

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE, ex rel
Richard A. Stern and Richard O. Stern,
Amon C York, Roger S. King

PLAINTIFFS

VS.

Civil Action No. 09-0894

THE CITY OF CHATTANOOGA, TENNESSEE

DEFENDANT

**COMPLAINT IN NATURE OF QUO WARRANTO
and DECLARATORY RELIEF**

Come your Plaintiffs, by and through counsel, and file this action in the nature of quo warranto, pursuant to TCA 6-51-103 and related statutes, and seeking declaratory relief and for cause of action would show as follows:

1. Plaintiffs own real property in Hamilton County, Tennessee, which property is included within an area (Area 8A) which Defendant City of Chattanooga, Tennessee, a municipal corporation, seeks to annex into its corporate limits pursuant to certain ordinances including but not necessarily limited to Ordinance Number 12296, which ordinance is attached as Exhibit A and made a part hereof by reference. Defendant undertook to pass said Ordinances on final reading on or about the 6th day of October, 2009, allegedly under authority of Tennessee Code Annotated 6-51-102, et seq.

2. Plaintiffs bring this action in the nature of quo warranto pursuant to Tennessee Code Annotated 6-51-103 and 6-58-111, contesting the annexation ordinance and the attempted annexation of Plaintiffs' property.

3. Plaintiffs, by and through their counsel, aver that neither the Mayor nor the City Council of Chattanooga have received a request or approval from the Plaintiffs to annex Plaintiffs'

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property and the residents of the annexed area have not submitted to the City Council that if they are not annexed, that their health, welfare and safety will be materially retarded.

4. Plaintiffs by and through counsel aver that the proposed Ordinance constitutes an exercise of power not conferred by law (Tennessee Code Annotated 6-51-102) and is therefore void and invalid ab initio in that it is not necessary for the health welfare and safety of the citizens and residents of the annexed territory, nor of the city and that the health, welfare and safety of the city and the residents will not be materially retarded if the property is not annexed.

5. Plaintiffs by and through counsel aver, that the governing body of the City of Chattanooga, Tennessee, has no power to provide any services to the citizens and residents of Hamilton County, Tennessee, which the citizens and residents of Hamilton County, Tennessee, do not already have or are not able, by and through their county legislative body, to procure for themselves should they deem their health welfare and safety to be materially retarded.

6. Plaintiffs, by and through counsel aver that the health, safety, and welfare of the citizens and property owners of the municipality and territory attempted to be annexed will not be materially retarded in the absence of such annexation.

7. Plaintiffs, by and through counsel aver, that neither the planning commission of the City of Chattanooga nor any other person or department in the City of Chattanooga has made a query of the citizens and property owners of the annexed area to determine if their health, welfare, safety or prosperity will be materially retarded if the territory is not annexed.

8. Plaintiffs, by and through counsel, aver that it is impossible for the City to have determined that which is necessary to prevent the health welfare and safety of the citizens and property owners of the territory, without having conferred and queried said persons as to the state of their health, welfare, and safety.

9. Plaintiffs aver, by and through counsel, that absent the inquiry noted in paragraphs 7 & 8 above, it is a factual and logical impossibility for the City to have determined that the annexation of the territory was necessary to prevent the endangerment or the material retardation of the health welfare and safety of the citizens and property owners of the annexed area.

10. Plaintiffs, by and through counsel, aver that the City of Chattanooga has thereby failed to meet the threshold requirement of annexation as set out in T.C.A. § 6-51-102. As a result, the action of the City of Chattanooga in annexing the subject property “constitutes an exercise of

power not conferred by law” (T.C.A. § 6-51-103(a)(1)(A).

11. Plaintiffs, by and through counsel, aver that their health and that of their families and of the other citizens and residents of the annexed area has not heretofore not been endangered by not being in the City of Chattanooga and that in fact they have experienced good health. Plaintiffs further aver that their continued good health and that of the citizens and residents of the annexed area will not be materially retarded if they are not annexed into the City of Chattanooga.

12. Plaintiffs aver, by and through counsel, that they are the persons best situated to ascertain whether their continued good health will be materially retarded if their property is not annexed into the City of Chattanooga.

13. Plaintiffs, by and through counsel, aver that their welfare, and that of their families and the citizens and residents of the annexed area has not heretofore not been endangered by not being in the City of Chattanooga and that in fact the welfare of themselves, their families and the citizens and residents of the annexed area will not be materially retarded if they are not annexed into the City of Chattanooga.

14. Plaintiffs aver, by and through counsel, that the past and present Mayors and City Councils of the City of Chattanooga have provided for the health welfare and safety of the residents and property owners of the City of Chattanooga.

15. Plaintiffs aver, by and through counsel, that the Mayor and City Council of Chattanooga will continue to assure that the health welfare and safety of the citizens and property owners of the City of Chattanooga will continue unabated and not be materially retarded if the subject property is not annexed.

16. Plaintiffs aver that the City of Chattanooga offers no services to the citizens and property owners of the proposed annexed territory that they do not already have, inter alia, to wit:

(a) The sheriff and his department provide for the health welfare and safety of the citizens and residents of the proposed annexed area and their health welfare and safety will not be materially retarded if they do not receive the services of the Chattanooga police department. Likewise, the City Police Department will continue to provide its services to the Citizens and residents of the City, unabated, if the proposed annexed territory is not annexed.

