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# Local Government Law -- 1958 Tennessee Survey

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# LOCAL GOVERNMENT LAW—1958 TENNESSEE SURVEY

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## INTRODUCTION

The tremendous expansion of the functions of local governmental agencies, particularly into provinces heretofore reserved for private enterprise, has resulted in a similar expansion of local government law. It seems safe to assert that within the confines of local government law can be found legal principles and rules from practically every other field of law. It is necessary, therefore, to limit the scope of an annual survey of local government law; no longer is it possible to include in a survey article such as this a discussion of all of these legal principles and rules. Nor is such a discussion necessary, since many of these rules will be treated in other survey articles. Consequently, the present survey article will attempt to emphasize various aspects of this body of law which would not receive treatment elsewhere in the survey or which would not be expected, as a general rule, to be discussed in another survey article.[1]

Although a number of cases involving local government law were decided by the Tennessee appellate courts during the survey period, very few involved questions of first impression. Since most of the rules underlying these decisions were fairly well-settled, there is little need for extensive background analysis. With relatively few exceptions, therefore, only a brief sketch of the individual cases will be attempted.

## PUBLIC OFFICERS AND EMPLOYEES

*Qualifications of Office:* In *Kinkead v. State*[2] the Tennessee Supreme Court defined the phrase, "freeholder of the city,"[3] to mean a person who holds legal title to a common-law freehold estate[4] situated within the territorial boundaries of the city. Defendant, who had been elected city commissioner, claimed he was a freeholder and qualified to hold the office on the following grounds: (1) he resided within the city

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1. In accordance with this approach, all decisions on tort liability of municipal or public corporations will be left entirely to the survey of tort law. Administrative law problems, such as municipal licensing of dealers in intoxicating beverages, will not be treated herein. The survey of a particular field of law or procedure should be consulted by the reader interested in cases in that field which also involve points of local government law.

2. 303 S.W.2d 713 (Tenn. 1957).

3. The phrase "freeholder of the city" eminates from the Charter of Johnson City, § 15, art. 5 (quoted in instant case, 303 S.W.2d at 714-15).

4. 303 S.W.2d at 715, "A 'freehold' is an estate for life or in fee simple. A freehold estate is equal to, or greater than, a life estate."

in a home which was owned by his wife; (2) he had made extensive repairs and had satisfied an encumbrance due on the wife's property; (3) he operated a business within the city, leasing the premises on a month-to-month basis; (4) he owned certain real estate in the county, but not situated within the city limits; and (5) his mother owned burial lots in a cemetery in the city. The court rejected each of these grounds, finding that the defendant did not have a vested present interest in a freehold estate situated in Johnson City.[5]

*Misconduct in Office:* The Tennessee personal interest statute makes it unlawful for an officer of a municipal or public corporation to have a direct or indirect interest in any contract in which the municipal or public corporation is interested.[6] Whether a loan of money to a school district by a bank whose president and principal stockholder was a member of the school board violated the Personal Interest Statute was at issue in *State v. Yoakum.*[7] The trial court found that the loan was made in good faith and solely to accommodate the school board, but held that the personal interest statute had been violated. The court of appeals reversed, holding that a loan of money made in good faith for a legitimate purpose at the legal rate of interest was not within "the policy and purpose of the statute."[8] The court distinguished a loan of money from a contract for goods or services, on the ground that in the latter case a question of value is presented, requiring good faith negotiation without any conflict of interest on the part of any member of the board, whereas in the case of the loan of money, the legal rate of interest is less than the legal maximum.[9] The court also noted that any other construction of the statute would result in great inconvenience to small communities and might prevent the school board or other municipal or public corporation from performing its functions.[10]

*State ex rel. Chitwood v. Murley*[11] presented the question of whether

5. The defendant's interest in his wife's real property was an inchoate interest—a mere future expectancy, not a present vested interest—which may or may not become vested in the defendant on the death of the wife. The nature of this interest was not affected by the fact that he had made extensive repairs and had satisfied an encumbrance on the property, for the law presumes that the husband has made a gift to his wife. The business interest was not sufficient, since defendant was a tenant, not a freeholder. Finally, the wording of the Charter required that the freehold estate be situated within the city, and his property interest in the county was, therefore, insufficient.

