AGENDA
GREENE COUNTY LEGISLATIVE BODY
Monday, June 18, 2018
6:00 P.M.

The Greene County Commission will meet at the Greene County Courthouse on Monday, June 18, 2018 beginning at 6:00 p.m. in the Criminal Courtroom (Top Floor) in the Courthouse.

Call to Order
*Invocation - Commissioner Brad Peters
*Pledge to Flag - Sheriff's Department Honor Guard
*Roll Call

Public Hearing
- Kim Gass - Work Keys
- Joel Hausser

Approval of Prior Minutes

Reports
- Reports from Solid Waste Dept.
- Committee Minutes

Election of Notaries

Old Business
- Resolution M. February 20, 2010 Letter and Response to Resolution to utilize funding from the Improve Act
- Resolution F. February 20, 2018 and letters sent for support of House Bill 1908/Senate Bill 1830
- Chancellor Rambo ruling in Salary Suit. Correspondence from James Wheeler regarding allegation of violation of sunshine law during litigation. Attached is the case of Smith County Education Association v. Anderson as cited by Plaintiff's attorney.

Resolutions
A. A resolution of the Greene County Legislative Body appropriating up to $25,000 for the replacement of the HVAC system at the Greeneville/Greene County Library from Fund # 171-General Capital Projects for the FYE June 30, 2018
B. A resolution to budget $10,000 from the Solid Waste - Fund # 116 transfer station account into the Sanitation Managements account for needed dumpsters, oil containers and spill pans for FYE June 30, 2018
C. A resolution of the Greene County Legislative Body to appropriate one hundred fifty thousand dollars ($150,000) for the purchase of a new frontend loader in Fund # 116 - Solid Waste for the FYE June 30, 2018
D. A resolution of the Greene County Legislative Body to appropriate $143,564 for EMS, EMA and Hazardous materials joint venture in Fund # 101 General Fund for FYE June 30, 2018
E. A resolution of the Greene County Legislative Body to reclass appropriation in General Debt Service - Fund # 151 to agree with local audit for FYE June 30, 2018
F. A resolution of the Greene County Legislative Body to appropriate $1500 for additional Trustee Commission in the General Debt Service Fund # 151 for the FYE June 30, 2018
G. A resolution of the Greene County Legislative Body to appropriate $2500 for additional Trustee Commission in the Educational Debt Service Fund # 156 for FYE June 30, 2018
H. A resolution of the Greene County Legislative Body to appropriate $30,000 for OCDEFT and HWY Safety Grant reimbursements in the Fund # 101 General Fund for the FYE June 30, 2018
I. A resolution of the Greene County General Purpose Schools Fund # 141 to move funds into # 177 Capital Projects Funds for the FYE June 30, 2018
J. A resolution authorizing the Greene County Sheriff's Department to donate a used Skid-Steer Loader to the Greene County Wood Ministry
K. A resolution authorizing the County Mayor to execute a Quitclaim Deed to State of Tennessee

Other Business
- Greene County, TN Debt Management Policy

Adjournment
Closing Prayer - Commissioner Wade McAmis

REGULAR COUNTY COMMITTEE MEETINGS

JUNE2018			
MONDAY, JUNE 4	3:30 P.M.	EDUCATION COMMITTEE	CENTRAL SCHOOL OFFICE
WEDNESDAY, JUNE 6	9:00 A.M.	BUDGET & FINANCE	ANNEX – DOWNSTAIRS
TUESDAY, JUNE 12	1:00 P.M.	PLANNING	ANNEX
WEDNESDAY, JUNE 13	2:00pm – 4:00pm	CONGRESSMAN ROE'S OFFICE REPRESENTATIVE	ANNEX
MONDAY, JUNE 18	**6:00 P.M.**	**COUNTY COMMISSION**	**COURTHOUSE**
MONDAY, JUNE 25	3:30 P.M.	EDUCATION COMMITTEE	CENTRAL SCHOOL OFFICE
TUESDAY, JUNE 26	8:30 A.M.	INSURANCE COMMITTEE	ANNEX
WEDNESDAY, JUNE 27	8:30 A.M.	ZONING APPEALS (IF NEEDED)	ANNEX
THURSDAY, JUNE 28	1:00 P.M.	BUDGET & FINANCE	ANNEX
JULY2018			
WEDNESDAY, JULY 4	**HOLIDAY**	**ALL OFFICES CLOSED**	
TUESDAY, JULY 10	9:00 A.M.	RANGE OVERSITE COMMITTEE	RANGE SITE
TUESDAY, JULY 10	1:00 P.M.	PLANNING	ANNEX
WEDNESDAY, JULY 11	2:00pm – 4:00pm	CONGRESSMAN ROE'S OFFICE REPRESENTATIVE	ANNEX
THURSDAY, JULY 12	3:00 P.M.	EMS BOARD	ANNEX
MONDAY, JULY 16	**6:00 P.M.**	**COUNTY COMMISSION**	**COURTHOUSE**
WEDNESDAY, JULY 18	3:00 P.M.	ANIMAL CONTROL COMMITTEE	ANNEX
TUESDAY, JULY 24	8:30 A.M.	INSURANCE COMMITTEE	ANNEX
WEDNESDAY, JULY 25	8:30 A.M.	ZONING APPEALS (IF NEEDED)	ANNEX

****THIS CALENDAR IS SUBJECT TO CHANGE****

CERTIFICATE OF ELECTION OF NOTARIES PUBLIC

AS A CLERK OF THE COUNTY OF GREENE, TENNESSEE I HEREBY CERTIFY TO THE SECRETARY OF STATE THAT THE FOLLOWING WERE ELECTED TO THE OFFICE OF NOTARY PUBLIC DURING THE JUNE 18, 2018 MEETING OF THE GOVERNING BODY:

NAME	HOME ADDRESS	HOME PHONE	BUSINESS ADDRESS	BUSINESS PHONE	SURETY
1. KRISTIAN C BEACH	1780 BIBLES CHAPEL RD MIDWAY TN 37809	423-620-7077	PO BOX 245 GREENEVILLE TN 37744	423-639-5311	LIGHTHOUSE ASSEMBLY OF GOD ROBERT BROWN JOHNNY SMITH
2. ROBIN S BROWN	2445 GRASSY CREEK RD. GREENEVILLE TN 37743	423-787-5082	1420 TUSCULUM BLVD. GREENEVILLE TN 37745	423-787-5082	LAUGHLIN MEMORIAL HOSPITAL, IN ROBIN BROWN ROBIN BROWN
3. ROBERT PAYNE CAVE	208 SUSONG LANE GREENEVILLE TN 37743	--	104 N. COLLEGE STREET GREENEVILLE TN 37743	423-638-5892	JONATHAN SEVIER CAVE
4. JEANNIE L CUTSHAW	380 MOUNT HEBRON ROAD GREENEVILLE TN 37743	423-426-4674	404 HOLSTON DRIVE GREENEVILLE TN 37743	423-787-8775	
5. CRYSTAL D DOTSON	105 E SAVANNA CT GREENEVILLE TN 37743	423-823-1016	101 W SUMMER ST GREENEVILLE TN 37743	423-638-4154	
6. LORI ANN DUNN	506 BIG SPRINGS DRIVE MOSHEIM TN 37818	423-422-7302	401 TAKOMA AVENUE MOSHEIM TN 37743	423-639-3151	10,000
7. BETH A FLETCHER	265 SEQUOIA TRAIL GREENEVILLE TN 37743	--	415 BANKS ST SUITE 1 GREENEVILLE TN 37745	423-798-1171	
8. CHRISTINIA GREENLEE	170 ELM ST MOSHEIM TN 37818	--	1655 POTTERTOWN RD MIDWAY TN 37809	423-235-3305	
9. TIFFANY MARIE GREER	1725 DODD BRANCH ROAD GREENEVILLE TN 37743	423-341-5585	602 COSBY HIGHWAY NEWPORT TN 37821	423-625-0436	FIRST TENNESSEE BANK
10. BETH DIANE HOLZKNECHT	465 MIDDLE CREEK RD AFTON TN 37616	--	219 W. DEPOT, SUITE 2 GREENEVILLE TN 37743	--	FEDERAL DEFENDER SERVICE
11. KELLY BROOK KILDAY	2245 POPLAR SPRINGS RD GREENEVILLE TN 37743	329-6543	380 SLATE CREEK RD GREENEVILLE TN 37743	638-3201	
12. DANA M MILLER	248 RICHARD BLAKE RD GREENEVILLE TN 37743	423 470 0998	471 POTTERTOWN RD MIDWAY TN 37809	423 422 2040	
13. JACOB CRAIG OTTINGER	380 SLATE CREEK RD GREENEVILLE TN 37745	638-3201	PO BOX 1234 GREENEVILLE TN 37744	639-4691	
14. DAVID B PEAKE	420 BONITA WAY GREENEVILLE TN 37745	423-823-0589	913 TUSCULUM BLVD GREENEVILLE TN 37745	423-639-0288	YES
15. JANET ILENE REAVES	1095 STEPHEN BROOKS RD GREENEVILLE TN 37743	423 639 3309			
16. LEA ANNE SPRADLEN	414 CALICO RD AFTON TN 37616	423 823 0545	1407 E JACKSON BLVD JONESBOROUGH TN 37659		
17. ROGER A WOOLSEY	118 S MAIN ST GREENEVILLE TN 37743	423-639-1211	204 N CUTLER STE 120 GREENEVILLE TN 37745	798-1779	
18. BRENT THOMAS WOOLSEY	120 MISTY WOODS LANE GREENEVILLE TN 37745	423-620-4481	118 SOUTH MAIN STREET GREENEVILLE TN 37743	423-639-7852	

Lopie Bryant

SIGNATURE

CLERK OF THE COUNTY OF GREENE, TENNESSEE

6/4/18

DATE

GREENE COUNTY SOLID WASTE

DATE MAY '18	TON	LOADS	BUS.	DEMO	COPPER/ BRASS	PLASTIC	O.C.C.	O.N.P.	ALUM	BATT	USED OIL	TIRE WGT	TIRE COUNT	E WASTE	RADIATOR	IORNY ALUM	FENCE WIRE	TEXTILES
1	52.1	19	16	4.13		1.63										3210		
2	55.02	29	14	2.09			2630					5.06	414			1570		
3	63.41	27	21	0.69							400					770		
4	53.17	22	18	3.95												1330		
7	152.99	32	25	3.41			5550					5.36	467			2970		
8	46.25	25	22	8.94		1.64										2680		
9	48.38	26	11	2			2800									1000		
10	62.82	19	16	0				9.07										
11	57.85	24	19	5.27	480					770					275	1850		
12*	5.22																	
14	114.52	33	26	7.51			6040					5.3	453			3270		
15	57.6	25	22	3.23		1.51					390					1780		
16	56.09	38	21	2.74								1.18	78			4670		
17	59.42	15	12	2.22					560			2.39	208			1270		
18	60.31	23	17	2.59												1720		
21	150.61	32	24	6.17			41640									4100		
22	54.35	22	20	4.24	180	1.92										4120		
23	47.83	35	19	3.3								2.99	223			1290		
24	66.65	18	15	0.72				13.93										
25	68.39	27	19	4.07			9070				350					2420		
28	121.39	29	22	10.82														
29	53.11	28	22	0.74		1.62										3590		
30	47.06	37	22	0								7.27	632			2960		
31	65.21	15	12	5.98														
TOTALS	1619.75	600	435	84.81	660	8.32	67730	23	560	770	1140	29.55	2475	0	275	46570	0	0

GREENE COUNTY SOLID WASTE

FISCAL YEAR 2017 - JUNE 2018

TRUCK #	YEAR	MAKE	Beginning Mileage	Ending Mileage	Fuel/gas	Fuel/diesel	Fuel Cost	Miles Traveled	USE
2	2004	MACK	255319	257837		608.731	1750.6	2518	FRONT LOADER
3	2013	F-250	92178	93314		79.655	228.24	1136	DEMO/METAL
4	1985	IH DUMP	268454	268454		0	0	0	ROCK TRUCK
5	2001	F-150	153938	154448	30.844		79.38	510	CENTER TRUCK
6	1997	F-350	251667	253632		188.447	538.98	1965	SPARE
7	2000	MACK	279885	282351		528.156	1514.5	2466	FRONT LOADER
9	2006	MACK	78665	78665		0	0	0	ROLL OFF
12	2008	F-250 4 X 4	120839	121947	101.816		269.15	1108	CENTER TRUCK
13	1984	C-10	76683	76888		15.189	41	205	SERVICE
14	2014	MACK	70304	70500		52.96	153.53	196	ROLL OFF
15	2014	MACK	112050	114067		385.867	1105.38	2017	ROLL OFF
16	2014	MACK	42688	42903		39.065	113.25	215	ROLL OFF
17	2014	MACK	41894	44846		554.283	1589.9	2952	ROLL OFF
19	2007	F-250 4 X 4	193735	194766	110.642		290.47	1031	SERVICE
20	2001	CHEVY VAN	107860	108108	26.064		70.35	248	VAN INMATES
21	2007	MACK	200000	200000		0	0	0	FRONT LOADER
22	2001	F-350	233339	235585		192.046	552.05	2246	DEMO/Metal
23	2001	MACK	400265	403317		520.135	1509.34	3052	FRONT LOADER
25	2003	F-350	225589	227374		165.518	472.5	1785	MAINTENANCE
Shop Fuel					52.059	57.915	287.09		
TOTALS					**321.425**	**3387.967**	**10565.71**	**23650**	

GREENE COUNTY SOLID WASTE

TONS PER DAY

WEEK OF 5/1/18		5/1/2018	5/2/2018	5/3/2018	5/4/2018	
CENTER	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	TOTAL
AFTON					24.19	24.19
BAILEYTON				4.95		4.95
CLEAR SPRINGS						0
CROSS ANCHOR			8.25			8.25
DEBUSK			8.36			8.36
GREYSTONE		8.17				8.17
HAL HENARD		8.6		12.73		21.33
HORSE CREEK				6.93		6.93
McDONALD				5.6		5.6
OREBANK			6.25			6.25
ROMEO			4.26			4.26
ST. JAMES		7.32			5.36	12.68
SUNNYSIDE		8.62			7.07	15.69
WALKERTOWN			6.02			6.02
WEST GREENE				15.13		15.13
WEST PINES			8.71			8.71
CHUCKEY-DOAK						0
MOSHEIM						0
WEST GREENE HS						0
GRAND TOTAL	0	32.71	41.85	45.34	36.62	156.52

GREENE COUNTY SOLID WASTE

TONS PER DAY

WEEK OF 5/7/18	5/7/2018	5/8/2018	5/9/2018	5/10/2018	5/11/2018	
CENTER	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	TOTAL
AFTON	17.79				19.47	37.26
BAILEYTON	7.09			4.07		11.16
CLEAR SPRINGS		8.47				8.47
CROSS ANCHOR			7.63		5.43	13.06
DEBUSK	8.25				7.11	15.36
GREYSTONE	8.47				5.29	13.76
HAL HENARD	13.93			12.21		26.14
HORSE CREEK	8.44			8.33		16.77
McDONALD	6.82			4.86		11.68
OREBANK		5.12				5.12
ROMEO	8.13		5.49			13.62
ST. JAMES			7.73			7.73
SUNNYSIDE			8.7			8.7
WALKERTOWN	9.8		5.07			14.87
WEST GREENE	23.11			15.9		39.01
WEST PINES		7.94			6.08	14.02
CHUCKEY-DOAK						0
MOSHEIM						0
WEST GREENE HS						0
GRAND TOTAL	111.83	21.53	34.62	45.37	43.38	256.73

GREENE COUNTY SOLID WASTE

TONS PER DAY

WEEK OF 5/14/18	5/14/2018	5/15/2018	5/16/2018	5/17/2018	5/18/2018	
CENTER	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	TOTAL
AFTON	16.16				22.35	38.51
BAILEYTON	6.75			4.14		10.89
CLEAR SPRINGS						0
CROSS ANCHOR			8.89		4.25	13.14
DEBUSK			8.17			8.17
GREYSTONE		8.7				8.7
HAL HENARD	6.42	7.83		6.27	5.37	25.89
HORSE CREEK	8.85			6.23		15.08
McDONALD	6.18			5.03		11.21
OREBANK		6.53				6.53
ROMEO	7.07		4.62			11.69
ST. JAMES		5.88			5.37	11.25
SUNNYSIDE		8.26			6.69	14.95
WALKERTOWN	8.65		5.44			14.09
WEST GREENE	24.26			12.77		37.03
WEST PINES			7.65			7.65
CHUCKEY-DOAK						0
MOSHEIM						0
WEST GREENE HS						0
GRAND TOTAL	84.34	37.2	34.77	34.44	44.03	234.78

GREENE COUNTY SOLID WASTE

TONS PER DAY

WEEK OF 5/21/18	5/21/2018	5/22/2018	5/23/2018	5/24/2018	5/25/2018	
CENTER	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	TOTAL
AFTON	17.08				25.56	42.64
BAILEYTON	7			5.31		12.31
CLEAR SPRINGS		8.59				8.59
CROSS ANCHOR		4.27			6.74	11.01
DEBUSK	7.99				7.3	15.29
GREYSTONE	8.91				6.13	15.04
HAL HENARD	12.94			14.62		27.56
HORSE CREEK	8.59			8.03		16.62
McDONALD	5.33			5.1		10.43
OREBANK			6.86			6.86
ROMEO	8.65		4.48			13.13
ST. JAMES			7.05			7.05
SUNNYSIDE			8.55			8.55
WALKERTOWN	9.71		5.96			15.67
WEST GREENE	25.95			15.3		41.25
WEST PINES		7.85			6.51	14.36
CHUCKEY-DOAK		5.8				5.8
MOSHEIM						0
WEST GREENE HS		5.16				5.16
GRAND TOTAL	112.15	31.67	32.9	48.36	52.24	277.32

GREENE COUNTY SOLID WASTE

TONS PER DAY

WEEK OF 5/28/18	5/28/2018	5/29/2018	5/30/2018	5/31/2018		
CENTER	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	TOTAL
AFTON	18.39					18.39
BAILEYTON	7.2			4.9		12.1
CLEAR SPRINGS						0
CROSS ANCHOR			6.97			6.97
DEBUSK			7.83			7.83
GREYSTONE		7.45				7.45
HAL HENARD	5.85	6.49		6.92		19.26
HORSE CREEK	9.01			7.32		16.33
McDONALD	5.09			4.2		9.29
OREBANK		5.09				5.09
ROMEO	7.09		4.31			11.4
ST. JAMES		6.01				6.01
SUNNYSIDE		8.15				8.15
WALKERTOWN	9.46		5.68			15.14
WEST GREENE	22.55			19.74		42.29
WEST PINES			7.68			7.68
CHUCKEY-DOAK						0
MOSHEIM						0
WEST GREENE HS						0
GRAND TOTAL	84.64	33.19	32.47	43.08	0	193.38

GREENE COUNTY SOLID WASTE

TOTALS FOR MAY 2018

AFTON	160.99
BAILEYTON	51.41
CLEAR SPRINGS	17.06
CROSS ANCHOR	52.43
DEBUSK	55.01
GREYSTONE	53.12
HAL HENARD	120.18
HORSE CREEK	71.73
McDONALD	48.21
OREBANK	29.85
ROMEO	54.1
ST. JAMES	44.72
SUNNYSIDE	56.04
WALKERTOWN	65.79
WEST GREENE	174.71
WEST PINES	52.42
CHUCKEY-DOAK	5.8
MOSHEIM	0
WEST GREENE HS	5.16
GRAND TOTAL	1118.73

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
COMMISSIONER'S OFFICE
SUITE 700, JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1402
(615) 741-2848

JOHN C. SCHROER
COMMISSIONER

BILL HASLAM
GOVERNOR

May 8, 2018

Ms. Lori Bryant
Greene County Clerk
204 North Cutler Street
Suite 200
Greenville, TN 37745

Dear Ms. Bryant:

Thank you for your letter of March 19, 2018 and the resolution requesting consideration of five (5) transportation infrastructure improvements in Greene County.

With regard to item 1, the Greeneville Bypass was included in the IMPROVE Act and was identified as US-11E (SR-34), (Greeneville Bypass) from US-11E west of Greeneville to US-11E east of Greeneville in Greene County.

In 2016, the department re-evaluated the 2006 Greenville Bypass Transportation Planning Report and developed a Technical Report identifying locations along existing US 11E (SR 34) for safety and capacity improvements. This type of solution is termed a *Transportation Systems Management* (TSM) approach to congestion mitigation and seeks to identify improvements to enhance the capacity of the existing system. The specific improvements to US 11E (SR 34) proposed consisted of;

- Widen existing US 11E (SR 34) to a six -lane, for a total of approximately three miles
- Four intersection realignments: West Church Street, SR 93 (Kingsport Highway), Bob Smith Road, and Bachman Drive
- Signalizing and improving intersection with SR 107 (Tusculum Boulevard)
- Various intersection enhancements
- Installing a signal interconnect system from the signal at the Greeneville Commons to signal at Ruff Taylor Road (approximately 1.5 miles)

The TSM solution can provide significant improvements to the operation of US 11E and is considered a viable solution to much of the traffic congestion in Greeneville and Greene County. The department will consider this option as an ultimate solution when project development activities are initiated on the environmental studies. Discussion with locally elected officials and

development process.

In general, the new funding generated by the IMPROVE Act will be used to address the 962 projects identified in the legislation. With no index to address inflation in project costs over time, the department does not feel it appropriate at this time to add additional projects to the list developed as part of the IMPROVE Act. The department does have other funding programs that address safety issues, although these programs are much more limited in available resources.

Item 2 requests a new traffic signal on Andrew Johnson Highway (US 11-E, SR 34) at the intersections of Lonesome Pine Trail (SR 70N) and Hal Henard Road. The department will coordinate with our Region 1 office in Knoxville to determine if signals are warranted at these intersections.

Regarding item 3, the department's Project Safety Office will conduct an analysis to determine if the section of Asheville Highway (SR 70S) qualifies for low cost safety improvements. In regards to the request for a continuous left-turn lane, this type of improvement is much more costly and would need to be developed through our annual work program. For the department to consider this request, it should be prioritized via a Needs Assessment requested through the Rural Planning Organization (RPO).

Similarly, items 4 & 5, the widening of SR 70S and other state routes to add shoulders should be prioritized via a Needs Assessment requested through the RPO.

If you should have any questions, please Mr. Steve Allen, Director of our Strategic Transportation Investments Division at (615) 741-2208 or by email at Steve.Allen@tn.gov.

Sincerely,

John C. Schroer
Commissioner

JCS/SA/MG

cc: Mr. Paul Degges
Mr. Steve Allen
Mr. Steve Borden

LORI BRYANT
GREENE COUNTY CLERK
204 North Cutler Street
Suite 200
Greeneville, TN 37745

March 19, 2018

Department of Transportation
Commissioner John C. Schroer
505 Deaderick Street, Suite 700
James K. Polk Building
Nashville, TN 37243

IN RE: A Resolution requesting that the Tennessee General Assembly and the Tennessee Department of Transportation, respectively, utilize funding from the "Improve" Act to perform safety improvements on various State Highways in Greene County, including Andrew Johnson Highway (U.S. 11-E, S.R. 34) and Asheville Highway (S.R. 70S)

Dear Commissioner John C. Schroer

Please be advised that I am the County Clerk for Greene County, Tennessee. I have been asked by our County Legislative Body to forward a copy of the enclosed Resolution adopted by our County Commission with a quorum being present and a majority voting in the affirmative, requests that the Tennessee General Assembly and the Tennessee Department of Transportation, respectively, considering the following:

1. Amend the Improve Act by revising the "Greeneville Bypass" project from a new alignment to the north of Greeneville, to elements of the widening option described in the 2006 TPR and utilize the cost savings from this revision to fund the improvements described below:
2. Install new traffic signals on Andrew Johnson Highway (U.S. 11-E, S.R. 34) at the intersections of Lonesome Pine Trail (S.R. 70N) and Hal Henard Road, respectively.
3. Perform safety improvements on Asheville Highway (S.R. 70S), including a continuous center left-turn lane from the intersection of Main Street (U.S.321, S.R. 35) to the Nolichucky River and at the other locations, as determined by the Department.
4. Widen the shoulders of Asheville Highway (S.R. 70S) in non-curbed sections.
5. Install turn lanes and widen shoulders on other state highways in Greene County, as determined by the Department, to improve safety.

Thank you in advance for your consideration of Greene County's request of the approval of the Resolution requesting that the Tennessee General Assembly and the Tennessee Department of Transportation, respectively, utilize funding from the "Improve" Act to perform Transportation, respectively, utilize funding from the "Improve" Act to perform safety improvements on various State Highways in Greene County, including Andrew Johnson Highway (U.S. 11-E, S.R. 34) and Asheville Highway (S.R. 70S).

Sincerely,

Lori Bryant

Lori Bryant
Greene County Clerk

LORI BRYANT
GREENE COUNTY CLERK
204 North Cutler Street
Suite 200
Greeneville, TN 37745

March 19, 2018

Senator Steve Southerland
425 5th Avenue North
Suite 722 Cordell Hull Bldg.
Nashville, TN 37243

IN RE: A Resolution requesting that the Tennessee General Assembly and the Tennessee Department of Transportation, respectively, utilize funding from the "Improve" Act to perform safety improvements on various State Highways in Greene County, including Andrew Johnson Highway (U.S. 11-E, S.R. 34) and Asheville Highway (S.R. 70S)

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Please be advised that I am the County Clerk for Greene County, Tennessee. I have been asked by our County Legislative Body to forward a copy of the enclosed Resolution adopted by our County Commission with a quorum being present and a majority voting in the affirmative, requests that the Tennessee General Assembly and the Tennessee Department of Transportation, respectively, considering the following:

1. Amend the Improve Act by revising the "Greeneville Bypass" project from a new alignment to the north of Greeneville, to elements of the widening option described in the 2006 TPR and utilize the cost savings from this revision to fund the improvements described below:
2. Install new traffic signals on Andrew Johnson Highway (U.S. 11-E, S.R. 34) at the intersections of Lonesome Pine Trail (S.R. 70N) and Hal Henard Road, respectively.
3. Perform safety improvements on Asheville Highway (S.R. 70S), including a continuous center left-turn lane from the intersection of Main Street (U.S.321, S.R. 35) to the Nolichucky River and at the other locations, as determined by the Department.
4. Widen the shoulders of Asheville Highway (S.R. 70S) in non-curbed sections.
5. Install turn lanes and widen shoulders on other state highways in Greene County, as determined by the Department, to improve safety.

Thank you in advance for your consideration of Greene County's request of the approval of the Resolution requesting that the Tennessee General Assembly and the Tennessee Department of Transportation, respectively, utilize funding from the "Improve" Act to perform Transportation, respectively, utilize funding from the "Improve" Act to perform safety improvements on various State Highways in Greene County, including Andrew Johnson Highway (U.S. 11-E, S.R. 34) and Asheville Highway (S.R. 70S).

