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. 01-096

Impact of Growth Plan on Extension of Sewer Service

QUESTION

The Water and Sewer Board of the City of Murfreesboro recently decided to extend the city's sewer service to an unincorporated portion of Rutherford County. The territory is outside the urban growth boundary of the City of Murfreesboro in an area designated as a rural area under the county's growth plan. What is the impact of the adoption of a growth plan on a decision to extend sewer service for development of an area designated as part of a rural area under a county growth plan adopted under Tenn. Code Ann. §§ 6-58-101, *et seq.* (the "Growth Law")?

OPINION

The Growth Law provides that "all land use decisions made by the legislative body and the municipality's or county's planning commission shall be consistent with the growth plan." Tenn. Code Ann. § 6-58-107. To date, we are unaware of any court opinion that has addressed the scope and enforceability of this statute. Its impact on a decision to extend sewer lines to a rural growth area would depend, first, on whether such decision is a land use decision made by the legislative body; second, whether this decision is inconsistent with the county growth plan; and third, whether there are parties and remedies available to enforce this provision. A definitive answer to all these issues could only be given by a court of competent jurisdiction after considering all the relevant facts and circumstances.

ANALYSIS

Rutherford County and the cities located within the county have adopted a county growth plan under Tenn. Code Ann. §§ 6-58-101, *et seq.* (the "Growth Law"). You have asked this Office to evaluate plans of the Water and Sewer Board of the City of Murfreesboro to extend its sewer service to an area outside its urban growth boundaries and into an area designated as a rural area under the growth plan. Specifically, your question is the impact of the county's growth plan on the authority of a city to extend sewer services for development in an area designated as a rural area. Our opinion will focus on that issue and will not address the city's authority to extend the service or the county's authority to challenge the extension under other statutory schemes.

You have provided us with letters from the County Technical Assistance Service and the Tennessee Municipal League addressing the same question. Both of these letters provide excellent discussions of the issues involved, and our response will not differ materially from them. As those letters indicate, the Growth Law provides no definitive answer to this question. As discussed below, only a court of competent jurisdiction could determine whether the decision to extend these services for future development is a land use decision inconsistent with the county growth plan, the parties that might have standing to challenge the decision, and the remedies the court could provide if it concludes that the decision is inconsistent with the county growth plan. Other facts and circumstances, including zoning or other regulations now in effect in the rural area, as well as development in other parts of the rural area as compared with areas designated as planned growth areas and urban growth areas, would be relevant to the court's decision.

Under a county growth plan, territory within a county is 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).

Tenn. Code Ann. § 6-58-107 provides in relevant part:

> Not later than July 1, 2001, a growth plan for each county shall be submitted to and approved by the local government planning advisory committee in accordance with the provisions of § 6-58-104. *After a growth plan is so approved, all land use decisions made by the legislative body and the municipality's or county's planning commission shall be consistent with the growth plan.*

(Emphasis added). The key issues with regard to the decision of the Water and Sewer Board are, first,

whether this decision is a "land use decision made by the legislative body and the municipality's or county's planning commission" within the meaning of this statute; second, whether this decision is consistent with the growth plan; and, finally, to what extent and by which parties this provision might be enforceable.

a. "Land use decision by the legislative body"

The first question is what decisions would fall within the term "land use decision" under Tenn. Code Ann. § 6-58-107. We addressed the meaning and scope of this statute as a general matter in Op. Tenn. Atty. Gen. 00-022 (February 15, 2000). That opinion concluded that the term "land use decision," used in the context of the Growth Law, includes any decision regarding the use of land within the jurisdiction of the legislative body or the planning commission. It is not clear to what extent a city board's decision to extend sewer service to an unincorporated area of the county would fall within this term. Of course, sewer service is essential to most development, and the letters included with your request indicate that the extension has been requested by an owner of land in the rural area who wishes to subdivide and develop the property into a residential subdivision. It is not clear, however, that the statute would include a decision by a city board to extend services into an area when such extension could facilitate development. We assume that the City of Murfreesboro has no zoning or other regulatory authority with regard to land designated as a rural area under the county growth plan. A court could conclude that the term "land use decisions" refers to the decision of a city or county legislative body to authorize a particular type of development within land included in the different components of a county growth plan. Specific facts and circumstances, such as the nature of the service extended, could also be relevant to this decision.

