

IN THE CHANCERY COURT FOR THE TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY, TENNESSEE

THE METROPOLITAN)
GOVERNMENT OF NASHVILLE)
AND DAVIDSON COUNTY,)
TENNESSEE,)

Plaintiff,)

v.)

Case No. _____

BILL LEE, in his official capacity as)
Governor for the State of Tennessee,)
RANDY MCNALLY, in his official)
capacity as Speaker of the Senate of)
the State of Tennessee, and)
CAMERON SEXTON, in his official)
capacity as the Speaker of the House)
of Representatives of the State of)
Tennessee,)

Defendants.)

COMPLAINT

Plaintiff Metropolitan Government of Nashville and Davidson County (“Metro Nashville”) seeks a declaratory judgment and injunctive relief from implementation of 2023 Public Acts chap. 488 (hereinafter, the “Nashville Airport Authority Transfer Act” or the “Act”), which Defendant Governor Bill Lee signed into law on May 19, 2023. The Act fundamentally changes the structure and control of the Metropolitan Nashville Airport Authority (the “Nashville Airport Authority”) by vacating the Nashville Airport Authority’s current board of commissioners, removing the power of Metro Nashville’s Mayor and Council to appoint and confirm those commissioners, and giving the appointment power (and thus control) to State officials. This action violates the Tennessee Constitution’s home rule and equal protection clauses. For these reasons, the Court should declare the Act unconstitutional and enjoin its enforcement.

In support of its requests for a declaratory judgment and temporary and permanent injunctive relief, Metro Nashville respectfully alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to Tenn. Code Ann. § 16-11-102.

2. This Court has the power to enter a declaratory judgment and issue injunctive relief pursuant to Tenn. Code Ann. § 1-3-121, § 29-1-101, and §§ 29-14-102 and -103.

3. Venue is proper in this judicial district pursuant to Tenn. Code Ann. §§ 4-4-104 and 20-4-101(a), as this cause of action arose in Davidson County, Tennessee.

PARTIES

4. Plaintiff Metro Nashville is a consolidated city and county government formed by the City of Nashville and Davidson County and incorporated pursuant to Tenn. Code Ann. §§ 7-1-101, *et seq.*

5. Defendant Bill Lee is the Governor of the State of Tennessee. The Tennessee Constitution vests the Governor with “the supreme executive power of this state.” Tenn. Const. art. III, § 1. As the Chief Executive for the State of Tennessee, Governor Lee has a constitutional obligation to “take care that the laws be faithfully executed,” *id.*, including that they be executed consistent with Tennessee constitutional mandates. Governor Lee is sued in his official capacity and may be served through the Tennessee Attorney General and Reporter’s Office.

6. Defendant Randy McNally is the Speaker of the Senate of the General Assembly of Tennessee. Article II, Section 3 of the Tennessee Constitution vests the State’s legislative authority in the General Assembly and creates the offices of Speaker of the Senate and Speaker of the House of Representatives. Article II, Section 11 of the Tennessee Constitution provides that the Senate and House of Representatives shall each “choose a

speaker.” McNally was validly elected to the position of Speaker of the Senate. Speaker McNally is sued in his official capacity and may be served through the Tennessee Attorney General and Reporter’s Office.

7. Defendant Cameron Sexton is the Speaker of the House of Representatives of the General Assembly of Tennessee. Article II, Section 3 of the Tennessee Constitution vests the State’s legislative authority in the General Assembly and creates the offices of Speaker of the Senate and Speaker of the House of Representatives. Article II, Section 11 of the Tennessee Constitution provides that the Senate and House of Representatives shall each “choose a speaker.” Sexton was validly elected to the position of Speaker of the House of Representatives. Speaker Sexton is sued in his official capacity and may be served through the Tennessee Attorney General and Reporter’s Office.

FACTUAL ALLEGATIONS

I. The Authority and Nashville’s Airport.

8. In 1935, the City of Nashville’s Mayor appointed a committee to identify a site for a municipal airport. In 1937, Nashville’s municipal airport opened as Berry Field.

9. In 1969, the 86th General Assembly passed the Metropolitan Airport Authority Act. *See* 1969 Public Acts ch. 174. An accurate and authentic copy of the Act is attached as Exhibit 1. The Metropolitan Airport Authority Act is codified at Tenn. Code Ann. §§ 42-4-101, *et seq.*

10. The Metropolitan Airport Authority Act’s “Declaration of Purpose” states that the Act was intended to give “local governments in metropolitan regions ... the option of placing the control, operation and financing of metropolitan airports in regional and metropolitan instrumentalities.” 1969 Public Acts ch. 174, § 2. The Act did this by giving local government sole discretion to create a metropolitan airport authority and full control over appointments to the authority’s board of commissioners.

11. The Metropolitan Airport Authority Act further recognized the close relationship between metropolitan airport authorities and the local governments that created them by recognizing the authorities as “agencies and instrumentalities of the creating and participating municipalities,” not agencies of the State. Tenn. Code Ann. § 42-4-402(a).

12. The Metropolitan Airport Authority Act limited its grant of authority to a class of local governments consisting of cities and metropolitan governments with a population of at least 100,000. Tenn. Code Ann. § 42-4-103(6) (defining “creating authority”); *id.* § 42-4-104(a) (authorizing cities and metropolitan governments having population not less than 100,000, or any county including such city, to create a metropolitan airport authority).

13. Municipalities of this size were granted this authority because they share the same challenges: “the present and projected rapid growth in air traffic, the need for adequate terminal facilities in the metropolitan regions of the state, the need to eliminate airport hazards without regard to municipal and county boundaries, and the need to raise large amounts of capital without further burdening the taxpayers in such regions.” 1969 Public Acts ch. 174, § 2.

14. A qualifying municipality creates a metropolitan airport authority by taking the following steps: (a) the municipality’s governing body, with approval of the executive officer, adopts a resolution calling a public hearing on the question of creating an authority; (b) the governing body conducts a public hearing; and (c) the governing body determines that public convenience and necessity requires creation of an authority and, with approval of the executive officer, adopts a resolution creating the authority. Tenn. Code Ann. § 42-4-104(b), (c).

15. After creating the authority, the creating municipality must enter into an agreement with the authority for the orderly transfer of the municipality’s airport properties, functions, and outstanding obligations to the authority. *Id.* § 42-4-104(d).

16. The four largest cities in Tennessee—Metro Nashville, Knoxville, Chattanooga, and Memphis—each exercised the option to create airport authorities.

17. In 1970, Metro Nashville formed the Metropolitan Nashville Airport Authority pursuant to the Metropolitan Airport Authority Act to replace the City Aviation Department. Metro. Gov't of Nashville & Davidson Cty. Res. No. 70-872 (1970).

