

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

FILED

BEE DeSELM, on relationship of the State of)
Tennessee and BEE DeSELM, individually,)

2005 JUL 15 P 1:20

Plaintiffs,)

HOWARD C. HOGAN
CLERK & MASTER

v.)

No. 164615-1

TIMOTHY HUTCHISON and)
KNOX COUNTY, TENNESSEE,)

Defendants.)

ANSWER

Timothy Hutchison does hereby appear and responds to the Complaint filed against him as follows:

1. The allegations in Paragraph 1 of the Complaint are denied as written. It is maintained that Timothy Hutchison lawfully holds the position of Sheriff of Knox County and that plaintiff's Complaint is in error when it states that the office was created by Knox County Charter, Article III, Section 3.09. The Office of Sheriff is a constitutional office created under the Constitution of the State of Tennessee (Article VII, § 1) and empowered by the laws of the State of Tennessee as found in Tennessee Code Annotated.

2. The allegations in Paragraph 2 of the Complaint fail to state that the Charter Amendment in question does not apply to constitutional officers such as the Sheriff of Knox County. Additionally, the entire quote as to the Charter Amendment has not been filed. Failure to so file is representative of the misleading claims by plaintiff and her attorney. The Charter Amendment referred to clearly states:

Section 8.17 Term Limits.

A. Effective January 1, 1995, no person shall be eligible to serve in any elected office of Knox County if during the previous 2

terms of that office, the person in question has served more than a single term. Service prior to the passage of this measure shall not count in determining length of service. Judges are exempt from this provision.

3. The language previously cited states that under Knox County's Charter, Tim Hutchison is holding his office in a lawful capacity. Plaintiff and her attorney have recklessly misstated what they intend to rely on. It is denied that the Knox County Charter is being violated by Tim Hutchison. It is denied that the laws of the State of Tennessee are being violated by Tim Hutchison. It is further denied that term limits apply to the Knox County Sheriff since said office is a constitutional office. While denying the applicability of term limits to the Office of Sheriff, it is obvious that even under plaintiff's own theory; Tim Hutchison is in fact holding his office lawfully. He was elected prior to 1995. The Charter Amendment was not effective on elections prior to 1995. Sheriff Hutchison was elected to a full term in 1998 and again in 2002. His second term of office after 1995 ends in 2006. The allegations in Paragraph 3 of the Complaint are therefore denied. It is additionally maintained that the plaintiff has no standing to remove Tim Hutchison from the Office of Sheriff of Knox County.

4. As to the allegations in Paragraph 4 of the Complaint, no objection is raised as to the jurisdiction of this Court to hear this cause. The applicability of the statutory provisions cited are hereby denied as they relate to this case and strict proof is required thereof. It is affirmatively denied that the plaintiff has complied with the terms and provisions of Tenn.R.Civ.P. 65. It is denied that this plaintiff can file an action under Tenn. Code Ann. § 29-35-101, et seq. It is therefore denied that this plaintiff has standing to bring such an action. It is denied that the terms of Tenn. Code Ann. § 29-35-110 have been complied with and as such, this Court cannot hear any claim based on Tenn. Code Ann. § 29-35-110. While it is admitted that

this Court has jurisdiction under Tenn. Code Ann. § 29-14-101 to hear declaratory judgments, it is denied that the plaintiff has stated claims for which relief can be granted.

5. The allegations in Paragraph 5 of the Complaint are denied and strict proof is required thereof.

6. The allegations in Paragraph 6 of the Complaint are denied. Tim Hutchison is not holding office unlawfully. Plaintiff's Complaint as filed by her attorney upon the premises as set out therein is nothing more than a personal attack on the Sheriff by the plaintiff and her attorney. The reference to the State of Tennessee Attorney General Opinion H 05-049 issued April 19, 2005 offers no support to the plaintiff.

7. The allegations regarding a prior demand being futile are denied. In fact, plaintiff's attorney has attempted to obtain the support of others in filing the Complaint and has been rejected. It is maintained that there is no basis for an ouster procedure against Tim Hutchison as alleged by the plaintiff in Paragraph 7. Reference is made to the Motion to Strike and Dismiss filed by the District Attorney General Randall E. Nichols. Reference is also made to the Motion to Dismiss filed by Knox County.

8. It is denied that the plaintiff has standing to bring this action. It is affirmatively maintained that the plaintiff has failed to give security and conform to Tenn. Code Ann. § 29-35-301 et seq. It is denied further that plaintiff has standing to bring the present action as an individual.

