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County Government Overview

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Article VII, Section 1: Elected Officials and Governmental Form

Reference Number:

CTAS-5

Several amendments to the Tennessee Constitution were approved in 1978; among them was an amendment restructuring the basic framework of county government. Article VII, Section 1 of the Tennessee Constitution now provides counties with the following constitutional officers: county executive, sheriff, trustee, register, county clerk, and assessor of property. This Section also requires the election of a legislative body of not more than 25 members, with no more than three members to be elected from a single district. The General Assembly sets the qualifications and duties of these offices.

Before the 1978 constitutional changes, county government had been difficult to divide into executive, legislative, and judicial branches. With the creation of the office of county executive and of the county legislative body, along with several judicial interpretations of the powers and duties of each, county government is now more clearly divided into three branches, even though the county executive must share executive powers with other constitutional officers. The legislature is afforded wide latitude in determining the duties that may be assigned to the various constitutional officers. *Metropolitan Government v. Poe*, 383 S.W.2d 265 (Tenn. 1964).

Article VII, Section 1, also provides that the General Assembly "may provide alternate forms of county governments including the right to charter and the manner by which a referendum may be called." The Tennessee Supreme Court has stated that when the General Assembly authorizes any deviation from the government provided for in this article, such action must be ratified by the people in a referendum called for that purpose. *State ex rel. Maner v. Leach*, 588 S.W.2d 534 (Tenn. 1979). Other than the county charter (T.C.A. §§ 5-1-201 through 5-1-214), no additional alternatives are now offered by the General Assembly except for the metropolitan and unification forms of government which were provided for in an earlier constitutional amendment and implementing legislation. Tenn. Const., art. XI, § 9; T.C.A. §§ 7-1-101 through 7-3-313, 7-21-101 through 7-21-408.

Article VII, Section 2: Vacancies In County Offices

Reference Number:

CTAS-7

Vacancies in county offices are to be filled by the county legislative body, and any person so appointed serves until a successor is elected at the next election after the vacancy. The Tennessee Supreme Court has determined that the term "next election" means the next general election or other countywide election in the county. *McPherson v. Everett*, 594 S.W.2d 677 (Tenn. 1980). There is a statute (T.C.A. 18-1-402) that says judges fill the vacancy in the office of court clerk but that statute (from 1858) has been superseded by the 1978 amendment to the state constitution (Art. VII, Sec. 2) requiring vacancies in county offices to be filled by the county legislative body. See AG Op. No. 88-131.

Miscellaneous Tennessee Constitutional Provisions Affecting County Government

Reference Number:

CTAS-8

Article II, Section 24, of the Tennessee Constitution, in a portion relevant to counties, states that "no law of general application shall impose increased expenditure requirements on cities and counties unless the General Assembly shall provide that the state share in the cost." Article II, Section 28, of the Tennessee Constitution deals with property taxation and other tax matters. It also states that each respective taxing authority shall apply the same tax rate to all property within its jurisdiction. However, the Supreme Court has found that the General Assembly may authorize counties to levy a different property tax rate on property within and without municipalities for school bonds, county road purposes, and perhaps other services as well. *Albert v. Williamson County*, 798 S.W.2d 758 (Tenn. 1990); Op. Tenn. Att'y Gen. 92-29 (April 7, 1992). Also, so-called "double taxation," levied by a county and city to fund similar services if statutorily authorized, is not unconstitutional. *Oliver v. King*, 612 S.W.2d 152 (Tenn. 1981); Op. Tenn. Att'y Gen. U95-96 (Dec. 22, 1995).

Article II, Section 29, grants the General Assembly the authority to authorize counties and municipalities to impose taxes for county or municipal purposes, in such a manner as is prescribed by law. This Section

also states that the credit of a county or municipality may not be given or lent to or in aid of any person, company, association or corporation, except upon an election wherein a three-fourths majority of the voters cast ballots in favor of such an extension of credit.

Article VI, Section 13, provides for the appointment of clerks and masters by chancellors for terms of six years, and for the popular election of clerks of inferior courts, by county or district, for terms of four years. The circuit court clerk is the prime example of a popularly elected inferior court clerk.

Article X, Section 1, requires that every person chosen or appointed to any office of trust or profit under the constitution or any statute must take an oath to support the constitution of this state and of the United States, as well as an oath of office before entering on the duties of the office.

Article X, Section 3, prohibits any official or candidate from accepting any type gift or reward which might be considered a bribe. The Section also provides that any person who directly or indirectly promises or bestows any such gift or reward in order to be elected is punishable as provided by law.

Article X, Section 4, provides the method by which new counties may be established. This Section also restricts the General Assembly in consolidating counties by stating that the seat of justice may not be removed without approval by two-thirds of the voters of the county being abolished (James County v. Hamilton County, 89 Tenn. 237, 14 S.W. 601 (1890)), but this limitation does not apply to Obion and Cocke counties. This Section is complicated and limits the discretion of the General Assembly in dealing with the boundaries or existence of certain specified counties (which are often referred to as "constitutional" counties).

Article XI, Section 8, provides that the General Assembly cannot suspend the general law for the benefit of any individual or individuals. This provision has been interpreted by the courts to mean that the General Assembly cannot pass private or local legislation applicable to a single county or counties that contravenes a general law of mandatory statewide application, unless a reasonable basis for the discrimination can be found. See, e.g., Knox County Educ. Ass'n v. Knox County Bd. of Educ., 60 S.W.3d 65 (Tenn. Ct. App. 2001).

Article XI, Section 17, provides that no county office created by the legislature shall be filled in any manner other than by vote of the people or by appointment of the county legislative body.

Traditional Structure

Reference Number:

CTAS-444

The most basic and widely used form of county government in Tennessee is one with a popularly elected county executive, entitled county mayor (T.C.A. § 5-6-101), who is the administrative head of the county, and a popularly elected county legislative body, which the General Assembly has formally entitled board of county commissioners and which is commonly referred to as the county commission. Members are generally referred to as county commissioners. T.C.A. § 5-5-102(f). This is the constitutionally required form of county government unless a county has followed the provisions provided by the Tennessee Constitution and implemented by statute a consolidated form of government with one or more of the county's municipalities, or an alternate form of government. Of course a consolidated government will have a legislative body of some type, but the size limitation of 25 does not apply. Tenn. Const., art. VII, § 1.

County Charters

Reference Number:

CTAS-445

The 1978 amendments to the Tennessee Constitution revised Article VII, Section 1, of the Tennessee Constitution, including adding the third paragraph as follows:

The General Assembly may provide alternative forms of county government including the right to charter and the manner by which a referendum may be called. The new form of government shall replace the existing form if approved by a majority of the voters in the referendum.

The Tennessee Supreme Court has determined that the Tennessee Constitution allows for three types or forms of county government: (1) the basic form which includes the constitutional offices, (2) consolidated city-county government, and (3) an alternative form, such as a county charter. The alternative form of county government authorized under the third paragraph of Article VII, Section 1 of the Tennessee Constitution may be created by the legislature without regard to the general type established in Article VII provided the legislature's action is ratified by referendum. *State ex rel. Maner v. Leech*, 588 S.W.2d 534 (Tenn. 1979), *Bailey v. County of Shelby*, 188 S.W.3d 539 (Tenn. 2006).

The General Assembly has provided an alternative to the standard form of government provided in the first paragraph of Article VII, Section 1 of the Tennessee Constitution through the means of a county charter. The county charter enabling law is found in *Tennessee Code Annotated*, Title 5, Chapter 1, Part 2. County charters are often referred to as "home rule" charters due to the discretion given by the legislature to the citizens of the county to alter the form or structure of the county government through the charter writing and referendum approval process. The legislature has also granted to counties with charters the power to adopt ordinances in a manner similar to that of a city government. Charter counties may adopt ordinances relating to purely county affairs and cannot interfere with the local affairs of any municipality. The county legislative body is authorized to provide penalties for the violation of ordinances, but these penalties cannot exceed certain statutory maximums. T.C.A. § 5-1-211. The Tennessee Supreme Court has ruled that a county charter may impose term limits on certain county officials although none is required by general law. *Bailey v. County of Shelby*, 188 S.W.3d 539 (Tenn. 2006); *Jordan v. Knox County*, 213 S.W.3d 751 (Tenn. 2007).

Any county wishing to adopt a charter must first create a charter commission by one of four possible methods--

1. Resolution of the county legislative body,
2. Proclamation of the county mayor ratified by a two-thirds majority vote of the county legislative body,
3. Petition by 10 percent of the qualified voters, or
4. Private act of the General Assembly.

Members of the charter commission are elected by popular vote if the resolution or petition method is used. If a proclamation by the county mayor is used, charter commission members are appointed in the proclamation from county legislative body districts with no more than three members from any one county legislative body district. Within nine months the charter commission must present a proposed charter, which is then submitted for approval in a referendum. The state statutes enabling a county charter require that the charter contain provisions assigning the functions and duties of the officers of the county, and state that the duties of the constitutional officers as prescribed by the general assembly cannot be diminished under the new charter government. T.C.A. § 5-1-210. Thus, the county charter must provide for the constitutional county offices or otherwise assign the duties of the constitutional county offices to another office, agency, or official. *Jordan v. Knox County*, 213 S.W.3d 751, 773 (Tenn. 2007).

The statutes authorizing a county charter provide for organizational changes and ordinance powers but do not provide any extension of the authority for home rule in vital areas such as local option taxation. To date, only Shelby and Knox counties have chosen county charters, although other counties have studied the matter.

County Consolidation Committee

Reference Number:
CTAS-446

If a petition to consolidate a county or a portion of a county with one or more adjoining counties is signed by the qualified voters of any one county in a number equal to at least 25 percent of the number of votes cast in the county for governor in the last general election, then the state consolidation committee created by T.C.A. § 5-3-101 is required to appoint a county consolidation committee for the petitioning county. The county consolidation committee is composed of the county mayor and county trustee of the petitioning county and the county mayors of the adjoining counties and five signers of the petition designated by the governor. T.C.A. § 5-3-102. The state consolidation committee and the county consolidation committee act as a joint committee to consider the request for consolidation and hold hearings within the petitioning county. The joint committee reports its findings within 90 days of receiving the petition. If favorable to consolidation, the joint committee recommends the county or counties with which the petitioning county should be consolidated and sets new proposed boundaries. T.C.A. § 5-3-103. After proper publication in a newspaper or newspapers of general circulation in the affected counties, the proposed consolidation is subject to referendum called by the county election commission. T.C.A. § 5-3-104. The consolidation plan is approved if two-thirds of the qualified voters in the petitioning county vote in favor of the proposed consolidation. T.C.A. § 5-3-105.

City-County Consolidation

Reference Number:
CTAS-447

In 1953, Article XI, Section 9, of the Tennessee Constitution was amended to permit the General

Assembly to "...provide for the consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located." The General Assembly has devised two statutory processes through which counties may consolidate with the cities within them: the metropolitan government charter process codified in T.C.A. §§ 7-1-101 through 7-3-316, and the unification government charter process codified at T.C.A. §§ 7-21-101 through 7-21-408.