6. TENN. CODE ANN. § 12-401 (1956). See also TENN. CODE ANN. § 12-402 (1956) (penalty for violation).

7. 306 S.W.2d 39 (Tenn. App. E.S. 1957).

8. *Id.* at 40.

9. *Ibid.*

10. *Ibid.* "To apply the statutes to such a situation, it seems to us, would be going beyond their meaning and purpose and result in great inconvenience in small communities where bank officers and stockholders frequently occupy positions of public trust and authority."

11. 308 S.W.2d 405 (Tenn. 1957).

a public officer may be removed from office for misconduct occurring in a previous term of office. It is well settled in Tennessee that misconduct in a previous term of office will not be grounds for ouster in a subsequent term under the Ouster Act,[12] and that the expiration of the term will render the question moot, even though the official succeeds himself.[13] In the instant case, however, the proceedings were brought under the quo warranto provisions of the Code,[14] and it was contended that the rule in ouster proceedings was not applicable to quo warranto proceedings. This contention was rejected, however, on the ground that there was little, if any, substantive difference between these two types of proceedings. Procedural distinctions were not deemed sufficient to require different treatment in quo warranto cases.

*State ex rel. West v. Kivett*[15] is somewhat similar to the preceding case in that the death of a county judge pending appeal of quo warranto proceedings to remove him from office rendered the issues raised in the case moot. The judge had been convicted and sentenced to the penitentiary for embezzlement of county funds, and while an appeal in the criminal case was pending, the quo warranto proceedings were instituted under a Code provision vacating the office of any state official sentenced to the penitentiary.[16] The defendant had claimed that the Code provision was unconstitutional because it conflicted with the constitutional provision providing for impeachment of county judges.[17] The court, reviewing the authorities on the effect of the expiration of the term of office on prior misconduct, held that the death of the county judge had the same effect, and that there was not sufficient public interest in the present type of case to allow the court to make an exception to the rule that it would not decide moot questions.[18]

It will be noted that both of the two preceding cases were brought

12. TENN. CODE ANN. § 8-2701 (1956).

13. See, *e.g.*, State ex rel. Phillips v. Greer, 170 Tenn. 529, 98 S.W.2d 79 (1936); State ex rel. Wilson v. Bush, 141 Tenn. 229, 208 S.W. 607 (1919).

14. TENN. CODE ANN. § 23-2801 (1956).

15. 308 S.W.2d 833 (Tenn. 1957).

16. TENN. CODE ANN. § 8-2801 (1956) "Any office in this state is vacated: .... (6) By the sentence of the incumbent, by any competent tribunal in this or any other state, to the penitentiary, subject to restoration if the judgment is reversed, but not if the incumbent is pardoned."

17. TENN. CONST. art. 6, § 6. It was contended that this section of the Constitution provided the exclusive method of removing a county judge from office. The lower court had rejected this contention on the ground that the acts of the judge had vacated the office and suit was brought merely to enjoin him from interfering with the office already vacated by him. See 308 S.W.2d at 834.

18. The court noted that in several prior cases when the question had become moot a decision had been rendered because the right of a governmental agency to perform certain duties had been successfully challenged in the trial court and the duties of the agency would be left in doubt until the supreme court had decided the question. This was not the case here, however, especially in view of the fact that the situation would arise only infrequently. See 308 S.W.2d at 836-37.

before the court by quo warranto proceedings. In *State ex rel. Wallen v. Miller*[19] the question involved the parties who may bring such proceedings. The proceedings had been instituted by a number of private citizens, without joining the District Attorney General, to remove the public officer on the ground that he had violated the public interest statute.[20] The court held that the District Attorney General or the Attorney General was an indispensable party to the quo warranto proceedings. Moreover, it noted that the private citizens would not have sufficient interest in the case to bring a regular proceeding at law[21] and that the Ouster Act[22] was not applicable.[23]

*Discharge of Public Employees:* In one case the question concerned not the substantive matters surrounding the discharge of public employees, but the proper appellate court in which to pursue an appeal from a circuit court judgment quashing the judgment of a mayor removing commissioners of a housing authority from office on the ground of neglect of duty.[24] The appeal was presented to the supreme court, which ordered it transferred to the court of appeals. The circuit court had heard the matter on a writ of certiorari which did not preclude it from making findings of fact; therefore, the court of appeals was the proper appellate court.