9. The attempts to claim that the plaintiff has a special interest for standing in Paragraph 9 of the Complaint are denied. To say plaintiff's failure to run for reelection to County Commission gives her standing lacks any merit or any foundation. Plaintiff's claim of an interest is barred by the doctrine of laches. If she intended to raise the issue of term limits in

relationship to her as a county commissioner, then such issues should have been raised previously and only as to the County Commission. In any event, the plaintiff was never the Sheriff of Knox County but rather was a Knox County Commissioner. No suit was raised by her prior to the filing of this case. She is barred under the theory of laches.

10. It is denied that the plaintiff has sufficient standing to file this action. She has no standing to enable her to file *quo warranto* action as to Tim Hutchison. It is maintained again that even under plaintiff's theory, Tim Hutchison is lawfully holding his position.

11. The allegations in Paragraph 11 of the Complaint are hereby denied and strict proof is required thereof. It is denied that plaintiff has proper standing to file this action.

12. The allegations in Paragraph 12 of the Complaint are denied. Article VII, § 1 states:

Sec. 1. County government – Elected officers – Legislative body – Alternate forms of government. – The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property. Their qualifications and duties shall be prescribed by the General Assembly. Any officer shall be removed for malfeasance or neglect of duty as prescribed by the General Assembly.

The legislative body shall be composed of representatives from districts in the county as drawn by the county legislative body pursuant to statutes enacted by the General Assembly. Districts shall be reapportioned at least every ten years based upon the most recent federal census. The legislative body shall not exceed twenty-five members, and no more than three representatives shall be elected from a district. Any county organized under the consolidated government provisions of Article XI, Section 9, of this Constitution shall be exempt from having a county executive and a county legislative body as described in this paragraph.

The General Assembly may provide alternate forms of county government including the right to charter and the manner by which a referendum may be called. The new form of government shall replace the existing form if approved by a majority of the voters in the referendum.

No officeholder's current term shall be diminished by the ratification of this article.

13. The allegation in Paragraph 13 of the Complaint is admitted.

14. The allegations in Paragraph 14 of the Complaint are admitted. However, the plaintiff fails to point out the distinction in the quoted provisions of the Knox County Charter. It is clear in Knox County Charter Section 3.09 that "the Sheriff of Knox County shall be elected by the qualified voters of Knox County according to the law" The quote goes on to say that the Sheriff shall have all powers and duties ". . . either expressly or impliedly, now or hereafter conferred by law and this Charter." It is clearly obvious that the Sheriff is elected in accordance with the laws of the State of Tennessee and that he is charged with the enforcement of laws by the State of Tennessee. It is stated that his office is a constitutional office and he is elected according to the Constitution and laws of the State of Tennessee. The claims as to the Sheriff and the election process are therefore invalid. The duties of the Sheriff are created under the Constitution, state statutory laws, Knox County Ordinances, and the Knox County Charter.

15. The allegations in Paragraph 15 of the Complaint are hereby denied. It is maintained that the charter form of government, particularly Knox County's Charter, *does not* place term limits on constitutional officers who are elected in accordance with the laws of the State of Tennessee. The opinion as referred to by the plaintiff is a Shelby County chancellor's opinion that is currently subject to appeal. The opinion only refers to the county commissioners and mayor of Shelby County. A review of the facts clearly indicates that the lawsuit does not refer to the sheriff's office. Reference is made to the opinion of the Attorney General of the State of Tennessee attached hereto as Exhibit A. The Court's attention is also called to the opinion of the Knox County Law Director, Michael W. Moyers, stating that "the Tennessee

Constitution prohibits local governments from imposing term limits on Constitutional officers.”
(See Exhibit B).

16. The allegations in Paragraph 16 of the Complaint are a misrepresentation. By not quoting the entire provision that the law does not even apply until after 1995, the plaintiff is misrepresenting the facts and circumstances of this case. It is further maintained that the Sheriff of Knox County is a constitutional officer and is not subject to term limit provisions. Reference is made to the opinion of Chancellor Daryl Fansler in the case of Beeler v. Thompson, et al., Knox County Chancery Court No. 145734-2. (See Exhibit C).