Metropolitan Government Charters

Reference Number:

CTAS-477

The metropolitan form of government combines the powers of a county with those of cities generally. T.C.A. § 7-2-108. Therefore, a metropolitan government can exercise more powers than a county charter government and can exercise these powers throughout the county, with some limitation regarding smaller municipalities within the county that retain their charters. Key features of a metropolitan government include the following:

1. A general services district for the entire county;
2. An urban services district;
3. Possible special service districts;
4. A unified school system;
5. Wide discretion on allocation of duties among officials, including those of constitutional officers, as determined by the charter;
6. The size of the legislative body (metro council) is determined in the charter (up to 20 voting members);
7. The existence, nature and extent of the executive and/or administrative offices are determined in the charter;
8. Optional control over and consolidation of utility districts; and
9. Full ordinance powers.

Although the metropolitan government may not act in contravention of general law, the wide powers granted to the metropolitan government by the legislature means that this form of government comes closest to "home rule" as is permitted under our current law.

The process to form a metropolitan government begins with the selection of a charter commission. A charter commission may be created by one of three methods. The most commonly used method is one in which the charter commission is created by a majority vote on a resolution approved by the governing bodies of both the most populous city (or, in certain circumstances, the county seat) and the county. A second method is by private act of the General Assembly. The third method is by petition signed by qualified voters in the county in a number equaling at least 10 percent of the votes cast in the county for governor in the last gubernatorial election. The commission members are either appointed by the county mayor and the mayor of the county's major city or elected by the voters as determined by the resolution or petition, if those methods are used, or by resolution if the petition does not specify a method of selecting charter members. If a private act is used, the private act determines the method of selection. If the resolution method is used, the county mayor appoints 10 members and the mayor of the most populous city appoints five members to a 15-member charter commission.

The charter must contain provisions for general services and urban services districts, for a metropolitan council and election of members to terms of office, for the selection of administrative and executive officers, for an education department, and for other administrative departments. Smaller (less populous) cities within the county may retain their charters if their governing bodies choose not to send representatives to the charter commission to write an appendix to the charter for inclusion of the smaller cities. Several cities and counties have formed charter commissions and voted on consolidation under the metropolitan government statutes, but only Nashville-Davidson County, Lynchburg-Moore County and Hartsville-Trousdale County have adopted a consolidated form of government as of this writing. One obvious difficulty in adopting a metropolitan form of government is the requirement that the metropolitan government charter receive a majority of the referendum votes both within the city and outside the city that is to consolidate with the county.

The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) has produced an excellent publication entitled *Forming a Metropolitan Government*.

Unification Government Charters

Reference Number:
CTAS-478

The unification charter form of government is similar to the metropolitan model; however, while the latter form is available to all counties, the unification form is available only to counties with a county or metropolitan charter. T.C.A. §§ 7-21-101 through 7-21-408. The unification government charter process may differ somewhat from that of the metropolitan government charter process. The unification government charter commission may be initiated by proclamation of the county mayor or resolution of the county legislative body, but the mayor's proclamation is subject to ratification by the county legislative body. Also, the county's action must be approved by the legislative body of the most populous city in the county for a charter commission to be formed. A county proclamation must appoint eight members to the charter commission, then the city mayor appoints eight members, and one member is appointed by the mayor of any smaller city electing to participate. A noteworthy substantive difference from a metropolitan government is that the unification charter must provide for a chief executive and a legislative body of a limited size--nine to 19 members.

As of this writing no county has adopted a unification charter although it has been the subject of a vote in Knoxville and Knox County.

Private Acts

Reference Number:
CTAS-2186

Counties have relied upon private acts of the General Assembly to provide authority where none was granted by the general law, and to provide for offices not established by the general law. The 1978 amendment to Article VII, Section 1, was an attempt to provide greater uniformity in county governmental structure; the implementing legislation passed by the General Assembly provided that all conflicting general laws or private acts were repealed by it. This means that counties with varying structures under private acts adopted prior to 1978 were required to conform to the uniform pattern provided by the General Assembly. Counties having structures of county government varying from the general law pattern under private acts adopted prior to 1978 have since taken action to elect county mayors and legislative bodies and otherwise conform to the required pattern. Private acts continue to provide authority for actions that are not specifically authorized in the general law and for officials or bodies not provided by general law, such as county highway commissions in many counties. Private acts are the authority for some taxing powers in many counties, such as hotel/motel taxes and development taxes (e.g., adequate facilities taxes). The general law provides the county legislative body the authority to adopt a wheel tax subject to a referendum or by a two-thirds vote at two consecutive regular meetings subject to a referendum only if an adequate petition is filed (10 percent of the votes cast in the last gubernatorial election), but this general law also recognizes that a private act may serve as authority for a county wheel tax. T.C.A. § 5-8-102. Also, private acts are needed in counties without county charters or consolidated government charters to determine the method of selecting the chief administrative officer of the county highway department. Therefore, private acts remain useful additions to the general law authority that counties may exercise.

When a county legislative body deems a private act is in the best interest of the county, it usually adopts a resolution requesting a member of the General Assembly representing the people of the county to introduce such a bill. Such a resolution is not required by law but is a commonly accepted practice. After a private act bill passes the General Assembly and becomes law either upon the signature of the governor or after being on the governor's desk without veto for the constitutionally required 10 calendar days, Sundays excepted, the private act must still obtain local approval before the act is effective. Tenn. Const., art. III, § 18 and art. XI, § 9. The method of local approval is provided for in the act itself and is either by two-thirds majority of the county legislative body or by a majority of the voters in a referendum. Also, for the private act to become effective, local approval must take place within any time limit set in the act, or if no time limit is set in the act, then by December 1 of the year of enactment. Local approval must be certified to the secretary of state by the presiding officer (chair) of the county legislative body or the chair of the county election commission, as appropriate. T.C.A. § 8-3-202.

On the CTAS website you can view the most current versions of the private acts.

County Offices

Reference Number:
CTAS-150

The Tennessee Constitution expressly provides for certain county offices, while others are created by the state legislature. In addition to the office of county mayor/executive and the county legislative body, Article VII, Section 1, of the Tennessee Constitution provides that each county have a sheriff, trustee, register, county clerk, and assessor of property elected by the voters of the county for terms of four years. The Judicial Article of the Tennessee Constitution, Article VI, also provides in Section 13 that any inferior court clerk shall be elected by the people on a district or county basis to a four-year term, and that the chancellors shall appoint a clerk and master for each district or county for a term of six years. Both the circuit court clerk and the clerk and master are currently elected or appointed one per county, but some counties have private acts or charters that establish other inferior court clerks such as general sessions court clerk and juvenile court clerk. All of these constitutional or quasi-constitutional offices except the assessor of property collect fees and are commonly referred to as "fee" offices. The legislature determines the qualifications and duties of each office. Tenn. Const., art. VII, § 1. The duties of these officers in a county with a consolidated city-county government are specified in the charter.

Qualifications

Reference Number:

CTAS-2152

General qualifications of officeholders are located in the Tennessee Code Annotated, which provides that all persons 18 years old and over, who are citizens of the United States and of Tennessee, and who meet certain residency requirements are qualified to hold office. Candidates for most county offices are also now required to be a qualified voter of the county and a resident of the county for one year prior to the date of the qualifying deadline for running as a candidate for such office. A person is not eligible to run for office if the person:

1. Has been convicted of offering or giving a bribe, of larceny, or, of any other offense declared infamous by law, unless the person has been restored to citizenship (except those who have been convicted of an infamous crime if the offense was committed in the person's official capacity or involved the duties of the person's office, in which case the person shall forever be disqualified from holding office);
2. Has not paid a judgment for money received in an official capacity, which is due to the United States, Tennessee, or any county;
3. Has defaulted to the treasury at the time of election (in which case the election is void);
4. Is a soldier, seaman, marine, or airman in the regular United States Army, Navy or Air Force; or
5. Is a member of Congress or holds any office of profit or trust under any foreign power, other state of the Union, or the United States.

T.C.A. § 8-18-101.

A crime declared infamous by law essentially means a felony, or a crime which is partially punishable by disenfranchisement (loss of the right to vote). Also, there are several criminal statutes related to an official's misconduct in office, such as official misconduct (T.C.A. § 39-16-402), official oppression (T.C.A. § 39-16-403), misuse of official information (T.C.A. § 39-16-404), and conflict of interest (T.C.A. § 12-4-101), which, upon conviction, will result in disqualification to hold office for a period of ten (10) years from the date of conviction (T.C.A. §§ 39-16-406, 12-4-102). Any disqualified person who takes office is guilty of a misdemeanor (T.C.A. § 8-18-102).

The principles for determination of residence for purposes of the election code are (T.C.A. § 2-2-122):

1. The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has a definite intention to return.
2. A change of residence is generally made only by the act of removal joined with the intent to remain in another place. There can be only one residence.
3. A person does not become a resident of a place solely by intending to make it the person's residence. There must be appropriate action consistent with the intention.
4. A person does not lose residence if, with the definite intention of returning, the person leaves home and goes to another country, state, or place within this state for temporary purposes, even if of years duration.
5. The place where a married person's spouse and family have their habitation is presumed to be the person's place of residence, but a married person who takes up or continues abode with the intention of remaining at a place other than where the person's family resides is a resident where the person abides.

6. A person may be a resident of a place regardless of the nature of the person's habitation, whether house or apartment, mobile home or public institution, owned or rented.
7. A person does not gain or lose residence solely by reason of the person's presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while living on a military reservation.
8. No member of the armed forces of the United States, or such member's spouse or dependent, is a resident of this state solely by reason of being stationed in this state.

The following factors, among other relevant factors, may be considered in the determination of where a person is a resident (T.C.A. § 2-2-122):

- The person's possession, acquisition or surrender of inhabitable property.
- Location of the person's occupation.
- Place of licensing or registration of the person's personal property.
- Place of payment of taxes which are governed by residence.
- Purpose of the person's presence in a particular place.
- Place of licensing activities, such as driving.

These same principles, basically the physical presence with intention to make a place your residence, are also used by the courts in determining residence for other purposes.

Additional statutory qualifications are required for certain county offices, such as sheriff, and are discussed in the individual county office section. The offices and duties may vary in counties with a metropolitan government charter or a county government charter.

Election to Office

Reference Number:

CTAS-659

Under *Tennessee Code Annotated*, Section 2-5-101(f)(5), a candidate for county office is prohibited from running for any other countywide office on the same ballot. This statute provides:

No candidate, whether independent or represented by a political party, may be permitted to submit and have accepted by any Election Commission, more than one (1) qualifying petition, or otherwise qualify and be nominated, or have such candidate's name anywhere appear on any ballot for any election or primary, wherein such candidate is attempting to be qualified for and nominated or elected to more than one (1) state office as described in either § 2-13-202(1) [Governor], or (2) [Member of the General Assembly] or in Article VI of the Constitution of Tennessee [Offices pertaining to the judicial department of the state] or more than one (1) constitutional county office described in Article VII, § 1 of the Constitution of Tennessee [county legislative body, county executive, sheriff, trustee, register, County Clerk, assessor of property] or any other countywide office, voted on by voters during any primary or general election.

When it is not prohibited by statute, a candidate may also run for an office other than a countywide office at the same election, even though the person may not be able to serve in both capacities if elected.

