

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
March 5, 2002 Session

**BOB PATTERSON, TRUSTEE OF SHELBY COUNTY, TENNESSEE v.
JIM ROUT, MAYOR OF SHELBY COUNTY, TENNESSEE**

**Direct Appeal from the Chancery Court for Shelby County
No. CH-00-1654-1 Walter L. Evans, Chancellor**

No. W2001-01769-COA-R3-CV - Filed July 10, 2002

This appeal concerns the application of the Shelby County Civil Service Merit Act to appointed employment positions in Shelby County. The trial court found that since the positions were appointed by the County Trustee, they were exempt from the Act. The chancellor accordingly held that the Human Resources Department does not have the authority to override salary decisions of the Trustee with respect to appointed positions, and that petitions for salary increases could be made to the court pursuant to Tenn. Code Ann. § 8-20-101, *et. seq.* The chancellor approved three of the Trustee's five requested increases, finding them reasonable and necessary. We hold that the trial court's interpretation of the Merit Act was only partially correct. We remand this case for further proceedings consistent with this opinion for a determination of whether the appointed employees are classified or unclassified.

Tenn. R. App. P. 3 Appeal as of Right; Remanded

DAVID R. FARMER, J., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and DON R. ASH, SP. J., joined.

Alan G. Crone, Memphis, Tennessee, for the appellant, Jim Rout, Mayor of Shelby County, Tennessee.

Joedae L. Jenkins and Tyrone J. Paylor, Memphis, Tennessee, for the appellee, Bob Patterson, Trustee of Shelby County, Tennessee.

OPINION

The litigation underlying this appeal concerned salary determinations for five Shelby County (the County) appointed positions: Deputy Administrator A, Manager A, Manager B, PAS-B, and PAS-D. These basic facts are undisputed. Bob Patterson, the county trustee, is an elected County official. On Dec. 22, 2000, he filed an amended salary petition requesting, *inter alia*, salary

increases for these positions. Relief regarding other issues was stipulated. Jim Rout, the mayor of Shelby County, opposed the petition, arguing that salaries for these positions are governed by the County's Civil Service Merit Act (the Act).¹ The chancellor held that since the positions were appointed by an elected official, they were not governed by the County's Civil Service Merit Act, but by the provisions of Tenn. Code Ann. § 8-20-101, *et seq.* The chancellor concluded that "the Human Resources Department has no authority to deny the Trustee's recommendations to fill unclassified positions in his office or salary increases approved by the county commission." The chancellor approved the salaries requested for Deputy Administrator A, Manager A, and Manager B, finding them reasonable and necessary.² Both parties appeal.

Issues Presented on Appeal

The parties raise the following issues for our review:

- I. Whether the Shelby County Salary Policy and Civil Service Merit Act have suspended T.C.A. §§ 8-20-101, *et seq.*, through the operation of statute and/or through the institution of a comprehensive plan for determining salaries and pay equity among employees of Shelby County.
- II. Whether the Chancellor erred in holding that appointed, "unclassified" County employees are governed by the "reasonable and necessary" recommendations of the elected officials and specific approval by the Shelby County Commissioners and are effectively exempt from the Shelby County Salary Policy and Civil Service Merit Act.
- III. Whether the Chancellor erred in finding that the requested salary increases for the [Deputy Administrator A, Manager A, and Manager B] were both reasonable and necessary.
- IV. Whether, in approving [these] increases, the Chancellor erred by placing too much emphasis on comparisons to salaries in the public sector as opposed to salaries in comparable positions in the County government.

¹When used in the context of such an act, "merit" is used as a term of art. Merit systems are designed to protect employees from arbitrary termination. *Knox County v. Knox County Personnel Bd.*, 753 S.W.2d 357, 359 n.1 (Tenn. Ct. App. 1988). They may also serve to "structure the method and manner of employment of . . . personnel." *Shelby County Civil Serv. Merit Bd. v. Lively*, 692 S.W.2d 15, 19 (Tenn. 1985).

