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. 03-158

Annexation of Parcels along Highway

QUESTION

After the adoption of a countywide growth plan under Tenn. Code Ann. §§ 6-58-101, *et seq.,* is a city authorized to annex properties within its urban growth area that are not contiguous to existing or annexed parcels other than by the highway connecting them?

OPINION

Tennessee courts have concluded that an ordinance annexing parcels of land connected to the city limits only by a strip of land such as a highway is not *per se* invalid under the annexation statutes. In *State ex rel. Earhart v. Bristol*, 970 S.W.2d 948 (Tenn. 1998), however, the state Supreme Court suggested, in *dicta,* that such an ordinance may be invalid under Tenn. Code Ann. § 6-51-102 because the annexed territory does not adjoin the existing city limits, or is unreasonable under the same statute or Tenn. Code Ann. § 6-51-103 because it does not further orderly city development, the purpose of the annexation statutes.

ANALYSIS

This opinion concerns a city's authority to annex property within its urban growth area after a countywide growth plan has been adopted under Tenn. Code Ann. §§ 6-58-101, *et seq.* The request indicates that Lenoir City has annexed an approximately four-mile long corridor of a four-lane highway, and approximately 38 random parcels of commercial properties and residential properties that the owners have requested to be annexed. The annexation skips many residentially-zoned and residentally-occupied properties. As a result, the only connection between the city limits and the newly annexed areas is the four-lane highway that runs between the city and the annexed parcels. The city took this course of action because, as part of adopting the growth plan, it has agreed with Loudon County not to annex residential property without the consent of more than fifty percent of the property owners in property to be annexed.

Under Tenn. Code Ann. §§ 6-58-101, *et seq.,* local governments within a county are authorized to develop a countywide growth plan. The plan delineates urban growth areas, planned growth areas, and rural areas. Tenn. Code Ann. § 6-58-106. In developing the plan, a municipality may make binding agreements with other municipalities and with counties to refrain from exercising,

among other powers, the authority to annex. Tenn. Code Ann. § 6-58-104(a)(6)(A). Tenn. Code Ann. § 6-58-111(a) provides:

> (a) Within a municipality's approved urban growth boundaries, *a municipality may use any of the methods in chapter 51 of this title to annex territory;* provided, that if a quo warranto action is filed to challenge the annexation, the party filing the action has the burden of proving that:
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> (1) An annexation ordinance is unreasonable for the overall well-being of the communities involved; or
>
> (2) The health, safety, and welfare of the citizens and property owners of the municipality and territory will not be materially retarded in the absence of such annexation.

Tenn. Code Ann. § 6-58-111(a) (emphasis added). The action is tried by the Circuit Court Judge or Chancellor without a jury. Tenn. Code Ann. § 6-58-111(b). A city's authority to annex within its urban growth boundaries, therefore, is largely determined by the same statutes, and cases interpreting those statutes, governing annexation in counties before the growth plan laws were adopted.

Tenn. Code Ann. § 6-51-102 outlines annexation by ordinance. Under this statute, a municipality may, by ordinance, ". . . extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole[.]" Tenn. Code Ann. § 6-51-102(a)(1) (emphasis added). The statute does not define the phrase "territory adjoining its existing boundaries."

An annexation ordinance that includes only a highway right-of-way is void under Tenn. Code Ann. § 6-51-102 because it does not annex people, private property, or commercial activities. *State ex rel. Earhart v. Bristol*, 970 S.W.2d 948 (Tenn. 1998); *State ex rel. Collier v. City of Pigeon Forge*, 599 S.W.2d 545 (Tenn. 1980). Based on the facts presented in the request, the Lenoir City ordinance annexes a strip of highway and various parcels of land on either side of the highway. Whether, under Tennessee law, a city may annex property connected to the city limits by a narrow strip of land is not clear. In *Earhart*, the city had, in a 1989 ordinance, annexed a highway right-of-way but no property on either side of the highway. The city later passed 24 ordinances annexing property on either side of the highway. The only connection between the city limits and some of the property was the highway right-of-way. Property owners challenged the later annexations. Among other grounds, the owners argued that the later annexations were invalid because the 1989 ordinance annexing the highway right-of-way — the only link between the city and some of the later annexed property — was void because it was not authorized under Tenn. Code Ann. § 6-51-102.