Article 2, Section 26 of the Tennessee Constitution provides:

No Judge of any Court of law or equity, Secretary of State, Attorney General, Register, Clerk of any court of Record, or person holding any office under the authority of the United States, shall have a seat in the General Assembly; nor shall any person in this State hold more than one lucrative office at the same time; provided, that no appointment in the Militia, or the office of Justice of the peace, shall be considered a lucrative office, or operative as a disqualification to a seat in either House of the General Assembly.

The Attorney General has issued several opinions over the years interpreting Article 2, Section 26. For example, the Attorney General has opined that Article 2, Section 26 does not prohibit a person from seeking the office of state senator and assessor at the same time, but that person could not hold both offices if elected to both of them. Attorney General Opinion U90-61 dated March 29, 1990; see also Attorney General Opinion 90-11 dated February 6, 1990, which opines that the prohibition against holding two lucrative offices is only applicable to state offices.

Oaths

Reference Number:

CTAS-30

Before taking office, the Tennessee Constitution, Article X, Section 1, provides that every person chosen to any office of trust must take an oath to "support the Constitution of this state and of the United States, and an oath of office." Review Oaths of Office for examples of different oaths.

There are various statutes throughout the Tennessee code providing for administering oaths to particular officials. There is also a general provision found at T.C.A. § 8-18-109(b), which provides that oaths of office for any elected or appointed official may be administered by the county mayor, the county clerk, a judge (current or retired) of any court of record in the county, or a current or retired judge of the general sessions court. In addition, under § T.C.A. 8-18-107, the governor, an active or retired supreme court justice, an active or retired inferior court judge, or an active or retired general sessions judge may administer the oath of office to an inferior court judge and, except as otherwise provided by law, to any other elected or appointed official. Notaries public are authorized to administer oaths pursuant to T.C.A. § 8-16-112. Members of the general assembly are also authorized to administer oaths to county officials. T.C.A. § 3-1-105. The oath of office for any county official required to file an oath may be administered at any time after the certification of the election returns by the appropriate legal authority in the case of elected officials, or after appointment in the case of appointed officials. However, even if the official files an oath before the scheduled start of a term of office, the official may not take office until the term officially begins. T.C.A. § 8-18-109.

The oath must be written and subscribed by the person taking it. Accompanying the oath must be a certificate executed by the officer administering the oath specifying the day and the year it was taken. T.C.A. § 8-18-107. The oath and the certificate are filed in the office of the county clerk, who endorses on them the day and year of filing, and signs the endorsement. T.C.A. §§ 8-18-109, 8-18-110. Any county official who fails to take and file the required oaths is guilty of a misdemeanor. T.C.A. § 8-18-113.

Bonds

Reference Number:

CTAS-31

An official bond is an instrument that requires the sureties to pay a specified sum of money if the official who executes the bond fails to perform certain acts or performs wrongful and injurious acts in the office. In other words, an official bond is a written promise, made by a public official (1) to perform all the duties of the office, (2) to pay over to authorized persons all funds received in an official capacity, (3) to keep all records required by law, (4) to turn over to his or her successor all records, money, and property, and (5) to refrain from anything that is illegal, improper, or harmful while acting in an official capacity. If the official fails to perform the duties, violates the law, or commits a harmful act, the person who is injured may collect damages from the sureties on the official bond. The sureties must be surety companies authorized to do business in Tennessee. If no surety company is willing to serve as surety for a particular person, the county legislative body may, by resolution, authorize the use of personal sureties approved by the mayor or the use of a cash bond approved by the mayor. T.C.A. §§ 8-19-111, 8-19-101, 8-19-102, 8-19-301.

The bond protects the state, the county, and the citizens in the event the county official fails to perform his or her duties properly. The bond does not protect county officials from liability. If a payment is made under the bond, the county official's sureties may have a right to recover the amount paid from the county official. This action against the county official by the sureties is known as subrogation. The following county constitutional officials must execute a surety bond: county clerk, court clerks, sheriff, register, property assessor, and trustee. Also, bonds are required for the finance director, director of accounts and budgets, county auditor, constable, coroner, road commissioners, county surveyor, director of schools, purchasing agent, and notaries. A blanket bond is required for all county employees that are not otherwise covered. The specific bond amounts are set out in the table entitled County Officials'/Employees' Minimum Bond.

The form of official bonds is prescribed by the comptroller of the treasury, with the approval of the attorney general. T.C.A. § 8-19-101. Blank copies of official bonds, ready for use, are available from the comptroller, Division of Local Finance.

The official bond of every county public official must be conditioned in the following manner: T.C.A. § 8-19-111.

That if the _____ (principal) shall:

1. Faithfully perform the duties of the office of _____ of _____ County during such person's term of office or continuance therein; and
2. Pay over to the persons authorized by law to receive them, all moneys, properties, or things of value that may come into such principal's hands during such principal's term of office or continuance therein without fraud or delay, and shall faithfully and safely keep all records required in such principal's official capacity, and at the expiration of the term, or in case of resignation or removal from office, shall turn over to the successor all records and property which have come into such principal's hands, then this obligation shall be null and void; otherwise to remain in full force and effect.

Some counties also use "blanket bonds" for all of the county officeholders. T.C.A. § 8-19-101.

Additionally, counties that have chosen to self-insure their liability under the GTLA may also elect to self-insure their risk of loss rather than obtain bonds or insurance. Such an election must be made by resolution, adopted by a 2/3 vote of the governing body. T.C.A. § 8-19-101.

Official bonds of the sheriff, county trustee, county clerk, register of deeds, assessors of property, and persons vested by law with the authority to administer county highway and bridge funds must be approved by the county mayor, recorded in the office of the register of deeds and transmitted to the county clerk for safekeeping. T.C.A. §§ 8-19-102, 8-19-103, 67-1-505, 54-4-103(c), 54-7-108. Official bonds of clerks of court must be approved and certified by the court, entered into the minutes of the court, recorded in the office of register of deeds and transmitted to the county clerk for safekeeping. T.C.A. § 18-2-205. The official bond of the director of schools must be approved by the county mayor, recorded in the office of the register of deeds and transmitted to the office of the county clerk for safekeeping. T.C.A. §§ 49-2-102, 9-3-301. The official bonds of other county officials, constables, and county employees required to have bonds shall be approved by the county mayor, recorded in the office of the register of deeds and transmitted to the office of the county clerk for safekeeping. T.C.A. §§ 8-19-102, 8-19-103. Official bonds of officers which must be transmitted to the county clerk must be filed in the clerk's office within thirty (30) days after the election or appointment of the person named in the bond. T.C.A. § 8-19-115.

The register of deeds must endorse on the bond the day and year on which it was recorded and sign the endorsement. Similarly, the county clerk, with respect to bonds filed for safekeeping in the office of county clerk, must endorse the filing date and sign the endorsement. Failure of the register or county clerk to endorse and sign the bond is a misdemeanor. T.C.A. § 8-19-116.

An officer required by law to give an official bond who fails to execute the bond when the bond is available and transmit the bond to the proper officer for approval within thirty (30) days from the time the bond becomes available for execution, forfeits the office and a vacancy in the office occurs, whether or not the officer has taken an oath of office. It is the duty of the officer who is to receive the executed official bond to certify the failure to execute and transmit the bond in the time required by this section to the official or body who has the power to elect or appoint a successor to the office. T.C.A. § 8-19-117. Upon the filing of a complaint alleging the failure of a county officer or constable to enter into an official bond as required by law, the circuit court clerk or the clerk and master having jurisdiction issues a summons that is served, together with a copy of the complaint, upon the county officer or constable in accordance with the Tennessee Rules of Civil Procedure. T.C.A. § 8-19-205. If the official fails or refuses to execute the required bond after receiving a copy of the complaint and a hearing, the court will enter a judgment declaring the office vacant, and the vacancy will be filled according to law. T.C.A. § 8-19-206.

County officials must enter into a new bond at the beginning of each term. If the original of any bond is lost or destroyed, the record of the bond will be considered the original and suit may be instituted on the recorded bond. T.C.A. § 8-19-105. The county pays the premiums for official bonds and registration fees of county officials and employees. T.C.A. § 8-19-106.

Fee System or Salary System

Reference Number:

CTAS-33

The sheriff, trustee, county clerk, register of deeds and court clerks receive fees from the public for services they perform; for this reason, these officials are sometimes referred to as "fee officials." There are two methods of accounting for the fees received by these officers. The first and oldest is the "fee system." Under this system, each official remits to the trustee quarterly all of the fees and charges collected by the official in excess of expenses for the following items: salaries of the official's deputies and assistants, necessary expenses of the office, and the official's salary as established by statute. The official is also authorized to maintain a reserve in an amount equal to three times the monthly salaries of the

official, deputies, and assistants. T.C.A. § 8-22-104. If in any month the total amount of fees and commissions are insufficient to pay the total amount of the official's salary, the salaries of deputies and assistants, plus the other expenses of the office for the month, the amount of the deficiency may be paid out of any excess fees received by the official during any preceding or succeeding months of the terms for which the official is elected. T.C.A. § 8-22-108. If the fees are insufficient to pay the regular expenses of the office, including the statutory salary of the official and the salaries of deputies and assistants, the minimum salary of the official is to be paid out of county general funds. T.C.A. § 8-24-107. Excess fees are placed in the county general fund as a source of county revenue.

The county commission is authorized to adopt an alternative system for fee officials, often called the "budget" or "salary" system, although the sheriff is always under this alternative system. T.C.A. § 8-24-103. This budget system can be adopted for some or all of the officials. T.C.A. § 8-22-104. Under this method, the official pays over to the trustee all of the fees, commissions, and charges collected by the office on a monthly basis. The county commission must, in return, budget for expenses, authorizing the trustee to pay the official's salary, salaries of deputies and assistants, and authorized expenses of the office. These salaries and other proper costs of the office are included in the budget and must be paid even if the fees are insufficient to cover them.

Compensation

Reference Number:

CTAS-32

There are specific statutes regarding compensation for each office. In general, though, statutes prescribe salaries according to county population classes for many officials. The General Assembly has established 17 population classes for the purpose of determining the compensation of county officers. T.C.A. § 8-24-102. This statute provides base minimum salary schedules for three categories of county officers: (1) "general officers," which include assessors of property, county clerks, clerks of court, trustees, and registers of deeds; (2) sheriffs and chief administrative officers of highway departments; and (3) county mayors. These specified minimum salaries cannot be raised or lowered except through subsequent legislation, but since they are minimum salaries, the actual salary may be increased by resolution of the county legislative body, but the class of general officers must all receive the same amount of any increase.

The minimum salaries are adjusted annually on July 1 by a dollar amount equal to the average annualized increase in state employees' compensation during the prior fiscal year multiplied by the compensation established for the county officials of the county with the median population of all counties. The adjustment cannot exceed 5 percent in any year; provided, however, the annual percentage increase in the minimum compensation of county officials shall not be less than the percentage increase established for county officials of the county with the median population of all counties. The average annualized general increase in state employees' compensation for purposes of calculating the adjustment in salary for county officials means the average increase in base salary plus the equivalent percentage increase represented by appropriated funds made available to address classification compensation issues, plus the equivalent percentage increase represented by recurring appropriation amounts provided to improve the level of retirement benefits, longevity benefits, deferred compensation benefits and other similar benefits not including health insurance benefits. These adjustments are calculated and certified by May 1 of each year by the commissioner of finance and administration. T.C.A. § 8-24-102.

