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MEMORANDUM

DATE: October 23, 1997
TO: MikeP, Mark, Ronnie, Dick, Sharon, Kris, Kirk, Pamela, JimL, MikeT, Pat,
Joe, Sid, Al, JimF, Carol
FROM: Robert P. Schwartz *RS*
RE: ad hoc Annexation Committee information

This may be more than you want, but I think you need to see it.

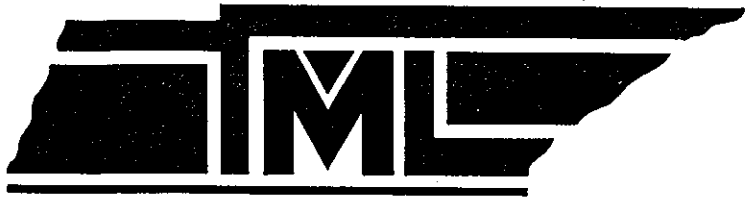
Enclosures

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Joseph A. Sweat
Executive Director

Ed Young
Associate Executive
Director

J. Nelson Biddle
Legislative Liaison

MEMORANDUM

TO: Members: TML Board of Directors, Annexation Committee,
and Legislative Committee

FROM: *EY* Ed Young

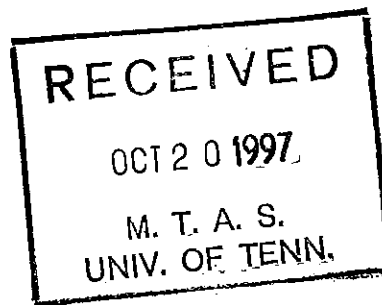
DATE: October 17, 1997

President Dan Speer wants to be certain that our key people get all the information and materials relating to the October 13 meeting of TML's committees and the October 13-14 meetings of the legislative Annexation and Incorporation Study Committee. Consequently, we are enclosing minutes of the TML meeting and copies of the materials made available to legislators serving on the Study Committee.

Also enclosed is a form to be completed by anyone wishing to address the Committee. We hope many of you will sign up for a 5-minute presentation - I assure you the other side will be doing so. Please don't allow the anti-annexation folks to dominate the process.

We will continue to keep you informed.

/dd
enclosures



TML LEGISLATIVE COMMITTEE AND
TML ANNEXATION COMMITTEE - JOINT MEETING
MINUTES - OCTOBER 13, 1997

The above referenced committees met in Nashville at 10:00 a.m. on Monday, October 13 preparatory to the scheduled meeting of the General Assembly's Ad Hoc Committee to Study Annexation at 1:30 p.m. A list of those attending is attached to these minutes.

Opening remarks were made by President Dan Speer who stated that all our efforts must be directed to the goal of protecting our annexation powers. Joe Sweat emphasized the importance of getting city officials energized. He then introduced Gene Pearson, Director of the Graduate Program in Planning of the Regional Economic Development Center at the University of Memphis, who has been hired as a consultant to TML in the campaign to save annexation. Tony Thompson commented that in some legal work he had done for Collierville in an annexation case, Gene Pearson had done an impressive job as an expert witness. He commended TML for getting such a knowledgeable and effective person as a consultant.

Professor Pearson reviewed two one-page materials he had prepared - "The Economic Future of Tennessee" and "Annexation: Two Experiences." No city is immune from the process of decay, and this is why growth and renewal are essential. It is unfair to cities and their citizens to allow fringe area residents to sustain their urban lifestyles with immunity from annexation. Pearson predicted that the Ad Hoc Committee will hear testimony concerning the innovative service/tax arrangements in northern cities. Those cities have had to be innovative because they have lost their annexation power. Tennessee doesn't need the innovation because we don't have the problem.

Dan Speer stated that all mayors and city officials need to articulate their own experiences with annexation as it relates to economic development. He has talked to his state legislators re three Pulaski cases where annexation was critical. The first was a Super Wal-Mart store that would not have been able to locate in Pulaski if the city had lacked annexation powers. Second was a new industrial park three miles outside the city that will be annexed. If an intervening incorporation were to occur, Pulaski would be unable to annex its own industrial park! The third example is a small border area (residential) that has substandard roads and no traffic signals. It needs to be annexed for the health and safety of its residents and those who pass by or through that area every day.

Joe Sweat emphasized the need to highlight commercial activity that wouldn't be possible without annexation. He observed that "finger" or "corridor" annexation is actually a reasonable compromise to get to a retail site without taking in intervening residents.

Tony Thompson stated that we will need business allies such as developers and the Tennessee Association of Business in order to win this fight. TML staff have met with TAB staff to discuss this. They accuse cities of "cherry picking." Their feeling is that cities annex after the businesses are already there and then they don't deliver the services promised. Mayor Montgomery stated that Kingsport did some corridor annexations that are models, but there are a lot of bad examples out there.

Next, Ed Young was asked to discuss the "Urban Growth Strategy" paper. Roland McElrath objected to the item that states that TML should consider alternative proposals to minimize the fiscal impact of annexation on county budgets. He stated that any phase-in of revenues (one of the possibilities proposed last year) would be devastating to Memphis because of the substantial sales taxes from the Hickory Ridge and Wolf Chase Galleria malls. These areas must be brought into Memphis without any loss of revenues.

Joe Sweat pointed out that the phase-in of situs-based revenues after annexation was Sen. Rochelle's idea. McElrath responded that annexations already initiated should be grandfathered. Bill Hammon suggested that when cities make or have made some infrastructure investment in the annexed area, they should get situs revenues immediately. John New discussed some of the history of Rochelle's idea to phase-in revenues over a three to five-year period. Young pointed out that counties are "crying wolf" over the loss of sales tax revenues. Between 1990 and 1995 data show that 85 of 95 counties experienced higher sales tax collections.

After breaking for lunch, discussion resumed of the situs-based tax issue and other matters. Dave Wilson stated that the statute giving big cities absolute preference over smaller cities is the big problem in his area. Hendersonville has preference in law over Goodlettsville for an area both cities have had their sights on even though Hendersonville would have to come through Goodlettsville to service the area in contention.

Mayor Whittington asked if TML was making a compromise offer that afternoon to the Ad Hoc Committee. Mayor Speer replied that we are not, but he needs to get a consensus of where we are for such time as we have to lay our cards on the table. The clear feeling of those present was that we not play our hand too soon. We don't need to be publicly talking about compromises at this point. What Sen. Rochelle wants is going to be very influential. What commitments or concessions can be get in return for compromising?

ATTENDANCE LIST
October 13, 1997

Adamsville	Donna Snider, City Recorder
Alcoa	Bill Hammon, Assistant City Manager
Bolivar	Jimmy Sain, City Administrator
Brownsville	Webb Banks, Mayor
Germantown	Sharon Goldsworthy, Mayor
Goodlettsville	Bobby Jones, Mayor David Wilson, City Manager
Henderson	Jim Garland, City Recorder Chas. Patterson, Mayor
Kingsport	Ruth Montgomery, Mayor
Knoxville	Tony Thompson, Lobbyist
Memphis	Roland McElrath, Finance Director Gene Pearson, University of Memphis
Murfreesboro	Richard Reeves, Vice Mayor
Nashville	Patty Lampley, Lobbyist
Pulaski	Dan Speer, Mayor
Savannah	Freeda Kemp, City Planning
Selmer	Jimmy Whittington, Mayor
Watertown	Mike Jennings, Mayor
TML Staff	Marilyn Edwards Sharon Fitzgerald Edna Holland Dennis Huffer Patty Huffer John New Joe Sweat Ed Young



ANNEXATION AND INCORPORATION STUDY COMMITTEE REVISED AGENDA

**OCTOBER 13-14
LEGISLATIVE PLAZA
RM 12-14**

OCTOBER 13, 1:30 PM

Staff Presentation: Nathan Ridley, Legal Services
Constitutional and Statutory Review

Guest Speaker: Dr. Joseph Whorton, Senior Fellow of the Institute of
Community and Area Development, University of Georgia
Local Government Reform in Georgia

Staff Presentation: Robert Broome, Research Analyst, House Finance, Ways &
Means Committee
Lawrence Hall, Research Analyst, House State & Local
Government Committee
Local Government Finance

OCTOBER 14, 9:30 AM

Guest Speaker: Ogden Stokes
Historical Overview of Annexation & Incorporation Issues

Guest Speaker: Dr. Harry Green, TACIR
Urbanization and Urban Policy in Tennessee

Presentations & Response to Committee Questions:
Marilyn Dillihay, Research Analyst, Senate State & Local
Government Committee
Mike Cole, Deputy Commissioner, Dept. of Revenue
Ed Eldridge, Dir. of Fiscal Services, Dept. of Revenue
Karen Blackburn, ASA 5, Dept. of Revenue
Lynisse Patrick, Assistant Commissioner, Dept. of Education



ANNEXATION AND INCORPORATION STUDY COMMITTEE

REQUESTS TO ADDRESS THE COMMITTEE

In order to hear the views of as many people as possible on the issues of annexation and incorporation, the committee will hold a "five minute day." As many speakers as possible will be allowed to address the committee. There will be a five minute limit for each speaker. The time limit will be strictly enforced. Organized groups should elect a spokesperson.

If you wish to address the committee please fill out a request form and give it to a staff member. Please attach a summary of your comments.