18. The governing body of the Nashville Airport Authority consists of seven persons appointed by the Mayor and approved by the Council. Tenn. Code Ann. § 42-4-105(a)(1)(A). A member of the Authority's governing body can only be removed for cause by a two-thirds vote of the Metro Council after being granted an opportunity for a public hearing on the cause. *Id.* § 42-4-105(d)(4).

19. As the creating municipality, Metro Nashville was empowered to exercise all necessary powers to further the purposes of the law, including providing funds on hand, advancing money, and donating real property. *Id.* § 42-4-111.

20. The Nashville Airport Authority is a public and governmental body acting as an agency and instrumentality of Metro Nashville. *Id.* § 42-4-102(a). The Authority is an agency of Metro Nashville and a department of local government, and it is subject to audit oversight by Metro Nashville. *See* Tenn. Op. Att'y Gen. No. 01-167, 2001 WL 1628001 at *5 (Nov. 20, 2001) (“Thus, while the MNAA may have been created to operate independently, it is still an agency of Metro, and is still subject to audit oversight by Metro Government.”).

21. The Metropolitan Airport Authority Act has been amended several times since 1970. *See, e.g.*, 2002 Public Acts ch. 562, at § 2. But the legislation's essential structure has not changed.

22. Today, Metro Nashville Airport consists of over one million square feet of space with an average of 380 flights arriving and departing daily.

23. Metro Nashville Airport is essential for the conduct of commerce in and out of one of the South's fastest growing metropolitan areas.

II. The State Enacts the Nashville Airport Authority Transfer Act.

30. On March 30, 2023, the Nashville Airport Authority Transfer Act passed by a vote of 25 ayes and 6 nays in the Tennessee General Assembly's Senate. On April 20, 2023, the Act passed by a vote of 69 ayes and 20 nays in the Tennessee General Assembly's House. On April 21, 2023, the Senate concurred in the version of the bill amended by the House by a vote of 23 ayes and 5 nays.

31. Governor Bill Lee signed the bill into law on May 19, 2023.

32. The Act amended several parts of the Metropolitan Airport Authority Act. Almost all of the provisions apply solely to airport authorities in a county having a metropolitan form of government with a population of over 500,000 (relying on the 2020 or subsequent census). *See Act §§ 2, 4, 6, 7, 8, 9.* The Act applies only to Metro Nashville.

33. Section 2 of the Act vacates the Nashville Airport Authority board of commissioners on July 1, 2023, per Section 11 of the Act.

34. Section 2 authorizes the Speaker of the State House of Representatives, the Speaker of the State Senate, and the Governor each to appoint two members to the Nashville Airport Authority board of commissioners. It authorizes the Mayor to appoint two members to the board. The Mayor's appointees do not require Metro Council approval. Any member can be removed without cause by the appointing authority.

35. Accordingly, where previously the Nashville Airport Authority was controlled by board members appointed by Metro Nashville, the Authority is now controlled by members appointed by the State of Tennessee who can be removed at any time without cause. In other words, the Act takes control of the Nashville Airport Authority away from Metro Nashville and gives it to the State.

36. Section 4 of the Act requires only the Nashville Airport Authority to designate additional corporate officers and an independent financial auditing firm. Sections 6 and 8 expands only Nashville Airport Authority's eminent domain authority. Section 7 authorizes only the Nashville Airport Authority to control sections of public streets when the Authority owns all real property abutting the public street section. Section 9 restricts Metro Nashville's authority to regulate airport hazards. Section 11 makes vacating the Nashville Airport Authority's current board and appointing new board members effective immediately upon becoming law. The remainder of the Act takes effect July 1, 2023.

37. The Nashville Airport Authority Transfer Act did not amend Tenn. Code Ann. § 42-4-102(a), so the Nashville Airport Authority statutorily remains an agency and instrumentality of Metro Nashville, even though Metro Nashville no longer appoints a controlling majority of the Authority's board.

38. Because state officials will appoint a voting majority to the Nashville Airport Authority board and have unfettered dismissal powers, the Act converts the Authority into a discretely presented component unit of state government that must be reported on the State's financial statement rather than on Metro Nashville's pursuant to generally accepted accounting principles. Under Tennessee Constitution Art. II, § 24, the Authority will be prohibited from expending funds except pursuant to a state appropriation made by law, and it can incur no operating debt except that it be repaid in the fiscal year of issuance. This is clearly a fundamental transfer in the Authority's governance. *See generally Hearing on H.B. 1176 Before the H. Finance, Ways, & Means Comm., 2023 Leg., 113th Gen. Assembly (Apr. 11, 2023) (statement of Witness Bill Bradley).*

39. Because state appointees will constitute 75% of the newly constituted Authority, the Act creates significant risk of disrupting federal airport funding for the Authority. In matters in which a proposed change in an airport's governance structure is

contested by the current operator, the Federal Aviation Administration will not act on a proposed change of operating authority until the dispute is resolved. *See Policy on Evaluating Disputed Changes of Sponsorship at Federally Obligated Airports*, 81 Fed. Reg. 36144 (June 6, 2016); Letter from D. Kirk Shaffer to Gov. Lee, Senate Speaker McNally, and House Speaker Sexton (Apr. 17, 2023), attached as Exhibit 2.

40. The House sponsor's statements on control of the Nashville Airport Authority were facially inaccurate. *Compare Hearing on H.B. 1176 and S.B. 1326 on the House Floor*, 2023 Leg., 113th Gen. Assembly 26 (Apr. 20, 2023) (statement of Rep. Johnny Garrett, R-Goodlettsville) ("There is no change in ownership. There is no change in governance. Even though the new members may be on the board, they're still governed by the same bylaws, they still have the same staff. The only thing that's changing is who gets to appoint members of the board, so this does not trigger any FAA issues."), *with* THIRD AMENDED AND RESTATED BYLAWS OF THE METROPOLITAN NASHVILLE AIRPORT AUTHORITY (Nov. 28, 2018), at Article II, § 2.1 (Board has general power to govern the Authority), Article III, § 3.2 (Board has power to appoint President, and major officers appointed by the President are subject to Board approval), Article VII (Board may "alter[], repeal[], or restate" bylaws or add new bylaws by majority vote at two successive meetings).¹

41. Thus, a new board would necessarily be a change in governance, as it would have the power to change the bylaws and the staff. The sponsor's explanation of the legislation's effects was factually incorrect.

¹ https://www.nashville.gov/sites/default/files/2021-03/airport_authority_bylaws.pdf?ct=1616008674.

III. The State's Pretextual Rationale for Targeting Nashville.

42. The legislative history of the Nashville Airport Authority Transfer Act demonstrates that the Act's governance provisions were explicitly drafted to target solely Metro Nashville and the Metro Nashville Airport Authority.