Sincerely,

Lori Bryant

Lori Bryant
Greene County Clerk

LORI BRYANT
GREENE COUNTY CLERK
204 North Cutler Street
Suite 200
Greeneville, TN 37745

March 19, 2018

Representative David B. Hawk
425 5th Avenue North
Suite 644 Cordell Hull Bldg.
Nashville, TN 37243

IN RE: A Resolution requesting that the Tennessee General Assembly and the Tennessee Department of Transportation, respectively, utilize funding from the "Improve" Act to perform safety improvements on various State Highways in Greene County, including Andrew Johnson Highway (U.S. 11-E, S.R. 34) and Asheville Highway (S.R. 70S)

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Sincerely,

Lori Bryant

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Greene County Clerk

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GREENE COUNTY CLERK
204 North Cutler Street
Suite 200
Greeneville, TN 37745

March 19, 2018

Representative Jeremy Faison
425 5th Avenue North
Suite 622 Cordell Hull Bldg.
Nashville, TN 37243

IN RE: A Resolution requesting that the Tennessee General Assembly and the Tennessee Department of Transportation, respectively, utilize funding from the "Improve" Act to perform safety improvements on various State Highways in Greene County, including Andrew Johnson Highway (U.S. 11-E, S.R. 34) and Asheville Highway (S.R. 70S)

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Sincerely,

Lori Bryant

Lori Bryant
Greene County Clerk

A RESOLUTION REQUESTING THAT THE TENNESSEE GENERAL ASSEMBLY AND THE TENNESSEE DEPARTMENT OF TRANSPORTATION, RESPECTIVELY, UTILIZE FUNDING FROM THE "IMPROVE" ACT TO PERFORM SAFETY IMPROVEMENTS ON VARIOUS STATE HIGHWAYS IN GREENE COUNTY, INCLUDING ANDREW JOHNSON HIGHWAY (U.S. 11-E, S.R. 34) AND ASHEVILLE HIGHWAY (S.R. 70S)

WHEREAS, in 2017 the Tennessee General Assembly passed the "Improving Manufacturing, Public Roads and Opportunities for a Vibrant Economy (IMPROVE) Act", also known as the "2017 Tax Cut Act."; and

WHEREAS, Section 67-3-912 of the IMPROVE Act (Use of Funds Generated by 2017 Increases), provides funding for a project in Greene County commonly known as the "Greeneville Bypass"; and

WHEREAS, the "Greeneville Bypass" has an estimated completion cost of $166,200,000.00; and

WHEREAS, in 2006 the Environment and Planning Divisions of the Tennessee Department of Transportation, respectively, prepared a Transportation Planning Report (TPR) to study and recommend safety and functional improvements to the Andrew Johnson Highway (U.S. 11-E, S.R. 34) in Greeneville, the options of which included signal system upgrades, widening of the existing alignment, and a new alignment to the north of Greeneville; and

WHEREAS, the TPR estimated the cost to widen the existing alignment of S.R. 34 to be $97,506,000.00; and

WHEREAS, on 12/5/17 the Town of Greeneville and the Tennessee Department of Transportation executed a contract for upgrades to the existing traffic signal system on Andrew Johnson Highway (US-11E, S.R. 34) in Greeneville and Tusculum, respectively (PIN 126589.00, Federal Project No. STP-M-34(115)); and

WHEREAS, the Asheville Highway (S.R. 70S) is a functionally classified minor collector state highway in Greene County; and

WHEREAS, the Asheville Highway has, in various locations, been the site of numerous fatal and incapacitating automobile accidents; and

WHEREAS, the Greene County Legislative Body considers the safety of its citizens and those visiting our County to be of the utmost importance; and

WHEREAS, the Mayors of Greene County and its four municipalities – Baileyton, Greeneville, Mosheim, and Tusculum – have prioritized "engineering and constructing safety

improvements along existing US-11E to reduce accidents, relieve congestion, and provide better business access along the commercial corridor" to be of greater importance than a new bypass to the north of Greeneville;

NOW, THEREFORE, BE IT RESOLVED that the Greene County Legislative Body, meeting in regular session on the 20th day of February 2018, a quorum being present and a majority voting in the affirmative, requests that the Tennessee General Assembly and the Tennessee Department of Transportation, respectively, consider the following:

1. Amend the IMPROVE Act by revising the "Greeneville Bypass" project from a new alignment to the north of Greeneville, to elements of the widening option described in the 2006 TPR and utilize the cost savings from this revision to fund the improvements described below.
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5. Install turn lanes and widen shoulders on other state highways in Greene County, as determined by the Department, to improve safety.

BE IT FURTHER, RESOLVED that the County Court Clerk is directed to forward copies of this Resolution to the State Representatives and State Senator that serve Greene County, and also to the Commissioner for the Department of Transportation requesting their support for this resolution.

This request shall take effect upon passage, the public welfare requiring it.

Brad Peters
Sponsor

David Ray Crum
County Mayor

Joe Bryant
County Clerk

Roger A Woolsey
County Attorney

LORI BRYANT
GREENE COUNTY CLERK
204 North Cutler Street
Suite 200
Greeneville, TN 37745

March 19, 2018

Senator Steve Southerland
425 5th Avenue North
Suite 722 Cordell Hull Bldg.
Nashville, TN 37243

IN RE: Resolution to encourage the State Legislature to enact House Bill 1908/Senate Bill 1830 during the 2018 Legislative Session

Dear Senator Steve Southerland,

Please be advised that I am the County Clerk for Greene County, Tennessee. I have been asked by our County Legislative Body to forward a copy of the enclosed Resolution adopted by our County Commission with a quorum being present and a majority voting in the affirmative that a reappraisal program be approved as follows:

THAT, The County Legislative Body for Greene County encourage the Tennessee State Legislature to enact House Bill 1908/Senate Bill 2018 attached as Exhibit "A" to establish a payment-in-lieu of tax process to develop an equitable way for these group homes to pay for county and municipal services.

Thank you in advance for your consideration of Greene County's request of the approval to encourage the State Legislature to enact House Bill 1908/Senate Bill 1830 during the 2018 Legislative Session.

Sincerely,

Lori Bryant

Lori Bryant
Greene County Clerk

LORI BRYANT
GREENE COUNTY CLERK
204 North Cutler Street
Suite 200
Greeneville, TN 37745

March 19, 2018

Representative David B. Hawk
425 5th Avenue North
Suite 644 Cordell Hull Bldg.
Nashville, TN 37243

IN RE: Resolution to encourage the State Legislature to enact House Bill 1908/Senate Bill 1830 during the 2018 Legislative Session

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Sincerely,

Lori Bryant

Lori Bryant
Greene County Clerk

LORI BRYANT
GREENE COUNTY CLERK
204 North Cutler Street
Suite 200
Greeneville, TN 37745

March 19, 2018

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Suite 622 Cordell Hull Bldg.
Nashville, TN 37243

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Thank you in advance for your consideration of Greene County's request of the approval to encourage the State Legislature to enact House Bill 1908/Senate Bill 1830 during the 2018 Legislative Session.

Sincerely,

Lori Bryant

Lori Bryant
Greene County Clerk

RESOLUTION
TO ENCOURAGE THE STATE LEGISLATURE TO ENACT HOUSE BILL 1908/SENATE BILL 1830 DURING THE 2018 LEGISLATIVE SESSION

WHEREAS, the recent closure of the Greene Valley Development Center resulted in a large increase in the growth of private sector and state operated group homes to care for former Greene Valley residents;

WHEREAS, the group homes increase the demand for the delivery of public services such as police protection, fire protection, emergency medical services, solid waste removal, access to the local school system, road maintenance, and other County services;

WHEREAS, the group homes housing these residents are considered not-for-profit by the State of Tennessee, and therefore exempt from local property taxation;

WHEREAS, the cost of the delivery of the public services to these group homes has been shifted to the remaining citizens of Greene County through their property tax and other municipal taxes;

NOW, THEREFORE BE IT RESOLVED, by the Greene County Legislative Body meeting in regular session on this 20th day of February, 2018, a quorum being present and a majority voting in the affirmative that a reappraisal program be approved as follows:

THAT, The County Legislative Body for Greene County encourages the Tennessee State Legislature to enact House Bill 1908/Senate Bill 2018 attached as Exhibit "A" to establish a payment-in-lieu of tax process to develop an equitable way for these group homes to pay for county and municipal services.

BE IT FURTHER RESOLVED, that the County Clerk forward a copy of this Resolution to our State Senator, Southerland, our State Representatives, Hawk and Faison, to the State Senate and House Leadership asking for their assistance and support of House Bill 1908/Senate Bill 1830.

ɔger A. Woolsey
County Attorney
204 N. Cutler St.
Suite 120 ,
reeneville, TN 37745
'hone: 423/798-1779
Fax: 423/798-1781

Budget and Finance Committee
Sponsor

David Lee Carson
County Mayor

Joe Bryant
County Clerk

Roger A Woolsey
County Attorney

EXHIBIT "A"

<BillNo> <Sponsor>

SENATE BILL 1830

By Southerland

AN ACT to amend Tennessee Code Annotated, Title 33; Title 67, Chapter 5 and Title 71, Chapter 5, relative to intermediate care facilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-5-212, is amended by adding the following as a new subsection:

( )

(1) If property being used as an intermediate care facility for individuals with intellectual disabilities (ICF/IID) is exempt from the taxes imposed by this chapter, the owners of the property shall agree to make payments in lieu of taxes to the tax jurisdictions in which they are located in an amount negotiated to cover the cost of improvements, facilities, or services rendered by the tax jurisdictions. If no amount is agreed upon, the payments shall be no less than twenty-five percent (25%) of the amount of tax that would be due if the project were not exempt.

(2) In order to prevent any county from bearing a disproportionate cost of hosting intermediate care facilities, this subsection ( ) only applies in counties where the population of the county, according to the 2010 federal census or any subsequent federal census, divided by the number of intermediate care facilities located in the county is less than eight thousand (8,000).

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to tax years beginning on or after January 1, 2019.

SENATE BILL 1830
By Southerland

HOUSE BILL 1908

By Hawk

AN ACT to amend Tennessee Code Annotated, Title 33; Title 67, Chapter 5 and Title 71, Chapter 5, relative to intermediate care facilities.

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( )

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SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to tax years beginning on or after January 1, 2019.

Chancery Court for the Third Judicial District
at Greene County, Tennessee

Kay Solomon Armstrong, J.D., in her official capacity as Clerk and Master of Greene County, Tennessee, Petitioner, v. David Crum, in his official capacity as Mayor of Greene County, Tennessee, Defendant.	Civil Action No. 2017-CV-316 **Judgment**

Ruling of Chancellor Rambo:

1. Procedural History

On August 10, 2017, Petitioner, Kay Armstrong, the Clerk and Master of Greene County, filed this cause of action naming the County Mayor of Greene County as the defendant, all in accord with the procedural requirements for Petitioner to bring her case seeking the allocation of more assistants for her office. In response, the County Mayor answered the Petition on August 28, 2017. Thereafter, the judiciary of the Third Judicial District recused themselves from hearing this cause, which was assigned by the presiding judges of the Third and First Judicial Districts to this chancellor.

The parties tried their case before the Court on March 27 and 28, 2018, and April 10 and 13, 2018, after which the Court announced that it would take the case under advisement to review the exhibits and to issue a written ruling.

2. Background

Petitioner, Kay Armstrong, is the Clerk and Master of Greene County. Her office employs five deputy clerks and one part-time clerk. When Greene County adopted the county's budget for fiscal year 2017-18, Ms. Armstrong proposed a budget for her office that included the addition of one full-time and one half-time deputy clerk. Both part-time deputy positions essentially would work one-half of the workweek, year-round. The budget committee declined to add the funds requested for the additional two deputy clerk positions in its proposed budget. The budget ultimately adopted by the Greene County Board of County Commissioners failed to include funding for the two requested positions. Accordingly, the County Mayor and Clerk and Master failed to agree on a letter of agreement.

Shortly after the adoption of the county budget, Ms. Armstrong filed a petition in the Chancery Court pursuant to Tennessee Code Annotated section 8-20-101. In her suit, she asked this Court to require Greene County, by and through the County Mayor, to approve the additional two positions she originally requested from the budget committee and Board of County Commissioners of Greene County.

Ms. Armstrong has served as Greene County's Clerk and Master since 1992. She obtained a law degree from Memphis State Law School, and she is a certified public administrator through the County Technical Advisory Service. On July 1, 2011, she became the court clerk responsible for decedent estate probate, which increased her annual filing by approximately 250 cases each year.

When she assumed her duties in 1992, her office operated on the second floor of the Greene County Courthouse. She was assisted by three full-time deputies and one part-time employee with unlimited hours. Additionally, she had another employee who split time as bailiff and deputy clerk.

In 1998, Greene County reassigned the Clerk and Master's office to the basement of the Courthouse. In her old offices, the workspace was more open, and the sight lines allowed the Clerk and Master the ability to observe the operations of her office.

Before she assumed probate responsibilities, she worked her office with four and one-half deputies. She received one full-time deputy clerk at an entry-level position with the transfer of probate cases to her office in 2011. Contemporaneously, her bookkeeper became a full-time deputy clerk. Greene County presently funds her office for five full-time deputies, one half-time deputy, and some money for additional part-time help.

Presently, the salary for the Clerk and Master's now vacant chief deputy position is $37,490; the bookkeeper position held by Ms. Gina Wexler pays a salary of $31,552; the probate specialist position held by Ms. Beth Norton pays $30,549; Ms. Mary Jo Moncier salary as a full-time deputy clerk is $21,847; and Ms. Amber Widner's salary as a full-time deputy clerk is $19,738. There is one half-time position held by Ms. Lauren Parker that pays $16,380. The Clerk and Master's request in this case is $24,375 (plus funds for county-offered benefits) for a new full-time deputy position and $11,997 for a new half-time position.

3. Burden of Proof

By a preponderance of evidence, Ms. Armstrong, as the petitioning county office holder, must demonstrate: (1) an inability to discharge the duties of her particular office by devoting her entire working time thereto; and, (2) the necessity for assistants, the

number of assistants required, and the salary each should be paid. Tenn. Code Ann. § 8–20–101(a).

The United States Supreme Court has held that "the burden of proof" is a "'substantive' aspect of a claim." *Raleigh v. Illinois Dept. of Revenue,* 530 U.S. 15, 20–21, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000); *Director, Office of Workers' Compensation Programs v. Greenwich Collieries,* 512 U.S. 267, 271, 114 S.Ct. 2251, 129 L.Ed.2d 221 (1994) ("[T]he assignment of the burden of proof is a rule of substantive law ..."); *Garrett v. Moore–McCormack Co.,* 317 U.S. 239, 249, 63 S.Ct. 246, 87 L.Ed. 239 (1942) ("[T]he burden of proof ... [is] part of the very substance of [the plaintiff's] claim and cannot be considered a mere incident of a form of procedure").

The Clerk and Master must present detailed evidence that has the cumulative effect of showing that the work she is required to perform cannot be done with existing manpower. *Reid v. Anderson,* No. 84-57-II, 1985 Tenn. App. LEXIS 2776, *4 (Tenn. Ct. App. Mar. 27, 1985) (no perm. app. filed) (citing *Cunningham v. Moore County,* 604 S.W.2d 866, 868 (Tenn. Ct. App. 1980)). "Once the necessity of employing assistants is established, the appropriate trial court is empowered to determine the number of assistants needed and their salaries." *Boarman v. Jaynes,* 109 S.W.3d 286, 291 (Tenn. 2003).

Petitioner had the burden of proof to introduce evidence that persuaded or convinced the Court, by a preponderance of evidence, two important elements of her case. First, she was required to prove an inability to discharge her duties by devoting her entire working time to them. Second, Petitioner carried the same burden of proof that that she needed additional deputies beyond what Greene County budgeted.

The burden of proof rested upon Petitioner to provide sufficient evidence to allow the Court to determine the number of deputies

needed to perform the tasks of the Clerk and Master's office. The evidence produced must be sufficient to meet the burden of persuasion. The evidence from the trial must produce the requisite degree of certainty that more likely than not, more deputies are needed. Further, the evidence must be sufficient for the Court to determine the requisite number of deputies required. The Clerk and Master must overcome the possibility of mere non-persuasion that would leave the Court with a state of honest doubt about the number of deputies needed by the Clerk and Master. Ultimately, it was Petitioner's burden of proof, by a preponderance of evidence, to show that more deputy clerks are needed.

At trial, Defendant introduced evidence that he asserted disproved two important elements of Petitioner's case. First, the Clerk and Master is not devoting her entire working time to her office, and second, additional deputies are not needed because the Clerk and Master is not efficiently and fully utilizing the staffing at the levels presently provided by Greene County. To a large extent, Petitioner focused her proof on evidence and testimony geared to disprove Defendant's theories that she was not properly managing her deputies by allowing them to keep inaccurate timesheets. The County Mayor did not assume the burden of persuasion merely by presenting a defense, unless the defendant asserts an affirmative defense, which was not applicable to this case. As the burden of proof is upon Petitioner, the County Mayor need not disprove every theory which Clerk and Master propounded to prove her case. As the burden of proof is upon the Clerk and Master, the County Mayor is not even required to produce evidence to prevail.

4. Applicable Law

Tennessee Code Annotated section 8–20–101(a) provides in part that:

> Where any one (1) of the clerks and masters of the chancery courts ... cannot properly and efficiently conduct the affairs

> and transact the business of such person's office by devoting such person's entire working time thereto, such person may employ such deputies and assistants as may be actually necessary to the proper conducting of such person's office....

When the clerk and masters of the chancery court seek additional deputies and assistants not funded by the local legislative body, the statute then sets forth legal procedures to be followed. The relevant statutory language provides that:

> (3) The clerks and masters of the chancery courts, county trustees, county clerks and clerks of the probate courts, and registers of deeds may make application to the chancellor, or to one (1) of the chancellors (if there be more than one (1)), holding court in their county by sworn petition as above set forth, showing the necessity for a deputy or deputies or assistants, the number required and the salary each should be paid.

Tenn. Code Ann. § 8–20–101(a). Additionally, subpart (c)(1) of section 8–20–101 states that:

> In the event the county official agrees with the number of deputies and assistants and the compensation and expenses related thereto, as set forth in the budget adopted by the county legislative body, the county executive and the county official involved may prepare a letter of agreement, using a form prepared by the comptroller of the treasury setting forth the fact that they have reached an understanding in this regard.

Tenn. Code Ann. § 8–20–101(c)(1).

Prior to the Tennessee Supreme Court's ruling in *Boarman v. Jaynes* there were divergent opinions as the requirements of Tennessee Code Annotated section 8–20–101. In *Boarman v. Jaynes,* the Tennessee Supreme Court made clear that Tennessee Code

Annotated section 8–20–101 imposes no additional elements or conditions upon an office holder to prove in her case beyond the plain language of the statute. When interpreting Tennessee Code Annotated section 8–20–101, the Supreme Court wrote:

> The statutory scheme enacted by the general assembly for staffing and compensating the court clerk's office is clear. The office holder must demonstrate: (1) an inability to discharge the duties of a particular office by devoting his or her entire working time thereto; and, (2) the office holder must petition the court and show the necessity for assistants, the number of assistants required, and the salary each should be paid.

Boarman, 109 S.W.3d at 291.

The *Boarman* court clarified that "[o]nce the necessity of employing assistants is established, the appropriate trial court is empowered to determine the number of assistants needed and their salaries." *Id.*

The statutory provision for the Court to determine whether more positions are justified for the operation of the Clerk and Master's office contemplate the elusive, swift hearing:

> Each of the above named officers shall name in the petition the county mayor as the party defendant thereto. A copy of the petition shall be served on the county mayor, who shall file an answer to the petition within five (5) days from the date of service of the petition, either admitting the allegations of the petition or denying same, or making such answer as the county mayor deems advisable under the circumstances. Whereupon, the court shall promptly in term or at chambers have such a hearing on the application, on the petition and answer thereto, as will develop the facts, and the court may hear proof either for or against the petition.

> The court may allow or disallow the application, either in whole or in part, and may allow the whole number of deputies or assistants applied for or a less number, and may allow the salaries set out in the application or smaller salaries, all as the facts justify.

Tenn. Code Ann. § 8–20–102.

In *Johnican v. Williams,* No. 02A01-9110-CR-00221, 1992 WL 94715 (Tenn. Ct. App. May 8, 1992), the Court of Appeals held the language of Tennessee Code Annotated section 8–20–102 "requires the court before whom the petition is brought to conduct a full evidentiary hearing on the matter." *Johnican,* 1992 WL 94715, at *2. All of these procedures help the trial court reach an informed and reasoned decision. *Burrus v. Wiseman,* No. W200801707COAR3CV, 2009 WL 782818, at *7 (Tenn. Ct. App. Mar. 26, 2009).

The requirement for court authorization of deputies under Tennessee Code Annotated section 8–20–101(a) states only that an office holder must demonstrate an inability to "properly and efficiently conduct the affairs and transact the business of such person's office by devoting such person's entire working time thereto." Once the necessity of employing assistants is established, the trial court is empowered to determine the number of assistants needed and their salaries. *Boarman,* 109 S.W.3d at 291.

5. The Court's Role in County Budgeting for Deputies

As our Tennessee Supreme Court has stated, county and state budgetary matters are usually left to political branches and subdivisions, and the judiciary is brought into the "budgetary fray" only in limited circumstances. *Id.* Indeed, generally county and state budgetary matters are better left to the various political branches and subdivisions. *See Hunter v. Conner,* 277 S.W. 71, 76 (1925), *Hickman v. Wright,* 210 S.W. 447, 450 (1919). However, as the

Supreme Court explained, "with the enactment of Tennessee Code Annotated section 8–20–101, *et seq.*, our legislature conferred authority upon the courts to determine the number and compensation" of those identified in the statute. *Id.*

The trial court when hearing the petition for more assistants does not engage in a budgeting process required by county governments when allocating financial resources. The General Assembly directs the trial courts to hear the petition and determine the number of assistants needed and the salaries to be paid. "An action brought under Tenn. Code Ann. § 8-20-101 does not seek judicial review of decisions by the county budgeting authority. Instead, it creates a method for certain public officials to obtain the staffing and funding they need in order to perform the duties assigned to them by statute." *Farthing v. Dickson Cty. ex rel.* Rial, No. M2013-00941-COA-R3CV, 2014 WL 793709, at *4 (Tenn. Ct. App. Feb. 26, 2014).

In the case of *Farthing v. Dickson County*, the Court of Appeals explained the reasons why the General Assembly would create a court forum outside of the county budgeting process to allow certain county officers, including the Clerk and Master, to seek office assistants with appropriate salaries:

> Article VII of the Tennessee Constitution creates various State and County Officers, including the Register of Deeds. The Constitution provides that there shall be elected in each county a Register of Deeds, a Sheriff, a Trustee, a County Clerk, and an Assessor of Property, whose duties shall be established by the General Assembly. Tenn. Const., Art. VII, sec. 1. Statutes describe the office of Register of Deeds, including establishing bond requirements, duties of the office, fees to be charged, and recordkeeping. Tenn. Code Ann. § 8–13–101 *et seq.* A Register may be indicted for failing to "perform any official duties." Tenn. Code Ann. § 8–13–110.

> Tennessee Code Annotated § 8–20–101, *et. seq* exists so that constitutionally created offices have a method for obtaining needed personnel and funding for such personnel when they are able to prove the need, independent of control by local county officials.

Farthing, 2014 WL 793709, at *4.

This Court must determine the number of assistants that should be authorized for the Clerk and Master, based on the evidence presented. When hearing a salary petition brought under Tennessee Code Annotated section 8–20–101, the trial court is authorized to enter an order fixing the number and salaries of the county official's employees. *Burrus v. Wiseman*, No. W200801707COAR3CV, 2009 WL 782818, at *3 (Tenn. Ct. App. Mar. 26, 2009).

6. The Clerk and Master Devotes Her Entire Working Time to Her Duties

The County Mayor strongly suggested the Clerk and Master has not devoted her entire working time to the duties of her office. The County Mayor produced surveillance videos that showed the Clerk and Master often appearing in the office well after the opening of business. Again, this evidence was produced for the purposes of showing the Clerk and Master does not devote her entire working time to her duties.

In response to the County Mayor claiming she is not devoted to working full-time to her public duties, the Clerk and Master's evidence was convincing that her working time exceeds the normal working hours of a county official.

The Clerk and Master has not taken a vacation since 2014, and she often answers her personal phone after hours to assist attorneys. The Clerk and Master carries work home that she reviews before she leaves for the office, and she attends to court business outside the Clerk and Master's office by stopping at the Courthouse Annex

on the way to work. Further, the Third Judicial District encompasses four counties, and the Clerk and Master is required to frequently travel to meet the chancellor for order signing and document and file exchange. The completion of the Clerk and Master's duties cannot be accomplished without leaving the office, as the evidence demonstrated her responsibilities require her to engage in banking duties and the sale of real property. She also attends some of the after-hours meetings of the Greene County Board of County Commissioners.

The Clerk and Master has met the statutory requirement to demonstrate to the trial court that she is devoting her "entire working time" to her Clerk and Master duties.

7. The Greene County Clerk and Master Requires Assistants to Operate Her Office

Having shown she is devoting her entire working time to her public duties, the Court finds that Ms. Armstrong is unable to operate the Clerk and Master's office by herself. Consequently, this Court is empowered to determine the number of assistants needed and their salaries within the confines of the salaries petitioned.

8. Number of Assistants Required

The County Mayor defended this action on the basis that the Clerk and Master's office is sufficiently staffed as it is presently constituted. The Clerk and Master's suit asserts that she cannot effectively operate her office without this Court authorizing more deputies to assist her.

Much of the trial's focus centered upon the timesheets of the employees of the Clerk and Master and their correlation to county security surveillance cameras recordings of their comings and goings. These recordings indicated the Clerk and Master often arrived in the Greene County Courthouse after the opening hour of her office. The timesheets were not accurately recorded by the

staffers in the Clerk and Master's office, and the Clerk and Master did not verify their veracity, although she approved them.

The reliability of these recordings were challenged by the Clerk and Master, and each party presented expert testimony as to this dispute. The Court weighed the testimony of the experts on this issues, Mr. David Cassell and Mr. Tyler Cannon. Mr. Cassell is the owner of the security company that installed the Greene County security system. As to Mr. Cannon, he graduated from East Tennessee State University with a degree in computer science. Since 2014, Mr. Cannon has worked in information technology security and risk management doing security analysis and employee data investigations.

The Court found the testimony of Mr. Cassell as more persuasive regarding the reliability of the surveillance video. His explanation regarding the circumstance of a person being pictured in two different videos during playback was more logical in the context of Mr. Cassell explaining the phenomenon in court and the video shown to the Court. Mr. Cannon did not closely examine the video recordings. The Court was persuaded the surveillance system was well maintained by Mr. Cassell's company and functioned well because the testimony of Mr. Cassell was consistent with the observations and testimony of Lieutenant Charles Morelock. However, the Court finds Mr. Cannon's testimony was persuasive that a better practice may be to have the deputy clerks to log into the computer system when they commence work and when they leave. Further, Mr. Cassell's forensic examination for keystrokes and computer entries would be more reliable in a workplace where the employees are primarily stationed at computers. Mr. Cassell did not engage in any examination of the computers in the Clerk and Master's office to contradict the observations from the surveillance cameras. The testimony regarding the surveillance cameras was sufficiently reliable to persuade the Court that timesheets were consistently inaccurate.

