Vanderbilt Law Review

Volume 7
Issue 5 *Issue 5 - August 1954*

Article 11

8-1954

Local Government Law -- 1954 Tennessee Survey

Clyde L. Ball

LOCAL GOVERNMENT LAW—1954 TENNESSEE SURVEY

CLYDE L. BALL*

I. MUNICIPAL CORPORATIONS

Tort Liability: The case of *Bricker v. Sims*[1] was one of four cases tried together involving the tort liability of a city and its officers. The Board of Aldermen of the City of Martin adopted a curfew ordinance prohibiting any person from being on a public street or other public place after 11:00 o'clock at night. Plaintiff, while conducting himself in an otherwise lawful manner, was arrested on the public streets of Martin after the curfew hour; he was jailed and the next day was convicted and fined in the city court. Upon appeal to the circuit court the case was dismissed at the cost of the city.

Plaintiff thereupon brought these suits against the city, the sheriff, the mayor and the members of the board of aldermen for false arrest and imprisonment, alleging that the ordinance was unconstitutional and void. Upon demurrers, the cases proceeded upon the premise that the ordinance was invalid. The cases thus raise three distinct questions: (1) Is a city liable for the acts of its agents, employees or servants done in the performance of a governmental function? (2) Is a member of a city legislative body civilly liable for his action in voting for an unconstitutional measure? (3) Is a ministerial officer of a city civilly liable for acts done in reliance upon an unconstitutional ordinance? All three questions were answered in the negative.

In the absence of statute a city cannot be held liable under the doctrine of *respondeat superior* for acts of its agents or servants done in the performance of a governmental function.[2] The members of a legislative body are not liable in a civil action for their act in voting for or against particular legislation in the absence of corruption;[3] the same rule applies even where they exceed their authority in passing an invalid act.[4] A ministerial officer is not liable for acts done in pursuance of a duly enacted statute, even though the statute be unconstitutional. An intolerable situation would result if each ministerial officer were permitted to make his own decisions as to constitutionality; misfeasance and nonfeasance in office would frequently be excused if the

*Assistant Professor of Law, Vanderbilt University; Faculty Editor, *Vanderbilt Law Review.*

1. 195 Tenn. 361, 259 S.W.2d 661 (1953).
2. Connelly v. Nashville, 100 Tenn. 262, 46 S.W. 565 (1898); Davis v. Knoxville, 90 Tenn. 599, 18 S.W. 254 (1891). See 18 McQUILLIN, MUNICIPAL CORPORATIONS § 53.01 (3d ed. 1950); PROSSER, TORTS 1066 et seq. (1941); 38 AM. JUR., *Municipal Corporations* § 572 (1941).
3. See Note, *Civil Responsibility of Member of Legislative Body for His Vote Therein*, 27 A.L.R. 125 (1923), and cases there cited.
4. See McGuire v. Carlyle, 6 Tenn. Civ. App. 51 (1915).

officer were allowed to apply his personal views as to the validity of the laws purporting to govern his actions. Since he cannot so decide, he is protected against civil liability for acting in reliance upon the legislative acts.[5]

—*Nature of the Function:* In *Watts v. Town of Dickson*[6] the Court of Appeals held that maintaining and conducting a public water system and selling water to the town's inhabitants is a proprietary, as distinguished from a governmental, function, and that therefore the town was liable for its negligence in connection therewith. The court made its decision on the basis of clear precedent[7] and made no attempt to solve the problem analytically. The Tennessee courts repeatedly admit that there is no clear definition or test which will determine the category into which a particular activity belongs.[8]

—*Waiver of Governmental Immunity:* In *Scates v. Board of Comm'rs of Union City*[9] a city automobile while being used by the city in the exercise of a governmental function collided with an automobile belonging to Scates. Action by Scates against the city was barred by the doctrine of governmental immunity. The city sued Scates, and he then filed a cross-declaration for his damages on the theory that by bringing the suit against him the city had submitted to the jurisdiction of the court and had waived its immunity with respect to claims properly to be considered in such suit. The Supreme Court sustained a demurrer to the cross-declaration. A private citizen may plead and prove matters properly defensive, such as credits or set-off, in such a suit,[10] but a cross-suit is not a defensive matter. Under Tennessee law a municipality has no power to waive its sovereign immunity without legislative authority. What it cannot do directly, it may not do by the indirect method of instituting suit so as to open up a cross-suit. If the legislature is sufficiently dissatisfied with this obviously unfair situation, it has the power to act to prevent its recurrence. Justice Tomlinson and the Supreme Court are sound in their insistence that it is up to the legislature and not to the court to abrogate a rule which has its roots back far beyond the existence of the court.[11]

