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# LOCAL GOVERNMENT LAW—1961 TENNESSEE SURVEY

EUGENE PUETT\*

## I. MUNICIPAL CORPORATIONS

## II. COUNTIES

## III. SCHOOLS AND SCHOOL DISTRICTS

## IV. LOCAL GOVERNMENT IN GENERAL—LEGISLATION

### I. MUNICIPAL CORPORATIONS

1. *Change of Boundaries.*—Incorporated cities and towns continued to use the authority in the annexation statute to annex by ordinance,<sup>1</sup> and the courts were presented with several questions of interpretation of the statute not heretofore answered.

2. *Discretion To Annex by Ordinance.*—The question in *Central Soya Co. v. City of Chattanooga*<sup>2</sup> was whether or not a municipality when petitioned by “interested persons” must propose extension of its corporate limits by the referendum method.<sup>3</sup>

The complainants filed a petition with the city of Chattanooga to have a certain area annexed by referendum one day before the commencement of proceedings by the city to annex a portion of the same territory by ordinance, and insisted that the city had no power to proceed by ordinance in view of the petition.

The court found nothing in the terms of the statute or the conditions which resulted in its enactment that would prevent it from holding that the discretion to annex by ordinance or to propose annexation by referendum was vested in the governing body of the city.

3. *Burden of Proof in Annexation.*—Since the action of the municipality is by ordinance,<sup>4</sup> the suit to contest the validity of an annexation ordinance is in the nature of a quo warranto proceeding.<sup>5</sup> In *State ex rel. Senff v. City of Columbia*<sup>6</sup> the relators, citing cases involving title to office,<sup>7</sup> contended that the burden of proof was on the city to show that the ordinance was reasonable.

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1. TENN. CODE ANN. § 6-309 (1956).

2. 338 S.W.2d 576 (Tenn. 1960).

3. TENN. CODE ANN. §§ 6-311, -312 (1956).

4. TENN. CODE ANN. § 6-309 (1956).

5. TENN. CODE ANN. § 6-310 (1956).

6. 343 S.W.2d 888 (Tenn. 1961).

7. *State ex rel. Dobbins v. Larry*, 332 S.W.2d 669 (Tenn. 1960); *State ex rel. General v. Allen*, 57 S.W. 182 (Tenn. Ch. App. 1900).

Although the question had not been previously decided, the court in *Morton v. Johnson City*<sup>8</sup> applied the same principles in determining the validity of an annexation ordinance as are applied to acts of the legislature, saying that one attacking the act must show that it is essentially arbitrary and does not rest upon any reasonable basis.<sup>9</sup> In the principal case it was held that the presumption of validity of the ordinance placed on those attacking it the burden of showing it unreasonable.

Under an almost identical annexation statute of the State of Mississippi it was held that those who contest the right to extend ought to have the burden of proving that the ordinance is unreasonable.<sup>10</sup>

There seems to be no general agreement on burden of proof in quo warranto cases.<sup>11</sup> Whatever the rule may be, the court chose to ignore the quo warranto nature of the suit as far as the question of burden of proof was concerned and treated the presumption in favor of the ordinance as controlling. This is consistent with the view taken in *State ex rel. Southerland v. Town of Greeneville*<sup>12</sup> where the court held that it was the intention of the legislature to integrate with the annexation statute such sections of the quo warranto statute as would be applicable.

4. *Notice in Annexation.*—Another point decided in the *Columbia* case<sup>13</sup> was the time within which the municipality must pass the annexation ordinance after notice and public hearing. The city of Columbia waited nine months before passing the ordinance. The contestants contended that this was not sufficient notice. The court held otherwise and pointed out that the statute did not provide any limitation as long as notice was given at least seven days before the proposal or passage of the ordinance. The court referred to the *Johnson City* case<sup>14</sup> as holding that the requirement of notice and public hearing should be liberally construed.

5. *Reasonableness of Annexation Ordinance.*—On December 7, 1960, the supreme court in two cases, *State ex rel. Campbell v. Mayor and Aldermen*<sup>15</sup> and *City of Knoxville v. State ex rel. Graves*,<sup>16</sup> held that the question of reasonableness of an annexation ordinance cannot be decided on demurrer. In the *Knoxville* case the court, agreeing with

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8. 333 S.W.2d 924 (Tenn. 1960).

