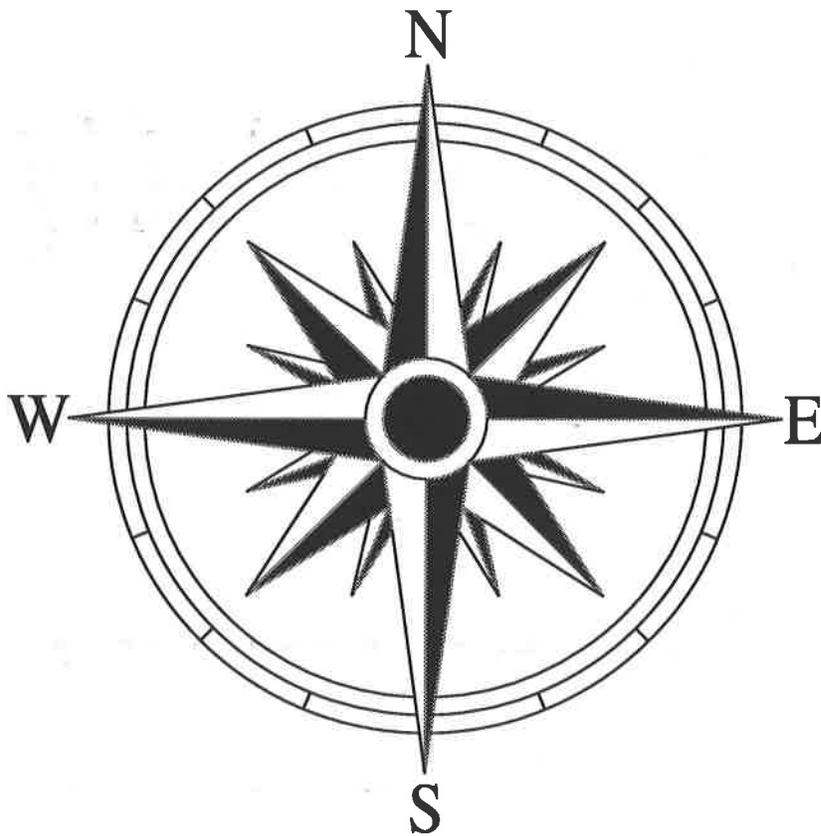


Annexation Issues In Tennessee

A Commission Report to the 99th General Assembly



**Tennessee Advisory Commission
on Intergovernmental Relations**

February 1995

Members Of The Tennessee Advisory Commission on Intergovernmental Relations

Representative John T. Bragg, Chairman
Truman Clark, Vice Chairman

City Members

Victor Ashe, Mayor
City of Knoxville

Mary Jo Dozier, Councilwoman
City of Clarksville

John Johnson, Mayor
City of Morristown

Hunter Wright, Mayor
City of Kingsport

County Members

Peggy Bevels
Lincoln County Commissioner

Truman Clark
Carter County Executive

Jeff Huffman
Tipton County Executive

Jim Rout, Mayor
Shelby County

Other Local Govt. Official Members

Judy Medearis
County Officials Assn. of TN

Maynard Pate
TN Development District Assn.

Executive Branch Members

Vacancy

Jeff Reynolds, Executive Director
Tennessee Housing Development Agency

Legislative Members

Senator Bud Gilbert
Senator Anna Belle O'Brien
Senator Carol Rice
Senator Robert Rochelle
Representative H.E. Bittle
Representative Matthew Kisber
Representative Bill Purcell
Representative Larry Turner

Private Citizen Members

Frank Crosslin, Smyrna
Wayne Hinson, Lexington
Linda Hooper, Whitwell
Dale Overton, Martin
Cromer Smotherman, Lawrenceburg

Statutory Members

Rep. John T. Bragg, Chairman
House Finance, Ways, & Means

Sen. Douglas Henry, Chairman
Senate Finance, Ways & Means

Bob Corker, Commissioner
Dept. of Finance and Administration

William R. Snodgrass, Comptroller
Comptroller of Treasury

TACIR Staff

Harry A. Green, Executive Director
John Norman, Sr. Research Associate
Frith Sellers, Research Associate
Shawn Hydorn, Research Associate
Marj Stellar, Research Assistant
Cherri Brady, Publication Assistant
Lea Ann Phelps, Adm. Specialist

Annexation Issues In Tennessee

A Report to the 99th General Assembly

John F. Norman
Principal Researcher

Harry A. Green
Executive Director and Research Director

Representative John T. Bragg
Chairman

February 1995



Acknowledgments

The conduct of this study can be seen as consisting of three essential parts. First, there was the public hearing process. We owe special thanks to the municipal and county officials and their staffs for the logistical assistance necessary to conduct our hearings. In particular, we wish to thank William Morris, the former Shelby County Mayor. To our east, we thank Mayor Victor Ashe of Knoxville and Dwight Kessel, the former Knox County Executive. Special thanks are also in order for non TACIR members of the General Assembly and the executive branch who attended and participated in our three public hearings.

The second part of this study consisted of the identification of major issues emanating from the hearings and the deliberation of these issues at three consecutive Commission meetings. All our thanks here go to our Commission members and municipal and county government representatives who attended the public hearings and Commission meetings.

The third part of this study consisted of the TACIR staff research on the annexation issue and the preparation of this report. This project was initially assigned to Ms. Susan Smithson, our former Research Analyst, now employed by the Tennessee Bureau of Investigation. However, projects of this magnitude usually always involve the entire TACIR staff. Special thanks go to Ms. Lea Ann Phelps, Executive Assistant, and Ms. Cherri Brady, our Publications Assistant, for helping to coordinate public hearings and Commission meetings. Ms. Brady is also responsible for the formatting, publication arrangements, and distribution of this report. Ms. Marj Stellar, Research Assistant, typed many draft copies of the report for staff review. John Norman, TACIR's Senior Research Associate, was responsible for most of the research and writing of the report. Ms. Frith Sellers and Ms. Shawn Hydorn, our Research Associates, helped to proof the report and provided constructive suggestions. All of the staff activities were under the direction of TACIR's Executive Director and Research Director, Harry A. Green.

Representative John T. Bragg
Chairman, TACIR
February 1995



Preface

The right of a municipality to expand its boundaries through annexation presents one of the most controversial public policy issues in Tennessee. It has been said that ninety percent of the time cities and counties can agree on public policy issues. However, the ten percent on which they cannot agree usually involves annexation policy. In too many instances, annexation results in an emotional and confrontational war of words between interests holding completely opposite opinions. On one side stands the interests of the annexing municipality. Municipal officials see annexation as the only way to implement plans for sustained growth and economic development. They see it as the only way to provide urban infrastructure, zoning and code requirements for the urban "fringe". On the other side stand citizens and county officials. Urban interests are often seen as something less than rational from the viewpoint of those about to be annexed. Persons either living in or owning businesses and property in the area often see their impending annexation as a ploy used by cities to increase the municipality's tax base. The right to impose city taxes, laws and rules on citizens the municipality does not represent are seen as a violation of basic American constitutional protection. County officials often see the proposed annexation as presenting an impending revenue crisis. County budgets, funded in part by situs based tax collections, stand to lose some of these revenues to the annexing city.

There often seems to be little, if any, "gray" area in annexation proceedings. Annexation, as an area of public policy, presents an environment full of potential conflict, confrontation and hostility to all involved parties. It is an area that presents outcomes where more often than not a compromise cannot be reached. Both sides are equally right in their actions and reactions. Both sides are afforded rights by law. Both sides are at times wary or suspicious of the motives and proposed goals of those put in the position of trying to make the annexation process less confrontational, volatile, hostile, implacable, etc. This is the position the membership and staff of the Tennessee Advisory Commission on Intergovernmental Relations has been placed. It is, however, the position in which we are rightfully placed. TACIR's statute (T.C.A. § 4-10-101) directs us to study and report on the following:

1. the current pattern of local governmental structure and its viability;
2. the powers and functions of local governments;
3. the existing, necessary, and desirable relationships between and among local governments; and
4. the existing, necessary, and desirable role of the state as the creator of the local government system.

The statute goes on to state, in T.C.A. § 4-10-104, that it is our duty to:

"Engage in such activities and make such studies and investigations as are necessary or desirable in the purposes set forth in T.C.A. § 4-10-101."

In the formative stages of our Government Modernization study, we typically looked to our mission and goals to help focus on the public policy issues most in need of study. At one time, this Commission identified the following as high priority activities to be addressed in our study:

1. coordinating a study designed to show where county and municipal services overlap and the cost inefficiencies of duplicative services;
2. determining the need of further study concerning planning and service delivery; and
3. coordinating a study of the problems unique to municipal growth and urbanization.

The conduct of this study on annexation is only one activity undertaken to improve public policy and intergovernmental relations and modernize government and government services.



Executive Summary

The Commission adopted one recommendation during the course of its deliberation on six major annexation issues. Mainly because it was the first to be addressed, the Commission's lone recommendation concerned an amendment to clarify the annexation notification process. **The Commission recommended that those sections of the Tennessee Code Annotated that address the annexation notification procedure should be amended to include the requirement of a map of the area to be annexed.**

While receiving no official recommendation, the Commission served as a catalyst for the possible resolution of the issue most repugnant to county officials: the loss of situs/state-shared taxes due to municipal annexations. At the Commission's January 12, 1995, meeting, representatives of the Tennessee Municipal League and the Tennessee County Services Association made an important announcement. As stated at that meeting, the Tennessee Municipal League and the Tennessee County Services Association pledged to reach some sort of agreement on this divisive issue. The agreement on the situs/state-shared tax issue would hinge, somewhat, on an equal effort to reduce statutory "encumbrances" to the annexation process.

The negotiation process between the Tennessee Municipal League and the Tennessee County Services Association has begun and is expected to continue through the spring and summer of 1995. The Tennessee Municipal League estimates that the results of negotiation on this important public policy issue will be presented at the 1995 Fall meeting of the Tennessee Advisory Commission on Intergovernmental Relations.

The Commission's mission is to provide a forum for the discussion, deliberation and resolution of critical and sensitive public policy issues. One of the Commission's primary goals, related to our broad mission, is to serve as a vehicle to complement discussions and negotiations stemming from competing but equally legitimate values, goals and perspectives that occur at every level of decision making. The annexation issue presents an excellent example of where public policy presents competing but equally legitimate values, goals and perspectives for most of those concerned in the process.

Legislative, municipal and county members of the Commission were present at the three public hearings on annexation. Commission members from these same three groups were present at each of the Commission's scheduled meetings where annexation issues and concerns of all were made known. The Commission's legislative members, those who eventually create annexation policy, had the opportunity to hear the issues from many different perspectives. While not shown as a finding or recommendation in the report, the following issues raised during Commission debate and deliberation may one day see action in the General Assembly:

- legislatively mandated **disincentives** to cities that annex for the sole purpose of increasing their tax base;
- objective and quantifiable **urbanization criteria** as a prerequisite for annexation;

- prohibition of annexations not in conformance with state, regional, or county-area **long range plans** that:
 - ⇒ are based on the premise that annexation is a growth tool not only for municipalities but for the state as well;
 - ⇒ set policies for economic growth and development;
 - ⇒ provide for a logical transition of services based on communication and coordination between municipal and county officials.

Resolving public policy conflicts takes time. Some may take many years to resolve. Others, like annexation policy, may take many years only to partially resolve areas of conflict. Because TACIR is a future oriented agency, the Commission keeps looking forward to see the potential impact of public policy issues, such as those associated with annexation, on the intergovernmental system. The Commission will continue to work with the Legislature, the executive branch, municipal and county officials, and all others in working to ensure the impact will be a positive one.

This report is an important contribution to knowledge about this issue and will serve as the beginning point the next occasion these issues arise.



Table of Contents

Page No.

Transmittal Letter i

Acknowledgments iii

Preface v

Executive Summary vii

Introduction..... 1

Background on Municipal Annexation 3

 Urban Sprawl and Suburbanization 3

 Transition from a "Rural" to an "Urban" State 4

 From Private Act to General Law Annexation 5

 A Change in Momentum: A Change in the Law 7

 Annexation Decided by Jury 9

Annexation Issues: Findings From the Public Hearings 11

 At Issue: The Annexation Notification Process 13

 At Issue: Annexation by Ordinance 14

 At Issue: Corridor Annexation 15

 At Issue: Loss of Situs/State-Shared Taxes 17

 At Issue: Planned Growth and Annexation 18

 At Issue: Property Tax Increases in Annexed Areas 20

Bibliography 23

Appendices 25

 1 Annexation Issues in Other States 27

 2 September 13, 1994 Meeting Minutes of the TACIR; Review of Annexation
 Testimony and Research Findings 33

 December 5, 1994 Meeting Minutes of the TACIR; Annexation Policy in
 Tennessee 36

 January 12, 1995 Meeting Minutes of the TACIR; Annexation Policy in
 Tennessee 43

 3 Private Acts, 1953, Chapter No. 528, House Bill 1133 47

 4 Distribution of Tennessee's Urban and Rural Population, By County 49

 5 Study on the Adjustment of Municipal Boundaries, Summary of
 Recommendations; Final Report of the Legislative Study Committee (1973) 51

 6 Participants in the TACIR Public Hearings on Annexation 52

 7 Example of Legal Notice using a Map of the Area to be Annexed 54

 8 Factors Considered in the Allocation of State-Local Shared Taxes to
 Local Governments and Apportionment of Collections by Fund (FY1990-94) 55

Handwritten text at the top of the page, possibly a title or header.

Handwritten text in the upper middle section, appearing to be a list or series of notes.

Handwritten text in the middle section, possibly a paragraph or a set of instructions.

Handwritten text in the lower middle section, possibly a conclusion or a signature area.

Handwritten text at the bottom of the page, possibly a footer or additional notes.



Introduction

In 1993, the 98th General Assembly directed the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) to conduct a study on municipal annexation. The General Assembly included this directive in Public Chapter No. 535, Acts of 1993, the state's Appropriations Act. The Legislature appropriated \$5,000 for TACIR to conduct the study.

While the Appropriations Act offered no specific guidance, a failed House Joint Resolution (HJR No. 58), introduced in 1993, was more specific concerning what issues to address. Had the resolution passed, HJR No. 58 would have directed TACIR to "...conduct a study relative to citizen's rights in annexation proceedings."

With all of this in mind, TACIR went about the task of establishing the parameters of our annexation study. Activities in this area consisted of both formal and informal meetings and conversations with members of TACIR, local government advocacy groups, and members of the General Assembly's House State and Local Government Committee. In consideration of the volatile nature of this important public policy issue and in an attempt to be as objective and thorough as possible, TACIR adopted the following approach to the study:

- conduct public hearings across the state to garner the views of public officials and concerned citizens;
- review the evolution of Tennessee's annexation statute;
- research the most important court cases concerning annexation in Tennessee;
- review annexation statutes of other states (examples included in Appendix 1); and
- deliberate on the issues at Commission meetings (Minutes of these meetings are included in Appendix 2).

The majority of this report addresses the issues raised at our public hearings. It was at these hearings that the people most affected by annexation had the chance to express opinions on annexation issues through their oral and written testimony. The following major issues emerged for study:

1. the adequacy of the annexation notification process;
2. the appropriateness of unilateral annexation by ordinance;
3. the reasonableness of corridor annexation;
4. the loss of situs/state-shared taxes to county government;
5. planned growth and annexation policy; and
6. property tax increases in annexed territory.

The following information has been provided for each issue:

- a brief introduction that explains the state's present policy on the issue;
- a summary of the public testimony relating to this specific policy issue;

- a very brief “issue review” that is provided to show how the particular policy evolved and its impact; and
- issue questions that may be useful in light of the Commission’s desire to address specific annexation policy.



Background on Municipal Annexation

Annexation is the method most frequently used by municipalities to change their boundaries. The annexation process is generally defined as the expansion of a municipality achieved by extending its corporate limits - boundaries - to include new territory as an integral part of the municipality. It is a process that has been in existence since the late 1700s when state constitutions were being ratified. Early annexation was accomplished in two ways. The first and most often used method was the introduction and passage of a private act of the state's legislative body. In our American federal system, local governments are legal "creatures of the states, established in accordance with state constitutions and statutes."¹ Thus, the power to extend or contract municipal boundaries "is a legislative power." The second most commonly used method was by petition from land owners living adjacent to the municipality and desiring to become part of the municipality.

