S T A T E O F T E N N E S S E E
OFFICE OF THE
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September 4, 2013

Opinion No. 13-71

Retroactivity of Annexation Moratorium

QUESTION

Does Chapter 441 of the 2013 Tennessee Public Acts preclude the implementation of annexation ordinances that were the subject of litigation contesting the validity of the ordinances, when the litigation was resolved prior to the date on which Chapter 441 became effective?

OPINION

No.

ANALYSIS

This opinion request concerns a municipality's annexation ordinances enacted in 2009 (hereinafter the "Annexation Ordinances"). *See* Agreed Order of Compromise and Dismissal, *Tennessee v. City of Chattanooga*, Case Nos. 09-c-1502 & 11-c-1376 (Apr. 30, 2012) (hereinafter "Agreed Order"). The validity of the ordinances was subsequently challenged in a *quo warranto* lawsuit commenced by residents in the annexed territory. *Id.* The litigation was resolved by settlement by an Agreed Order between the parties, entered on April 30, 2012. *Id.*[1] A copy of this Agreed Order was submitted to this Office with the opinion request. The Agreed Order states that the municipality will amend the 2009 Annexation Ordinances to, among other things, make these ordinances effective December 31, 2013. *Id.*, ¶ 1. The Order also states that the "Annexation Ordinances shall remain operative on their original dates of passage in 2009, but the effective dates shall be changed to December 31, 2013." *Id.*, ¶ 2.

Chapter 441 of the 2013 Tennessee Public Acts adds the following Section 6-51-122 to Tennessee Code Annotated, Title 6, Chapter 51, Part 1:

> (a)(1) Notwithstanding the provisions of this part or any other law to the contrary, from *April 15, 2013, through May 15, 2014***,** no municipality shall extend its corporate limits by means of annexation by ordinance *upon the municipality's* own initiative, pursuant to § 6-51-102, in order to annex territory being used

[1] This Office has been advised by the Hamilton County Circuit Court Clerk's Office that this Agreed Order was filed for entry on April 30, 2012. Thus, given the Order was filed on that date with the signatures of the judge and all parties or counsel, the Order became effective on that date. *See* Tenn. R. Civ. P. 58.

> primarily for residential or agricultural purposes; and, except as otherwise permitted pursuant to subdivision (a)(2), *no such ordinance to annex such territory shall become operative during such period*. As used in this subsection, "municipality" does not include any county having a metropolitan form of government.
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> (2) *If, prior to April 15, 2013, a municipality formally initiated an annexation ordinance delayed by subdivision (a)(1);* and if the municipality would suffer substantial and demonstrable financial injury if such ordinance does not become operative prior to May 15, 2014; then, upon petition by the municipality, the county legislative body may, by a majority vote of its membership, waive the restrictions imposed on such ordinance by subdivision (a)(1).
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> (b) On or before January 14, 2014, the Tennessee advisory commission on intergovernmental relations (TACIR) shall complete a comprehensive review and evaluation of the efficacy of state policies set forth within title 6, chapters 51 and 58, and shall submit a written report of findings and recommendations, including any proposed legislation, to the speaker of the senate and the speaker of the house of representatives.

2013 Tenn. Pub. Acts, Ch. 441, § 1 (hereinafter "Chapter 441") (emphasis added). Chapter 441 became effective on May 16, 2013. *Id.*, § 2. From April 15, 2013 through May 15, 2014, Chapter 441 prohibits a municipality from initiating an annexation by ordinance to extend the municipality's corporate limits to annex territory being used primarily for residential or agricultural purposes and also stays any such annexation ordinance from becoming "operative" during this time frame, subject to the exception described in Section (a)(2) of Tenn. Code Ann. § 6-51-122. *Id.*[2]

