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Annual Survey of Tennessee Law

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ANNUAL SURVEY OF TENNESSEE LAW

Administrative Law—1964 Tennessee Survey

*E. Blythe Stason**

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In preparing the Survey of Administrative Law for 1964, we find only eleven cases upon which to comment. Seven of them arise from a single field of administrative action, *i.e.*, the work of County Beer Boards. One is a zoning variation case, another involves a realtor's license revocation, and the other two are lower federal court cases decided in Tennessee, one relating to social security, and the other to an interpretation of the abandonment provisions of the Interstate Commerce Act. Compared with many other states this is a modest showing. Indeed, when one takes account of the number of boards and commissions in Tennessee the number of cases is extraordinarily small.

The principal administrative agencies in this state with authority over rule-making and contested cases are the Railroad and Public Utility Commission,¹ the Employee Security Commission,² the Commissioner of Revenue,³ the Commissioner of Insurance and Banking,⁴ the State Aeronautics Commission,⁵ the County Beer Boards,⁶ and a host of business and professional licensing agencies such as the Real

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- 1. TENN. CODE ANN. §§ 65-201 to -521 (1956).
- 2. TENN. CODE ANN. §§ 50-1301 to -1358 (1956).
- 3. TENN. CODE ANN. §§ 67-2501 to -3510 (1956).
- 4. TENN. CODE ANN. §§ 56-101 to -140 (1956).
- 5. TENN. CODE ANN. §§ 42-201 to -242 (1956).
- 6. TENN. CODE ANN. §§ 57-201 to -221 (1956).

Estate Commission,⁷ the Medical Examiners Board,⁸ the Pharmacy Board,⁹ the Dental Examiners Board,¹⁰ and the Barbers Board.¹¹ Possibly the small number of cases reaching the courts from these agencies reflects a high measure of satisfaction with the administrative process in Tennessee. Or possibly it indicates that the procedures available at the administrative level and for court review of administrative decisions are not calculated to facilitate presentation and examination of the issues, and hence private interests are not as well served as they should be. With this preliminary observation we proceed to examine the eleven cases.

I. COUNTY BEER BOARD CASES

Under the Tennessee Code¹² one who wishes to sell beer or light alcoholic beverages within the county outside city limits must apply to the county court or to a committee appointed by that court for a permit to do so. Within cities he must apply to boards created by ordinance. The applicant must establish that he and his employees are United States citizens; that sales will not cause congestion of traffic or interfere with schools, churches and places of public gathering, or with public health, safety or morals; that no sales will be made to minors; and that neither the applicant nor any of his employees have been convicted of violation of liquor laws or a crime involving moral turpitude within the last ten years. Any outstanding permit may be revoked for violation of the laws. Provision is made for court review of either an order of revocation or an order granting or refusing to grant a permit by petition for a statutory writ of *certiorari* to be followed by a trial de novo in either the circuit or the chancery court with appeal to the supreme court.¹³ Under these statutory provisions seven cases have reached the supreme court during the year 1964, with the following results:

A. Municipal Home Rule in Beer Licensing Cases

In *De Caro v. City of Collierville*,¹⁴ the petitioner, whose application for a permit had been denied by the Beer Board, filed his petition for statutory *certiorari* in chancery. The evidence indicated that the applicant satisfied all of the specific requirements of sections 57-205

7. TENN. CODE ANN. §§ 62-1301 to -1328 (1956).

8. TENN. CODE ANN. §§ 63-101 to -621 (1956).

9. TENN. CODE ANN. §§ 63-1001 to -1023 (1956).

10. TENN. CODE ANN. §§ 63-501 to -529 (1956).

11. TENN. CODE ANN. §§ 62-301 to -333 (1956).

12. TENN. CODE ANN. §§ 57-205, 57-208 (1956).

13. TENN. CODE ANN. § 57-209 (1956).

14. 213 Tenn. 254, 373 S.W.2d 466 (1963).

