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Consolidation of County and City Functions and other Devices for Simplifying Tennessee Local Government

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COMMENTS

CONSOLIDATION OF COUNTY AND CITY FUNCTIONS AND OTHER DEVICES FOR SIMPLIFYING TENNESSEE LOCAL GOVERNMENT

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I. INTRODUCTION

The growth of urban population beyond the legal boundaries of our towns and cities presents problems that are not being handled effectively by existing agencies of local government. Essentially the difficulty is that, while the suburbanites are an integral part of the central city's social and economic life, they are beyond her legal jurisdiction. As a result county government, designed primarily for rural areas, finds itself bogged down with urban problems. To meet such incongruities suburbanites often seek satisfaction of their needs in a series of uncoordinated special service districts, or other public or semi-public agencies and often ultimately in separate municipal incorporation. In short most of our urban centers are governed not by one, but by numerous more or less independent, uncoordinated, overlapping layers of local government. The result is confusion and conflict of authority, divided responsibility, high costs, uneven services, frustration of popular understanding and control, bitter antagonisms and decay of the central city due to the exodus of wealth and talents into suburbia, leaving costly blighted areas "in town" and an ever growing responsibility for "daylight populations" that bear little of the tax burdens involved.

One solution for such problems is the expansion of city limits by annexation of "built-up" or urbanized adjacent territory.[1] But annexation will often be politically or economically impractical and in any case leaves at least two layers of local government—county and city.

Another device for simplifying local government is consolidation in whole or in part of city and county government. This in turn would obviate the need for the other governmental agencies which tend to develop in fringe areas at the outskirts of our large municipalities. The essence of this approach is the integration or merger of the city and county into a single governing unit either for the performance of all, or of selected, functions. A related, but different device, is the inter-

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1. See Tenn. Pub. Acts 1955, c. 113.

governmental agreement. Under this device both county and city maintain their fully separate and independent status, but by contractual arrangements provide for the joint administration of selected services or functions. The purpose of the present paper is to examine the possibilities of existing Tennessee law with respect to consolidations and contractual arrangements for the simplifying of local governmental operations.

II. Consolidation of County and City Functions

Amendment No. 8, added to the Tennessee Constitution in 1953, provides that "the General Assembly may provide for the consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental or corporate functions now or hereafter vested in the counties in which such municipal corporations are located; provided, such consolidations shall not become effective until submitted to the qualified voters residing within the municipal corporation and in the county outside thereof, and approved by a majority of those voting within the municipal corporation and by a majority of those voting in the county outside the municipal corporation."

It will be noted that, in contrast to Amendment 6 (par. 3), this Amendment does not specify that the General Assembly must act by "general law." Indeed Amendment 8 is virtually a verbatim copy of one of the recommendations of the Frierson Commission[2] except that it omits the "general law" requirement which the Commission had included. Such an omission must be deemed meaningful. It follows that those who gave us Amendment 8 must have intended that consolidations could be accomplished either by general or by private act of the General Assembly.[3]

No general legislation authorizing consolidations has been enacted in Tennessee since the adoption of Amendment 8. Thus at least until such a measure is provided private act consolidation seems permissible.

But this presents two special problems, both of which grow out of Amendment 6 restrictions on private legislation. Under this new constitutional provision no private act can be effective unless by its terms it requires approval by popular referendum or by a two-thirds vote of the legislative body of any municipality or county affected thereby.[4] Thus a private consolidation act, since it would

2. Report of Constitution Revision Commission, State of Tennessee 37 (1946).

3. Amendment 7 prohibits all private acts with respect to home rule municipalities.

4. The Amendment reads as follows:

> "The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from

affect *both* a county and a city, would no doubt have to be approved by both—either by two-thirds vote of the city and the county legislative bodies or by referenda. The latter might cause trouble! Strictly two separate "elections" would have to be held, one for city voters and another for voters of the county which includes city voters. In practice this perhaps need mean only that city and extra-city votes would have to be separately tabulated. Any attempt at a short-cut by one county-wide vote would certainly invite challenge.

Then to compound the difficulty Amendment 8 requires referenda for consolidations—city voters must approve and county voters *who live outside the city* must approve before consolidation can be effected. Approval by city voters of a private consolidation act per Amendment 6 would at the same time appear to meet in substance the requirements of Amendment 8. But the same cannot be said as to county voters! For Amendment 6 contemplates *all* county voters, whereas Amendment 8 contemplates only those county voters who live outside the city. In short, private act consolidations would involve multiple elections at best. But to say this perhaps is to say merely that a single county-wide referendum would in substance meet all the requirements of both Amendments provided only that votes be separated and tabulated in such manner as to disclose the wishes of (a) county voters (b) city voters and (c) county voters residing outside the city. Some of this complexity could be eliminated, of course, by avoiding the referenda of Amendment 6, *i.e.*, by resorting to approval by the local legislative bodies. But the two-thirds vote requirement there might be a political stumbling block.

