

STATE OF TENNESSEE

OFFICE OF THE
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Opinion No. 10-104

Metropolitan Government Charter: Expansion of Urban Services District

QUESTION

Is it legally permissible under Tenn. Code Ann. §§ 7-1-101, *et seq.*, for a metropolitan government charter to provide that the area of the metropolitan government's urban services district may be expanded only if a majority of the voters in the area to be annexed approve the annexation by a referendum vote?

OPINION

It is the opinion of this Office that a metropolitan charter provision limiting annexation to one of the methods set out by the general law (referendum) is permissible and complies with Tenn. Code Ann. § 7-2-108(a)(6).

ANALYSIS

This question concerns whether a metropolitan government may legally provide that the area of the metropolitan government's urban services district may be expanded only if a majority of the voters in the area to be annexed approve the annexation by a referendum vote.

Tenn. Code Ann. § 7-1-102(b) provides:

Chapters 1-3 of this title are hereby declared to be remedial legislation to be liberally construed as a utilization of the constitutional power granted by Amendment No. 8 to article XI, § 9 of the Constitution of Tennessee approved at an election on November 3, 1953.

Article XI, Section 9, of the Tennessee Constitution provides in relevant part:

The General Assembly may provide for the consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located; provided, such consolidations shall not become effective until submitted to the qualified voters residing within the municipal corporation and in the county outside thereof,

and approved by a majority of those voting within the municipal corporation and by a majority of those voting in the county outside the municipal corporation.

This provision was one of several amendments to Article XI, Section 9, adopted in 1953. Tenn. Code Ann. § 7-2-108 sets forth the required contents of a proposed metropolitan charter. This statute provides in relevant part:

(a) The proposed metropolitan charter shall provide:

* * * *

(2) That the territory embraced in the metropolitan government shall be the total area of the county;

* * * *

(5) For two (2) service districts within the geographical limits of the metropolitan government, a general services district and an urban services district, as to both of which districts the metropolitan government shall have jurisdiction and authority. The general services district shall consist of the total area of the county. The urban services district shall consist originally of the total area of the principal city at the time of the filing of the proposed charter with the county election commission, together with such area of any smaller cities as may be specified in an appendix duly ratified and adopted under § 7-2-107.

(6) That the area of the urban services district may be expanded and its territorial limits extended by annexation whenever particular areas of the general services district come to need urban services and the metropolitan government becomes able to provide such service within a reasonable period. ***The annexation shall be under provisions and limitations specified in the charter, consistent with those provided by §§ 6-51-101 – 6-51-106.***

(emphasis added). Tenn. Code Ann. §§ 6-51-101 – 6-51-106 generally authorize a city to annex territory in unincorporated parts of the county, either by ordinance or by referendum. Generally, annexation by ordinance does not require a referendum in the territory to be annexed.

The request inquires whether a metropolitan government charter can authorize the metropolitan government to annex territory from the general services district into the urban services district only with the approval by the majority of the qualified voters residing in the territory to be annexed. Thus, effectively, the charter would limit annexation to one of the two methods authorized by general law.

Charters governing the three consolidated metropolitan governments in Tennessee simply refer to general annexation law and do not contain a restriction on annexation authority similar to that presented here. Nashville/Davidson County, § 1.04; Hartsville/Trousdale County, § 7.04; Lynchburg/Moore County, § 7.04. But the last sentence of Tenn. Code Ann. § 7-2-108(a)(6) authorizes a metropolitan charter to adopt limitations “consistent with those” in the general

annexation laws. The phrase “consistent with” as used in a statute does not mean “exactly alike” or “the same in every detail,” but instead means “in harmony with,” “compatible with,” “holding to the same principles,” or “in general agreement with.” *Roanoke Memorial Hospitals v. Kenley*, 3 Va. App. 599, 352 S.E.2d 525 (Va. Ct. App. 1987). Thus, Tenn. Code Ann. § 7-2-108(a)(6) does not necessarily prohibit a charter from adding further limitations on annexing property into the urban services district. Further, under Tenn. Code Ann. § 7-1-102(b), the statutes authorizing consolidated governments are to be liberally construed. The charter provision described in the question would contain no requirements that are contrary to the provisions in Tenn. Code Ann. §§ 6-51-101--6-51-106; it would simply require a majority of the voters in a territory to vote in favor of their area’s annexation into the urban services district. This method of annexation is expressly set forth in Tenn. Code Ann. §§ 6-51-104 and -105. The charter limitation would prevent the consolidated government from providing and financing urban services in areas where the residents refuse to approve enlargement of the urban services district to include their territory. While it could be argued that this result is inconsistent with the general annexation laws, the designation of only one, rather than both, of the annexation methods set out in the general law would appear to be the sort of limitation to which Tenn. Code Ann. § 7-2-108(a)(6) alludes. For these reasons, we think this provision is legally permissible.

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