Or, you may mail your request and summary to:

Dr. Phillip E. Doss
Office of Research and Education Accountability
Suite 500
James K. Polk Building
505 Deaderick Street
Nashville, Tennessee 37243-0268

Please include your name and address.

Name: _____

Address: _____

Phone: _____

Fax (if available): _____

E-mail (if available): _____

THE ECONOMIC FUTURE OF TENNESSEE
THE POLICY ON ANNEXATION & INCORPORATION

Testimony of Gene Pearson, AICP *
for the
Annexation and Incorporation Study Committee
Tennessee General Assembly

Annexation: The Economic Realities

The powers of local government in Tennessee are based on the notion that **county governments** are administrative sub-units of State government with officials vested with certain duties spelled out by Tennessee's Constitution.

In contrast, **municipal corporations** are created by Tennessee so that concentrated groups of citizens can provide a higher level of services necessary for continued economic development.

Municipal corporations contain people who have chosen to live in close proximity due to the convenience of employment, shopping, housing, education, and health/safety services. The collective actions of the municipal population are designed to insure growth of jobs and income.

Since 57% of Tennesseans live in municipalities, the economic future of Tennessee is shaped by the success of the municipal corporation to deliver efficient and fair services which support the creation of jobs and income.

Loss of municipal annexation powers in Tennessee will freeze corporate boundaries and will require enormous political resources to correct the following **problems for older municipalities:**

- decline of population, jobs and income.
- lowered credit rating.
- concentration of poor and elderly population.

- lowered tax resources and higher tax rates.
- reduction in municipal service capacity.

The loss of municipal annexation will **fragment economic unity** within Tennessee's sub-regions as a result of the following:

- proliferation of municipal governments.
- wasteful competition among municipal governments.
- tax resources will have to be shifted to support declining municipalities.

The loss of municipal annexation will **weaken the local public economy** and make business attraction more difficult due to the following:

- less unified promotion of area resources.
- fewer tax incentives to aid business start-up.
- inadequate transportation and other facilities for business development

Finally, the loss of annexation power will result in a basic unfairness toward the **citizens of existing older municipalities**. These taxpayers have provided the basic infrastructure to enable settlement of population and jobs at the municipal fringe. Without annexation the taxpayers of the newer fringe developments will avoid their fair share of taxes to support the municipality's continued growth. The territory of the local economy will have **separate but unequal patterns of government services:**

**ANNEXATION AND INCORPORATION STUDY COMMITTEE
OCTOBER 13, 1997
LEGISLATIVE PLAZA
ROOM 12-14**

**I. Tennessee Constitutional Provision
Article XI, Section 9
1953 Constitutional Convention**

II. Incorporation Procedures
A. Population Requirements
B. Buffer Zone Distance
C. Conflicting Buffer Zones

III. Annexation
A. Introduction
B. Territory which may be annexed
C. By ordinance or referendum
D. Plan of Service
E. Effective Date of Ordinance

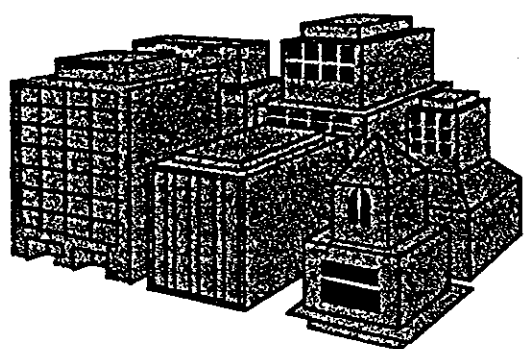
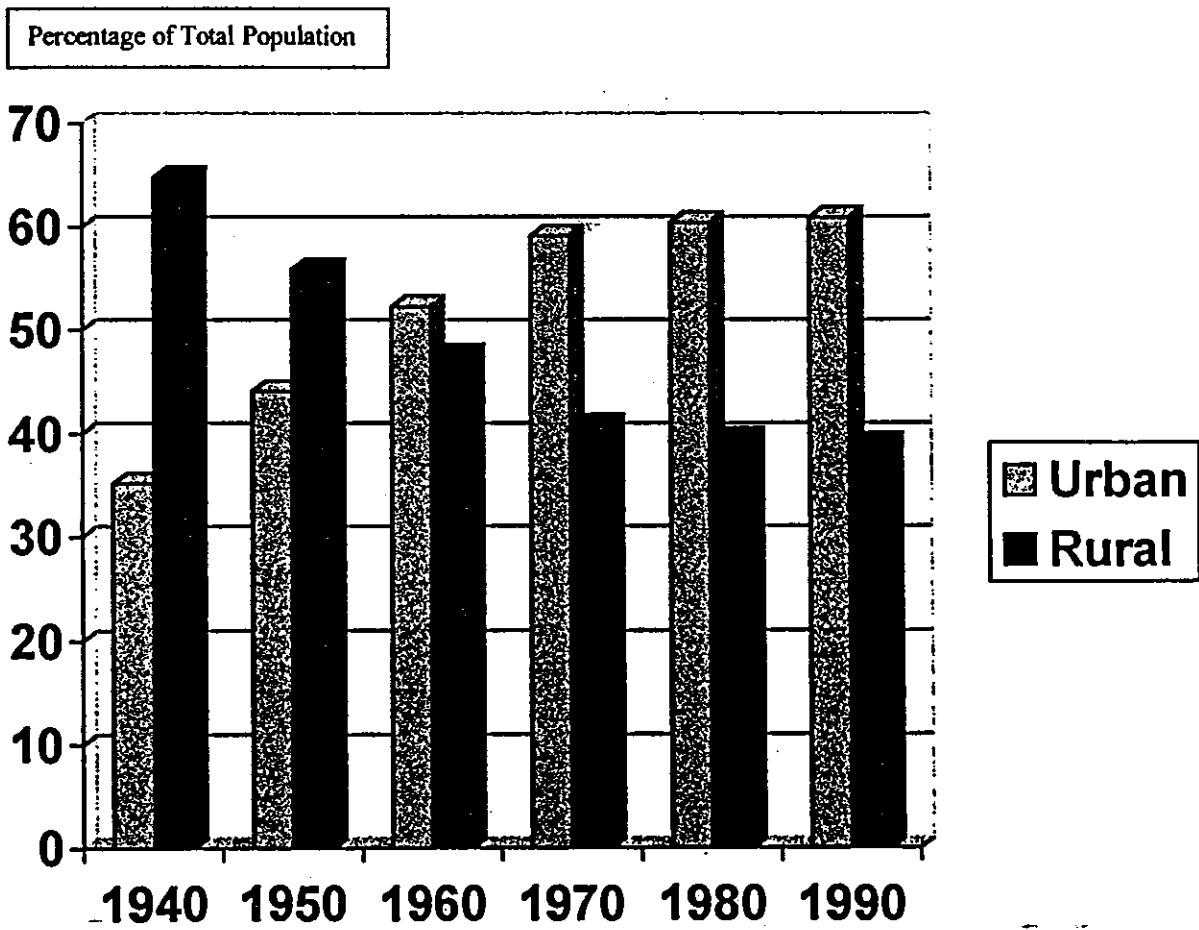
IV. Judicial Review of the Annexation Decision
A. Time Constraints
B. Parties
C. What in the world is Quo Warranto?
D. Factors for Determining Reasonableness
E. Trial by Jury
F. Effect if Ordinance found Unreasonable

V. Effects of Annexation
A. Rights of Residents in Annexed Area
B. Timing
C. Special Census
D. State Shared Taxes
E. Relationships with other Governmental Units

TENNESSEE POPULATION

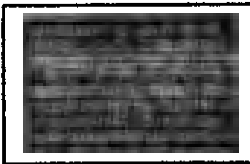
Urban vs. Rural,

1940-1990

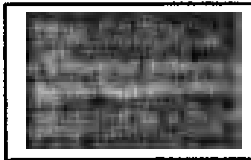


I. Tennessee Constitutional Provision
TENNESSEE CONSTITUTION - ARTICLE XI - Section 9.
Power over local affairs - Home rule for cities and counties -
Consolidation of functions.

The Legislature shall have the right to vest such powers in the Courts of Justice,
with regard to private and local affairs, as may be expedient.



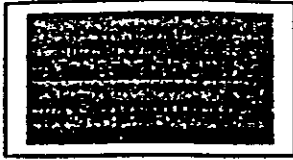
The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General 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.



Any municipality may by ordinance submit to its qualified voters in a general or special election the question: "Shall this municipality adopt home rule?"

In the event of an affirmative vote by a majority of the qualified voters voting thereon, and until the repeal thereof by the same procedure, such municipality shall be a home rule municipality, and the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect.

Any municipality after adopting home rule may continue to operate under its existing charter, or amend the same, or adopt and thereafter amend a new charter to provide for its governmental and proprietary powers, duties and functions, and for the form, structure, personnel and organization of its government, provided that no charter provision except with respect to compensation of municipal personnel shall be effective if inconsistent with any general act of the General Assembly and provided further that the power of taxation of such municipality shall not be enlarged or increased except by general act of the General Assembly. The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered.

