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# Annexation Handbook for Cities and Towns in Tennessee [archived material]

Eugene Puett

*Municipal Technical Advisory Service*

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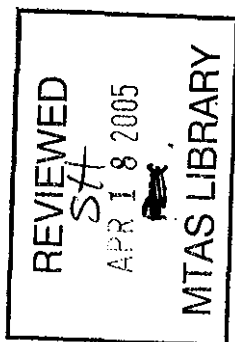
**ANNEXATION HANDBOOK FOR CITIES AND TOWNS IN TENNESSEE**

by  
Eugene Puett

1989

MUNICIPAL TECHNICAL ADVISORY SERVICE  
The University of Tennessee  
Knoxville, Tennessee

in cooperation with the Tennessee Municipal League



**ABSTRACT**

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**ANNEXATION HANDBOOK FOR CITIES AND TOWNS IN TENNESSEE**

## ANNEXATION HANDBOOK FOR CITIES AND TOWNS IN TENNESSEE

### Introduction

The growth of cities is a nationwide phenomenon. Experts estimate that up to 95 percent of future population growth will occur in and around cities. Much of growth has occurred and will continue to occur outside cities as a result of private initiatives that produce helter-skelter developments over wide areas. There has been little effort to control such development, and what action has been taken generally is in the category of "too little and too late." As compared with yesteryear's growth at the edge of a city because connections to sewers were necessary and (in the larger cities) walking distance to mass transit system was highly desirable, the annexation and assimilation of the growth areas has been immensely more complicated.

"Where there is no vision, the people perish" (Proverbs 29:18). This ancient admonition is timeless in its application, and is one that should be heeded when considering the problems of urban fringe area growth. Although the people may not "perish" they may reap serious consequences from failures or long delays of cities to annex, such as public health hazards, multiple and conflicting units of government, substandard services, higher costs, wasteful duplication of facilities (such as sewers replacing septic systems, and installation of larger water lines), inequitable distribution of tax burdens and benefits, narrow streets with inadequate drainage, and undesirable development resulting from non-existent or poor planning and zoning controls.

Only by annexation can a city become the agency to serve all of an urban community. When it fails to extend its boundaries as growth takes place, it abdicates its responsibility--and in time other agencies (county, utility district, satellite city) will provide the services needed by people living under urban conditions. When a city disclaims an obligation to serve and to control its growing fringes, there is no vision. The Tennessee Supreme Court has recognized this threat to a city:

. . . The mere fact that this people within this area were considering, and had gone so far as to prepare, even through defectively, to incorporate the area, was an excellent reason why the City in the instant case should include this land within their own city and not have a new city, or a separate corporation right on the edge of their town.'

Further recognition of circumstances warranting annexation is evident in this statement by the Tennessee Supreme Court:

The City of Columbia like so many other municipalities in the United States for the last twenty years had undergone an extensive growth. The metropolitan community which included Columbia and its industrial and residential environs had approximately doubled in population. As a result, the area within the corporate limits of the city had for residential sites outside of corporate limits. The

great majority of these people and the breadwinners thereof worked in the City of Columbia and used its facilities. The City of Columbia had to likewise expend its waterworks and other facilities. Thus due to all the things that are imaginable that might be placed upon a city that had doubled in population in this length of time, the city fathers decided that it was best to annex many of these suburban areas.<sup>2</sup>

Only annexation can guarantee to a city jurisdiction over its future. Other measures, such as subdivision controls, utility extension policies, and federations of cities in large metropolitan areas, can sometimes be effective beyond city limits and may accomplish a measure of success. But these are second-best solutions. This point of view is well stated in a report of a North Carolina Study Commission as follows:

Our recommendations with respect to planning and the control of land development do not fully meet this problem. Well conceived ordinances and good intentions will not provide the water and sewer systems that we need, the street systems that are necessary, the high quality fire protection, and the other services which are accepted as necessary for urban living.

. . . the significant feature of city government today is the system of facilities which the city provides and which is essential for urban living. We believe, in general, that the boundaries of a city should include all that part of the urban area which is developed in such a fashion as to presently require the package of services offered by a city, as well as that part of the urban area which is presently being developed in such a way as to need such services in the very near future.<sup>3</sup>

A former mayor of St. Cloud, Minnesota, has noted the following difficulties that arise from the "fragmentation of . . . a natural community of social and economic interests":

. . . competitive under taxation with the creation of tax havens; fragmentation of planning efforts; an irrational or even contradictory pattern of zoning; varying levels of police and fire protection; inability of any single government to control spillover effects from another jurisdiction such as pollution; irrational road layouts; differing construction codes; and diseconomies involved in duplication of public facilities for each unit. There are others. Fierce pride in one's own piece of "turf" characterizes small governmental units even more than large ones where size and impersonality somewhat mellow down parochial instincts.<sup>4</sup>



A situation frequently brought about by the fracturing of an urban community into separate cities or special districts is an imbalance between taxable resources and municipal needs. A satellite city encompassing upper level residential areas or substantial industry can offer a high level of urban services with a relatively low tax rate, while another satellite city primarily residential in character, and populated by low income people, has to strain to provide a minimum level of services. If all such areas are included within a single city, a much better balance of taxable resources and needs can be achieved.

An observer of the contemporary urban scene has noted how the movement of taxpayers from cities adds to this problem:

To some extent, also, the revenue problem of the cities arises from the way jurisdictional boundaries are drawn or, more precisely, from what are considered to be inequities resulting from the movement of taxable wealth from one side to a boundary line to another. When many large taxpayers move to the suburbs, the central city must tax those who remain at a higher rate if it is to retain the same level of services. The "problem" in this case is not that the taxpayers who remain are absolutely unable to pay the increased taxes; rather, it is that they do not want to pay them and that they consider it unfair that they should have to pay more simply because other people have moved away. The simple and costliest solution (in all but a political sense) would be to charge non-residents for services that they receive from the city or, failing that, to redraw the boundary lines so that everyone in the metropolitan area would be taxed on the same basis. As the historian Kenneth T. Jackson points out, those central cities that are declining in numbers of residents and in wealth are doing so because their state legislatures will not permit them to enlarge their boundaries by annexations; even before the Civil War many large cities would have been surrounded by suburbs--and therefore suffering from the same revenue problem--if they had not been permitted to annex freely.<sup>5</sup>

The quality of police services is also adversely affected by the fracturing of urban areas. Looking at the country's metropolitan areas, the President's Commission on Law Enforcement and Administration of Justice came to this conclusion:

A fundamental problem confronting law enforcement today is that of fragmented crime repression efforts resulting from the large number of uncoordinated local governments and law enforcement agencies. It is not uncommon to find police units working at cross purposes in trying to solve the same or similar crimes. Although law enforcement officials speak of close cooperation among agencies, the reference often simply means a lack of conflict. There is, in fact, little cooperation on other than an informal basis, and not a very effective means of meeting current needs.<sup>6</sup>

A spokesman for a major bond firm sees a connection between a city's credit rating and its authority to expand:

If there is no room for expansion stagnation sets in and with it an impairment of credit and dilution of the city's ability to finance improvements.<sup>7</sup>

A good summary of the case for annexation is the following from the opinion of the Supreme Court of Tennessee in *Kingsport v. Crown Enterprises*:

The whole theory of annexation is that it is a device by which a municipal corporation may plan for its orderly growth and development. Heavily involved in this is control of fringe area developments and zoning measures to the end that areas of unsafe, unsanitary and substandard housing may not "ring" the City to the detriment of the City as a whole. In a word, annexation gives a city some control over its own destiny. The preservation of property values, the prevention of the development of incipient slum areas, adequate police protection within a metropolitan area, and the extension of city services to those who are already a part of the City as a practical proposition, are the legitimate concern of any progressive city.

#### ***Constitutional Changes***

Prior to adoption of Constitutional Amendment No. 7 in November, 1953, the prevailing method of annexation in Tennessee was by private act of the state legislature. That amendment added to Article II, Section 9, a provision that the legislature "shall be general law provide the exclusive methods . . . by which municipal boundaries may be altered."

An annexation law applicable to municipalities generally was enacted by the 1955 General Assembly (Chapter 113, *Public Acts of 1955*).

In *Frost v. Chattanooga*, a case decided in 1972, the Tennessee Supreme Court held an act to be local and therefore unconstitutional which amended the annexation statute to authorize municipalities have a population of over 100,000 to annex by ordinance territory without levying property taxes except for services rendered, but which excluded the application of its provisions in counties having a metropolitan form of governments, counties having a population of more than 700,000 according to the 1970 federal census or any subsequent federal census, and counties having a population of not less than 260,000 nor more than 280,000 according to the 1970 federal census or any subsequent federal census. The Court said:

The reasonableness of this classification has to be viewed in the light Chapter 420 has been drafted to exclude all municipalities above one hundred thousand except Chattanooga; and, also, in the light the next largest city in Tennessee would have to increase two and one-half times its 1970 size by the U. S. Census figures to come

within the population classification of one hundred thousand. A study of chapter 420 provides convoking evidence it was not drafted to create a class of municipalities who have similar annexation-taxation problems with fringe population areas, but seeks to clothes a local act for Chattanooga in terms of a general act.

In the *Frost* case the court refused to follow cited Tennessee cases where statutes were upheld on a population classification which made the statutes applicable to one country, distinguishing those cases in that they involved subjects other than annexation, while the Constitution now in very clear language prohibits the legislature from prescribing any method of altering municipal boundaries except by general law. Going further, the court offered the dicta that "we do not hold that the legislature could not act to alter municipal boundaries by legislation valid as a general law under the classification doctrine, but we are not able to conceive of any circumstances where such would be valid." Also ruled out was the unique justification for upholding a classification, the court saying: "Even if it be determined Chattanooga has a unique situation, it would avail nothing as this constitutional provision has invalidated such uniqueness justification."

In 1974 the annexation statute was amended in several respects by Chapter 753, *Public Acts of 1974*. One of these amendments provided that in a suit to connect the validity of an annexation ordinance the municipality shall have the burden of proving that an annexation ordinance is reasonable for the overall well-being of the communities involved, but it was provided that this amendment not apply in counties having a population of not less than 65,000 nor more than 6,000 and counties having a population of 400,000 or more according to the federal census, and in counties having a metropolitan form of government. In the case of *Pirtle v. Jackson*, the Supreme Court of Tennessee held the exclusion provision unconstitutional. There was no rational basis to justify the exclusion of a few chosen municipalities from the burden of providing the reasonableness of their annexation ordinances when such a burden is placed upon all other municipalities.

### **Statutory Changes**

Since private acts to accomplish annexation were outlawed by adoption of the constitutional amendment in 1953, new legislation became necessary and this was enacted by the 1955 General Assembly (see Appendix I).<sup>8</sup> The 1955 law empowers the governing body of a city to annexation territory adjoining its boundaries by ordinance,<sup>9</sup> after notice and a public hearing. Any aggrieved owner of property lying within territory annexed<sup>10</sup> may, within 30 days,<sup>11</sup> challenge the action in court; if no suit is filed the annexation becomes effective 30 days after adoption of the ordinance. The law calls for the courts to determine whether the annexation is reasonable, and if upheld the effective date is fixed by court order.

The law also gives a municipality's governing body an option of submitting a question of annexation to the voters of an area proposed for annexation, or to both such voters and the voters within the existing city (if the latter, dual majorities are required). In *Central Soya Company v. Chattanooga* it was held that although interested persons petitioned the city to annex certain territory by referendum under

TCA 6-51-104 and 6-51-105 the city was not precluded from thereafter annexing only a portion of that territory by ordinance.

Other provisions relate to study by a planning agency, a plan of extending municipal services, relations with other public agencies, and other aspects of annexation. As a result of amendments to the annexation statute applicable to municipalities by population or other basic classification, the annexation law is not now uniform for all municipalities, unless these amendments are held unconstitutional.

#### **Territory Which May Be Annexed**

The law authorizes the annexation of territory adjoining the existing boundaries of a municipality. Where the annexation of one area was not yet effective, an attempt to annex another area which adjoined only the area of the still ineffective annexation was void (*Bartlett v. Memphis*).

In *Mount Carmel v. Kingsport* it was held that a municipality lying wholly within one county was authorized to annex territory adjoining its boundaries but lying wholly within an adjacent county.

A larger<sup>12</sup> municipality may by ordinance annex a smaller municipality in existence on March 8, 1955, (the effective date of the annexation law) on petition of twenty percent of the qualified voters of the smaller municipality and after a majority of the qualified voters voting in an election in the smaller municipality vote in favor of the annexation. The petition is filed with the chief executive officer of the smaller municipality who submits it to the chief executive officer of the larger municipality, and the county election commission holds the election on the request and at the expense of the larger municipality. The corporate existence of the smaller municipality ends within thirty days after adoption of the ordinance. The effect of the annexation is a merger.

But nothing in the annexation statute shall be construed to authorize annexation proceedings by a larger municipality with respect to territory within the corporate limits of a smaller municipality in existence ten or more years except in counties having a population of not less than 65,000 nor more than 66,000 and counties having a population of 400,000 or more according to the federal census of 1970 or any subsequent census and except in counties having a metropolitan form of government. TCA 6-51-110(a)

And in counties having a population of not less than 276,000 nor more than 277,000 according to the federal census of 1970 or any subsequent federal census, nothing in the annexation statute 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. TCA 6-51-110(a).

A smaller municipality is not authorized to annex territory within the corporate limits of a larger municipality [TCA 6-51-110(a)]. However, 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 75 acres in area, is not populated, is separated from the larger municipality by a limited access express highway, its ramps or service roads, and is not the site of industrial plant development<sup>13</sup> [TCA 6-51-110(g)].

No municipality having a population greater than ten thousand (10,000) according to the 1970 federal census of population 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 (24) month period [TCA 6-51-102(1)(3)].

#### **Annexation Study**

TCA 6-51-107 provides that 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. In the absence of a charter requirement in its discretionary with the governing body as to whether to take this step (*Knoxville v. Graves*).

Even when not required, it is desirable that some study precede annexation action. The study may be no more than personal visits to a small area on the edge of a city by members of the legislative body, and subsequent consultation among them as to the factor to be considered: costs of extending city services to the area, taxes from the area, need to control development, and so forth. However, if the area is substantial in size or population, a more thoroughgoing study should be undertaken.

Appendix II is a page from a report prepared by an MTAS consultant which summarized the type of financial analysis included in such studies.

Technical assistance is available to Tennessee cities for making such studies. The Municipal Technical Advisory Service (MTAS) will make such studies at the request of a city.

#### **Annexation By Ordinance**

The North Carolina Study Commission, in recommendation annexation by ordinance (their recommendation was enacted into law), said this:

. . . we do not believe that the extension of municipal boundaries is a legitimate question to be decided by a vote of the residents of a small portion of a large community.

. . . we believe that the rights and privileges of residents of urban fringe areas must be interpreted in the context of the rights and privileges of every person in the urban area. We do not believe that an individual who chooses to buy a lot and build a home in the vicinity of a city thereby acquires the right to stand in the way of action which is deemed necessary for the good of the entire urban area. By his very choice to build and live in the vicinity of the city, he has chosen to identify himself with an urban population,

to assume the responsibilities of urban living, and to reap the benefits of such location. Therefore, sooner or later his property must become subject to the regulations and services that have been necessary and indispensable to the health, welfare, safety, convenience and general prosperity of the entire urban area. Thus we believe that individuals who choose to live on urban-type land adjacent to a city must anticipate annexation sooner or later. And once annexed, they receive the rights and privileges of every other resident of the city, to participate in city elections, and to make their point of view felt in the development of the city. This is proper arena for the exercise of political rights, as this General Assembly has evidenced time and again in passing annexation legislation without recourse to an election.<sup>14</sup>

In *Senff v. Columbia* the Tennessee Supreme Court said:

This right of annexation, aside from the statute, would be in the legislature, and the legislature having the right to annex his likewise the right to confer this power upon the city fathers, and it seems to us perfectly obvious that the city fathers would know far more about the needs and necessity of annexation than would the legislature. The reasons therefore are so obvious that it isn't necessary for us to express them. This being true, such an annexation, so long as it complies with the statute, has the same force and effect and is subject to the same attacks only as annexation would be if done by the legislature.

Several other authorities may be cited in support of annexation by ordinance. The Indian Economic Council, after carefully studying the points of view of all groups involved in city expansions, concluded that the laws of that state authorizing annexation by ordinance should not be changed--that "the prerogative of annexation is presently that of the city council--as it should be."<sup>15</sup> Their report also referred to rulings by the high courts of Kentucky and Arkansas "based on this simple and fundamental thought--who goes to live, produce or operate in territory adjacent to a city does so at his peril, for it is the nature of cities to grow and expand and restriction of such growth and expansion by individuals or groups can not be tolerated."<sup>16</sup>

The Virginia Supreme Court of Appeals in *Henrico County v. Richmond* said this:

. . . it is no answer to an annexation proceeding to assert that individual residents of the county do not need or desire the governmental services rendered by the city. A county resident may be willing to take a chance on police, fire and health protection, and even tolerate the inadequacy of sewerage, water and garbage service. As long as he lives in an isolate situation his desire for lesser services and cheaper government may be acquiesced in with

complacency, but when the movement of population has made him a part of a compact urban community, his individual preferences can no longer be permitted to prevail. It is not so much that he needs the city government as it is the area in which he lives needs it.

### **Public Hearing**

The law requires public notice at least seven days in advance of a public hearing before the governing body on the proposed annexation by ordinance (in counting seven days, do not count both the day of publication and the day of hearing). An official notice published only five days in advance, taken together with a news article referring to the public hearing to be had and setting forth the area proposed for annexation which appeared in the newspaper seven days prior to the public hearing, was held to be substantial compliance with the statute (*Robbins v. Jackson*).

In *Senff v. Columbia* an annexation ordinance was attacked in that the notice was insufficient because it had been given too long, nine months, before the ordinance was adopted. For approximately nine months after the notice was given there was publicity in the newspaper constantly, and the Court was of the opinion the notice was ample and sufficient.

As to the location of a public hearing, the Tennessee Supreme Court in *Norton v. Johnson City* said this:

The call was for a meeting at the City Hall before the City Commission. This notice did not designate any particular room and of course the very obvious and only place that the meeting should and would be held, unless designated otherwise in the notice, is in the regular chambers of the City Commission. Thus it is that the notice was sufficient to notify the inhabitants that the meeting would be in the Commission room . . . .

In the same case the Court also gave clear instructions regarding the time of holding a public hearing:

The day that this public hearing was called for and held was on a Tuesday night while the regular meetings of the Commission were on Thursday night . . . . The argument is that then this was not properly called because not held on a regular night. Of course this public hearing or hearing as was conducted by the Commission did not have to be on their meeting night . . . . They could have this meeting anytime that they saw fit to have these public hearings.

The purpose of this requirement is that the governing body "hear" any person who wishes to speak for or against the annexation proposal. Generally, a governing body should simply "hear" such persons and make no effort to justify the annexation proposal -- to do so will usually lead to long and meaningless argument. A good procedure is that the mayor recognize each person who wishes to speak and thank him courteously at the conclusion of his remarks. If the crowd is large the mayor circulate

slips of paper or cards to be signed by person who desire to speak and then call on them in any order; it may also be necessary to impose a time limit on each speaker.

As the proposers of annexation, members of the governing body would be expected to feel that a particular annexation may be justified, but they should not take hard positions that indicate the matter is finally settled prior to the public hearing. The purpose of the public hearing is to provide an opportunity for objectors to bring to their attention any facts and relevant considerations that might have escaped their attention. In the case of *Mauzy County Farmers Co-op Corp. v. Columbia* the Tennessee Supreme Court considered an objection that "the City Commissioners had already made up their legislative minds to annex," based upon certain answers given by one of the commissioners on cross-examination, but rejected it on the grounds:

. . . that a reading of the whole of the testimony clearly shows that while the commissioners had proposed such annexation, as shown in the public notice, they had not foreclosed their minds, but afforded a fair and proper hearing and passed the ordinance only after careful consideration of the need and effect of the annexation.

No formal procedure is required for such a hearing. The only requirement is that all persons be given an opportunity to speak. The Tennessee Supreme Court, in *Morton v. Johnson City*, ruled on this point:

In *Commonwealth v. Sisson*, 189 Mass 247, 75 NE 619, 1 LRS, NS, 752, 109 Am. St. Rep. 630, the Massachusetts court had before it the question of whether or not the Board of Health acting in a legislative capacity gave a proper kind of hearing under a similar act which required a public hearing. The Court held . . . a board . . . acting in a legislative capacity . . . is not required to act on sworn evidence. . . its action is final as is the action of the legislature in enacting the statute . . . [and] questions of fact passed on in adopting the provisions cannot be tried over in the courts. In other words the only suggestions and the only requirement under this statute is that it be public; that the City Commission have an open public hearing so that they can hear those who are for or against the proposition and then make up their own minds from a legislative standpoint of whether or not such an ordinance would be feasible in view of their legislative duty to the City.

This presents, under the facts in this case, a question of law for the Court to determine. There was no action being taken at this meeting by the Commission; there was not reason why the Commission should enter into an agreement pro or con with those appearing to speak their piece on behalf of this legislation. The only question was to allow those that wished to stay and say their piece to be allowed to do so and then the Commission could make up its own legislative mind.



In *Stall v. Knoxville* the adequacy of the public hearing was brought under attack. The court referred to the criteria set out in *Morton v. Johnson City*, and concluded:

The Trial Judge found in the instant cases that these requirements were met, and the record clearly supports him in this regard. Proper notice of the hearing was given. It was held at the time and place designated in the notice. The council members were present with the mayor presiding, the doors were opened to the public. The records show that opinions and discussions were invited and that many opinions were given and much discussion was had. The council chambers might not have seated all who wished to come. However, the record shows that the meeting lasted for several hours and anyone who wished to be heard had the opportunity.

Appendix VI is a sample resolution to call a public hearing.

#### **Plan Of Service**

Before any territory or territories totaling more than one-fourth of a square mile in area or having a population of more than 500 persons may be annexed by ordinance under TCA 6-51-102 by a municipality within any twelve (12) month period, the governing body of the municipality shall have previously adopted a plan of service setting forth at a minimum the identification and projected timing of municipal services proposed to be extended into the territory proposed to be annexed.<sup>17</sup>

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, the plan of services, to be identified, shall include but be not limited to: police protection, fire protection, water service, electrical service, sanitary sewage system, solid waste disposal, road and street construction and repair, recreational facilities, and the zoning services which the municipality shall enact for the territory proposed to be annexed; provided such plan may except such services which are being provided by another public agency or private company in the area to be annexed. TCA 6-51-102(b).

The law further requires that before the plan is adopted that it be submitted to the local planning commission,<sup>18</sup> if there be one, for study and written report to be rendered within 90 days unless by resolution of the governing body a longer period is allowed. In an unpublished opinion, *New Providence Utility District v. Clarksville*, filed November 14, 1966, the Tennessee Supreme Court considered an objection that "approval of the plan of services by the Planning Commission by a resolution, and a certified copy of such resolution" did not comply with the statutory requirement "that a written report of the Commission's study of the plan be furnished the City." In rejecting this contention the court said:

The submission of the plan of services to the Planning Commission and its report to the legislative body of the municipality is part of the legislative process. The form and sufficiency of the report is a matter for determination by the legislative body and not the courts. The Planning Commission had the alternative of approving, modifying or rejecting the plan of services submitted to it for study. That body adopted the resolution approving the plan and so reported to the City Council by a certified copy of the resolution. There is nothing in the statute that requires the Planning Commission to report to the City Council its findings in any particular form.

#### **Public Hearing On Plan Of Service**

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, prior to the adoption of the plan of service, a municipality shall hold a public hearing. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the municipality seven (7) days prior to the hearing. 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 [TCA 6-51-102(b)].