9. *Id.* at 927.

10. *Town of Crystal Springs v. Moreton*, 131 Miss. 77, 95 So. 242 (1923).

11. 44 Am. Jur. *Quo Warranto* § 106 (1942).

12. 201 Tenn. 133, 297 S.W.2d 68 (1956).

13. *State ex rel. Senff v. City of Columbia*, 343 S.W.2d 888 (Tenn. 1961).

14. *Morton v. Johnson City*, 333 S.W.2d 924 (Tenn. 1960).

15. 341 S.W.2d 733 (Tenn. 1960).

16. 341 S.W.2d 718 (Tenn. 1960).

the trial judge that he would have to hear proof as to the factual matters to determine whether the question of reasonableness of the ordinance was debatable, said: "Obviously, these factual matters could not be determined on demurrer . . . ."17 The *Campbell* case stated that the court should hear the evidence that may be presented, and if the court concludes that a fairly debatable question is presented, then it becomes the duty of the trial court to find that the ordinance is reasonable and valid.18 The rule announced in the *Johnson City* case19 contemplates that those wishing to challenge the reasonableness of an annexation ordinance should at least be given the opportunity to prove their case by such evidence as they might have available.

Where the unreasonableness of an ordinance enacted under a general power is not apparent on its face, evidence extrinsic to it may be introduced to establish its unreasonableness.20 If the unreasonableness of an annexation ordinance is not apparent on its face, it seems that the contestants should be allowed to introduce extrinsic evidence, if the right to question its validity is to have any meaning. It would be rather anomalous to deny to those having the burden of proof21 an opportunity to prove unreasonableness in the only way available.22

6. *Representation of Annexed Area and Referral to Planning Commission.*—Two minor points were also disposed of in the *Knoxville* case23 with little difficulty. The first was that the annexation ordinance does not have to contain, as a condition precedent to its validity, a provision for representation of residents of the annexed area. The court said there was nothing in the statute to warrant such construction. The second point was that there is no requirement that the matter be referred to the planning commission before passage of the ordinance.

7. *Annexation Legislation.*—The authority of municipalities to

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17. *Id.* at 721.

18. *State ex rel. Campbell v. Mayor and Aldermen*, 341 S.W.2d at 735.

19. *Morton v. Johnson City*, 333 S.W.2d 924 (Tenn. 1960).

20. The correct rule appears to be that the admissibility of such evidence depends upon whether the ordinance has been enacted (1) under a valid, express and specific power, in which case extrinsic evidence is not admissible; or (2) under general, implied or incidental power, in which event extrinsic evidence is admissible to show its unreasonableness. 5 McQUILLIN, MUNICIPAL CORPORATIONS § 18.24 (3d ed. 1950).

21. See *State ex rel. Senff v. City of Columbia*, 343 S.W.2d 888 (Tenn. 1961), for a holding that the burden of proof is on those attacking the ordinance.

22. In a later case not included in the period of this survey an annexation ordinance of the city of Nashville was upheld on demurrer by judicial notice. *State ex rel. Schmittou v. City of Nashville*, 345 S.W.2d 874 (Tenn. 1961).

23. *City of Knoxville v. State ex rel. Graves*, 341 S.W.2d 718 (Tenn. 1960).

annex by ordinance<sup>24</sup> was amended by two acts of the 1961 General Assembly. The first<sup>25</sup> amended the law so as to require that the annexing municipality prove that the annexation of territory which is the site of substantial industrial plant development is not unreasonable.<sup>26</sup> It also specifically makes the need of municipal services by the plants, and the ability and intent of the municipality to extend the services factors in determining reasonableness. The other<sup>27</sup> requires that before any territory more than one-fourth square mile in area or having a population of more than five hundred persons may be annexed the governing body of the municipality shall adopt a plan of service. This plan must set forth at a minimum the identification and projected timing of municipal services proposed to be extended into the territory to be annexed. If there is a local planning commission, the plan of service must be submitted to it for study and written report.