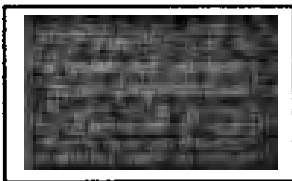


ordinance of any home rule municipality, by a charter commission provided for by act of the General Assembly and elected by the qualified voters of a home rule municipality voting thereon or, in the absence of such act of the General

Assembly, by a charter commission of seven (7) members, chosen at large not more often than once in two (2) years, in a municipal election pursuant to petition for such election signed by qualified voters of a home rule municipality not less in number than ten (10%) percent of those voting in the then most recent general municipal election.

It shall be the duty of the legislative body of such municipality to publish any proposal so made and to submit the same to its qualified voters at the first general state election which shall be held at least sixty (60) days after such publication and such proposal shall become effective sixty (60) days after approval by a majority of the qualified voters voting thereon.

The General Assembly shall not authorize any municipality to tax incomes, estates, or inheritances, or to impose any other tax not authorized by Sections 28 or 29 of Article II of this Constitution. Nothing herein shall be construed as invalidating the provisions of any municipal charter in existence at the time of the adoption of this amendment.



The General Assembly may provide for the consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located; provided, such consolidations shall

not become effective until submitted to the qualified voters residing within the municipal corporation and in the county outside thereof, and approved by a majority of those voting within the municipal corporation and by a majority of those voting in the county outside the municipal corporation.

1953 Constitutional Convention Context

The convention convened in April, 1953, as the first constitutional convention since 1870 to amend the oldest unamended written constitution of the United States. Frank G. Clement was governor at the time having been elected to a two year term in 1952 and was elected to first four year term in 1954.

Issues concerned the power of governor as opposed to the legislature, local government, the constitutional amendment process, and the abolition of the poll tax.

II. Incorporation Procedures

A. Population Requirements

1955 – 200 persons

1991 – 500 persons

1993 - 750 persons for mayor-alderman charter; others increased to 1500

1995 – 1500 persons

[See TCA §6-1-201, §6-18-103, §6-30-103]

B. Buffer Zone Distance

1955 – 2 miles if city had more than 500 persons

1991 – 5 miles if city had more than 100,000 persons

2 miles if city had more than 1,000 persons

1995 – 5 miles if city had more than 100,000 persons

3 miles for any other city

[See TCA §6-1-201, §6-18-103, §6-30-103]

C. Conflicting Buffer Zones

TCA §6-51-110

§6-51-110 (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.

III. Annexation

A. Introduction

B. Territory which may be annexed

TCA §6-51-102(a)(1) ...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;

C. By ordinance or referendum

Ordinance – TCA §6-51-102

Referendum – TCA §6-51-104

D. Plan of Service

TCA §6-51-102(b)

Added in 1961 by Chapter 320 of the Public Acts

E. Effective Date of Ordinance

TCA §6-51-102(a)(1) ... provided, that the ordinance shall not become operative until thirty (30) days after final passage thereof.

IV. Judicial Review of the Annexation Decision

A. Time Constraints

TCA §6-51-103(a)(1)(A) ... prior to the operative date thereof.

B. Parties

TCA §6-51-103(a)(1)(A) Any aggrieved owner of property which borders or lies within territory which is the subject of an annexation ordinance...

Notwithstanding the provisions of any other section in this chapter, for purposes of this section, an "aggrieved owner of property" does not include any municipality or public corporation created and defined under title 7, chapter 82 which owns property bordering or lying within the territory which is the subject of an annexation ordinance requested by the remaining property owner or owners of the territory and whose property and services are to be allocated and conveyed in accordance with § 6-51-111, § 6-51-112 or § 6-51-301, or any contractual arrangement otherwise providing for such allocation and conveyance.

C. What in the world is Quo Warranto?

The term "quo warranto" dates back to the old English writ used to inquire by what authority the king exercised certain powers. In Tennessee, today, the civil action permits a plaintiff to contest the validity of an annexation on the ground that it reasonably may not be necessary to protect the safety and welfare of either the municipality or the area to be annexed. Generally, Tennessee Code Annotated, Title 29, Chapter 35, governs the process. Ordinarily, it may be used by the district attorney general or the state attorney general whenever a public officer is unlawfully holds or exercises any public office or whenever persons incorporated act without lawful authority.

D. Burden of Proof

TCA §6-51-103(b) The municipality shall have the burden of proving that an annexation ordinance is reasonable for the overall well-being of the communities involved.

E. Factors for Determining Reasonableness

TCA §6-51-103(a) ... 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...

F. Trial by Jury

Moretz v. Johnson City 581 S.W. 2d 628 (Tenn. 1979)

G. Effect if Ordinance found Unreasonable

TCA 6-51-103(d) the municipality shall be prohibited from annexing, pursuant to the authority of § 6-51-102, any part of the territory proposed for annexation by such vacated ordinance for a period of at least twenty-four (24) months following the date of such order.

V. Effects of Annexation

A. Rights of Residents in Annexed Area

TCA §6-51-108(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...

(b) . . . 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 comply with the requirements of this subsection.

B. Timing

January 1 is assessment date for property tax purposes

TCA §6-51-115 (a) Notwithstanding any provisions of law to the contrary, whenever a municipality extends its boundaries by annexation, the county or counties in which the municipality is located shall continue to receive the revenue from all state and local taxes distributed on the basis of situs of collection, generated within the annexed area, until July 1 following the annexation, unless the annexation takes effect on July 1.

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

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

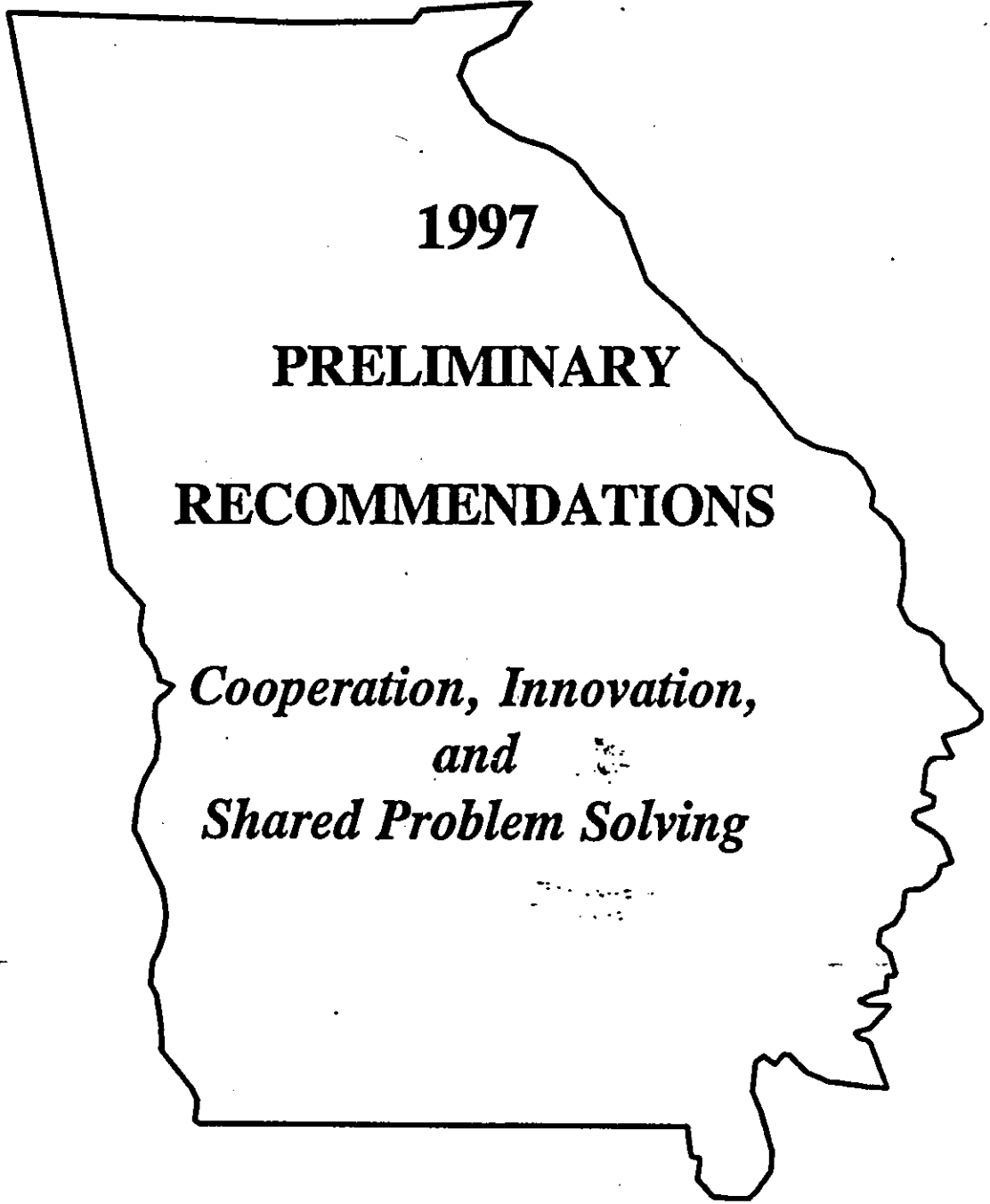
C. Special Census

TCA §6-51-114

D. State Shared Taxes

Sales Tax, Gasoline Tax, Income Tax on Dividends, Wholesale Beer Tax

E. Relationships with other Governmental Units



1997

**PRELIMINARY
RECOMMENDATIONS**

*Cooperation, Innovation,
and
Shared Problem Solving*

Georgia Future Communities Commission

September, 1997

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INTRODUCTION

Cooperation, Innovation, and Shared Problem Solving ii

PRELIMINARY RECOMMENDATIONS

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County Officer Budget Policy 11

1997 Preliminary Recommendations
Proposed By
The Georgia Future Communities Commission

COOPERATION, INNOVATION, AND SHARED PROBLEM SOLVING

Introduction

The Georgia Future Communities Commission was created in July of 1995 with the mandate to address those policies necessary for Georgia's communities to grow and prosper. As it set about its work the Commission quickly came to understand that the complex nature of local government in Georgia required recommendations that promoted and rewarded increased cooperation and communication between cities and counties. Rather than make recommendations that would attempt a radical redefinition of local government powers and structure, the Commission focused its recommendations on actions that would build on the expressed desire of citizens for public services that reflect the highest possible quality at the lowest possible cost.

