**S T A T E O F T E N N E S S E E**
OFFICE OF THE
**ATTORNEY GENERAL**
**PO BOX 20207**
**NASHVILLE, TENNESSEE 37202**

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Opinion No. 03-023

Extraterritorial Zoning by Memphis and Shelby County under Growth Law

## QUESTION

Under Tenn. Code Ann. §§ 6-58-101, *et seq.*, once a comprehensive growth plan has been adopted within a county, does Memphis have the authority to zone or control development in an area outside its urban growth boundaries and within the urban growth boundaries of another city?

## OPINION

The adoption of a comprehensive growth plan under this statute does not affect the private act regulatory authority of Memphis and Shelby County, acting through a joint planning commission, to zone and regulate land use in territory within five miles of the Memphis city limits. The joint planning commission may exercise this authority with regard to all land within five miles of the city limits, regardless whether it falls within the urban growth boundaries of another city.

## ANALYSIS

This opinion concerns the powers of a city to zone and control development in an area outside its urban growth boundaries and within the urban growth boundaries of another city once a comprehensive growth plan has been adopted. Under Tenn. Code Ann. §§ 6-58-101, *et seq.*, the county and city governments within a county are authorized to develop a comprehensive growth plan that meets the requirements of the statute. Under Tenn. Code Ann. § 6-58-104(a)(7)(B):

> 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.

The term "committee" refers to the Local Government Planning Advisory Committee. Tenn. Code Ann. § 6-58-101(1). Shelby County is a charter county, and the cities within Shelby County had entered into annexation reserve agreements that were in effect on the above date. Thus, in Shelby County, the annexation reserve agreements in effect on January 1, 1998, were deemed to satisfy the requirements of a growth plan.

A comprehensive growth plan must designate urban growth boundaries, planned growth areas, and rural areas. Tenn. Code Ann. § 6-58-106. Your question is whether the City of Memphis now has zoning authority in the area outside its urban growth boundaries and within the urban growth boundaries of another city.

The Department of Economic and Community Development is authorized to designate municipal planning commissions as regional planning commissions with respect to territory outside the city boundaries under Tenn. Code Ann. § 13-3-102.

Tenn. Code Ann. § 6-58-106(d) 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.

Ordinarily, under this statute, as to territory with respect to which a municipal planning commission has been designated a regional planning commission, but not within the city's urban growth boundaries under the plan, the municipal planning commission and the city will not have planning, subdivision, and zoning authority. Op. Tenn. Atty. Gen. 99-218 (November 4, 1999) and Op. Tenn. Atty. Gen. 99-227 (December 6, 1999). But this provision does not purport to limit county zoning authority or zoning authority exercised jointly by a city and a county under applicable law. This Office has concluded, in fact, that a city may not exercise extraterritorial zoning in an area where the county has already adopted zoning regulations, whether or not a comprehensive growth plan has been adopted. Op. Tenn. Atty. Gen. 99-227 (December 6, 1999).

The request states that the City of Memphis has been designated a regional planning authority with respect to land outside its corporate boundaries under Tenn. Code Ann. § 13-3-102. But the Department of Economic and Community Development has indicated that it has no record of this designation. Instead, private acts have long provided that the legislative bodies of the City of Memphis and Shelby County exercise joint control over land use, including the exercise of zoning authority, in land within five miles of the city corporate limits. *See* 1931 Tenn. Priv. Acts Ch. 613, as subsequently amended. Later private acts authorized the City of Memphis and Shelby County to establish a joint City and County Planning Commission. 1955 Tenn. Priv. Acts Ch. 352 and 1955 Tenn. Priv. Acts Ch. 353. Research indicates that Memphis and Shelby County have created a joint planning commission with zoning authority under the authority of these private acts. *See* Memphis Code of Ordinances, Article III, §§ 26-41, *et seq.* (Memphis and Shelby County Land Use Control Board); Shelby County Code, Article III, §§ 25-71, *et seq.* General acts governing local land use planning provide that they do not affect special or private statutes in this area. Tenn. Code Ann. §

13-4-105 (private act municipal planning commissions unaffected); Tenn. Code Ann. § 13-4-309 (zoning powers of private act municipal planning commissions unaffected); Tenn. Code Ann. § 13-7-115 (county zoning laws do not affect private acts relating to county or city power to enact zoning regulations in territory lying outside of the municipality).

It appears, therefore, that the City of Memphis does not, by itself, exercise zoning or planning authority over land outside its corporate boundaries. But the private acts cited above grant it joint planning and zoning authority with Shelby County over county territory within five miles of its corporate limits. Neither Tenn. Code Ann. § 6-58-106(d), nor any other provision of the growth law, affects this private act authority. For these reasons, therefore, the adoption of a comprehensive growth plan under Tenn. Code Ann. §§ 6-58-101, *et seq.*, does not affect the private act regulatory authority of Memphis and Shelby County, acting through a joint planning commission, to zone and regulate land use in territory within five miles of the Memphis city limits. The joint planning commission may exercise this authority with regard to all land within five miles of the city limits, regardless whether it falls within the urban growth boundaries of another city

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Tre' Hargett
State Representative
106 War Memorial Building
Nashville, TN 37243-0197