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Counties & Utility Districts Providing Service to Municipalities

Dear Reader:

The following document was created from the MTAS website (mtas.tennessee.edu). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

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

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T.C.A. § 5-1-118 gives counties authority to establish and operate utility systems, including sewer systems, through the device of permitting them by resolution to exercise certain powers given to municipalities under the general law mayor-aldermanic charter, including those contained in T.C.A. § 6-2-201(3) B(8), (10)B(13), (18), (19), (26), and (29). But there is no suggestion in that statute that counties can establish sewer systems inside municipalities.

Counties are also authorized under T.C.A. §§ 5-16-101 *et seq.* to establish and operate "urban type public facilities," which means sanitary and storm sewer lines and facilities, plants for the collection, treatment and disposal of sewage and waste matter, facilities and plants for the incineration or other disposal of garbage, trash, ashes and other waste matter, or water supply and distribution lines, facilities and plants, chemical pipelines and docks, or all of these things, and fire protection and emergency medical services. T.C.A. § 5-16-101(b)(2)That authority extends to "any area or areas within their border" [T.C.A. § 5-16-101(a)]. Notwithstanding that language, it does not appear that the county has authority to extend sewer service within the corporate limits of a municipality without its permission. Upon the annexation or incorporation of territory, the annexing or incorporating municipality has the exclusive authority to provide the urban type public facilities in question and to take over such facilities. In addition, the county cannot extend any urban services type facilities within five miles of an existing municipality

.... unless such incorporated city or town has failed to take appropriate action to provide a specified public service facility or facilities in a specified area or areas for a period of ninety (90) days after having been petitioned to do so by resolution of the county legislative body or other governing body.... (T.C.A. § 5-16-111).

That statute appears to permit the county to provide the urban type public facility within five miles of the municipality and to its very doorstep upon the appropriate petition, but probably cannot be read broadly enough to permit the provision of such a facility within the corporate limits of the municipality without its consent.

T.C.A. § 7-51-401 provides that

"(a) Except as provided in § 7-82-302 [the Utility District Act] each county, utility district, municipality, or other public agency conducting any utility service specifically including waterworks, water plants and water distribution systems, and sewage collection and treatment systems is authorized to extend such services beyond the boundaries of such county, utility district, municipality, or public agency to customers desiring such service."

but that

(c) No such county, utility district, municipality, or public utility agency shall extend its services into sections of roads or streets already occupied by other public agencies rendering the same service, so long as other public agency continues to render such service.

That statute authorizes the named political subdivisions, including counties, to extend their utility systems outside their boundaries. It can be argued that it implies that those political subdivisions have the authority to make such extensions into other political subdivisions, provided that the streets proposed for use contain no other utility lines belonging to another utility and already providing the utility service in question. But *Knoxville v. Park City*, 130 Tenn. 626 (1914), and *Franklin Light & Power Company v. Southern Cities Power Company*, 47 S.W.2d 86 (Tenn. 1932), require that a utility's authority to extend its service *into* a municipality without that municipality's consent be express authority. It is not enough that the statute authorizes the utility to extend its system *outside* its boundaries.

T.C.A. §§ 7-34-101 *et seq.* authorizes municipalities, including both counties and cities, to construct various "public works," including sewer systems [T.C.A. § 7-34-102], but also declares that, "[n]o municipality shall construct public works wholly or partly within the corporate limits of another municipality, other than to perform maintenance on or make improvements to its existing public works system in its service area, except with the consent of the governing body of the other municipality" [T.C.A. § 7-34-105].

Municipalities, including counties and cities, are also authorized to establish and operate electric systems under T.C.A. § 7-52-101 *et seq.* and to transfer to the utility board any sewage works that it "now or hereafter" owns and operates. But that statute provides that the municipality has the power to "[a]cquire, improve, operate and maintain within and/or without the corporate or county limits of such municipality, and within the corporate limits of any other municipality, *with the consent of such other municipality*, an electric plant...."

T.C.A. § 5-1-113 appears to give counties broad general authority to enter into "contractual relations" with municipalities lying within their boundaries, to "conduct, operate or maintain, either jointly or otherwise, desirable and necessary services or functions." They also have the power to "contract and be contracted with" under T.C.A. § 5-1-118(1). T.C.A. §§ 5-16-101 *et seq.* authorize counties to establish and operate urban type public facilities, including sewer systems. Section 5-16-109(a) gives the board, with the approval of the county legislative body, broad authority to enter into contracts with municipalities and other governments "for the furnishing of services and facilities within the purview of this chapter...."

Among the utility laws that give both cities and counties the authority to establish and operate sewer systems outside their territorial limits, T.C.A. §§ 7-34-101 *et seq.* obliquely permit both entities to provide sewer service in the other, by consent [T.C.A. § 7-34-105]. It is not clear whether the same is true under T.C.A. §§ 7-52-101 *et seq.* That statute specifically

applies to electric systems, but cities and counties may also transfer to the utility board various utilities, including sewer systems [T.C.A. § 7-52-111]. One of the powers of such utility boards is the power to extend *electric* service across city and county lines, with the consent of the city or county in question. That power may not apply to a sewer system operated by the utility board.