Both substantive and procedural matters pertaining to the discharge of a public school teacher were presented in *Johnson v. City of Jackson.*[25] The teacher had been discharged for cause—namely, mistreating students—after she had been notified of her re-election to teach in the succeeding school year[26] and after the expiration of the prior school term, and she sought to recover her salary on the ground that she had been wrongfully discharged. The court first found that the General Education Bill of 1925 was inapplicable,[27] and that the public schools of Jackson were operated under a private act[28] which gave a

19. 304 S.W.2d 654 (Tenn. 1957).
20. TENN. CODE ANN. §§ 12-401, 402 (1956).
21. 304 S.W.2d at 658.
22. TENN. CODE ANN. § 8-2701 (1956).
23. 304 S.W.2d at 659-60. It should be noted that the term had expired in the present case.
24. Mayor of the City of Jackson v. Thomas, 302 S.W.2d 56 (Tenn. 1957).
25. 302 S.W.2d 355 (Tenn. App. W.S. 1956).
26. The court held that the letter notifying the teacher of her re-election was sufficient to create a contract for her services in the succeeding school year, since the letter requested that the teacher notify the superintendent of schools if she could not accept. 302 S.W.2d at 359.
27. The reason given by the court is that the statute expressly excluded schools being operated under private act if the school district levies an addition tax for the operation of its schools. See 302 S.W.2d at 360 (quoting the exclusion provision of the General Education Bill of 1925). The City Charter, Tenn. Priv. Acts (1909), c. 407, § 27, provides for this additional tax, and while the teacher claimed no such tax was actually levied, the court held that in the absence of proof to the contrary, there is a presumption that the tax was levied and collected. See 302 S.W.2d at 361.
28. Tenn. Priv. Acts (1915), c. 168.

commissioner of education the power to discharge any employee for cause.[29] An appeal from the discharge by the commissioner to the full Board of School Commissioners was allowed, if brought within three days of the discharge.[30] Since the teacher had failed to appeal within the allotted time, she had lost her right of appeal. The court further held that the commissioner could discharge a teacher for cause at any time.[31]

*Removal by Recall:* As a general rule, charters and statutes regulating municipal corporations frequently provide for the removal of elected officials by recall elections.[32] Such a provision in the charter of Union City[33] was before the court in *Roberts v. Brown*.[34] The procedure is substantially the same as that adopted in most other jurisdictions: a petition calling for a recall election and signed by a certain number of the qualified electors of the city is filed with the city clerk, who is charged with the duty of examining the petition and determining its legal sufficiency. If sufficient, the clerk certifies the petition to the county election commission; otherwise, it is returned to the petitioners.

In *Roberts v. Brown* the clerk refused to certify both original[35] and amended petitions.[36] The petitioners sought and obtained a writ of certiorari to correct the action of the clerk. Three important questions were presented; first, whether the writ of certiorari was the proper appellate remedy; second, whether the recall provision was constitutional; third, whether city officials who received benefits under the city charter could question its validity.

Certiorari was held to be an appropriate remedy, since the clerk was acting in a judicial capacity and the writ was sought to regulate, correct and keep an inferior jurisdiction within its authority.[37] No

29. *Id.* at § 22.
30. *Ibid.*
31. Johnson v. City of Jackson, 302 S.W.2d 360, 362 (Tenn. 1957).
32. See 4 McQUILLAN, MUNICIPAL CORPORATIONS § 12.251 (3d ed. 1949).
33. Tenn. Priv. Acts (1925), c. 760, § 22.
34. 310 S.W.2d 197 (Tenn. App. W.S. 1957).
35. With regard to the original petition, the clerk allowed a number of the signers to withdraw their signatures during the ten day period in which she was to examine the petition. The result was a lack of the requisite number of signatures. This was clearly improper. 310 S.W.2d at 204, 214; 4 McQUILLAN, MUNICIPAL CORPORATIONS § 12.251 at 315 (3d ed. 1949).
36. The clerk rejected the amended petitions on a number of grounds, most of which were purely technical. For example, some petitions were rejected because the full names of the signers had been inserted in the place of initials. See 310 S.W.2d at 202-03.
37. The Tennessee Code provides for two types of certiorari—the statutory equivalent of the common-law writ, TENN. CODE ANN. § 27-801 (1956), and the so-called statutory writ, TENN. CODE ANN. § 27-802 (1956). It was contended that the petitioners must elect between these two writs, since under the latter provision, trial de novo may be had, whereas the court under the former section is limited to the question of whether the inferior jurisdiction exceeded its jurisdiction or acted illegally. The court rejected this contention

other method of review—*e.g.*, appeal or writ of error—was available here;[38] while mandamus would lie, it would not exclude the writ of certiorari.[39]