43. In response to a question asking why the Act did not apply to other airports or other authorities in the State, the Senate sponsor indicated that he specifically structured the legislation around Nashville and offered promises about sponsoring similar legislation in the future targeting other airports. *Hearing on S.B. 1326 Before the S. Transp. & Safety Comm.*, 2023 Leg., 113th Gen. Assembly (Mar. 15, 2023) (statement of Sen. Paul Bailey, R-Sparta) ("I'm more than willing to bring legislation back next year relative to all of those other airports throughout the state. In looking at that, they're not all metro-governed. They are city and county governments relative to those airports. *Specifically, I had requested a lot of information regarding the Nashville Metro Airport. That's information that I structured this legislation based on.* But I can assure you come next year we will be filing legislation to assist those four other airports in the state.") (emphasis added).

44. In response to a follow-up question as to why the legislation could not wait until next year, and why Nashville was being singled out, Senator Bailey stated: "BNA is the flagship of the state of Tennessee and something that we can all be proud of, and with us moving this legislation forward, we'll be able to continue the growth there at BNA." *Id.*

45. Before the Tennessee Senate passed the legislation on March 30, 2023, the Senate sponsor stated that the General Assembly created the Nashville Airport Authority. *Hearing on S.B. 1326 on Senate Floor*, 2023 Leg., 113th Gen. Assembly 21 (Mar. 30, 2023) (statement of Sen. Paul Bailey, R-Sparta) ("As previously mentioned, the airport authority was created in 1970 by the 86th Tennessee General Assembly."). That statement is factually

incorrect. Metro Nashville created the Nashville Airport Authority by resolution of the Metro Council approved by the Mayor.

46. The House sponsor confirmed that the Nashville Airport Authority Transfer Act applied only to Nashville. In response to a question asking why Nashville was being singled out and whether this legislation was a precursor to future actions against the other airports funded by the State, the House sponsor stated: “I can’t answer what could come down, or what might happen in the future. This legislation only relates to this particular airport, with this particular situation. There’s no way I could predict or try to create a hypothetical about what might happen to the other airports. What I probably would say is that they would want a great, sustaining relationship with the State to make sure that they have a strategic long-term plan, would be my guess.” *Hearing on H.B. 1176 Before the H. Finance, Ways, & Means Comm.*, 2023 Leg., 113th Gen. Assembly (Apr. 11, 2023) (statement of Rep. Johnny Garrett, R-Goodlettsville). When asked to clarify whether BNA’s relationship with the State was “strained,” the sponsor stated, “Not that I’m aware of.”

47. The Act’s sponsors claimed the State’s takeover of the Nashville Airport Authority was needed because the State “funded” the Authority, either by government appropriation or through Tennessee residents using the airport. In response to a question about why the Nashville Airport Authority’s board membership was being reconstituted, the House sponsor claimed the change in control would reflect the Authority’s funding sources: “The airport authority, in the area that it is, it’s not funded by that particular area. It’s actually funded by the entire State of Tennessee. So the board is not representative from the entire state of Tennessee, through us, through our various speakers. They now will be representative by the board of this new airport authority from the people rather than one particular area.” *Hearing on H.B. 1176 Before the H. Transp. Subcomm.*, 2023 Leg., 113th Gen. Assembly (Mar. 1, 2023) (statement of Rep. Johnny Garrett, R-Goodlettsville).

48. The House sponsor reiterated this claim two weeks later in committee testimony: “This legislation is just simply allowing appointments to the commission through representatives of, from the State of Tennessee through their respective speakers of the House and the Governor. The reason is, the utmost reason is, because the State funds the Airport....Tennesseans across this state, not just those from Davidson County, are funding the airport. So we hope, I hope, that the point of this legislation is to make all taxpaying Tennesseans a part of this airport, since it is Tennesseans that fund it.” *Hearing on H.B. 1176 Before the H. Gov. Operations Comm., 2023 Leg., 113th Gen. Assembly (Mar. 13, 2023)* (statement of Rep. Johnny Garrett, R-Goodlettsville).

49. The sponsors’ contention that the State “funds” the Metro Nashville Airport Authority is an exaggeration that grossly generalizes the financial relationship between the State, Metro Nashville, and the Authority.

50. In fact, the Metro Nashville Airport Authority is not “funded” by the State of Tennessee. It derives its revenue from multiple sources and funds its capital expenses by bonds it issues itself. As explained in the most recent ANNUAL COMPREHENSIVE FINANCIAL REPORT OF MNAA,² the Authority is “self-supporting, using aircraft landing fees, fees from terminal and other rentals and revenue from parking, concessions, and various additional sources to fund operating expenses. The Authority is not taxpayer funded. The Capital Improvement Program is funded by bonds issued by the Authority, federal and state grants, passenger facility charges (PFCs) and other discretionary funds.” *Id.* at 8.

51. To wit, for the year ending June 30, 2022, the Authority’s total operating revenue was \$210,228,864. *Id.* at 36. By comparison, in that year, the Authority received a total of \$29,853,233 in State assistance. *Id.* at 141. The State assistance was roughly

² <https://flynashville.com/wp-content/uploads/2022/11/ACFR-063022-FS-Revised.pdf>.

equivalent to the \$26,265,848 in federal assistance the Authority received for the same year.
Id.

52. In fact, the Nashville Airport Authority is largely independent of funding from the State of Tennessee. *See Hearing on S.B. 1326 Before the S. Transp. & Safety Comm.*, 2023 Leg., 113th Gen. Assembly (Mar. 15, 2023) (statement of Sen. Heidi Campbell, D-Nashville) (“It seems to me right now we’re doing a pretty good job running this airport. Metro Nashville is one of the few in the State that’s really successful, one of the only ones that’s making a significant amount of money. In 2022, the net operating income was \$18 million. They brought it to \$210 million in revenue, so the Metro Nashville Airport Authority is paying. And when you break it down to the operating revenue, it’s 100% operated by revenues that are created onsite. Over the last three years, the capital grants from the FAA were 4.5%, the grants from the State only 9%. And the Airport Authority itself, and this is an important number, 86.6%. So it looks to me like this is a pretty well run Airport Authority currently.”).

53. Further, the State has the “express duty” of auditing the books of any airport authority in the state. Tenn. Code. Ann. § 42-2-222. If the State had concerns about the Nashville Airport Authority’s use of funds, it had a lawful and constitutional avenue to address those concerns.

54. All metropolitan airport authorities in the State created pursuant to the enabling Act are structured the same way as the Nashville Airport Authority, in that they are funded primarily by operating revenues and their boards are appointed by the local governments. All of the authorities receive funds from the State and the federal government. To the extent they receive funding from the State, the appropriation is combined into a single appropriation for “5 major airports” in the State budget, meaning that Metro Nashville Airport Authority is only one in a group of five major airports for State funding purposes, not a unique entity. Yet none of the five major airports other than Nashville was targeted by the

Act. Compared to operating revenues and federal funding, the State is a minor source of funds for the five metropolitan airport authorities in Tennessee. And all of the metropolitan airports serve Tennesseans who live outside the municipality that created them, not just the Nashville Airport. The General Assembly's financial justification for the Act is a pretext.