The Mayor asserted that many of the employees in the Clerk and Master's office often took lunch breaks longer than one hour, and were often out of the office in the morning and afternoon. The surveillance videos were less helpful as to these assertions. The testimony was satisfactory that employees would run errands outside the courthouse, and they had 15-minutes breaks awarded by the Clerk and Master that would have afforded them the freedom to leave the building in 15-minutes increments, although it appeared that often the 15-minutes breaks lasted well past the allotted time.

The Clerk and Master further challenged the evidentiary value of the surveillance because employees would often record the end of the workday as 4:30 p.m. but would leave 15 to 30 minutes later. To her, this was proof that sometimes her deputies were working beyond the time reflected on their timesheets. The Clerk and Master noted the County Mayor focused on the morning arrival and timesheet discrepancies that supported his theory of not working and less on the end of day timesheet entries and departure times, which supported her theory of working extra.

The Court resolves this as follows, the Clerk and Master failed to explain how an employee could clock in before she arrived at the courthouse, and whether she required employees to immediately leave the building after their workday was completed. There are many explanations for an employee's timecard showing a quitting time of 4:30 p.m. when the employee left at 4:45 p.m. Examples include, visiting with co-workers after work hours, using the computer to check personal email or web and social media browsing, or going to the restroom before leaving the workplace.

Given the pre-trial proceedings, Petitioner and her deputies knew they would be heavily criticized by Defendant at trial for timesheet inaccuracies and the surveillance showing them coming and

going inconsistently with their time cards, but Petitioner failed to produce evidence to effectively explain the discrepancies.

Ms. Tweed confirmed that timesheets are not completed contemporaneously. They are completed when they are due, which is every other week. The timesheets were loosely kept; for example, Ms. Tweed may write down lunch from noon to 1:00 p.m., but she may have worked until 12:15 p.m. on a task or with a customer and her lunch hour would actually end at 1:15 p.m. The Clerk and Master did not personally verify, audit, or police the timesheet keeping. She does now.

The Defendant proved that timesheets were incorrectly completed, but the ultimate issue is how many deputies are needed. To simplify Defendant's theory of the case, even if Petitioner herself is devoting her entire working time to the business of the office, Defendant believes the Clerk and Master does not need additional deputy clerks, because she is not properly managing the deputies she has. Although the timesheets were inaccurate, the videos failed to persuade the Court that Petitioner's deputy clerks were not working the hours required of the office. If the Clerk and Master and her deputy clerks were not actually working the requisite hours of the county workweek, then this neglect of duties would necessarily have affected the determination of how many deputies were needed. The Court was persuaded the Clerk and Master and her deputies regularly work full workweeks, but the deputy clerks estimated their arrival and departure times, until recent timekeeping changes were implemented.

8.1 Wednesday and Lunch Closures

A significant component of Mayor Crum's defense of this case centered on the Clerk and Master's failure to keep her office open to the public on Wednesday, and the criticism, to a lesser extent, included her decision to close the office to the public between the hours of noon to 1:00 p.m.

The Court finds the Clerk and Master and staff worked on Wednesdays on tasks associated with the duties of the Clerk and Master. This Court is reluctant to rule on issues not before the Court, i.e., the legality of being open or closed to the public, as the answer does not help in the resolution of the issue of the number of employees needed in the office. But this Court was able to conclude from the evidence offered that most users of the Clerk and Master's office were not thwarted from transacting business on Wednesday. This Court will not declare whether this approach to office hours is in accord with the Tennessee Constitution and the Rules of the Tennessee Supreme Court. That issue is not before this Court.

More to the issues of this case, the closures were offered as evidence that the Clerk and Master was not discharging her duties "by devoting his or her entire working time thereto . . .." Tenn. Code Ann. § 8–20–101. In response, the Clerk and Master suggests these closures are evidence that more assistants are required, which would allow her to keep office hours concomitant with the other public offices in the Greene County Courthouse. To the Clerk and Master, this is evidence as to the "number of assistants required . . ." *Id.*

As to the County Mayor's theory, the Court finds that the Clerk and Master and her deputies are working on Wednesday on governmental functions associated with her office, and therefore, the hours of operation that are closed to the public are not evidence that the Clerk and Master is failing to devote her entire working time to the duties of her office.

As to the Clerk and Master's claim that more assistants are needed to keep her office open to the public on Wednesday and lunch hours, it is troubling that her office is closed to the unsuspecting, but open to those with knowledge that persistence will get a response on Wednesday. This decision was not the answer to the

Clerk and Master's asserted personnel shortage, since the evidence did not substantiate that a policy of closure to the public on Wednesday actually enhanced the work productivity of the Clerk and Master's office. To the contrary, the window traffic does not appear to be heavy on Wednesday. The evidence reflected that at most times, one experienced and cross-trained deputy clerk at the window, with others to assist as needed, was more than sufficient to handle public interactions on Wednesday, if not every day.

Chancellor Jenkins and the Clerk and Master believe Wednesday allows the deputies to work uninterrupted. Yet there was no evidence produced that an alternative plan was considered that would allow one or more deputies to work uninterrupted in one or more of the separate work areas while a colleague handled the work at the window or answered the telephones. The closure to the public on Wednesday was not justified by the evidence presented.

Although the Wednesday's closures can be justifiably criticized from the evidence presented in trial, the lack of justification for office closure on Wednesdays was not the fulcrum upon which the case is decided.

8.2 Personnel Turnover

The Clerk and Master presented evidence that she is now allowed five full-time deputies and one half-time deputy. Of those, three highly experienced deputies were lost since 2016. Petitioner asserts her need for additional help began with the departure of Ms. Tonya Sells to the Circuit Court Clerk's office in March 2016, and the need was exacerbated with the death of Mr. Russel Wexler, another experienced deputy, on April 11, 2016.

Mr. Russell Wexler had years of experience and with his expansive knowledge of the operations of the office, he was able to assist other deputy clerks. With his death, the Clerk and Master did not

directly replace him; instead she reallocated his responsibilities and a portion of his salary to two of Mr. Wexler's colleagues. Although not directly stated as such, this action by all appearances constituted promotions within the office. When coping with Mr. Wexler's death, the Clerk and Master shifted his responsibilities to some of her remaining staff. Guardianships and conservatorships shifted from Mr. Wexler to Ms. Gina Wexler. The handling of investments was reassigned from Mr. Wexler to Ms. Wexler. Where Mr. Wexler handled the docket, Beth Norton now handles these duties. Mr. Wexler would assist the Clerk and Master with some of the budget processes, and now Ms. Norton provides this assistance. Gena Wexler now serves as bookkeeper, manages investments, and handles conservatorships and guardianships. The TJIS report and the Indigent Defense Report are also prepared by her.

During the pendency of this case, the Clerk and Master's experienced chief deputy retired. Jeanne Tweed was hired by then Clerk and Master Polly Solomon and worked for over thirty years in the Clerk and Master's office, since August 26, 1986. According to an employee chart, she assumed position of chief deputy in 1996. In this role, she reported to the Clerk and Master and the other deputies reported to her. Her position remains unfilled.

The Clerk and Master hired two "handmaids" to assist the Clerk and Master's office with basic tasks on occasion. According to Ms. Tweed, one of the "handmaids" of the Clerk and Master's office is Rhonda Siders. Ms. Siders attends church with Mrs. Armstrong, and she has in the last fiscal year come into the office of the Clerk and Master to do some filing. Another "handmaid" is Ms. Betsy Shipley. She has helped the deputy clerks at the front service area with filing. On at least one occasion, and maybe twice, Ms. Tweed paid Ms. Shipley with $50 of personal funds from Ms. Tweed's checking account. Ms. Tweed made this payment on the assumption there were insufficient funds in the Clerk and Master's budget

to pay Ms. Tweed. Ms. Armstrong promised to repay Ms. Tweed, but she has failed to do so. Ms. Wexler also paid Ms. Shipley.

The Clerk and Master recognized that personnel turnover was hurting her office. In an August 17, 2016, memorandum to her staff after her August 5, 2016, reappointment, the Clerk and Master emphasized the need for Greene County to be "served more efficiently if each of us . . . work smarter and . . . choose to work together more efficiently. The goal for our office is to do more with less." This memorandum further asked the employee to document their duties and to declare their "wish to continue [their] employment with the Clerk and Master's office." Although the memorandum stated that performance evaluations would commence that day, none were introduced at trial.

8.3 Clerk and Master's Present Allocation of Work Tasks

The Clerk and Master has duties beyond a court clerk. Where the duties of the clerk are almost exclusively clerical, the Master in Chancery "is a judicial officer, and is clothed with many of the powers of the Chancellor himself." William H. Inman, Gibson's Suits in Chancery § 51.01 (8th ed. 2004). Tennessee Code Annotated section 18-5-103 authorizes all clerk and masters of the chancery court to perform all the functions of masters in chancery, unless restrained by other provisions of the law.

Most of the evidence produced regarding the operations of the office came from the various, and sometimes conflicting, job descriptions provided by Petitioner at trial. Deputy clerks Widner and Moncier handle most daily chancery court matters from creating new files, filing pleadings and orders, and making rule and docket entries. Their responsibilities include answering the telephone and email and assisting customers and attorneys at the front counter. They issue summonses and receipt delinquent tax and other payments.

The chief deputy position appears assigned to do most of the same tasks as deputy clerks Widner and Moncier, except greeting visitors; answering the telephone and email; preparing service for the sheriff; preparing executions, garnishments and levies related to delinquent court costs and judgments; and opening and closing the office. The chief deputy has the significant additional duties of working the delinquent tax file, preparing technical records for appeal, and verifying court orders.

Ms. Norton holds the deputy clerk position titled probate director. Her responsibilities entail opening new lawsuit files (a task all deputies are assigned) and helping with orders of protection. She appears to exclusively docket uncontested divorces. Ms. Norton types and composes pleadings and prepares letters of administration, guardianship, etc. She prepares the orders from the Chancellor's ruling in pro-se cases. She generally processes orders, exclusively monitors the disposition of court hearings, and works with others to disposition case files. Ms. Norton is the one in the office who prepares divorce certificates, and she is expected to attend to the Chancellor during court sessions. She is assigned to also work on preparing technical records for appeals. She prepares bills of costs and collects delinquent tax payments. She assists in the delinquent tax sale and, with the chief deputy clerk, helps prepare notices and issues summons for delinquent tax sales. She is designated to manage personnel issues and perform quarterly employee evaluations. She assists in preparing and reviewing pending case reports for submittal to the AOC. She performs daily banking and performs end of month bookkeeping. She manages the office budget and prepares requisitions for office necessities. She is not required to answer the telephone or email for the office or issue process.

Finally, Ms. Wexler is designated as the deputy clerk for probate, and she is further designated as the office bookkeeper. She exclusively accepts or rejects small estate affidavits, sends notices of

continuing estate administration, prepares notices to creditors, verifies orders, processes incoming mail, dockets probate cases, collects office timesheets, works on TJIS report to AOC, keeps investments updated in the office computer system, prepares tax documents for dispersal to attorneys and individuals, annually escheats funds to the State of Tennessee, conducts end of month bookkeeping and prepares year-end financial reports.

There were some tasks not mentioned at trial and not covered by the job descriptions such as maintaining required written internal controls, balancing Clerk and Master bank accounts, managing court-ordered investments, preparing payroll reports, and submitting monthly child support reimbursement reports to the State of Tennessee.

8.4 Clerk and Master's Management of Deputies

The Clerk and Master did not testify in detail as to how she interacts with her staff on a daily basis. She never testified whether she works the window, works on appeal transcripts, prepares orders for the Chancellor, answers the office telephone, takes payments for court costs or delinquent taxes, deals with pro-se divorce litigants, manages the docket, prepares orders related to delinquent tax redemptions, verifies court orders, directs the tasks of the deputies on a daily basis, reallocates work when employees are absent, engages in docket management, prepares payroll or prepares requests for purchase orders. Given that most, if not all, of these tasks are assigned to deputies by job descriptions, the testimony was silent as to whether the Clerk and Master engages in these daily activities or simply observes the work of her subordinates. She does help her deputies complete work tasks when needed, and she remains busy.

The Clerk and Master's production of evidence was noteworthy for its lack of detail. The Clerk and Master did not explain how an additional full-time employee and a part-time employee will ena-

ble the Clerk and Master to perform her work, except for her assessment that her office needs more help. No proposed job descriptions were offered. The proof at trial failed to describe a plan for the operation of the office with six full-time employees and two part-time positions. As to her present staffing, the deputies had one set of job descriptions and the Clerk and Master maintained a separate, conflicting set. The Clerk and Master never persuasively testified how two additional assistants would make her office more effective.

No explanation was offered why two part-time positions was superior to an additional full-time assistant. This decision may be the result of a logical and justified managerial determination, but no explanation was offered. But effectively, the Clerk and Master seeks the allocation of eight employees to accomplish the work of seven full-time employees.

The chancery court leadership determined there was a crisis, and the Clerk and Master's response is to apply additional manpower to the problem. However, the Clerk and Master must show the facts that would lead the trier-of-fact to reach the conclusion that more employees are needed, but this burden does not necessarily require her to show the existence of "crisis" state within her office.

The actions of the office belie the lack of crisis. No employee of the Clerk and Master was called in Petitioner's case in chief to recount indications of personnel shortages or work not getting done. The deputy clerks were not called upon to explain how another full-time deputy clerk and another part-time deputy clerk would help them and the Clerk and Master complete their work. Opinions of need were offered, but details of need were not. The Court heard no proof of delays in opening the mail, promptly entering pleadings as filed, promptly entering orders in the minutes, promptly sending notices of continued administration in probate,

failing to promptly handle the payment of delinquent taxes, answering or returning phone calls, handling email and other correspondence, issuing summonses, transmitting mittimuses, disseminating orders of protection and processing attachments. There was no evidence of long lines at the window of the Clerk and Master's office. The Clerk and Master and deputies never produced evidence of problems transacting rule entries in their computer system or completing the placement of pleadings and orders in physical court files.

To the credit of the Clerk and Master and her staff, the trial court was left with the impression that the daily work of the Clerk and Master's was mostly accomplished. Although the law may not contemplate the need to demonstrate a crisis or the complete failure to complete work, the Clerk and Master failed to demonstrate a compromised system of delays.

The Clerk and Master failed to offer evidence of an understaffing situation that has caused other employees to work extra time. No evidence of accumulated compensatory time earned from one or more employees was introduced. To the contrary, vacations and time off were managed by the employees with minimal intervention by the Clerk and Master to alter the desired time off schedule or to deny time.

The Clerk and Master's office effectively operated after the assumption of decedent estates jurisdiction by the Chancery Court in 2011, and the shifting of those filings from the County Clerk to the Clerk and Master. Although the Clerk and Master and her deputies failed to testify with specificity of need, the Clerk and Master did offer opinion testimony regarding need.

8.5 Mr. Akers' Testimony

Mr. Lee Akers testified as an expert on the operations of a clerk and master's office, as he is the former Clerk and Master of

Hamilton County, Tennessee. Mr. Akers was persuasive that some cases require more work and attention from the staff of the Clerk and Master than other cases. For example, the audit of annual accountings and certain cases require the office to send notices, especially in probate. He also noted that delinquent tax cases are labor intensive. All of this is true. Mr. Akers lumped these cases into a grouping that he termed "proactive cases." However, he offered no helpful information on how many deputies it takes to work proactive or non-proactive cases. The Court agrees with Mr. Akers that a well-trained office is typically more efficient. From 2016 to 2018, the years of experience in the Clerk and Master's office decreased from 103 to 48 years, not counting the Clerk and Master.

Mr. Akers expressed the opinion that Petitioner needs four full-time employees. He testified that two new full-time employees are necessary to replace the retiring chief deputy, who had 30 years of experience. He was of the opinion that she needs nine full-time employees.

Mr. Akers' opinion regarding staffing levels was unpersuasive. He failed to identify any duties that were currently not being performed by the staff as constituted. He failed to describe what work was being performed by which clerk. He failed to review the job descriptions for the deputies. He never reviewed personnel policies, and he kept no record of the time he spent in his work on this case. He offered no opinion that the Clerk and Master's office is working efficiently but is straining to complete their work.

Mr. Akers never went to the other counties in the Third Judicial District to make a comparison of filings or office management. Frankly, his opinions on staffing had no correlation to the number of cases filed. For example, the Clerk and Master in neighboring Hamblen County has more filings, the same Chancellor, and five deputy clerks, but he believes Greene County needs nine clerks to

handle a smaller number of case filings per year. He was of the belief the number of case filings has no correlation to the number of deputies needed. His opinion on need for more deputies was unpersuasive.

8.6 Case Filings

The case filings are evidence of the workload handled by the Clerk and Master. The primary responsibility of the Clerk and Master is to perform the work associated with the files in the office. The number of cases filed is the best indication of the number of files the Clerk and Master receives and must work. Tennessee Code Annotated section 18-1-101 succinctly describes the work on the clerk of a court "[e]ach of the courts has a clerk . . . whose duty is to attend the court and perform all the clerical functions of the court." Section 18-1-105 further sets out the duties of the clerk of each court in detail, which could best be summarized as doing work associated with a file and keeping the file. The number of filings in the court clerk's office represents a significant factor in the workload and deputy needs of a court clerk.

8.7 Comparison to the Hamblen County Clerk and Master's Office

The population of Hamblen County exceeds Greene County and so do the Chancery and Probate Court filings. In fiscal year 2016-17, Greene County filed 1,090 chancery and probate cases, while Hamblen County filed 1,265. During the prior fiscal year of 2015-16, Greene County received 975 filings in both courts, and Hamblen County received 1,182. In 2014-15, Greene County Chancery had 924 filings and Hamblen County filed 1,099. The results are similar for 2013-14, with the Greene County Clerk and Master receiving 802 filings and Hamblen County Clerk and Master filing 1,117. Comparing fiscal year 2016-17, the Clerk and Master of Greene County has 198 filings per deputy clerk, while there are 253 filings per deputy clerk in Hamblen County Clerk and Master's office.

There was no evidence as to the level of computerized automation in each office, and whether this allowed the Hamblen County Clerk and Master to operate more efficiently. Neither party introduced evidence to compare experience levels of deputies or whether the salaries and benefits offered by the Hamblen County Clerk and Master allowed her to competitively hire the best paralegal or secretarial talent from her local workforce. But it was clear that the personnel budget of the Greene County Clerk and Master has resulted in her concentrating on hiring relatively inexperienced employees who are entering the legal workforce at a lower pay rate.

Although the limited proof regarding the operations of the Hamblen County Clerk and Master's office was offered, it is sufficient to note that the office of the Hamblen County Clerk and Master is very efficient. But in comparison to Greene County, it is an important distinction that the Clerk and Master in Hamblen County operates with the benefit of a more open physical layout of her office compared to Greene County. Unlike Hamblen County Clerk and Master, Ms. Armstrong is unable to be in the presence of all of her employees. For these reasons, this case is not suitable for deciding the number of deputies needed by Petitioner solely on an employee count comparison between Greene and Hamblen counties.

8.8 Testimony of Judge Inman

Judge Dennis Inman served as Chancellor of the Third Judicial District from 1984 to 1995. Petitioner's initial appointment as Clerk and Master was made by Chancellor Inman in 1992. He found she operated her office efficiently during the three years they worked together. However, probate was added to her responsibilities after he left, and he has not practiced or presided in the Third Judicial District since 1995. Over twenty years later, his ob-

servations are no longer current to assist the Court in determining the issues of this case.

8.9 Testimony of Chancellor Jenkins

Chancellor Douglas Templeton Jenkins, the Chancellor of the Third Judicial District, testified on behalf of his Clerk and Master. He is of the opinion that more deputies are needed. The testimony of a witness holding the title of judge should never be considered indubitable, for the testimony must be analyzed in the same manner as other witnesses. His testimony was helpful to show that there are occasions that it is necessary for the Clerk and Master to meet him out of the office near an agreed-upon midway point near Exit 23 off Interstate 81. The purpose for these occasional meetings is to allow the Clerk and Master to deliver court papers to Chancellor Jenkins. He also testified that Ms. Armstrong occasionally brings documents to him at the other courthouses in his judicial district. He also noted that Ms. Armstrong's appointments to sell real property occasionally require her to be away from the office to visit property sites.

Chancellor Jenkins strongly holds the opinion that more staffing is required in the Clerk and Master's office. However, this Court cannot defer to his opinion on the ultimate issue at trial—the need for more deputies. As the trier of fact in this case, this Court is mindful to not view the testimony of Chancellor Jenkins as a "super witnesses," which would allow his to inadvertently exert undue influence over the proceedings. *State v. Nash,* 294 S.W.3d 541, 549 (Tenn. 2009). This Court cannot substitute Chancellor Jenkins' judgment for its own. It would be improper to abdicate the fact finder's duty to determine the number of deputies needed based on the accumulated evidence of need or lack thereof. This Court finds that an opinion from a judge on who should win is not probative of the issues in this case, therefore, this Court discounts Chancellor Jenkins' honestly-held opinion that Petitioner should

win. His testimony did provide some insight on the operations of the Clerk and Master's office. Tennessee Rules of Evidence 701(a)(1) allowed Chancellor Jenkins to give his lay opinion as to his perception as the trial judge working with the Clerk and Master's office that Petitioner and her deputies are working hard.

Chancellor Jenkins prefers to have approximately four clerks in his courtroom in Greene County when the court is in session, and that he is scheduled to hear cases in Greene County from three to six days per month. The extra clerk staffing in his courtroom allows Chancellor Jenkins to proceed through his cases quicker.

Chancellor Jenkins did demonstrate a familiarity with the various responsibilities performed by the present and former deputy clerks in the Clerk and Master's office. It was noteworthy that he verified that Mrs. Armstrong performs overflow work from other deputies. Chancellor Jenkins' testimony verified that he has added occasional afternoon sessions in Greene County to conduct common form probate opening and closing of estates and claims hearings that were previously conducted by the Clerk and Master. He assumed these extra dockets to relieve an overworked Clerk and Master.

Chancellor Jenkins also verified that the Hamblen County Clerk and Master operates with five full-time deputies, and he was knowledgeable about the six employees (five full-time and one part-time) employed by the Petitioner. Chancellor Jenkins further confirmed that he worked closely with the Clerk and Master to determine that the office should be closed on Wednesdays to give the office deputies time to "hibernate" to get their work done. These decisions by the Clerk and Master were made with the knowledge and concurrence of Chancellor Jenkins.

Chancellor Jenkins was closely cross-examined regarding his interactions with retired Clerk and Master Akers, to include deducing whether Chancellor Jenkins' opinions on staff influenced Mr. Akers. This Court's analysis of Mr. Akers' opinion does not turn on

questions of whether Mr. Akers' opinion was tainted by any perception of Chancellor Jenkins' desire for the Clerk and Master to prevail, as this Court has found that Mr. Akers' testimony was not helpful in determining the number of deputies required to assist the Clerk and Master.

Defendant requested this Court to exclude Chancellor Jenkins as a witness. The Court closely examined Exhibit 60 and deliberated upon it as it relates to the testimony provided by Chancellor Jenkins. It was Chancellor Jenkins who alerted the parties and the Court that he had a text message exchange with the Hawkins County Clerk and Master (who was a trial spectator) during the first day of trial. Chancellor Jenkins learned of no consequential testimony from these messages. The text messages confirmed that Court sessions are not scheduled to begin until 10:00 a.m. The messages revealed that Chancellor Jenkins learned that Judge Inman testified briefly and had appointed Petitioner to her current position and that Judge Inman was satisfied with her work when they worked together. As previously discussed, the testimony of Judge Inman was not helpful in determining the number of deputies presently needed in the Clerk and Master's office, so none this information revealed to Chancellor Jenkins related to testimony regarding matters that are particularly relevant to the outcome of this case.

The exchange of text message correspondence between the Hawkins County Clerk and Master and Chancellor Jenkins did not address the facts of the critical issue before this Court, which is the number of deputies presently needed in the Clerk and Master's office. The Hawkins County Clerk and Master informed Chancellor Jenkins that counsel was asking about time cards, although Chancellor Jenkins expressed an opinion that Ms. Armstrong's use of extra part-time helps means she has a need for staffing.

The rest of the text messages concerned the topic of whether a clerk and master is the hired hand of the chancellor, and whether the actions of the Clerk and Master paying her "hand maids" with personal funds instead of using her part-time help line item is appropriate. The Hawkins County Clerk and Master was not a witness contemplated at trial, and Chancellor Jenkins was not present when "the rule" was invoked and the corresponding admonition was given by the Court before witnesses were sent outside the courtroom. There was no evidence that Chancellor Jenkins was informed of the request for the rule, and there was no suggestion that the Hawkins County Clerk and Master informed him. Two messages related to the trial were redacted by Chancellor Jenkins, yet the parties failed to move the Court to review the messages unredacted.

Chancellor Jenkins never testified that he was aware of the daily work activity performed by the deputy clerks, and his testimony did not illuminate the efficiency of the Clerk and Master in the management of her time and staff, and it did not explain the processes regarding workflow to provide this Court with insight into the effectiveness of the office, and whether the addition of a staff may meets a need or would actually correct any deficiency perceived by Chancellor Jenkins, Ms. Armstrong, or others regarding the pertinent issues. In light of his lack of testimony regarding these issues that this Court finds are the decisive facts needed to assist this Court in making its factual and legal conclusions, the Court finds the opinion testimony of Chancellor Jenkins that more assistants are needed is not particularly dispositive.

8.10 Testimony of Kidwell King

The Court received testimony from attorney Kidwell King, who has practiced primarily in Greene County for over 40 years. His work is primarily concentrated in the Chancery and Probate Courts of Greene County. His testimony was consistent with others regard-

ing office personnel appearing in near-constant motion. He verified the employees appear to be busy, and most significantly, his testimony was credible that work output has decreased in the last year to two years. This is consistent with Clerk and Master's loss of experienced deputy clerks. Although he made no formal written complaint, Mr. King did report to Chancellor Jenkins that the Clerk and Master's office failed timely send some creditor claims to estate personal representatives, which complicated the administration of some estates. Finally, his testimony verified the testimony of the Clerk and Master that she is very accessible to the attorneys practicing in her courts.

8.11 The Clerk and Master's Physical Workplace is Inefficient

Ms. Barbara Talent testified on behalf of Petitioner. Ms. Talent has a degree in interior design, and she has worked in this field for 27 years. Her practice includes planning for space in the architectural development of office space, to include government buildings. Her skills are helpful in the layout of office space to maximize workflow by creating workstations that correspond with the needs of the office.

Ms. Talent went to the Clerk and Master's offices. Ms. Talent's testimony made her one of the most helpful witnesses to understand the operations of the office and the productivity of the Clerk and Master's staff. The space is compartmentalized, and many of the clerks cannot hear or see each other. There are four work areas associated with the operations of the Clerk and Master. Approaching from the courthouse basement entrance, to the right are two separated offices occupied by the Clerk and Master's deputies. To the left and across the hall from the deputies' offices are the Chancery Courtroom and the personal office of the Clerk and Master. Two deputies assigned primarily to probate and bookkeeping occupy the area designated as Clerk & Master 2 on trial Exhibit 1.

The deputies working the chancery filings are stationed in the area identified as Clerk & Master 1 on trial Exhibit 1.

