

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

January 10, 2014

Opinion No. 14-07

Moratorium's Effect Upon City Annexation of Property

QUESTION

The Tennessee General Assembly, pursuant to 2013 Tenn. Pub. Acts, ch. 399, approved the transfer of several properties from Davidson County to Wilson County, effective January 1, 2014. Following this transfer, is the City of Mount Juliet prohibited from immediately annexing these properties into the municipality by the moratorium on annexation in 2013 Tenn. Pub. Act, ch 441?

OPINION

Tennessee Code Annotated § 6-51-122 creates a moratorium on certain municipal annexation and prohibits the City of Mount Juliet from annexing properties into the municipality by means of annexation by ordinance upon the municipality's own initiative, pursuant to Tenn. Code Ann. § 6-51-102, until May 15, 2014. The annexation moratorium, however, does not apply to annexation by ordinance upon petition of a majority of the affected residents and property owners, pursuant to Tenn. Code Ann. § 6-51-102, nor does the moratorium apply to annexation by referendum, pursuant to Tenn. Code Ann. §§ 6-51-104 and -05.

ANALYSIS

The General Assembly has the power to establish counties and to determine and alter county lines, within the specific criteria set forth in Article X, Section 4, of the Tennessee Constitution. *Giles County v. Marshall County*, 133 Tenn. 414, 181 S.W. 308 (1915); *see also* Tenn. Att'y Gen. Op. 13-08 (Feb. 1, 2013) (concluding that constitutional requirements have been met for the General Assembly to authorize the transfer of certain properties from Davidson County to Wilson County). Acting pursuant to this authority, the General Assembly enacted 2013 Tenn. Pub. Acts, ch. 399 ("Chapter 399"), which transfers certain properties from Davidson County to Wilson County effective January 1, 2014. Nothing on the face of Chapter 399 alters the existing municipal territorial limits of the City of Mount Juliet, Tennessee.

The General Assembly, as set forth in Article XI, Section 9, of the Tennessee Constitution, also has the exclusive authority to develop the process for creating and altering authorized municipal boundaries in Tennessee. Acting pursuant to this authority, the General Assembly has authorized municipalities to annex

adjoining territory in accordance with Tenn. Code Ann. §§ 6-51-101 to -121. *See* Tenn. Att’y Gen. Op. 13-58 (July 25, 2013) (finding that absent invidious discrimination or an intent to circumvent the “one person, one vote principle,” annexation by municipal ordinance is constitutional).

Soon after enacting Chapter 399, the General Assembly also enacted an annexation moratorium, which provides in pertinent part:

Notwithstanding the provisions of this part or any other law to the contrary, from April 15, 2013, through May 15, 2014 no municipality shall extend its corporate limits by means of annexation by ordinance upon the municipality's own initiative, pursuant to § 6-51-102, in order to annex territory being used primarily for residential or agricultural purposes; and, except as otherwise permitted pursuant to subdivision (a)(2), no such ordinance to annex such territory shall become operative during such period. As used in this subsection, “municipality” does not include any county having a metropolitan form of government.

2013 Tenn. Pub. Acts, ch. 441, § 1 (“Chapter 441”) (codified at Tenn. Code Ann. § 6-51-122(a)(1)) (emphasis added). This annexation moratorium applies to any municipality-initiated annexations by ordinance, pursuant to Tenn. Code Ann. § 6-51-102, of properties being used primarily for residential or agricultural purposes and prohibits the City of Mount Juliet from annexing by such ordinance any residential and agricultural properties to be transferred to Wilson County pursuant to Chapter 399 until after May 15, 2014.¹

This annexation moratorium, however, does not apply to annexation by ordinance when the municipality is petitioned by a majority of the residents and property owners of the affected territory, pursuant to Tenn. Code Ann. § 6-51-102. The moratorium also does not apply to annexation by referendum pursuant to Tenn. Code Ann. §§ 6-51-104 and -05. Following transfer of the properties into Wilson County pursuant to Chapter 399 on January 1, 2014,² therefore, either the

¹ The Tennessee Advisory Commission on Intergovernmental Relations, an appointed panel of 25 state and local government officials and private citizens who study issues affecting state and local governmental public policies, unanimously recommended on December 11, 2013, that the moratorium on annexation by ordinance set forth in Chapter 441 be extended at least another year to May 15, 2015, or until new legislation is enacted. <http://www.tn.gov/tacir/Past%20Commission%20Meetings/2013DecMeeting.shtml> (follow link to video of December 11, 2013 TACIR meeting; approximately counter 1:07:47 to 1:19:46). The General Assembly must approve this recommendation through legislation for it to be effective. *See* Tenn. Code Ann. § 6-51-122(b) (providing for the Commission to complete a comprehensive review and to submit its report to the legislature).

² This opinion assumes that the transferred properties adjoin the City of Mount Juliet. *See* Tenn. Code Ann. §§ 6-51-102(a)(1) and 6-51-104(a) (authorizing a municipality to annex territory adjoining its existing boundaries).

affected residents and property owners or the City of Mount Juliet may immediately take steps toward annexation pursuant to Tenn. Code Ann. § 6-51-102(a)(1) or Tenn. Code Ann. §§ 6-51-104 and -05.

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