²The salary requests for the PAS-B and PAS-D positions were denied upon a finding that neither had been proven by a preponderance of the evidence to be reasonable and necessary. Mr. Patterson has not appealed this determination.

Mr. Patterson raises the additional issue of whether the appellant, Mr. Rout, is barred by the doctrine of *res judicata* and/or collateral estoppel from asserting its defenses flowing from the Civil Service Merit Act raised before the chancery court and now before this Court.

Standard of Review

Our standard of review of a nonjury trial is *de novo* upon the record. *See Wright v. City of Knoxville*, 898 S.W.2d 177, 181 (Tenn. 1995). There is a presumption of correctness as to the trial court's findings of fact, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d). With respect to the trial court's conclusions on matters of law or on mixed questions of fact and law, however, our review is *de novo* with no presumption of correctness. *See Bowden v. Ward*, 275 S.W.3d 913, 916 (Tenn. 2000); *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 174 (Tenn. 1996); Tenn. R. App. P. 13(d).

Res Judicata

We first dispense with the issue of whether Mr. Rout's defense is barred by the doctrine of *res judicata*. Mr. Patterson cites *Key v. Bolton*, No. 02A01-9703-CR-00072, 1997 Lexis 556 (Tenn. Ct. App. Aug. 13, 1997) *perm. app. denied*, for the proposition that the issue of whether the Civil Service Merit Act, Tenn. Priv. Acts ch. 110 (1971), exempts the County from Tenn. Code Ann. § 8-20-101, *et seq.*, is *res judicata*. This argument is without merit. This Court's opinion in *Key* was filed as a "Memorandum Opinion." *Key v. Bolton*, 1997 Lexis 556 at *1. As such it "shall not be published, and shall not be cited or relied on for any reason in a subsequent unrelated case." *Id.* at n.1; Court of Appeals Rule 10(b). Accordingly, the parties cannot rely on *Key* in the case at bar.

Effect of the Civil Service Merit Act on Tenn. Code Ann. § 8-20-101, et seq.

Mr. Rout submits that Shelby County is exempt from the provisions of Tenn. Code Ann. § 8-20-101, *et seq.*, which generally govern the appointment of deputies and assistants. He contends that the salaries of Shelby County employees are governed instead by the Civil Service Merit Act, enacted by the General Assembly in Tenn. Priv. Acts ch. 110 (1971), and that the Act suspends the statutory provisions. Mr. Patterson, however, contends that the Act exempts Shelby County only from section 109 of the statute, and that the remaining provisions continue to be applicable notwithstanding the Act. The seminal question for this Court, as we perceive the issue, is whether the Act suspends the general statutory provisions. We hold that Tenn. Code Ann. § 8-20-101, *et seq.*, is suspended by the Act with respect to those employees governed by the Act. The general statutory provisions continue to govern employees not covered by the Act.

In addressing this issue, we are called upon to interpret the provisions of the Civil Service Merit Act and Tenn. Code Ann. § 8-20-112. When interpreting a legislative provision, this Court's primary objective is to effectuate the purpose of the legislature. *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000). Insofar as possible, the intent of the legislature should be determined by the natural and ordinary meaning of the words used, and not by a construction that is forced or which

limits or extends the meaning. *Id.* Likewise, the Court must seek to ascertain the intended scope, neither extending nor restricting that intended by the legislature. *State v. Morrow*, – S.W.3d –, 2002 WL 27513, at *2 (Tenn. Jan. 11, 2002) (citing *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993)). Our interpretation must not render any part of a legislative act “inoperative, superfluous, void or insignificant.” *Id.* (citing *Tidwell v. Collins*, 522 S.W.2d 674, 676-77 (Tenn. 1975)). Rather, we seek to give effect to the legislature’s over-arching purpose. *Merrimack Mut. Fire Ins. Co. v. Batts*, 59 S.W.3d 142, 151 (Tenn. Ct. App. 2001).