In Tennessee, until the legislature passed a general annexation law in 1955, annexations were mostly accomplished via private act of the General Assembly. Before cities and counties were granted "home rule" powers, a private act of the General Assembly was about the only way for local governments to bring about needed changes. Unfortunately, at times, the powers of certain legislatures were abused; private acts were passed against the wishes of local government officials and citizens. Annexation accomplished by private acts was described as "an exercise of governmental power of which persons newly taken in could not be heard to complain; they had no voice in the matter, no power to resist, nor was any legal right of theirs infringed thereby."² An example of a private act annexation bill can be found in Appendix 3.

Urban Sprawl and Suburbanization

In the 1950s, Tennessee began to feel the growing pains caused by federal programs implemented in the 1930s and 40s to stimulate economic activity and financially assist veterans returning home from World War II. In 1934, Congress established the Federal Housing Administration (FHA) that instituted a system of low-cost home mortgage insurance. The backing of the FHA permitted banks to lend more money for a longer period of time. The congressional intent of the FHA was to stimulate residential construction and open up home ownership to more families. In time, both of these effects were achieved on a massive scale. Nationwide, housing starts went from 93,000 in 1933 to 619,000 in 1941. The FHA tended to favor new construction in suburban rather than urban developments. Federal intervention in mortgage markets fueled the dash to the suburbs.³

The automobile facilitated the rush to the suburbs. Automobile ownership rose from 25 million in 1945 to about 40 million in 1950, 62 million in 1960, 89 million in 1970, 122 million in 1980 and 190 million in 1990. Table 1 shows historical data on the increase in vehicle registrations in Tennessee.

¹ Quote by Justice John F. Dillon of the Iowa Supreme Court in the 1880s and known as the "Dillon Rule." Quoted in James A. Maxwell and J. Richard Aronson, *Financing State and Local Governments*, 3rd edition (Washington, D.C.: The Brookings Institution, 1977), p. 11.

² Opinion of the Tennessee Supreme Court in *McCallie v. Mayor of Chattanooga*, 1859.

³ John M. Levy, *Contemporary Urban Planning* (New Jersey: Prentice Hall, 1991), pp. 15-20.

Table 1
Motor Vehicle Registration
Tennessee, 1925-1991

Year	Total	Year	Total
1993	5,668,045	1970	2,049,992
1992	5,307,793	1969	1,971,160
1991	4,541,676	1968	1,906,774
1990	4,444,108	1967	1,869,918
1989	4,315,702	1966	1,757,575
1988	4,225,490	1965	1,654,682
1987	4,026,565	1964	1,573,437
1986	3,932,220	1963	1,500,566
1985	3,753,926	1962	1,429,055
1984	3,568,661	1961	1,362,868
1983	3,537,012	1960	1,307,010
1982	3,381,216	1959	1,264,255
1981	3,533,299	1958	1,203,405
1980	3,271,345	1957	1,160,042
1979	2,995,305	1956	1,131,437
1978	2,911,222	1955	1,168,295
1977	2,996,157	1950	858,111
1976	2,804,840	1945	466,677
1975	2,725,569	1940	461,183
1974	2,568,381	1935	359,618
1973	2,466,821	1930	373,534
1972	2,293,635	1925	246,511
1971	2,135,635		

Source: Tennessee Dept. of Safety, Motor Vehicle Division

In 1937, Congress established the Federal Highway Administration to fund highway projects necessitated by the increase in automobile ownership and to build better (safer) roads to the suburbs. Massive highway building programs were encouraged, subsidized by the federal government through a tax on gasoline. In 1956, the National Defense Highway Act funded the beginning of the interstate highway system. Commuting distances increased and a suburban residence for those who worked in the city became more feasible. The rush to the suburbs was followed close behind by strip commercial and residential developments.

The Tennessee Valley Authority (TVA), established in 1933, provided a combined approach to flood control, power generation, and natural resource conservation. The TVA power program facilitated rural electrification and brought industry and jobs into the valley.

Transition from a “Rural” to an “Urban” State

The combination of new highways, low cost energy and pools of low cost laborers rapidly shifted the state from an agricultural to an industrial economy during the two decades following World War II. By 1964, 31.4 percent of Tennesseans earned their living from industrial jobs as compared to 29.3 percent of the nation as a whole; only 5.7 percent received their major income from farming.⁴

It was in the 1950s that Tennessee began its transition from a rural to an urban state. Table 2 shows the urban growth pattern of the state from 1790 to 1990. The distribution of Tennessee’s urban and rural population by county, as of 1990, is shown in Appendix 4. It was also in the 1950s when citizens of municipalities and the unincorporated areas went to the polls to change the state’s annexation procedures.

⁴ Stanley J. Folmsbee, Robert E. Corlew, and Enoch L. Mitchell, *Tennessee: A Short History* (The University of Tennessee Press, 1969), p. 508.

Changing these procedures - from private act to general law - took place in this period of both rapid urban growth and suburbanization. While always present, economically segregated settlement patterns of urban and municipal development became more pronounced. This pattern of settlement combined with an ever expanding urban fringe has been dubbed "the metropolitan problem" by urban planners and sociologists. The "metropolitan problem" occurs when the residents of a municipality, for whatever reason, have the ways and means to leave the city and move to the urban fringe. Those remaining in the city are there because they either desire to stay or lack the ways and means to leave. The large migration of people and businesses from municipalities all across the nation is described as "urban sprawl." How cities handle this type of growth is identified as the most critical determinant of municipal stagnation versus progress.

From Private Act to General Law Annexation

In 1953, the people of Tennessee voted for a constitutional amendment requiring all future changes in municipal boundaries be made under terms of a general statute. The new "municipal boundary clause," Article XI, Section 9 of the Tennessee Constitution, states that "...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..."

The legislature passed the "general law" in 1955. Public Chapter No. 113 allowed municipalities two primary and distinct methods of annexation: by ordinance and by referendum. As enacted, the legislation contained the following key features:

1. A municipality could annex territory on its own initiative "...when it appears that the property of the municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property endangered...as may be necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole..."
2. A territory to be annexed had to be "adjoining" the municipality but no definition of this term was included.
3. An ordinance could not become operative until thirty days after final passage to allow quo warranto actions contesting the ordinance before it became operative.
4. Larger municipalities had precedence when two municipalities were attempting to annex the same territory.
5. Remedies to an aggrieved instrumentality of the state were limited to arbitration subject to Chancery Court review.

Table 2
Urban and Rural Population, Tennessee, 1790-1990
Decennial Census Years

Year	Total	Urban	Rural	Urban As % of Total	Rural As % of Total
1990	4,877,185	2,969,948	1,907,237	60.9	39.1
1980	4,591,120	2,773,573	1,817,547	60.4	39.6
1970	3,926,018	2,318,458	1,605,229	59.1	40.9
1960	3,567,089	1,864,828	1,702,261	52.3	47.7
1950	3,291,718	1,452,602	1,839,116	44.1	55.9
1940	2,915,841	1,027,206	1,888,635	35.2	64.8
1930	2,616,556	896,538	1,720,018	34.3	65.7
1920	2,337,885	611,226	1,726,659	26.1	73.9
1910	2,184,789	441,045	1,743,744	20.2	79.8
1900	2,020,616	326,639	1,693,977	16.2	83.8
1890	1,767,518	238,394	1,529,124	13.5	86.5
1880	1,542,359	115,984	1,426,375	7.5	92.5
1870	1,258,520	94,237	1,164,283	7.5	92.5
1860	1,109,801	46,541	1,063,260	4.2	95.8
1850	1,002,717	21,983	980,734	2.2	97.8
1840	829,210	6,929	822,281	0.8	99.2
1830	681,904	5,566	676,338	0.8	99.2
1820	422,823	0	422,823	0.0	100.0
1810	261,727	0	261,727	0.0	100.0
1800	105,602	0	105,602	0.0	100.0
1790	35,691	0	35,691	0.0	100.0

Note: 1790 population is that of territory south of the Ohio River, including area now constituting parts of Mississippi, Alabama, and Georgia. Definition of urban population before 1950: All persons living in incorporated places of 2,500 or more inhabitants and in areas (usually minor civil divisions) classified as urban under special rules relating to population size and density. Current definition of urban population:

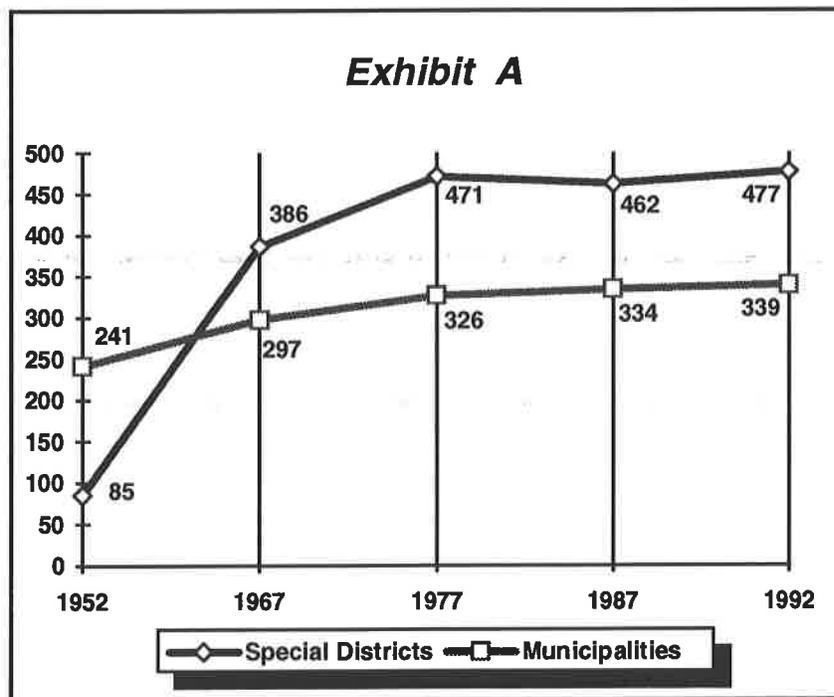
- 1) All persons living in places of 2,500 or more inhabitants but excluding those in rural portions of extended cities.
- 2) All persons living in any territory within urbanized areas.

Source: U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population, General Population Characteristics, Tennessee*, and earlier editions.

Public Chapter 113 contained provisions that greatly favored municipal annexation interests. However, aggrieved citizens could file quo warranto suits and challenge annexations in trial court. The term “quo warranto” dates back to the old English writ used to inquire by what authority the king exercised certain powers. As used in Tennessee, the quo warranto suit allows the plaintiff to contest the validity of an annexation on the ground that it reasonably may not be necessary to protect the safety and welfare of either the municipality or the area to be annexed. However, in many cases where there was a reasonable difference of opinion for the necessity of an annexation, the courts refused to interfere. In not interfering, the courts reasoned that such differences of opinion should be resolved only by the legislative actions of city councils. In cases that did go to trial, the burden of proving an annexation to be unwarranted was placed on those persons filing suit. Except for minor changes, Tennessee’s 1955 annexation law persevered for nearly twenty years. During this time, a considerable amount of annexation occurred in the state. From 1955 to 1968, annexation by referendum was effected eighteen times while annexation by ordinance was used seven hundred and sixteen times.

A Change in Momentum: A Change in the Law

Even though Tennessee’s urban growth was outstripping that of our rural areas, annexations were becoming harder to accomplish in the early 1970s. There were a number of reasons for this, including those political and those of a socio-economic nature. Suburban areas in Tennessee were becoming more densely populated and the demand for certain services and regulations began to increase. The number of special districts had been growing with Tennessee’s population during the 1950s and 60s. By 1977 special districts outnumbered municipal incorporations by 471 to 326. (See Exhibit A).



Source: Bureau of the Census, 1992 Census of Government, Volume 1, Number 1 Government Organization, 1994.

The special districts were used to carry out functions that existing units of government were not well suited to provide. Some county governments began providing urban-like services but not to the extent of special districts. Concerning annexation issues, the most powerful districts were those funded by the Consolidated Farmers Home Administration Act of 1961.

In 1961, Congress passed Public Law 87-128, the Agricultural Act of 1961. Title III, Section 301(b) of the Act is the relevant section. Three provisions of that section are of most importance to this study. This Act:

1. consolidated and brought up to date the authorities administered by the FmHA for real estate, operating, emergency and water facilities loans;
2. increased authority for water facilities loans to associations serving non-farm rural residences (emphasis added); and
3. prohibited curtailment of a water association borrowers service as a result of inclusion of its service area within the boundaries of any public body or as a result of the granting of any private franchise for similar services in the area.

Prior to the passage of this Act, loans to rural water associations could be made only if the majority of service provided went to farmers.

Lenient requirements for the establishment of utility districts encouraged their formation. In some instances, districts were formed where population density was not sufficient to support even a federally subsidized system.⁵ At the same time, many of the districts flourished and provided quality water at a reasonable rate.

During the 1970s wealthy suburbanites, county governments, and utility districts were making municipal annexation more and more difficult to achieve. These interests were putting pressure on the Legislature to change the law. A resolution passed by the 88th General Assembly in 1973 directed the now defunct Legislative Council Committee to make a comprehensive study of the entire matter of the adjustment to municipal boundaries in Tennessee. House Joint Resolution No. 159 made the following key points:

- annexation issues were a source of “continuing controversy” within the General Assembly; and
- the main source of controversy was the need for healthy growth and prosperity in the urban areas balanced against an equal need for the considerations of fairness and equity to residents of the suburbs.

The final report from the Committee acknowledged the following:

- inadequate planning in the urban fringe resulted in poor services and threats to health and safety;
- inadequate planning in the urban fringe promoted a duplication of facilities and a waste of taxpayers money;

⁵ East Tennessee Development District, *Goals and Policies for Utility Districts*, (1975), p.10.

- a proper balance between the interests of the municipality and the fringe area is a necessity; and
- basic to the adjustment of boundaries is determining who will decide - who should control the process.⁶

Thus, in 1974, the General Assembly made the first major revisions to the 1955 act. Public Chapter 753 made the following changes of relevance to the TACIR study:

1. A [municipal] plan of service was required to include elements pertaining to police and fire protection, water and electrical services, sewage and waste disposal systems, road construction and repair, and recreational facilities.
2. A public hearing on the plan of service had to be properly conducted before a municipality could adopt its plan of service. Notice of the public hearing had to be published in a newspaper of general circulation seven days prior to the hearing.
3. The burden of proving the reasonableness of an annexation ordinance was removed from the plaintiff and placed on the municipality.

Placing the burden of proof on the municipality instead of those parties challenging the annexation ordinance is one of the two revisions to the statute most repulsive to municipal interests. Municipal legal staffs argue that this particular amendment “reverses the presumption of constitutionality of legislation in favor of a presumption of unconstitutionality.”

Annexation Decided by Jury

In 1979, the Tennessee Supreme Court held that quo warranto plaintiffs were entitled to have the issue of reasonableness submitted to a jury. *The State ex rel. Moretz v. City of Johnson City* is described as the most devastating judicial blow to municipal annexation in the history of the act. This important case is discussed in relation to the annexation by ordinance issue on page 14 of this report.

⁶ “Study on the Adjustment of Municipal Boundaries”; *Final Report of the Legislative Council Committee*, (State of Tennessee, Legislative Council Committee, 1973), 30-33. Recommendations of the committee are included in Appendix 5. These recommendations set the stage for legislative action in 1974.



Annexation Issues: Findings from the Public Hearings

During Fiscal Year 1994, the TACIR conducted three public hearings on annexation issues in strategic locations across Tennessee. Following are the location and dates of these hearings:

1. Memphis, August 24, 1993
2. Knoxville, December 6 and 7, 1993
3. Nashville, June 13, 1994

At the hearings, testimony was heard by either the Commission as a whole or by special committees composed of Commission members. Appendix 6 shows the makeup of the three annexation committees and the persons presenting public testimony either verbally or in written form. Forty-five persons presented testimony over the course of three public hearings conducted by the TACIR. At the hearings, testimony was received from:

- state, county and municipal officials (including public safety officers);
- business and home owners affiliated with groups opposing present annexation statutes; and
- other private citizens or representatives of organizations with no expressed affiliation with the aforementioned groups.