and 208 of the Code as above stated, but also it appeared that the City of Collierville had adopted an ordinance pursuant to local option authority given it by statute¹⁵ limiting the number of permits to be issued within the city to seven. Since there were then seven permits outstanding, the Board had denied the plaintiff's application. The chancellor overruled the Board and decided in favor of the plaintiff on the ground that the limitation of the total number of permits to seven was invalid, and since the plaintiff had satisfied the requirements of section 57-205, as amended, the issuance of the permit was mandatory. There was good argument for the chancellor's position. It is true that Code section 57-208 provides that cities may, in connection with issuing beer permits, "impose additional restrictions, fixing zones and territories, and providing hours of opening and closing, and such other rules and regulations as will promote public health, morals and safety as they may by ordinance provide." However, Code section 57-205 was amended in 1961¹⁶ to include a new provision to the effect that "any applicant seeking a license or permit under this section and who complies with the conditions and provisions of this section *shall have issued to him* the necessary license or permit . . ." (Emphasis added.) It was not unreasonable for the chancellor to conclude that this language limited the powers given to cities by the previously enacted Code section 57-208.

The supreme court, however, reversed the decree of the chancellor. The court reached the rather significant conclusion that the earlier provision was not affected by the subsequent amendment of Code section 57-205, that the municipality continues to possess the right under Code section 57-208 to impose requirements and limitations in addition to those prescribed under Code section 57-205, that a maximum number of permits to be issued can be established by city ordinance, and that the city can even by ordinance totally prohibit the sale of beer or light alcoholic beverages.¹⁷ In its opinion the court went on to state that the only limitation on the city or town is that it must exercise its power in good faith and not in a discriminatory and arbitrary manner. Thus, municipal home rule powers remain intact in Tennessee so far as the sale of beer and light alcoholic beverages is concerned.

15. TENN. CODE ANN. § 57-208 (1956).

16. TENN. CODE ANN. § 57-205 (Supp. 1964).

17. In *Ketner v. Clabo*, 189 Tenn. 260, 225 S.W.2d 54 (1949), it had been previously held that the number of permits could be limited under the statutes in force prior to 1961, and in *Grubb v. Morristown*, 185 Tenn. 114, 203 S.W.2d 593 (1947), the court had held that the city might by ordinance totally prohibit the sale of beer or light alcoholic beverages.

B. *De Novo* Review in Beer Permit Cases

In the course of its opinion in the *De Caro* case the supreme court referred with approval to the 1962 decision in *Fentress County Beer Board v. Cravens*.¹⁸ That case is an important one in Tennessee administrative law for the reason that it deals with possible constitutional limitations upon the power of the courts to review administrative agency decisions of a legislative or administrative nature. *Fentress* is another beer permit case. In view of the fact that the court in the *De Caro* case reaffirmed *Fentress*, the circumstance is worthy of comment.

By way of background, reference must also be made to two other Tennessee Supreme Court decisions. One was rendered in 1953 in *Hoover Motor Co. v. Railroad & Public Utilities Commission*,¹⁹ in which the supreme court held that a statute prescribing *de novo* review of non-judicial administrative action, *e.g.*, action upon an application for a certificate of convenience and necessity for a motor carrier, was contrary to the constitution as a delegation of legislative or administrative power to the judiciary. The other decision was handed down in 1961 in *City of Whitwell v. Fowler*.²⁰ It was a rate classification case, in which the supreme court for reasons similar to those in the *Hoover* case held "ineffective" a provision in Chapter 162 of the Public Acts of 1953²¹ to the effect that in reviewing Railroad and Public Utilities Commission orders the courts might reverse the commission if its findings are "unsupported by the preponderance of proof in view of the entire record before the Commission." This conclusion was said to follow from the fact that the Commission was exercising "legislative or administrative" powers in passing upon rate classification questions and the courts cannot be expected in reviewing such Commission action to assume, by examining the weight of the evidence, the burdens of another department of the government.

