

A HISTORY
OF TENNESSEE
STATUTORY LAW:
COMPILATIONS,
CODIFICATIONS,
AND
COMPLICATIONS

EARLIEST COLLECTIONS OF STATUTES OF THE STATE

Or, A Catechetical Exposition, His Excellency the Palatine, and A Cross-Patch and Crazy Quilt.

On Monday, March 28, 1796, the First General Assembly of the State of Tennessee convened in Knoxville. The only problem was that the State of Tennessee did not yet exist. President George Washington signed Chapter XLVII (47) of the Fourth United States Congress into law on June 1, 1796, making Tennessee the sixteenth State of the Union, but the Tennessee Constitution of 1796 (which had been ratified "by unanimous consent" on February 6¹) called for the General Assembly to convene "on the last Monday of March"² 1796. Consequently, the General Assembly of the State of Tennessee is two months older than the State itself, and began passing laws for the State of Tennessee before there ever was a State of Tennessee.

In 1803, only seven years after Tennessee's statehood, George Roulstone, the public printer, issued a reprint of all the Acts of the State from 1796 to 1801, plus the Acts of the Territory South of the River Ohio from 1792 to 1796. It was a private effort by Mr. Roulstone, chronologically arranged, and the only editorial addition to the work was the creation of an index to the Acts.

This one-volume compilation of Acts, named "Laws of the State of Tennessee, 1794-1801" and commonly called "Roulstone's Laws," is considered the first book printed in the State of Tennessee, and is described as "battered type, crude binding, but good rag paper."³ It was printed in Knoxville, which was still the State's capital.

George Roulstone moved from New England to what would become Tennessee at the invitation of Territorial Governor William Blount in 1791. Roulstone began printing *The Knoxville Gazette* at the Hawkins Court House (now Rogersville) with the first issue dated November 5, 1791. "The naming of the little sheet was somewhat anticipatory as Knoxville was not in existence at that time except in the mind of William Blount."⁴ Roulstone began publishing the newspaper in Knoxville in 1792, and was appointed one of the first five commissioners of the City of Knoxville in September 1794.

The Territorial Government appropriated \$600 to Roulstone as public printer, and he was to publish all the acts and proclamations of that government. He also published the State Constitution and the proceedings of the Constitutional Convention after it adjourned on February 6, 1796.⁵

Roulstone's 1803 compilation of laws "is a volume in octavo of 320 [pages] with viii [8] prefatory pages, and a comprehensive index covering 16 unnumbered pages." Also in 1803, Roulstone published "A Catechetical Exposition of the Constitution of the State of Tennessee" by Willie (pro-

A HISTORY OF TENNESSEE STATUTORY LAW

(Endnotes)

- ¹ See the Schedule to the Constitution of 1796.
- ² Constitution of 1796, Article I, Section VI.
- ³ Samuel C. Williams, "A History of Codification in Tennessee." *Tennessee Law Review*, Vol X (February 1932); p. 82. This article, along with A. V. Goodpasture's "An Account of the Compilations of the Statute Laws of Tennessee" (*American Historical Magazine and Tennessee Historical Quarterly*, Vol VII, 1902) form the basis of this chapter. Also of great use was Lewis Laska's "Tennessee Legal Research Handbook" (1977), Chapter 2 on Statutes, in giving the proper names and publishers and printers of these early compilations.
- ⁴ Edwin Wiley, "Eighteenth Century Presses in Tennessee." *Proceedings and Papers of the Bibliographical Society of America*, 2 (1907-1908); pages 70-83.
- ⁵ *ibid.*
- ⁶ *ibid.*
- ⁷ She also probably owned the only printing press in the 25 counties of the State of Tennessee.
- ⁸ 1803 Chapter LXXVIII (78), passed November 3, 1803.
- ⁹ As reported by Goodpasture.
- ¹⁰ Tennessee State Library and Archives, Moses Fisk Papers.
- ¹¹ Williams, page 64.
- ¹² See, for examples, TCA 20-12-114, "recovery of damages for overflowing of water by the erection of a gristmill"; TCA 28-1-105 and 106; TCA 28-3-102; and TCA 29-24-102, "Where the verdict in slander is under five dollars (\$5.00), the plaintiff shall recover no more costs than damages." As TCA 20-12-114 has not been amended since the Code of 1858, I can only presume that the gristmill lobby remains as strong as ever in Tennessee.
- ¹³ 1823 Chapter 145, passed November 3, 1823.
- ¹⁴ Williams, page 65.
- ¹⁵ Williams, page 66.
- ¹⁶ 1825 Chapter LX (60), passed November 30, 1825.
- ¹⁷ 1826 Joint Resolution Number 56, passed December 11, 1826.
- ¹⁸ 1827 Chapter XCH (93), passed December 13, 1827.
- ¹⁹ From the Preface to Haywood and Cobbs Revisal, by James A. Whiteside.
- ²⁰ 1829 Chapter XXIII, passed December 9, 1829. The Act is 20 pages long and contains 82 sections, at a time when most Acts were less than one page and contained two or three sections.
- ²¹ From the Preface to Haywood and Cobbs Revisal, by James A. Whiteside.
- ²² Williams, page 67.
- ²³ 1831 Chapter I, passed October 8, 1831. This is six years after the Act "to procure a revisal of the public statutes of this State."
- ²⁴ *Bright et al. v. White*, January Term, 1844, Missouri Supreme Court; 8 Mo. 421.
- ²⁵ As stated by Goodpasture.
- ²⁶ Passed December 15, 1831.
- ²⁷ Passed November 27, 1833.
- ²⁸ Letter to Dan M. Robison, State Librarian and Archivist, February 15, 1952, Record Group 241, State Library and Archives.
- ²⁹ Williams, page 68.
- ³⁰ As stated on the inside front cover of the work.
- ³¹ Caruthers and Nicholson, in the Preface.
- ³² Williams, page 68.
- ³³ Or 1835, according to Attorney General Beeler.
- ³⁴ As stated by Goodpasture.
- ³⁵ 1850 Joint Resolution Number XII (12), adopted February 2, 1850.

