

**STATE OF TENNESSEE
TENNESSEE HISTORICAL COMMISSION**

IN THE MATTER OF:)	
)	
WILLIAMSON COUNTY, TENNESSEE)	
)	
<i>Petitioner,</i>)	
)	CASE NUMBER 04.48-210764A
)	
RE:)	THC 20-0009
REQUEST TO ALTER THE)	
WILLIAMSON COUNTY SEAL)	

**PETITION FOR DECLARATORY ORDER BEFORE THE TENNESSEE HISTORICAL
COMMISSION OF THE DEPARTMENT OF ENVIROMENT AND CONSERVATION**

Pursuant to Tennessee Department of State Rule 1360-04-01.07, Williamson County, Tennessee (1320 West Main Street, Franklin, Tennessee 37064) brings this Petition for a Declaratory Order. Specifically, Williamson County requests the Tennessee Historical Commission declare the provisions of T.C.A. § 4-1-412 not applicable to the Williamson County Seal (the “Seal”). Williamson County availed itself of the waiver process outlined in T.C.A. § 4-1-412 to obtain needed certainty as to the authority of the county to revise, replace or abandon the county seal while avoiding litigation that would require the continued expenditure of county resources. The removal of the Confederate Flag from the Seal is a highly contentious matter within the community and Williamson County wanted to avoid litigation that might arise from acting without clarity as to the authority to do so. However, as a threshold matter, this body should determine whether this matter is appropriately before it – or whether Williamson County is free to alter its seal without necessity of a waiver issued by this body. Williamson County submits the

following memorandum containing a factual background, description of how this statute should affect Williamson County, and a description of the requested ruling in compliance with Rule 1360-04-01-.07.

I. STATEMENT OF THE FACTS

1. On July 13, 2020, the Williamson County Board of Commissioners passed resolution 7-20-7 authorizing the County Mayor to appoint a Task Force to study the question of removing the Confederate flag from the Seal and to provide a report to the Board of Commissioners prior to their September 14, 2020, meeting.
2. Pursuant to Resolution 7-20-7 the County Mayor appointed the following members to the Task Force:
 1. Matt Largen, Chair, representing Williamson, Inc.
 2. Ellie Westman Chin, Vice Chair, representing Williamson County Convention and Visitors Bureau.
 3. Emily Bowman, Secretary, Multi-Generation Family Member.
 4. Lisa Campbell, representing Williamson County Business Community.
 5. Inetta Gaines, representing African American Heritage Society of Williamson County.
 6. Paula Harris, representing Heritage Foundation of Williamson County.
 7. Hewitt Sawyers, Multi-Generation Family Member.
 8. Rick Warwick, Williamson County Historian.
 9. Dr. Chris Williamson, African-American Religious/Community Leader.
3. The Task Force met weekly beginning July 28, 2020, and then three times in the final week, ending August 28, 2020. The Task Force invited and received public comments numbering in the hundreds through the Williamson Chamber's website. The Task Force also held citizen testimonial sessions open to the media. Through this process, it became clear to the Task Force that the community had a high level of interest in the outcome of the Task Force's report. The Task Force's report recommended removal of the Confederate flag from the Seal.

4. On September 14, 2020, the Board of County Commissioners of Williamson County passed resolution No. 9-20-18. This resolution authorized the Williamson County Mayor to formally petition the Tennessee Historical Commission for a waiver under the Tennessee Heritage Protection Act (the “Act”).¹ The petition was submitted due to a finding by the County Commission that the Task Force report addressed the financial, social, public interest, tourism, and business impacts of altering the Seal and that there was a material and substantial need for the Seal to be altered.
5. The resolution was accompanied by, and adopted by reference, the report created by the Task Force that outlined the reasons why there is a material or substantial need for a waiver based upon compelling public interests.
6. On November 5, 2020, the Williamson County Mayor, Rogers Anderson, formally filed the Petition for Waiver requesting the Tennessee Historical Commission approve a change to the upper left quadrant of the Seal that bears a Confederate Battle Flag draped over a cannon.
7. The Williamson County Mayor, based on the resolution approved by the County Commissioners, filed this petition because, among other reasons, section (f)(5) of the Act states that “a violation of this section shall result in the public entity being precluded from entering into grant contracts administered by the commission and the department of economic and community development for a period of five (5) years from the date upon which a violation determination is made.”
8. Williamson County submitted the Petition for Waiver out of an abundance of caution to avoid any adverse consequences resulting from a violation of the Act. Williamson

¹ Tenn. Code. Ann. § 4-1-412.