Full-time county officials, not including general sessions judges, who complete the County Officials Certificate Training Program (COCTP) administered by the University of Tennessee's County Technical Assistance Service (CTAS) and become a "Certified Public Administrator" may receive an annual incentive payment up to a maximum of \$1,500 from state-appropriated funds. To continue receiving these payments, certified county officials must take additional training annually. If an official receives incentive pay from the state through other professional development programs, such amounts will be offset so that no official receives more than \$1,500 of incentive pay from the state per year; provided, however, certified public administrator educational incentive payments to assessors shall not be offset by the compensation received by assessors for obtaining certain professional designations pursuant to T.C.A. §§ 67-1-508; 5-1-310(e). These amounts are subject to annual appropriations from the General Assembly and have not reached the maximum allowed by law.

County legislative bodies may appropriate additional amounts as incentive payments to county officials and employees who have become Certified Public Administrators in an amount not exceeding \$3,000 minus payments made by the state. Educational incentive pay received by an official does not affect the calculation of compensation for officials provided in other statutes. CTAS is required to submit a list to the state treasurer, by August 31 each year, of all county officers who have completed all requirements of the COCTP to attain or maintain the designation of Certified Public Administrator. This list replaces individual applications submitted by county officials for purposes of determining eligibility for the educational

incentive payment. T.C.A. § 5-1-310.

Deputies and Assistants

Reference Number:

CTAS-34

Generally, county "fee officials" (those county officials who regularly collect fees for their services) must have authority other than the county budget resolution before they can hire employees. This authority may come directly from statute, by court order, or through a letter of agreement. T.C.A. § 8-20-101. If the county official's own salary and that of deputies and assistants is paid directly from the county general fund and the county fee official agrees with the amount appropriated for deputies and assistants as set forth in the budget adopted by the county legislative body, the official enters into a letter of agreement with the county mayor, using a form prepared by the state comptroller, that is then filed with the court. T.C.A. § 8-20-101.

If the county official does not agree with the amount appropriated, a salary suit may be filed by petition of the county official under T.C.A. § 8-20-101. The court in which the petition is filed depends on the official. Clerks of court file their petitions with any one of the judges of their respective courts; sheriffs file in circuit or criminal court; clerks and masters, trustees, county clerks and clerks of probate court, and registers of deeds file with the chancery court. The county mayor is named as defendant and the county mayor is required to file an answer within five days after service of the petition. The petition must be filed by the fee official within 30 days after the final adoption of a budget by the county legislative body. Also, a new officeholder has 30 days from the day of taking office to file a petition. The court will then hold a hearing and issue an order determining the appropriate number and compensation of deputies and assistants. T.C.A. § 8-20-102. If the fee official is under the fee system and pays deputies and assistants directly from the official's bank account, the official can negotiate a letter of agreement with the county for the number and compensation of deputies and assistants. If the fee official cannot reach an agreement with the county mayor, the fee official must file suit to obtain authority to hire deputies and assistants.

County officials have the power to employ and discharge employees. The court decree or letter of agreement merely sets the maximum number and maximum compensation of the employees. It is the county official's duty to reduce the number of deputies and assistants or their salaries when it can reasonably be done. T.C.A. § 8-20-105.

The compensation for deputies and assistants established by court decree or letter of agreement must be sufficient to comply with the Federal Fair Labor Standards Act (FLSA) and its minimum wage and overtime provisions. In general, nonexempt employees must receive overtime compensation at the rate of one and one-half their regular rate of pay for all hours worked in excess of 40 in a week. Compensatory time off is allowed in lieu of overtime compensation, but the employee must receive one and one-half hours off for each hour worked in excess of forty (40), and as a general rule, an employee may not accrue more than two hundred forty (240) hours of compensatory time.

County Legislative Body

Reference Number:

CTAS-10

The county legislative body may exercise the powers of a legislative nature granted to it by the General Assembly in public acts (laws of general application or local option application, which may be found in codified form in the Tennessee Code Annotated) or in private acts that apply to a particular county (that do not conflict with the general law). The General Assembly has given the county legislative body a considerable array of powers, including the power to levy property taxes without limitation regarding rates, the power to expend funds for any lawful purpose, zoning powers for the unincorporated areas of the county and some regulatory powers, yet the General Assembly has not seen fit to grant to the county legislative body all of the powers that have been granted to Tennessee's incorporated municipalities (cities and towns). Therefore, counties must always look for the source of authority for any action taken, as counties have no authority to act outside the scope of the powers granted by the General Assembly.

The General Assembly has given the Title "county commissioner" to all county legislative body members not in a county with a consolidated city/county government. T.C.A. § 5-5-102(f).

Membership-CLB

Reference Number:

CTAS-11

Except in counties with a consolidated city-county (metropolitan or unification) form of government, the

county legislative body is made up of not less than nine nor more than 25 members, elected from districts. No more than three members may be elected from any one district. T.C.A. § 5-5-102. Districts must be reapportioned at least every 10 years, and commissioners must represent substantially equal populations based on the latest federal census. T.C.A. § 5-1-111. Members are elected by the voters in their district for four-year terms and until their successors are elected and qualified. T.C.A. § 5-5-102. The county legislative body determines by resolution whether members in multimember districts are elected at large within the district with the two or three persons receiving the greatest number of votes being elected, or whether candidates must run for designated seats, usually designated A and B, also C in three-member districts. T.C.A. § 5-5-102(h). Members are elected in the August general elections coinciding with the election of the governor and take office the following September 1 after being qualified to hold office.

Qualifications-CLB

Reference Number:

CTAS-12

There are no extraordinary qualifications to hold the office of county commissioner. However, a person must comply with the qualifications, explained under the General Information under County Offices tab, for holding office in this state.

County commissioners must reside within and be qualified voters of the district they represent. T.C.A. § 5-5-102. County employees otherwise qualified to serve may hold office as a legislative body member, except that a director of schools who was not a member of the county legislative body on June 18, 2005, is not qualified. T.C.A. § 5-5-102. However, no person elected or appointed as county mayor, sheriff, trustee, register, county clerk, assessor of property, or any other countywide office filled by popular vote or by the legislative body may be elected to the legislative body. T.C.A. § 5-5-102. Additionally, a member of a county legislative body shall resign their seat on such body if they accept an appointment for a vacancy required by the Tennessee Constitution to be filled by the county legislative body. T.C.A. § 5-5-111.

After receiving a certificate of election from the county election commission, a person elected as a county commissioner must take two oaths prior to taking office: the constitutional oath and the oath of office (otherwise known as the fidelity oath). Oaths of office are covered under the General Information tab of the County Offices topic.

Compensation-CLB

Reference Number:

CTAS-13

The compensation of legislative body members is fixed by resolution of the body, although the General Assembly establishes the minimum compensation in certain classes of counties. T.C.A. § 5-5-107.

Currently, the legislative body may not set the compensation of its members at less than the following daily amounts in these classes (delineated by population in T.C.A. § 8-24-101) of counties:

Third class (50,000-150,000)	\$35	Sixth class (5,500-12,000)	\$20
Fourth class (23,300-50,000)	\$30	Seventh class (3,770-5,500)	\$20
Fifth class (12,000-23,300)	\$25	Eighth class (under 3,770)	\$20

A county may adopt a resolution to pay members of the legislative body:

- (1) An amount greater than the minimum daily compensation for attendance at meetings of the body, or at committee meetings for which the member is an appointed member;
- (2) A base salary; or
- (3) A base salary and an amount greater than or equal to the minimum daily compensation for attendance at meetings of the body, or at committee meetings for which the member is an appointed member.

The compensation fixed by the county legislative body for attending duly authorized committee meetings of such body is one half (½) of the compensation paid for attending regular sessions of the body except that counties opting to pay members a base salary and a set amount for attending meetings may set their own rate for attendance at committee meetings.

Any increase in compensation for members of the county legislative body does not take effect until the beginning of the term following the next election of county commissioners after the resolution increasing the compensation is adopted.

In Hamilton County, the legislative body was statutorily required to set the compensation of its members by a two-thirds vote effective July 1, 1999; each year on July 1 the compensation is adjusted to reflect the

same percentage increase received by the county mayor for that year. T.C.A. § 5-5-107.

The compensation of the chair and chair pro tempore is fixed by the county legislative body but if on a per diem basis cannot be less than the amount fixed for members. The compensation of the chair pro tempore cannot exceed the compensation of the chair for like services. T.C.A. § 5-5-103(e).

More information on Compensation can be found under the General Information tab for County Offices.

Chair-CLB

Reference Number:
CTAS-14

In counties other than those with a consolidated form of government or county charter, the county legislative body elects a chair and a chair pro tempore at its first session on or after September 1 of each year. The county legislative body may elect one of its own members as chair, or it may elect the county mayor; however, the county mayor is not required to take the office and may decline. If the county mayor is elected as chair and accepts the office, then the county mayor relinquishes the power to veto legislative resolutions of the county legislative body. However, these provisions do not apply in Knox, Hamilton, and Shelby. T.C.A. § 5-5-103. A county mayor who assumes the chair may vote to break tie votes of the county legislative body, but otherwise does not vote. T.C.A. § 5-5-109(b). The county mayor may not make or second a motion. Alternatively, the legislative body may elect one of its own members as chair, in which case the member who is also chair may vote on all issues as a regular member of the body, but may not vote again to break a tie vote. T.C.A. § 5-5-109.

If the county mayor does not serve as chairman, the county mayor has veto power over legislative resolutions (but not administrative or appellate resolutions) within 10 days of receiving the legislative resolution from the county commission. If a resolution is vetoed, the county mayor must return it to the commission with reasons for the veto. The commission may override the veto at the next regular meeting of the county commission or within 20 days of receiving the veto, whichever is later.

When the regular chair is unable or fails to attend meetings of the county legislative body, the chair is under a duty to notify the chair pro tempore who shall attend and discharge the duties of the chair. If neither is present, the county clerk will call the meeting to order for the election of one of the members to temporarily preside over the meeting. T.C.A. § 5-5-103.

The chair may designate another member of the county legislative body to sit in the chair's place on any board, authority or commission that the chair serves upon by virtue of holding the office of chair. Any such designee may vote or exercise any power the chair could exercise had the chair been in attendance.

Meetings and Notice Requirements -CLB

Reference Number:
CTAS-15

The county legislative body is required by law to meet at least four times annually at a time and place established by resolution of the county legislative body. T.C.A. § 5-5-104. Every member of the county legislative body shall be required to attend each and every session of the body. T.C.A. § 5-5-106.

The Open Meetings Law requires adequate public notice of regular meetings as well as special meetings. T.C.A. § 8-44-103. The meetings of the county commission are presided over by a chairperson or the chairperson pro tempore if the chair is not in attendance. T.C.A. § 5-5-103. If the chairperson fails or is unable to attend the meeting, the chairperson pro tempore will discharge the chairperson's duties.

In counties not operating under a consolidated government charter or county charter, special meetings of the county legislative body may be called by the county mayor. Also, the chair of the county legislative body may call a special meeting upon application in writing by a majority of the county commissioners. The call for a special meeting must be made by publication in some newspaper published in the county, or by personal notices to the members sent by the county clerk at least five days before the time of convening the special meeting. The call must specify the objects and purposes for which the special meeting is called, and no business not referenced in the call can be transacted at the special meeting. T.C.A. § 5-5-105. This notice is for the purpose of informing the county commissioners and is in addition to the notice to the public required by the Open Meetings Law. However, one notice in a newspaper of general circulation in the county appearing five or more days before the special meeting may serve to meet both requirements.

