

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

HAMILTON COUNTY BOARD
OF EDUCATION,

Plaintiff,

v.

THE CITY OF CHATTANOOGA
and MAYOR ANDREW L. BERKE,

Defendants.

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DOCKET NO. 14-0231

PART _____

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES the Plaintiff, the Hamilton County Board of Education, by and through counsel, and, pursuant to T.C.A. § 29-14-101 *et seq.* and Rule 57 of the Tennessee Rules of Civil Procedure, complains of the Defendants and alleges as follows:

1. The Hamilton County Board of Education is a local education agency existing pursuant to the laws of the State of Tennessee for the purpose of operating a public school system in and for Hamilton County.
2. The City of Chattanooga is a municipal corporation existing pursuant to the laws of the State of Tennessee within Hamilton County. Andrew L. Berke is the duly elected Mayor of the City of Chattanooga. Both Defendants may be served at City Hall, which is located at 1000 Lindsay Street, Chattanooga, Tennessee 37402-4233.
3. Pursuant to T.C.A. § 29-14-102, this Honorable Court has jurisdiction over both the parties to this action and the subject matter of this controversy.

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FILED
S. LEE AKERS, C&M

4. Pursuant to T.C.A. § 57-4-301(c), the Tennessee Department of Revenue collects a fifteen percent state-imposed tax on the sale of alcoholic beverages intended to be consumed on the premises. Following a statutory formula set forth in T.C.A. § 57-4-306(2), the Department of Revenue distributes a portion of these liquor-by-the-drink tax revenues to local municipalities that have authorized the sale of liquor-by-the-drink within their corporate limits. The municipalities are then required to remit one-half of their liquor-by-the-drink tax revenue to the county school fund unless they operate their own school system, in which case they are nevertheless required to remit a portion of these revenues to the county school fund.

5. At all times material to this Complaint, the City of Chattanooga has authorized certain businesses within the City limits to sell liquor-by-the-drink. Pursuant to Tennessee law, the City has also received a portion of the State's liquor-by-the-drink tax revenues.

6. Until July 1, 1997, the City operated its own school system. During the operation of the Chattanooga City Schools, however, the City failed to remit any portion of its liquor-by-the-drink tax revenues to the Hamilton County Board of Education's school fund.

7. Pursuant to a referendum approved by the voters of the City of Chattanooga, the City ceased operating its own school system on July 1, 1997. Once the City ceased operating its school system, the City failed to remit one-half of its liquor-by-the-drink tax revenues to the Hamilton County Board of Education's school fund.

8. In the late summer of 2012, the Board of Education became aware that the City had been receiving these tax revenues from the Department of Revenue but had failed to remit any portion to the Hamilton County Board of Education's school fund. Board officials contacted the City's finance department and notified it of the City's obligation to remit one-half of its liquor-by-the-drink tax revenues. The administration of former Mayor Ron Littlefield promptly began remitting one-half of these tax revenues to the Board of Education. The Littlefield Administration paid these revenues into the Board of Education's school fund from July 2012 through March 2013, when Mayor Andrew L. Berke took office.

9. Inexplicably, the Berke Administration ceased remitting these liquor-by-the-drink tax revenues to the Board of Education's school fund.

10. After repeated requests from Board officials that the City resume remitting one-half of its liquor-by-the-drink tax revenues to the Board of Education's school fund, the City began remitting these revenues in September 2013. Rather than paying the full amount owed to the school system as the Littlefield Administration had done for several months, however, the Berke Administration began to deduct from its remittance amounts it claims are owed pursuant to the City's storm water fee schedule. The Board of Education has not consented to the City deducting these fees, and there is no legal authority for the City to deduct these fees from the tax revenues owed to the school system.

11. Between the inception of liquor-by-the-drink in the City of Chattanooga and Fiscal Year 1997, the City received an undetermined amount of liquor-by-the-drink

tax revenue from the Tennessee Department of Revenue. During this time, the City should have remitted a portion of its liquor-by-the-drink tax revenues to the Board of Education's school fund; it failed to do so.

12. According to the City's own financial records, the City of Chattanooga received twenty-two million, ninety-six thousand, six hundred sixty-five and 00/100 dollars (\$22,096,665.00) in liquor-by-the-drink tax revenue between Fiscal Years 1998 and 2012. Of this amount, the City should have remitted eleven million, forty-eight thousand, three hundred thirty-two and 50/100 dollars (\$11,048,332.50) to the Board of Education's school fund; it failed to do so.

