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IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

ROBERT ("ROB") L. HEALY)	NO. 08-0862
)	
Plaintiff,)	PART 2
)	
vs.)	
)	
"BUD" KNOWLES, in his official)	
capacity as ADMINISTRATOR OF)	
ELECTIONS, THE HAMILTON)	
COUNTY ELECTION COMMISSION,)	
and in their official capacities,)	
COMMISSIONER DOROTHY)	
EDDINGTON, COMMISSIONER J.B.)	
BENNETT, COMMISSIONER)	
SHARLOTTE POLK, COMMISSIONER))	
VIRGIL ROBERSON, AND)	
COMMISSIONER MICHAEL S.)	
WALDEN)	
)	
Defendants.)	
)	

**FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER
ON PLAINTIFF'S MOTION FOR A TEMPORARY INJUNCTION**

With some modifications the Court adopts Plaintiff's Proposed Findings of Fact and Conclusions of Law as hereafter set forth.

FINDINGS OF FACT

1. Plaintiff Robertson ("Rob") L. Healy initiated the underlying action against the Defendants "Bud" Knowles in his capacity as Administrator of Elections, The Hamilton County Election Commission, and in their official capacity as members of the Hamilton County Election Commission, Commissioner Dorothy Eddington, Commissioner J.B.

Bennett, Commissioner Sharlotte Polk, Commissioner Virgil Roberson and Commissioner Michael S. Walden with the filing of a Verified Complaint for Declaratory Judgment and Temporary and Permanent Injunctive Relief on October 28, 2008.

2. Defendants have been served with process and are properly before the court.

3. Plaintiff's motion for a temporary injunction came before the Court for hearing on November 14, 2008. All parties were represented by counsel.

4. Based upon the pleadings, the testimony of the witnesses, and the exhibits introduced into evidence at the hearing, the court makes the following findings of fact:

(a) Robertson ("Bob") L. Healy, age 57, is and has been a resident of the City of Chattanooga (the "City") since February 22, 2008.

(b) Defendant Election Commission is a five member commission operating under the laws of the State of Tennessee (the "State"). The Election Commission is responsible under State law for preparing ballots and conducting fair and free elections throughout Hamilton County, Tennessee and its various municipalities, including the City. The Election Commission includes on the ballot for elected City offices the names of all candidates for such offices who timely submit qualifying petitions signed by 25 registered voters from the City on the forms prescribed by Election Commission provided that such candidate signs the prescribed form and certifies he or she meets the eligibility requirements for such office.

- (c) The City is a Tennessee municipal corporation and a political subdivision of the State, operating as a "home rule" municipality within the meaning of Article XI, §9 of the State's Constitution. As such, the City is subject to the requirements and limitations of the State Constitution, the United States Constitution, the laws promulgated by the State's General Assembly, and the provisions of its written charter as duly adopted by the Council and approved by the City's registered voters by public referendum. Applicable law permits the Council and the City's registered voters to amend the City charter from time to time by ordinance duly adopted by the Council and approved by the City's registered voters in a public referendum.
- (d) The City's current charter (the "Charter") was adopted by the Council pursuant to Ordinance No. 11272 on April 30, 2002 (the "Adopting Ordinance"), such Charter to become effective sixty (60) days after its approval by a majority of the qualified voters of the City voting thereon, as provided by Article XI, §9 of the State Constitution.
- (e) Pursuant to Section 5 of the Adopting Ordinance, the Charter was submitted for approval by the City's registered voters in connection with a general state election conducted on August 1, 2002 (the "Adopting Referendum"). The Adopting Ordinance, as required by Section 4 thereof, was published in its entirety in the City's daily newspaper for review by the City's registered voters in advance of the Adopting Referendum so that the City's registered voters

would know the precise terms and conditions of the Adopting Ordinance that they were being asked to approve or reject in the Adopting Referendum.