Counties are authorized under T.C.A. § 5-5-105(d) to provide alternative notice of special called meetings in cases where newspaper notice cannot occur in a manner timely enough to conduct the necessary business of the body. Such notice may be provided by posting the notice in a location where the public

may become aware of the notice and on the county's website if such website exists. The notice must contain a reasonable description of the purpose of the meeting or action to be taken. Also, the notice must be posted at least five days before the meeting.

All meetings must be public and no secret votes may be taken. T.C.A. § 5-5-104. A limited exception to the open meeting rule is provided by case law due to the judicial doctrine of attorney-client privilege; the county legislative body may meet in closed session with the county attorney or other attorney representing the county to discuss with the attorney pending litigation involving the county, but no discussions among members of the body as to the action to be taken or votes or decisions may be made in secret, nor other matters discussed.

Procedure and Voting Requirements-CLB

Reference Number:

CTAS-18

Rules of parliamentary procedure were developed to provide for orderly and courteous meetings. If you have questions about parliamentary procedure at a meeting of your county commission, you should consult your county attorney. You may have your county attorney attend county commission meetings to assist the presiding officer with questions of parliamentary procedure (or be available to provide answers to your questions).

The county legislative body is usually required to follow procedures mandated by state law, but often the state law is silent on the procedures to be followed. Therefore, it is important for county legislative bodies to adopt rules of procedure to follow when the state law does not provide guidance. During the meeting a commissioner should seek recognition in the manner used by the body which is generally by rising or by raising his/her hand. As a parliamentary courtesy, the member who makes a motion is entitled to speak first on the issue and is entitled to close debate but not until every member who desires to speak has been heard. The member should make the motion, without discussion that is not needed to explain the motion, allow for a second, and then be heard on the motion. A member should confine his/her remarks to the question before the body and should avoid personalities.

Many county legislative bodies adopt *Robert's Rules of Order* when parliamentary questions arise that are not specifically dealt with in their local rules. Whenever specifically adopted local rules differ with *Robert's Rules* (unless the local rules provide *Robert's Rules* control), the local rule would control. Neither *Robert's Rules* nor local rules can take precedence over a statute. When there is a conflict between a statute and a rule, the statute controls.

Sample rules of procedure. These are basic rules and it is suggested, as the sample does in Rule 11, to adopt a provision that all matters not covered by state law or the adopted rules be governed by *Robert's Rules of Order Revised* as contained in the latest copyrighted edition.

Quorum Requirements

Reference Number:

CTAS-662

Voting. A majority of all the members constituting the county legislative body, and not simply a majority of the quorum, is required to take any action, including making appointments, filling vacancies, fixing salaries, appropriating money, and transacting any other business coming before the county legislative body in regular or special meetings. T.C.A. §§ 5-5-108 and 5-5-109. The majority vote requirement means a majority of the actual membership at the time and not a majority of the total authorized membership, so a vacancy would not be counted in determining the required majority. *Bailey v. Greer*, 468 S.W.2d 327 (Tenn. Ct. App. 1971).

Questions often arise as to the effect of an abstention or "pass" vote. If a member abstains from voting or "passes" for any reason other than a statutory conflict of interest, the vote has the practical effect of a "nay" vote. It is not counted as one of the required "yea" votes necessary to meet the majority approval required for adoption, and yet it must be counted in determining the number necessary for a majority. Attorney General Opinion 86-17 (1/1/86). If, however, a member abstains from voting because of a statutory conflict of interest, that member is not counted for purposes of determining the number necessary for a majority. T.C.A. § 5-5-102(c)(3)(B).

While most business coming before the Commission requires a simple majority vote, some measures require a "supermajority" vote of two-thirds (2/3) of the members. This is true for the approval of private acts, as well as for imposing some tax measures. Where a supermajority is required, it will be stated in the enabling legislation (general law or private act).

The following chart illustrates the number of votes required for a majority of the county legislative body.

Number of Members	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Majority	5	6	6	7	7	8	8	9	9	10	10	11	11	12	12	13	13
Two-Thirds	6	7	8	8	9	10	10	11	12	12	13	14	14	15	16	16	17

For example, if your county commission has 19 members, 10 votes are needed to pass a resolution (unless there is a vacancy or a member abstains due to a T.C.A. § 12-4-101 conflict of interest, and announces that intention to the chairman of the legislative body). If 15 of the 19 members are present at the meeting, 10 votes are still needed. If a county legislative body has 15 members, 10 of whom are present for a meeting, all ten of those would have to vote in the affirmative in order to pass a measure requiring a two-thirds vote; eight of the ten present would constitute a majority.

Tie votes - If the County Commission is equally divided on any vote, then and only then a county mayor chair may, but is not required, to cast the deciding vote. A member serving as chairman votes as a regular member and cannot vote a second time to break a tie. T.C.A. § 5-5-109.

Procedure - All business for action of the county legislative body must be presented to the chair who announces the business to the body and takes the vote which is recorded by the county clerk. The body cannot act on any business which is not presented to the chair unless the body decides to do so by a majority of those present. T.C.A. § 5-5-110.

Committees-CLB

Reference Number:
CTAS-16

There are many committees, boards and commissions in county government. The laws that apply can be very confusing. It is important to distinguish between internal committees of the county legislative body and committees or boards established or made optional by general law or private acts. Internal committees of the county legislative body have no statutory requirements associated with them, they can be created or not according to the will of the county legislative body, they have no independent power to act and may only make recommendations to the full county legislative body. Therefore, the number, title, composition, method of appointment and other matters pertaining to these committees are determined by resolution of the county legislative body, either directly or through the adopted rules of procedure. See e.g., Op. Tenn. Att’y Gen. U91-48 (March 25, 1991). These internal committees may vary greatly from county to county and may change easily within a county. They exist simply to provide advice to the full county legislative body.

On the other hand, a county may have many boards and committees that have their basis in either general state law or private acts. These statutory boards and committees have to be dealt with according to the terms of the laws that created them or authorized their creation. These boards and committees may exercise the powers granted to them by law, but no other powers may be exercised. Some statutory boards or committees may exercise some limited powers directly, and in other matters they may merely make recommendations as would an internal study committee. The nature and authority of any particular committee or board in a county must be examined individually on a county- by-county and committee-by-committee basis.

A brief summary, including examples, of these three types of committees is included below.

Statutory Committees. These committees are provided for in the statutory law involving county commission appointment or approval of committee members. Not all of these committees are mandatorily required by the statutory law, but if created, they must be created in accordance with the statutes.

Standing Committees. These are internal committees not required by statute and are usually established by local rules of procedure adopted by the county commission or by tradition in the county. The function and membership of standing committees is at the discretion of the body and its chairperson. Standing committees usually have broad areas over which they are responsible for making studies and recommendations back to the full body. These committees continue their operation throughout the year and make periodic reports to the entire body concerning findings of the committee and recommendations on questions submitted to them. Examples of this type of committee are Fiscal Review Committee, Planning Committee and Nominations Committee.

Special Committees. Special Committees are also non-mandatory, internal committees which may be appointed or elected at a meeting of the county commission when an issue arises which needs more information or further study prior to official actions by the body. These are temporary committees which cease to function when they have completed their duties and made a report or recommendation back to the full body. Examples of this type of committee are Committee to Study the Need for a County Ambulance Authority, Committee to Draft Local Rules of Procedure and Committee to Plan Annual Picnic.

The chairperson of any committee may from time to time appoint subcommittees to study special issues coming before the committee. A subcommittee makes a report and recommendation to the full committee after completion of the study.

Boards, commissions and committees are covered in more detail under the Structure of County Government topic.

Budgeting and Levying Taxes-CLB

Reference Number:

CTAS-19

The county legislative body assembled in session is authorized to act for the county. T.C.A. § 5-1-103. All funds to be used in the operation of the county must be appropriated for that use by the county legislative body, which can appropriate money only for expenditures sanctioned by state law. T.C.A. § 5-9-401. The county legislative body may appropriate funds for any lawful purpose. T.C.A. § 5-1-118 (incorporating certain municipal powers in T.C.A. § 6-2-201). It is the duty of the county legislative body to adopt a budget and to appropriate funds for the ensuing fiscal year for all county departments and agencies. T.C.A. § 5-9-404. The county mayor who does not chair the county legislative body may veto the entire county budget but may not veto portions of it. T.C.A. § 5-6-107.

A county usually adopts a budget annually, but a county legislative body may prepare and adopt a biennial budget for such departments of the county as are authorized for the particular county by the comptroller of the treasury's state director of local finance. However, such biennial budgets may not be used until changes are made to existing county law in county charters, private acts or resolutions that require annual budgets. T.C.A. § 4-3-305.

The budget adopted by the county legislative body must be balanced, meaning that estimated revenues must at least equal the amounts appropriated plus any reserves required by state law. The county legislative body must levy taxes sufficient to meet appropriations (with other revenues such as state shared taxes included in the determination) and to meet all debt retirement and interest obligations. T.C.A. § 9-11-115. The county budget must meet all state law requirements. The failure to meet these requirements can cause the loss or withholding of state shared funds, such as education funds. Besides the requirements of balance and meeting debt obligations, the budget must also meet several other requirements such as the maintenance of effort requirement for education funding, the five-year average requirement for highway funding, the requirement not to lower the funds available to the sheriff for personnel costs without the consent of the sheriff, the mandatory minimum salaries of county officials, any court decrees providing the number and salaries of deputies and assistants of county officials, the requirement to have adequate correctional facilities (alone or in conjunction with one or more other counties) and any other mandates that state law places on the county. Additional information about county operating budgets can be found under the Accounting/Budget/Finance tab.

The county property tax is the only significant source of revenue that the county legislative body can levy without limitation as to rate and without being subject to referendum (directly or if an adequate petition is filed) or requiring the passage of a private act.

Other Duties-CLB

Reference Number:

CTAS-20

The county legislative body has important duties. For example, the county legislative body—

- has duties with respect to the acceptance of county roads, the annual updating and approval of the county road list, and the closing of roads not deemed worthy of inclusion on the county road list.
- may adopt optional general laws in the areas of financial management, budgeting and purchasing.
- has important duties with respect to approving the issuance of county debt instruments such as bonds and notes.
- has a duty to provide courthouse space for the state courts and jail facilities (alone or in conjunction with one or more counties) as well as for certain county officials.
- may adopt comprehensive zoning for the area of the county outside the corporate limits of the municipalities.
- has a duty to have a countywide personnel policy (although several offices may have their own policy separate from the general county policy).

- may provide medical and life insurance benefits to county employees and county officials through insurance or self-insurance.
- has the authority to regulate dogs, cats and stray animals.
- may, by two-thirds vote of the county legislative body, adopt regulations to prevent public nuisances.
- may determine whether or not to adopt a distance rule regarding the sale of beer at retail.

