

FILED

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

2019 NOV -2 AM 11:35

PART I

HOWARD G. HOGAN

**KNOX COUNTY, TENNESSEE,**

**Plaintiff,**

**vs.**

**No. 195629-1**

**KNOX COUNTY RETIREMENT AND  
PENSION BOARD and  
LISA BIGWOOD, ROBERT CALDWELL,  
STELLA L. CATLETT, GREGORY CRAIG,  
GREGORY A. GASS, JAMES PRITCHARD,  
RENEE RICKER, BENEFICIARY OF  
DENNIS RICKER, and J. DAVID YOKLEY,  
Individually and pursuant to Tenn. R. Civ. P. 23  
As Class Representative for all other similarly  
Situating,**

**Defendants.**

**MEMORANDUM OPINION**

This cause came to be heard on October 29, 2018, upon the issue of the validity and legality of the settlement proposal, including the authority of the Knox County Mayor to enter into any settlement agreement. The settlement proposal was proffered for preliminary approval in this class action by the defendants: Bigwood, Caldwell, Carson, Catlett, Craig, Gass, Pritchard, Ricker, and Yokely, in their individual capacities and as class representatives for all other defendants similarly situated.

However, on October 26, 2018, the plaintiff, Knox County, Tennessee, filed a motion titled "Knox County's Motion to Declare the Authority of the Knox County Law Director to Proceed with this Litigation." On the same day, the above named defendants, in their individual capacities and as class representatives, filed a response titled

“Preliminary Response of Class Defendants to: Knox County’s Motion to Declare the Authority of the Knox County Law Director to Proceed with this Litigation Filed on October 26, 2018.” During the October 29 hearing, all parties agreed to waive notice of the hearing on the County’s motion to declare the authority of the Knox County Law Director. The parties also agreed the Court could consider the class defendants’ preliminary response. However, the issue for the Court’s consideration on the class defendants’ response was limited to whether the Law Director has acquired conflicts of interest requiring his disqualification.

The Court previously heard the Knox County Retirement and Pension Board’s initial motion for dismissal or disqualification, which was adopted by the class defendants, with the exception of defendant James Carson, who had not been joined as a party defendant at that time. The Court rendered a written memorandum opinion and a bench opinion on the prior motion for dismissal or disqualification on July 20, 2018 and September 25, 2018, respectively. On October 2, 2018, the Court entered an Order adopting and incorporating the memorandum opinion and the bench opinion.

At pages 14-17 of the transcript of the bench opinion, the Court discusses the presumption that the Law Director is acting within his authority in bringing this litigation. On October 2, 2018, the Knox County Mayor and the Pension Board entered into a settlement proposal whereby, among other things, the Law Director is to dismiss the pending cases related to the Uniformed Officers Pension Plan (the “UOPP”), including this declaratory judgment action. On October 25, 2018, the Knox County Commission passed a resolution instructing the Law Director to dismiss the litigation, referenced in the resolution, including the present declaratory judgment action. On the same day, the Mayor,

through written correspondence in the form of a personal letter, also instructed the Law Director to dismiss the litigation.

Pursuant to the Knox County Charter, the Law Director is Knox County's chief legal officer in his capacity as the County's attorney. The Knox County Charter assigns the Law Director the duty to "execute and administer all of the legal affairs of the County, including litigation." Code of Knox County, Tennessee, Part I, Article III, § 3.08(D). However, that assignment of duty is to the Law Director as the attorney for Knox County. *See Savage v. City of Memphis*, 464 S.W.3d 326, 332 n.1 (Tenn. Ct. App. 2015) (noting that that the City is the principal, the Mayor is the agent, and City's assistant law director is the subagent).

The Law Director is charged by the Charter to "execute and administer all of the legal affairs of the County, including litigation, drafting of contracts and other documents instruments and papers, the investigation of titles, and to advise and counsel officials and the Commission on all legal matters affecting their respective offices." Code of Knox County, Tennessee, Part I, Article III, § 3.08(D). The Charter further provides in the following sentence that "[n]o elected or appointed officer or employee of the County shall employ any other attorney to represent the County or any officer, board, or member of the Commission unless he/she shall first be acting and empowered to do so by resolution of the Commission. *Id.*

All of the Law Director's duties enumerated in the preceding paragraphs are tasks performed by an attorney for a client. All of the duties and tasks are associated with those of an attorney. *See Sallee v. Barrett*, 171 S.W.3d 822, 828-829 (Tenn. 2005) (Under the doctrine of *noscitur a sociis* for statutory construction, the meaning of words and phrases

may be clarified by the meaning of associated words and phrases.); *Renteria-Villegas v. Metro Gov't of Nashville & Davidson Cty.*, 382 S.W.3d 318, 321 (Tenn. 2012) (citing *Jordan v. Knox Cty.*, 213 S.W.3d 751, 763 (Tenn. 2007) (Principles of statutory construction are utilized to interpret local county charters.)). The Law Director's capacity respecting the county is as its attorney in handling its legal affairs. Its governmental affairs are conducted through the elected officials set out in the charter. The Knox County Charter's broad grant of authority to the Law Director is as the County's attorney only. The recent objections of the Knox County Government, through its Mayor and Commission, burst the presumption of the Law Director's capacity to continue with the prosecution of this case.