In view of these supreme court decisions what can we now say concerning the state of the law in Tennessee respecting *de novo* review of administrative agency decisions? Possibly one should merely conclude that the law is in a state of uncertainty. Yet, in view of the latest in the series of decisions, *i.e.*, *De Caro v. City of Collierville*, upholding the trial *de novo* of an order involving the refusal of a beer permit, there seems to be some grounds for concluding that the Tennessee Supreme Court is moving away from the *Hoover Motor Co.* decision, and is opening the door to plenary review

18. 209 Tenn. 679, 356 S.W.2d 260 (1962). The *Fentress* case is carefully discussed by Sanford, *Administrative Law—1962 Tennessee Survey*, 16 VAND. L. REV. 623 (1963).

19. 195 Tenn. 593, 261 S.W.2d 233 (1953).

20. 208 Tenn. 80, 343 S.W.2d 897 (1961).

21. TENN. CODE ANN. §§ 65-201 to -232 (1956).

of the facts in administrative agency cases even in characteristically legislative or administrative matters. This conclusion is subject, no doubt, to the qualification that in such review proceedings the court will not go so far as to review the exercise of discretionary authority properly conferred upon administrative agencies and exercised by such agencies in good faith. Whether or not such broad review is wise may be open to some question, but at least it does not seem to be unconstitutional under the most recent supreme court decisions.

The remaining six of the 1964 Beer Board permit decisions covered by this survey bear out the above conclusion, not so much from the language of the supreme court in the respective opinions as from the action of the court in sustaining the chancellor's review of the merits of the several cases. These six cases are *Cantrell v. DeKalb County Beer Board*,²² (Board refused permit, chancellor reversed Board and ordered the permit issued, supreme court affirmed lower court), *Hughes v. Little, Chairman, Carter County Beer Board*,²³ (Board refused permit, chancellor affirmed, supreme court affirmed lower court), *Chadwick v. Beer Committee of Anderson County*,²⁴ (Board refused permit, chancellor reversed Board and ordered the permit issued, supreme court affirmed lower court), *Case v. Carney*,²⁵ (Board refused permit, chancellor affirmed Board, supreme court reversed and remanded the case because lower court did not properly "weigh the evidence"), *Adams v. Monroe County Quarterly Court*,²⁶ (Board refused permit, chancellor reversed the Board and ordered the permit issued, the supreme court affirmed the lower court), and *Moore v. Marshall County Beer Board*,²⁷ (Board refused permit, chancellor reversed the Board and ordered the permit issued, the supreme court affirmed the lower court). It will be noted that in four of the cases, *Cantrell*, *Chadwick*, *Adams*, and *Moore*, the chancellor in a trial de novo reviewed the Beer Board's denial of the permits on the merits and ordered them to be issued. Moreover, in *Cantrell*, *Chadwick*, and *Adams* the supreme court itself scrutinized the merits of the chancellor's decisions both on law and facts. In other words both the chancellor and the supreme court on a de novo review play a large role in the process of granting or refusing beer permits. Undoubtedly, such action should be classified as "administrative" at the agency level, and yet, a plenary judicial review is acceptable under Tennessee constitutional principles. Taken together these six cases and the

22. 213 Tenn. 568, 376 S.W.2d 480 (1964).

23. 213 Tenn. 574, 376 S.W.2d 482 (1964).

24. 376 S.W.2d 490 (Tenn. 1964).

25. 213 Tenn. 592, 376 S.W.2d 492 (1964).

26. 379 S.W.2d 769 (Tenn. 1964).

27. 383 S.W.2d 14 (Tenn. 1964).

De Caro case seem to constitute a clear indication that the 1953 *Hoover Motor Co.* case can no longer be accepted at its full face value.

Additionally, in the *Cantrell* opinion the supreme court was more than explicit when it said "the trial judge is required to make an independent judgment on the merits which . . . results in the trial judge substituting his judgment for that of the beer board; but . . . *the courts cannot escape this responsibility, unwelcome though it may be*, when the statute commands it."²⁸ Moreover, as the court points out, after the decision by the trial court, if the parties are not satisfied, an appeal may then be taken to the supreme court where, "under Code section 27-303 the hearing is again *de novo*, although it is accompanied by a presumption of correctness, and the trial court's judgment will stand unless the evidence preponderates against it." Thus, we have independent review of the entire case in the trial court plus full authority to review subject to a self-restraining presumption, in the supreme court.

