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January 25, 2019

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RE: In the Matter of: Forrest Descendants & Sons of Confederate Veterans
Docket No. 04.47-150937J

Enclosed is an Initial order rendered in the above-styled cause of action.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure



**BEFORE THE STATE OF TENNESSEE
HISTORICAL COMMISSION**

IN THE MATTER OF:

**THE DESCENDANTS OF NATHAN
BEDFORD FORREST**

AND

**SONS OF CONFEDERATE VETERANS
NATHAN BEDFORD FORREST CAMP
#215,**

Petitioners.

APD No. 04.47-150937J

THC No. 18-001

**PETITION FOR
DECLARATORY ORDER**

INITIAL DECLARATORY ORDER

This matter came to be heard on October 15, 2018, before Administrative Judge Phillip R. Hilliard, assigned by the Secretary of State, Administrative Procedures Division, to consider Petitioners' AMENDED AND SUPERCEDING PETITION FOR DECLARATORY ORDER PURSUANT TO TENN. CODE ANN. § 4-5-223 AND § 4-5-224¹ (PETITION). The transcript of the proceedings was filed on November 9, 2018, and the record closed on that date. The undersigned is sitting alone for the Tennessee Historical Commission (Commission), pursuant to TENN. CODE ANN. § 4-5-301. Attorney Edward G. Phillips represents Petitioner, the Descendants of Nathan Bedford

¹ On February 23, 2018, a NOTICE OF HEARING was filed by the Tennessee Department of Environment and Conservation (TDEC) – the agency to which the Tennessee Historical Commission (Commission) is administratively attached. TENN. CODE ANN. § 11-1-101. Pursuant to TENN. CODE ANN. § 4-5-224, the NOTICE OF HEARING provided formal notice that the Commission had approved a motion to convene a contested case to consider the PETITION FOR DECLARATORY ORDER PURSUANT TO TENN. CODE ANN. § 4-5-223 AND § 4-5-224, submitted by Petitioners. Also on February 23, 2018, Petitioners purported to file an AMENDED PETITION FOR DECLARATORY ORDER PURSUANT TO TENN. CODE ANN. § 4-5-223 AND § 4-5-224, which pleading was disallowed by the undersigned's ORDER DENYING REQUEST TO AMEND PETITION FOR DECLARATORY ORDER, entered on February 28, 2018. Thereafter, on May 25, 2018, TDEC filed a second NOTICE OF HEARING, providing formal notice that the Commission had approved a motion to convene a contested case to consider the AMENDED AND SUPERCEDING PETITION FOR DECLARATORY ORDER PURSUANT TO TENN. CODE ANN. § 4-5-223 AND § 4-5-224, and that the Commission had referred the case to an Administrative Judge, sitting alone, pursuant to TENN. CODE ANN. §§ 4-5-301 and 4-5-314.

Forrest (the Descendants).² Attorneys Douglas E. Jones and John I. Harris, III represent Petitioner, the Sons of Confederate Veterans Nathan Bedford Forrest Camp #215 (SCV). There are no other parties.³

The PETITION⁴ requests the determination of the following issues:

1. Pursuant to the Tennessee Heritage Protection Act of 2016, did the prohibition regarding moving and/or disturbing the statues in question become affixed to the properties and memorials subject to this Petition, whereby a transfer of the properties and/or memorials, if otherwise legal, remained subject to the prohibitions, duties and obligations imposed by the Tennessee Historic Preservation Act of 2016 or its predecessor.
2. Whether the restrictive covenants as to the respected properties conveyed qualify said tracts as “public property” under the Tennessee Heritage Protection Act.
3. Whether the prohibitions and duties imposed by the Tennessee Historic Preservation Act of 2016 prohibit the City of Memphis from transferring the said statues to Memphis Greenspace, Inc. even if such conveyance may have been otherwise within the City’s discretion.
4. Whether the prohibitions and duties imposed by the Tennessee Historic Preservation Act of 2016 survive the transfer and operate as prohibitions and duties against Memphis Greenspace, Inc.

² Attorney David Livingston formerly represented the Descendants in this matter.