THE CODE OF 1858

Or; An Amendment in Lieu, Onerous Labors, and The Law of the Land

In 1844, the 25th General Assembly of the State of Tennessee passed "A Resolution providing for the revision and digest of the general Statutes of the State of Tennessee."¹ This Resolution declared:

"That two persons of sufficient learning and ability be appointed by the Judges of the Supreme Court... whose duty it shall be to revise and digest the general Statutes of the State of Tennessee, and the Reports of the Supreme Court, and report the same to the next regular session of the General Assembly; Provided, the persons so appointed shall receive in full compensation therefor, the balance due the State from Smith Criddle now pending in a suit in Chancery Court at Franklin..."²

The next General Assembly did not receive the expected report; instead, the 26th General Assembly adopted "A Resolution additional to Resolution No. 40..." which named the men appointed by the Supreme Court:²

"That the Clerk and Master of the Chancery Court at Franklin may advance to Francis B. Fogg and Return J. Meigs, who were appointed to perform the work in said Resolution mentioned, one-half the money therein specified, so soon as the same shall be collected."

Smith Criddle was the Clerk of the County Court of Davidson County from 1836 until 1840. On April 23, 1844, the Franklin Chancery Court recorded the sale of properties on Market Street in downtown Nashville owned by Criddle "to satisfy a debt of \$3,720.88 due October 1840 from said Criddle as a collector of monies in said State, to the State of Tennessee..."³ This money was what was to be used to fund the new revision to the statutes.

Unfortunately, like the Blount / Fisk attempt from 1803 to 1809, the project failed to produce results:

"The inadequacy of the Smith Criddle fund prevented the revisers from undertaking a revision of the statute law, but... Mr. Meigs did undertake, and in 1848, published, a Digest of the Decisions of the [Tennessee] Supreme Court, which has no superior in any State of the Union."⁴

Francis Fogg also found success in a different area; he served as a State Senator from Davidson County in the 29th General Assembly (1851-1852) and as a member of the Nashville Board of Education from 1856 to 1863, where he "helped found Nashville's public school system".⁵ He is also immortalized through the naming of Hume-Fogg High School in Nashville.

A HISTORY OF TENNESSEE STATUTORY LAW

In 1852, the 29th General Assembly returned to the idea of a State Code through "A Resolution to appoint Commissioners to prepare a Digest of Statutes".⁶

"That Return J. Meigs and William F. Cooper, be, and they are hereby appointed to revise and digest the general statutes of the State of Tennessee, and report the same to the next General Assembly, and that they suggest any amendments or alterations which they may deem advisable, and that they receive for their compensation the balance remaining unexpended of the amount recovered by the State against Smith Criddle."⁷

Return J. Meigs III (1801 – 1891) served as the first State Librarian of Tennessee from 1856 through 1860.⁸ Prior to that appointment, he served as the Attorney General and Reporter for the State in 1839, as a U.S. attorney for Middle Tennessee in 1841, and as a State Senator for the 27th General Assembly in 1847. Meigs County in Tennessee is named for his grandfather, the first Return Johnathan Meigs.



Image caption: Return J. Meigs. Image courtesy Tennessee State Library and Archives.

William F. Cooper (1820 – 1909) was a practicing attorney in a firm with A.O.P. Nicholson, who already had experience in compiling statute laws. Cooper later served as Dean of the Vanderbilt Law School from 1874 until 1875, and as a Justice of the Tennessee Supreme Court from 1878 until 1886.

THE CODE OF 1858



Image caption: William F. Cooper. Image courtesy Tennessee State Library and Archives.

The 30th General Assembly of the State of Tennessee received a report from the men on February 14, 1854, when the report was "Read and referred to Judiciary Committee."⁹ On Friday, December 15, 1855, the House took up a report "from the joint select committee, on the subject of the delay in the Digest of the Laws of the State" and received:

"the opinion of the committee that the reason of the delay is a good one, and that they ought to be continued, and that provision should be made for printing the Digest of Cooper and Meigs; Meigs' report was read and ordered to be transmitted to the Senate.... Cooper and Meigs had been employed in this work only about four years. Their meagre compensation would not justify them in devoting all their time to the business. Mr. Cooper had succeeded in completing his portion, and Mr. Meigs would have his portion completed in a few months. Mr. Meigs proposed in his report, that by the next meeting of the Legislature, they would have the work entirely completed."¹⁰

Despite the proposal, the work was not finished by the adjournment of the 31st General Assembly in 1856. That General Assembly was well aware of the on-going work, though; on February 6, there was an extensive debate in the House on a bill concerning "spirituous and vinous liquors". During the debate, "Mr. Tipton proposed to refer the whole subject to Meigs and Cooper, with instructions to report to the next General Assembly. It was very evident we couldn't do anything with it."¹¹

A HISTORY OF TENNESSEE STATUTORY LAW

In the closing days of that legislative session, the House debated a Senate Joint Resolution concerning the actions of Messrs. Meigs and Cooper:

"The Senate joint Resolution, to provide for the revival of the Statutes, coming up for consideration -

Mr. Newman submitted a resolution in lieu - authorizing R. J. Meigs and W. F. Cooper to superintend the printing of 100 copies of their revision of the Statutes of Tennessee - to be laid before the next General Assembly....

