

**IN THE SUPREME COURT OF MISSISSIPPI
NO. 2011-TS-00016**

**IN THE MATTER OF THE EXTENSION OF
THE BOUNDARIES OF THE CITY OF
TUPELO, MISSISSIPPI**

**LEE COUNTY, MISSISSIPPI,
CITY OF SALTILLO, MISSISSIPPI,
THE BELDEN FIRE PROTECTION DISTRICT,
THE PALMETTO-OLD UNION FIRE PROTECTION
DISTRICT, AND THE UNITY FIRE PROTECTION
DISTRICT**

APPELLANTS

V.

CITY OF TUPELO, MISSISSIPPI

APPELLEE

**Appeal from the Chancery Court of
Lee County, Mississippi
Cause No. 08-1446-41**

**BRIEF OF APPELLANTS THE BELDEN FIRE PROTECTION DISTRICT,
THE PALMETTO-OLD UNION FIRE PROTECTION DISTRICT, AND
THE UNITY FIRE PROTECTION DISTRICT**

Oral Argument Requested

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DISTRICT**

APPELLANTS

V.

CITY OF TUPELO, MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Belden, Palmetto-Old Union, and Unity Fire Protection Districts hereby certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. The City of Tupelo, Mississippi, Appellee;
2. Lee County, Mississippi, Appellant;
3. The City of Saltillo, Mississippi, Appellant;
4. The Belden Fire Protection District, Appellant;
5. The Palmetto-Old Union Fire Protection District, Appellant;
6. The Unity Fire Protection District, Appellant;

7. The Town of Sherman, Mississippi, statutory defendant to the City of Tupelo's Annexation Petition;
8. The Town of Plantersville, Mississippi, statutory defendant to the City of Tupelo's Annexation Petition;
9. The City of Verona, Mississippi, statutory defendant to the City of Tupelo's Annexation Petition;
10. James L. Carroll, J. Chadwick Mask, Clifton M. Decker, and the law firm of Carroll Warren & Parker PLLC, Attorneys for Lee County, Mississippi;
11. Gary L. Carnathan and the law firm of Carnathan & McAuley, Attorney for Lee County, Mississippi, the Belden Fire Protection District, the Palmetto-Old Union Fire Protection District, and the Unity Fire Protection District;
12. Guy W. Mitchell, III, William Spencer, John Hill, Martha Bost Stegall, Margaret Sams Gratz, and the law firm of Mitchell McNutt and Sams, Attorneys for the City of Tupelo, Mississippi;
13. Jason D. Herring, Henderson M. Jones, and the law firm of Jason D. Herring, PA, Attorneys for the City of Saltillo, Mississippi;
14. Jason L. Shelton and the law firm of Shelton & Associates, PA, Attorney for the Town of Plantersville, Mississippi;
15. The individual objectors listed on Exhibit A to this Certificate of Interested Persons.

SO CERTIFIED, this the 20th day of July, 2011.



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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
EXHIBIT A TO CERTIFICATE OF INTERESTED PERSONS	iii
TABLE OF CONTENTS	viii
TABLE OF AUTHORITIES	ix
I. INTRODUCTION.....	1
II. STATEMENT OF THE ISSUES	4
III. STATEMENT OF THE CASE	4
A. Statement of the Facts	4
B. Statement of the Law	5
C. Standard of Review	6
IV. SUMMARY OF THE ARGUMENT	7
V. ARGUMENT	8
A. The Lee County Fire Protection Districts, Created Pursuant to <i>Mississippi Code Ann. § 19-5-151, et seq.</i> , Are the Sole Public Corporations Empowered to Provide Fire Protection Services Within Their Legally Defined Boundaries	10
B. The Lower Court Committed Manifest Error in Failing to Consider the Inequitable Impact Both on Residents and Property Owners Annexed and the Affected Fire Protection Districts as a Result of the City of Tupelo's Annexation	16
VI. CONCLUSION	29
CERTIFICATE OF SERVICE	31
CERTIFICATE OF SERVICE ON TRIAL JUDGE	32

TABLE OF AUTHORITIES

CASES

<i>Bassett v. Town of Taylorsville</i> , 542 So. 2d 918 (Miss. 1989)	7
<i>In re Extension of the Boundaries of the City of Batesville</i> , 760 So. 2d 697 (Miss. 2000).....	6, 7
<i>In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Biloxi</i> , 744 So. 2d 270 (Miss. 1999).....	6
<i>In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Clinton</i> , 920 So. 2d 452 (Miss. 2006).....	6
<i>In the Matter of Enlargement and Extension of the Municipal Boundaries of the City of Jackson</i> , 691 So. 2d 978 (Miss. 1997)	5
<i>In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Madison</i> , 650 So. 2d 490 (Miss. 1995)	5, 6
<i>In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Meridian</i> , 662 So. 2d 597 (Miss. 1995).....	6
<i>In the Matter of the Enlarging, Extending and Defining the Corporate Limits and Boundaries of the City of Horn Lake</i> , 57 So. 3d 1253 (Miss. 2011).....	1, 2, 3, 7, 9, 12, 13, 14, 15, 16, 17, 18, 21, 30
<i>In the Matter of the Extension of the Boundaries of the City of Hattiesburg</i> , 840 So. 2d 69 (Miss. 2003)	6
<i>In Re Extension of the Boundaries of the City of Columbus</i> , 644 So. 2d 1168 (Miss. 1994).....	6
<i>Western Line Consolidated School District v. City of Greenville</i> , 465 So. 2d 1057 (Miss. 1985)	2, 6, 9, 17, 19

STATUTES

<i>Mississippi Code Annotated</i> § 19-5-151, <i>et seq.</i>	1, 2, 7, 8, 9, 10, 11, 12, 14, 21
<i>Mississippi Code Annotated</i> § 19-5-165.....	1, 8, 11, 12
<i>Mississippi Code Annotated</i> § 19-5-175.....	1, 2, 8, 10, 11, 12, 15, 16, 19, 20, 21

OTHER

2000 WL 799973 (Miss. A.G. May 26, 2000).....14, 15, 21

I. INTRODUCTION

The Mississippi Legislature has explicitly authorized county boards of supervisors to provide for fire protection services in unincorporated areas through the creation of fire protection districts pursuant to *Mississippi Code Annotated* § 19-5-151, *et seq.* Pursuant to *Mississippi Code Annotated* §§ 19-5-165 and 19-5-175, once created, these fire protection districts become public corporations in perpetuity and are the “sole public corporations empowered to furnish [fire protection] services within such district.”

Recently, in *In the Matter of Enlarging, Extending and Defining the Corp. Limits and Boundaries of the City of Horn Lake*, this Court upheld the DeSoto County Chancery Court’s denial of Horn Lake’s annexation, in large part, due to Horn Lake’s failure to resolve the conflict its annexation created with regard to a statutorily-created fire protection district. *In the Matter of the Enlarging, Extending, and Defining the Corp. Limits and Boundaries of the City of Horn Lake*, 57 So. 3d 1253, 1266-67, 1270-71 (Miss. 2011). In upholding the lower court’s denial of Horn Lake’s annexation, this Court recognized the statutory legal right held by fire protection districts created pursuant to *Miss. Code Ann.* § 19-5-151, *et seq.* to be the “sole public corporation empowered” to provide fire protection services within their legally-established boundaries. *City of Horn Lake*, 57 So. 3d at 1266-67, 1270-71; *Miss. Code Ann.* § 19-5-175. In *City of Horn Lake*, this Court also recognized the inequitable double-taxation problem which results when an annexing municipality fails to address the conflict created by the presence of a fire protection district in the municipality’s proposed annexation area. *City of Horn Lake*, 57 So. 3d at 1270-71.