³ The ultimately disallowed AMENDED PETITION FOR DECLARATORY ORDER PURSUANT TO TENN. CODE ANN. § 4-5-223 AND § 4-5-224 listed the City of Memphis, the Memphis City Council, and Memphis Greenspace, Inc. as Respondents. When attempting to schedule the first prehearing conference in this matter, and in order to expedite the process for potential intervention, the undersigned emailed Petitioners and all those contact persons listed on Petitioners’ certificate of service. On behalf of the City of Memphis, Attorney Allan J. Wade responded stating that “we respectfully decline your invitation to participate in a prehearing conference” because the City was not a party to this action. The email, *inter alia*, further stated the City’s position on the propriety of the Petition. On behalf of Memphis Greenspace, Inc., Attorney Christopher L. Vescovo responded in agreement with the City’s position and likewise declined to participate. Thus, the City of Memphis, the Memphis City Council, and Memphis Greenspace, Inc. were then advised, in a reply email from the undersigned, that they would be removed as addressees on further correspondence from the Administrative Procedures Division regarding this matter, at that time. Subsequently, the undersigned has received no further contact from the City of Memphis, the Memphis City Council, or Memphis Greenspace, Inc. The AMENDED AND SUPERCEDING PETITION FOR DECLARATORY ORDER PURSUANT TO TENN. CODE ANN. § 4-5-223 AND § 4-5-224 does not list any Respondents.

⁴ The issues are taken verbatim from the PETITION.

5. Whether the Equestrian Statue that was the top and focal point of the Forrest monument [are] protected by the Family Burial Grounds Protection Act above herein mentioned as a grave monument and as such require a court order prior to moving the same in addition to compliance with the additional restrictions imposed by the Tennessee Historic Preservation Act of 2016.
6. Are the transfers alluded to hereinabove in violation of Tenn. Code Ann. § 12-2-501 and as such prohibited by law, including the prohibitions and protections imposed by the Tennessee Historic Preservation Act of 2016 and if so whether compliance with Tenn. Code Ann. § 12-2-501 is a necessary and material element of seeking and obtaining a waiver under the Tennessee Historic Preservation Act of 2016 to the extent that such statute imposes additional requirements on a contemplated transaction or conveyance.
7. Have the representatives of the City of Memphis and representatives of Memphis Greenspace, Inc. violated the laws concerning desecration of the grave and/or conspiracy to desecrate a grave as such laws may apply to properties and/or memorials that are protected by the Tennessee Historic Preservation Act of 2016 and, if so, whether the compliance with the Family Burial Grounds Protection Act codified in Tenn. Code Ann. § 46-8-102 and § 39-16-402 is a necessary and material element of seeking and obtaining a waiver under the Tennessee Historic Preservation Act of 2016 to the extent that such statutes impose additional requirements on a contemplated transaction or conveyance.
8. Is the appropriate remedy to set aside the illegal transfer and/or order either the City of Memphis and/or Memphis Greenspace, Inc. to return the statues unharmed to their original locations with the cost to the Respondents.
9. Determine that the city ordinance upon which the conveyance was conducted was improperly passed to the extent it approves, ratifies or authorizes conveyances and government actions that were intended specifically to violate the Tennessee Historic Preservation Act of 2016.

PETITION, pp. 12-14.

Admissibility of Exhibits

At the October 15, 2018, hearing, Petitioners sought to enter a number of documents⁵ into evidence.⁶ The undersigned advised Petitioners, at the hearing, that any adverse rulings on the

⁵ There are 4 total proposed Exhibits, with Collective Exhibit 4 being comprised of 13 separate attachments.

⁶ The last page (p. 5 of 5) of Exhibit A to Memphis City Ordinance 5665, which Ordinance is Exhibit C to Attachment 9, COLL. EX. 4, was omitted from Petitioners' copy when it was proffered at the hearing. By Order entered December 19, 2018, the undersigned notified Petitioners, pursuant to TENN. CODE ANN. §

admissibility of the proposed exhibits would be incorporated into this INITIAL DECLARATORY ORDER.⁷ Upon review, the following items (marked for identification at the hearing, as noted below) are not probative of, or relevant to, the issues to be decided by the undersigned.

Therefore, these items are excluded as evidence in this contested case:

Exhibit 3 – A transcript from the October 13, 2017, meeting of the Tennessee Historical Commission.

Exhibit 4, Attachment 3 – A letter dated October 27, 2016, from Mr. E. Patrick McIntyre, Jr. to Allan J. Wade, Esq., and an Affidavit regarding the same.