The previous question forcing the vote on Mr. Newman's resolution, it was adopted in lieu of the Senate's proposition, and then rejected - yeas 28, nays 33."¹²

Meigs and Cooper continued their work with no direction from the Legislature.

The 32nd General Assembly convened on October 5, 1857. On October 6, the General Assembly received a message from Governor Andrew Johnson, his final message to the legislature as civilian Governor.¹³ In it, he declared:

"I am advised that Messrs. Cooper and Meigs, who have been appointed by the Legislature to prepare a Digest of the Laws of this State, have with great care and much labor performed that service, and will at an early date submit their Digest to your inspection and consideration.

If our system of jurisprudence is so modified as to conform to the requirements of the public interest, during your present sitting, I am advised that the Digest which has been prepared, can be suited or adapted to the change which may be made in our system of jurisprudence, with but little labor and very slight alterations."¹⁴

On October 12, 1857, the legislature received separate reports from the two men, leading to the first of many motions and debates over the men, their reports, and their work:

"Mr. Vaughn presented the reports of Mr. Meigs and Mr. Cooper, heretofore appointed by the General Assembly to the work of the revision of the Statutes of Tennessee, and moved that these reports be severally referred to a joint select committee.

Mr. Dunlap: Mr. Speaker, I desire to make a motion in reference to these reports.... I desire to make a motion that these reports be printed. The subject is perhaps of more importance than almost any other likely to come before us, and I should like to have the privilege of seeing these reports, before they are referred, so that we may all be prepared for intelligence action.

Mr. Vaughn withdrew his motion, stating that he had not read Mr. Cooper's report, but had read Mr. Meigs' report, which was very short - merely a synopsis of what he had done.

THE CODE OF 1858

On the motion of Mr. Dunlap it was then ordered that 500 copies of these reports be printed for the use of the House.¹⁵

The reports are as different as the men behind them.

"These reports fully demonstrate that the two commissioners found that they could not work in harmony – their mental constitutions, viewpoints and habits of work were too diverse.

The report made by Meigs is brief and somewhat in the nature of an apologia; that of Cooper gives evidence of a mastery of the field and of intense and prolonged work to bring desirable results."¹⁶

Meigs' report is four pages; three of those pages are the listings of "heads" or subjects under which statutes are grouped. He then states:

"As to the method in which the statutes are here digested, I beg your Honorable Body to consider it was merely tentative, an effort to effect the object contemplated by the legislature in appointing the commission....

If I had preferred it, I should have presented my materials in [alphabetical order]....

The power to revise includes those of alteration and amendment; but I have conceived myself authorized to exercise those powers only so far as to drop out of the statutes all unnecessary words, and to reform the composition so as to attain all the perspicuity and clearness in my power, not venturing to change the ideas of the legislature.

As to changes, indeed, I shall have many things to suggest; and I beg to conclude by saying, that I shall hold myself in readiness, at all times during your session, to wait upon any committee to whom the revisal may be referred, and to perform any work or duty, which it may be your pleasure to assign me."¹⁷

In contrast, the report of Mr. Cooper is 38 pages, including subjects broken down by Part, Title, Chapter, and Article; and the entirety of Part III ("Of the Redress of Civil Injuries"), Title I ("Of Civil Actions"), consisting of Chapter I ("Of the Forms of Civil Action") and Chapter II ("Of the Limitations of Actions"). Notably, Mr. Cooper's report does not list the creating or enacting Act for any of the statutes presented; it is as if the entire Title was written by him as he thought fit.

In his report, Cooper writes:

"With this Report, is submitted to the General Assembly a Digest of the laws of the State, with such alterations and suggestions as seemed advisable, analytically and systematically arranged upon the plan indicated by the annexed table of contents. The digest consists of between fifteen and sixteen hundred pages of manuscript, written upon one side only, of large record paper, divided into sections of convenient size, to be numbered continuously from

A HISTORY OF TENNESSEE STATUTORY LAW

the beginning to the end.... The manuscript is exclusively the work of my own hands....

[S]ome alterations seem demanded by the progress of law as a science, and by the practical spirit of our people.... Accordingly, I have not hesitated in many cases to by positive provision to supply deficiencies in the written law, to discard useless form, and to aim at substantial justice."¹⁸

Cooper concludes his report by stating "The manuscript digest herewith submitted will be retained by me, subject to the orders of the General Assembly."¹⁹ In response, the 32nd General Assembly appointed a Joint Select Committee to review the reports and documents, which then appointed a subcommittee. The members were "Senators Joseph B. Heiskell, W. P. Davis, and W. C. Whitthorne, and Representatives W. C. Dunlap, C. W. Rowles, H. B. Bate, Michael Vaughn, S. T. Bicknell and M. Bullock". The members of the subcommittee were "Joseph B. Heiskell, Chairman, and Micajah Bullock and Samuel T. Bicknell".²⁰



1858 Code Commission. Image courtesy Tennessee State Library and Archives.

The result became 1857 Senate Bill 86. The bill was introduced in parts as those parts were approved by the subcommittee and committee; each part then passed three readings over three days in each house. In the Senate afternoon session of Tuesday, November 17, 1857:

"Mr. Heiskell, from the Joint Select Committee on the Code, introduced part first of bill, No. 86,

To revise the Statutes on Tennessee; which

Passed the first reading."²¹

On Thursday, November 19, 1857, the first part of Senate Bill 86 passed the Senate unanimously, 18 ayes, 0 noes.²² Over the next several months, the subcommittee and committee proceeded to divide the bills into twenty-three parts to present to the Senate; each part was read and voted on, until finally, in the afternoon session of Thursday, March 11, 1858:

THE CODE OF 1858

"Senate proceeded with the reading of the Code.

