Title 6 Cities And Towns
Municipal Government Generally
Chapter 51 Change of Municipal Boundaries
Part 1 Annexation

***Tenn. Code Ann. § 6-51-101* (2013)**

6-51-101. Part definitions and definitions for § 6-51-301.

As used in this part and *§ 6-51-301*, unless the context otherwise requires:

(1) "Larger" and "smaller" refer to population and not area;

(2) "Municipality" or "municipalities" means any incorporated city or cities, or town or towns, and does not include any utility district, sanitary district, school district, or other public service district, whether organized under public or private acts; and

(3) "Notice" means publication in a newspaper of general circulation in the municipality at least seven (7) days in advance of a hearing. The notice, whether by ordinance as stipulated in *§ 6-51-102(a)(1)* and (b) or by referendum as stipulated in *§ 6-51-104(b)*, shall be satisfied by inclusion of a map that includes a general delineation of the area or areas to be annexed by use of official road names or numbers, or both, names of lakes and waterways, or other identifiable landmarks, as appropriate.

HISTORY: Acts 1955, ch. 113, § 1; T.C.A., § 6-308; Acts 1995, ch. 283, § 1.

NOTES: Code Commission Notes.

Acts 1995, ch. 283, § 2 provided that the amendment by this act applies only to annexation ordinances passed on first reading on or after July 1, 1995.

Cross-References.

Special census after annexation, *§ 6-51-114*.

Section to Section References.

This chapter is referred to in *§§ 6-58-111, 43-34-108*.

Sections 6-51-101 -- 6-51-111 are referred to in *§ 7-82-301*.

Sections 6-51-101 -- 6-51-106 are referred to in *§ 7-2-108*.

Textbooks.

Tennessee Jurisprudence, 19 *Tenn. Juris., Municipal Corporations, §§ 13, 15, 18.*

Law Reviews.

Tennessee Annexation Law: History, Analysis, and Proposed Amendments (Frederic S. Le Clercq), *55 Tenn. L. Rev. 577 (1989).*

Attorney General Opinions.

Alternative alteration of municipal boundaries, OAG 96-032 (3/6/96).

Constitutionality of strip annexation, OAG 97-157 (12/01/97).

Comparative Legislation.

Change of municipal boundaries:
Ala. *Code § 11-42-1* et seq.
Ark. *Code § 14-40-201* et seq.
Ga. *O.C.G.A. § 36-36-1* et seq.
Ky. *Rev. Stat. Ann. § 81A.005* et seq.
Miss. *Code Ann. § 21-1-27* et seq.
Mo. *Rev. Stat. § 71.011* et seq.
N.C. *Gen. Stat. § 160A-21* et seq.
Va. *Code § 15.2-2900* et seq.

Cited:

Nailling v. State, 208 Tenn. 372, 346 S.W.2d 247, 1961 Tenn. LEXIS 295 (1961); Consolidated Gray-Fordtown-Colonial Heights Utility Dist. v. O'Neill, 209 Tenn. 342, 354 S.W.2d 63, 1962 Tenn. LEXIS 364 (1962); State ex rel. Maury County Farmers Co-op Corp. v. Columbia, 210 Tenn. 657, 362 S.W.2d 219, 1962 Tenn. LEXIS 326 (1962); Pitts & Co. v. Memphis, 558 S.W.2d 448, 1977 Tenn. App. LEXIS 314 (Tenn. Ct. App. 1977).

NOTES TO DECISIONS

1. Constitutionality. 2. Notice. 3. Judicial Review.

1. Constitutionality.

Every provision of Acts 1955, ch. 113 (*§§ 6-51-101 -- 6-51-111*, *6-51-201* and *6-51-301*) was germane to the object expressed in its caption. *Witt v. McCanless, 200 Tenn. 360, 292 S.W.2d 392, 1956 Tenn. LEXIS 419 (1956),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

2. Notice.

Advertisement by city council in newspaper of general circulation five days before hearing on annexation ordinance together with extended front page article in such newspaper seven days prior to hearing constituted substantial compliance with provisions of this section as to notice. *State ex rel. Robbins v. Jackson, 218 Tenn. 322, 403 S.W.2d 304, 1966 Tenn. LEXIS 570 (1966),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

3. Judicial Review.

Sections 6-51-101 -- 6-51-112 and *6-51-301* contain the entire jurisdiction and authority of the courts to review the actions of municipalities in enacting annexation ordinances. *Oak Ridge v. Roane County, 563 S.W.2d 895, 1978 Tenn. LEXIS 537 (Tenn. 1978).*

Collateral References.

56 Am. Jur. 2d Municipal Corporations, Counties and Other Political Subdivisions § 1 et seq.

62 C.J.S. Municipal Corporations § 41 et seq.

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Tenn. Code Ann. § 6-51-102 **(2013)**

6-51-102. Annexation by ordinance.

(a) (1) A municipality, when petitioned by a majority of the residents and property owners of the affected territory, or upon its own initiative when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property endangered, after notice and public hearing, by ordinance, may extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole; provided, that the ordinance shall not become operative until thirty (30) days after final passage thereof. During this thirty-day period, the municipality shall notify the county mayor in whose county the territory being annexed is located that territory located in the unincorporated part of the county is being annexed by the municipality. The notification shall include a copy of the annexation ordinance and a map of the area being annexed.

(2) The provisions of subdivision (a)(1) that are in conflict with this subdivision (a)(2) do not apply to any county having a population of not less than three hundred nineteen thousand six hundred twenty-five (319,625) nor more than three hundred nineteen thousand seven hundred twenty-five (319,725), according to the 1980 federal census or any subsequent federal census. In such county, if the proposal to extend the corporate limits by the annexation of territory adjoining the existing boundaries of a municipality is proposed by the municipality upon its own initiative by ordinance, the ordinance shall not become operative until an election is held at the expense of the proposing municipality for approval or disapproval of such annexation by the qualified voters who reside in the territory proposed for annexation. The operation of the ordinance shall be subject to approval of the voters who reside in such territory. The county election commission shall hold an election thereon, providing options to vote "For" or "Against" the ordinance, not less than forty-five (45) days nor more than sixty (60) days after the receipt of a certified copy of such ordinance, and a majority vote of those voting in the election shall determine whether the ordinance is to be operative. A vote "For" the ordinance shall be a vote "For Annexation" and a vote "Against" the ordinance shall be a vote "Against Annexation." If the vote is for the ordinance, the ordinance shall become operative thirty (30) days after the date that the county election commission makes its official canvass of the election returns; such ordinance shall not become operative before the expiration of one hundred twenty (120) days following the final passage of the annexation ordinance. If the ordi-

nance is rejected, all relevant provisions in this chapter shall apply to the question of annexation in such county.

(3) (A) No municipality having a population greater than ten thousand (10,000), according to the 1970 federal census or any subsequent federal census shall, by means of annexation by ordinance upon its own initiative, increase the land area contained within its boundaries by more than twenty-five percent (25%) during any twenty-four-month period.

(B) (i) Subdivision (a)(3)(A) shall not apply to any municipality having a population of less than twelve thousand (12,000), according to the 1980 federal census or any subsequent federal census, and the charter of which is provided for by a private act of the general assembly, and not under the general law of this title.

(ii) Subdivision (a)(3)(B)(i) shall not apply to any municipality located in any county having a population of not less than thirty-four thousand one hundred (34,100) nor greater than thirty-four thousand two hundred (34,200), or located in any county having a population of not less than thirty-seven thousand (37,000) nor greater than thirty-seven thousand one hundred (37,100), or located in any county having a population of not less than forty-nine thousand four hundred (49,400) nor greater than forty-nine thousand five hundred (49,500), each according to the 1980 federal census or any subsequent federal census.

(b) (1) Before any territory may be annexed under this section, the governing body of the municipality shall adopt a plan of services establishing at least the services to be delivered and the projected timing of the services. Upon adoption of the plan of services, the municipality shall cause a copy of the plan of services to be forwarded to the county mayor in whose county the territory being annexed is located. The plan of services shall be reasonable with respect to the scope of services to be provided and the timing of the services.

(2) The plan of services shall include, but not be limited to: police protection, fire protection, water service, electrical service, sanitary sewer service, solid waste collection, road and street construction and repair, recreational facilities and programs, street lighting, and zoning services. If the municipality maintains a separate school system, the plan shall also include schools and provisions specifically addressing the impact, if any, of annexation on school attendance zones. If the municipality does not maintain a separate school system, then the municipality shall provide written notice of the annexation to all affected school systems as soon as practicable, but in no event less than thirty (30) days prior to the public hearing requirement set forth in subdivision (b)(4). The plan of services may exclude services that are being provided by another public agency or private company in the territory to be annexed other than those services provided by the county.

(3) The plan of services shall include a reasonable implementation schedule for the delivery of comparable services in the territory to be annexed with respect to the services delivered to all citizens of the municipality.

(4) Before a plan of services may be adopted, the municipality shall submit the plan of services to the local planning commission, if there is one, for study and a written report, to be rendered within ninety (90) days after such submission, unless by resolution of the governing body a longer period is allowed. Before the adoption of the plan of services, a municipality shall hold a public hearing. Notice of the time, place, and purpose of the public hearing shall be published in a newspaper of general circulation in the municipality not less than fifteen (15) days before the hearing. The notice shall include the locations of a minimum of three (3) copies of the plan of services,

which the municipality shall provide for public inspection during all business hours from the date of notice until the public hearing.

(5) A municipality may not annex any other territory if the municipality is in default on any prior plan of services.

(6) If a municipality operates a school system, and if the municipality annexes territory during the school year, any student may continue to attend such student's present school until the beginning of the next succeeding school year unless the respective boards of education have provided otherwise by agreement.

(c) Anything contained in this chapter to the contrary notwithstanding, a municipality in any county having a population of over sixty-six thousand (66,000), except in those counties having a population of more than seven hundred thousand (700,000), according to the federal census of 1970 or any subsequent federal census; or in those counties that have the metropolitan form of government, shall have the supplemental right and authority to annex upon its own initiative by ordinance any territory without levying any municipal ad valorem taxes, except for actual municipal services rendered, and that the residents of, and persons owning property in, annexed territory shall be entitled to rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as though such annexed territory had always been a part of the annexing municipality; and it shall be the duty of the governing body to put into effect with respect to an annexed area any charter provisions relating to representation on the governing body. Any municipality that exercises such right to annex is hereby authorized, required and shall levy separate ad valorem taxes for each municipal purpose or service, or both, within the existing limits of the city and shall levy only such taxes, if any, in any territory annexed hereunder when and if the municipal service or purpose for which such taxes have been imposed is actually being rendered; provided, that in the case of sanitary sewers, such sewers shall be furnished within thirty-six (36) months after ad valorem taxes become due.

(d) In counties having a population of more than seven hundred thousand (700,000), or having a population of not less than two hundred sixty thousand (260,000) nor more than two hundred eighty thousand (280,000), according to the 1970 federal census or any subsequent federal census, or in those counties that have the metropolitan form of government, a smaller municipality may, by ordinance, extend its corporate limits by annexation of any contiguous territory, when such territory within the corporate limits of a larger municipality is less than seventy-five (75) acres in area, is not populated, is separated from the larger municipality by a limited access express highway, its access ramps or service roads, and is not the site of industrial plant development. The provisions of this chapter relative to the adoption of a plan of service and the submission of same to a local planning commission, if there is such, shall not be required of the smaller municipality for such annexation.

(e) After receiving the notice from the municipality, as provided in subdivision (a)(1) or (b)(1), the county mayor shall notify the appropriate departments within the county regarding the information received from the municipality.

HISTORY: Acts 1955, ch. 113, § 2; 1961, ch. 320, § 1; 1969, ch. 136, § 1; 1971, ch. 420, §§ 1, 2, 3; 1972, ch. 844, § 1; 1974, ch. 753, §§ 1, 2, 8, 9; T.C.A., § 6-309; Acts 1980, ch. 849, § 1; 1981, ch. 522, §§ 1, 2; 1982, ch. 867, § 1; 1986, ch. 734, § 1; 1987, ch. 87, § 1; 1988, ch. 787, § 1; 1998, ch. 1101, §§ 19, 20; 2003 ch. 90, § 2; 2003, ch. 225, § 1; 2005, ch. 411, §§ 1, 2, 7; 2008, ch. 818, § 3.

NOTES: Code Commission Notes.

The provisions of former subdivisions (a)(2)(A)-(J)(i)-(iv) and (K) have been held unconstitutional, and have been deleted by authority of the code commission. Former subdivision (a)(2)(J)(v) was redesignated (a)(2)(E) in 1998.

Compiler's Notes.

Acts 1981, ch. 522 deleted "provided the ordinance shall not become operative until thirty (30) days after final passage" from the end of former subsection (a). However, because of qualifications on the applicability on the act deleting that material, and thus the continued applicability of the deleted language to certain counties, two versions of former subsection (a) have been set up: subdivision (a)(1), containing the language, and subdivision (a)(2)(A), reflecting the deletion of the language by Acts 1981, ch. 522. See *Vollmer v. City of Memphis, 730 S.W.2d 619 (Tenn. 1987),* and opinions of the attorney general, OAG 88-84 (4/15/88), including April 20, 1988 supplement to that opinion, as well as OAG U86-67 (4/7/86), regarding the constitutionality of various provisions in this section.

Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

Acts 2008, ch. 818, § 3 amended this section by deleting former subdivisions (a)(2)(A)-(D). Present subdivision (a)(2) provides applicability provisions for former subdivisions (a)(2)(A)-(D) that were deleted by the act.

For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Cross-References.

Plan of service, smaller municipalities not required to submit under certain circumstances, *§ 6-51-110*.

Streets in annexed territory, *§ 7-31-104*.

Section to Section References.

Sections 6-51-101 -- 6-51-111 are referred to in *§ 7-82-301*.

Sections 6-51-101 -- 6-51-106 are referred to in *§ 7-2-108*.

This section is referred to in *§§ 6-51-101, 6-51-103, 6-51-104, 6-51-105, 6-51-106*.

Textbooks.

Tennessee Jurisprudence, 19 *Tenn. Juris., Municipal Corporations, §§ 13-16, 18*; 21 *Tenn. Juris., Quo Warranto, § 5*.

Law Reviews.

Municipalities -- Judicial Review of Annexation, *36 Tenn. L. Rev. 825.*

Cited:

Witt v. McCanless, 200 Tenn. 360, 292 S.W.2d 392, 1956 Tenn. LEXIS 419 (1956); State ex rel. Schmittou v. Nashville, 208 Tenn. 290, 345 S.W.2d 874, 1961 Tenn. LEXIS 287 (1961); Nailling v.

State, 208 Tenn. 372, 346 S.W.2d 247, 1961 Tenn. LEXIS 295 (1961); Frost v. Chattanooga, 488 S.W.2d 370, 1972 Tenn. LEXIS 318 (Tenn. 1972); Lawson v. Ray, 549 S.W.2d 373, 1977 Tenn. LEXIS 597 (Tenn. 1977); Watauga v. Johnson City, 589 S.W.2d 901, 1979 Tenn. LEXIS 514 (Tenn. 1979); Taylor v. Armentrout, 632 S.W.2d 107, 1981 Tenn. LEXIS 520 (Tenn. 1981); Hart v. Johnson City, 801 S.W.2d 512, 1990 Tenn. LEXIS 444 (Tenn. 1990); Tenn. ex rel. City of Cookeville v. Upper Cumberland Elec. Mbrshp. Corp., 256 F. Supp. 2d 754, 2003 U.S. Dist. LEXIS 5449 (M.D. Tenn. 2003); Town of Huntsville v. Scott County, 269 S.W.3d 57, 2008 Tenn. App. LEXIS 114 (Tenn. Ct. App. Feb. 28, 2008); *Town of Oakland v. Town of Somerville, 298 S.W.3d 600, 2008 Tenn. App. LEXIS 778* (Tenn. Ct. App. Dec. 30, 2008).

NOTES TO DECISIONS

1. Constitutionality. 2. Construction and Application. 3. Construction With Other Law. 4. Theory of Annexation. 5. Delegation of Legislative Authority. 6. Hearing. 7. --Determination of Reasonableness. 8. Rights of Interested Parties. 9. Notice. 10. Jurisdiction of Subject Matter. 11. Noncontiguous Territory. 12. Schedule of Services. 13. Adoption of Ordinance. 14. Period for Contesting Annexation. 15. Review. 16. Default on Prior Services Plan.

1. Constitutionality.

The constitutionality of this law having been established, an ordinance enacted under its provisions is valid and constitutional if it meets the requirements of the statute. *State ex rel. Stall v. Knoxville, 211 Tenn. 271, 364 S.W.2d 898, 1962 Tenn. LEXIS 357 (1962),* cert. denied, Tennessee *ex rel. Stall v. Knoxville, 372 U.S. 914, 83 S. Ct. 728, 9 L. Ed. 2d 721, 1963 U.S. LEXIS 2161 (1963).*

Action of a city in annexing territory under this section is not subject to constitutional challenge under *U.S. Const., amend. 14* on the basis of the procedure employed or authorized hereunder or because of the pecuniary repercussions in the form of ordinary incidence of city taxation. *Deane Hill Country Club, Inc. v. Knoxville, 379 F.2d 321, 1967 U.S. App. LEXIS 5986 (6th Cir. Tenn. 1967),* cert. denied, *389 U.S. 975, 88 S. Ct. 476, 19 L. Ed. 2d 467, 1967 U.S. LEXIS 174 (1967).*

Annexation of territory in accordance with the provisions of this section did not deprive realtor of due process and equal privileges and immunities of law, did not amount to taking of property without just compensation or deprive realtor of jury trial in violation of United States Constitution or constitution of Tennessee. *State ex rel. Balsinger v. Madisonville, 222 Tenn. 272, 435 S.W.2d 803, 1968 Tenn. LEXIS 431 (1968).*

Placing property within the corporate limits of a given town or city where it will be subjected to the additional burdens of municipal taxation and supervision is not an unconstitutional taking of property since it is not a taking at all as the ownership is in no degree changed and the increased burden is presumed equaled by the increased advantages. *State ex rel. Balsinger v. Madisonville, 222 Tenn. 272, 435 S.W.2d 803, 1968 Tenn. LEXIS 431 (1968).*

In annexation cases there are no equal protection or due process arguments that can properly be made when this statute is properly followed. *State ex rel. Wood v. Memphis, 510 S.W.2d 889, 1974 Tenn. LEXIS 510 (Tenn. 1974).*

This section and *§ 6-51-103,* in providing for municipal annexation of contiguous territory, do not violate the constitutional guarantees of due process and equal protection of the laws, do not operate to take property without just compensation and are not unconstitutional under *U.S. Const., art.*

IV, § 4 or *U.S. Const., amend. 5* or *14*, or under *Tenn. Const., art. I, §§ 2, 8*, or 21, art. II, §§ 27, 28, or 29, or art. XI, § 8. *State ex rel. Hudson v. Chattanooga, 512 S.W.2d 555, 1974 Tenn. LEXIS 487 (Tenn. 1974),* cert. denied, *Hartley v. Chattanooga, 419 U.S. 1070, 95 S. Ct. 657, 42 L. Ed. 2d 666, 1974 U.S. LEXIS 3724 (1974),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

T.C.A. § 6-51-102 is constitutionally sound and empowers the city of Memphis to annex and include within its corporate limits certain adjacent areas including the town of Cordova in Shelby County. *Vollmer v. Memphis, 792 S.W.2d 446, 1990 Tenn. LEXIS 208 (Tenn. 1990),* rehearing denied, -- *S.W.2d --, 1990 Tenn. LEXIS 269* (Tenn. July 2, 1990).