The recommendations that led to legislation in the 1997 session of the General Assembly, as well as the recommendations offered this year for the 1998 session, share several common themes: They promote economy and efficiency in the delivery of local government services. They favor elimination of both duplication of services and "turf" conflict between governments. Finally, they offer mechanisms for service delivery that promote innovation, shared services, and regional problem solving.

These recommendations are not drawn from theories on how things ought to be, nor are they the creation of a detached bureaucracy. They are the product of a dedicated and committed group of Georgians who, as a Commission, sought advice and counsel from the broadest possible array of resources. During the past two years, the Commission worked closely with agencies of state government, especially the Department of Community Affairs. Both the Georgia Municipal Association (GMA) and the Association County Commissioners of Georgia (ACCG) played key roles in the Commission's work. The Commission held over 25 work sessions, committee meetings and decision conferences. Early on they conducted four focus groups designed to learn what problems Georgia's communities were facing and in the fall of 1996 the Commission held eight town hall meetings to get reaction to its preliminary recommendations. They also contracted for a statewide public opinion poll in 1995, and drew on numerous research reports conducted by the University of Georgia's Vinson Institute of Government and Institute of Community and Area Development, Georgia State University's Policy Research Center, and Commission staff. The Commission listened and it learned. Its record of success in 1996 and its recommendations for 1997 offer Georgia's communities every hope for a prosperous future.

Summary of 1996 Recommendations

In 1996, the Commission set out four recommendations, which led to the introduction and ultimate passage of House Bills 489 and 491. The four recommendations were (1) for counties and their respective cities to develop and implement service delivery plans, (2) for state grants, loans, and permits to be tied to the implementation of the joint service delivery plans, (3) to adopt standard charts of accounts for cities and counties, and (4) to make information on local governments more accessible through a community indicators report. House Bills 489 and 491 each implement two of the four recommendations.

House Bill 489

The most significant legislation coming from the Georgia Future Communities Commission's recommendations was House Bill 489, referred to as the Service Delivery Strategy Act. The bill provided for a process through which county and municipal officials would develop a local government service delivery strategy. Each strategy must promote the efficient, effective and responsive delivery of local government services, avoiding overlapping and unnecessary competition and duplication of services. The strategies must also address the issues of water and sewer rate differentials, double taxation, and the need for compatible, nonconflicting land use plans. After the July 1, 1999 deadline, state grants, loans and permits will only be available to the governments in counties which have adopted a strategy. Additionally, only projects compatible with the service delivery strategies will be eligible for state funding or permits.

The process described in the bill is an innovative approach to addressing duplication and unhealthy competition between governments. It also provides a mechanism to resolve disputes over service delivery, funding equity, and land use.

House Bill 491

House Bill 491, entitled Local Government Uniform Charts of Accounts and Reporting will improve the information available to elected officials and citizens about local governments (1) by standardizing local financial data and (2) by directing the Department of Community Affairs (DCA) to produce reports on communities and their local governments using census data and local government survey data.

Section 2 of the Act directs DCA, working with the state auditor, GMA and ACCG, to create uniform charts of accounts for cities and counties and requires local governments to adopt and use the uniform charts of accounts. By providing for reporting uniformity, it will now be possible to make meaningful comparisons of local government financial activity. Use of uniform charts of accounts is also expected to simplify local government financial auditing and reporting.

Section 3 of the Act directs DCA to produce a community indicators report for Georgia's cities and counties with annual operating expenditures of \$250,000 or more. The community indicators report will include information on community characteristics (e.g., population, education, housing, and other demographic data) and on local government services and administration (e.g., information on local service delivery measures and government finances — when comparable data is available through uniform charts of accounts). The community indicators report will provide state and local government officials and citizens with information on city or county government to more easily allow for comparisons, evaluation and decision making. These reports would allow for the kinds of benchmarking activities that have been so widely used by businesses to evaluate and improve efficiency and effectiveness.

Summary of 1997 Preliminary Recommendations

The Georgia Future Communities Commission met on August 27th and 28th in Macon to consider their preliminary recommendations for 1997. After 2½ years of work, the Commission will “sunset” in December, making the 1997 recommendations the final act of their tenure. At their August meeting, the Commission identified three preliminary legislative recommendations and four policy recommendations. Two other issues remain under consideration for possible action. Final decisions on all of the preliminary recommendations will be made at the Commission's October 24th meeting to be held at the Atlanta Chamber of Commerce. At that time, the Commission will consider the comments and input which they received during the intervening eight weeks.

The three preliminary legislative recommendations could lead to bills for action in the 1998 legislative session. They are as follows:

- **County Personnel Policy** — The Commission requested that ACCG and the County Officers Association of Georgia (COAG) jointly draft legislation that would provide for a personnel plan in each county, developed by that county's commission and county officers. At a minimum, each personnel policy would address matters of hours of operation, annual and sick leave, holidays, hiring, and termination. Each county's personnel policy would apply to all county departments, including those headed by county officers.
- **Authorities Sunset** — This recommendation would provide a sunset mechanism for local government authorities, eliminating duplicative or non functioning authorities. Local government authorities created under local law or general enabling act would continue only by affirmative vote of the commissions/councils of the cities and counties in which they operate.
- **Multi-Jurisdictional Service Commission (MSC)** — This recommendation would provide for a mechanism through which two or more cities or counties could create a commission for joint service delivery. As envisioned, the MSC's would operate under a board which could include local elected officials. The MSC's could potentially enter into revenue debt and could also be a vehicle for local government revenue sharing arrangements. The MSC's could also include a sunset date.

The preliminary policy recommendations are those recommendations which are directed toward an individual (e.g., the Governor) or group (e.g., a state agency), but which do not require legislative action. The four preliminary policy recommendations are as follows:

- **Court Reform** — The Commission supports Chief Justice Benham's court reform effort and requests that a list of specific issues be considered. Any court reform commission should allow local government officials to fully brief the commission on how court operations impact local government. The Commission also requests that the Governor and General Assembly support this initiative.
- **Workforce Development** — The Commission emphasizes the importance of workforce development to the future of Georgia and her communities. The recent creation of a task force on workforce development by the Governor is applauded and the Commission requests that, on completion of the work of that task force, additional steps to support and coordinate the state's workforce programs be implemented.
- **Land Use Planning and Management** — The Commission requests that DCA, at the Governor's direction, establish a policy group to develop recommendations for changes in the state's Planning Act, as well as other legislative initiatives needed to support a more cohesive and results-oriented planning and growth management framework for the state.
- **Budget Mediation** — The Commission requests that ACCG and COAG develop and adopt a mediation process for County Commissions and Constitutional Officers on budget matters.

Two issues remain under discussion: (1) a possible policy statement on economic development and (2) a policy statement on ideal service delivery arrangements.

Groups or individuals wishing to comment on these preliminary recommendations or needing more information should contact Jane Massey, the Commission's staff director, at 770/487-6238; by fax at 770/631-1966; by email at jmassey@atl.mindspring.com. Written comments should be addressed to the Commission at: Georgia Department of Community Affairs, 60 Executive Park South, NE, Atlanta, GA 30329-2231, attn.: Jane Massey .:

**Georgia Future Communities Commission
1997 Preliminary Legislative Recommendations**

COUNTY OFFICER PERSONNEL POLICY

Rationale: Personnel policies are an important factor in the operation of any local government. This is a key area of concern in the relationship between County Commissions and County Officers. Many counties have personnel systems that cover all county employees, while in other counties the commissioners and the county officers each have their own personnel systems. In some counties there is no personnel plan at all.

County Officers feel that it is important to have their own employees, knowledgeable of and committed to the vision of that county officer. At the same time, these employees are county employees and are also the responsibility of the County Commission. Improper firing, harassment, discrimination and other important personnel issues can create problems for the county commissions. The Georgia Future Communities Commission believes that this is a concern that must be addressed in order to further strengthen the relationship between the County Officers and the County Commissions.

Description of Legislation: Each Georgia county would be required to adopt a personnel plan, designed by that county's Commission and County Officers, covering all county employees. Each personnel plan would address:

- Hours of operation
- Annual and sick leave policy
- Overtime policy
- Holidays
- Hiring and firing procedures

Any County Commission and County Officers not able to develop such a plan jointly would be required to enter a dispute resolution process.