- County wanted to ensure full compliance with the law in the event that the Seal could possibly be interpreted as a “memorial” under the provisions of T.C.A. § 4-1-412.
9. In addition to the penalties located in the Act, Williamson County submitted this petition due to the high level of community interest in the process surrounding altering the Seal and the contentious nature of the proposed action. Williamson County seeks to obtain certainty as to the authority of the County to revise, replace or abandon the Seal while avoiding litigation that would require the continued expenditure of County resources. While this Commission may provide that certainty by granting a waiver, it may also provide such certainty by simply issuing a declaration that a waiver is not required for the County to exercise its inherent authority to modify its seal.
 10. After Williamson County submitted the Petition for Waiver, the Major Nathaniel Cheairs Camp 2138 of the Sons of Confederate Veterans (the “SCV”) intervened in this matter under the provisions of T.C.A. § 4-1-412.
 11. The procedure for this case is governed by the rules of the Department of State as specified in the Act. When the SCV intervened in this case the case became a contested case under the Department’s rules. Pursuant to the Department’s rules for contested cases any affected person may petition an agency for a declaratory order as to the validity or the applicability of a statute, rule, or order within the primary jurisdiction of the agency.
 12. Williamson County now brings this petition for a declaratory order asking the Tennessee Historical Commission to hold that the Act does not apply to the Seal because the Seal is not a “memorial” as defined in the Act and even if it was a

memorial, it was not erected for, named, or dedicated on public property in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization.

II. DESCRIPTION OF HOW THIS STATUTE SHOULD AFFECT WILLIAMSON COUNTY.

The Seal is not one of the objects listed in the definition of a “Memorial” as defined in the Act and even if it was an object included in the definition of a “Memorial” the Seal has not been dedicated in honor of any historical conflict because the Seal is a statutory mechanism for the county government to display its authority and bind itself to legal documents.

The Act does not apply to the Seal because the Seal is not a “Memorial” as defined in the Act. In order to be a “Memorial” under the Act two conditions must be met. First, the object in question must be a statue, monument, memorial, bust, nameplate, historical marker, plaque, artwork, flag, historical display, school, street, bridge, or building.² Second, if the object in question meets one of these categories it must have been erected for, named, or dedicated on public property in honor of a historical conflict, historic entity, historic event, historic figure, or historic organization.³ Even if the Seal could be categorized as one of the objects listed in the statute, it has not been erected for, named, or dedicated on public property in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization. The Seal is a byproduct of the General Assembly delegating powers to county governments and is a mechanism for county governments to express their authority and bind themselves to legal documents.

² Tenn. Code Ann. § 4-1-412(a)(7)(B).

³ Id.

The Act defines “Memorial” as:

“(A) Any public real property or park, preserve, or reserve located on public property that has been named or dedicated in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization; or

*(B) Any statue, monument, memorial, bust, nameplate, historical marker, plaque, artwork, flag, historic display, school, street, bridge, or building that has been erected for, named, or dedicated on public property in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization;”*⁴

Prior to further applying this definition to the Seal, it is important to view the Seal in its proper context, as a tool of local government in Tennessee. It is well settled law in Tennessee that counties, as political subdivisions of the state, may only possess and exercise those authorities which are granted to them.⁵

“The county courts are thereby constituted corporations with defined powers, and with justices thereof as representatives of the county. They can exercise that portion of the sovereignty of the State communicated to them by the legislature, and no more.”^{6 7}

Some of these powers issued to the counties imply by necessity that the county take certain procedural steps to complete them. For example, the Tennessee Code states the following with regard to counties executing contracts:

“The finance committee, to carry out the will of the county legislative body, shall be vested with full power to formulate, make and sign a contract upon the terms and conditions specified, which contract shall be approved by the county mayor,

⁴ Tenn. Code. Ann. § 4-1-412(a)(7).

⁵ Grainger Cty. v. State, 111 Tenn. 234, 256, 80 S.W. 750, 754 (1903).

⁶ Id.

⁷ “County court” as referred to in this selection from Grainger Cty v. State refers to what was the county legislative body at the time.

and attested by the county clerk, with the **county seal** attached, on the part of the county, and shall be binding on the county.”⁸

This provision of the Code places multiple conditions on the county that must be satisfied in order for the finance committee to properly enter into contracts on behalf of the county. One of these conditions is that the signed contract must have “the county seal attached, on the part of the county, and shall be binding on the county.”⁹ This provision, by necessity, gives county governments in Tennessee the authority to adopt a seal to conduct county business. This provision of the code states that the county seal must be attached “on the part of the county.” The county seal is a representation of the county’s authority to enter into contracts. The county seal, as evidenced by this statute, is not a statue, monument, memorial, bust, nameplate, historical marker, plaque, artwork, flag, historic display, school, street, bridge, or building. The Tennessee Code contains examples of statutory authority granted to local municipal bodies and various public boards to adopt official “seals.”