Appendix III is a sample resolution that may be used as a guide in preparing a plan of service. Appendix IV is a plan that was adopted by the City of Kingsport. Appendix V is a plan of services lifted verbatim from an annexation study report which received the approval of Clarksville's planning commission (see the Supreme Court's remarks quoted above, from *New Providence Utility District v. Clarksville*).

#### **Annexation Without Levy Of Property Taxes Except For Services Rendered**

Subsection (c) of section 6-51-102 of Tennessee Code Annotated provides:

(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 United States census of population of 1970 or any subsequent federal census; or in those counties which 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 without 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 and/or service 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 however, that in the case of sanitary sewers, such sewers shall be furnished within thirty-six (36) months after ad valorem taxes become due.

This provision originated with Chapter 420, *Public Acts of 1971*, both the application was to municipalities over 100,000 population, excluding municipalities in Shelby and Knox Counties by census figures and counties having a metropolitan form of government. In *Frost v. Chattanooga* this act was held violative of Article II, Section 9, of the Constitution. Chapter 844, *Public Acts of 1972*, amended the law to provide the present classification. This may be violative of Article II, Section 9. See *Pirtle v. City of Jackson*. The differential tax rates may also be in violation of the provision in Article 2, Section 28, of the Constitution that "Each respective taxing authority shall apply the same tax rate to all property within its jurisdiction."

#### ***The Annexation Ordinance***

After adopting a plan of service (if the area or population is large enough to require it) and after the public hearing, the governing body may adopt the annexation ordinance by the same procedure applying to any other ordinance under its charter.

The annexation statute provides that a city "after notice and public hearing, by ordinance, may extend its corporate limits." In the unreported case of *Gentry v. Bristol* (S. Ct., Tenn., June 5, 1972), an annexation ordinance was attacked on the ground that the ordinance was passed on first reading prior to the public hearing. Under the city's charter, it took two readings to pass the ordinance. The record showed that the ordinance was passed on first reading on December 1, 1970; that notice was thereafter published and a public hearing held on December 15, 1970; and that the ordinance was passed on second and final reading immediately after the public hearing. The court was of the opinion that there was substantial compliance with the statute.

Where the charter of the city provided that no ordinance could be adopted at the same meeting at which introduced, the requirements of TCA 6-51-102 were met by having the public hearing four days after the introduction but before the ordinance was adopted (*Pirtle v. Jackson*).

A question sometimes raised in whether a city may describe an area being considered for annexation, for purposes of the public hearing, and subsequently annex parts of the area by several ordinances, perhaps in all less than the area on which the hearing was conducted. An indication of Supreme Court approval of such procedure is found in *Senff v. Columbia*:

As a result of this notice and hearing an ordinance was not drawn immediately to take in the whole area pursuant to the notice but numerous and various ordinance were passed taking in smaller areas within the area as prescribed in the notice, the very obvious reason being that in many of these other areas the people were asking for it and they knew there would be no contest about it.

Every effort should be made to describe the new boundaries accurately, and it is desirable to attach a marked map to the boundary description. The Supreme Court has held that an inaccurate description did not invalidate an annexation because an appended map correctly showed the territory to be annexed (*Johnson City v. Maden*). In *Mauzy County Farmers Co-op Corp. v. Columbia* that court held that a single ordinance could annex two separate areas so long as each is contiguous to the city. It answered the argument that annexation of one area might be found to be reasonable and annexation of the other to be unreasonable by pointing out that "the part of the ordinance describing that area might be eliminated under the familiar doctrine of elision."

In a case of first impression in Tennessee, *Mount Carmel v. Kingsport*, the court considered, and rejected, an argument that a city could not annex across a county line. It concluded that the several provisions in Title 6 of the *Tennessee Code Annotated* which recognize and permit multi-county municipalities, ahead in pari materia with the annexation law, which simply requires contiguity to existing city limits, showed a legislative intent to authorize such annexation.

Appendix VII is a sample ordinance that may be used as a guide in drafting the annexation ordinance.

#### **Operative Date**

The law provides that an annexation ordinance shall not become operative until thirty (30) days after final passage thereof,<sup>19</sup> and that any aggrieved owner of property lying within the territory which is the subject of an annexation ordinance, and in some counties any aggrieved owner of property which borders or lies within territory which is the subject of an annexation ordinance,<sup>20</sup> may prior to the operative date file a suit to contest its validity.<sup>21</sup>

If a lawsuit is filed, and the trial court sustains the ordinance, the statute provides that an order shall be issued sustaining the ordinance, which shall then become operative 51 days after judgment is entered unless an appeal is taken. If on appeal judgment is for validity of the ordinance, the statute provides that it shall become operative forthwith by court order.

#### **Abandonment Of Proceedings**

Section 6-51-106 TCA provides that annexation proceedings initiated under 6-51-102 may be abandoned and discontinued at any time by resolution of the government body of the municipality.

On November 26, 1968, the City of Chattanooga passed three annexation ordinances, and within thirty days quo warranto suits were filed challenging the reasonableness of the ordinances. By agree order effective December 1, 1972, the suits were dismissed. Many months after the agreed order dismissing the quo warranto suits, residents of the territory filed bills to have a decree holding the annexation proceedings as to each of the areas declared void. The Chancellor held the annexations were abandoned by resolution the governing body of the City. On appeal the Court of Appeals of Tennessee, Eastern Section, held that even if passed (there was some question whether such a resolution had been passed) a resolution of the governing body of the City attempting to "de-annex" territories already validly annexed would be nugatory and void (*Lee v. Chattanooga*).

The basic and underlying questions posed by the Court: (1) Can a municipality contract its territorial boundaries otherwise than under the provisions of TCA 6-51-201 (contraction of limits), with particular reference to territory therefore annexed pursuant to (the annexation statute) unchallenged by quo warranto filed within 30 days and prosecuted to final judgment; (2) Can such municipality having finally passed such annexation ordinance "de-annex" such territory by resolution after the lapse of 30 days?

Where the annexation ordinances were validly passed and there was no adjudication by courts that they were not validly passed, the annexed territories became part of the city and could not be severed from it by any resolution passed by the governing body of the city.

#### **Judicial Review of Reasonableness of Annexation Ordinance**

The annexation statute provides for judicial review<sup>22</sup> to prevent abuse by municipalities of the authority to annex by ordinance. Any aggrieved owner of property lying within territory which is the subject of an annexation ordinance, and in some counties any aggrieved owner of property which "borders or lies" within territory which is the subject of an annexation ordinance, may prior to the operative date of the ordinance file a suit in the nature of quo warranto proceeding in accordance with the annexation statute and the quo warranto statute, Chapter 35 of Title 29 TCA, to contest the validity of the ordinance on the question whether the proposed annexation be or be not unreasonable<sup>23</sup> 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, an order shall be issued vacating it. In the absence of such a finding, an order shall be issued sustaining its validity.

Within the four corners of the annexation statute lies the entire jurisdiction and authority of the courts to review the actions of municipalities enacting annexation ordinances (*Oak Ridge v. Roane County*).

#### **Time For Filing Suit**

The statute gives property owners a right to file suit to contest the validity of an annexation ordinance, and a limited time in which to exercise the right. The right to commence a new action within one year from the date of a voluntary nonsuit under TCA 28-1-105 does not apply (*Brant v. Greenville*).

The statute gives the aggrieved parties thirty days following passage of the ordinance to contest its validity (*Bastnagel v. Memphis*).

The right to bring a suit pursuant to TCA 6-51-103 to review any issue arising out of the adoption of an annexation ordinance authorized by TCA 6-51-102 expires thirty days<sup>24</sup> after the operative date of the ordinance, and courts have no jurisdiction of such suits thereafter (*Oak Ridge v. Roane County*).

#### **Parties**

The initial statute gave any aggrieved owner of property lying within territory to be annexed the right to file suit to contest the validity of the annexation ordinance.

A bill was introduced in the 1983 legislature which would have amended section 6-51-103 TCA to give any owner of property adjacent to territory which is the subject of an annexation ordinance the right to file a suit to contest the validity of the ordinance. Numerous amendments of the bill were made excluding application to counties on a population basis, so that as enacted the amendment applies in about fourteen counties<sup>25</sup> to give any owner of property which borders or lies within territory which is the subject of an annexation ordinance the right to file a suit.

Although TCA 6-51-103 speaks of the suit brought by owners of property to contest the validity of an annexation ordinance as being one in the nature of a quo warranto proceeding, the Supreme Court has held that the district attorney need not bring the actin, as in quo warranto cases, but that any aggrieved owner or owners of property may bring and control suits in their own names (*Southerland v. Greeneville*).

A county which owned roads and a school building in an area to be annexed was held to be an "owner of property" within the meaning of the statute, and was therefore a proper party to a proceeding attacking the reasonableness of an annexation ordinance (*Spoone v. Morristown*).

When a larger municipality initiates annexation proceedings for a territory which 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 [TCA 6-51-110(f)].<sup>26</sup>

#### **Procedure**

In the initial annexation statute (Chapter 113, *Public Acts of 1955*) aggrieved property owners were given the right to contest the validity of annexation 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." This provision produced a series of cases articulating the "fairly debatable" standard. Annexation being a legislative power, the function of the court was to determine whether the exercise of the legislative power was arbitrary or clearly unreasonable, and "if it was a fairly debatable question as to whether or not an annexation was reasonable or

unreasonable, then the discretion of the legislative body was conclusive" (*Morton v. Johnson City*). There was a presumption in favor of the annexation ordinance, and those contesting it, had the burden of proving it to be unreasonable (*Senff v. Columbia*). The preponderance of evidence was not the test in annexation cases, but the test was whether a fairly debatable question as to reasonableness existed (*Ricks v. Chattanooga*).

In 1974 the annexation statute was amended to provide that in a suit contesting the validity of an annexation ordinance the municipality shall have the burden of proving that an annexation ordinance is reasonable for the overall well-being of the communities involved.<sup>27</sup> The amendment destroyed all presumptions of validity and demolished the "fairly debatable" rule (*Kingsport v. Crown Enterprises, Inc.*). The statute places "the burden of proving the annexation ordinance is reasonable for the overall well-being of the communities involved" upon the municipality (*Wilson v. LaFayette*).

Chapter 220, 1961 Public Acts, added the following provisions to TCA 6-51-103, the section which gives owners of property the right to file suit to contest the validity of an annexation ordinance:

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 said industrial plant development by rendering municipal services when and as needed. The policy and purpose of this provision is to prevent annexation of industrial plants 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 plant.

In order to trigger the statute, the "territory" to be annexed must "be the site of substantial industrial plant development." It is not enough that it "include" or "involve" or "embrace" an industrial development; it must be the development. This statute has no application in any annexation case wherein an industrial development is included within a larger area or territory annexed in good faith, and in accordance with acceptable principles governing annexation. An 85-acre industrial development within an 806-acre annexation was not "the territory sought to be annexed" and the industrial amendment did not apply (*City of Kingsport v. Crown Enterprises, Inc.*)

#### **Criteria Or Factors For Determining Reasonableness**

In cases filed and tried under TCA 6-51-103, the issue is essentially the reasonableness of the ordinance applying the criteria set out in that statute (*Spoone v. Morristown*). Paragraph (a) of that section speaks of such a suit as one to contest

the validity of the ordinance 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." Paragraph (b) provides that the municipality shall have the burden of proving that an annexation ordinance is reasonable "for the overall well-being of the communities involved." Paragraph (c) states the question as being whether the proposed annexation be or be not unreasonable "in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality."

Where the territory sought to be annexed in the site of substantial plant development, 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 said industrial plant development by rendering municipal services thereto when and as needed." TCA 6-51-103 (e).

The basic test must be whether the ordinance is "reasonable for the overall well-being of the communities involved." 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 (*Collier v. Pigeon Forge*).

Factors to be taken into consideration in testing the reasonableness of an annexation ordinance would include:

1. The necessity for, or use of, municipal services.
2. The present ability and intent of the municipality to render municipal services when and as needed;
3. Whether the annexation is for the sole purpose of increasing municipal revenue without the ability and intent to benefit the annexed area by rendering municipal services (*Kingsport v. Crown Enterprises, Inc.*; *Saylors v. Jackson*).

The need for city services is not of controlling significance (*Collier v. Pigeon Forge*).

The whole theory of annexation is that it is a device by which a municipal corporation may plan for its orderly growth and development. Heavily involved in this is control of fringe area developments and zoning measures to the end that areas of unsafe, unsanitary and substandard housing may not "ring" the City to the detriment of the City as a whole. In a word, annexation gives a city some control over its own destiny. the preservation of property values, the prevention of the development of incipient slum areas, adequate police protection within a metropolitan area, and the



extension of city services to those who are already apart of the city as a practical proposition, are the legitimate concern of any progressive city (*Kingsport v. Crown Enterprise, Inc*).

This reasoning is equally, if not more, viable when dealing with an annexation of an area lying in the growth pattern of a tourist-oriented city. It has a vital concern in guarding against the helter-skelter establishment of commercial activities that may not be in harmony with those already in operation. Indeed, the prevention of incompatible commercial enterprises is a high municipal duty. The failure of a city to extend its corporate boundaries to embrace contiguous areas of growth and development in 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 (*Collier v. Pigeon Forge*).

We should emphasize that this is not, as appellants insist, merely a "strip" or "shoestring" or "corridor" annexation, although it is long and lean. (Area one mile long situated astride Highway 441 with 200 feet on each side). Such annexations, so long as they take in people, private property, or commercial activities and rest on some reasonable and rational basis, and are not per se to be condemned. We do not deal with an annexation wherein a city attempts to run its corporate limits down the right-of-way of an established road without taking in a single citizen or a single piece of private property. Such an annexation is perhaps questionable and is not here involved. As in any annexation, and more particularly one wherein a geometrically irregular parcel of land is annexed, the Court must scrutinize the stated and ostensible purpose of the annexation (*Collier v. Pigeon Forge*).

The record shows that the officials of the City of Pigeon Forge were motivated by a civic-minded compilation to control and coordinate the expansion and growth of the city and insure that its development was on an orderly basis, in keeping with the character of the existing city. Additionally they were concerned about aesthetic considerations (*Collier v. Pigeon Forge*).

#### **Proof Of Reasonableness**

In *Cope v. Morristown* the Supreme Court summarized the evidence in the record which was presented on the question of reasonableness of the annexation ordinance. The testimony of experts in the field of municipal government sufficiently familiar with the Town of Morristown was said to be proper. This case would appear to provide guidance in the choice of witnesses and the evidence to be presented. In *Senff v. Columbia* it was held that the Mayor of the city has a right to testify. Other cases touching upon witnesses and evidence are *Balsinger v. Madisonville* and *Spoone v. Morristown*.

Where a territory proposed to be annexed includes farm land, courts in other states have considered the value of the land as a guide in determining the reasonableness or propriety of its annexation, the land having a high value far in excess of its value for farming purposes only because of its prospective use for city purposes. In *Morton v. Johnson City* the Tennessee Supreme Court agreed with the reasoning of these courts, upholding the annexation of territory which included a number of small farm tracts valued at far in excess of other like farm land out in

the count not contiguous or close to the city. The mere fact that a large percentage of the tract proposed to be annexed consists of agricultural land is not of itself a basis for holding the ordinance annexing the area to be null and void (*Morton v. Johnson City*). See the *Morton* case also for the view that a reason for annexation may be the prevention of incorporation of a separate corporation right on the edge of the town.

In general, as to the four areas to be annexed, it was shown by the plaintiffs that the county was able to provide health services, a planning commission, police protection through its Sheriff's Department, pollution control, a landfill operation, county roads and county schools, that water and electricity were available, that septic tanks were reasonably efficient, that private garbage collection and fire protection were available, that some recreational facilities were available, and that the health safety and welfare of the citizens of these areas was not endangered and that the prosperity of the residents of the affected areas and the municipality would not be materially retarded if the annexation were not permitted. The plaintiff's proof was that the city had failed adequately to provide the services mentioned within the present city and that it would not be financially able to provide the services to the annexed areas; that, consequently it would be unfair to raise their taxes for services not received. It was, therefore, their position that annexation of these four areas was unreasonable under all the circumstances.

On the other hand, it was shown by the city that the areas in question had not fire protection comparable to what the city could offer (and ultimately a lowering of insurance rates), that the city would provide better police protection, and that the schools would have available more funds, with a smaller teacher-pupil ratio, that the health of these areas was endangered due to percolation problems with regard to septic tanks and that the county had never provided sanitary sewers, whereas the city could, that the county does not provide refuse and garbage collection, nor recreational facilities, nor street lighting, nor traffic engineering, nor certain inspection services, which services could and would be provided by the city. Further, that the vast majority of the people in the posed areas work in the city, that their economic opportunities were provided by the city, that recreational facilities were provided and could be better provided by the city, that the airport was provided by the city, that cultural advantages were provided by the city and utilized by county residents and that it was necessary and right that the tax burden for all such service shall be equitably distributed. It was shown that the city was financially able to and would provide the usual municipal services in accordance with the schedule of services or before the dates scheduled. *Hicks v. Chattanooga* (1974). Validity of annexation ordinance sustained. Fairly debatable rule.

The Utility Division of the City of Jackson now furnishes the annexed area of gas service, electric service, water service, and bus service. The Bemis area, which has a sewage collection built by the Bemis Bag Company, has been permitted to tie their system into the waste disposal system of the City of Jackson. The north Bemis area, where septic tanks are used, has a problem with sewage in low-lying areas after heavy rainfall. This condition and its attendant danger to the health of the residents of the north Bemis and nearby areas will be corrected by the installation of sewers as called for by the plan of services. Further, the record shows that on annexation, the

up-to-date City of Jackson Fire Department will be substituted for the volunteer fire department now serving a large part of the annexed area; the city police department will be substituted for the limited manpower of the sheriff's office and the private guards of Bemis Bag Company. There will be universal garbage collection rather than pick-ups by a private concern on a subscriber basis with nonsubscribers, such as Mr. Pirtle, taking their garbage to remote areas of the county for dumping on private property with permission of the owners. In addition to the services enumerated above, the annexed areas will get building department services, housing services, and the services of the health department.

It also is suggested by appellants that the City failed to carry the burden of showing that its annexation of the Bemis area, which is the site of the Bemis Bag Company, was not "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." We find no basis for this position. Many municipal services are already being furnished to the residents of Bemis and the Bemis Bag Company. Further the uncontradicted evidence is that for several years, the additional revenue received by the City of Jackson as the result of the annexation will be less than the cost of carrying out the plan of service to the annexed areas." *Pirtle v. Jackson* (1977). City carried its burden of proving reasonableness of annexation ordinance.

A civil engineer and the chief environmentalist of the Jackson-Madison County Health Department testified most homes in the annexed area are served by septic tanks and that a health hazard existed because of surface drainage problems. The annexation plans include installation of sewer services and curbs and gutters to protect the area from flooding. Testimony was developed at trial that the Northside area lacked a full-time fire service, that police service was inadequate for a developing community and that existing building, electric, fire, gas and plumbing codes were not being enforced. Mayor Conger testified that the annexed area would be provided regular police protection, a new fire station and street lights. His testimony was corroborated by that of a city planner, a fire chief, a city commissioner and an insurance agent, who testified that lower home insurance premiums in the Northside area would result from the annexation. There was additional testimony concerning the added benefits to the Northfield area of improved recreational facilities, sanitation services and highway improvements.

In light of the above, we find that appellee has established that the annexation would further the health, safety and welfare of the property owners of both the municipality and annexed area. The improved municipal services that will accrue to the citizens of the Northside area and the need for the citizens of Jackson to control a fringe area development point to the obvious reasonableness of the annexation ordinance (*Saylor v. City of Jackson*). Reasonableness of ordinance clearly shown by a preponderance of the evidence.

Admittedly, most of the testimony was directed to showing a need for service in the annexed area and the ability of the City to furnish those services. For example, there was testimony showing the annexed area already draws heavily on the City of LaFayette for such needed services, as water, fire protection, and garbage disposal.

In addition to those services there was evidence that the city will make fire protection more available, will upgrade police protection, will inspect and monitor future construction in the area, and will perform needed maintenance on roads. There also was testimony that without the services provided by the city, property in the annexed area will deteriorate, and that is deterioration will adversely affect property within the city.

Further, there was testimony that the annexed area is in need of sewers and that the need will increase as population increases in the area. Even now, residents of the annexed area and of the city are exposed to a potential health hazard from wells in the annexed area contaminated by septic tank flow. Also, a potential health hazard was shown to exist in a part of the city where the septic tank is the only way to disperse sewage. The City of LaFayette has taken affirmative steps to alleviate the health hazard within its city limits by the construction of sewers. Engineering studies have been made, plans have been drawn and application has been filed with the Environmental Protection Agency for necessary funding. The city's need for sewers has resulted in its being given a "top priority for funding" in the State of Tennessee. The plan of services for the annexed area also calls for the construction of sewers as part of the on-going efforts of the city to protect the health of its citizens and those in the annexed area (*Wilson v. LaFayette*). 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.

The record is voluminous; some of the evidence was pertinent. The trial judge found facts as follows:

1. that there are no residential dwellings on the annexed property. We agree.
2. that Preston Farm Associates intends to develop its 309 acres as a residential subdivision. We agree.
3. that Sullivan County owns a 63 acre tract where a new high school is to be constructed. We agree.
4. that Crown Enterprises and Mason & Dixon are substantial corporate entities, employing large number of persons in the Kingsport area and paying substantial taxes. We agree.
5. that M & D has an adequate sewage treatment plan and its connection with the city sewer line is unnecessary. We agree.
6. that the annexation study report shows that the 806 acre territory is in need of zoning and other municipal service in order to coordinate an orderly development of the entire area. WE agree that the report so shows and we accept this to be a fact.

7. that the City of Kingsport has adequate service in the areas of police protection, fire protection, education, planning, traffic engineering, and refuse collection, all of which could be extended to the annexed area. WE agree.
8. that the city plans to expend approximately \$320,000 to extend city sewer and water lines into the annexed area. We agree.
9. that the total tax revenue accruing to the city from the annexed property would be \$85,281, of which appellees would pay approximately fifty-six percent. We agree.
10. that "the site in question constitutes a site of substantial industrial development." We agree that M & D is a site of substantial industrial development.

When consideration is given to the entire record, we are fully persuaded that the annexation ordinances under consideration represents a fair, reasonable and responsible effort of the City of Kingsport to cause its municipal boundaries to keep pace of the growth and development of the city" (*Kingsport v. Crown Enterprises, Inc*). Decision of trial judge that city failed to carry burden of proof reversed. Ordinance declared valid.

Mr. Carl Cope testified that there was a sinkhole in the area in question, which had been there for some ten years, and that county officials had advised residents that they were unable to satisfactorily rectify the situation; that there was no routine police patrol through the area, either by the county sheriff's office or the highway patrol, and that he has never seen a patrol car in the area. He further stated that in case of fire, the cities of the area would try to put it out, but that he know of at least once instance when the Morristown Fire Department had sent a fire truck to their assistance; that the county rendered a weekly garbage pick-up service but that the garbage was disposed of at a city operated and maintained garbage dump, which no resident of the area paid to maintain; that all of the residents of the area are on septic tanks, some of which have given trouble, his being one of them.

Bud Wolfe, the Road Superintendent of Hamblen County, testified that he had visited the area in question to look at the so-called sinkhole, but that the county had never done anything about water that collects there.

The Honorable George W. Jaynes, General Sessions Judge, testified that there were only three salaried deputies for all of Hamblen County, while that Town of Morristown employed twenty-eight policemen. He further stated that teachers in the Town of Morristown were paid more than the Hamblen County teachers, and that teachers' pay was one element going toward the creation of a better school system.

The City Recorder, Charles Smith, testified that in both 1964 and 1965, the city had operated with a surplus over its budgeted expenditures.