...

Part twenty-second and twenty-third of Senate Bill, No. 86, to
Revise the Statutes of the State of Tennessee,

Passed the third and last reading.

Ayes, 13

Noes, 7....

Ordered, that the bill be immediately transmitted to the House
of Representatives."²³

Even with this action, the Senate was not done with the bill. On Friday,
March 12, and on Saturday, March 20, the Senate concurred in House
amendments to parts 21, 22, and 23.²⁴

The House of Representatives, meanwhile, received the first part of
Senate Bill 86 in their afternoon session of Friday, November 20, 1857,
the day after its passage by the Senate.²⁵ Over the next several months,
the House received the parts of Senate Bill 86 as they were passed by the
Senate; each part was then debated and approved, but not always with-
out amendment.

The extent of the debate can be seen by reviewing the passage of one
part of the bill. On Tuesday, January 5, 1858, the Senate began debate on
the seventh part:

"Mr. Bullen moved to strike out all that authorizes the sell and
whipping of white men.

Mr. Whitthorne moved as an amendment in lieu, that so much
of the Code as includes the laws of the State, in reference to va-
grants, be stricken out;

Upon which motion,

Mr. Davis demanded the ayes and noes;

Which were ordered, and resulted [in a 7-7 tie vote]....

There not being a quorum present,

On motion of Mr. Davis,

The Senate adjourned to 10 A.M. to-morrow."

The Senate's debate of the next day went little better than the preced-
ing day. The Senate failed to adopt the amendment in lieu, this time by a
tie vote of 9-9, then came a series of proposed amendments, some of which
were adopted, before the seventh part of the bill finally passed the Senate,
12 Ayes, 7 Noes.²⁶

The House received and took up the seventh part of Senate Bill 86 on
Thursday, January 14, 1858. The bill passed 41 to 21, then:

"Mr. Gammon moved a reconsideration of the above vote;

A HISTORY OF TENNESSEE STATUTORY LAW

Which motion prevailed.

On motion of Mr. Bullock,

The House adjourned until to-morrow morning, 9 o'clock."²⁷

The House Journal for the next day only notes that Mr. Bullock offered an amendment to the bill, striking out three paragraphs, before the bill again passed, this time by a vote of 44 to 21.²⁸ The newspapers of the day, though, gave a more complete version of what was going on:

"The House now returned to the unfinished business of yesterday - the consideration of the Code, Part [7].

Mr. Bulloch, in view of what might seem to be an attack upon the Committee on Revision, said: The Committee had not felt authorized to leave out of the code statutes which they found in force on the statute book, and this particular section had been in the book since 1801, which he himself should now move to strike out.

Mr. Rowles further explained the duty of the Revision Committee and the revisers....

Mr. Bicknell also made a detailed statement of the proceeding of the committee and their onerous labors upon the collation and revision of the Statutes....

Mr. Davidson disclaimed any allusion to party politics in the debate of yesterday.

Mr. Bullock read the obnoxious section....

Which clauses were severally stricken out from the code."²⁹

That debate probably lasted for hours.

The newspapers of the day took note of the work of the legislature. The Athens Post reported:

"The revision and codification of the Statutory enactments of the State of Tennessee is, without question, the great work before the Legislature. In importance it overshadows every other measure which has or will be brought before the present session of the General Assembly....

When completed, the State of Tennessee will possess a code of laws which will, we opine, in all particulars compare favorably with that of any State in the Union..."³⁰

On Monday, March 22, 1858, the last day of the legislative session for the 32nd General Assembly, Senator Joseph Heiskell, the Chair of the Committee, "presented a schedule to the Revised Code, embracing certain statutes of the present session; which were read, approved, and ordered to be inserted in the places, and in the form herein provided."³¹

Also on that final day, the Speaker of the Senate, J. C. Burch, gave his final valedictory speech to the members of the 32nd General Assembly:

THE CODE OF 1858

"Senators: The hour has come when we must part. How pleasing the anticipation of again mingling with a confiding constituency, and participating in the endearments of the domestic circle....

Our session has been something longer than either of the last two, but the revisal of our entire Code of Laws, the Herculean labor of the session, which has been so long and so much needed, and which will stand a monument of the industry and energy of those who have superintended the revision, and the unusual importance of the measures disposed of by us, it is to be hoped, will prove a satisfactory apology to a generous constituency for our protracted stay."³²

Two resolutions also accompanied the final action of the legislature; 1858 Joint Resolution Number 10:

"That the thanks of the members of both branches of the Legislature are justly due, and are hereby tendered unanimously to Messrs. Heiskell, Bullock and Bicknell... for the labor and attention which they have bestowed on this work, and that they merit the confidence and ought to receive the thanks of the whole people of the State, for their supervision of the work, and the immense amount of labor which they have devoted to it."³³

Followed by Joint Resolution Number 20:

"That Messrs. Meigs and Cooper, be, and they are hereby directed to place the names of the Sub-Committee, to wit: Messrs. Bullock, Heiskell and Bicknell, on the title page of the Revised Code of Tennessee, in such manner as to them shall seem proper."³⁴

Finally came "An Act to provide for the printing of the Revised Code, and to compensate the Revisers...":

"That Return J. Meigs and Wm. F. Cooper, the revisers of the statutes, be appointed to superintend the printing of the work, with authority to make such side notes, head notes, indexes, and tables, as may be necessary...