The Seal represents the authority of Williamson County. Generally speaking, seals give various county administrative bodies the authority to bind themselves to certain contracts. The Seal was a way for the General Assembly to delegate authority to their political subdivisions and allow them to have an official mark to confirm this authority. County seals were not intended to be memorials in honor of historical entities or events. It would contravene clear legislative intent to strip the County of its authority to alter its Seal on the basis that the Seal has somehow become a memorial dedicated in honor of a historical conflict or event.

⁸ Tenn. Code Ann. § 5-8-202.

⁹ Id.

It becomes even more clear how the Seal does not meet the elements in the Act when the Seal is contrasted with previous petitions filed before the Tennessee Historical Commission. These petitions include historical memorials such as the bust of Nathan Bedford Forrest on display in the State Capitol Building and the City of Memphis statue of Nathan Bedford Forrest in a public park. These examples highlight the types of “memorials” intended to be under the purview of the Tennessee Historical Commission - statues, busts, and buildings all made with the specific purpose of honoring a piece of history in a public location. The Seal, by its very nature, is distinct from these types of matters. The Seal is a creature of statute intended to give local governments a way of expressing their authority. Williamson County chose at one time to express its authority as a political subdivision of the State through a Seal with a certain design. That does not mean the Seal became a memorial erected for, named, or dedicated on public property in honor of a historic conflict, historic entity, historic event, historic figure, or historic organization.

In fact, the Tennessee Attorney General has opined as to the characteristics of county seals. While the trademark issue in the opinion is not relevant to the present case the Attorney General opinion articulates quite well the General Assembly’s intent when developing county seals and their place in government.

“The language in the Tennessee statute, enacted in 1982, was adopted verbatim from the federal Lanham Trade-Mark Act, 15 U.S.C.A. § 1051 et seq. The pertinent provision is set forth in 15 U.S.C.A. § 1052(b). Consistent with the federal act, the Tennessee General Assembly has proclaimed that a mark that is comprised of a coat of arms or other governmental insignia, or any simulation thereof is precluded from registration. It is axiomatic that a county seal constitutes a governmental insignia. A county is an entity that has been described as a "government within a government." *Ferguson v. Tyler*, 183 S.W. 162 (Tenn. 1915). As a municipal body, a county is an arm or instrument of the state to carry out the purposes of government. *Grainger County v. State*, 111 Tenn. 234, 80 S.W. 750 (1903). In

Tennessee, counties are considered public municipal corporations with limited powers. *White's Creek Tpk. Co. v. Davidson County*, 82 Tenn. 73 (1884). Thus, although T.C.A. § 47-25-502(3) does not specify counties in its list of covered governmental entities, it is our opinion that a county would fall within the protection of this legislation. The General Assembly clearly intended to prohibit registration of any identifying insignia belonging to a governmental entity. And, in construing a statute, the primary purpose is to ascertain and give effect to the intention or purpose of the legislature as expressed in the statute. *Westinghouse Electric Corp. v. King*, 678 S.W.2d 19 (Tenn. 1984). Accordingly, it is the opinion of this Office that a county seal is not entitled to trademark registration pursuant to T.C.A. § 47-25-502(3). It should be noted that under both the common law and the Model Trademark Act, trademark or trade name registration is available only when associated with specific goods or services. In this regard, T.C.A. § 47-25-501(6) defines trademark as: Any word, name, symbol, or devise, or any combination thereof, adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.”¹⁰

Following the Attorney General’s analysis, the county seal is representative of Williamson County, not the individual elements that comprise the seal. The Attorney General’s analysis confirms and highlights the other arguments put forth in this memorandum. Williamson County is only permitted to take such actions that the General Assembly permits it to take. The General Assembly by statute developed a mechanism for counties to adopt a seal so that they could express their authority and bind themselves to contracts. Classifying the Seal as memorial that was dedicated in honor of a historical conflict would misrepresent the legislative intent behind the Seal and its ability to be altered at will.

¹⁰ 1991 Tenn. AG LEXIS 99, *4.

III. REQUEST FOR RELIEF

Based on the above facts of the controversy and description of how this statute should be applied to the facts Williamson County requests the Tennessee Historical Commission hold that the provisions of T.C.A. § 4-1-412 do not apply to the Seal or require a waiver to allow removal of the Confederate flag from the Seal.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been emailed to Judge Steve Darnell at Steve.Darnell@tn.gov; William B. Kerby III at will.kerby@tn.gov; H. Edward Phillips at edward@phillipslawpractice.com and William Pomeroy at wlpomeroylaw@gmail.com on this 8th day of November 2021.

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