2. Construction and Application.

1961 amendment requiring the governing body of certain municipalities to adopt plan of service before annexation was not retroactive in effect. *State ex rel. Hardison v. Columbia, 210 Tenn. 514, 360 S.W.2d 39, 1962 Tenn. LEXIS 313 (1962),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

The provision of this section that a plan of service for the annexed territories must be adopted prior to the passage of the ordinance has no application to ordinances that were passed before the effective date of the 1961 amendment. *State ex rel. Stall v. Knoxville, 211 Tenn. 271, 364 S.W.2d 898, 1962 Tenn. LEXIS 357 (1962),* cert. denied, Tennessee *ex rel. Stall v. Knoxville, 372 U.S. 914, 83 S. Ct. 728, 9 L. Ed. 2d 721, 1963 U.S. LEXIS 2161 (1963); State ex rel. Cathey v. Knoxville, 211 Tenn. 304, 364 S.W.2d 912, 1962 Tenn. LEXIS 359 (1962),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

Slight irregularities will not defeat an annexation proceeding. *State ex rel. Robbins v. Jackson, 218 Tenn. 322, 403 S.W.2d 304, 1966 Tenn. LEXIS 570 (1966),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

3. Construction With Other Law.

Interpreting *T.C.A. § 6-58-111(a)(2)* in conjunction with *T.C.A. § 6-51-102(a)(1)* leads to the conclusion that proving lack of material retardation necessarily requires proof that annexation will not materially benefit the municipality and territory. *State ex rel. Tipton v. City of Knoxville, 205 S.W.3d 456, 2006 Tenn. App. LEXIS 29 (Tenn. Ct. App. 2006),* appeal denied, -- *S.W.3d --, 2006 Tenn. LEXIS 922 (Tenn. 2006).*

4. Theory of Annexation.

The whole theory of annexation is that it is a device by which a municipal corporation may plan for its orderly growth and development. The failure of a city to extend its corporate boundaries to embrace contiguous areas of growth and development is an abdication of responsibility. The time to annex is in the incipient stage of growth, lest the basic purpose of annexation be frustrated and the public interest suffer by the annexation of substandard areas. *State ex rel. Collier v. Pigeon Forge, 599 S.W.2d 545, 1980 Tenn. LEXIS 458 (Tenn. 1980).*

5. Delegation of Legislative Authority.

The general assembly may delegate its authority to annex territories to municipal corporations to subordinate legislative bodies. *Morton v. Johnson City, 206 Tenn. 411, 333 S.W.2d 924, 1960 Tenn. LEXIS 379 (1960),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009); *State ex rel. Senff v. Columbia, 208 Tenn. 59, 343 S.W.2d 888, 1961 Tenn. LEXIS 394 (1961),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

The authority of a city to annex territory or to challenge annexation must be based upon the statutes. *Gallatin v. Hendersonville, 510 S.W.2d 507, 1974 Tenn. LEXIS 506 (Tenn. 1974).*

6. Hearing.

A hearing in the rooms of the city commission although there was room for only forty people and although 200 to 300 people gathered, was a sufficient public hearing where the room was open to the public and it was stated that everyone who had anything to say would be heard by the commission if it took all night to do it and everyone who wished was permitted to speak. *Morton v. Johnson City, 206 Tenn. 411, 333 S.W.2d 924, 1960 Tenn. LEXIS 379 (1960),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

It is not necessary that the public hearing required by this section be held on a regular meeting night of the commission. *Morton v. Johnson City, 206 Tenn. 411, 333 S.W.2d 924, 1960 Tenn. LEXIS 379 (1960),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

Hearing of annexation ordinance that lasted one and one-half hours and at which the approximately 125 persons present were afforded an opportunity to express their opinions and have their questions answered was sufficient to meet the requirements for public hearing. *State ex rel. Hardison v. Columbia, 210 Tenn. 514, 360 S.W.2d 39, 1962 Tenn. LEXIS 313 (1962),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

Evidence did not sustain contention that annexation ordinance was void on ground that city commissioners had made up their legislative minds to annex before they gave notice of public hearings, but rather showed that fair and proper hearing was had. *State ex rel. Maury County Farmers Co-op Corp. v. Columbia, 210 Tenn. 657, 362 S.W.2d 219, 1962 Tenn. LEXIS 326 (1962).*

The legislative body is required to consider the effects of both positive and negative action, and to then act or fail to act as in its discretion is best for the community. *State ex rel. Wood v. Memphis, 510 S.W.2d 889, 1974 Tenn. LEXIS 510 (Tenn. 1974).*

Where an ordinance was introduced at a regular meeting of the board of commissioners and notice of a public hearing on the ordinance was published in a local newspaper, after which hearing the ordinance was adopted, the city met the requirements of this section and it was not necessary that the public hearing on the ordinance precede its introduction. *Pirtle v. Jackson, 560 S.W.2d 400, 1977 Tenn. LEXIS 646 (Tenn. 1977).*

7. Determination of Reasonableness.

Where most of the testimony was directed to showing a need for services in the annexed area and the ability of the city to furnish those services, this evidence clearly demonstrated that the annexation was logical and reasonable and to the best interest of both the citizens and property owners of the city and of those in the annexed area. *State ex rel. Wilson v. Lafayette, 572 S.W.2d 922, 1978 Tenn. LEXIS 665 (Tenn. 1978).*

8. Rights of Interested Parties.

Interested parties do not acquire any vested rights in proceedings commenced under either this section or *§ 6-51-104*. *Central Soya Co. v. Chattanooga, 207 Tenn. 138, 338 S.W.2d 576, 1960 Tenn. LEXIS 440 (1960).*

Proceeding brought by interested persons for annexation by referendum under *§§ 6-51-104, 6-51-105* would not prevent city from proceeding under *§§ 6-51-102, 6-51-103* to annex by ordinance only a portion of the territory in question. *Central Soya Co. v. Chattanooga, 207 Tenn. 138, 338 S.W.2d 576, 1960 Tenn. LEXIS 440 (1960).*

9. Notice.

Notice of proposed annexation was sufficient even though city annexed smaller areas within proposed annexation area and a portion of the area was not annexed until nine months later. *State ex rel. Senff v. Columbia, 208 Tenn. 59, 343 S.W.2d 888, 1961 Tenn. LEXIS 394 (1961),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

Where notice of hearing was given and it was held at the time and place designated in the notice and the council members were present with the mayor presiding, and the doors were opened to the public, opinions and discussions were invited and much discussion was had, the meeting was proper even though the council chambers could not seat all who wished to come, where the meeting lasted for several hours and anyone who wished to be heard had the opportunity. *State ex rel. Stall v. Knoxville, 211 Tenn. 271, 364 S.W.2d 898, 1962 Tenn. LEXIS 357 (1962),* cert. denied, Tennessee *ex rel. Stall v. Knoxville, 372 U.S. 914, 83 S. Ct. 728, 9 L. Ed. 2d 721, 1963 U.S. LEXIS 2161 (1963).*

10. Jurisdiction of Subject Matter.

Annexation ordinance passed within 30 days after decree of chancellor declaring former ordinance relating to same territory invalid was not void on ground that subject matter was still within exclusive jurisdiction of chancery court where position of both parties was that former ordinance was void and former suit was ended for all practical purposes. *State ex rel. Maury County Farmers Co-op Corp. v. Columbia, 210 Tenn. 657, 362 S.W.2d 219, 1962 Tenn. LEXIS 326 (1962).*

11. Noncontiguous Territory.

City could annex two noncontiguous tracts by a single annexation ordinance. *State ex rel. Maury County Farmers Co-op Corp. v. Columbia, 210 Tenn. 657, 362 S.W.2d 219, 1962 Tenn. LEXIS 326 (1962).*

If in annexing noncontiguous tracts it should appear that one tract is properly the subject of annexation but the other area is unfit for annexation that part of the ordinance describing the latter area could be eliminated under the doctrine of elision without affecting the validity of the annexation of

the other area. *State ex rel. Maury County Farmers Co-op Corp. v. Columbia, 210 Tenn. 657, 362 S.W.2d 219, 1962 Tenn. LEXIS 326 (1962).*

City had no right or authority to annex territory by ordinance that did not adjoin the existing boundaries of the city. *Bartlett v. Memphis, 482 S.W.2d 782, 1972 Tenn. App. LEXIS 342 (Tenn. Ct. App. 1972).*

12. Schedule of Services.

No prefatory schedule of services was required where less than a quarter of a square mile and a population of less than 500 persons was involved in the area sought to be annexed. *State ex rel. Cope v. Morristown, 218 Tenn. 593, 404 S.W.2d 798, 1966 Tenn. LEXIS 590 (1966).*

Where there was proof in the record to the effect that services of fire protection, police protection, garbage disposal, erection of street signs, signals and markings would become effective as soon as annexation ordinance became operative, that extension of water and sewer services would be done as soon as engineering studies under way determined the areas in which extension was feasible and further that city's bond rating was such that issuance of bonds to finance such services would not be adversely affected, city complied with the requirements of this section. *State ex rel. Balsinger v. Madisonville, 222 Tenn. 272, 435 S.W.2d 803, 1968 Tenn. LEXIS 431 (1968).*

13. Adoption of Ordinance.

Where city charter and applicable statutes did not so require there was no necessity that annexation ordinance be read at three separate meetings. *State ex rel. Balsinger v. Madisonville, 222 Tenn. 272, 435 S.W.2d 803, 1968 Tenn. LEXIS 431 (1968).*

Where the law is silent as to the mode or procedure no particular formality in the enactment of an ordinance need be adopted and, in absence of other requirements, it is only necessary that there be sufficient proof of the will of the governing body. *State ex rel. Balsinger v. Madisonville, 222 Tenn. 272, 435 S.W.2d 803, 1968 Tenn. LEXIS 431 (1968).*

Where an annexation ordinance was amended to correct clerical error after passage but prior to the approval of the minutes of the meeting at which passage occurred, the annexation ordinance was lawfully enacted. *State ex rel. Wood v. Memphis, 510 S.W.2d 889, 1974 Tenn. LEXIS 510 (Tenn. 1974).*

14. Period for Contesting Annexation.

Provisions of *§ 6-51-103* giving aggrieved landowners of territory sought to be annexed right to contest annexation ordinance by quo warranto at any time prior to operative date of ordinance when read in conjunction with provisions of this section providing that no annexation ordinance shall be operative until thirty days after final passage have effect of giving aggrieved landowners 30 days after final passage of ordinance to contest its validity. *State ex rel. Bastnagel v. Memphis, 224 Tenn. 514, 457 S.W.2d 532, 1970 Tenn. LEXIS 350 (1970),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

When landowners contested a city's annexation ordinance, alleging the ordinance was amended in violation of the Open Meetings Act, *T.C.A. § 8-44-101* et seq., judgment was properly entered for the city because: (1) the landowners did not allege the ordinance exceeded the city's delegated statutory authority, so the ordinance was attacked for "procedural defects," and such a suit had to be brought pursuant to the quo warranto procedure; and (2) the applicable limitations period had ex-

pired. *Allen v. City of Memphis, -- S.W.3d --, 2012 Tenn. App. LEXIS 297* (Tenn. Ct. App. May 10, 2012), appeal denied, -- *S.W.3d --, 2012 Tenn. LEXIS 728* (Tenn. Oct. 1, 2012).

Alleged landowners' second complaint in the nature of a quo warranto proceeding, *T.C.A. § 6-51-102(b)*, challenging a city's annexation as unreasonable and/or unnecessary, was untimely because it was filed approximately ten years, rather than thirty days, after the November 2001 annexation of the area; the dismissal of the landowners' first quo warranto action "without prejudice" did not permit the trial court to exercise jurisdiction over a quo warranto action filed outside the thirty-day limitations period. *Cochran v. City of Memphis, -- S.W.3d --, 2013 Tenn. App. LEXIS 182* (Tenn. Ct. App. Mar. 19, 2013).

15. Review.

If the reasonableness of the annexation is a debatable question, then the court will uphold the validity of the annexation. *State ex rel. Wood v. Memphis, 510 S.W.2d 889, 1974 Tenn. LEXIS 510 (Tenn. 1974).*

The boundaries set by annexation will not be disturbed unless they were established by action that was arbitrary and unreasonable. *State ex rel. Wood v. Memphis, 510 S.W.2d 889, 1974 Tenn. LEXIS 510 (Tenn. 1974).*

Whether the boundaries of a city are fixed directly by the general assembly or are fixed by the legislative body of the city under the authority delegated by this section, it remains a legislative matter and will not be disturbed by the court on review unless shown to be arbitrary and unreasonable. *State ex rel. Hicks v. Chattanooga, 513 S.W.2d 780, 1974 Tenn. LEXIS 469 (Tenn. 1974).*

Annexation statutes expressly permit court review when method of annexation is by adoption of an ordinance but make no provision for court review when annexation is by referendum. *State ex rel. Vicars v. Kingsport, 659 S.W.2d 367, 1983 Tenn. App. LEXIS 707 (Tenn. Ct. App. 1983).*

The validity of an annexation ordinance alleged to exceed the authority delegated by the legislature is subject to declaratory judgment under *T.C.A. § 29-14-103*. *State ex rel. Earhart v. City of Bristol, 970 S.W.2d 948, 1998 Tenn. LEXIS 366 (Tenn. 1998).*

16. Default on Prior Services Plan.

Plaintiffs' motion to amend the pleadings to conform to the evidence to allege that an annexation was barred under *T.C.A. § 6-51-102(b)(5)* based on an alleged default on earlier plan of services was properly denied as plaintiffs failed to allege any facts about any alleged earlier default or to cite to the specific sub-section of *§ 6-51-102*; the issue was not tried by express or implied consent as a prior annexed resident testified as a rebuttal witness about an issue that had not been properly raised. *State Ex Rel. Grooms v. City of Newport, -- S.W.3d --, 2011 Tenn. App. LEXIS 561* (Tenn. Ct. App. Oct. 17, 2011), appeal denied, *State ex rel. Grooms v. City of Newport, -- S.W.3d --, 2012 Tenn. LEXIS 112* (Tenn. Feb. 15, 2012).

Alleged landowners' failed to sufficiently plead a declaratory judgment claim against a city, wherein the landowners claimed the city's annexation was prohibited by law based upon the city's default on a plan of services, *T.C.A. § 6-51-102(b)(5)*, because the landowners' complaint contained no allegations: (1) concerning the nature of the alleged default; (2) the default existed at the time the area was annexed; (3) the residents of the area had filed suit to compel the city to perform the plan of services; or (4) a court had determined the city had failed to comply with the plan of services

without cause. *Cochran v. City of Memphis, -- S.W.3d --, 2013 Tenn. App. LEXIS 182* (Tenn. Ct. App. Mar. 19, 2013).

Decisions Under Prior Law 1. Qualifications of Petitioners. 2. Description of Annexed Territory. 3. Liability of Annexed Territory for Debts. 4. Rights of Property Owners Questioning Annexation. 5. --Right to Enjoin Annexation. 6. Classification of Cases Involving Annexation. 7. Power of General Assembly to Change Boundaries.

1. Qualifications of Petitioners.

The "freeholders" must be residents, inhabitants, or citizens of the territory proposed to be annexed, and must be owners of land in their own names, in order to be qualified as petitioners for such annexation. *Morris v. Nashville, 74 Tenn. 337, 1880 Tenn. LEXIS 257 (1880).*

2. Description of Annexed Territory.

Where an act annexing adjacent territory to a municipal corporation begins the description of the property to be annexed at a point in the corporate line and ends at a different point in the corporate line, the description is sufficiently definite, the omission of the words "thence along the corporate line to the beginning," or their equivalent, being immaterial. *Johnson City v. Clinchfield R. Co., 163 Tenn. 332, 43 S.W.2d 386, 1931 Tenn. LEXIS 121 (1931).*

3. Liability of Annexed Territory for Debts.

The annexed territory, in absence of an express provision to the contrary, becomes liable for existing indebtedness of the corporation, and it will be presumed that the general assembly deemed the territory received reciprocal benefits from the annexation. *Galloway v. Memphis, 116 Tenn. 736, 94 S.W. 75, 1906 Tenn. LEXIS 25 (1906).*

4. Rights of Property Owners Questioning Annexation.

The owners of property in the territory proposed to be annexed to a municipal corporation have, prima facie, such peculiar interest and rights as entitle them to resort to a court of chancery to question the validity of an election held for annexation, for fraud or invalidity of the election. *Morris v. Nashville, 74 Tenn. 337, 1880 Tenn. LEXIS 257 (1880); Hooper v. Rhea, 3 Shan. 145 (1885); Shields v. Davis, 103 Tenn. 538, 53 S.W. 948, 1899 Tenn. LEXIS 134 (1899); Baker v. Mitchell, 105 Tenn. 610, 59 S.W. 137, 1900 Tenn. LEXIS 111 (1900); Patton v. Mayor of Chattanooga, 108 Tenn. 197, 65 S.W. 414, 1901 Tenn. LEXIS 22 (1901); Pope v. Dykes, 116 Tenn. 230, 93 S.W. 85, 1905 Tenn. LEXIS 19 (1905); Adcock v. Houk, 122 Tenn. 269, 122 S.W. 979, 1909 Tenn. LEXIS 22 (1909); Richardson v. Young, 122 Tenn. 471, 125 S.W. 664, 1909 Tenn. LEXIS 32 (1910).*

5. --Right to Enjoin Annexation.

The fact that the return of the result of the election has been made to the city authorities and accepted by them, and other acts have been done by them showing an intention to treat the annexation as complete, will not preclude the granting of relief by enjoining the annexation. *Morris v. Nashville, 74 Tenn. 337, 1880 Tenn. LEXIS 257 (1880).*

6. Classification of Cases Involving Annexation.

Cases involving the annexation of new territory to a city are controversies not falling under the classification of contested election cases, but, on the contrary, under the class of cases wherein the

chancery court restrains public officers from the exercise of unconstitutional powers. *Adcock v. Houk, 122 Tenn. 269, 122 S.W. 979, 1909 Tenn. LEXIS 22 (1909).*

The classification system by which voters of certain counties were excluded from ratification of annexation questions was unreasonable in violation of *Tenn. Const., art. XI, § 9* and chapter 522 of Acts 1981, codified as subdivisions (a)(2)(A)-(J)(i)-(iv) and (a)(2)(K), is void. *Vollmer v. Memphis, 730 S.W.2d 619, 1987 Tenn. LEXIS 893 (Tenn. 1987).*

7. Power of General Assembly to Change Boundaries.

Notwithstanding statute providing for the change of the boundaries or territorial limits of municipal corporations, the general assembly could, by special act, accomplish the same end by extending or contracting the corporate limits. *Williams v. Nashville, 89 Tenn. 487, 15 S.W. 364, 1890 Tenn. LEXIS 75 (1891); Grainger County v. State, 111 Tenn. 234, 80 S.W. 750, 1903 Tenn. LEXIS 22 (1904); Oneida v. Pearson Hardwood Flooring Co., 169 Tenn. 449, 88 S.W.2d 998, 1935 Tenn. LEXIS 68 (1935),* superseded by statute as stated in, *State ex rel. Vicars v. Kingsport, 659 S.W.2d 367, 1983 Tenn. App. LEXIS 707 (Tenn. Ct. App. 1983).*

The power of the general assembly to create municipal corporations and to alter their boundaries at will without the consent of the municipality or the inhabitants of its territory is a political power and in absence of constitutional restraint is not open to hindrance or review by the courts. *Oneida v. Pearson Hardwood Flooring Co., 169 Tenn. 449, 88 S.W.2d 998, 1935 Tenn. LEXIS 68 (1935),* superseded by statute as stated in, *State ex rel. Vicars v. Kingsport, 659 S.W.2d 367, 1983 Tenn. App. LEXIS 707 (Tenn. Ct. App. 1983).*

Collateral References.

Challenging acts or proceedings by which its boundaries are affected, right of political division to. 86 A.L.R. 1374.

Facts warranting extension or reduction of municipal boundaries. 62 A.L.R. 1011.

Power to extend boundaries of municipal corporations. 64 A.L.R. 1335.

Tenn. Code Ann. § 6-51-103 (2013)

6-51-103. Quo warranto to contest annexation ordinance -- Appellate review.

(a) (1) (A) Any aggrieved owner of property that borders or lies within territory that is the subject of an annexation ordinance prior to the operative date thereof, may file a suit in the nature of a quo warranto proceeding in accordance with this part, *§ 6-51-301* and title 29, chapter 35 to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole and so constitutes an exercise of power not conferred by law. Notwithstanding the provisions of any other section in this chapter, for purposes of this section, an "aggrieved owner of property" does not include any municipality or public corporation created and defined under title 7, chapter 82 that owns property bordering or lying within the territory that is the subject of an annexation ordinance requested by the remaining property owner or owners of the territory and whose property and services are to

be allocated and conveyed in accordance with *§ 6-51-111*, *§ 6-51-112* or *§ 6-51-301*, or any contractual arrangement otherwise providing for such allocation and conveyance.

(B) Subdivision (a)(1)(A) does not apply to the counties covered by subdivision (a)(2).

(2) (A) Any aggrieved owner of property, lying within territory that is the subject of an annexation ordinance prior to the operative date thereof, may file a suit in the nature of a quo warranto proceeding in accordance with this part, *§ 6-51-301* and title 29, chapter 35 to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole, and so constitutes an exercise of power not conferred by law.

(B) Subdivision (a)(2)(A) shall apply only in counties having a metropolitan form of government and in counties having populations of: Click here to view image.

according to the 1980 federal census or any subsequent federal census, and in any county with a population of not less than two hundred eighty-five thousand (285,000) and not more than two-hundred ninety thousand (290,000) based upon the 1980 federal census.

(b) The rendering of services under a mutual aid agreement, an automatic response agreement, an operational agreement, or any other agreement as allowed under a comprehensive growth plan, pursuant to chapter 58 of this title, or the providing of mutual aid or assistance under the Mutual Aid and Emergency and Disaster Assistance Agreement Act of 2004, compiled in title 58, chapter 8, is not admissible as evidence against the municipality in any action brought under this section or title 29, chapter 14.

(c) The municipality shall have the burden of proving that an annexation ordinance is reasonable for the overall well-being of the communities involved.

(d) If more than one (1) suit is filed, all of them shall be consolidated and tried as one (1) in the first court of appropriate jurisdiction in which suit is filed. Suit or suits shall be tried on an issue to be made up there, and the question shall be whether the proposed annexation is or is 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. Should the court find the ordinance to be unreasonable, or to have been done by exercise of powers not conferred by law, an order shall be issued vacating the ordinance and the municipality shall be prohibited from annexing, pursuant to the authority of *§ 6-51-102*, any part of the territory proposed for annexation by such vacated ordinance for a period of at least twenty-four (24) months following the date of such order. In the absence of such finding, an order shall be issued sustaining the validity of such ordinance, which shall then become operative thirty-one (31) days after judgment is entered unless an abrogating appeal has been taken therefrom.

(e) If on appeal judgment shall be against the validity of such ordinance, an order shall be entered vacating the same and the municipality shall be prohibited from annexing, pursuant to the authority of *§ 6-51-102*, any part of the territory proposed for annexation by such vacated ordinance for a period of at least twenty-four (24) months following the date of such order. If judgment shall be in favor of the validity of such ordinance, it shall become operative forthwith by court order and shall not be subject to contest or attack in legal or equitable proceeding for any cause or reason, the judgment of the appellate court being final.

(f) Should the territory hereafter sought to be annexed be the site of substantial industrial plant development, a fact to be ascertained by the court, the municipality shall have the burden of proving that the annexation of the site of the industrial plant development is not unreasonable in consideration of the factors above mentioned, including the necessity for or use of municipal services by the industrial plant or plants, and the present ability and intent of the municipality to benefit the industrial plant development by rendering municipal services thereto when and as needed. The policy and purpose of this provision is to prevent annexation of industrial plants for the sole purpose of increasing municipal revenue, without the ability and intent to benefit the area annexed by rendering municipal services, when and as needed, and when such services are not used or required by the industrial plants.

(g) During the time that any annexation ordinance is being contested as provided in this section, the annexing municipality and the county governing body or any affected school, sanitary or utility district, or all such districts, may enter into an agreement to provide for new, expanded, and/or upgraded services and facilities, including, but not limited to, equipment, land and buildings, and capital expenditures, including sale of bonds, to finance such services and facilities, which agreement shall include an equitable division of the cost and liabilities of such capital expenditures between the annexing municipality and the county governing body or any affected school, sanitary, or utility district, or all such districts, upon final determination of such contested annexation ordinance.

