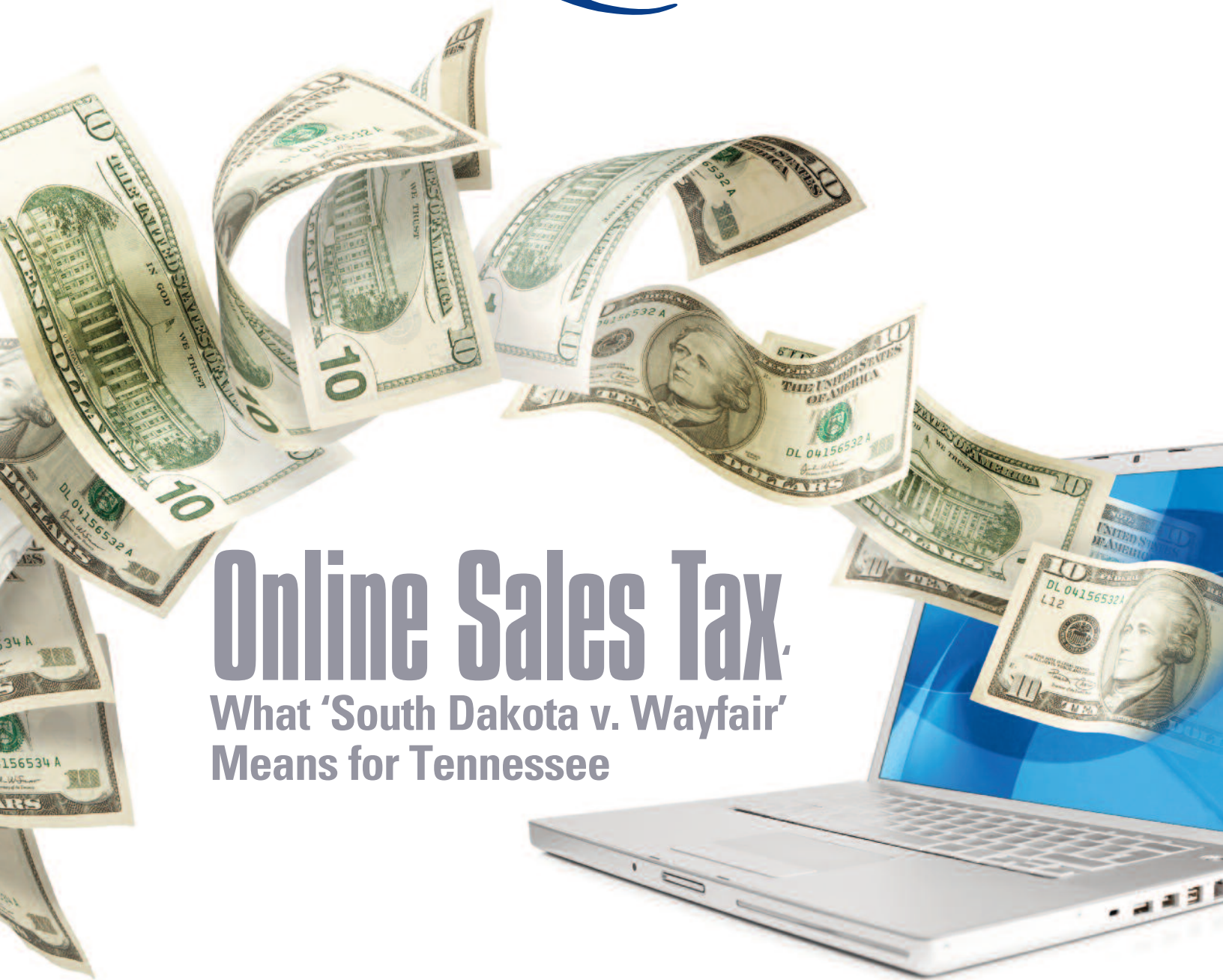


# TENNESSEE BAR JOURNAL

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## Online Sales Tax. What 'South Dakota v. Wayfair' Means for Tennessee

**ALSO: It's Celebrate Pro Bono Month!**

**Deficiency Judgments after Foreclosure Sales**

# Tennessee's Lutie Lytle A Woman of Many Firsts

By *Russell Fowler*



Lutie Lytle (1875-1955)

**October is “Celebrate Pro Bono Month.”** It is fitting that we remember a pro bono lawyer — Lutie Lytle — who was the first in many things. She was one of America’s first black female journalists.<sup>1</sup> She was the first black woman to earn a law degree in the South and be admitted to the bar in the South.<sup>2</sup> She was the first woman (of any color) admitted to the Tennessee bar.<sup>3</sup> She was the first black woman admitted to the Kansas bar. She was the first female law professor

(of any color) in the nation. She was the first African American female member of a national bar organization.<sup>4</sup>

And, as a dedicated pro bono lawyer, Lytle was one of the first lawyers to center a law practice on combating oppression of blacks and women. It was Lutie Lytle’s brilliance, courage and calling that made her face injustice and be the first at so much.