IV. Nashville Is Being Singled Out for Disparate Treatment.

55. The Nashville Airport Authority Transfer Act does not transfer control of Memphis-Shelby County Airport Authority's board of commissioners to the State.

56. The City of Memphis is, like Metro Nashville, a "metropolitan region" of the state under the Metropolitan Airport Authority Act. Memphis created the Memphis-Shelby County Airport Authority in 1969 pursuant to the Airport Authority Act. Its commissioners are appointed by either the Mayor of Memphis or the Shelby County Mayor and approved by the Memphis City Council. The airports controlled by the Memphis-Shelby County Airport Authority, particularly Memphis International Airport, are the busiest cargo airports in the nation. In 2021, Memphis International Airport handled 24.9 billion lbs. of landed cargo, while the Metro Nashville International Airport handled 475 million lbs. of landed cargo. https://www.faa.gov/sites/faa.gov/files/2022-08/cy21-cargo-airports_0.pdf.

57. The Nashville Airport Authority Transfer Act does not transfer control of Chattanooga Metropolitan Airport Authority's board of commissioners to the State.

58. The City of Chattanooga is, like Metro Nashville, a "metropolitan region" of the state under the Airport Authority Act. Chattanooga transferred control of its airport to the Chattanooga Metropolitan Airport Authority in July 1985 pursuant to the Metropolitan Airport Authority Act. Each board member is appointed by the Mayor of Chattanooga and approved by the Chattanooga City Council. <https://chattanooga.gov/boards-commissions>; <https://www.chattairport.com/cmaa-board-of-commissioners>.

59. The Nashville Airport Authority Transfer Act does not transfer control of Metropolitan Knoxville Airport Authority's board of commissioners to the State.

60. The City of Knoxville is, like Metro Nashville, a "metropolitan region" of the state under the Airport Authority Act. Knoxville created the Metropolitan Knoxville Airport Authority in 1978 pursuant to the Metropolitan Airport Authority Act. The Authority owns and manages the McGhee Tyson Airport in Blount County, Tennessee, and the Downtown Island Airport in Knoxville. <https://www.dkxairport.com/about/>. The Authority's board is appointed by the Mayor of Knoxville and confirmed by the Knoxville City Council.

61. Tennessee has two other metropolitan governments: the Metropolitan Government of Lynchburg, Moore County, and the Hartsville/Trousdale County Government. Neither of those metropolitan governments qualifies as a "creating municipality" under the Airport Authority Act, as the population of each county is less than 10,000 residents, and a "creating municipality" must have a population of at least 100,000 residents. There is no plausible circumstance in which either of the two metropolitan governments could qualify as a creating municipality in the foreseeable future, much less be affected by the Nashville Airport Authority Transfer Act's threshold of 500,000 residents.

V. Metro Nashville Has Not Consented to the State Takeover of the Airport.

62. Tennessee law already provides the State with the power to acquire the Metro Nashville Airport, but it can do so only with the consent of Metro Nashville. Tenn. Code Ann. § 42-2-204(a)(3) ("In like manner, the department [of transportation] may acquire existing airports and air navigation facilities; provided, that it shall not acquire or take over any airport, air navigation facility, aviation easement or easement in airport hazards owned or controlled by a municipality of this or any other state without the consent of the municipality.").

63. This restriction on the State's ability to acquire existing airports, adopted in 1957 as Public Chapter No. 374, provided assurance to Metro Nashville in 1970, when it transferred ownership of its municipal airport to its newly created airport authority, that the State could not acquire or take control of the airport without Metro Nashville's consent. By passing the Nashville Airport Authority Transfer Act, the General Assembly now seeks to circumvent this protection and "take over" Metro Nashville airport without its approval.

CAUSES OF ACTION

I. THE NASHVILLE AIRPORT AUTHORITY TRANSFER ACT IS UNCONSTITUTIONAL UNDER THE LOCAL LEGISLATION CLAUSE IN ARTICLE XI, SECTION 9 OF THE TENNESSEE CONSTITUTION.

64. Plaintiff adopts and incorporates all allegations in the preceding paragraphs as if fully set forth herein.

65. The Local Legislation Clause of the Tennessee Constitution reads in full:

The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

Tenn. Const., art. XI, § 9, ¶ 2.

66. Any legislation to which the Local Legislation Clause applies that omits local approval language is "absolutely and utterly void." *Farris v. Blanton*, 528 S.W.2d 549, 551 (Tenn. 1975).

67. The Nashville Airport Authority Transfer Act is local in form and effect. It only applies to the Nashville Airport Authority, which is an agency and instrumentality of Metro Nashville. The Act vacates the existing Nashville Airport Authority board and shifts

authority to appoint controlling membership of the board from the Metro Mayor and Council to the State. There is no reasonable expectation that the Act will apply to any other local government's airport authority absent future legislative action.

68. The Act does not contain a provision requiring consent of the voters of Metro Nashville or a two-thirds vote of the Metro Council before taking effect.

69. Because the Act applies only to Metro Nashville without the mandatory local approval language, it violates the Local Legislation Clause in the Home Rule Amendment.

70. Metro Nashville requests that the Court enter a declaratory judgment holding the Nashville Airport Authority Transfer Act unconstitutional and an order enjoining its enforcement.

II. THE NASHVILLE AIRPORT AUTHORITY TRANSFER ACT IS UNCONSTITUTIONAL UNDER ARTICLE XI, SECTION 8 OF THE TENNESSEE CONSTITUTION.

71. Plaintiff adopts and incorporates all allegations in the preceding paragraphs as if fully set forth herein.

72. The full text of Article XI, Section 8, of the Tennessee Constitution states as follows:

The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities, or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law. No corporation shall be created or its powers increased or diminished by special laws but the General Assembly shall provide by general laws for the organization of all corporations, hereafter created, which laws may, at any time, be altered or repealed and no such alteration or repeal shall interfere with or divest rights which have become vested.

Id.

73. The Nashville Airport Authority Transfer Act treats the Metro Airport Authority differently than any other metropolitan airport authority in the State for no rational purpose.

74. Metro Nashville requests that the Court enter a declaratory judgment holding the Nashville Airport Authority Transfer Act unconstitutional and an order enjoining its enforcement.

PRAYER FOR RELIEF

WHEREFORE, Metro Nashville demands judgment against Defendants Bill Lee, Randy McNally, and Cameron Sexton, in their official capacities, and prays that the Court award the following relief:

1. A judgment and order declaring the Metro Nashville Airport Authority Transfer Act facially unconstitutional and therefore null and void;
2. A temporary and permanent injunction preventing Defendants Governor Lee, Speaker McNally, and Speaker Sexton from implementing the Metro Nashville Airport Authority Transfer Act in any way; and
3. Such further and general relief as the Court deems appropriate at law or in equity.

