

tention, held the warrant invalid, and ruled that any evidence seized pursuant to it was inadmissible.

[1] The action of the trial court has effectively ended the prosecution of this case and leaves the State with no other plain, speedy or adequate remedy. This is tantamount to the denial to the State of its day in court and results in the loss of an interest not subject to recapture. In such a case the State may properly seek review of the trial court's action by means of the common law writ of certiorari. See *State v. Johnson*, 569 S.W.2d 808 (Tenn.1978); *State v. Gant*, 537 S.W.2d 711 (Tenn.Crim. App.1975); *Taylor v. Continental Tennessee Lines, Inc.*, 204 Tenn. 556, 322 S.W.2d 425 (1959).

Section 40-505, T.C.A. reads, in pertinent part, as follows:

[The magistrate] shall issue a search warrant signed by him, *directed to the sheriff, any constable, or any peace officer, commanding him* forthwith to search the person or place named for the property specified, and to bring it before the magistrate. (Emphasis supplied).

Using similar language, Section 40-501, T.C.A., defines a search warrant as a written order "signed by a magistrate, *directed to the sheriff, any constable, or any peace officer of the county, commanding him*" to search for property and bring it before the magistrate. (Emphasis supplied.) No statute restricts the class of persons to whom a warrant must be physically issued.

A further statutory requirement is that a warrant be executed by any of the officers to whom it is directed. However, no other person may execute a warrant "except in aid of such officer, at his request, he being present and acting in its execution." § 40-508, T.C.A.

[2] All such statutory requirements were met by the warrant in this case and by its execution. It was directed "to the sheriff, any constable, or any peace officer" of Shelby County and commanded them to execute a search of respondent's premises. It

did not direct or command Griggs to perform the search nor did Griggs alone execute the warrant. Deputy Hamby was present when application was made for the warrant; and he and two other county deputies, assisted by Griggs, searched the premises. Griggs' participation in the search in no way invalidates the warrant or the search so long as the provisions of § 40-508 are complied with. See also *State v. Schmidgall*, 21 Ariz.App. 68, 515 P.2d 609 (1973); *State v. Dudgeon*, 13 Ariz.App. 464, 477 P.2d 750 (1970).

The writs of certiorari and supersedeas are granted. The order of the trial court is vacated and this cause is remanded for trial.

FONES, COOPER, BROCK and HARBI-SON, JJ., concur.



STATE of Tennessee, ex rel. Charles WILSON, Dock J. Johnson, C. D. Patterson & James H. White, individually and representing a class of citizens of Macon County, Appellants,

v.

The CITY OF LAFAYETTE, Tennessee, Page Durham, Mayor, Britton Linville, Councilman, J. D. Knight, Councilman, Mary Tom Link, Councilman, Emogene Hunt, Councilman, Donnie Prock, Councilman, and Ronald Dycus, Councilman, Appellees.

Supreme Court of Tennessee.

Nov. 6, 1978.

Residents of annexed area appealed from decree of Equity Court, Macon County, Edward M. Turner, Chancellor, uphold-

ing validity of annexation ordinance adopted by city. Supreme Court, Cooper, J., held that: (1) generally, residents of annexed area have right to contest validity of annexation ordinance on ground that legislative body of city failed to follow procedures set forth in its charter for passage of city ordinances; (2) procedure established in city's charter providing that "no bill shall become an ordinance without having been passed on three separate readings and no more than one reading shall be had on one day" was substantially complied with where annexation ordinance was read in its entirety and unanimously passed on February meeting of city council, and where, in each of subsequent two meetings, ordinance was passed without being read to councilmen, who each had copy of ordinance, and (3) city's evidence demonstrated that annexation was logical and reasonable and to best interest of both citizens and property owners of city and those in annexed area, thus city satisfied its statutory burden for annexation.

Affirmed.

### 1. Municipal Corporations ⇌ 33(9)

Generally, residents of annexed area have right to contest validity of annexation ordinance on ground that legislative body of city failed to follow procedures set forth in its charter for passage of city ordinances.

