10520 Brickhill Lane
Soddy-Daisy, Tenn. 37379
Nov. 27, 2023

Coty Wamp, District attorney general
600 Market St Suite 310
Chattanooga, TN 37402

Dear Miss Wamp,

On Nov. 22, 2023, I am arrested by Hamilton County Sheriff Austin Garrett through his agent, Deputy Brandon Bennett, in a "traffic stop" under the administrative law in Title 55, motor and other vehicles, subject to the uniform administrative procedures act at T.C.A. § 4-5-101 *et seq*, regulating transportation in state of Tennessee.

The law concerns privilege enforcement upon those on the public roads who use the people's property for private profit and gain in the transportation sector of our great Tennessee economy. The road from which I am seized and removed, state highway 153 in Hixson, is maintained to serve those the law refers to as "the traveling public," T.C.A.§ 4-7-113. [1]

I am among the people of Tennessee, and among the traveling public, exercising state and federally protected rights under the Tennessee constitution, and also the U.S. constitution's bill of rights. My arrest without a warrant and without probable cause that predawn Wednesday morning is the occasion of at least two criminal acts.

I am being charged with two crimes, according to the appearance bonds handed me at Silverdale detention center. One is "light law violation" and the other is "violation of driver's license law/license to be CA."

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[1] The law states that the party charged with regulating the roads, the Tennessee highway patrol, has four duties:

> (1) Protect the lives and **safety of the traveling public** on state highways;
> (2) Conserve and preserve the state's property; and
> (3) Assist in the collection of state revenues.
> (b) This part is remedial in nature and shall be construed liberally.

Tenn. Code Ann. § 4-7-113 (emphasis added)

However, I'm not herein referring to these accusations. The criminal acts of that morning are on the part of Sheriff Garrett and deputy Bennett under a policy of harm that violates my God-given, constitutionally protected, unalienable and inherent rights and those of other people in like station in Hamilton County.

Because their actions are knowing and intentional, my arrest represents a grave harm to the interest and property rights of us people, and will persist unless the attorney general's office in Hamilton County steps in to hold these men to account.

The main breaches evident as policy, custom and usage in your district are:

1. *Ultra vires* enforcement of the motor vehicle law at Title 55 upon parties not subject to it who make it clear at the outset of the encounter

2. Rejection of the Tenn. const. Art. 1, sect. 7, prohibiting general warrants, and violation of the "public offense" arrest standard in T.C.A. § 40-7-103, the exceptions law allowing officer arrest without warrant

My arrest (1) is under a general warrants scheme about which I put the county government on administrative notice April 15, 2020, outlining the two tests an officer must meet in a misdemeanor warrantless arrest. One is the "in the officer's presence" test. The second is the "public offense" test. (2) My arrest occurs under *ultra vires* enforcement of the motor vehicle laws at §§ Titles 55 and 65, that regulate transportation and commerce, about which I put the Hamilton County sheriff's office under notice March 1, 2018, in a meeting with then-Sheriff Jim Hammond and staff.

That I am arrested while enjoying harmless, innocent, private activities on the public right of way, with no threat or injury caused by me in traveling on the public road and without a lawful warrant, infringes on my rights.

The public servant and agent of government crimes I herein allege by information Sheriff Garrett and Deputy Bennett are false imprisonment and false arrest, knowing and intentional, in breach of the state criminal code.

I. Official misconduct

Official misconduct is at T.C.A.§ 39-16-402. A public servant commits an offense who, with intent to obtain a benefit or to harm another, intentionally or knowingly:

> (1) Commits an act relating to the public servant's office or employment that constitutes an **unauthorized exercise** of official power;
> (2) Commits an act under color of office or employment that **exceeds** the public servant's official power;
>
> (3) Refrains from performing a duty that is imposed by law or that is clearly inherent in the nature of the public servant's office or employment;

T.C.A.§ 39-16-402 (emphasis added)

Messrs. Garrett and Bennett commit an offense against me to harm me "intentionally or knowingly," given administrative notice, an "unauthorized exercise of official power" that is "under color of office *** that exceeds the public servant's official power."

II. Official oppression

The felony official oppression statute is as follows:

> (a) A public servant acting under color of office or employment commits an offense who:
>
> > (1) **Intentionally subjects another to mistreatment** or to **arrest, detention, stop, frisk, halt, search, seizure,** dispossession, assessment or lien when the public servant knows the conduct is unlawful; or
> > (2) **Intentionally** denies or impedes another in the exercise or **enjoyment of any right, privilege,** power or immunity, when the public servant **knows** the conduct is unlawful.
>
> (b) For purposes of this section, a public servant acts under color of office or employment if the public servant acts, or purports to act, in an official capacity or takes advantage of the actual or purported capacity.
> (c) An offense under this section is a Class E felony.
> (d) Charges for official oppression may be brought only by indictment, presentment or criminal information; provided, that nothing in this section

> shall deny a person from pursuing other criminal charges by affidavit of complaint.

Tenn. Code Ann. § 39-16-403 (emphasis added)

In my false imprisonment and false arrest, two men with aid of others agree to mistreat a citizen exercising his ingress and egress rights from family property in Soddy-Daisy with arrest, detention, stop, frisk, halt, search, seizure and "impede another in the exercise or enjoyment of [a] right" and each "knows the conduct is unlawful."

Each of these two men "knows" the action is unlawful either with personal knowledge or under the doctrine of notice with imputed knowledge.

"'It is a general rule that whatever puts a person on inquiry amounts in judgment of law to notice, provided the inquiry becomes a duty, and would lead to a knowledge of the facts by the exercise of ordinary intelligence and understanding. A person who has sufficient information to lead him to a fact is deemed conversant with it, and a person who has notice of facts which would cause a reasonably prudent person to inquire as to further facts is chargeable with notice of the further facts discoverable by proper inquiry.' 66 C.J.S. Notice § 11 (1950). 'It is axiomatic that no man can recover upon the theory of fraud or mistake with respect to any matter of fact about which he has actual knowledge or legally imputed knowledge.' *671 *Blow Stave Co. v. Hattendorf,* 7 Tenn. C.C.A. 415, 417 (1917)." Hill v. John Banks Buick, Inc., 875 S.W.2d 667, 670–71 (Tenn. Ct. App. 1993)

My near certainty that Messrs. Garrett and Bennett act knowingly and intentionally to falsely imprison and arrest me is that I am author of two notices served them to inform them of limits beyond which they are by law not allowed to pass. [2]

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[2] Service of Tennessee transportation administrative notice is most recently upon the county in person of attorney Rheubin Taylor, June 21, 2023. **EXHIBIT No. 1**. Originally, TTAN is served in person in a meeting with Sheriff Jim Hammond on March 1, 2018. The notice also is notoriously published in the Chattanooga Times Free Press, under affidavit, and is recorded in the Rhea County, Tenn., register of deeds Jan Hulgan's office on Oct. 16, 2018, bk/pg: 470/118-138, no. 18008511.

Service of administrative notice regarding limits on warrantless arrest authority is April 15, 2020, via email to the members of Hamilton County county commission, and upon sheriff department counsel via email Aug. 21, 2020, and Oct. 12, 2020, to Coty Wamp at cwamp@hcsheriff.gov.

III. HCSO under administrative notice

Administrative notice puts the department and its corporate municipal master on awares as to how (1) the motor vehicle administrative law operates upon the transportation sector in the Tennessee economy and to how (2) arrests without warrant are restricted in light of the overall guarantee in the constitution that all arrests are unreasonable unless they occur under warrant, that being a judicially sanctioned permission to arrest on a lawful, nonfraudulent exigency, necessity or basis.

1. *Tennessee transportation administrative notice*, **EXHIBIT No. 2**, outlines the nature of transportation regulation and spotlights the line separating regulatory authority over one sector of the traveling public from that other sector of the traveling public upon which no authority is exercisable except for cause. Half of the recorded public document describes authority, the second half describes rights. The state exercises authority, the people enjoy rights — right of movement, locomotion, moving from Point A to Point B, self-propulsion, traveling, motoring, etc. Statutes and court cases separate the two sectors as described in the leading court case dealing with the operation of state privileges. Phillips v. Lewis, 3 Shannon's cases 230, 1877. **EXHIBIT No. 3.** Police power and regulatory authority under the UAPA are exercisable upon those "on the privilege" of driving or operating a motor vehicle. Phillips describes a privilege as an occupation, trade or calling such as the raising of bitches or jackasses for private profit and gain.

> This pursuit or occupation is taxed, not as property, but as an occupation. Another element in this occupation is, that its object and pursuit is directed to a profit to be made off the general public, the merchant having a relation, by reason of his occupation, to the whole community in which he may do business, by reason of which he reaps, or is assumed to reap, the larger profit by drawing upon or getting the benefit of the resources of those surrounding him. The same idea is involved in the case of the peddler, who may range over a whole county by virtue of his license. His is an occupation of like character, a peculiar use of his capital varied only in some of its incidents.

Phillips at 240

The parties affecting my arrest ignore the essential element of any "driving" or "operating a motor vehicle" criminal complaint. That is whether the accused is involved in activity subject to the privilege at the time of the alleged offense.

A fisherman at the wharf cafe near his boat is not "on" his fishing license until he finishes his grits and coffee and is on the water, with the bobber in action. A restaurateur is not "on" her restaurant license in her private kitchen cooking turkey for family. A hair stylist is not "on" her license on her back porch trimming locks of a visiting nephew, as I explain Nov. 22, 2023, in a jailhouse probable cause hearing at the glass window to Hamilton County magistrate Dwight Murchison in terms such as these. **A driver of a motor vehicle is not "on" his license taking gran'ma to a doctor's appointment.**

The moving parties in this encounter obtain no evidence of any commerce on part of accused, declaim any desire to obtain such evidence, nor establish the essential elements of "driving a motor vehicle" they rightly call a "privilege."

2. *Administrative notice on limits of arrest power in Tennessee under 'public offense' rule*, **EXHIBIT No. 4**, reveals the constitutional ban on warrantless arrest has exceptions at T.C.A. § 40-7-103, which enumeration and limit are ignored in this case, and possibly in others.

The statute § 40-7-103 opens this way:

> (a) An officer may, without a warrant, arrest a person:
>
> (1) For a **public offense** committed or a **breach of the peace threatened** in the officer's presence *** [Emphasis added]

The deputy has two tests to determine if authorized to make a warrantless arrest of an alleged misdemeanor. One is "the officer's presence." The other is whether it is a "public offense committed." The law itself appears to define a "public offense" as in the nature of a "breach of the peace." The notice lays out the jurisprudence indicating a breach of the peace or public offense.

> "'A breach of the peace is "a violation of public order, the offense of disturbing the public peace. An act of public indecorum is also a breach of the peace."' Galvin v. State, 6 Cold. 294. The sale of intoxicating liquors has always been recognized as tending to provoke disturbances of good

> order and breaches of the peace. When such sales were lawful it was found necessary to impose upon them strict regulations to prevent breaches of the peace. Speaking of such a regulation this court long ago said: 'This is a police regulation, for the good order and quiet of the city.' Smith v. Knoxville, 3 Head. 247." State ex rel. Thompson
>
> The State ex rel. Thompson court goes for social color to a list of public offenses. "The term, 'breach of the peace' is generic, and includes riotous and unlawful assemblies, riots, forcible entry and detainer, the sending of challenges and provoking to fight, going around in public, without lawful occasion, in such manner as to alarm the public, the wanton discharge of firearms in the public streets, engaging in an affray or assault, using profane, indecent, and abusive language by one toward another, on a street and in the presence of others, or being intoxicated and yelling on the public streets in such manner as to disturb the good order and tranquillity of the neighborhood." 8 Ruling Case Law, p. 285.
> From State ex rel Thompson 135 Tenn. 653, *669; 188 S.W. 225, **229; 1916 Tenn. LEXIS 46, ***17

Administrative notice on limits of arrest power in Tennessee under "public offense" rule, p. 4

A damaged taillight on petitioner's car is alleged as basis for petitioner's arrest, imprisonment and jailing. Such a technical fault in use of a car may indeed violate a provision of T.C.A.§ 55-9-402, lights required on motor vehicles, etc., if that car is being used as a motor vehicle. The rule for driving a motor vehicle is that "Each lamp and stoplight required in this section shall be in good condition and operational." Tenn. Code Ann. § 55-9-402(c). The facts are that the light is functional, though missing roughly 2 square inches of red plastic from being slapped by tire tread in a highway blowout Nov. 14, 2023.

Such of mechanical detail facts do not meet the test for a public offense in the nature of a breach of the peace, allowing for arrest without warrant. Accused is yet another victim by the department's *general warrants practice*, prohibited in Tenn. const. Art. 1, Sect. 7. "That the people shall be secure in their persons, houses, papers and possessions, from **unreasonable** searches and **seizures**; and that **general warrants,** whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to **seize any person** or persons not named, whose offences are not particularly described and supported by evidence, are **dangerous to liberty and ought not be granted**." (emphasis added)

> Messrs. Garrett and Bennett knowingly and intentionally run a "deputy-can arrest-anyone-at-anytime-without-a-warrant-if-it's-in-the-officer's-presence" scheme. It's materially no different than if Deputy Bennett had a blank arrest warrant in his pocket and fills it in with accused's name on a crime scene, i.e., general warrant.

Sheriff Garrett and Deputy Bennett, in contemplation of law, have falsely arrested and falsely imprisoned the accused under color of law and color of office. They go further to secure their harm by criminally prosecuting him in Hamilton County sessions court in case No. 1930156 with a first hearing Jan. 18, 2024.

District attorney Wamp, these acts are crimes under two provisions of Title 39. I hereby put you on notice about them, attach an affidavit of complaint against them, and demand prosecutorial relief today to prevent a repeat of these actions upon me or any other man or woman similarly situated in Hamilton County or the district.

Respectfully yours,

David Jonathan Tulis

Addenda

1. Affidavit of complaint
2. **EXHIBIT No. 1** Correspondence with Rheubin Taylor
3. **EXHIBIT No. 2** Tennessee transportation administrative notice
4. **EXHIBIT No. 3** Phillips v. Lewis, 3 Shannon's cases 230, 1877
5. **EXHIBIT No. 4** Administrative notice on limits of arrest power in Tennessee under 'public offense' rule

David Jonathan Tulis Affidavit of Complaint

Regarding crime against him in arrest by deputy Bennett under direction of Austin Garrett

David Jonathan Tulis, being of sound mind and body, testifies that he lives in Hamilton County, Tenn., and hereby testifies of the crimes committed against him Nov. 22, 2024, in his arrest, imprisonment, jailing and criminal prosecution for "driving a motor vehicle." 3

1. Austin Garrett is sheriff of Hamilton County, Tenn.
2. He employs Mr. Bennett as a deputy.
3. On Nov. 22, 2024, Mr. Bennett arrests affiant and charges him with a "light law" violation and with "failure to identify." He takes affiant to Silverdale detention center as prisoner.
4. On scene of the encounter, Mr. Bennett says "driving is a privilege."
5. Affiant rebuts presumption that he is involved in the privilege of driving, calling it a presumption and suggesting Mr. Bennett obtain evidence of commercial activity under T.C.A. § Title 55 as carrier before proceeding to obstruct his free movement.
6. The deputy indicates such evidence is not necessary to affect an arrest for driving with a damaged but functioning taillight.
7. Mr. Bennett lacks a warrant for affiant's arrest.
8. Mr. Bennett does not identify the act as a "public offense."
9. Mr. Bennett is bound by Tenn. const. Art. 1, sect. 7, prohibiting general warrants and requiring him to get a warrant, as a missing piece of red taillight plastic does not meet the requirements for public offense per T.C.A.§ 40-7-103.
10. Sheriff Garrett and deputy Bennett are subject of two administrative notices about the law.
11. They are Tennessee transportation administrative notice, served March 1, 2018, and Administrative notice on limits of arrest power in Tennessee under "public offense" rule, served on the county commission April 15, 2020, and on HCSO's counsel, Coty Wamp, Aug. 21, 2020, and Oct. 12, 2020.
12. If the law itself were not clear, notices cite law and court cases.
13. The sheriff's office has acquiesced in the determinations in the notices.
14. Affiant's arrest is injurious, oppressive, under coloration of law only, done in bad faith and malice knowingly and intentionally in violation of law and a citizen's due process rights.
15. Further affiant sayeth naught. I swear the above and foregoing representations are true and correct to the best of my information, knowledge and belief.

David Jonathan Tulis

David Jonathan Tulis

STATE OF TENNESSEE, COUNTY OF HAMILTON — I, the undersigned Notary Public, do hereby affirm that David Jonathan Tulis personally appeared before me on the 28th day of November 2023, and signed this affidavit as his free and voluntary act and deed.

ANN L. WALTON
STATE OF TENNESSEE NOTARY PUBLIC
HAMILTON COUNTY

Ann L Walton

Notary Public

Commission Exp: 08/12/2026

Exhibit 1

Gmail

David Tulis <davidtuliseditor@gmail.com>

Service by Tulis of administrative notice on Titles 55, 65

1 message

David Tulis <davidtuliseditor@gmail.com> Wed, Jun 21, 2023 at 12:04 PM
To: "Taylor, Rheubin" <RMTaylor@hamiltontn.gov>
Bcc: ecrisman@timesfreepress.com, John Wilson <news@chattanoogan.com>, Christopher Sapp <dadsapp@gmail.com>

Rheubin Taylor
County Attorney
Hamilton County, Tenn.

Dear Mr. Taylor,

On Tuesday I made service to Sheriff Austin Garrett, through his administrative assistant Kacey Picou, of a courtesy copy of my Tennessee transportation administrative notice. I say courtesy copy because the county and the sheriff's department are under this notice since March 1, 2018.

On that date I met with Sheriff Jim Hammond and three other officers of the HCSO to serve the notice describing the limits of the motor vehicle and carrier laws the department uses to conduct traffic arrests upon people not under these authorities.