Recall provisions have generally been upheld as constitutional,[40] and the Tennessee court, noting the general rule, sustained the recall provision in the instant case. In the first place, the recall provision did not conflict with the general law providing for the removal of public officials, indeed, the charter expressly declared that the recall procedure was cumulative, not exclusive.[41] Moreover, since municipal corporations are "extensions of the state government itself, they may be established with such provisions in their charters as to the Legislature may seem right and proper."[42] Finally, the home rule amendment to the Tennessee Constitution,[43] prohibiting local legislation which has the effect of removing an incumbent from office unless conditioned upon the approval of the local governing body or electorate, was not applicable; the amendment did not affect legislation enacted prior to its adoption, and further, the officer is not removed from office, but merely subjected to the risk of a new election.

The court also held that even if the constitutionality of the recall provisions were not sustained, neither the city clerk nor the city commissioner sought to be recalled could raise the question. Both were holding office under the charter and had accepted benefits under its provisions; therefore, both were estopped from denying the validity of the recall provisions. Once a public official has accepted the benefits conferred upon him by an act, he will not be heard to question the validity of that act in any particular, for to allow him to do so would be to allow him to hold office on different terms than those he had previously accepted.[44]

### POLICE POWER

*Zoning:* Owners of certain land in Davidson County, situated in an estate's "B" area, and a private club, as optionee to purchase the land,

on the ground that both writs were appropriate. The common-law equivalent would lie since it was claimed that the clerk had acted illegally, and the statutory writ would lie since neither an appeal nor a writ of error was available. 310 S.W.2d at 207-08.

38. It was claimed that TENN. CODE ANN. § 27-501 (1956) was applicable, allowing an appeal from the judgment of a municipal officer "charged with the conduct of trials." The latter phrase was held to render this section inapplicable in the instant case. 310 S.W.2d at 205-06.

39. The clerk was making a judicial determination—the legal sufficiency of the petitions—and the writ of certiorari lies to correct or superintend inferior jurisdictions. Mandamus may be used to require the clerk to perform the duties of office, but certiorari is also appropriate. 310 S.W.2d at 205. See also 4 MCQUILLAN, MUNICIPAL CORPORATIONS § 12.251 at 317-18 (3d ed. 1949).

40. 4 MCQUILLAN, MUNICIPAL CORPORATIONS § 12.251 at 311 (3d ed. 1949).

41. See State *ex rel.* Timothy v. Howse, 134 Tenn. 67, 183 S.W. 510 (1916).

42. Roberts v. Brown, 310 S.W.2d 197, 210 (Tenn. App. W.S. 1957).

43. TENN. CONST. art. 11, § 9, as amended (1953).

44. Roberts v. Brown, 310 S.W.2d 197, 212 (Tenn. App. W.S. 1957).

applied for and were granted a permit to operate a private club on the land. The action of the Board of Zoning Appeals was appealed, primarily on the ground that the private club was not a legal entity at the time the permit was issued. Although the documents required for incorporation had been prepared and filed with the board, they had not been filed in the offices of the Secretary of State and the Davidson County Registrar. The court held that the permit was properly issued.[45] In the first place, the board had not erroneously assumed that the club was in legal existence at the time of the hearing. Secondly, the lack of a corporate entity did not divest the board of authority to issue the permit.[46] Private clubs, a permissible use in an estate's "B" area under the appropriate zoning regulations, could be operated by an individual, unincorporated association or corporation. The permit, moreover, is not personal to the owners of the land; instead, it is a condition running with the land. As to the contention that the charter and by-laws of the private club might be at variance with those contemplated by the board, the court found no such variance, and concluded that even if a material variance were shown, the proper remedy is a further hearing before the board.[47] Finally, the court found that there was "material evidence" to support the findings of the board, and that those findings were, therefore, conclusive.

