

Vanderbilt Law Review

Volume 47
Issue 4 *Issue 4 - May 1994*

Article 1

5-1994

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Recommended Citation

Charles W. Burson, William J. Harbison, 47 *Vanderbilt Law Review* 945 (1994)
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol47/iss4/1>

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William J. Harbison

Justice William J. Harbison served on the Tennessee Supreme Court from 1974 through 1990, and served that court as Chief Justice from 1981 to 1982 and from 1987 to 1989. During his tenure he authored numerous opinions that shaped and refined Tennessee law. The following Tribute briefly highlights some of Justice Harbison's most significant opinions.

*Charles W. Burson**

One of the most significant cases of my tenure as Attorney General of Tennessee was *Secretary of State v. St. Augustine Church*.¹ This case involved the constitutionality of Tennessee's charitable bingo statutes under Article IX, Section 5 of the Tennessee Constitution, the anti-lottery provision. The Attorney General's Office occupied the unusual position of arguing that these statutes were unconstitutional. The case had attracted a great deal of attention from the press and the public. Justice Harbison responded quickly to this pressing public issue. He delivered a thorough, scholarly opinion that addressed the language and history of the constitutional provision as well as cases from other states regarding similar provisions. He concluded that the statutes were indeed unconstitutional. The repercussions of this case are still being felt in the form of calls for constitutional revision.

Justice Harbison authored a number of important opinions on new statutory schemes. The opinions provided needed guidance on and clarification of the law. For example, in *Aluminum Co. of America v. Celauro*,² his opinion clarified the application of a 1986 statute that made sweeping changes in the law governing taxpayer remedies. He wrote *Metropolitan Government of Nashville and Davidson County v. Shacklett*,³ and *Humana of Tennessee v. Tennessee Health Facilities Commission*,⁴ two of the early opinions on judicial review under the

* Attorney General, State of Tennessee, 1988-present. B.A., 1968, University of Michigan; J.D., 1970, Harvard University School of Law.

1. 766 S.W.2d 499 (Tenn. 1989).
2. 762 S.W.2d 107 (Tenn. 1988).
3. 554 S.W.2d 601 (Tenn. 1977).
4. 551 S.W.2d 664 (Tenn. 1977).

Administrative Procedures Act. He also wrote *Leech v. Wayne County*,⁵ which addressed the constitutionality of portions of Chapter 934 of the Public Acts of 1978. The 1978 Act implemented a restructure of county governments required by changes in the Tennessee Constitution.

Probably one of Justice Harbison's most significant opinions on new statutory schemes is *Johnson v. Oman Construction Co., Inc.*⁶ This wrongful death action involved allegations of negligence against two municipal corporations. After deciding that the municipal corporations were immune from liability for the negligence alleged and noting that the Court did not regard such immunity with favor, Justice Harbison commented on the Governmental Tort Liability Act, which had been passed the year before and was not in force at the time this litigation arose. Although the Act removed immunity for cities and counties in a number of areas, it allowed local governments to opt out of the coverage of the act. This opt-out provision satisfied neither Justice Harbison nor the court. Justice Harbison wrote that the court did "not regard this statute as dealing with the subject in a complete or comprehensive manner,"⁷ but was reluctant to take judicial action at this point. He invited the General Assembly to establish a uniform tort claims procedure for local governments. The General Assembly acted quickly to make the act mandatory for all local government entities for claims arising after January 1, 1976.

Justice Harbison also wrote a very significant opinion on an old statutory scheme. In 1969 the Tennessee Supreme Court determined in *Chamberlain v. Brown*⁸ that state courts need not entertain actions brought under the Civil Rights Act of 1871.⁹ Justice Harbison's thorough and thoughtful opinion in *Poling v. Goins*¹⁰ overruled *Chamberlain v. Brown* based on state and federal statutory changes, subsequent United States Supreme Court cases, and cases from other states. *Poling v. Goins* permits actions under 42 U.S.C. Section 1983 to be brought in state courts.

*Blackwell v. Quarterly County Court of Shelby County*¹¹ is an important case for every government employee. Justice Harbison's opinion dealt with the complicated area of pension plans and determined that although at some point an employee acquires a fixed and

5. 588 S.W.2d 270 (Tenn. 1979).

6. 519 S.W.2d 782 (Tenn. 1975).

7. Id. at 786.

8. 223 Tenn. 25, 442 S.W.2d 248 (1969).

9. 42 U.S.C. §§ 1983 et seq.

10. 713 S.W.2d 305 (Tenn. 1986).

11. 622 S.W.2d 535 (Tenn. 1981).

immutable right in the pension system, those rights are subject to the terms and conditions of the pension plan. He also determined that the public employer could make reasonable modifications in an existing plan if necessary to create or safeguard actuarial stability, provided no vested rights are impaired.

Justice Harbison also prepared many decisions on criminal law, several of which stand out. In *State v. Lakin*,¹² he defined the parameters of the "open fields" doctrine in the law of search and seizure under the Tennessee Constitution. In *State v. Durso*,¹³ Justice Harbison provided a scholarly discussion of Article IV, Section 14 of the Tennessee Constitution, which requires fines in excess of fifty dollars to be assessed by a jury. In *State v. Dusina*,¹⁴ he examined the right to a jury trial in the context of "small offenses." Each of these opinions, and many others, provide law enforcement officers, attorneys, and judges with much-needed guidance.

12. 588 S.W.2d 544 (Tenn. 1979).

13. 645 S.W.2d 753 (Tenn. 1983).

14. 764 S.W.2d 766 (Tenn. 1989).