To assist the public, employees are required to leave their workstations to wait on customers at the front counters. The isolation of the separate offices hinders trainers from watching and hearing co-workers deal with the public and impromptu questioning and answering regarding the proper ways to handle work. This is especially important for the Clerk and Master because over the last two years, her office has suffered from unresolved personnel turnover, and her new hires require training. The ability to develop experience deputies is hindered by the work demands of the office, the inability of the Clerk and Master to be in three offices at once, and low pay. From across the hall, Ms. Armstrong is unable to see her staff, because there are no windows in her office which allow viewing of the other two work areas.

Importantly, Ms. Talent observed the employees are in constant motion. Ms. Talent performed no analysis of rearranging the workstations to account for the work task assignments that each deputy clerk performs. She offered no suggestions on how to increase productivity within the current office space or whether changes in the office configuration are possible. The County Mayor offered no suggestions to improve the physical layout of the office, and he offered no suggestions on how Ms. Armstrong could improve the productivity of her office by reassigning workstations or changes to the office layout that Greene County could make in lieu of more help for the Clerk and Master.

8.12 More Money for Deputy Clerks

Although not requested, the evidence produced by Petitioner was persuasive to indicate a need for more money to retain or hire persons qualified by education or experience to handle the myriad responsibilities and knowledge required of deputies in the Clerk and Master's office. The testimony indicates a well-trained and

valuable employee was lost to the Greene County Circuit Clerk's office due to higher pay available in that office. (Although a dual motive may have been to work in the office with a relative).

Jeanne Pryor was a recent hire, and she has a paralegal background. After one year, she found a better work opportunity and left. Ms. Tonya Sells also left the Clerk and Master's employment to receive more money from the Circuit Court and to work with a relative. From the evidence received by the Court, the salaries offered by the Clerk and Master appear insufficient to attract and keep qualified employees. Alas, Ms. Armstrong did not request higher salaries for her proposed positions or current deputies.

The newest deputies hired by the Clerk and Master have been hired with modest salaries. Interestingly, Greene County appears to emphasize benefits over pay as the Clerk and Master's budget indicates the money paid for health insurance benefits for the two employees recently hired exceeds their respective annual salaries. This means Greene County's compensation for employees may be generous, though starting salaries may be less than competitive. This may reflect a priority of the Board of County Commissioners to emphasize health insurance benefits over pay, which results in the county spending large sums for employee compensation but with low salaries that may not allow the Clerk and Master to hire and keep qualified employees. Neither party explored the economics of the county compensation plan.

The Clerk and Master testified that she worked with a local agency to find newly–educated paralegals entering the workforce, she failed to explain her specific plan to replace a chief deputy. Promoting one of her remaining deputies who has demonstrated an aptitude for the responsibilities is one possibility; the other possibility is to conduct a more expansive search to find the most qualified individual. The ability to hire excellent deputies is relevant to

Mr. Akers and Petitioner's theory that more than one deputy is needed to replace each veteran deputy who departs.

The testimony of Mr. Akers and Ms. Armstrong that the process of replacing an experienced deputy necessitates hiring two entry-level deputies was not sufficiently persuasive. It is the responsibility of the office holder, when enabled by financial resources, to hire qualified individuals and to train them appropriately. If the Clerk and Master replaced every experienced deputy clerk with two novice deputies, the Court is not persuaded the Clerk and Master would undertake a workforce reduction when her less productive new hires become experienced deputies. Realistically, the Clerk and Master should be expected to reassign more challenging responsibilities to her deputies as they progress in training and experience, while shifting the more basic and entry-level duties to the newer hires. The hiring official must select and retain new hires with the appropriate aptitude to learn and proficiently administer the tasks and responsibilities assigned by the official.

Assuming the current staff is well-qualified to excel as deputy clerk court clerks, the complex work of the retired chief deputy clerk could be reallocated to one or more of the remaining experienced deputies, while the simpler tasks of the experienced deputies should be reassigned to the newer hires. For example, the running duties between the courtroom and the clerk's office could be reassigned to the new hires or to part-time helpers, while the remaining experienced deputies are reassigned to tasks that require more knowledge and experience. Likewise, filing and photocopying tasks could be shifted away from the experienced staffers and shifted to the new hires. Of course, the Clerk and Master is in the best position to reassign work assignments, which may necessitate daily hands-on management of workflow and personnel.

The proof at trial was unconvincing that the Court should award Petitioner with two new positions to now complete the work prod-

uct of one retiree. Standing alone, the recent retirement of an experience deputy is insufficient to justify the addition of a full-time deputy and part-time deputy to the current staffing allocation.

9. Conclusion

The most insightful testimony regarding the staffing needs of the Clerk and Master's office came from the interior designer. The physical layout of the offices occupied by the Clerk and Master's staff compromises their productivity. The primary office of the Clerk and Master is segregated from the rest of the office.

The management responsibilities of the Clerk and Master may be better served by locating her workstation across the hallway with her staff to be more accessible to them. This would allow her to disseminate her knowledge to them, to more quickly answer their questions so they can remain at their workstations, and it would allow her to cross-train her staff so more tasks can be accomplished by a staff member without "running around" within the office seeking help. Although the Clerk and Master may have considered all of this prior to asking for two more deputies, she failed to demonstrate in Court that she had considered or made improvements in work assignments to minimize the effects of her inefficient workspace.

Although the Clerk and Master's evidence was unpersuasive of a need for two new deputies, the Clerk and Master's evidence was sufficient to prove by a preponderance of the evidence that she has a need for more staffing in her office. Her office layout means that more staff work is needed than otherwise to account for the logistical problems caused by the chopped up nature of her offices. Further, more help is needed to account for vacancies in her office and loss of experienced deputies with management responsibilities.

A knowledgeable and capable staff overcame the logistics of the basement move for years because of their experience. The Clerk and Master no longer has the same well-trained staff.

Although the court rejects the assertion that two new employees are needed to replace a veteran employee, turnover is expected and is currently not accounted for in the staffing of the office. The ability to complete work has been compromised by the turnover in her office. The testimony of Kidwell King demonstrated this shortcoming, and the last two years have demonstrated the Clerk and Master is struggling to train and keep deputy clerks. Ms. Armstrong and Chancellor Jenkins collaborated in the hiring of paralegal Jeanne Pryor, but she left after one year. When employees leave, the remaining deputies have to accomplish the same work. When employees take vacation or sick leave, the work continues. Having some additional staffing hours also means the Clerk and Master would have more flexibility regarding lunch breaks.

The Clerk and Master's office is not a production factory, so the tradition of closing the office for lunch is incompatible with modern office management. Closing the office during lunch and on Wednesday represents an unnecessary inconvenience to the public. If a member of the public desires to conduct business with the Clerk and Master during that member's lunch hour, moving the half-time position to full-time will address this problem in addition to having sufficient staff in place when deputies are off work or have left employment with the Clerk and Master.

Mr. Akers would describe the addition of more staffing to an office to account for turnover as creating some "slack" in staffing. He is correct in concept, but the terminology he used unintentionally distorts the purpose. Since salaries are low and turnover has become a problem, the Clerk and Master's office is going to suffer from being short-handed. While five experienced deputies may be sufficient to operate the office, five positions held by persons com-

ing and going are not. By a preponderance of the evidence, the Court finds the turnover in the office was not the fault of the Clerk and Master, this turnover has now been continuous for at least two years, and it is exacerbated by low entry salaries. The evidence demonstrated the Clerk and Master needs six full-time positions to have five full-time deputies available to work in the office. Between vacations, sick time, breaks, lunch, and turnover, the Clerk and Master needs six full-time positions to keep five deputies working throughout the workday and workweek. Because the Clerk and Master has lost her chief deputy and Mr. Wexler, the Clerk and Master will now need to change her schedule to allow her to consistently be in the office when it opens to provide supervision and training. The nearly constant training and turnover is the more apparent crisis that she needs to handle, and she is the one best suited to train. The Court eliminates the present half-time position and replaces it with one full-time position.

As to part-time help, the logistics and needs of the Chancery Court in Greene County impose upon the Clerk and Master the responsibility to have multiple deputies in attendance in the courtroom when the chancellor is in session. The Clerk and Master has previously hired "handmaids" to assist her within the office, but the better use of "handmaid" would be to serve as the runners between the courtroom and the offices when court is in session. Further, they should be deputized and placed on the Greene County payroll when hired.

The budget approved by the Greene County Board of County Commissioners allocates sufficient funds for the Clerk and Master to hire part-time deputies to assist the Clerk and Master on the three to six court days per month to perform running duties between the courtroom and the clerk's office when court is in sessions. This would eliminate the need to have experienced deputies running files and documents back and forth on court day. The Court allocates up to $8.40 per hour to hire two part-time depu-

ties to fulfill the role of "handmaids" when court is in session. As Court is typically in session up to six times per month, the Clerk and Master's salary for each position is limited to 600 hours per fiscal year, which is an average of 50 hours per month. The Clerk and Master is thus limited to a total of $10,500 per fiscal year for her two part-time deputies. Although she requested two half-time employees, she is authorized to employee two part-time employees at any given time, so long as she does not exceed $10,500 during the fiscal year.

10. Costs

In her petition, Ms. Armstrong seeks an award of her costs including reasonable attorney's fees. In cases brought pursuant to Tennessee Code Annotated section 8–20–101 *et seq.*, the cost of such cases shall be paid out of the fees of the office collected by such officers, and they and each of them shall be allowed a credit for the same in settlement with the county trustee. Tenn. Code Ann. § 8–20–107.

As used in this statute, "costs" have been interpreted to include reasonable attorney's fees. *Jenkins v. Armstrong,* 211 S.W.2d 908, 910 (Tenn. Ct. App. 1947). The *Jenkins* court explained that an attorney's fee is "certainly a necessary expense or 'cost'; for none could contend that the petitioner could properly file and prosecute toward the relief sought, without the employment of legal assistance." *Id.* The *Jenkins* court further explained:

> While the filing of such petition and the prosecution thereof toward the relief sought is certainly for the benefit of petitioner and her relief, it is also, when filed in a proper case, as contemplated by the statutes, for the benefit of the office and its proper administration. In this, as well as in the funds affected, the defendant County Judge, and his constituents, the people of the County, have a real and continuing interest.

Id.

In a more recent case, the Court of Appeals has affirmed the holding in *Jenkins,* noting that section 8–20–107 has been interpreted by other courts to include attorney's fees as part of the petitioning local official's "costs," as that term is used in the statute. *Patterson v. Wharton,* 2006 WL 1237266, at *2 (Tenn. Ct. App. May 10, 2006). The *Patterson* court explained that when attorneys' fees are awarded, the fees are not charged to the county directly; instead, they become an expense payable from the funds that are available to the county official. *Id.* In *Grisham v. Hackett,* 1987 WL 30164, at *3 (Tenn. Ct. App. Dec. 30, 1987), the Court of Appeals relied on section 8–20–107 to award attorney's fees incurred on appeal.

Ms. Armstrong asks this Court to award her the costs, including her attorney's fees, which were incurred in the case. The statutory scheme fails to condition the payment of suit expenses upon success or failure. The Clerk and Master achieved partial success in receiving one additional full-time deputy position, although she lost a part-time position that covers one-half of the workweek. Essentially, the half-time position is now a full-time position. Although she failed to achieve the ultimate results she desired, there is nothing to suggest to the Court in the course of these proceedings, to include the trial, that Ms. Armstrong was anything but sincere in her request. The Clerk and Master has partially prevailed, and she is entitled to have her reasonable costs and fees paid out of the fees collected by the Clerk and Master, as set forth in the statute, and that she be allowed a credit for this amount in settlement with the Greene County Trustee.

Ms. Armstrong shall submit her request to this Court for a determination of reasonableness of attorney fees that she has incurred. Because the award of fees is not finally addressed in this ruling, this order is not a final order pursuant to Rules 54.03 or 58.

Based on the foregoing, it is therefore Ordered, Adjudged, and Decreed by the Court:

1. The Clerk and Master is awarded one full-time deputy clerk position at the annual salary level of $37,490.
2. The Clerk and Master is awarded one full-time deputy clerk position at the annual salary level of $31,552.
3. The Clerk and Master is awarded one full-time deputy clerk position at the annual salary level of $30,549.
4. The Clerk and Master is awarded one full-time deputy clerk position at the annual salary level of $24,375.
5. The Clerk and Master is awarded one full-time deputy clerk position at the annual salary level of $21,847.
6. The Clerk and Master is awarded one full-time deputy clerk position at the annual salary level of $19,738.
7. The Clerk and Master may employee two part-time assistants at any given time to assist when Court is scheduled to be in session at no more than $8.40 per hour and not to exceed $10,500 in total for both in a fiscal year.
8. The Clerk and Master shall cause her attorneys to file her request for approval of attorney fees within 20 days of the entry of this order, and the County Mayor shall file his objections, if any, within 20 days of the filing of the fee request. Either party may request a hearing regarding attorney fees and costs.
9. Clerk and Master Pro Tempore, enter this Order, and mail a copy to the attorneys of record.

So Ordered, this 25th day of May 2018.

John C. Rambo

Chancellor John C. Rambo

LAW OFFICES OF
James R. Wheeler

1211 East Jackson Boulevard
Post Office Box 308
Jonesborough, TN 37659
PHONE: (423) 913-0117
FAX: (423) 913-0118

James R. Wheeler
jim@firsttownlaw.com

June 1, 2018

Suzanne S. Cook, Esq.
Attorney Pro Tem, Greene County Tennessee
HUNTER, SMITH & DAVIS, LLP
100 Med Tech Parkway, Suite 110
Johnson City, TN 37604

VIA EMAIL: sscook@hsdlaw.com

RE: Armstrong vs. Crum

Dear Ms. Cook:

This correspondence will follow-up on the Chancellor's ruling in the above-referenced matter. While we understand that this is not a final order, we also realize there may be some discussion about an appeal at this point. This letter is in response to the deposition testimony of Mayor Crum regarding conservations held by the County Commissioners in Executive Session. For your convenience I am attaching the relevant pages of the Mayor's deposition regarding this issue. Also, you will recall that you interjected an objection during that testimony indicating that those conversations were legal.

I am attaching a copy of *Smith County Education Association vs. Joe K. Anderson, Superintendent of Schools for Smith County, et al.*, 676 S.W. 2d 328 (Tennessee Supreme Court 1984). You will recall I cited this case in court when this matter was discussed. In that case the Court held that ". . . once any discussion, whatsoever, begins among the members of the public body regarding what action to take based upon advice from counsel, whether it be settlement or otherwise, such discussions shall be open to the public and failure to do so shall constitute a clear violation of the Open Meetings Act." (emphasis added) *Smith* at 334.

There has been no indication from you that you agree with out interpretation, actually just reading, of this opinion. Please be advised that either Mr. Grossman, or myself or both will be at any published meeting of the Commission or called meeting of the Commission between now and the time this matter is no longer appealable. We anticipate that any discussion among commissioners regarding appeal of this matter will be held in public. Any further violation of the Open Meetings Act will result in additional litigation and/or administrative proceedings against the county, you and any other attorney present for any meeting in violation of the Open Meetings Act.

Our intention here is to make certain that discussions are held in public for the benefit of both Mrs. Armstrong, as is her right, and the rest of the public who certainly have any interest in this litigation and particularly in the amount that has been spent and will continue to be spent if this matter is appealed. In

that regard, we are requesting to be heard at any public meeting dealing with the issue of whether or not this case should be appealed or any discussion between Commissioners regarding this litigation.

It is our hope that we can resolve this matter and move forward without further protracted litigation.

With best regards, I remain

Very truly yours,

James R. Wheeler

JRW/acc

cc: Mark Dessauer, Esq. (***via email:*** *dessauer@hsdlaw.com*)
Roger Woolsey, Esq. (***via email:*** *rwoolsey@greenecountytngov.com*)
Matt Grossman, Esq. (***via email:*** *Mgrossman@fmsllp.com*)
Kay Armstrong (***via email***)

Enclosure

676 S.W.2d 328
Supreme Court of Tennessee,
at Nashville.

SMITH COUNTY EDUCATION ASSOCIATION, Plaintiff-Appellee,

v.

Joe K. ANDERSON, Superintendent of Schools for Smith County, et al., Defendants-Appellants.

Aug. 20, 1984.

County education association brought action against board of education, its individual members, and superintendent of the county schools, alleging that defendants had committed unlawful acts and violated the Open Meetings Act during collective bargaining negotiations. The Chancery Court, Smith County, Scott Camp, Chancellor by Designation, following a jury trial, took the case from jury and dismissed the complaint, and the association appealed. The Court of Appeals found that the board had not negotiated in good faith and had violated the Open Meetings Act, and defendants appealed. The Supreme Court, Drowota, J., held that: (1) the Open Meetings Act was inapplicable to discussions between the board and its attorney concerning the pending lawsuit, even though done in presence of board's chief negotiator; (2) jury verdict in the equity action was binding on factual issues and not merely advisory, but issue of whether the board committed acts that amounted to a failure to negotiate in good faith was a question for judge; and (3) board's unilateral termination of payment of monthly insurance premiums for association members and its refusal to continue deduction of professional dues from teacher's salaries during the negotiations constituted a failure to negotiate in good faith.

Affirmed in part and reversed in part.

Attorneys and Law Firms

*329 Charles Hampton White, William Prentice Cooper, Nashville, for plaintiff-appellee.

Jacky O. Bellar, Carthage, Henry Haile, Nashville, for defendants-appellants.

William B. Hubbard, Chief Deputy Atty. Gen., Michael W. Catalano, Asst. Atty. Gen., amicus curiae (for William M. Leech, Jr., Atty. Gen. and Reporter).

David H. Hornik, Kingsport, amicus curiae (for Tennessee Mun. Attys. Ass'n).

OPINION

DROWOTA, Justice.

This action arose from unsuccessful collective bargaining negotiations between the Smith County Education Association and the Smith County Board of Education. After months of negotiations, the SCEA sued the Board, its individual members, and Joe K. Anderson, the Superintendent of Smith County Schools, alleging the Defendants *330 had committed acts made unlawful by the Education Professional Negotiations Act, T.C.A. § 49–5–609, and had violated the Tennessee Open Meetings Act, T.C.A. § 8–44–102(a). Following a jury trial, the Chancellor took the case from the jury and dismissed the complaint, deciding that both sides were negotiating in good faith, that the Defendants had not engaged in any unlawful acts, and that the Defendants had not violated the Open Meetings Act. The Court of Appeals held the Chancellor acted properly in taking the case from the jury; however, the Court found the Board had not negotiated in good faith and had violated the Open Meetings Act.

In 1978, the Education Professional Negotiations Act was passed which provides that when a professional employee organization had been selected, the board of education shall bargain with that organization as the exclusive representative of all professional employees employed by that board of education. T.C.A. §§ 49–5–605(d), 49–5–606. The parties are required to negotiate in good faith the following conditions of employment: salaries or wages, grievance procedures, insurance, fringe benefits, working conditions, leave, student discipline procedures and payroll deductions. T.C.A. § 49–5–611. Section 49–5–609 proscribes certain unlawful acts for either the Board of Education or the employee organization. The Board cannot, among other things, use or threaten reprisals against a professional employee or discriminate against such employee for exercising the rights granted by the act; interfere with, restrain or coerce employees in the exercise of rights granted under the act; or refuse to bargain in

good faith. The employee organization cannot, among other things; refuse to negotiate in good faith; interfere with, coerce, or restrain professional employees or the board in the exercise of their rights granted by the act; or strike.

Following the selection of the SCEA as the representative of the Smith County Teachers, and the designation of Dr. Joseph C. Fields by the Board as its chief negotiator, the parties met on May 11, 1982, to negotiate for the first time. Dr. Fields informed the SCEA negotiators that insurance must be discussed before June 30, at which time the county commission would approve the new budget.

Since the 1976–1977 school year, the county had paid the total insurance premium for each teacher. In May, 1982, the monthly premium increased from $46.31 to $67.15 per teacher. The premium was paid by the Board during May and June despite the increase. After the first negotiation meeting, the SCEA negotiators attempted to discuss the insurance issue, but Dr. Fields refused to do so until other matters had been agreed upon. On June 28, the Board sent notice to all teachers that payment of insurance premiums would end on June 30.

This cause of action was filed on August 27, 1982, in an attempt to have the payment of the insurance premiums continued until negotiations could be concluded. A temporary restraining order was entered directing the Board to maintain the insurance in effect. Within a few days of the entry of that order, Dr. Fields announced that the Board would no longer deduct SCEA dues from the teacher's pay as had been the practice for several years prior to the 1981–1982 school year. There are no minutes of the meeting of the Board where this action was authorized. The Superintendent of Schools, Joe Anderson, testified that he took the action pursuant to advice from Board members.

On two occasions, September 3, and September 16, 1982, after the complaint in this action had been filed, the Board met privately, without notice, with its attorney and Dr. Fields. The SCEA filed a supplemental complaint on September 17, 1982, alleging violations of the Open Meetings Act and further acts on the part of the Board amounting to a refusal to negotiate in good faith. On October 27, 1982, the defendants filed their answer and demanded a jury to try the factual issues in this action.

The trial began on November 18, 1982, before the Chancellor and a jury pursuant *331 to the defendants' demand. At the end of all the proof, ten special issues were submitted to the jury. The jury decided, among other things, that the Board had negotiated in good faith and that the SCEA had not negotiated in good faith.

The Chancellor entered a final decree on January 3, 1983, in which he concluded the jury verdict was merely advisory due to the inherently equitable nature of relief sought, and accordingly, the court should decide the issues. The Chancellor also made the following findings:

> The court does find as a fact that both sides did honestly and sincerely try on many occasions to reach agreements upon the various problems and proposals which confronted them. This court further finds and holds that the plaintiffs did not establish by a greater weight of the evidence bad faith upon the part of the defendants, failure to negotiate in good faith upon the part of the defendants, or any other deliberate effort upon the part of the defendants or either of them to damage or destroy the organization known in the record as SCEA ....
>
> This court finds as a fact that the defendants did not knowingly or wilfully engage in any unfair labor practice in connection with their effort to reach agreement with the plaintiffs.
>
> This court finds as a fact that the proof fails to establish in any instance that the Board of Education violated the provisions of the Open Meetings Act.

Having so found, the Chancellor dismissed the complaint.

The issues raised on appeal are: (1) Does a public body engaged in litigation have the right to meet in private with its legal representatives? (2) Is a party to an action brought under the Education Professional Negotiations Act, T.C.A. § 49–5–601 to 5–604, or the Open Meetings Act, T.C.A. § 8–44–101 to 106, entitled to a jury trial and if so, what is the effect of the verdict? (3) Does the unilateral change of benefits during negotiations amount to an unlawful act under T.C.A. § 49–5–609?

As noted above, the Court of Appeals held the parties are entitled to a jury trial but the effect of the jury's verdict is advisory only. The court further held that a unilateral change of benefits during negotiations amounts

to a refusal to bargain in good faith. For the reasons set forth below, we reverse the Court of Appeals with regard to the jury verdict issue and we affirm the Court's judgment of the effect of a unilateral change of benefits during negotiations. However, we will first address the question of whether the Board had the right to meet with its attorney in private for the purpose of discussing the lawsuit in which it was involved.

I. *The Open Meeting Issue*

The Court of Appeals held that the School Board violated the Tennessee Open Meetings Act, T.C.A. § 8–44–101, et seq., when it met privately with its attorney and Dr. Joseph Field during the course of the present litigation.

Complaint is made of two particular meetings. The first occurred on September 3, 1982, when after a hearing in the case in Chancery Court, the Board, its attorney, and Dr. Fields met for twenty minutes behind closed doors in the second floor witness room at the courthouse. No notice of the meeting was given.

The second alleged violation occurred on the night of September 16, 1982, when the Board and Dr. Fields met with the Board's attorney at his office from 7:00 to 9:25 p.m. Rick Dringenburg, husband of the SCEA president, and Chris Baxter, a reporter for the local paper, watched Board members enter and leave the office and observed the meeting through the office window. Again, no notice was given of the meeting.

Section 8–44–101(a) of the Tennessee Open Meetings Act "declares it to be the policy of this state that the formation of public policy and decisions is the public business and shall not be conducted in secret." Section 8–44–102(a) then provides that "[a]ll meetings of any governing body are declared to be public meetings open to the public at all times, except as provided *332 by the Tennessee Constitution." There is no express exception to the Act permitting a public body to meet privately with its attorney and it is for this reason that the Court of Appeals determined that both of the Board's meetings with its attorneys violated the Act. This is a minority position among the courts in other jurisdictions that have considered the issue.

The majority of courts have fashioned an exception to their states' open meeting laws to permit private attorney-client consultation on pending legal matters even where the statute itself makes no such express exception. *See Sacramento Newspaper Guild v. Sacramento County Board of Supervisors,* 263 Cal.App.2d 41, 69 Cal.Rptr. 480, 487–492 (1968); *Associated Students of the University of Colorado v. Regents of the University of Colorado,* 189 Colo. 482, 543 P.2d 59, 61 (1975); *Times Publishing Company v. Williams,* 222 So.2d 470, 475–476 (Fla.Dist.Ct.App.1969); *Fiscal Court of Jefferson County v. Courier-Journal & Louisville Times Co.,* 554 S.W.2d 72, 73 (Ky.1977); *Minneapolis Star & Tribune Co. v. Housing & Redevelopment Authority,* 246 N.W.2d 448 (Minn.1976) (republished at 310 Minn. 313, 251 N.W.2d 620); *Oklahoma Association of Municipal Attorneys v. State,* 577 P.2d 1310 (Okla.1978).

Although the Tennessee Open Meetings Act differs from those of other states where courts have created exceptions, the rationale employed by those courts is noteworthy. Two approaches, both based upon the same policy consideration, are given for permitting this exception: (1) the evidentiary privilege between lawyer and client and (2) the attorney's ethical duty not to betray the confidences of his client. Each of these is recognized by the law of Tennessee. The first is found in T.C.A. § 23–3–105 which provides as follows:

> No attorney, solicitor or counselor shall be permitted, in giving testimony against a client, or person who consulted him professionally, to disclose any communication made to him as such by such person, during the pendency of the suit, before or afterwards, to his injury.

Some courts see no reason why both the Open Meetings Act and the attorney-client evidentiary privilege cannot co-exist. It is on this basis that they permit private meetings between public bodies and their attorneys for the purpose of discussing questions of pending litigation. The two are reconciled by holding there has been no implied repeal of the attorney client privilege statute by the open meeting law. *See e.g. Oklahoma Association of Municipal Attorneys v. State, supra* (but note that Oklahoma's open meeting statute and the privilege statute were passed in the same year); *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, supra,* 69 Cal.Rptr. at 490–491; *Associated Students of the University of Colorado v.*

Regents of the University of Colorado, supra, 543 P.2d at 61.

The California case, *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, supra,* contains the most-cited rationale for these cases. The court first notes that there is a presumption against repeals by implication and that they occur only where the two acts are so repugnant that there is no possibility of concurrent operation or the later provision undeniably shows an intent to supersede the earlier. 69 Cal.Rptr. at 490; *See Reams v. Trostel Mechanical Industries, Inc.,* 522 S.W.2d 170, 173 (Tenn.1975). The Court then goes on to state that

> [c]vidence of such intent is by far too thin.... In requiring board members to deliberate and act in public, these do not inexorably embrace the board members in their roles as clients calling upon their attorney for legal advice. In declaring the public's right to be informed, they do not necessarily propel the public's legal adversary into the lawyer-client conference clad in the robes of good citizenship.

