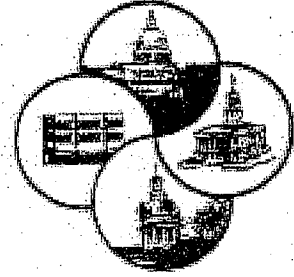


Preface

The General Assembly created the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) in 1978 in recognition of the need for a permanent state agency to monitor the operation of federal-state-local relations and make recommendations for improvements. The TACIR is a future-oriented organization concerned with issues and problems that impact the efficiency and effectiveness of governments involved in the intergovernmental process. Often called a "think-tank" or "think and do-tank" by some, the TACIR seeks to identify and diagnose public policy problems that loom on the horizon.



TACIR's enabling legislation directs it to study, report on, and make recommendations concerning:

- the current pattern of local government structure and its viability;
- the powers and functions of local governments, including fiscal powers;
- the relationships between and among local governments and the state;
- the role of the state as the creator of local government entities;
- the allocation of state and local fiscal resources; and
- ways to foster better relations between state and local government.

As part of its Government Modernization initiative, the TACIR has devoted a great deal of resources to the study of barriers to consolidation and other impediments to local government reform. In 1996, legislative members of the TACIR introduced legislation to increase the options available to create a metropolitan government charter commission. That legislation would have allowed the creation of a charter commission upon petition of 20 percent of the number of votes cast in the county for governor in the last gubernatorial election. That particular piece of legislation passed in the Senate but failed in the House in 1996. However, a few years later, the petition option for forming a metropolitan government charter commission was included in legislation that became Public Chapter No. 1101, Acts of 1998.

In this law, Tennessee's landmark "growth policy act," a charter commission was allowed to be formed....upon receipt of a petition, signed by qualified voters of the county, equal to at least 10 percent of the number of votes cast in the county for governor in the last gubernatorial election. Thanks to this law, there are now three options for forming a charter commission. All of these are discussed in this report.

Introduction

Since November 3, 1953, when Tennesseans amended their state constitution to allow for local government consolidation, the option of metropolitan government has existed. Yet, in nearly half a century, just a handful of counties have attempted to merge – and only three succeeded.

In 1998, the Tennessee General Assembly made local government consolidation a little bit easier by allowing a citizen-driven petition to launch the consolidation process. That’s why the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) has published this booklet – to educate Tennessee residents and local government officials about consolidation and metropolitan government and to explain the state’s consolidation laws and their amendments.

Tennessee Public Chapter 1101 of 1998 did a whole lot more than make consolidation more attainable. This groundbreaking legislation requires unprecedented local government teamwork. The law outlines a strategy for cities and counties to cooperatively plan for their futures. If ever the time was ripe for communities to consider whether consolidation is right for them, it’s now.



A History Lesson

Back in 1953, Tennessee voters adopted several constitutional amendments, including changes to one section on local government affairs. As amended, the final paragraph of Article XI, Section 9 reads as follows:

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.

That paragraph wasn't self-executing, which meant that the General Assembly needed to pass laws to allow for consolidation of counties and those necessary statutes are now codified in Tennessee Code Annotated (T.C.A.) Sections 7-1-101, et seq. The statutes refer to a government formed under this general law as a metropolitan government; however, the actual name of the consolidated government in a particular charter may be something else [T.C.A. Section 7-2-108 (a)(3)(D)].

T.C.A. defines a metropolitan government as "the political entity created by consolidation of all, or substantially all, of the political and corporate functions of a county and a city or cities." Here's how the National Association of Counties defines a city-county consolidation: "A city-county consolidation or merger involves the unification of the governments of one or more cities with the surrounding county. As a result of the consolidation, the boundary lines of the jurisdictions involved become conterminous. However, certain incorporated jurisdictions may opt to be excluded from the consolidation." Conterminous? That means the boundaries are the same for all the involved jurisdictions.

Perhaps because the first – and for many years, only – city-county consolidation in Tennessee involved Nashville and Davidson County, many Tennesseans have been under the misconception that only big counties may consolidate. But that's not the case. Any county in Tennessee may merge with its largest municipality [T.C.A. Section 7-2-101]. For example, the voters of diminutive Moore County and Lynchburg consolidated those local governments in 1987.

The wording of Tennessee's Constitution that you read above is cited as the predominant reason most consolidation votes fail in this state. A



Forming a Metropolitan Government

consolidation can occur only if the voters in the county who live outside the principal city approve. That means two sets of votes are compiled. It also means that a majority of all those who vote may whole-heartedly endorse consolidation, yet the merger still fails if there isn't a majority in favor both inside and outside the city.