Another problem arises under the "anti-ripper" provision of Amendment 6. Under it *no* private act "having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary" of a municipal or county officer can be valid. Yet the normal effect of a consolidation of city and county functions would be to abolish at least some county or city offices—the whole point of consolidation being to abolish overlapping, duplicatory government. This difficulty might be met by taking care that consolidation should not become operative until the end of the term of office of any person who would be adversely affected, or by "buying off" all possible objectors. The former escape would be something of a problem in the case of a board or commission having staggered terms.

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any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected."

Of course, it is possible that the courts might hold that despite its broad language the "anti-ripper" amendment should not be construed to affect *bona fide,* locally approved governmental reorganizations.

Aside from the foregoing problems Amendment 8 is so general in its terms as to invite conflicts of interpretation as to just what forms of consolidation it authorizes. On this matter it is worth noting that the amendment clearly was inspired by the Frierson Commission proposal and that the latter in turn was derived from a 1924 Amendment to the Georgia Constitution[5] since repealed. The Frierson group virtually copied the first few sentences of that Amendment, inserted a "general law" requirement, and substituted the terms "any or all" for the term "all" in describing the quantity of functions that might be consolidated. The Commission omitted the remaining provision of the Georgia Amendment which makes it clear that in Georgia, consolidation was to be accomplished only by private act and only by transferring *all* municipal and county functions to a new city-county unit co-extensive geographically with the pre-existing county. The breadth and generality of the Frierson proposal, and hence of the Tennessee Amendment, surely must be deemed purposeful! Deliberate failure to adopt the limiting provisions of the Georgia Amendment (or something similar) must be considered an intentional grant of broad discretion to the General Assembly in consolidation matters—subject to the severe restraints imposed by the dual referendum election requirements. In short, the restraints imposed are political rather than legal.

This brings us to a crucial problem springing from the Amendment's language which on its face could be held to permit consolidation only by transfer of functions from cities to counties. This would preclude such common consolidation devices as the shifting of functions from counties to cities, or from both city and county to a third agency.

The Georgia Amendment from which the crucial language was drawn clearly contemplated only transfers of *all* municipal functions and *all* county functions to a new city-county entity. It is significant that this limited amendment has since been replaced in Georgia by a much broader one. Our Amendment makes no mention of a new third unit to which both city and county functions may be transferred. It must be interpreted to permit such consolidations, however, unless we are to make the unreasonable assumption that those who gave us this Amendment contemplated transfers of "any or *all*" functions of great metropolitan cities to county governments designed to handle only essentially rural affairs.[6] Surely it is generally under-

5. GA. CONST., art. XI, § 2a.

6. It is assumed here, and throughout this paper, that such provisions respecting counties as are found in Articles VII and X of the Tennessee Constitution do not impose restrictions or limitations upon the consolidation

stood that consolidation, if not exclusively, is primarily a metropolitan area concern. In short, it would be unreasonable to suppose Amendment 8 was designed only for smalltown and county problems.

While on its face this Amendment seems to contemplate only a shifting of functions *away* from cities, it does not say so unequivocally. Moreover there appears to be no ground in reason or history that would dictate such a one-way policy. Indeed Georgia itself has since abandoned that limitation. The fact that the Frierson Commission dropped that part of Georgia's 1924 Amendment which clearly spells out the one-way limitation suggests an intention to insure more flexibility for Tennessee. Thus in the absence of a clear prohibition, in the absence of any contrary grounds in history or reason, and in view of the apparent intention of the Frierson Commission, our courts may well permit two-way consolidations, *i.e.* transfers to, as well as from, cities.

Another device for accomplishing at least the results of consolidation is the unilateral abandonment of a function by a city and the assumption thereof by a county. Of course this involves at least two legal problems—may the function in question be dropped by the one and may it be legally picked up by the other?[7] The answer to such questions will depend upon the nature of the function and the existing general and private acts relating to the city and county involved.[8] But apart from the issue of legality, there are practical considerations which may be controlling. A city, for example, might be authorized, but not required, to operate a rabies control program. Having established such a program, the city might for one reason or another see fit to give it up. The mother county, whether specially authorized or not, in order to protect its own rabies control system might feel compelled to take over. Of course the same thing might be done conversely. In either case, with or without mutual agreement, a simplification of local government would be accomplished without special legislative authorization.