17. The allegations in Paragraph 17 of the Complaint are hereby denied.

18. The allegations in Paragraph 18 of the Complaint as they relate to the two (2) term limit are hereby denied. Plaintiff only wishes to create a term limit where none exists as to the Sheriff of Knox County.

19. It is denied that there is a two (2) term limit provision as to the Sheriff of Knox County's position. It is admitted that term limits were never codified in Knox County's printed Charter.

20. It is admitted that Tim Hutchison was elected Knox County Sheriff and Chief Law Enforcement Officer in 1990 and again in 1994.

21. The allegations in Paragraph 21 of the Complaint are denied and strict proof is required thereof. It is maintained that Tim Hutchison is lawfully serving as Sheriff of Knox County.

22. The allegations in Paragraph 22 of the Complaint are affirmatively denied and strict proof is required thereof. It is maintained that Tim Hutchison has lawfully been serving his third (3rd) term (elected 1998) and fourth (4th) term (elected 2002) in office.

23. As to the allegations in Paragraph 23 of the Complaint, said allegations are hereby denied and strict proof is required thereof. It is affirmatively maintained that Tim Hutchison is lawfully serving his fourth (4th) term as Sheriff of Knox County having been elected by the citizens of Knox County.

24. As to the allegations in Paragraph 24 of the Complaint, it is admitted that Tim Hutchison has announced that he will run for reelection to a fifth (5th) term as Knox County Sheriff and Chief Law Enforcement Officer in 2006. It is further stated that he is in the process of obtaining campaign contributions to run for said fifth (5th) term.

25. The allegations in Paragraph 25 of the Complaint are denied as written. It is stated that on July 7, 2005 it was announced that the persons charged with dispatching calls for service to the Knox County Sheriff's Office would henceforth be employees of the Knox County Sheriff's Office.

26. The allegations in Paragraph 26 of the Complaint are hereby denied and strict proof is required thereof. Reference is made to Tenn. Code Ann. § 7-86-107(b) as set out in Paragraph 41 herein.

27. The allegations in Paragraph 27 of the Complaint are hereby denied and strict proof is required thereof.

28. The allegations in Paragraph 28 of the Complaint are hereby denied and strict proof is required thereof. It is maintained that under the laws of the State of Tennessee that Tim Hutchison as Sheriff of Knox County does in fact have authority to make the change announced on July 7, 2005 as Chief Law Enforcement Officer for Knox County. It is denied that there was a written contract or agreement entered into by Knox County under the Knox County Charter.

29. As to the allegations in the First Cause of Action found in Paragraphs 29, 30, and 31 of the Complaint, Tim Hutchison denies he is unlawfully holding the Office of Sheriff of Knox County as claimed in said paragraphs. Plaintiff's statement, that there is a two (2) term limit in accordance with the Charter of Knox County as to the Office of Sheriff is denied. It is maintained that Tim Hutchison is a constitutional officer as set out by the laws and Constitution of the State of Tennessee and is lawfully in office. Plaintiff's claims under Tenn. Code Ann. § 29-35-101 fail to state a claim for which relief can be granted.

30. It is maintained further that Plaintiff Bee DeSelm lacks standing to raise issues seeking to have Timothy Hutchison removed from office. The lawsuit as filed under Tenn. Code Ann. § 29-35-101 fails to include all necessary parties. A suit to adjudicate that a defendant is unlawfully holding a public office must be filed in the name of the State by the District Attorney General. The Complaint, on its face, shows that the suit has not been instituted by the Attorney General. Reference is made to the Attorney General's Motion to Dismiss.

31. The plaintiff's claims under Tenn. Code Ann. § 29-35-101 do not state a claim for which relief can be granted inasmuch as the necessary parties do not appear in the style or pleadings of this action. The claims therefore, as set out in the plaintiff's First Cause of Action, should be dismissed.

32. As to plaintiff's second cause of action, the statements as set out previously in the answer to this Complaint are hereby incorporated herein by reference as if fully and completely set out herein.

33. The allegations in Paragraph 33 of the Complaint are hereby denied. There is no two (2) term limit applicable to Tim Hutchison, a constitutional officer voted into the position of Sheriff of Knox County. The claim maintaining that all officials (County Commissioners,

County Mayor, clerks, trustees, etc.) are misappropriating public funds and moneys they pay to the Knox County Sheriff's Department, is denied. The claim is a frivolous claim and all issues in the Second Cause of Action filed by the plaintiff should be dismissed¹.

