Vanderbilt Law Review

Volume 9
Issue 5 *Issue 5 - August 1956*

Article 14

8-1956

Local Government Law -- 1956 Tennessee Survey

Joseph Martin Jr.

LOCAL GOVERNMENT LAW—1956 TENNESSEE SURVEY

JOSEPH MARTIN, JR.*

The scope of local government law covers the problems arising out of the functioning of units of government essentially local in character—the municipality, the county, the school district. Involved are the relations between the unit and its constituents or between the units themselves, the validity of its actions, the status of its officers or employees. In the era of increased government, the impact of this body of law is pervading.

CITIES

Nature.

The incorporated municipality—the creature of state and of legislature—possesses only those powers granted to it by charter pursuant to statutory guides together with those which may be clearly implied and conceded as necessary to its existence.[1] The fact that it does not possess all the powers usually associated with such an entity does not deprive it of corporate status. Thus, East Ridge was held to be a full municipal corporation in 1952 for the purpose of participating in the proceeds of the beer tax, despite the fact that certain police powers had been earlier withdrawn.[2] Based on its earlier decision, the Supreme Court, in a suit for declaratory judgment to declare the city's status in order that a certificate of good moral character could be obtained as a step toward obtaining a liquor license, reiterated its earlier holding that East Ridge is indeed a full municipal corporation.[3]

Powers.

The Court of Appeals for the Eastern Section in *Warren v. Bradley*[4] denied the right of a city to delegate its responsibilities for the exercise of a governmental function, the establishment and maintenance of a sewer system. Morristown had constructed a sewer; complainant had paid to the city its cost of construction materials and was in turn given by the city the right to assign to other citizens tapping privileges at such prices as he might determine until he was repaid. Complainant sought to prohibit respondent's connecting to the sewer until complainant's charge had been paid. A decree for him was reversed and remanded.

The court held that as to property held in a governmental as opposed

* Associate, Martin & Cochran, Nashville, Tennessee.

1. Chattanooga v. Tennessee Elec. Power Co., 172 Tenn. 524, 112 S.W.2d 385 (1938).
2. Hamilton County v. East Ridge, 193 Tenn. 677, 249 S.W.2d 895 (1952), 6 VAND. L. REV. 1206 (1953).
3. Crabtree v. Stephens, 278 S.W.2d 672 (Tenn. 1955).
4. 284 S.W.2d 698 (Tenn. App. E.S. 1955).

to proprietary capacity, no city has a right to lease that property for private purposes.[5] As to such properties, the city is trustee for its citizens.[6] The holding is further in accord with the principle that governmental functions cannot be delegated or bartered away.[7] The city apparently may finance public projects, however, by allowing receipts therefrom to accrue to the contractor, so long as basic control over the project is retained by the city.[8]

Taxation.

The fact that the business of selling repossessed used automobiles is incidental to the main function of financing them does not preclude a privilege tax[9] being exacted on that incidental business, even though in the operation of such business not all the powers authorized were exercised and even though a similar tax is paid on the main function.[10]

Zoning.

The case of *White v. Henry*,[11] an old friend of the Supreme Court, involved the validity of a zoning ordinance allowing operations in a commercial area of a garage located on the boundary of the commercial area.[12] The court announced the established rules: (1) that if the enactment of the ordinance was valid, the motive behind it would not be inquired into;[13] (2) that the ordinance allowed operation of a garage by anyone within the zone and thus did not fail the test of unlawful discrimination;[14] (3) that operation on the boundary line is of no consequence if the ordinance itself is not wide of the mark of reasonableness in regulation;[15] (4) that supposed depreciation of property in an adjacent noncommercial zone is not a factor rendering the ordinance invalid, the private interest being subordinate to the public good of zoning;[16] and (5) that improper publication of ordinances concerning zoning changes is not relevant where interested parties have actual knowledge of such enactment.

---

5. The court thus restricted the somewhat broad provisions of TENN. CODE ANN. § 6-1603 (1956). The operation of a sewer system has occasionally been held to be proprietary. 63 C.J.S., *Municipal Corporations* § 1049 (1950). *But see* Chattanooga v. Dowling, 101 Tenn. 342, 47 S.W. 700 (1898).