(h) When territory is annexed that is located in a county other than one in which the city hall of the annexing municipality is then located, any suit filed pursuant to this section for the purpose of contesting the annexation ordinance shall be filed in the county where the city hall of the annexing municipality is located. The chancellor, however, shall change the venue to a county that is adjacent to either the county where the annexing municipality's city hall is located or the county where the proposed annexation is located.

(i) When a final judgment is rendered in a quo warranto suit contesting a proposed annexation, the municipality shall notify the county mayor of the outcome of the litigation, so the county may keep abreast of the status of a pending annexation. Similarly, when a municipality files an appeal of a decision in a quo warranto suit, the municipality shall notify the county mayor of the pending appeal.

HISTORY: Acts 1955, ch. 113, § 2; 1961, ch. 220, § 1; 1970, ch. 516, § 1; 1974, ch. 753, §§ 4, 8, 9; T.C.A., § 6-310; Acts 1982, ch. 867, § 2; 1984, ch. 642, §§ 1-10; 1989, ch. 326, § 1; 1989, ch. 327, § 1; 2005, ch. 264, § 2; 2005, ch. 411, § 4.

NOTES: Compiler's Notes.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Cross-References.

Consolidation, separate trials, Tenn. R. Civ. P. 42.

Section to Section References.

Sections 6-51-101 -- 6-51-111 are referred to in *§ 7-82-301*.

Sections 6-51-101 -- 6-51-106 are referred to in *§ 7-2-108*.

Textbooks.

Tennessee Forms (Robinson, Ramsey and Harwell), No. 1-42.01-1.

Tennessee Jurisprudence, 19 *Tenn. Juris., Municipal Corporations, §§ 13, 14, 18*; 21 *Tenn. Juris., Quo Warranto, § 5*.

Law Reviews.

Municipal Annexation in Tennessee, *47 Tenn. L. Rev. 651*.

Attorney General Opinions.

Standing to contest city annexation ordinance, OAG 99-076 (4/5/99).

Cited:

State ex rel. Cope v. Morristown, 218 Tenn. 593, 404 S.W.2d 798, 1966 Tenn. LEXIS 590 (1966); Watauga v. Johnson City, 589 S.W.2d 901, 1979 Tenn. LEXIS 514 (Tenn. 1979); Town of Huntsville v. Scott County, 269 S.W.3d 57, 2008 Tenn. App. LEXIS 114 (Tenn. Ct. App. Feb. 28, 2008).

NOTES TO DECISIONS

1. Constitutionality. 2. Relation to Other Statutes. 3. Persons Entitled to Bring Suit. 4. Issues Raised by Suit. 5. Sufficiency of Allegations. 6. Consolidation of Suits. 7. Determination of Reasonableness. 8. --Burden of Proof. 9. Appeal. 10. Enforcement of Decrees. 11. Trial Court. 12. Period for Contesting Annexation. 13. "Industrial Development" Provisions. 14. Repeal of Ordinance.

1. Constitutionality.

The fact that the court is given the power to determine whether the ordinance is or not reasonable does not constitute an unlawful delegation of legislative powers to the judiciary within the meaning of *Tenn. Const., art. II, § 1*. *Witt v. McCanless, 200 Tenn. 360, 292 S.W.2d 392, 1956 Tenn. LEXIS 419 (1956),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

The provision for contesting an annexation ordinance provided by this section is in the nature of quo warranto, which is an equitable action, so that constitutional guaranty of trial by jury does not apply. *State ex rel. Balsinger v. Madisonville, 222 Tenn. 272, 435 S.W.2d 803, 1968 Tenn. LEXIS 431 (1968).*

The establishment by this section of one standard for individuals within an industrial area and another for individuals in a nonindustrial area constitutes a reasonable classification directly and naturally related to the legislative purpose and does not violate the equal protection of laws clause of U.S. Const., amend. 14 or *Tenn. Const., art. I, § 8* or art. XI, § 8. *State ex rel. Hudson v. Chattanooga, 512 S.W.2d 555, 1974 Tenn. LEXIS 487 (Tenn. 1974),* cert. denied, *Hartley v. Chattanooga, 419 U.S. 1070, 95 S. Ct. 657, 42 L. Ed. 2d 666, 1974 U.S. LEXIS 3724 (1974),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

This section and *§ 6-51-102*, in providing for municipal annexation of contiguous territory, do not violate the constitutional guarantees of due process and equal protection of the laws, do not operate to take property without just compensation and are not unconstitutional under *U.S. Const., art. IV, § 4, U.S. Const., amend. 5* or *14*, or under *Tenn. Const., art. I, §§ 2, 8*, or 21, art. II, §§ 27, 28 or

29, or art. XI, § 8. *State ex rel. Hudson v. Chattanooga, 512 S.W.2d 555, 1974 Tenn. LEXIS 487 (Tenn. 1974),* cert. denied, *Hartley v. Chattanooga, 419 U.S. 1070, 95 S. Ct. 657, 42 L. Ed. 2d 666, 1974 U.S. LEXIS 3724 (1974),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

The court held that the former exception exempting certain municipalities from the burden of proving the reasonableness of an annexation ordinance, was class legislation and was therefore unconstitutional. *Pirtle v. Jackson, 560 S.W.2d 400, 1977 Tenn. LEXIS 646 (Tenn. 1977).*

There was no rational basis for the population classifications in the 1984 amendment (Acts 1984, ch. 642) to *T.C.A. § 6-51-103*; therefore, the population classifications contained in the 1984 amendment were prohibited by the municipal boundaries clause, *Tenn. Const., art. XI, § 9,* and the amendment was unconstitutional in its entirety. *Hart v. Johnson City, 801 S.W.2d 512, 1990 Tenn. LEXIS 444 (Tenn. 1990).*

2. Relation to Other Statutes.

The intention of the general assembly to mesh in with the annexation statutes only such provisions of title 29, ch. 35 relating to quo warranto as would be applicable to the annexation proceedings. *State ex rel. Southerland v. Greeneville, 201 Tenn. 133, 297 S.W.2d 68, 1956 Tenn. LEXIS 475 (1956).*

T.C.A. § 28-1-105 permitting new action within one year after adverse decision not on merits with reference to suits properly commenced within period of limitation did not apply to proceedings to test validity of annexation ordinance since such section relates only to procedural limitations and under this part and *T.C.A. § 6-51-301* the right itself is limited rather than simply the remedy. *Brent v. Greeneville, 203 Tenn. 60, 309 S.W.2d 121, 1957 Tenn. LEXIS 464 (1957); Nailling v. State, 208 Tenn. 372, 346 S.W.2d 247, 1961 Tenn. LEXIS 295 (1961).*

This section did not apply to petition to rehear under former Supreme Court Rule 32. *State ex rel. Schmittou v. Nashville, 208 Tenn. 290, 345 S.W.2d 874, 1961 Tenn. LEXIS 287 (1961).*

It was not the intent of the general assembly that issues arising under *T.C.A. § 6-51-111* be determined at the time the reasonableness of the annexation ordinance was in issue under *T.C.A. § 6-51-103*. *State ex rel. Spoone v. Morristown, 222 Tenn. 21, 431 S.W.2d 827, 1968 Tenn. LEXIS 408 (1968),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

There is no essential difference between zoning classifications and annexation classifications and, in fact, a principal purpose of annexation is to govern land used by the application of sound zoning practices. *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

The purpose of *T.C.A. § 6-51-103* was to grant smaller municipalities the same standing to challenge annexation proceedings that had already been given to affected property owners. *State ex rel. Hornkohl v. Tullahoma, 746 S.W.2d 199, 1987 Tenn. App. LEXIS 3099 (Tenn. Ct. App. 1987),* superseded by statute as stated in, *Hardin County ex rel. Harris v. Adamsville, -- S.W.2d --, 1990 Tenn. App. LEXIS 801* (Tenn. Ct. App. Nov. 9, 1990).

The general assembly did not intend *T.C.A. § 6-51-110(f)* to have any effect upon the procedural requirements governing individual actions brought pursuant to *T.C.A. § 6-51-103*. Thus, the provisions in *T.C.A. § 6-51-110(f),* permitting a municipality to contest another municipality's annexation

ordinance in the chancery court of the county where the land is located, is limited to actions brought by a municipality and cannot be judicially extended to actions brought by an individual. *State ex rel. Hornkohl v. Tullahoma, 746 S.W.2d 199, 1987 Tenn. App. LEXIS 3099 (Tenn. Ct. App. 1987),* superseded by statute as stated in, *Hardin County ex rel. Harris v. Adamsville, -- S.W.2d --, 1990 Tenn. App. LEXIS 801* (Tenn. Ct. App. Nov. 9, 1990).

There being no conflict between *T.C.A. § 29-35-111* and the annexation statutes, it is applicable to annexation contests brought by individuals pursuant to *T.C.A. § 6-51-103*. *State ex rel. Hornkohl v. Tullahoma, 746 S.W.2d 199, 1987 Tenn. App. LEXIS 3099 (Tenn. Ct. App. 1987),* superseded by statute as stated in, *Hardin County ex rel. Harris v. Adamsville, -- S.W.2d --, 1990 Tenn. App. LEXIS 801* (Tenn. Ct. App. Nov. 9, 1990).

T.C.A. § 6-51-103, and not the general quo warranto statute, compiled in title 29, chapter 35, provides the exclusive means to challenge an annexation ordinance. *State ex rel. Cordova Area Residents for Environment v. City of Memphis, 862 S.W.2d 525, 1992 Tenn. App. LEXIS 361 (Tenn. Ct. App. 1992).*

The validity of an annexation ordinance alleged to exceed the authority delegated by the legislature is subject to declaratory judgment under *T.C.A. § 29-14-103*. *State ex rel. Earhart v. City of Bristol, 970 S.W.2d 948, 1998 Tenn. LEXIS 366 (Tenn. 1998).*

A disjunctive construction of the word "or" in *T.C.A. § 6-58-111(a)(1)*-(2) does not render *T.C.A. § 6-58-111* and *T.C.A. § 6-51-103* irreconcilable because the burdens of proof established in these statutes are not applied simultaneously in that *T.C.A. § 6-58-111(a)* applies to annexations of territory within a municipality's approved urban growth boundary, and *T.C.A. § 6-51-103(a),* (c), and (d) apply to annexations that occur in counties without an approved growth plan. These sections are reconciled because they apply to different situations, and are not ambiguous. *State ex rel. Tipton v. City of Knoxville, 205 S.W.3d 456, 2006 Tenn. App. LEXIS 29 (Tenn. Ct. App. 2006),* appeal denied, -- *S.W.3d --, 2006 Tenn. LEXIS 922 (Tenn. 2006).*

Court erred in finding that larger town waited too late to assert its statutory priority because larger town's annexation proceedings were initiated prior to the effective date of smaller town's ordinance, larger town's proceedings had precedence, and smaller town's annexation proceedings must be held in abeyance pending the outcome of larger town's proceedings pursuant to *T.C.A. § 6-51-110*; until the effective date of the annexation ordinance had passed, there were annexation proceedings underway that were subject to being held in abeyance, under either the quo warranto statute, *T.C.A. § 6-51-103*, or *T.C.A. § 6-51-110(b). Town of Oakland v. Town of Somerville, 298 S.W.3d 600, 2008 Tenn. App. LEXIS 778* (Tenn. Ct. App. Dec. 30, 2008), appeal denied, -- *S.W.3d --, 2009 Tenn. LEXIS 552* (Tenn. Aug. 24, 2009).

When landowners contested a city's annexation ordinance, alleging the ordinance was amended in violation of the Open Meetings Act, *T.C.A. § 8-44-101* et seq., even if the landowners were entitled to bring a declaratory judgment action, that action was time-barred because: (1) there was no universal statute of limitations applicable to all actions for declaratory judgment, so the action was governed by the statute of limitations applicable to another proceeding providing the same relief, which, in this case, was a quo warranto proceeding; and (2) that statute of limitation had expired. *Allen v. City of Memphis, -- S.W.3d --, 2012 Tenn. App. LEXIS 297* (Tenn. Ct. App. May 10, 2012), appeal denied, -- *S.W.3d --, 2012 Tenn. LEXIS 728* (Tenn. Oct. 1, 2012).

3. Persons Entitled to Bring Suit.

The provisions of this section clearly indicate that an aggrieved property owner may file suit to contest validity of annexation proceedings and such right is not limited to the attorney general even though this section incorporates applicable provisions of the quo warranto statute under which only attorney general can act. *State ex rel. Southerland v. Greeneville, 201 Tenn. 133, 297 S.W.2d 68, 1956 Tenn. LEXIS 475 (1956).*

County that owned roads and a school building within territory sought to be annexed was "an aggrieved owner of property lying within the territory" and was entitled to question the reasonableness of the annexation ordinance under this section. *State ex rel. Spoone v. Morristown, 222 Tenn. 21, 431 S.W.2d 827, 1968 Tenn. LEXIS 408 (1968),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

The fact that a city has initiated proceedings to annex a certain territory does not give that city standing to challenge the validity of another city's annexing ordinance of the same territory. *Gallatin v. Hendersonville, 510 S.W.2d 507, 1974 Tenn. LEXIS 506 (Tenn. 1974).*

Standing to contest an annexation ordinance is now limited to property owners within the area being annexed. *State ex rel. McNamee v. Knoxville, 824 S.W.2d 550, 1991 Tenn. App. LEXIS 552 (Tenn. Ct. App. 1991).*

In a quo warranto proceeding pursuant to this section that contests an annexation ordinance, the cause of action does not survive the pendente lite transfer of property by the original plaintiff. *State ex rel. McNamee v. Knoxville, 824 S.W.2d 550, 1991 Tenn. App. LEXIS 552 (Tenn. Ct. App. 1991).*

The only property owners allowed to contest an annexation ordinance by quo warranto proceedings are those property owners who own property within the annexed area and, therefore, plaintiffs as bordering landowners did not have standing. *State ex rel. Cordova Area Residents for Environment v. City of Memphis, 862 S.W.2d 525, 1992 Tenn. App. LEXIS 361 (Tenn. Ct. App. 1992).*

County was not an "aggrieved owner of property" with standing to challenge a city annexation ordinance encompassing area that included two roadways that had been dedicated to the county. *State ex rel. Kessel v. Ashe, 888 S.W.2d 430, 1994 Tenn. LEXIS 318 (Tenn. 1994).*

4. Issues Raised by Suit.

Effect of annexation ordinance on liability of county for repayment of school bonds could not be raised in suit under this section to contest reasonableness of annexation ordinance. *State ex rel. Spoone v. Morristown, 222 Tenn. 21, 431 S.W.2d 827, 1968 Tenn. LEXIS 408 (1968),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

5. Sufficiency of Allegations.

Bill that was replete with allegations of fact as to why proposed annexation was not only not conducive to the health, safety and welfare of citizens within the area of proposed annexation but also as to why it was positively detrimental to their welfare was sufficient to state cause of action in

proceedings under this section. *State ex rel. Southerland v. Greeneville, 201 Tenn. 133, 297 S.W.2d 68, 1956 Tenn. LEXIS 475 (1956).*

6. Consolidation of Suits.

Where suit attacking four separate annexation ordinances was ready for trial prior to several individual suits attacking the same ordinances separately it was proper that such individual suit be consolidated with the suit ready for trial notwithstanding the fact that some of the other suits may have been filed first. *State ex rel. Stall v. Knoxville, 211 Tenn. 271, 364 S.W.2d 898, 1962 Tenn. LEXIS 357 (1962),* cert. denied, Tennessee *ex rel. Stall v. Knoxville, 372 U.S. 914, 83 S. Ct. 728, 9 L. Ed. 2d 721, 1963 U.S. LEXIS 2161 (1963).*

Where property owners filed a quo warranto action against a city eight years after an annexation ordinance was passed but while a prior consolidated action was still pending, entry of a consent final judgment in the consolidated action did not render the property owners' action moot in light of the consolidation requirement because: (1) There remained a live controversy between the parties which necessitated adjudication; and (2) The issue of great public importance exception to the mootness doctrine would apply. *Highwoods Props. v. City of Memphis, -- S.W.3d --, 2006 Tenn. App. LEXIS 789* (Tenn. Ct. App. Dec. 14, 2006).

7. Determination of Reasonableness.

The question of reasonableness or unreasonableness of ordinance for annexation is not a question that can be submitted to the jury. *Morton v. Johnson City, 206 Tenn. 411, 333 S.W.2d 924, 1960 Tenn. LEXIS 379 (1960),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009); *State ex rel. Spoone v. Morristown, 222 Tenn. 21, 431 S.W.2d 827, 1968 Tenn. LEXIS 408 (1968),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

In suit contesting validity of proceedings for annexation by ordinance, demurrer to allegations going to factual matters in connection with the reasonableness of the ordinance should be overruled. *Knoxville v. State, 207 Tenn. 558, 341 S.W.2d 718, 1960 Tenn. LEXIS 492 (1960); State ex rel. Campbell v. Morristown, 207 Tenn. 593, 341 S.W.2d 733, 1960 Tenn. LEXIS 498 (1960),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

In suit contesting annexation by ordinance, residents of the area proposed to be annexed were entitled to opportunity to show that annexation ordinance was unreasonable and not necessary for health, welfare and safety of persons living in such area. *State ex rel. Campbell v. Morristown, 207 Tenn. 593, 341 S.W.2d 733, 1960 Tenn. LEXIS 498 (1960),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

Since the only ground on which an ordinance can be attacked is because it is unreasonable in consideration of the health, safety and welfare of the citizens, it was not improper for a court to strike from the bill provisions regarding other annexed areas, the activities of councilmen prior to passage, failure to consult the legal department, the county court (now county legislative body) or

county commissioners, lack of funds to secure engineering service, opinions of the chamber of commerce or other associations and other similar provisions. *State ex rel. Cathey v. Knoxville, 211 Tenn. 304, 364 S.W.2d 912, 1962 Tenn. LEXIS 359 (1962),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

Where there was evidence both for and against annexation from which the trial judge could determine that the reasonableness of the ordinance was fairly debatable, trial judge was not in error in withdrawing the issue from the jury and finding the ordinance reasonable. *State ex rel. Balsinger v. Madisonville, 222 Tenn. 272, 435 S.W.2d 803, 1968 Tenn. LEXIS 431 (1968).*

The factors to be taken into consideration in testing the reasonableness of any annexation ordinance include: the necessity for or use of municipal services, the ability and intent of the municipality to render municipal services and whether the annexation is for the sole purpose of increasing municipal revenues without an intent to benefit the area by rendering municipal services. *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978); Saylors v. Jackson, 575 S.W.2d 264, 1978 Tenn. LEXIS 689 (Tenn. 1978).*

Where most of the testimony was directed to showing a need for services in the annexed area and ability of the city to furnish those services, this evidence clearly demonstrated that the annexation was logical and reasonable and to the best interest of both the citizens and property owners of the city and of those in the annexed area. *State ex rel. Wilson v. Lafayette, 572 S.W.2d 922, 1978 Tenn. LEXIS 665 (Tenn. 1978).*

Annexation was reasonable where the ordinance did not have as its sole purpose the collection of additional revenues, but improved municipal services would accrue to the citizens of the annexed area and there was a need for the citizens of the municipality to control a fringe area development. *Saylors v. Jackson, 575 S.W.2d 264, 1978 Tenn. LEXIS 689 (Tenn. 1978).*

Evidence at trial was ample to show that the growth of the city of Memphis would be inhibited if Cordova was not annexed and was allowed to incorporate as planned, and that annexation was reasonable taking into consideration the health, safety and welfare of the citizens and property owners of the area to be annexed. *Vollmer v. Memphis, 792 S.W.2d 446, 1990 Tenn. LEXIS 208 (Tenn. 1990),* rehearing denied, -- *S.W.2d --, 1990 Tenn. LEXIS 269* (Tenn. July 2, 1990).

8. --Burden of Proof.