In *Hassler v. Overton County*[48] certain landowners who had previously executed right-of-way contracts brought suit to recover damages to their land as a result of the construction of the highway. The circuit court sustained the county's demurrer on the ground that the contract precluded recovery. The supreme court reversed and remanded the case for a new trial, holding that the landowners were entitled to prove on the trial of the cause that the elements of damages complained of were not within the contemplation of the parties at the time the contract was executed. A similar case in which the doctrine of estoppel had been applied was distinguished because the county had acquired the land in question there by a warranty deed which covered any and all damages which might result from the construction work.[49] The contract here was very general in nature and did not exclude the county from liability for damages over and

45. Hickerson v. Flannery, 302 S.W.2d 508 (Tenn. App. M.S. 1956).

46. The necessary incorporation procedure was completed by the time the chancellor considered the case; therefore, the opponents of the permit "would not be aggrieved by the ruling of the Zoning Board . . . ." Hickerson v. Flannery, 302 S.W.2d at 514 (Tenn. App. M.S. 1956).

47. Since the court had already concluded that the conditions of the permit ran with the land, it would seem that these conditions would take precedence over any charter or by-law provision and would be a part of the rules and regulations under which the club was operated.

48. 311 S.W.2d 206 (Tenn. 1958).

49. Denny v. Wilson County, 198 Tenn. 677, 281 S.W.2d 671 (1955).

above the incidental benefits which constituted the *quid pro quo*.

*Ordinances:* A city ordinance requiring the licensing of motor vehicles using the city streets was upheld against the contention that it was a revenue, not a regulatory, measure in *City of Chattanooga v. Veatch*.[50] The ordinance expressly required that the income from the license fee be used in the administration and enforcement of the ordinance and to promote traffic safety. The fact that the income exceeded the expenses of administration of the ordinance was not, according to the court, a valid objection.[51]

A recently enacted Chattanooga ordinance, requiring certain types of retail stores to close on Sundays, was alleged to be unconstitutional on the ground that it was arbitrary and discriminatory, in that it allowed similar retail stores to remain open and sell the same type of merchandise. The supreme court, per Justice Burnett, sustained the validity of the ordinance, finding a reasonable classification and no discrimination between persons or retail mercantile establishments in substantially the same situation.[52] A lack of clarity and logical analysis and overconcern with the boundaries of judicial and legislative functions casts considerable doubt on the authoritativeness of this opinion.

### MUNICIPAL BOUNDARIES—ANNEXATION

In *Brent v. Town of Greeneville*,[53] the supreme court decided a matter of procedure which may well trap the unsuspecting attorney seeking to contest annexation. The section of the Code which allows a person taking a voluntary nonsuit one year within which to commence a new action[54] was held inapplicable to annexation contests. The provision for quo warranto proceedings to contest an annexation ordinance requires that the proceeding be brought prior to the operative date of the ordinance,[55] which is thirty days after its passage.[56] The court reasoned that this was a "built-in" statute of limitations, a condition precedent to bringing the action, and that the one-year extension upon the taking of a voluntary non-suit is applicable only to general statutes of limitations relating solely to the remedy.

A description of the territory proposed to be annexed, which must be published prior to an election on the proposed annexation,[57] is

50. 304 S.W.2d 326 (Tenn. 1957).
51. *Id.* at 327.
52. Kirk v. Olgiati, 308 S.W.2d 471 (Tenn. 1957). The court also held that the ordinance did not conflict with a state "Blue Law," since it did not go beyond the terms of that statute. TENN. CODE ANN. § 39-4001 (1956).
53. 309 S.W.2d 121 (Tenn. 1957).
54. TENN. CODE ANN. § 28-106 (1956).
55. TENN. CODE ANN. § 6-310 (Cum. Supp. 1958).
56. TENN. CODE ANN. § 6-309 (Cum. Supp. 1958).
57. TENN. CODE ANN. § 6-311 (Cum. Supp. 1958).

