

12.04.06
MODEL ETHICS POLICY
UNDER THE ETHICS REFORM ACT OF 2006

The General Assembly passed the “Comprehensive Governmental Ethics Reform Act of 2006” in February of this year, which is codified in T.C.A. § 8-17-101 *et seq.* Among other requirements, the Ethics Reform Act requires local governments to adopt ethical standards related to the acceptance of gifts and disclosure of conflicts of interest, and directs CTAS to develop a model policy. This Spotlight sets out the requirements of the new law with regard to ethical standards for local governments and explains the model policy developed by CTAS.

IMPORTANT POINTS IN THE LEGISLATION

1. Local ethics policies must be adopted by the county legislative body in each county by June 30, 2007.
2. The policies are required to cover two things: (1) disclosure and/or limits on gifts and (2) disclosure of conflict of interests.
3. The policies cannot include personnel, employment, or operational regulations of local government offices.
4. The policies apply broadly to all officials and employees in all offices, agencies, and departments of the county and to the members, officers, and employees of all boards, commissions, authorities, corporations, or other instrumentalities of a county.
5. CTAS is required to draft and distribute a model policy to counties to provide guidance and direction. The county may choose to adopt the model or draft standards of its own.
6. The policies are filed with the State Ethics Commission. If the county adopts the CTAS model policy, then, instead of filing the policy, the county simply notifies the State Ethics Commission in writing that the county adopted the CTAS model policy.
7. Enforcement remains as provided under current law.
8. A failure or refusal to adopt standards by a local governing body by the deadline subjects its members to ouster.

12.04.06
MODEL ETHICS POLICY
UNDER THE ETHICS REFORM ACT OF 2006

OVERVIEW OF CTAS MODEL POLICY

Section 1. This section defines three terms used in the policy. The definition of “County” under the model policy uses the same definition required under the Ethics Reform Act. This definition includes all boards, committees, commissions, and other instrumentalities created by the county, specifically including the county school board, the county election commission, the county health department, and utility districts in the county. The act provides that if a board, commission, authority, corporation, or other instrumentality is created by two or more local government entities, the creating entities are to amend the inter-local agreement creating the joint instrumentality to designate the ethical standards that govern the joint instrumentality. Special school districts do not fall under the county’s policy but instead must adopt their own policy.

The definition of “officials and employees” who are covered by the policy is very broad and includes elected and appointed county officials, county employees, and members and employees of county boards, agencies, commissions, authorities, and corporations regardless of whether they are paid or not. This broad definition is required under the Ethics Reform Act.

The Ethics Reform Act requires counties to provide for disclosure of “personal interests that impact or appear to impact” the discretion of officials and employees. Under the model policy, a “personal interest” that must be disclosed publicly is defined as a financial interest of the official or employee (as broadly defined above), or a financial interest of a spouse or child who lives in the same household with the official or employee. This is one way to define personal interest, but a county may choose to define it in another way that also meets the requirements of the act.

Section 2. This section deals with the disclosure of personal interests by persons whose duty it is to vote on county matters. Officials and employees (as broadly defined) must publicly disclose any personal interest (as defined above) they may have in a matter to be voted upon if that personal interest affects the person’s vote or if it would lead a reasonable person to believe it affects the person’s vote. The disclosure must be made at the meeting before the vote takes place and it is to be included in the minutes of the body.

The Ethics Reform Act requires counties to provide for “reasonable and systematic disclosure” of “personal interests that impact or appear to impact” the discretion of officials and employees. This section of the CTAS model policy is one way to meet these requirements, but a county may choose another method.

12.04.06
MODEL ETHICS POLICY
UNDER THE ETHICS REFORM ACT OF 2006

Section 3. This section deals with matters where a vote is not involved but which require the exercise of discretion. Officials and employees (as broadly defined) must publicly disclose any personal interest (as defined above) that affects or would lead a reasonable person to believe it affects the person's exercise of discretion. The disclosure is to be made on a disclosure form that is attached to the model policy, and the form is to be filed in the office of the county clerk. The form is to be filed before the exercise of discretion, if possible.