The jury found that some of the ordinances were "reasonable" within the meaning of the *quo warranto* statute, Tenn. Code Ann. § 6-51-103. The trial judge found, however, that some of these ordinances were void as a matter of law. Of these ordinances, two annexed only highway rights-of-way, and seven did not adjoin the city limits except by the highway right-of way annexed in 1989. The trial judge ruled that "property annexed by ordinance which has as its only connection to the existing municipal boundaries a road right-of-way is void as a matter of law." 970 S.W.2d 950. But the trial court granted the city's motion for a new trial as to all of the ordinances found invalid, including those the judge had ruled were invalid as a matter of law.

At a new trial before a different judge, a jury found all ordinances still at issue to be reasonable. The judge in the new trial refused to issue declaratory relief regarding the legal validity of any of the ordinances, including the 1989 highway right-of-way annexation.

The trial court's refusal to issue declaratory relief regarding the legal validity of the later ordinances does not appear to be a direct issue on appeal. The Tennessee Court of Appeals found there was material evidence to support the jury's conclusion that all the ordinances were reasonable. *State ex rel. Earhart v. Bristol*, 03A01-96080-CH-00263 (February 6, 1997). The Court of Appeals also ruled that the validity of the 1989 ordinance could be challenged under the Declaratory Judgment Act, Tenn. Code Ann. §§ 29-14-101, *et seq.* But the Court ruled that the trial judge had not abused his discretion by refusing to issue declaratory judgment in the particular case.

The Tennessee Supreme Court granted the property owners permission to appeal the Court of Appeals' rulings on declaratory judgment. The Court affirmed the Court of Appeals' ruling that the validity of the 1989 ordinance could be challenged under the Declaratory Judgment Act, particularly in light of the fact that no property owner could have challenged the ordinance under the *quo warranto* procedure in Tenn. Code Ann. § 6-51-103. The Court concluded, however, that the trial court had erred in refusing to issue a declaratory judgment, and remanded the case to the trial court.

While the 1989 ordinance at issue annexed only a right-of-way, the Court's discussion reflects some readiness to question the validity of an annexation that, like the Lenoir City ordinance, annexes parcels of land connected to the city limits by a narrow corridor or highway right-of-way. The Court noted:

> *The majority of courts have interpreted the requirement that the annexed land be "contiguous" to not allow the annexation of thin strips of land to connect a larger parcel of land to a municipality. These decisions articulate the principle implicit in the Tennessee statute.* The validity of an annexation ordinance alleged to exceed the authority delegated by the legislature is subject to challenge under the Declaratory Judgment Act. And whereas Bristol is correct in

> contending that objections to reasonableness under section 6-51-102[1] must be filed within 30 days, that limitation does not apply to suits contesting the validity of an ordinance which purports to annex an area that does not include people, private property, or commercial activity and is, therefore, void.

970 S.W.2d at 953-54 (emphasis added) (citations omitted). The Court noted, "[a]t issue here is whether Bristol's somewhat ingenious annexation scheme is consistent with the purpose sought to be accomplished by the statutes authorizing municipalities to determine their own boundaries." *Id.* at 954. The Court quoted an earlier decision discussing that purpose:

> The whole theory of annexation is that it is a device by which a municipal corporation may *plan for its orderly growth and development.* Heavily involved in this is control of *fringe area developments* and zoning measures to the end that areas of unsafe, unsanitary and substandard housing may not "ring" the City to the detriment of the City as a whole. In a word, annexation gives a city some *control over its own destiny*. The preservation of property values, the prevention of the development of incipient slum areas, adequate police protection within a metropolitan area, and the extension of city services to those who are already a part of the city as a practical proposition, are the legitimate concern of any progressive city.