In the proceedings below, the City of Tupelo sought the approval of the Lee County Chancery Court of the enlargement and extension of Tupelo’s municipal boundaries to include seven (7) separate annexation areas. All of the territory sought to be annexed by Tupelo in the

proceedings below was situated within the boundaries of fire protection districts created by the Lee County Board of Supervisors pursuant to *Miss. Code Ann.* § 19-5-151, *et seq.* However, in no instance did the City of Tupelo seek to annex the entire geographical service area of any impacted District.

As in *City of Horn Lake*, Tupelo failed to resolve the conflict with the Lee County Fire Protection Districts during the course of the proceedings below. Rather, Tupelo placed a “plan” before the Lee County Chancery Court which proposed to deliver fire protection services to the annexed areas irrespective of the express statutory right of the Lee County Fire Protection Districts to be the sole public corporations empowered to provide such services, in direct conflict with *Miss. Code Ann.* § 19-5-175 and this Court’s holding in *City of Horn Lake*. 57 So. 3d at 1266-67, 1270-71.

Further, as was also the case in *City of Horn Lake*, Tupelo’s failure to resolve the fire protection conflict subjects annexed residents and property owners to inequitable double-taxation for fire protection services, paying both Lee County fire protection millage and City of Tupelo municipal taxes for fire protection services (despite the fact that the legal right to provide such services remains solely with the Lee County Fire Protection Districts, to the exclusion of the City of Tupelo). In addition, Tupelo’s disregard for the rights of the Fire Protection Districts creates uncertainty as to the financial viability of the impacted Fire Protection Districts and their ability (from a financial feasibility standpoint) to continue providing fire protection services in the unannexed portions of their respective service areas.

In *Western Line Consolidated School District v. City of Greenville*, this Court stated that an annexation “cannot be both inequitable and reasonable.” *Western Line Consol. Sch. Dist. v. City of Greenville*, 465 So. 2d 1057, 1060 (Miss. 1985). In *City of Horn Lake*, this Court recognized the inequitable impact on both annexed residents and property owners, as well as

impacted fire districts, when a municipality annexes into a statutorily-created fire protection district, without seeking resolution of the conflict created by the presence of such districts. 57 So. 3d at 1266-67, 1270-71. Nevertheless, the Lee County Chancery Court, despite substantial and credible evidence establishing these significant inequities, approved the City of Tupelo's annexation. In approving Tupelo's annexation, the Lee County Chancery Court found reasonable an annexation which results in the double-taxation of annexed residents and property owners; creates financial uncertainty as to the viability of impacted Districts and their ability to continue serving areas not annexed into Tupelo; shifts the burden of addressing the impact on statutorily-created fire protection districts and double-taxed residents and property owners away from the annexing municipality; and ignores and violates the express statutory right of fire protection districts to remain the sole public corporations empowered to provide fire protection services within their legal boundaries. To do so was error and, for the reasons discussed below, this Court should reverse the ruling of the Lee County Chancery Court approving the City of Tupelo's annexation, as modified, and render an Opinion finding Tupelo's proposed annexation unreasonable.

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II. STATEMENT OF THE ISSUES

- A. The Lee County Fire Protection Districts, Created Pursuant to Mississippi Code Annotated § 19-5-151, *et seq.*, Are the Sole Public Corporations Empowered to Provide Fire Protection Services Within Their Legally Defined Boundaries.**
- B. The Lower Court Committed Manifest Error in Failing to Consider the Inequitable Impact Both on the Residents and Property Owners Annexed and the Affected Fire Protection Districts as a Result of the City of Tupelo's Annexation.**

III. STATEMENT OF THE CASE

A. Statement of the Facts

The Belden Fire Protection District, the Palmetto-Old Union Fire Protection District, and the Unity Fire Protection District, as well as Lee County, Mississippi, and the City of Saltillo, Mississippi, have appealed from the Final Judgment of the Lee County Chancery Court approving, as modified, an enlargement and extension of the municipal boundaries of the City of Tupelo, Mississippi.

The proceedings below were instituted by the City of Tupelo seeking the approval of the Lee County Chancery Court of the enlargement and extension of the municipal boundaries of the City of Tupelo to include seven (7) proposed areas of annexation, identified as Area 1, Area 2 North, Area 2 South, Area 3, Area 4, Area 5, and Area 6. R. 011-037.¹ Lee County, Mississippi ("Lee County"), the City of Saltillo, Mississippi ("Saltillo"), the Town of Plantersville, Mississippi ("Plantersville"), the Belden Fire Protection District, the Palmetto-Old Union Fire Protection District, and the Unity Fire Protection District (collectively the "Fire Protection Districts") each filed Answers and Objections to the City of Tupelo's proposed annexation and fully participated in the proceedings below. R. 082-087, 100-104, 108-113, 211-220, 221-230,

¹ For purposes of this brief, citations to the record of the Lee County Chancery Court will be cited as "R.1, R.2," etc. Citations to the transcript of the trial of this matter will be cited as "Tr. 1, Tr. 2," etc. Citations to exhibits presented by the Unity, Belden, and Palmetto-Old Union Fire Protection Districts will be cited as "FD 1, FD 2," etc. Citations to exhibits presented by Lee County will be cited as "LC 1, LC 2," etc. Citations to exhibits presented by the City of Tupelo will be cited as "T 1, T 2," etc. Citations to exhibits presented by the City of Saltillo will be "S 1, S 2," etc.

231-240. In addition, a number of individual objectors made appearances in the matter below and voiced objections to the City of Tupelo's proposed annexation. R. 60-81

Following a trial that lasted a total of twenty-two (22) days from March 29, 2010 to June 7, 2010, the Lee County Chancery Court, Special Chancellor Edward C. Prisock presiding, approved, in their totality, each of the City of Tupelo's proposed areas of annexation with the exception of Area 5, which the Chancellor modified and approved. Thereafter, timely Notices of Appeal were filed by Lee County, the City of Saltillo, and the Fire Protection Districts R. 1363-64, 1376-79, 1381-84.