Respectfully submitted,

DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

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DIRECTOR OF LAW

/s/ Melissa Roberge

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PUBLIC ACTS, 1969 [Chapter 174

PASSED: April 29, 1969

Frank C. Gorrell,
SPEAKER OF THE SENATEWilliam L. Jenkins,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED: May 1, 1969

Buford Ellington,
GOVERNOR

CHAPTER NO. 174**SENATE BILL NO. 531**

By Gorrell, Roberson, Ayres

Substituted for: House Bill No. 642

By McKinney, White (Davidson), Love, Morgan,
Bradley, Blakemore, Cole, Doyle

AN ACT to declare the necessity for and to authorize the creation and dissolution of metropolitan airport authorities by certain municipalities and counties; defining the powers and duties of such authorities and prescribing the manner of their exercise; granting certain powers to municipalities and counties in relation to such authorities; exempting the property of such authorities, and their bonds and the interest thereon, from taxation; providing that such

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bonds shall be legal investments; granting remedies to the obligees of such authorities; and declaring that this act shall take effect from and after its passage.

Gorrell,
SENATE

SECTION 1. SHORT TITLE.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, That this Chapter may be cited as the "Metropolitan Airport Authority Act".

Jenkins,
FATIVES

SECTION 2. DECLARATION OF PURPOSE AND NECESSITY; EXEMPTION FROM TAXATION.

BE IT FURTHER ENACTED, That it is hereby determined and declared that the present and projected rapid growth in air traffic, the need for adequate terminal facilities in the metropolitan regions of the state, the need to eliminate airport hazards without regard to municipal and county boundaries, and the need to raise large amounts of capital without further burdening the taxpayers in such regions, all require that local governments in metropolitan regions should have the option of placing the control, operation and financing of metropolitan airports in regional and metropolitan instrumentalities. It is hereby declared that airport authorities created pursuant to this chapter shall be public and governmental bodies acting as agencies and instrumentalities of the creating and participating municipalities; and that the acquisition, operating and financing of airports and related facilities by such airport authorities is hereby declared to be for a public and governmental purpose and a matter of public necessity. The property and revenues of the authority or any interest therein shall be exempt from all state, county and municipal taxation.

Ellington,
VERNOR

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3, Morgan,

SECTION 3. DEFINITIONS.

BE IT FURTHER ENACTED, That the following words or terms whenever used or referred to in this chapter shall have the following respective meanings unless different meanings clearly appear from the context:

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s by certain
1 duties of such
ercise; granting
elation to such
rities, and their
iding that such

(a) "authority" shall mean a metropolitan airport authority created pursuant to the provisions of this chapter;

(b) "creating municipality" shall mean any city or metropolitan government having a population of not less than 100,000, or any county in which any such city shall be situated, which shall create an authority pursuant to this chapter;

(c) "participating municipality" shall mean any city, town or county; which city, town or county, pursuant to a resolution of its governing body and an agreement with the creating municipality, shall have sold, leased, dedicated, donated or otherwise conveyed its airport to the authority for operation by the authority in order to make such airport an operational part of its airport system;

(d) "airport" shall mean and include any one or more airports or heliports and related facilities, including but not limited to, land and interests in land, facilities for storage of air and space craft, navigation and landing aids, taxiways, pads, aprons, control towers, passenger and cargo terminal buildings, hangars, administration and office buildings, garages, parking lots, and such other structures, facilities and improvements necessary or convenient to the development and maintenance of airports and heliports, and for the promotion and accomodation of air and space travel, commerce and navigation;

(e) "governing body" shall mean the chief legislative body of any creating or participating municipality;

(f) "Board" shall mean the Board of Commissioners of an authority;

(g) "executive officer" shall mean the Mayor,

County Judge or other chief executive officer of any creating or participating municipality;

(h) "carrier" shall mean any person or corporation engaged in the air or space transportation of passengers or cargo;

(i) "bonds" shall include notes, interim certificates or other obligations of an authority;

(j) "state" shall mean the State of Tennessee.

SECTION 4. CREATION OF A METROPOLITAN AIRPORT AUTHORITY.

BE IT FURTHER ENACTED, That any city or metropolitan government having a population of not less than 100,000, or any county including any such city, may create a metropolitan airport authority in the manner hereinafter provided.

The governing body of the creating municipality shall adopt, and its executive officer shall approve, a resolution calling a public hearing on the question of creating a metropolitan airport authority. Notice of the date, hour, place and purpose of such hearing shall be published at least once each week for two consecutive weeks in a newspaper of general circulation in the creating municipality, the last such publication to be at least one week prior to the date set for the hearing.

Such hearing shall be had before the governing body and all interested persons shall have an opportunity to be heard.

After such hearing, if the governing body shall determine that the public convenience and necessity require the creation of a metropolitan airport authority it shall adopt, and its executive officer shall approve, a resolution so declaring and creating an authority, which resolution shall also designate the name and principal office address of the authority. A certified copy of such resolution shall be filed with the Secretary of State of the State of Tennessee and with the Tennessee Aeronautics Commission, along with the resolution

approving the appointment of the Board of Commissioners as provided for in Section 5, and upon such adoption and filing the authority shall constitute a body politic and corporate, with all the powers hereinafter provided. A certified copy of said resolution shall also be filed with the Administrator of the Federal Aviation Administration.

Whenever an authority shall be created under this chapter the creating municipality and any participating municipality shall enter into an agreement with the authority for the orderly transfer to the authority of the airport properties, functions, and outstanding obligations of such municipalities. Such agreement may include provisions for the reimbursement of any such municipality for its obligations issued for airport purposes, and such agreement may also include provisions for the payment of tax equivalents by the Authority and its lessees on all or any part of the properties owned by the Authority and any improvements owned by the Authority or its lessees to the principal and/or participating municipalities.

SECTION 5. GOVERNING BODY:

BE IT FURTHER ENACTED, That the governing body of the authority shall be a Board of Commissioners of seven persons appointed by the executive officer of the creating municipality and approved by its governing body, who shall have no financial interest in an airport or its concessions. Such Board of Commissioners shall include a person of good standing and reputation in each of the following fields: engineering, law, industry or commerce, and finance.

Not less than two (2) of the Commissioners shall hold a valid airman's certificate issued by the F. A. A.; and at least one of the airman's certificates shall be a valid private pilot's rating or higher pilot rating. Student certificates shall not satisfy the requirements of the preceding sentence. The engineer shall be an engineer licensed to practice in the State of Tennessee and shall have actively practiced his profession for the preceding five (5) years. The lawyer shall be licensed to practice

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before the highest court in the State of Tennessee and shall have been so licensed for a period of not less than five (5) years. The Commissioners appointed from the fields of industry, commerce and finance shall be eminently qualified in their particular field of endeavor. All Commissioners shall be of excellent character and reputation.