Duty to keep Streets in Safe Condition: City of Knoxville v. Cooper[12]

5. Roberts v. Roane County, 160 Tenn. 109, 23 S.W.2d 239 (1929).
6. 260 S.W.2d 206 (Tenn. App. M.S. 1953).
7. Williams v. Town of Morristown, 32 Tenn. App. 274, 222 S.W.2d 607 (M.S. 1949).
8. See Vaughn v. City of Alcoa, 194 Tenn. 449, 454, 251 S.W.2d 304 (1952); Ball, *Local Government Law—1953 Tennessee Survey*, 6 VAND. L. REV. 1206-08 (1953).
9. 265 S.W.2d 563 (Tenn. 1954).
10. Moore v. Tate, 87 Tenn. 725, 11 S.W. 935 (1889).
11. For a recent discussion of the desirability of changing the rule, see Anderson, *Claims against States*, 7 VAND. L. REV. 234 (1954).
12. 265 S.W.2d 893 (Tenn. App. E.S. 1953).

dealt with the extent of the duty which a city has to keep its streets clear of obstructions. Plaintiff's intestate was killed when the motorcycle which he was riding struck a depressed area caused by uneven settling of concrete slabs about a manhole cover. There was evidence to the effect that the depression was not an unusual one, that it was a normal occurrence in concrete pavements, and that others of like nature existed in the city. Upon these facts the Court of Appeals found no breach of duty on the part of the city. In reaching this result the court quoted with approval language from two earlier Tennessee cases[13] to the general effect that a municipality's duty requires it only to remove dangerous obstructions which are calculated to produce injury to persons using reasonable care and traveling in the ordinary modes upon the streets. The obstruction must be one which would probably result in injury under such circumstances in order to raise a duty on the part of the city to remove it; the mere possibility of injury gives rise to no duty to correct the defect.

Police Power—Regulation of Auction Sales: In *Jones v. City of Jackson*[14] plaintiff challenged the constitutionality of a city ordinance which strictly regulated auction sales to be held within the city. The effect of the original ordinance was to impose requirements which would virtually eliminate merchandise auctions except for those held under judicial order and those conducted by trustees, executors and the like. The particular provisions of the ordinance are examined in the article on Constitutional Law in this Survey.[15] The court's decision was to the effect that under the general police power a municipality has the power to regulate a lawful business in a reasonable manner, so long as the classification of the business to be regulated is not palpably arbitrary. The court found that auction sales offer such an opportunity for fraud and deception that it is not unreasonable to classify them as a business to be reasonably regulated in the public interest. The court drew upon the many cases upholding jewelry auction ordinances and reasoned that furniture auctions can properly be placed in the same category.

Enforcement of Municipal Ordinances: A court proceeding to enforce a municipal ordinance, although it may appear to the defendant to be criminal in nature, is really a penal civil action on the part of the municipality, and is brought in the civil courts. Thus in *Guidi v. City of Memphis*[16] a prosecution for violating a city speed limit was civil in nature. So, too, is a prosecution for possession of a federal wagering

13. City of Memphis v. McCrady, 174 Tenn. 162, 124 S.W.2d 248 (1938); Forrester v. City of Nashville, 179 Tenn. 682, 169 S.W.2d 860 (1943).
14. 195 Tenn. 329, 259 S.W.2d 649 (1953).
15. *Supra* p. 779.
16. 263 S.W.2d 532 (Tenn. 1953).

stamp in violation of a city ordinance.[17] And this is true even though the offense described by the city ordinance is also a criminal offense under the state law. Thus in *Burns v. City of Nashville*[18] a city ordinance prohibited the possession of gambling (lottery) tickets where such possession violated state law, thus in effect incorporating in the city ordinance the state criminal laws on the subject. Upon conviction of illegal possession of gambling tickets in city court, the appeal went to the Court of Appeals, rather than direct to the Supreme Court.