We do not suggest that either city or county should take advantage of a special situation to force its proper functions upon others. The point rather is that in many circumstances governmental simplification can be accomplished to the mutual satisfaction of all concerned without special legislative sanction or elaborate referenda—unless, of course, it is ultimately held that such acts constitute "consolidations" within the meaning of Amendment 8. It could be argued that un-

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of county and municipal functions. Or to put it differently such provisions are superseded by Amendment 8. This assumption, of course, may be unwarranted.

7. A case in point was abandonment by the City of Nashville, Tennessee, of its health function and assumption thereof by Davidson County in 1953 before Amendment 8 became effective. The cost of this function for the entire county is now paid by the county.

ilateral acts of the kind in question are not "consolidations." On the other hand the consolidation amendment could be construed as an effort to forbid one local government from foisting its functions off upon others without their consent. There appears to be no basis in the background of the Amendment for the latter construction.

In summary, then, it appears that a reasonable interpretation of Amendment 8 would permit consolidation of any or all county and municipal functions either by general or by private act, through creation of a new governmental agency to replace a pre-existing county and city for all or for only limited purposes, or instead of consolidating functions in a new third agency, by consolidating them either in the pre-existing city or county.[8]

III. Existing General Statutory Provisions for Simplifying Local Government Short of Consolidation

Prior to the consolidation amendment general legislation had been enacted in Tennessee for the expediting of local government by contractual arrangements between cities and counties. These measures will be explored below, but at the outset the problem of their compatibility with Amendment 8 must be considered. Is a city-county agreement for the administration by the county of all city and county schools a "consolidation"? If so, it would appear that legislation authorizing such an arrangement without the dual city and county referenda required by the amendment would be invalid. Certainly it may be argued that such contractual arrangements are essentially different from "consolidations" (see above) and so do not fall within the referenda requirements of Amendment 8. On the other hand there are at least some surface similarities between the two devices. It follows that courts might be induced to strike down any legislation purporting to authorize contractual transfers of functions between city and county, if such legislation did not provide for referendum approvals.

The sounder position, one suggests, is that Amendment 8 was not calculated to alter the existing device for simplifying local government by contractual arrangement. Rather its purpose was to authorize something *new* which might otherwise have been constitutionally vulnerable. That something new was consolidation which, unlike the contractual approach, changes the nature of the parties thereto, not merely their administrative responsibilities.

a. General and School Function Arrangements

8. See *Consolidation—Complete or Functional—of City and County Governments in Kentucky,* 42 Ky. L. J. 295, 297-98 (1953).

A Tennessee statute provides as follows:

> "The quarterly county court of any county and the chief legislative body of any municipality that lies within the boundaries of said county are hereby authorized and empowered to enter into any such agreements, compacts, or contractual relations as may be desirable or necessary for the purpose of permitting said county and said municipality to conduct, operate, or maintain, either jointly or by one agency for the other, desirable and necessary services or functions, under such terms as may be agreed upon by the two agencies."[9]

This is clearly the broadest existing Tennessee legislation on the problem at hand. It purports to cover all municipal and county functions and permits contractual arrangements for either joint operation, or operation by one agency for another. There appears to be no decision by any court of record concerning it. There is, however, another provision in the Tennessee code which seems to impose a limitation with respect to "separate [municipal] school systems."[10] The latter, according to this provision, may not be transferred without a referendum, but the law is far from clear as to whether such referendum is to be city-wide, or county-wide, or perhaps county-wide excluding the city.

Another peculiarity of the latter statute is that no contractual agreement is specified. For all that appears, upon approval by referendum, a city may transfer "administration of such town or city school system to the county board of education and county superintendent of education" without consent by either of the latter.

The same act "authorizes," but does not require, the transferring municipality to devote its school funds "to the payment of the proportionate part of the cost of the maintenance and operation of such schools."[11]

Other provisions of the same measure relate to the operation by, and duties of, the county school officials to whom such schools are transferred, and the handling of municipal school funds and indebtedness.[12]

Finally, the statute makes all that has been said above also applicable to transfers by special school districts to county school boards and superintendents.[13]

In connection with the foregoing, Section 2515 of the Tennessee Code[14] (enacted in 1925) should be mentioned. It authorizes "county