6. 63 C.J.S., *Municipal Corporations* §§ 962, 964 (1950).

7. Rockwood v. C., N.O. & T.P. Ry., 160 Tenn. 31, 22 S.W.2d 237 (1929); Chattanooga v. Southern Ry., 128 Tenn. 399, 161 S.W. 1000 (1913); Noe v. Mayor and Aldermen of Morristown, 128 Tenn. 350, 161 S.W. 485 (1913); 62 C.J.S., *Municipal Corporations* § 139 (1949).

8. Porter v. City of Paris, 184 Tenn. 555, 201 S.W.2d 688 (1947).

9. TENN. CODE ANN. § 67-4203 Item 8 (1956).

10. Murdock Acceptance Corp. v. Memphis, 288 S.W.2d 459 (Tenn. App. W.S. 1955).

11. 285 S.W.2d 353 (Tenn. 1955).

12. For a discussion of the prior case, see Ball, *Local Government Law—1953 Tennessee Survey*, 6 VAND. L. REV. 1206, 1209 (1953).

13. Madison v. Maryville, 173 Tenn. 489, 121 S.W.2d 540 (1938).

14. Rawlings v. Braswell, 191 Tenn. 285, 231 S.W.2d 1021 (1950).

15. Brooks v. Memphis, 192 Tenn. 371, 375, 241 S.W.2d 432 (1951).

16. Red Acres Improvement Club, Inc. v. Burkhalter, 193 Tenn. 79, 241 S.W.2d 921 (1951); Howe Realty Co. v. Nashville, 176 Tenn. 405, 141 S.W.2d 904 (1940).

Tort Liability.

The cases during the survey period involve the application of established principles of law[17] to familiar fact situations.

In *Russell v. Chattanooga,*[18] the court of appeals held that the city's collection and disposal of garbage was a governmental function upon which no liability would attach[19] unless it could be said that the maintenance of sanitary fills in which rain water had collected and around which children played constituted a nuisance proximately causing the wrong complained of.[20] In plaintiff's action for the wrongful death of two brothers drowned in such a fill, a directed verdict for the defendant city was upheld by the court. There was, according to the court, no inherently dangerous condition, the fills being removed from the thoroughfare and filled with unappealing refuse; furthermore, preventive measures would have cast an unreasonable financial burden on the city; no actionable nuisance, therefore, existed.[21]

However, where the capacity of a sewer system was overtaxed to the extent that raw sewage emptied upon plaintiff's land, the existence of nuisance was quickly found.[22] Thus, the City of Columbia was held liable for the resulting damage even if engaged in a public or governmental function.

In *Memphis v. Dush,*[23] the court dealt with the troublesome situation of injuries resulting from falls over a projection in the sidewalk some three and one-half to four inches in height. The plaintiffs, elderly sisters 77 and 73 years of age, fell as they were walking toward church over a route familiar to them. A jury verdict in their favor, affirmed by the Court of Appeals, was reversed by the Supreme Court, Mr. Justice Prewitt holding that no actionable negligence existed. The court rested its decision squarely on *Memphis v. McCrady.*[24] In the *McCrady* case the court, faced with a situation involving a concrete block projecting only two and a half inches above the adjoining block, admitted that there was a diversity of opinion as to the height or depth of defects in the sidewalk necessary for a stumbling plaintiff to re-

17. See Ball, *Local Government,* 6 VAND. L. REV. 1206, 1207 (1953), 7 VAND. L. REV. 881 (1954).

18. 279 S.W.2d 270 (Tenn. App. W.S. 1954).

19. Boyd v. Knoxville, 171 Tenn. 401, 104 S.W.2d 419 (1937); Nashville v. Mason, 137 Tenn. 169, 192 S.W. 915 (1916).

20. Chattanooga v. Dowling, 101 Tenn. 342, 47 S.W. 700 (1898).

21. The maintenance of a dangerous condition over a period of years is a nuisance on the part of a city. Johnson v. Tennessean Newspaper, 192 Tenn. 287, 241 S.W.2d 399 (1951). A rule, difficult of application, is that some affirmative act must be accomplished to create the condition. Vaughn v. City of Alcoa, 194 Tenn. 449, 251 S.W.2d 304 (1952); Burnette v. Rudd, 165 Tenn. 238, 54 S.W.2d 718 (1932).