The municipality initiated and passed the Annexation Ordinances in question in 2009, well before the time frame staying a municipality from initiating an annexation ordinance set by Chapter 441. Thus, the "initiation" of these ordinances was not stayed by Chapter 441. *See Myers v. AMISUB (SFH), Inc.*, 382 S.W.3d 300, 308 (Tenn. 2012) (quoting *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000)) (stating rule of statutory construction that courts will discern legislative intent "from the natural and ordinary meaning of the statutory language within the context of the entire statute without any forced or subtle construction that would extend . . . the statute's meaning). The filing of the *quo warranto* action questioning the legality of the annexation ordinance at issue did not alter the fact that the municipality had initiated and taken all action required to pass the ordinances in 2009; the *quo warranto* action merely held the effective date of annexation in abeyance until the filed action was resolved. *See Town of Huntsville v. Scott County*, 269 S.W.3d 57, 61-62 (Tenn. Ct. App. 2008); *City of Knoxville v. Knox County*, No. M2006-00916-COA-R3-CV, 2008 WL 465265, at * 3-4 (Tenn. Ct. App. Feb. 20, 2008); *Jefferson County v. City of Morristown*, No. 03A01-9810-CH-00331, 1999 WL 817519, at * 7-9 (Tenn. Ct. App. Oct. 13, 1999).

[2] A review of the Agreed Order and supporting documents submitted to this Office with this opinion request confirms that the Annexation Ordinances constitute an annexation of "territory being used primarily for residential or agricultural purposes."

The more difficult question is whether the language in Chapter 441 prohibiting certain annexation ordinances from becoming "operative" between April 13, 2013 and May 15, 2014, applies to the ordinances at issue. Chapter 441 became effective on May 16, 2013. Chapter 441, § 2. Thus, Chapter 441 by its terms would retroactively void any annexation ordinance that became operative between April 15, 2013 and May 16, 2013, the date Chapter 441 became law. The annexation in question concerns annexation ordinances enacted in 2009 that were stayed by the filing of a *quo warranto* action. The *quo warranto* action was resolved by an Agreed Order that became effective on April 30, 2012, *before* the effective date of Chapter 441 *but during* the time frame established by Chapter 441 precluding annexation ordinances from becoming operative. However, the Agreed Order by its terms states that "[t]hese Annexation Ordinances *shall remain operative* on their original dates of passage in 2009, but *the effective dates* shall be changed to December 31, 2013." Agreed Order, ¶ 2 (emphasis added). This provision appears to be added to allow the municipality time to officially approve the compromise and settlement, to amend the annexation ordinances as required by the Agreed Order, and to provide certain notices to property owners. *See id.*, ¶¶ 2, 3.

The threshold issue for this inquiry is when did the Annexation Ordinances become effective and operative—the date they were enacted in 2009, the date the Agreed Order became effective under Tennessee Rule of Civil Procedure 58 (April 20, 2013), or the "effective date" of December 31, 2013 referenced in the Agreed Order. The law of Tennessee establishes the "effective or operative" date of an annexation ordinance is held "in abeyance" by the filing of a proper *quo warranto* action and that the challenged annexation ordinance does not "become effective or operative" until the date the *quo warranto* action is resolved. *Town of Huntsville*, 269 S.W.3d at 61-62. Here the *quo warranto* action was resolved by the Agreed Order entered with the Circuit Court Clerk on April 30, 2012. *See* Tenn. R. Civ. P. 58. Under Tennessee law on that date the Annexation Ordinances became "effective or operative." *See Town of Huntsville*, 269 S.W.3d at 61-62. The entry of the Agreed Order resolved the *quo warranto* action between the parties and caused the Annexation Ordinances to become effective and operative under Tennessee law, thereby vesting the parties to that action with a binding resolution of all contested issues.[3]

The Tennessee Constitution's prohibition on retrospective laws precludes Chapter 441 from undoing an annexation ordinance which became operative and final prior to the enactment of Chapter 441. *See* Tenn. Const. art. I, § 20. The Tennessee Supreme Court recently explained the parameters of this constitutional guarantee:

> Article I, Section 20 of the Tennessee Constitution guarantees "[t]hat no retrospective law, or law impairing the obligations of contracts, shall be made." Despite two new renditions of the Tennessee Constitution in 1834 and 1870 and numerous amendments to these constitutions, this provision has remained unchanged since our constitution was originally ratified in 1796. The lineage of Article I, Section 20 can be traced to Article 23 of the New Hampshire Constitution of 1784. Approximately one hundred and seventy-five years ago, New Hampshire's Superior Court of Judicature, the state's highest appellate court

[3] This Office assumes that all conditions required by the Agreed Order have been or will be met by the parties.