The county legislative body must determine how to deal with its liability risks through either insurance, self-insurance, or joint self-insurance through an insurance pool. Many of the records of the county are very valuable and the county legislative body has an important role with the county public records commission and other county officials to preserve records of permanent value and to manage the county's records efficiently. The county legislative body has a role in either electing or approving the appointment of many county officials and department heads. Also, the county legislative body may decide to limit the duties of constables to process serving and take away law enforcement powers, or to abolish the office at the end of the terms of the incumbent constables.

Intergovernmental Agreements

Reference Number:

CTAS-449

The Constitution of Tennessee, legislation enacted by the General Assembly and administrative rules and regulations issued by agencies of the executive branch control the relationship between the State of Tennessee and its political subdivisions. The courts of the state interpret the provisions of the Constitution and ultimately determine the validity of statutes and regulations. The attorney general regularly issues opinions on the constitutionality, operation and effect of statutes. Opinions by the attorney general are particularly influential in Tennessee. For example, county officials frequently resolve disputes over various interpretations of law following the issuance of an attorney general's opinion, avoiding the necessity and expense of a court test. Also, legislators often request opinions about the authority of counties to perform functions contemplated in pending legislation or about what actions the state can legally take with regard to county governmental affairs.

County officials and personnel deal with state government as a matter of course in their daily activities. The county is not separate from the state, but is part of the state. It is a basic unit in the organization of political parties and in the administration of elections. County officials administer what are essentially state programs in areas of health and welfare, schools, courts and the collection of license fees and taxes. Counties supply services the state cannot provide or chooses not to provide. County sheriffs enforce state law and counties incarcerate thousands of state prisoners in local jails. The state oversees these activities performed on its behalf and often provides county programs with administrative and financial assistance.

The state comptroller's office has a division of local government audit responsible for seeing that local government finances are audited properly, while watching for potential financial difficulties. Another official in the office of the comptroller reviews local bond issues and advises local governments on bond problems. The state provides an Elections Coordinator in the office of the Secretary of State who works with local governments on local election problems and issues, giving assistance in election law and procedures. The Tennessee Emergency Management Agency is available to assist any local government in times of disaster. The Police Officers Standards Commission prescribes qualifications and training for local law enforcement officers. County jails are inspected in accordance with state laws.

The state is particularly cooperative in county purchasing and financial management. State law empowers counties to make purchases under the state purchasing contract without letting bids. This means automobiles, road salt, typewriters and anything that the state purchases can be purchased by local governments under the same contract. The state operates a Local Development Authority (LDA). Under the LDA, the state issues revenue bonds and loans proceeds to local governments for the construction of wastewater treatment projects. Local governments pay off these bonds through the revenues from local user charges. The state has also authorized a local government investment pool through which counties and other entities can invest idle funds with full protection.

State and counties share some of the same revenue sources. The state collects not only the state sales tax, but also county and municipal sales taxes. The state retains a small administrative fee for collecting local sales taxes and remits the balances to the county trustee for distribution within that county. The state also collects the state gasoline tax which is shared with cities and counties.

There are numerous worthy governmental programs and purposes which could not be performed or executed without extensive state and county cooperation. For example, the state Fire Marshal's office in the Department of Insurance, is responsible for reviewing the plans of all schools, multi-story office

buildings and institutional buildings in each local jurisdiction to make sure they are safely constructed. The Department of Health and Environment has a technical assistance program to assist local wastewater treatment facility operators to comply with environmental regulations. The Department of Economic and Community Development works with cities and counties to help them recruit industrial prospects and to publicize local resources. These are a few of the ways counties interact with the state on a daily basis for a variety of reasons and functions.

The state of Tennessee has been divided into nine development districts for the purpose of regional planning, joint community and economic development projects, and the provision of certain services on a regional basis. Each development district serves as an area agency on aging that administers many programs based on federal funds that are passed through the state to the development districts to assist elderly and disabled citizens. Each county, plus each municipality is represented on the board of the development district for the region along with other state representatives. The county mayor represents his or her county on the development district board and may serve on its executive committee.

Another form of intergovernmental cooperation is the representation of local governments on state boards and commissions. Some of the bodies on which county officials are represented include the Tennessee Advisory Commission on Intergovernmental Relations, the Air Pollution Control Board, the Consolidated Retirement System Board of Trustees, the Emergency Medical Services Board, the Tennessee Housing Development Agency, the Peace Officers Standards and Training Commission, the Solid Waste Disposal Control Board, the Water Quality Control Board, and many others. Local government representation on these boards and commissions is provided for by statute.

Mutual Assistance and Mutual Aid Agreements

Reference Number:

CTAS-480

When disasters strike, they often tax the resources and personnel of a local government beyond its capacity to respond properly. In such situations, neighboring cities and counties have the opportunity to be lifesavers, often literally. Under the Mutual Aid and Emergency and Disaster Assistance Act of 2004 (discussed below), a statewide system of mutual assistance exists that may be used at the option of the local government. Prior to the enactment of this legislation, many local governments had mutual aid agreements in place. The local governments that wished to keep these older agreements in force had to adopt a resolution before July 1, 2004, to extend them. If the local government did not pass such a resolution, then the provisions of the 2004 law are in effect in the county. This re-adoption requirement to keep an old agreement does not affect service and operational agreements between local governments that are not emergency or disaster related. Also, local governments may adopt new mutual aid agreements.

The 2004 Mutual Aid and Emergency and Disaster Assistance Act makes a distinction between aid, which is provided under this law on request in situations in which there has been no declaration of a state of emergency or disaster and for which no cost reimbursement is required, and assistance, which is provided after an emergency or disaster is declared and for which cost reimbursement is required. The law allows municipal and county mayors and executives to declare local states of emergency. Requests for aid or assistance may be made verbally, but such requests must be confirmed in writing within 30 days of the initial request.

Parties must keep records of all requests for assistance made under the act. The law allows a responding entity to send personnel and equipment anywhere in the state to respond to a request for aid or assistance, but there is no duty to respond to a request or to stay at a scene for any length of time. Responding employees and entities acting outside their boundaries have the same protections they have in their home jurisdiction.

For liability purposes, employees of the responding party will be considered employees of the requesting party while under the requesting party's supervision. At all other times, they will be considered employees of the responding party. The requesting party is required to pay the responding party all documented allowable costs incurred by the responding party in providing assistance after a state of emergency has been declared. The responding party is entitled to one-half its reimbursable costs for the first six hours of its response and 100 percent after six hours are exceeded.

This does not apply to responding utilities, which are to be reimbursed for 100 percent of their costs from the beginning of the state of emergency. The requesting party is required to reimburse personnel costs and equipment and material costs according to Federal Emergency Management Agency (FEMA) fee schedules. The responding party must maintain records and submit itemized invoices for reimbursement to the requesting party no more than 60 days after the provision of assistance has ended. This law allows, but does not require, local government entities to provide aid or assistance to any state or federal entity

upon request in any part of Tennessee. T.C.A. § 58-8-101 *et seq.*

Tennessee Fire Service Emergency Response System--The Tennessee Fire Chiefs Association created the Tennessee Fire Service Emergency Response System to provide for the systematic mobilization, deployment, organization, and management of fire service resources to assist local agencies in a large fire event, disaster, or other major emergency.

Revenue

Reference Number:

CTAS-199

The county legislative body does not have inherent power to tax or set fees. Instead, all revenue received by the county is derived from, or authorized by, statutory law, either general laws (public acts) or private acts. A county government's chief sources of revenue, property and local option sales taxes, are levied by the county legislative body, but are authorized by the state's general law, codified in the *Tennessee Code Annotated*. Counties receive substantial funds from state taxes on the sale of gasoline and diesel fuel, taxes that the counties do not levy but share in according to a formula in the general law. Counties may supplement these sources of revenue through private acts that levy additional taxes, such as a hotel/motel tax.

Financial Structure of County Government

Reference Number:

CTAS-694

Financial structure on the county level generally is organized around each local official and the revenues and expenses of each of these offices, which operate separately within the framework of the county financial structure as a whole. The trustee acts as the county banker and handles receipts and disbursements, the latter of which must be authorized by the county legislative body according to statutes enacted by the General Assembly and decisions rendered by the state courts. No county funds may be expended unless authorized ("appropriated") by the county legislative body. T.C.A. § 5-9-401. This appropriation procedure is a phase of the annual budgeting process that begins in January and usually ends in July with the approval of the budget.

County financial functions involve current operations as well as capital project financing and debt retirement. Day-to-day expenses relating to personnel, supplies, materials, utilities, contracted services, upkeep of facilities, and similar costs of providing county services are referred to as current operating expenses. To pay for these expenses the county collects fees authorized by statute, levies and collects taxes, and receives revenues from the state and federal governments. Like a business, the county has income (referred to as revenues) and expenses. Also like a business, the county's financial management involves budgeting, accounting, purchasing, payroll, cash flow, and related areas. Unlike a business, a county has very limited implied powers. It must operate strictly by the express provisions of the law in carrying out these functions. There are three types of state laws applicable to the county financial function: general laws, general laws with local option application, and private acts for a specific county. Also, the general law provides for county charters and metropolitan government charters to structure financial management in the counties that have adopted these charters.

The management of county finances under the general law allows practically every department to make purchases, make disbursements, receive funds without the trustee's involvement and maintain separate accounting records. With this type of system, it is difficult to manage the cash flow for investing temporarily idle cash funds and to properly communicate the county's financial condition on a monthly and uniform basis. In an attempt to address these and other problems, the General Assembly has passed three sets of local option acts governing one or more aspects of county financial management which may be adopted by referendum or two-thirds county commission approval (the 1993 law may be adopted only by the county commission).

1. Local Option Budgeting Law of 1993,
2. 1981 Financial Management System, and
3. 1957 Fiscal Acts,

These acts provide a means for counties to consolidate functions, establish uniform financial procedures and incorporate efficient business practices into the management of county finances.

For a chart showing which budget law each county has adopted, click here: [County Budget Laws](#).

Investment of County Funds

Reference Number:

CTAS-699

Each county is directed by general state law to invest all idle county funds to the maximum practical extent. T.C.A. § 5-8-301(a). Counties are authorized to invest in instruments designated by general law as a safe temporary medium. These temporary investments must either be approved by the county legislative body, be in compliance with an investment policy adopted by the county legislative body, or be approved by an investment committee appointed by the county legislative body. T.C.A. §§ 5-8-301, 5-8-302.

In counties that have not adopted the County Financial Management System of 1981, the county legislative body may create an investment committee to determine the investment of idle county funds from the statutory list of approved investments. The number of members on this committee and the mode of selection is according to resolution of the county legislative body. T.C.A. § 5-8-302.

In counties that have adopted the optional County Financial Management System of 1981, the county legislative body may establish an investment committee composed of five members appointed by the county legislative body. The members may or may not be members of the county legislative body. If the county has adopted the 1981 law, the county legislative body may choose to have the financial management committee perform the functions of the investment committee. The investment committee under the 1981 law establishes and approves policies and procedures for cash management and investing idle cash funds in the investments authorized by law and the director of finance has the authority to make the investments within the guidelines set by law and the committee's policies. T.C.A. §§ 5-21-105(e), 5-21-107(a). The organization of the investment committee in counties with a county charter or metropolitan government charter may differ from that provided by the general law.

