

IN THE CHANCERY COURT FOR LOUDON COUNTY, TENNESSEE

DANNIE A. HUTCHERSON and  
RICHARD T. ANKLIN,  
PLAINTIFFS

VS.

NO. 11513

TELLICO VILLAGE PROPERTY  
OWNERS ASSOCIATION, INC.

DEFENDANT

**PLAINTIFF, RICHARD T. ANKLIN, MEMORANDUM OF LAW IN RESPONSE TO  
DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Comes the Plaintiff, Richard T. Anklin ("Anklin"), and files his MEMORANDUM OF LAW  
IN RESPONSE TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

The defendant contends that the Plaintiff's cause of action should be dismissed for  
failure to exhaust his administrative remedies.

The doctrine of "exhaustion of administrative remedies" does not apply to the case at  
bar, because The TVPOA General Manager and the POA Board of Directors, referenced  
in Document Access Rules, Paragraph 6, are not individually a "commission or board  
created by legislative power" within the meaning of the doctrine of "exhaustion of  
administrative remedies".

This is an action brought by the Plaintiff pursuant to Tenn. Code Anno. §§ 48-66-101 et  
seq. to secure his statutory right of inspection of the corporate records of the Tellico Village  
Property Owners Association, Inc. (hereinafter referred to as "TVPOA"), of which he is a  
member, after a denial of his right upon a written request to inspect records in order to aid  
in determining whether the business of The Tellico Village Property Owners Association,  
Inc. was being properly conducted and whether there had been any breach of the fiduciary  
duties of any director or officer of The Tellico Village Property Owners Association, Inc.

Tenn. Code Anno. §§ 48-66-101 et seq. only requires (1) that Anklin's demand is made  
in good faith and for a proper purpose; (2) that Anklin describes with reasonable

particularity the purpose and the records the member desires to inspect; and (3) that the records are directly connected with the purpose for which the demand is made.

An “Administrative Remedy” is one which is not judicial, but provided by **commission or board created by legislative power**. BLACK’S LAW DICTIONARY, 67. (4th ed. 1968).

The TVPOA General Manager and the POA Board of Directors, referenced in Document Access Rules, Paragraph 6, are not individually a “commission or board created by legislative power” within the meaning of the doctrine of “exhaustion of administrative remedies”.

The authorities cited by the defendant, TVPOA, well chronicle the distinction from the case at bar.

In supporting its Motion for Partial Summary Judgment, the TVPOA cites Colonial Pipeline Co. v. Morgan 263 S.W. 2d 827, 838 (Tenn., 2008). Colonial Pipeline Company filed suit for declaratory judgment, challenging the constitutionality of specified portions of the state tax code and seeking an injunction as to the enforcement of those provisions.

The Defendants contend that the Court of Appeals erred by (1) holding that the Chancery Court had jurisdiction to hear the constitutional challenge without Colonial first submitting the claim to the Board of Equalization. The Board of Equalization is a “commission or board created by legislative power”.

Next the TVPOA cites Myers v. Bethlehem Shipbuilding Corp. 303 U.S. 41, 50-51 as authority that the Plaintiff’s action should be dismissed. The issue before the Court was whether a federal District Court has equity jurisdiction to enjoin the National Labor Relations Board from holding a hearing upon a complaint filed by it against an employer alleged to be engaged in unfair labor practices prohibited by National Labor Relations Act, July 5, 1935, c. 372, 49 Stat. 449, 29 U.S.C.A. § 151 et seq.

The National Labor Relations Board is a “commission or board created by legislative power”.

Thomas v. State Bd. of Equalization, 940 S.W. 2d 563, 566 (Tenn. 1997) is also cited by the TVPOA as authority in support of its Motion for Partial Summary Judgment.

Thomas chronicles the efforts of Betty Corlew Thomas, the appellant, to challenge the valuation placed on her home by the Tax Assessor for Metropolitan Nashville-Davidson County.

The Court found that by statute, an aggrieved taxpayer may appeal the assessor's valuation of property to the county board of equalization. Tenn. Code Ann. § 67-5-1402. Unless modified by the state board, the county board of equalization's determination is final. Tenn. Code Ann. § 67-5-1411.

The county board of equalization and the State Board of Equalization are each a "commission or board created by legislative power".

Finally, the TVPOA cites State ex rel. Moore & Assocs. Inc. v. West, 246 S.W.3d 569, 577 (Tenn. Ct. App. 2005), as authority for the proposition the Plaintiff's cause of action should be dismissed for failure to exhaust his administrative remedies.

In that case, Moore & Associates, during the construction of a hotel, erected a landscape buffer which did not comply with the zoning code. *Id.* at 572.

Moore & Associates applied for a variance, but its request was denied. *Id.* After substantial completion of the hotel, the Zoning Administrator refused to issue a certificate of compliance. *Id.* at 573.