FINDINGS OF FACT

1. For a number of years, the City of Memphis owned or had an interest in two tracts of realty located in Memphis, Shelby County, Tennessee, identified, respectively, as follows:

- I. 0 S. Manassas Street, Memphis, Shelby County, Tennessee; Lot 9 – Memphis Hospital Lot, recorded at Book O, Page 325, in the Office of the Register of Deeds for Shelby County
- II. 0 North Front Street, Memphis, Shelby County, Tennessee, recorded at Plat 3, Page 113, in the Office of the Register of Deeds for Shelby County

2. The following were located on those two tracts:

- a. A statue of Confederate General Nathan Bedford Forrest (Manassas Street)
- b. A statue of Confederate President Jefferson Davis, and a statue of Confederate Captain James Harvey Mathes (North Front Street)

4–5–313, of the intent to take judicial notice of the omitted page. A copy of the omitted page was attached to that notice.

⁷ The ORDER SETTING HEARING, entered August 16, 2018, stated that “the parties must exchange **and file** exhibit lists and witness lists” at least 7 days prior to the hearing date, and that “[f]ailure to comply may result in exclusion of a witness or exhibit.” (Emphasis added). No witness or exhibit lists were filed by Petitioners.

3. On March 11, 2016, the Tennessee Heritage Protection Act of 2016, 2016 TENN. PUB. ACTS, CH. 601, was enacted, and codified at TENN. CODE ANN. § 4-1-412.⁸

4. According to Petitioners, the City of Memphis has historically favored the statues. Mr. Lee Millar testified that the Manassas Street property is listed on the National Historic Registry – after the SCV “filed the application,” the City of Memphis “made the application” with the assistance of the THC.

5. According to the City of Memphis, the Forrest statue has been the subject of multiple protests – some involving violence and/or the threat of violence, and some of which have led to arrests – and that the statue has been vandalized, causing the City to expend considerable public funds. Also, according to the City of Memphis, these protests were likely to increase in frequency and severity due to the commemoration of the 50th anniversary of the assassination of Dr. Martin Luther King, which was to occur in Memphis on April 4, 2018. For these reasons⁹, the City of Memphis resolved to remove the statues prior to April 4, 2018. Exhibit A, at p.3, to Memphis City Ordinance 5665, Exhibit C to Attachment 9, COLL. EX. 4.

6. Finding opposition to its initial attempts to remove the statues, and that “[t]he City’s continued ownership of these assets [the Manassas and North Front Street properties] is an impediment to their immediate removal and/or relocation,” the City of Memphis, on October 17, 2017, by Ordinance No. 5661, “directed its attorney to work cooperatively, with the City

⁸ Minor changes to the statute were made, effective April 27, 2017, by 2017 TENN. PUB. ACTS. CH. 201.

⁹ According to the City of Memphis, the statues “are public nuisances and are unfit for service or use by the City since their continued presence is inconsistent with the purpose, intent and future land uses of the Medical Overlay District and with the Riverfront Development Plans . . . and the University of Memphis Law School’s efforts to be recognized as . . . open to all races, creeds and persons irrespective of national origins.” The City continues by saying that “all statues and artifacts honoring Confederate protagonists, like the Forrest equestrian statue and the Jefferson Davis statue . . . potentially infringe upon the civil rights of the significant majority of the population of the City.” Exhibit A to Memphis City Ordinance 5665, at pp. 4-5, Exhibit C to Attachment 9, COLL. EX. 4.

administration . . . to develop and submit to the [City] Council not later than November 21, 2017 a plan for the removal and/or relocation of all Confederate statues and artifacts, like the Forest equestrian statue and the Jefferson Davis statue, from City owned property for review and approval by the Council.” Exhibit C, at p. 1, Attachment 9, COLL. EX. 4.

7. On October 5, 2017, Memphis, Greenspace, Inc. was formed as a domestic (Tennessee) nonprofit corporation.

8. On December 20, 2017, by Ordinance No. 5665, the City of Memphis adopted an “Implementation Plan¹⁰,” which authorized the following:

- a. The sale and/or conveyance, at reduced or no cost, of Health Sciences Park and the Forrest Monument to Memphis Greenspace, Inc., in fee simple absolute;
- b. The sale and/or conveyance, at reduced or no cost, of such portions of the City’s easement in Memphis Park on which the Jefferson Davis statue and other confederate artifacts are located to Memphis Greenspace, Inc.; and
- c. The application in the name of the City or jointly with Memphis Greenspace, Inc. for Health Sciences and Memphis Parks to be rezoned parkland or open spaces to ensure their use by the general public for recreational purposes.

9. On or about December 20, 2017, the City of Memphis transferred its interests in the Manassas Street and North Front Street properties to Memphis Greenspace, Inc.