These cases rather definitely establish the law to be applied in beer permit cases. Is there any good reason why the same principles concerning the constitutional acceptability of plenary review would not be equally applicable in other areas of administrative agency action? There is, indeed, no good reason for differentiation between the various areas of action. Yet, this still leaves to be determined the question of *desirability* of such broad review. As a matter of policy should the trial court and the supreme court be required by legislative enactment to undertake an *independent* judicial review of fact questions (and possibly discretionary matters) arising in administrative proceedings? Or would it be a wiser use of available judicial and official skills to place responsibility for such determinations upon the presumably competent administrators who have the primary responsibility, the presumed technical knowledge, and the first hand contact with the factual situations? Such decisions can and should remain subject to review for arbitrary, capricious or illegal action, and in some situations even for *clear* error on the facts, but to broaden the review further can only be deemed questionable policy and an unwarranted burden on the courts.

II. REVOCATION OF REALTORS LICENSES

The revocation of a license to do business normally involves

28. (Emphasis added.) The responsibility resting upon the chancellor to review *de novo* was strongly re-affirmed in *Case v. Carney*, 213 Tenn. 592, 376 S.W.2d 492 (1964), one of the six 1964 beer permit cases, in which the chancellor was reversed because he did not weigh the evidence.

consideration of legal grounds for revocation, the examination of facts bearing upon a possible violation warranting revocation, and the reaching of the decision. It is a characteristically judicial process, and it can involve serious implications for the licensee. Under the Tennessee statutes²⁹ real estate broker licenses are issued to qualified applicants by the Tennessee Real Estate Commission, and elaborate provisions are made for revocation or suspension under proper circumstances. Code section 62-1324 sets forth ten grounds for revocation, eight of which are related directly to real estate brokerage transactions, but two of which relate to general qualities of the licensee's worthiness, competence and honesty.

In *Tennessee Real Estate Commission v. Godwin*,³⁰ the court was confronted with the revocation by the Commission of Godwin's real estate broker's license. He was charged with fraud in connection with personal real estate transactions, which fraud was involved and proved in collateral judicial proceedings. However, the fraud so proved did not relate to conduct in the licensee's capacity as a real estate broker. The Commission revoked the license. The question was whether or not such charges of collateral fraud could support the revocation. The statutes³¹ authorize the Commission to revoke or suspend the license if the licensee is found guilty, among other offenses, of:

(h) Being unworthy or incompetent to act as a real estate broker or salesman in such manner as to safeguard the interests of the public.

(i) Any other conduct . . . which constitutes improper, fraudulent, or dishonest dealing.

On *certiorari*, the chancellor concluded that since the fraudulent acts performed by Godwin were not related to his activities as a broker, the Commission was without power to revoke on such grounds. On appeal, the supreme court reversed the chancellor holding that the general provisions, (h) and (i) above quoted, warranted the Commission's action. Said the court:

We think it would be an anomaly to so construe the act as to render the Tennessee Real Estate Commission powerless to act to rid the ranks of real estate agents and brokers of men who have been convicted of fraudulent transactions whether directly in pursuit of the licensed privilege or not We do not think this result was intended by the legislature. . . .

Not only was the court's interpretation commendable from the standpoint of public policy, but it accords with conclusions reached

29. TENN. CODE ANN. §§ 62-1301 to -1323 (1956).

30. 378 S.W.2d 439 (Tenn. 1964).

31. TENN. CODE ANN. § 62-1324 (1956).

in similar revocation proceedings by the courts of both New Jersey³² and Florida.³³ Moreover, the decision clarifies the substantive powers of the Tennessee Real Estate Commission and, thus, strengthens administrative law in this state in a fairly significant particular.