Mr. Taylor, I have given through our press platforms extensive notice to you and your organization of the limits of the motor vehicle laws, insisting that the supreme law be regarded and limits and disabilities in state transportation law be respected, the peace and welfare of the county's people's requiring it. I trust you will advise your employer accordingly.

Respectfully yours

David J. Tulis

David J. Tulis

--
David Tulis
NoogaRadio 96.9 FM
Your USA Radio News affiliate
(423) 316-2680 c

Exhibit 2 ✡ ✡ ✡

Administrative notice

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Abstract

The exercise of police power of Tennessee state government upon transportation is authorized through Titles 55 and 65 of the Tenn. Code Ann. The power regulates the for-profit use of the roads and highways by carriers whose owners, operators, chauffeurs and drivers operate motor vehicles in carrying people or goods for hire. Such conduct is regulable in the public interest — for the public health, safety and welfare. This regulation of transportation does not infringe on the right of travel upon the roadways. Constitutionally guaranteed rights were not abrogated with the imposition of the driver license in 1937 and other statutes, which rights are practiced today by people in this state for their pleasure, private purpose, and for the exercise of myriad other God-given rights such as religion and assembly.

[Document prepared by David Jonathan Tulis]

Affidavit of power of attorney by David Jonathan Tulis

Regarding Transportation Administrative Notice Tennessee

I, David Jonathan Tulis, being of sound mind and body, testify that I am a resident of Hamilton County, Tenn., and reside at 10520 Brickhill Lane, Soddy-Daisy.

Under my own power of attorney, I have prepared this affidavit and state as follows: I affirm I have delivered true and accurate copies of transportation administrative notice, attached 20pp, to six jurisdictions within Hamilton County, Tenn., describing Tenn. Code Ann. Title 55 and U.S. Code Title 49, the state and federal transportation codes respectively, their authority and the limits thereon. Document prepared by David Jonathan Tulis.

a. Chattanooga city council held a regularly-scheduled meeting February 20th, 2018, a Tuesday. I made a personal appearance before the council. At the end of the meeting's agenda, I took a turn at the podium and delivered a five minute oration about the distinction between travel and transportation, summarizing the contents of my transportation administrative notice. I gave members of the council a copy of the notice, either directly or by having one pass the copies down the row. Members are Chip Henderson, Jerry Mitchell, Ken Smith, Darrin Ledford, Russell Gilbert, Carol Berz, Erskine Oglesby, Anthony Byrd and Demetrus Coonrod. City attorney Wade Hinton received a copy. Record of my oral presentation is on Facebook at https://www.facebook.com/hotnews1240/videos/1615301948536995/
b. On March 1, 2018, I had an interview at 11 a.m. with Hamilton County Sheriff Jim Hammond, his spokesman Matt Lea and a third officer, Mr. Branham. I handed a copy of transportation administrative notice to Sheriff Hammond at my left, and a copy to Mr. Lea across the table at my right.
c. On March 5, 2018, I placed into the U.S. mails, under the registered letter seal, a copy of my transportation administrative notice to Tennessee Gov. Bill Haslam. (RE338842074US)
d. On March 5, 2018, I placed into the U.S. mail, a first-class envelope containing a complete copy of transportation administrative notice to David W. Purkey, commissioner of safety and homeland security, agent of Tennessee Gov. Bill Haslam.
e. On May 24, 2018, I handed a copy of transportation administrative notice to City of East Ridge council members Larry Sewell, Jacky Cagle, Esther Helton and Brian Williams of East Ridge, Tenn., during a regularly scheduled meeting, with copies of the document also going to Mayor Brent Lambert, city attorney Mark Litchford and city manager J. Scott Miller.
f. On Tuesday, Aug. 7, 2018, at 10:28 a.m., I emailed a copy as an attachment of transportation administrative notice to Red Bank city attorney Arnold Stulce at his law firm email address, astulce@mwalawfirm.com, providing the city of Red Bank administrative notice about the scope of state and federal transportation law.

To date, no rebuttal by any receiving party has been made. Further affiant saith not. I swear the above and foregoing representations of service and the attached notice are true and correct to the best of my information, knowledge and belief.

David Jonathan Tulis

David Jonathan Tulis

STATE OF TENNESSEE, COUNTY OF HAMILTON — I, the undersigned Notary Public, do hereby affirm that David Jonathan Tulis personally appeared before me on the 12 day of September 2018, and signed this affidavit as his free and voluntary act and deed.

Sarah Thompson

Notary Public

SARAH THOMPSON
STATE OF TENNESSEE NOTARY PUBLIC
HAMILTON COUNTY

My Commission Expires Sept. 27, 2020

BK/PG: 470/118-138

18008511

21 PGS:AL-POWER OF ATTY	
10/16/2018 - 10:14 AM	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	105.00
ARCHIVE FEE	0.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	107.00

STATE OF TENNESSEE, RHEA COUNTY
TERESA HULGAN
REGISTER OF DEEDS

Administrative Notice

On Authority to Regulate Transportation, Travel on Tennessee Public Roadways

The Tennessee constitution, state law and court rulings delineate the state's authority over human activity upon the people's right of way. on roads, streets, lanes, boulevards, thoroughfares and highways, and the limits thereto.

The state's authority over certain uses of the road is described in several places: Title 55 of Tennessee code annotated (motor and other vehicles), title 4 (department of safety), title 5 (uniform administrative procedures act) and title 65 (motor carriers).

Federal authority to regulate interstate commerce and intrastate commerce is found at title 49 of the U.S. code.

Driver licenses are under the Uniform Classified and Commercial Driver License Act of 1988, regulating transportation on Tennessee roads, Title 55.

Transportation is "the removal of goods or persons from one place to another, by a carrier." A carrier is an "individual or organization engaged in transporting passengers or goods for hire." Black's Law Dictionary 6th ed.

Two types of carrier exist.

- "Common carriers are those that hold themselves out or undertake to carry persons or goods of all persons indifferently, or of all who choose to employ it. Merchants Parcel Delivery v. Pennsylvania Public Utility Commission, 150 Pa.Super. 120, 28 A.2d 340, 344. Those whose occupation or business is transportation of persons or things for hire or reward. Common carriers of passengers are those that undertake to carry all persons indifferently who may apply for passage, so long as there is room, and there is no legal excuse for refusal." Black's Law Dictionary 6th ed.

- "Private carriers are those who transport only in particular instances and only for those they choose to contract with." Black's Law Dictionary 6th ed.

Commerce means trade, traffic and transportation within the jurisdiction of the United States; between a place in a state and a place outside of the state, including a place outside the United States. It also means trade, traffic and transportation in the United States which affects any trade, traffic and transportation in any state. Tenn. Code Ann. § 55-50-102. Definitions 9(A), 9(B).

"Of course, the legislature has full authority over the highways of the State and may lay out their routes and regulate their use, and it may likewise prescribe the conditions on which highways may be used for gain by carriers for hire." S.E. Greyhound Lines v. Dunlap, 160 S.W.2d 418 (Tenn. 1942).

Controlling authorities: Tenn. Code Ann., 49 U.S. Code

"Commercial driver license" means a license issued by the department in accordance with the standards contained in 49 CFR part 383 to an individual that authorizes the individual to operate a class of commercial motor vehicle." Tenn. Code Ann. § 55-50-102. Chapter definitions. "'Commercial motor vehicle' means *** a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo" if the vehicle weighs 5 tons, carries more than 10 passengers or hauls hazardous materials. 49 U.S. Code § 31101 - Definitions

Tennessee department of safety and homeland security is an administrative department serving the governor's office and engages hearing officers to conduct contested case hearings under the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-3-2005. The commissioner "has the authority to establish and to promulgate such rules and regulations governing the administration and operation of the department *** not inconsistent with the laws of this state," under the authority of the state constitution. Tenn. Code Ann. § 4-3-2009.

The department has authority to oversee "administration and enforcement of title 65, chapter 15." Tenn. Code Ann. § 4-3-2012. Rules and regulations regarding motor carriers. It also has authority to implement title 55, chapter 50. Tenn. Code Ann. § 55-50-201.

Purpose of regulation: Protect public assets

Title 65, chapter 15, concerns itself with the public safety and the preservation of the people's assets, namely the highways and roads in Tennessee. The law is enacted "for the sole purpose of promoting and conserving the interest and convenience of the public" and "to supervise and regulate the transportation of persons and property by motor vehicle over or upon the public highways of this state" as well as "certain businesses closely allied with such motor transportation." Tenn. Code Ann. § 65-15-101. Purpose — Participation in the unified carrier registration system.

The department's duty in a unified carrier registration system is to "protect the property of the state and its highways from unreasonable, improper or excessive use."

The regulable activity of operating as a motor carrier is to carry goods and people for hire. "(11) 'Motor carrier' means any person, firm, partnership *** operating any motor vehicle with or without semitrailers attached, upon any public highway for the transportation of persons or property, or both, or for providing or furnishing such transportation service, for hire as a common carrier." Tenn. Code Ann. § 65-15-102. Part definitions.

Taxicab, sedan, shuttle, motor vehicle, limousine are instrumentalities used by a "for-hire motor carrier," who is a "person engaged in the transportation of goods or passengers for compensation." People and companies involved in for-hire services moving goods and people use "motor vehicles," which term means "any automobile, automobile truck, motor bus, truck bus or any other self-propelled vehicle not operated or driven upon fixed rails or tracks" Tenn. Code Ann. § 65-15-102(14).

The people's roads are turned into instrumentalities, too, when used in interstate commerce. 29 CFR § 776.29 Instrumentalities and channels of interstate commerce. "(a) Typical examples. Instrumentalities and channels which serve as the media for the movement of goods and persons in interstate commerce or for interstate communications include railroads, highways, city streets; telephone, gas, electric and pipe line systems; radio and television broadcasting facilities; rivers ***. "

The department of safety and homeland security has the authority to "license, supervise and regulate every motor carrier in the state and promulgate rules and regulations pertaining thereto" Tenn. Code Ann. § 65-15-106. Powers of department.

Since 1921 in Tennessee, the law is concerned about the damage to the public right of way and puts parties who damage the roads for private profit under state supervision and criminal penalty.

"No vehicle, truck, engine, or tractor of any kind *** shall be permitted to operate upon any street, road, highway, or other public thoroughfare that, either by reason of its weight or the character of its wheels, will materially injure the surface or foundation of the street, road, highway, public thoroughfare, including the bridges thereon, unless and until the owner or operator of the vehicle of any kind has complied with the rules and regulations that may be prescribed by the departments of transportation and safety ***." Tenn. Code Ann. § 55-7-101. Operation of vehicles injurious to highways must conform to regulations.

"The owner of any vehicle driven upon the public thoroughfare, in violation of any of §§ 55-7-101 — 55-7-105, or regulations issued thereunder, shall also be liable in an action for damages caused to these public thoroughfares, the action to be prosecuted in the name of the state by the district attorney general of the district in which the violation occurs." Tenn. Code Ann. 55-7-106. Liability for damages to highways — Suit by district attorney general.

The general assembly imposes detailed provisions about operating motor vehicles,— for example, about making left-hand turns and right-hand turns (Tenn. Code Ann. § 55-8-140); about. a driver "of any motor vehicle carrying passengers for hire or of any school bus carrying any school child" being required to stop at railroad crossings, (Tenn. Code Ann. § 55-8-147), about following too closely (Tenn. Code Ann. § 55-8-124) and myriad other rules.

"Motor vehicles are dangerous machines; and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest the State may make and enforce regulations reasonably calculated to promote care on the part of all, residents and non-residents alike, who use its highways." Hess v. Pawloski, 274 U.S. 352 (1927).

Regulation ensures safety of traveling public, pedestrians

The state of Tennessee regulates commerce on the roads through Title 55 of Tenn. Code Ann. via the department of safety & homeland security. "(a) The department of safety is vested with the power and authority, and it is its duty, to license, supervise and regulate every motor carrier in the state and promulgate rules and regulations pertaining thereto." Tenn. Code Ann.§ 65-15-106. Powers of department.

"The ability to drive a motor vehicle on a public highway is not a fundamental 'right.' Instead, it is a revocable 'privilege' that is granted upon compliance with statutory licensing procedures. State and local governments possess an inherent power, i.e. police power, to enact reasonable legislation for the health, safety, welfare, morals, or convenience of the public. Thus, our legislature, through its police power, may prescribe conditions under which the 'privilege' of operating automobiles on public highways may be exercised." State v. Booher, 978 S.W.2d 953 (Tenn. Crim. App. 1997).

Early court decisions in Tennessee and other states emphasize the need for the state to regulate commerce to promote public safety.

"The business of using the public highways for profit, earned by transporting persons and property for hire, has been definitely excluded from the category of private or personal rights arising from citizenship. Recent decisions of the Supreme Court of the United States have determined certain fundamental principles concerning the use of the highways. One is 'that the primary use of the state highways is the use for private purposes; that no person is entitled to use the highways for gain as a matter of common right. *** The statute under consideration is a comprehensive regulation of the use of the state highway system by both common carriers and contract carriers. It is designed *** to promote and preserve economically sound transportation, to regulate the burden of use to which the highways may be subjected, to protect the safety of the traveling public, and to protect the property of the state in the highways from unreasonable, improper, or excessive use.'" State v. Harris, 76 s.w.2d 324, 168 Tenn. 159 (1934).

"The movement of motor vehicles over highways, being attended by constant and serious dangers to the public and also being abnormally destructive to the highways, is a proper subject of police regulation by the state. In the absence of national legislation covering the subject, a state may prescribe uniform regulations necessary for safety and order in respect to operation of motor vehicles on its highways, including those moving in interstate commerce. A reasonable graduated license fee on motor vehicles, when imposed on those engaged in interstate commerce, does not constitute a direct and material burden on such commerce and render the act imposing such fee void under the commerce clause of the federal Constitution." Hendrick v. Maryland, 235 U.S. 610 (1915).

The Tennessee code provides myriad detailed rules of "vehicular traffic" to protect all users of the people's highways. For example:

➢ Tenn. Code Ann. § 55-8-110, traffic-control signals, in which green means go, orange means caution and red means stop.

➢ Rules about how "a vehicle shall be driven upon the right half of the roadway," Tenn. Code Ann. § 55-8-115.

➢ Rules about a "driver of a vehicle overtaking another vehicle," Tenn. Code Ann. § 55-8-117.

➢ Rules holding that "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent." Tenn. Code Ann. § 55-8-124.

The law's focus is that people involved in transportation be mindful of others, whether these others on the roadway are involved in transportation or in travel.

The law requires special care by those involved in transportation of another category of individual or person using the public right of way, namely the pedestrian.

> "(a) Notwithstanding the foregoing provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.
>
> "(b) Notwithstanding any speed limit or zone in effect at the time, or right-of-way rules that may be applicable, every driver of a vehicle shall exercise due care by operating the vehicle at a safe speed, by maintaining a safe lookout, by keeping the vehicle under proper control and by devoting full time and attention to operating the

vehicle, under the existing circumstances as necessary in order to be able to see and to avoid endangering life, limb or property and to see and avoid colliding with any other vehicle or person, or any road sign, guard rail or any fixed object either legally using or legally parked or legally placed, upon any roadway, within or beside the roadway right-of-way including, but not limited to, any adjacent sidewalk, bicycle lane, shoulder or berm." Tenn. Code Ann. § 55-8-136. Drivers to exercise due care.

The duty of the Tennessee highway patrol is to "enforce all laws *** regulating traffic," Tenn. Code Ann. 4-7-104. To this end, the state has created a unified carrier registration system to "[p]rotect the welfare and safety of the traveling and shipping public in their use of the highways," Tenn. Code Ann. § 65-15-101(a)(3).

The provision makes clear: *Some people on the road travel, and some ship.* Shipping is a type of travel, a subcategory of travel.

Fees are collected from "freight motor vehicle" operators to fund regulatory activity protective of the traveling public in two categories of commercial and private. "This safety inspection fee shall provide a means for the state to exercise its police powers in order to protect the highways, and to promote the safety of the traveling public by the regulation of the use of and safe operation of such [commercial] vehicles over the highways." Tenn. Code Ann. § 65-15-112. Inspection, control, and supervision fee — Motor vehicle account.

"(16) 'Public highway' means every public street, alley, road, highway, or thoroughfare of every kind in this state used by the public, whether actually dedicated to the public and accepted by the proper authorities or otherwise." Tenn. Code Ann. § 65-15-102.

"[T]he primary use of the state highways is the use for private purposes; that no person is entitled to use the highways for gain as a matter of common right; that as a proprietor, in preserving its highways, the state may, with little restraint, prescribe the conditions on which those highways can be used." Hoover Motor Express Co. v. Fort, 167 Tenn. 628 *; 72 S.W.2d 1052 **; 1933 Tenn. LEXIS 71.

"An examination of the acts of Congress discloses no provision, express or implied, by which there is withheld from the State its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them." Morris v. Duby, 274 U.S. 135 (1927).

"The reason for such a suspension or revocation is not to punish the driver but is to protect the general public by removing a potential menace from the highways. *** The reason for such a suspension or revocation is not to punish the driver but is to protect the general public by removing a potential menace from the highways. *** " In other words, the granting of this license in the first instance to the operator is a privilege which is subject to reasonable regulations in the interest of the public under the police power of the State." Goats v. State, 211 Tenn. 249, 364 S.W.2d 889, 891 (Tenn.1963).

"Because it is a means of guaranteeing a minimal level of driver competence, licensing improves safety on our highways and, thus, protects and enhances the well being of the residents and visitors of our state. Thus, our state legislature may properly within the scope of its police power enact reasonable regulations requiring licensing and registration of motor vehicles as it furthers the interests of public safety and welfare." State of Tennessee v. Robert K. Booher, 978 S.W.2d 953.