Section 8-20-112 of the Tennessee Code provides:

In any county having a civil service system for the sheriff’s department pursuant to chapter 8, part 4 of this title or other provision of general law or the provisions of a private act, or a civil service system for all county employees pursuant to the provisions of a private act, the employment or termination of employment of any deputy or assistant in any offices covered by this chapter *shall* be pursuant to the provisions of such civil service system, *and* the provisions of § 8-20-109 *shall* not apply to such county. [Acts 1984, ch. 912, § 1; 1933, ch. 53, § 6.]

Tenn. Code Ann. § 8-20-112 (1993) (emphasis added).³ In his brief, Mr. Patterson contends, “[t]he clear language of the statute provides that any county with a civil service system enacted by private act[s] is exempt only from Tenn. Code Ann. §§ 8-20-109, not Tenn. Code Ann. §§ 8-20-101, *et seq.*” We disagree.

The private act creating a civil service merit system for Shelby County is broad in scope. *Shelby County Civil Serv. Merit Bd. v. Lively*, 692 S.W.2d 15 (Tenn. 1985). The Act established “a Civil Service Merit System for the employees of Shelby County; creat[ed] a Civil Service Board; [p]rovid[ed] for the classified service; provid[ed] a schedule of compensation . . . exempt[ed] Shelby County from provisions of Section 8-2009 T.C.A.⁴ contrary to this Act . . .” Tenn. Priv. Acts ch. 110 (1971). Where a county employee is governed by the Act, the civil service system governs terms of employment, promotion, discipline and termination. *Lively*, 692 S.W.2d at 16. Our Supreme Court has opined that in enacting the Act the General Assembly classified Shelby County separately in order to place the majority of the County’s employees under a tenured civil service system. *Id.* at 19. The *Lively* court further noted that at the time it was enacted, the Act was contrary in some respects to the general statute, but that a reasonable basis existed to justify this departure. *Id.*

The 1971 Act established a comprehensive civil service system. *Id.* In 1984, the General Assembly amended the older, general statute, adding section 112. Tenn. Priv. Acts, ch. 192, § 1

³Section 8-20-109 of the Tennessee Code provides: “Any and all deputies and assistants in any of the offices covered by this chapter shall be removable by the officer for whom they are acting, at will.” Tenn. Code Ann. § 8-20-109 (1993).

⁴Currently codified as Tenn. Code Ann. § 8-20-109.

(1984). This section mandates that where a civil service system is enacted for a county, the terms of employment for county employees governed by the act “shall” be in accordance with the act. *Id.* The amendment additionally mandates that where a civil service system is enacted, section 109 of the general statute, which makes county employees terminable at will, “shall” not apply. *Id.* We believe this amendment serves dual purposes. First, it requires that where a civil service system is enacted, terms of employment for employees governed by the act “shall” be in accordance with that system. Second, it specifically mandates that contrary to the general provisions, employees governed by a civil service act are not deemed terminable at will.

This interpretation of the statute is supported by the observations of the Tennessee Supreme Court in *Lively*. The *Lively* Court noted that through the civil service system, the General Assembly “may classify counties in a reasonable manner and structure the method and manner of employment of county personnel accordingly. It has done so in this case [in Shelby County] as it has done with respect to several other counties. It long ago did so with respect to the salaries of county officers We believe that the General Assembly had a reasonable basis to confer that status upon the employees of this large urban county ***and to suspend the general employment law with respect to that county.***” *Id.* at 19-20 (emphasis added). The court accordingly held that the employees at issue in *Lively* were governed by the Act and therefore not terminable at will. *Id.* at 20.