From the oral and written testimony presented, the following major issues emerged for study:

- the adequacy of the annexation notification process;
- the appropriateness of unilateral annexation by ordinance;
- the reasonableness of corridor annexation;
- the loss of situs/state-shared taxes to county government;
- planned growth and annexation policy; and
- property tax increases in annexed territory.

The remainder of this section will address the major issues brought forth at the three public hearings.

Exhibit B Statutory Requirements for Annexation Notifications*

Notice in General

T.C.A. § 6-51-101(3) defines "notice" as publication in a newspaper of general circulation in the municipality at least seven (7) days in advance of a hearing.

Notice for Annexation by Ordinance (No Plan of Service Required)

T.C.A. § 6-51-102(a)(1) states that a municipality may extend its corporate boundaries by ordinance only after notice and public hearing.

Staff note: Notice, as used in this method of annexation, is achieved using the procedure stipulated in the above cited T.C.A. § 6-51-101(3).

Notice for Annexation by Ordinance Requiring a Plan of Service

T.C.A. § 6-51-102(b) states that before any territory or territories totaling more than one-fourth square mile in area or having population of more than 500 persons may be annexed by ordinance within any twelve month period, the municipality "shall" have previously adopted a plan of service. A public hearing must be held for annexations by ordinance requiring a plan of service.

The next to last sentence in T.C.A. § 6-51-102(b) stipulates that a notice of the time and place of the public hearing "shall be published in a newspaper of general circulation in the municipality seven (7) days prior to the hearing."

Notice Requirements for Annexations by Referendum

T.C.A. § 6-51-104(a) states that a municipality may, by resolution, extend its boundaries by annexation of territory adjoining its existing boundaries when such resolution is approved by voters who reside in the territory being annexed. T.C.A. § 6-51-104(b) stipulates that such resolution, describing the territory to be annexed, shall be published by:

1. posting copies of it in at least 3 public places in the territory to be annexed;
2. posting copies of it in a like number of places of the annexing municipality; and
3. by publishing notice of such resolution, at or about the same time as the required posting, in a newspaper of general circulation, if there is one, in the territory and municipality.

*As of 1-1-95

At Issue: The Annexation Notification Process

A universal topic of testimony and discussion at the hearings concerned the notification process used to inform residents of proposed annexations. The present statutory requirements for notification are shown in Exhibit B.

Those persons presenting testimony on the deficiencies of the present statutory notification requirement noted the following:

- Some property owners cannot understand the sometimes technical language of the notices.
- Notices often are not seen by persons who are away from their home for a length of time or by property owners no longer living in that municipality.
- The concept of a general circulation newspaper is ambiguous.

To alleviate these deficiencies, some testimony suggested the law be changed to require the municipality to notify property owners through first class mail.

Testimony by persons representing municipalities noted the following:

- Judging from the turnout for public hearings on annexation, the present method seems to work quite well.
- If the notification process is amended to require a first class mail notification, such requirement should not form the basis of a lawsuit by residents failing to receive notification - if the city has made a good faith effort to do so.

Issue Review: As shown in Exhibit B, notification requirements are somewhat different for each method of annexation. The common attribute to all the methods is the requirement for a "notice" in a newspaper of general circulation in the area. It must also be noted that the present definition of notice, in T.C.A. § 6-51-101(3) does not stipulate what language to use in the notice. Thus, in Tennessee, municipalities use many different methods to achieve "notice" in their local papers.

Issue Question: Notification Process

1. Should the present annexation statute be amended to:
 - require a uniform method of notification to inform residents of a proposed annexation, whether by ordinance or referendum, and regardless of the "size" of the annexation;
 - require notification in the form of a first class letter to the residents of the area to be annexed - in addition to the procedure presently required by statute;
 - in the first class notification, require a map showing the area to be annexed (Appendix 7 shows an example of notice with a map); and/or
 - require notification by first class mail to county executive(s) of the area to be annexed?

At Issue: Annexation by Ordinance

Tennessee Code Annotated § 6-51-102 permits a municipality to annex by ordinance when petitioned by a majority of the residents and property owners of the affected area. This section also allows the municipality to annex on its own initiative when it appears that the prosperity of the municipality and area to be annexed will be “materially retarded and the safety and welfare of the inhabitants and property endangered.”

Those presenting testimony in support of the option to annex by ordinance noted the following:

- Annexation by ordinance is a necessary and essential tool for the growth and development of a municipality.
- The state’s current annexation statute gives existing municipalities the flexibility to grow, thus reducing the proliferation of new governmental entities and service/tax duplication.
- The “due process” rights of annexed residents are well protected by existing state laws.

Those persons presenting testimony opposing annexations by municipal ordinance cited these reasons:

- Annexation of property by ordinance violates basic American citizenship rights by imposing city taxes, laws and rules on citizens the city does not represent.
- It is expensive for private citizens and businesses to bring suit to block proposed annexations.

Issue Review: In 1956, the Tennessee Supreme Court upheld the constitutionality of the state’s annexation law. In the case of *Witt v. McCarless*, the court found that the law was not an unlawful delegation of legislative power to the judiciary. The court noted that the power to extend or contract municipal boundaries is a legislative power.⁷ Again in 1960, the Tennessee Supreme Court found that the General Assembly may delegate its authority to annex territory to municipal corporations to subordinate legislative bodies.⁸

The *Morton v. Johnson City* lawsuit had as its main issue whether the ordinance annexing certain property was reasonable or unreasonable. The findings of the court became the basis for the “fairly debatable” rule. Basically, this rule rested on the assumption that, all things (evidence) being equal, the trial judge could withdraw the case from the jury and find for the legislative body that passed the ordinance. Legislation passed in 1974 (Public Chapter No. 753) changed the annexation statute to put the burden of proof on the municipality rather than the person(s) opposing the annexation. The 1974 legislation overturned the “fairly debatable” standard by which annexations were formerly judged.

Placing the burden of proof on municipalities was one of the recommendations of the *Final Report of the Legislative Council Committee* published in 1973.

⁷ *Witt v. McCarless*, 200 Tenn. 360, 292 S.W.2d 392 (1956).

⁸ *Morton v. Johnson City*, 206 Tenn. 411, 333 S.W.2d 924 (1960).

In 1979, the Tennessee Supreme Court, in *State ex rel. Moretz v. Johnson City*, held that quo warranto plaintiffs were entitled to have the issue of reasonableness submitted to a jury.⁹ The Supreme Court's decision is based on language in T.C.A. § 6-51-103(c). The second sentence of that section reads as follows:

"...Suit or suits shall be tried on an issue to be made up there, and the question shall be whether the proposed annexation be or be not unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality..."

According to an Attorney General's opinion rendered in 1980, the Supreme Court emphasized the "issue to be made up" phrase because it is characteristic of that used in discussing preparation for a trial by jury in a chancery proceeding. The Supreme Court reasoned that since the legislature saw fit to include it verbatim in the annexation statute, it had to be the legislative intent that the issue of reasonableness be tried by a jury if one party so requests. Furthermore, the Supreme Court reasoned that reasonableness is a mixed question of law and fact and such cases in Tennessee are for a jury to decide.

Issue Questions: Annexation by Ordinance

In consideration of fairness and equity to residents of municipalities and the urban fringe, should the final decision on annexation suits be given by the following:

- Chancery Court as it was before the *Moretz* decision (*Moretz* gave plaintiffs right to trial by jury);
- an arbitration committee or boundary commission composed of state planners and administrators;
- a special planning and growth management agency of state government with the responsibility to actively promote negotiated agreements; or
- a special annexation court appointed by the State Supreme Court and supported by an independent, impartial planning/policy research staff? Virginia uses a method like this to settle annexation issues. A summary of the system used in Virginia is included in Appendix 1.)

At Issue: Corridor Annexation

Tennessee's present annexation statute stipulates that when a municipality plans an annexation, the territory to be annexed must adjoin the existing boundaries of the municipality [T.C.A. § 6-51-102(a)(1)].

In order to annex areas of growth and potential growth not contiguous to existing borders, some municipalities have utilized "corridor" annexation. Corridor annexation, sometimes called "strip" or "finger" annexation, is the practice of using a road, river, or other right-of-way to "reach out" to an area not contiguous to the municipality.

Persons presenting testimony in support of these types of annexation stated that:

⁹ State ex rel. *Moretz v. City of Johnson City*, 581 S.W.2d 628 (1979).

- There is no other feasible means to reach out and annex the residents and businesses that have petitioned to be a part of the municipality.
- The entire county area benefits when economic development is assisted through the municipality's ability to provide services to new industry and growth outside its border.
- Some corridors are annexed because of topographical necessity.

Persons opposed to this type of annexation stated that:

- Cities sometimes annex long strips of roadway and other right-of-ways to adjoin areas they want to annex and keep other communities around them from incorporating.
- Municipalities should not be allowed to annex narrow strips of land without having to annex the areas on either side of that strip.
- Long strips of right-of-way, radiating out of the municipality, cause problems for police, fire, and other emergency service responders.

Issue Review: In 1980, the Tennessee Supreme Court held in *State ex rel. Collier v. City of Pigeon Forge* that "corridor" or "strip" annexation can meet the statutory test of reasonableness.¹⁰ The Court defined strip annexation as the "annexation of a stretch of land that is adjacent to a particular road; and usually involves long, thin strips of land." In the case of Pigeon Forge, the Court noted that Pigeon Forge is a linear city, approximately three and one-half miles long and generally runs back from the highway only a block or so in depth. In making its decision, the court did characterize strip annexation as "perhaps questionable," and suggested that a higher level of scrutiny should be given to annexations of "geometrically irregular parcels."

The adoption of objective and quantifiable urbanization criteria as a prerequisite for annexation is a recent trend in annexation law.¹¹ Some states are adopting statutory provisions that establish urbanization criteria based on the use and extent of subdivision activity in the territory. Other criteria for determining when a territory is urbanized could include the following:

- the land is currently devoted to commercial, business, or industrial uses (or is zoned or platted for those types of development);
- population density or other measure of resident population; and/or
- the amount of the territory which is subdivided.

Issue Questions: Corridor Annexations

1. Concerning "corridor" or "strip" annexations, should the language in T.C.A. § 6-51-102(a)(1) be amended to include references to the "geographical reasonableness" of an annexation?

¹⁰ *State ex rel. Collier v. City of Pigeon Forge*, 599 S.W. 2d 545 (1980).

¹¹ Laurie Reynolds, "Rethinking Municipal Annexation Power," *The Urban Lawyer*, Vol. 24, No. 2 (Spring 1992), pp. 276-278.

2. Should T.C.A. § 6-51-102(b) be amended to require a municipality to have in place a plan for growth, adopted by its legislative body at least three months before an ordinance for annexation is passed? The growth plan would be in addition to the requirement for a plan of service.
3. Should the present annexation statutes be amended to allow non-contiguous annexations?

At Issue: Loss of Situs/State-Shared Taxes

The main source of revenue for county governments is that received from their property and local option sales tax. Counties also receive a substantial amount of revenue from the following state-shared taxes:

- gasoline tax;
- motor vehicle fuel use tax;
- special tax on petroleum products;
- liquefied gas tax;
- alcoholic beverage tax;
- mixed drink tax (liquor by the drink);
- beer tax and beer permit privilege tax; and
- the Hall income tax.

The tax is allocated back to local governments based on where the transaction incurring the tax took place (situs). Counties will experience a loss of revenue as a result of municipal annexation of areas generating the tax.

Those in favor of the existing laws regarding situs taxes stated the following:

- Annexation reduces the area and the population to which counties had to provide services when the area becomes part of the city.
- Municipal investment in infrastructure brings about economic development in annexed areas which helps the city and the county broaden their tax base.

Those in disagreement with the existing situs and state-shared tax law noted the following:

- Counties have based revenue projections on the presumption that the tax would be a part of their continuing revenue stream.
- Counties need this revenue to fund existing services implemented before the loss of situs based taxes.
- Counties are limited in the amount of revenue they can generate and the removal of situs taxes exacerbates the problem.

Issue Review: A local government's population and its land area measured in square miles are two of the four criteria used by the state to distribute state-shared taxes. The other two criteria are based on "equal shares" and "origin." The origin criteria is also known as the situs - where the transaction leading to the levy of the tax took place. Appendix 8 illustrates the method of distributing state-shared taxes and the local share for 1994. The loss of situs and state-shared taxes are the principle reasons county officials are anti-annexation. Annexations

reduce situs and state-shared revenue available to county government. State-shared taxes distributed to local governments based on situs are the mixed drink tax and the Hall income tax.

In addition to state-shared taxes, local governments in Tennessee are permitted to levy a "local option" sales tax on those items and privileges subject to the state sales tax. The local option rate cannot exceed 2.75 percent and applies only to the first \$1,600 on the sale of any single item of personal property. Fifty percent of this tax goes specifically to education. The other fifty percent is distributed back to where the sale occurred; situs taxes collected in a city are distributed back to that city. If the transaction took place outside the corporate limits of any municipality, the tax revenue would be given to the county.

Another state tax of importance to local governments is the wholesale beer tax. Revenue from this tax, minus expenses retained for the wholesalers and the Tennessee Department of Revenue, is remitted by the wholesalers to local governments on the basis of the situs of the wholesaler. Because of the direct distribution by wholesalers to local governments and the 96.5 percent distribution of the tax to local governments, the tax is generally considered or treated as a local tax. Local governments, however, have neither control over the imposition of the tax, other than prohibiting beer sales, nor the tax rate.¹² According to the Tennessee Malt Beverage Association, revenue received by local governments from this tax in 1993 totaled \$76.2 million. Of that amount, \$59.5 million went to municipalities and \$16.7 million to county governments.

Issue Questions: Situs Tax Revenue Loss to County Government

1. Should the act allow the county government to "phase-out" their situs tax revenue to the annexing government over a period of four years at 25 percent per year or some other reasonable period?
2. Should a "phase out" or transfer of situs revenue from the county to the city be based on the amount of such revenue in relation to the county's total budget?
3. Should there be a requirement for sharing tax revenues between the county and the annexing municipality?

At Issue: Planned Growth and Annexation

Testimony concerning planning (long-range planning, comprehensive planning, etc.) went beyond the context of planning as it is addressed in T.C.A. § 6-51-102(b). That section of the Code states that there must be a plan of service when the annexation involves an area of one-fourth square mile or 500 persons. This part of the statute addresses planning from the view point of what will be provided after the annexation. It does not address the long-range, strategic type of urban and regional planning some see as necessary for rational growth of both the city and its surrounding area.

Those who saw a problem with the existing planning requirement noted the following:

¹² Tennessee Department of Revenue, *State Revenue System*. Nashville, Tennessee, 1994.

- The lack of a comprehensive plan may inhibit the orderly extension of municipal boundaries and, subsequently, inhibit the orderly and effective delivery of urban services.
- A comprehensive plan allows citizens and policy makers in the city and the county to better judge the effect of an annexation.

Those testifying from the municipalities' viewpoint echoed some of the sentiments of the other side. Their testimony stated the following:

- Long range plans enable the city planning commission and city council to anticipate when developing areas may need to be or want to be part of the municipality.
- Long range planning sometimes resolves conflicts within the city legislative body concerning services to be delivered to the areas planned for annexation.
- Well-planned annexation helps prevent fragmentation of government, the duplication of government services and the proliferation of new municipal governments and special districts.

Issue Review: Problems caused by inadequate planning in the “urban fringe” were discussed in the Legislative Council Committee’s 1973 *Study on the Adjustment of Municipal Boundaries*. The Committee recognized that no planning or inadequate planning too often resulted in poorly designed and maintained roads, and inadequate water, sewage, and solid waste disposal facilities. The Committee also noted the potential for a duplication of services and facilities due to poor planning. The Committee’s report noted that the municipality could become the unit of government to meet the needs of the fringe area through annexation based on an orderly and developed plan; annexation should not just serve the municipality as a source of tax revenue.