There are three categories of idle county funds that may be invested: funds derived from bond proceeds; funds from the sale of assets, settlements, or other infrequent occurrences; and other idle county funds. Under T.C.A. § 5-8-301, all three categories may be invested in any of the following manners:

1. Bonds, notes, or treasury bills of the U.S. as well as other obligations guaranteed by the U.S. or its agencies;
2. Deposits of funds into state and federally chartered banks and savings and loan associations, provided that these investments are properly secured;
3. Obligations of the United States or its agencies under a repurchase agreement for a shorter time than the maturity date of the security itself if the market value of the security itself is more than the amount of funds invested. Counties may invest in repurchase agreements only if the comptroller of the treasury or the comptroller's designee approves repurchase agreements as an authorized investment and if such investments are made in accordance with procedures established by the state funding board;
4. The state investment pool;
5. State bonds, if they have a rating of A or higher by any nationally recognized statistical rating organization as identified by the United States securities and exchange commission;
6. Nonconvertible debt securities of the following issuers provided such securities are rated in the highest category by at least two nationally recognized statistical rating organizations as identified by the United States securities and exchange commission:
 - The Federal Home Loan Bank;
 - The Federal National Mortgage Association;
 - The Federal Farm Credit Bank;
 - The federal home loan mortgage corporation; and
 - Any other obligations that are guaranteed as to principal and interest by the United States or any of its agencies.
7. The county's own bonds or notes issued in accordance with Title 9, Chapter 21.

Counties with population in excess of 150,000 may invest idle funds in prime banker's acceptances that are eligible for purchase by the federal reserve system and prime commercial paper that is rated at least A1 or equivalent by at least two nationally recognized statistical rating organizations as identified by the United States securities and exchange commission. T.C.A. § 5-8-301.

Additionally, counties with a population of 20,000 to 150,000 may invest idle funds in prime commercial

paper if it is rated in the highest category by at least two nationally recognized statistical rating organizations as identified by the United States securities and exchange commission and the paper has a remaining maturity of 90 days or less. T.C.A. § 5-8-301.

Counties may invest funds held by them with a bank or savings and loan association with a branch in Tennessee under certain conditions, including FDIC insurance of the full amount of principal and interest or collateralization of amounts not so insured. T.C.A. § 9-1-118.

There are other restrictions on the investment of specified county funds, as well as requirements for protection of county funds through proper collateralization of the investment. T.C.A. § 5-8-301. The advice of the state director of local finance, CTAS county government consultant, or county attorney will be helpful in determining available investment options, the correct procedures for making such investments, and the proper collateral to protect county investments.

Auditing

Reference Number:
CTAS-710

In Tennessee, the financial records of all local governments must be audited annually. T.C.A. § 9-3-211. The state comptroller of the treasury through the Division of Local Government Audit is given the authority to establish accounting standards (T.C.A. §§ 5-8-501, 9-3-212(b)) and auditing standards. T.C.A. § 9-3-212(b). The county legislative body contracts with a certified public accountant or the Division of Local Government Audit to make the annual audit. T.C.A. § 9-3-212. However, the county must receive approval of a private auditor from the Division of Local Government Audit and comply with other requirements of that office. The contract cost to use the state department of audit was set in 2016 at \$0.36 cents for each person in the county based on the most recent federal census with an annual 3% fee increase beginning July 1, 2017. T.C.A. § 9-3-210. Regardless of who performs the audit, a certified copy of it must be submitted to the state comptroller. T.C.A. § 9-3-213. In the event state-shared funds are misappropriated or misused, the state is authorized to withhold state funds for the amount misused. Also, the state may collect on the individual official's surety bond if the misused funds result from that official's unlawful or dishonest acts. T.C.A. §§ 9-3-301, 9-3-302. If a public servant, with intent to deceive, to knowingly misrepresents information to an auditor, this action constitutes a Class C misdemeanor. T.C.A. § 39-16-407.

Counties with one or more audit findings must submit a corrective action plan to the comptroller setting out the actions taken or to be taken to address the findings. The plan must include contact information for the person responsible for the corrective action, the corrective actions taken or to be taken and the anticipated completion date. If a county disagrees with an audit finding, the plan should include the reasons and justifications for the disagreement. T.C.A. § 9-3-407.

Capital Budgets

Reference Number:
CTAS-1696

Capital projects include purchases of land, buildings, and equipment; construction of buildings, roads, and bridges; renovation of buildings; and other such improvements that last for many years. Just as in the business world, governmental financing of capital projects involves short-term financing in the form of notes and permanent financing in the form of long-term notes or bonds. In some rare cases, counties levy taxes to fund capital projects. Regardless of the type of financing, the county legislative body must authorize the funding of such projects. Once the method of financing the capital project is approved, the county legislative body must establish a means of paying the principal and interest on the debt created. This process involves establishing of a debt service fund (sometimes referred to as a debt retirement or sinking fund) and imposing a tax or taxes, frequently the property tax or local option sales tax, to retire the debt.

The Tennessee State Funding Board requires counties issuing debt after January 1, 2012 to adopt a written debt management policy that must contain certain minimum requirements. This guidance is intended to guide counties in complying with the State Funding Board's requirement. The minimum topics required are-

- debt,
- transparency and disclosure,
- conflicts of interest,
- costs, and

- professionals.

Several steps are involved in initiating a capital project, often beginning with an architect or engineer. When a county decides that a capital project is necessary, the county legislative body may adopt a resolution authorizing funds to contract with an architect, engineer, or consultant service to prepare preliminary plans and cost estimates. According to T.C.A. § 62-2-107, all contracts for construction and maintenance exceeding \$50,000 must be under the supervision of a licensed architect or engineer.

Unless the county has the staff and expertise, the services of a financial advisor or bond fiscal agent may be helpful. T.C.A. § 9-21-110. An agent of this type can be of assistance to the county in preparing financial statements, legal opinions, and proper resolutions, in advertising the sale of the notes or bonds, in assisting the county in the timing of the issue, and in seeking bids for issuance. Financial advisors, bond placement agents and underwriters are required to file with the county an estimate of the cost of any debt issuance, including financial advisory fees and related fees and costs before the placement agent or underwriter enters into a bond purchase agreement or bond placement agreement with the county.

T.C.A. § 9-21-151. If a county wishes to engage the services of a financial advisor, it is recommended that the county use a Request for Proposals (RFP); CTAS staff can assist the county with preparation of the RFP and solicitation of proposals.

If the county authorizes funding of bonds or notes without the assistance of a financial advisor, the county should call upon the director of local finance in the state comptroller's office or the CTAS county government consultant to provide assistance with the necessary resolutions to authorize the funding. CTAS staff may help the county in the planning stage to determine the projected cost of a debt retirement plan and projected funding sources to retire the debt.

There are many statutes authorizing both long-term notes and bonds, as well as short-term financing notes. Counties must review their financing requirements to determine which type of bonds or notes would be best for the capital project being considered. However, before considering any bond or note issue, counties are urged to seek the assistance of a financial advisor, the director of local finance in the state comptroller's office, or the CTAS county government consultant for the area.

Qualifications and Title-County Mayor

Reference Number:
CTAS-22

The office of county executive was created by the 1978 amendment to Article 7, Section 1, of the Tennessee Constitution, when county executive was added to the list of county officials named in the Tennessee Constitution. In the implementing legislation, the General Assembly chose to designate members of the county legislative body as county commissioners, but left the county executive with the title given in the constitution with the option of establishing a different title by private act. This law was changed in 2003 to provide that the chief executive officer of each county, excepting counties with a consolidated (metropolitan) form of government, would hereafter be entitled "county mayor." This law was amended in 2004 to authorize the title to be changed to "county executive" by private act for the particular county. This law was once again amended in 2007 to remove the authority to re-designate county mayors as county executives by private act, but private acts enacted prior to the 2007 amendment remain in effect. T.C.A. § 5-6-101. The chief executive officers of metropolitan governments continue to use the title provided for them by their metropolitan government charter.

County mayors serve terms of four years or until their successors are elected and qualified. Terms begin on the first day of September following the election. T.C.A. §§ 5-6-101 and 5-5-102. There is no limitation on the number of terms county mayors may serve in most counties. In counties with a county charter or metropolitan government charter, the term and possible term limitation for county mayors is determined by the county's charter.

The office of county mayor is subject to the general qualifications for county offices as well as these specific qualifications.

To hold the office of county mayor in any particular county, a person must be at least 25 years of age and must be a qualified voter of the county. He or she must also have been a resident of the county for one year prior to filing a nominating petition for election to the office. To maintain this office, once elected, the county mayor must continue to reside in the county and may not hold any other public office of profit. T.C.A. § 5-6-104.

County mayors are elected county-wide by the qualified voters of the county. Regular general elections are held on the first Thursday in August in even numbered years for county offices, at the same time as primary elections are held for state offices. T.C.A. §§ 5-6-101, 5-5-102, 2-3-202 and 2-13-202.

After election, the county mayor must take an oath of office and execute a surety bond. Oaths of office

and Bonds are covered under the General Information tab of the County Offices topic.

Compensation-County Mayor

Reference Number:

CTAS-23

The minimum compensation for full time county mayors is set in T.C.A. § 8-24-102 and is determined according to county population by classes. The office is full time, except in counties where the voters have determined by referendum that the workload does not necessitate a full-time mayor. If the county mayor's office is determined by referendum not to be a full-time position, this must be done prior to the election of the county mayor or the county mayor will be entitled to the minimum salary. T.C.A. §§ 5-6-105, 8-24-102(e).

A minimum salary, determined by population class, is set by the General Assembly, although the county legislative body may increase that amount. T.C.A. §§ 8-24-102 and 8-24-114. However, the compensation for the full-time county mayor must be at least five percent greater than the maximum salary payable to any other constitutional officer. T.C.A. § 8-24-102(e).

As the sheriff is the next most highly compensated constitutional officer, the full-time county mayor's compensation must be at least five percent greater than the sheriff's salary.

Relationship to County Legislative Body-County Mayor

Reference Number:

CTAS-24

The county mayor serves as a nonvoting, ex officio member of the legislative body; as such the county mayor may not make or second a motion. Op. Tenn. Att'y Gen. 86-194 (December 1, 1986).

The county mayor may be elected chairperson of the legislative body. A county mayor who serves as chair of the legislative body may cast a vote in the event of a tie. T.C.A. § 5-5-109. However, if the county mayor becomes chair, the mayor's veto power is forfeited. T.C.A. § 5-5-103. If not chair of the county legislative body, the county mayor has veto power over legislative resolutions (not administrative or appellate resolutions) adopted by the legislative body.

When a resolution is adopted by the legislative body, it should be submitted to the county mayor. Each resolution must be signed, vetoed, or allowed to become effective without the county mayor's signature. If a resolution is signed by the county mayor, it becomes effective immediately or at a later date specified in the resolution. If the county mayor vetoes the resolution, he or she must return the resolution to the legislative body for action on the veto, and the resolution becomes effective only upon subsequent passage by a majority of all legislative body members. Such passage must take place within 20 days of receiving the county mayor's veto or at the legislative body's next regular meeting, whichever is later. If the county mayor does not sign or veto a resolution or report the mayor's action to the legislative body within 10 days after the resolution is submitted to him or her, the resolution becomes effective without the mayor's signature after 10 days or at a later date if the resolution so provides. The county mayor who does not chair the county legislative body may veto the entire county budget but may not veto portions of it. T.C.A. § 5-6-107.