In *Knox County v. Knox County Personnel Board*, 753 S.W.2d 357, 358 (Tenn. Ct. App. 1988), this Court addressed the issue of whether the County Personnel Board was to be considered the final appeals body for personnel grievances. We stated that although the county’s plan did not expressly state that the Board was to be so considered, such a holding best effectuated the legislative purposes of the act enabling the county’s merit system. *Id.* at 359. We further noted that in construing an act creating a civil service merit system for county employees, the court should construe the act so as to effectuate its purpose. *Id.* at 359. The primary purposes of an employment system based on merit are to protect employees from arbitrary removal and to establish consistent terms of employment, including a consistent pay scale. *Id.*; *Shelby County Civil Serv. Merit Bd. v. Lively*, 692 S.W.2d 692 S.W.2d 15, 19 (Tenn. 1985). We do not believe such consistency would be achieved if the civil service system could be circumvented by application of a prior statute generally governing county employees. The fact that the Act does not expressly suspend Tenn. Code Ann. § 8-20-101, *et seq.*, is not determinative where such suspension is implied by the purposes of the Act itself. *See Knox County*, 753 S.W.2d at 359. In light of the foregoing, we hold that the Act suspends Tenn. Code Ann. § 8-20-101, *et seq.*, with respect to those employees covered by the Act.

Applicability of the Act to Unclassified Employees

Mr. Rout contends that the Act governs both classified and unclassified employees. He argues that the Act suspends Tenn. Code Ann. § 8-20-101, *et seq.*, with respect not only to classified employees, but that it does so with respect to all Shelby County employees. Mr. Patterson submits that the Act pertains only to classified employees, and that it gives no authority to the County Human Resources Department to determine the salaries of unclassified employees. We agree with Mr. Patterson on this point of law.

Section 1 of the Act reads: “[t]here is hereby established a Civil Service Merit System for employees of Shelby County.” Tenn. Priv. Acts, ch 110, § 1 (1971). Section 2 of the Act is its definitional section. This section provides:

SECTION 2. DEFINITIONS. As used in this Act, the following words and terms shall have the following meanings:

(a) “Appointing Authority” - Any elected official of the county or head of an office of the county government specifically charged by the appropriate elected official with the responsibility of appointing and/or dismissing the personnel employed under his direction.

(b) “Board” - The Civil Service Merit Board.

(c) “Classified Service” - Those positions of employment contained in the Civil Service Merit System.

(d) “County” - Shelby County.

(e) “Employee” - Any person appointed to a position or office *in the classified service*.

(f) “Secretary” - Secretary of the Civil Service Merit Board.

(g) “System” - The Civil Service Merit System of Shelby County.

Tenn. Priv. Acts, ch 110, § 2 (1971), as amended by Tenn. Priv. Acts, ch. 128 § 1 (1977) (emphasis added). Thus where the word “employee” is used for purposes of the Act, the employee to whom it pertains is a classified employee. The civil service of the County accordingly is divided into classified and unclassified employees. Terms of employment for unclassified employees, although they are part of the civil service, are not covered by the Act. Section 9(a) of the Act lists those employees not classified. Section 9(b) stipulates: “[t]he classified service shall comprise all offices and positions of employment for the county *not specifically included in the unclassified service*.” Tenn. Priv. Acts, ch 110, § 9(b) (1971) (emphasis added). Only those employees specifically described in section 9(a) are unclassified and therefore not within the scope of the Act.

Section 9(a) of the Act as amended in 1977 provides:

The unclassified service shall include:

1. Officials elected by popular vote and persons appointed to fill vacancies in such elective offices;
2. Members of duly established boards and commissions of the county;
3. Any person retained by the county on a consultant basis;
4. Any employee of the county whose employment is on a temporary basis;
5. Any person who provides services to the county on a volunteer basis or who receives no compensation for said services;
6. Any person employed by the Shelby County Board of Education;

7. Any person⁵ occupying the position of department head, deputy department head, chief clerk, personal assistant to a department or personal secretary to a department head as is designated by an appointing authority and approved by the board. The intent of this provision is to restrict positions in the unclassified service to those which involve sensitive, policy-making duties. In granting its approval the board shall consider this intent as well as the size of the department in question. A list of these additional positions shall be prepared and maintained by the Secretary.

Tenn. Priv. Acts, ch. 128, § 7 (1977), amending Tenn. Priv. Acts, ch 110, § 9(a) (1971).