8. *Control Over Streets.*—The city of Paris granted the Paris-Henry County Public Utility District a franchise to lay pipes under the surface of the city streets to furnish gas to the inhabitants of the city.

A city ordinance required a permit to make excavation in the streets, charged a fee, required a deposit to insure repair and restoration, and also required that liability insurance be carried.

The utility district made excavation without compliance with the ordinance, and was convicted in city court. On appeal the circuit court held the ordinance unconstitutional as impairing the obligation of contract; the supreme court reversed, holding the ordinance a reasonable and valid police regulation.<sup>28</sup> Although the franchise gave the utility district the right to make use of the streets in installing its pipes, such right was subject to regulation by the city in its governmental capacity under the police power, and this power could not be limited by contract.

The rule that the police power cannot be limited by contract may be stated in another way. The authority of the state itself or its constituted agencies to exercise the police power is implied in every contract, and this rule is constantly applied to contracts made with the state or any of its agencies.<sup>29</sup> Thus the power of the city to

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24. TENN. CODE ANN. §§ 6-309, -310 (1956).

25. TENN. CODE ANN. § 6-310 (Supp. 1961).

26. In other annexations the burden of proof is on the party attacking the annexation ordinance. State *ex rel.* Senff v. City of Columbia, 343 S.W.2d 888 (Tenn. 1960).

27. TENN. CODE ANN. § 6-309 (Supp. 1961).

28. City of Paris v. Paris-Henry County Utility District, 340 S.W.2d 885 (Tenn. 1960).

29. 5 McQUILLIN, MUNICIPAL CORPORATIONS § 19.37 (3d ed. 1950).

make reasonable regulations governing street excavations would be implied in the franchise with the utility district.

Other examples of the police power with respect to franchises of public service companies are the powers exercised in proper cases to require the relocation of facilities in streets and to require that wires be placed underground.<sup>30</sup>

9. *Closing of Streets.*—In *Wilkey v. Cincinnati, N.O. & Tex. Pac. Ry.*,<sup>31</sup> the question concerned the authority of a city to contract with respect to control over its streets; the jurisdiction of the state department of highways over streets of a municipality was incidentally involved.

Acting under a contract with the Railway Company, the federal government, and the city of Dayton, the state highway department had re-routed a highway from one city street to another about four blocks away. On the street where the highway had been previously routed, the department, in order to eliminate a railroad grade crossing, had erected barriers across the street at the crossing. Property owners who had been using the street filed a bill for an injunction against the railroad and the city to have the barriers removed and the street kept open. The court of appeals, in affirming the decree of the lower court granting an injunction, held that (1) when the highway was changed, jurisdiction over the old route reverted to the local authority; (2) Tennessee Code Annotated section 54-531<sup>32</sup> does not apply to roads and streets no longer a part of the state highway system; and (3) the power of cities to contract in furtherance of public works projects under Tennessee Code Annotated section 6-1603<sup>33</sup> does not authorize a contractor to close a public street four blocks away from the project. The court said that contracts of a municipality which tend to embarrass or control its legislative powers and duties or to cede the rights of citizens are

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30. *State v. Southern Bell Tel. & Tel. Co.*, 319 S.W.2d 90 (Tenn. 1958); *Southern Bell Tel. & Tel. Co. v. City of Nashville*, 35 Tenn. App. 207, 243 S.W.2d 617 (M.S. 1951); 7 McQUILLIN, MUNICIPAL CORPORATIONS § 24.588 (3d ed. 1950).

31. 340 S.W.2d 256 (Tenn. App. E.S. 1960).

32. This section requires the department of highways to "construct, reconstruct, improve and maintain streets in municipalities over which traffic from state highways is routed . . ." TENN. CODE ANN. § 54-531 (1956).