34. The allegations in Paragraph 34 of the Complaint are hereby denied. It is affirmatively maintained that Plaintiff Bee DeSelm does not have standing as a taxpayer to file this cause of action.

35. The answers to the allegations previously given are hereby set out as if fully and completely stated herein.

36. The allegations in Paragraph 36 of the Complaint are hereby denied and strict proof is required thereof.

37. As to the allegations in Paragraph 37 of the Complaint, they are hereby denied as written. Reference is made to Paragraph 25 of this Answer.

38. The allegations in Paragraph 38 of the Complaint are hereby denied. The funds in question are appropriated by the Commission to the Sheriff's budget.

39. The allegations in Paragraph 39 of the Complaint are hereby denied and strict proof is required thereof. See Paragraph 4 of this Answer.

40. The allegations in Paragraph 40 of the Complaint are hereby denied and strict proof is required thereof.

41. The allegations in Paragraph 41 of the Complaint are hereby denied. The Sheriff of Knox County is the chief law officer of Knox County and has the right to run his office and departments as he, as the elected Sheriff of Knox County, deems appropriate and proper. No dispute exists. Reference is made to Tenn. Code Ann. § 7-86-107(b) which provides:

¹ Mr. Moncier represents County Commissioner Wanda Moody in extensive litigation. His claims in this lawsuit raise issues contrary and in conflict with Client Moody's interests. Reference is made to Tennessee Rule of Professional Conduct 1.7, Comment 19.

(b) Each public safety emergency services provider retains the right to dispatch its own services, unless a voluntary agreement is made between such provider and the board of directors of the emergency communications district.

Therefore, the Knox County Sheriff can dispatch its own services. Plaintiff's claim should be dismissed.

42. The allegations in Paragraph 42 of the Complaint are hereby denied and strict proof is required thereof. It is maintained that the plaintiff is neither the Mayor nor a member of the County Commission. She does not have standing to file the present lawsuit for the allegations as set out in Count Three. The Complaint filed by her should be dismissed.

43. The plaintiff has failed to provide for an injunction bond that would entitle her to a temporary injunction or to succeed on the merits in this case. As such, any claims by plaintiff for a temporary injunction must fail. The plaintiff has failed to provide written notice as is required by Tenn.R.Civ.P. 65.04. The plaintiff has failed to name all the necessary parties in this action. The plaintiff has failed to comply with Tenn.R.Civ.P. 65.04(4). The plaintiff has failed to furnish an injunction bond as required under Tenn.R.Civ.P. 65.05. The claims under plaintiff's Third Cause of Action should be dismissed.

44. The answers to the allegations previously given are hereby incorporated herein by reference as if fully and completely set out herein.

45. It is denied that this Court has any basis to remove Timothy Hutchison from office as Knox County Sheriff. It is maintained that the plaintiff's action is without merit and that there is no basis for the removal of Timothy Hutchison from the Office of Sheriff of Knox County, Tennessee.

46. The allegations in Paragraph 46 of the Complaint are hereby denied and strict proof is required thereof.

47. It is maintained by Timothy Hutchison that the plaintiff is not entitled to any of the prayers for relief as set out in the Complaint. The prayers for relief contained in Paragraphs 3, 4, 5, 6, 7, 8, and 9 are specifically denied. It is affirmatively denied that the plaintiff is entitled to recover monetary damages for attorney fees and costs in this action. It is, however, maintained that this defendant is entitled to receive monetary damages for attorney fees and costs in the defense of this action. It is further denied that the plaintiff is entitled to any further relief.

48. It is specifically denied that the plaintiff is entitled to either a temporary or permanent injunction in reference to the allegations as set forth in this case.

49. It is maintained that the term limits provision referred to in the Complaint do not relate or apply to the Office of Sheriff of Knox County inasmuch as the position is a constitutional position. As a constitutional position, the laws of the State of Tennessee and of the Constitution of the State of Tennessee establish criteria regarding elections in said cases.

50. It is maintained that the plaintiff has failed to state a claim for which relief can be granted.

51. It is maintained that the plaintiff lacks standing to file the issues as alleged in the Complaint. It is further maintained that she is not the Sheriff of Knox County nor has she ever held such position. It is maintained that the standing to file this case must be determined before the plaintiff can proceed forward.

52. The plaintiff is barred by the doctrine of laches. Essentially, if the plaintiff had a legitimate claim or lawsuit to file, she should have filed that on an earlier occasion under the theories as advanced in her case.