If there be one or more participating municipalities, one member of the Board shall be appointed from the person or persons nominated by the executive officers of the participating municipalities. If there shall be two or more participating municipalities two members of the Board, but not exceeding two, may be appointed from persons nominated by each of the executive officers of the participating municipalities. At least five members shall be residents of the creating municipality, but no commissioner shall be an officer or employee of the creating municipality or a participating municipality.

Commissioners first appointed to the Board shall be appointed for terms of 1, 2, 3, 4, 5, 6 and 7 years, respectively, but thereafter each commissioner shall be appointed for a term of seven years. Any vacancy by reason of non-residence, incapacity, resignation or death shall be filled in like manner for the unexpired term. A commissioner's term shall continue until the appointment and qualification of his successor. A commissioner may be removed from office by a two-thirds vote of the governing body of the creating municipality, but only after notice of the cause of such removal shall have been served upon the commissioner, and only after he shall have been granted an opportunity for a public hearing on such cause.

The Board shall elect from among its members a chairman and vice chairman, each of whom shall continue to be voting members, and shall adopt its own bylaws and rules of procedure. A majority of the Commissioners shall constitute a quorum for the transaction of business. Except as herein expressly otherwise specified all powers herein granted to an authority shall be exercised by the Board.

Commissioners shall receive no salary but shall be

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reimbursed for necessary expenses incurred in the performance of their official duties.

SECTION 6. OFFICERS.

BE IT FURTHER ENACTED, That the Board shall appoint a President, who shall be the chief executive and administrative officer of the authority, and shall enter into a contract with him establishing his salary and term of office. The President shall appoint, and the Board shall confirm, the following additional officers; a secretary, an auditor, legal counsel, a treasurer and a chief engineer. All other officers and employees of the authority shall be appointed by the President, subject to any civil service plan adopted by the Board. The President shall prepare annually the operating budget of the authority and submit the same to the Board for approval at least 60 days prior to the beginning of the fiscal year. If such budget shall not have been acted upon by the Board on the first day of the fiscal year, it shall then automatically go into effect. The President shall also submit such periodic reports to the Board as it may direct. The President shall attend all meetings of the Board.

SECTION 7. GENERAL POWERS.

BE IT FURTHER ENACTED, That an Authority shall have all powers necessary to accomplish the purposes of this chapter (excluding the power to levy and collect taxes and special assessments) including, but not limited to, the following:

(a) to have perpetual succession, to sue and be sued, and to adopt a corporate seal;

(b) to plan, establish, acquire, construct, improve and operate one or more airports within or without the creating municipality and within this state and within any adjoining state;

(c) to acquire real or personal property or any interest therein by gift, lease, or purchase, for any of

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the purposes herein provided, including the elimination, prevention or marking of airport hazards; and to sell, lease, or otherwise dispose of any such property; to acquire real property or any interest therein in areas most affected by aircraft noise for the purpose of resale or lease thereof, subject to restrictions limiting its use to industrial or other purposes least affected by aircraft noise;

(d) to enter into agreements with the creating municipality, and with participating municipalities, to acquire by lease, gift, purchase, or otherwise, any airport of such municipality and to operate such airport as a part of its metropolitan airport;

(e) to enter into agreements with the creating municipality and participating municipalities with respect to the manner of transfer of airport employees of such municipalities to the Authority, and with respect to the retention by such employees of existing civil service status and accrued pension, disability, hospitalization and death benefits;

(f) to enter into, by contract with the creating municipality or otherwise, a plan of civil service for employees of the Authority;

(g) to enter into, by contract with the creating municipality or otherwise, a plan for pension, disability, hospitalization and death benefits for the officers and employees of the authority;

(h) to make application directly to the proper federal, state, county and municipal officials and agencies, or to any other source, public or private, for loans, grants, guarantees or other financial assistance in aid of airports operated by it, and to accept the same;

(i) to make studies and recommend to the appropriate legislative body of the principal and participating municipalities, zoning changes in the

area of any airport operated by the authority with respect to height and aviation obstructions in order to enable the authority to meet the requirements of any Federal Aviation Administration regulations.

(j) to have control of its airport with the right and duty to establish and charge fees, rentals, rates and other charges, and to collect revenues therefrom, not inconsistent with the rights of the holders of its bonds, and to enter into agreements with carriers for the payment of landing fees, rental rates and other charges.

(k) to appoint a president, and to confirm or reject the President's appointments of a secretary, a treasurer, an auditor, legal counsel and a chief engineer; to prescribe their duties and qualifications; and to fix their compensation;

(l) to use in the performance of its functions the officers, agents, employees, services, facilities, records and equipment of the creating municipality or any participating municipality, with the consent of any such municipality, and subject to such terms and conditions as may be agreed upon;

(m) to enter upon such lands, waters or premises as in the judgment of the authority may be necessary for the purpose of making surveys, soundings, borings and examinations to accomplish any purpose authorized by this chapter, the authority to be liable for actual damage done;

(n) to provide its own fire protection, police and crash and rescue service;

(o) to contract with carriers with regard to the landing, accomodation and servicing of aircraft; the loading and unloading of cargo, passengers and baggage; and the accomodation of the employees and passengers of such carriers;

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(p) to contract with persons or corporations to provide goods and services for the use of the employees and passengers of the carriers and the employees of the authority, and necessary and incidental to the operation of the airport.

(q) to designate an independent certified public accountant firm to do an annual post audit of all books, accounts and records of the Airport Authority and issue a public report thereon.

SECTION 8. EMINENT DOMAIN.

BE IT FURTHER ENACTED, That any participating or creating municipality may acquire any interest in land within the boundaries of the creating or participating municipality by gift, purchase, lease or condemnation, and may transfer such interest to an authority by sale, lease or gift. Such transfer may be authorized by ordinance of the governing body of the municipality without submission of the question to the voters and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law.

SECTION 9. BONDS.

BE IT FURTHER ENACTED, That the authority shall have power to issue negotiable bonds from time to time in order to accomplish any of the purposes authorized by this chapter, and it shall also have power to issue refunding bonds for the purposes, and in the amounts and manner provided in Section 6-1603 (q), Tennessee Code Annotated. All such bonds shall be payable solely from all or any part of the revenues, income and charges of the authority and such bonds shall not constitute an obligation of the creating municipality, and the bonds shall so state.

Such bonds shall be authorized by resolution of the Board and shall bear such date, mature at such time or times, bear interest at such rate or rates payable annually or semiannually, be in such form and denominations, be subject to such terms of redemption

with or without premium, carry such registration privileges, be payable in such medium and at such place or places, be executed in such manner, all as may be provided in the resolution authorizing the bonds. Such bonds may be sold at public or private sale in such manner and for such amount as the Board may determine.