33. "Every municipality shall have power and is authorized . . . to make contracts and execute instruments containing such terms, provisions, and conditions as in the discretion of the governing body of the municipality may be necessary, proper, or advisable for the purpose of obtaining a grant, loan, or other financial assistance from any federal agency pursuant to or by virtue of any act for post war projected aid; to make all other contracts and execute all other instruments necessary, proper, or advisable in or for the furtherance of any public works projects; and to carry out and perform the terms and conditions of all such contracts or instruments." TENN. CODE ANN. § 6-1603(h) (1956).

not looked upon with favor.<sup>34</sup> The right to make such a contract should not be based upon implication from a strained and unnatural construction of a statute dealing in general terms with the unrelated subject of federal aid projects.

Since the city had not passed an ordinance closing the street, the barriers constituted an obstruction.<sup>35</sup>

The fundamental principle that public powers conferred upon a municipal corporation cannot be surrendered or relinquished to others in the absence of legislative authority has been applied frequently to the control of streets.<sup>36</sup> Legislative power cannot be delegated by a municipality unless expressly authorized by statute.<sup>37</sup> The construction put upon the authority of the city to contract seems to be in accord with these principles.

10. *Waiver of Immunity*.—An action was brought under the Tennessee Wrongful Death Statute<sup>38</sup> against the town of Morristown as a result of a collision of a police car with a car driven by the deceased. The issues submitted to the jury were whether or not the town knowingly (1) allowed its cruiser on which liability insurance was carried to be operated by an inexperienced, young, reckless, childish and immature driver; and (2) selected as one of its police officers, a young, inexperienced, reckless, childish and immature person. The assignment of this as error was sustained in *Mayor and Aldermen v. Inman*.<sup>39</sup>

The choosing of agents for the enforcement of public laws is a governmental function, and a municipality cannot be held liable for negligence about such matters.<sup>40</sup> It has been held that the carrying of insurance on police cruisers is not the equivalent of a consent to be sued for the exercise of any other governmental function, such as the choosing of police officers. This is necessarily so because the waiver is only to the extent of the insurance.<sup>41</sup> If the contract of insurance covers only the police car, the insurer could not be held liable outside the coverage of the contract.

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34. Cf. *Carter County v. City of Elizabethton*, 39 Tenn. App. 685, 287 S.W.2d 934 (E.S. 1955).

35. The charter of the city of Dayton grants it power to vacate streets by ordinance. TENN. CODE ANN. § 6-1901(15) (1956).

36. *Nashville v. Singer & Johnson Fertilizer Co.*, 127 Tenn. 107, 153 S.W. 838 (1912); *Knoxville v. Harth*, 105 Tenn. 436, 58 S.W. 650 (1900); 13 McQUILLIN, MUNICIPAL CORPORATIONS § 37.17 (3d ed. 1950).

37. 2 McQUILLIN, MUNICIPAL CORPORATIONS § 10.40 (3d ed. 1950).

38. TENN. CODE ANN. § 20-607 (1956).

39. 342 S.W.2d 71 (Tenn. App. E.S. 1960).

40. *Combs v. City of Elizabethton*, 161 Tenn. 363, 31 S.W.2d 691 (1930).

41. *McCloud v. City of LaFollette*, 38 Tenn. App. 553, 276 S.W.2d 763 (E.S. 1954).

11. *Emergency Vehicles*.—It was also held in the *Morristown* case<sup>42</sup> that in order for an emergency vehicle to be exempt from the rules governing other vehicles, the driver thereof must make use of audible *and* visual signals as required by statute,<sup>43</sup> the flashing of a searchlight alone being insufficient to invoke the exemption. A police officer who fails to comply with the requirements of the statute subjects himself to all rules of the road and common-law duties to which an ordinary motorist is subject.