9. Tenn. Pub. Acts 1939, c. 222, § 1, TENN. CODE ANN. § 10268.14 (Williams Supp. 1952).
10. Tenn. Pub. Acts 1949, c. 40, § 1, TENN. CODE ANN. § 2397.1 (Williams Supp. 1952).
11. TENN. CODE ANN. §§ 2397.2, 2397.5 (Williams Supp. 1952).
12. *Id.*, §§ 2397.3, 2397.4.
13. *Id.*, § 2397.2.
14. TENN. CODE ANN. § 2515 (Williams 1934).

and town boards of education and special school district boards" *by mutual agreement* "to operate the school or schools of such town under the general supervision of the county superintendent." No referendum is mentioned. A proviso requires that nothing therein shall be construed to change "the general method of distribution of county and state school funds between the county and such towns on the basis of the average daily attendance as provided in this statute. . . ."[15]

Conversely to the foregoing, Section 2393.16 of the Tennessee Code[16] authorizes contracts whereby "county high school may be taught in . . . private or city schools; provided, that the high school branches be taught free of charge to all pupils of the county entitled thereto" and provided also that the authority of the state commissioner, county superintendent and all public school officers shall be as full and ample in such schools as in other county high schools. No referendum is required.

b. Hospitals

Counties and municipalities are authorized jointly or separately to contribute funds for hospitals in accordance with the following statutory provisions:

> Any county or incorporated municipality of this state is hereby empowered and authorized to make contributions of property or money from the public funds of any such county or municipality, or of both, to any general welfare corporation established under the laws of this state, and engaged in acquiring, erecting, building, constructing, enlarging or repairing any hospital of this state which serves the citizens and residents of any such county or municipality, without regard to race, creed or color and which is not operated for private profit, without regard to whether such hospital is located within or without the territorial limits of any such county or municipality.[17]

The statute provides that in making such contribution counties and cities shall act by resolution or ordinance.[18]

c. Joint Recreational Systems

Provision for joint recreational systems is provided for as follows:

> Any two or more municipalities may jointly provide, establish, maintain and conduct a supervised recreation system and acquire property for and establish and maintain playgrounds, recreation centers, and other recreation facilities.[19]

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15. *Ibid.*
16. TENN. CODE ANN. § 2393.16 (Williams 1934).
17. Tenn. Pub. Acts 1949, c. 177, § 1, TENN. CODE ANN. § 4432.39 (Williams Supp. 1952).
18. *Id.*, § 4432.41.
19. *Id.*, § 3516.5, Tenn. Pub. Acts, 1937, c. 307, § 5.

The term "municipality" as used in this act includes counties.[20]

d. Health

Each municipality of 5000 or more in population is required to have a board of health, but cities are authorized to cooperate with counties in maintaining county departments of health, presumably on an expense-sharing basis.

> Every municipality having five thousand inhabitants and over shall organize a properly constituted board of health, which, in addition to their duties as such local boards, shall also make monthly, quarterly, semiannual, and annual reports to and in accordance with such form and instructions as the commissioner of public health may prescribe, and also shall make special reports whenever required.[21]
>
> Municipalities in any county in which a county department of health may be so established are authorized to co-operate in the maintenance of such county department of health; and where any such municipality may elect to enter into an agreement with the county for the maintenance of a county department of health, such county department of health shall also serve as the department of health for such municipality.[22]
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> Municipalities which may be located in counties so establishing county departments of health are empowered to cooperate in the maintenance of such county departments of health, and to have such county departments of health serve as departments for such municipalities, are authorized to incur the expenses necessary for their proportionate part in the establishment and maintenance of such county departments of health, and to levy and collect such taxes upon all of the property within the jurisdiction of such municipalities, as may be necessary to meet and pay the same.[23]

e. Miscellaneous Provisions

In addition to elaborate and detailed provisions for joint city and county airports[24] and the simpler provision for joint erection and control of bridges,[25] Tennessee law authorizes Regional Planning Commissions.[26] Membership thereon is to be designated by the State Planning Commission and may include members of both county courts and municipal legislative bodies. The purpose of such a commission is to "make and adopt a general regional plan for the physical development of the territory and region" including "municipal territory."[27] Also cities are authorized to adopt a Regional Planning Commission as their own municipal planning agency.[28]

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20. *Id.*, § 3516.1; see Hart v. Knox County, 79 F. Supp. 654 (E.D. Tenn. 1948).
21. TENN. CODE ANN. § 5770 (Williams 1934).
22. *Id.*, § 5784.
23. *Id.*, § 5788.
24. *Id.*, §§ 2726.13-2726.22.
25. *Id.*, § 3028.
26. *Id.*, §§ 552.14-552.23.
27. *Id.*, § 552.17.
28. *Ibid.*