While a plan of service amendment to the annexation statute was passed in 1961, the Legislative Council Committee believed the statute should be clarified to specify a minimum of services to newly annexed areas. In 1974, the General Assembly adopted Public Chapter No. 753 that required the following elements to be included in the plan of services:

- police and fire protection;
- water and electrical services;
- sewage and waste disposal systems;
- road construction and repair; and
- recreational facilities.

This section of the statute was later amended to include “zoning services.”

Nowhere in the existing annexation statute is there mention of a long-range or comprehensive plan for municipal development. However, testimony at the public hearing in Knoxville by some mayors and municipal planners revealed that annexation may be more readily effected when the annexation was part of the city’s comprehensive plan. The efficiency of planning has also been recognized by the courts. In an annexation suit in 1978, Chief Justice Henry of the Tennessee Supreme Court noted:

“Annexation is a devise by which a municipal corporation may plan for its orderly growth and development...In a word, annexation gives a city some control over its own destiny.”¹³

Ed Young, Associate Executive Director of the Tennessee Municipal League, noted the importance of planning in an April 1993 article in *Tennessee Town and City*. In Dr. Young's article, he strongly suggested that municipalities could not “overemphasize the importance of proper planning and execution” for annexations. He went on to note that a comprehensive plan is an essential element of the annexation process and “[i]t shows thought. It is good public relations. It gives people time to get use to the idea.”¹⁴

The common thread in comprehensive or strategic planning is the conscious effort to systematically define and think through a problem to improve the quality of decision making - whether in the public or private sector.

Issue Questions: Planned Growth and Annexation

1. Should the state require all municipalities to prepare and annually update a comprehensive plan of growth, covering a period of at least the next five years or some other reasonable period as a prerequisite to annexation by any method other than petition?
2. Should the state require municipalities and counties to work with regional planning bodies on growth management plans?
3. Should municipal annexations be tied to a statewide comprehensive urban and regional growth plan?

At Issue: Property Tax Increases in Annexed Areas

In Tennessee, residents and business owners of an area outside of municipalities (unincorporated areas) pay only the county tax levied on their property. When an area is annexed by a municipality, residents and businesses must pay both the county property tax and the property tax of the city, if it has one. Along with the extra tax comes the extra urban-type services previously, for the most part, unavailable to the resident or business in the unincorporated area.

Those persons testifying on this issue stated the following:

- They could contract with providers of urban services, such as fire, police, solid waste collection, etc., at a cost lower than their increased tax cost.
- Some residents of the annexed area simply could not stand the tax increase and might possibly lose their homes and businesses.

Persons speaking from the municipalities' point of view stated that:

¹³ Opinion of Tennessee State Supreme Court Justice Henry in *City of Oak Ridge v. Roane County*, 563 S.W.2d 895 (1978)

¹⁴ Young, Ed. *Annexation: The Most Important Municipal Power*. *Tennessee Town and City*, April 12, 1993, p.1.

- Services provided to the new area sometimes cost less than those previously charged by contracted service providers.
- There are more services provided that cannot be contracted efficiently such as sewage and solid waste collection and disposal.
- Insurance costs are generally lowered by the improved fire ratings of those living in the city.

Issue Review. Persons living in unincorporated areas often cite the prospect of paying higher property taxes as their major reason for opposing annexation. Over the years, some cities have tried various schemes to either exempt or phase in property taxes levied on newly annexed territory.

As early as 1898, the City of Memphis attempted to exempt from taxation certain property being annexed until service could be provided.¹⁵ The State Supreme Court found that such practice violated Article II, Section 28 of the Constitution of Tennessee. The controlling language of that section reads:

“The ratio of assessment to the value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct. Each respective taxing authority shall apply the same tax rate to all property within its jurisdiction.”

Issue Questions: Property Tax Increases in Annexed Areas

1. Should the state amend the present annexation statute to allow municipalities to “phase in” the city property tax on the newly annexed areas, based on the time frame new city services are implemented in the annexed area?
2. Should the state permit municipalities the right to annex territory and impose no new property taxes for a specified time period?
3. Should the state prohibit municipalities that have no property taxes from annexing by ordinance?

¹⁵ *Jones v. Memphis*, 101 Tennessee 188, 1898.



Bibliography

- Bingham, Herbert J. *Municipal Politics and Power*. Nashville: Municipal Press, 1986.
- Bureau of the Census, *1992 Census of Government*, Volume 1, Number 1 Government Organization, 1994.
- City of Knoxville, Tennessee. *Annexation Law Reform: A Study and Proposed Amendments for Legislative Consideration*, 1987. (Prepared for presentation to the Local Government Subcommittee of the State and Local Government Committee of the Tennessee House of Representatives.)
- Council of State Governments, *The States and the Metropolitan Problem*. Chicago, 1956.
- County Technical Assistance Service. *Tennessee County Government Handbook*. The University of Tennessee, 1994.
- Dusenburg, Patricia J. and Boyle, Thad L. *Southern Urban Trends 1960-1977*. Southern Growth Policies Board Research Report, 1978.
- Dusenburg, Patricia J. *Suburbs in the City: Municipal Boundary Changes in the Southern States*. Southern Growth Policies Board Research Report, 1980.
- East Tennessee Development District, *Goals and Policies for Utilities*, 1975.
- Folmsbee, Stanley J., Corlew, Robert E. and Mitchell, Enoch L. *Tennessee; A Short History*. Knoxville: The University of Tennessee Press, 1969.
- Greene, Siefert L., Grubbs, David H. and Holiday, Victor C. *Government in Tennessee*. The University of Tennessee Press, 1982.
- Levy, John M. *Contemporary Urban Planning*. New Jersey: Prentice Hall, 1991.
- Rosenberg, Louis T, and Curtis, John J. *Rural Water Associations Statutory Ally Against Municipal Territorial Encroachment: >U.S.C. § 1926(b)*. Law Offices of Louis T. Rosenberg, Texas Bank North Building, San Antonio, Texas 78232.
- Reynolds, Laurie. *Rethinking Municipal Annexation Powers*. The Urban Lawyer Vol. 24, No.2 (Spring 1992), 247-303.
- Rusk, David. *Bend or Die*. State Government News, Feb. 1994, pp. 6-10.
- Tennessee Department of Revenue. *State Revenue System*. Nashville, Tennessee, 1994.
- Tennessee Legislative Study Council. *Study on the Adjustment of Municipal Boundaries: Final Report of the Legislative Study Council*, 1973.
- U.S. Advisory Commission on Intergovernmental Relations. *Local Government Autonomy: Needs for State Constitutional Statutory, and Judicial Clarification*, 1993.

U.S. Advisory Commission on Intergovernmental Relations, *State Laws Governing Local Government Structure and Administration*, 1993.

University of Tennessee, Center for Business and Economic Research, *Tennessee Statistical Abstract 1992/93*, 1993.

Webster, Donald H. *Urban Planning and Municipal Public Policy*. New York: Harper and Row, 1958.

Young, Ed. "Annexation: The Most Important Municipal Power." Tennessee Town and City, April 12, 1993, p.1.

Appendices



Appendix 1

Annexation Issues in Other States

Comparison Of Methods Of Annexation Based On Issues From The Hearing

Issue	Tennessee	Alabama	Georgia	Florida	North Carolina	South Carolina	Virginia
Notification Method	Notice in Local Newspaper published 7 days prior to a hearing	Notice in Local Newspaper	Notice in Local Newspaper	Notice in Local Newspaper consecutively at least 2 weeks before referendum	Notice in Local Newspaper and Posted in 3 or more public places		Advertisement to the affected locality of proposed boundary line
Plan of Services	Yes			Yes	Yes		
Referendum	Yes			Yes	No		No
Annexation based on 100% of the property owners residents	No		Yes	Yes	Yes		Yes
Satellite or Non-Contiguous Annexation	No	No	No	No	Yes	No	
Consolidation	Yes			Yes	Yes	No	Yes

All of the selected southern states that have been analyzed require notification in a local newspaper. It was suggested at the hearings that a first class notification method should be considered. Of those states that require notification, none of them require first class notification of the property owners or residents.

SPECIAL FEATURES AND ISSUES OF ANNEXATION IN OTHER STATES

Florida

Florida's annexation statute requires that an area can be annexed only if it meets certain requirements. These requirements are similar to those in other states such as population density, commercial development, subdivision lots, etc., except for two. If the area is urban by other standards but is separated from the municipality by sparsely developed land, the municipality may annex that land and the area urban in nature. Such annexations allow municipalities to supply services like water and sewer lines to the developing area.

The statute also stipulates that annexed territory shall not be subject to municipal property taxes for the current year if the effective date of the annexation falls after the municipality levies such tax.

Source: Florida Statutes 1993, Chapter 171.

South Carolina

South Carolina's municipal annexation policies do not allow their cities to grow. Growth has been curtailed by restrictive annexation policies that prohibit municipal governing bodies from initiating a process to broaden city boundaries. Problems that have resulted from these restrictive annexation policies are:

- the proliferation of special districts;
- formation of small municipalities;
- fragmented service delivery system;
- minimization of economies of scale in the delivery of urban services; and
- deterioration of inner business districts.

Recommendations of the South Carolina ACIR:

- Municipalities should have access to an additional method of annexation in which city councils may formally initiate the process by resolution. No citizen petition would be necessary. A referendum would be held only in the area proposed for annexation.
- Municipalities should be permitted to annex "enclaves" or islands through the simple adoption of annexation ordinances by the municipal governing body.
- More stringent notification requirements should be introduced into the process. These may include first class mail notification of a pending annexation action being issued to all property owners in an area projected for annexation.

Source: South Carolina Advisory Commission on Intergovernmental Relations. *Elements of a Growth Policy for South Carolina*, 1994.

North Carolina

North Carolina is said to have one of the strongest annexation statutes in the nation because the basic premise is "urban means municipal." The 1959 North Carolina General Assembly declared as a matter of State policy that "sound urban development is essential to the continued economic development of North Carolina." In 1983 amendments to the annexation law repealed all local acts which restricted the annexation authority of various municipalities; annexation methods that were previously not available to cities under 5,000 population are today.

Methods of Annexation

North Carolina's annexation statute provides for annexations by ordinance and by special act of the General Assembly. Annexation by ordinance is allowed under the following conditions:

- when petitioned by all owners of real property in a contiguous area;
- if the municipality has less than 5,000 population and the area meets statutory standards of contiguity and intensity of development;
- if the property is contiguous and owned by the municipality;
- if areas not owned by the municipality do not at any point touch its primary corporate limits (Satellite Annexations); and

- by ordinance upon petition by all owners of real property in a satellite area.

Annexations may also be achieved through the passage of a special act of the General Assembly when the municipality requests its local legislative delegation to introduce a bill.

When a municipality with a population less than 5,000 population annexes by ordinance, the area must meet the following standards:

- At least one-eighth (12.5%) of the total external boundary of the area must coincide with the municipal boundary.
- No part of the area may be within another incorporated municipality.
- The area must be “developed for urban purposes,” which means any area so developed that it meets both of the following tests:
 - Use Test. At least sixty percent (60%) of the total number of lots and tracts are used for residential, commercial, industrial, institutional or governmental purposes; and
 - Subdivision Test. The area is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts five (5) acres or less in size.
- Wherever practical, natural topographic features such as ridge lines and streams and creeks shall be used as boundaries. Streets may also be used as boundaries.

For satellite annexation, upon petition of all owners of real property in the area, the following standards must be met:

- The nearest point on the satellite area must not be more than three miles from the primary limits of the annexing municipality.
- No point on the satellite area may be closer to the primary limits of another municipality than to the primary limits of the annexing municipality.
- The area proposed for annexation must be so situated that the municipality will be able to provide the same services within the satellite area that it provides within the primary limits.
- If the area proposed for annexation, or any portion thereof, is a subdivision, all of the subdivision must be included.
- The area within the proposed satellite limits plus the area within all other satellite corporate limits may not exceed ten percent of the total land area within the primary corporate limits of the annexing municipality.

Standards for annexation of satellite areas owned by the municipality are the same as those above.

Non Compliance with Service Plan

Any person owning property in the annexed area who believes that the municipality has not followed through on its service plan as set forth in the report and the annexation ordinance may apply to the Superior Court for a writ of mandamus. The Court may grant relief upon finding that the municipality has failed to provide services on substantially the same basis as in

the rest of the municipality or has failed to let contracts for any required water and sewer construction. If a writ is issued, costs in the action, including a reasonable attorney's fee for the aggrieved person, will be charged to the municipality.

Proration of Property Taxes

If the annexation becomes effective after June 30 and before September 2, prorated taxes are due and payable on the first day of September of the fiscal year for which the taxes are levied. If the annexation becomes effective after September 1 and before the following July 1, the prorated taxes are due on September 1 of the next fiscal year.

Source: North Carolina Statutes, Chapter 160A, Parts 1-8.

Virginia

Annexation in Virginia virtually always creates serious conflicts because of the constitutional separation of cities and counties as governmental units. Annexation transfers land, population, and tax base from a county to the annexing city. Substantial areas of land--between 2 and 15 square miles--typically are transferred, sometimes encompassing thousands of residents and millions of dollars in assessed valuation. Annexation often targets a county's most developed commercial and industrial areas. For counties, therefore, annexation presents a "dead loss" and is opposed by using every available legal and political means.

Annexation in Virginia is accomplished through the judiciary. A city begins the process by petitioning the Virginia Supreme Court, which appoints a special three-judge court to hear the annexation case. The special court follows statutory guidelines, but its rulings are not narrowly confined; it may prescribe, for example, different boundaries for the annexation. The city and the opposing county employ specialized annexation attorneys and technical advisors; once the case begins, local elected officials usually have little involvement.

In 1979, the General Assembly created a new state agency, the Commission on Local Government, to support negotiated resolution of annexation disputes as an alternative to litigation. Contending parties still may rely on adversary hearings before the special annexation court, but the commission actively encourages the alternative of voluntary, negotiated settlement.

The Commission on Local Government has two principle functions: 1) to conduct independent investigations and report findings to the annexation courts; and 2) to serve as a mediator between local governments and actively promote negotiated agreements. All annexation actions still must be reviewed and approved by the annexation court. Cases brought to the court without negotiation are settled by traditional litigation and the ruling of the court, except that the commission provides an additional dimension. The commission may investigate the case and submit an advisory report to the court. If a case is negotiated out of court, the commission reviews the agreement to determine whether it preserves the state's interests. If the commission raises objections to an agreement, the parties may revise it or proceed to the annexation court. The court, however, is constrained to accept or reject a negotiated annexation agreement. The court usually has followed the commission's recommendations.

Source: National Conference of State Legislatures, *Economic Development Conflicts: Model Programs for Dispute Resolution*.

A SIMPLE CLASSIFICATION OF ANNEXATION MODELS FOR THE 50 STATES

Laws governing annexation are derived from state legislatures and occasionally from state constitutions. The courts have ruled that the power to alter municipal corporations is incident to the power to create and abolish municipal corporations, a power that state legislatures possess. State lawmakers may either decide each proposed annexation or enact general legislation that prescribes the methods by which municipal boundaries may be changed. The methods of annexation can be generally classified into five categories:

- ◆ **popular determination**-allows residents who are most affected by the annexation to initiate and confirm the annexation or participate in its approval;
- ◆ **unilateral municipal determination**-allows municipalities to alter its boundaries at will without obtaining consent of the area to be annexed;
- ◆ **legislative determination**-the state legislature retains authority to ratify annexation;
- ◆ **judicial determination**-empowers a state court to review and enact a proposed annexation; and
- ◆ **administrative determination**-involves the creation of an administrative board to approve annexation proposals.

