



CHRONICLE

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Alvin Hawkins and the State Debt Controversy

by Gil Campbell

The third in a series of profiles of Tennessee Supreme Court justices who also served as governor of the state.

The twenty-fifth governor of Tennessee was, in fact, a native Kentuckian. Alvin Hawkins was born on December 2, 1821, in Bath County. When Hawkins was five, his father moved the family to Maury County, Tennessee. In 1828, his family decided to permanently settle in Carroll County. His father made certain that young Alvin received both a formal and a practical education. Hawkins worked long hours on the family farm and, by his twelfth birthday, had become a proficient blacksmith. He ultimately taught school before deciding on a career in law.

In 1842, Hawkins apprenticed himself to B.H. Totten, one of Carroll County's more prominent attorneys. He read law under Totten and, in 1843, was admitted to the bar. He established a law office in Camden, Benton County, where he soon developed an excellent reputation and turned it into a financially rewarding practice. In 1845, he ran unsuccessfully for a seat in the Tennessee House of Representatives and, in 1847, married Julia Ott of Murfreesboro. His interest in politics heightened and he became active in the Whig party. In 1853, he won election to the seat which he had tried to win six years earlier.

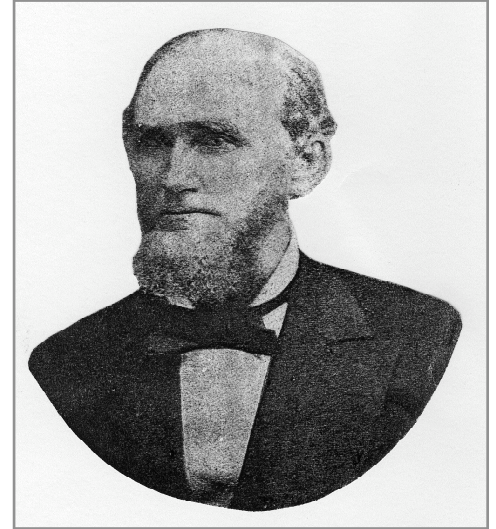
Hawkins was a staunch Unionist and, in 1860, supported the Constitutional Union Party's ticket of fellow Tennessean, John Bell, for president and Edward Everett for vice president. Following Bell's defeat, Hawkins switched his allegiance to the Republican Party and was elected to Congress in 1862. Apparently, however, there were "irregularities" in the election, which prevented him from taking his seat. With the Civil War raging, and following the occupation of West Tennessee by Union forces, Military Governor Andrew Johnson asked Hawkins to travel the region and report on "men and matters" to

aid in the eventual reconstruction process. In 1864, Hawkins' prominence in the Republican Party caused President Abraham Lincoln to appoint him United States District Attorney for West Tennessee. He resigned this position in September 1865, however, to accept an appointment from Governor William Brownlow to the Tennessee Supreme court.

During Reconstruction, Hawkins served on a Court which considered itself independent from the 'Radical Republican' administration of Brownlow, even though Hawkins' appointment had come from the fiery governor.

The war and the new political order it created had revolutionized the Court. Hawkins served with distinction as a member of the judiciary until his appointment as Consul-General to Cuba in 1868. Because of a yellow fever scare, however, he resigned his commission after six months. Upon his return in 1869, Hawkins was reelected to the Supreme Court.

The jurisprudence of the justices reflected their politics. They had little judicial experience prior to the war. They were not recognized as leaders in the organized bar. The majority had Whig political experience but none were considered to be outstanding politicians. They did, however, have a common disdain for all who had elected to support the Confederacy. But the Court would only sit for its December term and part of the March term before a new bench would be elected in May 1869. On April 20, Alvin Hawkins won nomination by only one vote. The Radical Party was



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beginning to be rent asunder and the General Assembly would soon become a conservative body. The approval of a new state constitution ended Reconstruction government in 1870 and also ended Hawkins term as a justice.

In its first session, the new conservative legislature passed an act limiting the right to carry arms. Under the act, it was a crime for "any person to publicly or privately carry a dirk, sword cane, Spanish stiletto, belt or pocket pistol or revolver." Needless to say, the act immediately came under attack.