Lutie Ann Lytle was born the child of former slaves in Rutherford County, Tennessee, on Nov. 19, 1875. Her father, John Lytle, was a resourceful entrepre-

neur and barber, who became a leader in Tennessee’s Grange political movement. When the Ku Klux Klan began terrorizing Middle Tennessee with night raids on homes of black people, specifically targeting politically active and economically successful African American leaders, the Lytle family moved to the safety of Topeka, Kansas, where the scholarly Lutie attended public schools and won honors for her academic achievement. It was through her father’s political connections in the Populist Party that she obtained a position in

1895 as “assistant engrossing clerk” for the Kansas legislature at the age of 19.<sup>5</sup>

While also working for the legislature, Lytle became a pioneering writer and editor for numerous black-owned newspapers in Kansas. Her journalism focused on injustices inflicted upon black citizens and the need for “intersectional advocacy” on their behalf.<sup>6</sup> It was her newspaper work that led her to want to be a lawyer. She later said:

I conceived the idea of studying law in a printing office where I worked for years as a composer . . . . I read the newspaper exchanges a great deal and became impressed with the knowledge of the fact that my own people especially were the victims of legal ignorance. I resolved to fathom its depths and penetrate its mysteries and intricacies in the hopes of being a benefit to my people.<sup>7</sup>

As a black woman, Lytle was barred from most law schools. Hence, she moved to Chattanooga to teach school and earn the money to attend Central Tennessee College in Nashville, a Methodist institution founded in 1865 to educate former slaves. It was the leading school for educating African American lawyers in the South. She was the college’s first female law student and the only woman in the six-student law class — and in the whole college. At Central, she proved to be a gifted orator and pianist. She graduated on June 1, 1897, as valedictorian. The press reported, as distant as London, that Lytle was the first black woman to be awarded a law degree in the American South.<sup>8</sup>

### Tennessee’s First Woman Lawyer and America’s First Woman Law Professor

While back teaching school in Chattanooga, Lytle was repeatedly denied admission to the Tennessee bar because she was a woman. Since Tennessee’s founding in 1796, bar examinations and admissions were administered by state trial judges. The Tennessee Supreme Court had held in 1892 that women were unqualified to be notaries,<sup>9</sup> and

this led to the conclusion that they also could not be lawyers.<sup>10</sup>

It seemed hopeless.

Lytle then learned of Judge Lunsford P. Cooper. He was the outspoken, reform-minded judge of the Shelby County Criminal Court, a state court of record.<sup>11</sup> Judge Cooper was often in the statewide press. For example, in 1894, he was enraged by the mob lynching in Millington, Tennessee, of six young black men under arrest and scheduled to appear in his court for the charge of burning a barn. Cooper publicly vowed to punish their killers and issued a barrage of bench warrants. The indomitable Lytle sped by train from Chattanooga to Memphis to find Judge Cooper.<sup>12</sup>

On a fateful Sept. 8, 1897, prominent Memphis black attorneys Josiah T. Settle and A. B. Saddler presented the 21-year-old Lytle and moved for her admission to the Tennessee bar at the Shelby County Courthouse. After hearing Settle’s and Saddler’s arguments, Judge Cooper boldly brushed aside the ban on female lawyers and administered the oral bar exam, deemed her qualified and granted the motion.<sup>13</sup> Lytle had found the right judge.<sup>14</sup>

The news burst across Tennessee and the country, but the legality of Lytle’s admission was never challenged or questioned. Although later some would say she never actually practiced in Tennessee, newspaper accounts of the time state that she did, albeit briefly.<sup>15</sup> She also taught law during the 1898-99 term at Central Tennessee College and was heralded as America’s first female law professor.<sup>16</sup> Professor Lytle’s courses were domestic rela-

tions, evidence and criminal procedure.<sup>17</sup>

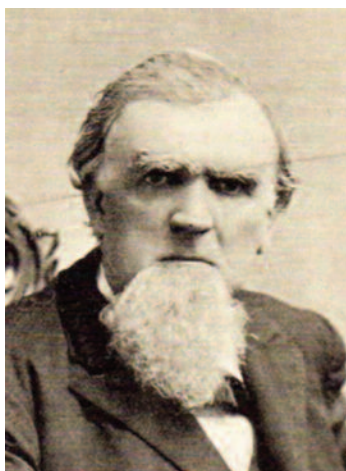
Believing that her practice would face fewer barriers in Kansas, Lytle returned to Topeka in 1899 as the first black woman admitted to the Kansas bar.<sup>18</sup> When it was reported in the press that she might relocate to Chicago and was seeking a partner, a St. Paul newspaper sarcastically said, “[T]he young lawyers of Chicago are not expected to all speak at once.”<sup>19</sup>