Mr. Elwood P. Hastic, the Chief Sanitarian with the Hamblen County Health Department, testified that generally over the County area, garbage was picked up only once a month; that the city maintains a full-time health department employee for city service, whose primary duty is insect control. He further testified that the water in the Ridgeview area is furnished by the Town of Morristown; that percolation tests had never been carried out in the Ridgeview area to ascertain whether that area was adaptable to septic tank usage; that there had been septic tank failures in the Ridgeview area and some areas of the Ridgeview area were unsuitable for septic tank usage, the trouble being aggravated by a concentration of septic tanks, with a likelihood of increased problems with continued usage. It was his opinion that unsanitary conditions would develop in the area in the future. He also testified at some length concerning the likelihood that problem would develop in the future because of a lack of any program for the control of flies, mosquitoes, insects and vermin.

Mr. W. P. Bell testified that the water lines in use of the Ridgeview area belongs to the Morristown Water System.

Mr. Amos Turley, an employee of the Appalachian Electric Co-operative, which furnished power to Ridgeview, testified that service to the area would be easier if provided by the Morristown Power System.

Mr. Earl Missing, City Engineer for the Town of Morristown, testified that sewer availability in the City was between 95% and 97% and that he did not believe other towns of comparable size were sewered to that extent. He further testified that the sinkhole problem could be eliminated and that garbage collection and street maintenance could be extended to the Ridgeview area with the existing personnel; and a street washing service extended to the area.

Mr. Ed Tucker, Office Manager and Accountant with the Morristown Power and Water system testified that the contemplated extension of service to the area was within the financial resources of the system and that present water rates in the area would be reduced by 50%.

The following testimony introduced by defendants in error abundantly supports the action of the trial judge. Dr. Lee S. Greene, Head of the Political Science Department of The University of Tennessee, testified that he had visited the area and was generally familiar with the growth and industrial development of Morristown. It was his opinion that cities should annex areas before development of the area and that the area in questions being partially developed, it was logical that the area be annexed. He expressed his opinion that service and facilities necessary to the prosperity, welfare, health and safety of both the residents of Morristown and the Ridgeview area would best be provided by annexation. He further testified that the bonded indebtedness of Morristown was not excessive and the interest rate on the indebtedness was quite good.

Mr. Victor Hobday, a consultant on municipal government, presently (1966) Director of Municipal Technical Advisory Service, a part of the Extension Division of The University of Tennessee, testified that he was generally familiar with Morristown and

its environs; and that it would be beneficial to all the people of the community to keep the community under a single municipal government.

Mr. William V. Ricker, City Administrator of the Town of Morristown, testified that forty-five heads of households in the area to be annexed are employed inside the city, that sewer service would be contemplated to be rendered to the annexed area within two years, a new patrol car had been added to the police force for the purpose of patrolling newly annexed areas, and that police protection could and would be rendered to the area, with existing patrol cars and officers; that immediate fire protection would be rendered to the area, a new Fire Hall near the area being planned for 1967; that a savings on fire insurance would follow annexation; trash and garbage service would be rendered to the area; streets in the area would be curbed and guttered, a regular street maintenance program would be carried out, the sinkhole area would be corrected, a storm drain system would be installed, and there would be no need for students attending County schools against their will. He further testified that various city inspection services would be rendered in the area, that plumbing codes, health codes and fire codes would be instituted, that planning and zoning regulations would be effective upon annexation, that the Morristown Power System would take over electrical service, street lights would be installed, and that the expenses involved for these improvements and operations are within the feasible structure of the city's finances (*Cope v. Morristown*). Annexation reasonable. Fairly debatable rule.

#### ***Trial By Jury***

Before the 1974 amendment to the annexation statute which provided that the municipality shall have the burden of proving that an annexation ordinance is reasonable, the fairly debatable rule applied and the question whether there was evidence for and against an ordinance was one to be answer by the trial judge. When 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. The 1974 amendment destroyed all presumptions of validity and demolished the fairly debatable rule (*Kingsport v. Crown Enterprises, Inc.*). In *Moretz v. Johnson City* it was held that under the amended statute those contesting the validity of an annexation ordinance are entitled to have the reasonableness of the annexation submitted to a jury.

#### ***Limitation On Annexing If Ordinance Found Unreasonable***

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 same and the municipality shall be prohibited from annexing, pursuant to the authority of *Tennessee Code Annotated 6-51-102* (annexation by ordinance) 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 (*Tennessee Code Annotated 6-51-103(c)*).

### **Annexation By Referendum**

The annexation law gives a governing body an option of submitting the question to the voters of an area proposed for annexation, in which case the decision is made by a majority of those voting. The law also empowers a governing body to call for an election within the city, in which case majorities in both the area to be annexed and inside the city are required.

An annexation by referendum becomes effective thirty days after certification of the election results. Appendix VIII is a sample resolution that may be used to call for a referendum.

### **Abandonment Of Proceedings**

T.C.A. 6-51-106 provides that "Any annexation proceedings initiated under section 6-51-104 may be abandoned and discontinued at any time by resolution of the governing body of the municipality."

### **Judicial Review Of Annexation By Referendum**

The Tennessee statutes make no provision for Court review when annexation is by referendum. There can be no judicial review absent constitutional infirmities, and there is no equal protection or due process argument that can be made when the statute is properly followed (*Vicars v. Kingsport*).

### **Priority**

"Larger" and "smaller" in the annexation law refers to population of municipalities and not to area [T.C.A. 6-51-101(1)].

If two municipalities which were incorporated in the same county shall initiate annexation proceedings which 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 the such larger municipality [T.C.A. 6-51-110(b)].

Except in counties having a population of not less than 65,000 nor more than 66,000 and counties having a population of 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 (T.C.A. 6-51-110(d); *Public Acts 1974, Chapter 753*).

If the ordinance of annexation of the larger municipality does not receive final approval within 180 days after having passed its first reading, the proceeding shall be void and the smaller municipality shall have priority with respect to annexation of the territory; provided its annexation ordinance shall be adopted upon final passage within 180 days after having passed its first reading [T.C.A. 6-51-110(e)].

In *Gallatin v. Hendersonville*, a case decided when the statute did not define "initiate", it was held that passage of a motion to "commence annexation proceedings" was initiation of proceedings by the larger municipality, and such municipality had



priority where the motion was passed before the smaller municipality adopted on final reading an ordinance annexing the disputed territory.

In an unreported *Maryville v. Alcoa*, the Supreme Court of Tennessee affirmed a judgment of the Court of Appeals, Western Section, sitting at Knoxville, which upheld the constitutionality of the provision giving the larger municipality priority. Giving precedence to the larger of two municipalities competing to annex the same territory in the time frame prescribed in section 6-51-113 T.C.A., is not the granting of a monopoly prohibited by the Tennessee Constitution, and is not a suspension of the general annexation law in violation of Article 11, Section 8, of the Tennessee Constitution, and is not unreasonable class legislation (*Watauga v. Johnson City*).

If two municipalities which were incorporated in different counties shall initiate annexation proceedings with respect to the same territory, the proceedings of the municipality which 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 which was incorporated in the same county as the territory to be annexation [T.C.A. 6-51-110(c)].

#### ***Rights Of Residents In Annexed Area***

The annexation law requires that persons residing in an annexed area be accorded all the "rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as through 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 the annexed area any charter provisions relating to representation on the governing body" [T.C.A. 6-51-108(a)].

In *Knoxville v. Graves* an annexation ordinance was attacked because it did not contain any provision for implementing this requirement. The court could find nothing in the statute to warrant a construction "that the ordinance must contain, as a condition precedent to its validity, a provision setting up such rights," and concluded that "it is enough if the rights of the citizens of that area are provided for by ordinance, as may be done, when the annexation becomes effective. Certainly we cannot declare the ordinance void on the assumption that the City Council will not do their duty. the presumption is that they will do it." the court reiterated its view on this point in *Hardison v. Columbia* and *Maury County Farmes Co-op Corp. v. Columbia*. In *Cope v. Morristown*, the court refused to invalidate an annexation ordinance because it was alleged that the governing body would be powerless to change wards established by private act of the General Assembly for election of its members.

#### ***Report And Hearing On Extension Of Services***

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 upon the expiration of a year from the date any annexed area 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, and 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 changes in the plan of service shall be incorporated in a resolution approved by the governing body of the municipality. 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 compel with these requirements [T.C.A. 6-51-108(b)].

In *Lee v. Chattanooga* it was held that there could be no abatement or recovery of taxes in an annexed area on the ground that the city had not furnished all services embraced within the plan of services.

#### **Timing**

The timing of annexation is important. An annexation ordinance becomes operation 30 days<sup>28</sup> after its final passage in the absence of a lawsuit. Annexation by referendum becomes effective thirty days after certification of the election results.

Two dates should be kept in mind in planning the effective date of an ordinance or referendum, taking into account the thirty-day waiting period: January 1 is the assessment date for property to be placed on the tax rolls, and June 30 is the deadline for qualifying for state-shared taxes in the ensuing fiscal year. Time must be allowed for taking, holding, and certifying a special census before June 30; failure to meet this deadline will result in the loss of state-shared taxes for the added residents for an entire year.

If a lawsuit against an annexation ordinance is anticipated, the timing of action by the governing body is less significant. Since legal procedures offer so many opportunities for delay and the time to complete a lawsuit is unpredictable, the best rule to follow is simply to get on with the job with all possible speed.

In the absence of a lawsuit, a city can bar the property tax impact on annexes by scheduling the annexation before or after the assessment date of January 1. If before that date property taxes for that year will be payable by annexes; if after that date none will be paid until the following year, which a city might elect to make the annexation a little more palatable.

On October 28, 1968, the City of Memphis adopted upon final reading four ordinances to annex several large areas. In order to phase the assimilation of these areas each ordinance fixed the dates the actual annexation would take place December 31, 1968, December 31, 1969, December 31, 1971, and December 31, 1972. One ordinance annexing one area and fixing December 13, 1969 as the date the actual annexation would take place, was challenged in a lawsuit filed on December 15, 1969. The Tennessee Supreme Court, in *Bastnagel v. Memphis*, held that the suit was not filed within 30 days after final passage.

### ***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 of population 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 Tennessee State Planning Office, 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 municipalities' 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 use din computing the aggregate population of all municipalities of the state, effective on the first day of the next July following the certification of such supplemental census results to the commission of finance and administration of the State of Tennessee, T.C.A. 6-51-114.

### ***State-Shared Taxes***

The deadline of June 30 to certify a special census of an annexed area, in order to secure state-shared taxes during the ensuing fiscal year (July 1 to June 30), has already been mentioned. After an annexation is finally effective, a city should make certain that timely certification is made. If time is short, the census could be taken before the final effective date so that the results will be available for certification immediately thereafter.

Two agencies can certify to a special census: the Federal Bureau of the Census and the Local Planning Assistance Office, of the Tennessee Department of Economic and Community Development. the former will assume full responsibility for supervising and conducting the census, but usually the request must be submitted well in advance of the desired completion date. Full information and an estimate of costs must be obtained from the Director of the Census, Department of Commerce, Washington, DC 20333. Upon completion the city should make certain that a copy of the results is sent to the Local Planning Assistance Office of the Tennessee Department of Economics and Community Development.

Under the other method a city must arrange to take the census with its own forces, or personnel locally employed, in the manner prescribed by the Local Planning Assistance Office. After completion, the staff of that office will spot check the census and then certify the results to the state. Instructions and an estimate of costs may be obtained from the Local Planning Assistance Office, Department of Economic and Community Development, 1800 James K. Polk State Office Building, 505 Deadrick Street, Nashville, TN 37219.

### ***Relations With Other Governmental Units***

Upon adoption of an annexation ordinance<sup>29</sup> or upon referendum approval of an annexation resolution, an annexing municipality and any affected instrumentality of the State of Tennessee, such as, 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, duty, property, assets, and liabilities of such state instrumentality that justice and reason may require in the circumstances. The annexing municipality, if and to the extent i may choose, shall have the exclusive right to perform or provide municipal and utility functions and services in any territory which it annexes, subject, however, to the provisions of T.C.A. 6-51-112 with respect to electric cooperatives [T.C.A. 6-51-111(a)].

The Tennessee Supreme Court in *Hamilton County v. Chattanooga* held that a county is an affected instrumentality within the statute, and in *Lenior City v. Loudon*, that a municipality is an affected instrumentality within the statute.

Subject to such exclusive right, any such matters upon which the respective parties are not in agreement in writing within sixty days after the operative date of the annexation shall be settled by arbitration under the laws of arbitration of the State of Tennessee [T.C.A. 6-51-111(a)].

After the City of Clarksville successfully defended an annexation suit before the Tennessee Supreme Court in 1966, it brought suit against the New Provident Utility District asking for a court order transferring the district in its entirety to the city. the city argued that the annexation law unequivocally established a city's "exclusive right to perform or provide municipal and utility functions and services in the territory which it annexes", and therefore, if the nature of the annexation requires a complete take-over of the utility district to implement this right, there is simply nothing to arbitrate. Chancellor William M. Leech, in a memorandum of February 7, 1968, *Clarksville v. New Providence Utility District*, agreed with this argument, noting that it was simply one public agency succeeding another, and directed transfer of the utility district's functions, assets and liabilities to the city. This was expeditiously accomplished after the utility district failed to appeal from the chancellor's ruling.

In 1973, however, the Court of Appeals held, in the case of *Hendersonville v. Hendersonville Utility District*, that although a city by its offer would acquire all of a utility district's assets and would assume all of its liabilities, arbitration was a necessary prerequisite to filing of suit by a the city to be allowed immediately to assume control and operation of the system.

The following from the opinion in that case indicates some of the items which should be considered as subject to arbitration:

It is the argument of the City that since the City by its offer will acquire all of the Utility District's assets and will assume all of the liabilities of the Utility district there is simply nothing to arbitrate as the Utility District is a public agency holding property by virtue of a trust in favor of the public and the City occupies the same status. Therefore, it is only the matter of a successor trustee assuming all the assets, whatever they might be, and liabilities, whatever they might be, of the first trustee. This

being true, there can be not disputed issues which would be the subject of a proper arbitration. It is readily admitted, that is only a small portion of the Utility District was taken over by the City and the Utility District were to continue its operation in the non-annexed area, such things as the value of the facilities received, the division of liability for bonded indebtedness, etc., would be the proper subject of arbitration.

We cannot agree with this argument. The statute does not limit its application to cases of a partial take-over. It should be noted that it is required by the statute that the parties "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." The statute also contemplates possible disagreements between the parties on the matters to be attempted to be agreed upon for it further provides "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 the state of Tennessee effective at the time of submission to the arbitrators, and subsection (2) of section 23-501 shall not apply to any arbitration arising under sections 6-309 -- 6-320."

We do not here attempt to list or limit in any way items which could be in dispute and the subject of arbitration for such attempt would be beyond the scope of this appeal, but even when the annexing authority is to take over an entire utility district, the date of takeover might very well be the subject of disagreement and arbitration. In the instant case, that problem is present as well as others. For instance, the second paragraph of the statute provides for protection of the bond holders to be an item of the agreement or arbitration. Also, it must be born in mind in this case that the City is going to, or so they say they will provide services for members of the Utility District outside the annexed area. It would seem to use that "justice and reason may require" some sort of written agreement on this subject by the City and release of the Utility District trustees.

We hold the arbitration as set out in the statute is a necessary prerequisite to the filing of such a suit as this. We think it would be somewhat difficult for the Chancellor below to order a take-over of assets when a list of those assets is not before the Court and the Chancellor has no knowledge of what they actually are. This case involves more than underground pipes and fireplugs, it involved service equipment, bonded indebtedness, etc. As we view it, to hold any other way would defeat the purpose of the statute, which not doubt was to relieve the Court of having to supervise the

dispute between the parties until some sort of agreement or award had been made through arbitration which the Court could either at that time approve or disapprove.

The City of Knoxville persistently decline to resort to arbitration in a wrangle with the Fountain City Utility District which lasted for more than four years. Practically all of the district had been annexed, and it was conceded by all that acquisition by the city was the only reasonable solution. The utility district refused to go out of business, however, unless the city would agree to use of its surplus funds to reimburse its customers for their "equity" in the system. In the Clarksville case the Chancellor agreed with the city's contention that to divide a city payment "ratably among the customers of the district would be an absurdity," but this is exactly what took place in the Fountain City case. As the successor public agency the City of Knoxville was of course entitled to assets in the form of surplus funds as well as pipes in the ground and other properties, so to agree to this disposition of such funds was the equivalent of the city making payment. Finally, to end the long dispute without recourse to the courts, the city in 1966 agree to a distribution of \$387,500 in surplus funds, which the district paid to the customers it was serving on December 31, 1965. In doing so, it ignored, as pointed out in the aforementioned chancellor's opinion, "the claims of those previously served who have ceased to be served, or who are deceased or who have moved away."

T.C.A. 6-51-111(b) provides:

If the annexed territory is then being provided with a utility service by a state instrumentality which 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 above shall also provide: (1) That the municipality will operate the utility property in such territory and account for the revenues therefor in such manner as not to impair the obligations of contract with reference to such bonds or other obligations; or (2) That 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 the terms. Such agreement or arbitration award shall fully preserve and protect the contract rights vested in the holders of such outstanding bonds or other obligations.

In the unreported case of *New Providence Utility District v. Clarksville*, on a petition to rehear, the petitioners argued that the court failed to pass upon the insistence of the petitioners that the annexation ordinance impaired the obligation of contracts entered into between the three utility districts, parties complainant and bondholders of the utility districts. The Court said

We see no merit in the petition. The ordinance was passed under authority of T.C.A. Section 6-309, et seq. T.C.A. Section 6-318 and 6-319 fully protect the rights and provide the remedies of the Utility Districts, their creditors and bondholders, upon the

completion of the annexation. Thus, the ordinance does not impair the obligations of a contract or deprive petitioners of their property without due process of law.

After the City of Memphis annexed an area which included a part of the area served by a utility district, the city entered into an agreement to take over the district and to assume all obligations of the district. Before the annexation the district had contracted with a subdivision developers agreeing to build water supplying facilities and to supply water to the subdivision. The developer had deposited \$88,456.90 with the district as the estimated cost of construction, and the district agreed to refund the deposit by annual payments equal to 50% of water revenues from its customers in the subdivision for a period of ten years or until the total amount of the deposit was repaid. The contract contained a provision that in event that the ownership or contract of the district was sold or transferred the balance of refunds would be paid in full at that time. The developers sued to enforce the terms of the contract, and the Court of Appeals of Tennessee, Western Section, held that the city was bound by the acceleration of refund provision of the contract (*Pitts & Company, Inc. v. Memphis*).

#### ***Utility Districts***

Utility districts organized under the general law or by private act will be found in the urban fringes of many Tennessee cities. Negotiations between such districts and annexing cities will therefore quite often be required. Appendix IX contains a resolution of the City of Jackson setting forth the terms and conditions for taking over a utility district and a subsequent ordinance fixing water rates in the acquired area. Appendix C is a contract whereby the City of Memphis took over the utility district in the Frayser area. Appendix XI contains resolutions adopted by a utility district and Johnson City for this purpose.

#### ***Radnor District v. Nashville***

This case grew out of a contract between the First Suburban (Radnor) Water District and Nashville, a condition of which was that the former would withdraw its suit against an annexation ordinance. The contract provided in part as follows:

Upon receipt of just compensation, as herein defined, the District will allocate and convey to the City the properties and assets of the District, herein described . . .

Just compensation is defined as the fair market value in case of the properties and assets to be allocated and conveyed by the District to the City as a going business, together with incidental damage to the remaining property and assets of the District by the severance therefrom of such properties and assets to be allocated and conveyed to the City, as though the properties and assets so to be allocated and conveyed had been taken or condemned in the exercise of the power of eminent domain under the laws of the State of Tennessee; provided, however, that the element of "good will" shall be given no consideration in arriving at just compensation.

The annexed area included about 6,600 of the utility district's customers; about 2,500 were left outside. The city conceded that this reduction in number of customers would increase the cost of remaining part of the utility district. The lawsuit resulted from the city's contention that the utility district should not be compensated for meters (allegedly paid for by customers) nor for water lines installed by subdividers and deeded to the district as no charge, and that deductions should be made for the cost of upgrading the district's facilities to city standards.

The arbitrator (a former chancellor) appointed by the chancellor to hear the case recognized the validity of the arguments on both sides. He ruled, however, that his role was limited strictly to making an award pursuant to the contract, and that therefore he must include "all of the properties and assets of the District used and useful in performing of its utility functions and services to be allocated and conveyed to the city" since this was the requirement of the contract. He noted that this award (\$1,585,437) was not determinative of the issues raised by the city, which would be appropriate for consideration by a court of law or equity.

Subsequently, suit was filed to determine the distribution of the arbitrator's award, the city contending that the district was acting as a trustee for the users, and that a portion of the award should be allocated to the users or to improving the quality for the system. The chancellor ruled that the award would be allocated as follows" \$392,900.79 to a trust fund set up by the city water system improvements within the district; \$797,500.00 for assumption of a proportionate share of the system's debt; \$268,563.45 for real estate and severance allowance; \$42,879.76 for customer deposits assumed by the city; and \$83,593.00 credited to the city for construction.

### **Schools**

A city desiring to take over a county school in an annexed area will need to negotiate with the county. The opening sentence in the opinion of *Hamilton County v. Chattanooga* was: "The sole question in this case is whether under section 9 of chapter 113 of the *Public Acts of 1955*, T.C.A. section 6-318, counties are included within the phrase 'any affected instrumentality of the state of Tennessee.'" The question was answered in the affirmative and the case was remanded for further proceedings. The Tennessee Supreme Court did not more than answer that question - it did not prescribe the terms of settlement between the county and the city. It may be significant that the Court noted that Hamilton County in its bill "prayed for . . . a judgment against the City of Chattanooga for the total amount, supra, expended on said schools," but refused to grant such relief. Subsequently the county and the city reached an agreement which was summarized by the Chattanooga City Attorney as follows:

In the first annexation, under Chapter 113, *Public Acts of 1955*, the City acquired a new school building from Hamilton County. The County had issued bonds under the provisions of section 49-715 of the Code, the interest and principal being payable only from taxes levied on property outside the corporate limits of the City. The City entered into an agreement with the County to pay to it the amount of bonds and interest as they mature, the bonds being serial bonds.



In the next territory annexed there were two school buildings belongs to the County which had been constructed several years before and bonds issued therefor payable on taxes levied on all property in the County, including property in the City. The bonds issued were divided between the County and City as provided by section 49-711 of the Code. There had been some additions to these buildings made from bonds funds payable only on taxes levied on property outside the City, and also the County has spent some of its capital outlay funds received from sales tax, in making improvements to these schools. The City entered into a contract with the County to reimburse them the amount of the capital outlay funds and to pay to the County annually the balance due on the issue of bonds allocated to the school buildings.

The County in each instance agreed to discontinue levying taxes on property in annexed territories for the payment of the principal of and interest on the urban school bonds.

The City has not paid or agreed to pay any part of the bonds outstanding which were issued for school purposes payable from taxes levied on all the property in the County, including that within the City. The taxpayers of the City will continue to pay on the County bonds, including the bonds used on constructing buildings in the County outside the City.<sup>30</sup>

Where it was alleged that the annexation of territory would reduce the county area liable to taxation for the payment of principal and interest on rural school bonds and thus impair the obligation of contract, it was held that this is not a justifiable issue in a suit in the nature of quo warranto attacking the reasonableness of an annexation ordinance (*Cope v. Morristown*; *Spoone v. Morristown*).

