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TO: Matt Wilson
FAX #: 668-5032
DATE: 3/31/08
FROM: JH

Total Number of Pages (including cover page): 13

RE: City of Chattanooga - Greg Bell

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The James Building
735 Broad Street, Suite 800
Chattanooga, Tennessee 37402

March 26, 2008

Donna Kelley
Administrator of Personnel
City of Chattanooga
101 East 11th Street, Suite 2001
Chattanooga, TN 37402

Re: City Court Court Officer Greg Beck

Dear Ms. Kelley:

I have been asked by City ~~Court~~ Court Officer Greg Beck to write you to express our position as to the question which has arisen concerning his employment as Judge Sherry Paty's Court Officer and his candidacy for Hamilton County Sheriff on the Democratic ticket.

Please be advised that it is our position that Mr. Beck is a special employee of the Office of the City Court of Chattanooga pursuant to Section 12-19 of the Chattanooga City Code as a member of the judicial branch and not as an employee of the City of Chattanooga under the administrative branch of government. I am enclosing a copy of the Memorandum Opinion and Order entered by Chancellor Howell N. Peoples of the Chancery Court of Hamilton County, Tennessee for June 13, 2005 in a similar lawsuit based on a previous complaint by City Councilman ~~Leeman~~ Pierce and others.

Please be further advised that it is our position that there exists a strong constitutional issue under the First Amendment of the United States Constitution and the comparable section of the Tennessee Constitution as to the validity of § 2-193 of the Chattanooga City Code dealing with an employee of the City of Chattanooga running for election to a public office. While I do not feel it is necessary for us to address this issue at this time, I do respectfully submit that there is a strong question as to the continuing validity of this section.

Hopefully this will have adequately explained Mr. Beck's position in this matter. If you have any questions please feel free to contact me directly or through the City Attorney's Office.



Page 2
March 26, 2008

Sincerely yours,

SUMMERS & WYATT, P.C.

By: _____


Jerry H. Summers

JHS/π

Enclosure

cc City Court Judge Sherry Paty
City Court Officer Greg Beck

Sec. 2-193. Running for public office.

Whenever an employee runs for election to a public office, the constituency for which is composed in whole or in part by residents of the City, the employee shall be required to go on leave (1) from and after any public announcement by such employee of his/her candidacy for said public office, or (2) from and after commencing to actually campaign, or (3) from and after having qualified as a candidate for such elective office, whichever occurs first. The employee shall first use compensatory leave, then personal leave, and then go on leave without pay. Such leave shall extend until the employee withdraws his/her candidacy or until the date such employee is either finally elected or not elected; however, the mayor may grant such leave for a longer period of time if requested by such employee. Nothing contained in this section shall be construed to be inconsistent with any applicable state or federal statute or regulation that may provide otherwise, and this section shall be supplemental to any such applicable state or federal regulation or statute.

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

CITY OF CHATTANOOGA, TENNESSEE)	NO. 05-0252
)	
Plaintiff,)	PART 2
)	
v.)	
)	
GREGORY BECK, in his INDIVIDUAL CAPACITY)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

This cause is before the court on the City of Chattanooga's Complaint for Declaratory Judgment. On June 3, 2005, the court held the trial in this matter and took the case under advisement. Having considered the matter, the Court issues the following Memorandum Opinion and Order.

I. BACKGROUND FACTS

The facts of this case are not in dispute. City Court Judge Sherry Paty appointed Gregory Beck ("Mr. Beck") on August 20, 2004, as a city court officer. After being appointed to his position in the City Court, Mr. Beck was appointed by the Hamilton County Commission to fill a vacancy in the office of County Commissioner on February 10, 2005. On March 8, 2005, the Plaintiff, City of Chattanooga, filed the complaint in this matter alleging that Mr. Beck unlawfully holds/exercises the office of Chattanooga City court officer. The Plaintiff's allegations are based upon the provisions of Title 3 Section 3.1 of the Chattanooga City Charter (the "Charter").