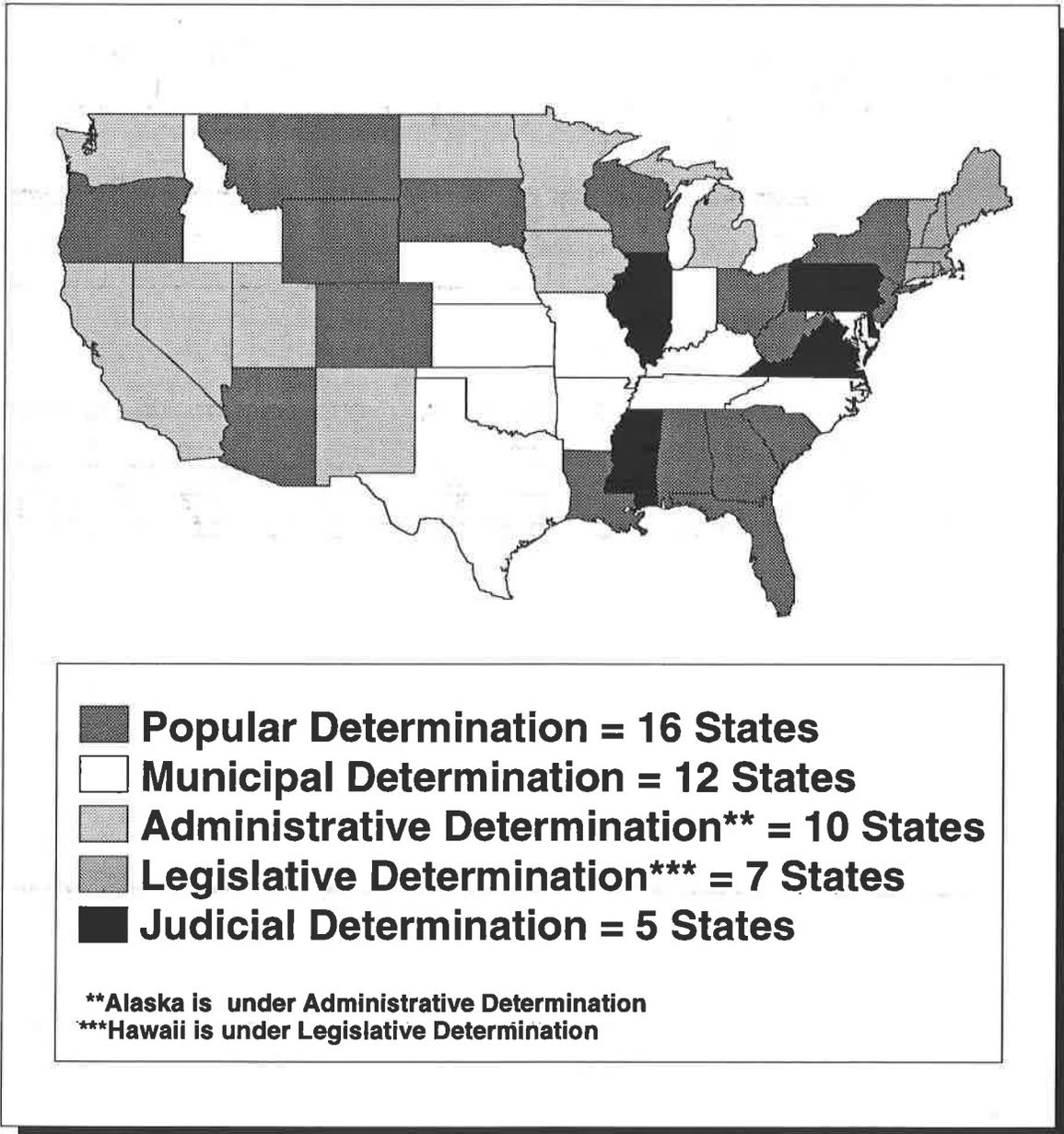
The unilateral annexation is the least restrictive for municipalities with popular and legislative determination the most restrictive.

	# of States
Popular Determination: Annexation decisions are made by local "residents" through referendum or petition; depending on the statute, "residents" may be defined as the municipal electorate, the owners and inhabitants of the annexed area, and/or the electorate of the diminished territory. (AL, AZ, CO, FL, GA, LA, MT, NJ, NY, OH, WV, WI, SC, SD, WY, OR)	16
Municipal Determination: The extension of municipal boundaries through the unilateral action of local governing bodies. (ID, NE, NC, IN, KS, KY, MD, OK, TX, AR, MO, TN)	12
Administrative Determination: An independent, non-judicial board or commission determines whether or not a proposed annexation should occur. (AK, CA, IA, MI, MN, WA, NM, NV, ND, UT)	10
Legislative Determination: The state legislature, lacking the desire or ability to delegate such responsibilities, deliberates each annexation proposal. (CT, HI, ME, MA, NH, RI, VT)	7
Judicial Determination: The state's judiciary determines whether or not a proposed annexation should occur. (MS, VA, PA, DE, IL)	5

*Note: None of these models is pure. Each has some type(s) of subordinate provisions that relate to one or more of the other models.

Source: Thomas D. Gallaway and John D. Landis, How Cities Expand? Growth and Change, October 1986.

A SIMPLE CLASSIFICATION OF ANNEXATION MODELS FOR THE 50 STATES



Note: None of these models is pure. Each has some type(s) of subordinate provisions that relate to one or more of the other models.

Source: Thomas D. Gallaway and John D. Lands, *How Cities Expand? Growth and Change* October 1986.



Appendix 2

September 13, 1994 Meeting Minutes of the TACIR Review of Annexation Testimony and Research Findings

These minutes contain comments from the following persons

TACIR Members

Representative John T. Bragg, Chairman
Mr. Truman Clark, Carter County Executive, Vice Chairman
Ms. Mary Jo Dozier, Councilperson, Clarksville
Mayor John Johnson, Morristown
Mr. Maynard Pate, Executive Director, Greater Nashville Regional Council
Senator Bob Rochelle
Mayor Hunter Wright

TACIR Staff

Dr. Harry Green, Executive Director and Research Director
Ms. Susan Smithson, Research Analyst,

Dr. GREEN summarized the annexation information provided in the docketbook. He said the information was divided into the following three areas:

- Part 1:** A classification of methods and annexation policies in all 50 states;
- Part 2:** A summary of the findings on attitudes of Tennesseans about annexation; and
- Part 3:** A summary of the major issues brought forth at the TACIR public hearings on annexation.

Dr. GREEN commented upon the timeline for the annexation report. He said the General Assembly did not specify a time for the submission of the study. He noted that to implement recommendations in the report, it should be submitted by January 30, 1995.

Dr. GREEN stated that the annexation issue to be addressed is extremely broad in scope, and covers more than just annexation. He said the overriding issue is the policy of the state in managing urban growth or, put another way, "growth management policies." He said Tennessee has had limited strategic planning in this area and has relied on annexation at the exclusion of other policies to guide growth.

Dr. GREEN then discussed Part One of the Docketbook: "A Simple Classification of Annexation Models for the 50 States." He described the models as follows:

- Popular Determination, which basically allows residents to decide annexation decisions through referendum or petition;

- Municipal Determination, which allows the extension of boundaries through the unilateral action of cities;
- Legislative Determination, where state legislative bodies deliberate each annexation proposal;
- Administrative Determination, where an independent, non-judicial board or commission has the final word; and
- Judicial Determination, where states let their courts decide on proposed annexation.

Dr. GREEN said that the second part of the information concerned a Master's thesis prepared by Jay C. Vincent from the University of Tennessee. Dr. GREEN said the thesis contained survey findings on the attitudes of Tennesseans on annexation. Dr. GREEN then asked Ms. Susan Smithson, TACIR staff, to report on the major issues brought forth at the Commission's three annexation hearings.

Ms. Smithson stated that the following major issues were brought forth:

- Annexation notification process as required by statute;
- Principles of annexation by ordinance versus those by referendum or other method;
- The ethics or necessity for "strip" or "corridor" annexations;
- Revenue issues relating to situs tax losses and increased property taxes; and
- Planning for the rational development of municipal growth and the provision of urban services.

Chairman BRAGG asked the Commission to discuss each of the issues beginning with the notification process—can it be made better or should it stand as is? Senator ROCHELLE discussed a map as part of the notification process. He wondered if requiring cities to publish a map of the proposed annexation area would cause any problems. Mayor WRIGHT of Kingsport said that his city uses the tax rolls and sends letters and a map to the affected property owners. He said it works well and shows a good faith effort to notify citizens. Ms. Mary Jo DOZIER noted that local governments are making a good faith effort; a system that has worked for forty years should not be changed. Mayor JOHNSON of Morristown said his city puts up signs in areas to be annexed. After much discussion of this issue, Senator ROCHELLE suggested that municipalities might, by ordinance, bind themselves into additional notification procedures that go beyond the present statutory notification requirements.

There being no other comments on this issue, Chairman BRAGG went on to the Annexation by Ordinance issues. Mr. Maynard PATE stated that the main purpose of annexation is to accommodate growth in the city, county, and region. He stated that the Greater Nashville Regional Council (GNRC) has brought officials in the area together to discuss growth, and planning for growth. He said the GNRC has adopted a policy that growth should be accommodated by reliable and responsible delivery of urban services. Mr. PATE further stated that the primary reason for the existence of cities is to provide these services; if we did not have annexation to help cities grow responsibly, we could not accommodate the growth

projected for this area. He said it is not economical or rational to go out and create new sources to provide infrastructure for new growth. Mr. PATE also noted that there was a lack of communication between an annexing city and the county where the annexation was taking place. He said we lack the requirement that there be some type of logical transition between urban- and county-provided services. He recommended that cities and counties coordinate service transitions when annexation occurs. He said we should view annexation policy not as a growth tool only for municipalities, but for the entire state. Mr. PATE noted that we need to use several tools: thorough planning; legislation that permits cities to plan outside their boundaries in a formal way; and the development of long-range plans for the provision of services.

Chairman BRAGG stated that these issues are why the Commission is looking at annexation. He said this Commission must determine if the present process and our present laws are conducive to rational growth across the state. He stated that if we have no recommendations to give the General Assembly, we are assuming that everything is all right. Chairman BRAGG did note that the Commission should take a close look at problems to see if there is a better way to address them.

Senator ROCHELLE asked what potential solutions exist for what he sees as the biggest problem out there: loss of situs based tax revenue by the county. Mayor WRIGHT said we need to quantify what this impact to county government actually is. Carter County Executive Truman CLARK said a solution to the situs issue might reduce complaints about annexation. There were no other comments concerning this issue.

Chairman BRAGG then discussed corridor annexation issues. There were no comments concerning this issue.

Chairman BRAGG then discussed planning for municipal growth and the provision of services. Dr. GREEN said that most testimony at the annexation public hearings concerned local issues and not the broad-based issues of state growth policy. He said the state has a vested interest in determining strategic plans and policies for economic growth and development, health services, and in minimizing cost for state and local government programs. He said the state needs to focus more closely on all of these growth factors and indicators. Chairman BRAGG said the Commission has a mandate to determine the best possible solution among all branches and levels of government. He said long-range planning is something that needs to be addressed, and if there are hindrances to that, the Commission should try to solve them. Mayor JOHNSON said the question of planning was moot in his area because one lawsuit kills an annexation plan. He said the courts have more power over planning than the legislature. He noted the courts have converted the method of annexation and dramatically hindered a city's ability to implement logical plans. He further stated that cities now have to convince juries that the plans will work. Senator ROCHELLE stated that one way to facilitate implementation of annexation plans is to bring people from the area to be annexed into consideration. Representative KISBER noted that feedback from legislators in other states indicated Tennessee has a good—but not perfect—annexation statute. He said we need to be careful in our deliberations and not damage something that has worked well.

Chairman BRAGG directed staff to take these discussions and see if they can refine what they have previously provided in Tab 6. He asked staff to check with both TML and TCSA for their suggestions about the types of maps that could be used in the notification process. Senator ROCHELLE said one other area in need of discussion (as a policy matter) was whether we needed to differentiate between cities that do not have a property tax and those that do. He

said cities without a property tax should perhaps not be allowed to annex an area just to get the situs tax generated by businesses in that area. This concluded the deliberation on annexation.

**December 5, 1994 Meeting Minutes¹⁶ of the TACIR
Annexation Policy in Tennessee**

These minutes contain comments from the following persons

TACIR Members

Representative H.E. Bittle
Representative John T. Bragg, Chairman
Mr. Truman Clark, Carter County Executive, Vice Chairman
Senator Bud Gilbert
Senator Douglas Henry
Mr. Jeff Huffman, Tipton County Executive
Mayor John Johnson, Morristown
Representative Matt Kisber
Mr. Maynard Pate, Executive Director, Greater Nashville Regional Council
Senator Bob Rochelle

TACIR Staff

Dr. Harry Green, Executive Director and Research Director
Mr. John Norman, Research Associate

Other Local Government Interests

Mr. Doug Goddard, Executive Director, Tennessee County Commissioners Assn.
Mr. John New, Tennessee Municipal League
Mr. Joe Sweat, Executive Director, Tennessee Municipal League

Chairman BRAGG asked DR. GREEN to introduce this subject. DR. GREEN said the TACIR was conducting this study at the direction of the General Assembly. He said the Commission conducted three public hearings across the state (in Memphis, Knoxville and Nashville) to garner the views of the public and their elected officials. He referred members to the results of these hearings in their docket books. He stated that the following six major annexation issues emerged from the public hearings:

1. the adequacy of the present annexation notification process;
2. the appropriateness of unilateral annexation by ordinance;
3. the reasonableness of corridor annexation;
4. the loss of situs/state-shared taxes to county government;
5. planned growth and annexation policy; and
6. property tax increases in annexed territory.

Dr. GREEN asked John NORMAN, TACIR Staff, to go over the material in the staff analysis for each of the six major issues. Mr. NORMAN began with the annexation notification issue. He said persons opposed to the present method gave the following reasons:

¹⁶ Minutes of this meeting have not yet been adopted by the Commission.

1. It is at times difficult to understand the technical language of the notices;
2. Property owners no longer living in the area or away on vacation or business may not see the notice; and
3. The concept of a general circulation newspaper is ambiguous.

Mr. NORMAN noted that after the staff analysis of this issue, staff had posed "issue questions" that, when addressed, might form the basis for a solution. He said the issue questions on notification asked if the present statute should be changed to either:

- require a uniform method of notification to inform residents of a proposed annexation, whether by ordinance or referendum, and regardless of the size of the annexation;
- require notification in the form of a first class letter to the residents of the area to be annexed - in addition to the procedure presently required by statute;
- in the first class mail notification, require a map showing the area to be annexed; or
- require notification by first class mail to county executives of the area to be annexed.

Mr. NORMAN directed the Commission to examples of notifications utilizing maps that were included in their docket books.

Senator GILBERT noted that he believed annexations were changing into what he labeled "strategic" annexations. He said this type was accomplished often by cities annexing only one tract of property involving one property owner. Senator GILBERT said this type of annexation is probably most to blame for the perception that cities were not adequately notifying property owners. He stated that the Commission should keep in mind the implications of strategic annexation. Representative KISBER said that type of annexation may be attributable to the leadership of a particular community. He said West Tennessee did not have the geographical problems of those in East Tennessee. He said cities in West Tennessee had less corridor and single tract annexations. He said we should carefully consider this issue in the context of what is best for an overall state policy.

Mayor JOHNSON stated that we should be careful not to recommend layer upon layer of notification requirements on municipalities.

Representative BITTLE said we should have a better notification mechanism to let people know they are in for a change. He suggested a first class mail notification.

Representative BRAGG said the use of a map in the newspaper showing the area to be annexed works well in his area. He suggested that, as a minimum, the notification should require a map of the area to be annexed. Senator GILBERT said the use of a map might work in some areas but not in others. He said a simple letter to the property owner could fulfill notification requirements. Representative KISBER pointed out that notice in the newspaper lets all citizens know about annexations and not just those who are to be annexed. Senator ROCHELLE talked about the problem of identifying individual property owners by use of tax

rolls. He said the tax roll usually lists the address of the escrow company that pays the taxes in many instances and not the actual property owners.