The Ethics Reform Act requires counties to provide for "reasonable and systematic disclosure" of "personal interests that impact or appear to impact" the discretion of officials and employees. This section of the CTAS model policy is one way to meet these requirements, but a county may choose another method.

Section 4. This section prohibits officials and employees (as broadly defined) from accepting gifts. Under this section, neither the official or employee, nor the spouse or minor child who lives in the same household as the official or employee, may accept any gift, money, gratuity, or other consideration or favor of any kind from anyone except the county for the performance of official duties. Officials, employees, and their spouses and minor children living in the same household also cannot accept any such gift, money, gratuity, or other consideration or favor of any kind that a reasonable person would believe was intended to influence the vote, official action, or judgment of the official or employee in executing county business.

The Ethics Reform Act requires counties to provide "limits on and/or reasonable and systematic disclosure of gifts or other things of value received by officials and employees that impacts or appear to impacts their discretion." The model policy is one way to meet this requirement, but the county may choose another method.

Section 5. This section creates a five-member County Ethics Committee to receive and investigate complaints of violations of the policy and to refer matters to the appropriate person or agency for further action under existing laws, if appropriate. The committee consists of three county commissioners, one constitutional county officer (or another county commissioner if no official is willing to serve), and either one member of a board, committee, commission, or other instrumentality governed by the policy or another county commissioner, all appointed by the county mayor. The committee is to elect a chair and a secretary from among its members. Records of the committee are to be filed in the office of the county clerk, where they are open to public inspection.

12.04.06
MODEL ETHICS POLICY
UNDER THE ETHICS REFORM ACT OF 2006

The Ethics Reform Act does not contain any provisions regarding enforcement of the ethical standards or specific penalties, but instead provides that violations of ethical standards are to be enforced under existing law. While it is not required under the Ethics Reform Act, the model policy creates a local ethics committee as a mechanism for filing complaints of violations of the policy and maintenance of records. Although the CTAS model policy provides for the creation of a local ethics committee, the Ethics Reform Act does not mandate the creation of an ethics committee or the designation of any other local office to receive complaints.

Section 6. This section lists and briefly summarizes most of the state laws currently in effect governing ethics in county government. While the Ethics Reform Act does not require that these laws be included in the policy, officials and employees need to be made aware of these laws. Some of the laws apply only in those counties that have adopted their provisions by resolution of the county legislative body, and some counties may have additional requirements that have been imposed by private acts, so the applicable laws may vary from county to county.

These state laws operate regardless of the code of ethics a county adopts; policies adopted under the Ethics Reform Act do not suspend the operation of these state laws. The act specifically provides that the policies cannot be less restrictive than the provisions of any applicable general law of statewide application, general law of local application, local option law, or private act that addresses the same issue.

ADOPTION OF ETHICS POLICY

Adoption of the CTAS model policy is not required. You are free to develop your own policy, but if you adopt something other than the model policy you must file the entire policy with the State Ethics Commission. If you adopt the model policy as it is written with no changes, you may simply notify the State Ethics Commission in writing that you adopted the model policy.

If your county chooses to adopt the CTAS model policy, we have provided a sample resolution that can be used for this purpose. The sample resolution requires the county clerk to mail the resolution to the State Ethics Commission. The county clerk is also directed to send a copy of the resolution and the code of ethics to each county office that will be governed by the policy. We recommend that the county clerk consult with the county attorney to ensure that all offices that are subject to the policy receive a copy of the policy.

After your policy has been filed, any amendments or modifications to your policy must be filed with the State Ethics Commission as soon as practical after they have been adopted by the county legislative body.

12.04.06
MODEL ETHICS POLICY
UNDER THE ETHICS REFORM ACT OF 2006

WHERE TO FILE YOUR POLICY
(OR WRITTEN STATEMENT OF ADOPTION OF THE MODEL POLICY)

By June 30, 2007, each county must file with the State Ethics Commission a copy of the ethical standards adopted in that county. If the county adopts the CTAS model policy, a written statement to that effect may be filed instead of filing the entire policy. The commission's mailing address and telephone numbers are

Tennessee Ethics Commission
SunTrust Bank Building
201 4th Avenue N., 18th Floor
Nashville, Tennessee 37219
(615) 253-8634
(800) 416-4730

If you have questions or need assistance with the adoption of your policy, please contact your county attorney and/or your CTAS county government consultant.