B. Statement of the Law

The "role of the judiciary in annexations is limited to one question: whether the annexation is reasonable." *In the Matter of Enlargement and Extension of the Municipal Boundaries of the City of Jackson*, 691 So. 2d 978, 980 (Miss. 1997). To determine the reasonableness of an annexation, this Court has identified twelve "*indicia* of reasonableness" which are not separate, distinct tests, but rather are to be considered under the totality of the circumstances. *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Madison*, 650 So. 2d 490, 494-95 (Miss. 1995). These *indicia* of reasonableness are as follows: (1) the municipality's need to expand; (2) whether the area sought to be annexed is reasonably within a path of growth of the city; (3) potential health hazards from sewage and waste disposal in the annexed areas; (4) the municipality's financial ability to make the improvements and furnish the municipal services promised; (5) the need for zoning and overall planning in the area sought to be annexed; (6) the need for municipal services in the area sought to be annexed; (7) whether there are natural barriers between the city and the proposed annexation area; (8) the past performance and time element involved in the city's provision of services to its present residents; (9) the economic or other impact of the annexation upon those

who live in or own property in the proposed annexation area; (10) the impact of the annexation upon the voting strength of protected minority groups; (11) whether the property owners and other inhabitants of the areas sought to be annexed have in the past, and in the foreseeable future unless annexed will, because of their reasonable proximity to the corporate limits of the municipality, enjoy economic and social benefits of the municipality without paying their fair share of taxes; and (12) any other factors that may suggest reasonableness. *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Biloxi*, 744 So. 2d 270, 278 (Miss. 1999); *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Meridian*, 662 So. 2d 597, 608 (Miss. 1995); *Madison*, 650 So. 2d at 494.

However, this Court has stated that “fairness to all parties has always been the proper focus of our reasonableness inquiry” and therefore, “municipalities must demonstrate through plans and otherwise, that residents of annexed areas will receive something of value in return for their tax dollars in order to carry the burden of showing reasonableness.” *In the Matter of the Extension of the Boundaries of the City of Hattiesburg*, 840 So. 2d 69, 82 (Miss. 2003) (citing *In Re Extension of the Boundaries of the City of Columbus*, 644 So. 2d 1168, 1171 (Miss. 1994)). Ultimately, “the common thread that must run through any reasonableness criteria is fairness. An unreasonable annexation is an unfair one and, as fairness is the foundation of equity, an annexation cannot be both unreasonable and equitable. The converse is equally true for an annexation cannot be both inequitable and reasonable.” *Western Line*, 465 So. 2d at 1059-60.

C. Standard of Review

This Court may reverse a chancellor’s determination that an annexation is either reasonable or unreasonable if that decision is manifestly erroneous or is unsupported by substantial and credible evidence. *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Clinton*, 920 So. 2d 452, 454 (Miss. 2006) (citing *In re*

Extension of the Boundaries of the City of Batesville, 760 So. 2d 697, 699 (Miss. 2000)). More recently, this Court stated that it may reverse a chancellor's determination that an annexation is either reasonable or unreasonable "where the chancery court has employed erroneous legal standards or where we are left with a firm and definite conviction that a mistake has been made." *City of Horn Lake*, 57 So. 3d at 1258 (citing *Bassett v. Town of Taylorsville*, 542 So. 2d 918, 921 (Miss. 1989)).

IV. SUMMARY OF THE ARGUMENT

The Lee County Fire Protection Districts, each created pursuant to *Mississippi Code Ann.* § 19-5-151, *et seq.*, are the sole public corporations empowered to provide fire protection services within their legally defined boundaries. In the proceedings below, the Lee County Chancery Court approved Tupelo's annexation of seven (7) separate areas, all of which are situated within the legally defined boundaries of one or more of the Lee County Fire Protection Districts.

In reaching its decision that the City of Tupelo's annexation was reasonable, as modified, the Lee County Chancery Court completely disregarded the right of the Lee County Fire Protection Districts to remain the sole public corporations empowered to render fire protection services inside of their legally defined boundaries irrespective of the outcome of Tupelo's proposed annexation. Further, the Lee County Chancery Court's opinion subjects annexed residents and property owners to unreasonable and inequitable double taxation for fire protection services, creates substantial uncertainty surrounding the financial viability of impacted fire protection districts, and devastates the impacted districts' ability to provide fire protection services in the remaining portions of their respective service areas not annexed into Tupelo.

This Court has made it abundantly clear that equity is the primary consideration in any determination of reasonableness and that an annexation cannot be both reasonable and

inequitable. The City of Tupelo's failure to resolve or otherwise account for the conflict with the Lee County Fire Protection Districts produces substantial inequitable impacts on both annexed residents and property owners, as well as the affected districts. The Lee County Chancery Court's approval of Tupelo's annexation as reasonable was erroneous in light of the inherent inequity and unfairness created by the City of Tupelo's complete disregard for the exclusive right of the Lee County Fire Protection Districts to provide fire response within their legal service boundaries. Accordingly, this Court should reverse the determination of the Lee County Chancery Court finding reasonable the City of Tupelo's annexation.

V. ARGUMENT

The Mississippi Legislature has codified the procedure for the establishment of fire protection districts in areas situated within any county of Mississippi which are not situated within the corporate boundaries of an existing municipality. Specifically, *Mississippi Code Annotated* § 19-5-151, *et seq.*, provides the legal authority for the establishment of fire protection districts, and sets forth the express legal rights and obligations of the districts. *Miss. Code Ann.* §§ 19-5-165 and 19-5-175 provide that these fire protection districts become public corporations in perpetuity and are the "sole public corporations empowered to furnish such services within such district."

The Lee County Board of Supervisors has provided for the delivery of fire protection services throughout all unincorporated areas of Lee County through the establishment of fire protection districts pursuant to *Miss. Code Ann.* § 19-5-151, *et seq.* LC 44. Every square inch of the territory annexed by the City of Tupelo in the proceedings below is situated within the defined boundaries of a statutorily-created fire protection district. Specifically, as depicted on LC 44, there are seven (7) Lee County Fire Protection Districts which are impacted by the City of Tupelo's proposed annexation in this matter, to wit:

- (1) Belden Fire Protection District;
- (2) Birmingham Ridge Fire Protection District;
- (3) Unity Fire Protection District;
- (4) Mooreville-Eggville Fire Protection District;
- (5) Greater Plantersville Fire Protection District;
- (6) Greater Verona Fire Protection District; and
- (7) Palmetto-Old Union Fire Protection District.

Of these seven (7) impacted fire protection districts, the Belden, Unity, and Palmetto-Old Union Fire Protection Districts have the largest geographical areas proposed to be annexed by Tupelo, and each filed separate answers and objections to the City of Tupelo's proposed annexation in the action below.

On appeal, the Belden, Unity, and Palmetto-Old Union Fire Protection Districts place the issue of the legal authority to render fire protection services within the defined boundaries of fire protection districts created pursuant to *Mississippi Code Annotated* § 19-5-151, *et seq.*, squarely before this Court. This Court recently affirmed the exclusive right of districts created pursuant to *Mississippi Code Annotated* § 19-5-151, *et seq.*, to be the "sole public corporation" rendering fire protection services in their respective district in *City of Horn Lake*. 57 So. 3d at 1266-67, 1270-71 The Lee County Chancery Court, however, disregarded the explicit statutory rights of these fire protection districts, and its holding is in conflict with this Court's holding in *City of Horn Lake*.

Further, the inequitable impact of the Lee County Chancery Court's approval of the City of Tupelo's annexation on both annexed residents and property owners, as well as the affected fire protection districts, is in direct conflict with this Court's longstanding principle that equity is the polestar consideration in any determination of the reasonableness of an annexation. *See, e.g., Western Line*, 465 So. 2d at 1060 (holding "annexation cannot be both inequitable and reasonable"). Tupelo's failure to resolve the fire protection conflict has created uncertainty with regard to the financial viability of the impacted Fire Protection Districts. Further, Tupelo's

failure to resolve the fire protection conflict has left every resident and property owner annexed subject to double taxation for fire protection purposes. Neither of these results is equitable, and the Lee County Chancery Court committed error by approving the City of Tupelo's annexation in light of Tupelo's complete failure to resolve the conflict regarding the provision of fire protection services within the legal service areas of the Lee County Fire Protection Districts.