Georgia Future Communities Commission 1997 Preliminary Legislative Recommendations

AUTHORITIES SUNSET

Rationale: The large number of local government authorities in Georgia complicates the state's local government structure. The Georgia Department of Community Affairs (DCA) estimates that there are currently around 1,100 local government authorities in Georgia. Recent legislation (O.C.G.A. d36-80-16) required these authorities to register with DCA by January, 1996. As of May 27, 1997 there were 792 authorities registered. Only 56 of these were created before 1950, mirroring a national trend of substantial growth in local government authorities. Non functioning or duplicative authorities are a needless complication. This recommendation would provide a mechanism for eliminating duplicative, unneeded, or non functioning local government authorities.

Description of Legislation: Similar to the "Inactive Municipalities Law" passed in 1993, local government authorities would be given a target date, by which time they must either demonstrate their viability or lose their authority to operate. The proposed bill would have the following features:

- Minimum standards would include evidence of a functioning governing body (e.g., all board positions filled and a minimum of an annual meeting in the preceding calendar year).
- Authorities created to provide a service (e.g., water and sewer authorities, recreation authorities, housing authorities) would be required to provide a financial report demonstrating service delivery activity. The only authorities which would not have to meet this financial standard would be development authorities, which often serve as pass through vehicles for development and would not necessarily be able to show financial evidence of their activities.
- All authorities would be required to obtain a resolution from the general purpose local government(s) in which they operate affirming the desire for the authority to continue.
- For local government authorities which do not meet the viability standards described above, but which hold long-term debt, other credit obligations, or assets, the general purpose local government(s) in which the authority exists must prepare a plan for the disposition of those obligations and assets. The plan would be reviewed and approved by the Department of Community Affairs (DCA) prior to the elimination of the local government authority. A similar plan would also be required in cases in which one or more, but not all, local governments in which the authority operates fails to affirm the authority's continued existence. Upon approval of the plan by DCA, the authority would cease to operate in those jurisdictions, but could continue to exist in the affirming localities.
- Authorities would be required to demonstrate their viability, as described above, by July 1, 1999 and every five years thereafter.

- **The Department of Community Affairs would file a list of all authorities eliminated under this Act with the Secretary of State by January 1, 2000 and every five years thereafter.**

Local government authorities which were created by local Constitutional Amendment would not be affected by this process, since their dissolution would require a Constitutional Amendment. Currently, about 11% of registered authorities were created by Constitutional Amendment.

Georgia Future Communities Commission 1997 Preliminary Legislation Recommendations

MULTI-JURISDICTIONAL SERVICE COMMISSION

Rationale: In many instances, services can be more economically and efficiently delivered on a multi-jurisdictional basis. To avoid many of the problems associated with local government authorities, the Multi-jurisdictional Service Commission would place local elected officials on the governing board, provide for a sunset date, and provide for a way to dissolve them.

Description of Legislation: By Constitutional amendment, cities and counties would be given the authority to create multi-jurisdictional service commissions (MSCs). If the MSC is to have the authority to enter into debt or to implement revenue sharing agreements, its creation would be dependent on approval of local voters. These commissions would be like local government authorities in that they would be separate public entities, providing public services, but would differ from local government authorities in responsiveness to their creating governments. The proposed bill would have the following features:

- Two or more cities and/or counties could create a MSC by local ordinance. The MSCs could be created to provide any service(s) that the local governments have authority to provide. The creating governments would designate the purpose(s) in the creating ordinance and must amend the creating ordinance to expand or reduce the MSC's purpose.
- The participating local governments would determine, through the local ordinance, the size, composition, and terms of the MSC's governing board. City and county elected officials would be allowed to serve on the MSC's board.
- The creating units of government would have the option of providing a sunset date for the MSC, renewable by the participating governments. If a MSC is given a sunset date and not renewed, its assets and liabilities would be apportioned to the participating government per the agreement creating the MSC.
- Other units of local government, including local government authorities and school districts could also participate in a MSC through intergovernmental contract, but would not have the authority to create an MSC.
- MSCs would have the authority to raise revenue through fees and charges to support MSC operations. MSCs would not have the authority to levy property taxes.
- Procedures for withdrawing from the MSC by its members must be specified in the creating ordinance.

- A MSC would not be allowed to enter into debt independently, unless its creation had been approved by the voters of each member government.
- MSCs approved by local voters could also serve as vehicles for implementing revenue sharing agreements. Such agreements must be tied to specific service delivery functions, such as revenue sharing agreements arising from joint economic development activities.
- The purpose, boards, and sunset dates of MSCs approved by local voters could only be amended with voter approval.

Georgia Future Communities Commission 1997 Preliminary Policy Recommendations

COURT REFORM

Rationale: Georgia's court system is a key component of the governmental infrastructure which makes communities secure and orderly places in which to live and work. The operation of our courts acutely impacts the entire criminal justice system — affecting our ability to protect citizens and fairly punish wrongdoers. Additionally, the operation of the courts has a profound impact on county government — affecting its ability to provide other types of services and to operate efficiently. In 1996, Georgia counties spent \$247.5 million on court operations; fines and fee revenues to the counties totaled \$175.4 million. During that same year, the state appropriated \$78.5 million to the judicial branch. Given its importance to governmental operations and to the state's communities, Georgia must have a court system that is both functioning well in the present and ready to assume potentially greater challenges in the future.

Recommendation: Georgia needs to continue the work of court reform begun over ten years ago by the Governor's Judicial Process Review Commission. Since that time, other reform efforts and study groups have also looked at our judicial system. Unfortunately, none of these efforts has resulted in significant change. Given the complexity of the issues at hand, and the various interest groups involved, the Georgia Future Communities Commission endorses the new approach to court reform — a judicially created commission — proposed by Chief Justice Benham in his January 17, 1997 "State of the Judiciary Address" to the Georgia General Assembly.

It is important that a judicially created commission consult with citizens, legislators, lawyers, criminal justice and court system experts, and local government officials as it proceeds in its work. The Georgia Future Communities Commission is particularly concerned that the court reform effort consider the following issues:

- the role of grand juries;
- the need for a separate family court system;
- the role and function of municipal courts;
- the personnel and compensation system for court employees which results in state and county employees working side-by-side, but under differing pay and employment systems;
- the size of juries;
- the use of technology to streamline court functions, including off-site arraignments;
- a phase-in period resulting in a unified, fully state-funded court system;

Lead Agency/Organization/Person: The Georgia Future Communities Commission requests that the Governor and General Assembly support Chief Justice Benham's court reform initiative. Further, the Commission requests that, in undertaking this effort, the Chief Justice consider the issues outlined above and allow local government officials to fully brief the commission on how court operations impact local governments.

Georgia Future Communities Commission 1997 Preliminary Policy Recommendations

WORKFORCE DEVELOPMENT

Rationale: In spite of Georgia's phenomenal economic success, education remains a serious challenge for the state. According to the U.S. Census Bureau, in 1990 40% of men and 48% of women in this country were earning only \$12,195 in full-time employment, the midpoint of the poverty range for a family of three. In the third annual Technology Leaders Survey, completed in September, 1995, over a third of the respondents presidents, COOs, and CEOs of 248 technology companies in Georgia listed a lack of skilled personnel as the primary restraint on achievement of planned growth. The survey, sponsored by The Atlanta Journal/Constitution, Coopers & Lybrand L.L.P., and the Georgia Tech School of Public Policy, asked respondents to identify major issues facing the technology industry in Georgia; about 45% of whom listed workforce skills and education. Nationally, approximately 21% of new jobs will require a college diploma, while 70% will require a high school diploma and specialized training. In Georgia, as well as across the nation, almost 75% of the workforce population either drops out of high school or graduates but fails to complete any other formal training. In 1990, almost 1.2 million adults (age 25 and over) in Georgia did not have a high school diploma. It is clear that a trained workforce will be vital for the future health and prosperity of Georgia's communities.

Recommendation: Workforce preparedness is both an economic development and a community quality of life issue facing the state. Currently there are a significant number of Georgians who are ill-prepared to meet even the entry level requirements of many industries in the state. Not only does this increase the cost of doing business in Georgia and negatively impact business creation and expansion, it also translates into social problems including crime, unemployment, poverty and a host of related ills. The problems facing Georgia are greater than simply decreasing our high school dropout rate or increasing adult literacy, although those issues are important. The challenges center on training our workforce for the jobs of the next century. While experts agree that only 20% to 30% of all new jobs require a college degree, the vast majority of these new jobs do require training beyond high school. Therefore, to meet our workforce needs, Georgia must:

- Continue to improve our public schools, insuring that our children receive a solid, high quality education in the years K through 12;
- Create an education culture, in which students graduate from high school with the expectation that their education will not end with their high school diploma;
- Bring all of Georgia's children, their parents, and our working-age adults into an educational network that emphasizes life long learning, training, retraining, skill development, and technical competency;
- Create a system in which all of the state's education, social service, and economic development agencies share a common goal of workforce preparedness — working together to create a seamless educational system; and

- Insure that the business community has the opportunity to play a leadership role in making the educational system relevant and responsive to our state's employers.