69 Cal.Rptr. at 491.

Notwithstanding these well reasoned opinions that follow this rationale, we believe the second approach, the attorney's ethical duty to preserve the confidences and secrets *333 of his client, provides a better basis for establishing an exception to the Open Meetings Act.

[1] The attorney-client evidentiary privilege only extends to communications from the client to the attorney. D. Paine, *Tennessee Law of Evidence,* § 96, p. 111–112 (1974), and confidentiality is destroyed when those communications take place in the presence of a third party. *Hazlett v. Bryant,* 192 Tenn. 251, 257, 241 S.W.2d 121, 123 (1951). The privilege is designed to protect the client and because it belongs to the client, may be waived by him. When the third party in whose presence such communications take place is an agent of the client, the confidentiality is not destroyed. McCormick § 91 (2d ed. 1972); D. Paine, *Tennessee Law of Evidence,* § 97, p. 112 (1974).

[2] When the Board discussed the present lawsuit with its attorney on September 3 and 16, 1982, it did so in the presence of Dr. Fields. As chief negotiator for the Board, Dr. Fields was the Board's agent; therefore, the confidentiality of those communications was not waived by his presence. However, the evidentiary privilege afforded by T.C.A. § 23–3–105 was waived by the passage of the Open Meetings Act.

In *Times Publishing Company v. Williams,* 222 So.2d 470 (Fla.Dist.Ct.App.1969), that court was confronted with the identical issue involving a similar Open Meetings Act. [1] In establishing an attorney-client exception to the Act, the court pointed out the following:

> The attorney-client relationship is a unique one under the law. Within this relationship both the attorney and the client enjoy rights and privileges independent of each other. The privilege the client enjoys is one of confidentiality. The privilege of confidentiality can be waived and the effect of Chapter 67–356 has been to waive the privilege on behalf of the board. The clear import of the "All meetings" provision of this statute is that the public, acting through the legislature, has waived the privilege with regard to the enumerated public bodies.
> *Id.* at 475.

We are of the opinion that the Tennessee Open Meetings Act had the same effect on the attorney-client evidentiary privilege. An exception based upon the evidentiary privilege would be in contravention of the Legislature's intent and express purpose as stated in the Act.

We note, however, that the Legislature was mindful of constitutional exceptions that may exist, and provided that all meetings shall be public "except as provided by the Tennessee Constitution." T.C.A. § 8–44–102(a). Article II, Sections 1 and 2, of the Constitution provide:

> Sec. 1. *Division of powers.*—The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.
>
> Sec. 2. *Limitation of powers.*—No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.

[3] It is well settled that the licensing and regulation of attorneys practicing law in courts of Tennessee is squarely within the inherent authority of the judicial branch of government. *Belmont v. Board of Law Examiners,* 511 S.W.2d 461 (Tenn.1974). Furthermore, the "Supreme Court has original and exclusive jurisdiction to promulgate its own Rules. Its rule making authority embraces the admission and supervision of members of the Bar of the State of Tennessee." *Petition of Tennessee Bar Ass'n.,* 539 S.W.2d 805, 807 (Tenn.1976).

This Court, in the exercise of its constitutionally delegated authority, has promulgated *334 rules and regulations governing the practice of law, and adopted a code of professional responsibility which includes the following:

CANON 4

A LAWYER SHOULD PRESERVE THE CONFIDENCES AND SECRETS OF A CLIENT

Ethical Considerations

EC 4–1. Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

[4] In deciding this same issue, the Supreme Court of Minnesota stated in the case of *Minneapolis Star & Tribune Co. v. H. & R.A., Etc., supra:*

> This long-accepted theory protecting the attorney-client relationship is as basic to our legal system as the right of the judiciary to regulate and oversee the administration of that legal system.

246 N.W.2d at 452.

The Legislature, then, is without authority to enact laws which impair the attorney's ability to fulfill his ethical duties as an officer of the Court. *See Times Publishing Company v. Williams, supra* at 475.

[5] It is clear that application of the Open Meetings Act to discussions between public bodies and their attorneys regarding pending litigation violates Article II, Sections 1 and 2 of the Tennessee Constitution. However, the Act itself is not unconstitutional. *Dorrier v. Dark,* 537 S.W.2d 888 (Tenn.1976), and we conclude that the Legislature did not intend for the coverage of the Act to include this situation. As previously stated, the Act provides for exceptions provided by the Tennessee Constitution. This is a clear indication of the Legislature's awareness of its constitutional limitations when passing the Act. Furthermore, the purpose of the Act as set out in T.C.A. § 8–44–101(a) states that it is "the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret."

Our holding in this case in no way compromises this stated purpose. The exception is limited to meetings in which discussion of present and pending litigation takes place. Clients may provide counsel with facts and information regarding the lawsuit and counsel may advise them about the legal ramifications of those facts and the information given to him. However, once any discussion, whatsoever, begins among the members of the public body regarding what action to take based upon advice from counsel, whether it be settlement or otherwise, such discussion shall be open to the public and failure to do so shall constitute a clear violation of the Open Meetings Act.

The SCEA argues that any exception to the Open Meetings Act should be carved out by the Legislature and not the Court. In support of this position, the SCEA cites *Dorrier v. Dark, supra,* wherein we said:

> If experience should prove that the public interest is adversely affected by open meetings involving pending or prospective litigation

> disciplinary hearings, promotion and demotion hearings, prospective land purchases, labor negotiations, etc., it is the Legislature, not the Judiciary, that must balance the benefits and detriments and make such changes as will serve the people and express their *335 will. In our role as guardians of the Constitution, we find the act free of defect of constitutional proportions.

537 S.W.2d at 896.

The issues presented by the facts in *Dorrier* did not include the question of whether public bodies may meet in closed session with their attorney in order to discuss pending litigation. The statements in that case made with reference to such discussions are consistent with the holding in this case. To the extent public bodies discuss those matters among themselves, such communications shall be open to the public. Any exceptions to be allowed for those meetings should come from the Legislature and not the Court.

[6] We are aware of the potential misuse of this exception in order to circumvent the scope of the Open Meetings Act. A public body could meet with its attorney for the ostensible purpose of discussing pending litigation and instead conduct public business in violation of the Act. Although the Act imposes only limited sanctions on a public body for such violations,[2] any attorney who participates, or allows himself to be used in a manner that would facilitate such a violation, would be in direct violation of the Code of Professional Responsibility and subject to appropriate disciplinary measures.[3]

In summary, we hold that discussions between a public body and its attorney concerning pending litigation are not subject to the Open Meetings Act. We emphasize that this is a narrow exception and applies only to those situations in which the public body is a named party in the lawsuit. Any such meetings should be conducted in a manner consistent with the guidelines set forth in this opinion.

II. *The Jury Trial Issue*

The Board asserts that the determination of the jury on the issues decided is conclusive. The SCEA contends that the jury verdict was merely advisory and could be ignored by the trial judge. The answer to this question requires some understanding of the historic distinctions between law and *336 equity which is detailed in Judge Cantrell's opinion.

"Article 1, Section 6, of the Tennessee Constitution preserves the right to a jury trial 'as it existed at common law.' *Marler v. Wear,* 117 Tenn. 244, 245–46, 96 S.W. 447, 448 (1906). In the classic common law system of courts, matters inherently legal in nature were tried in the law courts by a jury while matters inherently equitable were tried by the Chancellor without a jury. Therefore, there is no constitutional right to a trial by jury in a matter inherently equitable. *Harbison v. Briggs Bros. Paint Mfg. Co.,* 209 Tenn. 534, 541, 354 S.W.2d 464, 468 (1962).

"There is, however, a statutory right in Tennessee set out in Section 21–1–103 of the Tennessee Code which provides:

> Either party to a suit in chancery is entitled, upon application, to a jury to try and determine any material fact in dispute, save in cases involving complicated accounting, as to such accounting, and those elsewhere excepted by law or by provisions of this Code, and all the issues of fact in any proper cases shall be submitted to one (1) jury.

"This section has been interpreted to extend the right to a trial by jury to cases of a purely equitable nature. *Moore v. Mitchell,* 205 Tenn. 591, 595, 329 S.W.2d 821, 823 (1959). The exceptions to the right are few:

> It is our conclusion, therefore, ... that only those cases are excepted from the above quoted Code sections which are expressly excepted by the provisions of the Code, and those statutory exceptions not found in the Code; and such as by their very nature must necessarily be deemed inappropriate and not a proper case to be submitted to a jury such as *Pass v. State,* 181 Tenn. 613, 184 S.W.2d 1 [1944] (a contempt proceeding for violation of an injunction), unless in such case express provision for a jury trial is made by statute; or cases of such a complicated and intricate nature involving mixed questions of law and fact not suitable for solution by a jury such as laches or estoppel.

Id. at 597, 329 S.W.2d at 823–25.

"Therefore, we conclude that the defendants were within their rights to demand a jury to try disputed issues of material facts. But, the real question in this issue still remains: Was the jury's verdict advisory or conclusive?

"If the action were one of a legal nature in which *legal* or *common law* rights were being tried as opposed to one in which *equitable* rights are asserted, there would be no doubt that the jury verdict would be binding on the Chancellor (except as to his common law or statutory right to grant a new trial or suggest a remittitur or additur). *Hurt v. Earnhart,* 539 S.W.2d 133, 136, (Tenn.App.1976). The verdict would be a common law verdict, the right to which is preserved in Article I, Section 6 of our Constitution. Where, however, the cause is inherently equitable, the right [to a jury] is purely statutory and the effect to be given to the jury verdict must be drawn from the statute that gives the right or from the common law itself.

"Prior to 1846 in Tennessee, there was no right to a jury trial in cases of an equitable nature. *State ex rel. Webster v. Daugherty,* 530 S.W.2d 81, 88 (Tenn.App.1975). Although a chancellor might direct an issue to be submitted to a law court for a trial before the jury, he could accept the verdict or reject it and decide it himself. In other words, the verdict was purely advisory. *Id.*

"In 1846, the legislature passed the forerunner of T.C.A. § 21–1–103, which was the exclusive right to a jury in a purely equitable case. *See Greene County Union Bank v. Miller,* 18 Tenn.App. 239, 244, 75 S.W.2d 49, 52 (1934). Along with this statute the legislature passed a fairly elaborate set of companion statutes that dealt with the jury trial issue as it applied to chancery court. One of these, T.C.A. § 21–1016 (1955 ed.) (repealed), provided that the issues *337 to be decided by the jury were not advisory only:

> The trial shall be conducted like other trials at law, the finding of the jury having the same force and effect and the court having the same power and control over the finding, as on such trials at law.

"However, after the adoption of the Tennessee Rules of Civil Procedure these statutes were repealed and for a time there was no right to a jury trial in a case involving only equitable issues. *See Ashe v. State ex rel. Shriver,* 518 S.W.2d 360, 361 (Tenn.1975). Then, in 1976 the legislature reenacted Tennessee Code Annotated, section 21–1011 (now § 21–1–103), 1976 Tenn.Pub.Acts, ch. 436, but without its surrounding complement of statutes that describe the effect to be given to the jury verdict."

Opinion, Court of Appeals.

The Court of Appeals concluded that because the Legislature failed to enact the statutes describing the effect of the jury verdict in chancery court, the verdict is advisory in cases involving equitable issues. The Court went on to find that the remedies created by the Open Meetings Act and the EPNA are equitable rather than legal; accordingly, the jury verdict provided in T.C.A. § 21–1–103 is advisory only. We disagree.

[7] [8] In passing Chapter 436 of the Public Acts of 1976, the Legislature clearly intended to restore the law as it existed prior to the enactment of our present Rules of Civil Procedure. Senator Oehmig, the sponsor of the Senate bill which became Chapter 436 of the Public Acts of 1976, made the following remarks when the bill was before the Senate on its third and final reading:

> In 1972 when we adopted Rules of Civil Procedure, there were certain code sections that were repealed and this was one of them and it was felt that the present rules do not cover this situation of jury trials in Chancery and *this just puts back the old law into effect.* (Emphasis added.)

Clearly, the Legislature intended to re-establish the previous law and give a broad right to trial by jury. We conclude that the Chancellor was in error in taking the verdict from the jury and deciding the issues himself. Therefore, we reverse the Court of Appeals' determination that the jury verdict was advisory only.

The Board argues that the resolution of the jury verdict issue may determine the outcome of this case, and places great emphasis on the jury's answer to one of the ten special issues submitted, which is as follows:

> 2. Has the Smith County Board of Education refused or failed to negotiate in a good faith effort to reach a collective bargaining

> agreement with the Smith County Education Association? Answer in writing "Yes" or "No." *No*

Based on this answer, and in light of our holding that the jury verdict is binding, it would appear that the question of whether the Board negotiated in good faith is closed to further consideration. However, the verdict rendered in this case is a special verdict. In addition to the above quoted question, the jury was presented with the following:

> 4. Did the Smith County Board of Education exhaust reasonable efforts to reach agreement with the Smith County Education Association on employees health insurance for the 1982–83 school year before it voted to discontinue payment of teachers' health insurance premiums? Answer in writing "Yes" or "No." *No*
>
> 6. Did the Board of Education intend to stop paying insurance benefits for school teachers of Smith County Schools while it negotiated an agreement with the Smith County Education Association? Answer "Yes" or "No". *Yes*
>
> 7. Did the Smith County Board of Education stop deducting professional dues for the Smith County Education Association from the paychecks of teachers of *338 the Smith County School system while it negotiated an agreement with the Smith County Education Association? Answer in writing "Yes" or "No". *Yes*

In accordance with our holding that unilateral actions made during the course of negotiations constitutes a refusal to negotiate in good faith, the reasons for which are set forth below, it can be seen that the answers to questions 4, 6 and 7 are clearly inconsistent with the answer to question 2.

We note that questions 4, 6 and 7 are questions of fact and responses given by the jury are supported by the record. On the other hand, question 2 is a question of law which required the jury to reach a legal conclusion in order to respond. Rule 49, Tennessee Rules of Civil Procedure provides for special verdicts and governs their use.[4] However, the Rule does not specifically address the question before us; that is, the effect of a special verdict containing conclusions of law which are inconsistent with findings of fact.

In *Ratigan v. New York Central Railroad Co.*, 291 F.2d 548 (2d Cir.1961), the Second Circuit Court of Appeals was confronted with a similar problem involving a special verdict under Federal Rule of Civil Procedure 49(a), which is identical to TRCP 49.01. The jury was presented with eight interrogatories which included questions of fact and questions of law. The Court held that

> it was a mistake to submit the legal questions pertaining to active and passive negligence to the jury because these were difficult legal principles and they gave the jury an unnecessary legal workout which was far beyond their comprehension... [T]he facts having been determined by the answers to questions 3, 4, 5 and 6, the erroneous legal conclusion stated in the answer to question 7 could be disregarded as surplusage.

Id. at 555.

[9] Turning to the present case, we think it was improper and unnecessary to submit questions which required the jury to determine whether or not the Board negotiated in good faith. We point out that the right afforded by T.C.A. § 21–1–103 is "to a jury to try and determine any *material fact* in dispute." (Emphasis added.) It is for the jury to determine the facts and the trial judge to apply the appropriate principles of law to those facts. Whether the Board committed acts that amount to a failure to negotiate in good faith was a question for the trial judge and not the jury.

III. The Unlawful Act Issue

[10] The Court of Appeals held that the Board had not negotiated in good faith with the SCEA because of its unilateral action in terminating payment of monthly insurance premiums and its refusal to continue deduction of professional dues from teachers' salaries during negotiations. In reaching its decision, the court adopted the rationale of the majority of cases in which this question has been considered under other state public employee labor relations acts. We affirm.

[11] An employer's unilateral change in conditions of employment which are under *339 negotiation constitutes a refusal to bargain in good faith under the National Labor Relations Act. *NLRB v. Katz,* 369 U.S. 736, 82 S.Ct. 1107, 8 L.Ed.2d 230 (1962). Courts of other states have considered whether the principles set forth in *Katz* apply to collective bargaining in the public sector and the majority have held that they do.

In the case of *Galloway Township Board of Education v. Galloway Township Education Ass'n.,* 78 N.J. 25, 393 A.2d 218 (1978), the Association filed an unfair practice charge against the Board of Education alleging refusal to negotiate in good faith by its unilaterally withholding payment of an annual salary increment due the teachers represented by the Association. The court cited the above stated rule in *NLRB v. Katz, supra,* and went on to say

> The basis of the rule prohibiting unilateral changes by an employer during negotiations is the recognition of the importance of maintaining the then-prevailing terms and conditions of employment during this delicate period until new terms and conditions are arrived at by agreement. Unilateral changes disruptive of this *status quo* are unlawful because they frustrate the 'statutory objective of establishing working conditions through bargaining.' *NLRB v. Katz, supra,* 369 U.S. at 744, 82 S.Ct. at 1112.

393 A.2d at 230.

In addressing the question of whether to apply the definition of good faith obligation to negotiate as found in cases decided under the National Labor Relations Act, the Supreme Court of Pennsylvania noted that "the present case does not present a situation where there exists a meaningful difference in policy between the NLRA and the [state statute], ... both acts favor the collective bargaining process." *Appeal of Cumberland Valley School District, Etc.,* 483 Pa. 134, 394 A.2d 946, 950 (1978). The facts in that case are similar to the case at bar. During the course of negotiations for a new agreement, the old agreement expired resulting in the school district's termination of payment of health and life insurance premiums. The court held that this constituted a refusal to bargain in good faith and stated that "[t]he duty to bargain in good faith means that the parties must 'make a serious effort to resolve differences and reach a common ground.' " *Id.* (citation omitted).

The stated purpose of our collective bargaining statutes is the establishment and maintenance of professional working conditions and "the highest possible education standards." T.C.A. § 49–5–601. Section 49–5–611 requires the boards of education and professional employee organizations to negotiate in good faith certain conditions of employment. Clearly, our statute favors the collective bargaining process as a means whereby both parties can resolve their differences through open discussion.

In the present case, the Board has paid the total insurance premium for each teacher since the 1976–1977 school year. These payments had been made despite periodic increases in the premiums, and following the increase in May 1982, the full premium was paid through the months of May and June before being discontinued by the Board.

[12] As pointed out by the Court of Appeals, the Board is bound by the funding provided by the county government. *Carter County Board of Education Commissioners v. American Federation of Teachers,* 609 S.W.2d 512, 517 (Tenn.App.1980). The court went on to say that in the event of a budgetary problem, the Board may be forced to make a prompt decision with regard to one of the conditions subject to employment; nevertheless, "in such circumstances, it should be incumbent on the school board to show that it had no other choice other than to act quickly and that it did not have an opportunity to first negotiate these matters with the public employee union." Accordingly, absent a justification *340 of its action, the Board is guilty of a refusal to bargain in good faith.

As to the issue of the Board's decision to terminate the deduction of professional dues, we agree with the Court of Appeals that such action also constituted "an incident of bad faith." Payroll deductions are among the mandatory subjects of negotiation, T.C.A. § 49–5–611(a)(8), and an impasse in negotiations on the subject had not been declared.

At the time these violations occurred, the EPNA did not provide specific remedies. However, we agree with the judgment of the Court of Appeals, that the Board be required to pay the full insurance premiums until it justifies its actions and also to continue making payroll deductions for SCEA members during negotiations.

Accordingly, the Court of Appeals is reversed as to the Open Meetings issue and the finding that the jury verdict

in chancery court is advisory only. We affirm the Court of Appeals' conclusion that the Board failed to negotiate in good faith due to its unilateral actions on matters under negotiation. Costs of this appeal shall be divided equally between the parties.

COOPER, C.J., and FONES, BROCK, and HARBISON, JJ., concur.

All Citations

676 S.W.2d 328, 20 Ed. Law Rep. 762

Footnotes

1 F.S.A. § 286.011 provides in relevant part:

> (1) All meetings of any board or commission of any state agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times.

2 The following provisions provide for sanctions and enforcement of those sanctions when the Act is violated:

> 8–44–105. *Action nullified—Exception.*—Any action taken at a meeting in violation of this part shall be void and of no effect, provided that this nullification of actions taken at such meetings shall not apply to any commitment, otherwise legal, affecting the public debt of the entity concerned.
>
> 8–44–106. *Enforcement—Jurisdiction.*—(a) The circuit courts, chancery courts, and other courts which have equity jurisdiction, shall have jurisdiction to issue injunctions, impose penalties, and otherwise enforce the purposes of this part upon application of any citizen of this state.
>
> (b) In each suit brought under this part, the court shall file written findings of fact and conclusions of law and final judgments, which shall also be recorded in the minutes of the body involved.
>
> (c) The court shall permanently enjoin any person adjudged by it in violation of this part from further violation of this part. Each separate occurrence of such meeting not held in accordance with this part shall constitute a separate violation.
>
> (d) The final judgment or decree in each suit shall state that the court retains jurisdiction over the parties and subject matter for a period of one (1) year from date of entry and the court shall order the defendants to report in writing semiannually to the court of their compliance with this part. [Acts 1974.]

3 In *Times Publishing Company v. Williams, supra,* the court noted

> that an attorney who represents a public body such as covered under this statute is an officer of the court and a public figure himself, and we will not assume that he will abuse the above exception and allow the discussions in a properly held secret meeting to include any matters not specifically included in this aspect of the attorney-client relationship.

Id. at 476.

While we adhere to the views expressed in this opinion, we add that in the unfortunate situation where an attorney might fail to fulfill his responsibilities in this regard, he would be in violation of at least two provisions of the Code of Professional Responsibility.

DR 7–102 Representing a Client Within the Bounds of the Law.

> (A) In his representation of a client, a lawyer shall not:
>
> (7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.
>
> (8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

4 See *Williams v. Van Hersh,* 578 S.W.2d 373 (Tenn.App.1978). In *Williams,* the Court of Appeals points out that

> The submission of issues in a jury trial in chancery was formerly governed by T.C.A. § 21–1014, which required the submission of specific issues to the jury. T.C.A. § 21–1014 was repealed by Chapter 565, Public Acts 1972, and the procedure is now governed by Rule 49, Tennessee Rules of Civil Procedure.

Id. at 375.

Although this appears to conflict with our holding above that the Legislature intended to re-establish the previous law by enacting T.C.A. § 21–1–103 (formerly § 21–1011), we point out that the right to a jury trial in chancery, or the effect of the verdict, is not provided for in the Tennessee Rules of Civil Procedure. See *Ashe v. State ex rel. Shriver, supra.* To the extent proceedings in chancery are not covered under TRCP, the effect of T.C.A. § 21–1–103 is to restore the previous law, otherwise, the TRCP are controlling.

End of Document

Q. I don't recall that. Okay. Outside of the fees to Hunter, Smith & Davis, how much has the county spent otherwise to date defending this lawsuit?

A. I'm not aware of any. I'm just trying to think of anything that we've had because internal time would not have been applicable. So the answer would be, I guess, I'm not aware of any.

Q. Okay. Do you know if you've also paid court reporter fees and things like that?

A. I'm thinking there was a bill for about $500.00 that came through for court fees, but I don't know if we paid that or if it was paid otherwise.

Q. Are you aware that a county commissioner has told the Clerk and Master that you and/or the commission had determined to spend as much money as it took to beat her because if she won, all the county office holders would file salary suits or words to that effect?

A. That sounds like something John Waddle said.

Q. Are you aware of whether he did say it or not?

A. No, huh-uh.

Q. Has the commission given you some sort of consensus that they want to try this case?

MS. COOK: Objection. I think you're asking for discussions in Executive Session, which are privileged.

Q. Were there discussions in Executive Session? Don't tell me what was said. Were there discussions by commissioners in Executive Session?

A. There were discussions in Executive Session by commissioners regarding this case.

Q. Are you aware it's a violation of the Sunshine Law?

A. It's not.

MS. COOK: It's not, Jim. And the objection is about asking him about...

Q. Ms. Cook, you've been doing speaking objections right and left.

MS. COOK: Mr. Wheeler, you're asking him a misleading question.

Q. You make a note of your objection or you...

MS. COOK: You're asking him a legal conclusion based upon your interpretation of some things, and he...

Q. If he can answer, he can answer.

MS. COOK: He answered and says he didn't agree.

Q. That's fine. What attorneys were present in the Executive Session?

A. Ms. Cook representing us and the county attorney, who's a member of the Insurance Committee.

Q. That would be Mr. Woolsey?

A. Yes. Yes.

MS. COOK: And for the record, the Court's already ruled in this case that those are privileged. You all wanted to depose Roger Woolsey. The Court made a ruling about Executive Sessions are privileged.

Q. That has nothing to do with what's allowed in Executive Session, but we'll go on. Did the commission vote in Executive Session?

A. No.

Q. Did commissioners discuss among themselves?

A. Yes.

Q. Are you aware of Knox County and the lawsuits that have gone on down there on Executive Sessions?

A. No.

Q. Okay. You received the letter Mr. Grossman wrote approximately two weeks before suit was filed indicating the Clerk and Master would compromise in her effort to save the county money. Is that correct?

A. Yes.

Q. Did you share that with any or all of the commissioners when it was received?

A. Can I ask my attorney a question before I answer or...

Q. No, Sir. You can't.

A. Okay. Okay. To my knowledge, that was discussed in close session.

Q. And as far as providing a copy, you did not do that?

A. No.

Q. Okay.

A. I don't think so. Typically, closed session, we do not dispense out information. If they got it, it was retrieved.

Q. Okay. Are you aware of any response being given to the Clerk and Master or to Mr. Grossman first prior to the commission meeting that they appeared at?

MS. COOK: Is your question post-lawsuit

then?

A. Help me again. I'm trying to...

Q. It's post or -- up to whenever they appeared at the commission meeting. Are you aware of any response to that letter being given to the Clerk and Master directly or to Mr. Grossman between the time that you received it and the time that Mr. Grossman and the Clerk and Master appeared at the County Commission meeting?

A. I am not.

Q. Okay. Are you aware of any response being given to the Clerk and Master or to Mr. Grossman since that time?

A. No.

Q. Okay. Have you authorized a response at any point?

A. No.

Q. Okay. Has anyone advised or told you -- other than Ms. Cook or her firm or the county attorney, has anyone advised or told you not to settle this lawsuit?

A. No. We've been given directions by the County Commission, I believe, and taking the action that they've directed in this course of action.

Q. Outside of Executive Session, have you had discussions about that with any commissioners?

A. I don't -- John Waddle has called me and told me what his conversations have been, but as far as the settling, no. No, I don't recall.

Q. What did you and Mr. Waddle discuss?

A. The conversation I've alluded to about his conversation they had, but I don't, I don't think there's been conversation regarding any settlement of this suit by the commissioners. Any conversations regarding the litigation has been involved during those Executive Sessions. I'm trying to take the direction that they've indicated.

Q. Your lawyers in a letter indicated that you might not fund Mrs. Armstrong's office next year.

A. That's -- I don't...

Q. Do you intend to retaliate against her next year?

MS. COOK: Objection. That hasn't been said by any...

A. I don't recall that letter or any indication that her office would not be funded. There was no indication this year to cut her budget. Help me out because I don't recall. I don't recall

that if that's been -- I don't recall any indication to -- during the process to reduce her budget or that her budget would be reduced as a result of this.