12. *Zoning*.—In *State ex rel. Morris v. City of Nashville*<sup>44</sup> a property owner had been denied a permit to place trailers on a lot because to do so would, in the opinion of the building inspector, violate certain zoning and building regulations which referred to buildings and structures but did not specify trailers. The board of zoning appeals affirmed, but certiorari was not taken. Instead the property owner brought mandamus to compel the officials to issue the permit. The chancellor granted the writ and the supreme court reversed. The supreme court cited several cases from other jurisdictions and stated that they conflicted hopelessly on the question of whether a trailer is a building or a dwelling in respect to a zoning ordinance. The court concluded that the city officials did not act arbitrarily, unreasonably or capriciously in their denial of the permit; therefore the court would not disturb their decision by mandamus. The courts will not utilize mandamus to disturb decisions and actions of boards and officers having discretionary powers, except where they (1) act in an arbitrary and oppressive manner, or (2) act beyond their jurisdiction, or (3) refuse to assume the jurisdiction which the law imposes upon them.<sup>45</sup>

Mandamus generally is precluded when certiorari or statutory appeal is available for review of the action of a zoning board or official.<sup>46</sup> In the absence of facts showing an abuse of discretion or other legal error to the prejudice of the rights of the relator, a writ of mandamus to compel the issuance of a permit or other administrative action in zoning will be denied.<sup>47</sup> The exception—abuse of discretion—has been recognized by other courts. In *Finston v. Town of Nutley*<sup>48</sup> the court said: "If the record before us showed clearly that prosecutors were entitled to the permit, we might well grant the

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42. *Mayor and Aldermen v. Inman*, 342 S.W.2d 71 (Tenn. 1960).

43. TENN. CODE ANN. § 59-808 (1956).

44. 343 S.W.2d 847 (Tenn. 1961).

45. *State ex rel. Millsaps v. Board of Education*, 122 Tenn. 161, 121 S.W. 499 (1909).

46. 8 McQUILLIN, MUNICIPAL CORPORATIONS § 25.307 (3d ed. 1950).

47. *Ibid.*

48. 1 N.J. Super. 85, 62 A.2d 483 (App. Div. 1948).

mandamus, even though the appeal to the Board of Adjustment had not been pursued. . . . But the record is too scanty, the prosecutors' right too uncertain."<sup>49</sup> In *Janigian v. City of Dearborn*<sup>50</sup> it was held that a board of zoning appeals did not abuse its discretion in refusing to issue a building permit in view of the fact that some evidence that granting such permit would be inimical to public health and safety was shown. The persons seeking the writ of mandamus failed to show that they had a clear legal right to the issuance of such a permit by the board.

13. *Legislation.*—In addition to the above mentioned public acts of the 1961 General Assembly relating to or affecting municipalities, Tennessee Code Annotated sections 6-1251 to -1268 seem significant. They authorize municipalities to levy special assessments for sanitary sewers, streets, sidewalks and storm drains. The cost of such facilities shall be shared by the property owners who benefit thereby in proportion to the assessed valuation of their land, not including improvements. The municipality, however, must bear at least twenty-five per cent of the cost unless it pledges its full faith and credit to satisfy any deficiency in the collection of improvement assessments. Improvement assessments shall not be levied against undeveloped or largely undeveloped areas, but shall be limited to areas in which a majority of the lots or parcels of land have buildings or other structures on them.

## II. COUNTIES

1. *Change of Voting Places.*—*Byrd v. Rhea County*<sup>51</sup> dealt with the authority of county courts to change voting divisions or places, and was largely a case of statutory construction.<sup>52</sup> As far as future changes in voting places or divisions are concerned, the case is of academic interest only, since the 1961 General Assembly deleted all the sections of the code in question<sup>53</sup> and inserted new provisions.<sup>54</sup> Under the new enactment, precinct boundaries may be established, altered or modified by the commissioners of elections subject to approval by the county court. Any change must be made at least three months before an election in order to be effective for that

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49. *Id.* at 484-85.

50. 336 Mich. 261, 57 N.W.2d 876 (1953).

51. 338 S.W.2d 545 (Tenn. 1960).

52. The county court changed voting places without complying with the conditions in TENN. CODE ANN. § 2-704 (1956), and insisted that § 2-704 did not apply for various reasons. The supreme court held that when the conditions in § 2-704 existed, the county court was required to comply with them.