Although this statute unconstitutionally excepted certain municipalities from the burden of proving the reasonableness of an annexation ordinance, where an excepted municipality nevertheless sustained such burden of proof, the annexation ordinance was affirmed. *Pirtle v. Jackson, 560 S.W.2d 400, 1977 Tenn. LEXIS 646 (Tenn. 1977).*

This section places the burden of proving that the annexation ordinance is reasonable for the overall well-being of the communities involved upon the municipality. *State ex rel. Wilson v. Lafayette, 572 S.W.2d 922, 1978 Tenn. LEXIS 665 (Tenn. 1978).*

Prior to the 1974 amendment to this section if a trial judge decided there was evidence for and against the reasonableness of an ordinance, he had to withdraw the case from the jury and uphold the ordinance, but since the 1974 amendment the municipality has the burden of proving the reasonableness of the ordinance and those contesting the reasonableness are entitled to have the rea-

sonableness submitted to a jury. *State ex rel. Moretz v. Johnson City, 581 S.W.2d 628, 1979 Tenn. LEXIS 435 (Tenn. 1979).*

9. Appeal.

Provision that annexation ordinance shall become effective 31 days after judgment unless an "abrogating appeal" has been taken therefrom does not refer to a petition for certiorari to the United States supreme court but to an appeal from the trial court to the Tennessee supreme court. *State ex rel. Stall v. Knoxville, 211 Tenn. 428, 365 S.W.2d 433, 1963 Tenn. LEXIS 363 (1963).*

Review of suit contesting validity of annexation ordinance was de novo with statutory presumption in favor of decree of chancellor unless the preponderance of the evidence was otherwise. *State ex rel. Spoone v. Morristown, 222 Tenn. 21, 431 S.W.2d 827, 1968 Tenn. LEXIS 408 (1968),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

Any conflict of testimony requiring a determination of the credibility of a witness or witnesses is for the trial court and binding on the supreme court unless from other evidence it is compelled to conclude to the contrary. *State ex rel. Balsinger v. Madisonville, 222 Tenn. 272, 435 S.W.2d 803, 1968 Tenn. LEXIS 431 (1968).*

Supreme court's review is de novo of all matters of law and fact appearing in the record with statutory presumption in favor of judgment of trial court unless preponderance of evidence is otherwise. *State ex rel. Balsinger v. Madisonville, 222 Tenn. 272, 435 S.W.2d 803, 1968 Tenn. LEXIS 431 (1968).*

This part and *§ 6-51-301* contain the entire jurisdiction and authority of the courts to review the actions of municipalities in enacting annexation ordinances. *Oak Ridge v. Roane County, 563 S.W.2d 895, 1978 Tenn. LEXIS 537 (Tenn. 1978).*

This section expressly authorizes the courts to vacate an annexation ordinance upon a finding of unreasonableness but does not expressly or impliedly authorize the courts to void annexation ordinance for failure to give notice, hold a public hearing or submit a plan of services to the local planning commission. *Oak Ridge v. Roane County, 563 S.W.2d 895, 1978 Tenn. LEXIS 537 (Tenn. 1978).*

While other factors may be considered, the primary test of the reasonableness of an annexation ordinance must be the planned and orderly growth and development of the city, taking into consideration the characteristics of the existing city and those of the area proposed for annexation. *State ex rel. Collier v. Pigeon Forge, 599 S.W.2d 545, 1980 Tenn. LEXIS 458 (Tenn. 1980).*

On appeal of the dismissal of the property owners' action seeking a declaration that an annexation ordinance accomplished through a consent order was procedurally invalid, the court held that it had no power to vacate the annexation ordinance on the purely procedural grounds alleged by the property owners because the consent judgment purported to provide for operative dates that did not comply with *T.C.A. § 6-51-101* et seq.; additionally, the property owners' procedural challenges were meritless, because the court found nothing in the consent order that contradicted *T.C.A. § 6-51-103(d)*' s provision that the ordinance itself become operative 31 days after judgment was entered unless an abrogating appeal had been taken therefrom. *Highwoods Props. v. City of Memphis,*

-- *S.W.3d --, 2007 Tenn. App. LEXIS 723* (Tenn. Ct. App. Nov. 27, 2007), aff'd, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

10. Enforcement of Decrees.

Where trial court and supreme court had previously sustained validity of annexation ordinance and annexation procedure and same complainants filed suit in chancery court seeking to enjoin collection of taxes in the annexed area and complaint in the chancery suit contained basically the same averments as those in previous proceedings, supreme court issued supersedeas and permanent injunction superseding any action taken or that might be taken in the chancery proceeding and enjoining and restraining complainants from interfering directly or indirectly with the previous judgment of the supreme court. *State ex rel. Stall v. Knoxville, 211 Tenn. 428, 365 S.W.2d 433, 1963 Tenn. LEXIS 363 (1963).*

Review under *T.C.A. § 6-51-103* applies only to annexation by ordinance cases and was inapplicable to annexation by referendum case. *State ex rel. Vicars v. Kingsport, 659 S.W.2d 367, 1983 Tenn. App. LEXIS 707 (Tenn. Ct. App. 1983).*

11. Trial Court.

Court in which the quo warranto proceedings are to be brought is a nisi prius court of record. *State ex rel. Stall v. Knoxville, 211 Tenn. 428, 365 S.W.2d 433, 1963 Tenn. LEXIS 363 (1963).*

12. Period for Contesting Annexation.

Provisions of this section giving aggrieved landowners of territory sought to be annexed right to contest annexation ordinance by quo warranto at any time prior to operative date of ordinance when read in conjunction with provisions of *§ 6-51-102* providing that no annexation ordinance shall be operative until thirty days after final passage have effect of giving aggrieved landowners 30 days after final passage of ordinance to contest its validity. *State ex rel. Bastnagel v. Memphis, 224 Tenn. 514, 457 S.W.2d 532, 1970 Tenn. LEXIS 350 (1970),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

The right to bring an action pursuant to this section to review any issue arising out of the adoption of an annexation ordinance expires 30 days after the operative date of the ordinance. *Oak Ridge v. Roane County, 563 S.W.2d 895, 1978 Tenn. LEXIS 537 (Tenn. 1978).*

Where property owners filed a quo warranto action against a city eight years after an annexation ordinance was passed, the action was time-barred under *T.C.A. § 6-51-102* and *T.C.A. § 6-51-103* because: (1) The operative date for purposes of pursuing the cause of action was thirty days after final passage of the annexation ordinance; and (2) Even if *T.C.A. § 6-58-108* modified the limitations period, the property owners did not file the action within ninety days of final passage of the annexation ordinance. *Highwoods Props. v. City of Memphis, -- S.W.3d --, 2006 Tenn. App. LEXIS 789* (Tenn. Ct. App. Dec. 14, 2006).

Trial court did not err in denying a golf club's *Tenn. R. Civ. P. 24.01* or *Tenn. R. Civ. P. 24.02* motion to intervene in property owners' quo warranto action challenging a city's annexation ordinance, and even if the parties consent order changed the ordinance in violation of the open meetings act, the club still fell within the annexation area and the order did not preclude, impair or impede the club's ability to litigate its claim in a declaratory judgment action that the "new" or "modified" ordinance was invalid. *Blount v. City of Memphis, -- S.W.3d --, 2007 Tenn. App. LEXIS 214* (Tenn. Ct. App. Apr. 13, 2007).

Trial court did not err in denying a golf club's Tenn. R. Civ. P. 24 motion to intervene in property owners' quo warranto action challenging a city's annexation ordinance because the club did not file a quo warranto action prior to the 30-day limitations period of *T.C.A. § 6-51-102* and *T.C.A. § 6-51-103* and its motion was filed on the day the owners' and the city's consent order was scheduled to be filed and eight years after the litigation began. *Blount v. City of Memphis, -- S.W.3d --, 2007 Tenn. App. LEXIS 214* (Tenn. Ct. App. Apr. 13, 2007).

When landowners contested a city's annexation ordinance, alleging the ordinance was amended in violation of the Open Meetings Act, *T.C.A. § 8-44-101* et seq., judgment was properly entered for the city because: (1) the landowners did not allege the ordinance exceeded the city's delegated statutory authority, so the ordinance was attacked for "procedural defects," and such a suit had to be brought pursuant to the quo warranto procedure; and (2) the applicable limitations period had expired. *Allen v. City of Memphis, -- S.W.3d --, 2012 Tenn. App. LEXIS 297* (Tenn. Ct. App. May 10, 2012), appeal denied, -- *S.W.3d --, 2012 Tenn. LEXIS 728* (Tenn. Oct. 1, 2012).

Alleged landowners' second complaint in the nature of a quo warranto proceeding, challenging a city's annexation as unreasonable and/or unnecessary, was untimely because it was filed approximately ten years, rather than thirty days, after the November 2001 annexation of the area; the dismissal of the landowners' first quo warranto action "without prejudice" did not permit the trial court to exercise jurisdiction over the second quo warranto action filed outside the thirty-day limitations period. *Cochran v. City of Memphis, -- S.W.3d --, 2013 Tenn. App. LEXIS 182* (Tenn. Ct. App. Mar. 19, 2013).

13. "Industrial Development" Provisions.

The purpose of the provisions in subsection (e) regarding industrial development is to prevent the annexation of a substantial industrial plant development without consideration being given to whether the annexation is necessary to the welfare of residents and property owners, to the necessity or use of municipal services, to the present ability and the intent of the municipality to render services needed and to insure that the annexation not be for the sole purpose of increasing municipal revenue. *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

A national trucking company terminal on an 85-acre tract, which included its main office building, a supply building, a terminal building and a maintenance-transportation building, was industrial in nature rather than commercial. *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

An 85-acre industrial development in the middle of an 806-acre annexation does not make the annexation the site of substantial industrial plant development. *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

14. Repeal of Ordinance.

An annexation ordinance once validly passed, but not yet operative because of a quo warranto proceeding, can be repealed when the legislative body acts with equal dignity and in full compliance with procedures required for passing a valid ordinance. However, an attempted repeal by motion "to kill the annexation suit" is not an act of equal dignity. *Bluff City v. Morrell, 764 S.W.2d 200, 1988 Tenn. LEXIS 268 (Tenn. 1988).*

City had the power to repeal annexation ordinances that were the subject of pending quo warranto proceedings challenging the reasonableness of the ordinances. *State ex rel. Schaltenbrand v. Knoxville, 788 S.W.2d 812, 1989 Tenn. App. LEXIS 350 (Tenn. Ct. App. 1989).*

An annexation ordinance validly repealed by an act of equal dignity renders a pending quo warranto proceeding moot. *State ex rel. Schaltenbrand v. Knoxville, 788 S.W.2d 812, 1989 Tenn. App. LEXIS 350 (Tenn. Ct. App. 1989).*

Collateral References.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision. *17 A.L.R.5th 195.*

***Tenn. Code Ann. § 6-51-104* (2013)**

6-51-104. Resolution for annexation by referendum -- Notice.

(a) A municipality, when petitioned by interested persons, or upon its own initiative, by resolution, may propose extension of its corporate limits by the annexation of territory adjoining to its existing boundaries.

(b) (1) (A) A copy of the resolution, describing the territory proposed for annexation, shall be promptly sent by the municipality to the last known address listed in the office of the property assessor for each property owner of record within the territory proposed for annexation. The resolution shall be sent by first class mail and shall be mailed no later than fourteen (14) calendar days prior to the scheduled date of the hearing on such proposed annexation. The resolution shall also be published by posting copies of it in at least three (3) public places in the territory proposed for annexation and in a like number of public places in the municipality proposing such annexation, and by publishing notice of such resolution at or about the same time in a newspaper of general circulation, if there is one, in such territory and municipality. The resolution shall also include a plan of services for the area proposed for annexation. The plan of services shall address the same services and timing of services as required in *§ 6-51-102*. Upon adoption of the plan of services, the municipality shall cause a copy of the resolution to be forwarded to the county mayor in whose county the territory being annexed is located.

(B) A person or persons with personal knowledge of the mailing of the resolutions to each property owner of record pursuant to subdivision (b)(1)(A) may submit a notarized affidavit to the presiding officer of the municipality attesting that such resolutions were mailed in accordance with this subdivision (b)(1). Failure of a property owner to receive a notice that was mailed pursuant to subdivision (b)(1)(A) shall not be grounds to invalidate the annexation.

(2) After receiving the notice from the municipality as provided in subdivision (b)(1), the county mayor shall notify the appropriate departments within the county regarding the information received from the municipality.

HISTORY: Acts 1955, ch. 113, § 3; T.C.A., § 6-311; Acts 2005, ch. 411, §§ 5, 8; 2011, ch. 495, § 1.

NOTES: Amendments.

The 2011 amendment rewrote (b)(1) which read: "Such resolution, describing the territory proposed for annexation, shall be published by posting copies of it in at least three (3) public places in the territory proposed for annexation and in a like number of public places in the municipality proposing such annexation, and by publishing notice of such resolution at or about the same time in a newspaper of general circulation, if there is one, in such territory and municipality. The resolution shall also include a plan of services for the area proposed for annexation. The plan of services shall address the same services and timing of services as required in *§ 6-51-102*. Upon adoption of the plan of services, the municipality shall cause a copy of the resolution to be forwarded to the county mayor in whose county the territory being annexed is located."

Effective Dates.

Acts 2011, ch. 495, § 2. July 1, 2011.

Section to Section References.

Sections 6-51-101 -- 6-51-111 are referred to in *§ 7-82-301*.

Sections 6-51-101 -- 6-51-106 are referred to in *§ 7-2-108*.

This section is referred to in *§§ 6-51-101, 6-51-106, 6-58-111*.

Textbooks.

Tennessee Jurisprudence, 19 *Tenn. Juris., Municipal Corporations, §§ 13, 18*.

Law Reviews.

Local Government Law -- 1961 Tennessee Survey (Eugene Puett), *14 Vand. L. Rev. 1335*.

Cited:

Witt v. McCanless, 200 Tenn. 360, 292 S.W.2d 392, 1956 Tenn. LEXIS 419 (1956); Lee v. Chattanooga, 500 S.W.2d 917, 1973 Tenn. App. LEXIS 286 (Tenn. Ct. App. 1973); Oak Ridge v. Roane County, 563 S.W.2d 895, 1978 Tenn. LEXIS 537 (Tenn. 1978); Hart v. Johnson City, 801 S.W.2d 512, 1990 Tenn. LEXIS 444 (Tenn. 1990); Committee to Oppose the Annexation of Topside & Louisville Rd. v. City of Alcoa, 881 S.W.2d 269, 1994 Tenn. LEXIS 222 (Tenn. 1994); City of Harriman v. Roane County Election Comm'n, -- S.W.3d --, 2009 Tenn. App. LEXIS 877 (Tenn. Ct. App. Dec. 28, 2009).

NOTES TO DECISIONS

1. Constitutionality. 2. Description. 3. Rights of Interested Parties. 4. Multi-County Proceedings. 5. Review.

1. Constitutionality.

Where a town correctly followed statutory annexation provisions, inclusion of a farm and a subdivision within a single annexation referendum did not deny the farm owners' equal protection or substantive due process under the *14th amendment to the U.S. Constitution. State ex rel. Smith v. Church Hill, 828 S.W.2d 385, 1991 Tenn. App. LEXIS 354 (Tenn. Ct. App. 1991).*

2. Description.

Where it was not contended that realtors were mislead by description or that they did not vote in election or were surprised, fact that there was error in description did not invalidate annexation where map correctly showed territory and therefore proper description could be determined. *Johnson City v. State, 202 Tenn. 318, 304 S.W.2d 317, 1957 Tenn. LEXIS 393 (1957).*

3. Rights of Interested Parties.

Interested parties do not acquire any vested rights in proceedings commenced under either *§ 6-51-102* or this section. *Central Soya Co. v. Chattanooga, 207 Tenn. 138, 338 S.W.2d 576, 1960 Tenn. LEXIS 440 (1960).*

Proceeding brought by interested persons for annexation by referendum as provided in this section and *§ 6-51-105* would not prevent city from proceeding under *§§ 6-51-102*, *6-51-103* to annex by ordinance only a portion of the territory in question. *Central Soya Co. v. Chattanooga, 207 Tenn. 138, 338 S.W.2d 576, 1960 Tenn. LEXIS 440 (1960).*

4. Multi-County Proceedings.

Municipality lying wholly within one county could annex territory adjoining to its boundaries but lying wholly within another county. *Mt. Carmel v. Kingsport, 217 Tenn. 298, 397 S.W.2d 379, 1965 Tenn. LEXIS 546 (1965).*

Provisions of this title providing for multi-county municipalities would be read in pari materia with this section. *Mt. Carmel v. Kingsport, 217 Tenn. 298, 397 S.W.2d 379, 1965 Tenn. LEXIS 546 (1965).*

It was the legislative intent that cities within a county should have priority in annexing that county's property. *Bluff City v. Johnson City, 794 S.W.2d 732, 1990 Tenn. App. LEXIS 149 (Tenn. Ct. App. 1990).*

Where city seeking to annex land in county in which it was incorporated failed to publish its annexation resolution as required by *T.C.A. § 6-51-104*, and failed to seek a referendum as required by *T.C.A. § 6-51-105*, but passed a resolution for annexation by referendum, city initiated annexation proceedings, bringing itself within the priority provisions of *T.C.A. § 6-51-110*, and obtained precedence over second city incorporated in another county seeking to annex the same land. *Bluff City v. Johnson City, 794 S.W.2d 732, 1990 Tenn. App. LEXIS 149 (Tenn. Ct. App. 1990).*

5. Review.

Annexation statutes expressly permit court review when method of annexation is by adoption of an ordinance but make no provision for court review when annexation is by referendum. *State ex rel. Vicars v. Kingsport, 659 S.W.2d 367, 1983 Tenn. App. LEXIS 707 (Tenn. Ct. App. 1983).*

Court review of annexation by referendum will be allowed when there is a constitutional infirmity. Municipal adjustment of boundary of area to be annexed so that majority of voters would be for annexation was not such an infirmity. *State ex rel. Vicars v. Kingsport, 659 S.W.2d 367, 1983 Tenn. App. LEXIS 707 (Tenn. Ct. App. 1983).*

Tenn. Code Ann. § 6-51-105 (2013)

6-51-105. Referendum on annexation.

(a) At least thirty (30) days and not more than sixty (60) days after the last of such publications, the proposed annexation of territory shall be submitted by the county election commission in an election held on the request and at the expense of the proposing municipality, for approval or disapproval of the qualified voters who reside in the territory proposed for annexation.

(b) The legislative body of the municipality affected may also at its option submit the questions involved to a referendum of the people residing within the municipality.

(c) In the election or elections to be held, the questions submitted to the qualified voters shall be "For Annexation" and "Against Annexation."

(d) The county election commission shall promptly certify the results of the election or elections to the municipality. Upon receiving the certification from the county election commission, the municipality shall forward a copy of the certification to the county mayor in whose county the territory being annexed is located.

(e) If a majority of all the qualified voters voting thereon in the territory proposed to be annexed, or in the event of two (2) elections as provided for in subsections (a) and (b), a majority of the voters voting thereon in the territory to be annexed and a majority of the voters voting thereon in the municipality approve the resolution, annexation as provided therein shall become effective thirty (30) days after the certification of the election or elections.

(f) The mode of annexation provided in this section is in addition to the mode provided in *§ 6-51-102*.

HISTORY: Acts 1955, ch. 113, § 3; T.C.A., § 6-312; Acts 2005, ch. 411, § 6.

NOTES: Section to Section References.

Sections 6-51-101 -- 6-51-111 are referred to in *§ 7-82-301*.

Sections 6-51-101 -- 6-51-106 are referred to in *§ 7-2-108*.

This section is referred to in *§ 6-58-111*.

Textbooks.

Tennessee Jurisprudence, 19 *Tenn. Juris., Municipal Corporations, § 16.*

Cited:

Lee v. Chattanooga, 500 S.W.2d 917, 1973 Tenn. App. LEXIS 286 (Tenn. Ct. App. 1973); Oak Ridge v. Roane County, 563 S.W.2d 895, 1978 Tenn. LEXIS 537 (Tenn. 1978); City of Harriman v. Roane County Election Comm'n, -- S.W.3d --, 2009 Tenn. App. LEXIS 877 (Tenn. Ct. App. Dec. 28, 2009).

NOTES TO DECISIONS

1. Constitutionality. 2. Review. 3. Multi-County Proceedings. 4. Residency. 5. Rights of Interested Parties.

1. Constitutionality.

Where a town correctly followed statutory annexation provisions, inclusion of a farm and a subdivision within a single annexation referendum did not deny the farm owners' equal protection or substantive due process under the *14th amendment to the U.S. Constitution. State ex rel. Smith v. Church Hill, 828 S.W.2d 385, 1991 Tenn. App. LEXIS 354 (Tenn. Ct. App. 1991).*

2. Review.

Annexation statutes expressly permit court review when method of annexation is by adoption of an ordinance but make no provision for court review when annexation is by referendum. *State ex rel. Vicars v. Kingsport, 659 S.W.2d 367, 1983 Tenn. App. LEXIS 707 (Tenn. Ct. App. 1983).*

Court review of annexation by referendum will be allowed when there is a constitutional infirmity. Municipal adjustment of boundary of area to be annexed so that majority of voters would be for annexation was not such an infirmity. *State ex rel. Vicars v. Kingsport, 659 S.W.2d 367, 1983 Tenn. App. LEXIS 707 (Tenn. Ct. App. 1983).*

3. Multi-County Proceedings.

It was the legislative intent that cities within a county should have priority in annexing that county's property. *Bluff City v. Johnson City, 794 S.W.2d 732, 1990 Tenn. App. LEXIS 149 (Tenn. Ct. App. 1990).*

Where city seeking to annex land in county in which it was incorporated failed to publish its annexation resolution as required by *T.C.A. § 6-51-104*, and failed to seek a referendum as required by *T.C.A. § 6-51-105*, but passed a resolution for annexation by referendum, city initiated annexation proceedings, bringing itself within the priority provisions of *T.C.A. § 6-51-110*, and obtained precedence over second city incorporated in another county seeking to annex the same land. *Bluff City v. Johnson City, 794 S.W.2d 732, 1990 Tenn. App. LEXIS 149 (Tenn. Ct. App. 1990).*

4. Residency.

Under the provisions of *T.C.A. § 6-51-105*, residency includes the curtilage of the qualified voters who reside in the territory proposed for annexation; thus, those residents along the rights-of-way whose curtilage extended into territory proposed for annexation were entitled to vote in the referendum. *Committee to Oppose the Annexation of Topside & Louisville Rd. v. City of Alcoa, 881 S.W.2d 269, 1994 Tenn. LEXIS 222 (Tenn. 1994).*

5. Rights of Interested Parties.

Interested parties do not acquire any vested rights in proceedings commenced under either this section or *§ 6-51-104*. *Central Soya Co. v. Chattanooga, 207 Tenn. 138, 338 S.W.2d 576, 1960 Tenn. LEXIS 440 (1960).*

Proceeding brought by interested persons for annexation by referendum under *§§ 6-51-104, 6-51-105* would not prevent city from proceeding under *§§ 6-51-102, 6-51-103* to annex by ordinance only a portion of the territory in question. *Central Soya Co. v. Chattanooga, 207 Tenn. 138, 338 S.W.2d 576, 1960 Tenn. LEXIS 440 (1960).*

Tenn. Code Ann. § 6-51-106 **(2013)**

6-51-106. Abandonment of proceedings.

Any annexation proceeding initiated under *§ 6-51-102* or *§ 6-51-104* may be abandoned and discontinued at any time by resolution of the governing body of the municipality.

HISTORY: Acts 1955, ch. 113, § 4; T.C.A., § 6-313.

NOTES: Section to Section References.

Sections 6-51-101 -- 6-51-106 are referred to in *§ 7-2-108*.

Sections 6-51-101 -- 6-51-111 are referred to in *§ 7-82-301*.

Textbooks.

Tennessee Jurisprudence, 19 *Tenn. Juris., Municipal Corporations, § 17*.