Suddenly Alvin Hawkins emerged as counsel for two defendants who had been charged with violating the statute. In *Andrews vs. State* in 1871, Hawkins argued that the statute was violative of the Second Amendment of the United States Constitution and, also, that the Tennessee legislature only had the power to regulate and not to prohibit the right to bear arms. The Supreme Court quickly dismissed the Second Amendment argument and interpreted the right to bear arms in Tennessee as extending only to weapons that would be normally carried by a soldier. The Court also said that the defendant could not avoid prosecution under the statute by maintaining that his weapon was carried for reasons of self-defense. The Court, in ratifying the legislature's intent, was attempting to quell the violence that had been prevalent in Tennessee since secession. Had Hawkins argued before a Radical Republican Court (like the one he had left in 1870), he probably would have prevailed.

In 1880, Hawkins' political star was on the rise. While attending a general conference of the ME church in Cincinnati, Hawkins was nominated by the Republican Party of Tennessee as its candidate for governor. He won election as the first Republican governor since Reconstruction.

There was a major division in the Democratic Party over what to do about the state debt, which had been the subject of controversy since 1877. The debt was first incurred in support of anti-bellum railroad construction and it increased dramatically during the Civil War. Unpaid interest was allowed to accumulate and by 1870, for example, the debt amounted to 43 million dollars. There was growing sentiment in Tennessee to repudiate the debt, either partially or wholly.

Upon his election as governor, Hawkins proposed a compromise and on April 6, 1881, the leg-

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Creating the Great Smoky Mountains National Park

by Andy D. Bennett

Legislative acts of 1925 and 1927 authorized the state to acquire land in Eastern Tennessee. This land was to be turned over to the United States in order to establish the Great Smoky Mountains National Park.

In one case, the state sued to condemn about 300 acres in Cades Cove. The trial court said that Tennessee could not exercise the power to eminent domain when the purpose was to turn the land over to the United States. It relied on case law from other states that held the sovereign can only exercise the power of eminent domain for its own public uses and not for the public uses of another sovereignty.

On appeal the Tennessee Supreme Court, per Chief Justice Grafton Green, initially determined that Tennessee precedence required a contrary decision. Land must be condemned for a public use of the government instrumentality seeking to exercise the power, the Court said, but the Court could “perceive no reason why a public use ... may not be common to Tennessee and to the United States.”¹ A park is a public use. The fact that it also serves a public use of another sovereign does not negate the validity of the exercise of the power of eminent domain. The Court observed that Tennesseans will be the chief beneficiaries of the park due to proximity of the park. Tennesseans “will have superior advantages”² in enjoying the park.

The Supreme Court rejected other arguments that the acts authorizing the condemnation of this land were unconstitutional. The acts did not violate the single subject rule, nor did the ceding of the land adjacent to the state border violate the constitutional provision defining the boundaries of the state. The constitutional provisions concerning the size of counties and the taxation uniformity clause also were not violated by the cession of land to the United States.

The Great Smoky Mountains National Park was formally established by Congress June 15, 1934, and on September 2, 1940, President Franklin Delano Roosevelt officially dedicated the park. The park is one of the largest protected areas in the Eastern United States. It is recognized for the diversity of its plant and animal life, the beauty of its ancient mountains and the Appalachian mountain culture. The park attracts over nine-million visitors each year and has an enormous economic impact on east Tennessee — all due to a wise decision of the Tennessee Supreme Court.

Notes

¹*State ex rel v. Oliver*, 162 Tenn. 100, 109, 35 S.W.2d 396 (1931).

²*Id.*, 162 Tenn. at 100.

Andy Bennett is Chief Deputy Attorney General of Tennessee and a member of the Society's Board of Directors. ❖

Alvin Hawkins, *continued*

islatre passed the “100-3 Act” which funded the debt at 100 cents on the dollar, including unpaid interest and called for the issuance of three-percent “compromise bonds.” It also increased the property tax from ten cents to forty cents to pay the interest. This compromise did not hold, however, and in February 1882, the Tennessee Supreme Court declared the act to be unconstitutional and void. Hawkins called the legislature into special session and on May 20, 1882, the General Assembly passed the “60-6 Settlement” which funded the principal and all past due interest on the state bonds at 60 cents on the dollar.