Despite Tennesseans' past reluctance to consolidate cities and counties, the concept continues to be studied and promoted by those who see in the current Tennessee local government structure serious structural weaknesses.

In recent years, TACIR has had county modernization as an ongoing agenda issue. During 1995, local government officials at several TACIR meetings identified city-county consolidation and other alternative forms of county governments as avenues to modernize and reform local government.

Definitions

Metropolitan Government

The political entity created by consolidation of all, or substantially all, of the political and corporate functions of a county and a city or cities.

Charter Commission

A commission established to write and propose to the voters the charter for a metropolitan government.

Principal City

The municipality that has the largest population of any municipality in the county.

Smaller City

Any municipality other than the principal (largest) city in the county.

Urban Services District

A service district within a metropolitan government in which additional, urban type services are provided by the metropolitan government in addition to those in the general services district.

General Services District

A service district within a metropolitan government whose geographical limits are coextensive with the total in which the government functions.

Why Should A County Consider Consolidation?

Both proponents and opponents of local government consolidation brandish a substantial list of reasons to support their positions. Yet, experts agree that consolidation has the potential to offer at least the following advantages.

- **An economic development edge:** Having a consolidated government allows the community to react quickly to proposed economic development prospects. Instead of having to deal with two or more governments, prospective businesses have one point of contact. Business and industrial prospects like the idea of licensing and inspection offices under the authority of one government. There's less red tape. Also, cooperative countywide planning and zoning is an economic development plus. When Augusta and Richmond County in Georgia debated consolidation in 1995, one consolidation proponent said the merger would result in 10,000 new jobs in five years. Voters of those jurisdictions overwhelmingly endorsed the plan.
- **Economies of scale:** Combined purchasing power and efficiency can result in taxpayer savings. For example, public works operations can share machinery, personnel and equipment. Consolidated law enforcement departments may find themselves with the ability to fund additional patrols. A small city may find itself better able to offer services that weren't cost-effective before.
- **Less duplication:** Cities and counties many times fund similar operations, such as road building, fire protection and solid waste services. With consolidated government, one office would replace two or more.
- **Government accountability:** One unified government is easier for voters to understand than several local jurisdictions. This increased visibility may better focus public attention on governmental operations.
- **Harmony:** One government will eliminate some discord, such as annexation disputes, and local planning and zoning issues may be more readily resolved.

First Things First

The initial step toward consolidation is the creation of a metropolitan government charter commission. The charter commission can be formed by one of the following three methods:

1. the adoption of a consolidation resolution by the governing body of a county and the adoption of a similar resolution by the city with the largest population in the county;
2. by private act of the General Assembly; and
3. by a petition signed by qualified voters of the county, equal to at least ten percent (10%) of the number of votes cast in the county for governors in the last gubernatorial election.



Steps Toward Consolidation

The process of local government consolidation in Tennessee can be broken down into five broad steps.

Step 1. The Exploratory Committee (optional)

As an initial step toward possible adoption of metropolitan government, many communities choose first to establish an exploratory committee.

Though an exploratory committee isn't required by law, there are good reasons to use this approach. The committee can:

- help determine whether there's sufficient support to proceed to the next step—formation of a charter commission.
- serve an educational function by holding public meetings to obtain citizen input and determine possible benefits of consolidated government.
- recommend procedures for the formation of a charter commission, since the law gives three options.

Step 2. Creation of the Charter Commission

Unlike the exploratory committee, creation of a charter commission is **required** by state law. There are three ways a charter commission can be established:

1. by adoption of a resolution by the county and the county's principal city (the principal city is determined by population). Both governing bodies must adopt a similar resolution by a majority vote of the quorum. The resolution should state that "a metropolitan government charter commission is established to propose the consolidation of all or substantially all of the government and corporate functions of the county and its principal city and the creation of a metropolitan government for the administration of the consolidated functions." Other cities may also be included, or they may choose not to participate (see Page 12). The resolutions must state whether the members of the charter commission will be chosen by the county and city mayors and confirmed by their respective governing bodies, or whether the charter commission will be elected by a countywide at-large election. If the community goes the election route, the 10 candidates receiving the most votes are elected.
2. by a private act, passed by both houses of the Tennessee General Assembly. The Legislature introduces the private act upon the recommendation of all local governments involved. The private

act then must be approved by a two-thirds vote of the county and the principal city governing bodies *or* by a countywide referendum. The advantage of the private act is it allows for the charter commission to be structured differently from what general statutes call for – thus allowing for representation on the charter commission that reflects local desires. For example, when cities other than the principal city want more representation, a private act can allow for that. When Sullivan County and the cities of Kingsport, Bristol, and Bluff City established a charter commission in 1987, they used this method.