A. The Lee County Fire Protection Districts, Created Pursuant to Mississippi Code Annotated § 19-5-151, *et seq.*, Are the Sole Public Corporations Empowered to Provide Fire Protection Services Within Their Legally Defined Boundaries.

In approving the City of Tupelo's annexation, the Lee County Chancery Court stated that "it is rather difficult to believe that the rural fire departments who serve the PAAs now will maintain a position that they alone should control fire protection services in the PAAs." R. 1351. In other words, in the opinion of the Lee County Chancery Court, it is "rather difficult to believe" that the express statutory right granted to the Belden, Unity, and Palmetto-Old Union Fire Protection Districts under *Mississippi Code Annotated* § 19-5-175 to be the sole public corporations empowered to provide fire protection services inside their district boundaries is one worthy of being exercised by the Districts or being protected by the court. However, this position is contrary to both the explicit statutory provisions pursuant to which the Lee County Fire Protection Districts were created, as well as recent holding of this Court.

The Mississippi Legislature authorized the creation of fire protection districts pursuant to *Mississippi Code Annotated* § 19-5-151, *et seq.*² Specifically, *Mississippi Code Annotated* § 19-5-151 sets forth, in pertinent part, that:

Any contiguous area situated within any county of the state, and not being situated within the corporate boundaries of any existing municipality, and having no adequate water system, sewer system, garbage and waste collection and disposal system, or fire protection facilities serving such

² *Miss. Code Ann.* § 19-5-151, *et seq.*, also provides the statutory authority for the creation of water, sewer, and garbage and waste collection districts.

area, may become incorporated as a water district, as a sewer district, as a garbage and waste collection and disposal district, as a fire protection district, as a combined water and sewer district, as a combined water and garbage and waste collection and disposal district, as a combined water and fire protection district, or as a combined water, sewer, garbage and waste collection and disposal and fire protection district, in the manner set forth in the following sections.

Pursuant to the express authority set forth in *Mississippi Code Annotated* § 19-5-151, *et seq.*, the Lee County Board of Supervisors created multiple fire protection districts throughout Lee County. For example, the Belden Fire Protection District, the Palmetto-Old Union Fire Protection District, and the Unity Fire Protection District, each impacted by Tupelo's proposed annexation, were created by the Lee County Board of Supervisors by resolutions dated October 15, 1987, February 4, 1991, and December 2, 1996, respectively. Exhibits FD-002, FD-003, and FD-004. From and after their date of creation, each of the fire protection districts created by the Lee County Board of Supervisors has continued to provide fire protection services to the residents and property owners within their defined boundaries.

As depicted on LC-44, all of the territory sought to be annexed by Tupelo in this matter is situated within the boundaries of existing statutorily-created fire protection districts. The rights and obligations with respect to the provision of fire protection services within the defined boundaries of the seven (7) fire protection districts impacted by the City of Tupelo's proposed annexation are set forth in *Mississippi Code Annotated* § 19-5-151, *et seq.* In this regard, *Mississippi Code Annotated* § 19-5-165 provides, in part, that:

Beginning on the date of the adoption of the resolution creating any district, the district shall be a public corporation in perpetuity under its corporate name and shall, in that name, be a body politic and corporate with power of perpetual succession.

Further, *Mississippi Code Annotated* § 19-5-175 describes the general powers conferred upon statutorily created fire protection districts. Specifically, *Mississippi Code Annotated* § 19-5-175 provides:

Districts created under the provisions of Sections 19-5-151 through 19-5-207 shall have the powers enumerated in the resolution of the board of supervisors creating such districts but shall be limited to the conducting and operating of a water supply system, a sewer system, a garbage and waste collection and disposal system, a fire protection system, a combined water and fire protection system, a combined water and sewer system, a combined water and garbage and waste collection and disposal system, or a combined water, sewer, garbage and waste collection and disposal and fire protection system; and to carry out such purpose or purposes, such districts shall have the power and authority to acquire, construct, reconstruct, improve, better, extend, consolidate, maintain and operate such system or systems, and to contract with any municipality, person, firm or corporation for such services and for a supply and distribution of water, for collection, transportation, treatment and/or disposal of sewage and for services required incident to the operation and maintenance of such systems. **As long as any such district continues to furnish any of the services which it was authorized to furnish in and by the resolution by which it was created, it shall be the sole public corporation empowered to furnish such services within such district....**

Mississippi Code Annotated §§ 19-5-165 and 19-5-175 are clear and unambiguous: the seven (7) Lee County Fire Protection Districts impacted by this proposed annexation, all created by resolutions of the Lee County Board of Supervisors pursuant to *Miss. Code Annotated* § 19-5-151, *et seq.*, are public corporations in perpetuity and are each charged with the responsibility to provide fire protection services within their defined boundaries. Moreover, pursuant to *Mississippi Code Annotated* § 19-5-175, as long as the fire districts continue to furnish fire protection services within their defined boundaries, the districts are the “sole public corporations empowered to furnish such services within such district.” As this Court’s recent holding in *City of Horn Lake*, as well as recent Attorney General Opinions have established, a fire district’s statutory right to be the sole provider of fire protection services

within its defined boundaries is not impacted by the annexation of portions of the districts into a municipality.

In *City of Horn Lake*, this Court affirmed the DeSoto County Chancery Court's denial of an annexation proposed by Horn Lake based, in large part, upon the presence of the Walls Fire Protection District in Horn Lake's proposed annexation area and Horn Lake's failure to resolve the conflict created by the presence of the District. *City of Horn Lake*, 57 So. 3d at 1266-67, 1270-71. In the proceedings underlying the *City of Horn Lake* action, the DeSoto County Chancery Court found as follows:

Further, although Horn Lake seeks to provide first response fire protection for the area which it seeks, **it should be noted that the obligation, and indeed the right to furnish that fire protection service lies solely with the Walls Fire Protection District** established by the DeSoto County Board of Supervisors in 1986. That fire protection district created pursuant to Mississippi statute clearly has this right as set forth in Section 19-5-175 of the Mississippi Code Annotated (1972 as amended). [emphasis added]

...

The foregoing notwithstanding, to allow the further annexation into this fire protection district would be this Court's approval for the continued violation by Horn Lake of Section 19-5-175 of the Mississippi Code (1972 as amended). Until this conflict between the Walls Fire Protection District and Horn Lake or any annexing municipality remains, this will reflect negatively on an annexation application in this area.

R. 1179-1215.

On appeal, this Court affirmed the Desoto County Chancery Court's findings with regard to the right of the Walls Fire Protection District to remain sole provider of fire protection services to the area Horn Lake sought to annex, holding:

[t]he chancellor found that Horn Lake had a plan to provide first response fire protection for the proposed annexation area; however, that obligation lies solely with the Walls Fire Protection District, which was established by the DeSoto County Board of Supervisors in 1986. Further, that fire protection district was created pursuant to Mississippi Code Section 19-5-

175, which reads, in pertinent part, that “as long as any such district continues to furnish any of the services which it was authorized to furnish in and by the resolution by which it was created, it shall be the sole public corporation empowered to furnish such services within such district.”