"By reason of the competition of the many engaged in the business, frequent contests between the operators for points advantage in the streets would follow; that there was a tendency fraught with danger in the many so engaged seeking the streets of heaviest travel for passengers, thus leading to congestion, as well as in hasty efforts made to head off and divert those waiting on the curb as offerers for passage on Street railways; that the desire and necessity to collect many small fares would tempt operators to indulge in swift and careless running; that by reason of receiving and discharging passengers at Short, unscheduled intervals there would be an interruption of traffic and endangering of other vehicles in the streets; that by reason of the small investment required many who are financially irresponsible would embark in the business." Memphis Street Railway Co. v. Rapid Transit Co., 6 Thomp., 99, 1915, justifying regulation of jitneys.

Driving, operating vehicle for profit is subject to regulation

The driving of an automobile is a privilege, not a property right, and is subject to reasonable regulation under the police power in the interest of the public safety and welfare. The driving of an automobile is a privilege, not a property right, and is subject to reasonable regulation under the police power in the interest of the public safety and welfare. 5 Am. Jur., 593; 42 C.J., 740, 746; Hendrick v. Maryland, 235 U.S. 610, 35 S.Ct., 140, 59 L.Ed., 385; Rutherford v. City of Nashville, 168 Tenn. 499, 79 S.W.2d 581.

"A state has power to regulate not only the use of its highways, but private contracts also, insofar as they contemplate that use; it may prescribe the terms upon which persons will be permitted to contract in respect of the use of the public highways for purposes of gain." Stephenson v. Binford, 287 U.S. 251 (1932)

The Stephenson case stresses that regulation of "motor carrier[s] for hire" is necessary in light of rising danger and "hazard on public highways."

TRAFFIC. Commerce; trade; sale or exchange of merchandise, bills, money, and the like. The passing of goods or commodities from one person to another for an equivalent in goods or money. Senior v. Ratterman, 44 Ohio St. 673, 11 N.E. 321; Fine v. Moran, 74 Fla. 417, 77 So. 533, 538; Bruno v. U. S., C.C.A.Mass., 289 F. 649, 655; Kroger Grocery and Baking Co. v. Schwer, 36 Ohio App. 512, 173 N.E. 633. The subjects of transportation on a route, as persons or goods; the passing to and fro of persons, animals, vehicles, or vessels, along a route of transportation, as along a street, canal, etc. United States v. Golden Gate Bridge and Highway Dist. of California, D.C.Cal., 37 F. Supp. 505, 512.

"These cases, though involving regulatory statutes or ordinances, all recognize and are based upon the fundamental ground that the sovereign state has plenary control of the streets and highways, and, in the exercise of its police power, may absolutely prohibit the use of the streets as a place for the prosecution of a private business for gain. They all recognise the fundamental distinction between the ordinary right of a citizen to use the streets in the usual way and the use of the streets as a place of business or main instrumentality of a business for private gain. The former is a common right, the latter an extraordinary use. As to the former the legislative power is confined to regulation, as to the latter it is plenary and extends even to absolute prohibition. Since the use of the streets by a common carrier in the prosecution of its business as such is not a right, but a mere license or privilege, it follows that the Legislature may prohibit such use entirely without impinging any provision either of the state or federal Constitution. *** [T]he use to which the appellant purposes putting the streets is not their ordinary or customary use, but a special one. He purposes using them for the transportation of passengers for hire, a use for which they are not primarily constructed." Hadfield v. Lundin, 98 Wash. 657. 1917.

"[T]he business of operating as a motor carrier of property for hire along the highways of the state is one affected with the public interest. It further declares that the rapid increase of motor carrier traffic and the lack of effective regulation have increased the dangers and hazards on public highways and made more stringent regulations imperative to the end that the highways may be rendered safer for public use, the wear and tear upon them reduced, discrimination in rates eliminated, congestion of traffic minimized, the use of the highways for transportation of property for hire restricted to the extent required by the necessities of the general public, and the various transportation agencies of the state adjusted and correlated 'so that public highways may serve the best interest of the general public.'" Stephenson v. Binford, 287 U.S. 251 (1932).

Cars, trucks, motor vehicles of all kinds make up traffic, as defined in Bouvier's Law Dictionary (1856). "TRAFFIC. Commerce, trade, sale or exchange of merchandise, bills, money and the like." People involved in traffic are drivers. "DRIVER. One employed in conducting a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals." Bouvier's, 1856.

Drivers are people involved in commerce or who are servants. Tennessee statute identifies two types, one under authority of a commercial driver's license, the other under a classified driver license. "Commercial driver license" means a license issued by the department in accordance with the standards contained in 49 CFR part 383 to an individual that authorizes the individual to operate a class of commercial motor vehicle."

"Every person applying for an original or renewal driver license shall be required to comply with and be issued a classified driver license ***. Tenn. Code Ann. 55-50-301. License required — Requirements — Exception — Applicability to temporary licenses and permits. Among the requirements: "No person, except those expressly exempted in this section, shall drive any motor vehicle upon a highway in this state unless the person has a valid driver license under this chapter for the type or class of vehicle being driven." Tenn. Code Ann. § 55-50-301(a)(1).

Licenses give permission to do that which otherwise forbidden or prohibited. With reference to highways and roads: "Streets and Ways A permit to use street is a mere license revocable at pleasure. City of Boston v. A.W. Perry, Inc., 304 Mass. 18, 22 N.E.2d 627, 630; Lanham v. Forney, 196 Wash. 62, 81 P.2d 777, 779. City having right to regulate use of its streets by motor vehicles for hire may issue licenses; license being permission. Ex parte Schutte, 118 Tex.Cr.R. 182, 42 S.W.2d 252, 255. Permissive use and license as synonymous, Aldine Realty Co. of Pittsburgh v. Manor Real Estate & Trust Co., 297 Pa. 583, 148 A. 56, 58. Street railway location or elevated railway location as license. Boston Elevated Ry. Co. v. Commonwealth, 310 Mass. 528, 39 N.E.2d 87, 103, 106, 108. The privilege of using the streets and highways by the operation thereon of motor carriers for hire can be acquired only by permission or license from the state or its political subdivisions. Blashfield, Cyc. of Automobile Law and Prac., Perm. Ed., 331." Black's Law Dictionary, 4th edition.

"The driving of an automobile is a privilege, not a property right, and is subject to reasonable regulation under the police power in the interest of the public safety and welfare." Earl Sullins was a licensee who had obtained the privilege of driving an automobile by application and the remission of fees. He violated the 1939 driver license law, Section 11 of the original act, as amended by the 1939 Act, section 5, is as follows: "(b) In the event of any final judgment for damages to property or personal injury resulting from the negligent operation of any motor vehicle,*** the Department of Safety shall forthwith suspend the license of any chauffeur or operator of the motor vehicle *** until conditions are met." Sullins *v.* Butler, 135 S.W.2d 930 (Tenn. 1940).

The holding of a driver license by someone involved in regulable activity is subject to civil sanction; the seizure of a license or a finding that a person is a habitual offender against rules for operators of motor vehicles is subject to statute. "If the court finds that the defendant is not an habitual offender, the proceeding shall be dismissed, but if the court finds that such defendant is an habitual offender, the court shall make an order directing that such person shall not operate a motor vehicle on the highways of this state and that such person shall surrender to the court all licenses to operate a motor vehicle upon the highways of this state." Tenn. Code Ann. § 55-10-613(a)

"We conclude that the use of the word 'shall' by the legislature removes all discretion from the trial court as to the decision to revoke a person's license to drive once the determination that he is an habitual offender has been made. The sanction of declaring an individual to be an habitual offender is not a matter affected by principles of equity." State vs. Jonathan Malady, 952 S.W.2d 440; 1996 Tenn. Crim. App. LEXIS 449

Federal law controls transportation enforcement

"The power of the federal government to regulate interstate commerce gives it control over motor vehicles engaged in business between one state and another of the same degree as such control exists as to any other class of vehicles engaged in the same occupation." 7A Am Jur 2d, Automobiles and highway traffic.

49 U.S. Code 13102, Motor Carriers etc. "(16) Motor vehicle. – The term 'motor vehicle' means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used o a highway in transportation, or a combination determined by the Secretary *** ." (23) Transportation.—The term 'transportation' includes – (A) a motor vehicle, vessel, warehouse *** or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and (B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property."

At 18 U.S. Code, Part 1, Chapter 2 - AIRCRAFT AND MOTOR VEHICLES, among the definitions:

> **"(6) Motor vehicle.** — The term 'motor vehicle' means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo.
>
> **"(10) Used for commercial purposes.** — The term 'used for commercial purposes' means the carriage of persons or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit.

Code of Federal Regulations 49, part 383. Definitions: "Driver means any person who operates any commercial motor vehicle."

> *Commercial motor vehicle* means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle -
>
> (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or
>
> (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or
>
> (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
>
> (4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

"*Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service." 49 CFR 390.5 - Definitions.

"(56) 'Vehicle' means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks." Tenn. Code Ann. § 55-50-102. Chapter definitions.

Federal law pre-empts state law when its standards are more stringent. 49 CFR Part 392, Subpart A - General.

"§ 392.1 Scope of the rules in this part.

"Every motor carrier, its officers, agents, representatives, and employees responsible for the management, maintenance, operation, or driving of commercial motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules in this part.

"§ 392.2 Applicable operating rules.

"Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with."

Federal jurisdiction over the Tennessee department of safety is through compacts under the interstate commerce clause of the U.S. constitution that give authority in Tennessee to 49 CFR Chapter III, Subchapter B - Federal Motor Carrier Safety Regulations (MCSAP). Rules for commercial trucks and drivers begin at part 390.

The federal government regulates interstate commerce to protect the public from injuries and losses caused by commercial motor vehicles. "The MCSAP is a federal grant program that provides financial assistance to states to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMVs). The goal of the MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs" 49 CFR 350.101.

"The purpose of this part is to ensure that the Federal Motor Carrier Safety Administration (FMCSA), and states *** work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient transportation system. *** " 49 CFR § 350.103 What is the purpose of this part?

The national Motor Carrier Safety Assistance Program spends tax dollars to help protect travelers on the highways — to "[i]ncrease public awareness and education on commercial motor vehicle safety" and "[t]arget unsafe driving of commercial motor vehicles and non commercial motor vehicles in areas identified as high risk crash corridors" 49 CFR § 350.110.

Traffic enforcement against offenses such as speeding is directed at commercial carriers. Enforcement "means enforcement activities of state or local officials, including the stopping of vehicles operating on highways, streets, or roads for moving violations of state or local motor vehicle or traffic laws (e.g., speeding, following too closely, reckless driving, improper lane changes)" 49 CFR § 350.111.

The U.S. government oversees state protocols "to promote adoption and enforcement of State laws and regulations pertaining to commercial motor vehicle safety" 49 CFR 355.1 - Purpose. "These provisions apply to any state that adopts or enforces laws or regulations pertaining to commercial motor vehicle safety in interstate commerce" 49 CFR § 355.3 Applicability.

Federal rules apply to road users involved in transportation. "**(a)** The rules in subchapter B of this chapter are applicable to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce. **(b)** The rules in part 383 of this chapter, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in § 383.5 of this subchapter, in interstate or intrastate commerce and to all employers of such persons." 49 CFR § 390.3 General applicability.

Operator defined as commercial

"(46) 'Operator' means: (A) For purposes of a conventionally operated vehicle, every person, other than a chauffeur, who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle." Tenn. Code Ann. § 55-8-101. Chapter and part definitions.

Operators are users of the highway in commerce, starting at the beginning of regulable highway commerce in Tennessee.

"3079a199. Operator is a common carrier, and the business is a privilege, when. — any person, firm, or corporation operating for hire any public conveyance propelled by steam, compressed air, gasoline, naphtha, electricity, or other motive power for the purpose of affording a means of street transportation similar to that ordinarily afforded by street railways (but not operated upon fixed tracks) by indiscriminately accepting and discharging such persons as may offer themselves for transportation along the way in course of operation, shall be and the same is hereby declared and defined to be a common carrier, and the business of all such common carriers is hereby declared to be a privilege." (1915, chapter 60 Section 1, cited Shannon's Compilation of Tennessee Statutes, Volume 2, 1917.

From nearly the beginning of automobile use in Tennessee, cities were allowed to demand permits, licenses and bonds for those working as operators. "Cities May impose a tax for such privilege. — And all such incorporated cities and towns are hereby authorized and empowered to impose upon all such common carriers a tax for the exercise of the privilege herein granted." Shannon's *A Compilation of the Tennessee Statutes,* 3079a204, 1917.

"The word 'Jitney' we think may be defined to be a self-propelled vehicle, other than a streetcar, traversing the public streets between certain definite points or termini, and as a common carrier conveying passengers at a 5-cent or some small fare between such termini and indeterminate points, and so held out, advertised, or announced." Memphis Street Railway Co. v. Rapid Transit Co., 6 Thomp., 99, 1915.

Driver defined as commercial

The distinction between driver and traveler appears ancient. In the Holy Bible, a driver is a hireling serving a master with a freight-carrying animal, or a soldier taking orders. Moses and the Israelites exalted God's destruction of the Egyptian military in the Red Sea, "Both horse and driver he has hurled into the sea," Exodus 15:1. In a battle with the king of Judah, wicked King Ahab is hit by a "chance" arrow: "The king told his chariot driver, 'Wheel around and get me out of the fighting. I've been wounded,'" 2 Chronicles 18:33. In a lament, Job says, "Captives also enjoy their ease; they no longer hear the slave driver's shout," Job 3:18. The verb "drive" is used 89 times in the scriptures (NKJV) and often refers to the act of movement under compulsion and duress, as in, "I will send the hornet ahead of you to drive the Hivites, Canaanites and Hittites out of your way," Exodus 23:28.

Synonyms from driver are from the era of horse-drawn commerce, including synonyms such as carter, coachman, porter, shipper, wagoner, cabman, conductor, hack, drayman, teamster, carman, hauler, waggoner.

Tenn. Code Ann. defines various classes of commercial users of the public right of way.

"'Chauffeur' means every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation;" Tenn. Code Ann. § 55-8-101(8)

"'Driver' means: (A) For purposes of a conventionally operated vehicle, every person who drives or is in actual physical control of a vehicle." Tenn. Code Ann. § 55-8-101. Chapter and part definitions.

"DRIVER: One employed in conducting a coach, carriage, wagon, or other vehicle,with horses, mules, or other animals, or a bicycle, tricycle, or motor car, though not a street railroad car. See Davis v. Petrinovich, 112 Ala. 654, 21 South. 344, 36 L. R. A.615; Gen. St. Conn. 1902." Black's Law Dictionary 1st edition

"DRIVER — One employed in conducting or operating a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals, or a bicycle, tricycle, or motor car, though not a street railroad car. See Davis v. Petrinovich, 112 Ala. 654, 21 So. 344, 36 L.R.A. 615; Isaacs v. Railroad Co., 7 Am. Rep. 418, 47 N.Y. 122." Black's Law Dictionary, 3rd Ed.

DRIVE, v. To impel motion and quicken. Bosse v. Marye, 80 Cal.App. 109, 250 P. 693, 696. To compel, urge, or move in some manner or direction. Howell v. J. Mandelbaum & Sons, 160 Iowa 119, 140 N.W. 397, 398, Ann.Cas.1915D, 349. To

control the motive power, as of a motor vehicle. Grant v. Chicago, M. & St. P. Ry. Co., 78 Mont. 97, 252 P. 382, 385." Black's Law Dictionary 4th edition

"A driver's license is usually prerequisite to the privilege of driving a motor vehicle on the highways, and no person except those individuals who are specifically exempted by law may drive or operate any motor vehicle on the highways of the state without a proper license to do so." 7A Am Jur 2d Automobiles and highway traffic. A driver or chauffeur is required to have a license to operate in commerce. "(33) 'License to operate a vehicle' means any operator's or chauffeur's license, or any other license or permit to operate a motor vehicle issued under the laws of this state." Tenn. Code Ann. § 55-8-101.

"'For-hire motor carrier' means a person engaged in the transportation of goods or passengers for compensation" Tenn. Code Ann. § 65-15-102(7).

"'Contract hauler' means any person, firm or corporation engaged in the transportation for compensation or hire of persons and/or property for a particular person or corporation to or from a particular place or places under special or individual agreement or agreements, and not operating as a common carrier" Tenn. Code Ann. § 65-15-102(4).

"'Motor vehicle' means any automobile, automobile truck, motor bus, truck, bus or any other self-propelled vehicle not operated or driven upon fixed rails or tracks *** " Tenn. Code Ann. § 65-15-102(14).

"'Private carrier' means a person who provides transportation of property or passengers by a commercial motor vehicle and who is not a for-hire motor carrier" Tenn. Code Ann. § 65-15-102(15).

A driver who is a licensee is distinct from a traveler. Transportation is a category of travel.

"Appellant's right to travel has not been infringed upon by the requirement by our legislature that an individual have a valid driver's license to lawfully operate a motor vehicle on the public highways of this state." State of Tennessee v. Anthony Troy Williams 2012 Tenn. Crim. App. LEXIS 832 *; 2012 WL 4841547.

Travel is unaffected by and not infringed upon by the transportation law in Tennessee because transportation law controls transportation, and doesn't infringe or abrogate the right of travel in Tennessee. The transportation statute passes the court's constitutional muster.

Are private cars subject to rules? Yes, if used in transportation

In some uses, privately owned cars are subject to regulation under transportation.

Transportation network company. In the context of Internet-based ride-sharing services such as Uber and Lyft, state law holds such cars used by private individuals as motor vehicles in ride-sharing services are subject to regulation under Title 65. "'Personal vehicle' means a vehicle that is used by a transportation network company driver and is: **(A)** Owned, leased, or otherwise authorized for use by the transportation network company driver; and (B) Not a taxicab, limousine, or for-hire vehicle." Tenn. Code Ann. § 65-15-301. Part 3 definitions, transportation network companies. A rider in this context is involved in commercial activity as customer.