Q. Another point made was that if she dropped her lawsuit and walked away, that she might curry favor and be in better stead with the Budget Committee next year.

A. No.

Q. Do you recall that?

A. Okay. Yes. They might be more receptive to that.

Q. Okay.

MS. COOK: Objection. I believe that was part of mediation, which would be inadmissible.

A. I think the letter was response to mediation.

MS. COOK: It would be a settlement offer, too. Inadmissible.

Q. Have you been -- you were an employee of the Town of Greeneville. Correct?

A. Yes.

Q. Are there some commissioners who have been either employees or office holders with the Town of Greeneville?

A. Yes.

Smith County Education Asso. v. Anderson

Supreme Court of Tennessee

August 20, 1984

No Number in Original

Reporter
676 S.W.2d 328 *; 1984 Tenn. LEXIS 936 **

SMITH COUNTY EDUCATION ASSOCIATION, Plaintiff-Appellee, v. JOE K. ANDERSON, SUPERINTENDENT OF SCHOOLS FOR SMITH COUNTY, ET AL., Defendants-Appellants

Prior History: [**1] SMITH CHANCERY

Honorable Scott Camp, Chancellor by Designation.

Disposition: AFFIRMED IN PART; REVERSED IN PART.

Core Terms

negotiate, open meeting, good faith, issues, board of education, meetings, jury verdict, public body, jury trial, teachers, equitable, courts, cases, advisory, bargaining, conditions, attorneys, insurance premium, attorney-client, provides, matters, parties, secret, evidentiary privilege, pending litigation, unilateral change, questions, benefits, repealed, waived

Case Summary

Procedural Posture

Defendant board of education appealed an order from an appellate court (Tennessee), which found that the board had failed to negotiate in good faith with plaintiff teachers' union, that the jury's verdict in the case was advisory only, and that the board had violated the Open Meetings Act (Act), *Tenn. Code Ann. § 8-44-101*-44-*106*. The teacher's union had filed suit as a result of failed collective bargaining negotiations.

Overview

During negotiations with the teachers' union, the board unilaterally decided to cease making insurance premium payments for the teachers. The board also notified the teachers that it would no longer make payroll deductions for dues in the teachers' union. During the litigation, the board held two private meetings with its attorney and its negotiator. At issue was whether the jury's verdict at the trial was advisory only, whether the board's closed meetings violated the Act, and whether the board had negotiated in bad faith. The court held that the attorney-client privilege was waived by the legislature when it passed the Act. However, ethical considerations on the disclosure of confidential client information by attorneys created an exception to the Act for meetings between a public body, its agents, and attorneys regarding current or

pending litigation. The trial court erred in taking the verdict from the jury because the verdict was not advisory. However, the issue of the board's good faith negotiation was one of law and the trial court's decision that the board did not negotiate in good faith as to the dues and insurance premiums was correct.

Outcome

The court reversed the findings that the Open Meetings Act had been violated and that the jury verdict had been advisory only. The court affirmed the finding that the board failed to negotiate in good faith.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > Labor & Employment Law > Collective Bargaining & Labor Relations > Bargaining Subjects

Insurance Law > Liability & Performance Standards > Good Faith & Fair Dealing > Payments

Insurance Law > Liability & Performance Standards > Good Faith & Fair Dealing > General Overview

Business & Corporate Compliance > ... > Labor & Employment Law > Collective Bargaining & Labor Relations > Duty to Bargain

HN1[] **Collective Bargaining & Labor Relations, Bargaining Subjects**

When a professional employee organization is selected, the board of education bargains with that organization as the exclusive representative of all professional employees employed by that board of education. *Tenn. Code Ann. §§ 49-5-605(d)*, *49-5-606*. The parties are required to negotiate in good faith the following conditions of employment: salaries or wages, grievance procedures, insurance, fringe benefits, working conditions, leave, student discipline procedures and payroll deductions. Tenn. Code Ann. § 49-5-611.

Business & Corporate Compliance > ... > Labor & Employment Law > Collective Bargaining & Labor Relations > Duty to Bargain

Labor & Employment Law > Collective Bargaining & Labor Relations > Strikes & Work Stoppages

Labor & Employment Law > ... > Unfair Labor Practices > Union Violations > Union Refusal to Bargain

HN2[] **Collective Bargaining & Labor Relations, Duty to Bargain**

Tenn. Code Ann. § 49-5-609 proscribes certain unlawful acts for either a board of education or the employee organization. The board of education cannot use or threaten reprisals against a professional employee or discriminate against such employee for exercising the rights granted by the act; interfere with, restrain or coerce employees in the exercise of rights granted under the act; or refuse to bargain in good

faith. The employee organization cannot refuse to negotiate in good faith; interfere with, coerce, or restrain professional employees or the board in the exercise of their rights granted by the act; or strike.

Administrative Law > Governmental Information > Public Information > Sunshine Legislation

Administrative Law > Governmental Information > Public Information > General Overview

HN3[] **Public Information, Sunshine Legislation**

Tenn. Code Ann. § 8-44-101(a) of the Tennessee Open Meetings Act, *Tenn. Code Ann. § 8-44-101*-44-*106*, declares it to be the policy of the state that the formation of public policy and decisions is the public business and shall not be conducted in secret. *Tenn. Code Ann. § 8-44-102(a)* provides that all meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Tennessee Constitution.

Civil Procedure > ... > Discovery > Privileged Communications > General Overview

HN4[] **Discovery, Privileged Communications**

See *Tenn. Code Ann. § 23-3-105*.

Civil Procedure > ... > Discovery > Privileged Communications > General Overview

Evidence > Privileges > Attorney-Client Privilege > Waiver

Evidence > Privileges > General Overview

Evidence > Privileges > Attorney-Client Privilege > General Overview

HN5[] **Discovery, Privileged Communications**

The attorney-client evidentiary privilege only extends to communications from the client to the attorney and confidentiality is destroyed when those communications take place in the presence of a third party. The privilege is designed to protect the client and because it belongs to the client, may be waived by him. When the third party in whose presence such communications take place is an agent of the client, the confidentiality is not destroyed.

Governments > State & Territorial Governments > General Overview

HN6[] **Governments, State & Territorial Governments**

See Tenn. Const. art. II.

Legal Ethics > Client Relations > Duties to Client > Duty of Confidentiality

HN7[] **Duties to Client, Duty of Confidentiality**

Tennessee's code of professional responsibility canon four states: A lawyer should preserve the confidences and secrets of a client.

Governments > Fiduciaries

Legal Ethics > Client Relations > Duties to Client > Duty of Confidentiality

HN8[⬇] **Governments, Fiduciaries**

The ethical considerations for canon four of Tennessee's code of professional responsibility state: EC 4-1. Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant.

Legal Ethics > Client Relations > Duties to Client > Duty of Confidentiality

HN9[⬇] **Duties to Client, Duty of Confidentiality**

The ethical considerations for canon four of Tennessee's code of professional responsibility continue: The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

Administrative Law > Governmental Information > Public Information > General Overview

HN10[⬇] **Governmental Information, Public Information**

See *Tenn. Code Ann. § 8-44-105*.

Administrative Law > Governmental Information > Public Information > General Overview

HN11[⬇] **Governmental Information, Public Information**

See *Tenn. Code Ann. § 8-44-106*.

Civil Procedure > Trials > Jury Trials > Right to Jury Trial

Constitutional Law > ... > Fundamental Rights > Criminal Process > Right to Jury Trial

Governments > Courts > Common Law

Civil Procedure > ... > Jury Trials > Right to Jury Trial > Actions in Equity

HN12[⬇] **Jury Trials, Right to Jury Trial**

Tenn. Const. art. I, § 6 preserves the right to a jury trial as it existed at common law. In the common law system of courts, matters inherently legal in nature are tried in the law courts by a jury while matters inherently equitable are tried by a chancellor without a jury. There is no constitutional right to a trial by jury in a matter inherently equitable.

Civil Procedure > ... > Jury Trials > Right to Jury Trial > Actions in Equity

HN13[⬇] **Right to Jury Trial, Actions in Equity**

See *Tenn. Code Ann. § 21-1-103*.

Civil Procedure > ... > Jury Trials > Right to Jury Trial > Actions in Equity

Civil Procedure > Trials > Jury Trials > Right to Jury Trial

HN14[⬇] **Right to Jury Trial, Actions in Equity**

Tenn. Code Ann. § 21-1-103 extends the right to a trial by jury to cases of a purely equitable nature.

Civil Procedure > ... > Jury Trials > Right to Jury Trial > Actions in Equity

Civil Procedure > Judicial Officers > Judges > General Overview

Civil Procedure > Trials > Jury Trials > Province of Court & Jury

HN15[⬇] **Right to Jury Trial, Actions in Equity**

The right afforded by *Tenn. Code. Ann. § 21-1-103* is to a jury to try and determine any material fact in dispute. It is for the jury to determine the facts and the trial judge to apply the appropriate principles of law to those facts.

Labor & Employment Law > ... > Unfair Labor Practices > Union Violations > Union Refusal to Bargain

HN16[⬇] **Union Violations, Union Refusal to Bargain**

An employer's unilateral change in conditions of employment which are under negotiation constitutes a refusal to bargain in good faith under the National Labor Relations Act.

Business & Corporate Compliance > ... > Labor & Employment Law > Collective Bargaining & Labor Relations > Duty to Bargain

HN17[⬇] **Collective Bargaining & Labor Relations, Duty to Bargain**

Tenn. Code Ann. § 49-5-611 requires boards of education and professional employee organizations to negotiate in good faith certain conditions of employment.

Business & Corporate Compliance > ... > Labor & Employment Law > Collective Bargaining & Labor Relations > Bargaining Subjects

Labor & Employment Law > Collective Bargaining & Labor Relations > Impasse Resolution

HN18[⬇] **Collective Bargaining & Labor Relations, Bargaining Subjects**

Payroll deductions are among the mandatory subjects of negotiation under Tenn. Code Ann. § 49-5-611(a)(8).

Counsel: For Plaintiff-Appellee: Charles Hampton White, Nashville, Tennessee, William Prentice Cooper, Nashville, Tennessee.

For Defendants-Appellants: Jacky O. Bellar, Carthage, Tennessee, Henry Haile, Nashville, Tennessee.

Amicus Curiae (for William M. Leech, Jr., Attorney General and Reporter), William B. Hubbard, Chief Deputy Attorney General, Michael W. Catalano, Assistant Attorney General, Amicus Curiae (for Tennessee Municipal Attorneys Association).

David H. Hornik, Kingsport, Tennessee.

Judges: Drowota, J. wrote the opinion. Concur: Cooper, C.J., Fones, Brock, and Harbison, JJ.

Opinion by: DROWOTA

Opinion

[*329] This action arose from unsuccessful collective bargaining negotiations between the Smith County Education Association and the Smith County Board of Education. After months of negotiations, the SCEA sued the Board, its individual members, and Joe K. Anderson, the Superintendent of Smith County Schools, alleging the Defendants **[*330]** had committed acts made unlawful by the Education Professional Negotiations Act, *T.C.A. § 49-5-609*, and had violated the Tennessee **[**2]** Open Meetings Act, *T.C.A. § 8-44-102(a)*. Following a jury trial, the Chancellor took the case from the jury and dismissed the complaint, deciding that both sides were negotiating in good faith, that the Defendants had not engaged in any unlawful acts, and that the Defendants had not violated the Open Meetings Act. The Court of Appeals held the Chancellor acted properly in taking the case from the jury; however, the Court found the Board had not negotiated in good faith and had violated the Open Meetings Act.

In 1978, the Education Professional Negotiations Act was passed which provides that *HN1*[⬆] when a professional employee organization had been selected, the board of education shall bargain with that organization as the exclusive representative of all professional employees employed by that board of education. *T.C.A. §§ 49-5-605(d)*, *49-5-606*. The parties are required to negotiate in good faith the following conditions of employment: salaries or wages, grievance procedures, insurance, fringe benefits, working

conditions, leave, student discipline procedures and payroll deductions. T.C.A. § 49-5-611. *HN2*[↑] *Section 49-5-609* proscribes certain unlawful acts for either the Board of Education **[**3]** or the employee organization. The Board cannot, among other things, use or threaten reprisals against a professional employee or discriminate against such employee for exercising the rights granted by the act; interfere with, restrain or coerce employees in the exercise of rights granted under the act; or refuse to bargain in good faith. The employee organization cannot, among other things; refuse to negotiate in good faith; interfere with, coerce, or restrain professional employees or the board in the exercise of their rights granted by the act; or strike.

Following the selection of the SCEA as the representative of the Smith County Teachers, and the designation of Dr. Joseph C. Fields by the Board as its chief negotiator, the parties met on May 11, 1982, to negotiate for the first time. Dr. Fields informed the SCEA negotiators that insurance must be discussed before June 30, at which time the county commission would approve the new budget.

Since the 1976-1977 school year, the county had paid the total insurance premium for each teacher. In May, 1982, the monthly premium increased from $46.31 to $67.15 per teacher. The premium was paid by the Board during May and June despite **[**4]** the increase. After the first negotiation meeting, the SCEA negotiators attempted to discuss the insurance issue, but Dr. Fields refused to do so until other matters had been agreed upon. On June 28, the Board sent notice to all teachers that payment of insurance premiums would end on June 30.

This cause of action was filed on August 27, 1982, in an attempt to have the payment of the insurance premiums continued until negotiations could be concluded. A temporary restraining order was entered directing the Board to maintain the insurance in effect. Within a few days of the entry of that order, Dr. Fields announced that the Board would no longer deduct SCEA dues from the teacher's pay as had been the practice for several years prior to the 1981-1982 school year. There are no minutes of the meeting of the Board where this action was authorized. The Superintendent of Schools, Joe Anderson, testified that he took the action pursuant to advice from Board members.

On two occasions, September 3, and September 16, 1982, after the complaint in this action had been filed, the Board met privately, without notice, with its attorney and Dr. Fields. The SCEA filed a supplemental complaint **[**5]** on September 17, 1982, alleging violations of the Open Meetings Act and further acts on the part of the Board amounting to a refusal to negotiate in good faith. On October 27, 1982, the defendants filed their answer and demanded a jury to try the factual issues in this action.

The trial began on November 18, 1982, before the Chancellor and a jury pursuant **[*331]** to the defendants' demand. At the end of all the proof, ten special issues were submitted to the jury. The jury decided,

among other things, that the Board had negotiated in good faith and that the SCEA had not negotiated in good faith.

The Chancellor entered a final decree on January 3, 1983, in which he concluded the jury verdict was merely advisory due to the inherently equitable nature of relief sought, and accordingly, the court should decide the issues. The Chancellor also made the following findings:

> The court does find as a fact that both sides did honestly and sincerely try on many occasions to reach agreements upon the various problems and proposals which confronted them. This court further finds and holds that the plaintiffs did not establish by a greater weight of the evidence bad faith upon **[**6]** the part of the defendants, failure to negotiate in good faith upon the part of the defendants, or any other deliberate effort upon the part of the defendants or either of them to damage or destroy the organization known in the record as SCEA . . . .
>
> This court finds as a fact that the defendants did not knowingly or wilfully engage in any unfair labor practice in connection with their effort to reach agreement with the plaintiffs.
>
> This court finds as a fact that the proof fails to establish in any instance that the Board of Education violated the provisions of the Open Meetings Act.

Having so found, the Chancellor dismissed the complaint.

The issues raised on appeal are: (1) Does a public body engaged in litigation have the right to meet in private with its legal representatives? (2) Is a party to an action brought under the Education Professional Negotiations Act, *T.C.A. § 49-5-601* to 5-604, or the Open Meetings Act, *T.C.A. § 8-44-101* to 106, entitled to a jury trial and if so, what is the effect of the verdict? (3) Does the unilateral change of benefits during negotiations amount to an unlawful act under *T.C.A. § 49-5-609*?

As noted above, the Court of Appeals held **[**7]** the parties are entitled to a jury trial but the effect of the jury's verdict is advisory only. The court further held that a unilateral change of benefits during negotiations amounts to a refusal to bargain in good faith. For the reasons set forth below, we reverse the Court of Appeals with regard to the jury verdict issue and we affirm the Court's judgment of the effect of a unilateral change of benefits during negotiations. However, we will first address the question of whether the Board had the right to meet with its attorney in private for the purpose of discussing the lawsuit in which it was involved.

I. *The Open Meeting Issue*

The Court of Appeals held that the School Board violated the Tennessee Open Meetings Act, *T.C.A. § 8-44-101, et seq.*, when it met privately with its attorney and Dr. Joseph Field during the course of the present litigation.

Complaint is made of two particular meetings. The first occurred on September 3, 1982, when after a hearing in the case in Chancery Court, the Board, its attorney, and Dr. Fields met for twenty minutes behind

closed doors in the second floor witness room at the courthouse. No notice of the meeting was given.

The second **[**8]** alleged violation occurred on the night of September 16, 1982, when the Board and Dr. Fields met with the Board's attorney at his office from 7:00 to 9:25 p.m. Rick Dringenburg, husband of the SCEA president, and Chris Baxter, a reporter for the local paper, watched Board members enter and leave the office and observed the meeting through the office window. Again, no notice was given of the meeting.

HN3[↑] *Section 8-44-101(a)* of the Tennessee Open Meetings Act "declares it to be the policy of this state that the formation of public policy and decisions is the public business and shall not be conducted in secret." *Section 8-44-102(a)* then provides that "all meetings of any governing body are declared to be public meetings open to the public at all times, except as provided **[*332]** by the Tennessee Constitution." There is no express exception to the Act permitting a public body to meet privately with its attorney and it is for this reason that the Court of Appeals determined that both of the Board's meetings with its attorneys violated the Act. This is a minority position among the courts in other jurisdictions that have considered the issue.

The majority of courts have fashioned an **[**9]** exception to their states' open meeting laws to permit private attorney-client consultation on pending legal matters even where the statute itself makes no such express exception. *See Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 263 Cal. App.2d 41, 69 Cal. Rptr. 480, 487-492 (1968); *Associated Students of the University of Colorado v. Regents of the University of Colorado*, 189 Colo. 482, 543 P.2d 59, 61 (1975); *Times Publishing Company v. Williams*, 222 So.2d 470, 475-476 (Fla. Dist. Ct. App. 1969); *Fiscal Court of Jefferson County v. Courier-Journal & Louisville Times Co.*, 554 S.W.2d 72, 73 (Ky. 1977); *Minneapolis Star & Tribune Co. v. Housing & Redevelopment Authority*, 246 N.W.2d 448 (Minn. 1976) (republished at 310 Minn 313, 251 N.W.2d 620); *Oklahoma Association of Municipal Attorneys v. State*, 577 P.2d 1310 (Okla. 1978).

Although the Tennessee Open Meetings Act differs from those of other states where courts have created exceptions, the rationale employed by those courts is noteworthy. Two approaches, both based upon the same policy consideration, are given for permitting this exception: (1) the evidentiary privilege between lawyer **[**10]** and client and (2) the attorney's ethical duty not to betray the confidences of his client. Each of these is recognized by the law of Tennessee. The first is found in *HN4*[↑] *T.C.A. § 23-3-105* which provides as follows:

> No attorney, solicitor or counselor shall be permitted, in giving testimony against a client, or person who consulted him professionally, to disclose any communication made to him as such by such person, during the pendency of the

suit, before or afterwards, to his injury.

Some courts see no reason why both the Open Meetings Act and the attorney-client evidentiary privilege cannot co-exist. It is on this basis that they permit private meetings between public bodies and their attorneys for the purpose of discussing questions of pending litigation. The two are reconciled by holding there has been no implied repeal of the attorney client privilege statute by the open meeting law. *See e.g. Oklahoma Association of Municipal Attorneys v. State, supra* (but note that Oklahoma's open meeting statute and the privilege statute were passed in the same year); *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, supra*, 69 Cal. Rptr. at 490-491; *Associated* **[**11]** *Students of the University of Colorado v. Regents of the University of Colorado, supra*, 543 P.2d at 61.

The California case, *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, supra*, contains the most-cited rationale for these cases. The court first notes that there is a presumption against repeals by implication and that they occur only where the two acts are so repugnant that there is no possibility of concurrent operation or the later provision undeniably shows an intent to supersede the earlier. 69 Cal. Rptr. at 490; *See Reams v. Trostel Mechanical Industries, Inc., 522 S.W.2d 170, 173 (Tenn. 1975)*. The Court then goes on to state that

> evidence of such intent is by far too thin. . . . In requiring board members to deliberate and act in public, these do not inexorably embrace the board members in their roles as clients calling upon their attorney for legal advice. In declaring the public's right to be informed, they do not necessarily propel the public's legal adversary into the lawyer-client conference clad in the robes of good citizenship.

69 Cal. Rptr. at 491.

Notwithstanding these well reasoned opinions that follow this rationale, **[**12]** we believe the second approach, the attorney's ethical duty to preserve the confidences and secrets **[*333]** of his client, provides a better basis for establishing an exception to the Open Meetings Act.

HN5[↑] The attorney-client evidentiary privilege only extends to communications from the client to the attorney. D. Paine, *Tennessee Law of Evidence*, § 96, p. 111-112 (1974), and confidentiality is destroyed when those communications take place in the presence of a third party. *Hazlett v. Bryant, 192 Tenn. 251, 257, 241 S.W.2d 121, 123 (1951)*. The privilege is designed to protect the client and because it belongs to the client, may be waived by him. When the third party in whose presence such communications take place is an agent of the client, the confidentiality is not destroyed. McCormick § 91 (2d ed. 1972); D. Paine, *Tennessee Law of Evidence*, § 97, p. 112 (1974).

When the Board discussed the present lawsuit with its attorney on September 3 and 16, 1982, it did so in the presence of Dr.

Fields. As chief negotiator for the Board, Dr. Fields was the Board's agent; therefore, the confidentiality of those communications was not waived by his presence. However, the **[**13]** evidentiary privilege afforded by T.C.A. § 23-3-105 was waived by the passage of the Open Meetings Act.

In *Times Publishing Company v. Williams*, 222 So.2d 470 (Fla. Dist. Ct. App. 1969), that court was confronted with the identical issue involving a similar Open Meetings Act. [1] In establishing an attorney-client exception to the Act, the court pointed out the following:

> The attorney-client relationship is a unique one under the law. Within this relationship both the attorney and the client enjoy rights and privileges independent of each other. The privilege the client enjoys is one of confidentiality. The privilege of confidentiality can be waived and the effect of Chapter 67-356 has been to waive the privilege on behalf of the board. The clear import of the "All meetings" provision of this statute is that the public, acting through the legislature, has waived the privilege with regard to the enumerated public bodies.

Id. at 475.

We are of the opinion that the Tennessee Open Meetings Act had the same effect on the attorney-client evidentiary privilege. An exception based upon the evidentiary privilege would be in contravention of the Legislature's intent **[**14]** and express purpose as stated in the Act.

We note, however, that the Legislature was mindful of constitutional exceptions that may exist, and provided that all meetings shall be public "except as provided by the Tennessee Constitution." T.C.A. § 8-44-102(a). ***HN6***[↑] Article II, Sections 1 and 2, of the Constitution provide:

> Sec. 1. *Division of powers.* -- The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.
>
> Sec. 2. *Limitation of powers.* -- No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in **[**15]** the cases herein directed or permitted.

It is well settled that the licensing and regulation of attorneys practicing law in courts of Tennessee is squarely within the inherent authority of the judicial branch of government. *Belmont v. Board of Law Examiners*, 511 S.W.2d 461 (Tenn. 1974). Furthermore, the "Supreme Court has original and exclusive jurisdiction to promulgate its own Rules. Its rule making authority embraces the admission and supervision of members of the Bar of the State of Tennessee." *Petition of Tennessee Bar Ass'n.*, 539 S.W.2d 805, 807 (Tenn. 1976).

This Court, in the exercise of its

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[1] F.S.A. § 286.011 provides in relevant part:

> (1) All meetings of any board or commission of any state agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times.

constitutionally delegated authority, has promulgated **[*334]** rules and regulations governing the practice of law, and adopted a code of professional responsibility which includes the following:

HN7[↑] CANON 4

A LAWYER SHOULD PRESERVE THE CONFIDENCES AND SECRETS OF A CLIENT

HN8[↑] Ethical Considerations

EC 4-1. Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever **[**16]** he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. *HN9*[↑] The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

In deciding this same issue, the Supreme Court of Minnesota stated in the case of *Minneapolis Star & Tribune Co. v. H. & R.A., Etc., supra:*

> This long-accepted theory protecting the attorney-client relationship is as basic to our legal system as the right of the judiciary to regulate and oversee the administration of that legal system.

246 N.W.2d at 452.

The Legislature, then, is without authority to enact laws which impair the attorney's ability to fulfill his ethical **[**17]** duties as an officer of the Court. *See Times Publishing Company v. Williams, supra* at 475.

It is clear that application of the Open Meetings Act to discussions between public bodies and their attorneys regarding pending litigation violates Article II, Sections 1 and 2 of the Tennessee Constitution. However, the Act itself is not unconstitutional, *Dorrier v. Dark, 537 S.W.2d 888 (Tenn. 1976)*, and we conclude that the Legislature did not intend for the coverage of the Act to include this situation. As previously stated, the Act provides for exceptions provided by the Tennessee Constitution. This is a clear indication of the Legislature's awareness of its constitutional limitations when passing the Act. Furthermore, the purpose of the Act as set out in *T.C.A. § 8-44-101(a)* states that it is "the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret."

Our holding in this case in no way compromises this stated purpose. The

exception is limited to meetings in which discussion of present and pending litigation takes place. Clients may provide counsel with facts and information regarding the lawsuit **[**18]** and counsel may advise them about the legal ramifications of those facts and the information given to him. However, once any discussion, whatsoever, begins among the members of the public body regarding what action to take based upon advice from counsel, whether it be settlement or otherwise, such discussion shall be open to the public and failure to do so shall constitute a clear violation of the Open Meetings Act.

The SCEA argues that any exception to the Open Meetings Act should be carved out by the Legislature and not the Court. In support of this position, the SCEA cites *Dorrier v. Dark, supra*, wherein we said:

> If experience should prove that the public interest is adversely affected by open meetings involving pending or prospective litigation disciplinary hearings, promotion and demotion hearings, prospective land purchases, labor negotiations, etc., it is the Legislature, not the Judiciary, that must balance the benefits and detriments and make such changes as will serve the people and express their **[*335]** will. In our role as guardians of the Constitution, we find the act free of defect of constitutional proportions.

537 S.W.2d at 896.

The issues presented **[**19]** by the facts in *Dorrier* did not include the question of whether public bodies may meet in closed session with their attorney in order to discuss pending litigation. The statements in that case made with reference to such discussions are consistent with the holding in this case. To the extent public bodies discuss those matters among themselves, such communications shall be open to the public. Any exceptions to be allowed for those meetings should come from the Legislature and not the Court.