ROLLED June 13 2005
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S. LEE A. REX
C&M

As a City court officer, Mr. Beck performs the typical duties of the position commonly referred to as a bailiff. His responsibilities include keeping order in the court, directing witnesses to the stand, and protecting the judge. He does not carry a weapon and is not a commissioned police officer. His position is defined by the Chattanooga City Code (the "Code") Section 12-19, which provides:

- (a) Each city judge is authorized to appoint or employ one (1) or more court officers subject to confirmation by the city council and upon such terms and conditions as may be required by the city council. A court officer so approved by the city council shall likewise be appointed as a special policeman pursuant to section 13.3 of the charter compilation. A court officer who is in attendance while court is in session shall be under the supervision of the presiding city judge and while court is in session all members of the police and fire department attending court shall be subordinate to and obey the instructions of the court officer. When court is not in session, or at times when a court officer is not needed for duty in the courtroom, or when not performing duties under the direction of a city judge all court officers shall then be engaged in serving warrants or other court process. The number of warrants or other court process served by a court officer shall be reported each week by the city court clerk to the city judges, the mayor, and the city finance officer. A court officer shall be an employee of the office of the city court.
- (b) A court officer may be discharged, suspended or otherwise disciplined by any city judge.

Under the Code, Mr. Beck should have taken an oath and been commissioned as a special policeman. However, testimony revealed that neither Mr. Beck nor the other City court officers have taken such an oath or been commissioned as special policemen. Beyond his courtroom duties, Mr. Beck works his remaining hours serving process.

II. ISSUES PRESENTED

1. Whether Mr. Beck as a City court officer, "holds any office" as prohibited by the Chattanooga City Charter and City Code.

2. If Mr. Beck holds an office with the City, whether Title 3 Section 3.1 of the Chattanooga City Charter violates the separation of powers as mandated by the Tennessee Constitution.

III. DISCUSSION

Because the court decides the first issue in the negative, it is unnecessary to address the Constitutional issue.

Title 3 Section 3.1 of the Charter states the following:

No person, while holding any office or employment under the federal, state or county government, except the office of notary public, shall be eligible to any office under said city government. . . . If, while any person is holding any office under the city government, he shall cease to possess any or all of the qualifications, or become subject to any of the disqualifications herein prescribed, his office shall thereby become immediately vacant.

Under the Charter, no person holding any "office" with the City of Chattanooga may also hold any office or employment under the county government. As a County Commissioner, Mr. Beck holds an office under the county government. Therefore, if his position as a city court officer is an "office" under the city government, he will be disqualified from his position.

In *Day v. Sharp*, the Tennessee Supreme Court quoted with approval the case of *United States v. Hartwell*, 6 Wall. (U.S.), 385, 18 L. Ed. 830, in which the United States Supreme Court held that the term "office" implies "the right to exercise the functions of a public trust or employment, and to receive the fees and emoluments belonging to it, and to hold the place for the term prescribed by law." 161 S.W. 994, 996 (Tenn. 1913). Stated

differently, the term "office" "embraces the ideas of tenure, duration, emolument, and duties." *State Ex rel. Thompson v. Crump*, 183 S.W. 505 (Tenn. 1915). Building upon the attributes of the term "office" listed above, the Tennessee Supreme Court made an instructional decision in the case of *Wise v. City of Knoxville*, 250 S.W.2d 29 (Tenn. 1952). In *Wise*, the Tennessee Supreme Court was called upon to decide whether a policeman held an "office" with the City of Knoxville. *Id.* If the policeman had been found to hold an "office", he would have been entitled to full back salary without deduction. *Id.* at 92. However, the Court ruled that a policeman did not hold an "office" under the City of Knoxville Charter and reasoned as follows:

An "officer" when used in the sense of one who holds an "office" which entitles him to the salary for the entire term, carries with it the idea of tenure for a definite duration, definite emoluments and definite duties which are fixed by statute.

The charter of the City of Knoxville from beginning to end refers to policemen as employees. Charter, Secs. 121, 123 and 124. In these charter provisions, policemen and firemen are referred to together. Certainly it cannot be said that a fireman is an officer.