Cited:

Central Soya Co. v. Chattanooga, 207 Tenn. 138, 338 S.W.2d 576, 1960 Tenn. LEXIS 440 (1960).

NOTES TO DECISIONS

1. In General. 2. Applicability.

1. In General.

This section has reference to proceedings that have not culminated in passage of valid ordinance, and "initiated" therefore, must not be equated with "passage." *Lee v. Chattanooga, 500 S.W.2d 917, 1973 Tenn. App. LEXIS 286 (Tenn. Ct. App. 1973),* cert. denied, *419 U.S. 869, 95 S. Ct. 128, 42 L. Ed. 2d 108, 1974 U.S. LEXIS 2770 (1974).*

This section must be read in pari materia with *§ 6-51-201* where abandonment proceeding was attempted after valid passing of annexation ordinance. *Lee v. Chattanooga, 500 S.W.2d 917, 1973 Tenn. App. LEXIS 286 (Tenn. Ct. App. 1973),* cert. denied, *419 U.S. 869, 95 S. Ct. 128, 42 L. Ed. 2d 108, 1974 U.S. LEXIS 2770 (1974).*

2. Applicability.

T.C.A. § 6-51-106 is applicable only in situations where the annexing municipality has "initiated" annexation proceedings but has not yet passed an annexation ordinance. *Bluff City v. Morrell, 764 S.W.2d 200, 1988 Tenn. LEXIS 268 (Tenn. 1988).*

Tenn. Code Ann. § 6-51-107 **(2013)**

6-51-107. Referral to planning agency.

The governing body of a municipality shall, if its charter so provides, and otherwise may, refer any proposed annexation to the planning agency of the municipality for study of all pertinent matters relating thereto, and the planning agency expeditiously shall make such a study and report to the governing body.

HISTORY: Acts 1955, ch. 113, § 5; T.C.A., § 6-314.

NOTES: Section to Section References.

Sections 6-51-101 -- 6-51-111 are referred to in *§ 7-82-301*.

Textbooks.

Tennessee Jurisprudence, 19 *Tenn. Juris., Municipal Corporations, § 17*.

Cited:

Witt v. McCanless, 200 Tenn. 360, 292 S.W.2d 392, 1956 Tenn. LEXIS 419 (1956).

NOTES TO DECISIONS

1. Construction.

1. Construction.

Where charter of City of Knoxville made no mention of annexation of territory, provisions of this section were discretionary rather than mandatory. *Knoxville v. State, 207 Tenn. 558, 341 S.W.2d 718, 1960 Tenn. LEXIS 492 (1960).*

Referral to a planning commission was discretionary and not mandatory where charter did not so require. *State ex rel. Hardison v. Columbia, 210 Tenn. 514, 360 S.W.2d 39, 1962 Tenn. LEXIS 313 (1962),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

Tenn. Code Ann. § 6-51-108 **(2013)**

Legislative Alert: LEXSEE 2013 Tn. SB 1054 -- See section 1.

6-51-108. Rights of residents of annexed territory -- Plan of service and progress report.

(a) Residents of, and persons owning property in, annexed territory shall be entitled to rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as though such annexed territory had always been a part of the annexing municipality. It shall be the duty of the governing body to put into effect with respect to an annexed area any charter provisions relating to representation on the governing body.

(b) Upon the expiration of six (6) months from the date any annexed territory for which a plan of service has been adopted becomes a part of the annexing municipality, and annually thereafter

until services have been extended according to such plan, there shall be prepared and published in a newspaper of general circulation in the municipality a report of the progress made in the preceding year toward extension of services according to such plan, and any changes proposed therein. The governing body of the municipality shall publish notice of a public hearing on such progress reports and changes, and hold such hearing thereon. Any owner of property in an annexed area to which such plan and progress report are applicable may file a suit for mandamus to compel the governing body to comply with the requirements of this subsection (b).

(c) A municipality may amend a plan of services by resolution of the governing body only after a public hearing for which notice has been published at least fifteen (15) days in advance in a newspaper of general circulation in the municipality when:

(1) The amendment is reasonably necessary due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality;

(2) The amendment does not materially or substantially decrease the type or level of services or substantially delay the provision of services specified in the original plan; or

(3) The amendment:

(A) Proposes to materially and substantially decrease the type or level of services under the original plan or to substantially delay those services;

(B) Is not justified under subdivision (c)(1); and

(C) Has received the approval in writing of a majority of the property owners by parcel in the area annexed. In determining a majority of property owners, a parcel of property with more than one (1) owner shall be counted only once and only if owners comprising a majority of the ownership interests in the parcel petition together as the owner of the particular parcel.

(d) An aggrieved property owner in the annexed territory may bring an action in the appropriate court of equity jurisdiction to enforce the plan of services at any time after one hundred eighty (180) days after an annexation by ordinance takes effect and until the plan of services is fulfilled, and may bring an action to challenge the legality of an amendment to a plan of services if such action is brought within thirty (30) days after the adoption of the amendment to the plan of services. If the court finds that the municipality has amended the plan of services in an unlawful manner, then the court shall decree the amendment null and void and shall reinstate the previous plan of services. If the court finds that the municipality has materially and substantially failed to comply with its plan of services for the territory in question, then the municipality shall be given the opportunity to show cause why the plan of services was not carried out. If the court finds that the municipality's failure is due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality that materially and substantially impeded the ability of the municipality to carry out the plan of services, then the court shall alter the timetable of the plan of services so as to allow the municipality to comply with the plan of services in a reasonable time and manner. If the court finds that the municipality's failure was not due to natural disaster, act of war, act of terrorism, or reasonably unforeseen circumstances beyond the control of the municipality that materially and substantially impeded the ability of the municipality to carry out the plan of services, then the court shall issue a writ of mandamus to compel the municipality to provide the services contained in the plan, shall establish a timetable for the provision of the services in question, and shall enjoin the municipality from any further annexations until the services subject to the court's order

have been provided to the court's satisfaction, at which time the court shall dissolve its injunction. If the court determines that the municipality has failed without cause to comply with the plan of services or has unlawfully amended its plan of services, the court shall assess the costs of the suit against the municipality.

HISTORY: Acts 1955, ch. 113, § 6; 1974, ch. 753, §§ 3, 8, 9; T.C.A., § 6-315; Acts 1998, ch. 1101, § 21.

NOTES: Section to Section References.

Sections 6-51-101 -- 6-51-111 are referred to in *§ 7-82-301*.

This section is referred to in *§ 6-58-112*.

Textbooks.

Tennessee Jurisprudence, 19 *Tenn. Juris., Municipal Corporations, § 17*.

Cited:

Little v. City of Chattanooga, -- S.W.3d --, 2012 Tenn. App. LEXIS 666 (Tenn. Ct. App. Sept. 25, 2012).

NOTES TO DECISIONS

1. Duty to Provide Privileges of Citizenship. 2. Annexation by Ordinance. 3. Period for Contesting Annexation. 4. Extension of Services.

1. Duty to Provide Privileges of Citizenship.

The presumption is that the governing body of the municipality will do its duty with respect to the requirements of this section. *Knoxville v. State, 207 Tenn. 558, 341 S.W.2d 718, 1960 Tenn. LEXIS 492 (1960); State ex rel. Hardison v. Columbia, 210 Tenn. 514, 360 S.W.2d 39, 1962 Tenn. LEXIS 313 (1962),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

Fact that city was divided into wards by private act of the general assembly would not preclude annexation upon argument that city was without authority to change wards to provide representation in annexed area since express provision is made in this section for representation and method of so providing did not bear on the question of the validity of the annexation. *State ex rel. Cope v. Morristown, 218 Tenn. 593, 404 S.W.2d 798, 1966 Tenn. LEXIS 590 (1966).*

2. Annexation by Ordinance.

It is not necessary that the annexation ordinance provide for representation of residents of the annexed ordinance as a condition precedent to the validity of the annexation proceedings since it is sufficient if those rights are provided when the ordinance becomes effective. *Knoxville v. State, 207 Tenn. 558, 341 S.W.2d 718, 1960 Tenn. LEXIS 492 (1960); State ex rel. Maury County Farmers Co-op Corp. v. Columbia, 210 Tenn. 657, 362 S.W.2d 219, 1962 Tenn. LEXIS 326 (1962).*

3. Period for Contesting Annexation.

Trial court did not err in denying a golf club's Tenn. R. Civ. P. 24 motion to intervene in property owners' quo warranto action challenging a city's annexation ordinance because the club did not

file a quo warranto action prior to the 30-day limitations period of *T.C.A. § 6-51-102* and *T.C.A. § 6-51-103*, and its motion was filed on the day the owners' and the city's consent order was scheduled to be filed and eight years after the litigation began. *Blount v. City of Memphis, -- S.W.3d --, 2007 Tenn. App. LEXIS 214* (Tenn. Ct. App. Apr. 13, 2007).

4. Extension of Services.

Circuit court committed error when it granted a writ of mandamus ordering defendant city to extend a sewer line within a 16-month period pursuant to *T.C.A. § 6-51-108*; condition relevant to extension of the line was economic feasibility, not what constituted a reasonable time. *State ex rel. Cain v. City of Church Hill, -- S.W.3d --, 2008 Tenn. App. LEXIS 589* (Tenn. Ct. App. Sept. 30, 2008).

Tenn. Code Ann. § 6-51-109 (2013)

6-51-109. Annexation of smaller municipality by larger municipality.

(a) Upon receipt of a petition in writing of twenty percent (20%) of the qualified voters of a smaller municipality, voting at the last general election, such petition to be filed with the chief executive officer of the smaller municipality who shall promptly submit the petition to the chief executive officer of the larger municipality, such larger municipality may by ordinance annex such portion of the territory of the smaller municipality described in the petition or the totality of such smaller municipality if so described in the petition only after a majority of the qualified voters voting in an election in such smaller municipality vote in favor of the annexation.

(b) The county election commission shall hold such an election on the request and at the expense of the larger municipality, the results of which shall be certified to each municipality.

(c) If a majority of the qualified voters voting in such election are in favor of annexation, the corporate existence of such smaller municipality shall end within thirty (30) days after the adoption of the ordinance by the larger municipality, and all of the choses in action, including the right to collect all uncollected taxes, and all other assets of every kind and description of the smaller municipality shall be taken over by and become the property of the larger municipality. All legally subsisting liabilities, including any bonded indebtedness, of the smaller municipality shall be assumed by the larger municipality, which shall thereafter have as full jurisdiction over the territory of the smaller municipality as over that lying within the existing corporate limits of the larger municipality.

HISTORY: Acts 1955, ch. 113, § 7; T.C.A., § 6-316; Acts 1987, ch. 31, § 1.

NOTES: Section to Section References.

Sections 6-51-101 -- 6-51-111 are referred to in *§ 7-82-301*.

Cited:

Witt v. McCanless, 200 Tenn. 360, 292 S.W.2d 392, 1956 Tenn. LEXIS 419 (1956); Central Soya Co. v. Chattanooga, 207 Tenn. 138, 338 S.W.2d 576, 1960 Tenn. LEXIS 440 (1960).

Tenn. Code Ann. § 6-51-110 **(2013)**

6-51-110. Priority of municipalities in annexation.

(a) Nothing 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 nor, except in counties having a population of not less than sixty-five thousand (65,000) nor more than sixty-six thousand (66,000) and counties having a population of four hundred thousand (400,000) or more, according to the federal census of 1970 or any subsequent federal census, and except in counties having a metropolitan form of government, by a larger municipality with respect to territory within the corporate limits of a smaller municipality in existence for ten (10) or more years. Notwithstanding any provisions of this chapter to the contrary, in counties of this state having a population of not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000), according to the federal census of 1970 or any subsequent federal census, nothing in this part shall be construed to authorize annexation proceedings by a larger municipality with respect to territory within the corporate limits of any smaller municipality in existence at the time of the proposed annexation.

(b) If two (2) municipalities that were incorporated in the same county shall initiate annexation proceedings with respect to the same territory, the proceedings of the municipality having the larger population shall have precedence and the smaller municipality's proceedings shall be held in abeyance pending the outcome of the proceedings of such larger municipality.

(c) If two (2) municipalities that were incorporated in different counties shall initiate annexation proceedings with respect to the same territory, the proceedings of the municipality that was incorporated in the same county in which the territory to be annexed is located shall have precedence and the other municipality's proceedings shall be held in abeyance pending the outcome of the proceedings of the municipality that was incorporated in the same county as the territory to be annexed.

(d) Except in counties having a population of not less than sixty-five thousand (65,000) nor more than sixty-six thousand (66,000) and counties having a population of four hundred thousand (400,000) or more, according to the federal census of 1970 or any subsequent federal census, and except in counties having a metropolitan form of government, annexation proceedings shall be considered as initiated upon passage on first reading of an ordinance of annexation.

(e) If the ordinance of annexation of the larger municipality does not receive final approval within one hundred eighty (180) days after having passed its first reading, the proceeding shall be void and a smaller municipality shall have priority with respect to annexation of the territory; provided, that its annexation ordinance shall likewise be adopted upon final passage within one hundred eighty (180) days after having passed its first reading.

(f) When a larger municipality initiates annexation proceedings for a territory that could be subject to annexation by a smaller municipality, the smaller municipality shall have standing to challenge the proceedings in the chancery court of the county where the territory proposed to be annexed is located.

(g) A smaller municipality may, by ordinance, extend its corporate limits by annexation of any contiguous territory, when such territory within the corporate limits of a larger municipality is less than seventy-five (75) acres in area, is not populated, is separated from the larger municipality by a

limited access express highway, its access ramps or service roads, and is not the site of industrial plant development. The provisions of this chapter relative to the adoption of a plan of service and the submission of same to a local planning commission, if there be such, shall not be required of the smaller municipality for such annexation.

HISTORY: Acts 1955, ch. 113, § 8; 1969, ch. 136, § 2; 1974, ch. 753, §§ 5, 8, 9; 1978, ch. 684, § 1; T.C.A., § 6-317; Acts 1980, ch. 833, § 1.

NOTES: Compiler's Notes.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Section to Section References.

Sections 6-51-101 -- 6-51-111 are referred to in *§ 7-82-301*.

Textbooks.

Tennessee Jurisprudence, 19 *Tenn. Juris., Municipal Corporations, §§ 18, 100*.

Law Reviews.

Municipal Annexation in Tennessee, *47 Tenn. L. Rev. 651*.

Attorney General Opinions.

Annexation priorities, 98-0148 (8/12/98).

Cited:

Witt v. McCanless, 200 Tenn. 360, 292 S.W.2d 392, 1956 Tenn. LEXIS 419 (1956); State ex rel. Earhart v. City of Bristol, 970 S.W.2d 948, 1998 Tenn. LEXIS 366 (Tenn. 1998).

NOTES TO DECISIONS

1. In General. 2. Applicability. 3. Noncontiguous Territories. 4. Annexation of Same Area. 5. No Monopoly Created. 6. Venue for Annexation Challenge. 7. Standing of Smaller Municipalities. 8. Complaint by Smaller Municipality.

1. In General.

This section merely designated the priority of annexation and did not define the areas that may be annexed by the preferred municipality differently from that specified in *T.C.A. § 6-51-102*. *Bartlett v. Memphis, 482 S.W.2d 782, 1972 Tenn. App. LEXIS 342 (Tenn. Ct. App. 1972).*

2. Applicability.

The general assembly did not intend *T.C.A. § 6-51-110(f)* to have any effect upon the procedural requirements governing individual actions brought pursuant to *T.C.A. § 6-51-103*. Thus, the provisions in *T.C.A. § 6-51-110(f)*, permitting a municipality to contest another municipality's annexation ordinance in the chancery court of the county where the land is located, is limited to actions brought by a municipality and cannot be judicially extended to actions brought by an individual. *State ex rel. Hornkohl v. Tullahoma, 746 S.W.2d 199, 1987 Tenn. App. LEXIS 3099 (Tenn. Ct. App. 1987),*

superseded by statute as stated in, *Hardin County ex rel. Harris v. Adamsville, -- S.W.2d --, 1990 Tenn. App. LEXIS 801* (Tenn. Ct. App. Nov. 9, 1990).

3. Noncontiguous Territories.

Plans adopted by city council, notices given and hearings held relative to attempts to annex territory that was not adjacent to city boundaries were null and void. *Bartlett v. Memphis, 482 S.W.2d 782, 1972 Tenn. App. LEXIS 342 (Tenn. Ct. App. 1972).*

4. Annexation of Same Area.

Where two cities are attempting to annex the same territory the larger city will be given priority. *Gallatin v. Hendersonville, 510 S.W.2d 507, 1974 Tenn. LEXIS 506 (Tenn. 1974).*

No suspension of the general annexation law is involved in prescribing which municipality should be given precedence, as between two municipalities competing for the same territory at the same time, and a determination by the general assembly that the larger municipality should prevail did not constitute unreasonable class legislation. *Watauga v. Johnson City, 589 S.W.2d 901, 1979 Tenn. LEXIS 514 (Tenn. 1979).*

It was the legislative intent that cities within a county should have priority in annexing that county's property. *Bluff City v. Johnson City, 794 S.W.2d 732, 1990 Tenn. App. LEXIS 149 (Tenn. Ct. App. 1990).*

Where city seeking to annex land in county in which it was incorporated failed to publish its annexation resolution as required by *T.C.A. § 6-51-104*, and failed to seek a referendum as required by *T.C.A. § 6-51-105*, but passed a resolution for annexation by referendum, city initiated annexation proceedings, bringing itself within the priority provisions of *T.C.A. § 6-51-110*, and obtained precedence over second city incorporated in another county seeking to annex the same land. *Bluff City v. Johnson City, 794 S.W.2d 732, 1990 Tenn. App. LEXIS 149 (Tenn. Ct. App. 1990).*

Under *T.C.A. § 6-51-110(b)* of this section, a city would have priority and precedence over town's annexation of same area. *City of Bristol v. Town of Bluff City, 868 S.W.2d 282, 1993 Tenn. App. LEXIS 487 (Tenn. Ct. App. 1993),* appeal denied, *City of Bristol v. City of Bluff City, 868 S.W.2d 282, 1993 Tenn. LEXIS 449 (Tenn. 1993).*

Court erred in finding that larger town waited too late to assert its statutory priority because larger town's annexation proceedings were initiated prior to the effective date of smaller town's ordinance, larger town's proceedings had precedence, and smaller town's annexation proceedings must be held in abeyance pending the outcome of larger town's proceedings pursuant to *T.C.A. § 6-51-110*; effective date of the annexation, not the date of final passage, was the operative date by which a municipality with a larger population must initiate annexation proceedings in order to take advantage of its statutory priority. *Town of Oakland v. Town of Somerville, 298 S.W.3d 600, 2008 Tenn. App. LEXIS 778* (Tenn. Ct. App. Dec. 30, 2008), appeal denied, -- *S.W.3d --, 2009 Tenn. LEXIS 552* (Tenn. Aug. 24, 2009).

T.C.A. § 6-58-111 required a larger city to obtain an amendment to the county growth plan before it could effect an annexation of territory beyond its urban growth boundary by ordinance. A smaller city successfully held an annexation referendum pursuant to *§ 6-58-111(d)(2)* and annexed the territory the larger city sought to annex. *City of Harriman v. Roane County Election Comm'n, -- S.W.3d --, 2011 Tenn. LEXIS 576* (Tenn. June 9, 2011).

5. No Monopoly Created.

It is the exclusive prerogative of the general assembly to create municipalities and to alter, shrink or enlarge their boundaries and therefore this section favoring larger municipalities does not create a monopoly in violation of *Tenn. Const., art. I, § 22*. *Watauga v. Johnson City, 589 S.W.2d 901, 1979 Tenn. LEXIS 514 (Tenn. 1979).*

6. Venue for Annexation Challenge.

Where territory annexed was located in two counties, the venue of an action challenging such annexation would be in either county. *Watauga v. Johnson City, 589 S.W.2d 901, 1979 Tenn. LEXIS 514 (Tenn. 1979).*

7. Standing of Smaller Municipalities.

By *T.C.A. § 6-51-110* the general assembly intended to grant to smaller municipalities the same standing to challenge annexation that it, theretofore, granted to owners of property in the territory to be annexed as provided in *T.C.A. § 6-51-103*, no more and no less. *Watauga v. Johnson City, 589 S.W.2d 901, 1979 Tenn. LEXIS 514 (Tenn. 1979); State ex rel. Hornkohl v. Tullahoma, 746 S.W.2d 199, 1987 Tenn. App. LEXIS 3099 (Tenn. Ct. App. 1987),* superseded by statute as stated in, *Hardin County ex rel. Harris v. Adamsville, -- S.W.2d --, 1990 Tenn. App. LEXIS 801* (Tenn. Ct. App. Nov. 9, 1990).

The purpose of *T.C.A. § 6-51-110* was to grant smaller municipalities the same standing to challenge annexation proceedings that had already been given to affected property owners. *State ex rel. Hornkohl v. Tullahoma, 746 S.W.2d 199, 1987 Tenn. App. LEXIS 3099 (Tenn. Ct. App. 1987),* superseded by statute as stated in, *Hardin County ex rel. Harris v. Adamsville, -- S.W.2d --, 1990 Tenn. App. LEXIS 801* (Tenn. Ct. App. Nov. 9, 1990).

8. Complaint by Smaller Municipality.

A complaint by a smaller municipality challenging an annexation must raise the issue of reasonableness of the annexation as prescribed by *§ 6-51-103* and such complaint cannot be based on procedural defects for actions contrary to *§ 6-51-102*. *Watauga v. Johnson City, 589 S.W.2d 901, 1979 Tenn. LEXIS 514 (Tenn. 1979).*

Collateral References.

Right of one governmental subdivision to challenge annexation proceedings by another such subdivision. *17 A.L.R.5th 195.*

Tenn. Code Ann. § 6-51-111 (2013)

6-51-111. Municipal property and services.