### 2. Municipal Corporations ⇌ 33(2)

Procedure established in city's charter providing that "no bill shall become an ordinance without having been passed on three separate readings and no more than one reading shall be had on one day" was substantially complied with where annexation ordinance was read in its entirety and unanimously passed on February meeting of city council, and where, in each of subsequent two meetings, ordinance was passed without being read to councilmen, who each had copy of ordinance. T.C.A. § 6-309.

### 3. Municipal Corporations ⇌ 33(6)

City's evidence demonstrated that annexation was logical and reasonable and to best interest of both citizens and property owners of city and those in annexed area,

thus city satisfied its statutory burden for annexation. T.C.A. § 6-310.

Arthur McClellan, Gallatin, for appellants.

Jon A. Wells, Lafayette, Ogden Stokes, Griffith & Stokes, Susan Emery McGannon, Griffith & Stokes, Nashville, for appellees.

## OPINION

COOPER, Justice.

This is an appeal from a decree of the chancery Court of Macon County upholding the validity of the annexation ordinance adopted by the City of Lafayette, Tennessee, on March 15, 1977. Appellants, residents of the area annexed, insist the ordinance is invalid in that:

(1) It was not passed on three separate readings as required by the city charter; and

(2) The ordinance was unreasonable and unnecessary in consideration of the health, safety, and welfare of residents of the annexed areas and the City of Lafayette.

T.C.A. § 6-309 provides for the annexation of territory by a municipality by ordinance, after the adoption of a plan of services for the annexed area and after notice and public hearing on the ordinance, "when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property thereof endangered," unless the territory is annexed.

T.C.A. § 6-310 grants residents of the annexed area the right to contest the validity of the ordinance on the one ground—"whether the annexation is reasonably necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole." *City of Oak Ridge v. Roane County*, Tenn., 563 S.W.2d 895 (1978). On this issue, the statute places "the burden of proving [the] annexation ordinance is reasonable for the overall well-being of the communities involved" upon the municipality.

[1] Residents of the annexed area also have the right to contest the validity of the annexation ordinance on the ground that the legislative body of the city failed to follow the procedure set forth in its charter for the passage of city ordinances, generally. *Pirtle et al. v. City of Jackson*, 560 S.W.2d 400 (Tenn.1977).

As to the latter issue, the parties stipulated that the Charter of the City of Lafayette provided that:

No bill shall become an ordinance without having been passed on three several readings and no more than one reading shall be had on one day.

This procedure, or a variant thereof, is commonplace—the purpose being to prevent the passage of hasty and ill-considered legislation. *Metro. Gov't of Nashville, etc., v. Mitchell*, 539 S.W.2d 20 (Tenn.1976); *Biltmore Hotel Court v. City of Berry Hill*, 216 Tenn. 62, 390 S.W.2d 223 (1965); *Brumley v. Town of Greeneville*, 38 Tenn.App. 322, 274 S.W.2d 12 (1954); 62 C.J.S. Municipal Corporations § 418; 5 McQuillin, Mun. Corp. (3rd Ed.) § 16.30. And, as is noted in the *Mitchell* case *supra*, the procedure for the enactment of an ordinance set forth in a city's charter generally has been held to be mandatory," but [the procedure] must be given a reasonable construction, one that does not result in frustrating the legislative process at the municipal level." The charter provisions being mandatory, it follows that, unless, in enacting the annexation ordinance, the legislative body of the City of Lafayette substantially complied with the requisite procedure, the ordinance is invalid. See *Perez et al. v. Pawtucket Redevelopment Agency et al.*, 111 R.I. 327, 302 A.2d 785 (1973); *Hallenborg et al. v. Town Clerk of Billerica et al.*, 360 Mass. 513, 275 N.E.2d 525 (1971); *Bill Posting Sign Co. v. Atlantic City*, 71 N.J.L. 72, 58 A. 342 (1904); 5 McQuillin, Mun. Corp. (3rd Ed.) § 16-10, and cases there cited. Cf. *Brumley v. Town of Greeneville*, 38 Tenn.App. 322, 274 S.W.2d 12 (1954).