22. Columbia v. Lentz, 282 S.W.2d 787 (Tenn. App. M.S. 1955). See Annot., 70 A.L.R. 1347 (1931).

23. 288 S.W.2d 713 (Tenn. 1956).

24. 174 Tenn. 162, 124 S.W.2d 248 (1938).

cover,[25] but felt that a two and one-half inch height would not be proof of actionable negligence. The rule was announced that the city in maintaining sidewalks acts in a proprietary capacity and is not an insurer but is liable only where the obstruction or defect constitutes a danger from which injury might be reasonably anticipated; where the defect is such that reasonable men would not differ over the conclusion that the defect was not dangerous to travel in the ordinary modes by persons exercising due care, a verdict should be directed.[26] As pointed out by the dissent, the court is apparently adopting the rule that as a matter of law a defect of three and one-half to four inches does not constitute actionable negligence; that reasonable men differ is shown in the finding of danger by the trial court and the Court of Appeals.[27] Undoubtedly, the *McCrady* holding permitted but did not compel a directed verdict, particularly inasmuch as the defect was higher in the *Dush* case. In the penumbral area between actionable and nonactionable defects, perhaps substantial justice can best be accomplished by leaving the matter to the jury; certainly the *McCrady* rule does not require a contrary result.

In the absence of statute,[28] a city in the operation of an electrical power plant performs a proprietary function and is liable for the negligence of its employees in its maintenance.[29] In *Rogers v. Chattanooga,*[30] the city was held to be under a duty to patrol and inspect its high voltage lines at frequent intervals to see that the lines do not become unsafe and dangerous by changing conditions. Although the dissenting justice felt that this requirement would in effect make the utility liable as an insurer,[31] the duty of inspection of high voltage wires seems to be recognized because of the high danger attendant to their use.[32]

Although section 42-310 of the Tennessee Code Annotated specifically exempts cities and counties from suits arising out of the operation of airports, the United States Court of Appeals for the Sixth Circuit applied the established rule[33] that recovery may be had against a municipal corporation for governmental activities to the extent of the liability insurance coverage.[34] The plaintiff, while walk-

25. As to various rulings from other jurisdictions, see Annot., 37 A.L.R.2d 1187 (1954).
26. Rye v. Nashville, 25 Tenn. App. 326, 156 S.W.2d 460 (M.S. 1941).
27. Memphis v. Dush, 288 S.W.2d at 716.
28. TENN. CODE ANN. § 6-1303 (1956) may be authority to the contrary as to utilities established under that act. See Nashville Elec. Service v. Luna, 185 Tenn. 175, 183, 204 S.W.2d 529 (1947).
29. Lawrenceburg v. Dyer, 11 Tenn. App. 493 (M.S. 1929).
30. 281 S.W.2d 504 (Tenn. App. 1954).
31. *Id.* at 510.
32. 29 C.J.S., *Electricity* § 47 (1941); Annot., 19 A.L.R.2d 344 (1951).
33. Rogers v. Butler, 170 Tenn. 125, 92 S.W.2d 414 (1935); Taylor v. Cobble, 28 Tenn. App. 167, 187 S.W.2d 648 (E.S. 1945); Williams v. Morristown, 32 Tenn. App. 274, 222 S.W.2d 607 (M.S. 1949) (dictum).
34. Knoxville v. Bailey, 222 F.2d 520 (6th Cir. 1954), 24 TENN. L. REV. 272 (1956).

ing about the terminal awaiting the departure of her plane, fell at a step which because of the color of materials was difficult to see and at which no handrails had been placed. The court felt that the rule of *Scates v. Board of Comm'rs of Union City*[35]—that governmental immunity can only be waived by the legislature, not by officials of the municipality—had no application, the facts being utterly dissimilar. Although the *Scates* case involved waiver through the filing of a lawsuit so as to permit countersuit, the theory seems applicable in that purchasing the insurance according to the rule announced is a waiver to the extent of the coverage. Legislative enactment of a comprehensive tort claims act is perhaps needed to protect citizens of the state from the negligent acts of employees of local government units in the performance of solely governmental functions.

COUNTIES

Quarterly County Court—Majority.