Zoning: City of Knoxville v. Brown[19] involved the construction of a zoning ordinance in the City of Knoxville. Defendant resided in an area zoned "'A' One Family District." In such a district the zoning ordinance provided that "no building or land shall be used . . . except for one or more of the following uses: . . . . " Nine permissible uses, all consistent with better class residential area, are then set out. Defendant used the yard of his home as a site to assemble and disassemble automobiles in pursuance of his hobby as a racing car driver. At times he had as many as nine automobiles in his yard. He did no work for others, and the automobiles were a true hobby rather than a commercial enterprise. The circuit court reversed a judgment of the Knoxville City Court finding defendant guilty of violating the zoning ordinance. On appeal the Supreme Court reversed the circuit court. Justice Gailor dissented on the ground that a legitimate hobby is a use customarily incident to a family residence, and that as the zoning law is in derogation of the common law it should be strictly construed and not extended by implication. It seems that when one considers the purpose and policy back of zoning restrictions—the prevention of nuisances and conflicts between adjacent landowners, the avoidance of unsightly areas in residential neighborhoods—the conclusion of the majority is justified. Too, the prohibition of uses was sweeping, and the ordinance could be given a strict construction without permitting the use in question, as only the enumerated uses were permissible. However, in arriving at the decision, it is respectfully submitted that Justice Burnett sought to make use of the doctrine of *ejusdem generis* when that doctrine was wholly inapplicable. Justice Gailor made this point in his dissent: "That doctrine simply stated is than in a contract or statute where a series of specific terms concludes with a general term, that the general term shall, in its construction, be limited to the kind (genus) of the enumerated special terms. There is no such language in the ordinance before us here."[20] Upon Petition to Rehear Justice Burnett coupled the doctrine of *ejusdem generis* with the maxim *Expressio unius est exclusio alterius* so as to

17. Deitch v. City of Chattanooga, 195 Tenn. 245, 258 S.W.2d 776 (1953).
18. 261 S.W.2d 149 (Tenn. App. M.S. 1953).
19. 195 Tenn. 501, 260 S.W.2d 264 (1953).
20. *Id.* at 508-09.

justify the application of the doctrine. However, the maxim seems no more applicable than the doctrine. It requires no maxim or rule of construction to conclude that the expression of the nine permissible uses negatives any other use, since any other use is expressly prohibited by the words of the ordinance. The whole question in the case is whether the practice of an unusual hobby is permitted under the use of the property as a one-family residence, where such hobby offends the considerations which gave rise to the ordinance in the first instance.

COUNTIES

Exemption of Municipal Property from county taxation: Under the Tennessee Constitution the legislature is empowered to exempt from taxation property held by cities and used exclusively for public purposes.[21] Pursuant to this constitutional provision the legislature has enacted a statute exempting from taxation property of any incorporated city in the state that is used exclusively for public or municipal purposes.[22] In *Johnson City v. Booth*[23] the facts were that Johnson City had acquired some 1900 acres of land in Unicoi County as a watershed for springs and a creek from which the city obtained its water supply, and including a tract of some 100 acres on which was built a filtration plant covering about an acre. Water from this area was piped through parts of three counties to reach the city. The unincorporated town of Unicoi was served by the water lines, as were other areas immediately adjacent to the city limits. Unicoi County sought to tax the land and the lines on the ground that only a small portion of the land [that on which the water sources and filtration plant were actually located] was being used for a public purpose. The Court of Appeals upheld a declaratory decree holding that the properties were not taxable, except for the lines serving the Town of Unicoi.

The providing of a safe and adequate water supply for citizens of a municipality is a public purpose within the constitutional and statutory meaning.[24] This public purpose extends to the provision of a safe and adequate supply of water to those unincorporated areas immediately adjacent to the city limits, since epidemics or fires which might begin in the immediate vicinity of a city could well affect the health and safety of the inhabitants of the city.[25] However, if the area served by the water system is so far removed from the city as to render this purpose inoperative, to that extent the system is subject to taxation. This seems to be the justification for the decree's excepting

21. TENN. CONST. Art. 2, § 28.
22. TENN. CODE ANN. § 1085(1) (Williams 1934).
23. 261 S.W.2d 820 (Tenn. App. E.S. 1953).
24. Smith v. City of Nashville, 88 Tenn. 464, 12 S.W. 924 (1890).
25. *Ibid.*; Johnson City v. Weeks, 133 Tenn. 277, 180 S.W. 327, 3 A.L.R. 1431 (1915).

the Town of Unicoi from the exemption. Too, if the adjacent area is itself incorporated, the function of supplying water to it becomes the concern of the latter municipality; it is not within the public purposes of one municipality to provide water to the inhabitants of another city.[26]

Upon these principles the water lines and limited acreage on which the springs and creek were located are clearly exempt from taxation by the county. As to the remaining acreage which was a part of the watershed, the court held that the acquisition of such acreage was a proper part of the public function. Protection of the water source, both as to quality and quantity, requires some control over the surrounding watershed. So long as this area is not used for an income-producing or commercial purpose not a part of the water-supply function, the property is exempt. The case suggests but does not raise the interesting question as to how extensive these exempt watershed holdings may be.