City of Horn Lake, 57 So. 3d at 1266-67.

Simply put, the exact legal issue which was before the Lee County Chancery Court with respect to Tupelo’s proposed annexation of territories situated in the seven (7) Lee County Fire Protection Districts identified above, was before this Court with regard to Horn Lake’s proposed annexation of an area situated within the Walls Fire Protection District. In that case, based in large part on the unresolved issue of the City of Horn Lake’s attempt to annex territory located within the legal boundaries of the Walls Fire Protection District, the DeSoto County Chancery Court denied the City of Horn Lake’s proposed annexation in its entirety. This Court affirmed the DeSoto County Chancery Court on this point, and the Lee County Chancery Court’s finding otherwise on the fire protection district issue is in conflict with this Court’s decision. *City of Horn Lake*, 57 So. 3d at 1266-67.

Further, in addition to this Court’s recent affirmation of the right of statutorily-created fire protection districts to be “sole public corporation empowered” to provide fire protection services inside their legally defined boundaries, the Mississippi Attorney General has repeatedly opined that said right is unaffected by a municipal annexation. For example, in response to an inquiry from the Reservoir Fire Protection District, the Mississippi Attorney General’s Office addressed the very issue which is before this Court with respect to the City of Tupelo’s provision of fire protection in the areas it seeks to annex (and the very issue this Court addressed in *City of Horn Lake*). Specifically, the Attorney General’s Office addressed the following question: If a municipality were to annex a portion of the Reservoir Fire Protection District, which was created pursuant to *Miss. Code Annotated* § 19-5-151, *et seq.*, what entity would have the sole and/or

primary authority to render fire protection services within the area encompassed within the Reservoir Fire Protection District but annexed into the corporate limits of the municipality? In response, the Attorney General's office opined:

In response, we refer you to a prior opinion of this office to Kenner Ellis, Jr., dated December 8, 1989, in which we stated that "(I)t is our opinion that the intent of these statutes was to create the duty of the district to provide services within its district, and not to cease to provide the same unless there was some other source that could immediately provide the same services as the district". MS AG Op., Ellis (December 8, 1989). We have also opined that a municipality has the statutory duty pursuant to Section 21-25-3 to provide fire protection within its corporate limits, and that if there is no fire protection district serving the area, the municipality must provide fire protection for the area. MS AG Op., Davis (September 25, 1998). A fire district may "cede" its jurisdiction over areas annexed by a municipality when the municipality is able and willing to assume the service being ceded. Unless the Reservoir Fire Protection District cedes the area within its boundaries which was annexed by a municipality to that municipality, the district continues to have the sole authority to provide fire protection services to that area. MS AG Op., Ellis (December 8, 1989) and MS AG Op., Woods (May 25, 1994). [emphasis added].

2000 WL 799973 (Miss. A.G. May 26, 2000).

Mississippi law on this point is clear and undisputed: Mississippi Code Annotated § 19-5-175 provides that statutorily created fire protection districts, as long as they continue to furnish the service for which they were created to provide, are the sole public corporations empowered to furnish fire protection services within their defined boundaries. The seven (7) impacted Lee County Fire Protection Districts in this case have, since their creation, continued to provide adequate fire protection services to the residents and property owners within their defined boundaries. *See, e.g.,* Thompson, Tr. 3344-45. Consistent with this Court's holding in *City of Horn Lake* and the Mississippi Attorney General's opinion to the Reservoir Fire Protection District, the Lee County Fire Protection Districts will remain the sole public

corporations empowered to furnish fire protection services within their defined boundaries, to the exclusion of the City of Tupelo, if this Court were to approve Tupelo's proposed annexation.

Further, as the Chancery Court of DeSoto County found with respect to Horn Lake's proposal to provide fire protection in the portions of the Walls Fire Protection District which it sought to annex (and which was denied), while the City of Tupelo "intends" to provide first response fire protection in those areas which it seeks to annex, **"it should be noted that the obligation, and indeed the right to furnish that fire protection service lies solely with" the Lee County Fire Protection Districts.** These fire protection districts clearly have this right and legal authority to the exclusion of all other public corporations (including the City of Tupelo), as set forth in *Mississippi Code Annotated* § 19-5-175.

Accordingly, it was error for the Lee County Chancery Court to find that, following annexation, the City of Tupelo would have the right to provide fire protection services in annexed areas, and that the Lee County Fire Protection Districts should not exercise their statutory right to remain sole public corporation empowered to provide fire protection services within annexed portions of their service areas. The Lee County Chancery Court's ruling in this regard is both contrary to *Mississippi Code Ann.* § 19-5-175, as well as this Court's express holding in *City of Horn Lake*, and should be reversed.

B. The Lower Court Committed Manifest Error in Failing to Consider the Inequitable Impact Both on the Residents and Property Owners Annexed and the Affected Fire Protection Districts as a Result of the City of Tupelo's Annexation.

In its Findings of Fact and Conclusions of Law, the lower court completely disregarded the substantial and credible evidence demonstrating the inherent inequity of Tupelo's annexation, in light of the City's failure to resolve the legal conflict with the statutorily-created Lee County Fire Protection Districts. R. 1304-28, 1329-53. Further, comments made by the trial court during the course of the proceedings below evidence the trial court's complete disregard of the

significant, annexation-impacting legal issues created by Tupelo's proposed annexation related to the Lee County Fire Protection Districts. For example, when the issue was raised on cross-examination of Tupelo's expert urban and regional planning witness by counsel for Lee County, the trial court stated:

I don't understand where this is going. I don't understand how some of this is relevant, the fire districts, to an annexation case.

Chancellor Prisock, Tr. 3072.

This Court's recent holding in *City of Horn Lake*, however, certainly recognizes the relevance of fire districts to annexation cases, and the Lee County Chancery Court committed manifest error in disregarding the significant impact of these Districts on Tupelo's annexation. Ultimately, as discussed below, the Lee County Chancery Court's approval of Tupelo's annexation disregards the substantial and credible evidence regarding the fire protection district conflict, subjects annexed residents and property owners to double taxation for fire protection services, and creates significant uncertainty with regard to the continued financial viability of the impacted districts.

In *Western Line*, this Court stated that "[a]n unreasonable annexation is an unfair one and, as fairness is the foundation of equity, an annexation cannot be both unreasonable and equitable. The converse is equally true for **an annexation cannot be both inequitable and reasonable.**" *Western Line*, 465 So. 2d at 1059-60. To this end, in *City of Horn Lake*, this Court held the following in a situation factually analogous to the present case:

Finally, the Chancellor considered the possible impact of annexation by the City of Horn Lake on the people residing in the area serviced by the Walls Fire Protection District. The chancellor found that the Walls Fire Protection District provided services to an area that is in excess of forty square miles, that the area included the Town of Walls, the proposed annexation area of Walls, and the proposed annexation area of the City of Horn Lake. A tax of one mil was imposed by DeSoto County for the

benefit of the fire protection district on all residents in that fire protection district.