But "[a] transportation network company driver is not a chauffeur as defined in Tenn. Code Ann. 55-50-102(7) and is not subject to the requirements relating to commercial driver licenses or commercial vehicles covered under title 55, chapter 50." Tenn. Code Ann. § 65-15-302. Laws and regulations applicable to transportation network companies.

In the interest of public safety, a transportation network company driver must "possess a valid driver license," have "proof of registration for any motor vehicle used to provide a prearranged ride" and "possess proof of personal automobile liability insurance." Tenn. Code Ann. § 65-15-306. Individuals prohibited from acting as drivers.

Ridesharing and jitney services. Similarly, ridesharing or jitney services are subject to regulation because they are involved in transportation. "Any person operating for hire any public conveyance *** for the purpose of affording a means of street transportation similar to that ordinarily afforded by street railways (but not operated upon fixed tracks) by indiscriminately accepting and discharging such persons as may offer themselves for transportation along the course of operation, is declared to be a common carrier, and the business of all such common carriers is declared to be a privilege." Tenn. Code Ann. 65-19-101. Common carrier — Business declared a privilege. The common carrier is required to obtain a municipal privilege license, Tenn. Code Ann. § 65-19-102, and obtain a minimum $5,000 bond. Tenn. Code Ann. § 65-19-103. Bond required.

Ridesharing services. In 2017 the general assembly passed a ridesharing act to regulate employers/employees involved in for-hire ridesharing arrangements.

"'Ridesharing' means the prearranged transportation of persons in a motor vehicle where such transportation is incidental to another purpose of a volunteer driver, and includes ridesharing arrangements known as carpools, vanpools, and buspools." Tenn. Code Ann. § 65-19-202. Part 2 Tennessee Ridesharing Act. It regulates any act to "transport passengers for hire."

Drivers transport goods or people for hire, but they also "travel." A driver who does "not exercise a sound and reasonable discretion in travelling" will have a wreck and be liable. Bouvier's 1853.

Subject to state commercial regulation: 'Vehicles'

"(c) 'Motor vehicle' means every vehicle that is self-propelled, excluding motorized bicycles and every vehicle that is propelled by electric power obtained from overhead trolley wires. 'Motor vehicle' means any low speed vehicle, or medium speed vehicle as defined in this chapter. 'Motor vehicle' means any mobile home or house trailer as defined in § 55-1-105." Tenn. Code Ann. § 55-1-103.

"(e) 'Vehicle' and 'freight motor vehicle' means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks." Tenn. Code Ann. § 55-1-103. "Autocycle," "motor bicycle," "motor vehicle," "motorcycle," "vehicle" and "freight motor vehicle" defined.

"(87) 'Vehicle' means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks." Tenn. Code Ann. § 55-8-101. Definitions

"(c) 'Truck' means every motor vehicle designed, used, or maintained primarily for the transportation of property." § 55-1-104. "truck" defined.

"(b) 'Owner' means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of chapters 1-6 of this title. Tenn. Code Ann. § 55-1-112. 'owner' 'person' defined.

"(c) 'Person' means every natural person, firm, copartnership, association, or corporation. Tenn. Code Ann. § 55-1-112. 'person' defined.

"(40) 'Motor vehicle' means every vehicle, including a low speed vehicle or a medium-speed vehicle that is self-propelled ***," with some trolly and electrical exceptions. Tenn. Code Ann. § 55-8-101.

Streets are available to public and private use. Statute focuses on for-profit use. "(76) 'Street' means the entire width between boundary lines of every way when any part thereof is open to the use of the public for purposes of vehicular travel" (Tenn. Code Ann. § 55-8-101).

(87) "'Vehicle' means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks" (Tenn. Code Ann. § 55-8-101).

The commercial use of automobiles in Tennessee first came under regulation in 1917 in chapter 38 of state code, "Registration of automobiles, and the regulation of their operation."

> **3079a186. Registration of automobiles, etc., with secretary of state and county court clerk; fees therefor.** — Before the owner of any automobile, motorcycle, auto truck, traction engine, or other vehicle of like character, used for the purpose of conveying persons or freight or for any other purpose, whether such vehicle is propelled by steam, gasoline, or electricity, or any other mechanical Power, she'll operate or permit to be operated,*** such owner shall register such vehicle with the Secretary of State, giving the motor power or horsepower and make the same together with the name and residence address of such owner, and shall upon payment of the following fees ***."

Among its provisions: The "owner of a motor vehicle" shall report his ownership of a vehicle Jan. 1 and pay a fee of $7.50 for a four-passenger automobile. The failure of a car dealer to report a sale to the secretary of state is a misdemeanor, and grand juries are given Inquisitorial powers to enforce the statue at 3079a193. "No automobile shall be run or driven upon any road, street, highway, or other public thoroughfare at a rate of speed in excess of twenty miles per hour[.]" 307a195. The traveler is obligated to stop his motor vehicle when approaching a wagon pulled by a horse. These are commercial relationships.

In provisions dealing with accidents, "there shall be a lien upon such automobile for the satisfaction of such recovery as the court may award whether, at the time of the injury, such automobile was driven by the owner thereof or by his chauffeur, agent, employee, servant, or any other person using the same by loan, hire, or otherwise." 3079a197. Lien on automobile for damages.

Black's Law Dictionary, 4th edition: "MOTOR VEHICLE. In the Uniform Act Regulating Traffic on Highways, 11 U.L.A., and similar statutes, any self-propelled 'vehicle,' defined as including every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human or muscular power or used exclusively upon stationary rails or tracks. The term 'motor vehicles,' although sometimes regarded as synonymous with or limited to 'automobiles,' often has a broader meaning, and includes not only ordinary automobiles, but also motorbusses and trucks, as well as motorcycles. Blashfield, Cyc. of Automobile Law and Prac., Perm. Ed., § 2."

Taxable activity

Any act of transportation, the operation of motor vehicles, working for hire, owning and using motor vehicles on Tennessee roadways are taxable because they are privileged. "Automobiles for hire or rent. For each automobile truck for hauling baggage, freight or express , twenty-five horsepower or less, each, per annum .... $30." Etc Shannon's A Compilation of the Tennessee Statutes, Vol. V, 1918.

From the early 1900s, Tennessee state government demanded registration of cars used for profit on the roadway.

"Before the owner of any automobile, motorcycle, auto truck, or other vehicle of like character, used for the purposes of conveying persons of [or] freight or for any other purposes, whether such vehicle is propelled by steam, gasoline, or electricity, or any other mechanical power, shall operate or be permitted to operate upon any street, road, highway, or any other public thoroughfare in Tennessee, such owner shall register such vehicle with the state department of highways through the county clerk in the county in which owner resides, giving the motor number, rated horse power, tonnage capacity of motor trucks and make of same, together with the name and residence of such owner, and shall upon payment of the following fees ***." 3079a194b1. Registration of automobiles, etc., with state department of highways, through County Court Clerk fees therefor. Shannon's Compilation of Tennessee statutes, Vol. 4, 1918.

Department of safety authority commercial

The department of safety and homeland security has authority to regulate commerce and traffic. "The department of safety is vested with the power and authority, and it is its duty, to license, supervise and regulate every motor carrier in the state and promulgate rules and regulations pertaining thereto" Tenn. Code Ann. § 65-15-106(a).

DOS' officers have the duty of "policing and enforcing this part" and have "authority to make arrests for violation of this part" as well as other "orders, decisions, rules" etc.

The people through the general assembly added to these powers. "Such enforcement officers while enforcing and policing the provisions of this part also have authority to make arrests for any violations of the Tennessee Drug Control Act of 1989, compiled in title 39, chapter 17, part 4, and for violations of title 55, chapter 10, part 4 ["Alcohol and drug related offenses], and Tenn. Code Ann. § 55-50-408 ["driving under the influence"], when such violations are committed by a driver or an occupant of a vehicle regulated under this part." Tenn. Code Ann. § 65-15-106. Powers of department.

In a traffic stop in Tennessee upon someone involved in transportation for compensation under this part, such enforcement officer "upon reasonable belief that any motor vehicle is being operated in violation of this part" may demand the registration certificate issued to such vehicle, demand "any and all bills of lading, waybills, invoices or other evidences of the character of the lading being transported in such vehicle," require the operator to "inspect the contents of such vehicle for the purpose of comparing same with bills of lading, waybills, invoices or other evidence of ownership or of transportation for compensation." If the operator or chauffeur is performing "the transportation service" in violation of this part, the officer may "impound any books, papers, bills of lading, waybills and invoices" as evidence. Tenn. Code Ann. § 65-15-106. Powers of department.

It is unlawful for any motor carrier to not have a permit while using the public's roadways. Tenn. Code Ann. § 65-15-107 Interstate permits.

"(a) It is unlawful for any motor carrier, contract hauler, or exempt for-hire motor carrier to use any of the public highways of this state for the transportation of persons or property, or both, in interstate or intrastate commerce, without first having received a permit from the department or from any state designated as the base jurisdiction state for that carrier pursuant

to 49 U.S.C. ৲ 11506 [omitted] as amended by ৲ 4005 of the Intermodal Surface Transportation Efficiency Act of 1991. Violators are subject to penalty pursuant to Tenn. Code Ann. § 65-15-113." Tenn. Code Ann. § 65-15-107. Interstate permits.

The motor carrier or contract hauler must fill out forms and pay $50. Tenn. Code Ann. 65-15-109. Applications for permits. Insurance is required for parties involved in transportation to "adequately protect the interests of the public in the use of the public highway and with due regard to the number of persons and the amount of property to be transported, which liability or cargo insurance shall bind the obligors thereunder to make compensation for injury to persons, and loss of or damage to property resulting from the negligent operation by such motor carrier or contract hauler" Tenn. Code Ann. 65-15-110. Liability insurance requirements.

The department's highway patrol officers "have jurisdiction and authority to make such investigation of operators of motor vehicles for hire" Tenn. Code Ann. § 4-7-105. Enforcement of motor carrier laws.

In a stop alongside a roadway, the officer is investigating compliance with rules for transportation.

> "**(3)** Such enforcement officers, upon reasonable belief that any motor vehicle is being operated in violation of this part, shall be authorized to require the driver thereof to:
>
> **(A)** Stop and exhibit the registration certificate issued for such vehicle;
>
> **(B)** Submit to such enforcement officer for inspection any and all bills of lading, waybills, invoices or other evidences of the character of the lading being transported in such vehicle; and
>
> **(C)** Permit such officer to inspect the contents of such vehicle for the purpose of comparing same with bills of lading, waybills, invoices or other evidence of ownership or of transportation for compensation.
>
> **(4)** It is the further duty of such enforcement officers to impound any books, papers, bills of lading, waybills and invoices which would indicate the transportation service being performed is in violation of this part, subject to the further orders of the court having jurisdiction over the alleged violation." Tenn. Code Ann. § 65-15-106. Powers of the department.

It is a Class C misdemeanor for any licensee operating a motor vehicle to not have his license available for exhibit on demand. "(a) Every licensee shall have the licensee's license in immediate possession at all times when operating a motor vehicle and shall display it upon demand of any officer or agent of the department or any police officer of the state, county or municipality *** " 55-50-351. License to be carried and exhibited on demand -- Arrest and penalty for violations.

Travelers who apply for licenses are given a Class D license, subject to the rules of transportation that apply to other classes whose weights and conditions are described in Title 55.

No derogation of common law

The operation of the department of safety and homeland security does not abrogate or derogate common law rights of the people, and is constitutional.

Derogation defined: "The partial repeal or abolishing of a law, as by a subsequent act which limits its scope or impairs its utility and force. Distinguished from abrogation, which means the entire repeal and annulment of a law." Black's Law Dictionary 4th edition.

State agencies such as DOS are governed by the Uniform Administrative Procedures Act, which does no injury to the exercise of travel and other common law rights by either abrogation nor derogation. "(a)(1) This chapter shall not be construed as in derogation of the common law, but as remedial legislation designed to clarify and bring uniformity to the procedure of state administrative agencies and judicial review of their determination and shall be applied accordingly.

"(2) Administrative agencies shall have no inherent or common law powers, and shall only exercise the powers conferred on them by statute or by the federal or state constitutions." Tenn. Code Ann. § 4-5-103. Construction of chapter.

Free use of public right of way

'Roads used principally for travel, transportation'

Roads and highways in Tennessee are built for public benefit. "Public highways and streets are intended principally for public travel and transportation" TCA 54-5-801. Declaration of policy. "All roads and ferries laid out or appointed agreeably to law are to be deemed public roads and ferries." Tenn. Code Ann. § 54-10-101. Public roads and ferries.

"The roads belong to the public, and the county court holds them in trust for the public, and while it is proprietor for the purposes of its trust, it is not proprietor in the sense that it is owner of the roads against the public, or any member thereof. The public road is a way open to all the people, without distinction, for passage and repassage at their pleasure." Sumner County v. Interurban Transp. Co., 141 Tenn. 493, 213 S.W. 412, 1918 Tenn. LEXIS 112, 5 A.L.R. 765 (1919).

The right of members of the public to travel on the road is recognized in commercial regulatory statute as being without [outside of] its purview as the rules pertain "exclusively to the operation of vehicles" upon highways. Tenn. Code Ann. § 55-8-102. Provisions refer to vehicles upon highways --- Exceptions.

> (a) The provisions of this chapter and chapter 10, parts 1-5 of this title, relating to the operation of vehicles, refer exclusively to the operation of vehicles upon highways, except where a different place is specifically referred to in a given section.
>
> (b) (1) This chapter and chapter 10, parts 1-5 of this title apply to the operation of motor vehicles upon streets, roads, and highways within federal reservations or under federal ownership and control if the following conditions exist:
>
> (A) The streets, roads or highways are generally open to public travel; ***
>
> (C) The streets, roads, and highways covered by the agreement shall be considered public streets, roads, and highways of the state for purposes of enforcement of this chapter or chapter 10, parts 1-5 of this title.

"A law abiding citizen is free to travel anywhere he or she chooses. Where, as here, a citizen is randomly murdered in a high crime area and a perpetrator is convicted and sentenced to death, the citizen's decision to travel into the neighborhood has no bearing on whether the death penalty is disproportionate." State v. Bland 958 S.W.2d 651.

Commercial transportation and private travel are the object of the state's care, especially when transportation system failure threatens the normal activity on the highway. "**(a)** In the event of a transportation system failure, an imminent threat of a failure, or other emergency that the commissioner reasonably believes would present a hazard to the traveling public or a significant delay in transportation, then the commissioner shall have the authority to enter into contracts narrowly tailored to remedy the actual or imminent failure or other emergency ***." Tenn. Code Ann. 54-1-135. Transportation system failure.

"The fact that a highway is used chiefly by a private individual and is opened and maintained at his private expense does not make it a private highway where the statute declares it public and the whole public has the right to use the way." Bashor v. Bowman, 133 Tenn. 269, 180 S.W. 326, 1915 Tenn. LEXIS 92 (1915).

"We are of opinion that there is no ambiguity about the ordinary meaning of the expression 'public highway.' We think there can be no doubt that the common understanding of a public highway is such a passageway as any and all members of the public have an absolute right to use as distinguished from a permissive privilege of using same." Standard Life Ins. Co. v. Hughes, 203 Tenn. 636, 315 S.W.2d 239, 1958 Tenn. LEXIS 229 (1958).

"The streets of cities and towns belong to the public, and the municipality where they are located holds them in trust for it. This interest of the public is generally defined and held to be an easement. Humes [citation omitted] The general public have a right to use these thoroughfares for all the purposes for which they are condemned, dedicated, opened, constructed, and maintained; that is, they have the right to travel upon them, and to transport property through and over them, subject to such reasonable police regulations as the proper authorities may promulgate for the public convenience, health, morals, and safety." McHarge v. M. M. Newcomer & Co., 117 Tenn. 595 (1906).

The right to travel encompasses small, quotidian contexts (using a car to get to the store or to church, see Bashor v. Bowman, 133 Tenn. 269; 180 S.W. 326; 1915 Tenn. Lexis 92) and large, demographic-altering ones (relocation of domicile, see Doe v. State, 209 Tenn. App. Lexis 296; 2009 WL 637104).

"Personal liberty largely consists of the Right of locomotion — to go where and when one pleases — only so far restrained as the Rights of others may make it necessary for the welfare of all other citizens. The Right of the Citizen to travel upon the public highways and to transport his property thereon, by horsedrawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will, but the common Right which he has under his Right to life, liberty, and the pursuit of happiness. Under this Constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's Rights, he will be protected, not only in his person, but in his safe conduct." II Am.Jur. (1st) Constitutional Law, Sect. 329, p.1135.

"The right to travel interstate by auto vehicle upon the public highways may be a privilege or immunity of citizens of the United States. Compare Crandall v. Nevada, 6 Wall. 35. A citizen may have, under the Fourteenth Amendment, the right to travel and transport his property upon them by auto vehicle. But he has no right to make the highways his place of business by using them as a common carrier for hire. Such use is a privilege which may be granted or withheld by the state in its discretion, without violating either the due process clause or the equal protection clause." Packard v. Banton, 264 U.S. 140, 144.

"The right of a citizen to travel on public highway is a common right which he has under his right to enjoy 'life, liberty, and pursuit of happiness', and the right to 'travel', which means the right to go from one place to another, includes the right to start, to go forward on the way, and to stop when the traveler's destination has been reached, and also the right to stop on the way, temporarily, for a legitimate or necessary purpose when that purpose is an immediate incident to travel." Teche Lines, Inc., v. Danforth, 12 So.2d 784, 195 Miss. 226, Words and Phrases, Travel.

According to the most-cited supreme court case, Hale v. Henkel, "There is a clear distinction *** between an individual and a corporation. *** The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way...He owes nothing to the public so long as he does not trespass upon their rights. Upon the other hand, the corporation is a creature of the state...its powers are limited by law." Hale v. Henkel 201 U.S. 43 (1906).