Senator GILBERT suggested that we may need to allow a number of options because of the differences in the size of annexations and other features unique to various types of annexations. Mayor JOHNSON asked about the possibility of using a map in the newspaper for those annexations involving 500 persons or one-quarter square mile of area and then a letter to property owners for any annexations below that size. He also suggested that cities be protected when they had made a good faith effort to notify by mail. Representative BRAGG asked if 500 was too high of a number. There was no answer.

Representative BRAGG noted that the T.C.A. lists three different notification requirements depending on the type of annexation taking place. He said there should be one method of notification regardless of the method of annexation. He said we should just try to get down to a simple statement about notification requirements. Senator GILBERT moved that the Commission consider the following options:

1. That the population standard currently in place be decreased from 500 to 250; and
2. All other annexations by ordinance (good faith notice) to be given by:
 - first class mailing to the known property owners' address;
 - or in a newspaper of general circulation.

Representative BITTLE said we should do both first class mail and newspaper notice. Mayor JOHNSON again stated that the either/or idea was good but we should not require a city to do both. Representative BITTLE said he did not want to pile responsibilities onto the city. However, he said all he wanted was that people about to be annexed should receive a proper notice so they know what is going on.

Senator GILBERT said there must be a good faith notice requirement that says failure to provide the notice is not grounds for appeal or nullification of the annexation.

Senator HENRY requested that the Commission go no further in its deliberation until hearing from representatives of the Tennessee Municipal League (TML). The Chair agreed. Mr. John NEW spoke for the TML. He talked about the possible problems caused by cities having to contract with planners to prepare their plans. Mr. Doug GODDARD, Executive Director of the Tennessee Association of County Commissioner's Association (TCCA) related that while stationed in Mississippi, which has an annexation statute similar to that of Tennessee's, he bought some land. He said that while he was away from Mississippi, his land was annexed and a higher property tax was assigned to it. He was not informed of the annexation and subsequently his land was sold at a tax sale.

Senator ROCHELLE noted that the Commission was spending a lot of time discussing the notification process at the expense of other significant issues. He said, in his opinion, bad annexations are those in which the only incentive is for the city to go after revenue-producing territory. He said we need to temper the economic incentive to cities to go after the sales tax generators. This could be done, he said, by removing the immediate gain of sales tax revenue to the city via a phase in mechanism. He said this type of system might encourage cities to annex areas they truly intend to provide with urban services. He said the legislative and state policy toward annexation should be to encourage the extension of municipal services. He said it is in the best interest of the state to encourage the extension of sanitary sewers to as

many people as possible in Tennessee. He said this would help the environment and our people. Senator ROCHELLE ended by saying we should not encumber cities when they are trying to do the right thing.

Senator HENRY said we should have a system where urban services are performed by urban corporations and not other entities less capable of providing urban services. He said there should be a system, based on population density, whereby the urban services are provided.

Senator GILBERT agreed with Senators ROCHELLE and HENRY but said the notification issue had to be addressed. He said many annexations involve businesses who lease their property. He said many of these businesses operate under a "triple-net" lease, where property tax increases are passed onto them as tenants. He said that, to a business, the increase in property tax could be the fundamental difference between surviving and going under. He said people had a fundamental right to know. Senator GILBERT made the following recommendation:

"The Commission should recommend a statutory change by requiring a notice of all annexations by ordinance that would be accomplished by public notice, except for annexations involving one hundred (100) or less residents and that the public notice may be accomplished by means of first class mail - good faith effort- to the affected property owners."

Representative BITTLE commented that he did not think cities were deliberately "sneaking up" on people to annex them. However, he stated people think cities can do this. He said if people knew they were going to be notified, as a requirement of state law, this would relieve some of their fears.

Mayor JOHNSON talked about some of the problems of using maps in the newspaper notification. Representative KISBER asked for clarification about Senator GILBERT'S recommendation. He asked if it required a map or other mandatory verbiage. Senator GILBERT said it should be left to the discretion of the city to accomplish an effective notice.

Maynard PATE asked if this recommendation would have any effect on the method of notice when a plan of services is required. Senator GILBERT said it would not affect such notices.

Senator ROCHELLE asked that the record show that he was abstaining when the Commission comes to a vote on this issue.

Mayor JOHNSON made a motion to amend Senator GILBERT'S recommendation to include 250 persons or less. However, this motion failed and the Commission adopted Senator GILBERT'S recommendation as stated.

Representative BRAGG asked Mr. NORMAN to move on to the next topic. Mr. NORMAN said the next issue concerned annexation by ordinance. Mr. NORMAN stated the present language allowed cities to annex by ordinance. He said that, at the public hearings, those presenting testimony in the favor of annexation by ordinance noted that:

- annexation by ordinance is a necessary and essential tool for the growth and development of a municipality.

- the state's current annexation statute gives existing municipalities the flexibility to grow, thus reducing the proliferation of new governmental entities and service/tax duplication; and
- the "due process" rights of annexed residents are well protected by existing state laws.

He said persons presenting testimony opposing annexation by municipal ordinance cited these reasons:

- annexation of property by ordinance violates basic American citizenship rights by imposing city taxes, laws and rules on citizens the city does not represent; and
- it is expensive for private citizens and businesses to bring suit to block proposed annexation.

Mr. NORMAN related how, over the years, annexation by ordinance has ended in trial by jury. Senator HENRY stated that annexation cases do not seem fit for a jury to decide. He further stated that a more accurate measure of whether a city was correct would be by putting the issue before the Chancery Judge. He said Chancery Court could make an appropriate order of reference on any particular question rather than a jury.

Senator ROCHELLE reiterated that removing the city's financial incentive to annex and replacing it with a policy that would make annexations done for good reason would be more easily accomplished. He stated that annexation for good reason serves the public interest of the state. He further stated that a jury might decide against an annexation but ten years later if the territory is reeking with sewage, the jury does not suffer from the consequences. He said in such instances it is the city that must move into the area to clean it up or leave it to the citizens in the territory to suffer the consequences.

Truman CLARK stated that an annexation can cause a county financial problems and that counties need a mechanism to address this issue.

Senator ROCHELLE said he saw annexation as a political process and not one for the judiciary.

Mr. Jeff HUFFMAN, Tipton County Executive, stated that counties need some method to contest annexations. He said to take the example of an area of the county having a substantial amount of sales tax revenue and the county using such revenue to fund a twenty-year school bond issue. He asked if a county had any avenue at all to protest the loss of that revenue.

Senator ROCHELLE discussed the distribution of the local option sales tax and asked what is the rule when the city annexes. He said one-half goes back to the county if they are providing schools. Senator ROCHELLE said that if sales tax revenues go to rural bond issues then annexation could impact the county. Mr. Doug GODDARD noted that a lot of counties are pledging their other half of the sales tax to rural bond issues to prevent double taxation. He noted that, otherwise, counties might have to use property taxes and that is double taxation. Mr. GODDARD stated that most counties put all their sales tax revenue into education. He

said when cities annex county territory it impacts schools. Mr. Joe SWEAT, Executive Director of the Tennessee Municipal League, asked if counties should be putting the other half of their sales tax revenue into education. He said he understood why some counties had to do this, but, it was not the intent of the legislature that the second half go to education. Mr. CLARK said that the statute setting out the distribution of the sales tax revenue says that the city may divide that revenue with the county. He said if the word "may" in the law was changed to "shall", a lot of annexation issues would be taken care of.

Chairman BRAGG asked if there was a motion on this issue. There being none, he asked Mr. NORMAN to move to the issue concerning the loss of situs and state-shared taxes. Mr. NORMAN reported that the loss of situs and state-shared taxes were some of the main reasons county officials were anti-annexation. He said testimony at the public hearings noted that:

- counties have based revenue projections on the assumption that the taxes would be part of their continuing revenue stream;
- counties need this revenue to fund existing services implemented before the loss of situs based taxes; and
- counties are limited in the amount of revenue they can generate and the removal of situs taxes exacerbates the problem.

He said those in disagreement with the existing situs and state-shared tax law noted that:

- annexation reduces the area and the population to which counties had to provide services when the area becomes part of the city;
- municipal investment in infrastructure brings about economic development in annexed areas which helps the city and the county broaden its tax base.

Mr. NORMAN talked about the following criteria utilized to distribute state-shared taxes:

- land area in square miles;
- population;
- equal shares; and
- origin (situs).

He also talked about the distribution of the local option sales tax. He then stated the issue questions for this subject:

1. Should the statute allow the county government to "phase in" their situs tax revenue to the annexing government over a period of four years at 25 percent per year or some other reasonable period?
2. Should a "phase in" or transfer of situs revenue from the county to the city be based on the amount of such revenue in relation to the county's total budget?
3. Should there be a requirement for sharing the tax revenues?

Senator ROCHELLE requested that it would help to hear the opinions of the TML and Tennessee County Services Association (TCSA) on this issue. He said he had seen it both ways where a percentage was phased in for four or five years. He said he would probably add a provision stating that cities without a property tax would be ineligible to receive any sales tax increases due to annexation. He said this removes the financial incentive for cities to go out and annex and live off the sales tax. He asked to hear from TML and TCSA about these concepts.

Mr. Doug GODDARD spoke for the counties. He said county officials have long said that the financial incentives of annexation needed to be removed. He did not believe that looking at the impact on county budgets would work because in most counties the largest revenue source is state education money. He stated that some sort of phase in mechanism would be fair. He also agreed that cities without a property tax should not be able to go out and take revenue from counties. He said all counties have a school system and funding these systems is a major issue. He said a phase in system might make people look at annexation as a growth issue and not a way to get more money.

Senator ROCHELLE said the same principle should apply when a city has a local option sales tax and the county comes and levies one.

Mr. GODDARD reiterated that those cities without a property tax should not be allowed to go after county sales tax revenues to fund city services.

Mr. John NEW spoke for the TML. Mr. NEW said Mr. NORMAN's statements about the loss of state-shared taxes were overstated. He said the only two state-shared taxes affected by annexation were the income tax and motor fuel tax. He said the motor fuel tax loss occurs when a city annexes part of a county road and reduces the road mileage for the county. He said, otherwise, annexations do not reduce the square miles of counties for the distribution of state-shared taxes. He said the situs tax situation did exist. He noted that five years ago the TML came up with legislation to allow counties their full budget year to adjust for losses. He said TML was not in a position, at this time, to make a commitment one way or the other. He talked about the financial benefits to the county when land is annexed and provided services that increase the value of the land. He said everyone benefits in that situation and it should be looked at when discussing phase in mechanisms. Mr. NEW said it had been his experience that most of the controversial annexations revolve around who is going to run sewer lines into annexed territory. He said each annexation is unique and must be looked at case by case.

Senator ROCHELLE reiterated that this instant economic incentive is the reason we have so many annexation problems. He said the phase in mechanism would be accompanied by granting cities greater latitude or ease in annexation procedures. He said he tied these two incentives together. He said if we remove the economic incentive to annex then there is a reasonable basis to give cities greater ability to annex. He said cities could start annexing for the right reasons when the instant incentive was changed to a phase in mechanism. He said a key part of this package is a requirement that cities have a property tax.

Mr. NEW stated that TML and the TACIR have raised the population needed for incorporation and pushed for a property tax for new cities. Mr. NEW stated that property assessments in those cities without a property tax were minuscule. He also stated that the state-shared taxes going to these cities was only three or four percent of the total. Senator ROCHELLE asked if TML could support a requirement for a phase in mechanism if it was tied to giving cities greater

latitude in annexation procedures. Mr. NEW said we really need to understand the issue of economic incentive. He reiterated that the provision of urban services in newly annexed areas increases property values for the county as well.

Mr. Joe SWEAT stated that this issue could be brought before the TML Board.

Representative BRAGG noted a quorum was not present to conduct further business, but he recommended that we continue to deliberate on these issues at our next meeting. He said the remaining issues were:

- the principles of annexation by ordinance;
- the ethics or necessity for strip and/or corridor annexations;
- revenue issues relating to increased property taxes; and
- planning for the rational development of municipal growth and the provision of urban services.

At Senator ROCHELLE's request, Representative BRAGG asked the city and county associations to discuss proposals that could be implemented. Representative BRAGG also requested that all parties get back to him the second week of the legislative session with their proposals.

Representative BRAGG noted that the Commission had made great strides in addressing ECD problems by recommending the creation of an ECD board. He said we would continue to address issues to bring about a proper resolution of long term problems as we work to improve state and local government in Tennessee.

The meeting was adjourned at 12:00 noon.

January 12, 1995 Meeting Minutes¹⁷ of the TACIR Annexation Policy in Tennessee

These minutes contain comments from the following persons

TACIR Members

Representative John T. Bragg, Chairman
Mr. Truman Clark, Carter County Executive, Vice Chairman
Senator Bud Gilbert
Mayor John Johnson, Morristown
Mayor Hunter Wright, Kingsport

TACIR Staff

Dr. Harry Green, Executive Director and Research Director
Mr. John Norman, Research Associate

Other Local Government Interests

Mr. John New, Tennessee Municipal League
Mr. Bob Wormsley, Executive Director, Tennessee County Services Assn.

¹⁷ Minutes of this meeting have not yet been adopted by the Commission.

Chairman BRAGG asked John NORMAN to introduce the annexation notification issue. Mr. NORMAN restated the recommendation made by Senator GILBERT and adopted by the Commission at their December 5, 1994 meeting.

“The Commission should recommend a statutory change by requiring a notice of all annexations by ordinance that would be accomplished by public notice except for annexations involving one hundred (100) or less residents that the public notice may be accomplished by means of first class mail - good faith effort - to the affected property owners.”

Mr. NORMAN said that a staff review of a recording of the meeting showed that the recommendation was based on inaccurate staff information. He said Senator GILBERT made his recommendation with the understanding that no public notice was required for certain types of annexations. Mr. NORMAN passed out a summary of annexation notification requirements that showed all annexations require a public notice.

Senator GILBERT suggested that the Commission might wish to reconsider their recommendation in light of the new information.

Mayor JOHNSON noted that, to avoid any further confusion on this issue, the Commission may want to mandate the use of a map in the notice. He said the use of a map would provide the simplest, clearest, and least misunderstood method of notice.

Chairman BRAGG stated that Murfreesboro uses a map in their annexation and zoning notices and it works quite well.

Mr. CLARK said we really ought to simplify the process by requiring annexations to be decided by referendum.

Mr. CLARK noted that county governments are precluded by the courts from raising an issue towards annexations like the loss of their sales tax base to municipal governments. Mr. NORMAN stated that Mr. CLARK was correct in that before an annexation became final, the county had no recourse for remedial action. However, he stated that after the annexation occurs, any question concerning the transfer of a county's interest to the annexing municipality could be addressed in procedures outlined in T.C.A. § 6-51-111(a). Mr. NORMAN said that section allows some issues to be settled by arbitration.

Senator GILBERT stated that if all cities did as good a job as Murfreesboro, using a map as part of the notice, we would not have to be discussing public notice options. Senator GILBERT asked to hear the thoughts of Commission members on the issue.

Truman CLARK noted that the Commission originally intended to study annexation in its entirety. He said the Commission should not be precluded from deliberating on other areas of this issue, such as annexation by referendum. Mr. CLARK said most people see annexation as a mandate if they are annexed by ordinance and the issue of mandates is a hot topic. He said people should be allowed to vote on whether or not they are to be annexed.

Harry GREEN asked the Commission to provide some guidance as to how staff should proceed concerning the publication of this report. He said we would probably not meet again until after the legislative session but we had an obligation to report to the General Assembly.

He noted that the Commission had a timeline to meet and asked that staff be empowered to proceed with the project.

Mr. John NEW reminded everyone of comments made by Senator ROCHELLE at the last meeting. Mr. NEW said that Senator ROCHELLE suggested some sort of phase in methodology for the transfer of situs revenue out of the county and into the municipalities.

Mr. NEW said he and Bob WORMSLEY talked with Senator ROCHELLE and agreed that much more time would be needed to work out the details of a phase-in plan.