OFFICERS

Summary Removal from Office: In *Trent v. State* ex rel. *Smith*,[27] a circuit court clerk had pleaded guilty in federal court to a charge of violating the Mann Act and had been given a suspended sentence. Under Code Sections 10076-10081 a summary proceeding was instituted for the removal from office of the clerk, on the ground that he was guilty of a felony. Stripped of its procedural complications the case holds that conviction of a felony is proper ground for removal under the applicable statute, and that it need not be a felony in office. The statute provides that a clerk may be removed for "a misdemeanor in office or a felony." This phraseology, together with the fact that "misdemeanor in office" is defined in that statute, whereas felony is not so defined, logically leads to the interpretation made by the court.

The case gave occasion for the court to restate a well-established rule that election to office for a definite term carries with it the implied condition "during good behavior."[28]

A procedural point of importance arose in this case. The power of a court to remove its clerk for legal and sufficient cause is absolute and peremptory. Proper administration of the court requires that the clerk not be allowed to take an appeal which by its nature will suspend or vacate the trial court's judgment and thus enable the clerk to continue in office pending final disposition of the appeal. Therefore the clerk is not entitled to an appeal in error, or an appeal in the nature of a writ of error, nor to a broad appeal as from a chancery decree. The

26. City of Knoxville v. Park City, 130 Tenn. 626, 172 S.W. 286 (1914).
27. 195 Tenn. 350, 259 S.W.2d 657 (1953).
28. *Id.* at 359.

clerk is entitled to file the record for writ of error without supersedeas.[29]

Review of Discharge: Under the Tennessee Statute[30] the exclusive method of review of the action of a city or county official or board in ruling on the employment status of a civil service employee is by common law certiorari. However, where the city official or board conducts no hearing, and an employee claiming civil service status is summarily fired, there is no record to be reviewed under the common law writ. Consequently, in such a case the statute is not applicable, and the employee may properly bring a mandamus proceeding in the chancery court to determine whether the city acted illegally or arbitrarily.[31] Where the court finds in favor of the employee, it can properly order the city to reinstate him with back salary and interest.[32]

Effect of Ouster Decree: A proceeding under the Tennessee Ouster Law[33] has for its purpose the removal from office of a public official who is guilty of misfeasance or malfeasance in office. A decree of ouster in such a proceeding simply removes the unfaithful officer from the term which he is serving, and does not carry with it any disqualification to hold office for subsequent terms. Accordingly, the expiration of the term which the officer is serving at the time of the conduct upon which the ouster suit is based renders the cause moot, and the suit will be dismissed, even though the officer has in the meantime been elected to and is serving a new term in the same office.[34]

Term of Office—Holdovers in Office: The constitutional provision with respect to the term of an elected officer is that he shall hold office for a specified term and until the qualification of his successor.[35] Thus where for any reason steps are not taken to elect officers for a new term, the old officers are authorized to continue to exercise the functions and prerogatives of the office until successors are duly qualified. However, a holdover officer has no such vested right in the office as will give him standing to test the validity of an Act of the legislature which purports to eliminate the office.[36]

Power of Legislature to fill County Office: The new Home Rule Amendment to the Tennessee Constitution[37] will probably eventually

29. *Id.* at 356-57.
30. Tenn. Pub. Acts 1949, c. 266, §§ 1-2; Tenn. Code Ann. § 9018.1 (Williams Supp. 1952).
31. State *ex rel.* Paylor v. City of Knoxville, 195 Tenn. 318, 259 S.W.2d 537 (1953).
32. *Ibid.*
33. Tenn. Code Ann. §§ 1877-1902 (Williams 1934).
34. State *ex rel.* Agee v. Hassler, 264 S.W.2d 799 (Tenn. 1954).
35. TENN. CONST. Art. 7, § 5.
36. State *ex rel.* Turner v. Wilson, 264 S.W.2d 796 (Tenn. 1954).
37. See Hunt, *Constitutional Law—1954 Tennessee Survey, supra* p. 763 at 768.