III. ZONING DECISIONS

Zoning decisions are almost exclusively the function of local government; yet in a larger sense they are an important part of the administrative law of the state. In fact, the same principles and procedures should be applicable whatever level of government is involved.

*Reddoch v. Smith*³⁴ was a zoning case. A property owner by the name of Murray sought a zoning variation requesting the Shelby County Board of Adjustment to permit the erection of a gasoline filling station on a certain corner in Shelby County outside the city limits. The Board granted the variation, changing the classification from R-1 residential to commercial. A petition for common law *certiorari* was filed in the circuit court by nearby property owners. That court affirmed the Board, finding, among other things, that "the evidence did not preponderate against the findings" of the Board. Appeal was taken to the supreme court. That court noted that the Board acted as a quasi-judicial body. "Its decision becomes final on the facts . . ." It can act to authorize variations, in the words of the ordinance, "where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the [zoning] regulations . . ." In taking such action, said the court, the Board is "vested with a wide discretion, and the courts will not interfere with that discretion unless it is abused." It is the court's duty "to determine . . . whether the [Board] has acted beyond its jurisdiction, arbitrarily, fraudulently or illegally Whether there is any material evidence to support the finding and order is a matter of law for the court upon review."³⁵

Thereupon, the court reviewed the evidence showing that the property in question had been offered for sale as residential property during a period of eight years but had attracted no buyer; that it fronted on a heavy traffic street; that it was only 1000 feet from an expressway and interchange; that there was a restaurant across the street and a construction business nearby. Altogether, so concluded

32. *Real Estate Comm'n v. Ponsi*, 39 N.J. Super. 526, 121 A.2d 555 (1956).

33. *Anderson v. Fla. Real Estate Comm'n*, 105 So. 2d 918 (Fla. App. 1958).

34. 379 S.W.2d 641 (Tenn. 1964).

35. Citing *Hoover Motor Express v. Railroad and Pub. Util. Comm'n*, 195 Tenn. 593, 261 S.W.2d 233 (1953).

the court, there was material evidence to support the variation.³⁶ The court then said cogently, "We know, of course, that the men who composed this Board, heard this evidence, and viewed the property, were substantial citizens and were in a far better position to know and determine under the facts presented to them whether or not this variation should be granted than is the court . . ." The judgment of the trial court affirming the Board's decision was affirmed.

This conclusion together with the supporting arguments can be commended as a proper and sensible working of the administrative process, *i.e.*, leaving the decision on the facts to the body best qualified to make it. It contrasts favorably with the Beer Board cases and their statutory *de novo* review.

IV. FEDERAL ADMINISTRATIVE LAW CASES

Although federal cases do not necessarily make state administrative law, Tennessee federal court decisions are a part of the total administrative process within the state's borders and, accordingly, Tennessee readers may find interesting two recent decisions of the federal district courts sitting in this state.

A. *The Social Security Act*

In *Holland v. Celebrezze*,³⁷ the plaintiff, age 72, was an applicant for social security benefits. She attempted to qualify under an arrangement pursuant to which her brother, a widower, as a result of a divorce decree, employed her to keep his daughter in plaintiff's home, feeding, disciplining and sending her to school, as well as taking care of her clothes and other needs. The father visited his daughter on weekends and "supervised" the wardrobe, recreation, and school and extra-curricular activities of the child, as well as her deportment, health and diet. For such services the plaintiff was paid by her brother fifty dollars per calendar quarter for an aggregate of six calendar quarters. She then claimed old age insurance benefits.

The administrative determination in the bureau in the Department of Health, Education and Welfare was adverse to the plaintiff, holding that she was not in the "domestic service" of her brother, as required by the Social Security Act.³⁸ Her claim for benefits was denied. This decision was appealed to a hearing examiner who affirmed the departmental decision. Judicial review was sought under

36. A large number of variations of cases involving factual decisions may be found collected and analyzed in Annot., 168 A.L.R. 131-156 (1947) and Annot., 75 A.L.R. 2d 168-311 (1961).

37. 223 F. Supp. 347 (E.D. Tenn. 1963).