(a) Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as provided in this part, an annexing municipality and any affected instrumentality of the state, including, but not limited to, a utility district, sanitary district, school district, or other public service district, shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets and liabilities of such state instrumentality that justice and reason may require in the circumstances. Any and all

agreements entered into before March 8, 1955, relating to annexation shall be preserved. The annexing municipality, if and to the extent that it may choose, shall have the exclusive right to perform or provide municipal and utility functions and services in any territory that it annexes, notwithstanding *§ 7-82-301* or any other statute, subject, however, to the provisions of this section with respect to electric cooperatives.

(b) Subject to such exclusive right, any such matters upon which the respective parties are not in agreement in writing within sixty (60) days after the operative date of such annexation shall be settled by arbitration with the laws of arbitration of this state effective at the time of submission to the arbitrators, and *§ 29-5-101(2)* shall not apply to any arbitration arising under this part and *§ 6-51-301*. The award so rendered shall be transmitted to the chancery court of the county in which the annexing municipality is situated, and thereupon shall be subject to review in accordance with *§§ 29-5-113* -- *29-5-115* and *29-5-118*.

(c) (1) If the annexed territory is then being provided with a utility service by a state instrumentality that has outstanding bonds or other obligations payable from the revenues derived from the sale of such utility service, the agreement or arbitration award referred to in subsections (a) and (b) shall also provide that:

(A) The municipality will operate the utility property in such territory and account for the revenues therefrom in such manner as not to impair the obligations of contract with reference to such bonds or other obligations; or

(B) The municipality will assume the operation of the entire utility system of such state instrumentality and the payment of such bonds or other obligations in accordance with their terms.

(2) Such agreement or arbitration award shall fully preserve and protect the contract rights vested in the holders of such outstanding bonds or other obligations.

(d) (1) Notwithstanding the provisions of any law to the contrary, if a private individual or business entity provides utility service within the boundaries of a municipality under the terms of a privilege, franchise, license, or agreement granted or entered into by the municipality, and if the municipality annexes territory that includes the service area of a utility district, then such private individual or business entity and the utility district shall attempt to reach agreement in writing for allocation and conveyance to such private individual or business entity of any or all public functions, rights, duties, property, assets, and liabilities of such utility district that justice and reason may require in the circumstances. If an agreement is not reached, then notwithstanding the change of municipal boundaries, the service area of the utility district shall remain unchanged, and such private individual or business entity shall not provide utility service in the service area of the utility district.

(2) Nothing in subdivision (d)(1) shall be construed to diminish the authority of any municipality to annex.

(e) If at the time of annexation, the annexed territory is being provided with utility service by a municipal utility system or other state instrumentality, including but not limited to, a utility district, the annexing municipality shall, by delivering written notice of its election to the municipal utility system or other state instrumentality, have the right to purchase all or any part of the utility system of the municipal utility system or other state instrumentality then providing utility service to the area being annexed that the annexing municipality has elected to serve under this section. The pur-

chase price shall be a price agreed upon by the parties for the properties comprising the utility system, or part thereof, that is being acquired and payment of such purchase price shall be on terms agreed to by the parties. In the event the parties cannot agree on a purchase price, then a final determination of the fair market value of the properties being acquired and all other outstanding issues related to the provision of utility services in the annexed area shall be made using the arbitration provisions of subsection (b); provided, that the arbitrator or arbitrators shall be a person or persons experienced and qualified to value public utility properties and any such arbitrator or arbitrators shall be agreed upon by the parties. If the parties cannot agree, the selection of an arbitrator shall be as otherwise provided by the laws of arbitration of this state. Such method and determination shall be the sole means by which the annexing municipality may acquire the facilities of a municipal utility or other state instrumentality located in the annexed territory.

HISTORY: Acts 1955, ch. 113, § 9; 1957, ch. 381, § 1; 1968, ch. 413, § 1; T.C.A., § 6-318; Acts 1993, ch. 375, § 1; 1998, ch. 586, § 1; 2003, ch. 93, § 1.

NOTES: Section to Section References.

Sections 6-51-101 -- 6-51-111 are referred to in *§ 7-82-301*.

This section is referred to in *§§ 6-51-103, 65-34-107*.

Textbooks.

Tennessee Jurisprudence, 19 *Tenn. Juris., Municipal Corporations, §§ 17, 19, 71*.

Law Reviews.

Constitutional Law -- 1960 Tennessee Survey (James C. Kirby, Jr.), *13 Vand. L. Rev. 1021*.

Attorney General Opinions.

Authority of city to charge franchise fee to a private company providing utility service in newly annexed territory, where that territory is in the service area of a utility district, OAG 07-086 (6/1/07).

Power of a city to acquire ownership of a water utility district, OAG 07-124 (8/16/07).

Application of *Tenn. Const., art. II, § 9*, to a local government investing in a mutual fund organized as a business trust that invests in assets authorized under Tennessee law, OAG 07-125 (8/17/07).

Cited:

Witt v. McCanless, 200 Tenn. 360, 292 S.W.2d 392, 1956 Tenn. LEXIS 419 (1956); State ex rel. Kessel v. Ashe, 888 S.W.2d 430, 1994 Tenn. LEXIS 318 (Tenn. 1994); Highwoods Props. v. City of Memphis, -- S.W.3d --, 2006 Tenn. App. LEXIS 789 (Tenn. Ct. App. Dec. 14, 2006); *Express Disposal, LLC v. City of Memphis, -- S.W.3d --, 2008 Tenn. App. LEXIS 772* (Tenn. Ct. App. Dec. 29, 2008).

NOTES TO DECISIONS

1. "Affected Instrumentality of the State" Construed. 2. Purpose of Section. 3. Determination of Issues. 4. Necessity for Franchise. 5. Arbitration. 6. Conveyance of Rights, Duties, Liabilities.

1. "Affected Instrumentality of the State" Construed.

Counties are included within the phrase "any affected instrumentality of the state of Tennessee." *Hamilton County v. Chattanooga, 203 Tenn. 85, 310 S.W.2d 153, 1958 Tenn. LEXIS 279 (1958).*

This section encompasses state instrumentalities other than those listed. *Lenoir City v. State, 571 S.W.2d 297, 1978 Tenn. LEXIS 646 (Tenn. 1978).*

A municipality is an affected instrumentality of the state within the meaning of this section. *Lenoir City v. State, 571 S.W.2d 297, 1978 Tenn. LEXIS 646 (Tenn. 1978).*

2. Purpose of Section.

The general purpose of this section is to provide an outline of the procedure for transferring utility functions to an annexing municipality. *Lenoir City v. State, 571 S.W.2d 297, 1978 Tenn. LEXIS 646 (Tenn. 1978).*

3. Determination of Issues.

Question of effect of annexation ordinance on liability of county for repayment of school bonds could not be raised in suit under *§ 6-51-103* to contest reasonableness of annexation ordinance. *State ex rel. Spoone v. Morristown, 222 Tenn. 21, 431 S.W.2d 827, 1968 Tenn. LEXIS 408 (1968),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978),* superseded by statute as stated in, *Highwoods Props., Inc. v. City of Memphis, 297 S.W.3d 695, 2009 Tenn. LEXIS 487* (Tenn. July 27, 2009).

4. Necessity for Franchise.

Before any corporation may furnish electricity within the territory of a municipality it must have the permission of that municipality in the form of a franchise even where the corporation has been serving the area before it became a part of the municipality. *Franklin Power & Light Co. v. Middle Tennessee Electric Membership Corp., 222 Tenn. 182, 434 S.W.2d 829, 1968 Tenn. LEXIS 421 (1968).*

5. Arbitration.

Provision in this section for arbitration was not limited to cases of a partial take-over but also applied where city proposed absolute control and operation of an entire utility system. *Hendersonville v. Hendersonville Utility Dist., 506 S.W.2d 149, 1973 Tenn. App. LEXIS 266 (Tenn. Ct. App. 1973).*

6. Conveyance of Rights, Duties, Liabilities.

Where the city of Memphis annexed part of a water district and elected under the statute to provide water services to the entire area served by the district, the city was required to assume an acceleration of refund payments obligation pursuant to a contract entered into by the district and a subdivision developer prior to annexation. *Pitts & Co. v. Memphis, 558 S.W.2d 448, 1977 Tenn. App. LEXIS 314 (Tenn. Ct. App. 1977).*

Rights relating to the taking of properties of a city's utilities board by the utilities board of a city annexing an area served by the former board were governed by *T.C.A. § 6-51-111*, not by *T.C.A. § 6-51-112*, providing for the payment of compensation to electric cooperatives. *Knoxville Utils. Bd. v. Lenoir City Utils. Bd., 943 S.W.2d 879, 1996 Tenn. App. LEXIS 508 (Tenn. Ct. App. 1996).*

Tenn. Code Ann. § 6-51-112 **(2013)**

6-51-112. Electric cooperatives.

(a) Notwithstanding the provisions of any other statute, if the annexing municipality owns and operates its own electric system, it shall either offer to purchase any electric distribution properties and service rights within the annexed area owned by any electric cooperative, or grant such cooperative a franchise to serve the annexed area, as follows:

(1) The municipality shall notify the affected electric cooperative in writing of the boundaries of the annexed area and shall indicate such area on appropriate maps;

(2) The municipality shall offer to purchase the electric distribution properties of the cooperative located within the annexed area, together with all of the cooperative's rights to serve within such area, for a cash consideration, which shall consist of:

(A) The present-day reproduction cost, new, of the facilities being acquired, less depreciation computed on a straight-line basis; plus

(B) An amount equal to the cost of constructing any necessary facilities to reintegrate the system of the cooperative outside the annexed area after detaching the portion to be sold; plus

(C) An annual amount, payable each year for a period of ten (10) years, equal to the sum of:

(i) Twenty-five percent (25%) of the revenues received from power sales to consumers of electric power within the annexed area, except consumers with large industrial power loads greater than three hundred kilowatts (300kW), during the last twelve (12) months preceding the date of the notice provided for in subdivision (a)(1); and

(ii) Fifty percent (50%) of the net revenues, which is gross power sales revenues less wholesale cost of power including facilities rental charge, received from power sales to consumers with large industrial power loads greater than three hundred kilowatts (300kW) within the annexed area during the last twelve (12) months preceding the date of the notice provided for in subdivision (a)(1);

(3) The electric cooperative, within ninety (90) days after receipt of an offer by the annexing municipality to purchase the cooperative's electric distribution properties and service rights within the annexed area, shall signify in writing its acknowledgement of the offer, and the parties shall proceed to act. The annexing municipality shall then be obligated to buy and pay for, and the cooperative shall be obligated to sell to the municipality, such properties and rights free and clear of all mortgage liens and encumbrances for the cash consideration computed and payable as provided in subdivision (a)(2);

(4) The annexing municipality, if it elects not to make the offer to purchase as provided for in subdivisions (a)(1) and (2), shall grant to the cooperative a franchise to serve within the annexed area, for a period of not less than five (5) years, and the municipality shall thereafter renew or extend the franchise or grant new franchises for similar subsequent periods; provided, that upon expiration of any such franchise, the municipality may elect instead to make an offer to buy the cooperative's electric distribution properties and service rights as they then exist in accordance with and subject to the provisions of subdivisions (a)(1) and (2); provided further, that, during the term of any such franchise, the annexing municipality shall be entitled to serve only such electric customers

or locations within the annexed area as it served on the date when such annexation became effective;

(5) If any annexing municipality contracts its boundaries so as to exclude from its corporate limits any territory, the cooperative may elect within sixty (60) days thereafter to purchase from such municipality, and such municipality shall thereupon sell and convey to the cooperative, the electric distribution properties and service rights of the municipality in any part of the excluded area that the electric cooperative had previously served, upon the same procedures set forth in subdivisions (a)(1)-(4) for acquisitions by municipalities;

(6) Nothing contained in this section shall prohibit municipalities and any cooperative from buying, selling, or exchanging electric distribution properties, service rights and other rights, property, and assets by mutual agreement;

(7) The territorial areas lying outside municipal boundaries served by municipal and cooperative electric systems will remain the same as generally established by power facilities already in place or legal agreements on March 6, 1968, and new consumers locating in any unserved areas between the respective power systems shall be served by the power system whose facilities were nearest on March 6, 1968, except to the extent that territorial areas are revised in accordance with this section; and

(8) "Electric distribution properties," as used in this section, means all electric lines and facilities used or useful in serving ultimate consumers, but does not include lines and facilities that are necessary for integration and operation of portions of a cooperative's electric system that are located outside the annexed area.

(b) The methods of allocation and conveyance of property and property rights of any electric cooperative to any annexing municipality provided for in subsection (a) shall be exclusively available to such annexing municipality and to such electric cooperative notwithstanding *§ 7-52-105* or any other title or section of the code in conflict or conflicting herewith.

HISTORY: Acts 1968, ch. 413, §§ 2, 3; T.C.A., § 6-320.

NOTES: Cross-References.

Provisions in section unaffected by rural electric and community services cooperative provisions, *§ 65-25-226*.

Section to Section References.

This section is referred to in *§§ 6-51-103*, *48-69-123*, *65-25-226*, *65-34-101*, *65-34-107*, *65-36-108*.

Textbooks.

Tennessee Jurisprudence, 19 *Tenn. Juris., Municipal Corporations, § 19*.

Cited:

Tenn. ex rel. City of Cookeville v. Upper Cumberland Elec. Mbrshp. Corp., 256 F. Supp. 2d 754, 2003 U.S. Dist. LEXIS 5449 (M.D. Tenn. 2003); Highwoods Props. v. City of Memphis, -- S.W.3d --, 2006 Tenn. App. LEXIS 789 (Tenn. Ct. App. Dec. 14, 2006).

NOTES TO DECISIONS

1. Applicability of Section. 2. Measure of Compensation. 3. Territory. 4. Withdrawal of Consent.

1. Applicability of Section.

Rights relating to the taking of properties of a city's utilities board by the utilities board of a city annexing an area served by the former board were governed by *T.C.A. § 6-51-111,* relating to the rights of parties when the annexed territory affects an instrumentality of the state, not by *T.C.A. § 6-51-112*. *Knoxville Utils. Bd. v. Lenoir City Utils. Bd., 943 S.W.2d 879, 1996 Tenn. App. LEXIS 508 (Tenn. Ct. App. 1996).*

T.C.A. § 6-51-112 is designed to govern the relationship between electric cooperatives and annexing municipalities that own and operate electric systems. *City of S. Fulton v. Hickman-Fulton Counties Rural Elec. Coop. Corp., 976 S.W.2d 86, 1998 Tenn. LEXIS 464 (Tenn. 1998),* rehearing denied, -- *S.W.2d --, 1998 Tenn. LEXIS 572* (Tenn. Oct. 12, 1998).

T.C.A. § 6-51-112 contains no limitation preventing all municipalities, other than those annexing municipalities that own and operate electric systems, from acquiring the property and service rights of an electric cooperative. *City of S. Fulton v. Hickman-Fulton Counties Rural Elec. Coop. Corp., 976 S.W.2d 86, 1998 Tenn. LEXIS 464 (Tenn. 1998),* rehearing denied, -- *S.W.2d --, 1998 Tenn. LEXIS 572* (Tenn. Oct. 12, 1998).

T.C.A. § 6-51-112 does not apply to an annexing municipality which does not own and operate its own electric system, and therefore, the city was not prohibited from altering any service areas that were outside the city's municipal boundaries, where the city did not qualify as a municipality that owns and operates its own electric system. *City of S. Fulton v. Hickman-Fulton Counties Rural Elec. Coop. Corp., 976 S.W.2d 86, 1998 Tenn. LEXIS 464 (Tenn. 1998),* rehearing denied, -- *S.W.2d --, 1998 Tenn. LEXIS 572* (Tenn. Oct. 12, 1998).

Subsection (a) requires that compensation be paid to electric cooperatives whose property and service rights were "taken" through annexation; however, Tennessee's statutes afford no similar protection to displaced garbage collectors. *Express Disposal, LLC v. City of Memphis, -- S.W.3d --, 2008 Tenn. App. LEXIS 772* (Tenn. Ct. App. Dec. 29, 2008).

2. Measure of Compensation.

The statute setting the measure of compensation for annexed utilities was applicable where a city acquired the property of an electrical cooperative by condemnation, as the measure of compensation set in the general condemnation statute would not have been adequate. *Duck River Electric Membership Corp. v. Manchester, 529 S.W.2d 202, 1975 Tenn. LEXIS 577 (Tenn. 1975).*

The statutory scheme enunciated in *T.C.A. § 6-51-112* is not the exclusive means of determining damages in every action concerning the inverse condemnation of an electric cooperative; a trial court, although it certainly may not ignore the scheme, has some discretion to modify the formula where the equities of the case dictate. *Forked Deer Elec. Coop. v. City of Ripley, 883 S.W.2d 582, 1994 Tenn. LEXIS 252 (Tenn. 1994).*

District Court found that proposed condemnations of electrical cooperative's facilities and service rights did not frustrate the Rural Electrification Act (REA) because condemnations would not cripple the ability to service rural areas and T.C.A. § 6-15-112(a)(2) provided a formula for sufficient compensation. *City of Cookeville v. Upper Cumberland Elec. Mbrshp. Corp., 360 F. Supp. 2d 873, 2005 U.S. Dist. LEXIS 4802 (M.D. Tenn. 2005),* aff'd, *City of Cookeville v. Upper Cumberland*

Elec. Mbrshp. Corp., -- F.3d --, 2007 U.S. App. LEXIS 8960, 2007 FED App. 0138P (6th Cir. Apr. 19, 2007).

Compensation award that included reintegration costs was affirmed because *T.C.A. § 6-51-112* required as part of the compensation that the city had to pay to the electrical cooperative an amount equal to the cost of constructing any necessary facilities to reintegrate the system of the cooperative outside the annexed area after it detached the portion to be sold. *City of Cookeville v. Upper Cumberland Elec. Mbrshp. Corp., -- F.3d --, 2007 U.S. App. LEXIS 8960, 2007 FED App. 0138P* (6th Cir. Apr. 19, 2007).

3. Territory.

A municipality may not by ordinance grant an electric utility a franchise covering the territory within the municipality served by another electric utility. *Electric Power Bd. v. Middle Tennessee Electric Membership Corp., 841 S.W.2d 321, 1992 Tenn. App. LEXIS 415 (Tenn. Ct. App. 1992).*

4. Withdrawal of Consent.

Recently incorporated city could not withdraw consent to electric utility to operate within city limits, unless the withdrawal was accompanied by the "orderly process of the law" provided by *T.C.A. § 6-51-112*. *Electric Power Bd. v. Middle Tennessee Electric Membership Corp., 841 S.W.2d 321, 1992 Tenn. App. LEXIS 415 (Tenn. Ct. App. 1992).*

Tenn. Code Ann. § 6-51-113 **(2013)**

6-51-113. Provisions supplemental.

Except as specifically provided in this part, the powers conferred by this part shall be in addition and supplemental to the powers conferred by any other general, special, or local law, and the limitations imposed by this part shall not affect such powers.

HISTORY: Acts 1955, ch. 113, § 12; T.C.A., §§ 6-320, 6-321.

NOTES: Textbooks.

Tennessee Jurisprudence, 5 *Tenn. Juris., Census, § 1*; 19 *Tenn. Juris., Municipal Corporations, § 13*.

Cited:

Witt v. McCanless, 200 Tenn. 360, 292 S.W.2d 392, 1956 Tenn. LEXIS 419 (1956).

NOTES TO DECISIONS

1. Alternative Remedies.

1. Alternative Remedies.

Where quo warranto review under *T.C.A. § 6-51-103* was not available, the validity of an annexation ordinance alleged to exceed the authority delegated by the legislature was subject to declaratory judgment under *T.C.A. § 29-14-103*. *State ex rel. Earhart v. City of Bristol, 970 S.W.2d 948, 1998 Tenn. LEXIS 366 (Tenn. 1998).*

Tenn. Code Ann. § 6-51-114 **(2013)**

6-51-114. Special census after annexation.

In the event any area is annexed to any municipality, the municipality may have a special census and in any county having a population of not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000), according to the 1970 federal census or any subsequent federal census, the municipality shall have such special census within the annexed area taken by the federal bureau of the census or in a manner directed by and satisfactory to the department of economic and community development, in which case the population of such municipality shall be changed and revised so as to include the population of the annexed area as shown by such supplemental census. The population of such municipality as so changed and revised shall be its population for the purpose of computing such municipality's share of all funds and moneys distributed by the state of Tennessee among the municipalities of the state on a population basis, and the population of such municipality as so revised shall be used in computing the aggregate population of all municipalities of the state, effective on the next July 1 following the certification of such supplemental census results to the commissioner of finance and administration.

HISTORY: Acts 1953, ch. 121, § 1 (Williams, § 3321.1); impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; impl. am. Acts 1972, ch. 542, § 15; T.C.A. (orig. ed.), § 6-303; Acts 1981, ch. 278, § 1.

NOTES: Compiler's Notes.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Section to Section References.

This section is referred to in *§ 6-58-114*.

Textbooks.

Tennessee Jurisprudence, 5 *Tenn. Juris., Census, § 1*.

Cited:

Lee v. Chattanooga, 500 S.W.2d 917, 1973 Tenn. App. LEXIS 286 (Tenn. Ct. App. 1973).

Tenn. Code Ann. § 6-51-115 **(2013)**

First of 2 versions of this section

6-51-115. Receipt and distribution of tax revenues. [Effective until July 1, 2013. See the version effective on July 1, 2013.]

(a) Notwithstanding any provisions of law to the contrary, whenever a municipality extends its boundaries by annexation, the county or counties in which the municipality is located shall continue to receive the revenue from all state and local taxes distributed on the basis of situs of collection,

generated within the annexed area, until July 1 following the annexation, unless the annexation takes effect on July 1.

(1) If the annexation takes effect on July 1, then the municipality shall begin receiving revenue from such taxes generated within the annexed area for the period beginning July 1.

(2) Whenever a municipality extends its boundaries by annexation, the municipality shall notify the department of revenue of such annexation upon the annexation becoming effective, for the purpose of tax administration.