### ‘I Shall Talk to My People’

Lytle dedicated her practice to helping African Americans, advising that “we must point to the Constitution as the Christian does to his Bible.”<sup>20</sup> She also eloquently said:

I like constitutional law because the anchor of my race is grounded on the Constitution. . . . It is the certificate of our liberty and our equality before the law. Our citizenship is based on it, and hence I love it. . . . In connection with my law practice I intend to give occasional lectures, but not in any sense for personal benefit. I shall talk to my people and make a sincere and earnest effort to improve their condition as citizens. I shall talk to white people and appeal to them for fair play to my race. I am not a

*continued on page 20*



Josiah T. Settle, right, with another lawyer presented Lytle and moved for her admission in 1897 to the Tennessee bar at the Shelby County Courthouse. Judge Lunsford Pitt Cooper, left, was judge of the Shelby County Criminal Court at the time. Ignoring the ban on female lawyers, Cooper administered the oral bar exam to Lutile Lytle and deemed her qualified.

radical in anything, nor do I intend to be. I believe in efficacy of reason to bring about the best results.<sup>21</sup>

Lytle married in 1901 and practiced law with her husband, Alfred C. Cowan, a New York City lawyer renowned for challenging racial discrimination such as school segregation. After her husband's death in 1913, Lytle kept their New York law firm going, lectured widely and volunteered for causes and cases to advance blacks and women. In 1916, she married Rev. Stephen Alexander McNeill. He died in 1934. Lutie Lytle died on Nov. 12, 1955. She had no children. Her gravesite is unknown, but her legacy is indelible.<sup>22</sup>



Marion Griffin persuaded the General Assembly to pass, and the governor to sign, a statute granting women access to the bar in 1907.

## Marion Griffin Wins the Struggle in Tennessee

With the centralization of control over bar examinations and admission by the Tennessee Supreme Court in 1903,<sup>23</sup> the wall against women being admitted to the bar was stronger than ever.<sup>24</sup> A divided court continued to block their admission until the unrelenting Marion Griffin of Memphis, a University of Michigan law graduate who passed the bar exam but was denied admission, finally won her great seven-year struggle for herself and Tennessee women lawyers of the future. She persuaded the General Assembly to pass, and Gov. Malcolm R. Patterson to sign, a statute granting women access to the bar in

1907. Griffin went on to become the first woman elected to the Tennessee House in 1922 and practiced law in Memphis for more than 40 years.<sup>25</sup>

The Tennessee bar owes much to Lutie Lytle and Marion Griffin. ⚖️



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## Notes

1. See Taja-Nia Y. Henderson, "I Shall Talk to My Own People": The Intersectional Life and Times of Lutie A. Lytle, 102 *Iowa L. Review* 1983, 1995 (2017).

2. See *id.* at 1996-97 (2017); Dorothy A. Brown, "Faith or Foolishness," 11 *Harv. Black-Letter L.J.* 169, 176 (1994).

3. See, e.g., "Lead Her Race," *The Columbia Herald* (Columbia, Tenn.), Sept. 19, 1897 at 2.

4. See Dorothy A. Brown, "Faith or Foolishness," 11 *Harv. BlackLetter L.J.* 169, 176 (1994). Also in 1897 Ellen Spencer Mussey and Emma Gillett founded the Washington College of Law in D.C.

5. Henderson at 1986-94.

6. *Id.* at 1995.

7. *Id.* at 1996.

8. See *id.* at 1996-97.

9. *State v. Davidson*, 92 Tenn. 931 (1892).

10. Henderson at 2001.

11. See Robert A. Lanier, *The History of the Memphis and Shelby County Bar Association* 50 (1981).

12. "Ida B. Wells Speaks," *Indianapolis Journal*, Sept. 3, 1894, at 3.

13. Henderson at 2001-02.

14. It is unknown, but there may have been one other judge (or an easily obtainable "special judge") present in the courtroom to comply with a 1798 statute requiring two or more judges conduct bar exams and admissions.

15. See, e.g., "Remarkable Women," *Ottumwa Semi-Weekly Courier* (Ottumwa, Iowa), March 19, 1900 at 11.

16. Angela Onwuachi-Willing, "The Promise of Lutie Lytle," 102 *Iowa L. Rev.* 1843, 1843 (2017).

17. See Brown at 176.

18. Henderson at 2002.

19. *Bulletin of the St. Paul Globe*, Saint Paul Globe, Sept. 20, 1897, at 1.

20. Onwuachi-Willing at 1845-46.

21. *Id.* at 1846.

22. See Henderson at 2007-13.

23. Lewis L. Laska, "The Fake Law School," 53 *Tenn. B.J.* 12, 18 (Oct. 2017).

24. See *Ex parte Griffin*, 71 S.W. 746 (Tenn. 1901).

25. See Lanier at 54.



The Old Shelby County Courthouse, formerly the Overton Hotel, was the site of Lutie Lytle's admission to the Tennessee bar on Sept. 8, 1897. The building was demolished in 1925.