Letters included with your request also indicate that the decision to extend sewer service has been made by the Water and Sewer Board of the City of Murfreesboro. As our Office noted in Op. Tenn. Atty. Gen. 00-022, Tenn. Code Ann. § 6-58-107 by its terms refers only to land use decisions made by the legislative body and the municipality's or county's planning commission. A decision by a city department or board does not fall within the statute. Whether the statute might apply to this decision would depend on the role of the city legislative body in approving or implementing the decision to extend such service.

b. "Consistent with the Growth Plan"

The next question is whether a city board's decision to extend sewer service to an area designated as a rural area would be inconsistent with the growth plan and therefore violate Tenn. Code Ann. § 6-58-107. The Growth Law describes a rural area as follows:

> (c)(1) Each rural area shall:
>
> (A) Identify territory that is not within urban growth boundaries;
>
> (B) Identify territory that is not within a planned growth area;

> (C) Identify territory that, over the next twenty (20) years, is to be preserved as agricultural lands, forests, recreational areas, wildlife management areas *or for uses other than high density commercial, industrial, or residential development*; and
>
> (D) Reflect the county's duty to manage growth and natural resources in a manner which reasonably minimizes detrimental impact to agricultural lands, forests, recreational areas and wildlife management areas.

Tenn. Code Ann. § 6-58-106(c)(1) (emphasis added). Whether extension of city sewer lines to a rural area is inconsistent with the county growth plan would depend on particular facts and circumstances. It should be noted, however, that initial versions of the Growth Law provided that, in addition to the other characteristics now listed in Tenn. Code Ann. § 6-58-106(c)(1), a rural growth area would "[i]dentify territory in which sanitary sewer services will not be expanded and in which any license, permit or other regulatory action conducive to high density development will not be granted[.]" This provision was omitted from the joint conference committee report that the General Assembly finally adopted. Earlier versions of the Growth Act also provided that a rural area could not be served by a sanitary sewer system for residential customers if such area was not served by a sanitary sewer system on the effective date of the act. Senator Rochelle, the primary sponsor of the act in the Senate, supported a motion to delete this provision. Senator Rochelle stated:

> The hope was with this section that we could address a problem that is about to be seen in the state. There's a new type of package treatment plant for waste water. And that type of plant doesn't have to be on a creek, it doesn't have to be on a river. It's a sand filter system. And it's possible now to take a sand filter system, install it out here 10 miles away from the nearest populated area, put it on the river or whatever, and with a sand filter system, put a three or four hundred-unit apartment complex there. And then you have an expense of all the city services coming out to it. *We have, it was never our intention to say that a sewer can't be extended out from the cities. That was not our desire.* Our desire was to prevent pockets of dense population from forming in the rural areas, to try to steer those toward the planned growth areas. I have to admit to you, Senator Gilbert [who proposed deleting the provision] is correct, the way it is written it involves, it addresses sewers being expanded out. We have not been able to find a satisfactory thing to recommend to you in regard to trying to prevent the pocket of development occurring way away from urban type services.

Remarks of Senator Rochelle, Senate Session April 27, 1998 (emphasis added). A decision to extend a sewer line to a rural area therefore is probably not, *per se*, inconsistent with a county growth plan.

Whether a particular extension would be inconsistent would depend on facts and circumstances, particularly such issues as the density of existing development in the rural area compared to development in planned growth areas and urban growth areas under the county growth plan. As the letter from the County Technical Assistance Service notes, the Growth Law does not provide a definition of "high density" development. Because of the varied size and nature of the counties where the Growth Law was to be implemented, the General Assembly probably intended that term to be interpreted relative to the population and level of development in each particular county as well as within the different areas delineated within a growth plan.

c. Enforcement of Tenn. Code Ann. § 6-58-107

Finally, it is not clear which parties have standing to challenge a land use decision on the grounds that it violates Tenn. Code Ann. § 6-58-107, or the remedies that might be available to those parties. This Office addressed this issue in Op. Tenn. Atty. Gen. 00-022 (February 15, 2000). There, we noted that the Growth Law must be read in conjunction with other statutes governing land use planning. We are unaware of any statutory provision expressly allowing a citizen or a local government to appeal the decision of a city utility board to extend sewer service to a particular area. Whether Tenn. Code Ann. § 6-58-107 could provide grounds to challenge this decision could only be determined by a court of competent jurisdiction based on all the relevant facts and circumstances. Similarly, only a court could determine which parties had standing to bring such a challenge as well as the appropriate remedies. As we noted in Op. Tenn. Atty. Gen. 00-022, a court could conclude that other legislative bodies that approved the plan might have standing to challenge a decision made in conflict with it. To date, however, we are unaware of any court opinion that has addressed the scope and enforceability of Tenn. Code Ann. § 6-58-107.

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