(3) Such taxes shall include the local sales tax authorized in *§ 67-6-702*, the wholesale beer tax authorized in *§ 57-6-103*, the income tax on dividends authorized in *§ 67-2-102*, and all other such taxes distributed to counties and municipalities based on the situs of their collection.

(b) In addition to the provisions of subsection (a), when a municipality annexes territory in which there is retail or wholesale activity at the time the annexation takes effect or within three (3) months after the annexation date, the following shall apply:

(1) Notwithstanding the provisions of *§ 57-6-103* or any other law to the contrary, for wholesale activity involving the sale of beer, the county shall continue to receive annually an amount equal to the amount received by the county in the twelve (12) months immediately preceding the effective date of the annexation for beer establishments in the annexed area that produced wholesale beer tax revenues during that entire twelve (12) months. For establishments that produced wholesale beer tax revenues for at least one (1) month but less than the entire twelve-month period, the county shall continue to receive an amount annually determined by averaging the amount of wholesale beer tax revenue produced during each full month the establishment was in business during that time and multiplying this average by twelve (12). For establishments that did not produce revenue before the annexation date but produced revenue within three (3) months after the annexation date, and for establishments that produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of wholesale beer tax revenue produced during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision (b)(1) are subject to the exceptions in subsection (c). A municipality shall only pay the county the amount required by this subdivision (b)(1), for a period of fifteen (15) years.

(2) Notwithstanding the provisions of *§ 67-6-712* or any other law to the contrary, for retail activity subject to the Local Option Revenue Act, compiled in title 67, chapter 6, part 7, the county shall continue to receive annually an amount equal to the amount of revenue the county received pursuant to *§ 67-6-712(a)(2)(A)* in the twelve (12) months immediately preceding the effective date of the annexation for business establishments in the annexed area that produced Local Option Revenue Act revenue during that entire twelve (12) months. For business establishments that produced such revenues for more than a month but less than the full twelve-month period, the county shall continue to receive an amount annually determined by averaging the amount of local option revenue produced by the establishment and allocated to the county under *§ 67-6-712(a)(2)(A)* during each full month the establishment was in business during that time and multiplying this average by twelve (12). For business establishments that did not produce revenue before the annexation date and produced revenue within three (3) months after the annexation date, and for establishments that produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of the 1963 Local Option Revenue Act,

compiled in title 67, chapter 6, part 7, produced and allocated to the county under *§ 67-6-712(a)(2)(A)* during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision (b)(2) are subject to the exceptions in subsection (c). A municipality shall only pay the county the amount required by this subdivision (b)(2), for a period of fifteen (15) years.

(c) Subsection (b) is subject to these exceptions:

(1) Subdivision (b)(1) ceases to apply as of the effective date of the repeal of the wholesale beer tax, should this occur;

(2) Subdivision (b)(2) ceases to apply as of the effective date of the repeal of the Local Option Revenue Act, compiled in title 67, chapter 6, part 7, should this occur;

(3) Should the general assembly reduce the amount of revenue from the Wholesale Beer Tax, compiled in title 57, chapter 6, part 1, or the 1963 Local Option Revenue Act, compiled in title 67, chapter 6, part 7, accruing to municipalities by changing the distribution formula, the amount of revenue accruing to the county under subsection (b) will be reduced proportionally as of the effective date of the reduction;

(4) A county, by resolution of its legislative body, may waive its rights to receive all or part of the revenues provided by subsection (b). In these cases, the revenue shall be distributed as provided in *§§ 57-6-103* and *67-6-712* of the respective tax laws unless otherwise provided by agreement between the county and municipality; and

(5) Annual revenues paid to a county by or on behalf of the annexing municipality are limited to the annual revenue amounts provided in subsection (b) and known as "annexation date revenue" as defined in subdivision (d)(2). Annual situs-based revenues in excess of the "annexation date revenue" allocated to one (1) or more counties shall accrue to the annexing municipality. Any decrease in the revenues from the situs-based taxes identified in subsection (b) shall not affect the amount remitted to the county or counties pursuant to subsection (b), except as otherwise provided in this subsection (c); provided, that a municipality may petition the department of revenue no more often than annually to adjust annexation date revenue as a result of the closure or relocation of a tax producing entity.

(d) (1) It is the responsibility of the county within which the annexed territory lies to certify and to provide to the department a list of all tax revenue producing entities within the proposed annexation area.

(2) The department shall determine the local share of revenue from each tax listed in this section generated within the annexed territory for the year before the annexation becomes effective, subject to the requirements of subsection (b). This revenue shall be known as the "annexation date revenue."

(3) The department, with respect to the revenues described in subdivision (b)(2), and the municipality, with respect to the revenues described in subdivision (b)(1), shall annually distribute an amount equal to the annexation date revenue to the county of the annexed territory.

HISTORY: Acts 1988, ch. 1016, § 1; 1998, ch. 1101, § 24; 2004, ch. 959, §§ 52, 53; 2005, ch. 311, § 2; 2012, ch. 837, § 1.

NOTES: Amendments.

The 2012 amendment substituted "upon" for "prior to" in (a)(2).

Effective Dates.

Acts 2012, ch. 837, § 2. April 25, 2012.

Cross-References.

Alcoholic beverage gross receipts taxes, distribution, *§ 57-4-306*.

Income tax, distribution of revenue, *§ 67-2-119*.

Local Option Revenue Act, distribution of revenue, *§ 67-6-702*.

Wholesale beer tax, levy and distribution, *§ 57-6-103*.

Section to Section References.

This section is referred to in *§ 6-58-112*.

Attorney General Opinions.

Effective date of annexation for purposes of local sales tax distribution under subdivision (b)(2) of this section, OAG 04-037 (3/12/04).

NOTES TO DECISIONS

1. Applicability.

1. Applicability.

T.C.A. § 6-51-115(b)(2) controlled the allocation of tax revenues from areas of a county that were annexed by a city, notwithstanding that *T.C.A. § 6-51-115(b)(2)* was not yet in effect when the city passed its annexation ordinance, because *T.C.A. § 6-51-115(b)(2)* was in effect when the annexation became effective or operative. *City of Knoxville v. Knox County, -- S.W.3d --, 2008 Tenn. App. LEXIS 86* (Tenn. Ct. App. Feb. 20, 2008), appeal denied, *City of Knoxville v. Tenn. Dep't of Revenue, -- S.W.3d --, 2008 Tenn. LEXIS 668* (Tenn. Aug. 25, 2008).

The 1998 version of *T.C.A. § 6-51-115(b)(2)* controlled the allocation of local option revenue derived from the annexed territory because it was in effect when the quo warranto litigation challenging the ordinances was concluded, and the determinative date was the date on which the annexation ordinance became operative, which was January 2002; the mere filing of a quo warranto action held the effective date of the annexation in abeyance until the filed action was dismissed, and as long as the quo warranto actions were pending, the annexations did not become effective or operative. *Town of Huntsville v. Scott County, 269 S.W.3d 57, 2008 Tenn. App. LEXIS 114* (Tenn. Ct. App. Feb. 28, 2008), appeal denied, -- *S.W.3d --, 2008 Tenn. LEXIS 665* (Tenn. Aug. 25, 2008).

***Tenn. Code Ann. § 6-51-115* (2013)**

Second of 2 versions of this section

6-51-115. Receipt and distribution of tax revenues. [Effective on July 1, 2013. See the version effective until July 1, 2013.]

(a) Notwithstanding any provisions of law to the contrary, except that *§ 67-6-716* shall control the effective date of local jurisdictional boundary changes for sales and use tax purposes, whenever a municipality extends its boundaries by annexation, the county or counties in which the municipality is located shall continue to receive the revenue from all state and local taxes distributed on the basis of situs of collection, generated within the annexed area, until July 1 following the annexation, unless the annexation takes effect on July 1.

(1) If the annexation takes effect on July 1, then the municipality shall begin receiving revenue from such taxes generated within the annexed area for the period beginning July 1.

(2) Whenever a municipality extends its boundaries by annexation, the municipality shall notify the department of revenue of such annexation upon the annexation becoming effective, for the purpose of tax administration.

(3) Such taxes shall include the local sales tax authorized in *§ 67-6-702*, the wholesale beer tax authorized in *§ 57-6-103*, the income tax on dividends authorized in *§ 67-2-102*, and all other such taxes distributed to counties and municipalities based on the situs of their collection.

(b) In addition to the provisions of subsection (a), when a municipality annexes territory in which there is retail or wholesale activity at the time the annexation takes effect or within three (3) months after the annexation date, the following shall apply:

(1) Notwithstanding the provisions of *§ 57-6-103* or any other law to the contrary, for wholesale activity involving the sale of beer, the county shall continue to receive annually an amount equal to the amount received by the county in the twelve (12) months immediately preceding the effective date of the annexation for beer establishments in the annexed area that produced wholesale beer tax revenues during that entire twelve (12) months. For establishments that produced wholesale beer tax revenues for at least one (1) month but less than the entire twelve-month period, the county shall continue to receive an amount annually determined by averaging the amount of wholesale beer tax revenue produced during each full month the establishment was in business during that time and multiplying this average by twelve (12). For establishments that did not produce revenue before the annexation date but produced revenue within three (3) months after the annexation date, and for establishments that produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of wholesale beer tax revenue produced during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision (b)(1) are subject to the exceptions in subsection (c). A municipality shall only pay the county the amount required by this subdivision (b)(1), for a period of fifteen (15) years.

(2) Notwithstanding the provisions of *§ 67-6-712* or any other law to the contrary, for retail activity subject to the Local Option Revenue Act, compiled in title 67, chapter 6, part 7, the county shall continue to receive annually an amount equal to the amount of revenue the county received pursuant to *§ 67-6-712(a)(2)(A)* in the twelve (12) months immediately preceding the effective date of the annexation for business establishments in the annexed area that produced Local Option Revenue Act revenue during that entire twelve (12) months. For business establishments that produced such revenues for more than a month but less than the full twelve-month period, the county shall continue to receive an amount annually determined by averaging the amount of local option revenue produced by the establishment and allocated to the county under *§ 67-6-712(a)(2)(A)* during each full month the establishment was in business during that time and multiplying this average by

twelve (12). For business establishments that did not produce revenue before the annexation date and produced revenue within three (3) months after the annexation date, and for establishments that produced revenue for less than a full month prior to annexation, the county shall continue to receive annually an amount determined by averaging the amount of the 1963 Local Option Revenue Act, compiled in title 67, chapter 6, part 7, produced and allocated to the county under *§ 67-6-712(a)(2)(A)* during the first three (3) months the establishment was in operation and multiplying this average by twelve (12). The provisions of this subdivision (b)(2) are subject to the exceptions in subsection (c). A municipality shall only pay the county the amount required by this subdivision (b)(2), for a period of fifteen (15) years.

(3) When the amount of local option sales tax produced by businesses in the annexed area cannot be determined from sales tax returns filed by the businesses, the commissioner may determine the amount to be distributed to the county over the fifteen-year period based on the best information available. For this purpose, the commissioner may use information obtained from business tax returns or obtain additional information from the businesses involved.

(c) Subsection (b) is subject to these exceptions:

(1) Subdivision (b)(1) ceases to apply as of the effective date of the repeal of the wholesale beer tax, should this occur;

(2) Subdivision (b)(2) ceases to apply as of the effective date of the repeal of the Local Option Revenue Act, compiled in title 67, chapter 6, part 7, should this occur;

(3) Should the general assembly reduce the amount of revenue from the Wholesale Beer Tax, compiled in title 57, chapter 6, part 1, or the 1963 Local Option Revenue Act, compiled in title 67, chapter 6, part 7, accruing to municipalities by changing the distribution formula, the amount of revenue accruing to the county under subsection (b) will be reduced proportionally as of the effective date of the reduction;

(4) A county, by resolution of its legislative body, may waive its rights to receive all or part of the revenues provided by subsection (b). In these cases, the revenue shall be distributed as provided in *§§ 57-6-103* and *67-6-712* of the respective tax laws unless otherwise provided by agreement between the county and municipality; and

(5) Annual revenues paid to a county by or on behalf of the annexing municipality are limited to the annual revenue amounts provided in subsection (b) and known as "annexation date revenue" as defined in subdivision (d)(2). Annual situs-based revenues in excess of the "annexation date revenue" allocated to one (1) or more counties shall accrue to the annexing municipality. Any decrease in the revenues from the situs-based taxes identified in subsection (b) shall not affect the amount remitted to the county or counties pursuant to subsection (b), except as otherwise provided in this subsection (c); provided, that a municipality may petition the department of revenue no more often than annually to adjust annexation date revenue as a result of the closure or relocation of a tax producing entity.

(d) (1) It is the responsibility of the county within which the annexed territory lies to certify and to provide to the department a list of all tax revenue producing entities within the proposed annexation area.

(2) The department shall determine the local share of revenue from each tax listed in this section generated within the annexed territory for the year before the annexation becomes effective,

subject to the requirements of subsection (b). This revenue shall be known as the "annexation date revenue."

(3) The department, with respect to the revenues described in subdivision (b)(2), and the municipality, with respect to the revenues described in subdivision (b)(1), shall annually distribute an amount equal to the annexation date revenue to the county of the annexed territory.

HISTORY: Acts 1988, ch. 1016, § 1; 1998, ch. 1101, § 24; 2004, ch. 959, §§ 52, 53; 2005, ch. 311, § 2; 2007, ch. 602, §§ 127, 128; 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2012, ch. 837, § 1.

NOTES: Amendments.

The 2007 amendment, as amended by Acts 2009, ch. 530, § 35, and further amended by Acts 2011, ch. 72, § 1, effective July 1, 2013, inserted "except that *§ 67-6-716* shall control the effective date of local jurisdictional boundary changes for sales and use tax purposes," in the first sentence of subsection (a); and added (b)(3).

The 2012 amendment substituted "upon" for "prior to" in (a)(2).

Effective Dates.

Acts 2007, ch. 602, § 187. July 1, 2009.

Acts 2009, ch. 530, § 133. June 25, 2009, July 1, 2011.

Acts 2011, ch. 72, § 18. April 13, 2011; July 1, 2013.

Acts 2012, ch. 837, § 2. April 25, 2012.

Cross-References.

Alcoholic beverage gross receipts taxes, distribution, *§ 57-4-306*.

Income tax, distribution of revenue, *§ 67-2-119*.

Local Option Revenue Act, distribution of revenue, *§ 67-6-702*.

Wholesale beer tax, levy and distribution, *§ 57-6-103*.

Section to Section References.

This section is referred to in *§ 6-58-112*.

Attorney General Opinions.

Effective date of annexation for purposes of local sales tax distribution under subdivision (b)(2) of this section, OAG 04-037 (3/12/04).

NOTES TO DECISIONS

1. Applicability.

1. Applicability.

T.C.A. § 6-51-115(b)(2) controlled the allocation of tax revenues from areas of a county that were annexed by a city, notwithstanding that *T.C.A. § 6-51-115(b)(2)* was not yet in effect when the city passed its annexation ordinance, because *T.C.A. § 6-51-115(b)(2)* was in effect when the annexation became effective or operative. *City of Knoxville v. Knox County, -- S.W.3d --, 2008 Tenn.*

App. LEXIS 86 (Tenn. Ct. App. Feb. 20, 2008), appeal denied, *City of Knoxville v. Tenn. Dep't of Revenue, -- S.W.3d --, 2008 Tenn. LEXIS 668* (Tenn. Aug. 25, 2008).

The 1998 version of *T.C.A. § 6-51-115(b)(2)* controlled the allocation of local option revenue derived from the annexed territory because it was in effect when the quo warranto litigation challenging the ordinances was concluded, and the determinative date was the date on which the annexation ordinance became operative, which was January 2002; the mere filing of a quo warranto action held the effective date of the annexation in abeyance until the filed action was dismissed, and as long as the quo warranto actions were pending, the annexations did not become effective or operative. *Town of Huntsville v. Scott County, 269 S.W.3d 57, 2008 Tenn. App. LEXIS 114* (Tenn. Ct. App. Feb. 28, 2008), appeal denied, -- *S.W.3d --, 2008 Tenn. LEXIS 665* (Tenn. Aug. 25, 2008).

***Tenn. Code Ann. § 6-51-116* (2013)**

6-51-116. Annexation of territory in a county in a different time zone.

Notwithstanding any provision of law to the contrary, after December 31, 1992, it is unlawful for any municipality to annex, by ordinance upon its own initiative, territory in any county other than the county in which the city hall of the annexing municipality is located, if the two (2) counties involved are located in different time zones.

HISTORY: Acts 1993, ch. 36, § 1.

NOTES: Attorney General Opinions.

Applicability of annexation prohibition, OAG 97-015 (2/20/97).

***Tenn. Code Ann. § 6-51-117* (2013)**

6-51-117. Annexation of regional airport commission property.

If three (3) or more municipalities and counties jointly create and participate in a regional airport commission and if the property of the regional airport commission is located outside the boundaries of the participating municipalities, then no municipality shall annex any property of the regional airport commission without the prior consent of the legislative bodies of the participating municipalities and counties.

HISTORY: Acts 1993, ch. 213, § 1.

***Tenn. Code Ann. § 6-51-118* (2013)**

6-51-118. Applicability to certain counties with a metropolitan form of government.

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.

HISTORY: Acts 1998, ch. 1101, § 23.

NOTES: Compiler's Notes.

Acts 1998, ch. 1101, referred to in this section, enacted this section and chapter 58 of this title, amended numerous sections throughout this title and title 7, and made minor changes in title 13. See the Session Laws Disposition table in Volume 13.

Tenn. Code Ann. § 6-51-119 **(2013)**

6-51-119. Provision of copy of annexation ordinance, the plan for emergency services and map designating the annexed area to emergency communications district.

(a) The legislative body of an annexing municipality or its designee shall provide a copy of the annexation ordinance, along with a copy of the portion of the plan of services dealing with emergency services and a detailed map designating the annexed area, to any affected emergency communications district upon final passage of the ordinance. The map shall identify all public and private streets in the area to be annexed, including street names and direction indicators. The map shall include or have appended a list of address ranges for each street to be annexed. For contested annexation ordinances, in cases in which the municipality plans to begin providing emergency services in the annexed territory immediately, the municipality shall notify the district when the annexation becomes final. Compliance or noncompliance with this section is not admissible against the municipality in any case brought under this title or title 29, chapter 14, or against the municipality or any affected emergency communications district under the Tennessee Governmental Tort Liability Act, compiled in title 29, chapter 20.

(b) The municipality shall provide the information required in subsection (a) to an affected district by certified return receipt mail or other method that assures receipt by the district.

HISTORY: Acts 2005, ch. 264, § 3; 2005, ch. 411, § 3.

NOTES: Compiler's Notes.

Acts 2005, ch. 264, § 3 purported to enact this section, effective July 1, 2005. Acts 2005, ch. 411, § 3 enacted similar provisions, effective June 17, 2005, but with the addition of subsection (b). Because of the enactment by ch. 411, the provisions of ch. 264 were not given effect.

Tenn. Code Ann. § 6-51-120 **(2013)**

6-51-120. Annexation of territory in a state park or natural area.

No municipality shall annex any territory located within any state park or natural area unless all of the following conditions are met:

(1) The territory proposed for annexation must be located within the municipality's urban growth boundaries;

(2) The municipality must provide advance written notification of the proposed annexation to the commissioner of environment and conservation;

(3) The advance written notification must include a detailed description of the territory proposed for annexation, reasons for the proposed annexation, the proposed plan of municipal services, and the timeline for actual delivery of each municipal service;

(4) The department of environment and conservation must study the likely impact upon the park or natural area and its wildlife, scenery, ambiance, traffic, roads, visitors and mission. The cost of the study shall be borne by the municipality proposing the annexation;

(5) As a component of the study, the department must conduct one (1) or more public hearings for citizen input;

(6) Prior to the public hearing, the department must seek the county commission's input regarding the municipality's proposed annexation; and

(7) The department must report its findings and may prescribe such binding prerequisites for the proposed annexation as may be necessary and desirable to protect and preserve the park or natural area for the benefit of all current and future Tennesseans.

HISTORY: Acts 2008, ch. 1033, § 1.

Tenn. Code Ann. § 6-51-121 **(2013)**

6-51-121. Recording of annexation ordinance of resolution by annexing municipality.

Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as provided in this part, an annexing municipality shall record the ordinance or resolution with the register of deeds in the county or counties where the annexation was adopted or approved. The ordinance or resolution shall describe the territory that was annexed by the municipality. A copy of the ordinance or resolution shall also be sent to the comptroller of the treasury and the assessor of property for each county affected by the annexation.

HISTORY: Acts 2011, ch. 111, § 1.

NOTES: Effective Dates.

Acts 2011, ch. 111, § 2. April 25, 2011.

Title 6 Cities And Towns
Municipal Government Generally
Chapter 51 Change of Municipal Boundaries
Part 2 Contraction

***Tenn. Code Ann. § 6-51-201* (2013)**

6-51-201. Procedure -- Ordinance -- Referendum.

(a) Any incorporated city or town, whether it was incorporated by general or special act, may contract its limits within any given territory; provided, that three fourths (3/4) of the qualified voters voting in an election thereon assent thereto.

(b) (1) Any incorporated city or town, whether it was incorporated by general or special act, may after notice and public hearing, contract its limits within any given territory upon its own initiative by ordinance when it appears in the best interest of the affected territory.

(2) Such contraction of limits within any territory shall not occur unless a majority of the total membership of the city legislative body approves such contraction.

(3) Such contraction of limits within any territory shall not occur if opposed by a majority of the voters residing within the area to be deannexed. The concurrence of a majority of the voters shall be presumed unless a petition objecting to deannexation signed by ten percent (10%) of the registered voters residing within the area proposed to be deannexed is filed with the city recorder within seventy-five (75) days following the final reading of the contraction ordinance. If such a petition is filed, a referendum shall be held at the next general election to ascertain the will of the voters residing in the area that the city proposes to deannex. The ballot shall provide a place where voters may vote for or against deannexation by the city. If a majority of those voting in the referendum fail to vote for the deannexation, the contraction ordinance shall be void and the matter may not be considered again for two (2) years. If a majority vote for deannexation, the ordinance shall become effective upon certification of the result of the referendum.