That they have authority to transpose the order of the sentences, and to change the order of arrangement where necessary to the completeness and perfection of the work, and to change the phraseology so far as such transfers may render necessary.

To number the sections and to fill blanks by reference to the proper sections, and do such other acts in relation thereto as may be necessary to render the work complete: Provided, that said revisors shall in no respect change the substance matter of said code as enacted by this General Assembly...

That the code so completed shall constitute the body of the public statutes of the State of Tennessee....

A HISTORY OF TENNESSEE STATUTORY LAW

That the engrossed copy now in the hands of the committee be also signed by the Speakers, to authenticate the same....

That the copy-right to the work be reserved to the State, and that it be sold to citizens at the price of three dollars....

That the revisors, for their services up to the final publication of the work, shall each be entitled to a warrant from the comptroller for the sum of four thousand dollars....

That H. L. Claiborne, for his services in copying the revision, shall be allowed the sum of three hundred and fifty dollars, to be paid by the treasurer on the warrant of the comptroller...⁷⁸⁵

Fourteen years after the effort began and after 62 years of statehood, the State of Tennessee had its first official Code. The work done cannot be overstated. In addition to reviewing over 100 years of legislation, the members of the Commission also reviewed the laws of other states, and included what they considered appropriate in their draft presented to the legislature. Consequently, new language was enacted by this Code of 1858 which had never before been considered by the General Assembly.³⁶

But not everyone was certain that the new Code was duly and legally enacted. On December 3, 1858, the Clarksville Chronicle ran the headline "IS THE NEW CODE OF TENNESSEE THE LAW OF THE LAND?" and printed a letter to the editor which asked:

"The copies of the New Code which have been received here have not the signatures of the Speakers of the Senate and House of Representatives, and it is *reported* here that the original manuscript of the 'Code,' passed by the Legislature, has not the signatures of the Speakers. How is this? The provision of the Constitution of the State of Tennessee is plain and emphatic on this point - 'No bill shall become law until it shall be read and passed on three different days in each house, and be *signed by the respective Speakers.*'"

The response of the editors was simple and direct: "We learn from the Secretary of State that the bill as it originally passed the legislature was signed by the Speakers of both Houses after it had passed on the third reading. This settles the question."

It seems that the original copy of the bill, "copied by Henry L. Claiborne, the clerk of the committee," was filed with the Secretary of State's office without the signatures, and that a second "engrossed copy... was signed during the session, by the Speakers of both Houses, and this copy is the one that has been published."

The article continues:

"The object of the first... was to provide a neat manuscript copy of the Code for the Secretary's Office and we presume it was the non-compliance with its provisions that gave rise to the apprehensions expressed in the above communication; but from the above statement it will be evident that the validity of the Code cannot

THE CODE OF 1858

be affected by a failure to observe the usual formalities as to this copy, inasmuch as all the requirements of the Constitution have been fulfilled in passing the engrossed copy of the Code.”

It's a good thing lawyers don't like debating little details.³⁷

A HISTORY OF TENNESSEE STATUTORY LAW

(Endnotes)