Section 5-509 of the Code requires that a majority of all the justices constituting the court, and not merely a majority of the quorum, is required to elect county officials to be elected by the court and to transact other specified business.[36] Where one justice died, a majority of the remaining justices, though it was not a majority of those authorized, was considered sufficient to elect the county road superintendent.[37] While recognizing that a conflict exists on the question,[38] the court felt bound by the decision in *Whitehead v. Clark*.[39]

Vacancy in office of County Judge.

"[G]reat segments of the public have heretofore regarded it to be the prerogative of the Governor to fill the vacancy in those counties wherein the special statute creating the office of County Judge provides that the vacancy shall be filled by the Governor's appointment."[40] The Supreme Court then decided that, despite popular opinion, such statutes contravene the general law[41] providing for the filling of the vacancy by the voters at the next August election, and in the interim by the county court, and is therefore unconstitutional. Although the legislature may enact laws affecting particular counties in their governmental capacities, such laws cannot constitutionally suspend a general law mandatorily applicable to every other county, unless there is some reasonable basis for the discrimination.[42] Earlier

35. 196 Tenn. 274, 265 S.W.2d 563 (1954).
36. TENN. CODE ANN. § 5-509 (1956).
37. Beckler v. State *ex rel.*, 280 S.W.2d 913 (Tenn. 1955).
38. See, *e.g.*, Annot., 43 A.L.R.2d 698 (1955); 20 C.J.S., *Counties* § 88c (1940); 62 C.J.S., *Municipal Corporations* §§ 399c, 404f (1949).
39. 146 Tenn. 660, 244 S.W. 479 (1922).
40. State *ex rel.* Howard v. Register, 280 S.W.2d 934, 936 (Tenn. 1955).
41. TENN. CODE ANN. § 17-115 (1956).
42. Chambers v. Marcum, 195 Tenn., 1, 11, 255 S.W.2d 1 (1953); McMinnville v. Curtis, 183 Tenn. 442, 192 S.W.2d 998 (1945).

cases[43] apparently did not consider the mandatory nature of the general law; certainly there is no reasonable basis for discrimination in regard to filling the vacancies of county judges.

Illegal Expenditures.

In *Bayless v. Knox County*,[44] certain taxpayers[45] in seeking to enjoin the payment of certain items on the budget met with varying degrees of success:

(1) The additional amount appropriated for the county judge was held not to increase his salary in office in violation of article 6, section 7, of the Constitution, but to be compensation for his services as financial agent.[46]

(2) The salaries of general session judges, they being judges of an inferior court, could not be increased, however, during their term;[47] appropriations in excess of the amount fixed at the beginning of their term were unauthorized, the statute increasing them being unconstitutional. Under the doctrine of *Lawrence County v. Hobbs*,[48] however, the excessive amounts could not be recovered from the judges.

(3) The presumption was stated that only amounts actually necessary would be projected as expenses of the county solicitor. The item of $2,600 could not be considered, therefore, as an attempt to increase his salary.

(4) Appropriations for expense of car operation for county commissioners and the county judge were unauthorized. There was no legislative authorization for the furnishing of cars; the presumption, therefore, is that the expenses of travel are included in the salary. Counties have no powers except those expressly conferred or inferred by necessary implication, the latter being strictly construed.[49] The *Hobbs* case was held inapplicable, since no statute required payment, but the equitable solution reached by the court was to bar recovery by the county since the cars had been presumably used for county purposes. This latter ruling may allow circumvention of

43. Caldwell v. Ligon, 168 Tenn. 607, 80 S.W.2d 80 (1935); State *ex rel.* Smiley v. Glenn, 54 Tenn. 472 (1872).

44. 286 S.W.2d 579 (Tenn. 1955).

45. Taxpayers may bring suit where it is shown that the county has refused to bring the action or where it appears with reasonable certainty that suit would have been refused or where it would be useless for the county to bring suit in that the litigation would be under the control of those adversely affected. Peeler v. Luther, 175 Tenn. 454, 135 S.W.2d 926 (1940).