53. TENN. CODE ANN. §§ 2-703 to -704 (1956).

54. TENN. CODE ANN. §§ 2-701 to -702 (Supp. 1961).

election. Changes made in the boundaries of precincts must be recorded and published.<sup>55</sup>

2. *Appointment of Election Commissioners.*—*Buford v. State Board of Elections*<sup>56</sup> held that private citizens who claimed no special interest or special injury could not maintain an action to have the appointment of county election commissioners declared null and void; nor could they question the qualifications of members of the county election commission, this being a political question resting entirely with the state board of elections.<sup>57</sup>

3. *Fees of Clerks.*—The clerk of the circuit and criminal courts of Clay County, who also served *ex officio* as clerk of the general sessions court, filed a declaratory judgment suit asking for the construction of Tennessee Code Annotated sections 8-2401 to -2413.<sup>58</sup> It was his contention that the county was liable for the difference in the amount of fees he received as clerk of the circuit and criminal courts and the minimum salary provided by statute, and that the fees received for serving as clerk of the general sessions court should not be counted in arriving at that minimum. The supreme court held that he must account for all his fees, including fees earned as clerk of the general sessions court, in arriving at his minimum salary. The court said that the purpose of the Anti-Fee Act<sup>59</sup> was to make these officers' salaries uniform, and that to allow clerks compensation over and above the fees that they would otherwise earn would make compensation uneven in the various counties in the same class. The effect of such a holding would be to suspend a general statute for the benefit of an individual. The court's decision is analogous to its previous holdings that private acts which provide compensation over and above the maximum salary to which officers are entitled under the Anti-Fee Act<sup>60</sup> are unconstitutional. For example, in *Board of Education v. Shelby County*<sup>61</sup> the court found it necessary to hold invalid a provision of the general law by which the legislature had attempted to reserve a right to provide additional compensation by private act.<sup>62</sup>

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55. TENN. CODE ANN. §§ 2-701 to -702 (Supp. 1961).

56. 334 S.W.2d 726 (Tenn. 1960).

57. *Jared v. Fitzgerald*, 183 Tenn. 682, 195 S.W.2d 1 (1946).

58. *Clay County v. Stone*, 343 S.W.2d 863 (Tenn. 1961).

59. TENN. CODE ANN. §§ 8-2401 to -2413 (1956).

60. TENN. CODE ANN. §§ 8-2401 to -2413 (1956).

61. 339 S.W.2d 569 (Tenn. 1960).

62. "Provided, that the provisions of this section prohibiting additional salaries or compensation to clerks of special courts shall not apply to court of general session. Provided, further, that when such clerks shall serve as clerks of a court of general session, it shall be lawful for such clerks to receive additional compensation, and payable, as may be provided in the law creating such general sessions court." TENN. CODE ANN. § 8-2411 (1956).

4. *Paupers*.—In *Jennings v. Davidson County*<sup>63</sup> a county was held to be entitled to recover the value of services rendered to a pauper patient from an inheritance received by the pauper after the services were rendered. The basis of the holding was that the patient at all times owed for the services, that the services were gratuitous only if the patient had no money.

It was also held that the statute of limitations did not apply, since the county in providing for the poor was exercising a governmental function.

5. *Legislation*.—Tennessee Code Annotated sections 5-1601 to -1612 authorize counties to establish, construct, acquire and operate certain urban type public facilities in unincorporated areas, and to levy appropriate charges or fees.

### III. SCHOOLS AND SCHOOL DISTRICTS

1. *Conflict of Interest*.—A quo warranto proceeding was brought against the defendant, a member of a county board of education; he was charged with violating Tennessee Code Annotated sections 12-401 and 12-402. These sections prohibit any person whose duty it is to vote on state, county or municipal contracts from having a personal interest in such contracts. The defendant, as agent for one or more insurance companies, had written fire and indemnity insurance policies on public schools in the county. He had received and continued to receive commissions based on a percentage of premiums. By demurrer he contended that the statute was not violated because the rates charged for insurance were governed by statute. In sustaining the lower court's overruling of the demurrer, the supreme court held that the statute was violated because the board of education was vested with discretion as to whether to carry its own insurance, or if it procured insurance, the amount it procured. Thus, the amount of the commission which the defendant would receive depended upon the exercise of discretion by the board.<sup>64</sup>

The defendant's demurrer indicates that he was relying on the case of *State v. Yoakum*,<sup>65</sup> which held that a loan of money in good faith for a legitimate purpose at the legal rate of interest did not violate the policy and purpose of the statute. This case, however, was neither mentioned nor distinguished in the principal case.