3. by a voter petition. This is the recent change in state law that allows for a citizen-driven initiative. A petition must be signed by qualified voters in the county equal to 10 percent of the number of votes cast in the last gubernatorial election. The petition must be certified by the county election commission. Upon certification, the petition becomes the consolidation resolution and is delivered to the county governing body and the governing body of the principal city for adoption. Those two governing bodies must decide within 60 days how to select the charter commission members. If a decision isn't made, then the charter commission members will be elected in a countywide election. If the decision is made to appoint the members, the county mayor must appoint 10 members and the mayor of the principal city must appoint 5 members. (The appointments must happen within 30 days of the consolidation resolution's adoption by the last of the two governments to act).

One last thought on selection of the charter commission: The statutes direct that those appointed should broadly represent all areas of the county and principal city. Every effort should be made to include representatives from various political, social and economic groups. Those appointing charter commission members should take the need for diversity seriously. Of course, if the membership is elected, then such diversity can't be

Selecting Members of the Charter Commission

The metropolitan government charter commission may be created by the adoption of a consolidation resolution by the governing body of the county and by the adoption of a substantially similar resolution by the governing body of the principal city in the county.

An important part of the resolution concerns the method to be used for selecting persons who will serve on the charter commission. Tennessee Code Annotated §7-2-101 (1) (B) stipulates that the resolution shall either :

- Authorize the county mayor to appoint ten (10) commissioners, subject to confirmation of the county governing body, and authorize the mayor of the principal city to appoint (5) commissioners, subject to confirmation by the city governing body; or
- Provide that an election be held to select members of the charter commission.

If the resolution calls for the charter commission members to be elected, Tennessee Code Annotated §7-2-102 stipulates the following:

- no less than forty-six (46) days nor more than sixty (60) days after the adoption of the resolution, it shall be the duty of the county election commission to hold a special election to elect members of the charter commission;
- the cost for the election is paid out of county funds; and
- the ten (10) candidates receiving the most votes shall become members of the charter commission.

assured. Those citizens who previously served on the exploratory committee can't be excluded from consideration for the charter commission.

Step 3. The Work of the Charter Commission

The members of the charter commission must hold an organizational meeting at the county courthouse at 10 a.m. on the fifth day following their election or appointment. The commission must elect at least a chairperson and secretary, and more officers if desired. The staff can include an attorney or others the commission may need and can pay. State law requires the county legislative body to appropriate at least \$25,000, but not more than \$50,000 for the commission's work.

There aren't any rules regarding the commission's internal organization. The members may organize as they see fit and may use committees to subdivide and specialize the workload.

The charter commission must finish its work within nine months of its initial meeting (or within the limit of any extension approved by the governing bodies of the county and principal city) [T.C.A. Section 7-2-105].

Charter Particulars

The charge of a charter commission certainly isn't an easy one. To help out, state law **requires** public officials to provide all information and assistance needed and requested by the commission. Here are some provisions that the proposed charter must contain:

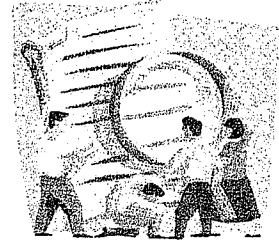
1. The metropolitan government must have a general services district and an urban services district. The general services district is the total area of the county. The original urban services district is the area of the municipalities involved. These two districts are separate taxing districts [T.C.A. Section 7-2-108 (a) (5)].
2. The metropolitan government must be vested with all powers that both cities and counties have under general law. There are a few exceptions [T.C.A. Section 7-2-108 (a) (1)].
3. The metropolitan government must have a metropolitan council that sets the budget for both districts and the property tax rate for the general services district [T.C.A. Section 7-2-108 (a) (11)].
4. The metropolitan government must have a three-member urban council. Its sole function is to levy a property tax for the urban services district. This tax must finance the budget for the urban services set by the metropolitan council [T.C.A. Section 7-2-108 (a) (15)].

The Hows and Whys of Local Government Consolidation in Tennessee

5. The Attorney General has opined that the metropolitan charter can't abolish certain county constitutional officers. However, the officers' duties may be altered from the general law provisions, but each must retain some duties [T.C.A. Section 7-2-108 (a) (16)]. Op Tenn. Atty. Gen. 80-394 (August 5, 1980) and 81-74 (February 7, 1981).
6. The metropolitan government must provide for the consolidation of all school systems and establish a metropolitan board of education [T.C.A. Section 7-2-108 (a) (18)]. The charter commission must determine how the school system would be governed and staffed, subject to limitations found in general law {T.C.A. Title 49}.

