

BEFORE THE STATE OF TENNESSEE HISTORICAL COMMISSION

IN THE MATTER OF:

FORREST DESCENDANTS & SONS OF
CONFEDERATE VETERANS
(PETITION FOR DECLARATORY
ORDER)

DOCKET NO: 04.47-150937J

NOTICE OF DENIAL OF THE
PETITION FOR RECONSIDERATION OF THE INITIAL ORDER

A Petition for Reconsideration of the Initial Order filed on February 8, 2019, is denied effective **February 28, 2019**.

- There having been no action taken by the Administrative Judge on the petition within twenty (20) days as provided by §4-5-317.
- By Order of the Administrative Judge.

This the 28th day of February 2019.

J. Richard Collier

J. Richard Collier, Director
Administrative Procedures Division

The Initial Order shall become a Final Order unless:

1. A party files a written appeal with the Administrative Procedures no later than **March 15, 2019**.
2. The agency files a written notice of review with the Administrative Procedures Division no later than **March 15, 2019**.

You must file the appeal with the Administrative Procedures Division and the address is:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

If you have any questions, please call the above Division at: (615) 741-7008 or 741-2078.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of this Notice of Petition for Reconsideration of the Initial Order has been served upon all interested parties identified in the attached list by delivering same to their offices or by placing a true and correct copy of same in the United States mail, postage prepaid.

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H. Edward Phillips, III, Esq.
219 – 3rd Avenue North
Franklin, TN 37064-2504

This the 28th day of February 2019.

By: *Nena Parham*
Administrative Procedures Division



State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
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Nashville, Tennessee 37243-1102
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February 28, 2019

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Franklin, TN 37064-2504

RE: In the Matter of: Forrest Descendants & Sons of Confederate Veterans
Docket No. 04.47-150937J

Enclosed is an Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/ncp
Enclosure

BEFORE THE STATE OF TENNESSEE
HISTORICAL COMMISSION

IN THE MATTER OF:

THE DESCENDANTS OF NATHAN
BEDFORD FORREST,

AND

SONS OF CONFEDERATE VETERANS
NATHAN BEDFORD FORREST CAMP
#215,

Petitioners.

APD No. 04.47-150937J

THC No. 18-001

PETITION FOR
DECLARATORY ORDER

ORDER DENYING PETITIONS FOR RECONSIDERATION AND MOTION FOR STAY

The INITIAL DECLARATORY ORDER was entered in this matter on January 25, 2019. On February 1, 2019, Petitioners timely filed a MOTION TO STAY THE INITIAL ORDER ENTERED JANUARY 25, 2019. On February 8, 2019, Petitioner Sons of Confederate Veterans, Nathan Bedford Forrest Camp #215, timely filed SONS OF CONFEDERATE VETERANS, NATHAN BEDFORD FORREST CAMP #215'S PETITION FOR RECONSIDERATION OF INITIAL DECLARATORY ORDER. On February 11, 2019, Petitioner Descendants of Nathan Bedford Forrest timely filed a PETITION FOR RECONSIDERATION OF INITIAL ORDER ENTERED JANUARY 25, 2019.

For the following reasons, the three aforementioned motions are not well-taken, and they are therefore **DENIED**.

Petitions for Reconsideration

Petitioners¹ argue that a remedial construction of the Tennessee Heritage Protection Act of 2016, TENN. CODE ANN. § 4-1-412 (March 11, 2016), hereinafter referred to as "the Act" or

¹ This argument is made in the SONS OF CONFEDERATE VETERANS, NATHAN BEDFORD FORREST CAMP #215'S PETITION FOR RECONSIDERATION OF INITIAL DECLARATORY ORDER, and adopted by Petitioner

“the 2016 Act,” prohibits the City of Memphis from selling the properties upon which the statues in question were located without first obtaining a waiver from the Tennessee Historical Commission.²

The maxim of liberal construction being required to interpret remedial legislation is only applicable if there are irreconcilable ambiguities. *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 714 (Tenn. 2012); *Amos v. Metropolitan Government of Nashville and Davidson County*, 259 S.W.3d 705, 710 (Tenn. 2008). If there are no such ambiguities, the courts only enforce laws as they are written, giving the words their natural and ordinary meaning. *Chapman* 380 S.W.3d at 714 (Tenn. 2012). Courts must also be mindful of existing law when they construe a statute. See *Realty Shop, Inc. v. RR Westminster Holding, Inc.*, 7 S.W.3d 581, 602 (Tenn. Ct. App. 1999).