sufficient if it would pass property under a deed.[58] If the boundaries of the property described can be ascertained by running the calls in reverse, the description is sufficient even though one of the calls is erroneous. Moreover, publishing a correct plat with the description cured the defect. The court based its reasoning on the fact that the purpose of publishing the description was to notify the residents of the territory to be annexed of the proposed annexation.[59]

Tennessee law requires the adjustment of the assets and liabilities of an annexed territory as between the annexing municipality and "any affected instrumentality of the State of Tennessee, such as, but not limited to, a utility district, sanitary district, school district, or other public service district . . . ."[60] In *Hamilton County v. City of Chattanooga*[61] the supreme court rejected the contention that a county was not an "affected instrumentality of the State of Tennessee." The rule of *ejusdem generis* was not applicable and did not limit this phrase to public service districts, since the general words preceded rather than followed the specific words. Moreover, the phrase, "but not limited to," required, according to the court, a decision that "affected instrumentalities" was not limited to the examples given.

### Labor Relations

During the survey period the right of a labor union to coerce, by strikes and picketing, a municipal corporation to recognize it as bargaining agent for the municipal employees was before the appellate courts in two cases.[62] In both cases the question was decided adversely to the union, although the municipal corporation was performing a proprietary function—operating a public electric system. In both, the municipal corporation sought and was granted an injunction against the union.

Both of these cases are authority for the proposition that striking and picketing a municipal corporation is illegal and against public policy, and even though peaceful, can be enjoined by the state courts. Moreover, this is true without regard to the nature of the function being performed by the municipal corporation—that is, whether it is acting in a governmental or proprietary capacity is immaterial. The controlling fact is that the functions are public in nature. In one of

58. Johnson City v. State *ex rel.* Maden, 304 S.W.2d 317, 319-20 (Tenn. 1957).
59. *Id.* at 319.
60. Tenn. Code Ann. § 6-318 (Cum. Supp. 1958). This legislation is based on Mendelson, *Suggestions for the Improvement of Municipal Annexation Law*, 8 Vand. L. Rev. 1 (1954).
61. 310 S.W.2d 153 (Tenn. 1958).
62. City of Alcoa v. Int'l Bhd. of Elec. Workers, 308 S.W.2d 476 (Tenn. 1957); Weakley County Municipal Elec. System v. Vick, 309 S.W.2d 792 (Tenn. App. W.S. 1957). See Sanders, *Labor Law—1958 Tennessee Survey*, 11 Vand. L. Rev. 1287 (1958).

these cases, the principal ground for holding that such strikes are illegal was the lack of authority in the municipal corporation to enter into a collective bargaining agreement,[63] while in the other case, the court relied upon the duty of a government employee to perform his functions economically and efficiently and upon the general rule against delegation of the discretionary duties of governmental agencies.[64]

One case presented the question of whether the doctrine of preemption divested the state courts of jurisdiction, the union contending that the National Labor Relations Board had exclusive jurisdiction.[65] The court rejected this contention, noting that the National Labor Relations Act expressly excluded governmental agencies in its definition of "employer."[66]

### HOME RULE

The Tennessee Constitution, by virtue of the so-called home rule amendment adopted in 1953, provides that local legislation shall be void unless approval by two-thirds of the local legislative body or by a majority of the local electorate is required by the provisions of the legislation.[67] During the survey period the supreme court had occasion to interpret this amendment twice.

In *State ex rel. Doyle v. Torrence*[68] the legislature had provided for a pension for the city judge, the act to become effective upon approval of two-thirds of the local legislative body.[69] At the meeting of the local city council, a quorum was present, but nine members refrained from voting, the result being that eight votes were cast in favor of the act, two against. Two-thirds of the full membership of the body would be fourteen. The city judge claimed that since a quorum was present, the two-thirds required was not two-thirds of the full membership, but merely two-thirds of those present and voting. The court rejected this contention, holding that the legislation must be approved by two-thirds of the full membership of the local legislative body.