There's more! The commission must be sure to address at least the following issues in the charter it proposes:

- determine what to call the new government;
- create a new legislative body and determine its powers and organizational and operational procedures;
- establish legislative districts and determine and set the qualifications for its members;
- establish the position of a top executive or administrative officer, set requirements of the position, determine how the person would be selected and establish the position's powers;
- outline the fiscal, budgetary and financial administrative procedures;
- determine the public works responsibilities to be assumed and their operations;
- establish an education system and how it would be governed and staffed;
- outline the new government's judicial system and its staffing;
- determine the scale of other governmental concerns, such as utilities, fire protection, public and safety planning;
- adopt transitional tax levy procedures, budgetary matters, legal documents and personnel procedures; and



A charter commission with their available funds, may cause the copying of the charter and the charter summary, and may print and make available other information material for general distribution.

Forming a Metropolitan Government

- set out the procedures for public consideration and action on the proposed charter. Much of the procedure is already established by state statute.

Step 4. Adoption or Rejection

Now the charter commission takes its vote. If it endorses consolidated government, then it must prepare and file the proposed charter with the county clerk and with the city clerk of each incorporated municipality. It must also file a copy with the county election commission. The proposed charter is a public record and must be available for anyone to see. Every newspaper in the county must be furnished a copy or have one made available [T.C.A. Section 7-2-105].

Then, the county election commission sets a date for a special referendum election on the question of consolidation. The election must be held not less than 80 nor more than 100 days after the proposed charter is filed. Remember, consolidation occurs only if the voters in the principal city and the voters in the county residing outside of the principal city approve.

The election returns, along with a copy of the approved or rejected charter, must be certified by the county election commission to the secretary of state. Then, the secretary of state issues a proclamation showing the election results and whether any appendix to the charter was approved or rejected (see "Smaller Cities" below). A copy of this proclamation goes to the county clerk, who attaches it to a copy of the new or rejected charter and files both. If the charter is approved, the county's certified copy of the charter and proclamation is delivered to the officer of the metropolitan government that the charter directs [T.C.A. Section 7-2-106(e)]. If the consolidation proposal fails, three years must pass before another charter commission can be proposed.

STEP 5. Off and Running

If the voters approve consolidation, then the new metropolitan government subsumes all rights, obligations, duties and privileges of the county and the city or cities consolidating [T.C.A. Section 7-3-101].

The status of the county when it comes to the manufacture, receipt, sale, storage, transportation, distribution and possession of alcoholic beverages doesn't change with the establishment of metropolitan government. In other words, previous local option elections in the county will continue in force unless the metropolitan government decides to put the question before voters under the new government [T.C.A. Section 7-3-303].

The establishment of metropolitan government doesn't change zoning regulations effective in the city or county until they are changed by the metro council [T.C.A. Section 7-3-304].

General sessions courts and juvenile courts are required to continue. However, the new charter may combine any city court with the general sessions court [T.C.A. Section 7-3-311].

A new metropolitan council must be elected and an executive or chief administrative officer selected. The charter may call for election of officers before the charter goes into full effect, or the charter may designate county or city officers to take on certain functions during the transition.

The charter may be very detailed or may provide great flexibility to the new metropolitan county. If it grants flexibility, it's particularly important that ordinances be ready for quick adoption that ensure all bases are covered

Smaller Cities

A municipality that's not a principal city doesn't have to participate in the consolidation process and may retain its charter, even if the principal city and the county vote to consolidate [T.C.A. Section 7-2-107].

There are two ways a smaller city may be involved:

1. by an appendix to the proposed charter after a charter commission has been created. Any smaller city within the county may decide, by action of its legislative body, to appoint a representative to consult with the charter commission and to aid it in the drafting of an appendix to the charter, or
2. by inclusion in the private act that creates the charter commission.

If a smaller city sends a representative to the charter commission and an appendix is approved both by the voters inside the smaller city and outside the city in the county (including those inside the principal city), then the smaller city becomes part of the urban services district of the metropolitan government. If consolidation of the county and the principal city is approved, but the appendix for the smaller city is disapproved, then the smaller city retains its charter and becomes a part of the general services district of the metropolitan government.

A separate appendix must be drafted and attached to the charter and voted on separately for each smaller incorporated municipality that sends a representative to the charter commission [T.C.A. Section 7-2-107].

Conclusion

Consolidated local governments have proven to be a wise choice for a growing number of communities across the country. While Tennessee's constitutional and statutory road toward consolidation may, at first blush, appear daunting and unwieldy, the process is designed to ensure maximum citizen participation and consideration before such a big step is taken. The General Assembly ensured further public interest with its 1998 vote to allow a citizen-driven petition to launch this process. Today, interested and enthusiastic citizens may bring consolidation to the table and – no matter the outcome – that's government at its best.