

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

**FILED**

**August 16, 1996**

**Cecil Crowson, Jr.**  
Appellate Court Clerk

CHATTANOOGA FIREMEN'S AND  
POLICEMEN'S INSURANCE AND  
PENSION FUND,

Plaintiff - Appellant,

v.

CITY OF CHATTANOOGA,

Defendant - Appellee.

) C/A NO. 03A01-9603-CH00093  
)  
) HAMILTON CHANCERY

) HON. R. VANN OWENS,  
) CHANCELLOR

) REVERSED  
) AND  
) REMANDED

ARVIN H. REINGOLD, Chattanooga, for Plaintiff - Appellant.

MICHAEL A. McMAHAN, Chattanooga, for Defendant - Appellee.

O P I N I O N

Franks. J.

In this action plaintiff sought a declaration that defendant wrongfully withheld \$16,598.67 from the monies appropriated by defendant for plaintiff in fiscal 1993.

Following an evidentiary hearing, the Trial Judge ruled that the finance officer for defendant was vested with discretion to withhold the amount in dispute, and plaintiff has appealed.

The genesis of this dispute was the transfer of Ernie Meyer, a policeman, to the City's personnel department.

Meyer had accrued in excess of eight years under the retirement plan administered by plaintiff for firemen and policemen. Defendant had also established a general pension plan under the City's charter for regular employees, other than firemen and policemen. When Meyer transferred his employment, plaintiff unilaterally refunded to him all monies he had paid into plaintiff's pension fund. The City took the position that Meyer had been wrongfully deprived of credited service by plaintiff's plan, and arranged for Meyer to "buy back" his credited service in the City's general pension plan that had accrued under plaintiff's plan as a policeman. Under this arrangement, the City was required to contribute to the credited service, which contribution was calculated to be \$16,598.68. At that juncture, the finance officer determined the defendant had over time paid on behalf of Meyer \$38,641.89 to plaintiff's plan, and the finance officer withheld \$16,598.68 from the annual appropriated fund for plaintiff's plan, and paid that amount into the general pension plan on behalf of Meyer.

The City insists this action should be dismissed under the clean hands doctrine. It says that plaintiff wrongfully refunded Meyer's contributions to him and thereby wrongfully denied him benefits under its plan pursuant to City Ordinance #8688.<sup>1</sup> While we agree with the City as to the

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<sup>1</sup>ORDINANCE NO. 8688.

Item 2.

(a) "Notwithstanding any provisions to the contrary, the Firemen's and Policemen's Insurance and Pension Plan (Pr. Acts 1949, Ch. 165, as amended) is hereby amended to provide that a Participant in the General Pension Plan who has transferred employment from the provisions of the Firemen's and Policemen's Insurance and Pension Plan shall have the right to have his service under the Firemen's and Policemen's Insurance

benefits payable under the ordinance,<sup>2</sup> the doctrine of unclean hands is generally not applicable to declaratory judgment actions. *Hogue v. Kroger Co.*, 213 Tenn. 365 (1963).

The City's principal argument is the City's general revenue ordinance, #9939 for the fiscal year 1993-1994, gave the finance office discretion because it "became readily apparent to [the finance officer] that the wrongful action of the F & P Fund was not only depriving Mr. Meyer of vested service to which he was entitled, but was also depriving the City of the benefit of its \$38,641.89 contributed on Mr. Meyer's behalf. Accordingly, Mr. Boney [the finance officer] directed a reduction of the normal City contribution to the F & P Fund in the amount of \$16,598.68 to offset the funds already contributed by the City to the Fund on behalf of Mr. Meyer." As laudable as the finance officer's intent may be, we cannot agree. City Ordinance #9939, after making an appropriation of the general fund in pertinent part provides:

SECTION 9(c). That the City Finance Officer is authorized to match to the total salaries of all participants in the Fire and Police Pension Fund with a twenty (20%) percent contribution from the General Fund.

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and Pension Plan vested if it amounts to five (5) years or more and said Participant has more than five (5) years credited service under the General Pension Plan. Such employee shall be entitled to receive at age fifty-five (55), if not employed by the City of Chattanooga, ten (10%) percent of the pension he or she could have received if employed for twenty-five (25) years that was paid at the time of transfer, for five (5) years of service, and if any employee transfers after serving more than five (5) years and less than ten (10) years, the vested percent of said pension paid at the time of transfer shall be increased by three (3%) for each additional year of service up to ten (10) years of service.?

<sup>2</sup>Meyer, while a party in interest, is not bound because he was not made a party to this action. *Commercial Casualty Insurance Co. V. Tri-State Transit Company*, 177 Tenn. 51 (1941).

The parties in their briefs focus on the meaning of authorized in the abstract, but the cardinal rule of statutory interpretation that requires no citation is that statutory intent is to be gleaned from the wording of the whole statute. Authorize is generally defined to permit a thing to be done in the future, and has a mandatory effect or meaning implying a direction to act. *Black's Law Dictionary*, 5th Ed. West. The intent from the ordinance is clear, it simply directed its finance officer to pay the appropriated 20% into the Firemen and Policemen's Fund. There is no authorization in the ordinance to in effect withhold from the general appropriation the disputed amount which had been previously paid into the fund on behalf of Meyer, nor can such be inferred from the directive to defendant's agent to discharge his ministerial function by dispersing the funds as directed. Upon remand a judgment will be entered requiring the City to pay into plaintiff's fund the amount arbitrarily withheld.

The issue of whether the City is entitled to recover any or all of the monies it paid into plaintiff's fund on behalf of Meyer is not before us, and this opinion is not to be construed as a ruling in any way on that issue.

The judgment of the Trial Court is reversed, and the cause remanded with the cost of the appeal assessed to Appellee.

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Herschel P. Franks, J.

CONCUR:

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Houston M Goddard, P. J.

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Charles D. Susano, Jr., J.