Thereafter, Moore & Associates brought suit in the trial court seeking a declaratory judgment declaring the buffer to be in compliance and requiring the Zoning Administrator to issue a certificate of compliance. The Court of Appeals held the Moore & Associates was required to exhaust its administrative remedies by appealing to the Board of Zoning Appeals prior to filing suit.

The Board of Zoning Appeals is "commission or board created by legislative power".

In all of the cases cited by the TVPOA, statutes provided for specific administrative procedures.

While the doctrine arose as a discretionary rule in courts of equity, today many exhaustion requirements are **mandated by legislation** (emphasis added). See Smith v. United States, 199 F. 2d 377, 381 (1<sup>st</sup> Cir, 1952).

**When a statute provides specific administrative procedures** (emphasis added), "one claiming to have been injured must first comply with the **provisions of the administrative statute**." State v. Yoakum, 201 Tenn. 180, 297 S.W. 2d 635, 641 (1956) (citing State ex rel. Jones v. City of Nashville, 198 Tenn. 280, 279 S.W. 2d 267 (1955)).

Exhaustion of administrative remedies is not an absolute prerequisite for relief, however, unless a statute "'by its plain words'" requires exhaustion. Thomas v. State Bd of Equalization, 940 S.W. 2d 563, 566 (Tenn. 1997) (quoting Reeves v. Olsen, 691 S.W. 2d 527, 530 (Tenn. 1985)).

Thus, a statute does not require exhaustion when the language providing for an appeal to an administrative agency is worded permissively. *Id.* Absent any statutory mandate, whether to dismiss a case for failure to exhaust administrative remedies would be a matter of "'sound judicial discretion.'" Reeves, 691 S.W.2d at 530 (quoting Cerro Metal Prod. V. Marshall, 620 F. 2d 964, 970 (3d Cir. 1980)).

Perhaps most fatal to the position of the TVPOA is the language of Tenn. Code Anno. § 48-66-102 under which authority this suit is predicated.

Section (d) of Tenn. Code Anno. § 48-66-102 provides "**The right of inspection granted by this section may not be abolished or limited by a corporation's charter or bylaws...**" (emphasis added).

Rule 6 of the Document Access Rules of the Tellico Village Property Owners Association is an attempt to limit the plaintiff's right of inspection utilizing the doctrine of exhaustion of administrative remedies, which simply does not apply because the TVPOA General Manager or the POA Board of Directors are not a "commission or board created by legislative power" within the meaning of the doctrine of "exhaustion of administrative remedies".

The cardinal canon of statutory construction requires the courts to ascertain and to carry out the General Assembly's intent. Colonial Pipeline Co. v. Morgan 263 S.W. 3d at 836.

A statute's intent is reflected in the statute's words, and, therefore, we must focus initially on the words of the statute. Waldschmidt v. Reassure Am. Life Ins. Co., 271 S.W. 3d 173, 176 (Tenn. 2008)

When the words of the statute are clear the Court must simply enforce the statute as it is written. Green v. Green, 293 S.W. 3d 493, 507 (Tenn., 2009); U.S. Bank, N.A. v. Tenn. Farmers Mut. Ins. Co. 277 S.W. 3d 381, 386 (Tenn. 2009).

When dealing with statutory interpretation, the Court's chief concern is to carry out legislative intent without broadening or restricting the statute beyond its intended scope. Houghton v. Aramark Educ. Res., Inc., 90 S.W.3d 676, 678 (Tenn.2002).

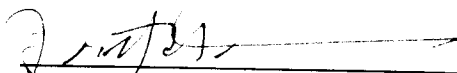
In construing legislative enactments, the Court should presume that every word in a statute has meaning and purpose and should be given full effect if the obvious intention of the General Assembly is not violated by so doing. In re C.K.G., 173 S.W.3d 714, 722 (Tenn.2005).

When a statute is clear, the Courts should apply the plain meaning without complicating the task. Eastman Chem. Co. v. Johnson, 151 S.W.3d 503, 507 (Tenn.2004). The Court's obligation is simply to enforce the written language. Abels ex rel. Hunt v. Genie Indus. Inc., 202 S.W.3d 99, 102 (Tenn. 2006).

It is clear by its language "**The right of inspection granted by this section may not be abolished or limited by a corporation's charter or bylaws...**" (emphasis added) Tenn. Code Anno. § 48-66-102 (d).

WHEREFORE, the Defendant's Motion for Partial Summary Judgment should be over-ruled.

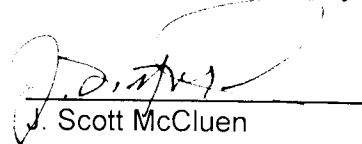
Respectfully submitted:



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served upon all parties of record or their counsel either by hand delivery or by leaving it at the person's office with a clerk other person in charge, or if there is none in charge, leaving it at a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing in a properly addressed stamped envelope deposited in the U. S. Mail to such persons last known address, or if no address is known, by leaving the same with the Clerk of the Court. This the 6th day of January 2010.

  
J. Scott McCluen

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