Following Horn Lake's 2002 annexation, the city took in six square miles of the fire protection district, which was more densely populated than other portions of the district. As a result, the citizens of that six square mile area, which now is a part of Horn Lake, were required to pay taxes for city fire protection in addition to the one mil tax for fire protection from the Walls Fire Protection District. As a result of the increased taxation, residents of the six square mile area became unwilling to make donations or other contributions to the Walls Fire Protection District's operation, acquisition of equipment, or training experiences.

With regard to the current annexation, the chancellor found that:

Horn Lake now seeks to take in an additional nine square miles of the most heavily populated area of the Walls Fire Protection District, some 60% of its remaining residents. Not only would annexation by Horn Lake double tax the citizens of that fire protection district[,] as was done in 2002 whereby they are paying additional monies without receiving additional services, it will have a chilling effect on the district's efforts to secure funding by way of donations and dues collections. The consequence will be that the remaining members of the fire protection district who are not annexed by Horn Lake will be forced to survive on reduced funds and resources for continued protection in fire emergencies.

City of Horn Lake, 57 So. 3d at 1270-71.

As discussed below, each of the elements found by this Court to support the denial of Horn Lake's annexation on the basis of the proposed annexation's impact upon the Walls Fire Protection District in *City of Horn Lake* is present in this case. Tupelo has not resolved, or even attempted to resolve for that matter, the conflict with the Lee County Fire Protection Districts and, in doing so, has rendered its annexation inherently inequitable and unreasonable. It was error for the Lee County Chancery Court to find otherwise.

(i) Double Taxation of Annexed Residents and Property Owners.

The evidence introduced at trial established that the Lee County Board of Supervisors levies a 4 mill tax against all taxable property within the boundaries of the respective Fire

Protection Districts for the benefit and support of the Fire Protection Districts. Thompson, Tr. 3347. Within those portions of the Fire Protection Districts sought to be annexed by the City of Tupelo, this 4 mill tax amounts to \$79,717.42 per year. *Id.* The testimony at trial confirmed that this 4 mill tax would not automatically go away as a result of annexation. Thompson, Tr. 3348. Rather, the County would continue to levy the 4 mill tax for the financial support of the fire protection districts consistent with the enabling legislation and Board of Supervisors' Resolutions by which the fire protection districts were created. *Id.*

Trial testimony also established that if Tupelo annexes this territory, it will levy full municipal taxes against property in the annexed areas, a portion of which supports City fire services. Thompson, Tr. 3348; Watson, Tr. 3564-65. However, as discussed *supra*, the City of Tupelo would not have the legal authority to provide the fire protection services which the taxes levied against annexed residents and property owners would go to support. Moreover, and probably even more importantly from the aspect of equity and fairness to those residents and property owners which Tupelo is seeking to annex, this scenario would result in annexed residents and property owners paying taxes to both the City of Tupelo and the Lee County Fire Protection Districts for the exact same service: fire protection. Thompson, Tr. 3348, 3351-53; Watson, Tr. 3564-65. The inequity and inherent unfairness to the annexed residents which would arise from this double taxation is a result which this Court simply cannot allow.

It is unnecessary and unreasonable to subject the residents and property owners of the territory sought to be annexed to double taxation which Tupelo's annexation would create. Watson, Tr. 3563-65. The conflict should have been resolved by the City of Tupelo on the front end through negotiations with the various Fire Protection Districts for the ceding of jurisdiction of their fire service areas to the City of Tupelo in exchange for compensation to the fire protection districts for loss of tax revenues as a result of Tupelo's proposed annexation. *Id.*

However, Tupelo failed to account in any way for the anticipated cost of buying out the Lee County Fire Protection Districts in Tupelo's Services and Facilities Plan. In fact, trial testimony established that Tupelo's "plan" is to simply begin providing fire protection services to the annexed areas without regard to the Fire Protection Districts. *See, e.g.,* Chief Walker, Tr. 2140-41. Simply put, Tupelo's failure to resolve this conflict has left every resident and property owner annexed subject to double taxation.

As discussed above, this Court, in *Western Line*, stated as follows:

In short, the common thread that must run through any reasonableness criteria is fairness. An unreasonable annexation is an unfair one and, as fairness is the foundation of equity, an annexation cannot be both unreasonable and equitable. The converse is equally true for an annexation cannot be both inequitable and reasonable.

Western Line, 465 So. 2d at 1059-60.

Subjecting these residents and property owners to double taxation is neither equitable, nor reasonable. For this Court to affirm the Lee County Chancery Court's decision allowing the City of Tupelo to annex its proposed annexation areas, which are situated 100% within the legally defined boundaries of the Lee County Fire Protection Districts, would amount to this Court's approval of such an inequitable situation. Further, for this Court to allow the City of Tupelo's annexation into these Lee County Fire Protection Districts would amount to this Court's approval of violation by the City of Tupelo of Section 19-5-175 of the Mississippi Code.

(ii) *Devastating Financial Impact on the Districts.*

In support of the operation of the various Fire Protection Districts situated throughout the County, the Lee County Board of Supervisors levies a 4 mill tax against all taxable property within the legal boundaries of each respective district, the avails of which are used for operation, support and maintenance of each respective fire protection district. Thompson, Tr. 3347.

As discussed above, the Lee County Fire Protection Districts were each created by the Lee County Board of Supervisors pursuant to *Mississippi Code Annotated* § 19-5-151, *et seq.* As such, the Fire Protection Districts' statutory right to be the "sole public corporation empowered" to provide fire protection services within their legally defined boundaries is not impacted by the City of Tupelo's proposed annexation. See, e.g., *Miss. Code Ann.* § 19-5-175; *City of Horn Lake*, 57 So. 3d at 1266-67; 2000 WL 799973 (Miss. A.G. May 26, 2000). Similarly, the 4 mill tax levied by the Lee County Board of Supervisors for the benefit of the respective fire protection districts will remain in effect following annexation of any of the Fire Protection Districts' legal service areas into the City of Tupelo. Thompson, Tr. 3347-48.

Tupelo's failure to resolve this conflict with the Lee County Fire Protection Districts has created an inequitable lose-lose scenario for Lee County, the various Fire Protection Districts impacted by Tupelo's proposed annexation, and those residents and property owners who live in the proposed annexation areas and within the portion of the Fire Protection Districts' service areas which are not being sought to be annexed by Tupelo. This "everyone loses" situation created by the City of Tupelo's ill-conceived annexation can play out in one of two ways: (1) assuming that the Lee County Board of Supervisors continues to levy the 4 mill tax on behalf of the Fire Protection Districts, the residents and property owners of the annexed areas will be double-taxed for the same service: fire protection; or (2) if the Board of Supervisors seeks to alleviate the double taxation problem created by Tupelo's annexation by removing the 4 mill tax levy, the resulting loss of tax revenues to the Lee County Fire Protection Districts will be absolutely devastating.

It is undisputed that 100% of the territory sought to be annexed by the City of Tupelo is situated within the legal boundaries of statutorily-created fire protection districts. However, in no instance does Tupelo seek to annex 100% of any impacted district's geographical territory.