Fairly serious problems developed in Davidson County and Knox County resulting from large annexations by Nashville and Knoxville. The county judges of these two counties were quoted in newspaper stories as saying that annexation without unification of the county and city schools into a single school system would be intolerable, and this position gained substantial support in both communities. The Davidson County problem was submitted to arbitration, but the issue became moot when voters approved a single metropolitan government, including a unified school system, in June 28, 1962.

Several problems arise from the division of a county school district by a new city boundary which cuts off county students from the school which they formerly attended. The area annexed by Nashville included approximately 12,500 students, 2,600 of whom had been attending schools outside the annexed area; an additional 1,650 students lived outside but had been attending county schools in the annexed areas. Knox County reported that 14,840 students were attending 29 schools in the area annexed by Knoxville, 2,275 of whom lived beyond the new city boundaries.

A Knoxville city school official suggested as a solution to such a situation at one high school that the county pay tuition to the city for the non-resident students and that the city pay the county for transporting students within the annexed areas. If the tuition rate is reasonable, this would seem a sensible solution--such tuition payments may be little more than it would cost the county to educate the children directly, and the county receives state funds for transportation which are not distributed to city systems. In consideration of county transportation for city schools, a city might even agree to accept county students at tuition rates equal to the net cost per students to operate the county system.

The County Judge of Knox County proposed that two high schools be retained by the county, on a basis of "law and common horse sense." A precedent for such an arrangement exists in Chattanooga, where a large county high school has been located in the county for many years. Davidson County school officials proposed that the county retain four of the 22 schools in the annexed areas because 40% of the enrollment in these schools was from beyond the new city boundaries, but the city expressed an intention of taking over all schools.

When an annexation case is in litigation, usually there is a considerable time lag before the annexation is finally effective. During this time a problem arises as to building or enlarging school facilities to take care of an increasing number of students attending schools in the area subject to annexation. A solution for this problem in the Nashville area, formulated by the staff of the city-county planning commission (see Appendix XII), was accepted by the two school systems. The law now provides that during the time that any annexation ordinance is being contested the annexing municipality and the county governing body may enter into an agreement to provide for new, expanded and/or upgraded services and facilities [T.C.A. 6-41-103(f)].

Preliminary negotiations between Nashville and Davidson County school officials on existing school properties reflect typical conflicts in points of view. The county places a replacement value of \$11,262,732.37 on the buildings, sites, improvements and equipment of twenty-two schools in the annexed area, which had an original cost of \$7,558,752.88, but an "asking price" was not specified. The city had previously offered \$6,400,000, on the grounds that 40% of the total county property assessment was in the annexed area and this amount represented 40% of the total rural school bonds outstanding against these schools. The city proposed no division of outstanding county-wide bonds issue for these schools, on the grounds that city taxpayers had paid and would continue to pay taxes for their retirement, but this was rejected by the county on a basis that the city had received its ADA-share of these bonds when issued.

Knox County officials stated that the loss of the property tax base in areas annexed would make it impossible to issue rural school bonds (amortized by a tax levy outside the city), and to issue county-wide bonds to obtain the amount of funds needed by the county would require an unreasonably large issue because of the required ADA-sharing with the city. A suggested partial solution to this problem which received some city and county support, was that the city waive its share of such a bond issue

if the county would agree to apply the city share against the amount eventually determined to be chargeable against the city for county school facilities taken over by the city.

Eventually an agreement was worked out between Knoxville and Knox County which covered several of the problems discussed above. The agreement (see Appendix XIV) was negotiated by a "school negotiating committee" and ratified by both local governing bodies. The negotiating committee was composed of two members of county court, the county school superintendent, the county solicitor, one city council member, one city school board member, the city school superintendent, and the city law director.

Twenty-eight schools, valued at \$12,000,000, were transferred to the city. One school offering a county-side special education program was continued under county operation. the city agreed to pay the debt service on about \$4,000,000 of the outstanding rural school bonds of the county which had been invested in the schools taken over. The city also waived its ADA short of a \$2,000,000 county-wide school bond issue, the proceed so which had been primarily spend on the annexed schools. Further (see section IV of the agreement), there was provided a cooperative system of financing all future capital improvements. the later provision includes ongoing planning and capital budgeting of all school facilities in both the city and county.

Section V of the agreement covers the question of which pupils can attend which school with or without tuition. Paragraph (D) requires tuition payments for pupils who resided inside the city at the time annexation proceedings were begun and later moved outside the city including the annexed area. This provision has been cumbersome and virtually impossible to enforce. All of section V has been rendered null and void by a subsequent agreement reached in connection with the adoption of ac county sales tax earmarked for schools. The essence of the latter agreement is that tuition payments are entirely eliminated, and the county provides transportation for city pupils on a reimbursable basis.

A by-product of annexation and the resulting transfer of county school facilities to the city was the desire on the part of the county to raise its teach salaries to the level of city teachers. The cost of the salary increases would have required a large increase in the tax rate (the county needed about \$300,00 but would have had to raise in excess of \$1,000,000 in order to allow for the city's ADA share of the levy). The city school system did not need these additional funds at the time. Section VII of the "agreement for Transfer of Schools" was amended to provide for an additional payment to the county, permitting an increase in county teacher salaries to the level of city teachers without raising the county tax rate. In exchange, the county agree to provide transportation for pupils in the annexed areas for one year.

An extensive annexation by Memphis, in four phases (effective on December 31 in the four years of 1968, 1969, 1971 and 1972), resulting in an arbitration proceeding with Shelby County involving 27 county schools located in the annexed areas. The county asked for approximately \$17 million, the board of arbitration awarded \$1,917,904, and on appeal a chancery court, in a consent order, awarded \$8,213,768, to be taken from future ADA funds due the city school system. the city's brief before

the arbitration board, the board's memorandum and the chancellor's consent order are reproduced in Appendixes XIV, XV, and XVI.

**Agreement For New or Improved Services And Facilities**

During the time that any annexation ordinance is being contested as provided herein, the annexing municipality and the county governing body (and/or affected school, sanitary or utility district) 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 (and/or affected school, sanitary, or utility district) upon final determination of such contested annexation ordinance [T.C.A. 6-51-103(f)].

**Elective Cooperatives**

T.C.A. 6-51-112 provides that 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 which are owned by an electric cooperative, or grant such cooperative a franchise to serve the annexed area. Procedure details are spelled out in that section.

## ENDNOTES

1. *Morton v. Johnson City*.
2. *Senff v. Columbia*.
3. *Report Of The Municipal Government Study Commission*, North Carolina General ASsembly, November 1, 1958, p. 20. The Commission was composed of nine members of the General Assembly, only two of whom had had any connections with municipal governments.
4. Edward L. Henry, ec., *Micropolis In Transition* (St. John's University, Collegedale, Minn., 1971), p. 19).
5. Edward C. Banfield, *The Unheavenly City Revisited* Boston: Little, Brown and Company, 1974, p. 8.
6. *Task Force Report: The Police*. U. S. Government Printing Office, Washington, DC, 1967, p. 68.
7. Frank Metternich, *First Southwest Corporation, Texas Town & City*, September 1960, p. 33.
8. The constitutionality of the annexation statute was upheld in *Witt v. McCanless*, and again in *Morton v. Johnson City*, and was considered established in *Knoxville v. Graves*. The statute has been held constitutional as against the contention of deprivation of property without due process of law, equal protection and due process under the State and Federal Constitutions. *Dean Hill County Club, Inc. v. Knoxville; Balsinger v. MADisonville; Wood v. Memphis; Hudson v. Chattanooga*.
9. The legislature may delegate the authority to make annexations to municipalities, and the governing body of the municipality in annexing acts in a legislative capacity, and its discretion is not to be controlled except as it is restrained by constitutional and statutory provisions. *Morton v. Johnson City*.
10. In some counties which "borders or lies" within territory. See page 26.
11. In some counties and areas 120 days. See page 9.
12. "Larger" and "smaller" in the annexation law refer to population and not area. TCA 6-51-101(1).
13. Chapter 136, *Public Acts of 1969*, amended section 317 (now 6-51-110), by adding this provision. That act also amended section 6-309 (now 6-51-102) by adding the same provision. Chapter 420, *Public Acts of 1971*, section 1, amended 6-309 by repealing the provision. However, a section of the Act, made the provisions of the act inapplicable in counties having population in excess of 700,000 and population of not less than 260,000 nor more than 280,000, according to the 1970 or any subsequent federal census and in counties having a metropolitan form of government. Therefore, the repeal of the provision in 6-51-102 was not effected in those counties.
14. *Supplementary Report of the Municipal Government Study Commission*, North Carolina General Assembly, February 26, 1959, pp. 5, 10.
15. *Proposal for Revision of Law Pertaining to City Annexation and Sewer Extension Contracts*, Indiana Economic Council, 140 North Senate Avenue, Indianapolis, Indiana, December 1, 1954, p. 3.
16. *Ibid*, pp. 8-9.

- 17. Where a city proposed to annex less than a quarter of a square mile and less than 500 persons were included in the area, no prefatory schedule of services was requires (*Cope v. Morristown*).
- 18. Local planning commission means planning commission of annexing municipality (*Oak Ridge v. Roane County*).
- 19. Except for some municipalities it may be 120 days (see page 9).
- 20. See page 26.
- 21. The right to commence a new action within one year from the date of a voluntary nonsuit under TCA 38-106 does not apply (*Brent v. Greenville; Nailling v. Lynn*).
- 22. In *Witt v. McCanless* it was held that there was no delegation to the court of the power to extend municipal boundaries, which is a legislative power, but the power is simply given the power to determine whether the ordinance is reasonable or unreasonable.
- 23. The constitutionality of the annexation law have been established, an ordinance enacted under its provisions is valid and constitutional if it meets the requirements of the stature (*Stall v. City of Knoxville*).
- 24. Thirty days following passage (*Bastnagel v. Memphis*).
- 25. Not applicable in counties having a metropolitan form of government and in counties having a population of:

Not Less Than	Nor More Than	Not Less Than	Nor More Than
4,000	43,000	67,300	67,400
14,940	15,000	74,500	74,600
43,700	44,700	100,000	250,000
49,400	49,500	475,000	480,000
58,000	59,000	700,000	

according to the 1980 federal census or any subsequent federal census, and in any county with a population of not less than 285,000 and not more than 290,000 based upon the 1980 federal census (Chapter 642, *Public Acts of 1984*).

- 26. This provision originated in Chapter 753, *Public Acts of 1974*, which did not apply to counties having a population not less than 65,000 nor more than 66,000, and counties having a population of 400,000 or more according to the 1970 U. S. Census, or any subsequent federal census nor to counties having a metropolitan form of government.
- 27. Chapter 753, *Public Acts of 1974*. Except of municipalities on population basis and in counties have metro governments held unconstitutional. *Pirtle v. City of Jackson*.
- 28. For some municipalities 120 days. See page 9.
- 29. The court in *New Providence Utility District v. Clarksville* said that obviously, a municipality does not acquire the right or duty to negotiate with the utility district furnishing services to an area sought to be annexed to the city until annexation of such area is completed.
- 30. Letter of May 15, 1959, from Joe W. Anderson, City Attorney of Chattanooga, to Eugene Puett, MTAS Consultant.

**APPENDIX A**  
**ANNEXATION LAW**

## APPENDIX A

### ANNEXATION LAW

6-51-101. Annexation of territory - Definitions. As used in sections 6-51-101--6-51-112 and 6-51-103:

- (1) "Larger" and "smaller" shall refer to population and not to area;
- (2) "Municipality" or "municipalities" shall mean any incorporated city or cities, or town or towns, and shall not include any utility district, sanitary district, school district, or other public service district, where organized under public or private acts; and
- (3) "Notice" shall mean publication in a newspaper of general circulation in the municipality at least seven (7) days in advance of a hearing. [Acts 1955, ch. 113, section 1; TCA, section 6-308.]

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 said ordinance shall not become operated until thirty (30) days after final passage thereof.

Provided, further, the provisions of subsection (a) shall 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, which are in conflict with this subdivision (a)(2)(J)(v). 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; provided, however, 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 ordinance is needed all relevant provisions in this chapter shall apply to the question of annexation in such county.



(3) (a) Provided, however, no municipality having a population greater than ten thousand (10,000), according to the 1970 federal census of population 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 (24) month period.

(b) The provisions of 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 legislature, and not under the general law of Title 6.

The provisions of this subdivision (a) (3) (b) 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.

(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 have a population of more than seven hundred thousand (700,000) according to the United States census of population of 1970 or any subsequent federal census; or in those counties which 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 and/or service 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, however, 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 and sixty thousand (260,000); nor more than two hundred and eight thousand (280,000) according to the United States census of population of 1970 or any subsequent federal census, or in those counties which 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 separate 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. [Acts 1955, ch. 113, section 2; 1961, ch. 320, section 1; 1969, ch. 136, section 1; 1971, ch. 420, sections 1, 2, 3; 1972 (Adj.S.), ch. 844, section 1; 1974 (Adj.S.), ch. 753, sections 1, 2, 8, 9; TCA, section 6-309; Acts 1980 (Adj.S.), ch. 849, section 1; 1981, ch. 522, sections 1, 2; 1982 (Adj.S.), ch 867, section 1; Acts 1986 (Adj.S.), ch. 734, section 1; Acts 1987, ch. 87, section 1; Acts 1988 (Adj.S.), ch 787, section 1.]

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

(a) (1) (A) Any aggrieved owner of property which borders or lies within territory which 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 sections 6-51-101--6-51-112 and 6-51-301 and chapter 35 of title 29, 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) The provisions of this subdivision (a) (1) shall not apply to the counties covered by subdivision (a) (2).

(2) (A) Any aggrieved owner of property lying within territory which 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 sections 6-51-101--6-51-112 and 6-51-301 and chapter 35 of title 20, 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) The provisions of this subsection (a) (2) shall apply only in counties having a metropolitan form of government and in counties having populations of:

not less than	nor more than
4,000	43,000
14,940	15,000
43,700	44,700
49,400	49,500
58,000	59,000
67,300	67,400
74,500	74,600
100,000	250,000
475,000	480,000
700,000	

according to the 1980 federal census or any subsequent federal census, and in any county with a population of not less than 285,000 and not more than 290,000 based upon the 1980 federal census.

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

(c) If more than one suit is filed, all of them shall be consolidated and tried as one 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 be or be not unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality. 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 same and the municipality shall be prohibited from annexing, pursuant to the authority of section 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 judgement is entered unless an abrogating appeal has been taken therefrom.

(d) If an appeal judgement 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 section 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 judgement 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 proceedings for any cause or reason, the judgment of the appellate court being final.

(e) Should the territory hereafter south to be annexed be the site of substantial industrial plant development, a fact to be ascertained by the county, the municipality shall have the burden of providing 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 said 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 each services are not used or required by the industrial plants.

(f) During the time that any annexation ordinance is being contest as provided herein, the annexing municipality and the county governing body (and/or any affected school, sanitary or utility district) 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 (and/or affected school, sanitary, or utility district) upon final determination of such contested annexation ordinance. [Acts 1955, ch. 113, section 2; 1961, ch. 220, section 1; 1970 (Adj.S.), ch. 516, section 1; 1974 (Adj.S.), ch. 758, sections 4, 8, 9; TCA, section 6-310; Acts 1982 (Adj.S.), ch. 867, section 2; Acts 1984, ch. 642, sections 1-10.]

6-51-104. Annexation by referendum-Notice. 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. 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 proposed such annexation, and by publishing notice of such resolution at or about the same time, in a newspaper of general circulation, if there be one, in such territory and municipality. [Acts 1955, ch. 113, section 3; TCA, section 6-311.]

6-51-105. Referendum on annexation-Made additional. At least thirty (30) 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. 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. In the election or elections to be held the questions submitted to the qualified voters shall be, "For Annexation," "Against Annexation." The county election commission shall promptly certify the results of the election or elections to the municipality. 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 above stated, a majority of the voters voting thereon in the territory to be annexed and a majority of the voters voting thereon in the municipality shall approve the resolution, annexation as provided therein shall become effective thirty (30) days after the certification of said election or elections. The mode of annexation provided in this section shall be in addition to the mode provided in section 6-51-102. [Acts 1955, ch. 113, section 3; TCA, section 6-312.]

6-51-106. Abandonment of proceedings. Any annexation proceeding initiated under section 6-51-102 or 6-51-104, may be abandoned and discontinued at any time by resolution of the governing body of the municipality. [Acts 1955, ch. 113, section 4; TCA, section 6-313.]

6-51-107. Planning agency study - Report. 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 in the governing body. [Acts 1955, ch. 113, section 5; TCA, section 6-314.]

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) 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, upon the expiration of a year from the date any annexed area 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 proceeding year toward extension of services according to such plan, and any changes proposed therein, and 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 changes in the plan of service shall be incorporated in a resolution approved by the governing body of the municipality. 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. [Acts 1955, ch. 113, section 6; 1974 (Adj.S.), ch. 753, sections 3, 8, 9; TCA, section 6-315.]

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 same 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 said petition or the totality of such smaller municipality, if so described in said petition only after a majority of the qualified voters voting in an election in such small 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 small municipality shall end within thirty (30) days after the adoption of said 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 and by and become the property of the larger municipality and all legally subsisting liabilities, including any bonded indebtedness, of the smaller municipality shall be assumed by the larger municipality, which shall thereafter as over that lying within the existing corporate limits of the larger municipality. [Acts 1955, ch. 113, section 7; TCA, section 6-316; Acts of 1987, ch. 31, section 1.]

6-51-110. Priority of larger or smaller municipalities in annexation.

(a) Nothing in sections 6-51-101--6-51-112 and 6-51-301 shall be construed to authorize annexation proceedings by a small 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 sections 6-51-101--6-510114, 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 which 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 proceedings shall be held in abeyance pending the outcome of the proceedings of such larger municipality.

(c) If two (2) municipalities which were incorporated in different counties shall initiate annexation proceedings with respect to the same territory, the proceedings of the municipality which 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 which was incorporated in the same county as the territory to be annexed.

(d) Except in counties have 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 to annexation of the territory; provided its annexation ordinance shall likewise be adopted upon final passage within one hundred and eighty (180) days after having passed its first reading.

(f) When a larger municipality initiates annexation proceedings for a territory which 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) Provided, however, that 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 be not be required of the smaller municipality for such annexation. [Acts 1955, ch. 113, section 8; 1969, ch. 136, section 2; 1974 (Adj.S.), ch. 753, sections 5, 8, 9; 1978 (Adj.S.), ch. 684, section 1; TCA, section 6-317; Acts 1980 (Adj.S.), ch. 839, section 1.]

6-51-111. Municipal property and services. (a) Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as hereinabove provided, an annexing municipality and any affected instrumentality of the state of Tennessee, such as, 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. Provided, however, that 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 which it annexes, notwithstanding section 7-82-301 or any other statute, subject, however, to the provisions of this section with respect to electric cooperatives. 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 the state of Tennessee effective at the time of submission to the arbitrators, and subsection (2) of section 23-501 shall not apply to any arbitration arising under sections 6-51-101--60510112 and 6-510391. 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 sections 23-513--23-515 and 23-518.

(b) If the annexed territory is then being provided with a utility service by a state instrumentality which 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 above shall also provide.

(1) That 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

(2) That 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.

Such agreement or arbitration award shall fully preserve and protect the contract rights vested in the holders of such outstanding bonds or other obligations. [Acts 1955, ch. 113, section 9; 1957, ch. 381, section 1; 1968 (Adj.S.), ch. 413, section 1; TCA, section 6-318.]

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 hereinafter provided:

(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) 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 300 kilowatts, during the last twelve (12) months preceding the date of the notice provided for in subdivision (a) (1) above; and

(ii) Fifty percent (50%) of the net revenue (gross power sales revenues less wholesale cost of power including facilities rental charge) received from power sales to consumers with large industrial power loads great than 300 kilowatts within the annexed area during the last twelve (12) months preceding the date of the aforesaid notice.

(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 to the 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 aforesaid cash consideration computed and payable as provided in subdivision (a) (2) of this section.

(4) The annexing municipality, if it elects not to make the offer to purchase as provided for above, 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 said franchise or grant new franchises for similar subsequent periods; provided, however, 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 (a) (2) of this section; 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 and if served on the date when such annexation became effective.

(5) Provided, further, if any annexing municipality shall contract 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 which the said electric cooperative had previously served, upon the same procedures set forth in subdivisions (a) (1) through (a) (4) of this section hereof for acquisitions by municipalities.



(6) Provided, further, nothing contained herein 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) Provided further, 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 the provisions of this section.

(8) The terms "electric distribution properties" as used in this section shall mean all electric lines and facilities used or useful in serving ultimate consumers, but shall not include lines and facilities which are necessary for integration and operation of portions of a cooperative's electric system which are located outside the annex area.

(b) The above methods of allocation and conveyance of property and property rights of any electric cooperative to any annexing municipality shall be exclusively available to such annexing municipality and to such electric cooperative notwithstanding section 7-52-105 or any other title or sections of the Code in conflict of conflicting herewith. [Acts 1968 (Adj.S.), ch. 413, sections 2. 3; TCA, section 6-320.]

6-51-113. Provisions supplemental. Except as specifically provided in sections 6-51-101--6-51-113 the powers conferred by such sections shall be in addition and supplemental to, and the limitations imposed by said sections shall not affect the powers conferred by any other general, special or local law. [Acts 1955, ch. 113, section 12; TCA sections 6-320, 6-321.]

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 of population 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 Tennessee state planning office, 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 municipalities' 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 municipalities as so revised shall be used in computing the aggregate population of all municipalities of the state, effective on the first day of the next July following the certification of such supplemental census results to the commissioner of finance and administration of the state of Tennessee. [Acts 1953, ch. 12, section 1 (Williams, section 3321.1); impl. am. Acts 1959, ch. 9, section 3; impl. am. Acts 1961, ch. 97, section 3; impl. am. Acts 1972 (Adj.S.), ch. 542, section 15; TCA (orig. ed.), section 6-303; Acts 1981, ch. 278, section 1.]

**APPENDIX B**

**ILLUSTRATIVE REVENUE -- COSTS COMPARISON**

**APPENDIX B**

**ILLOSTRATIVE REVENUE -- COSTS COMPARISON**

General Fund	Melrose Area	Shady Acres Area	
Revenue			
Property tax	\$ 6,242	\$ 1,833	
State-shared sales tax	2,016	358	
State-shared beer tax	63	11	
State-shared income tax	173	31	
Out-of-town fire calls (loss)	(525)	(75)	
Refuse collection charges	1,260	192	
Other collections	<u>100</u>	<u>20</u>	\$2,370
Deduct anticipated expenditures			
Police protection	175	25	
Fire protection (hydrant rental)	2,520	360	
Street lighting	375	120	
Refuse collection	1,086	100	
General government	<u>425</u>	<u>75</u>	<u>680</u>
<b>BALANCE</b>		<u><u>4,478</u></u>	<u><u>1,690</u></u>
<b>Water and Sewers</b>			
Water revenue			
Inside-city rates	3,726	662	
Hydrant rental	2,520	360	
Sewer service charges	<u>2,795</u>	497	1,519
Deduct present water revenue, outside-city rates		<u>7,452</u>	<u>1,325</u>
<b>BALANCE</b>		1,589	194
Deduct annual principal and interest to amortize 20-year bonds (\$49,000 for water and \$226,490 for sewers in Melrose, and \$39,950 for sewers in Shady Acres)		<u>20,276</u>	<u>2,958</u>
(Deficit)		<u>(18,687)</u>	<u>(2,764)</u>
<b>Streets</b>			
State-shared fuel tax (\$6.40 per capita)	2,016	358	
Deduct maintenance and debt retirement expenses (\$6,500 for 10 years at 4%)	<u>2,673</u>	<u>500</u>	
(Deficit)	<u>(657)</u>	<u>(142)</u>	
Net annual deficit, all purposes	(\$14,596)	(\$1,216)	

**APPENDIX C**

**MODEL PLAN OF SERVICE FOR ANNEXED AREA**

APPENDIX C

MODEL PLAN OF SERVICE FOR ANNEXED AREA

A RESOLUTION ADOPTING A PLAN OF SERVICE FOR ANNEXATION OF (general description of area) BY THE CITY (TOWN) OF \_\_\_\_\_, TENNESSEE

WHEREAS, TCA 6-51-102 as amended requires that a plan of service be adopted by the governing body of a city prior to passage of an ordinance annexing an area of more than 1/4 square mile of having a population of more than 500; and

WHEREAS, the City (Town) of \_\_\_\_\_ is contemplating annexation of an area exceeding one (or both) of these minimum conditions, which area is bounded as follows:

(describe boundaries)

NOW, THEREFORE, BE IT RESOLVED BY THE (description of governing body) OF THE CITY (TOWN) OF \_\_\_\_\_, TENNESSEE:

Section 1. Pursuant to the provisions of section 6-51-102, Tennessee Code Annotated, there is hereby adopted, for the area bounded as described above, the following plan of service:

A. Police

1. Patrolling, radio responses to calls, and other routine police services, using present personnel and equipment, will be provided on the effective date of annexation.
2. Within approximately \_\_\_ months \_\_\_ additional police personnel and \_\_\_ patrol car(s) will be added to continue the present level of police services throughout the city, including the newly annexed area.
3. Traffic signals, traffic signs, street markings, and other traffic control devices will be installed as the need therefor is established by appropriate study and traffic standards.

