



General Assembly of Tennessee  
**OFFICE OF LEGAL SERVICES**  
War Memorial Building  
Nashville, Tennessee 37243-0059

January 12, 2016

**MEMORANDUM**

TO: Honorable Ron Ramsey, Lt. Governor and Speaker of the Senate  
Chairs of standing committees of the Senate  
Honorable Beth Harwell, Speaker of the House of Representatives  
Chairs of the standing committees of the House of Representatives

FROM: Karen Garrett, Director, Office of Legal Services  
Douglas Himes, Director, Office of Legal Services 

SUBJECT: Office of the Repealer - 2015 Annual Report

**I. BACKGROUND INFORMATION**

The Office of the Repealer was created within the Office of Legal Services (OLS) by Chapter 475 of the Public Acts of 2013 (Tenn. Code Ann. § 3-12-109). The OLS Repealer accepts submissions from Tennessee citizens and entities for review of Tennessee state laws and rules believed to be anachronistic, obsolete, defective, duplicative, contradictory, unnecessary, or incomprehensible. Please accept this memorandum as the 2015 Annual Report of the Office of the Repealer. The 2015 Annual Report encompasses submissions made to the OLS Repealer from January 1, 2015, through December 31, 2015. During this reporting period, the OLS Repealer received five completed submissions via the web site and no submissions via regular mail. Each submission was assigned a unique identifying file number and reviewed by staff. In addition, agencies identified as having familiarity with submissions were requested to submit comments to the OLS Repealer. On a month-to-month basis, the OLS Repealer received submissions as follows:

January 2015	=	0
February 2015	=	1
March 2015	=	0

April 2015	=	1
May 2015	=	0
June 2015	=	0
July 2015	=	2
August 2015	=	0
September 2015	=	0
October 2015	=	0
November 2015	=	1
<u>December 2015</u>	=	<u>0</u>
TOTAL	=	5

## II. SUBMISSION FORMS RECEIVED & RECOMMENDATIONS

The OLS Repealer makes the following findings and recommendations as to the submission forms submitted:

**A. 2015-1 – three tier system of alcohol distribution.** Tennessee regulates intoxicating liquors under Title 57 of Tenn. Code Ann. It has been submitted that Tennessee's three-tier system of distribution is "anachronistic", "contradictory", "defective", "duplicative", "incomprehensible", "obsolete", and "unnecessary". The OLS Repealer cannot concur with this submission. Tennessee's use of a three-tier system is far from unique. The issue of whether Tennessee abandons this system for another regulatory scheme is a policy decision. It is the role of the General Assembly to decide such policy matters.

**B. 2015-2 – fancy eggs.** Tenn. Code Ann. § 53-2-106 authorizes the creation of a fancy fresh egg marketing program within the Department of Agriculture. It has been submitted that this statute is "anachronistic", "contradictory", "duplicative", "incomprehensible", and "unnecessary". While the OLS Repealer does not concur with these reasons, the OLS Repealer does find that the program is obsolete. According to the Department of Agriculture, the program is an "old law" and has been nonexistent "at least over the last 30 years".<sup>1</sup> The OLS Repealer recommends that the statute be repealed.

**C. 2015-3 – boiler inspection.** The Board of Boiler Rules formulates rules for the safe and proper construction, installation, repair, use and operation of boilers in this state. It has been submitted that certain rules are "unnecessary". The Board strongly disagrees.<sup>2</sup> Both the submission and response are well presented. The OLS Repealer cannot concur with this submission.

**D. 2015-4 – inmate bibles.** Tenn. Code Ann. § 41-21-211 provides:

Each inmate shall be provided with a Bible, which the inmate may be permitted to peruse in the inmate's cell at such times as the inmate is not required to perform prison labor.

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<sup>1</sup> Agency comments, December 3, 2015.

<sup>2</sup> Agency comments, December 21, 2015.

It has been submitted that this provision is "obsolete". According to the Department of Correction, offenders have access to religious materials and the ability to participate in religious services of their choosing so long as the materials and participation does not violate statutory provisions or departmental policy.<sup>3</sup> As to Tenn. Code Ann. § 41-21-211, the OLS Repealer concurs that the statute is obsolete and recommends that it be repealed.

*E. 2015-5 – legal holidays.* Tenn. Code Ann. § 15-1-101 provides:

January 1; the third Monday in January, "Martin Luther King, Jr. Day"; the third Monday in February, known as "Washington Day"; the last Monday in May, known as "Memorial" or "Decoration Day"; July 4; the first Monday in September, known as "Labor Day"; the second Monday in October, known as "Columbus Day"; November 11, known as "Veterans' Day"; the fourth Thursday in November, known as "Thanksgiving Day"; December 25; and Good Friday; and when any one (1) of these days falls on Sunday, then the following Monday shall be substituted; and when any of these days falls on Saturday, then the preceding Friday shall be substituted; also, all days appointed by the governor or by the president of the United States as days of fasting or thanksgiving, and all days set apart by law for holding county, state, or national elections, throughout this state, are made legal holidays, and the period from twelve o'clock (12:00) noon to twelve o'clock (12:00) midnight of each Saturday which is not a holiday is made a half-holiday, on which holidays and half-holidays all public offices of this state may be closed and business of every character, at the option of the parties in interest of the same, may be suspended.

It has been submitted that portions of this statute are "anachronistic", "contradictory", "defective", and "incomprehensible". Specifically, singled out are Columbus Day and Washington Day for differing reasons.<sup>4</sup> While the statute is verbose, the OLS Repealer cannot otherwise concur with this submission. Columbus Day is a legal holiday which is observed on the second Monday in

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<sup>3</sup> Agency comments, December 18, 2015.

<sup>4</sup> The following unedited comments were provided in support of the submission:

TCA 15-1-101 lists the legal holidays of the state; however, the "third Monday in February" is still listed as "Washington Day" instead of the currently used "Presidents Day". Also, there is no mention of "Columbus Day" being observed as the day after Thanksgiving; it's still listed as the "second Monday in October". To my knowledge, this day is no longer observed as a legal holiday in the State.  
The language itself is difficult to read, being a single run-on sentence of over 200 words.

October.<sup>5</sup> Washington Day is a legal holiday which is observed on the third Monday in February.<sup>6</sup> The issues of whether to delete Columbus Day or rename Washington Day are policy decisions. It is the role of the General Assembly to decide such policy matters.

If you have any questions, please contact Karen Garrett or Doug Himes at (615) 741-3056.

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<sup>5</sup> The OLS Repealer observes that this submission is likely from a state employee. Tennessee state government has for many years observed Columbus Day on the day after Thanksgiving. Tenn. Code Ann. § 4-4-105(a)(3) authorizes the Governor to make this substitution.

<sup>6</sup> While this day may be colloquially referred to as "Presidents' Day", Tennessee's designation is far from unusual. A sample of designations associated with the third Monday in February: federally, Washington's Birthday, 5 U.S.C. § 6103; in Alabama, George Washington's birthday and Thomas Jefferson's birthday, ALA Code § 1-3-8; in Arkansas, George Washington's Birthday and Daisy Gatson Bates Day, A.C.A. 1-5-101; in Kentucky, Washington's Birthday, KY Rev. Stat. § 2.110; in North Carolina, Washington's Birthday, N.C. Gen. Stat. § 103-4; and, in Virginia, George Washington Day, VA Code § 2.2.-3300. Kentucky additionally recognizes the twelfth day of February as Lincoln's Birthday, KY Rev. Stat. § 2.110.