

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

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Opinion No. 10-109

Annexation under Metropolitan Form of Government

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**QUESTION**

Is it legally permissible for a metropolitan charter under Tenn. Code Ann. §§ 7-1-101, *et seq.*, to provide that “annexation reserve agreements” entered into by the principal city of the county and the smaller cities of the county before adoption of the charter shall survive the creation of, and will be binding upon, the metropolitan government?

**OPINION**

No. Once a county and city form a metropolitan government under Tenn. Code Ann. §§ 7-1-101, *et seq.*, smaller cities that do not join the metropolitan government may not annex any territory in the metropolitan government beyond their existing corporate limits.

**ANALYSIS**

This opinion concerns whether a metropolitan charter may legally provide that annexation reserve agreements entered into by the principal city of the county and the smaller cities of the county before adoption of the charter survive the creation of, and will be binding upon, the metropolitan government created by that charter. Under an annexation reserve agreement, certain portions of the unincorporated area of the county are reserved for annexation by smaller cities, and the principal city agrees not to annex these territories. Under the charter provision described in the question, the metropolitan government created under the charter would be legally prevented from annexing these reserved territories into the urban services district.

A metropolitan charter is governed by Tenn. Code Ann. §§ 7-1-101, *et seq.*, regarding the creation of a metropolitan government. Tenn. Code Ann. § 7-1-102(b) provides:

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

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

The General Assembly may provide for the consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal

corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located; provided, such consolidations shall not become effective until submitted to the qualified voters residing within the municipal corporation and in the county outside thereof, and approved by a majority of those voting within the municipal corporation and by a majority of those voting in the county outside the municipal corporation.

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

(a) The proposed metropolitan charter shall provide:

\* \* \* \*

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

\* \* \* \*

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

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

(emphasis added).

In 1981, this Office concluded that a metropolitan charter may not allow smaller cities that elect to continue in their separate identities to annex territory in the urban services district, the general services district, or a special service district in the metropolitan government. Op. Tenn. Att’y Gen. No. 81-390 (June 24, 1981). This conclusion was based on consolidation and annexation statutes that are still in effect. Under Tenn. Code Ann. § 7-3-101, “Any metropolitan government created and established pursuant to chapters 1-3 of this title shall acquire and succeed to all rights, obligations, duties and privileges of the county and of the cities consolidating[.]” A metropolitan government, therefore, would succeed to the rights of the principal city. Tenn. Code Ann. § 6-51-110(a) provides in relevant part that “[n]othing in this part and § 6-51-301 shall be construed to authorize annexation proceedings by a smaller municipality with respect to territory within the corporate limits of a larger municipality[.]” As used in the annexation laws, the terms “larger” and “smaller” refer to population and not area.

Tenn. Code Ann. § 6-51-101(1). The term “municipality” means any incorporated city or cities, or town or towns, and does not include any utility district, sanitary district, or other public service district, whether organized under public or private act. Tenn. Code Ann. § 6-51-101(2). But, under Tenn. Code Ann. § 7-2-108(a)(2), the resulting metropolitan government includes the entire area of the county. The metropolitan government, therefore, succeeds to the privileges under Tenn. Code Ann. § 6-51-110 with respect to all its territory. A metropolitan government thus is both a municipality and a county. Tenn. Code Ann. § 7-2-108(a)(1). Accordingly, smaller cities that elect not to be included in the consolidation may not annex any territory of the metropolitan government outside their corporate limits after the consolidation becomes effective because that territory is already part of a larger municipality, the metropolitan government. Conversely, these smaller cities become a part of the general services district and may not be included within the urban services district by action of the metropolitan council. Tenn. Code Ann. § 7-2-107(e). Nothing in the consolidation or annexation statutes now in effect appears to change this result.

This conclusion is made certain when read in conjunction with Tenn. Code Ann. §§ 6-58-101, *et seq.* This statutory scheme, adopted in Chapter 1101 of the Public Acts of 1998, requires cities and counties without a metropolitan government to establish an urban growth plan. Tenn. Code Ann. § 6-51-118, which was part of Chapter 1101, added the following provision to the general annexation laws:

No provision of Acts 1998, ch. 1101, applies to an annexation in any county with a metropolitan form of government in which any part of the general services district is annexed into the urban services district; provided, that any section of this part specifically referenced on May 19, 1998, in the charter of any county with a metropolitan form of government shall refer to the language of such sections in effect on January 1, 1998.

Tenn. Code Ann. § 6-58-104(a)(6) provides:

(A) A municipality may make binding agreements with other municipalities and with counties to refrain from exercising any power or privilege granted to the municipality by this title, to any degree contained in the agreement including, but not limited to, the authority to annex.

(B) A county may make binding agreements with municipalities to refrain from exercising any power or privilege granted to the county by title 5, to any degree contained in the agreement including, but not limited to, the authority to receive annexation date revenue.

(C) Any agreement made pursuant to this subdivision (a)(6) need not have a set term, but after the agreement has been in effect for five (5) years, any party upon giving ninety (90) days written notice to the other parties is entitled to a renegotiation or termination of the agreement.

Tenn. Code Ann. § 6-58-104(a)(7) provides:

(A) ***Notwithstanding any provisions of this chapter or any other provision of law to the contrary***, any annexation reserve agreement or any agreement of any kind either between municipalities or between municipalities and counties setting out areas reserved for future municipal annexation and in effect on May 19, 1998, ***are ratified and remain binding and in full force and effect***. Any such agreement may be amended from time to time by mutual agreement of the parties. Any such agreement or amendment may not be construed to abrogate the application of any provision of this chapter to the area annexed pursuant to the agreement or amendment.

(B) In any county with a charter form of government, the annexation reserve agreements in effect on January 1, 1998, are deemed to satisfy the requirement of a growth plan. The county shall file a plan based on such agreements with the committee [the Local Government Planning Advisory Committee established under Tenn. Code Ann. § 4-3-727; Tenn. Code Ann. § 6-58-101(2)].

The language, “Notwithstanding any provision of this chapter or any other provision of law to the contrary,” is strong. But Tenn. Code Ann. § 6-58-103(a) provides:

The provisions of this chapter ***do not apply to any county having a metropolitan form of government***; provided, that each such county shall receive full benefit of all incentives available pursuant to § 6-58-109, and each such county shall escape the sanctions imposed by § 6-58-110; and provided further, that any municipality that lies within a county having a metropolitan form of government and another county must establish an urban growth boundary in conjunction with the county containing the territory that is not within the county having a metropolitan form of government.

(emphasis added). Thus, a municipality with territory in the metropolitan government and in another county must establish an urban growth boundary for its territory within the non-metropolitan county, but not for territory within the county having a metropolitan form of government. Obviously, the reason for this provision is that the municipality may not annex any territory within the metropolitan government. In light of this language, it is the opinion of this Office that the General Assembly did not intend for annexation reserve agreements to survive in a county where a metropolitan form of government is adopted. For these reasons, a metropolitan charter provision retaining annexation reserve agreements between the principal city and the smaller cities is not authorized under Tenn. Code Ann. §§ 7-1-101, *et seq.*, and would become a nullity upon adoption of a metropolitan government.

ROBERT E. COOPER, JR.  
Attorney General and Reporter

CHARLES L. LEWIS  
Deputy Attorney General

ANN LOUISE VIX  
Senior Counsel

Requested by:

The Honorable Mark Norris  
Senate Majority Leader  
9A Legislative Plaza  
Nashville, Tennessee 37243