The subject matter of this litigation is the UOPP, effective July 1, 2007, as amended. Pursuant to the Knox County Charter, the UOPP is administered by the Knox County Retirement and Pension Board with the proviso that the Pension Board may not take any "action, which thereby increases the funding or financial obligations of the County either at the time of the action or in the future without notification to and express consent and funding from the Commission by resolution." Code of Knox County, Tennessee, Part I, Article VII, §§ 7.04(E) and 7.05(E). Under the Charter, no County official, other than the Pension Board and the Commission, has any involvement with the administration of the UOPP except as a member of the Pension Board and within that membership capacity.

The Knox County Charter states that "[w]ith regard to private and local affairs, all lawful powers are vested in the Mayor of Knox County and the Commission of Knox County, except those reserved to the Judiciary, Board of Education, and elected Charter and Constitutional officers . . . ." Code of Knox County, Tennessee, Part I, Article I, §

1.02. The Charter vests in the Commission legislative powers of the County and “all other powers of the government of Knox County not specifically, or by necessary implication, vested in some other office of the County . . . .” Code of Knox County, Tennessee, Part I, Article II, §§ 2.01 and 2.02.

Regarding executive authority, the Charter further states that “[t]he executive and administrative powers of the Knox County Government shall be vested in, and exercised by, the Mayor of Knox County . . .” and that “[t]he Mayor shall be the head of the executive branch of Knox County government, responsible for the exercising of all executive and administrative functions of the county government and shall be the chief fiscal officer of the County.” Code of Knox County, Tennessee, Part I, Article III, §§ 3.01 and 3.02. The Charter further provides that the Mayor shall “[s]ee that all provisions of this Charter, resolutions, ordinances and emergency ordinances of the Commission and all applicable laws of the state of Tennessee subject to execution by Knox County are faithfully executed; provided, however, the Mayor shall not assume any of the constitutional, statutory or Charter duties of the Sheriff.” Code of Knox County, Tennessee, Part I, Article III, §§ 3.03(A).

When the Court heard the Pension Board’s motion to dismiss or disqualify and rendered its written memorandum opinion and bench opinion, neither the Knox County Mayor nor the Knox County Commission had made known any objection to this suit. There was no evidence or indication as to the preference of either the legislative or executive offices of the County government.

The original authority of an attorney to bring a suit is presumed. *In re Ellis*, 822 S.W.2d 602, 606 (Tenn. Ct. App. 1991). “The presumption is, however, rebuttable.” *Id.*

When the attorney's authority is questioned, the attorney must demonstrate his or her authority. *Id.* Normally, demonstrating such authority is not difficult and any written communication from the client may be sufficient. *Id.* (citing *Rogers v. Park's Lessees*, 23 Tenn. (4 Hum.) 480, 482 (1844)). All that is necessary is "such proof as will raise a reasonable presumption of the existence of the authority." *Id.* (quoting *Rogers v. Park's Lessees*, 23 Tenn. (4 Hum.) 480, 482 (1844)). In the present case, the Knox County Charter expressly gives the Knox County Law Director the authority "to execute and administer all of the legal affairs of the County, including litigation . . . ." Code of Knox County, Tennessee, Part I, Article III, §§ 3.08(D). However, "[t]he attorney cannot prosecute or defend in the name of his client against the latter's consent." *Yoakley v. Howley*, 73 Tenn. Reports 670, 673 (Tenn. 1880). The Knox County Mayor and Commission, as agents of the County, have now made it known to the County's attorney that they do not consent to the continuation of this action. The County, like any client or party, "has always the right to control his case, and he has the absolute right to revoke the authority of his attorney to prosecute or defend in his name." *Yoakley v. Howley*, 73 Tenn. Reports at 673.

While the Knox County Law Director is not, as an elected Charter official, subordinate to the Mayor or to the Commission, the Law Director is, when acting as an attorney for the County, subject to their direction as agents of the client and principal, Knox County, Tennessee. The Law Director's authority is limited to that of attorney for Knox County. Pursuant to Sup. Ct. R. 8, § 1.2(a), the Law Director is required to abide by the client's desires. Here, the client, Knox County, Tennessee, acting through its Mayor and Commission, have instructed the Knox County Law Director to discontinue this action. Accordingly, upon the Motion to Declare the Authority of the Knox County Law Director

to Proceed with this Litigation,” filed by Knox County, Tennessee, this Court determines and declares that the Knox County Law Director no longer has the authority to continue with the prosecution of this case.

Signed this 2nd day of November, 2018.

John G. Weaver  
Chancellor

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the persons listed below by United States Mail, first-class prepaid, this 2<sup>nd</sup> day of November, 2018.

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This 2<sup>nd</sup> day of November, 2018.

Howard G. Hogan By: [Signature] DEM  
Howard G. Hogan  
Clerk and Master