The other case involved the question of whether a sanitary district was a municipality within the meaning of the home rule amendment.[70] The legislature had passed local legislation extending the services of a sanitary district, and had included in the legislation a section requiring approval by a majority of the local electorate.[71] It was claimed

63. Weakley County Municipal Elec. System v. Vick, 309 S.W.2d 792 (Tenn. App. W.S. 1957).
64. City of Alcoa v. Int'l Bhd. of Elec. Workers, 308 S.W.2d 476 (Tenn. 1957).
65. *Ibid.*
66. As amended 61 Stat. 137 (1947); 29 U.S.C. § 152(2) (1952).
67. TENN. CONST. art. 11, § 9.
68. 310 S.W.2d 425 (Tenn. 1958).
69. Tenn. Priv. Acts (1957), c. 200.
70. Fountain City Sanitary Dist. v. Knox County Election Comm'n, 308 S.W.2d 482 (Tenn. 1957).
71. Tenn. Priv. Acts (1957), c. 320.

that the district was not a municipality within the meaning of the amendment, and that the section requiring approval by the local electorate was, therefore, an unconstitutional delegation of legislative authority. The court sustained the contention that the sanitary district was not a municipality within the meaning of the amendment, but held that the section requiring approval by the local electorate was not essential to the purpose of the legislation and could be elided. Therefore, the act was declared constitutional, the repugnant section being elided from the legislation.

### MISCELLANEOUS

*Dedication of Real Estate:* Although dedication of real estate to a public use is normally a matter considered in the survey article on real property, one case involving dedication must at least be noted here, as it involves dedication by a county to a municipality.[72] Rutherford County on various occasions had expressly dedicated portions of its courthouse yard to the City of Murfreesboro to be used as streets, but no such express dedication was made with regard to a certain portion of the courthouse yard within the sidewalk. However, parking on this portion of the yard had been allowed. The city had placed parking meters around this portion of the yard, claiming it had been dedicated as a street and that the city had exclusive control over the streets within its boundaries. The court held that there had been no dedication, either express or implied, in this case, relying on a number of grounds. One ground emphasized the usual rule that there must be a definite and certain intention to dedicate the property, the court finding no proof of such intent on the part of the county. But most important from the standpoint of local government law is the fact that the court seems to hold that dedication cannot be implied when the county or other local governmental body is the owner of the property. According to the court, the disposition of county property is exclusively the province of the Quarterly County Court, and that body cannot delegate this authority, since it is not a ministerial act but an exercise of corporate powers. Therefore, the court concluded, acquiescence by county officials to a particular use of property would not be sufficient to result in dedication.[73] The court noted further that in order to change the particular use of real property held by a municipal or public corporation, the governing body must strictly conform to the legal procedure established by law.

*Intergovernmental Relations:* In another action brought by Rutherford County against the City of Murfreesboro, the county sought to

72. Rutherford County v. City of Murfreesboro, 309 S.W.2d 778 (Tenn. App. M.S. 1957).
73. *Id.* at 785, 786.

recover the amount transferred from the municipal electric system funds to the general funds of the city as a "county tax equivalent."[74] This county tax equivalent was allowed by a provision of the contract between the municipality and the Tennessee Valley Authority, whereby all electric system funds were to be kept separately from the general funds of the city, except that the city could collect from the electric system funds the equivalent of municipal, county and state taxes. This exception to the maintenance of separate funds was not to be effective if taxes were actually assessed by the other governmental units. The county contended, first, that it was a third party beneficiary of the contract, and, second, that the county tax equivalent funds were impressed with a constructive trust for the benefit of the county. Both contentions were rejected by the court. With regard to the third party beneficiary theory, the court found no express provision indicating an intent to confer a benefit on the county; instead, the only provision which would lend any weight to the argument was the one in which the amount transferred to the city's general funds was declared to include the equivalent of county taxes. This was construed merely as a yardstick to determine the amount the city could receive for its general funds.[75] The constructive trust theory failed because municipal property was exempt from taxation and the city was under no obligation to collect county taxes on property exempt from taxation for the benefit of the county. In short, the county never had a legal or equitable right to the funds.