Thompson, Tr. 3344. Rather, as approved by the Lee County Chancery Court, each of the impacted districts has territory remaining in the unincorporated portions of Lee County in which the districts will continue to have a duty and legal obligation to provide fire protection services (in addition to that territory annexed into Tupelo for which the Fire Protection Districts remain “sole public corporation empowered” to provide fire protection services). *Id.* Describing this dilemma, Lee County Administrator Sean Thompson testified:

Q. Will these fire protection districts – will these various fire protection districts continue to have an obligation to provide fire services in the remainder of their districts?

A. Until their legal boundaries are changed, they will continue to be the sole provider within their current district, whether it’s inside the city or not.

Q. With respect to if ultimately the fire protection districts ceded any of their areas to the City of Tupelo, will there be areas, I guess for no better way to put it, that are left out or left over that still have to continue to operate?

A. Yes, there will.

Q. And in fact, Mr. Thompson, with respect to the overall geographical areas within these fire districts that the City of Tupelo is seeking to annex, the city is not seeking to annex anywhere near all of these fire districts, are they?

A. No.

Thompson, Tr. 3344-45.

While Tupelo did not seek to annex the entire geographical service area of any impacted district, Tupelo’s annexation, as approved by the Lee County Chancery Court, annexes substantial portions of the impacted districts’ tax base. For example, with respect to the Belden Fire Protection District, Sean Thompson testified:

Q. All right. How much of the tax base of Belden Fire District is within the City of Tupelo’s proposed annexation area?

A. Within these two PAAs here, the assessed value is \$9,136,890, and 4 mills of that will result \$36,547.56.

Q. All right. Again, I don't have my pen with me, but the \$36,000 and some-odd dollars that you just testified, that would be the – would that be the annual value of 4 mills that's being assessed on behalf of the Belden Fire District that the City of Tupelo is seeking to annex in this case?

A. Yes, it would.

Q. Now, again, I bet we are going to hear this in a minute when you are cross-examined, will the annexation in and of itself make that 4 mills go away?

A. It will not.

....

Q. Now, assume for me a second scenario, and that is that the commissioners of the Belden Fire Protection District were to catch a lot of grief from the people that are having to pay double taxation as a result of this annexation and they agree to cut an area, to cut the area that is ultimately annexed by the city out of their legal boundaries or out of their service area, and the county stops assessing the 4 mills. Under that scenario is that – does that bring into effect the financial impact that you just said of \$36,000 a year –

A. Yes. Based on the –

Q. – loss to the Belden Fire District?

A. Based on the 2008 assessment, they will lose \$36,547.

....

Q. What percentage of – and again, for purposes of this computation, it's impossible to give you different scenarios if the Court were to annex this small area or if the Court were to approve annexation of this small area, but just assuming for purposes of a mathematical calculation that all of the areas in the green color that is in the Belden Fire Protection District that the City of Tupelo is seeking to annex in this case, what percentage of the overall tax base is that comprised of the overall Belden Fire District?

A. For Belden, which is on the second line of this exhibit, if you come into the third column from the right, it's 42.17 percent.

Q. All right. Does that mean that the Belden Fire Protection District, in the event the county decides to address this issue of double taxation caused by this annexation, and if the county were to take off that 4 mills, what percentage of the overall revenues, tax revenues, would the Belden Fire District lose as a result of this annexation?

A. Approximately 42 percent.

Q. . . . [I]s the City of Tupelo seeking to annex anywhere near [42] percent of the overall Belden Fire Protection District?

A. No, they are not.

Thompson, Tr. 3351-54.

Similarly, with respect to the Unity Fire Protection District, Lee County Supervisor Phil Morgan testified:

Q. Did you – did you consider the level of municipal services – of services in the areas sought to be annexed as part of your vote to oppose?

A. The knowledge that I had that any of the areas that were certificated, as far as utilities-wise, would not change. The – probably the most heaviest financial burden would be the loss of a 4-mill tax levy to the fire departments, which I have, actually, three different departments, I believe.

Q. Explain to the Court what you mean by that. As a supervisor, what does it – why does it concern you about the 4-mill tax levy issue?

A. Well, we appoint the fire commissioners of each fire department. But as I understand it, from what knowledge I have gathered that the City will be taxing people in these areas that they intend to annex for fire protection. And one of my departments, especially, and it's Unity, which would cover Area 2 South, I believe, and North, or part of it anyway, they built an additional fire station in the Fellowship community to serve Deer Park. And it's close to 40 percent of their revenue comes from Deer Park. And they can – if they can't meet their financial burden – responsibilities, it will place a burden on them without those areas. And if we take – if – the way I understand, the commissioners would be the ones that had to remove the 4-mill millage; we couldn't statutorily do it. But if they choose not to, then those people in those areas will be double taxed, they would be paying the 4 mill, plus they would be paying the city tax.

....

Q. Take a look at LC-44, Supervisor Morgan, and tell the Court, if you could, what fire districts you were talking about that would be adversely affected by the annexation.

A. The one that would be the most affected would be the Unity Fire District because of what I just stated, that they cover Area 2 South, as well as part of North. **However, when you take away 40 percent of the revenue, as I said, they built a new fire station, bought a fire truck, bought a rescue truck, that's a financial burden on them.**

Supervisor Morgan, Tr. 3277-78.

Accordingly, while not seeking to annex anywhere near the entire geographical service area of the Belden and Unity Fire Protection Districts, Tupelo's annexation proposal would result in both districts' losing over 40% of their tax base. Thompson, Tr. 3352-54; Supervisor Morgan, Tr. 3277-78. If Tupelo merely takes over fire protection within these Fire Protection Districts without compensating them for their lost tax revenue, the Fire Protection Districts will undoubtedly suffer a devastating financial impact.

Ultimately, with regard to the annual financial impact to the Fire Protection Districts, were they forced to stop levying the 4 mills tax as a result of Tupelo's annexation of their territory, Tupelo planning expert Karen Fernandez testified:

Q. Mrs. Fernandez, let me ask you this. You are aware of how these fire protection districts receive their funding; right?

A. What I know is that four mills is assessed on the property.

Q. All right. Are you aware of any other funding mechanisms by which the fire protection districts in Lee County, Mississippi receive funds?

A. No, sir.

Q. So to the best of your knowledge, the only way they are funded is through the four mills that the county assesses on their behalf; right?

A. I know four mills is assessed, yes.

Q. Okay. The first question I have for you, Mrs. Fernandez, when we talk about mills, until you apply that to assessed value, it doesn't mean anything. What does four mills mean in the realm of assessed value in the proposed annexation areas? Can you do that calculation on your calculator, four mills time the assessed value in the proposed annexation area?

....

A. Oh, I'm sorry. 79,000. I'm sorry. I was just testing you.

....

Q. All right. Mrs. Fernandez, so we all understand that calculation, you took the total assessed value of property in the proposed annexation area straight from Exhibit T80, and that, of course, was a 2008 assessment; correct?

A. Yes, sir.

Q. And that was probably the most recent data that you were able to get; right?

A. Yes, sir.

....

Q. Okay. So all you did was take the total assessed value from the six PAAs as of the 2008 assessment of \$19,929,355, and you multiplied that times four mills; right?

A. Yes, sir.

Q. And that comes out to be that if the fire districts and the county choose to stop assessing the four mills, that would result in a loss of revenue from that four mills tax assessment of just under \$80,000 per year; right?

A. Yes, sir.

Fernandez, Tr. 5-26-2010, pp. 163-65.