Pleasure purpose of private travel

Tennessee maintains its roadways and highways to serve the pleasure of those described as the "free people," Article 1, section 24, Tennessee constitution, in the state, people served by "free governments founded on their authority," Article 1, section 1.

"Can the legislature impose a privilege tax upon the mere taking a pleasure by the people, which is the exercise of an inalienable right, so long as it does not interfere with the rights of others? The taking of pleasure is a great benefit to humanity, and often a powerful agency for the restoration of health, as well as for the preservation of health." Shannon's Compilation of Tennessee Statutes, Vol. 1, 1917.

The state constitution ordains the highway system for the pleasure of the people. "A well regulated system of internal improvement is calculated to develop the resources of the State, and promote the happiness and prosperity of her citizens; therefore it ought to be encouraged by the General Assembly." Tenn. Const. Art. XI, § 10. Internal improvements to be encouraged.

The right of the public to travel pre-exists the constitution, which explicitly guards the people's innocent activity as being invulnerable to claims in court. "Nothing contained in this Constitution shall impair the validity of any debts or contracts, or affect any rights of property or any suits, actions, rights of action or other proceedings in Courts of Justice." Tenn. Const. Art. XI, § 2. No impairment of rights.

In law, pleasure appears most frequently in reference to one official serving "at the pleasure of" a superior, as in "Each commissioner shall hold office at the pleasure of the governor," Tenn. Code Ann. § 4-3-112(b).

Statute recognizes pleasure as an aspect of human nature, that belonging to and attained by individual human beings. "A permit shall be available from the department on an annual basis for individual owners of overdimensional boats used strictly for noncommercial pleasure purposes for double the amount of the regular fee described in subdivisions (h)(1) and (2). Tenn. Code Ann. 55-7-205. Permits for moving vehicles of excess weight or size — Permits for towing vehicles of excess weight, height, length, or width. Clubs are operated "operated exclusively for pleasure, recreation and other nonprofit purposes" Tenn. Code Ann. 57-4-102(8)(a). In provisions for taxes on fuels, "'Recreational vehicle' means vehicles such as motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor," Tenn. Code Ann. § 67-3-1201(9) .

"It is well-settled law that every member of the public has the right to use the public roads in a reasonable manner for the promotion of his health and happiness." Sumner County v. Interurban Transp. Co., 141 Tenn. 493.

"Under the general law a public street is a public highway, and, if a highway, it is a 'road which every citizen has a right to use.' The right of the citizen to pass and repass on it is limited to no particular part of it, for, as said in the books, 'the public are entitled not only to a free passage along the highway, but to a free passage along any portion of it not in the actual use of some other traveler." 1 Hawk. P.C. 22; Ang. & D. Highw. § 226. Under the common law a public highway was 'a way common and free to all the king's subjects to pass and repass at liberty,' and it followed, of course, under the law, that an

unauthorized obstruction was indictable and punishable as a nuisance." State v. Stroud, 52 S.W. 697 *; 1898 Tenn. Ch. App. LEXIS 167 **

A 1915 Davidson County act under private law imposing a privilege tax on all automobiles is overturned on grounds that pleasures are not taxable as vocations and that business use of roads impose more wear on the people's asset than their use for pleasure. Roadway use "for business purposes generally inflicts greater injury and detriment than their use for a pleasure; and a discrimination by taxing their use for pleasure, and leaving them untaxed for business purposes, is without reason or just cause, and is vicious." Shannon's compilation of the Tennessee Statutes, vol. 1, 1917.

The pleasure of travel for private purposes is highlighted in Dred Scott v. Sandford, 1857, securing the institution of slavery and a ban on free travel by African-Americans.

> "For if they [blacks] were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police [60 U.S. 393, 417] regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognised as citizens *in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction*, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State." Dred Scott v. Sandford, 60 U.S. 393, 396. 1856.

Private purpose, civic duty, personal necessity in travel

The General Assembly in statute recognizes the private vs. public/commercial distinction. Regarding parking authorities: They "are authorized to be created to *** to maintain current data leading to efficient operation of off-street parking facilities, for the fulfillment of public needs for parking and the relation of parking to public transit and other public and private transportation modes." Tenn. Code Ann. 7-65-109(a). The law recognizes creations such as the "private entity" and the "private non-profit educational institution" Tenn. Code Ann. § 7-90-109(5).

There exist "state, federal and private forests." A private club "means any club or organization that does not permit the general public access to its facilities or activities" Tenn. Code Ann. § 39-17-1802(10)(A).

People and cargo can be involved in transportation, the court says. "These cases lay down certain fundamental propositions. Among others, that the primary use of the state highways is the use for private purposes; that no person is entitled to use the highways for gain as a matter of common right; that as a proprietor, in preserving its highways, the state may, with little restraint, prescribe the conditions on which those highways can be used.

"One objection made by complainants to the act of 1933 is that it applies only to motor vehicles used for carrying freight and does not apply to motor vehicles used for the hauling of passengers. It is said that a bus with its load often weighs more than a truck with its load, is therefore more destructive to the highway, and that the discrimination between trucks and busses cannot be justified. ***

"The peculiar importance to the state of conveniences for the transportation of persons in order to provide its communities with resources both of employment and of recreation, the special dependence of varied social and educational interests upon freedom of intercourse through safe and accessible facilities for such transportation, are sufficient to support a classification of passenger traffic as distinct from freight." Hoover Motor Exp. Co. *v.* Fort, 72 S.W.2d 1052, 167 Tenn. 628 (Tenn. 1934).

The people of Tennessee use the public right of way for private purposes and for necessity. "Except as provided in §§ 39-11-611 — 39-11-616, 39-11-620 and 39-11-621, conduct is justified, if: **(1)** The person reasonably believes the conduct is immediately necessary to avoid imminent harm; and **(2)** The desirability and urgency of avoiding the harm clearly outweigh the harm sought to be prevented by the law proscribing the conduct, according to ordinary standards of reasonableness." Tenn. Code Ann. § 39-11-609. "Necessitas, quod cogit, defindit. (The necessity is a defense to what necessity compels one to do.) As when houses are blown up to stay a conflagration." Gibson's Suits in Chancery, 5th edition.

Free travel is required for the discharge of private duties, as well as the private citizen's public ones. "The public is interested in every citizen having a right of way to and from his lands or residence. [citation omitted] Such a right of way enables a citizen to discharge the duties he owes to the public, among which are mentioned the duties of attending courts,

elections, churches, and mills." Bashor v. Bowman. 133 Tenn. 269 *; 180 S.W. 326 **; 1915 Tenn. LEXIS 92 ***; 6 Thompson 269.

In a divorce ruling, "The mother also had the right to travel with the child to visit her family and friends for not longer than thirty days." Webb v. Webb 2009 Tenn. App. LEXIS 64 *; 2009 WL 348362.

An employee who has an accident in his private car during the scope of his employment is held to have been traveling "not within the scope of employment," but for private purposes. "When an employee's job requires travel, an employer may be vicariously liable for the employee's negligence while traveling. The threshold issue in cases involving travel is whether the employment created the necessity for travel. [citations omitted] If the employee's duties created a necessity for travel, then the employee is within the scope of employment while traveling, as long as the employee does not deviate from the employer's business and engage in conduct the employer [**12] had no reason to expect. If, however, the employee's work played no part in creating the reason for travel and was only incidental to the trip, then the trip was not within the scope of employment." Tennessee Farmers Mut. Ins. Co. v. American Mut. Liability Ins. Co., 840 S.W.2d 933 1992 Tenn. App. LEXIS 629 **.

Commission of a crime "qualifies" the "fundamental right" to move freely on the roadway. "The right to move freely from state to state is an incident of national citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. *** [T]he defendant's criminal conduct within the state necessarily qualifying his right thereafter freely to travel interstate." Jones v. Helms 452 U.S. 412 *; 101 S. Ct. 2434 **. Travel for religious purposes is qualified to one who is on probation. "The State's interests in maintaining order, in the form of compliance with court directives, and keeping defendant within the State's borders, so as to properly monitor him, outweighed his right to travel to Texas." State v. Smithson 2005 Tenn. Crim. App. LEXIS 238 *; 2005 WL 639132.

"The right of the Citizen to travel upon the public highways and to transport his property thereon, in the ordinary course of life and business, is a common right which he has under the right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right, in so doing, to use the ordinary and usual conveyances of the day, and under the existing modes of travel, includes the right to drive a horse-drawn carriage or wagon thereon or to operate an automobile thereon, for the usual and ordinary purpose of life and business." Thompson v. Smith, 154 SE 579, 11 American Jurisprudence, Constitutional Law, section 329, page 1135.

"The general public have a right to use these thoroughfares for all the purposes for which they are condemned, dedicated, opened, constructed, and maintained; that is, they have the right to travel upon them, and to transport property through and over them, subject to such reasonable police regulations as the proper authorities may promulgate for the public convenience, health, morals, and safety." McHarge v. M. M. Newcomer & Co., 117 Tenn. 595 (1906).

Travel, travelers

The people of Tennessee are given the legal status of "free people" in the constitution for the state. Court cases make clear the distinction between travel and transportation, between traveler and driver. Bouvier's Law Dictionary distinguishes between a "traveler" and a "driver." "Traveler — One who passes from place to place, whether for pleasure, instruction, business, or health." Locket vs. State, 47 Ala. 45; Bouvier's Law Dictionary, 1914 ed., p. 3309. "Driver — One employed in conducting a coach, carriage, wagon, or other vehicle." Bouvier's Law Dictionary, 1914 ed., p. 940.

"[Robert Booher's] right to travel within this state or to points beyond its boundaries remains unimpeded. Thus, not only has the appellant's right to freedom of travel not been infringed, but also, we cannot conclude that this right is even implicated in this case. Rather, based upon the context of his argument, the appellant asserts an infringement upon his right to operate a motor vehicle on the public highways of this state. This notion is wholly separate from the right to travel. The ability to drive a motor vehicle on a public highway is not a fundamental 'right.' See Goats v. State,211 Tenn. 249, 364 S.W.2d 889, 891 (Tenn.1963) (emphasis added); Sullins v. Butler, 175 Tenn. 468, 135 S.W.2d 930, 932 (Tenn.1940) (citations omitted). Instead, it is a revocable 'privilege' that is granted upon compliance with statutory licensing procedures. See Reitz v. Mealey, 314 U.S. 33, 36, 62 S. Ct. 24, 26-27, 86 L. Ed. 21 (1941), overruled in part by, Perez v. Campbell, 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971); Goats, 364 S.W.2d at 891; Sullins, 135 S.W.2d at 932." State of Tennessee v. Robert K. Booher, 78 S.W.2d 953 (1997).

"The state legislature may properly enact reasonable regulations requiring licensing and registration of motor vehicles as it furthers the interests of public safety and welfare pursuant to its police power. The ability to drive a motor vehicle on a public highway is not a fundamental right. Instead, it is a revocable privilege that is granted upon compliance with statutory licensing Procedures." State v. Ferrell, 2009 Tenn. Crim. App. LEXIS 629.

Constitutionally guaranteed rights implicate one another. The communication among the people traveling on the public right of way is implied in:

➢ The freedom of worship and religion, as in, "No person shall in time of peace be required to perform any service to the public on any day set apart by his religion as a day of rest," Tenn. Const. Art. XI, § 15, religious holidays, and as in "That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; *** that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship." Tenn. Const. Art. I, § 3. Freedom of worship.

➢ " *** The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject," Tenn. Const. Art. I, § 19. Freedom of speech and press.

➢ "That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address or remonstrance." Tenn. Const. Art. I, § 23. Rights of assembly. Etc.

Vocation, profession, business or occupation

The people of Tennessee via their general assembly convert some vocations, professions, businesses and occupations into privileges, allowing them to be taxed. Tenn. Code Ann. § 67-4-1701. Privilege tax established — Collection.

"The occupations, businesses and business transactions deemed privileges are to be taxed, and not pursued without license *** . Tenn. Code Ann. § 67-4-101. Privileges taxable — License required.

Vocations subject to tax are as follows; lobbyists; agents; broker-dealers; investment advisers; accountants; architects; brokers; engineers; and landscape architects. audiologists; chiropractors; dentists; optometrists; osteopathic physicians; pharmacists; physicians; podiatrists; psychologists; speech pathologists; veterinarians; attorneys; and athlete agents. Tennessee Code Ann. § 67-4-1702. Occupations subject to tax.

"The essential elements of the definition of privilege is occupation and business, and not the ownership simply of property, or its possession or keeping it. The tax is on the occupation, business, pursuits, vocation, or calling, it being one in which a profit is supposed to be derived by its exercise from the general public, and not a tax on the property itself or the mere ownership of it." ..."The legislature cannot, under our constitution, declare the simple enjoyment, possession, or ownership of property of any kind a privilege, and tax it as such. It may declare the business, occupation, vocation, calling, pursuit, or transaction, by which the property is put to a peculiar use for a profit to be derived from the general public, a privilege and tax it as such, but it cannot tax the ownership itself as a privilege. The ownership of the property can only be taxed according to value.") Phillips v. Lewis, 3 Shann. Cas. 231.

The courts overturned a 1915 Davidson County ordinance taxing all automobiles by converting their use in pleasure into an occupation or calling. "A privilege tax cannot be imposed upon anything or any act, unless it constitutes a business, occupation, pursuit or vocation. Such use for pleasure does not constitute a business, occupation, pursuit or vocation. Pleasure taking does not constitute a business, occupation, pursuit or vocation, in the sense of the definition of a taxable privilege; and therefore is not subject to privilege taxation." Shannon's Compilation of Tennessee Statutes, Vol. 1, 1917.

Abuses, oppression, nuisances, extortion forbidden

"The claim and exercise of a constitutional right cannot be converted into a crime." Miller v. United States, 230 F.2d 486 (5th Cir. 1956).

The Tennessee constitution grants state government authority, but it is limited by the rights of the people as secured by that covenant when invoked by a belligerent claimant in person. "The declaration of rights hereto prefixed is declared to be a part of the Constitution of the state, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted out of the general powers of the government, and shall forever remain inviolate." Tenn. Const. Art. XI, § 16. Bill of rights to remain inviolate.

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." 9th amendment to U.S. constitution.

"That government being instituted for the common benefit, the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind." Tenn. Const. Art. I, § 2 Doctrine of nonresistance condemned.

Oppression

Official oppression is "(a) A public servant acting under color of office or employment commits an offense who: (1) Intentionally subjects another to mistreatment or to arrest, detention, stop, frisk, halt, search, seizure, dispossession, assessment or lien when the public servant knows the conduct is unlawful; or (2) Intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity, when the public servant knows the conduct is unlawful. (b) For purposes of this section, a public servant acts under color of office or employment if the public servant acts, or purports to act, in an official capacity or takes advantage of the actual or purported capacity. (c) An offense under this section is a Class E felony." Tenn. Code Ann. § 39-16-403. Official oppression.

Offenses against religious liberty

"Except as provided in subsection (c), no government entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability.

"(c) No government entity shall substantially burden a person's free exercise of religion unless it demonstrates that application of the burden to the person is: (1) Essential to further a compelling governmental interest; and (2) The least restrictive means of furthering that compelling governmental interest." Tenn. Code Ann. § 4-1-407. Preservation of religious freedom.

Nuisances

Under common law, a nuisance is "anything which annoys or disturbs the free use of one's property, or which renders its ordinary use or physical occupation uncomfortable." Caldwell v. Knox Concrete Products Inc., 54 Tenn. App. 393, 402 (Ct. App. 1964).

The restatement of torts defines a public nuisance as "an unreasonable interference with a right common right to the general public." Restatement (Second) of Torts, 821B (1979).

Determining whether an unreasonable interference with the public right exists, the court should consider

1. Whether the conduct and involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or
2. Whether the conduct is prescribed by statute, ordinance or administrative regulation, or
3. Whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows, or has reason to know, has a significant effect upon the public right.

Tennessee's nuisance statute describes gang members as threatening other people and being involved in controlled substances and drugs. (B) A criminal gang, as defined by Tenn. Code Ann. § 40-35-121(a), that regularly engages in gang related conduct.

Extortion and Racketeering Influenced Corrupt Organizations

Tennessee law: "(a) A person commits extortion who uses coercion upon another person with the intent to: (1) Obtain property, services, any advantage or immunity; (2) Restrict unlawfully another's freedom of action; or (3) (A) Impair any entity, from the free exercise or enjoyment of any right or privilege secured by the Constitution of Tennessee, the United States Constitution or the laws of the state, in an effort to obtain something of value for any entity; (B) For purposes of this section, "something of value" includes, but is not limited to, a neutrality agreement, card check agreement, recognition, or other objective of a corporate campaign; (C) For purposes of this section, 'corporate campaign' means any organized effort to unlawfully bring pressure on an entity, other than through collective bargaining, or any other activity protected by federal law." *** (c) Extortion is a Class D felony. Tenn. Code Ann. § 39-14-112. Extortion.

Federal law prohibits organizations that thrive on racketeering and other criminal activity. The Racketeering Influenced Corrupt Organizations act is found at 18 U.S. Code, Part I, Chapter 96 § 1961. Among the banned practices is extortion pursuant to 18 U.S. Code § 1951 - Interference with commerce by threats or violence.

(b) "As used in this section— (1) The term 'robbery' means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

Monopolies

The constitution forbids monopolies. "That perpetuities and monopolies are contrary to the genius of a free State, and shall not be allowed." Tenn. Const. Art. I, § 22. No perpetuities or monopolies.

Oppression under federal law

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death." 18 U.S. Code § 242 - Deprivation of rights under color of law.

Criminal intent requisite in Tennessee law

(a) (1) A person commits an offense who acts intentionally, knowingly, recklessly or with criminal negligence, as the definition of the offense requires, with respect to each element of the offense.