HISTORY: Acts 1875, ch. 92, § 15; Shan., § 1911; mod. Code 1932, § 3322; Acts 1955, ch. 61, § 1; 1955, ch. 113, § 10; 1979, ch. 363, § 1; T.C.A. (orig. ed.), § 6-304; Acts 1984, ch. 731, § 1.

NOTES: Section to Section References.

This section is referred to in *§ 6-51-202*.

Law Reviews.

Consolidation of County and City Functions and Other Devices for Simplifying Tennessee Local Government (Wallace Mendelson), *8 Vand. L. Rev. 878.*

Cited:

Knoxville v. State, 207 Tenn. 558, 341 S.W.2d 718, 1960 Tenn. LEXIS 492 (1960); State ex rel. Campbell v. Morristown, 207 Tenn. 593, 341 S.W.2d 733, 1960 Tenn. LEXIS 498 (1960); State ex rel. Maury County Farmers Co-op Corp. v. Columbia, 210 Tenn. 657, 362 S.W.2d 219, 1962 Tenn.

LEXIS 326 (1962); Mt. Carmel v. Kingsport, 217 Tenn. 298, 397 S.W.2d 379, 1965 Tenn. LEXIS 546 (1965).

NOTES TO DECISIONS

1. Constitutionality. 2. Applicability. 3. Reversal of Annexation.

1. Constitutionality.

Every provision of Acts 1955, ch. 113, was germane to the object expressed in its caption. *Witt v. McCanless, 200 Tenn. 360, 292 S.W.2d 392, 1956 Tenn. LEXIS 419 (1956),* superseded by statute as stated in, *Kingsport v. State, 562 S.W.2d 808, 1978 Tenn. LEXIS 592 (Tenn. 1978).*

2. Applicability.

Provisions of *T.C.A. § 6-51-201* governing contraction of municipal boundaries are not applicable where a quo warranto proceeding has been filed challenging the validity of an annexation ordinance. *Bluff City v. Morrell, 764 S.W.2d 200, 1988 Tenn. LEXIS 268 (Tenn. 1988).*

3. Reversal of Annexation.

Annexed territories become part of city and cannot be separated therefrom by any resolution passed by city when annexation ordinance was validly passed. *Lee v. Chattanooga, 500 S.W.2d 917, 1973 Tenn. App. LEXIS 286 (Tenn. Ct. App. 1973),* cert. denied, *419 U.S. 869, 95 S. Ct. 128, 42 L. Ed. 2d 108, 1974 U.S. LEXIS 2770 (1974).*

Decisions Under Prior Law 1. Power of General Assembly to Change Boundaries.

1. Power of General Assembly to Change Boundaries.

Notwithstanding statute providing for the change of the boundaries or territorial limits of municipal corporations, the general assembly could, by special act, accomplish the same end by extending or contracting the corporate limits. *Williams v. Nashville, 89 Tenn. 487, 15 S.W. 364, 1890 Tenn. LEXIS 75 (1891); Grainger County v. State, 111 Tenn. 234, 80 S.W. 750, 1903 Tenn. LEXIS 22 (1904); Oneida v. Pearson Hardwood Flooring Co., 169 Tenn. 449, 88 S.W.2d 998, 1935 Tenn. LEXIS 68 (1935),* superseded by statute as stated in, *State ex rel. Vicars v. Kingsport, 659 S.W.2d 367, 1983 Tenn. App. LEXIS 707 (Tenn. Ct. App. 1983).*

Where property was excluded from municipal boundaries by private act and where no right of creditors of the municipality was involved, such property was no longer subject to taxation by the municipality. *Oneida v. Pearson Hardwood Flooring Co., 169 Tenn. 449, 88 S.W.2d 998, 1935 Tenn. LEXIS 68 (1935),* superseded by statute as stated in, *State ex rel. Vicars v. Kingsport, 659 S.W.2d 367, 1983 Tenn. App. LEXIS 707 (Tenn. Ct. App. 1983).*

Collateral References.

Power to detach land from municipal corporation, towns, or villages. 117 A.L.R. 267.

Tenn. Code Ann. § 6-51-202 **(2013)**

6-51-202. Election.

The election provided for in *§ 6-51-201*, shall be held under the provisions of an ordinance to be passed for that purpose. A full report of the election shall be spread upon the minutes of the board, if three fourths (3/4) of the voters assent to the contraction, and in the report the metes and bounds of the territory to be excluded must be fully set forth.

HISTORY: Acts 1875, ch. 92, § 15; Shan., § 1912; Code 1932, § 3323; T.C.A. (orig. ed.), § 6-305.

Tenn. Code Ann. § 6-51-203 **(2013)**

6-51-203. [Repealed.]

NOTES: Compiler's Notes.

Former *§ 6-51-203* (Acts 1875, ch. 92, § 15; Shan., § 1913; Code 1932, § 3324; T.C.A. (orig. ed.), § 6-306), concerning transcripts of contraction proceedings, was repealed by Acts 1986, ch. 700, § 1.

Tenn. Code Ann. § 6-51-204 **(2013)**

6-51-204. Effective date of contraction -- Continuing jurisdiction for taxation -- Notice of contraction.

(a) Except for responsibility for any debt contracted prior to the surrender of jurisdiction, all municipal jurisdiction shall cease over the territory excluded from the municipality's corporate limits on the effective date of the ordinance if the contraction is done by ordinance, or on the date of the certification of the results of the election if the contraction is done by election. The municipality may continue to levy and collect taxes on property in the excluded territory to pay the excluded territory's proportion of any debt contracted prior to the exclusion.

(b) The chief executive officer of the municipality shall notify the county assessor of property as to contractions in the territorial limits of the municipality and shall provide the county assessor of property with a complete description of all property affected by the contractions.

HISTORY: Acts 1875, ch. 92, § 15; Shan., § 1914; Code 1932, § 3325; T.C.A. (orig. ed.), § 6-307; Acts 1986, ch. 700, § 2; 2008, ch. 971, § 1.

NOTES: Compiler's Notes.

Acts 2008, ch. 971, § 1 provided that the code commission is directed to change all references to "tax assessor", wherever such references appear, to "assessor of property", as such sections are amended or volumes are replaced. See *§ 1-1-116*.

Section to Section References.

This section is referred to in *§ 1-1-116*.

Title 6 Cities And Towns
Municipal Government Generally
Chapter 51 Change of Municipal Boundaries
Part 3 Mutual Adjustments

Tenn. Code Ann. § 6-51-301 **(2013)**

6-51-301. Utility services other than gas or telephone.

(a) (1) Notwithstanding any other law, public or private, to the contrary, no municipality may render utility water service to be consumed in any area outside its municipal boundaries when all of such area is included within the scope of a certificate or certificates of convenience and necessity or other similar orders of the Tennessee regulatory authority or other appropriate regulatory agency outstanding in favor of any person, firm or corporation authorized to render such utility water service. If, and to the extent that, a municipality chooses to render utility water service to be consumed within its municipal boundaries when all or part of such area is included within the scope of a certificate or certificates of convenience and necessity or other similar orders of the Tennessee regulatory authority or other appropriate regulatory agency outstanding in favor of any person, firm or corporation authorized to render such utility water service, then the municipality and such person, firm or corporation shall attempt to reach agreement in writing for allocation and conveyance to the municipality of any or all public utility functions, rights, duties, property, assets, and liabilities of such person, firm or corporation so affected that justice and reason may require. If, within a reasonable time, the parties cannot agree in writing on allocation and conveyance, then either party may petition the chancery court of the district in which such area is located for a determination of value and damages suffered by such person, firm or corporation as a result of such municipal choice.

(2) Such proceeding shall be conducted according to the laws of eminent domain, title 29, chapter 16, and shall include a determination of actual damages, incidental damages, and incidental benefits, as provided for therein, but in no event shall the amounts so determined exceed the replacement cost of the facilities.

(b) "Municipality," as used in this section, includes any agency, instrumentality, board, public corporation, or authority of the municipal government performing or authorized to perform such utility functions. This subsection (b) shall not apply to municipalities having a population in excess of three hundred fifty thousand (350,000), according to the federal census of 1960 or any subsequent federal census.

(c) (1) This section shall not apply to those counties having a population of not less than twenty-six thousand nine hundred (26,900) and not more than twenty-seven thousand (27,000), according to the federal census of 1960.

(2) This section shall not apply in counties having a population of not less than twenty-seven thousand six hundred (27,600) nor more than twenty-seven thousand seven hundred (27,700), according to the 1960 federal census or any subsequent federal census.

(3) This section shall not apply in counties having a population of not less than ten thousand seven hundred (10,700) nor more than ten thousand seven hundred seventy (10,770) or not less than twelve thousand (12,000) nor more than twelve thousand one hundred (12,100), according to the 1960 federal census or any subsequent federal census.

(d) If and to the extent that a municipality incorporated after January 1, 1972, and that has been incorporated for two (2) years or longer chooses to render any utility services, other than the furnishing of natural or artificial gas or telephone service, within its municipal boundaries, when all or any part of such area is included within the scope of:

(1) A certificate or certificates of convenience and necessity or other similar orders of the Tennessee regulatory authority or other appropriate regulatory agency outstanding in favor of any person, firm or corporation authorized to render any such utility services, other than the furnishing of natural or artificial gas or telephone service; or

(2) An order issued pursuant to the provisions of title 7, chapter 82 authorizing a utility district to furnish any such utility services, other than the furnishing of natural or artificial gas or telephone service;

then the municipality and such person, firm or corporation or utility district shall attempt to reach agreement in writing for allocation and conveyance to the municipality of any or all public utility functions, including, but not limited to, those set out in *§ 7-82-302*, excepting the furnishing of natural or artificial gas or telephone service, and of all rights, duties, property, assets and liabilities of such person, firm or corporation or utility district so affected that justice and reason may require. If, within a reasonable time, the parties cannot agree in writing on allocation and conveyance, then either party may petition the circuit court of the district in which such area is located for a determination of value and damages suffered by such person, firm or corporation or utility district as a result of such municipal choice. If the court finds that it would be in the best interests of both the municipality and the person, firm or corporation or utility district furnishing utility services in the area in question, the court may, in its discretion, order the transfer to the municipality of the entire utility system, upon compensation being paid such person, firm or corporation or utility district in such amount and in such manner as may be determined by the court. Before any such municipality may initiate any negotiation or proceedings under this subsection (d) for the allocation and conveyance to the municipality of any or all public utility functions, such action shall first have been approved by a majority of the qualified voters of such municipality voting in a referendum on the question of such municipality acquiring and exercising such public utility functions. Such referendum shall be called by resolution or ordinance duly adopted by a majority of the governing body of such municipality, and shall be held by the county election commission upon request of such governing body not less than forty-five (45) days after the adoption of such resolution or ordinance and publication in a newspaper of general circulation in such municipality once a week for a period of three (3) weeks preceding such referendum. The votes cast in such election shall be counted and the results certified as provided by law for municipal elections generally and the qualification of voters in such referendum shall be the same as those required for voting in municipal elections generally. The municipality shall pay the costs of holding such referendum.

HISTORY: Acts 1965, ch. 304, § 1; 1974, ch. 773, §§ 1-3; T.C.A., § 6-319; Acts 1995, ch. 305, § 73.

NOTES: Compiler's Notes.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Section to Section References.

This section is referred to in *§§ 6-51-101*, *6-51-103*, *6-51-110*, *6-51-111*, *7-82-301*.

Textbooks.

Tennessee Jurisprudence, 21 Tenn. Juris., Public Service Commissions, § 13.

Cited:

Highwoods Props. v. City of Memphis, -- S.W.3d --, 2006 Tenn. App. LEXIS 789 (Tenn. Ct. App. Dec. 14, 2006).

NOTES TO DECISIONS

1. Application.

1. Application.

Where one public utility was providing water for an apartment complex within the boundary of another utility's certificate of public convenience and necessity pursuant to a 1972 agreement, the court held that the 1974 amendment to this section had prospective application only and hence the amendment had no effect on the agreement. *Westland Drive Service Co. v. Citizens & Southern Realty Investors, 558 S.W.2d 439, 1977 Tenn. App. LEXIS 310 (Tenn. Ct. App. 1977).*

***Tenn. Code Ann. § 6-51-302* (2013)**

6-51-302. Adjustment of boundaries of contiguous municipalities.

(a) Whenever the boundaries of the corporate limits of municipalities are contiguous and such boundaries either are not in line with the street and lot layout of the municipalities or do not conform to existing or proposed public rights-of-way, drainage ways, utility easements, or railroad rights-of-way, these municipalities may adjust such boundaries by contract between themselves so as to avoid confusion and uncertainty about the location of the contiguous boundary or to conform the contiguous boundary to an existing public right-of-way, drainage way, utility easement, or railroad right-of-way, or to dedicated public right-of-way or lot line that appears on a recorded plat or deed, or to a proposed public right-of-way, drainage way, utility easement, or railroad right-of-way that is a part of either a comprehensive municipal or county plan, or both, approved by a municipal or county governmental body or by a legally constituted municipal planning commission, regional planning commission, or the state planning office.

(b) Such boundary adjustments may not place any elected official into a voting or political subdivision not presently in the district that such elected official represents, and no such boundary shift may occur any less than ninety (90) days prior to any election in which affected citizens may participate if such boundary adjustment had not occurred.

HISTORY: Acts 1976, ch. 834, § 1; 1977, ch. 91, §§ 1, 2; T.C.A., § 6-322.

NOTES: Compiler's Notes.

The state planning office, referred to in this section, was abolished by Acts 1995, ch. 501, effective June 12, 1995.

Textbooks.

Tennessee Jurisprudence, 19 *Tenn. Juris., Municipal Corporations, §§ 9, 12*.

Title 6 Cities And Towns
Municipal Government Generally
Chapter 51 Change of Municipal Boundaries
Part 4 Merger of Municipalities

***Tenn. Code Ann. § 6-51-401* (2013)**

6-51-401. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Contiguous" means having a shared portion of boundary. In the case of more than two (2) municipalities, it means that each municipality must have a shared portion of boundary with at least one (1) of the other municipalities seeking to merge; and

(2) "Municipality" or "municipalities" refers to incorporated cities and towns in this state.

HISTORY: Acts 1989, ch. 176, § 1.

***Tenn. Code Ann. § 6-51-402* (2013)**

6-51-402. Merger -- Authorized.

(a) Two (2) or more contiguous municipalities located in the same county may merge into one (1) municipality using the procedures in this part.

(b) When municipalities are separated only by water, they shall be deemed contiguous for all purposes of this part if they are in the same county. After the municipalities merge, the water shall become a part of the consolidated municipality.

(c) The merger, when complete, shall result in the creation and establishment of a new municipality.

(d) Contiguous municipalities may be merged either as provided in *§ 6-51-403* or *§ 6-51-404*.

HISTORY: Acts 1989, ch. 176, § 1.

***Tenn. Code Ann. § 6-51-403* (2013)**

6-51-403. Merger -- By resolution and referendum.

(a) The governing bodies of the municipalities wanting to merge may pass a joint resolution, or joint ordinance in the case of a proposed merger involving a home rule municipality, requesting a referendum in the municipalities to approve or disapprove a merger. The resolution must be passed by each of the governing bodies by a majority vote of the members to which the body is entitled. The resolution shall list the municipalities seeking to merge and state the name of the proposed consolidated municipality and under which charter it will operate: mayor-aldermanic, chapter 1 of this title; city manager-commission, chapter 18 of this title; or one (1) of the charters of the merging municipalities. The resolution may establish wards or districts for the consolidated municipality if

the charter provides for wards or districts. A copy of the resolution, certified by the record keeper of each municipality, shall be forwarded to the county election commission or commissions if more than one (1) county is involved.

(b) (1) Upon receipt of the resolution, the county election commission or commissions shall call an election on the question of the merger in the municipalities as provided in the general election law. The election shall be held on the same day in each municipality. The question to be voted on shall appear on the ballot in substantially the following form:

(A) Click here to view form

(B) If one (1) of the municipalities seeking to merge is a home rule municipality pursuant to the *Constitution of Tennessee, article XI, § 9*, all references in this section to "resolution" shall be deemed a reference to "ordinance." The ordinance must indicate whether the non-home rule municipality wishes to adopt home rule and whether the home rule municipality wishes to abandon home rule. If the municipalities seeking to merge wish to adopt the home rule charter, the question appearing on the ballot in the non-home rule municipality shall be:

Click here to view form

(C) If, on the other hand, the municipalities seeking to merge do not wish to adopt the home rule charter, the question appearing on the ballot in the home rule municipality shall be:

Click here to view form

(2) If a majority of those voting in each municipality votes yes, the municipalities shall merge and become one (1) municipality one hundred twenty (120) days after the certification of the election results. If a majority of those voting in either municipality votes no, the municipalities shall remain separate entities.

(3) Notwithstanding any restrictions or requirements of the charter of the consolidated municipality, during the one-hundred-twenty-day period after approval of a merger, but before it takes effect, the election commission or commissions shall call an election in the area of the consolidated municipality to elect the officials who are chosen by popular vote under the charter of the consolidated municipality. These officials shall take office on the date the merger takes effect and will serve in accordance with the charter.

HISTORY: Acts 1989, ch. 176, § 1.

NOTES: Compiler's Notes.

Former chapter 1 of this title, referred to in this section, was repealed by Acts 1991, ch. 154, § 1; a new chapter 1 was enacted by Acts 1991, ch. 154, § 1, effective July 1, 1991.

Section to Section References.

This section is referred to in *§§ 6-51-402, 6-51-404*.

Tenn. Code Ann. § 6-51-404 **(2013)**

6-51-404. Merger -- By petition and referendum.

(a) Registered voters in each of the municipalities may petition for a referendum on the merger of the municipalities. The petition shall be signed by ten percent (10%) of the registered voters in each municipality. The petition shall list the municipalities seeking to merge and request a referendum on merging the municipalities, state the name of the proposed consolidated municipality, under which charter it will operate: mayor-aldermanic, chapter 1 of this title; city manager-commission, chapter 18 of this title; or one (1) of the charters of the merging municipalities, and may divide the proposed municipality into wards or districts if the charter provides for wards or districts. The petition shall be forwarded to the county election commission or commissions.

(b) Upon receipt of the petition and its verification, the county election commission or commissions shall proceed as provided in *§ 6-51-403(b)(1)* and (2). The provisions of *§ 6-51-403(b)(3)* shall apply if the merger is approved.

HISTORY: Acts 1989, ch. 176, § 1.

NOTES: Compiler's Notes.

Former chapter 1 of this title, referred to in this section, was repealed by Acts 1991, ch. 154, § 1; a new chapter 1 was enacted by Acts 1991, ch. 154, § 1, effective July 1, 1991.

Section to Section References.

This section is referred to in *§ 6-51-402*.

Tenn. Code Ann. § 6-51-405 **(2013)**

6-51-405. Costs of referendum.

If the merger is authorized by referendum, the costs of the election shall be borne by the municipality formed by the merger. If the merger is defeated by referendum, the costs shall be borne by each municipality in the proportion its population bears to the total population of the municipalities in which the election was held. Population figures used shall be those from the latest determination of population by the department of economic and community development.

HISTORY: Acts 1989, ch. 176, § 1.

Tenn. Code Ann. § 6-51-406 **(2013)**

6-51-406. Continuation of ordinances.

(a) (1) Unless otherwise provided in the petition or resolution that initiated the merger, the provisions of this subsection (a) shall govern the continuation of ordinances and the interpretation of existing ordinances.

(2) All ordinances in force within the former municipalities at the time of the merger that are not in conflict with the consolidated municipality's charter or with the ordinances of the former municipality with the greater population according to the latest determination by the department of economic and community development shall remain in full force and effect until superseded or repealed by the governing body of the consolidated municipality.

(3) All such ordinances, except franchise and other ordinances of only local effect, shall apply to the entire area of the consolidated municipality. In the case of different nonconflicting ordinances dealing with the same subject matter, the ordinance of the more populous municipality shall control.

(4) Ordinances of the former municipalities that are in conflict with the charter of the merged municipality or the ordinances of the more populous municipality shall be deemed repealed as of the effective date of the merger.

(5) Nothing in this subsection (a) shall be construed to discharge any person from liability, either civil or criminal, for any violation of any ordinance of any of the former municipalities incurred before the merger.

(b) The petition or resolution initiating the merger may provide different terms for the continuation of ordinances and the interpretation of existing ordinances from those provided in subsection (a).

HISTORY: Acts 1989, ch. 176, § 1.

Tenn. Code Ann. § 6-51-407 **(2013)**

6-51-407. Property, rights and privileges.

All the property, rights and privileges of every kind vested in or belonging to either of the former municipalities shall be vested in and owned by the consolidated municipality.

HISTORY: Acts 1989, ch. 176, § 1.

Tenn. Code Ann. § 6-51-408 **(2013)**

6-51-408. Debts and liabilities -- Bond funds.

(a) All outstanding debts and liabilities of the former municipalities shall be assumed by the consolidated municipality.

(b) All the territory included within the limits of the consolidated municipality shall be liable for the floating and bonded indebtedness, including interest, of all the territory included within the consolidated municipality.

(c) Whenever at the time of the merger, however, any of the respective municipalities have on hand any bond funds voted for public improvements not already appropriated or contracted for, this money shall be kept in a separate fund and devoted to public improvements in the territory for which the bonds were voted.

HISTORY: Acts 1989, ch. 176, § 1.

Tenn. Code Ann. § 6-51-409 **(2013)**

6-51-409. State-shared taxes.

(a) The consolidated municipality shall continue without interruption receiving state-shared taxes.

(b) For state-shared taxes distributed on a population basis, the entire population of the consolidated municipality shall determine its share of the state revenue.

HISTORY: Acts 1989, ch. 176, § 1.

Tenn. Code Ann. § 6-51-410 **(2013)**

6-51-410. Part inapplicable.

This part shall not apply to counties having a metropolitan form of government.

HISTORY: Acts 1989, ch. 176, § 3.