46. State *ex rel.* Puckett v. McKee, 76 Tenn. 24 (1881).

47. Thrasher v. Lively, 195 Tenn. 630, 263 S.W.2d 497 (1953).

48. 194 Tenn. 323, 250 S.W.2d 549 (1952). See also Roberts v. Roane County, 160 Tenn. 109, 23 S.W.2d 239 (1929). In a somewhat reverse application, the court in O'Brien v. Rutherford County, 288 S.W.2d 708 (Tenn. 1956), held that the *Hobbs* case did not estop a circuit court clerk, complying with a statute found to be unconstitutional, from seeking to apply fees collected as general sessions clerk against the deficit incurred.

49. State *ex rel.* Citizens of Wilson County v. Lebanon & Nashville Turnpike Co., 151 Tenn. 150, 268 S.W. 627 (1924); Burnett v. Maloney, 97 Tenn. 697, 37 S.W. 689 (1896).

statutory limitations on salaries; however, the suggested qualification, that the funds be actually traced to benefits received by the county, is a protection against spending with impunity.

(5) The item of $500 for "official travel" was considered so vague as not to give taxpayer any idea for what purpose public funds were appropriated.[50] "Tuition, Elmwood School $1,768.14" was considered sufficient, however, to lead the inquiring taxpayer to the purpose for which the appropriation was intended.

General Sessions Judges.

In *Duncan v. Rhea County*[51] the court was called upon to pass on the constitutionality of a private act repealing a former act which created a general sessions judge for the county, giving to him the judicial authority of the justices of the peace and of the county judge. The court held that the repealing act was not an attempt to transfer the duties to another official as from county judge to county chairman,[52] but was rather a redistribution of the business of the court in the interest of efficiency and economy.[53]

OFFICERS

Three cases during the survey period dealt with the familiar problem of when is one an officer, when an employee.[54] In *Glass v. Sloan*,[55] the Superintendent of Roads of Tipton County was held to be an officer; the intention and subject matter of the enactment, the nature of the duties and method by which they are to be executed, the ends to be attained, the right to claim emoluments of the office (which would seem to depend on whether the claimant is an officer), the requirement of an oath and bond, the exercise of discretion, official designation, the compensation and dignity of the position were all factors to be considered in arriving at the proper classification. Although a bond and oath were required, the Supervisor of Roads of Macon County was held to be an employee since no definite term of office was specified, the court holding that each case must rest on its own facts.[56] The Supervisor of Public Instruction of Hamilton County met the requirements necessary for him to be deemed an officer.[57] The common ground for attacking the legislation in question in the cases was the constitutional mandate of article 11, section 17, that no

50. Southern v. Beeler, 183 Tenn. 272, 195 S.W.2d 857 (1946).
51. 287 S.W.2d 26 (Tenn. 1955).
52. State *ex rel.* v. Link, 172 Tenn. 258, 111 S.W.2d 1024 (1938). See also Cagle v. McCanless, 285 S.W.2d 118 (Tenn. 1955).
53. State *ex rel.* Tyler v. King, 104 Tenn. 156, 57 S.W. 150 (1900).
54. See Ball, *Local Government Law*, 6 VAND. L. REV. 1206, 1217 (1953), 7 VAND. L. REV. 881, 887 (1954).
55. 281 S.W.2d 397 (Tenn. 1955). The case contains examples of interesting manipulations of the doctrine of elision and statutory construction.
56. Williams v. Cothron, 288 S.W.2d 698 (Tenn. 1956).
57. Cagle v. McCanless, 285 S.W.2d 118 (Tenn. 1955).

county office created by the legislature shall be filled other than by the people or the county court. The frequency with which the question has arisen suggests that extreme care should be taken to express legislative intent in the drafting of local legislation.

Qualification.

Chapter 37 of Title 40 of the Code[58] establishes the procedure under which restoration of citizenship may be obtained by those persons convicted of a crime and rendered infamous. Under the above provisions the court held that one whose citizenship had been restored was entitled to hold the office of Commissioner of the Town of Atwood, despite the enabling act which provided that one convicted of a crime could not hold such office.[59] The holding carries out the manifest intent of the legislature that one restored to citizenship should be and is entitled to the full benefits and privileges incident to that status.

Officers Holding Over.