2. *Permanent Tenure*.—In *State ex rel. Stewart v. Lunsford*<sup>66</sup> the

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63. 344 S.W.2d 359 (Tenn. 1961).

64. *State ex rel. Abernathy v. Anthony*, 335 S.W.2d 832 (Tenn. 1960).

65. 43 Tenn. App. 123, 306 S.W.2d 39 (E.S. 1957).

66. 336 S.W.2d 20 (Tenn. 1960).

question was whether a former county superintendent of schools who had served a four-year elective term in such capacity had qualified by reason of such service for permanent tenure status under the Teachers Tenure Act.<sup>67</sup> He had, after such service, made application for a teaching position but was not elected by the board of education. The court was of the opinion that a superintendent is a teacher as defined by the act and that the four-year elective term should be counted as the probationary period required by the act; however, he failed to meet one requirement—re-election or retention in the system after the probationary period.

3. *School Budgets.*—*State ex rel. Bobo v. County of Moore*<sup>68</sup> illustrates the difficulties which can sometimes arise when there is a division of responsibilities among public officers or bodies with respect to a public function.

A supervisor and attendance teacher had been elected by the county board of education and the board had adopted a resolution to amend the school budget to provide for his salary and traveling expenses. The superintendent of schools did not, however, present a budget to the quarterly county court, and the court did not amend the budget to provide for the teacher's salary and traveling expenses. The teacher in a prior suit had obtained a decree holding that he held the position under permanent tenure and was entitled to all rights, benefits and salaries of the position. The action in the principal case was necessary to enforce the decree and instruct the superintendent, board and county court on their duties.

The inaction of the board of education was due to doubts that the teacher had a contract, since the contract was not in writing; he had been elected by the board without the recommendation of the superintendent, and the superintendent had not prepared the budget.

The court, citing *Morton v. Hancock County*, said that it was no longer the law in Tennessee that a teacher's contract must be in writing.<sup>69</sup> Also cited were cases refuting the idea that the board could not act without the recommendation of the superintendent and without his having prepared the budget. The court added that a court of equity could correct the situation by acting in personam upon the person of the superintendent or other recalcitrant official or by force of direct decree.<sup>70</sup>

As to the power of the courts to require the county court to provide for the teacher's salary and traveling expenses in the budget, it was

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67. TENN. CODE ANN. §§ 49-1401 to -1420 (1956).

68. 341 S.W.2d 746 (Tenn. 1960).

69. 161 Tenn. 324, 30 S.W.2d 250 (1930).

70. GIBSON, SUITS IN CHANCERY § 41 (5th ed. 1956); TENN. CODE ANN. §§ 21-1203 to -1209 (1956).

said that this was in the discretion of the county court, but that the exercise of the discretion must be reasonable.<sup>71</sup>

4. *Division of Local School Funds.*—The question in *Board of Education v. Shelby County*<sup>72</sup> concerned the validity of certain private acts applicable to Shelby County. These acts provided for division of local school funds and the proceeds of an issue of county school bonds between the county and city school systems on a fixed percentage basis instead of on an average daily attendance basis as provided by general statute.<sup>73</sup>

There would have been no difficulty in finding the private acts invalid<sup>74</sup> had it not been for certain appended provisions in several general education acts by which the legislature attempted to reserve the right to act by private act.<sup>75</sup> Illustrative of these provisions was the one in the General Education Act of 1947<sup>76</sup> which directed division of local school funds on an average daily attendance basis, but added "unless otherwise provided by Private Act." The court held that this provision and similar provisions in other general education acts were attempts to suspend the general law and in violation of article 11, section 8, of the state constitution. The legislature could not suspend the general law by private act, and it could not authorize a suspension of the general law by an appended provision to a public act. The private acts depending upon such provisions were therefore invalid as suspending the general law for the benefit of one county and individuals therein. There was found to be no reasonable basis for such discrimination. The same problems and the same general situation existed in Shelby County as in all other counties in respect to its educational system.