- (f) Section 1 of the Adopting Ordinance as approved by the Council and as submitted to and duly adopted by the City's registered voters set out a restated comprehensive Charter for the City collating and incorporating parts of various Private Acts of the Tennessee legislature relating to the City's government. It conformed provisions to actual current practice in the functioning of the executive, legislative, judicial and administrative arms of the City; and, among other things, it specified the qualifications and methods of selection of various officers, department heads, and employees of the City.
- (g) The Adopting Ordinance was approved by a majority of the City's registered voters participating in the Adopting Referendum on August 1, 2002, and became effective on or about October 1, 2002. In Section 1, the Charter sets forth how the City's Major is to be elected and establishes eligibility requirements for persons seeking election as the City's Mayor.
- (h) The Charter provides that the City's Mayor is to be elected at-large from and among the City's registered voters. Sec. 8.27 of the Charter sets forth the eligibility requirements for persons to be elected as the City's Major, providing as follows:

Section 8.27 Qualifications of Mayor. No person shall be elected to the office of mayor unless he or she has been a resident of the City for at least one year prior to his or her election and unless he or she shall be at least thirty (30) years of age.

- (i) Section 2 of the Adoption Ordinance, as approved by the Council and as submitted to and duly adopted by the City's registered voters, preserved and saved prior laws of the City consistent with newly amended and restated Charter, while expressly repealing those laws that were inconsistent with the newly amended and restated Charter. Section 2 of the Adopting Ordinance provided as follows:

SECTION 2. BE IT FURTHER ORDAINED,
That all laws constituting the present charter of the City of Chattanooga, not in conflict with the amendatory home rule ordinance, be and the same are continued in full force and effect, and all laws or parts of laws that are in conflict therewith are hereby repealed.

- (j) Healy satisfies both the age and durational residency qualifications of Section 8.27 of the City's Charter and is eligible to be elected as the City's Mayor under the terms thereof.
- (k) The Election Commission advised Healy on September 29, 2008 that his qualifying petition, submitted September 25, 2008, was properly signed, completed and certified, timely submitted, and had more than enough signatures from the City's validly registered voters to be placed on the ballot in the Upcoming Election.
- (l) On October 6, 2008, however, Defendants Eddington, Bennington, Walden and Roberson, acting in their official capacity as members of the Election Commission determined by a 4-0 vote of the Election Commission's Members, with Polk absent, on behalf of the Election Commission that Healy was

ineligible to be elected as the City's Mayor in the Upcoming Election and hence could not be included on the ballot as a candidate for that office in such election. Defendant's decision was based upon a legal opinion of Randall Nelson, the City Attorney.

(m) The City Attorney submitted a written opinion to the State's Coordinator of Elections, Brook K. Thompson, dated July 14, 2008, with a copy to the Election Commission's counsel, among others, stating that, in the opinion of the City Attorney, there are durational residency requirements not set forth in the City's Charter, as duly approved by the Council and the City's registered voters in 2002, which candidates for the office of the City's Mayor must satisfy in order to be eligible to be placed upon the ballot in the Upcoming Election (the "City Attorney's Opinion Letter").

(n) The City Attorney's Opinion Letter, which was relied upon by the Defendants in their decision to disqualify Healy as a mayoral candidate in the Upcoming Election and deny him access to the ballot imposed a different durational residency requirement from the express durational residency requirement contained in Section 8.27 of the City's present Charter, as duly approved and adopted in 2002 by the Council and the City's registered voters in the public referendum, based upon provisions contained in Ordinance No 9432, adopted in 1990, which were not carried forward and included as part of Section 1 of the City's Charter adopted in 2002 in accordance with applicable law. Ordinance No. 9432 provides:

The residency and age requirements must be met at the time (s)he qualifies to run for office. Each candidate, at the time of qualification, shall sign an oath that (s)he meets the residence and age requirements.

The City Attorney's Opinion Letter treated the provisions of Ordinance No. 9432 as not having been repealed by Section 2 of the Adopting Ordinance, even though the City Attorney's Opinion Letter stated City Ordinance No. 9432 changed the durational residency requirements of the City's Charter actually adopted by the Council and the City's registered voters in the public referendum. (Ordinance No. 9432 would require a mayoral candidate to be a resident of the City for one year before December 18, 2008, the last date for candidates to qualify. Sec. 8.27 requires a mayoral candidate to be a resident of the City for one year before March 3, 2009, the election date.)