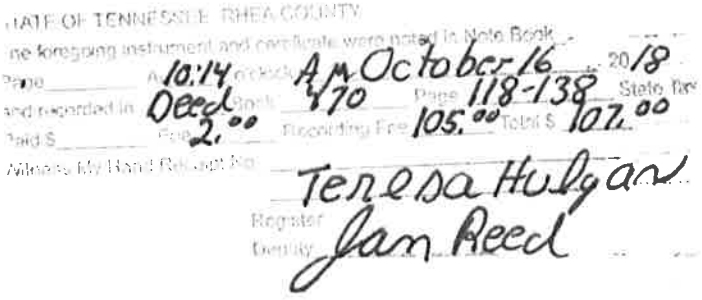
(2) When the law provides that criminal negligence suffices to establish an element of an offense, that element is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish an element, that element is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, that element is also established if a person acts intentionally.

(b) A culpable mental state is required within this title unless the definition of an offense plainly dispenses with a mental element.

(c) If the definition of an offense within this title does not plainly dispense with a mental element, intent, knowledge or recklessness suffices to establish the culpable mental state." Tenn. Code Ann. § 39-11-301

In the definitions: "(a) 'Intentional' refers to a person who acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result. "(b) 'Knowing refers to a person who acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result. *** Tenn. Code Ann. § 39-11-302.

"Individual rights protection is the only legitimate reason for government to exist *** [T]he duty of this court, as of every judicial tribunal, is limited to determining rights of persons or of property ***." Tyler v. Judges of Court of Registration, 179 U.S. 405, 409 (1900).



phillips v Lewis 1877

TENNESSEE CASES

—WITH— Exhibit 3

Notes and Annotations

BEING REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME COURT OF TENNESSEE, NOT HERETOFORE REPORTED, AND ALSO THE CASES CONTAINED IN THOMPSON'S CASES AND THE LEGAL REPORTERS NOT REPORTED IN THE REGULAR SERIES OF TENNESSEE REPORTS

—BY—
ROBERT T. SHANNON
Of the Nashville Bar

IN THREE VOLUMES

VOLUME III

PUBLISHERS
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1916

with the law. The testator might have used the words, "home tract," or "home place," or "the tract of land on which he resides"—or words of boundary or other words designating more certainly his intention.

But the will speaks from his death—and he does not use the words, my homestead—but "my wife's homestead," which we think indicates his intention to let the law carve out the homestead for his wife, and that he used the words, "my wife's homestead" in their technical sense, meaning the land, mansion, and its appurtenances which the law secures to her.

We therefore hold that the chancellor erred in his construction of this clause of the will, or so much thereof as undertakes to declare what the testator meant by the use of the word homestead.

In all other respects than as herein indicated the decree will be affirmed. The costs will be paid by complainant out of the trust fund in his hands.

DISSENTING OPINION.

Turney, J., delivered a dissenting opinion, saying: I dissent from so much of the opinion as disposes of the question of homestead.

JOHN W. PHILLIPS v. W. G. LEWIS, TAX COLLECTOR, ETC.

Nashville, January Term, 1877.

1. CONSTITUTIONAL LAW. Constitution supreme law of the land, and constitutional questions demand grave consideration.

Constitutional questions in a republican form of government like ours, always demand grave consideration. The constitution of our state is not to be lightly esteemed, but must be held, both in great and small matters, to be the supreme law of the land. (Pp. 237, 251.)

2. SAME. Freedom guaranteed, and limitations imposed.

Our constitutions, state and federal, embody the great guarantees for freedom of the citizen that have been wisely wrought out by the experience of ages past. Not only this, but they contain the limitations which the people have imposed upon their official agents as well as upon themselves through their representatives in our legislature, which cannot be disregarded. (P. 237.)

3. SAME. Legislative power unlimited except as forbidden by the constitution; limitations imposed are imperative, and acts violative thereof are void.

It is true, as an axiom admitted everywhere by the courts of the United States, that the legislature of a state may exercise all legitimate powers appertaining to the government of a free people representing as it does the sovereign will of such a people, except what is expressly or by fair implication forbidden by the constitution of such state, yet limitations therein imposed must always be held as imperative, the supreme law of the land, which no legislature can disregard. If it should be done, then it is the duty of any or every court in the land to declare such act void as beyond the power of the legislature and in violation of the embodied will of the people as expressed in their constitution of government. (P. 237.)

4. SAME. All laws to be constitutionally tested, and if forbidden by the constitution, to be held void.

Every act of the legislature, when before our courts for interpretation or application, must be brought to the test as to whether its provisions are in accord with the requirements of the constitution. If the law be forbidden by that instrument, the enactment must be held void, regardless of all other considerations. (P. 238.)

5. SAME. Ownership of property cannot be taxed as a privilege, but the business in which it is used may be taxed as a privilege.

The legislature cannot, under our constitution, declare the simple enjoyment, possession, or ownership of property of any kind a privilege, and tax it as such. It may declare the business, occupation, vocation, calling, pursuit, or transaction, by which the property is put to a peculiar use for a profit to be derived from the general public, a privilege, and tax it as such, but it cannot tax the ownership itself as a privilege. The ownership of the property can only be taxed according to value. (P. 245.)

6. SAME. Same. Dogs may be taxed as other property, but the ownership of them cannot be taxed as a privilege.

Dogs are property, and under the constitutional provision that "all property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state," dogs may be taxed as such, if taxed according to value as other property, but they cannot be taxed at so much per head for the privilege of keeping them, regardless of value. A dog is property, notwithstanding the fact he is not property of general use, or has no market value. (Pp. 245, 246.) [In the case of the State v. Brown, 9 Bax., 53, 56, it was held that a dog, if he have

an owner, is personal property, and if of any value, is the subject of larceny. See Wheatley v. Harris, 4 Sneed, 468; Citizens' Rapid Transit Co. v. Dew, 16 Pickle, 322, 325; Sentell v. Railroad, 166 U. S., 698 (L. ed., Book 41, p. 1169.]

7. SAME. Same. Same. An enactment taxing dogs for the privilege of keeping them is unconstitutional and void.

A revenue act declaring the keeping of dogs a privilege, and taxing the owner or harborer of dogs so much per head for the privilege of keeping or harboring them, is a tax on the simple ownership of property, or the harboring of it, as a privilege regardless of value, and not a tax upon any peculiar use of it for profit to be derived from the general public, nor a tax upon a vocation, calling, or pursuit as a privilege, and is therefore unconstitutional and void. (Pp. 238, 239.)

Cited and held unconstitutional: Act 1875, ch. 67 [repealed by act 1877, ch. 8].

8. STATUTES. Body of act may show one of two objects in title thereof to be the leading object and the other the incident or result.

Where the title of an act is "An act to increase the revenue of the state, and to encourage wool growing," it indicates two objects, namely, the increase of state revenue and the encouragement of wool growing; but where the body of the said act shows that the leading object is the increase of the revenue of the state, and that the encouragement of wool growing is only an incident or probable result of the leading object of the enactment, the act must be treated as a revenue act, one in which the legislature intended and has exercised the taxing power, and not an act in the appropriate exercise of the police power of the State. (Pp. 237, 250.)

Cited and construed: Acts 1875, ch. 67 [repealed by act 1877, ch. 8].

9. PRIVILEGES. Definition of the term "privilege" as used in the state constitution.

The settled judicial construction, interpretation, and definition of the term "privilege" at the time of the adoption of our constitution in 1870, in which sense the term was used in that instrument, was, "the exercise of an occupation or business, which requires a license from some proper authority, designated by a general law, and not open to all, or any one, without such license." The essential element of the definition is occupation and business, and not the ownership simply of property, or its possession or keeping it. The tax is on the occupation, business, pursuits, vocation, or calling, it being one in which a profit is supposed to be derived by its exercise from the general public, and not a tax on the property itself, or the mere ownership of it. (Pp. 242, 243.)

Cited with approval: Mabry v. Tarver, 1 Hum., 94; Cate v. State, 3 Sneed, 121; State v. Schlier, 3 Heis., 283; French v. Baker, 4 Sneed, 193 [see Robertson v. Heneger, 5 Sneed, 258; Columbia v. Guest, 3 Head, 414; Jenkins v. Ewin, 8 Heis.,

475; Clarke v. Montague, 3 Lea, 277; Dun v. Cullen, 13 Lea, 204; Railroad v. Harris, 15 Pickle, 702].

Cited and construed: Code (1858 and T. & S.), sec. 550; M. & V. Code, secs. 604, 617; Shannon's Code, secs. 692, 712.

10. SAME. Same. Legislature cannot declare anything else not included in the definition a privilege and tax it as such, and destroy ad valorem and uniformity of taxation.

To assume as correct the proposition argued, that whatever the legislature shall so declare is a privilege, is to make the clause of the constitution, providing that "all property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state" (const., art. 2, sec. 28) as conferring a power, or limiting or defining a power in the legislature, useless, inoperative, and absurd. If the power conferred to tax in this mode is only equivalent to the will or discretion of the legislature, then this clause of the constitution is practically a nullity, ceases to be any rule, or to operate at all over the subject, but only the will of the legislative body would be supreme over the question so that in fact anything and all property could be taxed exclusively in this way, and thus the rule of taxation according to value be annulled. This cannot be the proper construction of the said clause under consideration. (Pp. 244, 245.)

11. SAME. Actually issued license or tax receipt only evidence of the grant of the privilege, and not an essential feature of it.

It seems that it is not an essential feature of a privilege that an actual license be issued to the party, for it is only the evidence of the grant of the right to follow the occupation or business, and while the usual and perhaps universal incident to such grant, yet a tax receipt even is or may be the evidence of the grant; still the thing declared to be a privilege is the occupation or business, the license but the incident to its engagement, prescribed by statute, assuming, however, that the license in one form or the other is to be had. (P. 243.)

12. POLICE POWERS OF THE STATE. Different from taxing power, though taxes may tend to reach same end in some cases.

The police power of the state is a very different one from the taxing power, in its essential principles, though the taxing power, when properly exercised, may indirectly tend to reach the end sought by the other in some cases. (P. 246.)

13. SAME. Same. Privilege and license laws not an exercise of police powers, when.

Where revenue is the leading object of the privilege and license laws, though they may, as a mere incident or result thereof, to some extent, in some cases, as in that of the sale of intoxicating liquors, check or prevent the business, it does not follow that because this effect may in some

degree follow, that it is the end of the law, nor that it is done in the exercise of the police power of the state. (Pp. 250, 251.)

14. SAME. Based on certain maxims.

The police power of the state is based on the maxims that a man must so use his own as not to do wrong to another, that the individual citizen shall so enjoy his own rights as not thereby to infringe upon the rights of others, that the interest and rights of the individuals or a class of individuals is to be made subservient to the higher interest of the whole or a majority of the people of the state, whenever the minor interest shall conflict in the judgment of the legislature with that of the greater. (Pp. 246, 247.)

15. SAME. Same. Principle on which founded.

The police power of the state is a principle growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient. (P. 247.)

Cited with approval: Commonwealth v. Alger, 7 Cush., 53, 84, 85.

16. SAME. May be exercised in the suppression, repression, and regulation of dogs, and in other instances.

In the exercise of the police power of the state, the legislature may, by a proper enactment, declare the keeping of dogs a nuisance, or limit the number to be kept, or particular species of them with known tendencies to do injury by devouring sheep; it may impose penalties for keeping such animals, to be enforced by fine or otherwise, on conviction; it may regulate the manner in which such animals shall be kept, as by forbidding them to be allowed to go at large except when in use and under control of competent persons, or require them to be kept muzzled or collared so as to be incapable of doing mischief, and, in fact, may make whatever kind of regulation or requirement in this direction that may be adequate to the end to be attained: for instance, the protection of that valuable and increasing industry, wool growing, in our state. Several instances of the exercise of the police power are given in the text and authorities cited. (Pp. 247, 249, 251.) [Our statues against sheep killing dogs. See Shannon's Code, secs. 2871-2873, 6527, 6528.]

Cited and construed: Acts 1875, ch. 67, sec. 4; acts 1865-66, ch. 3, sec. 1; T. & S. Code, sec. 4665a; Shannon's Code, sec. 6527; M. & V. Code, sec. 5428.

Cited with approval: Cooley's Const. Lim., 572 et seq., 594, 593 (6th ed., 704 et seq., 712 et seq., 739-741); 100 Mass., 136.

17. SAME. No destruction of property without a previous adjudication.

Except in the well known cases, recognized at common law, of great emergencies, such as the demolition of a house in a city to check the progress of a fire, etc., neither dogs nor any other property shall be destroyed without a previous adjudication to that effect. In the case of the destruction of any property, with the exception stated, the rule of the constitution of our state must be followed, which is that "no man shall be . . . deprived of his life, liberty, or property, but by the judgment of his peers, or the law of the land." (Pp. 243, 249, 250.)

Cited and construed: Const., art. 1, sec. 8 [see art. 1, sec. 21, and art. 11, sec. 8].

Cited and disapproved as to destruction of dogs without previous adjudication: 100 Mass., 136.

18. SAME. Same. "The law of the land" and "due process of law" defined.

The phrase "the law of the land," as used in the constitution, is equivalent to the phrase "due process of law," and does not mean a statute passed for the purpose of working wrong, for such construction would render the restriction absolutely nugatory, and turn this part of the constitution into mere nonsense, and would but be to say to the legislature, "You shall not do the wrong, unless you choose to do it:" but the meaning is, that no member of the state shall be disfranchised or deprived of any of his rights and privileges, unless the matter shall be adjudged against him upon trial had according to the course of the common law. It must be ascertained judicially that he has forfeited his rights, before he can be deprived of them. It cannot be done by mere legislation, but only by adjudication, with the well known exception mentioned and referred to in the last syllabus. (Pp. 243, 249, 250.) [See Const., art. 1, sec. 8, and notes, and Henley v. State, 14 Pickle, 667.]

Cited with approval: Taylor v. Porter, 4 Hill (N. Y.), 140; Sedgw. on Const. and Stat. Law, 478 et seq.

FREEMAN, J., delivered the opinion of the court:

This suit is brought to recover from the tax collector of Giles county, two dollars paid as a tax on two dogs, one by the agreed case is the property of Phillips, the other is a "stray dog" of no value, which was on the plaintiff's premises, and harbored by plaintiff. The tax was paid under protest, and this suit brought, no doubt, for the purpose of testing the question of the constitutionality of the act of the legislature on this subject.

The act of the legislature of March 22d, 1875 [Acts 1875, ch. 67], is as follows: Section 1. "That hereafter the keeping of dogs shall be a privilege, which shall be taxed as follows: Every owner or harborer of a dog or dogs shall pay one dollar on each dog; for the privilege of keeping a bitch the owner or harborer of the same shall pay a tax of five dollars for each bitch so kept except spayed bitches, which shall be taxed as other dogs, to be collected and paid into the treasury as other moneys by the revenue collector."

Section 2 provides for the enumeration and assessment by the tax assessor of the dogs and bitches in their districts at the time he assesses other property, and that the revenue collector shall collect the taxes so assessed. Each person is requested to state on oath to the assessor the number and kind of dogs owned by himself.

The third section of the act makes it a misdemeanor to fail to pay the taxes so assessed within ten days after demand made by the tax collector or his deputy, and on conviction, he is to be fined not less than five dollars and costs for each dog or bitch not paid for, with a proviso that the party may be relieved from payment of the tax by immediately killing the dog upon demand made for the tax. These are all the provisions bearing on the question before us.

It might seem at first glance that this is a case of small importance, involving, as it does, but the paltry sum of two dollars, but upon consideration it will be readily seen that it involves not only large interest to the state, but also to the people who pay the tax. It is stated by the attorney-general that an assessment of $266,000 has been made on the dogs of the state, from which has already been derived to the treasury the sum of $120,000. These figures show the gravity of the questions presented in this aspect. In addition, the case presents several grave constitutional questions as to the powers of the legislature

that (to say the least of them) are not of ready solution. Constitutional questions in a republican form of government like ours, always demand grave consideration. Our constitutions, state and federal, embody the great guarantees for freedom of the citizen that have been wisely wrought out by the experience of ages past. Not only this, but they contain the limitations which the people have imposed upon their official agents, as well as upon themselves, through their representatives in our legislature, which cannot be disregarded. It is true as an axiom admitted everywhere by the courts of the United States, that the legislature of a state may exercise all legitimate powers appertaining to the government of a free people, representing, as it does, the sovereign will of such a people, except what is expressly, or by fair implication, forbidden by the constitution of such state, yet limitations therein imposed must always be held as imperative, the supreme law of the land which no legislature can disregard. If it should be done, then it is the duty of any or every court in the land to declare such act void as beyond the power of the legislature, and in violation of the embodied will of the people, as expressed in their constitution of governments. With these views of the gravity of the questions before us, we proceed to their solution.

It is obvious from the sections we have quoted that this act must be treated as a revenue bill, one in which the legislature intended and has exercised the taxing power. The title of the act is, "An act to increase the revenue of the state, and to encourage wool growing," thus indicating so far as this goes, two objects, the leading one, however, the increase of the revenue of the state. The body of the act shows the other object was deemed but an incident or probable result of the leading object of the enactment. The first section emphatically declares the keeping of dogs a privilege, and then proceeds to prescribe the amount of tax to be paid on this privilege, and the money should be

paid into the treasury as other revenue collected by the revenue collector.

In each of the sections it is spoken of as a tax, and the mode of payment provided for. It is true the fourth section provides for another and different end—that is, the punishment of persons who knowingly keep sheep-killing dogs, but this does not and could not change the entire character and purpose of the main body of the act. This being the undoubted character of the law before us, the question is whether its provisions are in accord with the requirements of the constitution. If forbidden by that instrument, the enactment must be held void regardless of all other considerations. To this test, every act of the legislature must be brought when it is before our courts for interpretation or application.