If a policeman is injured in line of duty, he receives employee benefits as a railroad employee would. If the Mayor, who is an officer, is injured in line of duty, he does not receive employee benefits in such a manner.

A City Director, under the charter of Knoxville, can retire a policeman or any other employee but cannot retire an official.

The city policeman is paid a salary like a railroad engineer or brakeman. He must report at a certain hour and goes off duty at a certain hour. He does the work assigned to him like a secretary or a nurse at a municipal hospital.

A policeman is not an officer; but a mayor, a sheriff or a judge is an officer.

Id. at 93, 94.

If the term "office" "entitles [an officer] to the salary for the entire term, carries with it the idea of tenure for a definite duration, definite emoluments and definite duties which are fixed by statute," Mr. Beck does not qualify as holding an "office". First, Mr. Beck clearly has no tenure because he can be fired at any time. Second, with regard to the notion of a definite duration, section 12-19 of the Code does not set a term or any specific duration for the City court officer. In fact, the testimony reveals that the duration of Mr. Beck's employment is wholly dependent upon the City Court Judge's discretion. Third, while Mr. Beck receives emoluments from his position as a court officer, it is unclear what would constitute definite emoluments for a court officer. Fourth, while it is true that a city court officer has definite duties defined by the Code, his duties do not constitute a generally recognizable function of the judicial branch of government. A city court officer does not make judicial decisions or any of the other duties necessary for the operation of the judicial branch of government. Also, the testimony in this case revealed that although the duties of the city court officer, as set forth in the Code require that he become appointed as a special policeman, neither Mr. Beck nor the other city court officers currently serving have been commissioned as special policemen.

Section 12-19 of the Code, the only section that addresses the position of city court officer, states that "[a] court officer shall be an employee of the office of the city court." While the reference to the city court officer as an employee is not conclusive evidence that the

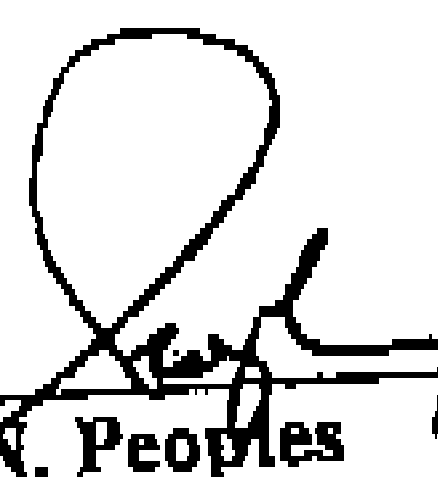
position is not an "office", the City of Chattanooga was unable to present any section of the Charter or Code that refers to the position as an "office". Further, as an employee of the office of the City Court, the city court officer receives the same salary, benefits, and rights as other employees. By contrast, Chapter 2 of Title 4 of the Charter sets forth the salary and other specific duties of the City Judge who clearly holds an "office." The Charter sets forth a specific minimum salary for City Court Judges but does not provide any specific employment terms for a city court officer. The city court officer does the work assigned to him by the City Court Judge and works the hours that are required of him by the City Court Judge. In fact, he "may be discharged, suspended or otherwise disciplined by any city judge." Since Mr. Beck can be fired at any time he is essentially an employee at will.

Applying the reasoning of the Tennessee Supreme Court in *Wise* to the present case, the court concludes that the position of court officer for the Chattanooga City Court does not constitute an "office". Therefore, Mr. Beck is not disqualified from serving as court officer for City Court Judge, Sherry Paty.

IV. CONCLUSION

It is therefore **ORDERED** that the Complaint for Declaratory Judgment is dismissed with costs taxed against the Plaintiff.