- ¹ 1843 Joint Resolution Number XL (40), adopted January 15th, 1844.
- ² 1845 Joint Resolution Number XIX (19), passed January 26, 1846.
- ³ Minutes, Vol. F, 1844 - 1846, Chancery Court Office, Williamson County, Franklin Tennessee, April 23, 1844, *State of Tennessee v. Smith Criddle et al.*, in the Tennessee State Library and Archives.
- ⁴ As stated by Goodpasture in "An Account of the Compilations of the Statute Laws of Tennessee" (*American Historical Magazine and Tennessee Historical Quarterly*, Vol VII, 1902).
- ⁵ *Biographical Directory of the Tennessee General Assembly*, Volume 1 (1796 - 1861), page 253.
- ⁶ 1851 Joint Resolution Number XXVI (26), adopted February 8, 1852.
- ⁷ An interesting side note concerning these men. On October 13, 1853, the Nashville Union and American ran an advertisement for "French Lessons" by "Mr. Zevallas, teacher of French at the Academy". In the advertisement, he "respectfully" refers to "F. B. Fogg, Esq., W. F. Cooper, Esq., M. Vaughn, Esq., R. J. Meigs, Esq., Sam. P. Allison, Esq." Three of the five were deeply involved in what became the Code of 1858; Samuel Allison was the Adjutant General of Tennessee from 1855 until 1858; and "M. Vaughn" was probably Michael Vaughn, a member of the State House of Representatives in 1857 and Harvard graduate.
- ⁸ Being a Union sympathizer, he resigned the position in June 1860 and left Nashville, but technically remained in office until June 1861; see State Librarian's Records (Return J. Meigs), 1841-1879, at the Tennessee State Library and Archives.
- ⁹ Nashville Union and American, February 15, 1854.
- ¹⁰ Nashville Union and American, December 15, 1855.
- ¹¹ Nashville Union and American, February 8, 1856. The debate, as detailed there, includes one of the great lines in the legislative annals: "Mr. Cavitt proposed a substitute, declaring, that it is the good sense of this Legislature, that good liquor is a good thing in the abstract."
- ¹² Nashville Union and American, February 24, 1856. The House at that time had 75 members.
- ¹³ Isham Harris was elected Governor in 1857, and Andrew Johnson was elected U.S. Senator by the legislature in the same year. Johnson was then appointed Military Governor of the State by Secretary of War Edwin M. Stanton on March 3, 1862.
- ¹⁴ 1857 House Journal, page 29.
- ¹⁵ Nashville Union and American, October 13, 1857.
- ¹⁶ Samuel C. Williams, "A History of Codification in Tennessee"; *Tennessee Law Review*, Volume X, Number 2, February 1932; page 70.
- ¹⁷ "Report to the General Assembly on the Revised Statutes, by R. J. Meigs." Appendix to Senate and House Journals, 1857, pages 31 to 34.
- ¹⁸ "Report on the Revisal of the Statutes, by W. F. Cooper." Appendix to the Senate and House Journals, 1857, pages 187 to 225.
- ¹⁹ *ibid*, page 196.
- ²⁰ As reported by Goodpasture.
- ²¹ 1857 Senate Journal, page 166.
- ²² 1857 Senate Journal, page 175. The Senate had 25 members.
- ²³ 1857 Senate Journal, pages 732-733.
- ²⁴ 1857 Senate Journal, pages 745 and 826, respectively.
- ²⁵ That House floor session also ends with one of the great lines of the legislature: "On motion, the House adjourned until Monday morning, 10 o'clock, for the purpose of having the stoves repaired." The Capitol was still under construction, after all.
- ²⁶ 1857 Senate Journal, pages 322-326.
- ²⁷ 1857 House Journal, page 379.
- ²⁸ 1857 House Journal, pages 380-381.
- ²⁹ Nashville Union and American, January 17, 1858.
- ³⁰ Athens Post, February 19, 1858, reprinted from the Nashville Daily News.
- ³¹ 1857 Senate Journal, page 844.
- ³² 1857 Senate Journal, pages 848-849.

THE CODE OF 1858

³³ 1857 Joint Resolution Number 10, adopted February 24, 1858.

³⁴ 1857 Joint Resolution Number 20, adopted March 20, 1858.

³⁵ 1857 Chapter 177, passed March 20, 1858.

³⁶ The history lines of these sections indicate "Code 1858" with no prior legislation or derivative listed. See, for example, TCA 4-1-101, 16-1-102, 25-1-103, and 36-3-302, among many others.

³⁷ If you're wondering why there's no mention of the Governor signing the bill as well, there's a reason: the Constitution of 1835 made no provision for a bill to be presented to the Governor. A bill became law after passage and after being signed by the Speakers; the Governor had no part and no power of veto.

THE CODE OF 1932

Or; A Veto Override, Real Manhood, and A Legislative Enactment of Statutes.

In 1929, the Sixty-sixth General Assembly again attempted the creation of a Code Commission. The members passed:

"A Bill to be entitled 'An Act to create a commission to codify the laws of the State of Tennessee into general statutes for adoption by a subsequent General Assembly.' Said General Statutes to contain all the law on each subject of the law, and to prepare and submit a plan for the codification, printing and binding of the said General Statutes."¹

The bill passed the Senate on February 8 by a vote of 20 Ayes, 8 noes.² On February 15, the House passed the Senate bill by a landslide vote of 80 Ayes to 1 No vote, with Representative Richard P. Huffman of Castalian Springs casting the lone contrarian vote.³

On February 25, Governor Henry Horton, following the lead set by his predecessor in office, Governor Austin Peay,⁴ vetoed the bill:

"I am returning to you Senate Bill No. 26 without my approval....

The \$40,000.00 provided for the work contemplated is in no sense adequate for the task. It is simply a starter insofar as appropriations are concerned for this purpose....

Then another objection to this bill is that it provides for the Commissioners to give their undivided time to this work.

The class of lawyer who should undertake this work could not afford to devote his entire time to it. He could not neglect his own business for the length of time necessary to prepare the necessary data.

The bill also provides that the Commission may leave out any part of the present Code or may add to any new material they may see fit. This gives too much power to any three men. This in effect delegates the power to enact new laws to this Commission, which, in my opinion, is unsound.

Then, again, I find no real substantial need or demand for this work at this time....

Practically every section of our Code has been construed by our Supreme Court. The new Code would of necessity require much litigation in order to have the different sections construed by the Court....

For these reasons I am constrained to return to you this measure without my approval."⁵

A HISTORY OF TENNESSEE STATUTORY LAW

(Endnotes)