> at the time, observed that the "object of the clause is to protect both parties from any interference of the legislature whatever, in any cause, by a retrospective law." *Woart v. Winnick,* 3 N.H. 473, 477 (1826).
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> . . . .
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> Despite the facial breadth of Article I, Section 20, this Court has long taken the view that "not every retrospective law . . . is objectionable in a Constitutional sense." *Collins v. E. Tenn., Va. & Ga. R.R.*, 56 Tenn. (9 Heisk.) 841, 847 (1874). We have held that the prohibition in Article I, Section 20 "does not mean that absolutely no retrospective law shall be made, but only that no retrospective law which impairs the obligation of contracts, or divests or impairs vested rights, shall be made." *Ford Motor Co. v. Moulton*, 511 S.W.2d 690, 696 (Tenn.1974) (quoting *Shields v. Clifton Hill Land Co.*, 94 Tenn. 123, 148, 28 S.W. 668, 674 (1894)); *Dark Tobacco Growers' Coop. Ass'n v. Dunn*, 150 Tenn. 614, 632, 266 S.W. 308, 312 (1924).
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> Accordingly, the Tennessee Constitution does not prohibit the retrospective application of remedial or procedural laws, unless the application of these laws impairs a vested right or contractual obligation. *Stewart v. Sewell*, 215 S.W.3d 815, 826 (Tenn.2007); *Doe v. Sundquist*, 2 S.W.3d 919, 923–24 (Tenn.1999); *see also Saylors v. Riggsbee*, 544 S.W.2d 609, 610 (Tenn.1976). The constitutional guarantee against retrospective laws does, however, prohibit retrospective substantive legal changes "which take away or impair vested rights acquired under existing laws or create a new obligation, impose a new duty, or attach a new disability in respect of transactions or considerations already passed." *Doe v. Sundquist*, 2 S.W.3d at 923 (quoting *Morris v. Gross*, 572 S.W.2d 902, 907 (Tenn.1978)); *cf. Kuykendall v. Wheeler*, 890 S.W.2d 785, 787 (Tenn.1994) (noting that "[w]hether a statute applies retroactively depends on whether its character is 'substantive' or 'procedural.'").

Estate of Bell v. Shelby County Healthcare Corp., 318 S.W.3d 823, 828-29 (Tenn. 2010) (footnotes omitted).

Applying this analysis to the facts presented with this opinion request, upon entry of the Agreed Order on April 30, 2012, the terms of the Agreed Order became effective and operative for purposes of vesting the parties' interests in the ordinances. The fact that the ordinances were to be subsequently amended to become effective on December 31, 2013, does not change this fact. Because the parties became vested in the finality of the disposition of the *quo warranto* litigation prior to the effective date of Chapter 441, the Tennessee Constitution's prohibition against retroactive laws precludes Chapter 441 from impairing these vested interests. *See id*.

This opinion is narrowly confined to any annexation ordinance that became effective and operative from April 15, 2013 to May 16, 2013, the date Chapter 441 became law. The Municipal Boundaries Clause of the Tennessee Constitution grants the General Assembly the

broad authority to "provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered." *Vollmer v. City of Memphis*, 792 S.W.2d 446, 448 (*quoting* Tenn. Const. art. XI, § 9). *See* Tenn. Att'y Gen. Op. 13-60 (July 26, 2013); Tenn. Att'y Gen. Op. 13-45, at 4 (June 11, 2013). Thus, under this provision, Chapter 411 can prospectively stay any future or pending annexations. Chapter 411 also does not violate the constitutional guarantee against retrospective laws by changing the procedural remedial process for pending annexations that have not become operative and effective. *See Estate of Bell*, 318 S.W.3d at 829; *State ex rel. Cain v. City of Church Hill*, No. E2007-00700-COA-R3-CV, 2008 WL 4415579, at * 6 (Tenn. Ct. App. Sept. 30, 2008).

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