(b) The citizens and property owners of the proposed annexed area have fire protection and their continued safety will not be materially retarded if they are not annexed into the City. Likewise,

the City Fire Department will continue to provide its services to the Citizens and residents of the City, unabated, if the proposed annexed territory is not annexed.

(c) The citizens and property owners of the proposed annexed area presently have running water in their homes supplied by the Hixson Utility District and the City of Chattanooga states that the Hixson Utility District will continue to provide running water. The health and safety of the citizens of the annexed, with respect to potable water will not be materially retarded if they are not annexed by the City of Chattanooga. Likewise, the Chattanooga City Water Department will continue to provide its services, unabated, to the Citizens and residents of the City, unabated, if the proposed territory is not annexed.

(d) As set out in the Plan of Services, the annexed area presently receives its electric services from the Electric Power Board of Chattanooga which operates as a separate utility entity. The citizens and property owners of the proposed annexed area do not need to be annexed to continue to receive Electric Service and therefore their health welfare and safety will not be materially retarded if they are not annexed. Likewise, the Electric Power Board of Chattanooga will continue to provide its services to the Citizens and residents of the City, unabated, if the proposed annexed territory is not annexed.

(e) The citizens and property owners of the proposed annexed area have private waste disposal available and the cost of increased taxes does not offset their present cost. If they are not annexed, their health, welfare and safety will not be materially retarded if they do not receive the solid waste disposal services of the city. Likewise, the City Garbage Disposal Department will continue to provide its services to the Citizens and residents of the City, unabated, if the proposed annexed territory is not annexed.

(f) The citizens and property owners of the proposed annexed area presently have sewage disposal systems and/or sewer service from Hamilton County Waste Water Treatment Authority. Since Chattanooga is providing no services than are otherwise being provided, the health welfare and safety of the annexed residents will not be materially retarded if they are not annexed.

(g) The Hamilton County Highway Department has provided and will continue to provide the same emergency routine maintenance services to the streets in the proposed annexed area that are proposed to be provided by the City of Chattanooga if the property is annexed. The safety of the citizens and property owners of the proposed annexed area, will not, therefore be

materially retarded if the property is not annexed.

(h) There is no need for traffic control devices in the annexed area other than as already provided by the Hamilton County highway department. Likewise, the City Road Department will continue to provide traffic control services to the Citizens and residents of the City, unabated, if the proposed annexed territory is not annexed.

(i) Hamilton County provides maintenance of storm water sewer and drainage systems on county property and installs them where needed as does the City of Chattanooga. Failure to annex this area and substitute the storm water sewer services of the City will not materially retard the health, welfare, and safety of the citizens and residents of the annexed area. Likewise, the City will continue to provide its storm water sewer services to the Citizens and residents of the City, unabated, if the proposed annexed territory is not annexed.

(j) Hamilton County has the same codes as does Chattanooga and has a codes enforcement authority. The enforcement of the codes of Chattanooga will continue unabated if the subject property is not annexed. The health welfare and safety of the residents of the annexed area as well as the residents of the city will not be materially retarded if the property is not annexed.

17. Plaintiffs aver, by and through counsel, that the annexation of this area is for the purpose of obtaining additional revenues over and above the costs to the City and not for the purpose of preventing the material retardation of the health, welfare and safety of the citizens and residents of the City and the area annexed.

18. Upon information and belief, plaintiffs aver that the City of Chattanooga is in default on the provisions of one or more plans of service for prior annexed areas and is therefore precluded from annexing this territory as set forth in T.C.A. § 6-51-102(b)(5).

PREMISES CONSIDERED, PLAINTIFF PRAYS:

1. That process issue and be served upon Defendant requiring it to appear and answer this Complaint.

2. That the Court decide the statutorily mandated issue as provided in Tennessee Code Annotated 6-51-103 and T.C.A. 6-58-111.

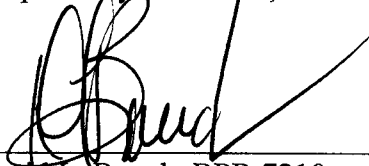
3. That the Ordinance herein referenced be vacated by order of this Court, and the same be declared null, void and of no effect.

4. That Plaintiff have such other, further, equitable and general relief to which this

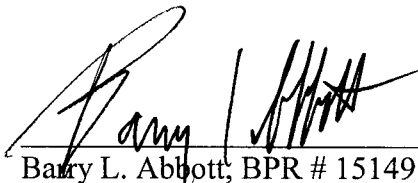
Court may deem it entitled

THIS IS THE FIRST PETITION IN THE NATURE OF QUO WARRANTO OR FOR EXTRAORDINARY RELIEF FILED ON BEHALF OF THE PLAINTIFF IN THIS MATTER AND NO COURT HAS HERETOFORE DENIED SUCH RELIEF.

Respectfully submitted,



David L. Buuck, BPR 7210
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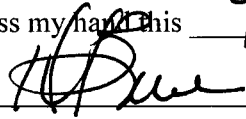


Barry L. Abbott, BPR # 15149
801 Broad Street, Ste. 428
Chattanooga, TN 37402
423-265-8804
423-267-5915 (FAX)

COST BOND

I hereby acknowledge and bind myself for the payment of all non-discretionary costs that may be adjudged herein against , the principal, in the event that the principal does not pay them.

Witness my hand this 9 day of Nov, 2009 .



Signature

David L. Buuck, BPR #7210
707 Market St.,
Knoxville, TN 37902