CODE OF ETHICS
_____ COUNTY, TENNESSEE

Section 1. Definitions.

(1) “County” means _____ County, which includes all boards, committees, commissions, authorities, corporations or other instrumentalities appointed or created by the county or an official of the county, and specifically including the county school board, the county election commission, the county health department, and utility districts in the county.

(2) “Officials and employees” means and includes any official, whether elected or appointed, officer, employee or servant, or any member of any board, agency, commission, authority or corporation (whether compensated or not), or any officer, employee or servant thereof, of the county.

(3) “Personal interest” means, for the purpose of disclosure of personal interests in accordance with this Code of Ethics, a financial interest of the official or employee, or a financial interest of the official’s or employee’s spouse or child living in the same household, in the matter to be voted upon, regulated, supervised, or otherwise acted upon in an official capacity.

Section 2. Disclosure of personal interest in voting matters. An official or employee with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and to be included in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official’s or employee’s vote on the measure. In addition, the official or employee may, to the extent allowed by law, recuse himself or herself from voting on the measure.

Section 3. Disclosure of personal interest in non-voting matters. An official or employee who must exercise discretion relative to any matter other than casting a vote and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on the attached disclosure form and file the disclosure form with the county clerk. In addition, the official or employee may, to the extent allowed by law, recuse himself or herself from the exercise of discretion in the matter.

Section 4. Acceptance of gifts and other things of value. An official or employee, or an official’s or employee’s spouse or child living in the same household, may not accept, directly or indirectly, any gift, money, gratuity, or other consideration or favor of any kind from anyone other than the county:

MODEL ETHICS POLICY

(1) For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or

(2) That a reasonable person would understand was intended to influence the vote, official action, or judgment of the official or employee in executing county business.

It shall not be considered a violation of this policy for an official or employee to receive entertainment, food, refreshments, meals, health screenings, amenities, foodstuffs, or beverages that are provided in connection with a conference sponsored by an established or recognized statewide association of county government officials or by an umbrella or affiliate organization of such statewide association of county government officials.

Section 5. Ethics Complaints. A County Ethics Committee (the “Ethics Committee”) consisting of five members shall be appointed to one-year terms by the County Mayor with confirmation by the county legislative body, to be appointed each year at the same time as internal committees of the county legislative body. At least three members of the committee shall be members of the county legislative body; one member shall be a constitutional county officer or, should no constitutional county officer be willing to accept appointment, an additional member of the county legislative body; and the remaining member may be either a member of a board, committee, commission, authority, corporation, or other instrumentality governed by this policy, or an additional member of the county legislative body. The Ethics Committee shall convene as soon as practicable after their appointment and elect a chair and a secretary. The records of the Ethics Committee shall be maintained by the secretary and shall be filed in the office of the county clerk, where they shall be open to public inspection.

Questions and complaints regarding violations of this Code of Ethics or of any violation of state law governing ethical conduct should be directed to the chair of the Ethics Committee. Complaints shall be in writing and signed by the person making the complaint, and shall set forth in reasonable detail the facts upon which the complaint is based.

The County Ethics Committee shall investigate any credible complaint against an official or employee charging any violation of this Code of Ethics, or may undertake an investigation on its own initiative when it acquires information indicating a possible violation, and make recommendations for action to end or seek retribution for any activity that, in the Committee’s judgment, constitutes a violation of this Code of Ethics. If a member of the Committee is the subject of a complaint, such member shall recuse himself or herself from all proceedings involving such complaint.

