

EXHIBIT A

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Office of the Attorney General
State of Tennessee

*1 Opinion No. 98-149
August 12, 1998

Local Growth Plans: Composition of Coordinating Committee
Honorable Ben Atchley
State Senator
303 War Memorial Building
Nashville, TN 37243-0206

QUESTIONS

Under 1998 Tenn. Pub. Acts Ch. 1101, each county within the State is required to develop a local growth plan. The plan is to be initially developed through a coordinating committee established in each county as of September 1, 1998. Under Section 5(a)(1) of the act, the committee includes the following:

(C) One (1) member appointed by the governing board of the **municipally owned utility system** serving the largest number of customers in the county;

(D) One (1) member appointed by the governing board of the **utility system**, not **municipally owned**, serving the largest number of customers in the county;

1. Does the phrase "governing board of the **municipally owned utility system** serving the largest number of customers in the county" only refer to a **system owned** by a municipality located within the county, or to any **municipally owned system** that provides **utility** service in that county?

2. How should the "largest number of customers" be determined:

a. By the persons named on the utility's billings;

b. By the number of meters served by the utility; or

c. By the total number of persons served by the utility system?

d. If the phrase refers to persons named on the account, are joint accounts treated as one customer?

e. If the phrase is based on the number of utility meters, are domestic wastewater customers, who have no separate wastewater meter, but are billed for wastewater services based on water consumption, to be counted more than once?

3. What is the definition of a "utility system, not municipally owned?" Does it include:

a. A telephone company?

b. A cable television company?

c. An electric cooperative?

d. A private gas company? or

e. A company providing garbage removal services?

OPINIONS

1. Within the context of the Act, we think the General Assembly intended the phrase "governing board of the municipally owned utility system serving the largest number of customers in the county" to refer to any municipally owned system that provides utility service in that county, whether or not the owning municipality is located within that county.

2. a., b., and c. We think the General Assembly intended the number of

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customers served by a utility under these provisions to include all the persons named on the bills issued for services of that utility within the county.

d. Based on the conclusion above, if two persons are named on a joint account, each person should be counted as a separate customer.

e. Because this opinion concludes that the number of customers is based on the persons named on the bills, and not on the number of meters served, this question is moot.

3. We think the General Assembly intended the term, "utility system, not municipally owned," to include privately owned companies included within the definition of a "public utility" in Tenn. Code Ann. § 65-4-101. Applying this definition, the term would include privately owned common carriers, traction companies, and interurban railways, and any privately owned company that operates express, gas, electric light, heat, power, water, telephone, telegraph, telecommunications services, or any other like system, plant or equipment, affected by and dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the State or by any political subdivision of the State. Therefore, any privately owned company listed in Question 3 could be a "utility system, not municipally owned," under the Act if it serves the public under a privilege, franchise, license, or agreement granted by the State or any political subdivision of the State. An electrical cooperative operating under Tenn. Code Ann. §§ 65-25-201, et seq., would probably fall within this definition.

ANALYSIS

*2 Introduction: Developing a Local Growth Plan

This opinion addresses the composition of a coordinating committee formed under 1998 Tenn. Pub. Acts Ch. 1101 (the "Act."). Section 5 of the Act creates a coordinating committee within each county effective September 1, 1998. It is the duty of this committee to develop a recommended growth plan by January 1, 2000 and submit the plan for ratification by the county commission and the governing body of each county. The recommended growth plan must identify urban growth boundaries for each municipality within the county and identify planned growth areas and rural areas within the county, as described in Section 7 of the Act. Section 5(a)(1) outlines the composition of the coordinating committee:

(a)(1) Except as otherwise provided pursuant to subdivision (a)(9), effective September 1, 1998, there is created within each county a coordinating committee which shall be composed of the following members:

(A) The county executive or the county executive's designee, to be confirmed by the county legislative body; provided, however, a member of the county legislative body may serve as such designee subject to such confirmation;

(B) The mayor of each municipality or the mayor's designee, to be confirmed by the municipal governing body;

(C) One (1) member appointed by the governing board of the municipally owned utility system serving the largest number of customers in the county;

(D) One (1) member appointed by the governing board of the utility system, not municipally owned, serving the largest number of customers in the county;

(E) One (1) member appointed by the board of directors of the county's soil conservation district, who shall represent agricultural interests;

(F) One (1) member appointed by the board of the local education agency

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having the largest student enrollment in the county;

(G) One (1) member appointed by the largest chamber of commerce, to be appointed after consultation with any other chamber of commerce within the county; and

(H) Two (2) members appointed by the county executive and two (2) members appointed by the mayor of the largest municipality, to assure broad representation of environmental, construction and homeowner interests.