ENTER:



Howell N. Peoples
Chancellor, Part 2

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this Memorandum Opinion and Order has been placed in the United States Mail addressed to:

Mr. Jerry H. Summers
Summers & Wyatt
500 Lindsay Street
Chattanooga, Tennessee 37403

Phillip A. Noblett, Esq.
D. Marty Lasley, Esq.
OFFICE OF CITY ATTORNEY
801 Broad Street, Suite 400
Chattanooga, Tennessee 37402

This the 13th day of June 2005

S. Lee Akers, Clerk and Master

By: ML 20
Deputy Clerk and Master

ADMINISTRATION

appropriate supervisor when an employee fails to follow the rules and regulations of his/her department, supervisor or the personnel administration sections of this Code. The types of disciplinary action are oral reprimand, written reprimand, suspension, demotion and dismissal.

Employee: A person working in the service of the city government in one (1) of the following capacities:

- (1) *Regular employee:* An employee who works full time and who has received a regular appointment to a permanent position, excepting elected officials, after satisfactorily completing a probationary period.
- (2) *Regular part-time employee:* A regular employee who works less than full time on a regular basis.
- (3) *Probationary employee:* A new employee appointed to a regular classified position or an employee promoted who is required to successfully serve a probationary period.
- (4) *Seasonal employee:* An employee whose employment is limited to three (3) calendar months or less in any twelve (12) month period.
- (5) *Temporary employee:* An employee whose employment is for a specified period, not to exceed six (6) months.

In addition, a person working in the service of the city government will also fall into one (1) of the two following categories:

- (1) *Hourly employee:* An employee whose wage is calculated and paid based upon the number of hours worked during a given work week.
- (2) *Salaried employee:* An employee whose wage is calculated and paid upon any basis other than an hourly basis. Unless otherwise provided, a salaried employee's wage shall be paid based upon a forty-hour work week.

Examination: One of the tools used for filling positions, which may include physical, skills, performance, aptitude, preference, knowledge and psychological testing.

Exempt employee: An employee to whom the city is not obligated to pay overtime pursuant to the Fair Labor Standards Act.

CHATTANOOGA CITY CODE

(c) The checking account herein authorized shall be audited at least once per month by the office of the city finance officer, and the city court clerk shall keep accounts of all bonds received, deposits made, and disbursements drawn against the account.
(Code 1986, § 12-18; Ord. No. 9654, § 8, 1-6-92)

Sec. 12-19. Court officers.

(a) Each city judge is authorized to appoint or employ one (1) or more court officers subject to confirmation by the city council and upon such terms and conditions as may be required by the city council. A court officer so approved by the city council shall likewise be appointed as a special policeman pursuant to section 13.3 of the charter compilation. A court officer who is in attendance while court is in session shall be under the supervision of the presiding city judge and while court is in session all members of the police and fire department attending court shall be subordinate to and obey the instructions of the court officer. When court is not in session, or at times when a court officer is not needed for duty in the courtroom, or when not performing duties under the direction of a city judge all court officers shall then be engaged in serving warrants or other court process. The number of warrants or other court process served by a court officer shall be reported each week by the city court clerk to the city judges, the mayor, and the city finance officer. A court officer shall be an employee of the office of the city court.

(b) A court officer may be discharged, suspended or otherwise disciplined by any city judge.
(Code 1986, § 12-19; Ord. No. 9654, §§ 2 & 8, 1-6-92)

Sec. 12-20. Local litigation tax.

(a) *Imposed; exemption.* As authorized by Tennessee Code Annotated, sections 67-4-401, 67-4-501 and 67-4-601 and 67-4-606 there is levied in all criminal cases instituted in the city court a local litigation tax of five dollars and twenty-five cents (\$5.25). This tax shall be in addition to all other taxes and fees collected by the city court clerk in all criminal cases; provided, this tax shall not apply to any violation relative to the use of a metered parking space, including the forfeiture of an appearance bond or the payment of the penalty or fine prior to the arrest for such violation.

(b) *Collection.* The city court clerk shall collect such litigation tax from all defendants in any criminal case instituted in the city court upon a finding of guilt, plea of guilty, or submission to fine by the city court judge and in the same manner as the city court clerk collects the state litigation tax. The city court clerk shall be liable for the tax imposed by this section.

(c) *Disbursement.* The city court clerk shall disburse all collections under this section for the local litigation tax to the city treasurer for deposit in the general fund of the city.