B. Fire

1. Fire protection by the present personnel and the equipment of the fire fighting force, within the limitations of available water and distances from fire stations, will be provided on the effective date of annexation.
2. Within approximately \_\_\_ months \_\_\_ fire engines (and auxiliary equipment) and \_\_\_\_\_ personnel will be added to the fire fighting force to maintain present standards in the expanded city.

3. Within approximately \_\_\_\_ months (years) \_\_\_\_ additional fire station(s) will be constructed to serve the annexed area.

**C. Water**

1. Water for domestic, commercial and industrial use will be provided at city rates, from existing city lines on the effective date of annexation, and thereafter from new lines as extended in accordance with current policies of the city.
2. Water for fire protection will be available within approximately \_\_\_\_ months (years), the time estimated to be required to install adequate water lines and fire hydrants in the annexed area.
3. In those parts of the annexed area presently served by utility district(s), the above time periods will begin with acquisition by the city of such district(s) or parts thereof, which may be delayed by negotiations and/or litigation.

**D. Sewers**

1. The necessary intercepting and trunk sewers to serve the substantially developed annexed area(s) should be completed within approximately \_\_ years.
2. Construction of collecting sewers in the substantially developed annexed area(s) should be completed within approximately \_\_\_\_ years. Residences and commercial and industrial properties will then be connected to those sewers in accordance with current policies of the city.

**E. Refuse Collection**

The same regular refuse collection service now provided within the city will be extended to the annexed area (within one week after the effective date of annexation) (as soon as additional personnel and equipment can be obtained, estimated to require about \_\_\_\_ months.)

**F. Streets**

1. Emergency maintenance of streets (repairs of hazardous chuck holes, measures necessary for traffic flow, etc.) will begin on the effective date of annexation.
2. Routine maintenance, on the same basis as in the present city, will begin in the annexed area when funds from the state gasoline tax based on the annexed population are received (usually July 1 following the effective date of annexation.)

3. Reconstruction and resurfacing of streets, installation of storm drainage facilities, construction of curbs and gutters, and other such major improvements, as the need therefor is determined by the governing body, will be accomplished under current policies of the city.
4. Cleaning of streets having curbs and gutters will begin within \_\_\_\_ week(s) after the effective date of annexation on the same basis as the cleaning of streets within the present city.

**G. Schools**

County schools in the annexed area will become a part of the city school system as soon as necessary negotiations and arrangements with the county can be completed. Normally this change would take place at the beginning of the school year following the effective date of annexation. Thereafter the same program of education will be offered in the annexed area in other schools of the city system.

**H. Inspection Services**

Any inspection services now provided by the city (building, electrical, plumbing, gas, housing, weights and measures, sanitation, etc.) will begin in the annexed area on the effective date of annexation.

**I. Planning And Zoning**

The planning and zoning jurisdiction of the city will extend to the annexed area on the effective date of annexation. City planning will thereafter encompass the annexed area. Some study will be required before specific zoning can be adopted which should be completed within approximately \_\_\_\_ months after the effective date of annexation.

**J. Street Lighting**

Street lights will be installed in substantially developed commercial and residential areas within approximately \_\_\_\_ months after the effective date of annexation, under the standards currently prevailing in the existing city.

**K. Recreation**

Residents of the annexed area may use all existing recreational facilities, parks, etc., on the effective date of annexation. The same standards and policies now used in the present city will be followed in expanding the recreational program and facilities in the enlarged city. Approximately \_\_\_\_ acres of land for parks, playgrounds, etc., will be developed within approximately \_\_\_\_ months (years) after the effective date of annexation.

**L. Miscellaneous**

1. Street name signs where needed will be installed within approximately \_\_\_ months after the effective date of annexation.
2. (Any other service not classified under foregoing headings.)

Section 2. This resolution shall be effective from and after its adoption.



**APPENDIX D**

**PLAN OF SERVICE FOR ANNEXED AREA, CITY OF KINGSPORT**

**APPENDIX D**

**PLAN OF SERVICE FOR ANNEXED AREA, CITY OF KINGSPORT**

WHEREAS, TCA 6-51-102 as amended requires that a plan of service be adopted by the governing body of a city prior to passage of an ordinance annexing an area of more than 1/4 square mile or having a population of more than 500; and

WHEREAS, the City of Kingsport is contemplating annexation of an area exceeding one of these minimum conditions, which is bounded as shown on a map of the proposed annexation area, dated August 17, 1961, and approved by the Kingsport Planning Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF KINGSPORT, TENNESSEE:

Section 1. Pursuant to the provisions of section 6-51-102, Tennessee Code Annotated, there is hereby adopted for the proposed annexation area the following plan of service:

**A. Police**

1. Patrolling, radio responses to calls, and other routine police services, using present personnel and equipment, will be provided on the effective date of annexation.
2. Traffic signals, traffic signs, street markings, and other traffic control devices will be installed as the need therefor is established by appropriate study and traffic standards.

**B. Fire**

1. Fire protection by the present personnel and the equipment of the fire fighting force, within the limitations of available water and distances from fire stations, will be provided on the effective date of annexation.

**C. Water**

1. Water for domestic, commercial and industrial use will be provided at city rates, from existing city lines on the effective date of annexation, and thereafter from new lines as extended in accordance with current policies of the city.
2. Water for fire protection will be available within approximately 18 months, the time estimated to be required to install adequate water lines and fire hydrants in the annexed area.

**D. Sewers**

1. The necessary intercepting and trunk sewers to serve the substantially developed annexed area(s) should be completed within approximately 2 years.
2. Properties in the annexed areas will then be connected to the intercepting and trunk sewers in accordance with the established policies of the city.

**E. Refuse Collection**

The same regular refuse collection service now provided within the city will be extended to the annexed area within one month after the effective date of annexation.

**F. Streets**

1. Emergency maintenance of streets (repairs of hazardous chuck holes, measures necessary for traffic flow, etc.) will begin on the effective date of annexation.
2. Routine maintenance on the same basis as in the present city, will begin in the annexed area on the effective date of annexation.
3. Reconstruction and resurfacing of streets, installation of storm drainage facilities, construction of curbs and gutters, and other such major improvements, as the need therefor is determined by the governing body, will be accomplished under current policies of the city.

**G. Schools**

1. The city recommends that students in the annexed area continue attending the schools where they are presently enrolled for the remainder of the school year.
2. Students paying tuition to attend the city schools will stop payment on effective date of annexation.
3. Students attending county schools can transfer to the city school district in which they live starting the school year of 1962-63.

**H. Inspection Services**

Any inspection services now provided by the city (building, electrical, plumbing, gas, housing, sanitation, etc.) will begin in the annexation area on the effective date of annexation.

**I. Planning And Zoning**

The planning and zoning jurisdiction of the city will extend to the annexed area on the effective date of annexation. City planning will thereafter encompass the annexed area. Some study will be required before specific zoning can be adopted which should be completed within approximately 3 months after the effective date of annexation.

**J. Street Lighting**

Street lighting will be installed in the substantially developed areas in accordance with the established policies of the city.

**K. Recreation**

Residents of the annexed area may use all existing recreational facilities, parks, etc., on the effective date of annexation. The same standards and policies now used in the present city will be followed in expanding the recreational program and facilities in the enlarged city.

**L. Miscellaneous**

Street name signs where needed will be installed within approximately 6 months after the effective date of annexation.

Section 2. This resolution shall be effective from and after its adoption.

**APPENDIX E**

**PLAN OF SERVICES, CITY OF CLARKSVILLE**

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**APPENDIX E**

**PLAN OF SERVICES, CITY OF CLARKSVILLE**  
Resolution 20-1964-65

A RESOLUTION ADOPTING A PLAN OF SERVICE FOR ANNEXATION OF CERTAIN PARTS OF CIVIL DISTRICTS 3, 7 AND 8 OF MONTGOMERY COUNTY, TENNESSEE WHICH INCLUDES NEW PROVIDENCE, TENNESSEE, BY THE CITY OF CLARKSVILLE, TENNESSEE

WHEREAS, Tennessee Code Annotated 6-51-102 as amended requires that a plan of service be adopted by the governing body of a city prior to passage of an ordinance annexing an area of more than 1/4 square mile or having a population of more than 500; and

WHEREAS, the City of Clarksville is contemplating annexation of an area exceeding both of these minimum conditions, which is bounded as shown on a map of the proposed annexation area, dated October 1, 1964, and approved by the Clarksville-Montgomery County Regional Planning Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF CLARKSVILLE:

Section 1. Pursuant to the provisions of Section 6-51-102 Tennessee Code Annotated, there is hereby adopted for the proposed annexation area the following plan of service:

- A. **Fire Service** - Program fire protection immediately upon the effective date of the annexation. Naturally the details of building a fire station, securing the necessary equipment and employing 16 firemen to "man" the stations will require time, however, plans for providing these necessities should be drafted and completed during the first year after the effective date of annexation. Full fire protection will be provided by mid-1966, to fifth class standards.
- B. **Police Protection** - Provide city police protection immediately upon the effective date of annexation. Proceed immediately with plans for the addition of 12 policemen and the purchase of two patrol cars to up-grade police enforcement in the area.
- C. **Streets**
  - (a) Street maintenance and repair - Implement a normal program of maintenance and repair within 90 days after the effective date of annexation.
  - (b) Street widening and surfacing:
    - 1. Surfacing the 2.4 miles of unpaved streets will be phased over a two year period. One and two-tenths miles the first year after annexation, and the remaining one and two-tenths miles the subsequent year.
    - 2. Widening and resurfacing 12.5 miles of roads will be phased over a six year period at the rate of two and one-half miles per year.

- D. **Water Service** - Water service based on city rates will be provided within 60 days after legal incorporation of the Utility District into the city system.
- E. **Recreation Program** - Plans for implementing a Recreation Program for the New Providence Area should be completed within a year after this area has been annexed.
  - A. **Playgrounds** - The installation of the first playground will be undertaken and completed during the first year after annexation. The installation of the second playground will be completed within three (3) years after the effective date of annexation.
  - B. **Park** - Acquisition and equipping one (1) park will be completed within five (5) years after annexation.
- F. **Street Lighting** - The necessary measures to provide street lights to city standards will be undertaken as soon after annexation as is feasible for present personnel.
- G. **Other Service** - Such as general governmental administration, planning and zoning administration, inspectional services, traffic control, etc., will be in effect immediately after annexation.

Section 2. This resolution shall be effective from and after its adoption.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Adopted:



**APPENDIX F**

**SAMPLE RESOLUTION FOR A PUBLIC HEARING ON PROPOSED ANNEXATION**

APPENDIX F

SAMPLE RESOLUTION FOR A PUBLIC HEARING ON PROPOSED ANNEXATION

A RESOLUTION CALLING A PUBLIC HEARING TO DETERMINE WHETHER CERTAIN TERRITORY SHOULD BE ANNEXED TO THE CITY (TOWN) OF \_\_\_\_\_, TENNESSEE.

WHEREAS, it appears that the prosperity of this city (town) and of the territory herein described may be materially retarded and the safety and welfare of the inhabitants and property thereof endangered if such territory is not annexed; and,

WHEREAS, the annexation of such territory may be deemed necessary for the welfare of the residents and property owners of the said affected territory and this city (town) as a whole;

WHEREAS, the annexation of such territory appears to be for the overall well-being of the communities involved;

NOW, THEREFORE, Be it resolved by the (designation of governing body) of the City (Town) of \_\_\_\_\_, Tennessee:

That the city recorder (or other official) be and he hereby is instructed and required to have published in the (name of newspaper) of general circulation in the (city or town) on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a notice that a public hearing before this body will be held on the (not less than 8 days after publication of notice) \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at (place) \_\_\_\_\_, to determine whether the following described territory adjoining the present corporate boundaries should be annexed:

Embracing that certain part of civil district(s) no(s). \_\_\_\_\_ of \_\_\_\_\_ County, Tennessee, and more fully described, to-wit: (metes and bounds, and reference to recorded may, if any)

**APPENDIX G**  
**SAMPLE ORDINANCE TO ANNEX TERRITORY**



APPENDIX G

SAMPLE ORDINANCE TO ANNEX TERRITORY

AN ORDINANCE TO ANNEX CERTAIN TERRITORY AND TO INCORPORATE SAME WITHIN THE CORPORATE BOUNDARIES OF THE CITY (TOWN) OF \_\_\_\_\_, TENNESSEE.

WHEREAS, a public hearing before this body was held on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, pursuant to a resolution adopted on \_\_\_\_ (date)\_\_\_\_, and notice thereof published in (name of newspaper) on \_\_\_\_ (date)\_\_\_\_; and,

WHEREAS, it now appears that the prosperity of this city (town) and of the territory herein described will be materially retarded and the safety and welfare of the inhabitants and property thereof endangered if such territory is not annexed; and,

WHEREAS, the annexation of such territory is deemed necessary for the welfare of the residents and property owners thereof and of the city (town) as a whole; and,

WHEREAS, a plan of service for this area was adopted by resolution on \_\_\_\_ (date)\_\_\_\_ as required by section 6-51-102, *Tennessee Code Annotated*; (any be omitted if area and population are too small to require a plan of service.)

NOW, THEREFORE, Be it ordained by the (designation of governing body) of the City (Town) of \_\_\_\_\_, Tennessee:

Section 1. Pursuant to authority conferred by sections 6-51-101 to 6-51-114, *Tennessee Code Annotated*, there is hereby annexed to the City (Town) of \_\_\_\_\_, Tennessee, and incorporated within the corporate boundaries thereof, the following described territory adjoining the present corporate boundaries:

Embracing that certain part of civil district(s) no(s). \_\_\_\_\_ of \_\_\_\_\_, County, Tennessee, and more fully described, to-wit:  
(metes and bounds, and references to recorded map, if any)

Section 2. This ordinance shall be effective from and after its passage, the public welfare requiring it. (this section should conform to the provisions of the city's charter governing effective dates of ordinances.)

**APPENDIX H**

**SAMPLE RESOLUTION CALLING FOR ANNEXATION REFERENDUM**

APPENDIX H

SAMPLE RESOLUTION CALLING FOR ANNEXATION REFERENDUM

A RESOLUTION CALLING FOR A REFERENDUM ON ANNEXATION OF CERTAIN TERRITORY TO THE CITY (TOWN) OF \_\_\_\_\_, TENNESSEE.

Be it resolved by the (designation of governing body) of the City (Town) of \_\_\_\_\_, Tennessee:

Section 1. As provided in section 6-51-104 and 6-51-105, *Tennessee Code Annotated*, it is proposed to annex the following described territory adjoining the present corporate boundaries:

Embracing that certain part of civil district(s) no(s). \_\_\_\_\_ of \_\_\_\_\_ County, Tennessee, and more fully described, to-wit: (metes and bounds, and reference to recorded map, if any)

Section 2. The city recorder (or other official) is hereby directed to have copies of this resolution posted in three public places in this city (town) and in three public places in the above described territory, and to have this resolution published in the (name of newspaper of general circulation in the city or town) on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. All copies of this resolution shall be so posted on or before the date of publication in said newspaper. The city recorder (or other official) shall immediately file with this body and with the county election commission a certificate showing the date(s) on which such posting and publication took place.

Section 3. The county election commission of \_\_\_\_\_ County is hereby requested to hold an election in said territory proposed for annexation (and in this city (town) [add this if the governing body chooses to exercise its option of calling for an election in the city], at least 30 days and not more than 60 days after the foregoing date of newspaper publication.

Section 4. This ordinance shall be effective from and after its passage, the public welfare requiring it. (This section should conform to the provisions of the city's charter governing effective dates of ordinances.)

**APPENDIX I**

**CITY OF JACKSON RESOLUTION TO ACQUIRE JACKSON SUBURBAN UTILITY DISTRICT**



**APPENDIX I**

**CITY OF JACKSON RESOLUTION TO ACQUIRE JACKSON SUBURBAN UTILITY DISTRICT**

WHEREAS, Jackson Suburban Utility District of Madison County, Tennessee, has been and is now furnishing water to the residents in certain territory of which a part was recently annexed by the City of Jackson, Tennessee, under the authority of Tennessee Code Annotated, sections 6-308 to 6-319, inclusive; and,

WHEREAS, The City of Jackson has as the result of negotiations with Jackson Suburban Utility District of Madison County, Tennessee, as authorized and required by Tennessee Code Annotated, section 6-318, reached a mutually satisfactory and acceptable agreement whereby the City of Jackson shall purchase\* all the assets and properties of said District, and assume and operate only a part of said water system now owned by the District; and,

WHEREAS, the Commissioners of said Jackson Suburban Utility District of Madison County, Tennessee, have agreed to transfer all the assets of said District, real and personal, and otherwise, to the City of Jackson, Tennessee, on condition that the City agree to operate the entire utility system of said district, and to assume the payment of outstanding bonds of said District in accordance with their terms, and to pay all other obligations of said District outstanding as of the effective date of transfer of the assets, and subject to the further understanding and agreement that of the cash on hand of the District and its investment in U. S. Government Bonds which are to be transferred to the City, there shall be earmarked or set aside in a reserve account a sum equal to such cash on hand and investments in bonds, after deducting therefrom a sum equal to the requirements for the payments of interest due August 1, 1961, on the outstanding bonds of the District and both principal and interest due February 1, 1962, and a further deduction in an amount equal to any outstanding liability for customers deposits and current accounts payable or other liabilities (except bond indebtedness) of the district, including any unpaid water accounts payable to the City of Jackson, as of the effective date of the transfer of the assets; and that such reserve funds (as adjusted), or at least the cash equivalent thereof, shall be used for an elevated water storage tank designed for use in the area presently served by the District, or for such other equipment or facilities, and at such time or times, as may be deemed feasible within the best judgement and discretion of the City, or its representatives, to provide adequate water service to areas; and

WHEREAS, it appears advisable and in the best interests of The City of Jackson, Tennessee, to enter into said agreement and thereby acquire the assets of said District, assume the obligations thereof and take over the operation of its entire water system.

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\*Although the word "purchase" is used here, a careful reading of the resolution will disclose that this was not a purchase transaction. It was a transfer of functions, assets and liabilities from one governmental unit to another governmental unit. A formal agreement between two such units could closely parallel the language of this resolution.

NOW, THEREFOR, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, AS FOLLOWS:

1. That, in consideration of the transfer to the City of Jackson Suburban Utility District of Madison County, Tennessee, of all of its assets, real and personal, the same being described and set forth in Schedule No. 1, annexed hereto, and made a part hereof, The City of Jackson shall assume and take over the management and operation of the entire utility or water system of Jackson Suburban and Utility District of Madison County, Tennessee, and accept title thereto.
2. That The City of Jackson hereby assumes and agrees to pay from the revenues of its water and sewerage departments all outstanding bonds and other obligations of the Jackson Suburban Utility District of Madison County, Tennessee, as such bonds and obligations may mature, and in accordance with their terms, and to otherwise perform all covenants contained in the bonds required of the District, said bonds being described and set forth in Schedule No. 2, annexed hereto, and made a part hereof; said bonded indebtedness consisting of an issue of water works revenue bonds of said District in the original total amount of \$75,000.00, dated February 1, 1951, in the denomination of \$100.00 each, bearing interest at three and one-half percent (3 1/2%), payable semi-annually on August 1st, and February 1st, of each year commencing August 1, 1951, maturing serially in numerical order, without option of prior redemption, on February 1st of each year from February 1, 1953, to February 1, 1970, inclusive; and provided further, that the City agrees, as a consideration for the transfer of all assets of said District, to earmark or set aside in a reserve account all of the cash on hand and the cash equivalent of the present redemption value of U. S. Government Bonds in the face sum of \$10,000.00 which are being transferred by the District to the City, after having deducted therefrom a sum equal to the requirements for the payment of interest on the outstanding bonds issued by the District due August 1, 1961, and both interest and principal due February 1, 1962, and a further deduction in an amount equal to outstanding customers' deposits and current accounts payable or otherwise liabilities (except bond indebtedness) of the district as of the effective date of the transfer of assets, and to use said reserve fund, or at last the cash equivalent thereof, for the purposed hereinabove set forth at such time or times as may be deemed feasible within the best judgement and discretion of the City or its representatives.
3. That this Resolution be effective June 1, 1961, upon delivery to the City of Jackson of deeds, bills of sale, and other instruments of writing necessary to transfer all assets of the Jackson Suburban Utility District of Madison County, Tennessee, to The City of Jackson, Tennessee, and to vest title to same in The City of Jackson.

NOTICE

The foregoing resolution was introduced, read and approved by the Board of Commissioners of the City of Jackson, Tennessee, the 27 day of June, 1961, and will be considered for adoption at the regular meeting of said board to be held June 30, 1961, in the Board Room of the City Hall, Jackson, Madison County, Tennessee at 10 A.M. at which time any and all suggestions pertaining to the adoption of said resolution will be considered.

Published by the order of the Board of Commissioners of the City of Jackson, Tennessee, this 27 day of June, 1961.

ATTEST: B. F. Graves  
City Recorder

Schedule No. 1 To Resolution For Transfer Of Jackson Suburban Utility District of Madison County, Tennessee

Assets of Described to be transferred to the City of Jackson, Tennessee.

FIXED ASSETS

Real Estate, consisting of a parcel of land and building together with all other improvements thereon described in deed from Jackson Suburban Utility District to The City of Jackson, Tennessee, dated June 1, 1961.

All Machinery and Equipment, Meters, Underground Lines, together with all other personal property, including the entire water distribution system, mains, services and meter connections, valves, hydrants, supplies, accessories and inventory on hand as of effective date of this transfer as per resolutions.

CURRENT ASSETS

All cash on hand and in banks; including cash in the National Bank of Commerce of Jackson, Tennessee, as of effective date of this transfer as per resolutions, consisting of the following accounts:

Operating Account.....	\$25,417.25
Customer Account.....	- 0 -
Construction Account.....	<u>209.82</u>
Total	\$25,627.07

All accounts receivable, including current and unbilled customer water accounts.

Accrued interest receivable.

Investments--U. S. Government Bonds (or redemption value or cash realized therefrom as, if and when redeemed, same now being in face amount of \$10,000.00).

Any unexpired insurance premiums.

All permits and licenses from The State of Tennessee, Madison County, Tennessee, and any others now held or enjoyed by said District.