10. The property transfers included restrictive covenants.

11. The City of Memphis has not leased or rented the properties back from Memphis Greenspace, Inc.

12. The restrictive covenants task Memphis Greenspace, Inc. with maintenance of the properties.

¹⁰ The plan is detailed in Exhibit A to Memphis City Ordinance 5665, Exhibit C to Attachment 9, COLL. EX. 4.

13. The restrictive covenants give the City of Memphis the right to seek recourse if the restrictive covenants are allegedly violated. Otherwise, the City of Memphis retains no control over the properties.

14. The "Implementation Plan" states that "[t]his recommendation is also consistent with the City's arrangement with other private non-profit organizations to manage and/or control public parkland using private funds." Exhibit A to Memphis City Ordinance 5665, at p. 5, Exhibit C to Attachment 9, COLL. EX. 4.

APPLICABLE LAW

1. Any affected person may petition an agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency. TENN. CODE ANN. § 4-5-223.

2. The Tennessee Heritage Protection Act of 2016, Tenn. Code Ann. § 4-1-412 (effective April 27, 2017 to May 20, 2018¹¹) provides, in pertinent part, as follows:

(a) For purposes of this section:

(1) "Commission" means the Tennessee Historical Commission.

(7) "Memorial" means:

(A) Any public real property or park, preserve, or reserve located on public property that has been named or dedicated in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization; or

(B) Any statue, monument, memorial, bust, nameplate, plaque, artwork, flag, historic display, school, street, bridge, or building that has been erected for, named, or dedicated on public property in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization; and

¹¹ The version of the statute effective April 27, 2017 to May 20, 2018, is applicable in this matter as the transfer of the properties in question occurred in December of 2017, and is the version referenced herein unless otherwise explicitly stated.

(8) “Public property” means all property owned, leased, rented, managed, or maintained by or under the authority of this state, any county, municipality, metropolitan government, or any other public entity that is created by act of the general assembly to perform any public function.

(b)(1) Except as otherwise provided in this section, no memorial regarding a historic conflict, historic entity, historic event, historic figure, or historic organization that is, or is located on, public property, may be removed, renamed, relocated, altered, rededicated, or otherwise disturbed or altered.

TENN. CODE ANN. § 4–1–412 (effective April 27, 2017 to May 20, 2018).

ANALYSIS AND CONCLUSIONS OF LAW

Clearly, an impassioned difference of opinion exists as to whether the statues should have been removed from the properties in question, and regarding the manner in which the City of Memphis effected their removal. In a separate but related matter regarding the naming of the properties upon which the statues were formerly located, Judge Brandon O. Gibson, writing for the Western Section Court of Appeals, most aptly stated that “[t]he underlying issue in this case involves complex cultural and social concerns that generate strong passions on both sides. While we appreciate the depth of those feelings, it is not within the purview of this Court to resolve the larger issue of whether or how those who fought for the Confederacy should be honored or remembered. Rather, it is the function of this Court to resolve the legal dispute between the parties according to principles of law. Our decision should not be viewed as an endorsement of either the City’s decision to change the park names or the plaintiffs’ desire to preserve them.” *Hayes v. Memphis*, No. W2014-09162-COA-R3-CV, 2015 WL 5000729, at *14 (Tenn. Ct. App. August 21, 2015). And so it is with the instant matter.

The PETITION seeks a determination that the prohibitions contained in the Tennessee Heritage Protection Act of 2016, Tenn. Code Ann. § 4–1–412 (hereinafter “the Act”), continued to apply to statues located on the properties in question after the transfer of those properties to Memphis Greenspace, Inc.

The Act contains prohibitions, at TENN. CODE ANN. § 4-1-412(b)(1), regarding items defined by the Act, at TENN. CODE ANN. § 4-1-412(a)(7), as “memorials,” which includes certain “statues.” However, in order to be subject to the Act’s prohibitions, such “memorials” must be located on “public property.” TENN. CODE ANN. § 4-1-412(b)(1). The Act defines “public property” as property owned, leased, rented, managed, or maintained by or under the authority of this state, any county, municipality, or metropolitan government, or any other public entity that is created by act of the general assembly to perform any public function. TENN. CODE ANN. § 4-1-412(a)(8).

The properties in question were transferred to Memphis Greenspace, Inc. on or about December 20, 2017 – at the point of transfer, these properties were no longer owned by the City of Memphis.¹² There is no proof that the City of Memphis has leased or rented the properties back from Memphis Greenspace, Inc. Thus, the City of Memphis has no ownership interest in the properties.