Mr. NEW said the Tennessee Municipal League (TML) is pledged to study the situs issue in detail. He said the TML, in conjunction with the Municipal Technical Advisory Service (MTAS) and several Tennessee municipalities is pledged to work on this issue. He said he would present findings to the Commission at its 1995 fall meeting. He said it was the desire of the TML to come to some sort of agreement on this issue. He said that ninety percent of the time cities and counties were able to reach agreement on issues. He said the ten percent of disagreement was usually about annexation issues. Mr. NEW said that the entire state would benefit if some sort of agreement could be reached on the situs issue and if annexations could be accomplished without the encumbrances of litigation.

Concerning the notification issue, Mr. NEW stated that the TML did not have a problem with the use of a map in the notice. He said the TML did not like the idea of a first class mail notification requirement. He mentioned that some cities do much more than is presently required by law. He said if the map would help the TML would go along with it. He said the TML had legislation drawn up to address that issue.

Mayor WRIGHT concurred with what Mr. NEW had to say on these issues. He said the notification issue was one of the big issues to come out of our public hearings. He also said some of the notices are difficult to understand. He said the use of a map for the notice, like that utilized by Murfreesboro, was a good idea. Mayor WRIGHT made the following recommendation:

“Those sections of the Tennessee Code Annotated that address the annexation notification requirement should be amended to include the requirement of a map of the area to be annexed.”

Bob WORMSLEY said that, on behalf of the counties, the TML is working in good faith with them on the situs tax issue. He said the counties would work with TML to achieve an agreement.

Chairman BRAGG asked if Mr. WORMSLEY was requesting that the Commission report that we have had the hearings, identified the problems, and the TCSA and TML have agreed to sit down and work on these problems? Mr. WORMSLEY said we should report that.

Senator GILBERT made a motion to withdraw his recommendation made at the last meeting. That motion was duly seconded and adopted.

Mayor John JOHNSON, seconded Mayor WRIGHT's recommendation on the map requirement. The Commission then adopted Mayor WRIGHT's motion.

Dr. GREEN said that the draft reports submitted to the Commission in December are substantially the reports that will go to the General Assembly. He asked if the Commission would authorize staff to proceed with the preparation of these reports and their distribution to the General Assembly. Dr. GREEN said that the only changes would be those to edit the documents and to include pertinent information from this and the last meeting. There being no objection, Chairman BRAGG authorized staff to proceed as requested.



Appendix 3

Private Acts, 1953, Chapter No. 528, House Bill 1133

CHAPTER NO. 254

SENATE BILL No. 444

(By Maddox)

A BILL to be entitled: AN ACT to amend Chapter 644 of the Private Acts of 1911, being AN ACT entitled: "AN ACT to incorporate the Town of Lebanon in the County of Wilson, State of Tennessee; and to provide for the government and control thereof; and to provide for the ways and means for the conduct and administration of said Corporation," and as amended by Chapter 685 of the Private Acts of 1929 and all other Acts amendatory thereof.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee, That Chapter 644 of the Private Acts of 1911, the caption of which is recited in this Caption, as amended by Chapter 685 of the Private Acts of the General Assembly of the State of Tennessee of 1929, and all Acts amendatory thereof, be and is hereby amended in the following respects, to-wit:*

First, Section 2 of Chapter 644 of the Private Acts of 1911 as amended by Chapter 275 of the Private Acts of 1945, and as amended by Chapter 410 of the Private Acts of 1949, and as amended by Chapter 414 of the Private Acts of 1953, be amended by striking the entire Section 2 as amended, and by substituting and adding in the place and stead of said Section 2 of Chapter 644 of the Private Acts of 1911 as amended, the following language and figures:

"Beginning on a concrete marker in the ground on the South side of the Coles Ferry Pike by a Cedar stump, near the Northeast corner of the Wilson County Fair Grounds, and run N. 26 degrees 34' E. 917.0 feet to a point in a wire fence; thence S. 87 degrees 45' E. 800.0 feet to a concrete marker in the ground on the N. line of West Forest Avenue; thence S. 85 degrees E. 726.0 feet to the intersection of the center line of N. Cumberland Street with the North line of Forest Avenue; thence South 86 5/8 degrees East 500.0 feet to the Southwest corner of the Texas Boot Company's property; thence North 4 degrees 00' West 387.2 feet to the Northwest corner of Texas Boot property; thence S. 87 degrees 20' E. 371.5 feet to the Boot Company's Northeast corner; thence S. 7 degrees 23' E. 399.8 feet to the center line of East Forest Avenue;

thence S. 86 5/8 degrees E. 1578.7 feet to a point in the Hartsville Pike indicated by a concrete marker on the West side of said pike; thence S. 8 1/4 degrees E. 2224.2 feet to a point in the middle of the Rome Pike noted by a marker on the East side of said pike; thence S. 50 1/2 degrees E. 2106.1 feet to a point on the South edge of the Trousdale Ferry Pike at the North end of Stokes Lane marked by a concrete marker on the North edge of said pike; thence S. 3 1/4 degrees W. 1775.4 feet to a concrete marker; thence S. 40 1/2 degrees W. 614.5 feet to a concrete marker; thence S. 54 degrees W. 924.0 feet to a point in the center line of the Lebanon and Sparta pike noted by a concrete marker on the West side of the pike; thence S. 58 1/4 degrees W. 1427.3 feet to a concrete marker at the South end of a stone fence on the North line of Knoxville Avenue; thence S. 62 1/4 degrees W. 566.9 feet to a concrete block in the ground at the Northeast corner of the Gulf Red Cedar lot; thence S. 4 3/8 degrees W. 594.0 feet to a concrete marker at the Southeast corner of the Red Cedar lot; thence along the South line of the above mentioned lot N. 85 1/2 degrees W. 332.6 feet to a concrete marker; thence S. 6 degrees W. 535.9 feet to a concrete marker on the North side of the Cainsville Road; thence on the North line of the said road N. 79 degrees W. 330.0 feet; thence N. 73 1/4 degrees W. 345.2 feet to a concrete marker; thence N. 39 degrees W. 165.0 feet; thence N. 20 degrees W. 96.4 feet to the intersection of the East line of South College Street with the West line of Tott Street; thence S. 65 degrees W. 2672.3 feet to a concrete marker in the Cedar Grove Cemetery; thence N. 76 degrees W. 108.9 feet to the center line of the Lebanon and Murfreesboro Pike indicated by a concrete marker on the East edge of the Pike; thence N. 43 1/2 degrees W. 2057.2 feet to the center line of Hobbs Avenue with concrete marker on the North side of Hobbs Avenue; thence N. 32 5/8 degrees W. 325.4 feet to a concrete marker 50 feet North of the center line of the former N. C. & St. L. Railway; thence parallel to said center line S. 76 3/8 degrees W. 720.7 feet to an iron pin in a wire fence; thence N. 5 3/4 degrees W. 622.4 feet to an iron pin in the junction of wire fences; thence N. 88 degrees W. 438.2 feet to a point in an orchard; thence N. 2 degrees E. 1543.1 feet passing over a concrete line marker at 125 feet and on to an iron

pin on the West line of Castle Heights Avenue at the Northeast corner of C. C. Jennings yard; thence N. $87\frac{3}{4}$ degrees W. 891.7 feet to an iron pin on the East edge of Crest Drive; thence N. $2\frac{1}{4}$ degrees E. 308.2 feet to an iron pin 9.2 feet Southeast of the center of a Hackberry tree; thence N. 76 degrees 50' W. 1855.9 feet to an iron pin at a corner fence post on the East side of Dawson Lane; thence N. $87\frac{1}{4}$ degrees W. 280.5 feet to an iron pin on the West side of Sloan Street 10 feet East of the center of Hackberry tree; thence N. 0 degrees 26' E. 687.7 feet to the North side of a Cedar corner post; thence N. 12 degrees E. 432.3 feet to an iron pin $9\frac{1}{2}$ feet South of the center of a Hackberry tree; thence N. 76 degrees W. 1028.9 feet passing over an iron pin $3\frac{1}{2}$ feet South of a square red top Cedar fence post on the East bank of Barton's Creek to the middle of the Creek; thence N. 70 degrees 44' W. 1598.4 feet to a point in the Firestone property about 350 feet South of the center line of Highway 70N; thence N. 5 degrees 27' E. 948.8 feet passing the Southwest corner of Lux Clock Company land at 394.5 feet to a point on their West line; thence N. 1 degree 44' W. 791.2 feet to the North property line of the Tennessee Central Railway; thence along their North line N. 76 degrees 17' E. 1869.4 feet; thence N. 78 degrees 47' E. 185.0 feet; thence N. 80 degrees 44' E. 158.9 feet; thence N. 85 degrees E. 192.8 feet; thence N. 89 degrees 45' E. 170.9 feet; thence S. 85 degrees E. 58.1 feet; thence S. 80 degrees E. 2269.2 feet; thence S. 74 degrees 48' E. 161.3 feet; thence S. 72 degrees 23' E. 165.9 feet; thence S. 70 degrees 19' E. 181.7 feet; thence S. 67 degrees 22' E. 153.5 feet; thence S. 62 degrees 47' E. 168.0 feet; thence S. 60 degrees E. 119.4 feet; thence S. 58 degrees 26' E. 1641.9 feet to a point on the North line of said railway; thence leaving the railway N. $5\frac{1}{2}$ degrees E. 1251.7 feet with the West line of the Sewage Disposal plant; to a point in the middle of the Town Creek; thence up the creek S. $48\frac{1}{2}$ degrees E. 198.0 feet; thence S. $52\frac{1}{4}$ degrees E. 225.5 feet; thence S. $41\frac{1}{4}$ degrees E. 288.4 feet; thence S. $15\frac{3}{4}$ degrees E. 163.0 feet to a point in the middle of the Creek marked by an iron pin on the West bank 4 feet South of a marked Hackberry tree; thence leaving the creek N. $37\frac{1}{4}$ degrees E. 1152.4 feet to the beginning."

Second, that said Chapter 644 of the Private Acts of 1911, as subsequently amended, be amended by adding to Article XII, a Section, to be entitled, Section 15(a) as follows: "*Be it further enacted, That Lebanon, Tennessee, upon authorization by resolution of the City Council of Lebanon, Tennessee, at a regular or called session of said council, authorizing the same, shall have the power to borrow funds as may from time to time become necessary or proper to operate, maintain, alter, repair or expand the water department of Lebanon, Tennessee, not to exceed One Hundred Thousand Dollars (\$100,000.00).*"

SECTION 2. *Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it.*

Passed: March 2, 1955.

JARED MADDUX,
Speaker of the Senate.

JAMES L. BOMAR,
Speaker of the House of Representatives.

Approved: March 11, 1955.

FRANK G. CLEMENT,
Governor.

This is to certify that according to the official records on file in this office, Senate Bill Number 444, which is Chapter Number 254 of the Private Acts of 1955, was properly ratified and approved and is therefore operative and in effect in accordance with its provisions.

G. EDWARD FRIAR,
Secretary of State.



Appendix 4

Distribution of Tennessee's Urban and Rural Population, By County

County	1990 Population	Land Area Sq. Miles	Per Sq. Mile	Population			
				Urban	Rural	% Urban	% Rural
Anderson	68,250	337.5	202.2	36,022	32,228	52.8	47.2
Bedford	30,411	473.7	64.2	14,049	16,362	46.2	53.8
Benton	14,524	394.8	36.8	3,643	10,881	25.1	74.9
Bledsoe	9,669	406.3	23.8	0	9,669	0.0	100.0
Blount	85,969	558.6	153.9	44,394	41,575	51.6	48.4
Bradley	73,712	328.8	224.2	40,975	32,737	55.6	44.4
Campbell	35,079	480.1	73.1	7,192	27,887	20.5	79.5
Cannon	10,467	265.7	39.4	0	10,467	0.0	100.0
Carroll	27,514	599.1	45.9	9,058	18,456	32.9	67.1
Carter	51,505	341.1	151.0	26,128	25,377	50.7	49.3
Cheatham	27,140	302.7	89.7	2,552	24,588	9.4	90.6
Chester	12,819	288.5	44.4	4,760	8,059	37.1	62.9
Claiborne	26,137	434.3	60.2	2,657	23,480	10.2	89.8
Clay	7,238	236.1	30.7	0	7,238	0.0	100.0
Cocke	29,141	434.4	67.1	7,123	22,018	24.4	75.6
Coffee	40,339	428.9	94.1	23,467	16,872	58.2	41.8
Crockett	13,378	265.3	50.4	0	13,378	0.0	100.0
Cumberland	34,736	681.6	51.0	6,930	27,806	20.0	80.0
Davidson	510,784	502.3	1,016.9	505,786	4,998	99.0	1.0
Decatur	10,472	333.9	31.4	0	10,472	0.0	100.0
DeKalb	14,360	304.6	47.1	3,791	10,569	26.4	73.6
Dickson	35,061	489.9	71.6	8,791	26,270	25.1	74.9
Dyer	34,854	510.6	68.3	18,832	16,022	54.0	46.0
Fayette	25,559	704.5	36.3	0	25,559	0.0	100.0
Fentress	14,669	498.7	29.4	0	14,669	0.0	100.0
Franklin	34,725	553.1	62.8	7,308	27,417	21.0	79.0
Gibson	46,315	602.7	76.8	21,982	24,333	47.5	52.5
Giles	25,741	611.0	42.1	7,895	17,846	30.7	69.3
Grainger	17,095	280.4	61.0	0	17,095	0.0	100.0
Greene	55,853	621.8	89.8	13,532	42,321	24.2	75.8
Grundy	13,362	360.6	37.1	0	13,362	0.0	100.0
Hamblen	50,480	161.0	313.5	21,385	29,095	42.4	57.6
Hamilton	285,536	542.5	526.3	250,761	34,775	87.8	12.2
Hancock	6,739	222.3	30.3	0	6,739	0.0	100.0
Hardeman	23,377	667.6	35.0	5,969	17,408	25.5	74.5
Hardin	22,633	577.9	39.2	6,547	16,086	28.9	71.1
Hawkins	44,565	486.7	91.6	16,039	28,526	36.0	64.0
Haywood	19,437	533.2	36.5	10,019	9,418	51.5	48.5
Henderson	21,844	520.1	42.0	5,810	16,034	26.6	73.4
Henry	27,888	561.8	49.6	9,447	18,441	33.9	66.1
Hickman	16,754	612.7	27.3	3,616	13,138	21.6	78.4
Houston	7,018	200.2	35.1	0	7,018	0.0	100.0
Humphreys	15,795	532.2	39.7	3,925	11,870	24.8	75.2
Jackson	9,297	308.9	30.1	0	9,297	0.0	100.0
Jefferson	33,016	273.8	120.6	5,494	27,522	16.6	83.4
Johnson	13,766	298.5	46.1	0	13,766	0.0	100.0
Knox	335,749	508.5	660.3	261,720	74,029	78.0	22.0
Lake	7,129	163.4	43.6	0	7,129	0.0	100.0
Lauderdale	23,491	470.5	49.9	6,188	17,303	26.3	73.7
Lawrence	35,303	617.2	57.2	10,412	24,891	29.5	70.5