eliminate the basis for the type of suit represented by *Carr v. State* ex rel. *Armour*.[38] Armour had been elected by the County Court of Hardeman County to be Superintendent of Schools for a four-year term beginning January 15, 1953. Shortly thereafter when the legislature convened it passed a Private Act[39] which changed the method of election of the school superintendent by making the office subject to popular election. The term of office was changed so as to make the new term begin in September, 1954, and Carr was named to fill the office until the beginning of the 1954 term. The Supreme Court sustained Armour's contention that the legislature had no power to name Carr to the office for the interim period. Although the legislature did have power to change the method of election, and indeed to eliminate the office altogether in the absence of contrary general law, it could not retain the office and name one other than the incumbent during his term to fill it until the new system could go into effect. The State Constitution provides that "No county office created by the Legislature shall be filled otherwise than by the people or the County Court."[40] This provision does not prohibit the legislature from naming a temporary officer to act until the first regular opportunity of the local power to elect the officer, provided a new office is being created.[41] However, where the office is already in existence and an incumbent is serving a term to which he was elected by the then proper local authority, *Carr v. State* ex rel. *Armour* makes it clear that the legislature cannot unseat the incumbent and name a successor.

Contracts of Municipal Officer with Employer: The Tennessee statutes dealing with public contracts expressly prohibit any officer or other person whose duty it is to vote for, let out, overlook, or in any manner superintendent any work or contract in which any governmental unit may be interested to be directly or indirectly interested in such contract.[42] In case a person violates this statute, he forfeits all pay and compensation therefor[43] and is subject to dismissal from office, with ineligibility to hold the same or similar office for ten years.[44] Another statute applying specially to municipal corporations makes an officer of such corporation incapable of contracting with the corporation for any work which is to be paid for out of the city treasury, and provides for forfeiture of amounts paid on such contract, and recovery therefor by the municipality upon the suit of any citizen

38. 265 S.W.2d 556 (Tenn. 1954).
39. Tenn. Private Acts 1953, c. 19.
40. TENN. CONST. Art. 11, § 17.
41. Crewse v. Beeler, 186 Tenn. 475, 212 S.W.2d 39 (1948).
42. TENN. CODE ANN. § 1874 (Williams 1934).
43. *Id.* at § 1875.
44. *Id.* at § 1876.

of the municipality.[45] In *Crass v. Walls*,[46] the Mayor of Oliver Springs was a partner with his brother in an arrangement whereby the partnership hauled and spread crushed rock on the city streets, and gathered and disposed of city garbage. It appeared that the partnership made no profit from the operation, and that the services rendered were in good faith, with the welfare of the town in view, and at a cost to the city below that which anyone else would have charged. No express contract was entered into, but the court found that the services were rendered with the expectation of pay on both sides. The Court of Appeals affirmed the chancellor's decree awarding recovery for the town of one-half the amount paid to the partnership and declaring the ex-mayor, whose term had expired, ineligible to hold the same or similar office for ten years. The court recognized that the result is harsh; but it quoted with approval from an earlier case[47] that the rule "is based on a wise purpose and principle, that is, to prevent public officials from using their public functions and duties to subserve their private interests. It does not matter that the service is rendered faithfully and inures to the benefit of the county. . . . " The *Walls* case thus restates existing principles. One who makes such a contract cannot recover upon it, nor can he recover on a quantum meruit, and if he has already been paid, the city can recover the payment in full.[48]

It is significant to note that the court found in the *Walls* case that there was an implied contract; that is, the partnership expected to be paid, and the city expected to pay for the services. Under the rule of *Knoxville v. Christenberry*[49] a city may pay its officers for benefits received and special services rendered, provided that the services and benefits were not rendered under a prohibited contract. In the *Christenberry* case a mayor spent considerable time and some of his own money working outside the scope of his ordinary duties, performing services for which the city could legally and properly have contracted with third parties. The mayor could not have contracted to perform the services for pay, nor could he have recovered in contract or quasi-contract for the services rendered. However, the city, after receiving the benefit of the services, chose to pay the officer for the services. He accepted, and it was held that the city could not recover the sums thus paid.