Further, Sean Thompson testified:

Q. Now, utilizing the numbers calculated by Mrs. Karen Fernandez, the city's annexation expert, for the assessed valuation for the property within the proposed annexation area as of the 2008 assessment, I think she

testified that that was the most recent assessment when she prepared that exhibit. For purposes of this question, I want you to assume that. There's probably been another year of assessment, but based on the 2008 assessment, what would the 4 mills of tax assessment amount to for financial support for the various fire protection districts that the City of Tupelo is seeking to annex in this case?

A. It would be \$79,717.42.

Thompson, Tr. 3347.

Clearly, the impact on these statutorily-created fire protection districts were they forced to stop levying the 4 mill tax would be devastating, and is a significant factor which the City of Tupelo should have addressed on the front end of this litigation. Watson, Tr. 3563-64. The City of Tupelo, however, completely failed (or refused) to do so. *Id.*

Furthermore, testimony elicited at the trial of this matter raised significant concern with regard to the willingness of Tupelo to address this conflict with the Fire Protection Districts were it not resolved prior to Tupelo's annexation of territory. For example, Tupelo Fire Chief Walker testified:

Q. In connection with this proposed annexation, have you or are you aware of any discussions that the City of Tupelo has had with these fire protection districts which are being impacted by this annexation –

A. No, sir.

Q. Well, I really wasn't even finished with my question, but your answer may get there.

A. Okay.

Q. The City of Tupelo hasn't talked to any of these fire protection districts, have they?

A. Not that I'm aware of.

Q. Right. And, to your knowledge, as the expert in the field of fire fighting, as well as the City of Tupelo's chief fire fighting officer, you are not aware of any plan or commitment by the City of Tupelo to acquire the right of first response in the proposed annexation area; correct?

A. I'm not. As the chief fire officer, I have no plans to. . .

Chief Walker, Tr. 2140-41.

Rather, as Chris Watson testified, Tupelo very clearly shifted the burden associated with its annexation into the Lee County Fire Protection Districts over to the County:

Q. And in your expert opinion, is the City of Tupelo's plan to just merely hope that this works itself out on the back end, is that a reasonable approach to annexation, Mr. Watson?

A. In my opinion, it is not. Here is what happens. When we get on the back side of that annexation, then you have to look and think about what is the motivation for the City of Tupelo to spend more money, that is, resolving this fire district issue. I've heard pretty clearly throughout their examination that this tax is Lee County taxes and that Lee County can choose to apply the taxes or not apply the taxes. After annexation, when these people, assuming they come into the city, and they are still paying both taxes; and people, generally, are not pleased by paying any more taxes than they have to pay. Being annexed into the city and being served by the city fire department, I would fully expect these people to call their supervisors and say, Hey, we are paying their taxes so, by golly, we are going to use their services, so y'all can just get rid of your 4-mill taxes. That's the same thing that happened in Desoto County. That's why it became such an issue, people were upset by paying 1 mill in Desoto County.

Q. This is, of course, four times that, 4 mills?

A. That's right. So going forward, I would expect there to be political pressure placed upon the county to do something with the 4 mills. In other words, the pressure is not going to be on the City of Tupelo, it's going to be on the county to take care of the double taxation issue.

Q. Is the entity that is seeking to annex in this case, the City of Tupelo, trying to shift this problem over to Lee County?

A. Yes, sir.

Watson, Tr. 3583-84.

Simply put, Tupelo created this conflict by seeking to annex into statutorily-created fire protection districts, yet failed to provide the court below with any evidence as to how it plans to

resolve the matter or any plan or financial commitment by the City to buy out the Fire Protection Districts which it seeks to annex. Tupelo's failure to do so renders its annexation unreasonable. As an annexation cannot be both inequitable and reasonable, it was error for the Lee County Chancery Court to approve the City of Tupelo's annexation in light of Tupelo's failure to resolve the fire protection conflict.

VI. CONCLUSION

As an annexation cannot be both reasonable and inequitable, the Lee County Chancery Court's approval of the City of Tupelo's annexation was in error. The City of Tupelo's failure to resolve the conflict with the Fire Protection Districts has left all residents and property owners annexed into the City subject to unreasonable and inequitable double taxation. Further, Tupelo's failure to resolve the conflict with the Fire Protection Districts has created significant uncertainty regarding the financial ability of the Fire Protection Districts to continue serving territory not annexed into the City in the event the Fire Protection Districts are forced to stop levying taxes in the annexed territory.

The City of Tupelo created these issues through its adoption of an annexation ordinance that sought to annex territory inside the legally defined boundaries of multiple fire protection districts, yet Tupelo failed to demonstrate to the Lee County Chancery Court how it intends to address and resolve these significant issues. Further, Tupelo made no financial commitment to buy out the impacted Lee County fire protection districts or otherwise compensate the fire protection districts for their significant loss in tax revenues. The City of Tupelo had the burden of proof in this proceeding to demonstrate the reasonableness of its annexation plans, including fairness to individuals and property owners in the areas sought to be annexed. Double taxation is not fair and equitable, and neither is financial devastation to the Lee County Fire Protection Districts which had nothing to do with starting this annexation battle, and it was error for the Lee

County Chancery Court to brush over these significant inequities and approve Tupelo's annexation. Tupelo could have resolved this conflict and presented a plan or financial commitment by the City to eliminate these problems. However, it chose not to do so.

Based upon the inequitable duplicate taxation of residents and property owners in the annexed territories, the devastating financial impact to those portions of the Fire Protection Districts which were not annexed, and this Court's recent precedent in the *City of Horn Lake* decision, the Chancellor's decision to approve Tupelo's annexation was manifest error and was not supported by substantial and credible evidence.

Accordingly, the Unity, Belden, and Palmetto-Old Union Fire Protection Districts respectfully request that this Court reverse the Final Judgment of the Lee County Chancery Court approving the City of Tupelo's annexation, as modified, and render an opinion finding the City's proposed annexation to be unreasonable.

RESPECTFULLY SUBMITTED, this the 20th day of July, 2011.

**BY: UNITY FIRE PROTECTION DISTRICT,
BELDEN FIRE PROTECTION DISTRICT, AND
PALMETTO-OLD UNION FIRE PROTECTION
DISTRICT**

BY: CARNATHAN & MCAULEY

BY:



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CERTIFICATE OF SERVICE

I, Gary L. Carnathan, counsel for the Belden, Palmetto-Old Union, and Unity Fire Protection Districts, do hereby certify that I have this day mailed *via* United States First Class Mail, postage prepaid, or as otherwise indicated, a true and correct copy of the above and foregoing to the following:

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Those persons listed on Exhibit "A"

This the 20th day of July, 2011.



Gary L. Carnathan

CERTIFICATE OF SERVICE ON TRIAL JUDGE

I, Gary L. Carnathan, counsel for the Belden, Palmetto-Old Union, and Unity Fire Protection Districts, do hereby certify that I have this day mailed *via* United States First Class Mail, postage prepaid, or as otherwise indicated, a true and correct copy of the above and foregoing to the trial judge in this matter at the following address:

The Honorable Edward C. Prisock
201 S. Jones Avenue
Louisville, MS 39339

This, the 25th day of July, 2011.



Gary L. Carnathan