We are aware of the potential misuse of this exception in order to circumvent the scope of the Open Meetings Act. A public body could meet with its attorney for the ostensible purpose of discussing pending litigation and instead conduct public business in violation of the Act. Although the Act imposes only limited sanctions on a public body for such violations, [2] **[**20]**

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[2] The following provisions provide for sanctions and enforcement of those sanctions when the Act is violated:

> *HN10*[↑] 8-44-105. *Action nullified -- Exception.* -- Any action taken at a meeting in violation of this part shall be void and of no effect, provided that this nullification of actions taken at such meetings shall not apply to any commitment, otherwise legal, affecting the public debt of the entity concerned.
>
> *HN11*[↑] 8-44-106. *Enforcement -- Jurisdiction.* -- (a) The circuit courts, chancery courts, and other courts which have equity jurisdiction, shall have jurisdiction to issue injunctions, impose penalties, and otherwise enforce the purposes of this part upon application of any citizen of this state.
>
> (b) In each suit brought under this part, the court shall file written findings of fact and conclusions of law and final judgments, which shall also be recorded in the minutes of the body involved.
>
> (c) The court shall permanently enjoin any person adjudged by it in violation of this part from further violation of this part. Each separate occurrence of such meeting not held in accordance with this part shall constitute a separate violation.
>
> (d) The final judgment or decree in each suit shall state that the court retains jurisdiction over the parties and subject matter for a period of one (1) year from date of entry and the court shall

any attorney who participates, or allows himself to be used in a manner that would facilitate such a violation, would be in direct violation of the Code of Professional Responsibility and subject to appropriate disciplinary measures. [3]

In summary, we hold that discussions between a public body **[**21]** and its attorney concerning pending litigation are not subject to the Open Meetings Act. We emphasize that this is a narrow exception and applies only to those situations in which the public body is a named party in the lawsuit. Any such meetings should be conducted in a manner consistent with the guidelines set forth in this opinion.

II. *The Jury Trial Issue*

The Board asserts that the determination of the jury on the issues decided is conclusive. The SCEA contends that the jury verdict was merely advisory and could be ignored by the trial judge. The answer to this question requires some understanding of the historic distinctions between law and **[*336]** equity which is detailed in Judge Cantrell's opinion.

HN12[↑] "*Article 1, Section 6, of the Tennessee Constitution* preserves the right to a jury trial 'as it existed at common law.' *Marler v. Wear, 117 Tenn. 244, 245-46, 96 S.W. 447, 448 (1906)*. In the classic common law system of courts, matters inherently legal in nature were tried in the law courts by a jury while matters inherently equitable were tried by the Chancellor without a jury. Therefore, there is no constitutional right to a trial by jury in a matter inherently **[**22]** equitable. *Harbison v. Briggs Bros. Paint Mfg. Co., 209 Tenn. 534, 541, 354 S.W.2d 464, 468 (1962)*.

"There is, however, a statutory right in Tennessee set out in *HN13*[↑] *Section 21-1-103 of the Tennessee Code* which provides:

> Either party to a suit in chancery is entitled, upon application, to a jury to try and determine any material fact in dispute, save in cases involving complicated accounting, as to such accounting, and those elsewhere excepted by law or by provisions of this Code, and all the issues of fact in any proper cases shall be submitted to one (1) jury.

HN14[↑] "This section has been interpreted to extend the right to a trial by jury to cases of a purely equitable nature. *Moore v. Mitchell, 205 Tenn. 591, 595, 329 S.W.2d*

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order the defendants to report in writing semiannually to the court of their compliance with this part. [Acts 1974.]

[3] In *Times Publishing Company v. Williams, supra*, the court noted

> that an attorney who represents a public body such as covered under this statute is an officer of the court and a public figure himself, and we will not assume that he will abuse the above exception and allow the discussions in a properly held secret meeting to include any matters not specifically included in this aspect of the attorney-client relationship.

Id. at 476.

While we adhere to the views expressed in this opinion, we add that in the unfortunate situation where an attorney might fail to fulfill his responsibilities in this regard, he would be in violation of at least two provisions of the Code of Professional Responsibility.

DR 7-102 Representing a Client Within the Bounds of the Law.

> (A) In his representation of a client, a lawyer shall not:
>
> (7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.
>
> (8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

821, 823 (1959). The exceptions to the right are few:

> It is our conclusion, therefore, . . . that only those cases are excepted from the above quoted Code sections which are expressly excepted by the provisions of the Code, and those statutory exceptions not found in the Code; and such as by their very nature must necessarily be deemed inappropriate and not a proper case to be submitted to a jury such as Pass v. State, 181 Tenn. 613, 184 S.W.2d **[**23]** 1 (Tenn. 1944) (a contempt proceeding for violation of an injunction), unless in such case express provision for a jury trial is made by statute; or cases of such a complicated and intricate nature involving mixed questions of law and fact not suitable for solution by a jury such as laches or estoppel.

Id. at 597, 329 S.W.2d at 823-25.

"Therefore, we conclude that the defendants were within their rights to demand a jury to try disputed issues of material facts. But, the real question in this issue still remains: Was the jury's verdict advisory or conclusive?

"If the action were one of a legal nature in which *legal* or *common law* rights were being tried as opposed to one in which *equitable* rights are asserted, there would be no doubt that the jury verdict would be binding on the Chancellor (except as to his common law or statutory right to grant a new trial or suggest a remittitur or additur). Hurt v. Earnhart, 539 S.W.2d 133, 136, (Tenn. App. 1976). The verdict would be a common law verdict, the right to which is preserved in Article I, Section 6 of our Constitution. Where, however, the cause is inherently equitable, the right [to a jury] is purely **[**24]** statutory and the effect to be given to the jury verdict must be drawn from the statute that gives the right or from the common law itself.

"Prior to 1846 in Tennessee, there was no right to a jury trial in cases of an equitable nature. State ex rel. Webster v. Daugherty, 530 S.W.2d 81, 88 (Tenn. App. 1975). Although a chancellor might direct an issue to be submitted to a law court for a trial before the jury, he could accept the verdict or reject it and decide it himself. In other words, the verdict was purely advisory. *Id.*

"In 1846, the legislature passed the forerunner of T.C.A. § 21-1-103, which was the exclusive right to a jury in a purely equitable case. *See* Greene County Union Bank v. Miller, 18 Tenn. App. 239, 244, 75 S.W.2d 49, 52 (1934). Along with this statute the legislature passed a fairly elaborate set of companion statutes that dealt with the jury trial issue as it applied to chancery court. One of these, T.C.A. § 21-1016 (1955 ed.) (repealed), provided that the issues **[*337]** to be decided by the jury were not advisory only:

> The trial shall be conducted like other trials at law, the finding of the jury having the same force and effect **[**25]** and the court having the same power and control over the finding, as on such trials at law.

"However, after the adoption of the

Tennessee Rules of Civil Procedure these statutes were repealed and for a time there was no right to a jury trial in a case involving only equitable issues. *See Ashe v. State ex rel. Shriver, 518 S.W.2d 360, 361 (Tenn. 1975)*. Then, in 1976 the legislature reenacted Tennessee Code Annotated, section 21-1011 (now *§ 21-1-103*), 1976 Tenn. Pub. Acts, ch. 436, but without its surrounding complement of statutes that describe the effect to be given to the jury verdict."

Opinion, Court of Appeals.

The Court of Appeals concluded that because the Legislature failed to enact the statutes describing the effect of the jury verdict in chancery court, the verdict is advisory in cases involving equitable issues. The Court went on to find that the remedies created by the Open Meetings Act and the EPNA are equitable rather than legal; accordingly, the jury verdict provided in *T.C.A. § 21-1-103* is advisory only. We disagree.

In passing Chapter 436 of the Public Acts of 1976, the Legislature clearly intended to restore the law as it existed prior to the enactment **[**26]** of our present Rules of Civil Procedure. Senator Oehmig, the sponsor of the Senate bill which became Chapter 436 of the Public Acts of 1976, made the following remarks when the bill was before the Senate on its third and final reading:

> In 1972 when we adopted Rules of Civil Procedure, there were certain code sections that were repealed and this was one of them and it was felt that the present rules do not cover this situation of jury trials in Chancery and *this just puts back the old law into effect.* (Emphasis added.)

Clearly, the Legislature intended to re-establish the previous law and give a broad right to trial by jury. We conclude that the Chancellor was in error in taking the verdict from the jury and deciding the issues himself. Therefore, we reverse the Court of Appeals' determination that the jury verdict was advisory only.

The Board argues that the resolution of the jury verdict issue may determine the outcome of this case, and places great emphasis on the jury's answer to one of the ten special issues submitted, which is as follows:

> 2. Has the Smith County Board of Education refused or failed to negotiate in a good faith effort to reach a **[**27]** collective bargaining agreement with the Smith County Education Association? Answer in writing "Yes" or "No." *No*

Based on this answer, and in light of our holding that the jury verdict is binding, it would appear that the question of whether the Board negotiated in good faith is closed to further consideration. However, the verdict rendered in this case is a special verdict. In addition to the above quoted question, the jury was presented with the following:

> 4. Did the Smith County Board of Education exhaust reasonable efforts to reach agreement with the Smith County Education Association on employees

health insurance for the 1982-83 school year before it voted to discontinue payment of teachers' health insurance premiums? Answer in writing "Yes" or "No." *No*

6. Did the Board of Education intend to stop paying insurance benefits for school teachers of Smith County Schools while it negotiated an agreement with the Smith County Education Association? Answer "Yes" or "No". *Yes*

7. Did the Smith County Board of Education stop deducting professional dues for the Smith County Education Association from the paychecks of teachers of **[*338]** the Smith **[**28]** County School system while it negotiated an agreement with the Smith County Education Association? Answer in writing "Yes" or "No". *Yes*

In accordance with our holding that unilateral actions made during the course of negotiations constitutes a refusal to negotiate in good faith, the reasons for which are set forth below, it can be seen that the answers to questions 4, 6 and 7 are clearly inconsistent with the answer to question 2.

We note that questions 4, 6 and 7 are questions of fact and responses given by the jury are supported by the record. On the other hand, question 2 is a question of law which required the jury to reach a legal conclusion in order to respond. Rule 49, Tennessee Rules of Civil Procedure provides for special verdicts and governs their use. [4] However, the Rule does not specifically address the question before us; that is, the effect of a special verdict containing conclusions of law which are inconsistent with findings of fact.

[29]** In *Ratigan v. New York Central Railroad Co.*, 291 F.2d 548 (2d Cir. 1961), the Second Circuit Court of Appeals was confronted with a similar problem involving a special verdict under Federal Rule of Civil Procedure 49(a), which is identical to TRCP 49.01. The jury was presented with eight interrogatories which included questions of fact and questions of law. The Court held that

> it was a mistake to submit the legal questions pertaining to active and passive negligence to the jury because these were difficult legal principles and they gave the jury an unnecessary legal workout which was far beyond their comprehension . . . The facts having been determined by the answers to questions 3, 4, 5 and 6, the erroneous

---

[4] See ***Williams v. Van Hersh, 578 S.W.2d 373 (Tenn. App. 1978)***. In *Williams*, the Court of Appeals points out that

> The submission of issues in a jury trial in chancery was formerly governed by T.C.A. § 21-1014, which required the submission of specific issues to the jury. T.C.A. § 21-1014 was repealed by Chapter 565, Public Acts 1972, and the procedure is now governed by Rule 49, Tennessee Rules of Civil Procedure.

Id. at 375.

Although this appears to conflict with our holding above that the Legislature intended to re-establish the previous law by enacting T.C.A. § 21-1-103 (formerly § 21-1011), we point out that the right to a jury trial in chancery, or the effect of the verdict, is not provided for in the Tennessee Rules of Civil Procedure. See Ashe v. State ex rel. Shriver, supra. To the extent proceedings in chancery are not covered under TRCP, the effect of T.C.A. § 21-1-103 is to restore the previous law, otherwise, the TRCP are controlling.

> legal conclusion stated in the answer to question 7 could be disregarded as surplusage.

Id. at 555.

Turning to the present case, we think it was improper and unnecessary to submit questions which required the jury to determine whether or not the Board negotiated in good faith. We point out that *HN15*[↑] the right afforded by T.C.A. § 21-1-103 is "to a jury to try and determine any *material fact* in dispute." (Emphasis added.) It is for the jury to determine **[**30]** the facts and the trial judge to apply the appropriate principles of law to those facts. Whether the Board committed acts that amount to a failure to negotiate in good faith was a question for the trial judge and not the jury.

III. The Unlawful Act Issue

The Court of Appeals held that the Board had not negotiated in good faith with the SCEA because of its unilateral action in terminating payment of monthly insurance premiums and its refusal to continue deduction of professional dues from teachers' salaries during negotiations. In reaching its decision, the court adopted the rationale of the majority of cases in which this question has been considered under other state public employee labor relations acts. We affirm.

HN16[↑] An employer's unilateral change in conditions of employment which are under **[*339]** negotiation constitutes a refusal to bargain in good faith under the National Labor Relations Act. *NLRB v. Katz, 369 U.S. 736, 82 S. Ct. 1107, 8 L.Ed 2d 230 (1962)*. Courts of other states have considered whether the principles set forth in *Katz* apply to collective bargaining in the public sector and the majority have held that they do.

In the case of *Galloway Township* **[**31]** *Board of Education v. Galloway Township Education Ass'n.*, 78 N.J. 25, 393 A.2d 218 (1978), the Association filed an unfair practice charge against the Board of Education alleging refusal to negotiate in good faith by its unilaterally withholding payment of an annual salary increment due the teachers represented by the Association. The court cited the above stated rule in *NLRB v. Katz, supra*, and went on to say

> The basis of the rule prohibiting unilateral changes by an employer during negotiations is the recognition of the importance of maintaining the then-prevailing terms and conditions of employment during this delicate period until new terms and conditions are arrived at by agreement. Unilateral changes disruptive of this *status quo* are unlawful because they frustrate the 'statutory objective of establishing working conditions through bargaining.' *NLRB v. Katz, supra, 369 U.S. at 744, 82 S. Ct. at 1112*.

393 A.2d at 230.

In addressing the question of whether to apply the definition of good faith obligation to negotiate as found in cases decided under the National Labor Relations Act, the Supreme Court of Pennsylvania noted that "the present case does **[**32]** not present a

situation where there exists a meaningful difference in policy between the NLRA and the [state statute], . . . both acts favor the collective bargaining process." *Appeal of Cumberland Valley School District, Etc.*, 483 Pa. 134, 394 A.2d 946, 950 (1978). The facts in that case are similar to the case at bar. During the course of negotiations for a new agreement, the old agreement expired resulting in the school district's termination of payment of health and life insurance premiums. The court held that this constituted a refusal to bargain in good faith and stated that "the duty to bargain in good faith means that the parties must 'make a serious effort to resolve differences and reach a common ground.'" *Id.* (citation omitted).

The stated purpose of our collective bargaining statutes is the establishment and maintenance of professional working conditions and "the highest possible education standards." T.C.A. § 49-5-601. *HN17*[↑] Section 49-5-611 requires the boards of education and professional employee organizations to negotiate in good faith certain conditions of employment. Clearly, our statute favors the collective bargaining process as a means whereby both parties **[**33]** can resolve their differences through open discussion.

In the present case, the Board has paid the total insurance premium for each teacher since the 1976-1977 school year. These payments had been made despite periodic increases in the premiums, and following the increase in May 1982, the full premium was paid through the months of May and June before being discontinued by the Board.

As pointed out by the Court of Appeals, the Board is bound by the funding provided by the county government. *Carter County Board of Education Commissioners v. American Federation of Teachers, 609 S.W.2d 512, 517 (Tenn. App. 1980)*. The court went on to say that in the event of a budgetary problem, the Board may be forced to make a prompt decision with regard to one of the conditions subject to employment; nevertheless, "in such circumstances, it should be incumbent on the school board to show that it had no other choice other than to act quickly and that it did not have an opportunity to first negotiate these matters with the public employee union." Accordingly, absent a justification **[*340]** of its action, the Board is guilty of a refusal to bargain in good faith.

As to the issue of the Board's **[**34]** decision to terminate the deduction of professional dues, we agree with the Court of Appeals that such action also constituted "an incident of bad faith." *HN18*[↑] Payroll deductions are among the mandatory subjects of negotiation, T.C.A. § 49-5-611(a)(8), and an impasse in negotiations on the subject had not been declared.

At the time these violations occurred, the EPNA did not provide specific remedies. However, we agree with the judgment of the Court of Appeals, that the Board be required to pay the full insurance premiums until it justifies its actions and also to continue making payroll deductions for SCEA members during negotiations.

Accordingly, the Court of Appeals is reversed as to the Open Meetings issue and the finding that the jury verdict in chancery court is advisory only. We affirm the Court of Appeals' conclusion that the Board failed to negotiate in good faith due to its unilateral actions on matters under negotiation. Costs of this appeal shall be divided equally between the parties.

Concur: Cooper, C.J., Fones, Brock, and Harbison, JJ.

End of Document

A RESOLUTION OF THE GREENE COUNTY LEGISLATIVE BODY APPROPRIATING UP TO $25,000 FOR THE REPLACEMENT OF THE HVAC SYSTEM AT THE GREENEVILLE/GREENE COUNTY LIBRARY FROM FUND #171 - GENERAL CAPITAL PROJECTS FOR THE FYE JUNE 30, 2018

WHEREAS, the Greeneville/Greene County Library is a joint venture funded equally by both the City of Greeneville and Greene County; and

WHEREAS, the HVAC system at the Greeneville/Greene County Library is in need of replacement; and

WHEREAS, Town of Greeneville is exploring the option of increasing its annual contribution to the Library but Greene County would prefer to continue to support the Library at current levels from Fund #101 – General Fund; and

WHEREAS, Greene County recognizes the additional funding needs of the Library and is willing to cover the one-time cost to replace the current HVAC system by appropriating up to twenty five thousand ($25,000) for the project; and

THEREFORE, let the budget for Fund #171 - General Capital Projects be amended to the following:

DECREASE IN APPROPRIATIONS

91190	OTHER GENERAL GOVERNMENT PROJECTS		
799	Other Capital Outlay	$	25,000
	Total Decrease in Appropriations	$	25,000

INCREASE IN APPROPRIATIONS

91190	OTHER GENERAL GOVERNMENT PROJECTS		
707	Building Improvements	$	25,000
	Total Increase in Appropriations	$	25,000

NOW, THEREFORE; be it resolved by the Greene County Legislative Body meeting in regular session this 18th day of June, 2018, a quorum being present and a majority voting in the affirmative, that the budget be amended as above.

Budget and Finance Committee

County Mayor — Sponsor

Roger A Woolsey

County Clerk — County Attorney

A.

A RESOLUTION TO BUDGET $10,000 FROM THE SOLID WASTE- FUND #116 TRANSFER STATION ACCOUNT INTO THE SANITATION MANAGEMENTS ACCOUNT FOR NEEDED DUMPSTERS, OIL CONTAINERS AND SPILL PANS FOR THE FISCAL YEAR ENDING JUNE 30, 2018.

WHEREAS, the Solid Waste Convenience Centers is in need of (5) 8-yard front loader dumpsters, (2) two-hundred-gallon oil containers and spill pans and;

WHEREAS, the Solid Waste Transfer Stations department has adequate funds to purchase needed equipment and;

THEREFORE, let the Solid Waste Fund budget be amended as follows:

DECREASE IN APPROPRIATIONS

55733	TRANSFER STATIONS	$ 10,000
359	Disposals	$ 10,000
Total decrease to appropriations		

INCREASE IN APPROPRIATIONS

55732	CONVENIENCE CENTER	
790	Other Equipment	$ 10,000
Total increase to appropriations		$ 10,000

NOW, THEREFORE; be it resolved by the Greene County Legislative Body meeting in regular session this 18th day of June 2018, a quorum being present and a majority voting in the affirmative, that the budget be amended as above.

_____
County Mayor

Budget and Finance Committee
Sponsor

_____
County Clerk

B.

Roger A Woolsey
_____
County Attorney

A RESOLUTION OF THE GREENE COUNTY LEGISLATIVE BODY TO APPROPRIATE ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000) FOR THE PURCHASE OF A NEW FRONTEND LOADER IN FUND #116 - SOLID WASTE FOR FYE JUNE 30, 2018

WHEREAS, during the April 16th County Commission meeting, the County Legislative Body approved Resolution F, appropriating one hundred thousand dollars ($100,000) for the purchase of a used frontend loader and;

WHEREAS, the Greene County Solid Waste department also included one hundred thousand dollars ($100,000) in the FY 2019 budget to purchase a used frontend loader and;

WHEREAS, the Greene County Solid Waste department would like to change the purpose of Resolution F from April and use funds included in the FY 2019 budget to purchase a new frontend loader for approximately two hundred fifty thousand dollars ($250,000) and

WHEREAS, the Greene County Solid Waste department would like to expend those funds from its Unassigned Fund Balance in the current fiscal year;

NOW, THEREFORE, BE IT RESOLVED, by the Greene County Legislative Body meeting in regular session on June 18th, 2018 a quorum being present and a majority voting in the affirmative, that the budget be amended as follows:

DECCREASE IN UNASSIGNED FUND BALANCE

39000 UNASSIGNED FUND BALANCE	$150,000
Total Decrease in Unassigned Fund Balance	**$150,000**

INCREASE IN APPROPRIATIONS

55710 SANITATION MANAGEMENT	
718 Motor Vehicles	$150,000
Total Increase in Appropriations	**$150,000**

County Mayor

Budget and Finance Committee
Sponsor

County Clerk

Roger A Woolsey
County Attorney

A RESOLUTION OF THE GREENE COUNTY LEGISLATIVE BODY TO APPROPRIATE $143,564 FOR EMS, EMA AND HAZARDOUS MATERIALS JOINT VENTURE IN FUND #101 - GENERAL FUND FOR THE FYE JUNE 30, 2018

WHEREAS, Greene County is part of a joint venture agreement with the Town of Greeneville for the operation of Emergency Medical Services, Emergency Medical Agency, Hazardous Materials Team and Animal Control and;

WHEREAS, when a surplus occurs in those departments (actual revenues less actual expenditures) Greene County is to reimburse the Town of Greeneville 30% of that surplus for property taxes collected from citizens living within the Town of Greeneville and;

THEREFORE, let the General Fund budget be amended as follows.

DECREASE IN UNASSIGNED FUND BALANCE		
39000 Unassigned Fund Balance	$	143,564
Total Decrease in Unassigned Fund Balance	**$**	**143,564**
INCREASE IN APPROPRIATIONS		
58400 OTHER CHARGES		
521 Loss on Joint Ventures	$	143,564
Total Increase in Appropriations	**$**	**143,564**

NOW, THEREFORE; be it resolved by the Greene County Legislative Body meeting this 18th day of June, 2018, a quorum being present and a majority voting in the affirmative, that the budget be amended as above.

_____
County Mayor

Budget and Finance Committee
Sponsor

_____
County Clerk

Roger C Woolsey
County Attorney

D.

A RESOLUTION OF THE GREENE COUNTY LEGISLATIVE BODY TO RECLASS APPROPRIATIONS IN GENERAL DEBT SERVICE - FUND #151 TO AGREE WITH LOCAL AUDIT FOR THE FYE JUNE 30, 2018

WHEREAS, due to the refunding of bond issues in General Debt Service - Fund #151, requires the reclassification of appropriations to agree with the determination of Local Audit and;

THEREFORE, let the General Debt Service Fund budget be amended as follows.

DECREASE IN APPROPRIATIONS

82110	GENERAL GOVERNMENT	
601	Principal on Bonds	$ 105,000
82210	GENERAL GOVERNMENT	
603	Interest on Bonds	3,705
82310	GENERAL GOVERNMENT	
599	Other Charges	1
Total Increase in Budgeted Revenues		**$ 108,706**

INCREASE IN APPROPRIATIONS

82120	HIGHWAYS & STREETS	
601	Prinicipal on Bonds	$ 105,000
82220	HIGHWAYS & STREETS	
603	Interest on Bonds	3,706
Total Increase in Appropriations		**$ 108,706**

NOW, THEREFORE; be it resolved by the Greene County Legislative Body meeting this 18th day of June, 2018, a quorum being present and a majority voting in the affirmative, that the budget be amended as above.

County Mayor

Budget and Finance Committee
Sponsor

County Clerk

Roger A Woolsey
County Attorney

E.

A RESOLUTION OF THE GREENE COUNTY LEGISLATIVE BODY TO APPROPRIATE $1,500 FOR ADDITIONAL TRUSTEE COMMISSION IN THE GENERAL DEBT SERVICE FUND FOR THE FYE JUNE 30, 2018

WHEREAS, General Debt Service - Fund #151 will incur additional Trustee Commission expenses of approximately $1,500 (one thousand five hundred dollars) and;

THEREFORE, let the General Debt Service Fund budget be amended as follows.

DECREASE IN UNASSIGNED FUND BALANCE		
39000 Unassigned Fund Balance	$	1,500
Total Increase in Budgeted Revenues	**$**	**1,500**
INCREASE IN APPROPRIATIONS		
82310 GENERAL GOVERNMENT		
510 Trustee's Commission	$	1,500
Total Increase in Appropriations	**$**	**1,500**

NOW, THEREFORE; be it resolved by the Greene County Legislative Body meeting this 18th day of June, 2018, a quorum being present and a majority voting in the affirmative, that the budget be amended as above.

County Mayor

Budget and Finance Committee
Sponsor

County Clerk

Roger A Woolsey
County Attorney

F.

A RESOLUTION OF THE GREENE COUNTY LEGISLATIVE BODY TO APPROPRIATE $2,500 FOR ADDITIONAL TRUSTEE COMMISSION IN THE EDUCATIONAL DEBT SERVICE FUND FOR THE FYE JUNE 30, 2018

WHEREAS, Educational Debt Service - Fund #156 will incur additional Trustee Commission expenses of approximately $2,500 (two thousand five hundred dollars) and;

THEREFORE, let the Educational Debt Service Fund budget be amended as follows.

DECREASE IN UNASSIGNED FUND BALANCE		
39000 Unassigned Fund Balance	$	2,500
Total Increase in Budgeted Revenues	**$**	**2,500**
INCREASE IN APPROPRIATIONS		
82330 EDUCATION		
510 Trustee's Commission	$	2,500
Total Increase in Appropriations	**$**	**2,500**

NOW, THEREFORE; be it resolved by the Greene County Legislative Body meeting this 18th day of June, 2018, a quorum being present and a majority voting in the affirmative, that the budget be amended as above.

County Mayor

Budget and Finance Committee
Sponsor

County Clerk

Roger A Woolsey
County Attorney

G.

A RESOLUTION OF THE GREENE COUNTY LEGISLATIVE BODY TO APPROPRIATE $30,000 FOR OCDEFT AND HWY SAFETY GRANT REIMBURSEMENTS IN FUND #101 - GENERAL FUND FOR THE FYE JUNE 30, 2018

WHEREAS, the Greene County Sheriff's Department receives reimbursements monies from the OCDEFT and Highway Safety Grants periodically throughout the year for expenditures that go beyond the original appropriation for certain accounts and;

WHEREAS, the Greene County Sheriff's Department wishes to expend these funds during the current fiscal year and;

THEREFORE, let the General Fund budget be amended as follows.