- ¹ 1929 Senate Bill 26.
- ² 1929 Senate Journal page 298.
- ³ 1929 House Journal, page 525.
- ⁴ Governor Peay died in office on October 2, 1927, during his third two-year term.
- ⁵ 1929 Senate Journal, pages 506-507.
- ⁶ Senator Keefe also served as an announcer for radio station WSM in Nashville. See his entry in the Biographical Directory of the General Assembly to learn of his varied interests.
- ⁷ 1929 Senate Journal, page 507.
- ⁸ 1929 House Journal, page 718.
- ⁹ 1929 Public Chapter 48, passed March 19, 1929, "the objection or veto of the Executive to the contrary notwithstanding."
- ¹⁰ Charles C. Trabue, "The New Tennessee Code", Tennessee Law Review, Volume X, Number 3 (April 1932), page 155.
- ¹¹ *ibid*, page 159.
- ¹² *ibid*, pages 159-160.
- ¹³ Samuel C. Williams, "A History of Codification in Tennessee (Continuation)", Tennessee Law Review, Volume X, Number 3 (April 1932), page 174.
- ¹⁴ *ibid*.
- ¹⁵ 1931 House Journal, page 255.
- ¹⁶ Williams, page 174. Possibly an ulcer or cancer.
- ¹⁷ *ibid*, page 175.
- ¹⁸ 1931 Senate Journal, page 62.
- ¹⁹ Williams, page 176.
- ²⁰ *ibid*, page 177.
- ²¹ 1931 House Journal, page 64.
- ²² *ibid*, page 161.
- ²³ *ibid*, page 345. This action is not in the bill index to this volume.
- ²⁴ *ibid*, page 446.
- ²⁵ 1931 Senate Joint Resolution 32, adopted February 3, 1931.
- ²⁶ 1931 Senate Joint Resolution 19, Section 4, adopted January 28, 1931.
- ²⁷ 1931 House Journal, page 440.
- ²⁸ 1931 Senate Journal, page 342.
- ²⁹ 1931 Senate Joint Resolution No. 33, passed March 17.
- ³⁰ 1931 House Joint Resolution No. 49, adopted March 18.
- ³¹ 1931 House Journal, pages 823 - 828.
- ³² *ibid*, page 828.
- ³³ Williams, page 176.
- ³⁴ 1931 House Joint Resolution 78, adopted June 26, 1931.
- ³⁵ 1931 Public Chapter 88, approved July 2, 1932.
- ³⁶ Preface to the Code of 1932, page iii.
- ³⁷ Williams, page 177.

V
S
O
E

ib.
on
th
co.
ea
12
ce
1
in

PREPARATION OF THE TENNESSEE CODE ANNOTATED

copy, plus copies for the clerks, copies to be amended, and copies to be filed with different offices.

The Commission also had a new companion in legislative actions. The 78th General Assembly had created a new Tennessee Legislative Council Committee,⁶ which replaced the Legislative Reference Bureau created four years earlier:

"The Executive Secretary reported that he had been requested by the Executive Director of the Tennessee Legislative Council to cooperate with the council in providing bill drafting facilities for members of the Legislature;... that the Tennessee Legislative Council planned to employ two attorneys and two legal secretaries during the 1955 session of the legislature, to work under the general supervision of the Attorney General, for the purpose of providing bill drafting service to members of the Legislature; and that the Executive Secretary had been requested to assist in this work, for the purpose of integrating new bills enacted by the 1955 Legislature and succeeding legislatures into the framework and organization of T.C.A."

The great difference between the Legislative Council Committee and its predecessor, the Legislative Reference Bureau, is that the members of the Legislative Council Committee were legislators and legislative employees, instead of executive branch employees. Legislative independence was becoming a reality.

Also in September 1954, the Tennessee Banker ran an article by Harry Phillips, the Executive Secretary of the Code Commission, and a member of the faculty for the Tennessee Bankers Conference. In this article,⁷ Secretary Phillips described both the need for the new Code and the arrangement of the new Code:

"The public statutes of Tennessee are scattered in four publications: The 1932 Code, the 1950 Code Supplement, the Public Acts of 1951 and the Public Acts of 1953, each with a separate index. The present title arrangement originated before the War Between the States and is hopelessly inadequate for present and future needs.... Even the most experienced lawyers and judges have trouble *finding* the statutory law....

In enacting our first *official annotated* code, with a plan for keeping it up to date on a long range basis, Tennessee profits for the experience of the most progressive states of the Union and will have a system of statutory law second to none....

T.C.A. will *not* change or modify the meaning or effect of any existing statute. It will follow a new title arrangement, however, which will be a tremendous improvement over the present code....

One of the most convenient and progressive features of T.C.A. will be its new system of section numbering. It is believed that the section numbering will give to the new Tennessee Code the best

A HISTORY OF TENNESSEE STATUTORY LAW

combination of simplicity, flexibility and ease of handling of any system yet devised....

In T.C.A. sections will be designated by title, chapter and section. The title number comes first, followed by a hyphen, then the chapter number, with the last two digits showing the section number within the chapter. Thus, Section 6 of Chapter 3 of Title 12 will be designated as §12-306; or Section 18 of Chapter 14 of Title 7 will be designated as §7-1418....

Under this numbering system it will be possible to add new sections to existing chapters, new chapters to existing titles, and new titles at the end of the code without resorting to decimals or alphabetical sub-numbering....

T.C.A. will be kept up to date on an *official* basis. Following each session of the Legislature the public laws of that session will be codified and published in pocket part supplements. At the next session of the Legislature, the codification of acts of the previous session contained in the current pocket part supplements will be submitted for enactment. This will mean that all sections of T.C.A., both in the original volumes and pocket supplements, can be cited as official statutes and amended by code section number....

It is the objective of the code commission and the publisher to make T.C.A. one of the best state codes in the nation. Only time will tell whether or not the new code will measure up to the ambitions of its sponsors. If it does, then 'T.C.A.' should be the official citation to the statutory law of the Volunteer State for many years to come."