We need not say that it does not purport to be a tax on the dog as property, for in that case the rule of the constitution is plain, that "all property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state." [Const., art. 2, sec. 28.] We have held that a dog was property in our state, and we must treat the case in this view. [See State v. Brown, 9 Bax., 53; Wheatley v. Harris, 4 Sneed, 468.] The tax is what it purports to be, a privilege tax—that is, a grant of a right of certain conditions to do what is otherwise prohibited, and we must decide the question at present on that aspect of it.

The language is that hereafter the keeping of dogs shall be a privilege which shall be taxed as follows, etc. In this view of the question, the real point presented is whether the simple ownership of property of any kind can be declared by the legislature a privilege, and taxed as such, for if it can be done in the case of a dog it may be done in the case of a horse, or any other species of property. It is clear this is what is done by this statute, except that

it has even gone further, and taxed a party who shall harbor or give shelter to a cur on his premises. This latter privilege, we take it, is one that will not be much sought after. But to the main question.

It is evident the words, "keeping of dogs," in the statute mean simply ownership, especially when taken in connection with the other provision making harboring them taxable, likewise showing definitely the purpose of the legislature to tax in the one case the ownership, in the other case a dog that was not owned but only harbored on the premises. We turn to the constitution, art. 2, sec. 28, for such limitations on the taxing power of the legislature as have been imposed by the people. After providing for uniformity and equality of taxation upon all property, according to its value, that value to be ascertained as the legislature may direct, it is provided: "But the legislature shall have power to tax merchants, peddlers, and privileges in such manner as they may from time to time direct." It would seem clear that this was intended to fix definitely two different and distinct objects of taxation as well as modes. The first is property, which is to be taxed according to value. The second, merchants, peddlers, and privileges. These are different objects of taxation, evidently, and are to be taxed by a different rule—that is, in such manner as the legislature may direct. The ad valorem principle is excluded here and the manner of taxation left to the legislative will. It must be these two clauses have reference to different objects and prescribe for different subjects, or else the constitution has laid down a definite rule as to taxation of property in the first case, and then in the same clause has enabled and empowered the legislature to reject and utterly disregard that rule, by simply changing the name of the tax to a privilege tax, or tax on a privilege, and then taxing it in its own way, regardless of value. We take it, this is too clear to need further discussion.

Const. auth

This being so, we inquire what is the peculiar element or elements in the latter class of objects of taxation distinguishing them from property, the subject of regulation contained in the first clause of the section. We first take the language of the constitution, and then examine our decisions on the question for the solution of this question.

"Merchants, peddlers, and privileges," are the defined objects of taxation in the latter clause of the section. It is certain the merchant is not taxed except by reason of his occupation, and in order to follow or pursue this occupation—one of profit—in which it may be generally assumed capital, skill, labor, and talent are the elements of success, and are called into play by its pursuit. This pursuit or occupation is taxed, not as property, but as an occupation. Another element in this occupation is, that its object and pursuit is directed to a profit to be made off the general public, the merchant having a relation, by reason of his occupation, to the whole community in which he may do business, by reason of which he reaps, or is assumed to reap, the larger profit by drawing upon or getting the benefit of the resources of those surrounding him. The same idea is involved in the case of the peddler, who may range over a whole county by virtue of his license. His is an occupation of like character, a peculiar use of his capital varied only in some of its incidents.

These occupations are taxed as such, and not on the ad valorem principle. So we take it the word privilege was intended to designate a larger, perhaps an indefinite class of objects, having the same or similar elements in them distinguishing them from property, and these objects were to be defined by the legislature and taxed in like manner as might be deemed proper. But the essential element distinguishing the two modes of taxation was intended to be kept up. That is the difference between property and occupation or business dealing with and reaping profit from the general public, or peculiar and public uses of

prop. v. Occupa

property by which a profit is derived from the community. If this distinction does not exist, then, as we have said, the constitution has fixed the rule of taxation with precision in the first clause imperatively, and that it shall be ad valorem, and in the subsequent and secondary clause and class of objects of taxation, have left the legislature free to utterly avoid the first by taxing the ownership of all property as a privilege. This cannot be the true interpretation of so solemn an instrument as the constitution of a state.

We now examine for a moment the leading cases decided by this court, to ascertain whether the principles we have stated do not underlie them, and whether they do not really sustain the views expressed. There may be and is found sometimes in the loose use of language or generality of terms apparent conflict with these ideas, but when taken in connection with the cases in judgment, and limited to the facts before the court, we think there will be found no real conflict in any of the cases with the view we have taken. The case of Mabry v. Tarver, 1 Hum., 94, was under the act of 1835 [Acts 1835–6, ch. 13, sec. 4], prohibiting the keeping, or rather, using the jackass for profit in the propagation of stock. Here it is clear it was the keeping of the animal, and using him for profit to be derived from the public in a particular manner, that was declared to be a privilege and taxed as such. It is not a tax on the jack, or for owning him or harboring him as the case before us, but a tax upon the particular public use to which he is put, that makes the element of privilege in that case. Judge Reese, in his opinion, keeps this idea steadily in his mind, for he says it is contended that this avocation is not in itself and its nature a privilege, and then goes on to say that it becomes one when declared by the legislature and forbidden to be exercised without license. He then replies to the argument that the legislature might declare farming a privilege and tax this class of

"pursuits and avocation," by saying the danger was remote, and the remedy to be applied by the people in the exercise of the elective franchise, and we may add no such danger can ever exist while we continue to be an agricultural people unless there should be a most imperative demand for it, and then the people would impose the privilege tax upon themselves through their representatives, and they may very safely be trusted not to tax themselves unnecessarily in this direction. But the point to be noticed is that the idea of a privilege in this case is attached to the avocation, the pursuit, and not the ownership simply of the land on which the avocation may be pursued. It would equally apply to the avocation, if followed on lands owned by another. The idea that the legislature should say that a man should not keep or own a farm without a license would be a reduction of the question at once to an absurdity. The citizen could at once point to the constitution and say it was his property, of which he could not be deprived except by due process of law, and that he held it by right, and could not be compelled to hold it by a license from any authority in the state, or from any department of its government.

The case of Cate v. The State, 3 Sneed, 121, arose under the same act of 1835, and the same idea runs through the case, the language used being less accurate and the reasoning less carefully expressed by Judge Caruthers, than in the case where the opinion was by Judge Reese. The State v. Schlier, 3 Heis., 283, was the case of a party engaged in the avocation of photographing. In this case Chief Justice Nicholson cites the definition given a privilege from various preceding cases, as follows:

"The exercise of an occupation or business which requires a license from some proper authority, designated by a general law, and not open to all, or any one, without such license," and says this was the settled judicial construction of the term privilege at the date of the adoption

of our constitution in 1870, and in this sense the term was used in that instrument. It is seen that the essential element of the definition is occupation and business, not the ownership simply of property, or its possession or keeping it. We may concede, as we understand the argument of the attorney-general to do, that an actual license issued to the party is not an essential feature of a privilege, but is only the evidence of the grant of the right to follow the "occupation or pursuit," and the usual and perhaps universal incident to such grant, or that a tax receipt is, or even may be the evidence of the grant. Still, the thing declared to be a privilege is the occupation, the license but the incident to its engagement, prescribed by statute, assuming, however, the license in one form or the other is to be had. We think it would be impossible to hold, in any accurate sense, that a man could only be entitled to hold and possess his property, paid for with his money or earned by his labor, upon the condition of obtaining a license, either from the county court clerk, or a tax collector. His right is indefeasible under the constitution of the state. He can only be deprived of it by due process of law, or the law of the land as hereinafter explained. It is true his property may be sold if he fails to pay his taxes properly imposed, but this must be done under regular proceedings provided by law in such cases, and is in the nature of a sale under execution for the payment of a debt. The case of French v. Baker, 4 Sneed, 195, the question as stated by Judge Caruthers, page 196, was whether the occupation of a wholesale grocer was a privilege subject to taxation. It was held that it was. It is true in this case we have language used somewhat wanting in precision, and the reasoning not precisely accurate in assuming the test of privilege to be a declaration of that fact by the legislature, or the requirements of a license as an essential element, but when we look to the case before the court, and limit the generality of the

language to its facts, the same idea underlies this, as all the other cases in our state, that the tax is on the occupation, avocation, or calling, it being one in which a profit is supposed to be derived, by its exercise, from the general public. We need not go through the list of cases in our state on this question. It suffices to say that none of them vary the principles announced herein or found involved in the cases cited. When fairly construed in connection with their facts, all go on the idea of declaring the privilege to be in the exercise of the occupation, or in allowing something to be done, not in the enjoyment, possession, or ownership of property as such. We might go into a more elaborate discussion of this question, and meet the exceedingly able and acute argument of the attorney-general in detail, but we do not deem this necessary on this branch of the case, as it would swell this opinion beyond a reasonable length. The principle we have announced, based, as we think, on the true meaning of the constitution as understood by its framers, as well as the expositions given by our courts from 1835 down to the present time, abundantly demonstrate the incorrectness of his positions. We need but add that to assume as correct his main proposition, that whatever the legislature shall so declare is a privilege, is to make this clause of the constitution as conferring a power, or limiting or defining a power in the legislature, useless, inoperative, and absurd. If the power conferred to tax in this mode is only equivalent to the will or discretion of the legislature, then the constitution, or this clause, is practically a nullity, ceases to be any rule, or to operate at all over the subject, but only the will of the legislative body would be supreme over the question, so that, in fact, anything and all property could be taxed exclusively in this way, and thus the rule of taxation according to value be annulled. This cannot be the proper construction of the clause under consideration.

We are aware that the distinction may be said to be

somewhat refined between taxing the occupation, avocation, or calling of a party by reason of his using his property in that calling or occupation, and taxing the property itself, as property, but the distinction is made in our constitution in very plain and emphatic language, repeatedly adopted as its proper interpretation by our courts, and we feel bound to maintain it as the supreme law of the land, which we cannot alter and dare not disregard. In support of the view we have taken of this bill as a revenue measure in its purpose, we may add here that it is so treated by all the parties to this case by paying the taxes, first, under protest, and second, bringing the suit for the amount so paid under the provisions of the act of 1873, and if these provisions had not been strictly pursued, we have no doubt but that the watchful attorney, who always sedulously and zealously guards the interest of the state, would have promptly interposed the bar of that statute against the right of the taxpayer to sue at all.

So much for this aspect of the case, in which we hold this law by its terms to be a revenue law, and a tax upon the simple ownership of property, by declaring it to be a privilege and not a tax upon any peculiar use of it for profit to be derived from the general public, nor a tax upon an avocation, calling, or pursuit, all of which may be declared and have been so held privileges under our constitution.

The dog being property, may be taxed as a matter of course, under our view, as all other property, ad valorem, such value to be ascertained in such manner as the legislature may direct. We omitted to notice the fact, and add it here, that the language of our statutes creating privileges, as well as their subjects, is based on the view we have taken. For instance, the code, sec. 550, says: "The occupations and transactions that shall be deemed privileges, and be taxed, and not pursued or done without license, are the following, etc. [See Shannon's Code, secs.

692, 712], then enumerating the various occupations, business, and callings that are made subject to the tax thus imposed, all of them involving the elements, in whole or in part, we have given in this opinion as the distinctive features of a privilege.

As to the objection that the dog is not a property of general use or having a market value, we may say that the particular use to which property may be put, or its value, or what may make the elements of its value, cannot change or affect the principle on which it is protected as such by the constitution. If it be property, whatever may be its uses or elements of value, or however small that value may be, it is still under the protection given by that instrument. Many articles might have no market value, yet no one would hesitate to claim they were not so protected, such as family pictures and many articles of like kind that might have no practical use and no market value, and therefore, not be real sources of revenue, on the principle of ad valorem taxation.

We now proceed shortly to notice the other aspect in which this case has been pressed upon our attention by the attorney-general and counsel who argued the case—that is, that the law is sustainable under the police power of the state.

This power is a very different one from the taxing power, as we think, in its essential principles, though the taxing power, when properly exercised, may indirectly tend to reach the end sought by the other in some cases. This power in the state is based on the maxims that a man must so use his own as not to do wrong to another, that the individual citizen shall so enjoy his own rights as not thereby to infringe upon the rights of others, that the interest and rights of the individual, or a class of individuals, is to be made subservient to the higher interest of the whole or majority of the people of the state whenever the minor interest shall conflict, in the judgment of the legislature, with that of the greater. It is well defined by Chief Justice Shaw, in Commonwealth v. Alger, 7 Cushing, 53, 84, 85, to be "principle growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it [may be so regulated that it] shall not be injurious to the equal [enjoyment of others having an equal] right to the enjoyment of their property, nor injurious to the rights of the community. . . . . Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment [as shall prevent them from being injurious and to such reasonable restraint and regulations], established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient." This was said in a case where parties had the right, by reason of ownership of uplands near the sea, and to the fee in adjoining flats, to erect wharves and other buildings thereon. The legislature fixed lines in the harbor of Boston, beyond which no wharf should extend, and declared any wharf extended beyond this point to be a nuisance. The party was indicted, however, for the nuisance and the conviction sustained, and the law held to be constitutional.

We need not go minutely into the various cases on this question. They all stand on the principle announced, though the particular circumstances of each case are variant the one from the other. Instances of the exercise of this power may be found in regulations requiring railroads to fence in their tracks to prevent destruction of stock, making them liable on failure for the value of all stock killed by their cars. See Cooley Const. Limt., 572 et seq. [6th ed., 704, et seq.; 712 et seq.]

As said by Mr. Cooley, Const. Limt., 594 [6th ed., 738, 739], "it would be quite impossible to enumerate all the instances in which the power is, or may be exercised, be-

Nuisance control

cause the various cases in which the exercise by one individual, of his rights, may conflict with a similar exercise by others, or may be detrimental to the public order or safety, are infinite in number and in variety."

We will, however, from the cases before us, indicate some of the means which have been held constitutional and within the power of the legislature in other states, by which the ownership of property may be regulated, and restraints fixed upon such ownership so as to prevent injury to others, or detriment to great public interests to which such ownership must always be held subordinate. Numerous instances will be found in Cooley's Const. Limt., p. 595 [6th ed., 739–741], for the proper exercise of this power, and are familiar to our own jurisprudence. Such cases, too, as in themselves are not wrong, but are declared to be public nuisances because endangering the public health, public safety, and we may add, the same principle applies to that which is deemed injurious to any great public interest, and this to be judged of by the legislature. Mill dams may be abated or destroyed, church yards found detrimental to the public health, or in danger of becoming so, the keeping of gunpowder in cities or villages, the sale of poisonous drugs, allowing unmuzzled dogs to be at large when danger is apprehended from hydrophobia, and we may say, the same regulation might be applied in case of danger to any great public interest, such as sheep raising in our state. The author adds, "and, generally, it may be said that each state has complete authority to provide for the abatement of nuisances, whether they exist by the party's fault or not."

In Massachusetts, it has been held that a law [Act of 1867, ch. 130, sec. 7], was valid providing "that any person may, and every police officer [and constable], shall kill, or cause to be killed, all dogs [whenever or] wherever found, not licensed and collared according to the requirements of a statute, and this without previous adjudication,

and that an officer with a warrant for this purpose from proper authority, might even enter upon the close of an owner for this purpose. See 100 Mass. R., 136. We may say that this decision goes too far in one aspect, and there ought to be a judgment of a court of competent jurisdiction as to the improper possession of the property before it could rightfully be destroyed.

At any rate, from a brief summary of their results, it is clear from them all that the state may declare the keeping of this species of property a nuisance, or limit the number to be kept, or particular species of it, with known tendencies to do injury by devouring sheep; that it may impose penalties for keeping such animals, to be enforced by fine or otherwise, on conviction; that it may regulate the manner in which such animals shall be kept, as by forbidding them to be allowed to go at large except when in use and under the control of competent persons, or require them to be kept muzzled or collared so as to be incapable of doing mischief, and, in fact, may make whatever [character] of regulation or requirement in this direction [that may be] adequate to the end to be attained, the protection of that valuable and increasing industry, wool growing in our state.

To devise proper means in this direction is confided to the wisdom of the legislature representing the people and familiar with their wants. But in case of destruction of this or any other property, except in the well-known cases, recognized at common law, of great emergencies, such as the destruction of a house in a city to check the progress of a fire, etc., and under these limitations, the rule of the constitution of our state must be followed—that is, no man shall be deprived of his life, liberty, or property, but by the judgment of his peers, or the law of the land. [Const., art. 1, secs. 8, 21, and art. 11, sec. 8.]

This last phrase is but equivalent to "due process of

law," and is well defined in this respect by the supreme court of New York, as follows:

"The law of the land, as used in the constitution, does not mean a statute passed for the purpose of working the wrong. That construction would render the restriction absolutely nugatory, and turn this part of the constitution into mere nonsense." It would but be to say to the legislature, you shall not do the wrong unless you choose to do it. The meaning is, that no member of the state shall be disfranchised or deprived of any of his right and privileges, unless the matter shall be adjudged against him upon trial, had according to the course of the common law. It must be ascertained judicially that he has forfeited his rights before he can be deprived of them. It cannot be done by mere legislation, but we add, only by adjudication, with the well-known exceptions referred to. Taylor v. Porter, 4 Hill, 140; Sedg. on Const. and Stat. Law, p. 478, et seq.

It is proper to say that another section of the act, not germain, however, to the main body of it, contains an apt illustration of an appropriate exercise of this power, by making it a misdemeanor, knowingly to keep a sheep-killing dog, and upon conviction upon presentment or indictment, imposed a fine of twenty-five dollars on the person so convicted.

The act of 1865–6, ch. 3, sec. 1, had provided a similar remedy which was in force when the law under discussion was passed, but we suppose was not observed by the legislature at the time. See T. & S. Code, sec. 4665a [Shannon's Code, sec. 6527].