13. According to the Tennessee Department of Revenue, the City of Chattanooga received one million, twelve thousand, six hundred twenty-nine and 00/100 dollars (\$1,012,629.00) in liquor-by-the-drink tax revenue between April 2013 when Mayor Berke took office and August 2013. Of this amount, the City should have remitted five hundred six thousand, three hundred fourteen and 50/100 dollars (\$506,314.50) to the Board of Education's school fund; it failed to do so. The Board of Education avers that the decision to discontinue these payments commenced by the Littlefield Administration was in bad faith and without any legal justification.

14. According to Tennessee Department of Revenue, the City received nine hundred ninety thousand, seven hundred thirty-seven and 48/100 dollars (\$990,737.48) in liquor-by-the-drink tax revenue between September 2013 and February 2014. Of this amount, the City should have remitted four hundred ninety-five thousand, three hundred sixty-eight and 74/100 dollars (\$495,368.74) to the Board of Education's school fund.

Instead, the City has withheld one hundred thirty-two thousand, five hundred eighteen and 41/100 dollars (\$132,518.41) from the Board of Education, purportedly to offset the Board of Education's storm water fees. The City's decision to withhold this portion of the liquor-by-the-drink tax revenue is without legal justification and is therefore in bad faith.

15. Indeed, the City's reliance upon the Board of Education's purported liability for storm water fees is in bad faith inasmuch as the City has made no effort to collect these fees from other governmental entities located within the City of Chattanooga. The City has not even billed Hamilton County Government, the Board of Education's funding body, for these purported storm water fees in several years in recognition that the Hamilton County Commission has established by resolution that no County funds may be used to pay these fees. A copy of this resolution is attached Exhibit A. The City is thus well aware that the Board of Education has no authority to pay these fees.

16. The City owes the Board of Education in excess of eleven million, six hundred eighty-four thousand, one hundred sixty-five and 41/100 dollars (\$11,684,165.41) in unremitted liquor-by-the-drink tax revenues from 1998 to the present, plus interest.

17. The Hamilton County Board of Education therefore seeks relief pursuant to T.C.A. § 29-14-101 et seq. and Rule 57 of the Tennessee Rules of Civil Procedure inasmuch as this controversy requires the adjudication of the parties' rights and responsibilities under the terms of T.C.A. § 57-4-306(2).

WHEREFORE, PREMISES CONSIDERED, the Hamilton County Board of Education prays for relief as follows:

1. For declaratory judgment regarding the Board of Education's rights and the City's responsibilities under T.C.A. § 57-4-306(2) with regard to unremitted liquor-by-the-drink tax revenues;
2. For an order compelling the City to pay to the Board of Education the full amount of unremitted tax revenues;
3. For an award of pre-judgment interest pursuant to T.C.A. § 47-14-123;
4. For an order directing the City to pay the Board of Education one-half of its future liquor-by-the-drink tax revenues without any withholding whatsoever;
5. For costs of this matter to be taxed against the City; and
6. For such other further general and equitable relief as this Court may deem just and proper.

Respectfully submitted,

LEITNER, WILLIAMS, DOOLEY &
NAPOLITAN, PLLC

By:



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WE ARE SURETIES FOR COSTS:

LEITNER, WILLIAMS, DOOLEY &
NAPOLITAN, PLLC

By: 

D. SCOTT BENNETT, Member

M. ANDREW PIPPENGER, Member

STATE OF TENNESSEE

Hamilton County



January 5 1994
DATE (Month, Day, Year)

Hamilton County Board of Commissioners

RESOLUTION

No. 194-19

A RESOLUTION EXPRESSING HAMILTON COUNTY'S OPPOSITION TO THE CITY OF CHATTANOOGA'S STORM WATER USER FEE ON ALL COUNTY-OWNED PROPERTY WITHIN THE CITY LIMITS.

WHEREAS, the City of Chattanooga has imposed a storm water user fee on all County-owned property within the City Limits; and

WHEREAS, said user fee should not be imposed on all Hamilton County-owned property within the City of Chattanooga; and

NOW, THEREFORE, BE IT RESOLVED BY THIS COUNTY LEGISLATIVE BODY IN SESSION ASSEMBLED:

The Hamilton County Board of Commissioners does hereby express its opposition to the storm water user fee imposed by the City of Chattanooga on all County-owned property within the City of Chattanooga, and further prohibits any County funds from being used to pay this user fee until further reviewed and authorized by the Hamilton County Commission.

BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

BECAME LAW UNDER TEN (10) DAY PROVISION
CHAPTER 934, TENNESSEE PUBLIC ACTS OF 1978

ATTEST D. Storch
Deputy County Clerk

DATE Jan 18 1994

Approved:

CERTIFICATION OF ACTION

Rejected:

W. J. Crowder
County Clerk

Approved:

County Executive

Vetoed:

Jan. 5 1994
Date
MB 107, P. 216