Petitioners do not argue that the Act is ambiguous. To the contrary, Petitioners argue that the Act is “clearly stated in terms broad enough in Tennessee Code Annotated § 4–1–412(b) to prohibit any sale or change in legal title that is done without a state waiver.” SONS OF CONFEDERATE VETERANS, NATHAN BEDFORD FORREST CAMP #215’S, PETITION FOR RECONSIDERATION OF INITIAL DECLARATORY ORDER, at p. 14. There is no ambiguity in the wording of the Act, and adding to the language of the same would contradict a more precisely broad-worded law.

TENN. CODE ANN. § 12–2–302 allows a municipality to sell “any land” to a not-for-profit corporation “without limitation by reason of any other provisions of law.” While Petitioners cast their argument as a request for liberal construction of the Act, the effect of that construction

Descendants of Nathan Bedford Forrest at p. 2 of the PETITION FOR RECONSIDERATION OF INITIAL ORDER ENTERED JANUARY 25, 2019.

² Aside from a citation to *Allmand v. Pavletic*, 292 S.W.3d 618 (Tenn. 2009), for the general proposition that actions undertaken by local governments in violation of state law are *ultra vires*, void, or voidable, no case law is provided to support the arguments made in the petition for reconsideration.

would be to insert a prohibition into the Act that did not exist in 2016. Such a prohibition would run headlong into TENN. CODE ANN. § 12-2-302. The more precisely broad-worded scope of TENN. CODE ANN. § 12-2-302³, combined with the absence of language in the 2016 Act regarding sales of municipal property, leads to the conclusion that the Act failed to create a prohibition against the sales of municipal property absent a waiver from the Tennessee Historical Commission, at the time of the sales or conveyances of the properties in question⁴.

Petitioner Sons of Confederate Veterans, Nathan Bedford Forrest Camp #215, also argues that other state laws must be satisfied before a waiver can be issued. Similarly, Petitioner Descendants of Nathan Bedford Forrest argues that other laws that may impact whether the sale of the properties in question was valid should be considered in this matter.⁵ Respectfully, this argument fails for two reasons. One, as stated in the INITIAL DECLARATORY ORDER, at p. 10, the Tennessee Historical Commission has no jurisdiction over allegations that other such laws were violated. And two, the determination that upon transfer of the properties in question any “memorials,” as defined by the Act, were no longer subject to the Act’s stated prohibitions effectively moots the argument.

Therefore, it is concluded that the petitions for reconsideration fail to provide a legal basis to overturn the findings of fact and/or conclusions of law contained in the INITIAL DECLARATORY ORDER. Accordingly, the SONS OF CONFEDERATE VETERANS, NATHAN BEDFORD

³ Citation to TENN. CODE ANN. § 12-2-302 is made in order to assist in interpreting the Act and is not a finding of compliance with the substantive requirements, if any, of TENN. CODE ANN. § 12-2-302, as such a finding would not be within the jurisdiction of the Tennessee Historical Commission to make.

⁴ As noted in the INITIAL DECLARATORY ORDER, the current version of the Act, effective May 21, 2018, provides that “[n]o memorial or public property that contains a memorial may be sold, transferred, or otherwise disposed of by a county, metropolitan government, municipality, or other political subdivision of this state.” Tenn. Code Ann. § 4-1-412(b)(2) (May 21, 2018).

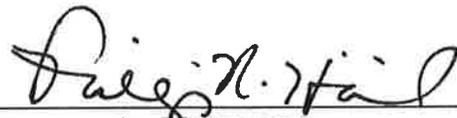
⁵ No case law is cited to support this threshold proposition.

merits of Petitioners' claims in the instant petition for declaratory order is preliminary in nature. As stated in the Davidson County Chancery Court's MEMORANDUM AND FINAL ORDER DENYING INJUNCTION; AND ORDER FOR RULE 62.01 STAY, at p. 1, the Act "assigns a limited, temporary, and immediate role" to the Chancery Court to entertain injunctive relief regarding the disposition of the statues in question "prior to a final determination by the Tennessee Historical Commission." Thus, the Court of Appeals may or may not address some or all of the issues raised in the instant petition for declaratory order. Further, it is impossible to know when the Court of Appeals will render a decision. Accordingly, the motion fails to show that judicial economy presents a basis for a stay at this late stage of the administrative proceedings.

For these reasons, the MOTION TO STAY THE INITIAL ORDER ENTERED JANUARY 25, 2019 is hereby **DENIED**.

It is so ORDERED.

Entered and effective this the 28th day of February, 2019.



PHILLIP R. HILLIARD
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE