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Mr. Harold Collins
Council Member, District 3
Memphis City Council
City Hall Room 514
Memphis, Tennessee 38103

RE: *Forrest Park-Revised Opinion*

Dear Councilman Collins:

You have requested an opinion from us whether any provision of state or federal law restricts the City in renaming Forrest Park, removing or relocation of the equestrian statue honoring Nathan Bedford Forrest and/or relocation of the remains of Forrest and his wife.[1] This opinion corrects the date the remains of Forrest and his wife were moved from Elmwood Cemetary from September 11, 1904 to November 11, 1904. We have also updated information about the availability of Elmwood Cemetary as a possible location for the re-interment of Forrest and his wife and for the relocation of the equestrian statue.

HISTORY AND BACKGROUND

By the Tennessee Acts of 1873, the Tennessee General Assembly conveyed certain land, containing about 10 acres, in fee simple absolute to be used solely and exclusively as a public hospital and for no other purpose on the condition that said hospital shall be open and free of charge to all destitute citizens of the state in need of hospital benefit. The City erected and operated the Memphis Hospital on the present site of Forrest Park for over 20 years.

By a subsequent public act, adopted in 1895 the Tennessee General Assembly authorized the City to sell the Memphis Hospital Grounds and to deposit the proceeds of any such sale in the general treasury of the City to be used for the City's general purposes or to purchase additional property and construct another hospital. This act also authorized the City to retain said Memphis Hospital Grounds and to convert the same into a public park, or devote the same to any other public municipal purpose as the City may see fit.

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[1] We have read but not confirmed that one of Forrest's grandchildren may also be buried at the site.

On August 10, 1899 the City's legislative Council received a resolution adopted by the Confederate Historical Association urging the Council to name the old Memphis Hospital Grounds in honor of former Confederate General Nathan Bedford Forrest. This resolution was received by the Council unanimously with all Council members standing. The City's legislative Council subsequently adopted an ordinance recognizing its authority to convert the grounds formerly occupied by the City hospital into a public park or to devote the same to any municipal purpose determined by the Council. The Council exercised its authority by ordinance which provided as follows:

> Whereas, all the buildings have now been removed from said ground; therefore, be it ordained by the Legislative Council of the City of Memphis, that the grounds bounded on the North by Madison Street, on the East by Dunlap Street, on the South by Union Avenue, and on the West by Manassas Street. and formally known as the Memphis Hospital Grounds, are hereby constituted and established a public park of the City of Memphis, to be known as Bedford Forrest Park in honor of our distinguished hero, Gen. N.B. Forrest.

The Council also invited the historical societies in the City and the citizens of Memphis to erect a statue of Gen. Bedford Forrest. During the reunion of the Confederate veterans in 1901 a cornerstone commemorating Forrest was laid in the park.

On March 25, 1903 the N.B. Forrest Monument Association and Confederate Historical Association petitioned the Legislative Council to authorize a special tax levy to commission an equestrian statue of Gen. N.B. Forrest to be located at Bedford Forrest Park. The council members expressed great sympathy with the request but objected to any proposed appropriation or tax levy because of the urgent necessity for funds for streets, sewers and bridges. The Council voted to reject the petition by unanimous vote. However, each member of the Council voted to donate their salary for that Council meeting to the Forrest Monument Association fund.

On April 15, 1903 the Tennessee General Assembly enacted a public act empowering and authorizing the City of Memphis to levy annually a special tax on all taxable property in the City, not exceeding two cents on $100 of assessment for the years 1903 and 1904 to be in addition to all other general and special taxes, the proceeds of which was to be devoted exclusively for the purpose of building and completing a statue of Gen. Bedford Forrest. We have found no evidence that the Council changed its original position and levied any such special tax.

On May 18, 1905 the Forrest monument was officially dedicated by the Forrest Monument Association. The monument was the culmination of extensive fund raising and work by the Monument Association. The monument weighs 9500 pounds and cost $28,000.00. As previously indicated we can find no record that any special tax was levied by the Council or that any public funds were appropriated by the legislative Council for the statue. Based on material produced by the Monument Society regarding the dedication, it appears that the total amount for the statue and all expenses associated with its dedication, including the interment of Gen. Forrest and his wife, were raised by the society from private donations.

Elwood Cemetery records reflect that Forrest and his wife were disinterred on November 11, 1904.

Our research reveals that the efforts to rename the old Memphis Hospital Grounds and to erect an equestrian statue was a momentous undertaking. It appears that at least one segment of the Memphis community was completely committed to this endeavor. It also appears that Memphis and Tennessee politicians were all supportive of the undertaking and its completion and dedication was praised as one of the most significant and symbolic tributes to those who were protagonist in the Civil War. This observation and obsession with memorializing the City's involvement as part of the Confederacy is curious, since Memphis' and Tennessee's involvement in the Civil War as part of the Confederacy was hardly noteworthy.

Tennessee was the last southern state to secede from the Union and the first state to rejoin the Union. As the Pink Palace Museum reports, Memphis was one of the first Confederate cities to fall to Union forces after the Confederate army was defeated in the First Battle of Memphis on June 6, 1862. The battle lasted a total of 90 minutes; the Mayor of Memphis, John Park, surrendered shortly thereafter. The City was occupied by Union troops until July, 1865. On August 21, 1864 General Forrest attempted a raid on Memphis to free Confederate troops imprisoned there. Forrest abandoned his raid after Union troops thwarted his efforts. So, based on Memphis' limited involvement as a part of the confederacy, the insistence on preserving historical references to Memphis' fleeting involvement in the Civil War seems unjustified.

POLITICAL CONTEXT

The naming of the park and the erection of the equestrian statue in honor of Bedford Forrest was considered then and possibly now by some to be a deserving tribute to his accomplishments and as a lasting symbol of the South for which he fought. However, it would not be fair to judge the significance of these tributes outside of the context in which they occurred. Irrespective of the merits and demerits of Bedford Forrest's accomplishments and beliefs, the larger question is the significance of these tributes in light of the lack of a balanced discussion and debate by all citizens of Memphis at the time the decision was made to name the park and allow the erection of the equestrian statue in honor of Bedford Forrest.

The tribute to Bedford Forrest occurred some 40 years after the conclusion of the Civil War. As the Commercial Appeal observed it was better to wait to honor Forrest until the passions of the war had subsided and sectional animosity had grown pale. Slavery as a legal institution ended some 40 years earlier after the passage and ratification of the 13th amendment to the United States Constitution. Congress adopted the 14th amendment shortly thereafter and in 1869 adopted the 15th amendment guaranteeing voting rights to all citizens without regard to race, color or previous condition of servitude. From the end of the Civil War until 1870 most southern states were under Union occupation during the reconstruction period.[2] Most other states were required to ratify the 15th amendment as a condition of reentry as one of the United States.

[2] Tennessee escaped military reconstruction because its government was thought to be favorable to the Union.

Since Tennessee was one of the last states to join the Confederacy and one of the first states to leave it, Tennessee had already been re-admitted to the Union before Congress imposed ratification of the 15th Amendment as a condition to readmission, and therefore Tennessee did not ratify the 15th amendment and in fact adopted a joint resolution opposing black suffrage in 1870. Tennessee did not ratify the amendment until 128 years later.

During Reconstruction the first African-American members of the Tennessee General Assembly were elected. During the same period the first African-American members of the Memphis City Council were elected[3]. At the conclusion of reconstruction the Tennessee General Assembly adopted a series of Jim Crow laws and poll tax requirements that greatly diminished the political power and voting power of African-Americans. As a result of these laws, by 1884 all of the African-American members of the General Assembly had lost their seats. Two African-American general assemblymen were elected to terms in 1886 but never took their seats because they were run out of Fayette County by white supremacists. From about 1884 until 1965 there were no African-American members of the General Assembly. A.W. Willis, Jr. was elected to the General Assembly in 1965 from Shelby County.

Prior to 1879 Memphis' legislative Council was elected from specific voting districts, which guaranteed African-American representation in the City's legislative affairs. In 1879 the state of Tennessee revoked charter of the City of Memphis due to the City's inability to pay its debts as and when they were due. On the same day the General Assembly re-established Memphis as a taxing district and reconstituted its legislative Council to consist of eight members to be elected at large. From and after 1879 until 1968 there were no African Americans elected to the office of Legislative Council. After the adoption of the City's home rule charter in 1966, Messrs. Fred L. Davis, James L. Netters and J.O. Patterson, Jr. were the first African-Americans elected to the City's legislative body since 1879.[4]

The significance of these political events merely reflects an overlooked view of the City that existed at the time the park was named and the statue erected. During this time African-American citizens were essentially disenfranchised from the political process and relegated to second-class citizenship through a series of Jim Crow laws and intimidation, including lynching, which was conducted in an open and notorious fashion. In fact, lynchings were public events attended by women and children. Ironically, Ida B. Wells was a prominent voice against such practices.

Our historical review reflects that the decision to name the park to permit the erection of the equestrian statue in honor of Bedford Forrest was a political decision by the Council made at the urging of Confederate and Monument Societies. It seems equally fair for the present Council to make a political decision to rename the Park based on the desires of its various constituencies. The only difference being the involvement of all points of view in the current debate. Unlike the present process, it is fair to conclude that the decision to name the old Memphis Hospital

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[3] At that time Memphis legislative power was vested in a board of aldermen and a city council. African-American representation was on the Council.

[4] Even then the at large Council districting was later found to have diluted African American voting power in City Council elections.

Grounds after Bedford Forrest and to permit the erection of equestrian statue and to permit the re-internment of Forrest and his wife on that property was a decision that did not reflect the will of the entire community and was not made after input from all segments of the entire community.

In our opinion the Council's authority over the renaming of the Park, relocation of the statue and re-interment of the remains of Mr. and Mrs. Forrest has a sound legal and political foundation.

AUTHORITY OF THE CITY COUNCIL

It is our opinion based upon the authority granted by the General Assembly to the City to sell, convert to a park or to convert the old Memphis Hospital Grounds to any use that it saw fit, that the City has the complete and absolute authority to rename Forrest Park to any name that its Legislative Council sees fit. The Council exercised its authority to name the old Memphis Hospital Grounds Forrest Park by ordinance; as such it has the authority to rename the old Memphis Hospital Grounds to any other name that it chooses by ordinance.

Is our opinion that the Forrest Monument Society donated the equestrian statue to the City of Memphis without restriction or condition; consequently, that statue may be moved or relocated to another location in the discretion of the Council. If the Forrest Monument Society still exists as a lawfully constituted non-profit entity, the City can make arrangements with that entity to take possession of the statue.

Private citizens caused Forrest Park to be placed on the National Register of Historic Places. The National Park Service advises that the designation on the National Register of Historic Places imposes no legal restrictions on the use that the owner of any designated site may make of his or her property, as long as there are no federal funds attached to the property. If federal monies are attached to the project, any changes to the property must be submitted to the Advisory Council on Historic Preservation for comment. Our research has not revealed any federal monies being attached to Forrest Park or to the designation on the National Register of Historic Places. So that designation does not restrict the City in renaming the park or in relocating the equestrian statue.

The remains of Forrest and his widow were moved from Elmwood Cemetery to the park on November 11, 1904. We have not yet determined whether any perpetual care funds have been allocated to these new gravesites. Pursuant to Tennessee Code Annotated § 46-1-106(a)(1) cemeteries owned by municipalities are exempt from certain provisions of Tennessee cemetery laws. The City is not exempt from the provisions of Tennessee Code Annotated § 46-4-103, which authorizes any municipality to bring or to join in a suit in the Chancery Court of this county to have the remains of all deceased persons buried in a particular burial ground removed from that burial ground and reburied in a suitable repository to be obtained for that purpose. Any interested person, which essentially means any surviving spouse and children or the nearest relative or relatives by consanguinity of any one or more of deceased persons whose remains are buried in a burial ground, must be made a party in any such suit.

In order to reinter Forrest and his widow, the City would be required to initiate a Chancery suit for this purpose and secure a suitable place for reinterment. We have been advised that the Forrest family burial plots still exist at Elmwood Cemetary and that there is adequate room for the reinterment of Forrest and his wife. We have also been advised that there is also room for the Forrest statue. In fact, the last will and testament of N.B. Forrest probated in Shelby County, Tennessee on December 17, 1877 provides in pertinent part:

> FIRST I commit my body after death to my family and friends with the request that it may be entered among the Confederate dead in the Elmwood Cemetery near the City of Memphis, it being my desire that my remains shall rest with those of the brave men, men who were my comrades in war and shared with me the danger and peril of battle fields fighting in a cause we believed it our duty to uphold and maintain.

The relocation of the remains of Forrest and his widow and the equestrian statue would be in keeping with his wishes and would provide a more fitting tribute to his legacy and that of the Confederate soldiers who he commanded.

I trust we have adequately responded to your inquiry and provided you with the historical and political contexts that you requested. We will provide any additional information or explanation that you may request.

Very truly yours,

Allan J. Wade

Enclosures

Cc: Councilman William Boyd
Councilmembers
Mayor
City Attorney