Together with, and including, any and all other assets of said District, real or personal, tangible or intangible, which are on hand and to the extent of the District's interest therein as of the effective date of this transfer as per resolutions and agreements in reference thereto.

Provided, however, of the cash on hand and investments in U. S. Government Bonds (or cash equivalent at redemption), there shall be established by The City of Jackson a reserve account for use to improve the water system in the area presently served by said District as provided in resolutions in reference to this transfer.

**Schedule No. 2 To Resolution For Transfer Of Jackson Suburban Utility District Of Madison County, Tennessee**

Liabilities and Obligations of Jackson Suburban Utility District of Madison County, Tennessee, Assumed by The City of Jackson, Tennessee.

Bonds Payable, dated February 1, 1951, of issue in original principal amount of \$75,000.00, bearing interest at three and one-half percent (3 1/2%) per annum, payable semi-annually on August 1st and February 1st of each year, of which the principal amount of \$26,000.00 has been paid together with interest due February 1, 1961, thereby leaving an outstanding principal amount of \$49,000.00 due and payable on February 1st of each year as follows:

<u>Year</u>	<u>Amount</u>	<u>Bond Numbers</u>
1962	\$4,000	27 to 30, inc.
1963	5,000	31 to 35, inc.
1964	5,000	36 to 40, inc.
1965	5,000	41 to 45, inc.
1966	5,000	46 to 50, inc.
1967	6,000	51 to 56, inc.
1968	6,000	57 to 62, inc.
1969	6,000	63 to 68, inc.
1970	7,000	69 to 75, inc.

Together with all unpaid accrued interest and the interest hereafter due and payable on said bonds; and to duly and punctually perform all covenants of said bond issue remaining unpaid and to protect all contract rights vested in the holders of said outstanding bonds.

Customers' deposits to secure payment of customers' obligations for water bills.

All outstanding unpaid accounts, bills and other obligations at the District, including final water bill due The City of Jackson, Central Service for billing customers and Arnold & Badgett for final audit.

An existing contract dated March 9, 1951, between the District and The City of Jackson for furnishing water to the District; said contractual obligations to be assumed or else rendered void and of no further force and effect.

AN ORDINANCE ESTABLISHING WATER RATES FOR WATER SERVICE SUPPLY FROM DISTRIBUTION SYSTEM OF JACKSON SUBURBAN UTILITY DISTRICT OF MADISON COUNTY, TENNESSEE OUTSIDE AND INSIDE THE CORPORATE LIMITS OF THE CITY OF JACKSON, TENNESSEE.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF JACKSON, TENNESSEE:

Section 1. That water rates of the Jackson Utility Division for water service from the Jackson Suburban Utility District of Madison County, Tennessee, inside the corporate limits of the City of Jackson, Tennessee, be the same rates charged all other consumers inside the corporate limits of the City of Jackson, Tennessee.

Section 2. That water rates of the Jackson Utility Division for water service from the Jackson Utility District of Madison County, Tennessee, outside the corporate limits of the City of Jackson, Tennessee, be and remain the same rates as are now being charged by the Jackson Suburban Utility District of Madison County, Tennessee.

Section 3. That this ordinance take effect June 1, 1961, upon its adoption, the Public Welfare requiring it.

#### NOTICE

The foregoing ordinance was introduced, read and approved by the Board of Commissioners of the City of Jackson, Tennessee, the 27th day of June, 1961, and will be considered for adoption at the regular meeting of said board to be held June 30, 1961, in the Board Room of the City Hall, Jackson, Madison County, Tennessee, at 10 A.M. at which time any and all suggestions pertaining to the adoption of said ordinances will be considered.



**APPENDIX J**

**CONTRACT OF SALE FOR ACQUISITION OF MEMPHIS SUBURBAN UTILITY DISTRICT**





**APPENDIX J**

**CONTRACT OF SALE\* FOR ACQUISITION OF MEMPHIS SUBURBAN UTILITY DISTRICT**

THIS AGREEMENT, made and entered into this 30th day of April, 1957 by and between THE MEMPHIS SUBURBAN UTILITY DISTRICT OF SHELBY COUNTY, TENNESSEE, a public corporation of the State of Tennessee (hereinafter called "District") and the MEMPHIS LIGHT, GAS AND WATER DIVISION OF THE CITY OF MEMPHIS, a Division of Government of the City of Memphis, (hereinafter called "Division")

WITNESSETH:

WHEREAS, the District now owns, operates and maintains a water supply and distribution system, fire protection facilities and sanitary sewer system within the territorial limits of said District as shown on the plat annexed hereto as Exhibit "A"; and

WHEREAS, in order to finance said water supply and distribution system and said fire protection facilities and to refund certain obligations of the District issued for the foregoing purpose, the District has issued and sold and now has outstanding \$1,572,000.00 Utility Revenue Refunding Bonds, dated April 1, 1957, represented by Interim Receipts therefor, as described in a resolution adopted by the District on April 29, 1957, annexed hereto as Exhibit "B"; and

WHEREAS, in anticipation of the annexation to the City of Memphis of the territorial area of the District and the practical necessity for combining the water system of the Division, the District and the Division, duly authorized by the Board of Commissioners of the City, have conducted negotiations for the acquisition by the Division of the water supply and distribution system of the Division, and the parties hereto, for valuable considerations, the receipt and sufficiency whereof being acknowledged, have agreed and do hereby agree and bind themselves as follows:

1. The District hereby agrees to transfer and deliver to the Vision and the Division hereby agrees to accept and take over from the district, on the terms and conditions and on or before the time herein set forth, all of the water supply and distribution system and priorities relating thereto now or hereafter owned by the District, together with all of the real estate belonging to the District, and the District agrees to convey to the City of Memphis for the use and benefit of the Division by good and valid conveyances, with the usual covenants of warranty and quiet possession, the real estate described in Exhibit "C" annexed hereto, and all of the personal

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\*Actually, no "sale" occurred. The contract simply provided for a transfer of functions, assets and liabilities to the Memphis Light, Gas and Water Division.

property of every kind and character owned and used by the District in the operation of said water supply and distribution system at the date of closing under this contract, including all easements, wells, pumping plants, water treatment works, water storage facilities, water lines and mains, meters, contracts, accounts receivable and bank deposits and cash on hand except the sum of \$10,000.00 which is hereby determined by the parties hereto to be the sum that will be required by the District for the operation of its fire protection system until the annexation of the territorial area of the District by the City of Memphis and said sum shall be retained by the district for such purpose.

The District and the division agree that consummation of the transactions provided for above in this paragraph 1 will take place on or before January 1, 1958. the actual date of consummation of such transactions is herein referred to as the "Closing Date."

Upon annexation of the territorial area of the district by the City of Memphis, the District, for the consideration herein set forth, agrees to transfer and convey to the City of Memphis all of its property, both real and personal constituting, and used in connection with, its fire protection system, including all money on deposit to banks and on hand, which shall be paid over to the Division.

2. The Division agrees to assume and pay, from and after the Closing Date, all obligations of the District, secured and unsecured, relating to or incurred in connection with the ownership and operation by the District of its water supply and distribution system, including the Utility Revenue Refunding Bonds described in Exhibit "B"; provided, however, that the obligation of the Division aforesaid shall be conditioned upon the financial condition of the District as of the Closing Date being as favorable as the financial condition of the District evidenced by the Accountant's Report of Balch, Pratt, Priddy & Co., dated as of May 31, 1956. The District agrees to furnish the Division, not later than June 25, 1957, with an Accountant's Report of its financial condition as of May 31, 1957, and covering its preceding fiscal year prepared by a firm of certified public accountants acceptable to the Division and to furnish on the Closing Date a supplemental report of such accountants showing the true financial condition of the district as of the Closing Date. The Division reserves the right to waive any or all of the foregoing requirements.
3. The Division binds itself to operate said water supply and distribution system in an efficient manner, to make all necessary additions and extensions as may be needed from time to time, and to charge water rates in accordance with its applicable rate schedules for customers in like circumstances as such schedules may be amended from time to time; all in accordance with the Rules and Regulations of the Division as they presently exist, or may be hereafter amended.

4. The Division agrees and binds itself to assume the obligations of all executory contracts entered into by the District with subdivision developers and other property owners covering the installation and maintenance of water services, and to pay such refunds as may be required under the terms of said contracts.
5. The Division further agrees and binds itself to carry out the terms of the contract of the District with International Harvester company, as set forth in Exhibit "D" hereto, until such time as the Division and said International Harvester Company may enter into superseding contracts covering water services to be furnished said Company.
6. The Division agrees to employ such of the personnel now employed by the District as may desire employment by the Division and as may be equipped to perform the duties required of them by the Division; and the Division agrees to accept into the Retirement & Pension System for Employees of Memphis Light, Gas & Water Division, City of Memphis, all such employees who desire to participate therein and make the payments hereinafter referred to, with full rights in said employees to retirement benefits beginning with the dates of their respective employments by the district, provided, the District pays the cost as an operating expense account on or before the Closing Date to said retirement and pension fund of the Division the sum set out in Exhibit "E" hereto for those employees who elect to enter said retirement system and who personally pay to said retirement and pension fund of the Division, as the employees contribution, 4% of the total compensation of such employee from the District from the time of his employment to January 1, 1956, and 5% of his total compensation from the District or the Division after January 1, 1956, such payments by the employee and application for participation in said retirement and pension fund of the Division to be made within six months from their employment by the Division.
7. The Division further agrees to bill the charges made by the District for sewer services furnished to the present District customers, as certified by the District to the Division, provided the customers so certified is being billed for electric, gas or water service by the Division. The Division shall remit to the district monthly the sewer rentals paid to the Division as above provided until the area so served sewer service is annexed to the City of Memphis, or until the City of Memphis shall take over the operation of the sewer systems now operated by the District.
8. Each party shall cooperate and take such action as may be reasonably requested by the other in order to carry out the provisions and purposes of this agreement; and the district shall continue in existence for the operation of the fire protection system and sewer systems now under its jurisdiction until annexation of the territorial area of the District by the City of Memphis.

9. The Division hereby consents and agrees that this contract may be assigned or pledged by the District in such form or manner as the District may provide.
10. This contract is contingent upon approval thereof by the board of commissioners of the City of Memphis, as required by law.

IN WITNESS WHEREOF, the parties hereto duly authorized and by their lawfully authorized officers and agents, have executed this agreement on the day and in the month and year first hereinabove written.

The Memphis Suburban Utility District of Shelby County, Tennessee

By \_\_\_\_\_

Memphis Light, Gas and Water Division of the City of Memphis,  
Tennessee

By \_\_\_\_\_

#### RESOLUTION

IT IS HEREBY RESOLVED by the Mayor and Board of Commissioners of the City of Memphis that the action taken by the Board of Light, Gas & Water Commissioners on April 25, 1957, as evidenced by the attached excerpts from that meeting authorizing the execution of contract of sale with Memphis Suburban Utility District, be and is hereby ratified and approved.

**APPENDIX K**

**RESOLUTION FOR ACQUISITION OF NORTH JOHNSON CITY UTILITY DISTRICT**

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**APPENDIX K**

**RESOLUTION FOR ACQUISITION OF NORTH JOHNSON CITY UTILITY DISTRICT**

On motion of Commissioner Floyd Bolton, seconded by Commissioner P. J. Humphries, the following resolution was presented for adoption. The motion was carried by a vote of 3 to 0.

WHEREAS, the City of Johnson City, Tennessee, heretofore has annexed certain territory on the westerly side of said City, commonly known as "West Hills," which territory at the time of its annexation was being served by the North Johnson City Utility District of Washington County, Tennessee; and

WHEREAS, the City of Johnson City, Tennessee, has elected to exercise its right under section 6-318 of the *Tennessee Code Annotated*, to assume the operation of the entire Utility system and to pay all outstanding bonds and other obligations of said North Johnson City Utility District of Washington County, Tennessee, in accordance with their terms;

NOW, THEREFORE, be it resolved by the Commissioners of the North Johnson City Utility District of Washington County, Tennessee as follows:

That all of the assets of the North Johnson City Utility District of Washington County, Tennessee, be, and they hereby are, transferred to the City of Johnson City, Tennessee, and title thereto vested in said City in consideration of said City's agreement to pay all outstanding obligations of the North Johnson City Utility District of Washington County, Tennessee, in accordance with the terms and to protect the contract rights vested in the holders of all outstanding bonds and other obligations of the District.

**RESOLUTION**

On Motion of Commissioner McDowell, seconded by Commissioner Spears, the following resolution was presented for adoption. The motion was carried by a vote of 4 to 1.

WHEREAS, the North Johnson City Utility District of Washington County, Tennessee, is and has been furnishing water to certain inhabitants of the territory commonly known as "West Hills," which was recently annexed by the City of Johnson City, Tennessee; and

WHEREAS, the City of Johnson City, Tennessee, has entered into negotiations with the said North Johnson City Utility District of Washington County, Tennessee, as required by section 6-318 of the *Tennessee Code Annotated* and as a result of said negotiations it appears that it will be to the advantage of the City of Johnson City to assume the operation of the entire Utility system of said North Johnson City Utility District of Washington County, Tennessee, rather than to purchase a part thereof;

NOW, THEREFORE, be it resolved by the Board of Commissioners of the City of Johnson City, Tennessee, as follows:

Section 1. That the City of Johnson City, Tennessee, hereby assumes the operation of the entire Utility system of the North Johnson City Utility District of Washington County, Tennessee, and accepts title thereto.

Section 2. That the City of Johnson City, Tennessee, hereby assumes and will pay all outstanding bonds and other obligations of said North Johnson City Utility District of Washington County, Tennessee, in accordance with their terms. Said indebtedness consisting of 1952 series bonds of \$985,000.00; 1956 series bonds in the amount of \$265,000.00; 1958 Certifications of Indebtedness in the amount of \$550,000.00; East Tennessee Water Corporation bonds in the amount of \$160,000.00, totaling \$1,960,000, all payable from revenues of said system.



**APPENDIX L**  
**NASHVILLE CITY/DAVIDSON COUNTY**



APPENDIX L

NASHVILLE CITY/DAVIDSON COUNTY

WHEREAS, the Nashville City and Davidson County school systems exist to provide the best educational opportunity for the children and youth of the total community within the limits of the people's ability to pay for the services, and

WHEREAS, continuous progress in education is the primary goal and objective of a school policy for the City of Nashville and Davidson County, and

WHEREAS, the coordination of community participation in the furtherance of education must be based on a plan of action directing efforts toward the common goal, and

WHEREAS, a plan of action to provide, maintain and improve the quality level of educational opportunity for the children and youth of the community requires the establishment of a statement of policies, and

WHEREAS, the promotion of maximum efficiency of education facilities requires that the creative and productive capacities of all concerned must be encouraged, utilized, and coordinated within a framework of mutual respect and understanding;

NOW, THEREFORE, BE IT RESOLVED by the Nashville City Board of Education and the Davidson County Board of Education:

1. That they shall coordinate their efforts to secure the decisions necessary to achieve the public purpose of education within the total Nashville-Davidson County community.
2. That the Nashville City Board of Education hereby enters into an agreement with the Davidson County Board of Education whereby:
  - A. The Davidson County Board of Education will operate the school facilities during the 1961-62 fiscal year in all areas served by them during the 1960-61 fiscal year;
  - B. The Davidson County Board of Education shall proceed with its capital improvements program in the annexed areas and in the areas affected by the annexation, said program for the 1961-62 being described in Appendix A of the *Davidson County Capital Improvements Program, 1961-67*;
  - C. The Nashville City Board of Education shall proceed with its capital improvements programing the areas affected by the annexations, said program for the 1961-62 being described in Appendix A of the *Davidson County Capital Improvements Program, 1961-67*;

- D. It is proposed that the County shall authorize and sell a \$4,000,000 countywide General Obligation Bond issue to finance school construction.
- E. The formula for the distribution of a proposed \$4,000,000 countywide General Obligation Bond issue shall be on the basis of the proposed formula shown on page \_\_\_\_ of the *Davidson County Capital Improvements Program, 1961-67*; and shall be specifically allocated, as follows:

TENTATIVE FORMULA FOR DISTRIBUTION OF A \$4,000,000 COUNTYWIDE GENERAL OBLIGATIONS BOND ISSUE FOR 1961-62\*

I. Assuming an issue of \$4,000,000 Countywide General Obligation Bond			
II. A.	County Program for 1961-62		\$3,150,000
	Less: Undivided Program		
	John Early Elementary	\$ 90,000	
	Glengarry Elementary	285,000	
	John Overton High	250,000	<u>625,000</u>
	Total remaining for divided program		<u>2,525,000</u>
B.	City Program for 1961-62		
	Less: Undivided Program		
	Highland Heights Junior High	287,000	<u>287,000</u>
	Total remaining for divided program		<u>1,979,000</u>
III. A.	County A.D.A.		
	Less: Undivided Program A.D.A.		
	John Early Elementary	439	
	Glengarry Elementary (est)	400	
	John Overton High	817	<u>1,656</u>
	Net County A.D.A.		42,844
B.	City A.D.A.		
	Less: Undivided Program A.D.A.		
	Highland Heights Junior High	492	<u>492</u>
	Net A.D.A.		27,008
C.	Percentage Relationship of Net A.D.A.		
	Net County A.D.A.	42,844*	61.3354%
	Net City A.D.A.	27,008*	38.6646%
	Total	69,852*	100.00%

\*The final 1960-61 Average Daily Attendance of the City and County School systems will be used in computing the final and exact distribution.

IV. Undivided Program			
John Early Elementary	90,000		
Glengarry Elementary	285,000		
John Overton High	250,000		
Highland Heights Junior High	<u>287,000</u>		<u>912,000</u>
V. Divided Program			
\$4,000,000 issue less undivided program			3,088,000
Issued to County by percentage in			
No. III C	1,984,037		
Issued to city by percentage in			
No. III C	1,393,963		
VI. Summary of Divided and Undivided Programs			
County:			
Divided	1,894,037		
Undivided	<u>625,000</u>		<u>2,529,037</u>
City:			
Divided	1,193,963		
Undivided	<u>287,000</u>		<u>1,480,963</u>
Total:			
Divided	3,088,000		
Undivided	<u>912,000</u>		<u>4,000,000</u>

F. It is recognized that the project costs shown in the Capital Improvements Budget and Program are estimated costs and that the actual costs can only be determined through the letting of bids. In the event that the bids for the construction of the proposed facilities or the cost acquiring proposed sites for projects within the undivided bond program differ from the estimated figures shown in the City Capital Improvements Budget and Program, 1961-67 and the County Capital Improvements Program, 1961-67, the City and County School Boards shall resolve the difference within the spirit of this agreement.

BE IT FURTHER RESOLVED THAT:

3. The Nashville City and Davidson County Boards of Education shall cooperate in a comprehensive examination of public education needs within the Nashville-Davidson County Community. This study shall include an examination of administration, school zoning policies, pupil transportation, school debt administration, finance and capital outlay programming and such other subjects as may be deemed appropriate to the furtherance of education opportunity.

4. The Nashville City Board of Education and the Davidson County Board of Education shall prior to May 1, 1962, develop a mutually acceptable plan for the acquisition and/or transfer of school priorities located within the areas annexed by the City of Nashville. During the period prior to the transfer of such priorities they shall continued to be maintained at County standards.

BE IT FURTHER RESOLVED THAT as part of this agreement between the Nashville City Board of Education and the Davidson County Board of Education:

5. That consistent with the principle that pupils should be disturbed as little as possible with respect to the school they attend:
  - A. The Boards jointly study the problems of rezoning along the boundary areas of the two school systems on an annual basis; and
  - B. That pupils be permitted to attend schools as presently assigned or as determined by agreement between the City and County Boards of Education without regard to corporate lines;
6. That no tuition be charged except for county students attending Hume-Fogg Technical High School and Pearl High Vocational School.

BE IT FURTHER RESOLVED THAT:

7. The Superintendent of the County Board of Education shall advise the Superintendent of the City Board of Education as to the status of all school personnel for schools within the areas annexed to the City of Nashville as of the effective date of such annexation.
8. The Superintendent of the County Board of Education and/or his representative shall advise with the Superintendent of the City Board of Education and/or his representative prior to personnel transfers or the assignment of new personnel concerning schools within the areas annexed to the city of Nashville but subsequent to the effective date of such annexation.
9. That all rights of all school personnel shall be protected in accordance with existing law.
10. That the County Board of Education, under policies which the County Board transports pupils throughout the County, will continue to transport pupils living within the annexed area during the 1961-62 and the 1962-63 school years.

APPROVED BY DAVIDSON COUNTY BOARD OF EDUCATION  
May 25, 1961

APPROVED BY NASHVILLE CITY BOARD OF EDUCATION  
June 9, 1961

**APPENDIX M**

**KNOXVILLE AND KNOX COUNTY AGREEMENT FOR TRANSFER OF SCHOOLS**

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APPENDIX M

KNOXVILLE AND KNOX COUNTY AGREEMENT FOR TRANSFER OF SCHOOLS

THIS AGREEMENT, made and entered into this 19 day of June 1963, by and between the CITY OF KNOXVILLE, a municipal corporation with situs in Knox County, Tennessee, of the first part, hereinafter called "CITY," and the COUNTY OF KNOX, a governmental division of the State of Tennessee, of the second part, hereinafter called "COUNTY,"

WITNESSETH

WHEREAS, by Ordinances Nos. 2947, 3049, 3050, 3052, 3053, 3054, the City annexed certain territory pursuant to the authority of Title 6, Chapter 30 TCA so that the said territory is now within the corporate limits of the City, and

WHEREAS, certain public schools of a value of approximately \$12,000,000 now owned and operated by the County are located within the area so annexed, and

WHEREAS, the parties are empowered by law to effect a transfer of annexed school properties by contract between them,

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinbelow contained, it is agreed between the parties as follows:

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On or before July 1, 1963, the County will give and convey absolutely to the City the following County Schools:

- |                                  |                                 |
|----------------------------------|---------------------------------|
| 1. Alice Bell School             | 2. Anderson School              |
| 3. Bearden Elementary School     | 4. Bearden High School          |
| 5. Cedar Grove School            | 6. Central High School          |
| 7. Chilhowee School              | 8. Fountain City Grammar School |
| 9. Galbraith School              | 10. Happy Home School           |
| 11. Holston High School          | 12. Inskip Elementary School    |
| 13. Lyons View School            | 14. Mooreland Heights School    |
| 15. Norwood School               | 16. Oakland School              |
| 17. Pleasant Ridge School        | 18. Pond Gap School             |
| 19. Ridgedale School             | 20. Robert Huff School          |
| 21. Rocky Hill School            | 22. Shannondale School          |
| 23. Smithwood School             | 24. Spring Hill School          |
| 25. Sterchi School               | 26. West Haven School           |
| 27. West Hills Elementary School | 28. Young High School           |

Such conveyance shall include all land and buildings comprising the school properties of the above schools, together with all equipment, furniture, fixtures, books and other items of personal property now in use or present and available for use at any of the above schools, excepting however items of equipment used by or available

for the use of all County Schools without designation to a particular school, such as but not limited to special projectors, film strips, special scientific equipment and special musical instruments and equipment. County agrees that it will, on or before the said date, execute and deliver all deeds, assignments and other instruments of transfer necessary or appropriate to effectuate such conveyance or conveyances.