Petitioners assert, despite the transfer of ownership interests, that the properties in question remain “public property,” as defined by the Act, because of restrictive covenants¹³ that were agreed to by Memphis Greenspace, Inc. as a condition of the transfer of the properties. Presumably, Petitioners’ position is that the restrictive covenants are evidence that the properties are either maintained or managed by the City of Memphis. However, the restrictive covenants

¹² The current version of the Act, effective May 21, 2018, provides that “[n]o memorial or public property that contains a memorial may be sold, transferred, or otherwise disposed of by a county, metropolitan government, municipality, or other political subdivision of this state.” TENN. CODE ANN. § 4-1-412(b)(2) (May 21, 2018). This language is not contained in the version of the Act effective at the time of the transfer of the properties in question.

¹³ Restrictive covenants are not uncommon in real estate transactions – “[i]t is well established law in this State that a person owning a body of land may sell portions thereof and make restrictions as to its use for the benefit of himself as well as those to whom he sells.” *Benton v. Bush*, 644 S.W.2d 690, 691 (Tenn. Ct. App. 1982) (citing *Laughlin, et al. v. Wagner, et al.*, 244 S.W. 475 (1922); *Hamilton v. Broyles*, 415 S.W.2d 532 (1967)).

task Memphis Greenspace, Inc.¹⁴ with maintenance of the properties, not the City of Memphis. And the “Implementation Plan” clearly provides that Memphis Greenspace, Inc. will manage and/or control the properties. While the restrictive covenants may potentially give rise to an enforcement action, of some variety, by the City of Memphis, this is only a possibility and does not represent direct control, or certainly ultimate control, over the properties. Thus, it cannot be said that the City of Memphis maintains or manages the properties by virtue of the restrictive covenants. In conclusion, with respect to Petitioners’ Issues 1 through 4, *supra* p. 2, upon transfer, the properties in question were no longer public property, as defined by TENN. CODE ANN. § 4–1–412(a)(8). As such, upon transfer, any “memorials,” as defined by the Act, located on the properties in question were no longer subject to the Act’s prohibitions.

Issues 5 through 7, and 9 of the PETITION, *supra* p. 3, with respect to actions undertaken by the City of Memphis and/or Memphis Greenspace, Inc., seek a determination that alleged violations of certain laws (e.g., Family Burial Grounds Act, TENN. CODE ANN. § 46–8–102¹⁵; Sale of Surplus Public Property, TENN. CODE ANN. § 12–2–501; and unspecified regulations of the City of Memphis relative to the passage of certain city ordinances) renders the statues still subject to the Act’s prohibitions. Because these laws are not within the jurisdiction of the Commission, the allegations made relative thereto are not properly before the Commission and therefore cannot be considered.

¹⁴ Memphis Greenspace, Inc. is not a “public entity,” as contemplated by Tenn. Code Ann § 4–1–412. See *Patterson v. Convention Center Authority of Metropolitan Government of Davidson County*, 421 S.W.3d 597 (Tenn. Ct. App. 2013) (citing Black’s Law Dictionary, 8th ed. 573 (2004) (defining “public entity” as “[a] governmental entity, such as a state government or one of its political subdivisions.”)).

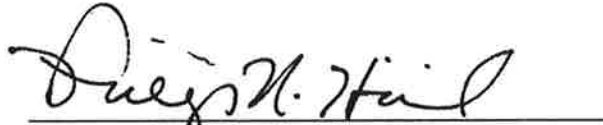
¹⁵ While Petitioners brought forth testimony, through Mr. Millar, that the listing of these properties on the National Historic Registry specifically refers to the Forrest statue as the headstone to the graves of General Forrest and his wife, as with all claims not within the jurisdiction of the Tennessee Historical Commission, this claim cannot be adjudicated by the Commission – it must be addressed in the appropriate forum.

Given the above determination regarding Issues 1 through 4, it is unnecessary to reach Issue 8, *supra* p. 3. Issue 8 of the PETITION seeks a determination as to the appropriate remedy in the event of a violation of the Act.

The policy reason for this decision is to harmonize the preservation of the integrity of the Act, as written at the time in question, with the protection of property rights of governmental and non-governmental entities.

It is so ORDERED.

Entered and effective this the 25th day of JANUARY, 2019.



PHILLIP R. HILLIARD
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 25th day of JANUARY, 2019.