Defendants were appointed as trustees of a school district to fill vacancies created by resignation. At the general election a new slate of officers was elected, defendants not being included. Thereafter, two persons elected were declared by court decree to be ineligible to hold the office and the remaining member sought to appoint two other persons for the unexpired term.[60] Defendants refused to vacate the office, declaring that they were legally entitled to hold over under their original appointments. The court ruled to the contrary, however,[61] relying on the established principle that there is a distinction between the holding over of one appointed to fill an unexpired term and one elected, the former holding only until the election or appointment of a successor, the latter holding until his successor is elected in due course (at the expiration of the term), there being no vacancy in the office if no successor qualifies.[62]

Employee Discharge.

Where the Auditor of Purchases for the City of Nashville failed to appeal his layoff within the time fixed under civil service rules, petition for mandamus was dismissed.[63] The court applied the rule that where administrative remedy is provided, such remedy must be exhausted by the claimant before resorting to the courts unless the

58. TENN. CODE ANN. §§ 40-3701 to 40-3704 (1956).

59. Bryant v. Moore, 279 S.W.2d 517 (Tenn. 1955).

60. The legality of the appointment by the remaining member was decided in a connected case, *State ex rel. v. Simpson,* discussed *infra* under the heading "Schools and School Districts."

61. State *ex rel.* Barnes v. Smith, 287 S.W.2d 63 (Tenn. 1956).

62. State *ex rel.* Gann v. Malone, 131 Tenn. 149, 174 S.W. 257 (1914). See also Glass v. Sloan, 281 S.W.2d 397, 401 (Tenn. 1955).

63. State *ex rel.* Jones v. Nashville, 279 S.W.2d 267 (Tenn. 1955).

futility of applying the administrative process can be shown.[64] The mere fact that the administrative authorities would probably deny relief was not adequate ground for asserting futility.

Bonds.

In an exhaustive Court of Appeals' opinion by Judge Felts, decided in 1943, but reported for the first time during the survey period, the rule is announced that under section 8-1920 of the Code, an officer and his sureties are liable on his official bond to any person injured by any wrongful act of the officer whether done under color or by virtue of office.[65] Although former opinions of the Supreme Court indicated that liability would attach only where the wrongful acts were done by virtue of the office,[66] Judge Felts pointed out that the application of the statute was not passed on in those cases which could not, therefore, be considered as precedent. The literal language of the statute clearly indicates the correctness of the opinion; the result obviates the need for a distinction which could often work an injustice.

The surety on the common-law bond of a special university policeman cannot be held liable, however, for wrongful acts committed by said policeman at an uptown dance hall since the bond was not official and was limited to the smaller risks incurred on the campus.[67]

SCHOOL AND SCHOOL DISTRICTS

Under a somewhat analogous situation to that considered above as to what constitutes a majority of a county court, the Supreme Court has held that despite the statutory provision that two trustees should constitute a quorum of the three authorized for the transaction of school district business, where the statute further provides that vacancies should be filled by appointment of the "other members," the sole remaining member could lawfully fill the vacancies caused by resignation.[68] The distinction is drawn between the statutory language conferring power to fill vacancies on "other members" or on "the Board"; in the former case a minority only is necessary, while in the latter a quorum must be present for the appointment. There is no apparent reason why the distinction should be drawn.

64. Wallace v. Neal, 191 Tenn. 240, 232 S.W.2d 49 (1949); Tennessee Enamel Mfg. Co. v. Hake, 183 Tenn. 615, 194 S.W.2d 468 (1946).

65. State *ex rel.* Harbin v. Dunn, 282 S.W.2d 203 (Tenn. App. M.S. 1943). No appeal was taken and the case was not reported. In Marable v. State *ex rel.* Wackernie, 32 Tenn. App. 238, 222 S.W.2d 234 (M.S. 1949), the *Harbin* opinion was relied on, though it was then unpublished.

66. See, *e.g.*, State *ex rel.* Morris v. National Surety Co., 162 Tenn. 547, 39 S.W.2d 581 (1931).

67. Day v. Walton, 281 S.W.2d 685 (1955).

68. State *ex rel.* v. Simpson, 281 S.W.2d 679 (Tenn. 1955), citing 78 C.J.S., *Schools and School Districts* § 117c (1) (1952).

School Funds.