[2] The legislative body of the City of Lafayette—the City Council—consists of six councilmen and the mayor. It appears

from the minutes of the Council that it considered and unanimously passed Ordinance 151, the annexation ordinance, in regular meetings held on February 1, 1977, March 1, 1977, and March 15, 1977. The ordinance was read in its entirety in the February 1, 1977, meeting and a copy was given each councilman. In each of the subsequent meetings, there being no amendments to the ordinance, the mayor announced that a vote would be taken on "Ordinance 151, the annexation ordinance." The chancellor concluded this action was sufficient to meet the charter requirements, noting "the City of Lafayette from a practical standpoint is not annexing two or three tracts of land in every meeting, the copy of the ordinance was in the hands of the councilmen, they had not only heard this read at the first meeting, but they had the opportunity to scrutinize it from the first meeting to the second meeting, to the third meeting."

We agree with the chancellor that the City Council, in passing the annexation ordinance, substantially complied with the requisite procedure set forth in the City Charter. From our examination of the record, we have no doubt that each time the councilmen cast their vote for the passage of the annexation ordinance, they were aware of the nature of the matter embodied within the ordinance and of the effect of the ordinance, on passage.

[3] Appellants also contend that the City failed to prove the annexation was reasonable from the standpoint of the citizens and property owners of the municipality, a part of the burden placed on the City by T.C.A. § 6-310.

Admittedly, most of the testimony was directed to showing a need for services in the annexed area and the ability of the City to furnish those services. For example, there was testimony showing the annexed area already draws heavily on the City of Lafayette for such needed services, as water, fire protection, and garbage disposal. In addition to these services there was evidence that the city will make fire protection

more available, will upgrade police protection, will inspect and monitor future construction in the area, and will perform needed maintenance on roads. There also was testimony that without the services provided by the City, property in the annexed area will deteriorate, and that its deterioration will adversely affect property within the City.

Further, there was testimony that the annexed area is in need of sewers and that the need will increase as population increases in the area. Even now, residents of the annexed area and of the city are exposed to a potential health hazard from wells in the annexed area contaminated by septic tank flow. Also, a potential health hazard was shown to exist in a part of the city where the septic tank is the only way to disperse sewage. The City of Lafayette has taken affirmative steps to alleviate the health hazard within its city limits by the construction of sewers. Engineering studies have been made, plans have been drawn and application has been filed with the Environmental Protection Agency for necessary funding. The City's need for sewers has resulted in it being given a "top priority for funding" in the State of Tennessee. The plan of services for the annexed area also calls for the construction of sewers as part of the on-going efforts of the City to protect the health of its citizens and those in the annexed area. We think this evidence clearly demonstrates that the annexation was logical and reasonable and to the best interest of both the citizens and property owners of the city and of those in the annexed area.

Decree affirmed. Costs incident to the appeal are adjudged against the appellants and their surety.

HENRY, C. J., and FONES, BROCK and HARBISON, JJ., concur.



William M. CHAPMAN, Appellant,

v.

Hattie L. KING and husband, James  
W. King, Appellees.

Supreme Court of Tennessee.

Nov. 6, 1978.

Parents of deceased pedestrian brought wrongful death action against motorist. The Circuit Court, Cheatham County, Leonard Martin, J., dismissed complaint and denied substitution motion filed by decedent's husband, and appeal was taken. The Supreme Court, Brock, J., held that where parents of deceased pedestrian filed initial wrongful death complaint against motorist, defendant's motion to dismiss complaint on ground that no right of action survived in favor of decedent's parents was granted, and decedent's husband made his application for substitution within a reasonable time after objection was made by defendants to status of original plaintiffs as real parties in interest, trial court erred in denying substitution motion filed by decedent's husband, notwithstanding fact that statute of limitations had run prior to its filing.

Reversed and remanded.

#### 1. Death $\Leftrightarrow$ 46

Where complaint was incorrectly styled by designating plaintiff as decedent by next friend, decedent's father and mother, but decedent's parents alleged in complaint that they were decedent's parents and that they suffered monetary damages "by reason of her wrongful death," such complaint would be construed as one asserting an action for damages for wrongful death by decedent's parents. Rules of Civil Procedure, rule 8.06.

#### 2. Death $\Leftrightarrow$ 31(6)

The right to bring action for damages for wrongful death of deceased married woman belonged to her husband. T.C.A. § 20-611.