INCREASE IN REVENUE		
47590 OTHER FEDERAL THROUGH STATE	$	2,000
47990 OTHER DIRECT FEDERAL		28,000
Total Increase in Budgeted Revenues	**$**	**30,000**

INCREASE IN APPROPRIATIONS		
54110 SHERIFF'S DEPARTMENT		
187 Overtime	$	18,000
355 Travel		2,000
716 Law Enforcement Equipment		10,000
Total Increase in Appropriations	**$**	**30,000**

NOW, THEREFORE; be it resolved by the Greene County Legislative Body meeting this 18th day of June, 2018, a quorum being present and a majority voting in the affirmative, that the budget be amended as above.

County Mayor

Budget and Finance Committee
Sponsor

County Clerk

Roger A Woolsey
County Attorney

H

THE GREENE COUNTY SCHOOLS
FUNDS 141 GENERAL PURPOSE AND 177 CAPITAL PROJECTS
A RESOLUTION TO MOVE FUNDS FROM 141 TO 177

WHEREAS, Greene County Schools is amending the General Purpose School Fund and the Capital Projects Fund budgets to move funds from the General Purpose School's Unassigned Fund Balance;

THEREFORE, the following appropriations will be amended:

Account	General Purpose School Fud 141	Debit	Credit
49800	Transfer In	$ -	$ 2,500,000
99110 590	Transfer to Other Funds	2,500,000	$ -

Account	Capital Projects Fund 177	Debit	Credit
49800	Transfer In	$ -	$ 2,500,000
91300 706	Building Construction	2,500,000	-

NOW, THEREFORE, BE IT RESOLVED by the Greene County Legislative Body meeting in regular session, this 18th day of June 2018, a quorum being present and a majority voting in the affirmative, that the funds be appropriated as shown above.

County Mayor

Greene County Education Committee
Sponsor

Roger D Woolsey
County Attorney

County Clerk

I

RESOLUTION AUTHORIZING THE GREENE COUNTY SHERIFF'S DEPARTMENT TO DONATE A USED SKID-STEER LOADER TO THE GREENE COUNTY WOOD MINISTRY

WHEREAS, the Greene County Sheriff's Department has a skid-steer loader that the Sheriff obtained through military surplus; and

WHEREAS, the Greene County Wood Ministry is in need of a skid-steer loader; and

WHEREAS, the Greene County Sheriff's Department has agreed to donate the military surplus skid-steer loader that is no longer being utilized by the Sheriff's Department to the Greene County Wood Ministry, a non-for-profit charitable organization.

NOW THEREFORE BE IT RESOLVED, by the Greene County Legislative Body meeting in regular session on the18th day of June, 2018, a quorum being present and a majority voting in the affirmative, that the Greene County Sheriff's Department Department is hereby authorized to donate a military surplus skid-steer loader to the Greene County Wood Ministry, a not-for-profit charitable organization serving the elderly and low income citizens of Greene County.

Budget and Finance
Sponsor

County Mayor

County Clerk

Roger A Woolsey
County Attorney

J.

Roger A. Woolsey
County Attorney
204 N. Cutler St.
Suite 120
Greeneville, TN 37745
Phone: 423/798-1779
Fax: 423/798-1781

RESOLUTION AUTHORIZING THE COUNTY MAYOR TO EXECUTE A QUITCLAIM DEED TO STATE OF TENNESSEE

WHEREAS, Greene County acquired certain real property known as the Greenwood Drive parcel and being further described and identified as Property Map 0870 C Parcel 026 in the Greene County Assessor of Property's office that the County obtained by quitclaim deed from the State of Tennessee on or about November 6, 2013, which deed contained a right of revision to the State of Tennessee if the property ceased to be owned or used by Greene County; and

WHEREAS, said property is no longer utilized by Greene County and as such now presents a liability risk and continuing maintenance expense; and

WHEREAS, after reviewing the usage of said property, weighing the liability issues imposed by said property being vacant with vagrants and others attempting to use the property, and the expense to the County to maintain the property and its improvements, it would appear that it would be in the best interest of the citizens of Greene County and those adjoining property owners for Greene County to formally abandon any interest in this property and quitclaim the Greenwood Drive property back to the State of Tennessee.

WHEREAS, considering the said revision clause, it would appear that quitclaiming the property back to the State of Tennessee is the County's only viable option.

NOW, THEREFORE BE IT RESOLVED by the Greene County Legislative Body meeting in regular session on the 18th day of June, 2018 a quorum being present and a majority voting in the affirmative that the County Mayor is authorized to execute a quitclaim deed to the State of Tennessee for the property know as Greenwood Drive Parcel (Map No. 0870 C Parcel 026), transferring any right that Greene County may have in that property to the State of Tennessee.

Jason Cobble
Sponsor

County Mayor

County Clerk

Roger A. Woolsey
County Attorney

K.

Roger A. Woolsey
County Attorney
204 N. Cutler St.
Suite 120
Greeneville, TN 37745
Phone: 423/798-1779
Fax: 423/798-1781

GREENE COUNTY
TENNESSEE

Debt Management Policy

Revised: December 19, 2011

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INTRODUCTION

This Debt Management Policy (the "Debt Policy") is a written guideline with parameters that affect the amount and type of debt that can be issued by Greene County, Tennessee (the "County"), the issuance process and the management of the County's debt. The purpose of this Debt Policy is to improve the quality of management and legislative decisions and to provide justification for the structure of debt issuances consistent with the Debt Policy's goals while demonstrating a commitment to long-term capital planning. It is also the intent of the County that this Debt Policy will signal to credit rating agencies, investors and the capital markets that the County is well managed and will always be prepared to meet its obligations in a timely manner. This Debt Policy fulfills the requirements of the State of Tennessee regarding the adoption of a formal debt management policy on or before January 1, 2012.

This Debt Policy provides guidelines for the County to manage its debt and related annual costs within both current and projected available resources while promoting understanding and transparency for our citizens, taxpayers, rate payers, businesses, investors and other interested parties.

The County may, from time to time, review this Debt Policy and make revisions and updates, if warranted.

GREENE COUNTY, TENNESSEE
DEBT MANAGEMENT POLICY

I. INTRODUCTORY STATEMENT

In managing its Debt (defined herein as tax-exempt or taxable bonds, capital outlay notes, other notes, capital leases, inter-fund loans or notes and loan agreements); it is the County's policy to:

- Achieve the lowest cost of capital within acceptable risk parameters
- Maintain or improve credit ratings
- Assure reasonable cost access to the capital markets
- Preserve financial and management flexibility
- Manage interest rate risk exposure within acceptable risk parameters

II. GOALS AND OBJECTIVES

Debt policies and procedures are tools that ensure that financial resources are adequate to meet the County's long-term capital planning objectives. In addition, the Debt management policy (the "Debt Policy") helps to ensure that financings undertaken by the County have certain clear, objective standards which allow the County to protect its financial resources in order to meet its long-term capital needs.

The Debt Policy formally establishes parameters for issuing debt and managing a debt portfolio which considers the County's specific capital improvement needs; ability to repay financial obligations; and, existing legal, economic, and financial market conditions. Specifically, the policies outlined in this document are intended to assist in the following:

- To guide the County in policy and debt issuance decisions
- To maintain appropriate capital assets for present and future needs
- To promote sound financial management
- To protect the County's credit rating
- To ensure the County's debt is issued legally under applicable state and federal laws
- To promote cooperation and coordination with other parties in the financing

- To evaluate debt issuance options

III. PROCEDURES FOR ISSUANCE OF DEBT

1) Authority

a) The County will only issue Debt by utilizing the statutory authorities provided by *Tennessee Code Annotated* as supplemented and revised ("TCA") and the Internal Revenue Code (the "Code").

b) The County will adhere to any lawfully promulgated rules and regulations of the State and those promulgated under the Code.

c) All Debt must be formally authorized by resolution of the County's Legislative Body.

2) Transparency

a) It is recognized that the issuance of Debt must have various approvals and on occasion, written reports provided by the State of Tennessee Comptroller's office either prior to adoption of resolutions authorizing such Debt, prior to issuance and/or following issuance. The County, in conjunction with any professionals (including, but not limited to, financial advisors, underwriters, bond counsel, etc. which may individually or collectively be referred to herein as "Financial Professionals") will ensure compliance with TCA, the Code and all Federal and State rules and regulations. Such State compliance will include, but not be limited to, compliance with all legal requirements regarding adequate public notice of all meetings of the County related to consideration and approval of Debt. Additionally, the County shall provide the Tennessee Comptroller's office sufficient information on the Debt to not only allow for transparency regarding the issuance, but also assuring that the Comptroller's office has sufficient information to adequately report or approve any formal action related to the sale and issuance of Debt. The County will also make this information available to its legislative body, citizens and other interested parties.

b) The County will file its Audited Financial Statements and any Continuing Disclosure document prepared by the County or its Dissemination Agent. To promote transparency and understanding, these documents should be furnished to members of the Legislative Body and made available electronically or by other usual and customary means to its citizens, taxpayers, rate payers, businesses, investors and other interested parties by posting such information on-line or in other prominent places.

c) All costs (including interest, issuance, continuing, and one-time) related to Debt shall be disclosed to the Legislative Body and citizens in a timely manner. In order to comply with the requirements of the preceding sentence, an estimate of the costs described above will be presented to the Legislative Body along with any resolution authorizing debt. Within four weeks of closing on a debt transaction, the debt service schedule and the State Form CT-0253 shall be available at the office of the Budget and Accounts Director for review by members of the Legislative Body and the public.

IV. CREDIT QUALITY AND CREDIT ENHANCEMENT

The County's Debt management activities will be conducted in order to maintain or receive the highest possible credit ratings. The Mayor and Budget and Accounts Director in conjunction with any Financial Professionals that the County may choose to engage will be responsible for maintaining relationships and communicating with one or more rating agencies.

The County will consider the use of credit enhancements on a case-by-case basis, evaluating the economic benefit versus cost for each case. Only when clearly demonstrable savings can be shown shall an enhancement be considered. The County will consider each of the following enhancements as alternatives by evaluating the cost and benefit of such enhancements:

1) Insurance

The County may purchase bond insurance when such purchase is deemed prudent and advantageous. The predominant determination shall be based on such insurance being less costly than the present value of the difference in the interest on insured bonds versus uninsured bonds.

2) Letters of Credit

The County may enter into a letter-of-credit ("LOC") agreement when such an agreement is deemed prudent and advantageous. The County or its Financial Professionals, if any, may seek proposals from qualified banks or other qualified financial institutions pursuant to terms and conditions that are acceptable to the County.

V. AFFORDABILITY

The County shall consider the ability to repay Debt as it relates to the total budget resources, the wealth and income of the community and its property tax base and other revenues available to service the Debt. The County may consider debt ratios

and other benchmarks compared to its peers when analyzing its Debt including materials published by the nationally recognized credit rating agencies.

VI. DEBT STRUCTURE

The County shall establish all terms and conditions relating to the issuance of Debt and will invest all bond proceeds pursuant to the terms of its investment policy, if any. Unless otherwise authorized by the County, the following shall serve as the Debt Policy for determining structure:

1) Term

All capital improvements financed through the issuance of Debt will be financed for a period not to exceed the useful economic life of the improvements and in consideration of the ability of the County to absorb such additional debt service expense. The term of Debt shall be determined by, but not limited to, the economic life of the assets financed, conditions in the capital markets, the availability of adequate revenue streams to service the Debt and the existing pattern of Debt payable from such identifiable fund or enterprise activity, but in no event will the term of such Debt exceed forty (40) years, as outlined in TCA.

2) Capitalized Interest

From time to time, certain financings may require the use of capitalized interest from the date of issuance until the County is able to realize beneficial use and/or occupancy of the financed project. Interest may be capitalized through a period permitted by federal law and TCA if it is determined that doing so is beneficial to the financing by the Legislative Body and is appropriately memorialized in the legislative action authorizing the sale and issuance of the Debt.

3) Debt Service Structure

General Obligation debt issuance shall be planned to achieve relatively net level debt service or level principal amortization considering the County's outstanding debt obligations, while matching debt service to the useful economic life of facilities. Absent events or circumstances determined by its Legislative Body, the County shall avoid the use of bullet or balloon maturities (with the exception of sinking fund requirements required by term bonds) except in those instances where such maturities serve to make existing overall debt service level or match specific income streams. Debt which is supported by project revenues and is intended to be self-supporting should be structured to achieve level proportional coverage to expected available revenues.

4) **Call Provisions**

In general, the County's Debt should include a call feature no later than ten (10) years from the date of delivery of the bonds. The County will avoid the sale of long-term debt which carries longer redemption features unless a careful evaluation has been conducted by the Mayor and Budget and Accounts Director and/or Financial Professionals, if any, with respect to the value of the call option.

5) **Original Issuance Discount/Premium**

Debt with original issuance discount/premium will be permitted.

6) **Deep Discount Bonds**

Deep discount debt may provide a lower cost of borrowing in certain capital markets. The Mayor and Budget and Accounts Director and/or Financial Professionals, if any, should carefully consider their value and effect on any future refinancing as a result of the lower-than-market coupon.

VII. DEBT TYPES

When the County determines that Debt is appropriate, the following criteria will be utilized to evaluate the type of debt to be issued.

1) **Security Structure**

a) **General Obligation Bonds**

The County may issue Debt supported by its full faith, credit and unlimited ad valorem taxing power ("General Obligation Debt"). General Obligation Debt shall be used to finance capital projects that do not have significant independent creditworthiness or significant on-going revenue streams or as additional credit support for revenue-supported Debt, if such support improves the economics of the Debt and is used in accordance with these guidelines.

b) **Revenue Debt**

The County may issue Debt supported exclusively with revenues generated by a project or enterprise fund ("Revenue Debt"), where repayment of the debt service obligations on such Revenue Debt will be made through revenues generated from specifically designated sources. Typically, Revenue Debt will be issued for capital projects which can be supported from project or enterprise-related revenues.

c) Capital Leases

The County may use capital leases to finance projects assuming the Mayor and Budget and Accounts Director and/or Financial Professionals, if any, determine that such an instrument is economically feasible.

2) Duration

a) Long-Term Debt

The County may issue long-term Debt when it is deemed that capital improvements should not be financed from current revenues or short-term borrowings. Long-term Debt will not be used to finance current operations or normal maintenance. Long-term Debt will be structured such that financial obligations do not exceed the expected useful economic life of the project(s) financed.

i. *Serial and Term Debt.* Serial and Term Debt may be issued in either fixed or variable rate modes to finance capital infrastructure projects;

ii. *Capital Outlay Notes ("CONs").* CONs may be issued to finance capital infrastructure projects with an expected life up to twelve years; or

iii. *Capitalized Leases.* Capitalized Leases may be issued to finance infrastructure projects or equipment with an expected life not greater than its expected useful life.

b) Short-Term Debt

Short-term borrowing may be utilized for:

i. Financing short economic life assets;

ii. The construction period of long-term projects;

iii. For interim financing; or

iv. For the temporary funding of operational cash flow deficits or anticipated revenues subject to the following policies:

1. *Bond Anticipation Notes ("BANs").* *BANs,* including commercial paper notes issued as BANs, may be issued instead of capitalizing interest to reduce the debt service during the construction period of a project or facility. The BANs shall not mature more than 2 years from the date of issuance. BANs can be rolled in accordance with federal

and state law. BANs shall mature within 6 months after substantial completion of the financed facility.

2. *Revenue Anticipation Notes ("RANs") and Tax Anticipation Notes ("TANs").* RANs and TANS shall be issued only to meet cash flow needs consistent with a finding by bond counsel that the sizing of the issue fully conforms to federal IRS and state requirements and limitations.

3. *Lines of Credit.* Lines of Credit shall be considered as an alternative to other short-term borrowing options. A line of credit shall only be structured to federal and state requirements.

4. *Inter-fund Loans.* Inter-fund Loans shall only be used to fund operational deficiencies among accounts or for capital projects to be paid from current fiscal year revenues. Such inter-fund loans shall be approved by the State Comptroller's office and shall only be issued in compliance with state regulations and limitations.

5. *Other Short-Term Debt.* Other Short-Term Debt including commercial paper notes, BANs, Capitalized Leases and CONs may be used when it provides an interest rate advantage or as interim financing until market conditions are more favorable to issue debt in a fixed or variable rate mode. The County will determine and utilize the most advantageous method for short-term borrowing. The County may issue short-term Debt when there is a defined repayment source or amortization of principal.

3) Interest Rate Modes

a) Fixed Rate Debt

To maintain a predictable debt service schedule, the County may give preference to debt that carries a fixed interest rate.

b) Variable Rate Debt

The targeted percentage of net variable rate debt outstanding (excluding (1) debt which has been converted to synthetic fixed rate debt and (2) an amount of debt considered to be naturally hedged to short-term assets in the Unreserved General and/or Debt Service Fund Balance) shall not exceed **[25%]** of the County's total outstanding debt and will take into consideration the amount and investment strategy of the County's operating cash.

The following circumstances may result in the consideration of issuing variable rate debt:

i. *Asset-Liability Matching;*

ii. *Construction Period Funding;*

iii. *High Fixed Interest Rates*. Interest rates are above historic averages;

iv. *Diversification of Debt Portfolio;*

v. *Variable Revenue Stream*. The revenue stream for repayment is variable and is anticipated to move in the same direction as market-generated variable interest rates or the dedication of revenues allows capacity for variability; and

vi. *Adequate Safeguard Against Risk.* Financing structure and budgetary safeguards are in place to prevent adverse impacts from interest rate shifts such structures could include, but are not limited to, interest rate caps and short-term cash investments in the County's General Fund.

An analysis by the Mayor and Budget and Accounts Director and/or Financial Professionals, if any, shall be conducted to evaluate and quantify the risks and returns associated with the variable rate Debt including, but not limited to, a recommendation regarding the use of variable rate debt.

4) Zero Coupon Debt

Zero Coupon Debt may be used if an analysis has been conducted by the Mayor and Budget and Accounts Director and/or Financial Professionals, if any, and the risks and returns associated with the Zero Coupon Debt have been made. The analysis shall include, but not be limited to a recommendation regarding the use of Zero Coupon Debt as the most feasible instrument considering available revenues streams, the need for the project and other factors determined by the Legislative Body.

5) Synthetic Debt

The County will not enter into any new interest rate swaps or other derivative instruments unless it adopts a Debt Derivative Policy consistent with the requirements of TCA and only after approval of the State Comptroller's office and affirmative action of the Legislative Body. To the extent the County has any current existing interest rate swaps or other derivative instruments, the County will monitor these agreements and any amendments consistent with the compliance report issued by the State Comptroller's Office at the time the agreements were previously authorized.

VIII. REFINANCING OUTSTANDING DEBT

The Mayor and Budget and Accounts Director, in conjunction with Financial Professionals, if any, shall have the responsibility to analyze outstanding Debt for refunding opportunities. The Mayor and Budget and Accounts Director will consider the following issues when analyzing possible refunding opportunities:

1) **Debt Service Savings**

Absent other compelling considerations such as the opportunity to eliminate onerous or restrictive covenants contained in existing Debt documents, the County has established a minimum net present value savings threshold of at least 3.0 percent of the advance refunded Debt principal amount. Current refunding opportunities may be considered by the County using any savings threshold if the refunding generates positive net present value savings. The decision to take less than 3.0 percent net present value savings for an advance refunding or to take the savings in any manner other than a traditional year-to-year level savings pattern must be approved by the Legislative Body or delegated to the County's Mayor.

2) **Restructuring for economic purposes**

The County may also refund Debt when it is in its best financial interest to do so. Such a refunding will be limited to restructuring to meet unanticipated revenue expectations, achieve cost savings, mitigate irregular debt service payments, release reserve funds or remove unduly restrictive bond covenants or any other reason approved by the Legislative Body in its discretion.

3) **Term of Refunding Issues**

Normally, the County will refund Debt equal to or within its existing term. However, the Mayor and Budget and Accounts Director may consider maturity extension, when necessary to achieve desired outcomes, provided that such extension is legally permissible and it is approved by the Legislative Body. The Mayor and Budget and Accounts Director may also consider shortening the term of the originally issued debt to realize greater savings. The remaining useful economic life of the financed facility and the concept of inter-generational equity should guide these decisions.

4) **Escrow Structuring**

The County shall utilize the least costly securities available in structuring refunding escrows. In the case of open market securities, a certificate will be provided by a third party agent, who is not a broker-dealer stating that the securities were procured through an arms-length, competitive bid process, that such securities were more cost effective than State and Local Government Obligations (SLGS), and that the price paid for the securities was reasonable

within Federal guidelines. In cases where taxable Debt is involved, the Mayor and Budget and Accounts Director, with the approval of bond counsel, may make a direct purchase as long as such purchase is the most efficient and least costly. Under no circumstances shall an underwriter, agent or any Financial Professionals sell escrow securities involving tax-exempt Debt to the County from its own account.

5) Arbitrage

The County shall take all necessary steps to optimize escrows and to avoid negative arbitrage in its refunding. Any positive arbitrage will be rebated as necessary according to Federal guidelines.

IX. METHODS OF ISSUANCE

The Mayor and Budget and Accounts Director may consult with a Financial Professional regarding the method of sale of Debt. Subject to approval by the Legislative Body, the Mayor and Budget and Accounts Director will determine the method of issuance of Debt on a case-by-case basis consistent with the options provided by prevailing State law.

1) Competitive Sale

In a competitive sale, the County's Debt will be offered in a public sale to any and all eligible bidders. Unless bids are rejected, the Debt shall be awarded to the bidder providing the lowest true interest cost as long as the bid adheres to the requirements set forth in the official notice of sale.

2) Negotiated Sale

The County recognizes that some securities are best sold through a negotiated sale with an underwriter or group of underwriters. The County shall assess the following circumstances in determining whether a negotiated sale is the best method of sale:

a) State requirements on negotiated sales;

b) Debt structure which may require a strong pre-marketing effort such as those associated with a complex transaction generally referred to as a "story" bond;

c) Size or structure of the issue which may limit the number of potential bidders;

d) Market conditions including volatility wherein the County would be better served by the flexibility afforded by careful timing and marketing such as is the case for Debt issued to refinance or refund existing Debt;

e) Whether the Debt is to be issued as variable rate obligations or perhaps as Zero Coupon Debt;

f) Whether an idea or financing structure is a proprietary product of a single firm;

g) In a publicly offered or privately placed, negotiated sale, a financial advisor, if any, shall not be permitted to resign as the financial advisor in order to underwrite or privately place an issue for which they are or have been providing advisory services;

h) The underwriter shall clearly identify itself in writing (e.g., in a response to a request for proposals or in promotional materials provided to the County) as an underwriter and not as a financial advisor from the earliest stages of its relationship with the County with respect to the negotiated issue. The underwriter must clarify its primary role as a purchaser of securities in an arm's length commercial transaction and that it has financial and other interests that differ from those of the County. The underwriter in a publicly offered, negotiated sale shall be required to provide pricing information both as to interest rates and to takedown per maturity to the Legislative Body (or its designated official) in advance of the pricing of the debt.

3) Private Placement

From time to time, the County may elect to privately place its Debt. Such placement shall only be considered if this method is demonstrated to be advantageous to the County.

X. PROFESSIONALS

1) Financial Professionals

As needed, the County may select Financial Professionals to assist in its Debt issuance and administration processes. In selecting Financial Professionals, consideration should be given with respect to:

a) relevant experience with municipal government issuers and the public sector;

b) indication that the firm has a broadly based background and is therefore capable of balancing the County's overall needs for continuity and innovation in capital planning and Debt financing;

c) experience and demonstrated success as indicated by its experience;
d) the firm's professional reputation;

e) professional qualifications and experience of principal employees; and

f) the estimated costs, but price should not be the sole determining factor.

2) **Miscellaneous**

a) **Written Agreements**

i. Any Financial Professionals engaged by the County shall enter into written agreements including, but not limited to, a description of services provided and fees and expenses to be charged for the engagement. Finance Professionals must clearly disclose all compensation and consideration received related to services provided in the Debt issuance process by the County, the lender and the conduit issuer, if any, including "soft" costs or compensation in lieu of direct payment.

ii. The County shall enter into an engagement letter agreement with each lawyer or law firm representing the County in a debt transaction. No engagement letter is required for any lawyer who is an employee of the County or lawyer or law firm which is under a general appointment or contract to serve as counsel to the County. The County does not need an engagement letter with counsel not representing the County, such as underwriters' counsel.

iii. The County shall require all Financial Professionals engaged in the process of issuing debt to clearly disclose all compensation and consideration received related to services provided in the debt issuance process by both the County and the lender or conduit issuer, if any. This includes "soft" costs or compensations in lieu of direct payments.

iv. If the County chooses to engage a financial advisor for a debt transaction, the County shall enter into a written contract with the financial advisor. Whether in a competitive or negotiated sale, the financial advisor shall not be permitted to bid on, privately place or underwrite an issue for which they are or have been providing advisory services.

b) Conflict of Interest

i. Financial Professionals involved in a debt transaction hired or compensated by the County shall be required to disclose to the County existing client and business relationships between and among the professionals to a transaction (including but not limited to financial

advisors, swap advisors, bond counsel, swap counsel, trustee, paying agent, underwriter, counterparty, and remarketing agent), as well as conduit issuers, sponsoring organizations and program administrators. This disclosure shall include that information reasonably sufficient to allow the County to appreciate the significance of the relationships.

ii. Financial Professionals who become involved in the debt transaction as a result of a bid submitted in a widely and publicly advertised competitive sale conducted using an industry standard, electronic bidding platform are not subject to this disclosure. No disclosure is required that would violate any rule or regulation of professional conduct.

XI. COMPLIANCE

1) Continuing Annual Disclosure

Normally at the time Debt is delivered, the County will execute a Continuing Disclosure Certificate in which it will covenant for the benefit of holders and beneficial owners of the publicly traded Debt to provide certain financial information relating to the County by not later than twelve months after each of the County's fiscal years, (the "Annual Report and provide notice of the occurrence of certain enumerated events. The Annual Report (and audited financial statements, if filed separately) will be filed with the MSRB through the operation of the Electronic Municipal Market Access system ("EMMA") and any State Information Depository established in the State of Tennessee (the "SID"). If the County is unable to provide the Annual Report to the MSRB and any SID by the date required, notice of each failure will be sent to the MSRB and any SID on or before such date. The notices of certain enumerated events will be filed by the County with the MSRB through EMMA and any SID. The specific nature of the information to be contained in the Annual Report or the notices of significant events is provided in each Continuing Disclosure Certificate. These covenants are made in order to assist underwriters in complying with SEC Rule 15c2-12(b) (the "Rule").

2) Arbitrage Rebate

The County will also maintain a system of record keeping and reporting which complies with the arbitrage rebate compliance requirements of the Internal Revenue Code (the "Code").

3) Records

The County will also maintain records required by the Code including, but not limited to, all records related to the issuance of the debt including detailed

receipts and expenditures for a period up to 6 years following the final maturity date of the Debt or as required by the Code.

XII. DEBT POLICY REVIEW

1) General Guidance

The guidelines outlined herein are only intended to provide general direction regarding the future issuance of Debt. The County maintains the right to modify this Debt Policy and may make exceptions to any of its guidelines at any time to the extent that the execution of such Debt achieves the goals of the County as long as such exceptions or changes are consistent with TCA and any rules and regulations promulgated by the State.

This Debt Policy should be reviewed from time to time as circumstances, rules and regulations warrant.

2) Designated Official

The Mayor and Budget and Accounts Director are responsible for ensuring substantial compliance with this Debt Policy.