(Emphasis added.) The request raises several questions regarding the members identified in (a)(1) (C) and (D). The Act itself contains no definition of the term "utility system" or "customer." In construing any statute, the "fundamental rule ... is to ascertain and, if possible, to give effect to the intention or purpose of the legislature as expressed in the statute." *Mercy v. Olsen*, 545 S.W.2d 736, 738 (Tenn. 1977). The meaning of a statute is determined by viewing the statute as a whole and in light of its general purpose. *City of Lenoir City v. State ex rel. City of Loudon*, 571 S.W.2d 297, 299 (Tenn. 1978). In discussing these issues, it is therefore important to review the remainder of the statute regarding the establishment of a local growth plan and the intent of the General Assembly, specifically, with regard to a local growth plan established by annexation reserve agreements in charter counties.

*3 Section 3 of the Act provides:

With this act, the General Assembly intends to establish a comprehensive growth policy for this state that:

- (1) Eliminates annexation or incorporation out of fear;
- (2) Establishes incentives to annex or incorporate where appropriate;
- (3) More closely matches the timing of development and the provision of public services;
- (4) Stabilizes each county's education funding base and establishes an incentive for each county legislative body to be more interested in education matters; and
- (5) Minimizes urban sprawl.

1998 Tenn. Pub. Acts Ch. 1101, Section 3. The Act provides for each county to develop a local growth plan to be adopted by the county and city governments within the county. The process by which the plan is to be developed for most counties, except charter counties, is set forth in Section 5 of the Act. Under a local growth plan, territory within a county will be divided into three components: urban growth boundaries, planned growth areas, and rural areas. The coordinating committee is to consider proposed urban growth boundaries submitted by municipalities within a county, and the proposed planned growth areas and rural areas submitted by the county. The cities' and the county proposals must include a report on development projections and costs within these areas, and each city and the county must hold two public hearings before submitting proposed urban growth boundaries, or planned growth areas, respectively. 1998 Tenn. Pub. Acts Ch. 1101, Section 7.

After a growth plan is approved, all land use decisions made by the legislative body and the municipality's or county's planning commission must be consistent with the growth plan. 1998 Tenn. Pub. Acts Ch. 1101, Section 8. The purpose of the growth plan is to direct the coordinated, efficient, and orderly development of the local government and its environs that will, based on an analysis of

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present and future needs, best promote the public health, safety, morals and general welfare. Id.

1. "Municipally Owned Utility System" under the Act.

The first question in the request concerns the meaning of "municipally owned utility system serving the largest number of customers in the county," in Section 5(a)(1)(C) above. Based on our review of the entire planning process set forth in the Act, we think the General Assembly intended the phrase "municipally owned utility system serving the largest number of customers in the county" to refer to a system owned by any municipality, whether or not it is located in the county where the local growth plan is being developed. Interpreting the phrase to include only the county or cities within the county would prevent a representative of the system serving the most customers in the county--and therefore in the best position to judge the viability of county wide development and also the utility on which the final plan will have the most impact--from helping to develop the local growth plan. This result would serve no purpose articulated in the Act. It should also be noted that, under the Act, the governing body of each county and each city within the county must adopt the plan proposed by the coordinating committee. If the county and all the cities within it do not adopt the plan, the Act provides a dispute resolution mechanism for developing a plan.

2. Determining the Number of Utility Customers.

*4 The next question is how the utility with the "largest number of customers" in the county should be determined. The Act does not provide any method for counting customers of a utility. In addition, basic rules of statutory construction require that these terms be given their common and ordinary meaning without any forced or subtle construction. *AFG Indus., Inc. v. Cardwell*, 835 S.W.2d 583, 584 (Tenn. 1992); see also, *State v. Williams*, 690 S.W.2d 517, 529 (Tenn. 1985); *Mercy v. Olsen*, 672 S.W.2d 196, 198 (Tenn. 1984). The American Heritage Dictionary defines the term "customer" in relevant part as follows:

"A person who buys goods or services, esp. on a regular basis."
 American Heritage Dictionary 357 (2d Coll. Ed. 1985).