The Committee may:

(1) refer the matter to the County Attorney for a legal opinion and/or recommendations for action;

(2) in the case of an official, refer the matter to the county legislative body for possible public censure if the county legislative body finds such action warranted;

(3) in the case of an employee, refer the matter to the official responsible for supervision of the employee for possible disciplinary action if the official finds discipline warranted;

(4) in a case involving possible violation of state statutes, refer the matter to the district attorney for possible ouster or criminal prosecution;

The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this Code of Ethics. When a violation of this Code of Ethics also constitutes a violation of a personnel policy or a civil service policy, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this Code of Ethics.

Section 6. Applicable State Laws. In addition to the ethical principles set out in this Code of Ethics, state laws also provide a framework for the ethical behavior of county officials and employees in the performance of their duties. Officials and employees should familiarize themselves with the state laws applicable to their office or position and the performance of their duties. To the extent that an issue is addressed by state law (law of general application, public law of local application, local option law, or private act), the provisions of that state law, to the extent they are more restrictive, shall control. Following is a brief summary of selected state laws concerning ethics in county government. For the full text of these statutes, see the Tennessee Code Annotated (T.C.A.) sections indicated.

Campaign finance—T.C.A. Title 2, Chapter 10. Part One (campaign financial disclosure) requires candidates for public office to disclose contributions and contributors to their campaigns. Part Three (campaign contribution limits) limits the total amount of campaign contributions a candidate may receive from an individual and sets limits on the amount a candidate may receive in cash.

MODEL ETHICS POLICY

Conflict of interest—T.C.A. § 12-4-101 is the general conflict of interest statute that applies in all counties. It prohibits anyone who votes for, lets out, or in any manner supervises any work or contract from having a direct financial interest in that contract, purchase or work, and it requires disclosure of indirect financial interests by public acknowledgment.

Conflict of interest—T.C.A. § 49-6-2003 applies to the department of education in all counties and prohibits direct and indirect conflicts of interest in the sale of supplies for use in public schools.

Conflict of interest—T.C.A. § 5-1-125 applies in all counties and prohibits county officials and employees from purchasing surplus county property except where it is sold by public bid.

Conflict of interest—T.C.A. § 54-7-203 applies in all counties that are governed by the County Uniform Highway Law. It prohibits officials and employees in the highway department and members of the county legislative body from having any personal interest in purchases of supplies, materials, machinery, and equipment for the highway department.

Conflict of interest—T.C.A. § 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from having any financial or other personal beneficial interest in any contract or purchase of goods or services for any department or agency of the county.

Conflict of interest—T.C.A. § 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits all county officials and employees from having any financial or other personal beneficial interest in the purchase of any supplies, materials or equipment for the county.

Conflict of interest—T.C.A. §§ 5-5-102 and 12-4-101 govern disclosures and abstentions from voting due to conflicts of interest of members of county legislative bodies.

Conflict of interest disclosure statements—T.C.A. § 8-50-501 and the following sections require candidates and appointees to local public offices to file a disclosure statement with the state ethics commission listing major sources of income, investments, lobbying activities, professional services provided, bankruptcies, certain loans, and other information, and to keep these statements up to date.

MODEL ETHICS POLICY

Gifts—T.C.A. § 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from receiving anything of value, directly or indirectly, from anyone who may have or obtain a contract or purchase order with the county.

Gifts—T.C.A. § 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits the finance director, purchasing agent, and employees in those departments from accepting anything of value, directly or indirectly, from anyone who furnishes supplies, materials or equipment to the county.

Honoraria—T.C.A. § 2-10-116 prohibits elected officials from accepting an honorarium (including money or anything of value, but not including reimbursement for actual expenses) for an appearance, speech, or article in their official capacity.

Private use of public property—T.C.A. § 54-7-202 applies in counties that are governed by the County Uniform Highway Law. It prohibits the private use of equipment, rock, and other highway materials.

Court sales—T.C.A. § 39-16-405 prohibits judges, clerks of court, court officers, and employees of court, from bidding on or purchasing any property sold through the court for which such person discharges official duties.

Rules of the Supreme Court— Rule 10, Cannon 5 (Code of Judicial Conduct) establishes ethical rules for judges and other court personnel when exercising judicial functions.