Without citation of authority the Court of Appeals reasoned in *Carter County v. Elizabethton,*[69] that an agreement by the city to assist the county in the repayment of school bonds out of capital outlay funds allocated to the city, the county to allocate funds from the bond issue to the city and to pay to the city any future special levy or bond issue for school building or repairing purposes, was without adequate supporting consideration, was ultra vires and violated state policy relating to proper apportionment of funds derived from county bond issues for school building purposes. The legality of division of funds raised for school purposes is not clear. The Code[70] now specifically allows the waiver by a city or school district of the right to participate in the proceeds of county bonds issued for school purposes. Although the holding of *Southern v. Beeler*[71] denies the right of the county to divide certain school funds between city and county schools, the General Education Bill of 1955 appears to require apportionment of all such funds.[72] Since the county may by agreement operate the city school system,[73] it would seem that the freedom of contract with respect to such funds should be clearly established by legislative action.

Reading of Bible.

In *Carden v. Bland,*[74] it was held that the reading of the *Bible* without comment and the singing of inspiring songs is not a violation of the state or federal constitution.[75]

Integration.

Carrying out the mandate of the United States Supreme Court,[76] a federal district court ordered the racial integration of high schools in Anderson County by the beginning of the fall term, 1956.[77]

Teachers' Tenure.

Two cases[78] declared that the Teachers' Tenure Act of 1951[79] was prospective in operation; that each teacher began a new probationary

69. 287 S.W.2d 934 (Tenn. App. E.S. 1955).
70. TENN. CODE ANN. §§ 49-111, 49-112 (1956).
71. 183 Tenn. 272, 195 S.W.2d 857 (1946) (applying sections 49-111, 49-206, 49-607 of the Code substantially unchanged).
72. Tenn. Pub. Acts 1955, c. 136, § 8(3). It is also interesting to note that the statute relied on in the *Carter County* case was declared unconstitutional in Nashville v. Browning, 192 Tenn. 597, 241 S.W.2d 583 (1951). However, similar language appears in Tenn. Pub. Acts 1955, c. 136, § 16(5).
73. TENN. CODE ANN. § 49-401 (1956).
74. 288 S.W.2d 718 (Tenn. 1956).
75. See Annot., 45 A.L.R. 2d 742 (1956). Section 49-1307(4) of the Code requires the reading of the *Bible* in the public schools.
76. Brown v. Board of Educ., 347 U.S. 483 (1954).
77. McSwain v. County Bd. of Educ., 138 F. Supp. 570 (E.D. Tenn. 1956).
78. Shannon v. Board of Educ., 286 S.W.2d 571 (Tenn. 1955); Brown v. Newman, 282 S.W.2d 677 (Tenn. App. M.S. 1955).
79. TENN. CODE ANN. §§ 49-1401 to 49-1420 (1956).

period at the effective date of the act, prior teaching service not being taken into account; and that no teacher was thus entitled to the protection afforded under the act unless he was reemployed at the end of his probationary period as required therein.

The cases are of only passing interest since under the time element involved, the specific question is not likely to arise again. Should the legislature attempt to pass similar laws granting tenure rights in other fields, however, care should be taken in the drafting to express clearly the intent as to the effect to be given service prior to the effective date of the legislation.

Legislation.

In *State ex rel. Banks v. Taylor*[80] the Supreme Court noted that the General Education Bill of 1955[81] took effect on July 1, 1955, as stated in the act itself. Further the court held that a general education bill which purports to cover the entire subject matter falls within the rule of law that such legislation repeals by implication all prior acts, whether inconsistent therewith or not, either with or without a repealing clause and notwithstanding it may omit material provisions of earlier statutes.[82] The requirement[83] that a board of education elect to positions in the school system only those persons recommended by the county superintendent was, therefore, held to have been repealed.[84] A large part of the 1955 act was not codified by the Code Commission, many of its provisions being deemed of temporary nature. A comprehensive reexamination of the entire statutory educational scheme is therefore necessary in order to establish definitely the standards for local school administration.

MISCELLANEOUS

Intoxicating Liquors.

Pursuant to a city ordinance, the Board of Commissioners of Memphis had refused to issue petitioner a certificate of moral character necessary for him to obtain a liquor license[85] because his proposed location was such that the Board felt it inimical to the public welfare. Petitioner was admittedly a man of good moral character, and when refused a license, brought certiorari to compel its issuance. The court held, however, that a city may validly regulate the location of liquor stores without contravening the general law regarding the

80. 287 S.W.2d 83 (Tenn. 1955).

