

Utility Districts

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

Table of Contents

Utility Districts	3
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Utility Districts

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Creating and Expanding Utility Districts

Most utility districts created under T.C.A. §§ 7-82-101, *et seq.*, provide water and sometimes sewer service. However, they may be empowered to provide natural gas, bottled gas, police, fire, garbage, street lighting, park, transit, chemical pipeline, and cable TV services.

State law establishes procedures for creating or expanding a utility district. At least 10 days prior to a hearing on a petition to create a utility district, the county executive must send by registered mail a notice of the hearing to the mayor or other chief executive officer of any city that has a boundary within five miles of the proposed district's boundary if the city has a population of more than 5,000 or within three miles if it has a population of less than 5,000. The notice also must be sent if any city, regardless of size, has "any water, sewerage, or gas service facility" within three miles of the proposed district's boundary. At the hearing, the city may make known its intention of serving the area, whereupon the county executive must give the city 60 days to file its specific plans for doing so. When such plans are filed, the county executive must determine a reasonable time (which he or she may later extend) for the city to provide such service, a decision that may be appealed by either party to circuit court. The utility district may then be created minus the area to be served by the city or without authority to duplicate the city's service.

A similar procedure is provided for extending service facilities by existing utility districts, with priority given to a city within the same mileage limitations as above. The county executive likewise determines a reasonable time for the city to provide the service, which is subject to appeal.

The statute also provides a procedure for consolidating two or more utility districts.

Acquisition of Utility District by Municipality

T.C.A. § 7-82-202(f) provides a means for a municipality to acquire a utility district. The acquisition must be preceded by a petition of the governing body of the utility district, following which the county executive handles the petition in the same manner as a petition for the creation of a utility district is handled. If the county executive determines that the municipal acquisition of the utility district serves the public convenience and necessity, the utility district is dissolved and all its property is transferred to the municipality. The former utility district must be operated by the municipal governing body, separately from any other municipal utility. If the area served by the former utility district is outside the limits of the municipality, the municipal governing body must, by ordinance, appoint an advisory committee consisting of either the former commissioners or residents and customers of the utility district.

Although this statute provides that the former utility district must be operated by the municipality as a separate department, it also provides that "When the former utility district ceases to be a separate department and is merged with the other utility services of the municipality into one utility system, such advisory committee may be dissolved. No portion of such utility district shall be made a part of the municipal utility service without consideration being paid to the department composed of such utility district." It is not clear how the internal conflict in the statute would be resolved.

Expansion of Cities into Utility District and Electric Cooperative Service Areas

Things become more complicated when a city is expanding as it must contend with both state and federal restrictions. The state code says a city may not extend its utility service within the boundaries of a utility district "... unless and until it shall have been established that the public convenience and necessity requires other or additional services ..." T.C.A. § 7-82-301. Apparently, any additional service by either public or private providers is required to be supported by a certificate of convenience and necessity issued by the county mayor. [See *West Wilson Utility District of Wilson County v. Atkins*, 442 S.W.2d 612 (Tenn. 1969); *Consolidated Grey-Fordtown-Colonial Heights Utility District v. O'Neill*, 354 S.W.2d 63 (Tenn. 1962); *Pace v. Garbage Disposal District of Washington County*, 390 S.W.2d 461 (Tenn. App. 1965); *Chandler Investment Co. v. Whitehaven Utility District*, 311 S.W.2d 603 (Tenn. App. 1958)].

When a city annexes part of a district's territory, the state code gives the city power to take over the utility district's facilities in the annexed area upon payment of an agreed amount of compensation and under agreed terms, or as determined by arbitration. If so much of a utility district is annexed that

operating the remainder outside the city is economically unfeasible, a city probably would have to choose between taking all of the district or none of it. T.C.A. § 6-51-111.

However, 7 U.S.C. § 1926(b) and court decisions interpreting this federal statute limit this state grant of power. Almost all utility districts built rural water lines funded with Farmers Home Administration (FmHA) loans. 7 U.S.C. § 1926(b) has provisions protecting the borrowing district's ability to pay those loans back to FmHA. Courts have interpreted these provisions to give a district an absolute ability to refuse to transfer utility service rights to a municipality that annexes part or all of its service area.

A city incorporated after January 1, 1972, must hold a referendum before it can take over utility service from a utility district. T.C.A. § 6-51-301 (d).

The taking of facilities owned by an electric cooperative is subject to special rules regarding compensation of the co-op. T.C.A. § 6-51-112. A utility district may act jointly in carrying out its powers with a county, city, or other utility district and may contract jointly with the state or federal government or any agency thereof. T.C.A. § 7-82-304(11).

Utility Management Review Board

A utility management review board, appointed by the governor, advises utility district boards of commissioners on utility management. Financially distressed utilities are reported to the board by the comptroller's office. The board has broad powers to adopt rates, study consolidating utility districts, hear customer complaints, and review and comment on the creation and modification of utility districts' boundaries. T.C.A. §§ 7-82-201–202, T.C.A. §§ 7-82-701–804.

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