In order to accomplish those goals, Georgia must:

1. set clear priorities for its educational and training agencies;
[The task of priority setting for workforce development appropriately falls to the governor. In the same way that the state has made tremendous progress in improving our system of public education through clearly stated goals by Governor Miller, so too could workforce development benefit from an emphasis on two or three specific initiatives.]
2. clearly establish accountability for accomplishing workforce development goals;
3. strengthen interagency cooperation and coordination to make the state's disparate programs work together; and
4. provide Georgia's business leaders with a central role in the state's workforce development system.

Lead Agency/Organization/Person: The Georgia Future Communities Commission commends the Governor on the creation of a Taskforce on Workforce Development. The taskforce's charge to formulate a vision and strategy for an integrated workforce development system which is market-driven and customer focused is a critical need for the state. In anticipation of the taskforce's recommendations, the Commission urges the Governor and General Assembly, where appropriate, to take those next steps to implement the needed workforce development strategies.

Georgia Future Communities Commission 1997 Preliminary Policy Recommendations

LAND USE PLANNING AND MANAGEMENT

Rationale: While the state has made impressive strides in good land use planning — about 99% of Georgia's local governments have completed comprehensive plans as part of the Georgia Planning Act requirements, much remains to be done. In many communities, the locally adopted comprehensive plan is not being implemented. The Local Government Operations Survey, conducted annually by DCA, provides an indication of how far we must go in plan implementation. In 1995, less than half of the counties responding to the survey reported having a zoning ordinance, nor did a third of the responding municipalities. While zoning is not the only way to implement a comprehensive plan, it is a powerful tool for controlling land use and its absence lends credibility to the concern that many existing plans do not represent a real, achievable community vision for the future.

Another issue related to land use is how decisions made at the local government level affect neighboring jurisdictions or the state as a whole, as well as local residents. For example, counties and municipalities in metropolitan Atlanta face tremendous growth pressures. Some development decisions made by these local governments contribute to sprawl, abandonment of older urban areas, the degradation of established neighborhoods, and air and water quality problems. But if a single local government restricts development, it forgoes needed tax revenues and faces the probability that the development will not have been prevented but will simply be built in a neighboring jurisdiction. Although the Growth Strategies legislation of 1989 took an important step toward encouraging local governments to consider the broader impacts of the decisions they make, it may not have gone far enough. Additionally, the actions of state government — in siting facilities, through transportation planning and construction, state parks, etc. — impact local plans and development. There may need to be a better way to assess the impact of those activities. Thus, it is time to revisit Georgia's planning and land use management needs.

Recommendation: A broad-based policy group should be established to assess the planning and growth management needs of the state. The group should include individuals representing the various land use interests, such as:

- state government
- city and county governments
- economic development professionals
- universities
- development interests
- regional organizations
- Georgia Planning Association
- business leaders
- public policy groups
- professional planning organizations
- environmentalists
- citizens
- neighborhood groups
- ACCG and GMA

The group should be charged with developing recommendations that would lead to changes in the Planning Act, as well as other legislative initiatives needed to support a more cohesive and results-oriented planning and growth management framework for the state. The policy group should consider the following questions:

- Should all counties with a population of 20,000 or greater be required to adopt zoning ordinances?
- Should city councils or county commissions be required to have a 2/3 vote to adopt zoning or other changes that do not conform to the jurisdiction's comprehensive plan?
- Is there a way to improve the mechanism through which state and regional interests are considered in local development decisions with a regional or statewide impact?
- Should state planning enabling legislation be developed? Many modern tools for managing land use and development, used throughout the nation, are not sanctioned in state law, so Georgia's local governments are reluctant to use them. Examples include transfer of development rights, official mapping, and extraterritorial jurisdiction.
- Should there be two or more levels of local planning requirements, so that smaller, slower growth communities face less rigorous requirements than larger, or fast growing areas?
- What is the appropriate institutional structure to promote regional approaches?
- How can local governments address the impact of authorities operating in neighboring jurisdictions?

Lead Agency/Organization/Person: The Georgia Future Communities Commission requests that the Governor charge the Georgia Department of Community Affairs with the responsibility of coordinating a planning and land use management study group. The study group should conduct its work over a two year period and report to the sitting Governor and General Assembly in 1999.

**Georgia Future Communities Commission
1997 Preliminary Policy Recommendations**

COUNTY OFFICER BUDGET POLICY

Rationale: The working relationship between county Constitutional Officers and County Commissions is a very important one in Georgia's local governments. The Georgia Future Communities Commission believes that strengthening this relationship will be in the best interests of the state's citizens.

There are several budgetary areas that have historically caused difficulties between some County Commissions and County Officers. For example, situations involving unexpected (unbudgeted) expenses, such as capital felony prosecutions and staffing of facilities can be a source of problems. The application of budget administration procedures, such as purchase orders, travel vouchers, and bid processes can cause conflict. Additionally, as department heads, County Officers may request the optimum budget levels for their operating unit, while the County Commissions must balance those needs with every other department's needs. These types of conflict can lead to costly litigation. Because issues involving the expenditure of taxpayer money may create barriers to the efficient and effective delivery of governmental services, the Commission feels it is important to address county budgetary policies.

Recommendation: The Association County Officers of Georgia (ACCG) and the Sheriff's Association of Georgia have already developed and implemented a mediation process for resolving issues. The Georgia Future Communities Commission recommends that a similar program be developed to cover all of the Constitutional Officers' Associations. Such a process could help avoid the sometimes divisive politicizing of key budget issues, as well as litigation.

Lead Agency/Organization/Person: The Georgia Future Communities Commission has requested that ACCG and the County Officers Association of Georgia (COAG) develop a mediation process for County Commissions and Constitutional Officers on budget matters. The Commission believes that the two associations are best able to develop and implement the mediation process. The program developed should then be taken to the individual county officers associations for their approval.

GEORGIA FUTURE COMMUNITIES COMMISSION

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President, Chatham Steel Corporation*

*Dr. Carl C. Patton, Vice-Chairman
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*Honorable George W. "Bubba" Bird, III
Chairman, Candler County Board of
Commissioners*

*Honorable John O'Callaghan
Atlanta City Councilman*

*Mr. William A. Clement, Jr., Chairman
& Chief Executive Officer
Dobbs, Ram & Company*

*Honorable Dorothy Felton, State Representative
Georgia General Assembly*

*Honorable Jack Hill, State Senator
Georgia General Assembly*

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*Mr. Gene Hodges, Executive Vice President
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*Mr. Robert W. Kinard, President
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*Honorable Robert E. Knox, Mayor
City of Thomson*

*Honorable Clay Land, State Senator
Georgia General Assembly*

*Ms. Deborah Lane, Vice President
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*Mr. Joseph G. Martin, Jr., President
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ANNEXATION REPORT

The research division has taken a look at some of the sources that local governments rely on for revenue. Two of the major sources that are discussed in this report are the *property tax* and the *sales tax*. Enclosed you will find the formulas for distribution and how annexation or incorporation will effect the portions of revenue that municipalities and counties receive.

PROPERTY TAXES

Description:

Property taxes are moneys that are collected on all property for state, county, and municipal purposes. Unless property has been declared exempt by law, all property must be assessed for taxation. T.C.A. & 67-5-101.

Formula for distribution:

When the county trustee collects all county, and municipal taxes, all of the county property taxes remain in the county and all city property taxes remain in the city to be appropriated by the respective legislative bodies for the purposes for which the tax was levied.

Effect of Annex. or Incorp. on the distribution of the property tax.

When a larger city, which has a city property tax, annexes an unincorporated area, the newly annexed area is then responsible for paying the newly acquired city property tax in addition to the county property tax. However, in the event of incorporation, there is no effect on county revenue, the newly incorporated city will remain responsible for paying county property taxes.

SALES TAXES

(1) State Sales and Use Tax

Description:

The state sales and use tax is a collection of moneys from every person who is exercising a taxable privilege as listed in T.C.A. & 67-6-201.

Formula for Distribution:

The state sales tax rate is 6%. One-half of one percent is earmarked for the Education Fund. The remaining 5.5% of the state sales and use tax revenues are allocated as follows:

29.0246%	to the state general fund.
65.0970%	exclusively for education.
4.5925%	to incorporated municipalities (from which an allocation is made to the University of Tennessee for the municipal technical advisory service).
.3674%	to the department of revenue for sales tax administration.
.9185%	sinking fund for payment of interest and principal on state bonds.

Effect of Annex. or Incorp. on the distribution of the state sales tax.

A portion of this tax is allocated to incorporated cities based on the population of the municipality as a percentage of the total population of all municipalities in the state. Therefore, when an area incorporates into a city or is annexed, the population change will effect how the revenues are allocated percentage wise among the municipalities.

(2) Local Option Sales Tax

Description:

Any county, city, or town, after an election approving such measure, can levy a sales tax on the same privileges subject to the state sales tax. The local tax rate must not exceed 2.75%. The local rate only applies to the first \$1,600 on the sale or use of any single article of personal property as defined in T.C.A. & 67-6-702.

Formula for distribution:

The local sales tax revenues are distributed as follows:

- (1) 50% specifically for education, to be distributed in the same manner as the county property tax for school purposes.
- (2) 50% on the basis of where the sale occurred. Taxes collected inside a municipality go to that municipality and taxes collected in unincorporated areas go to the county. Counties and cities are authorized to contract with each other for some other distribution of the one-half not allocated for schools. T.C.A. & 67-6-712.