81. Tenn. Pub. Acts 1955, c. 136.

82. Northcross v. Taylor, 29 Tenn. App. 438, 197 S.W.2d 9 (W.S. 1946).

83. TENN. CODE ANN. § 49-224(10) (1956).

84. There was no requirement at all in the 1953 act. The 1955 act requires such election only for the purpose of including the expense of such position in the minimum foundation program and that only in equalizing counties. The confusion which results from such a sweeping rule is obvious.

85. TENN. CODE ANN. § 57-126 (1956).

issuance of licenses; in the absence of some abuse of discretion, the Board could not be compelled to issue a certificate of character nor the Commissioner of Finance and Taxation a license.[86]

The holding follows the principle that traffic in intoxicating liquors is subject to stringent regulation. Although the statutes differ, the same general theme prevails as to the sale of beer. Thus, it is held that a beer license is not a contract by right of property but only a temporary permit; the court can lawfully prohibit sales in an area in which it had theretofore been lawful.[87] Further, wide discretion is given the beer board in its hearings and if there is any evidence to support its findings that activity is actually detrimental to the public welfare, its action in revoking a license will be sustained.[88] Review of the action of a beer board may be had only through common-law certiorari.[89] On application for a beer license, the applicant is not entitled to a hearing;[90] the court, therefore, holds that protestants have no right to appear and present evidence.[91]

Eminent Domain.

Where a property owner to whom an easement had reverted did not raise question as to the subsequent taking of the easement by the county until more than one year after the taking, his suit was held to be barred.[92] The statute[93] begins to run when land is taken for the purpose of internal improvement; preliminary work such as the making of surveys, plans and specifications will be sufficient to create a cause of action, actual construction not being necessary.[94] Furthermore, where an owner gives a deed and accepts consideration for all damages, he may be estopped to assert in a later action further damages based on a change in the grade of an elevation.[95] The county, acting in a governmental capacity in acquiring property, is not required to make an appeal bond in appealing from a jury of view unless the property is actually taken pending the litigation.[96]

86. Safier v. Atkins, 288 S.W.2d 441 (Tenn. 1956).
87. McClellan v. State, 282 S.W.2d 631 (Tenn. 1955). Section 57-109 specifically provides that there shall be no property right in a liquor license.
88. Presson v. Benton County Beer Bd., 281 S.W.2d 63 (Tenn. 1955), relying on Putnam County Beer Bd. v. Speck, 184 Tenn. 616, 201 S.W.2d 991 (1947).
89. TENN. CODE ANN. § 57-209 (1956). See also McClellan v. State, *supra* note 87.
90. Camper v. Pollard, 189 Tenn. 86, 222 S.W.2d 374 (1949).
91. Manuel v. Eckel, 285 S.W.2d 360 (Tenn. 1955).
92. Polk v. Davidson County, 281 S.W.2d 257 (Tenn. App. M.S. 1955). The court did not pass on the question of the right to raise the issue in a subsequent suit after failing to do so in the original.
93. Section 23-1424 provides a one year period within which owners may bring action if their land is taken without suit.
94. Davidson County v. Beauchesne, 281 S.W.2d 266 (Tenn. App. M.S. 1955).
95. Denny v. Wilson County, 281 S.W.2d 671 (Tenn. 1955). However, it is suggested that damages may be claimed if not contemplated by the parties at the time of the original action. Fuller v. Chattanooga, 22 Tenn. App. 110, 118 S.W.2d 887 (E.S. 1938) (dictum).
96. Clairborne County v. Jennings, 285 S.W.2d 132 (Tenn. 1955).

Elections.

A special election resulting from an election contest is a lawful expense of the public treasury of which no taxpayer can complain.[97] In an election contest the poll books, lists of votes and tally sheets may be proved though not certified without in validating an election and where the ballot boxes contain the actual votes cast, they may be recounted to determine the correct result if there is evidence of irregularity in the counting.[98]

97. Shoaf v. Bringle, 281 S.W.2d 255 (Tenn. 1955).
98. Summit v. Russell, 285 S.W.2d 137 (Tenn. 1955).