## II

Effective July 1, 1963, all employees of the Knox County Board of Education assigned to the above schools shall be and become employees of the Board of Education of the City if they choose to do so, providing that as concerns teachers, such employment rights shall exist only for those who are at that time certified or otherwise approved by the State of Tennessee Department of Education. An appropriate proportionate number of maintenance employees, clerical employees, and supervisory personnel of the County Board of Education, not assigned to any particular school, whose employment by the County will no longer be necessary by reason of the reduction of the number of County Schools shall similarly become employees of the Board of Education of the City if they choose to do so. all such persons thus becoming employees of the City shall be entitled to the following rights, which the City hereby agrees to preserve and protect:

- A. They shall acquire tenure rights under the City Charter as if they had been employees of the City for the period of time they have been employees of the County Board of Education.
- B. They shall be placed on the salary scale of the City Board of Education as if they had been employees of the City Board of Education for the time they have been employees of the County Board of Education. If the County shall have granted credit for pay purposes for experience in employment by other Boards of Education, the City Board of Education shall likewise grant credit for such experience not to exceed three years, provided however that compensation of no Knox County employee shall be decreased by reason of the three year limitation for non-Knox County experience.
- C. Such employees may elect to continue membership in any pension plan of which they are members. In absence of such election, they shall acquire the same pension rights as new employees of the City Board of Education.

## III

County represents that Exhibit "A" attached hereto is a complete listing of the proportion of the outstanding Rural Bonds of the County applicable to the schools above listed, and that the same accurately reflects the principal and interest requirements to maturity of such proportion of such bonds. City agrees that it will provide funds sufficient to meet all payments to principal and interest due and accruing on the above listed bonds from and after July 1, 1963, as follows:

- A. Not less than thirty days before any date on which a payment on principal or interest is due to be delivered by the County, the County's general accounting office shall give written notice to the Mayor and Finance Director of the City, advising them of the due date and the amount of such payment and such other information respecting the same as they may reasonably request.
- B. Not less than fifteen days preceding such due date, the City shall transmit and deliver to the Trustee of the County funds sufficient to meet such payment to principal and interest.
- C. The City's liability under this Article III shall be only to the County and shall be limited to the amounts stated in Exhibit "A," plus interest on any amount not paid when otherwise due.
- D. County agrees that the funds so transferred will be applied to the payment of such bonds according to the terms of the notice given the City as above.

IV

Pursuant to the authority of TCA 49-711 the parties agree as follows respecting the issuance of school bonds and the division between them of funds from school bonds:

- A. City hereby waives its right to all or any part of funds due it from County bonds sold during 1962.
- B. In lieu of its right to demand a proportional payment from each county-wide school bond issue, the City agrees that from and after the execution of this agreement all County bonds for school purposes shall be issued and sold according to the following terms:
  - 1. Funds raised at the request of the County Board of Education for school construction outside the City shall be expended by the County without a proportional payment from such funds.
  - 2. County shall issue county-wide bonds to meet the capital needs of the City School System as follows"
    - a. City shall make request or requests for funds from time to time by delivery to the County Court Clerk and the County Judge of a certified copy of a Resolution by the City Council authorizing expenditure of such funds by the City School Board. Such request for requests shall be made on or before January 1 of each year in which funds will be needed so that necessary bond resolution may be prepared for presentation to the County Court at its regular January meeting and the bonds marketed by April 1.

- b. The County shall upon receipt of such request or requests issue without delay sufficient County bonds to produce the amount of funds requested.
- c. Upon receipt of the proceeds of such bonds, the County Trustee shall forthwith transfer said funds to the Treasurer of the City free of any control of the County as to the use of such funds, provide that the same shall be expended by the City in accordance with the terms of TCA 49-713.
- d. The City School Board and the County School Board will develop by mutual agreement a county-wide budget of capital expansion and improvement funds, projecting the needs for school facilities over a ten year period, and specifying the recommended order of such expansion and improvements year by year. In developing such budget the respective Boards may make such use of population studies and school studies as may be available from the Metropolitan Planning Commission. The Capital Budget and projection of needs so developed shall annually be extended by the Boards for one year, and may be adjusted from time to time as circumstances shall require.

When a majority of each of the respective Boards agrees upon such a budget, it is agreed that such budget shall form the basis for each Board's request to its respective legislative body for capital funds.

Nothing herein is intended to limit or in any wise restrict the right of County Court to issue or refuse to issue bonds for school construction outside the City in such amounts and at such times as it may see fit, whether consistent or inconsistent with the request of the County Board of Education. Neither is anything herein intended, except as provided in paragraph 3 hereinbelow, to limit or in any wise restrict the right of City Council to request or refuse to request the issuance of county-wide bonds for school construction inside the City in such amounts as it may see fit, and County court shall be bound to issue such bonds upon proper request by City council in accordance with Article IV, C, a, b, c, above, irrespective of any agreements or lack of agreement between the Boards of Education.

3. The City may not in the first three years hereafter be entitled to more than 60 percent of the total bonds issued by the County under this agreement. In the next three years thereafter the City may not be entitled to more than 65 percent of the total bonds issue by the County under this agreement. After these two periods of three years have expired the limitation of division of bonds sold by the County shall be upon the basis of average daily attendance for each year thereafter.

4. Nothing herein shall be construed to give to the County or its School Board any right to direct or control the management or operation of the City School System or any part thereof.
5. The provision of this Article IV shall continue in full force and effect until the City shall have paid to the County the total requirements of principal and interest on Rural bonds as set out in Exhibit "A" hereto, provided, that the parties may by mutual agreement sooner terminate the same. After the said total requirements of principal and interest have been paid by the City to the County the parties shall review the fiscal problems of each with reference to schools existing at that time to determine whether the provisions of Article IV shall be terminated or not.

If after review it appears to either party upon reasonable grounds that it would be inequitable to continue in force the provisions of this Article IV, then such party may terminate the provisions of this Article IV upon six months notice to the Chief Executive Office of the other, assigning reasons for such termination.

V

The Parties agree as follows respecting the attendance at the above schools by a student living outside the corporate limits of the City.

- A. Pupils now attending such schools may continue to do so tuition-free.
- B. New first grades, new high school students, and other pupils hereafter moving into a county school district may attend the nearest of the above listed schools located within two miles of his residence, tuition-free.
- C. Pupils not now attending one of the above listed schools who move hereafter into a different county school district, and whose residence is more than two miles from all of the above listed schools, may attend one of the above listed schools nearer to his residence than the nearest county school if he would have attended said school had it remained a part of the County School System.
- D. No pupil may attend a City School without payment of tuition if he or his parents or guardian have moved their residence from within the present corporate limits of the City to a place outside the present corporate limits of the City at any time after November 22, 1960.
- E. The City reserves the right to transfer pupils attending under paragraphs A, B, and C above if transfer shall seem advisable to alleviate crowded conditions.

F. Attendance tuition-free under paragraphs A, B, and C above shall cease after June 1969, following which time all County Students attending City Schools must pay tuition or attend under an exchange agreement then in effect.

VI

In event of consolidation of the two school systems the above agreement respecting the city's payment of principal and interest on rural bonds and the above agreements respecting waiver of the division of bond proceeds shall be void and of no effect. If such consolidation shall become effective at a time less than one year following any remittance by the City to the County of funds for payment of bonds as provided in Article III above, the County shall return to the city the same proportion of such remittance as the time elapsed between such remittance and the effective date of consolidation bears to one year, less the amount of funds the County would have received during such period from beer tax, capital outlay, etc., and which the County had previously pledged for retirement of said rural school bonds has annexation not been voted.

VII

As additional consideration for the transfer and conveyance of the school properties aforesaid, City agrees to pay to the County the sum of Three Hundred Twenty-Eight Thousand Dollars (\$328,000) cash, the same to be paid as follows: Fifty Thousand Dollars (\$50,000) on the 15th day of October, November and December, 1963, Fifty thousand Dollars (\$50,000) on the 15th day of January and February 1964, and Seventy-Eight Thousand Dollars (\$78,000) on the 15th day of March, 1964.

County agrees, as additional consideration, that during the school year ending June 1964, it will provide transportation to and from school for all pupils who would have been entitled to such transportation by the County for the transfer and conveyance provided in this Agreement.

VIII

The provisions of this agreement may be enforced by suit for specific performance to the Chancery Court for Knox County, Tennessee, or in the alternative by suit for damages in any Court of this State having jurisdiction. It is specifically agreed that in event of breach of Article IV, B, 2, any funds borrowed by the City and applied to school construction pending outcome of the suit for specific performance may be repaid by the City with proceeds of the bonds thereafter issued by the County whether the same be issue in conformity with a decree of specific performance or otherwise.

IN WITNESS WHEREOF, parties have caused this agreement to be executed on the day and year first above written by their duly authorized authors and officials.

Approved as to form and correctness:

CITY OF KNOXVILLE

\_\_\_\_\_  
Director of Law

By \_\_\_\_\_  
Mayor

COUNTY OF KNOX

By \_\_\_\_\_  
County Judge

**APPENDIX N**  
**ARBITRATION BRIEF FOR MEMPHIS BOARD OF EDUCATION**



APPENDIX N

ARBITRATION BRIEF FOR MEMPHIS BOARD OF EDUCATION

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SHELBY COUNTY AND  
THE SHELBY COUNTY BOARD OF EDUCATION  
Petitioners

and

BOARD OF EDUCATION  
OF THE MEMPHIS CITY SCHOOLS  
Respondent

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MEMORANDUM OF POINTS AND AUTHORITIES

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Comes the respondent, Board of Education of the Memphis City Schools, and respectfully submits this Memorandum of Points and Authorities to the Board of Arbitration:

I.

THE LAW DOES NOT REQUIRE THAT AN ANNEXING MUNICIPALITY COMPENSATE ANOTHER AGENCY OF GOVERNMENT FOR PUBLIC PROPERTIES WHICH HAVE BEEN TAKEN AS A RESULT OF ANNEXATION.

At the threshold of this controversy, there is a fundamental difference of view between the parties as to the basic function of the Board of Arbitration. In the one hand, petitioners view the law as requiring that compensation be paid for annexed schools, and they would limit this arbitration to the sole issue of the value of the school properties taken into the City. Respondent on the other hand very earnestly contends that the Board is confronted by a much broader range of issues than the mere appraisal of real estate. It is responsible for arriving at a just and reasonable decision which takes into account the overall realignment of governmental functions, rights and responsibilities resulting from the annexation. Obviously, since the results of the Board's decision will ultimately be borne by the residents and taxpayers of the community, the final criterion must be one of fairness to the various groups of taxpayers involved.

It is appropriate to consider, at the outset of this discussion, the language of the statute which authorizes this arbitration:

"Municipal Property And Services - Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as hereinabove provided, an annexing municipality and any affected instrumentality of the State of Tennessee, such as, but not limited to, a utility district, sanitary district, school district, or any 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. Provided, however, that 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 which it annexes, notwithstanding Sec. 6-26-7 or any other statute, subject, however, to the provisions of this section with respect to electric cooperatives. 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 the state of Tennessee effective at the time of submission to the arbitrators and Subsection (2) of Sec. 23-501, shall not apply to any arbitration arising under Subsection 6-308-6-320. 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 Subsection 23-513--23-515 and 23-518. T.C.A. 6-318. (Emphasis supplied)

There are no court decisions construing this statute which are particularly helpful in dealing with the issue raised by this arbitration. The case of *Whitt v. McCanless*, 200 Tenn. 360 (1956), simply upholds the constitutionality of the 1955 annexation law, of which this statute forms a part. In *Hamilton County v. City of Chattanooga*, 203 Tenn. 85 (1958), the Court held that a county was an "affected instrumentality" within the meaning of the statute and, therefore, arbitration would be required. However, the Court did not expand on the language of the statute to throw any light on what the result of the arbitration might be.

No language in this statute suggests that the standard applied by the Board should be one of monetary compensation according to either the value or the cost of the properties taken. On the contrary, the statute recognizes that an annexation does not involve a simple transfer of property but results in an indivisible transfer of numerous "public functions, rights, duties, property, assets and liabilities" and, as we shall later discuss, we doubt that the statute authorizes a monetary award.

The statute leaves the Board of Arbitration free to reach a decision which is fair to all agencies and all taxpayers and which takes into account the entire governmental reorganization which results from the changed boundaries. "Reason and justice" are the only measures by which the ultimate result is to be evaluated, and the word "compensation" does not appear in any place in the statute. The language of the statute, therefore, lends no support to the simplistic approach of the petitioners: an approach which assumes that monetary compensation must be paid and leaves as the only question for the Board the issue of "how much."

In weighing the intent of this statute, it is also significant to note that the Chancery Court is designated as the reviewing body for this arbitration proceeding. This is the court where all considerations of general equity to the parties and taxpayers can be evaluated. If, as petitioners contend, the act was tantamount to a condemnation statute, it would have been more logical to designate the Circuit Court as the reviewing tribunal.

## II.

### THE "COUNTY TAXPAYER HAS SUFFERED NO LOSS AS A RESULT OF THE ANNEXATION OF SCHOOLS IN THE WALKER HOMES AND WHITE HAVEN AREA

In weighing the economic impact of annexation on the various groups of taxpayers involved, the Board has had the benefit of the testimony of Dr. Wilbur R. Thompson. Dr. Thompson is a pioneer in the field of urban economics and, in addition to his academic work, has had personal experience with various intergovernmental authorities. He is therefore, eminently, and perhaps uniquely, qualified to express an opinion with regard to the dictates of fairness and reason in the type of intergovernmental transfer of duties and properties which confronts this Board.

At pages 218 through 224 of the record of the October 4th hearing, Dr. Thompson discussed his general opinion with respect to the transfer of property and responsibilities from one governmental agency to another. He pointed out that an annexation is not a taking of property from its owners but a taking of both the owners and their property into a new governmental jurisdiction. Applying this reasoning to an annexation of school properties, it is obvious that if the annexation takes both the school buildings and the children served by those schools, there has been on gain or loss which would justify one group of taxpayers being compensated at the expense of another. State another way, the county held the school property which are the subject of this arbitration for the sole purpose of performing its responsibility of educating the children in the annexed areas. When the respondent relieves the county of this responsibility, the respondent is entitled to take charge of these properties and should not be required to pay additional compensation.

Dr. Thompson's opinion was based in part on the fact that a governmental agency is regard, not as a private property owner, but as a trustee which holds property for the benefit of the citizens or taxpayers. At page 221, he carefully drew a distinction between condemnation proceeding in which the owner is divested of his property and an annexation, in which property and owners alike pass into the jurisdiction of a new governmental agency. this view of the transaction is not only supported by Dr. Thompson's personal expertise, but has been confirmed by the Supreme Court of this state. In *Prescott v. Town of Lexxon*, 100 Tenn. 59 (1898), the Court held that the organization of a special school district for the town of Lexxon divested title to the school in that town of the 18th school district of Shelby County and into the newly created municipality. The Court confirmed Dr. Thompson's opinion by stating:

"In the present case it is evident that the property in question cannot now be used for school purposes, unless by the Board of Education, representing such uses within the limits of the new corporation, and if complainants were permitted to control at all, it would be only on the idea of an ownership which could alone be divested by grant or by express Legislative enactment. Such theory, however, would ignore the fact that the title to such property is only held in trust for the public, and that by the change of municipal conditions the cestui que trust has become that public constituting the new corporation of Lennon." 100 Tenn. 594 (Emphasis added).

Of course, as both the Court in *Lennon* and the City Board's witnesses pointed out, an injustice would be worked in particular situations. This might occur if the annexed area did not include all of the school children served by the annexed schools, resulting in the county;s being obliged to construct new school buildings. T.C.A. 6-318 would allow a Board of Arbitration to make adjustments for such situations. In the present case, however, no such inequity exists. At page 372 of the hearing of June 7th, the petitioner's witness, Mr. George Barnes, testified that the County Board had not been obliged to construct any additional school facilities as a result of the annexation. In fact, all of the proof at the hearing was to the effect that the children served by these schools had been taken into the city along with the school buildings.

The witness, John P. Freeman, speaking with the benefit of vast experience in school finance and in the relationship of the City and County school systems in this community, confirmed Dr. Thompson's testimony. Beginning on page 402 of the transcript of the hearing of June 7th, Mr. Freeman pointed out that those taxpayers remaining outside the city have suffered no loss as a result of these annexations. To illustrate this point, he showed that the taxpayers in Shelby County may be divided into three groups for purposes of this arbitration: (1) Taxpayers residing within the city of Memphis prior to the annexation, (2) taxpayers continuing to reside outside the city of Memphis, and (3) taxpayers residing in the annexed area. The taxpayers in Group (1), who live within the old boundaries of Memphis and who send their children in schools located within those boundaries, have not reaped any benefit from the fact

that other schools located in the Whitehaven-Walker Homes areas are now under the jurisdiction of the City Board of Education. The taxpayers in Group (2), who have always sent their children to schools that remain outside the city and whose schools are still a part of the Shelby County system, have suffered no loss by the detachment of other schools from the system. The situation of these taxpayers is unchanged and there is no equity in the county's property that the schools of these taxpayers should be subsidized by the remainder of the citizens of Shelby County. Taxpayers in Group (3), who have come into the city along with the annexation of their schools, are in the same position as they were when these schools were in the county. They have been taxed as county taxpayers to build the schools in question, and it would be a gross injustice to require them to be taxed again as city taxpayers to pay for the schools a second time.

In terms of the analysis used by the Tennessee Supreme Court in *Lennox*, the taxpayers in Group 3 are the beneficial owners of the annexed schools and petitioners are their trustee. If petitioners' theory of this arbitration were upheld, it would result in a legal absurdity: the requirement that a cestui que trust must purchase how own property from his trustee.

The validity of this analysis was further confirmed by Mr. Gary Head, a professional in the field of local government:

"In addition, I have a strong conviction that when one government Unit accepts the responsibility of another Governmental Unit, and, consequently the assets, that no payment should be required." (Page 57, Hearing of September 13th)

The petitioners themselves furnish no basis on which to challenge the conclusions of these witnesses. No loss or inequity was shown to exist by the petitioners, and no expert testimony in the field of governmental relations was presented to suggest that one agency of government should receive financial compensation for the mere process of turning over certain of its functions to another governmental agency. Moreover, when the petitioners' witness, Mr. George Barnes, was invited on cross examination to give his opinion as to the requirements of "justice and reason" with regard to this transaction, he declined the opportunity. (See Page 344, et seq., Hearing of June 3rd). He also failed to indicate any financial loss which the petitioners would sustain in the course of turning over to the respondents the schools and education responsibilities in the annexed areas. In fact, to the extent that the County's situation has changed at all, the remaining portion of the Court School System has realized a net gain in this transaction. This is because non-severable assets of the petitioners have remained entirely in the hands of the County School Board. The County, for example, will now have a greater per capita amount of administrative and transportation facilities with which to serve the remaining students.

Based on the facts set out above, respondents submit that justice and reason do not require any compensation whatsoever for the school properties in the annexed areas. These properties were acquired and held by petitioners in order to discharge their responsibility of educating the children living in those areas. Respondents, having relieved petitioners of that responsibility to the beneficial owners of the property, are entitled - as part of the overall transfer of governmental duties - to assume control of the properties used in the performance of these duties. To require respondents to go further and to pay the County for the privilege of taking over these functions would be manifestly unjust and unreasonable. It would require taxpayers living within the City limits to simply subsidize the operation of a school system in other parts of Shelby County.

### III.

EVEN IF PAYMENT FOR THE SCHOOLS WERE REQUIRED, THE INEQUITIES SUFFERED BY THE CITY TAXPAYER HAVE MORE THAN OFFSET THE CLAIM OF PETITIONERS

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Although, as discussed above, it is respondent's position that neither law or equity would require a payment for assets transferred between governmental bodies, the proof disclosed a number of areas in which the City taxpayer has already suffered inequities. These areas more than offset the entire claim of the County for compensation.

#### A. The Illegal Division of County School Funds

Prior to the decision of the Tennessee Supreme in *Board of Education v. Shelby County, et al.*, 207 Tenn. 330 (1960), bond proceeds and County school levies were divided on a fifty-fifty basis between the City and the County Boards of Education. Since more children attended the Memphis City School system, this resulted in an inequitable distribution of school funds, which was held by the Supreme Court to be illegal and unconstitutional. At page 398 of the Hearing of June 7th, Mr. John Freeman testified that the total amount of bond funds wrongfully withheld from the City Board as a result of this arrangement was approximately \$13,000,000. It is the position of respondent that this amount should be offset against any claim which the City might otherwise be awarded. This was substantiated by the testimony of Mr. Harvey on page 165-7 (May 26th). He shows that the city received \$17,950,000 from bond issues of 1948-60. Based on the 75-25 pupil population, the City Board should have received \$32,175,000 of the \$42,950,000 issued during these years.

The petitioners seek to evade this issue by relying on the refusal of the Supreme Court to make a cash award in favor of the City Board. This overlooks the well-recognized principle that even a claim which has been barred so that it can no longer be the basis of an affirmative action may be raised as a defense. This is particularly true where the claim is in the nature of a recoupment arising out of the same transaction (51 A., Jr. 2d "Limitation of Action", Sec. 77). Many of the site purchases and construction payments on which the County bases its claim were made out

of these very school funds which over the years were illegally withheld from the City Board. The County's claim, therefore, arises directly out of the same transaction as the barred claim of the City Board for the recovery of these funds. While the Supreme Court declined to award the City a recover for these past injustices, it does not follow that expenditures made of illegally-obtained money should be allowed as a basis of affirmative recovery of the County against the City Board. This would allow the County take advantage of the past wrong-doing and to receive the illegal funds a second time.

#### B. The Construction of the Shelby County Administration Building

In the course of the present hearing, another example of illegal appropriation of funds to the County School Board came to light. The testimony of Mr. Ward Harvey showed that the new Administration Building of the Shelby County Board of Education was built with funds which had not been divided on an a/d/a basis with the City School system (Pages 226-8, Hearing of May 31st). This building is used entirely for school purposes by the County board and its construction, therefore, represents an expenditure of County funds for education purposes. Under the rule of *Board of Education v. Shelby County et al.*, supra, the County was obligated to give the City Board an a/d/a share of any educational appropriations. The County expenditure on this building was \$895,000.00. Based on a 3:1 a/d/a ration, the County is obligated to pay the City \$2,685,000 and this amount of money, which has not been received by the City of Memphis, should be offset against any County claim.

#### C. The Physical Needs of the Annexed Buildings

In addition to incurring the general liabilities and responsibilities associated with the duty of educating children in the annexed areas, the City Board has incurred various extraordinary expenses in maintaining and improving the annexed schools. Mr. John Freeman testified to the pressing facility needs in these areas and to the regrettable state of most of the annexed buildings. Exhibits Number 1 and 2 to his testimony set out the extensive needs in the annexed areas. At page 410 of the Hearing of June 7th, Mr. Freeman testified that there were approximately \$1,000,000 in maintenance costs required of these funds, of which \$310,000.00 had already been committed. Capital needs in these areas were estimated at an additional \$3,000,000.

These expenses were over and above the normal expenditures incurred in extending the city school system, such as the increase in the amount of the supplement which is paid out of City property taxes. In the present year, for example, the City of Memphis has contributed \$9,982,758.93 to the City Board's budget, for an average contribution of \$75.51 per pupil. This amount is raised purely from the City property tax. If this amount were capitalized at 8 percent, the result would be a capital outlay of \$948.88 for each pupil taken into the City as a result of these annexations. This amount multiplied by the 8,406 pupils in the Westwood area would

result in a capitalized expenditure of \$7,934,255.38 and multiplied by the 11,907 annexed students in Whitehaven would result in a capitalized expenditure of \$11,238,779.16, or a total of \$19,173,034.44. In light of these increased expenses incurred by the City Board with regard to capital expenditures and to increased operating expenses, it would be unreasonable, both legally and practically, to require the City Board to bear additional expenses resulting from this annexation.