County	1990 Population	Land Area Sq. Miles	Per Sq. Mile	Population			
				Urban	Rural	% Urban	% Rural
Lewis	9,247	282.1	32.8	3,760	5,487	40.7	59.3
Lincoln	28,157	570.3	49.4	6,921	21,236	24.6	75.4
Loudon	31,255	228.6	136.7	10,441	20,814	33.4	66.6
Macon	15,906	307.1	51.8	3,641	3,641	22.9	7.1
Madison	77,982	557.1	140.0	53,048	53,048	68.0	32.0
Marion	24,860	499.8	49.7	6,075	6,075	24.4	75.6
Marshall	21,539	375.4	57.4	9,879	9,879	45.9	54.1
Maury	54,812	612.9	89.4	32,422	32,422	59.2	40.8
McMinn	42,383	430.3	98.5	15,881	26,502	37.5	62.5
McNairy	22,422	560.1	40.0	3,838	18,584	17.1	82.9
Meigs	8,033	194.9	41.2	0	8,033	0.0	100.0
Monroe	30,541	635.2	48.1	8,087	22,454	26.5	73.5
Montgomery	100,498	539.2	186.4	75,857	24,641	75.5	24.5
Moore	4,721	129.2	36.5	714	4,007	15.1	84.9
Morgan	17,300	522.1	33.1	51	17,249	0.3	99.7
Obion	31,717	544.9	58.2	13,201	18,516	41.6	58.4
Overton	17,636	433.4	40.7	3,809	13,827	21.6	78.4
Perry	6,612	414.9	15.9	0	6,612	0.0	100.0
Pickett	4,548	162.9	27.9	0	4,548	0.0	100.0
Polk	13,643	435.1	31.4	0	13,613	0.0	100.0
Putnam	51,373	401.0	128.1	24,303	27,070	47.3	52.7
Rhea	24,344	315.9	77.1	5,671	18,673	23.3	76.7
Roane	47,227	361.0	130.8	20,209	27,018	42.8	57.2
Robertson	41,494	476.5	87.1	15,824	25,670	38.1	61.9
Rutherford	118,570	619.0	191.6	65,963	52,607	55.6	44.4
Scott	18,358	532.1	34.5	3,502	14,856	19.1	80.9
Sequatchie	8,863	265.9	33.3	3,731	5,132	42.1	57.9
Sevier	51,043	592.3	86.2	18,726	32,317	36.7	63.3
Shelby	826,330	754.9	1,094.6	739,545	32,785	96.0	4.0
Smith	14,143	314.4	45.0	0	14,143	0.0	100.0
Stewart	9,479	457.7	20.7	0	9,479	0.0	100.0
Sullivan	143,596	413.0	347.7	103,352	40,244	72.0	28.0
Sumner	103,281	529.4	195.1	63,644	39,637	61.6	38.4
Tipton	37,568	459.4	81.8	7,487	30,081	19.9	80.1
Trousdale	5,920	114.2	51.8	0	5,920	0.0	100.0
Unicoi	16,549	186.1	88.9	5,015	11,534	30.3	69.7
Union	13,694	223.6	61.2	0	13,694	0.0	100.0
Van Buren	4,846	273.5	17.7	0	4,846	0.0	100.0
Warren	32,992	432.7	76.2	11,194	21,798	33.9	66.1
Washington	92,315	326.2	283.0	61,474	30,841	66.6	33.4
Wayne	13,935	734.0	19.0	0	13,935	0.0	100.0
Weakley	31,972	580.3	55.1	8,775	23,197	27.4	72.6
White	20,090	376.7	53.3	4,681	15,409	23.3	76.7
Williamson	81,021	582.7	139.0	40,551	40,470	50.0	50.0
Wilson	67,675	570.6	118.6	30,477	37,198	45.0	55.0
Tennessee	4,877,185	41,219.2	118.3	2,969,948	1,907,237	60.9	39.1

Note: Urban population includes all persons living in urbanized areas and in places of 2,500 or more inhabitants outside urbanized areas. Rural population not classified as urban.

Source: Tennessee Statistical Abstract, 1992/93.



Appendix 5

Study on the Adjustment of Municipal Boundaries Summary of Recommendations Final Report of the Legislative Study Committee (1973)

The Council recommends:

1. That the present provision be retained permitting the annexation of territory contiguous to a municipality, when it appears necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole.
2. That the plan of services shall include but not be limited to police protection, fire protection, water service, electrical service, sewage, solid waste disposal, road and street construction and repair, recreational facilities, and the zoning services which shall be enacted for the territory.
3. That a minimum of three copies of the plan of services be available for public inspection, and that the municipality shall include in the notice of a public hearing, published in a newspaper of general circulation in the municipality, a statement as to where the public may inspect the plan of services. The plan of services shall be available for inspection during reasonable business hours from the date of notice until the public hearing.
4. That before any change can be made in a plan of services that would substantially diminish the quality, quantity, or timing of the services, it must be approved by the voters in the newly annexed area. The referendum shall be conducted in the manner provided by T.C.A. § 6-311 and 6-312.
5. That a sense of fairness requires that the burden of proving that an annexation ordinance is not unreasonable shall be on the annexing municipality.
6. That annexation proceedings shall be considered as initiated upon passage on first reading of an ordinance of annexation. If the ordinance does not receive final approval within one hundred and eighty (180) days after having passed its first reading, the proceedings should be void and a smaller municipality should have priority with respect to annexation of the territory. When a larger municipality initiates annexation by a smaller municipality, the smaller municipality should be able to challenge the proceedings in chancery court.



Appendix 6

Participants in the TACIR Public Hearing on Annexation

Annexation Hearing-Memphis August 24, 1993

Presenters: Tammy Brogan, Citizens for Home Rule
Bob Wormsley, Executive Director for Tennessee County Services
Joe Sweat, Executive Director for Tennessee Municipal League
Tom Varlan, Law Director for City of Knoxville
Monice Moore Hagler, City Attorney of Memphis (Written Testimony)

TACIR MEMBERS

Rep. H. E. Bittle
Rep. John T. Bragg
Mr. Truman Clark
Mr. Frank Crosslin
Ms. Mary Joe Dozier
Senator Douglas Henry
Dr. Wayne Hinson
Ms. Linda Hooper
Commissioner Joe Huddleston
Mayor John Johnson
Rep. Matthew Kisber
Commissioner David Manning*
Ms. Judy Medearis

Mayor Bill Morris
Mr. Maynard Pate
Mr. Joel Plummer
Senator Carol Rice
Senator Robert Rochelle
Rep. Larry Turner
Mayor Hunter Wright

TACIR Staff

Dr. Harry Green, Executive Director
Lynne Holliday, Research Associate
John Norman, Research Associate
Susan Smithson, Research Analyst

* Mr. Jerry Lee represented Com. David Manning

Annexation Hearing-Knoxville December 6 & 7, 1993

December 6, 1993 Testimony

Dwight Kessell, Knox County Executive
Mike Moyers, Knox County Law Department
Kathy Hamilton, Knox County Dir. of Finance
Don Parnell, Mauldin & Parnell/American
Planning Association
Paul Titus, Citizens for Home Rule
Jesse Barton, Citizens for Home Rule
I. C. Flanders, Citizens for Home Rule
William McKamey, Sullivan County Executive
Gary Holiway, Jefferson County Executive
Alan Broyles, Green County Executive
Bob Cording, ProVote in Sullivan County
Nancy Duggan, Gray Area Council
Byron Cox, Citizens Against Annexation
in Jackson
Frank Leuthold, Knox County Commission
John Meese, Private Citizen

December 7, 1993 Testimony

Victor Ashe, Mayor, City of Knoxville
Thomas A. Varlan, City of Knoxville Law Dir.
John New, Tennessee Municipal League
Charles Johnson, Mayor of Sevierville
Jack Hamlett, Farragut City Administrator
Mel Hill, Pigeon Forge
Jim Moody, Johnson City Director of Planning
Don Dardon, Jefferson City, City Manager
Dan Casey, Businesses Against Annexation
Tom Johnson, Businesses Against Annexation
Bill Gaines, Unicoi United
David L. Thomas, Private Citizen
H. Freeman Brooks, Private Citizen (Written
Testimony Only)
David L. Long, Attorney for Woodlands West
and Franklin Square
Tim Hutchinson, Sheriff, Knox County
Ted Esch, Chief, Seymore Fire Department

TACIR MEMBERS

Rep. H. E. Bittle
Mr. Truman Clark, Carter County Executive
Senator Bud Gilbert
Mayor John Johnson, City of Morristown
Rep. Matthew Kisber
Mayor Hunter Wright, City of Kingsport
Ms Linda Hooper, Private Citizen of Whitwell

TACIR Staff

Dr. Harry A. Green, Executive Director
John Norman, Research Associate
Susan Smithson, Research Analyst

In addition to those on TACIR's Annexation Committee, the following legislators from the East Tennessee area participated in our hearing:

Senator Ben Atchley
Rep. Jim Boyer
Rep. Jere Hargrove
Rep. Charles M. Severance
Rep. Richard S. Venable

Annexation Hearing-Nashville June 14, 1994

Jim Clodfelter, Director, Legislative Office of Legal Services
Lynn Wampler, Administrator, City of Fayetteville
Bob Wormsley, Executive Director, Tennessee County Services Association
Bob Ring, Williamson County Executive
Tony Campbell, Mayor, Town of Kingston Springs
Mike Woods, City Clerk, Town of Smyrna
Craig Bivens, Planning Director, City of Cleveland
Julius Johnson, Tennessee Farm Bureau
Ogden Stokes, Legal Counsel for the Tennessee Municipal League
David Riggins, Clarksville/Montgomery County Planning

TACIR MEMBERS

Senator Douglas Henry
Representative Matthew Kisber
Mayor John Johnson, City of Morristown
Ms. Mary Jo Dozier, Councilperson, City of Clarksville
Mr. Maynard Pate, Executive Director, Greater Nashville Regional Council
Ms. Peggy Bevels, Lincoln County Commissioner

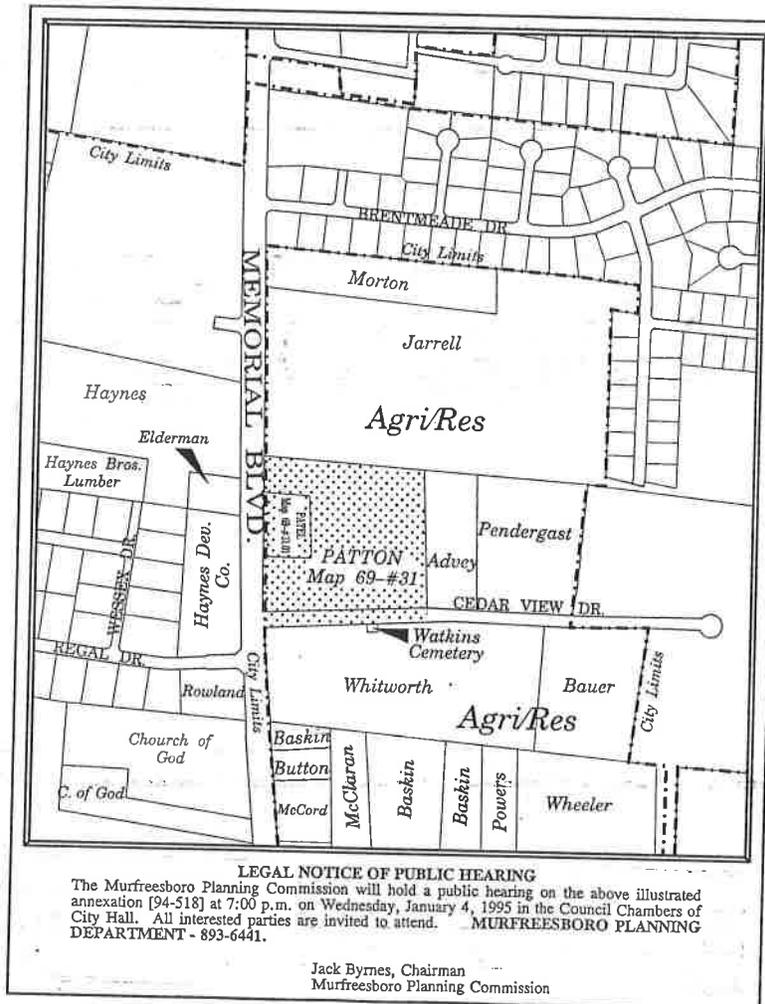
TACIR Staff

Dr. Harry A. Green, Executive Director
John Norman, Research Associate



Appendix 7

Example of Legal Notice using a Map of the Area to be Annexed





Appendix 8

Factors Considered in the Allocation of State-Local Shared Taxes to Local Governments

Shared Taxes	County				City	
	Population	Area	Equal Share	Origin	Population	Origin
Alcoholic Beverage	75%	25%	---	---	---	---
Beer (barrelage)	---	---	100%	---	100%	---
Mixed Drink	---	---	---	100%	---	100%
Income	---	---	---	100%	---	100%
Gasoline	25%	25%	50%	---	100%	---
Motor Vehicle Fuel	25%	25%	50%	---	100%	---
Sales Tax	---	---	---	---	100%	---
Special Petroleum Prod.	100%	---	---	---	100%	---
TVA Payments	42.9%	57.1%	---	---	100%	---

Apportionment of Collections by Fund Fiscal Years 1990-1994 (In Thousands)

	1990	1991	1992	1993	1994
To Counties					
Alcoholic Beverage	4,796	4,742	4,660	4,736	4,694
Beer (barrelage)	1,289	1,326	1,337	1,354	1,400
Excise	7,361	6,629	4,931	6,842	11,180
Gasoline	125,925	124,092	128,556	120,959	132,543
Gross Receipts	36,132	36,805	38,341	38,161	21,753
Income	8,863	9,703	8,719	9,449	9,581
Mixed Drink	3,768	3,777	3,895	3,946	4,050
Motor Fuel	17,281	17,092	17,464	18,558	19,160
Severance	1,264	1,142	860	722	689
Special Petroleum	4,579	4,579	4,579	4,579	4,579
Total	211,258	209,887	213,342	209,307	209,629
To Municipalities					
Alcoholic Beverage	3	4	4	5	0
Beer (barrelage)	1,289	1,326	1,337	1,354	1,400
Excise	4,148	3,755	2,521	3,825	5,889
Gasoline	62,895	62,149	64,381	60,263	65,986
Gross Receipts	14,071	14,481	14,999	14,903	17,855
Income	27,020	23,933	23,648	23,925	25,456
Mixed Drink	7,155	7,226	7,338	7,313	7,525
Motor Fuel	8,644	8,550	8,736	9,283	9,584
Sales & Use	109,268	110,411	115,996	116,419	128,585
Services	0	0	0	7,013	6,041
Special Petroleum	7,318	7,318	7,318	7,318	7,318
Total	241,811	239,153	246,278	251,620	275,639

Source: Research Division, Tennessee Department of Revenue



State of Tennessee Policy of Non-Discrimination

Pursuant to the State of Tennessee's policy of non-discrimination, the Tennessee Advisory Commission on Intergovernmental Relations does not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability, or military service in its policies, or in the admission or access to, or treatment or employment in, its programs, services or activities.

Equal Employment Opportunity/Affirmative Action inquiries or complaints should be directed to the Tennessee Advisory Commission on Intergovernmental Relations EEO/AA Coordinator or Officer, Suite 508, 226 Capitol Blvd. Bldg., Nashville, TN 37219, (615) 741-3012. ADA inquiries or complaints should also be directed to the Tennessee Advisory Commission on Intergovernmental Relations, ADA Coordinator, Suite 508, 226 Capitol Blvd. Bldg., Nashville, TN 37219, (615) 741-3012.

Public Authorization Number 316610
(2/95); 700 copies. This public document
was promulgated at a cost of \$1.90 each.

What is the TACIR?

The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) was created by the General Assembly in 1978 to monitor the operation of federal-state-local relations in Tennessee and make recommendations for their improvement. TACIR is a permanent nonpartisan body representing the executive and legislative branches of the state, county and municipal governments, and the public.

The TACIR is the principal state agency committed to the study and deliberation of state and local government issues. It is the only agency where all participants in the intergovernmental arena can meet in a neutral setting. It is in this forum that the Commission studies and deliberates on a wide variety of issues related to the functioning of the intergovernmental system. Studies by the Commission often result in published reports, findings and recommendations, legislative initiatives or any combination of these efforts which may be needed to address a particular intergovernmental problem or issue.

The Commission is composed of 29 members. Ten represent local governments: four elected county officials and four elected city officials. The County Officials Association of Tennessee and the Tennessee Development District Association also have one member each on the Commission. Ten members represent the General Assembly: the Chairmen of the House and the Senate Finance, Ways, and Means Committees, and four Representatives and four Senators appointed by the Speakers of the House and Senate, respectively. Five of the members are private citizens appointed by the Governor. The Governor also appoints two members of the Executive Branch. By virtue of their office, the Commissioner of Finance and Administration and the Comptroller of the Treasury are members of the Commission.

The TACIR is jointly funded by state and local government. The state provides seventy-five percent and local governments contribute twenty-five percent of the operating budget.

Suite 508, 226 Capitol Blvd. Bldg.
Nashville, TN 37219
Phone: (615) 741-3012
FAX: (615) 532-2443