The distinction between the *Walls* and *Christenberry* cases is clear; yet it would seem that *Christenberry* introduces an unfortunate administrative difficulty into the picture. *Walls* says that a municipality can not pay for special services rendered to it by one of its officers if

45. *Id.* at §§ 3497-3498.
46. 259 S.W.2d 670 (Tenn. App. E.S. 1953).
47. Madison County v. Alexander, 116 Tenn. 685, 94 S.W. 604 (1906).
48. Savage v. Mynatt, 156 Tenn. 119, 299 S.W. 1043 (1927).
49. 147 Tenn. 286, 247 S.W. 98 (1922).

it receives the benefits with the expectation of paying therefor. *Christenberry* says that a municipality can pay for services if it receives the benefits without the expectation of paying therefor. What then of the officer who renders special services without a contract but with the *hope* that he will be paid? Assuming that absolutely nothing has been said about compensation, but that the history of the municipality has been that it has consistently paid its officers after receiving special benefits from their services, Does an officer who, knowing these facts, performs special services come under the proscribed implied-in-fact contract of *Walls*, or under the permissible gratuity of *Christenberry*? The officer who comes into court with something less than perfect good faith may find himself classified with *Christenberry* and thus eligible to receive or retain a gratuitous payment by the city; whereas he who states with complete frankness that he knew he could not force the city to pay, but hoped and expected with good reason that he would be paid may find that he is subject to the penalties of the statute. It is submitted that the Supreme Court could perform a service by seizing the first opportunity to overrule *Christenberry*, rather than distinguishing it on its special facts, so that the rule, though harsh, would be absolute and clear: "A public officer may not contract with his own governmental unit, and if he performs special services without a contract the city may not pay him therefor, and if it does pay him, the sums can be recovered at the suit of any citizen of the municipality."

An important procedural point should be noted here. Appeals in cases involving the right to hold public office are taken direct to the Supreme Court.[50] However, suits under Code Sections 1874-1876, though they may result in dismissal from office and a declaration of ineligibility for ten years, are held not to involve the right to hold a public office, and appeals under these statutes are properly taken to the Court of Appeals. So in *Crass v. Walls* when the original appeal was taken to the Supreme Court it was by that court transferred to the Court of Appeals.[51]

Policy of the Statute: Code Sections 1874-1876 were also involved in *State* ex rel. *Ellis v. Robbins*.[52] There Ellis, County Superintendent of Schools whose term was about to expire, recommended to the County Board of Education that he be appointed as supervising teacher of the county schools to begin at the expiration of his tenure as superintendent. Under the applicable statute[53] the superintendent was a member of the executive committee of the board of education. Section 2323 of the Code makes it a misdemeanor in office for a county superintendent

50. TENN. CODE ANN. § 10618 (Williams Supp. 1952).
51. Crass v. Walls, 194 Tenn. 573, 253 S.W.2d 755 (1952).
52. 263 S.W.2d 518 (Tenn. 1953).
53. TENN. CODE ANN. § 2327(6) (Williams 1934).

to take any other contract under the county board of education. The Supreme Court, in a short opinion by Justice Prewitt, ruled that the contract of employment as supervising teacher was void as against public policy. The opinion does not make it entirely clear whether the contract is found to come within the terms of Sections 1874-1876 and Section 2323, or whether it is from these statutes that the court determines the public policy which is offended by the contract in question. The opinion is phrased in terms of general public policy, but at one place the court states that "to hold that [the contract is valid] . . . would nullify the statute and defeat its purpose."[54]

Official Bonds

Liability on Bond of Holdover Officer: In *Garner v. State* ex rel. *Atkins*,[55] a constable while arresting plaintiff for an alleged traffic violation committed an unjustified assault and battery upon plaintiff. The constable upon his original election to office for a two-year term procured a surety company to execute his official bond as surety; at the expiration of this first term, the constable, having been reelected, continued to serve. He made no attempt to qualify with a new bond for the second term, and thus was in the position of holding over from his first term, since no successor had qualified. He continued to pay premiums on the original bond, and the surety company accepted the payments. Under these facts the Court of Appeals held that the surety company accepted the payments. Under these facts the Court of Appeals held that the surety bond continued in force and that the surety company was liable to plaintiff on the bond. The decision seems clearly correct, either on the theory that an officer who is holding over is still serving the original term for purposes of his bond; or that the tender and acceptance of additional premiums after the time when the original term should have expired could be held to amount to a renewal of the bond, and thus a re-qualification of the constable.

54. 263 S.W.2d at 519.
55. 266 S.W.2d 358 (Tenn. App. M.S. 1953).