#### D. Overall Inequities Suffered By The City Taxpayer

In addition to the above matters which relate directly to school expenditures, the respondent has shown that the City taxpayer is already subsidizing the general operation of county government to an inequitable degree. The principal proof on this issue was the Memphis-Shelby County Fiscal Relationship Study (Exhibit 2 to the testimony of Mr. Gary Head) and the supporting testimony of the witnesses, Messrs. Head and Thompson. This study covers the fiscal years of 1968, 1969 and 1970 and it is pointed out at Page 2 of the Study that during this period \$17,000,000 in "spillover" benefits flowed from the City taxpayer to the County taxpayer. This phenomenon is the result of a system of double taxation by which the City resident pays 100 percent of the amount required to operate the City government and also pays approximately 85 percent of the property taxes required to operate the County government.

The method used in the Fiscal Relationship Study was to determine the amount of benefits received by the City taxpayer as a result of each Shelby County program and to deduct from that amount the total costs of the proper paid for by the city taxpayer. If the cost of the City taxpayer exceeded the benefit of the program, the excess amount was noted as a "spillover" benefit from the City taxpayer to the County. It was noted at Page 3 of the Study that no County service produced a contrary spillover in the City's favor while virtually every County function resulted in a spillover from the City taxpayer to the County.

As described by Mr. Head, the Study adopted as its hypothetical theory the assumption that the benefits of most city and County services should be allocated equally among the taxpayers. Mr. Head pointed out that this basic method was a means of assuring absolute fairness to the County taxpayer, since the contrasting audit approach would have showed an increased spillover from the City taxpayer to the County (Pages 28-30, Hearing of September 13th).

A second area in which the Head study bent over backward to assure fairness to the County was the computation of the trade spillover. The fact that a preponderance of commercial property is located in the City was adjusted by allowing the County full credit for all commercial benefits which were not identifiable as stemming from City residents (Page 34, Hearing of September 13th). The study, therefore, shows the minimum amount of benefit spillover from the City resident to the County and, in Mr. Head's opinion, the true amount of County benefit would exceed the \$17,000,000 which was identified by the study (Pages 23-4, Hearing of September 13th).



Although the County's witness, Mr. John Thomas, indicated that various other studies on the City-County fiscal relationship had been conducted, the petitioners did not attempt to present any evidence which would refute the findings of respondent's analysis as reflected in the Head study. It can only be assumed from this that other studies would either support the respondent's case or would not stand the scrutiny to which Mr. Head's study was subjected. Mr. Thomas did suggest two different approaches which might be made in another study. The first suggestion was that an adult approach should be used. Such approach, however, would result in a showing of greater inequity in favor of the County taxpayer. This is true because such County services as the construction and maintenance of the road system and the operation of the sheriff's department outside the city limits would then be attributed to non-city residents. Under the approach of Mr. Head's study, these services, although performed outside the City limits, were attributed equally to all residents of Memphis and Shelby County. Thus, the first suggestion of Mr. Thomas would result in a finding of spillover benefits to the County government which would greatly exceed the \$17,000,000 indicated by Mr. Head's study.

The second approach suggested by Mr. Thomas was the unique theory of removing the tax produced by commercial and other income-producing property from the amounts credited to the City taxpayer. This suggestion overlooks the fact that the concentration of commercial property in an urban area is offset by the greater need for services to the poor that exists in such area. Even more important, Mr. Thomas' application of this principle was inconsistent if commercial and industrial assessments are to be excluded on the ground that they reflect a fortuitous distribution of income-producing property, since it would seem to naturally follow that farm properties which are also income producing, non-residential uses should be removed from the credits attributed to the non-city taxpayer. Thus, the consistent application of Mr. Thomas' second suggestion would undoubtedly lead to the finding of additional spillover benefit in favor of the County.

On the basis of the evidence, therefore, the \$17,000,000 in spillover benefits identified by Mr. Head must be taken as the minimum amount of inequity suffered by the City taxpayer. The Board of Arbitration, which is charged with considering the full range of issues relating to the annexation, should take into account the existence of this inequity. Even though it falls outside the scope of school expenditures, it is a direct subsidy provided to the County by the same group of taxpayers who would bear the ultimate expense of any award which the petitioners might receive, and respondent submits that any award of this Board should attempt to deal equitably with all of the economic realities faced by the taxpayers involved.

IV.

RESPONDENT SHOULD NOT BE REQUIRED TO ASSUME OUTSTANDING BONDED  
INDEBTEDNESS ARISING FROM COUNTY-WIDE BOND ISSUES

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Although there is superficial plausibility in the claim that the City Board should assume the obligation of retiring outstanding bonded indebtedness with respect to the annexed schools, a careful analysis would show that such action should not equitably be required for the reason that those bonds are being retired from tax levies imposed by the County on all County taxpayers.

The County had authority under TCA 49-715 to issue bonds which would be retired solely from taxes levied on property from areas outside the City. Had this been done, it would clearly be equitable to require that the outstanding obligations of these bonds be assumed by the City upon the annexation of the schools. The County, however, choose to disregard this opportunity and to finance the schools by a bond issue which is to be retired from General County Funds. Since 1961, the proceeds of such bond issues have been divided equitably on a per capita basis for the benefit of the school children in the County. The bonds are retired by a tax levy which falls equally over all of the assessed property in the County, with the City taxpayer already retiring 80 to 85 percent of these bonds. So long as the buildings and equipment which were purchased by these bond issues continue to be enjoyed upon an equitable and per capita basis by the citizens of the County, no inequity results even through control of particular schools may be transferred from one jurisdiction to another.

The same reasoning applies to the County's claim of cash payment for equipment in these school buildings. The funds used to purchase this equipment have been divided on a per capita basis among the school children through the County. If, for example, a particular tax levy were used to buy desks or books on an equal basis for all children in both school systems, there would be no equity in requiring annexed school children either to abandon their per capital share of these assets or to pay a part of their costs a second time.

It should also be noted that TCA 6-318 not only fails to require that a cash award be made for annexed school property, but does not even authorized such an award. No clause of this statute confers on the Board of Arbitration any power to direct a cash award with respect to properties which have already been paid for by the County. The only relief which the statute would authorize the Board to give to the petitioners would be the allocation of "liabilities" to the City Board if such an allocated were acquired [required] by justice and reason. Based on the language of the statute, respondent submits that the maximum relief which could be granted the County would be the assumption of existing liabilities by the City Board although, as discussed above, this relief would not be appropriate in light of the county-wide nature of these liabilities.

CONCLUSION

The respondent, Board of Education of Memphis City Schools, therefore, submits to the Board of Arbitrators that is it not liable to reimburse the County in any amount whatsoever for the schools involved in this annexation. This is true for the following reasons:

1. The entire process of annexation has resulted in no more than a transfer of trust in the annexed schools together with their beneficial owners - the people of Whitehaven and Walker Homes areas - from one governmental agency as Trustee to another.
2. The claim of compensation has been more than offset by the numerous inequities suffered by the City taxpayer and the City Board.
3. The compensation sought by the petitioners is neither required nor authorized by the terms of TCA 6-318, and no inequities have been suffered by the petitioners which would warrant a departure from the Act.

Respectfully submitted,

EVANS, PETREE, COBB & EDWARDS

By \_\_\_\_\_  
Attorneys for Respondent  
Board of Education of the  
Memphis City Schools

CERTIFICATE OF SERVICE

Copy of the foregoing Memorandum of Points and Authorities served on Lee Winchester, Jr., Esq., Attorney for Petitioners, by forwarding same copy by United States mail, postage prepaid, addressed to said attorney at this business address in Memphis, Tennessee, this the 7th day of January, 1972.

**APPENDIX O**

**BOARD OF ARBITRATION AWARD, SHELBY COUNTY VS.  
MEMPHIS BOARD OF EDUCATION**

APPENDIX O

BOARD OF ARBITRATION AWARD, SHELBY COUNTY VS.  
MEMPHIS BOARD OF EDUCATION

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SHELBY COUNTY AND  
THE SHELBY COUNTY BOARD OF EDUCATION

Petitioners

and

BOARD OF EDUCATION  
OF THE MEMPHIS CITY SCHOOLS

Respondent

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After a full hearing before the Board of Arbitration, duly impaneled pursuant to the provisions of TCA 6-318 and after consideration of all of the evidence presented to the Board, it is the finding and opinion of the majority of the Board of Arbitration that the Petitioner, Shelby County Board of Education, should be granted a total sum of \$1,917,904.00 without interest thereon as a full and final settlement with respect to the school sites, school buildings, and other school properties passing to the Board of Education of the Memphis City Schools by reason of the 1969 and 1970 annexations.

Payment of this amount shall be made by the Board of Education of the Memphis City Schools as follows: \$127,296.00 shall be paid in cash with respect to the equipment and furnishings of the annexed schools. The balance of the award, or \$1,790,608.00, shall be credited to the Shelby County Board of Education for use as future construction funds in the same manner as the credit prescribed in Item 3 of the Settlement Agreement previously entered into by the parties with respect to the school properties annexed in 1965, except that the Average Daily Attendance percentage used in that agreement shall be adjusted to reflect the Average Daily Attendance at 21.74 percent for the Shelby County Board of Education with regard to the funds awarded by reason of the 1969 annexations and 13.33 percent with regard to funds awarded by reason of the 1970 annexations.

The computation of the above amount was made in the following manner:

1. The total acquisition cost of each parcel of land was computer with respect to each of the annexed areas. This amount was \$143,187.00 with respect to the 1969 annexation and \$397,866.00 with respect to the 1970 annexation.

To this amount was added the cost of improvements depreciated over a thirty-year period. This amount was \$4,022,748.00 with respect to the 1969 annexation and \$6,240,792.00 with respect to the 1970 annexation.

The content value of each of the annexed schools was then added less a depreciation figure of 50 percent, said 50 percent depreciation figure having been agreed to as reasonable by officials of the respective Boards. This depreciated content value was \$330,866.00 with respect to the 1969 annexation and \$415,350.00 with respect to the 1970 annexation.

2. The total thus obtained was \$4,496,801.00 for the 1969 annexation and \$7,054,088.00 for the 1970 annexation. This total was then multiplied by the percentage which the Average Daily Attendance of pupils in the County School System bore with respect to the Average Daily Attendance of students in Shelby County as a whole. The period used for the computation of the a/d/a was the period immediately following the assumption of control of the annexed schools by the Board of Education of the Memphis City Schools. With respect to the 1969 annexation, the percentage factor was 21.74 percent. With respect to the 1970 annexation, the percentage factor was 13.33 percent.
3. The result thus obtained represented the final award which is set out above. The award consists of a total award of \$977,604.00 with respect to the 1969 annexation, including \$71,930.00 for contents. The award also consists of a total of \$940,300.00 with respect to the 1970 annexation including \$55,666.00 for contents. Further itemization of these figures can be obtained by reference to the computation sheet which is attached as an appendix to this award.

IT IS FURTHER ADJUDGED by the Board of Arbitration that this award would be submitted to the Chancery Court of Shelby County pursuant to the terms of TCA 6-318.

The undersigned members of The Board of Arbitration concur in the foregoing finding and opinion, this the 15th day of March, 1972.

/a/ George M. Houston, Chrm.

/a/ Walter P. Armstrong, Jr.

To the majority finding and opinion of The Board of Arbitration the Honorable Ed Gibbons respectively excepts and reserves the right to file a minority finding and opinion in the Chancery Court of Shelby County pursuant to TCA 6-318.

/a/ Ed Gibbons

**APPENDIX P**

**CHANCELLOR'S CONSENT ORDER, SHELBY COUNTY VS.  
MEMPHIS BOARD OF EDUCATION**

APPENDIX P

CHANCELLOR'S CONSENT ORDER, SHELBY COUNTY VS.  
MEMPHIS BOARD OF EDUCATION

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

SHELBY COUNTY BOARD OF EDUCATION,  
Complainant

vs.

BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS,  
Defendant

No. 76380-3 R. D.

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CONSENT ORDER APPROVING SETTLEMENT AGREEMENT AND DISMISSION CAUSE

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This cause came on to be heard on the joint report of the parties to this lawsuit advising the Court that a settlement agreement heretofore filed as an exhibit to this report has been executed by all of the parties hereto.

And it appearing that this settlement agreement concludes all of the matters in controversy between the parties, including the annexation of schools in two areas which were involved in the original arbitration and litigation.

It further appears to the Court that the settlement agreement should be approved pursuant to the *Tennessee Code Annotated* 6-318; and that the trustee of Shelby County should be authorized and directed to carry out the terms of the settlement agreement; and that the provisions of the arbitration award should be completely set aside and superseded by the settlement agreement.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the contract dated the \_\_\_\_ day of \_\_\_\_\_, 1974, between the Shelby County Board of Education and the Board of Education of the Memphis City Schools be, and the same is hereby, approved as a final settlement of all liability arising from the annexations covered therein, and the Trustee of Shelby County, Tennessee, the Chairman of the Shelby county Court and other charged with distributing funds to the Shelby county Board of Education and Board of Education of the Memphis City Schools are authorized to carry out the terms of the said contract.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the arbitration award heretofore filed in this cause is forever set aside and held for naught and is superseded by the aforesaid contract.



The costs of this cause are assessed fifty (50%) percent against the defendant, Board of Education of the Memphis City Schools, and fifty (50%) percent against the plaintiff, Shelby County Board of Education.

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Chancellor

Approved:

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R. LEE WINCHESTER, JR.  
Attorney for Plaintiff,  
Shelby County Board of Education

EVANS, PETREE, COBB & EDWARDS

By \_\_\_\_\_  
Attorneys for Defendant,  
Board of Education of the Memphis City Schools

## CONTRACT

THIS INSTRUMENT entered into this 4th day of June, 1974, by and between the SHELBY COUNTY BOARD OF EDUCATION, party of the first part, hereinafter referred to as the "County Board of Education" and THE BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS, party of the second part, hereinafter referred to as the "City Board of Education."

## WITNESSETH:

WHEREAS, effective December 31, 1968, the City of Memphis annexed into its corporate boundaries additional territory containing the following schools owned by the County Board of Education: Ford Road School, Geeter School; Lakeview School, Levi School, Mitchell Road High School, Walker Elementary School, Weaver Elementary School, and Westwood High and Elementary School; and

WHEREAS, effective December 31, 1969, the City of Memphis annexed into its corporate boundaries additional territory containing the following schools owned by the County Board of Education: Fairley Elementary and High School, Gardenview Elementary School, Graceland Elementary School, Graves Elementary School, Havenview Elementary School, Hillcrest High School, Oakshire Elementary School, Raineshaven Elementary School, Westhaven Elementary School, Whitehaven Elementary and High School and Winchester Elementary School; and

WHEREAS, effective December 31, 1971, the City of Memphis annexed into its corporate boundaries additional territory continuing the following schools owned by the County Board of Education: Coro Lake Elementary School and White's Chapel Elementary School; and

WHEREAS, effective December 31, 1972, the City of Memphis annexed into its corporate boundaries additional territory containing the following schools owned by the County Board of Education: Scenic Hills Elementary School, Raleigh-Bartlett Meadows Elementary School, and Coleman Elementary School.

WHEREAS, in the case of each of the above annexations, the Shelby County Board of Education subsequently transferred the operation of the aforesaid schools to the city Board of Education and included in said transfer the furniture, fixtures and equipment located in and about the aforesaid properties; and

WHEREAS, being unable to agree upon the terms upon which the aforesaid school properties, furniture, fixtures and equipment are to be transferred to the City Board of Education, the parties have heretofore transmitted the matter to arbitration in accordance with the provisions of Section 6-318, etc., *Tennessee Code Annotated*, with respect to the 1968 and 1969 annexation resulting in an annexation award which has not been accepted and implemented by the parties and which has been appealed to the Chancery Court of Shelby County, Tennessee in case Number 76380-3; and

WHEREAS, both Boards as a result of continued negotiations, subject to the ratification by the Shelby County Quarterly Court, have resolved their differences and reached agreement both as to the amount and method of payment by the city Board of Education of the County Board of Education for all school properties, furniture, fixtures and equipment contained in all four of the above listed annexations:

NOW, THEREFORE, in consideration of the mutual promises of the parties and the further consideration as hereinafter set forth, it is agreed as follows:

1. That the total amount of bond proceeds creditable to the County in the manner hereinafter set forth with respect to all school properties, furniture, fixtures and equipment contained in the 1968 annexation shall be: \$2,354,428.60;

that the total amount of bond proceeds creditable to the County in the manner hereinafter set forth with respect to all school properties, furniture, fixtures and equipment contained in the 1969 annexation shall be: \$4,555,798.17;

that the total amount of bond proceeds creditable to the County in the manner hereinafter set forth with respect to all school properties, furniture, fixtures and equipment contained in the 1972 annexation shall be: \$272,504.22; and

that the total amount of bond proceeds creditable to the County in the manner hereinafter set forth with respect to all school properties, furniture, fixtures and equipment contained in the 1973 annexation shall be: \$1,031,037.02.

2. It is agreed that the total balance of payments for these four annexations in the amount of \$8,213,768.01 shall bear no interest and shall be credited to the County Board of Education by the City Board of Education only in the following manner: Shelby County or the Shelby County Board of Education shall have the right to issue County School Bonds or to use any other local funds subject to A.D.A. distribution as required by state laws for constructing purposes without participation by the City Board of Education in the proceeds until such time as the county Board shall have received \$8,213,768.01 of the said bond issues or other capital improvement funds that would otherwise have been paid to the City Board of Education. In other words, Shelby County or the Shelby County Board of Education shall have the right to issue County School Boards [bonds] or to use any other local funds subject to A.D.A. distribution as required by state laws for capital improvement purposes without the necessity of making any average daily attendance distribution to the City Board of Education other than as a credit against the obligation established herein, until such time as the City Board's A.D.A. share of such proceeds shall equal \$8,213,768.01.

3. The County Board agrees that, as the above credit is expended, it will promptly give notice to the City Board of the amount of bond credit and of the purpose for which it has been expended and of the source of County funds utilized whether they be bond or other county revenues.
4. Shelby County and the County Board of Education hereby agree that title to all school properties annexed by the City of Memphis shall be vested indefeasibly and in fee simple absolute in the Board of Education of the Memphis City Schools. Shelby County and the Shelby County Board of Education further agree that they will, upon request of the City Board, make formal conveyance of any or all of the said properties to the city Board by appropriate quit claim deed.
5. It is further agreed that the amount of credit due for the anticipated annexation of the North Raleigh Area which includes Brownsville, Spring Hill, Raleigh Egypt Elementary and High School shall be determined by the basis used in establishing the amounts in this settlement.
6. It is further agreed and understood by the parties that this contract is intended to supersede and supplant the arbitration award presently before the Chancery Court of Shelby County, Tennessee, incase Number 76380-3. Upon the conclusion of this agreement, that case shall be dismissed and the arbitration award therein set aside by consent of the parties. Shelby County, the Shelby County Board of Education, and the City Board of Education hereby mutually release each other from any further liability of any nature growing out of the four annexations covered by this agreement.

IT WITNESS WHEREOF, the aforesaid parties, the Shelby County Board of Education and the Board of Education of the Memphis City Schools, have hereto set their hands by their duly authorized officers the day and year above written.

SHELBY COUNTY BOARD OF EDUCATION

By \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary

BOARD OF EDUCATION OF THE MEMPHIS CITY SCHOOLS

By \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary

**APPENDIX Q**  
**COURT CASES CITED**

APPENDIX Q

COURT CASES CITED

- Balsinger v. Madisonville*, 222 Tenn. 272, 435 S.W. 2d 803 (1968).
- Bartlett v. Memphis*, 482 S.W. 2d 782 (Tenn. Ct. App., 1972).
- Bastnagel v. Memphis*, 224 Tenn. 514, 457 S.W. 2d 532 (1970).
- Brent v. Greeneville*, 203 Tenn. 60, 309 S.W. 2d 121 (1957).
- Campbell v. Morristown*, 207 Tenn. 593, 341 S.W. 2d 733 (1960).
- Central Soya Co. v. Chattanooga*, 207 Tenn. 138, 338 S.W. 2d 576 (1960).
- Collier v. Pigeon Forge*, 599 S.W. 2d 545 (Tenn. 1980).
- Cope v. Morristown*, 218 Tenn. 593, 404 S.W. 2d 798 (1966).
- Dean Hill Country Club, Inc., v. Knoxville*, 379 F. 2d 321 (1967).
- Frost v. City of Chattanooga*, 488 S.W. 2d 370 (S. Ct. Tenn., 1972).
- Gallatin v. Hendersonville*, 510 S.W. 2d 370 (S. Ct. Tenn., 1974).
- Hamilton County v. Chattanooga*, 203 Tenn. 85, 310 S.W. 2d 153 (1958).
- Hardison v. Columbia*, 210 Tenn. 514, 360 S.W. 2d 39 (1962).
- Hendersonville v. Hendersonville Utility District*, 506 S.W. 2d 149 (Ct. App., Tenn., 1973; Cert. denied by S. Ct. Tenn., March 4, 1974).
- Henrico County v. Richmond*, 177 Va. 789, 15 S.E. 2d 309 (1941).
- Hicks v. Chattanooga*, 513 S.W. 2d 780 (S. Ct. Tenn., 1974).
- Hudson v. Chattanooga*, 512 S.W. 2d 555 (S. Ct. Tenn., 1974).
- Hunt v. Hunt*, 169 Tenn., 1, 80 S.W. 2d 666 (1935).
- Johnson City v. Maden*, 202 Tenn. 318, 304 S.W. 2d 317 (1957).
- Knoxville v. Graves*, 207 Tenn. 558, 341 S.W. 2d 718 (1960).
- Kingsport v. Crown Enterprises, Inc.*, 562 S.W. 2d 808 (Tenn. 1978).
- Lee v. Chattanooga*, 500 S.W. 2d 917 (Ct. App., Tenn., 1973).

*Lenior City v. Loudon*, 571 S.W. 2d 297 (Tenn. 1978) .

*Maury County Farmers Co-op Corp. v. Columbia*, 210 Tenn. 657, 362 S.W. 2d 219 (1962) .

*Moretz v. Johnson City*, 518 S.W. 2d 628 (Tenn. 1979) .

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

*Mount Carmel v. Kingsport*, 217 Tenn. 298, 397 S.W. 2d 379 (1965) .

*Nailing v. Lynn*, 208 Tenn. 372, 346 S.W. 2d 247 (1961) .

*New Providence Utility District v. Clarksville*, unreported, (S. Ct., Tenn., Nov. 14, 1966; Cert. denied by U. S. S. Ct., May 22, 1967, for want of jurisdiction) .

*Oak Ridge v. Roane County*, 563 S.W. 2d 895 (Tenn. 1978) .

*Pirtle v. Jackson*, 560 S.W. 2d 400 (Tenn. 1977) .

*Prescott v. Lennox*, 100 Tenn. 591, 47 S.W. 181 (1898) .

*Robbins v. Jackson*, 218 Tenn. 322, 403 S.W. 2d 304 (1966) .

*Saylor v. Jackson*, 575 S.W. 2d 264 (Tenn. 1978) .

*Schmittou v. Nashville*, 208 Tenn. 290, 345 S.W. 2d 874 (1961) .

*Senff v. Columbia*, 208 Tenn. 59, 343 S.W. 2d 888 (1961) .

*Southerland v. Greeneville*, 201 Tenn. 133, 297 S.W. 2d 68 (1956) .

*Spoone v. Morristown*, 222 Tenn. 21, 431 S.W. 2d 827 (1968) .

*Stall v. Knoxville*, 211 Tenn. 271, 364 S.W. 2d 898 (1962) .

*Stall v. Knoxville*, 211 Tenn. 428, 365 S.W. 2d 433 (1962) .

*Vicars v. Kingsport*, 659 S.W. 2d 367 (Tenn. Ct. App. 1983) .

*Watauga v. Johnson City*, 589 S. W. 2d 901 (Tenn. 1979) .

*Wilson v. LaFayette*, 572 S. W. 2d 922 (Tenn. 1978) .

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

*Wood v. Memphis*, 510 S. W. 2d 889 (Tenn. 1974) .