970 S.W.2d at 954-55, *quoting State ex rel. Collier v. City of Pigeon Forge*, 599 S.W.2d 545, 547 (Tenn. 1980) (emphasis in text). The Court noted that, in *Collier*, the Court had examined the validity of an annexation of a strip of land along a highway. The Court quoted the following language from *Collier:*

> We should emphasize that this is not, as appellants insist, merely a "strip" or "shoestring" or "corridor" annexation although it is long and lean. *Such annexations, so long as they take in people, private property, or commercial activities, and rest on some reasonable and rational basis, are not per se to be condemned.* We do not deal with an annexation wherein a city attempts to run its corporate limits down the right-of-way of an established road without taking in a single

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[1]It is not clear whether, by referring to this statute, the Court found that an "unreasonable" ordinance could be found to be void because it is beyond the city's authority to annex property under Tenn. Code Ann. § 6-51-102. The issue of reasonableness is usually the subject of a *quo warranto* action under Tenn. Code Ann. § 6-51-103. This issue is significant because, under *Earhart*, while a *quo warranto* challenge must generally be bought by a property owner within thirty days (*State ex rel. Bastnagel v. City of Memphis*, 224 Tenn. 514, 457 S.W.2d 732 (1970)), property owners outside the annexed property may challenge the validity of an annexation ordinance under Tenn. Code Ann. § 6-51-102 years after the ordinance was passed.

> citizen or a single piece of private property. Such an annexation is perhaps questionable and is not here involved. As in any annexation, and more particularly one wherein a geometrically irregular parcel of land is annexed, the Court must scrutinize the stated and ostensible purpose of the annexation.

970 S.W.2d at 955, *quoting Collier,* 599 S.W.2d at 546-47 (emphasis added). The Court also cited *Hart v. City of Johnson City*, 801 S.W.2d 512, 517 (Tenn. 1990), where the Tennessee Supreme Court found that the purpose of the *quo warranto* statute was to prevent "strip annexations." *Id.* Under *Earhart*, therefore, depending on the particular facts and circumstances, a court could conclude that an ordinance like the one in Lenoir City is not authorized under Tenn. Code Ann. § 6-51-102 or is not reasonable under Tenn.Code Ann. § 6-51-103.

At the same time, however, earlier cases have found that an annexation of a thin strip of land and some property adjacent to the strip is not *per se* invalid. The Tennessee Court of Appeals addressed this issue in *State ex rel. Moretz v.Bristol,* 03A01-9501-CH-00013 (August 30, 1995). In that case, the city annexed 4,540 feet of a highway right-of-way and a subdivision. The annexed property, therefore, was connected to the annexing city limits only by the highway right-of way. The plaintiffs challenged the annexation on the grounds that the property did not adjoin the existing boundaries of the city as required under Tenn. Code Ann. § 6-51-102(a)(1). The trial court granted the plaintiffs' motion for summary judgment. The Court of Appeals reversed the trial court. The Court of Appeals noted there was a split of authority as to the meaning of "adjoining" and similar terms in annexation statutes, but it refused to rule that a road right-of-way is insufficient as a matter of law to meet the requirement of Tenn. Code Ann. § 6-51-102 that the annexed property be adjoining. The Court quoted the passage from *Collier*, quoted above, regarding annexation of a narrow strip of property. The Court noted that the circumstances would be a factor in whether any particular annexation ordinance was reasonable.

In *Earhart,* the Tennessee Supreme Court quoted the same language from *Collier* that the Court of Appeals cited in *Moretz.* But the *Earhart* opinion does not comment on *Moretz.* It should also be noted that, in *Collier*, the City of Pigeon Forge had annexed a strip of land 400 feet wide and a mile long, consisting of a highway and the property on either side of it. The Court noted that the existing city was mostly a narrow strip of commercial development along both sides of the same highway. The annexation, therefore, clearly furthered the city's desire to regulate nearby commercial development in an orderly way. In light of *Earhart,* a court could find that an annexation of a series of parcels connected to the city limits only by a strip of land is invalid under Tenn. Code Ann. § 6-51-102, or unreasonable under the same statute or Tenn.Code Ann. § 6-51-103 where, based on facts and circumstances, it does not further this purpose.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Russell Johnson
State Representative
110 War Memorial Building
Nashville, TN 37243-0121