- (o) The Election Commission accepted and adopted the position set forth in the City Attorney's Opinion Letter in disqualifying Healy as a candidate eligible to be elected as the City's mayor in the Upcoming Election and denying Healy access to the ballot as a mayoral candidate in such election. Defendants did not assert or claim any other basis to support their October 6, 2008 decisions disqualifying Healy as a mayoral candidate and denying him access to the ballot in the Upcoming Election.
- (p) The Court finds that Section 1 of the Adopting Ordinance sets out the provisions constituting the Charter of the City of Chattanooga. Section 1 includes Sec. 8.27 setting out the qualifications to be mayor as thirty (30) years

of age and resident of the City for one year before election. Section 2 of the Adopting Ordinance provides that prior provisions of the City's Charter not in conflict with the Adoption Ordinance would continue in full force and effect, and those provisions in conflict would be repealed. An interpretation that a candidate for Mayor must be a resident of the City for one year prior to qualifying as a candidate conflicts with the provisions of Sec. 8.27 of the Charter as adopted by the City's registered voters and is repealed by Section 2 of the Adopting Ordinance.

- (q) The Defendants' actions, unless enjoined, directly suppress Healy's candidacy. Unless injunctive relief is granted, Healy's ability to mount a successful challenge to the incumbent Mayor's forthcoming candidacy are and will be immediately and irreparably impaired by shortening the time period in which Healy may campaign and organize support for his election as the City's Mayor in the Upcoming Election.

CONCLUSIONS OF LAW

1. Plaintiff has and will continue to suffer immediate and irreparable harm if a temporary injunction is not granted.
2. Delay of relief until final entry of judgment will likely render the relief accorded thereby largely ineffective.
3. Plaintiff has no adequate remedy at law.
4. Plaintiff, for reasons set forth in greater detail below, has demonstrated a substantial probability of success on the merits.

5. The public interest will be furthered, not deterred or impaired, by granting the temporary injunction.
6. Defendants will suffer no harm by issuance of the temporary injunction requested by Plaintiff.
7. The City Attorney's Opinion Letter does not accurately reflect applicable law, and is predicated on unsustainable and legally impermissible assumption. In exclusively relying and acting thereon, Defendants have exceeded their statutory and constitutional authority.
8. The Tennessee Supreme Court has held that these rules of statutory construction apply to local ordinances and charters:

Construction should not impair, frustrate, or defeat the object of a statute. It is the duty of the Court to place a construction on a statute that will not be prejudicial to the public interest. These rules of construction apply to local ordinances, a county charter and any amendments, or any other legislation by a local government.

Jordan v. Knox County, 213 S.W. 3d 751, 763 (Tenn. 2007) (citations omitted)

9. Were the rules of statutory construction otherwise, legislative bodies and citizens voting by public referendum could never be sure that the plain and unambiguous words they were approving actually meant what they intended them to say. This reality takes on particular meaning when, as here, the legislative record (a) is predicated on the purported actions of a subcommittee of the legislative body for which the record of what was or was not discussed and what was or was not determined at the subcommittee meeting are inexplicably missing, (b) excludes consideration of what was actually published

for specific review by the City's voters prior to the Adopting Referendum, and (c) rests upon the dubious proposition that words claimed to have been inadvertently omitted from the legislative act at issue were not merely intended to change what was actually said, but actually make the words expressly stated meaningless and without purpose or effect.

10. Defendants' responsibilities are ministerial in nature only. *City of Memphis v. Shelby County Election Commission*, 146 S.W. 3d 531, 536-538 (Tenn. 2004). By construing the Charter to include provisions other than those actually set forth therein, Defendants exceeded their limited statutory and constitutional authority. *Id.*
11. Quoting from a New Jersey decision, *In Re Ray*, 26 N.J.Misc. 56, 56 A.2d 761 (1947), the Tennessee Supreme Court has stated:

[t]he right to hold office is a valuable one and its exercise should not be declared prohibited or curtailed except by plain provisions of law ... statutes imposing disqualifications are to be construed strictly, while those declaring qualifications are to receive a liberal construction. In consequence, ambiguities to be resolved in favor of eligibility to office ...

