrounding the decision that might show that either acted arbitrarily, illegally, or without material supporting evidence. Based on our review, however, we think the Committee's decision is within its statutory authority. We find nothing in 1998 Tenn. Pub. Acts Ch. 1101 that would prevent the Committee from changing its earlier practice to reflect the planning and effort required in the development of a county growth plan. Moreover, Tenn. Code Ann. § 13-3-102 clearly entrusts decision making under this statute to the Commissioner and the Committee. A state agency's interpretation of a statute that the agency is charged to enforce is entitled to great weight in determining legislative intent. *Consumer Advocate Division v. Greer,* 967 S.W.2d 759, 761 (Tenn. 1998). Further, we do not think this decision, based on the considerations outlined above, is arbitrary or capricious. For this reason, if the Committee determines that allowing a municipal planning commission to expand its regional planning authority to include territory within its urban growth boundaries, as a policy matter, is appropriate in all cases, the Committee may approve it, subject to the requirements in Tenn. Code Ann. § 13-3-102, including the city's acceptance of the expansion.

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