38. 49 Stat. 625 (1935), 42 U.S.C. § 409(g)(2) (1958).

the act which provides that "the findings of the Secretary as to facts are conclusive if supported by substantial evidence." The federal district court reversed the secretary's decision, holding that the required employer-employee relationship existed for the mandatory period and that it should be deemed to have produced the necessary wage credits to entitle the plaintiff to benefits.

The federal court took its action notwithstanding the formula making the agency decision final if "supported by substantial evidence." The court decided that on the above stated facts there was a good faith employer-employee relationship between the plaintiff and her brother. Noting that the Social Security Act³⁹ prescribes that any person who under the "common law rules" would have the status of an employee would qualify, the court took account of the usual elements, that is direction and control by the employer, the services rendered by the employee, and the payment of compensation by the employer for the services. The court concluded that they were decisive of the issue. The plaintiff was, in effect, a governess. Interestingly enough the court cited *Universal Camera Corp. v. NLRB*,⁴⁰ in support of the assumption by the federal courts of greater "responsibility for the reasonableness and fairness of decisions of federal agencies than some courts have demonstrated in the past." Said the court, "We are not disposed to abdicate the conventional judicial function in these matters." In effect the court held, without actually so stating, that the determination of employment status under common law rules is a question of law for the court.⁴¹ Actually the determination of employment status under the various federal acts is not easy, nor is the court's power to reverse the administrative finding on the question at all clear. There have, in fact, been many social security cases in which the courts have accepted the Secretary's conclusions.⁴²

B. *Interstate Commerce Commission—Jurisdiction over Abandonment Cases*

This exceedingly complex area of administrative action was presented to the Court in *Interstate Commerce Commission v. Memphis*

39. 49 Stat. 625 (1935), 42 U.S.C. § 410(j)(2) (1958).

40. 340 U.S. 474 (1951).

41. Compare *NLRB v. Hearst Publications*, 322 U.S. 111, 131 (1944), in which the court held that the Board's decision to the effect that semi-independent newsboys were "employees" under the National Labor Relations Act should be sustained since it had "warrant in the record and a reasonable basis in law."

42. See, e.g., *Palmer v. Celebrezze*, 334 F.2d 306 (3d Cir. 1964); *Johnson v. Fleming*, 264 F.2d 322 (10th Cir. 1959); *Folsom v. O'Neal*, 250 F.2d 946 (10th Cir. 1957).

*Union Station Co.*⁴³ In this case the Commission brought action against The Union Station Company and four railroad companies that had been using the station to prevent the termination of such use and the transfer of their railroad termini in Memphis to other quarters without first obtaining a certificate of public convenience and necessity from the Commission. Such certificate is required by Section 1(18) of the Interstate Commerce Act⁴⁴ for any "abandonment of all or any portion of a line of railroad." The Commission contended that the station and the tracks leading to it were parts of a "line of railroad" and, therefore, a certificate was required. On the other hand, the defendants asserted that a certificate was not needed since the approaches to the Union Station were in reality "spur or switching tracks" exempted from the certificate requirement by Section 1(22) of the Interstate Commerce Act. Weight was added to the defendants' argument by the fact that passenger trains did not approach the station directly on through tracks, but were backed into the station on Y shaped approach tracks connected with the main lines. The defendant further contended that the station itself should not be deemed to be a "line of railroad." In addition to the abandonment issue, the Commission contended that the acquisition by the railroad defendants of other terminal facilities in Memphis constituted an "acquisition of trackage and facilities" without the certificate required by section 5(2) of the act. The central issue was really one of jurisdiction of the Commission under the facts of the case. The court, after considering the technical interpretation of sections 1(18), 1(22) and 5(2) as well as taking account of the possible effect on the public of the proposed abandonments and acquisitions, concluded that "line of railroad" and not mere "spur or switching tracks" were involved, and the Interstate Commerce Commission had jurisdiction over the operations. An injunction was issued.