J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Descendants of Nathan Bedford Forrest and
Sons of Confederate Veterans (Petition for
Declaratory Order)

NOTICE OF APPEAL PROCEDURES

REVIEW OF INITIAL ORDER

Attached is the Administrative Judge's decision in your case before the Tennessee Historical Commission (the Commission), called an Initial Order, with an entry date of **January 25, 2019**. The Initial Order is not a Final Order but shall become a Final Order unless:

1. **A Party Files a Petition for Reconsideration of the Initial Order:** You may ask the Administrative Judge to reconsider the decision by filing a Petition for Reconsideration. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the decision is incorrect. The APD must **receive** your written Petition no later than 15 days after entry of the Initial Order, which is no later than **February 11, 2019**. A new 15 day period for the filing of an appeal to the Commission (as set forth in paragraph (2), below) starts to run from the entry date of an order disposing of a Petition for Reconsideration, or from the twentieth day after filing of the Petition if no order is issued.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph (2), below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an appeal. Such an Appeal must be **received** by the APD no later than 15 days after the date of denial of the Petition. *See* TENN. CODE ANN. §§ 4-5-317 and 4-5-322.

2. **A Party Files an Appeal of the Initial Order:** You may appeal the decision to the Commission. Mail to the APD a document that includes your name and the above APD case number, and states that you want to appeal the decision to the Commission, along with the specific reasons for your appeal. The APD must **receive** your written Appeal no later than 15 days after the entry of the Initial Order, which is no later than **February 11, 2019**. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317.
3. **The Commission decides to Review the Initial Order:** In addition, the Commission may give written notice of its intent to review the Initial Order, within 15 days after the entry of the Initial Order.

If either of the actions set forth in paragraphs (2) or (3) above occurs prior to the Initial Order becoming a Final Order, there is no Final Order until the Commission renders a Final Order.

If none of the actions in paragraphs (1), (2), or (3) above are taken, then the Initial Order will become a Final Order on **February 12, 2019**. **In that event, YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER.**

STAY

In addition, you may file a Petition asking the Administrative Judge for a stay that will delay the effectiveness of the Initial Order. A Petition for a stay must be **received** by the APD within 7 days of the date of entry of the Initial Order, which is no later than **February 1, 2019**. *See* TENN. CODE ANN. § 4-5-316.

Descendants of Nathan Bedford Forrest and
Sons of Confederate Veterans (Petition for
Declaratory Order)

NOTICE OF APPEAL PROCEDURES

REVIEW OF A FINAL ORDER

1. **A Party may file a Petition for Reconsideration of the Final Order:** When an Initial Order becomes a Final Order, a party may file a Petition asking for reconsideration of the Final Order. Mail to the Administrative Procedures Division (APD) a document that includes your name and the above APD case number, and states the specific reasons why you think the Final Order is incorrect. If the Initial Order became a Final Order without an Appeal being filed, and without the Commission deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Commission rendered a Final Order, the Commission will consider the Petition. The APD must **receive** your written Petition for Reconsideration no later than 15 days after: (a) the issuance of a Final Order by the Commission; or (b) the date the Initial Order becomes a Final Order. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing the Final Order will be adjusted. If no action is taken within 20 days of filing of the Petition, it is deemed denied. *See* TENN. CODE ANN. § 4-5-317.
2. **A Party Files an Appeal of the Final Order:** A person who is aggrieved by a Final Order in a contested case may seek judicial review of the Final Order by filing a Petition for Review “in the Chancery Court nearest to the place of residence of the person contesting the agency action or alternatively, at the person’s discretion, in the chancery court nearest to the place where the cause of action arose, or in the Chancery Court of Davidson County,” within 60 days of (a) the date of entry of a Final Order; or (b) the date the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-322. The filing of a Petition for Reconsideration is not required before appealing. *See* TENN. CODE ANN. § 4-5-317. A reviewing court also may order a stay of the Final Order upon appropriate terms. *See* TENN. CODE ANN. §§ 4-5-322 and 4-5-317.
3. **A Party may request a stay of the Final Order:** A party may file a Petition asking for a stay that will delay the effectiveness of the Final Order. If the Initial Order became a Final Order without an Appeal being filed, and without the Commission deciding to modify or overturn the Initial Order, the Administrative Judge will consider the Petition. If the Commission rendered a Final Order, the Commission will consider the Petition. A Petition for a stay of a Final Order must be **received** by the APD within 7 days after the Initial Order becomes a Final Order. *See* TENN. CODE ANN. § 4-5-316.

FILING

To file documents with the Administrative Procedures Division, use this address:

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