Such resolution may include any covenants with the bondholders deemed necessary by the Board to make such bonds secure and marketable, including, but without limitation, covenants regarding the application of the bond proceeds; the pledging, application and securing of the revenues of the authority; the creation and maintenance of reserves; the investment of funds; the issuance of additional bonds; the maintenance of minimum fees, charges and rental; the operation and maintenance of its airport; insurance and insurance proceeds; accounts and audits; the sale of airport properties; remedies of bondholders; the vesting in a trustee or trustees such powers and rights as may be necessary to secure the bonds and the revenues and funds from which they are payable; the terms and conditions upon which bondholders may exercise their rights and remedies; the replacement of lost, destroyed or mutilated bonds; the definition, consequences and remedies of an event of default; the amendment of such resolution; and the appointment of a receiver in the event of a default.

Any holder of any such bonds, including any trustee for any bondholders, may enforce his or their rights against the authority, its Board or any officer, agent or employee thereof by mandamus, injunction or other action in any court of competent jurisdiction, subject to the covenants included in the bond resolution.

All sums received as accrued interest from the sale of any bonds shall be applied to the payment of interest on such bonds. All sums received as principal or premium from such sale shall be applied to the purpose for which such bonds were issued, and may include, but without limitation, expenses for fiscal, legal, engineering and architectural services, expenses for the authorization, sale and issuance of the bonds, expenses

for obtaining an economic feasibility survey in connection with such bonds, and to create a reserve for the payment of not exceeding one year's interest on such bonds.

Bonds issued pursuant to this chapter executed by officers in office on the date of such execution shall be valid obligations of the authority notwithstanding that before the delivery thereof any or all of the persons executing the same shall have ceased to be such officers.

Bonds issued pursuant to this chapter, and the income therefrom, shall be exempt from all state, county and municipal taxation except inheritance, transfer and estate taxes.

All public officers and bodies of the state, municipal corporations, political subdivisions, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, all executors, administrators, guardians, trustees, and all other fiduciaries in the state may legally invest funds within their control in bonds of an authority.

SECTION 10. CIVIL SERVICE.

BE IT FURTHER ENACTED, That the Authority by action of its Board may elect to come under the civil service plan of the creating municipality, to be administered by the civil service commission or board of such municipality; or may adopt its own civil service plan to be administered by the Board, which plan shall include, but need not be limited to, the following provisions:

(a) entry into the service on the basis of open competition; and service, promotions and remuneration on the basis of merit, efficiency and fitness;

(b) classifications of the positions in the service;

(c) the rating of candidates on the basis of publicly announced competitive examinations and the maintenance of lists of eligible candidates;

(d) employment of candidates from the eligible lists in the highest qualified rating;

(e) probationary periods not to exceed six months;

(f) disciplinary action, suspension or discharge of employees for cause only with the right of notice and review;

(g) schedules of compensation and pay increases prepared by the President and approved by the Board;

(h) promotion on the basis of ascertained merit, seniority in service, and competitive examinations;

(i) provision for keeping service records on all employees;

(j) regulations for hours of work, attendance, holidays, leaves of absence and transfers; and procedures for layoffs, discharge, suspension, discipline and reinstatement;

(k) the exemption from civil service of persons employed to render professional, scientific technical or expert service of a temporary or exceptional character; persons employed on projects paid from the proceeds of bonds issued by the authority; and persons employed for a period of less than three months in any twelve-month period;

(l) review by the Board, at the request of the employee in question and after notice and public hearing of any disciplinary action, suspension or discharge of any employee, which action, suspension or discharge may be affirmed, modified or reversed by the Board. Findings of fact by the Board shall not be subject to review by any court except for illegality or want of jurisdiction.

SECTION 11. CERTAIN POWERS OF MUNICIPAL CORPORATIONS AND COUNTIES.

BE IT FURTHER ENACTED, That any creating municipality and any participating municipality shall have all necessary powers in order to further the purposes of this chapter, including, without limitation, the following, any or all of which powers may be exercised by resolution of its governing body;

(a) to advance, donate or lend money or real or personal property to the authority;

(b) to provide that any funds on hand or to become available to it for airport purposes shall be paid directly to the authority;

(c) to cause water, sewer, gas, electric or other utility services to be provided to the authority airport;

(d) to sell, lease, dedicate, donate or otherwise convey to the authority any of its interest in any existing airport or other related property, or grant easements, licenses or other rights or privileges therein to the authority;

(e) to open and improve streets, roads and alleys to said airport;

(f) to provide police and fire protection services to said airport;

(g) to enter into agreements with the authority with regard to the transfer of its airport employees to the authority with the retention by such employees of any civil service status and accrued rights in pension, disability, hospitalization and death benefits.

SECTION 12. MUNICIPAL ZONING AUTHORITY UNAFFECTED.

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BE IT FURTHER ENACTED, That nothing contained in this chapter shall be construed to limit any power of a municipality to regulate airport hazards by zoning.

SECTION 13. DISSOLUTION: DISPOSITION OF PROPERTY.

BE IT FURTHER ENACTED, That whenever the governing bodies of the creating municipality and the participating municipalities shall each by resolution determine that the purposes for which the authority was created have been substantially accomplished, that all of the bonds and other obligations of the authority have been fully paid, and that such municipalities have agreed on the distribution of the funds and other properties of the authority, then the executive officers of such municipalities shall execute and file for record with the Secretary of State of the State of Tennessee a joint certificate of dissolution reciting such facts and declaring the authority to be dissolved. Upon such filing the authority shall be dissolved, and title to all funds and other properties of the authority at the time of such dissolution shall vest in and be delivered to such municipalities in accordance with the terms of their agreement relating thereto.

SECTION 14. SUPPLEMENTAL NATURE OF CHAPTER.

BE IT FURTHER ENACTED, That the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law, and are not in substitution for such powers, and the limitations imposed by this chapter shall not affect such powers. The powers herein granted may be exercised without regard to requirements, restrictions or procedural provisions contained in any other law or charter, except as herein expressly provided. Any metropolitan government or any home rule municipality authorized hereunder to create a metropolitan airport authority may do so without the necessity of a charter amendment, notwithstanding anything in its charter to the contrary.

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SECTION 15. SEVERABILITY.

BE IT FURTHER ENACTED, That if any section, subdivision, sentence, clause or phrase of this act, or the application thereof to any person or circumstance, is for any reason held invalid, the validation of the remainder of this act, or the application of such provision to other persons or circumstances, shall not be affected thereby. The General Assembly hereby declares that it would have passed this act, and each section, subdivision, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subdivisions, sentences, clauses or phrases, or the application thereof to any person or circumstance, might be held invalid.

