

A Short History of Tennessee's Annexation Law

- I. Theory of annexation – why must municipalities annex?
 1. Most organic form of government
 2. Created locally to provide more and better services than state or county
 - a. Dense populations create needs for:
 - i. More sanitary ways of disposing of waste
 - ii. More fire protection and building safety code enforcement
 - iii. An adequate water system with fire hydrants
 - iv. Storm water drainage
 - v. More streets and street maintenance and traffic control
 - vi. Sidewalks and street lights
 - vii. More police protection
 - viii. More land use regulations to protect property values and channel development
 - ix. More libraries, and on and on
 - b. A successful city grows and becomes the economic hub of its region
 - i. Much growth will happen just outside the city
 - ii. Urban sprawl has been a problem
 - iii. Eventually these areas also need urban services
 - c. Need for urban services in densely populated places is inevitable.
 - i. Without sewers and other utilities economic growth is impossible and sanitation problems that are a danger to the public health and safety develop.

- ii. Once-prosperous subdivisions can become incipient slums as the inadequacy of the services provided becomes apparent and property values begin to decline.
- d. Question is, since the need for these services is inevitable, who will provide them.

Number of municipalities and utility districts by state

Tennessee 346	475
Alabama 458	529
Arkansas 502	724
Georgia 535	570
Kentucky 419	634
Mississippi 296	458
Missouri 952	1,809
North Carolina 548	315
Virginia 229	186

- e. Prosperity of the state and its citizens depends on the prosperity of its cities.

II. Annexation before 1955

- a. Private acts and ripper bills
- b. 1953 constitutional amendments supported by TML and other local government organizations

- i. Prohibited abridging a term of office or altering salaries by private act
- ii. Required local approval of private acts
- iii. Authorized home rule for municipalities
- iv. Authorized consolidated government
- v. Enacted Municipal Boundaries Clause – The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered.
 - A. No more annexations by private act
 - B. No more cities created or abolished by private act
- c. TML began working with Wallace Mendelson to draft annexation law

III. Annexation under the 1955 Act

- a. Annexation by ordinance and referendum or resolution of contiguous territory
 - i. Ordinance by far most popular – referenda expensive and uncertain
 - ii. Annexation study by planning commission authorized but not required
 - iii. Public notice and hearing
 - iv. Plan of services for certain annexations required by 1961 Act but was not enforceable
 - v. *Quo warranto* to contest ordinance
 - A. Equitable action tried to chancellor without jury
 - B. Must be brought within 30 days after final passage

- C. Standing limited to aggrieved property owners in annexed area
- D. Burden of proof on plaintiff
- E. Courts treated the ordinance as a legislative act and developed the “fairly debatable” rule to determine validity of ordinance
- F. Special census authorized after annexation
- vi. No provision for contesting annexation by referendum
- vii. Larger municipalities by population have precedence over smaller municipalities in annexing the same territory
- viii. City located in same county as territory has precedence over municipality in adjacent county
- ix. The city has priority under state law in providing utilities and public services in annexed area
- A. Utility districts and other governmental instrumentalities must transfer assets to municipality – arbitration if no agreement within 60 days. **BUT THEY ARE PROTECTED UNDER FEDERAL LAW – 7 U.S.C. § 1926(b):** “The service provided or made available through any such association shall not be curtailed or limited by inclusion of the areas to be served by such association within the boundaries of any municipal corporation or other public body....”
- B. Cities must purchase electric cooperatives’ assets or grant a franchise

IV. Friction Between Cities and Counties over Revenues

- a. Cities and annexation increase the county's tax base by making industrial and commercial development possible and enhancing the value of residential property
 - b. Counties had legitimate concern about local sales tax revenues, beer tax revenues, and Hall Income Tax revenues that started accruing to cities when annexation was effective
 - c. In 1988 TML worked with TCSA to pass a law requiring that these revenues would continue accruing to the county until the end of the fiscal year.
 - d. More draconian changes in 1101
- V. Major Statutory and Case Law Developments 1955—1998
- a. 1961 Act required a plan of services for annexations greater than $\frac{1}{4}$ square mile or taking in 500 persons
 - b. 1974 Act changed burden of proof to the municipality. TML supported
 - c. 1979 case of *Moretz v. Johnson City* held that change in burden of proof destroyed presumption of validity, the “fairly debatable” rule, and allowed a trial by jury. This had a chilling effect on annexation by ordinance
 - d. 1980 case of *Collier v. Pigeon Forge* held that shoestring or corridor annexations are not invalid as long as they take in people, private property, or commercial activity (one mile long and 400 feet wide)
 - e. 1981 Act required referendum for annexations in certain counties by population. Declared unconstitutional as violating Municipal Boundaries Clause in 1987 case of *Vollmer v. Memphis*. Original statute left intact.

- f. 1983 case of *Vicars v. Kingsport* held that court review of annexation by referendum would be allowed only in cases of constitutional infirmity.
- g. 1984 Act gave standing to contest ordinance to owners of property bordering the annexed area in 14 counties. Ruled unconstitutional in *Hart v. Johnson City* in 1990.
- h. 1998 case of *Earhart v. Bristol* opened up a new way to challenge some annexation ordinances by declaratory judgment. Appears to apply only in situations where *quo warranto* is not available
- i. TML goal after the Moretz case was to defend existing annexation powers and to return to judge trials for annexation ordinances. Used committee system in House to stymie any significant decrease in annexation powers.
- j. 1995 Act required map as part of notice for annexation

VI. Tiny Towns law—Ch. 98, Acts of 1997

- a. Lowered population requirements from 1,500 to 225 under Mayor Aldermanic Charter
- b. Eliminated buffer zones under Mayor Alderman Charter
- c. Caused:
 - 1. Pandemonium – 40 places sought to incorporate; 5 actually did
 - 2. Embarrassed legislature
 - 3. Unleashed a torrent of pent-up frustration with TML
 - 4. Led to the forced resignations of TML Executive Director and lobbyists

5. Caused the General Assembly to apply the Open Meetings Law to TML and affiliates' board meetings
 6. Led up to Ch. 1101
- d.* Ruled unconstitutional as broader than its caption in *TML v. Thompson*