Effect of Annex. or Incorp. on the distribution of the local option tax.

One-half of the local option tax revenues are allocated on the basis of where the sale occurred. Taxes collected in a municipality remain in the municipality and taxes collected in an unincorporated area go to the county. So, when an unincorporated area becomes a municipality or is annexed, those tax revenues would then remain in that municipality, whereas, before those revenues would have been allocated to the county.

Sources:

County Revenue Manual, The University of Tennessee County Technical Assistance Service, August 1994.

Tennessee County Government Handbook, The University of Tennessee County Technical Assistance Service, August 1996.

Annexation Issues: A Commission Report to the 99th General Assembly, Tennessee Advisory Commission on Intergovernmental Relations, February 1995.

Memo: Effect of Annexation and the Formation of New Municipalities on the Allocation of State Shared Revenues, State of Tennessee, Comptroller

of the Treasury, Department of Audit, Division of County Audit: Richard V.
Norment to John G. Morgan, July 1997.

The Financial Effects of Annexation and Incorporation

The main source of revenue for county governments is that received from their property and local option sales taxes. Counties also receive a substantial amount of revenue from state-shared revenues. The legislative bodies of counties and cities in Tennessee do not have the inherent power to tax or set fees. Instead, all revenue received by the local governments is derived from statutory law. Chief sources of revenue are authorized by the state's general law. Supplemental sources of revenue, like the hotel/motel tax, may be authorized by a private act.

State Shared Revenues

Annexation and the formation of new municipalities would primarily affect the allocation of ten state-shared revenues. Although counties and municipalities receive other state-shared revenues in addition to those listed below, it does not appear that annexation or the incorporation of new municipalities would affect the allocation of these revenues between the municipalities and counties.¹ These ten affected state-shared revenue sources are the:

- Mixed Drink Tax
- Wholesale Beer Tax
- Hall Income Tax
- Bank Excise Tax
- Gasoline Tax
- Motor Vehicle Fuel Use Tax
- Special Tax on Petroleum Products
- Highway User Fuel Tax
- Beer Tax and Beer Permit Privilege Tax
- Tennessee State Revenue Sharing (T.V.A. in lieu of tax payments)

1. Mixed Drink Tax (T.C.A. §§ 57-4-301 through 308)

The Mixed Drink Tax, also known as the Liquor by the Drink Tax, is actually composed of two related taxes considered together under this topic. Both taxes are on the privilege of selling alcoholic beverages at retail for consumption on the premises. One tax is an annual fixed amount based on the type and size of the business. The other tax is a 15% levy based on the sales price of the alcoholic beverages sold. There are two exemptions to this tax.

The statute which levies a state tax on the privilege of selling liquor by the drink also allows a county to levy and collect the fixed amount annual tax based

¹ Memo from Richard Norment, Assistant to the Comptroller, to John Morgan, Executive Assistant to the Comptroller, 16 July 1997.

on the type and size of the business. Only the fixed amount, and not the percentage component, is available for local option levy.

Revenue from the annual fixed tax is distributed to the state General Fund. The gross receipts portion is distributed as follows:

- a. 50% to the state General Fund for educational purposes.
- b. 50% to local governments:
 - (1) 50% in the same manner as the county property tax for schools is expended. *In Bedford County, however, municipalities that do not operate their own school systems separate from the county must remit one-half of their proceeds from this tax to the county school fund.*
 - (2) 50% divided as follows:
 - (a) Collections in unincorporated areas, to the county general fund.
 - (b) Collections in municipalities, to those municipalities. *If the municipality is a premiere tourist resort, collections go to the schools of that municipality.*

If a municipality annexed an area, or if a new municipality was formed and the newly incorporated area included establishments selling liquor by the drink, then the municipality would receive a portion of the Mixed Drink Tax that had previously been allocated to the county.

2. Wholesale Beer Tax (T.C.A. §§ 57-6-101 through 118)

The Wholesale Beer Tax is a tax, at wholesale, on the sale of beer and similar alcoholic beverages of not more than 5% alcoholic content by weight, wine excepted. Beer sold at United States armed forces posts is exempt.

The tax collected is distributed to the county or municipality of the retailer's place of business, less 3% commission for the wholesaler and .5% remitted to the Department of Revenue for administration of the tax. The tax is remittable to the municipality if the retailer's place of business is within the city or town's boundary. Otherwise, the tax is remitted to the county of the retailer's place of business.

If a municipality annexed an area, or if a new municipality was formed and the newly incorporated area included establishments selling beer and similar alcoholic beverages, then the municipality would receive the wholesale beer tax that had previously been allocated to the county.

3. Hall Income Tax (T.C.A. §§ 67-2-101 through 121)

The Hall Income Tax is a 6% per annum tax on income derived from stocks and bonds. There are numerous exemptions.

Up to 10% of the first \$200,000 of taxes collected and 5% of the amount over \$200,000 received is distributed to the Department of Revenue for administration of the tax.

After the deduction of these administration expenses, 5/8 of the taxes collected is distributed to the state General Fund. The remaining 3/8 is paid to the counties and municipalities of Tennessee. If the taxpayer resides inside the corporate limits of a municipality, then the revenue goes to the municipality. If outside the city limits, the proceeds go to the county of the taxpayer's residence.

If a municipality annexed an area, or if a new municipality was formed and the newly incorporated area included taxpayers paying the Hall Income Tax, then the municipality would begin receiving the portion of the Hall Income Tax that had previously been received by the county.

4. Excise Tax Applied to Banks (T.C.A. §§ 67-4-801 through 813)

The Bank Excise Tax is a 6% state tax on the net earnings of all state chartered banks, national banks, and state and federally chartered savings and loans, doing business in Tennessee. The state excise tax applies to other corporations doing business in Tennessee, but only the portion of revenue received from banks and savings and loan associations is distributed to counties and municipalities.

Up to 3% of the net earnings of a bank or financial institution is allocated between counties and municipal governments. The allocation is based on (1) the location of the office or branch of the bank or financial institution and (2) the relationship of the property tax rate of the jurisdictions. The balance of the tax is distributed to the state General Fund.

If a new municipality is created or an existing municipality annexed additional area and the municipality imposed a property tax, then the bank excise tax allocation that had been made to the county only would be shared between the county and municipality.

5. Gasoline Tax (T.C.A. §§ 67-6-301 through 618; 67-3-101 through 503)

The Gasoline Tax is a special privilege tax imposed on distributors and dealers of gasoline for the privilege of engaging in this business. Distributors and dealers of gasoline must pay a tax that is based on the volume of gasoline that is refined, manufactured, produced, compounded, sold, stored or distributed in Tennessee within the commerce clause provisions of the U.S. Constitution. Some exemptions and refunds are available. Gasoline previously identified as a measure of tax liability of a registered distributor is not included in the tax liability of a subsequent dealer.

Gasoline is taxed at the rate of 20¢ per gallon. Distributors and dealers may deduct from the tax to be paid an allowance of 1.5% of the amount of tax due as compensation for administration and normal gallonage losses. The distribution of the proceeds from the Gasoline Tax is fairly extensive:

- a. Amount necessary (if any) to fund state debt through sinking fund account.
- b. 9¢ of the 20¢ is distributed as follows:
 - (1) 28.6% (less 2% of this amount to the General Fund for administration expenses) to the county aid fund for county road purposes, which are divided as follows:
 - (a) 50% is divided equally among the 95 counties;
 - (b) 25% is divided among the counties on the basis of population;
 - (c) 25% is divided among the counties on the basis of geographical area.
 - (2) 14.3% (less 1% for administration expenses) to the various municipalities according to population.
 - (3) The remainder (less 2% for administration expenses) to the state highway fund.
- c. 2¢ is distributed as in b. above, except to receive its portion the county must appropriate funds for road purposes from local revenue sources an amount not less than the average of the preceding five fiscal years. Bond issues are excluded from this calculation. If this amount is less than the five year average, the state allocation will be decreased by the difference between the five year average and the current amount appropriated from local sources. These funds must be used for resurfacing and upgrading county roads.
- d. 3¢ is distributed as follows:
 - (1) 66 2/3% to the counties as other county aid funds are distributed, less 1% for administration expenses, to be used for resurfacing and upgrading county roads, including paving of gravel roads.
 - (2) 33 1/3% to the municipalities as other municipal aid funds are distributed, less 1% for administration expenses.
- e. 6¢ is distributed to the state highway fund.

NOTE: .1074% of sixteen cents (16¢) of the twenty cents (20¢) gasoline tax is allocated to the state wildlife resources fund. Due to the small percentage going to this fund, this allocation is not reflected in the allocation percentages noted above.

Since a portion of this tax is allocated among municipalities based on the population of the municipality, the change in population that would occur in the event of the annexation of an area or the incorporation of a new municipality would affect how this tax is allocated.

State law also allows for a Gasoline Tax for Local Transportation Funding. This tax may be levied by a particular county, municipality or metropolitan government at their option, although a county levy precludes a municipal levy within that county. The rate is 1¢ per gallon on the privilege of selling gasoline. Net proceeds of the tax must be used to support public transportation services provided wholly or partly within the governmental unit.