SECTION 16. CONSTRUCTION: ACT CONTROLLING.

BE IT FURTHER ENACTED, That the provisions hereof shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this act may be inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

SECTION 17. EFFECTIVE DATE.

BE IT FURTHER ENACTED, That this Act shall take effect from and after its passage, the public welfare requiring it.

PASSED: April 28, 1969

Frank C. Gorrell,
SPEAKER OF THE SENATE

William L. Jenkins,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED: May 1, 1969

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D. Kirk Shaffer PLLC
kirk@dkirkshaffer.com 615-587-4242

April 17, 2023

The Honorable Bill Lee
Governor of Tennessee
State Capitol, First Floor
Nashville, TN 37243

The Honorable Randy McNally
Lieutenant Governor and Speaker of the Senate
425 Rep. John Lewis Way North
Cordell Hull Building, Suite 700
Nashville, TN 37243

The Honorable Cameron Sexton
Speaker of the House of Representatives
425 Rep. John Lewis Way North
Cordell Hull Building, Suite 600
Nashville, TN 37243

Re: HB 1176 / SB 1326

Dear Governor Lee, Lt. Governor McNally, and Speaker Sexton:

Earlier this year, I testified in front of legislative committees of the Tennessee General Assembly about my concern that pending legislation (HB 1176 / SB 1326) replacing the Board of Commissioners and altering the process for Board appointments at the Metropolitan Nashville Airport Authority (MNA) will likely cause serious disruption at Nashville International Airport (BNA) and John C. Tune Airport (JWN). I write now to reiterate that caution is warranted and to urge postponement of action on this legislation until the next session of the General Assembly so that further deliberation can occur.

I offer this perspective as one who has been a high-ranking official of both MNA and the Federal Aviation Administration (FAA). From 1986 to 2004, I served variously as Executive Assistant to the President, Director of Properties, and General Counsel of MNA. In 2007, President George W. Bush appointed me to serve as Associate Administrator for Airports at the FAA, leading the FAA office that regulates the national airport system including BNA and JWN and also oversees federal grant funding for airports through the Airport Improvement Program and other programs. After I left the FAA to return to the private practice of law, in 2018, President Donald J. Trump appointed me to serve again in the same position at the FAA. I am the only person to have served in that position twice, appointed by two Presidents. My responsibilities as Associate Administrator for Airports included administering national airport safety standards, planning, engineering, financial assistance, and compliance for public-use airports nationwide.

The MNAA was created by the Metropolitan Government of Nashville and Davidson County pursuant to an enabling statute enacted in 1970. For 53 years, the Mayor of Nashville appointed members to serve on the MNAA Board of Commissioners, subject to the approval of the Metropolitan Council. The MNAA Board has been composed of a bipartisan group of business, legal, and civic leaders and has functioned in a very successful, business-like fashion, separated from partisan politics. There has been at least one nominee who was not confirmed by the Council. Had any Commissioner committed some act or omission constituting cause for his or her removal from office, that Commissioner would have been entitled to notice from the Mayor, assured of due process, and removed only upon a two-thirds vote of the Council.

The pending legislation, however, proposes to terminate the existing Board and appointment and removal procedures, and replace them immediately with a new governance structure in which state officials would appoint all of the Board's voting members (HB 1176) or six out of eight positions (SB 1326) and could unilaterally remove those Commissioners without cause. It is my understanding that this transfer of control will result in MNAA becoming a component unit of the State of Tennessee, with potential ramifications for ownership, control, and financial accountability of BNA and JWN that have not yet been fully vetted. I also understand that an enacted law shifting appointment power from the Mayor to state officials will likely result in litigation challenging such a law.

If this legislation is enacted and the Metropolitan Government of Nashville and Davidson County challenges the enacted law in court, there likely will be two competing Boards—one Mayor-appointed and Council-confirmed, the other state-appointed—both purporting to represent MNAA. Absent judicial intervention to clarify who controls MNAA and who is responsible for the fulfillment of MNAA's very substantial federal obligations, the FAA will most likely not make any grant awards, including infrastructure grants, to MNAA until the dispute is resolved.

This expectation is based not only on my personal experience as the FAA Associate Administrator for Airports, but also on the FAA's declared policy about disputed changes in an airport's governance structure. The FAA has stated that (i) the "FAA's obligation extends to reviewing sponsor/operator eligibility when state and local governments propose a change in the airport governance structure to ensure that there is no ambiguity regarding responsibility for Federal obligations," and that (ii) "[i]n matters in which a proposed change is contested by a current sponsor or operator, the FAA will not act on a part 139 application or a change of airport sponsorship and/or operating authority until the dispute is definitively resolved to the satisfaction of the FAA." *FAA Notice of Policy on Evaluating Disputed Changes of Sponsorship at Federally Obligated Airports*, 81 Fed. Reg. 36144 (June 6, 2016).

It is not apparent that any exigency demands urgent action on HB 1176 / SB 1326. Nobody in the public debate has claimed any particular performance deficiency by MNAA, BNA, or JWN that this legislation would rectify. Rather, proponents of the legislation justify it on the basis that 70% of airport passengers come from outside Davidson County. But that is old news. Even in the mid-1980s when I first began representing MNAA, BNA's catchment area extended well into Southern Kentucky and Northern Alabama. The success for which MNAA is most known has occurred since then: the American Airlines hub, the development of the airfield to its present state, becoming the #10 Southwest Airlines operation in the nation, and the initial development, redevelopment, and expansion of the passenger terminal to its present state. For decades, all passengers, regardless of where they are from, have been exceptionally

well-served by MNAA. The legislation is not addressed at, and does not solve, any pressing performance problem in that respect.

The pending legislation thus carries significant risk of disrupting federal airport funding for BNA and JWN, without any countervailing urgency to act on the legislation having been identified. Incurring this risk is not in *anybody's* interest—not the airports, not MNAA, not the Metropolitan Government of Nashville and Davidson County, and not the State of Tennessee. I am concerned that enactment of the pending legislation promises a messy and costly stalemate that damages all involved. The legislation needs further study and discussion to address these considerations and produce a better outcome. To enable this further deliberation, I respectfully urge that action on the legislation be postponed until the next session of the General Assembly.

Respectfully,

A handwritten signature in cursive script, appearing to read "D. Kirk Shaffer". The signature is written in black ink and is positioned to the right of the word "Respectfully,".

D. Kirk Shaffer

cc: Sen. Paul Bailey
Rep. Johnny Garrett
John Cooper, Mayor, Metropolitan Government of Nashville and Davidson County
Wallace Dietz, Law Director, Metropolitan Government of Nashville and Davidson County
Jocelyn A. Stevenson, Chair, Metropolitan Nashville Airport Authority
Douglas E. Kreulen, President & CEO, Metropolitan Nashville Airport Authority