Only a fraction of the substantive complexities of the case are revealed by the foregoing brief resume. The court's opinion, however, invites a comment concerning the technical difficulties frequently encountered on the substantive side of administrative law. What are to be deemed "spur tracks," for example, arises again and again under widely varying circumstances. There is much to be said for so limiting the scope of judicial review as to take reasonable advantage of the technical experience, familiarity and skill of properly qualified administrators. At the same time the burden of de novo review should not be placed on the courts. Good government is best served by a proper distribution of functions. This principle would be a

43. 230 F. Supp. 456 (W.D. Tenn. 1964).

44. 24 Stat. 379 (1887), 49 U.S.C. § 1(18) (1958).

useful guide in Tennessee in shaping the administrative law of this state. Again the Beer Board cases stand out in sharp contrast.

V. A PROPOSED TENNESSEE ADMINISTRATIVE PROCEDURE ACT

Doubtless the most significant development of the year from a long range point of view in the field of administrative law in Tennessee has been the excellent progress in the preparation of a draft State Administrative Procedure Act for presentation to the Legislature. In 1963, the Legislature created a Law Revision Commission charged, among other things, with the duty of proposing specific reforms in the organization of administrative agencies and their rules of procedure.⁴⁵ By way of guidance the Commission has made use of the Revised Model State Administrative Procedure Act promulgated in 1961 by the National Conference of Commissioners on Uniform State Laws. This act has been used widely throughout the country by state legislatures interested in preparing comprehensive state administrative procedure legislation for their respective states.⁴⁶ To make available for its deliberations the essential background research the Law Revision Commission was fortunately able to enlist the services of Professor Daniel J. Gifford of the Vanderbilt Law Faculty. He has prepared a comprehensive and penetrating 160 page monograph treating, with special reference to Tennessee law, all of the significant phases of the subject, including rule making, the procedures in contested cases and the manner and extent of judicial review.⁴⁷ It is to be hoped that the Law Revision Commission draft will be ready for introduction in the 1967 legislative session.

For over thirty years an enormous amount of high level attention has been devoted to both state and federal administrative procedure. In 1941, the United States Attorney General's Committee on Administrative Procedure presented its final report, and five years later in 1946 the federal Administrative Procedure Act became law.⁴⁸ Con-

45. Tenn. Pub. Acts, ch. 74 (1963).

46. For the text of the Revised Act, see 1961 HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 206-23. The model act has either been adopted or used as a guide in the preparation of administrative procedure legislation in the following states: Arizona, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, Virginia, Washington, West Virginia and Wisconsin. For a first rate general discussion written by Professor Maurice Merrill of the University of Oklahoma Law Faculty at the time of the adoption of the Oklahoma Administrative Procedure Act, see 17 OKLA. L. REV. 1 (1964). Professor Merrill assisted the Oklahoma Legislature in drafting its act.

47. It is hoped that this monograph can be published in the *Vanderbilt Law Review* in the near future.

48. 60 Stat. 237 (1946), 5 U.S.C. §§ 1001-11 (1953).

currently, the Uniform Laws Commissioners worked on a Model State Administrative Procedure Act, and this also was finally promulgated in 1946.⁴⁹ After ten years of experience at both federal and state levels the Commissioners prepared the Revised Model State Act which is now being widely used.

There can be little doubt that the administrative procedure legislation which has resulted from these activities has made a vast improvement in the administrative systems of the country. The major principles embraced in the model acts include such fundamental matters as the requirement that each agency adopt essential procedural as well as substantive rules; that all rule making be accompanied by proper notice and opportunity to submit views; that there be proper assurance of publicity for all administrative rules; that provision be made for declaratory judgments and rulings; that there be assurance of fundamental fairness in administrative hearings—particularly as to notice, rules of evidence, taking official notice, separation of functions, and the assurance of personal familiarity with the evidence on the part of responsible deciding officers; and, finally, that provision be made for wise and adequate judicial review. These are basic principles of fairness in procedure. Tennessee will have a better system when its legislature adopts some such law for this state.

49. See 1946 PROCEEDINGS OF THE NCCUSL 202-17.