6. Motor Vehicle Fuel Use Tax (T.C.A. §§ 67-3-101 through 503; 801 through 820)

The Motor Vehicle Fuel Use Tax is an excise tax imposed on the sale of motor vehicle fuel other than gasoline by any person within this state. The most common fuel taxed under this section is diesel fuel. Any person paying the tax who, in turn, sells or distributes such fuel to another, whether or not for use, must include the tax as part of the selling price of the fuel. Any person who subsequently resells such fuel must include the tax paid as a part of the selling price of the fuel.

In addition to this tax, an excise tax is imposed on the sale of compressed natural gas used as a motor vehicle fuel. Motor vehicle fuel is any combustible gas or liquid (except liquefied gas as defined in the Liquefied Gas Tax Law) used in an internal combustion engine to generate power to propel a motor vehicle and its auxiliary unit, if any. Several exemptions and refunds apply.

Motor vehicle fuel is taxed at the rate of 17¢ per gallon. Compressed natural gas used as motor vehicle fuel is taxed at 13¢ per gallon. Distribution of the proceeds breaks down as detailed below:

- a. 12¢ of the 17¢ per gallon of motor fuel sold and 9¢ of the 13¢ per gallon of the compressed natural gas sold is distributed as follows:
 - (1) 1.62% to the state General Fund.
 - (2) 24.75% to the counties to become a part of the county highway fund in the following manner:
 - (a) 50% equally among all counties;
 - (b) 25% on the basis of population; and
 - (c) 25% on the basis of area.
 - (3) 12.38% to the municipalities on the basis of population, with minor exceptions.
 - (4) 61.25% to the state highway fund.
- b. 5¢ of the 17¢ per gallon of motor fuel sold and 4¢ of the 13¢ per gallon compressed natural gas sold is distributed to the state sinking or highway fund.

Since a portion of this tax is allocated among municipalities based on the population of the municipality, the change in population that would occur in the

event of the annexation of an area or the incorporation of a new municipality would affect how this tax is allocated.

7. Special Tax on Petroleum Products (T.C.A. §§ 67-3-901 through 911)

This is a special tax assessed on distributors and dealers of benzol, gasoline, burning oil, distillate, fuel oil, gas oil, kerosene, naphtha, and most other volatile petroleum substances (except propane) sold or stored in Tennessee. There is an additional environmental assurance fee to stabilize the petroleum underground storage tank fund that is imposed and collected in the same manner as the Special Tax on Petroleum Products. There are numerous refunds and exemptions.

The tax rate is 1¢ per gallon sold or used in Tennessee, and 1/20¢ per gallon on petroleum products temporarily stored in this state and subsequently exported. The environmental assurance fee is 0.4¢ per gallon on each gallon of petroleum products imported into the state.

Distribution is as follows:

- a. 2% to the General Fund for administrative purposes.
- b. Local Government Fund (\$12,017,000 per year)
 - (1) \$381,583 monthly to county highway departments on the basis of county population.
 - (2) \$619,833 monthly to cities on the basis of population.
 - (3) \$10,000 monthly to the Center for Government Training for in-service training of local government officials and employees.
- c. Remainder to the state highway fund.
- d. The environmental assurance fee is distributed to the petroleum underground storage tank board.

Since a portion of this tax is allocated among municipalities based on the population of the municipality, the change in population that would occur in the event of the annexation of an area or the incorporation of a new municipality would affect how this tax is allocated.

8. Highway User Fuel Tax (T.C.A. §§ 67-3-701 through 710)

The Highway User Fuel Tax is imposed on owners or operators of any qualified motor vehicle engaged in the transportation of property in interstate commerce in or through Tennessee. The tax is determined by dividing the total number of miles traveled in the state during the quarter or annual reporting period by the average number of miles of motor vehicle travel per gallon of gasoline or motor fuel, and multiplying the result by the rates of the tax per gallon.

The Highway User Fuel Tax rate is 20¢ per gallon for gasoline, 17¢ per gallon for motor vehicle fuel, and 13¢ per gallon for compressed natural gas used as a motor vehicle fuel.

This tax is distributed in the same manner as the components of the Gasoline Tax and Motor Vehicle Fuel Use Tax.

Since a portion of this tax is allocated among municipalities based on the population of the municipality, the change in population that would occur in the event of the annexation of an area or the incorporation of a new municipality would affect how this tax is allocated.

9. Beer Tax and Beer Permit Privilege Tax (T.C.A. §§ 57-5-101 through 208)

The Beer Tax and Beer Permit Privilege Tax are privilege taxes paid by every person, firm, corporation, joint stock company, syndicate, or association in this state storing, selling, distributing, or manufacturing beer and alcoholic beverages of less than 5% alcoholic content by weight.

There are two types of beer privilege taxes: one on the volume of beer sold (a state barrel tax) and one on the business entity (a county/municipal tax).

The tax rate is \$3.90 per barrel (31 liquid gallons) for state tax, and \$100 per each seller, distributor, storer, or manufacturer for local tax.

Distribution is as follows:

- a. Up to 4% to the Department of Revenue to defray the expenses of administration of the tax.
- b. Of the amount paid into the state treasury:
 - (1) 10.05% to the several counties equally for general purposes.
 - (2) 10.05% to the incorporated municipalities according to population for general purposes.
 - (3) .41% to the Department of Mental Health and Mental Retardation to assist municipalities and counties in carrying out the provisions of the "Comprehensive Alcohol and Drug Treatment Acts of 1973."
 - (4) 79.49% to the state General Fund.

Since a portion of this tax is allocated among municipalities based on the population of the municipality, the change in population that would occur in the event of the annexation of an area or the incorporation of a new municipality would affect how this tax is allocated.

10. T.V.A. In Lieu of Tax Payments (16 U.S.C.A. § 831(L); T.C.A. §§ 67-9-101 through 103)

Created by the Tennessee State Revenue Sharing Act, these are payments, in an amount determined by federal law, made by the Tennessee Valley Authority to the state in lieu of taxes which the T.V.A. would otherwise pay but for its nontaxable status as a federal agency.

These payments are distributed by the Commissioner of Finance and Administration as follows:

- a. The first \$55.2 million (based on the 1977-78 fiscal year total amount) is distributed according to the pre-1977 formula:
 - (1) \$51,000,000 to the state.
 - (2) \$3,817,000 to counties.
 - (3) \$358,000 to municipalities.

- b. Amounts above \$55.2 million are distributed as follows:
 - (1) 48.5% to the state
 - (2) 48.5% to counties and municipalities, allocated as follows:
 - (a) 30% of the 48.5% to counties on the basis of their percentage of the state's total population.
 - (b) 30% of the 48.5% to counties on the basis of their percentage of the state's total area.
 - (c) 10% of the 48.5% to counties on the basis of the percentage of their land owned by T.V.A. compared to all the land owned by T.V.A. in Tennessee.
 - (d) 30% of the 48.5% to municipalities on a population basis.
 - (3) 3% to local governments impacted by T.V.A. construction of facilities to produce electric power. The impacted areas are designated by T.V.A.; payments are made during the period of construction activity and for three fiscal years after completion of construction using a phase out schedule in which each year is reduced by 25%. The comptroller of the treasury allocates the impact funds among the counties and municipalities according to a weighted population formula. If, in any fiscal year there are remaining impact funds, CTAS is to receive them, up to a cap of 10% of the total impact funds. Any excess funds remaining are then distributed according to (2) above.

Since a portion of this tax is allocated among municipalities based on the population of the municipality, the change in population that would occur in the event of the annexation of an area or the incorporation of a new municipality would affect how this tax is allocated.

Other Taxes

Hotel/Motel Tax (T.C.A. §§ 67-4-1401 through 1425)

Approximately fifty-six counties utilize the privilege tax on the occupancy of hotel and motel rooms and similar space.² The rate of tax varies from county to county. Currently, the lowest rate is 1.5% and the highest rate is 5% of the price of lodging. Administration, collection and allocation of the tax varies as well. In non-metropolitan government counties, this levy has been authorized by private act.

Since May 12, 1988, there have been three limitations to application for cities and counties authorized to levy a hotel/motel tax. Williamson and Shelby Counties are exempted from these limitations:

- a. A city shall only levy such tax on occupancy of hotels located within its boundaries.
- b. A city shall not be authorized to levy such tax on occupancy of hotels if the county in which such city is located has levied such tax prior to the adoption of the tax by the city.
- c. A county shall only levy such tax on occupancy of hotels within its boundaries but outside the boundaries of any municipality which has levied a tax on such occupancy prior to the adoption of such tax by the county.

In the event of annexation or incorporation, the municipality would be restricted from levying such a tax only if the county levied such a tax prior to the annexation or incorporation.

² Source: Tennessee Department of Revenue, Research Division.

Conclusion

In its 1995 report on Annexation Issues in Tennessee, the Tennessee Advisory Commission on Intergovernmental Relations outlined some of the pros and cons of the existing state shared revenue structure. Those in favor of the existing laws regarding situs taxes stated the following:

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

Those in disagreement with the existing situs tax law noted the following:

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

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**POPULATION REQUIREMENTS
FOR
INCORPORATION.**

1955	200
1991	500
1993	750/MAYOR-ALDERMAN FORM
1995	1500

BUFFER ZONE DISTANCE

1955	2 MILES IF > 500
1991	5 MILES IF > 100,000 2 MILES IF 1,000 TO 100,000
1993	5 MILES IF > 100,000 3 MILES FOR ALL OTHERS