In 1882, Hawkins was opposed in his reelection bid by General William “Low Tax” Bate who received the support of most of the State Credit Democrats. His failure to achieve a settlement on the state debt controversy would cost Hawkins. Bate was elected and succeeded in securing the passing of the “Compromise of 1883” which called for the funding of the “state debt proper” (\$2,118,000) with accumulated interest into 5 1/4 percent bonds; the funding of the remainder of the debt with accumulated interest, at 50 cents on the dollar into three percent bonds, resulting in the decrease of the state debt from \$29 million to \$16 million dollars. The payment of the debt was no longer the subject of political discussions, although it remained an acrimonious issue and had an influence on Tennessee politics for some time to come. On the other hand, Hawkins had earned a reputation as a champion of judicial and educational reform. His administration was hailed as being both honest and efficient and he won bipartisan acclaim for his integrity in office. Many believe that head virtually erased the stigma which the Republicans had carried as a result of the autocratic administration of William Brownlow.

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The Tennessee Supreme Court and the Separation of Powers Under the 1796 Tennessee Constitution

by Andy D. Bennett

The Tennessee Constitutional Convention met in early 1796 in Knoxville. Among the delegates were men who would later play large roles in state and national affairs, such as John McNairy, William Blount and Andrew Jackson. Their final product had many similarities to the constitutions of North Carolina and Pennsylvania. The Constitution did not contain a specific separation of powers provision, but it did vest the executive power in the governor, the legislative power in the General Assembly and the judicial power in “such superior and inferior courts of law and equity as the legislature from time to time direct and establish.”¹ Why did they not include a more express provision for the separation of powers? Maybe they did not think one was needed in light of the express vesting of powers among the three branches of the government? Perhaps they were more concerned with establishing the state government than with “details.” One Tennessee historian noted, “Robertson and many of his associates were not lawyers, and the American people had yet to learn the great service that an independent judiciary is capable of rendering.”²

Despite the ability of the General Assembly to create and repeal the courts, Tennessee’s highest court did not view itself as an inferior branch. Rather, the opposite is true. As early as 1815 in an ejectment action in which the defendant challenged as unconstitutional Chapter 24 of the Acts of 1813, the justices saw the court as “a separate and independent branch of government.”³ This notion arose, from the specific vesting of judicial authority in the courts. This vesting was part of the great framework of government.

The legislature, the executive and the judicial departments are three lines of equal length, balanced against each other, and the framework forming an equilateral triangle, becomes stronger the more its parts are pressed. Like the foundation of our religion, the trinity, it is the key on which the whole arch rests. The people have erected it; they have seen its suitability for duration, and compared its proportions with the external view of the pyramid, whose age is untold, and which alone, of all the works of man, has withstood the ravages of time.⁴

Related to this is the notion that independence comes about from the concept of accountability. The Court’s independence was supported by the Tennessee Constitution’s specific vesting of the judicial powers in the courts. With judicial responsibility should come

independence. In *Officer v. Young*,⁵ an act of the legislature authorized Young to prosecute a suit against Robert Officer in the name of Peter Elrod without taking out a letter of administration upon Elrod’s estate. Finding the act unconstitutional, the Judge Jacob Peck stated that “if the agent be not free to act, there should not be accountability; hence arises the great necessity of courts looking to their own constitutional rights and power and firmly disregarding all attempts at innovation upon them.”⁶

Even though the 1796 Tennessee Constitution permitted the General Assembly to create and abolish the courts at will, the highest court of Tennessee asserted its independence. As Judge Peck observed many years ago, “The framers of our constitution never dreamed of admitting the exercise of arbitrary power in any department of the government ... it is our (the court’s) province to look into the constitution.”⁷

Notes

¹Tenn. Const., Art. V, Sec. I (1796)

²Joshua W. Caldwell, *Studies in the Constitutional History of Tennessee*, 2nd ed. (Cincinnati: The Robert Clarke Co., 1907), 149.

³*Bristoe v. Evans & McCampbell*, 2 Tenn. 341, 34 (1815)

⁴*Bank of the State v. Chas. Cooper and others*, 10 Tenn. 599, 611 (1831).

⁵13 Tenn. 320 (1833).

⁶*Id.*, at 322

⁷*Bank of the State v. Chas Cooper and others* at 611.❖

Alvin Hawkins, continued

Hawkins retired again from public life in January 1883. He returned to Huntingdon and his law practice and continued to be very active in the Methodist Church. He died April 27, 1905, at the age of 84, having attained a niche in Tennessee history as one of the state’s more colorful, (if not one of its more controversial) public figures.

Sources:

- Harvey G. Hudspeth, “State Debt Controversy,” *Encyclopedia of Tennessee*
- Ben Brown, “A History of the Tennessee Supreme Court”

Gil Campbell, CAE, serves as executive director of the Society.❖