It is also a rule of statutory construction that statutes are to be construed with reference to existing laws. *State ex rel. Carr v. Wallace*, 168 Tenn. 591, 79 S.W.2d 1027 (1935). The legislature is presumed to be cognizant of other statutes germane to the subject. *Ledbetter v. Duncan*, 676 S.W.2d 91, 93 (Tenn. App. 1984). Statutes providing for utility district commissioners to be elected or ousted by the "customers" of the district generally define that term to include any person or any individual who receives bills for services from the district and pays money for such services. See, e.g., Tenn. Code Ann. § 7-82-307(c)(2) (any individual who receives bills for services from the water district and pays money for such services and who resides and is the owner of real property within the boundaries of the district); § 7-82-397(f)(1) (any person who receives bills for services from the water utility district and pays money for such services); § 7-82-307(p)(2) (any individual who receives bills for services from the water utility district and pays money for such services and who resides and is the owner of real property within the boundaries of the district); Tenn. Code Ann. § 7-82-307(aa)(7) (a "customer" is a person or entity whose name appears on a water bill for water services; only one vote is allowed for each utility bill); Tenn.

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Code Ann. § 7-82-307(bb)(1) ("customer" means any individual who receives bill for services from the gas utility district and pays money for such services and who resides within the boundaries of the district); Tenn. Code Ann. § 7-82-307(dd)(4) ("customer" means any individual who receives bill for services from the utility district and pays money for such services); Tenn. Code Ann. § 7-82-307(ee) ("customer" means any individual who receives bill for services from the water utility district and pays money for such services and who resides within the boundaries of the district); Tenn. Code Ann. § 7-82-307(ff)(1), as amended by 1998 Tenn. Pub. Acts Ch. 588, ("customer" means any individual or entity who receives bills from the utility district, pays money for such services and resides or operates within the area served by the district; each individual or entity is limited to one vote); Tenn. Code Ann. § 7-82-307(gg)(1) ("customer" means a person who is periodically billed for utility service rendered by the district and who pays money for such service); Tenn. Code Ann. § 7-82-307(ii)(1) ("customer" means any individual or entity who receives bills from the district, pays for the services and resides or operates within the boundaries of the district; each individual or entity is limited to one vote).

*5 Based on the definitions of "customer" outlined above, we think the General Assembly intended the customers of a utility to include all the individuals and entities listed on the bills of that utility. Thus, where two individuals are listed on a joint account, we think each individual should be counted as a customer for the purpose of determining the number of customers of that utility.

3. Definition of a "Utility System, Not Municipally Owned."

Finally, the request asks the definition of the term, "utility system, not municipally owned" under Section 5(a)(1)(D) of the Act. Again, the Act itself contains no definition of the term. We therefore must apply the same principles of statutory construction outlined in Question 2 above. The American Heritage Dictionary defines the term "utility" in relevant part:

A public service, such as gas, electricity, water or transportation.
 American Heritage Dictionary 1311 (2d Coll. Ed. 1985). The same dictionary defines the term "system" in relevant part:

A network of structures and channels, as for communications, travel or distribution.

American Heritage Dictionary 1234 (2d Coll. Ed. 1985). See also, e.g., Southern Liquid Gas Co. v. City of Dothan, 253 Ala. 350, 44 So. 2d 744, 747 (1950) (an essential element of a "utility" is that it is both serving and is constituted to serve all inhabitants in an area who comply with reasonable conditions).

These definitions are consistent with the statutory definition of a "public utility" subject to the jurisdiction of the Tennessee Regulatory Authority. That statute defines the term "public utilities" generally as follows:

"Public utility" includes every individual, copartnership, association, corporation, or joint stock company, its lessees, trustees, or receivers, appointed by any court whatsoever, that own, operate, manage or control, within the state, any interurban electric railway, traction company, all other common carriers, express, gas, electric light, heat, power, water, telephone, telegraph, telecommunications services, or any other like system, plant or equipment, affected by and dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision

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thereof. ...

Tenn. Code Ann. § 65-4-101(a) (Supp. 1997). Applying this definition, the term "utility system, not municipally owned" would include privately owned common carriers, traction companies, and interurban railways, and any privately owned company that operates express, gas, electric light, heat, power, water, telephone, telegraph, telecommunications services, or any other like system, plant or equipment, affected by and dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the State or by any political subdivision of the State. Therefore, any privately owned company offering telephone, cable television, gas or garbage removal services could be a "utility system, not municipally owned," under the Act if it serves the public under a privilege, franchise, license, or agreement granted by the State or any political subdivision of the State. An electrical cooperative operating under Tenn. Code Ann. §§ 65-25-201, et seq., would probably fall within this definition, since such a cooperative typically serves a rural community under a statutory scheme.

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