5. *Legislation.*—Tennessee Code Annotated section 49-233 prohibits the creation or reactivation of a city or special school district school system unless it is large enough to offer adequate educational opportunities for pupils of grades one through twelve in keeping with standards established by the state board of education.

Tennessee Code Annotated section 49-1105 raises substantially the

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71. State *ex rel.* Brown v. Polk County, 165 Tenn. 196, 54 S.W.2d 714 (1932).

72. 339 S.W.2d 569 (Tenn. 1960).

73. TENN. CODE ANN. § 49-206 (1956).

74. In *Davidson County v. City of Nashville*, 190 Tenn. 136, 228 S.W.2d 89 (1950), an act substantially the same as those involved in the principal case was held invalid as an attempt to change the method of dividing school funds from that provided by general law.

75. Whether there was a valid classification on a population basis to make the acts general was dismissed with the statement that the private acts involved "apply to only one county, that of Shelby, and were never intended to apply to any other county." *Davidson County v. City of Nashville*, 190 Tenn. 136, 228 S.W.2d 89 (1950).

76. Tenn. Pub. Acts 1947, ch. 8, § 16.

number of pupils in average daily attendance required for the establishment of junior and senior high schools by county, city, or special school district boards of education. This section, however, specifically permits the consolidation of any two or more high schools now established even though the required number of pupils would not be met.

Tennessee Code Annotated sections 49-712 and 49-713 amend existing law so as to change the method of distributing bond funds to special school districts from a "scholastic population" basis to an "average daily attendance" basis. They also regulate the use of the special school fund by counties, cities and special school districts.

#### IV. LOCAL GOVERNMENT IN GENERAL—LEGISLATION

The 1961 General Assembly passed several public acts relating to or affecting local governments. In addition to the public acts already mentioned the following seem significant.

Tennessee Code Annotated sections 57-205 and 57-209 make the action of any county or municipal beer board in connection with the issuance of any order, including the revocation of a license or permit or the refusal to grant a license or permit, reviewable by statutory writ of certiorari; a trial de novo may be substituted for an appeal. The same method of review is provided for refusal of any county beer board to grant a hearing upon the person's application for a license or permit.

Tennessee Code Annotated section 65-405 provides that any future franchise payments or other payments made by a privately owned public utility to a municipality or other local government, for the use of public streets, alleys, or other public places, or any future license, privilege, occupation or excise tax payment above those now paid, shall be billed pro rata to the utility customers receiving local service within the municipality or local government, and shall not otherwise be considered by the public service commission in fixing the rates and charges of the utility.

Tennessee Code Annotated section 35-326 authorizes the state, municipal corporations and political subdivisions to invest any sinking funds, pension funds, or other funds in any bonds or other obligation issued by the Tennessee Valley Authority.

Tennessee Code Annotated sections 6-3704, 6-3706, 6-3707, and 6-3711 amend the metropolitan governmental law to permit the creation of a charter commission by private act, and repeal Tennessee Code Annotated section 6-3705, which provided for the election of members. The amendment also requires removal from the total area

of the urban services district such areas of the principal city as to which the metropolitan government will not be able to provide substantial urban services within a reasonable period, in the event such territory has been added to the principal city subsequent to the creation of a charter commission or subsequent to the time of the filing of the proposed charter.

Tennessee Code Annotated sections 9-313 to -315 require each office, department, agency, division, or board of a political subdivision to be audited annually, and provides that a copy of the audit shall be sent to the state comptroller.

Tennessee Code Annotated sections 54-557 and 54-558 provide that municipalities or political subdivisions owning or operating utilities, or a privately owned utility "for which the municipality or other political subdivision is legally responsible under a valid contract or franchise for relocation costs," may obtain reimbursement of ninety per cent of the costs of relocating utilities on the interstate highway system, or on urban extensions thereof, "hereafter constructed."

Tennessee Code Annotated sections 8-3453 to -3457 require that any retirement system established by the state or any of its political subdivisions must become actuarially sound on or before January 1, 1966, and be so declared by the state comptroller; otherwise, it must suspend payment to all beneficiaries.