The Civil Service Merit Act governs employees. For purposes of the Act, the term “employees” refers to classified employees. Employees described in section 9(a) are designated unclassified. Those employees retained in the excepted positions, therefore, are not employees who are governed by the Act. The general statutory provisions of Tenn. Code Ann. § 8-20-101, *et seq.*, are applicable to unclassified employees.

Determination of Status as Classified or Unclassified

We must next determine whether the employees in question in this case are classified or unclassified. The trial court found that the positions of Deputy Administrator A, Manager A, and Manager B were appointed by the Trustee and were therefore unclassified. The chancellor approved salary increases for these positions upon finding such increases “reasonable and necessary.”

As noted above, pursuant to section 9(a)(7), the unclassified service includes employees who occupy the positions of department head, deputy department head, chief clerk, personal assistant to a department or personal secretary to a department head who are designated by an appointing authority and approved by the board. We note that in amending this section, the legislature emphasized,

[t]he intent of this provision is to restrict positions in the unclassified service to those which involve sensitive, policy-making duties. In granting its approval the board shall consider this intent as well as the size of the department in question.

Tenn. Priv. Acts, ch. 128, § 7 (1977). Thus employees who are unclassified pursuant section 9(a)(7) must meet certain criteria. First, they must occupy one of the five designated positions (department head, deputy department head, chief clerk, personal assistant to a department or personal secretary to a department head). Second, they must be designated by an appointing authority as defined by section 2(a). Third, they must be approved as unclassified by the civil service merit board. The legislature further mandated that in approving such positions as unclassified, the board must consider

⁵The phrase “[a]ny person” subsequently was replaced with “[s]uch person.” Tenn. Priv. Acts, ch. 192, § 2 (1984).

whether the position involves sensitive, policy-making duties, as well as the size of the department in question. The board must restrict the unclassified designation accordingly.

A plain reading of this section evidences the legislature's intent that not all appointed employees are to be considered unclassified. In order to be unclassified, the appointed employee must occupy one of the five designated positions. Further, these positions must be approved as unclassified by the board. Such board approval must be based on a determination that the position involves sensitive, policy-making duties.

We believe this interpretation effectuates the over-arching purpose of the Civil Service Merit Act, which is to provide the protections of a civil service system to the employees of a large, complex county. *See Lively*, 692 S.W.2d at 15. One of these protections is a consistent pay-scale for employees in similar positions throughout the county. *Id.* at 19. Accordingly, the legislature specifically defined a limited number of positions which are unclassified. Tenn. Priv. Act, ch. 110, § 9(a) (1971), as amended. Positions not falling into one of these categories are deemed classified and are governed by the Act. Tenn. Priv. Act, ch.110, §§ 1, 2, 9 (1971). Positions which are unclassified pursuant to section 9(a) are restricted to those enumerated by the legislature. To interpret this section as providing that all appointed employees are unclassified would render most of the language of 9(a)(7) superfluous.

We are unable to determine from the record before us whether the appointed positions designated as Deputy Administrator A, Manager A, and Manager B meet the criteria described above and are thus unclassified pursuant to section 9(a). We remand for determinations consistent with this opinion. Other issues are therefore pretermitted.

Conclusion

The Shelby County Civil Service Merit Act, as amended, suspends operation of the general provisions of Tenn. Code Ann. § 8-20-101, *et. seq.*, with respect to employees holding classified positions as defined by the Act. Unclassified positions are limited to the provisions of section 9, as amended. The specifically designated appointed positions enumerated in section 9(a)(7) (department head, deputy department head, chief clerk, personal assistant to a department or personal secretary to a department head) are not classified when they involve sensitive, policy-making duties. They are part of the unclassified civil service and are governed by the general statutory provisions. We remand for determinations consistent with this opinion of whether Deputy Administrator A, Manager A, and Manager B are unclassified pursuant to section 9(a)(7) of the Act. Costs of this appeal are taxed to one-half to the appellee, Bob Patterson, Trustee of Shelby County, Tennessee, and one-half

to the appellant, Jim Rout, Mayor of Shelby County, and his surety, for which execution may issue if necessary.

DAVID R. FARMER, JUDGE