All the players were now in position. It was now time for the 79th General Assembly of the State of Tennessee to convene and enact the text of the Tennessee Code into law. On Tuesday, January 11, 1955, Governor Frank Clement addressed the General Assembly in a Joint Convention.⁸ In his remarks, he declared:

"Let me commend for your consideration 'Tennessee Code Annotated,' a long range codification of our public statutes authorized by Chapter 80, Public Acts of 1953. Plans for this code have been developed by the Tennessee Code Commission, of which the Chief Justice is chairman. This new code will contain all the existing public laws of Tennessee, so arranged that it can be kept up-to-date every two years.⁹ The next step will be the enactment by the General Assembly, following the same procedure that was used in enacting our previous official codes - the Code of 1858, the Code of 1932 and the 1950 Code Supplement....

This code is being published at the cost of the publisher and not at the expense of the State Treasury. The Code Commission has certified that no change has been made in the effect or meaning of any existing statutes. I recommend this code for your earliest con-

PREPARATION OF THE TENNESSEE CODE ANNOTATED

sideration, in order that publication may proceed and that 'Tennessee Code Annotated' may be off the press before its effective date, January 1, 1956."¹⁰

On January 11, 1955, House Bill 47 was introduced by Speaker James Bomar and Representatives James Cummings, Eugene Collins, I. D. Beasley, and Damon Headden.¹¹ Also on January 11, its companion bill in the Senate, Senate Bill 40, was introduced by Senators T. Robert Acklen and McAllen Foutch, along with Speaker of the Senate Jared Maddux. This bill is almost certainly the largest bill ever introduced in the General Assembly; it is 5,061 pages.

In the House, on January 12, the bill passed second reading and was referred to the Judiciary Committee.¹² That Committee recommended the bill for passage on January 27, after the members had "carefully considered" the bill.¹³ The bill then unanimously passed the House on January 28.¹⁴

In the Senate, Senate Bill 40 passed second reading on January 12 and was referred to the Judiciary Committee.¹⁵ That Committee recommended the bill for passage on January 27, also after the members had "carefully considered" the bill. The House Bill was then substituted for the Senate Bill on January 31, and passed unanimously without amendment.¹⁶ Either the Code Commission did a truly remarkable job in the preparation of the bill, or it may not have been as "carefully considered" as intimated.

Governor Frank Clement signed the bill into law on February 2, 1955. Tennessee had its third official Code of laws, with plans to update that Code every other year.

The Commission met days later on February 4, 1955, and announced that the new Code was on file in the Secretary of State's office as Chapter 6 of the Public Acts of 1955. The Bobbs-Merrill Company assured the Commission that the Tennessee Code Annotated would be published in calendar year 1955.

The Bobbs-Merrill Company also made a new offer to the Commission, to publish an index to the Private Acts of Tennessee along with the new Tennessee Code Annotated, if the Commission would provide such an index. The Commission agreed that this index would be worthwhile.

The Commission next met on April 14, 1955, and announced that the State had agreed to purchase 200 copies of the new Tennessee Code Annotated for use by the judges of the State and other State officials. These 200 sets would be sent out piecemeal as the volumes of the Code were printed by the Bobbs-Merrill Company and sent to the Code Commission. Governor Frank Clement would receive one set; Attorney General George McCannless would receive nine sets; the newly-created Legislative Council Committee would receive four sets; the Speaker of the Senate and the Speaker of the House would receive one set each; and the State Law Library Commission would receive 46 sets for distribution to other states in

PREPARATION OF THE TENNESSEE CODE ANNOTATED

(Endnotes)

- ¹ The position of Executive Secretary was required by 1953 Public Chapter 80, Section 6. The Commission was granted the authority to "appoint and employ an Executive Secretary who may be either a member of the Commission or some other qualified person" and to set his compensation.
- ² 1953 Public Chapter 80, Section 4.a., approved April 6, 1953. The Commission was authorized to leave out "enacting clauses, repealing clauses, severability clauses, conditional clauses, preambles, captions and statements declaring legislative intent."
- ³ Samuel Burham Gilreath, a 1925 graduate of Cumberland Law School in 1932, joined the faculty of that school in 1932 and served as Dean of the Law School from 1946 to 1948. He was also named acting President of the University in 1951.
- ⁴ 1953 Public Chapter 80, Section 4.a., approved April 6, 1953.
- ⁵ William "Duke" Pearce, Jr., was a commercial artist for the Rich Printing Company before starting his own business, Madison Printing. He also printed and delivered programs for the Grand Ole Opry for over 35 years. He passed away in 2018 at age 91. See <https://obits.tennessean.com/>
- ⁶ 1953 Public Chapter 215, approved April 10, 1953.
- ⁷ The Tennessee Banker, September 1954, Vol. XLII No. 9, page 24.
- ⁸ 1955 House Journal, page 87.
- ⁹ The General Assembly had met only every other since 1797, notwithstanding extraordinary sessions. Yearly sessions did not begin until 1967.
- ¹⁰ 1955 House Journal, page 151.
- ¹¹ *ibid*, page 171.
- ¹² *ibid*, page 183.
- ¹³ *ibid*, page 323.
- ¹⁴ *ibid*, page 367.
- ¹⁵ 1955 Senate Journal, page 153.
- ¹⁶ *ibid*, page 314.
- ¹⁷ Alaska and Hawaii were still four years away from becoming states. I have no idea what other state did not receive a set of the new TCA, but the number "47" is scratched out in the minutes and replaced with "46".
- ¹⁸ 1955 Public Chapter 230, Section 4, Item 18, approved March 19, 1955.