*Elections:* In *City of Red Bank-White Oak v. Abercrombie*[76] the supreme court held that the municipality and not the county must bear the burden of a municipal referendum. In the absence of specific legislation to the contrary, the county will be held liable for the costs of a municipal election only if "there should appear some basis which bears a reasonable relation to county purposes."[77] Section 2-1107 of the Code,[78] requiring county payment of the costs of elections, was held to apply only to general elections, and not to prohibit municipalities from paying the costs of special elections.[79]

The question presented in *Brown v. Vaughn*[80] involved the definition of an election contest and the court which has original jurisdiction over such a contest. An election contest was defined as "a controversy

74. Rutherford County v. City of Murfreesboro, 304 S.W.2d 635 (Tenn. 1957).
75. The court noted in this regard that the contract specifically provided that the tax equivalents were to be used for municipal purposes; payment to the county would not be, the court concluded, for a municipal purpose. *Id.* at 638.
76. 308 S.W.2d 469 (Tenn. 1957).
77. *Id.* at 470.
78. TENN. CODE ANN. § 2-1107 (1956).
79. 308 S.W.2d at 471.
80. 310 S.W.2d 444 (Tenn. 1957).

between two private individuals as to the right to exercise the functions and enjoy the emoluments of an office."[81] With regard to the original jurisdiction over such a contest, the court reiterated the rule that the court having the power to induct the officer into office has original jurisdiction over a contest involving that office, or in the absence of specific legislation providing for such a contest or of specific authority on the part of a court to induct the officer into office, the circuit court would have jurisdiction.[82] Applying this rule to the instant case, the court found that the county court had the authority to induct the county school superintendent into office and that it had original jurisdiction over the election contest.[83]

*Pensions:* Several cases decided during the survey period involved the definition of terms in pension plans for public employees. In *Pless v. Franks*[84] the pension plan[85] provided for twenty-five per cent of the pensioner's "basic salary" at the time of retirement for the first ten years of service, and two and one-half per cent of the basic salary for each year thereafter. In another provision, however, it was provided that the full amount of the pension should not be less than fifty per cent of the basic salary, provided that the maximum amount of the pension was to be $150.00 per month. In the section providing for the computation of the employee's deduction, the maximum amount of basic salary which could be used in the computation was $300.00. The board contended that this latter provision set a maximum on the basic salary which could be used in computing the pension. The court rejected this contention, holding that the full amount of basic salary at the time of retirement must be the basis of the pension, and that "basic salary" meant "the salary that the pensioner is receiving at the time he retires without taking into consideration any extra compensation to which he might be entitled for extra work."[86] The legislature intended to fix a maximum basic salary on which the monthly employee deduction is to be computed and, in addition, a maximum pension which may be received without regard to the basic salary.

Whether the pensioner was entitled to receive credit for his service as assistant district attorney general under a pension plan giving such credit to former employees of the City of Memphis and Shelby County was the issue in another pension case decided during the survey period.[87] The district consisted solely of Shelby County, which paid one-half of the assistant district attorney general's salary. The court held

81. *Id.* at 447.
82. *Id.* at 446.
83. See TENN. CODE ANN. § 49-222 (1956); Tenn. Priv. Acts (1923), c. 606.
84. 308 S.W.2d 402 (Tenn. 1957).
85. Tenn. Priv. Acts (1949), c. 165, as amended, Tenn. Priv. Acts (1953), c. 90.
86. 308 S.W.2d at 403.
87. Pharr v. Pension Board, 305 S.W.2d 254 (Tenn. App. W.S. 1956).

that the credit should be allowed. In the first place, the pensioner, in performing the duties of assistant district attorney general, was being paid by and rendering service to the county; the fact that the state was paying half of his salary did not mean that he was not an employee of the county. In the second place, the court indicated that the pension board was estopped from denying the pensioner credit for this service, having issued to him various cards stating his length of service and including the prior service in the computation thereof.[88]

*Utility Districts:* In *Chandler Investment Co. v. Whitehaven Utility District*,[89] the owner of a proposed subdivision sought a declaratory judgment as to his rights to enter into a contract with the City of Memphis whereby the latter would furnish water in an area situated within the territorial boundaries of the Whitehaven Utility District. By statute, the utility district had an exclusive franchise to furnish water within its boundaries,[90] but it required the owner in question to advance the capital necessary to extend its services. The court held that the district had the exclusive right to operate within its boundaries unless it were unable to furnish the services requested, and that the fact that it required the capital advance would not be sufficient to allow the owner to contract with another utility to furnish such services.

88. *Id.* at 261-63.
89. 311 S.W.2d 603 (Tenn. App. W.S. 1957).
90. See TENN. CODE ANN. § 6-2607 (1955).