Halbert v. Shelby County Election Commission, supra at 249.

12. Even if the Court assumes that Ordinance No. 9432 was not repealed by the Adopting Ordinance approved by the City's registered voters in the public referendum, Defendants improperly interpreted the provisions of Ordinance No. 9432 to be in conflict with and hence trump the provisions of Section 8.27

of the Charter, rather than being read in harmony and in favor of eligibility to office.

13. The Defendants, in their reliance upon the City Attorney's Opinion Letter to disqualify Healy as a mayoral candidate in the Upcoming Election, also failed to accord the Adopting Referendum any deference, much less the great deference which the Tennessee Supreme Court has held must be accorded such referenda.

Referenda are to be construed with great deference, because "[w]hen citizens vote in a referendum, they are presumed to know the issue on which they are voting."

Jordan v. Knox County, 213 S.W.3d at 780 (Tenn. 2007).

14. The Election Commission may not apply any durational residency requirements by which to assess the eligibility of candidates to stand for election as the City's Mayor, different from those contained in Section 8.27 of the City's Charter and/or T.C.A. § 8-18-101, especially when the candidate certifies to the Election Commission, using the Election Commissions own prescribed forms, that such candidate meets all eligibility requirements.
15. Healy satisfies the age and durational residency requirements of Section 8.27 of the City's Charter and T. C.A. § 8-18-101; it is unlawful for the Election Commission to refuse to place Healy on the ballot as a mayoral candidate in the Upcoming Election for the office of the City's Mayor.

16. Ordinance No. 9432 was repealed by Section 2 of the Adopting Ordinance if, as stated in the City Attorney's Opinion Letter, it changes the durational residency requirements for candidates seeking to be elected as the City's Mayor from the durational residency requirements specified in Section 8.27 of the Charter as duly approved by the Council and City's registered voters in a public referendum.
17. If it is assumed, for purposes of argument, that the provisions of Ordinance No. 9432 have not been repealed by the Charter duly approved by the Council and the City's registered voters in the public referendum, the provisions of Ordinance No. 9432 should be read in harmony with Section 8.27 of the Charter, and not in conflict with one another, the conflicting construction placed on Ordinance No 9432 in the City Attorney's Opinion letter, and adopted by the Defendants, would impermissibly render the durational residency requirements set forth in Section 8.27 meaningless and without purpose or effect and hence result in an impermissible statutory construction.
18. Even if Ordinance No. 9432 is assumed, for purposes of argument, not to have been repealed by the Charter duly approved by the Council and the City's Registered Voters in the public referendum, Healy satisfies the requirements of Ordinance No. 9432 because it is clear that as of the date that he submitted his Qualifying Petition he will be a resident of the City for more than one year prior to his election as Mayor should his candidacy succeed and, if an ambiguity arises from Ordinance No. 9432, the Tennessee Supreme Court has

declared that the ambiguity must be construed in a manner that favors eligibility.

ORDERED

It is hereby ordered, adjudged and decreed pursuant to Rule 65.04 of the Tennessee rules of Civil Procedure that each of the Defendants, from the date of this Order through the date that a final judgment is entered herein, is hereby:

- (a) **Enjoined** from taking any action which would, directly or indirectly, declare or render Robertson L. ("Rob") Healy ineligible to be elected to the Office of Mayor of Chattanooga in the March 3, 2009 election to be conducted thereon; and
- (b) **Ordered** and enjoined, if a final judgment is not sooner entered in this action, to place the name of Robertson L. ("Rob") Healy on the ballot to be used in the March 3, 2009 election as a candidate for the Office of Mayor of the City of Chattanooga.

Entered this 18th day of November 2008.



Howell N. Peoples
Chancellor Part 2

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Order has been mailed to all parties or their counsel in this cause.

This 18 day of November 2008

S. LEE AKERS, Clerk and Master

By: mm 2W
Deputy Clerk and Master

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