It will readily be seen from this review of the principles that underlie the police power, as well as the cases on the subject, that this statute is not in accord with them, so far as the provisions for taxation are concerned. In fact the law was not framed with that view, but purely as a revenue measure, no doubt intending as one of the results, however, to be secondary to the first, to lessen the number of dogs

dog law

in this state, but this secondary end which might or might not be the result, cannot bring the tax imposed within the requirements of the constitution, and the means used are not the appropriate ones to that end.

It is proper, perhaps, before we close, to refer to one other argument presented. That is, that our license laws in some cases, as in that of selling spirituous liquors, were intended to check its sale. This may be, and is no doubt, to some extent, a secondary result of the law, but the leading one [object] is revenue.

But it is clear, this is only an incident to such a law. We have but to look at the list of occupations made privileges to see that this is not the general object of such laws. For instance, merchants, telegraph companies, artists, and photographers. These occupations were certainly not intended to be checked or lessened by declaring them a privilege, and taxing them as such. It does not follow that because this effect may, in some degree follow, that it is the end of the law, nor that it is done in the exercise of the police power of the state, especiallly when we see the leading object to be revenue. But we need not further pursue this discussion. The result is, that the law before us must be held void as a revenue measure or tax imposed in violation of the limitations of our constitution, and not sustainable under the police power of the state, because not so purposed in the first place, and, second, because not using the appropriate remedies for the exercise of such power. However lightly we may esteem the animal subject to this tax, the constituion of our state is not thus lightly to be esteemed, and must be held, both in great and small matters, to be the supreme law of the land.

Let the judgment be reversed, and proper judgment be entered here.

Exhibit 4

Administrative notice

On limits of arrest power in Tennessee under 'public offense' rule

Many cases in Hamilton County courts and in those across the state should be dismissed on due process grounds because the officer arrested the accused person without a warrant in violation of Tennessee Code Ann. § 40-7-103, arrest by officer without a warrant.

This administrative notice outlines the limits of the general assembly's list of exceptions to the general prohibition under the constitution for arrest by officer without an officer-sworn and judge-OK'd warrant prior to seizure. The law on grounds for arrest by officer is found at Tenn. Code Ann.§ 40-7-103. This notice indicates even a law making things easy for police officers and courts has limits — walls and barriers behind which the accused has every right to find protection.

Administrative notice on Tenn. Code Ann.§ 40-7-103 shows how:

➢ The term "public offense" has been deconstructed and redefined into the phrase "any crime" to allow for on-the-spot arrest by an officer in any case whatsoever, for his convenience, apart from the law's explicit design and in defiance of case law.

➢ Two tests are required before an arrest without a warrant for an offense not explicitly mentioned in any of the 11 grounds. These unenumerated offenses fall out under the heading "public offense." The officer's presence is test No. 1. The second test is that of public offense OR threatened breach of the peace. To honor one test and ignore the other is a due process violation.

➢ Public offense is a crime *whose nature or form is visible*. A public offense is one *in the nature of a breach of the peace*. Statute says "public offense" or "threat of breach of peace." A public offense is an *existing* breach of peace, which excludes many crimes.

➢ Rules of statutory construction forbid any reading or use of a law that deletes, negates or renders useless any of its provisions, which instant prosecution exemplifies, violating the state's peace and tranquility.

The statute 40-7-103 begins this way:

(a) An officer may, without a warrant, arrest a person:

(1) For a **public offense** committed or a **breach of the peace threatened** in the officer's presence *** [Emphasis added]

'Public offense' subject to citizen arrest power

Generally, a public offense is a crime that contains the elements of visibility, disturbance of the peace, uproar, threat, intimidation, spectacle, disturbance. It is akin to disorderly conduct.

Its visibility as an offense means it is the kind of crime for which one might be arrested by a fellow citizen. The common law citizen arrest power is codified at Tenn. Code Ann. § 40-7-109, arrest by private person, grounds. Among those grounds: "Public offense committed in the arresting person's presence."

The limitation on citizen arrest power under public offense doctrine is seen in State of Tennessee v. Ronald W. Byrd, 2001 Tenn. Crim. App. LEXIS 543 *; 2001 WL 840290. It focuses on an erstwhile citizen's arrest and the limits on that power. The court upheld Mr. Byrd's conviction for attempt to commit aggravated kidnapping, aggravated criminal trespass, and resisting arrest.

The judges say the facts of the case did not warrant an instruction on citizen's arrest, noting that the appellant's argument that "[congressional district director Bill] Snodgrass had committed a crime because Snodgrass did not examine the fifty-pound box of 'evidence' the appellant brought to Congressman Jenkins' office and, therefore, Snodgrass was involved in a conspiracy against the Appellant." This purported crime laid against Mr. Byrd is not one that meets the "public offense" standard.

A police officer operating outside his city's corporate jurisdiction may arrest an offender for a public offense in light of his personal rights as a citizen to make a citizen's arrest.

"Generally, municipal police authority does not extend into the limits of another municipality. See T.C.A. § 6-54-301. However, a police officer may still effect an arrest outside of his municipal jurisdiction to the same extent that a private citizen is authorized to do so by law. State v. Johnson, 661 S.W.2d 854, 859 (Tenn. 1983)." State of Tennessee v. Steven Troy Wilburn, 2015 Tenn. Crim. App. LEXIS 672 *; 2015 WL 5000627.

Observability of crime a requirement

From early times, a crucial element in a citizen's arrest-type offense is its visibility. "Under our statute (Shannon's Code, section 6997) an officer may without a warrant arrest a person for a public offense committed in his presence. That means that the offense, or the facts constituting the offense, **must be revealed in** the presence of the officer. An officer cannot lawfully arrest a person without a warrant and search his person for

the purpose of ascertaining whether or not he has violated the law. Even if the person arrested were in fact violating the law, the offense was not in legal contemplation committed in the presence of the officer, and such an arrest is unauthorized, where **the facts constituting the offense are incapable of being observed** or are not observed by the officer" Hughes v. State, 145 Tenn. 544, 1921. [Emphasis added]

Public offenses are detectable by a human being's eyeballs, in the physical presence of that human being. "It is the duty of the sheriff and his deputies to keep their eyes open for evidence of public offenses." State ex rel. Thompson v. Reichman, 135 Tenn. 653 *; 188 S.W. 225 **; 1916 Tenn. LEXIS 46 ***; 8 Thompson 653

The court in State v. Ash put it this way: "That means that the offense, or the **facts constituting the offense,** must be **revealed** in the presence of the officer. An officer cannot lawfully arrest a person without a warrant and search his person for the purpose of ascertaining whether or not he has violated the law. Even if the person arrested were in fact violating the law, the offense **was not in legal contemplation committed in the presence of the officer**, and such an arrest is unauthorized, where the **facts constituting the offense are incapable of being observed** or are not observed by the officer." Word of a crime reported to an officer by a citizen is not "in the officer's presence" because he didn't see it. State v. Ash, 12 S.W.3d 800 *; 1999 Tenn. Crim. App. LEXIS 764 ** [Emphasis added]

'Public offense' akin to 'breach of the peace'

The visibility and observability of a public offense allows a citizen's arrest — and also arrest by an officer without a warrant. That's because in the crime's visibility is the element of notoriousness or breach of the peace.

"'A breach of the peace is "a violation of public order, the offense of disturbing the public peace. An act of public indecorum is also a breach of the peace."' Galvin v. State, 6 Cold. 294. The sale of intoxicating liquors has always been recognized as tending to provoke disturbances of good order and breaches of the peace. When such sales were lawful it was found necessary to impose upon them strict regulations to prevent breaches of the peace. Speaking of such a regulation this court long ago said: 'This is a police regulation, for the good order and quiet of the city.' Smith v. Knoxville, 3 Head. 247." State ex rel. Thompson

The State ex rel. Thompson court goes for social color to a list of public offenses. "The term, 'breach of the peace' is generic, and includes riotous and unlawful assemblies, riots, forcible entry and detainer, the sending of challenges and provoking to fight, going around in public, without lawful occasion, in such manner as to alarm the public, the wanton discharge of firearms in the public streets, engaging in an affray or assault, using profane, indecent, and abusive language by one toward another, on a street and in the presence of others, or being intoxicated and yelling on the public streets in such manner as to disturb the good order and tranquillity of the neighborhood." 8 Ruling Case Law, p. 285.

From State ex rel Thompson 135 Tenn. 653, *669; 188 S.W. 225, **229; 1916 Tenn. LEXIS 46, ***17

Breaches of the peace are grounds for arrest by officer under Tenn. Code Ann. § 39-17-305, disorderly conduct. A person commits this offense in a public place "with intent to cause public annoyance or alarm" who engages in "fighting or in violent or threatening behavior" or creates a "hazardous or physically offensive condition" or "makes unreasonable noise that prevents others from carrying on lawful activities."

Similar offenses are 39-17-307, obstructing highway or other passageway, in which the accused causes a sensation; he "render[s] impassable or *** render[s] passage unreasonably inconvenient or potentially injurious to persons or property" by obstructing the way. The harassment charge at 39-17-208 tells of "threat of harm to the victim" and riot is put into the same category. Riot involves three or more people in "tumultuous and violent conduct, creates grave danger of substantial damage to property or serious bodily injury to persons" (Tenn. Code Ann. § 39-17-301).

These statutory offenses are breaches of the peace.

Authorities hold that "[a]lthough a breach of the peace frequently causes intimidation or fear, and in some instances intimidation and fear are essential elements, as where the offense is charged to have been committed by threatening and quarreling, conduct need not in all cases be such as is calculated to put one in fear of bodily harm, or to have had that effect, to constitute a breach of the peace. Similarly, although a breach of the peace may be committed by an act of violence, or by one likely to produce violence, or inciting to violence, violence or incitement to violence is not an essential element of breach of the peace in all instances" [notes omitted]. 12 Am Jur 2d Breach of Peace and Disorderly Conduct § 8

"A statute which prohibits any person from maliciously and willfully disturbing the peace or quiet of any neighborhood, family or person by loud or unusual noise, or by tumultuous or offensive conduct, is not overbroad where the statute seeks to regulate conduct, not pure speech, and is neutral with respect to the content of any expressive element of such conduct that may exist in a particular circumstance." 12 Am Jur 2d Breach of Peace and Disorderly Conduct § 14. Citation to State v. Poe, 139 Idaho 885, 88 P.3d 704 (2004).

In Bouvier's Dictionary: "A breach of the peace is 'a violation of public order, the offense of disturbing the public peace. An act of public indecorum is also a breach of the peace,'" cited in James Galvin vs. The State, 46 Tenn. 283 *; 1869 Tenn. LEXIS 56 **; 6 Cold. 283

Affecting, disturbing the public

A public offense is one that offends the public. As officers stood in the public road opposite a home they heard "loud drunken talk and cursing come from defendant's house." The fact of Cartwright being drunk in his home did not warrant the invasion of that home, since it was not public drunkenness.

"But in addition there was the 'loud drunken talk and cursing,' and that conduct had annoyed the neighbors as evidenced by the fact that it was twice reported to these officers. This profanity **was a public nuisance since** it could be heard at places where the public were. It was, therefore, in public and in hearing of citizens. Compare Young v. State, 78 Tenn. 165. This **drunken cursing was disturbing the peace and quiet of this community** to the extent that they called upon the officers for relief. 'Generally, any practices tending to disturb the peace and quiet of communities, or corrupt the morals of the people, are indictable as public offenses by the common law.'" Parker v. State, 84 Tenn. 476, 478, 1 S. W. 202, 203. Cartwright v. State, 190 Tenn. 543 *; 230 S.W.2d 995 **; 1950 Tenn. LEXIS 520 ***

Grounds for arrest by officer without warrant

The constitution forbids searches and seizures generally, but allows them under probable cause or warrant. The general assembly codifies general exceptions to the ban on arrest by officer without warrant at Tenn. Code Ann. § 40-7-103. The law gives 11 grounds for such extra-judicial arrests.

The number of offenses subject to arrest by cop without warrant are greater than 11, because the law allows arrest for felonies, unenumerated, and "public offenses," also unenumerated.

The warrantless arrest grounds include attempted suicide (a)(5), domestic abuse (a)(7) and stalking (a)(9).

More exceptions to the general ban on warrantless arrest relate to traffic accidents. Briefly:

➢ At the scene of a traffic accident, the officer suspects drunkenness of a driver subject to Title 55, chapters 8 and 10 (DUI). 40-7-103(a)(6)

➢ At the scene of a highway crash, up to four hours later, of a "driver who has been transported to medical facility" under suspicion of DUI. 40-7-103(a)(8)

➢ A traffic accident, the officer may arrest the "driver of a motor vehicle" up to four hours after "leav[ing] the scene of the accident." 40-7-103(a)(10)

➢ An accident involves "serious bodily injury" or "death" and the "driver *** does not have a valid driver license" and "does not have evidence of financial responsibility." 40-7-103(a)(11)

A traffic accident under these conditions involving drunkenness is a public offense, a breach of the peace and a public disturbance fitting for arrest by officer without a warrant. State v. Duer, 616 S.W.2d 614 *; 1981 Tenn. Crim. App. LEXIS 336 **

Threat of breach of peace

The law at issue gives the officer grounds for arrest for breaches of the peace — but also threats of breaches of the peace. The officer may arrest in anticipation of riot or breach of peace if the totality of circumstances seem to warrant.

The Thompson court indicates that an officer doesn't have authority to make an arrest for a misdemeanor if it doesn't occur in his presence or is not a breach of the peace. "We hold therefore, that a person found in control of such a place as we have described ***is subject to arrest, without warrant, as for a breach of the peace threatened*** in the presence of an officer. It may be true that he has not committed any offense for which he may be indicted and prosecuted. But neither has the man who has threatened an assault and battery, or to send a challenge, but has been arrested before he could put his threat into execution. In such cases the arrest is made not for the purpose of inflicting punishment, but to prevent the necessity for punishment." State ex rel Thompson at 672. [Emphasis added]

"To summarize, it is the duty of a sheriff to keep the peace and prevent or suppress crimes and public offences. In order to do this, he is authorized to arrest, without a warrant, persons known to be or suspected of being armed for the purpose of committing a breach of the peace, and such persons may be required to give security to keep the peace. All other breaches of the peace he is simply commanded to suppress. And, to this end, he is authorized, for such a breach of the peace threatened in his presence, to make an arrest without a warrant. He may likewise arrest for any misdemeanor committed in his presence. In the case of all other misdemeanors, he must have a warrant." State ex rel Thompson

'Officer's presence' includes team approach

The presence requirement is intended "to protect citizens from harassment and baseless arrests" State v. Ash, 12 S.W.3d 800 *; 1999 Tenn. Crim. App. LEXIS 764 ** But a major liberalization of 40-7-103 affords the state greater leeway in seizing people without a warrant whose offense occurs in the officer's presence.

The high court accounts for radios, communications devices and teamwork and cooperation among law enforcement officers to broaden the "officer's presence" standard. facilitates warrantless arrests by officers in the Ash case.

"In light of the increased speed with which offenders may flee from a witnessing officer and modern communications techniques available to the police, an offense may be said to have been committed in the presence of the arresting officer if he is in communication with and is assisting the witnessing officer. *** Police officers working together on a case may combine their collective perceptions so that if the composite otherwise satisfies the presence requirement that requirement is deemed satisfied although the arresting officer does not himself witness all the elements of the offense."

The court accepts the use of radio to widen the meaning of officer presence (State v. Bryant, 678 S.W.2d 480, Tenn Crim. App. 1984); communication between departments in separate jurisdictions to affect an arrest (State v Maxie Lewis Hunter, 1989 Tenn. Crim. App. LEXIS 713); officer receipt of "information from another law enforcement official who was witness to the misdemeanor" (State v. Teri L. Hopson, 1997 Tenn. Crim App. LEXIS 627)

However, Ash looks at "certain limited circumstances" that loosen the officer presence rule and does not disturb the "public offense" standard.

Statutory construction

Finally, the rules of statutory construction forbid any reading of law that deletes, voids or makes of no effect any of its provisions.

A court cannot be relieved of the essential task of saying what the law means. The court is "guided by the rules of statutory construction found in the case law of this State. We recall at the outset that 'as a general proposition Code provisions in pari materia . . . *must be construed together,* and the construction of one, if doubtful, may be aided by the consideration of the words of and legislative intent indicated by the others.' (Gallagher v. Butler, 214 Tenn. 129, 137, 378 S.W.2d 161, 164 (1964)). Additionally, this Court has stated that 'the obligation of a court in construing a statute is to ***give effect to the statutory purpose.*** When the proper application of a statute is not entirely clear, the first inquiry is to ascertain the general legislative intent.' State by Lockert v. Knott, 631 S.W.2d 124, 126 (Tenn. 1982). Moreover, we have consistently held that 'in construing a statute, ***all sections are to be construed together*** in light of the general purpose and plan, evil to be remedied, and object to be attained. . . . .' State v. Netto, 486 S.W.2d 725, 729 (Tenn. 1972). *** While we recognize that an unambiguous statute does not require resort elsewhere than the face of the statute to ascertain legislative intent, see, e.g., Roddy Manufacturing Co. v. Olsen, 661 S.W.2d 868 (Tenn. 1983), this principle of construction cannot relieve us of the essential task of saying what the law means, particularly in a case of first impression. *** " (John C. Neff, commissioner of commerce and insurance, v. Cherokee Insurance Co., etc., No. 85-26-I, 704 S.W.2d 1; 1986 Tenn. LEXIS 648)

Given this summary of rules, converting "public offense" into "any crime" effectively deletes the rest of the statute.

For, if "public offense" means any crime, why would the general assembly bother to list 10 additional offenses for which the officer is allowed to arrest a citizen without a warrant?

Any practice by law enforcement to arrest people without a warrant is outside the permission of this statute and violative of the accused's right to be free generally speaking from warrantless arrest for misdemeanor crimes.

An arrest disregarding the limits in this law and the definition of public offense is violative of an accused person's due process rights. Charges in any case wherein this law is violated are rightly dismissed in their entirety in light of his right to a warrant signed before the arrest.

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