



technical bulletin

Municipal Technical Advisory Service
Institute for Public Service, The University of Tennessee
In cooperation with the Tennessee Municipal League
October 1, 1980

PLAINTIFFS IN KNOXVILLE ANNEXATION CASES HELD NOT TO HAVE STANDING

In an opinion on petition to rehear (not designated for publication), the Tennessee Supreme Court has held that the plaintiffs in McGill v. City of Knoxville and Johnson v. City of Knoxville who contested the annexation of a right-of-way along Interstate 40/75 owned by the state lack standing to contest the annexation. In the McGill case, the court, interpreting the language of Tennessee Code Annotated sections 6-51-103, held that "only owners of property within the boundaries of the territory proposed to be annexed have standing to contest an annexation ordinance."

In the Johnson case, plaintiffs asserted that they were entitled to proceed upon the relation of private citizens in the name of the State of Tennessee, the District Attorney and State Attorney General having declined to do so. Plaintiffs based their claim to standing on Title 23, chapter 28, Tennessee Code Annotated and on Bennett v. Stutts, 521 S.W. 2d 575 (Tenn. 1975). The court held, however, that "an annexation ordinance is not the character of public wrong contemplated in Bennett v. Stutts, supra, and standing to contest an annexation ordinance is exclusively controlled by T. C. A. Secs. 6-51-101 et seq."

.

DISMISSAL OF COLUMBIA POLICE OFFICER UPHELD

The Tennessee Supreme Court has upheld the dismissal by the Columbia Civil Service Board of a police officer for disregarding proper procedures of the police department and for conduct unbecoming an officer. The plaintiff in Watts v. Civil Service Board for Columbia S.W. 2d _____ (Tenn., September 1980) was dismissed by the Civil Service Board after being suspended indefinitely by the city manager. The Circuit Court of Maury County and the Court of Appeals both sustained the action of the Civil Service Board. The Supreme Court affirmed the judgment of the Court of Appeals.

The facts of the case are these: On June 4, 1976, the plaintiff, apparently without the knowledge of his superiors, testified before the Grand Jury of Maury County in a case in which an indictment was returned. The district attorney general, however, believed the indictment was defective and was allowed to enter a nolle prosequi (no prosecution) with the intention of seeking another indictment. The plaintiff police officer learned that the district attorney did not intend to seek another indictment, and made an appointment with the district attorney general, at which there was a "heated discussion." After this heated discussion, the district attorney general contacted the chief of police. The chief of

police thereupon sent plaintiff a letter, approved by the city manager, which commanded that "you shall not proceed with any evidence to the next Grand Jury or any other court, news media, or any other persons concerning this case unless you have prior clearance from either me or the City Manager." The plaintiff asked for such permission but was denied. He went before the grand jury anyway and was fired.

The Supreme Court held that "the scope of court review of the action by the Civil Service Board is that afforded by the common law writ of certiorari." _____ S.W. 2d at _____ (Tenn. 1980). Thus, the court limited its inquiry to the questions of "Whether or not there is any material evidence to support the action of the agency . . ." and "whether the administrative agency acted fraudulently, illegally or arbitrarily." _____ S.W. 2d at _____ (Tenn. 1980), quoting cases. The court found that there was material evidence to support the dismissal because there was testimony indicating that plaintiff had been fired for willful failure to obey superiors and for failure to follow police department procedures.

The court further found that the action of the Civil Service Board did not illegally infringe on plaintiff's First Amendment freedom of speech rights. Citing Pickering v. Board of Education, 391 U. S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968), the court held that the interests of the employee in free speech must be weighed against the interests of the public employer in the proper functioning of the public's business. In the Watts case, the interests of the public employer outweighed the interests of the employee since the employee's work with the district attorney general had been impaired by their "heated discussion." The court therefore held that "the Board was acting upon substantial evidence and proper, legal and constitutional grounds in finding plaintiff guilty of misconduct meriting discipline." _____ S.W. 2d _____ (Tenn. 1980).

Municipal Technical Advisory Service
The University of Tennessee
Knoxville, TN 37916

Non-Profit Org. U.S. POSTAGE PAID Knoxville, TN Permit No. 481
--