Fee statutes—T.C.A. §§ 8-21-101, 8-21-102, and 8-21-103 set out circumstances where fees are authorized, prohibit officials from requiring payment of fees in advance of performance of services except where specifically authorized, and set penalties for charging excessive or unauthorized fees.

Consulting fee prohibition for elected county officials—T.C.A. §§ 2-10-122 and 2-10-124 prohibit officials from receiving compensation for advising or assisting a person or entity in influencing county legislative or administrative action.

Crimes involving public officials—T.C.A. § 39-16-101 and the following sections prohibit bribery, soliciting unlawful compensation, and buying and selling in regard to offices.

MODEL ETHICS POLICY

Official misconduct—T.C.A. § 39-16-402 applies to public servants and candidates for office and prohibits unauthorized exercise of official power, acting in an official capacity exceeding the servant's power, refusal to perform a duty imposed by law, violating a law relating to the servant's office or employment, and receiving a benefit not provided by law.

Official oppression—T.C.A. § 39-16-403 prohibits abuse of power by a public servant.

Bribery for votes—T.C.A. §§ 2-19-121, 2-19-126, and 2-19-127 prohibit bribery of voters in elections.

Misuse of official information—T.C.A. § 39-16-404 prohibits a public servant from attaining a benefit or aiding another person in attaining a benefit from information which was obtained in an official capacity and is not available to the public.

Ouster law—T.C.A. § 8-47-101 sets out conduct that is punishable by ouster from office, including misconduct in office and neglect of duty.

_____ COUNTY CODE OF ETHICS
CONFLICT OF INTEREST DISCLOSURE STATEMENT

Instructions: This form is for reporting personal interests required to be disclosed under Section 3 of the Code of Ethics of this county. Officials and employees are required to disclose personal interests in matters that affect or would lead a reasonable person to infer that it would affect the exercise of discretion of an official or employee.

- 1. Date of disclosure: _____
- 2. Name of official or employee: _____
- 3. Office and position: _____
- 4. Description of personal interest (describe below in detail):

Signature of official or employee

Witness Signature

Printed name of witness

RESOLUTION NO. _____

**TO ADOPT A CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES
OF _____ COUNTY GOVERNMENT**

WHEREAS, Section 49 of the Comprehensive Governmental Ethics Reform Act of 2006, 2006 Public Chapter 1 (1st Ex. Sess.), (the "Ethics Reform Act") requires county legislative bodies to adopt certain ethical standards by resolution on or before June 30, 2007; and

WHEREAS, the County Technical Assistance Service (CTAS) is directed to prepare and disseminate a model of ethical standards which may be adopted by counties in compliance with the Ethics Reform Act; and

WHEREAS, _____ County desires to adopt the CTAS model of ethical standards as the Code of Ethics for _____ County;

NOW THEREFORE, BE IT RESOLVED by the _____ County legislative body meeting in _____ session at _____, Tennessee, on this _____ day of _____, 200____, that:

SECTION 1. The model of ethical standards developed by CTAS and attached to this resolution is hereby adopted as the Code of Ethics for _____ County.

SECTION 2. Upon approval of this resolution, the County Clerk is directed to:

(a) Mail a copy of this resolution to the State Ethics Commission; and

(b) Mail a copy of this resolution and the attached Code of Ethics to each county office governed thereby, including all boards, committees, commissions, authorities, corporations or other instrumentalities appointed or created by the county or an official of the county, and specifically including the county school board, the county election commission, the county health department, and utility districts in the county; and

(c) Post a copy of the Code of Ethics on each public bulletin board in the county courthouse.

SECTION 3. This resolution shall take effect upon its passage and approval, the public welfare requiring it.

ADOPTED this ____ day of _____, 200_____.

APPROVED:

ATTEST:

County Mayor

County Clerk

12.04.06
MODEL ETHICS POLICY
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CTAS OFFICES

Nashville (Headquarters)	(615) 532-3555	
Chattanooga	(423) 425-5319	Johnson City (423) 282-4141
Cookeville	(931) 525-3535	Knoxville (865) 974-0667
Jackson	(731) 423-3710	Martin (731) 587-7056

www.ctas.tennessee.edu

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