53. It is maintained that the term limit provision does not apply to the Sheriff of Knox County. It is further denied that the term limit provision applies at all to constitutional officers elected in accordance with the Constitution and laws of the State of Tennessee.

54. It is affirmatively maintained that plaintiff's claims are barred by the doctrine of estoppel, judicial estoppel, and collateral estoppel.

55. It is further maintained that the plaintiff has failed to offer a basis for the obtaining of a temporary injunction as is being sought in this case. Additionally, the plaintiff has failed to comply with the requirements of the Tennessee Rules of Civil Procedure in both the application and bonding provisions related thereto.

56. It is denied that *quo warrantor* is a viable position in this case or that plaintiff has the right to file said action.

57. It is denied that the plaintiff has any special interest or injury not common to the general public. It is maintained that the plaintiff has not complied with the provisions of Tenn. Code Ann. § 29-35-101. This case has been improperly brought as an *ex rel* lawsuit.

58. It is maintained that plaintiff's attorney has a conflict of interest as set out in the Tennessee Rules of Professional Conduct with his representation of County Commissioner Wanda Moody and his failure to consider what effect this litigation may have on her position. This clearly is indicative of a conflict of interest and plaintiff's attorney should be excluded from this case.

59. The action of the plaintiff in seeking to recover damages, attorney fees, and costs fails to state a claim upon which relief can be granted.

60. The plaintiff lacks standing to raise issues regarding 911 and the participation of the Knox County Sheriff's Department in said dispatching procedures of that organization.

61. It is maintained that all necessary parties have not been made parties to this lawsuit and as such, the Complaint must fail.

62. It is denied that this Court has jurisdiction to hear several of the causes of action as stated by plaintiff as a result of the appropriate procedures not having been followed. The statute of limitations for said actions are hereby asserted.

63. Anything not previously admitted or denied is hereby denied as if fully and completely set out herein.

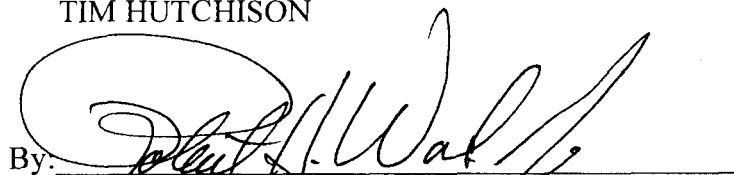
64. This defendant reserves the right to plead more specifically upon the ascertainment of additional information through the discovery process.

65. It is hereby requested that any costs or fees associated with the defense of this cause of action incurred by the Sheriff of Knox County be paid in accordance with the ruling of the Court.

66. It is hereby requested that the Complaint be dismissed and all costs taxed accordingly.

RESPECTFULLY SUBMITTED,

TIM HUTCHISON

By: 

ROBERT H. WATSON, JR., BPR NO. 1702
Attorney for Defendant
WATSON & HOLLOW, P.L.C.
Attorneys at Law
1500 Riverview Tower
900 South Gay Street
P.O. Box 131
Knoxville, Tennessee 37901-0131
(865) 637-1700

CERTIFICATE OF SERVICE

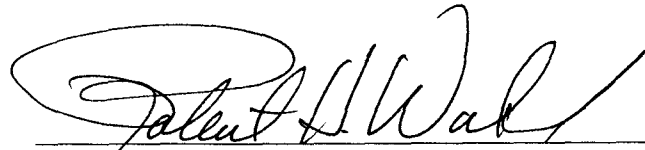
I hereby certify that a true and exact copy of the foregoing has been served upon parties or counsel for the parties, in interest herein, by delivery of same to the offices of said counsel or parties' counsel, or by mailing the same to said offices by United States Mail, with sufficient postage thereon to carry the same to its destination.

Herbert S. Moncier
Suite 775, Bank of America Center
550 Main Street
Knoxville, Tennessee 37902

John E. Owings, Chief Deputy Law Director
Mary Ann Stackhouse, Deputy Law Director
Suite 612 City-County Building
400 Main Street
Knoxville, Tennessee 37902-2405

Randall E. Nichols
District Attorney General
6th Judicial Office
Office of the District Attorney
P.O. Box 1468
400 Main Street
Knoxville, Tennessee 37901-1468

Dated July 15, 2005.



ROBERT H. WATSON, JR., BPR NO. 1702