The county mayor or the county mayor's representative also serves as a nonvoting, ex officio member of each committee of the legislative body, except as provided by law or by the legislative body. T.C.A. § 5-6-106. Most mayoral appointments, including appointments of department heads under T.C.A. § 5-6-106(c), are subject to confirmation by the county legislative body.

Additional information about a county mayor's relationship to the county legislative body is under the County Legislative Body-County Offices tab.

Duties-County Mayor

Reference Number:

CTAS-25

Many of the duties and responsibilities of the county mayor are not specifically addressed in the Tennessee Code, but are a function of the fact that the county mayor is expected to provide leadership and direction to the county in most policy areas. This leadership duty of the county mayor is not easily defined. The county mayor should have a better picture of the total government operation than any other county official, and should also have the knowledge, information and leadership ability to steer the county in the direction most beneficial to the county's future.

The county mayor is required to devote full time to the office of county mayor, except in counties where,

by referendum, it has been determined that the work is insufficient to require a full time county mayor. T.C.A. § 5-6-105. However, this requirement does not necessarily mean that the county mayor cannot have another job or manage another business. It does mean that the county mayor should devote a normal working day's time to the office.

The county mayor is the accounting officer and chief financial officer of the county; he or she is charged with the care and custody of county property (unless the law specifically places the care and custody on another official, such as the chief administrative officer of the highway department for highway equipment). T.C.A. § 5-6-108. While the county mayor is charged with care of county property, the county legislative body has the power to erect, control and dispose of county property (T.C.A. § 5-5-121), and the authority to levy taxes for this purpose. T.C.A. § 5-5-122.

The county mayor appoints members of county boards and commissions and appoints department heads unless, as is frequently the case, the law specifically provides otherwise; these appointees are subject to confirmation by the county commission. T.C.A. § 5-6-106(c). Unless there is a conflict of interest or other prohibition, the county mayor is free to appoint a member of the county legislative body in exercising the appointment power, although the appointee should not vote on the confirmation. Op. Tenn. Att'y Gen. U94-004 (January 4, 1994). Approval of an appointee requires a commission majority; if the county commission does not approve an appointment, the county mayor must make another appointment that will also be required to be approved by the county commission.

The county mayor is authorized to employ secretarial and clerical assistants needed in the performance of the duties of the office of county mayor. The county mayor shall establish the compensation of any such assistant within the amount appropriated for such purpose by the county legislative body. T.C.A. § 5-6-116.

While leadership is the most important responsibility of the county mayor, leadership alone is not enough to keep county government functioning properly. Smooth operation also requires that each county official perform statutory administrative duties in several different areas.

Accounting Officer-County Mayor

Reference Number:
CTAS-26

As accounting officer and general agent of the county, the county mayor has the responsibility to:

1. Have care and custody of all county property, except that in the custody of other officials.
2. Appoint and to fix compensation of an agent or attorney to take care of county property.
3. Control all books, papers and instruments of the office.
4. Audit all claims for money against the county.
5. Draw, without seal, all warrants on the county treasury.
6. Audit and settle accounts of the county trustee, and those of any other collector or receiver of county revenue, taxes or incomes, payable into the county treasury, and those of any persons entrusted to receive or expend any money of the county.
7. Require the above officers or persons to render and to settle their accounts as directed by law, or by the authority under which they act.
8. Enter in the warrant book, in order of issuance, the number, date, amount and name of the drawee of each warrant drawn upon the treasury.
9. Keep in a suitable book an account of the receipts and expenditures of the county, so as to show clearly the assets of the county, and the debts payable to and by it, balancing the account semiannually, and generally to superintend the financial concerns of the county.
10. Write a semiannual report to the county legislative body reflecting all money received and paid out, and a complete statement of the financial condition of the county; to settle the other accounts once every year. T.C.A. § 5-6-108.

Financial Officer-County Mayor

Reference Number:
CTAS-753

The county mayor is the chief financial officer of the county. Except in counties that have adopted the 1981 Financial Management System or that have a county charter that provides otherwise, the county mayor signs or cosigns county warrants, at least for general fund expenditures. The county mayor may examine the accounts of the county officers to verify each item of expenditure or revenue. T.C.A. §§

5-6-110, 5-6-112. The county mayor audits all claims for money against the county. In counties not providing otherwise, the county mayor serves as the chief accounting officer for the county and maintains the general fund accounts. T.C.A. § 5-6-108. Although the exact role varies depending upon the particular county's adoption of optional general laws, county charters or private acts, the county mayor generally has a strong role in the budgetary process and often presents the consolidated budget for each fiscal year to the county budget committee or county legislative body.

As financial officer of the county, the county mayor has the following duties:

1. To draw a warrant on the county trustee for payment of any judgment recovered against, or debt due from, the county.
2. To reduce to writing the testimony of any witness examined by the mayor concerning any settlement and file the same.
3. To examine minutely and settle the accounts of county officers, referring to the records, documents, dockets and papers in the office to verify each item.
4. To report the settlement to the county legislative body, under an oath stating "that the county mayor believes that the same contains a true schedule of the revenue collected by each officer, and which the county mayor is bound by law to pay to the county trustee."
5. To make duplicates of the settlements with the clerks of the circuit, chancery and appellate courts, to deliver one duplicate to the county clerk, and to file the others in each clerk's office. T.C.A. § 5-6-110.

Powers-County Mayor

Reference Number:
CTAS-754

To carry out the financial responsibilities, the county mayor has the following powers:

1. If there is no county attorney, to employ and/or retain counsel to advise the mayor and the members of the county legislative body as to their legal rights as members, to prepare resolutions for passage by the body, and to represent the county in suits brought by or against the county, except suits by the county to collect delinquent taxes. The attorney is entitled to a reasonable fee for his or her services and/or retention to be fixed by a majority vote of the members of the county legislative body at a regular session, to be paid out of the county general fund.
2. To require clerks of courts to produce all records, documents and papers in their offices relative to county revenue collected by that officer.
3. To call or summon all witnesses having any knowledge relating to the county revenue.
4. To demand of each clerk an account, on oath, of all moneys collected for the use of the county, setting forth each separate item, from whom, and at what time received, and the source from which it was derived.
5. To call the collectors of the county tax, at the time prescribed by law, for the purpose of making a final settlement for the year past.
6. To call the county trustee to a settlement when required by law, or by the court.
7. To procure, at the county's expense, a well-bound book, and therein cause to be entered, on the left-hand pages, two regular accounts, one against the collectors of taxes and revenue, the other against the county trustee, stating the amount of the taxes for which the collectors are accountable, and each item with which each of the officers is chargeable, in behalf of the county, expressing the manner in which it became due and owing, or by whom paid. And, on the right-hand page, opposite the debits, the county mayor shall cause to be entered such item or credit to which either of the officers is entitled, plainly showing the amount thereof and to whom paid.
8. To transfer the balance, if any, either for or against the county, to their respective accounts to be opened for the ensuing year, so that the county executive may be enabled, when required by the county legislative body, plainly to show the state and condition of the county treasury, and in what manner the moneys thereof have been disbursed.
9. To demand of the county clerk a list of the amount of taxes put into the hands of the collector, and due and owing for that year, together with sufficient vouchers, showing the amount of moneys paid to the trustee, as required by law, for fines and forfeitures, and the amount of all appropriations made for the year by the county legislative body, with all

necessary documents and vouchers showing any receipts and disbursements of county money. T.C.A. § 5-6-112.

10. To act for the county clerk when the clerk cannot perform any official act because of interest or relationship. T.C.A. § 5-6-114.

County mayors, as well as former county mayors and county executives, may perform marriages. T.C.A. § 36-3-301.

These statutory powers and responsibilities are only a very few of the day-to-day duties performed by the county mayor. While these duties provide the framework for the county mayor's administrative functions, the details of the county mayor's responsibilities are spread throughout the laws concerning county government.

Other Legal Authority

Reference Number:

CTAS-755

In addition to statutory law, court cases and constitutional provisions provide guidance for county officials in determining what actions may properly be taken. The county mayor should be familiar with the local court system. When the chancellor or circuit court judge makes a determination in a case which affects a county's operation, the order of the court must be followed. If either party to the action disagrees with the court's determination, that party can appeal to a higher court. Decisions of the court of appeals or the Supreme Court are binding on all counties and must be followed. When a lower court in a judicial district gives a decision, it is not binding on other judicial districts; however, it is a good indication of what courts in other districts would hold in similar cases.

Constitutional provisions are written in general language. Normally, their application to local governments is determined by case law. A single court case or a series of cases on a particular constitutional provision form the case law on that issue.

The county mayor who is not a lawyer, and even those who have legal training, should work with the county attorney when interpreting the law, in determining the legal viability of a proposal, assessing county liability issues or the county mayor's duty in various situations.

Interaction with other County Offices-County Mayor

Reference Number:

CTAS-758

In order to promote the smooth and efficient operation of county government, the county mayor should understand something about the other officials and departments, their daily operation and their statutory duties and powers.

Highway commissioners. It is the duty of the county mayor to examine the inventories of the county road department for compliance with the provisions of the Uniform Highway Law that require proper safeguarding of machinery and equipment. If the road superintendent is not in compliance with those provisions, the county mayor must withhold any funds due the superintendent until he or she complies. T.C.A. § 54-7-112.

Trustee. The county trustee has three major functions: collecting the county's property taxes, accounting for and disbursing county funds, and (in some counties) investing temporarily idle county funds. T.C.A. § 8-11-104. The trustee is authorized to receive a commission for the taxes he or she collects; however, the trustee receives no commission for money turned over by the predecessor in office, or on money borrowed for the use of the county, or received from the sale of bonds. T.C.A. § 8-11-110. The trustee must keep a complete record of all fees, commissions or charges collected by the office. A sworn itemized monthly statement is to be filed with the county mayor. T.C.A. § 8-22-104.

Delinquent tax attorney. The delinquent tax attorney brings suit on behalf of the county (and any municipality whose property taxes are collected by the county trustee) to collect delinquent property taxes. The delinquent tax attorney is appointed each year by the county trustee subject to approval by the county mayor for the property taxes becoming delinquent in that year. In most counties the county attorney may serve as the delinquent tax attorney if selected by the county trustee and approved by the county mayor, but the trustee is under no legal obligation to appoint the county attorney to this position. T.C.A. § 67-5-2404

County medical examiner. The county medical examiner is elected by the county commission from a list of two doctors nominated by convention of physicians residing in the county. The county mayor calls the convention. In counties with a metropolitan form of government, the medical examiner is appointed by

the chief executive officer subject to the confirmation of the metropolitan council. T.C.A. § 38-7-104.

County Statutory Offices and Positions

Reference Number:

CTAS-215

In addition to the county constitutional offices and important statutory offices such as the chief administrative officer of the county highway department and the important employment position of director of schools, counties have various other offices and employment positions that have been created by either general law or private act. Some of the offices and positions described are not found in all counties but are fairly common.

An explanation of the office of Judicial Commissioner can be found under Courts. Election Administrators are covered under Elections and County Building Commissioner is covered under Land Use, Planning and Zoning.

County Attorney

Reference Number:

CTAS-450

The county attorney or law director is a popularly elected official in a few counties by private act or county charter, an officer elected for a term of office by the county legislative body under a private act in a few others, and an executive appointed department head in others by county or metropolitan government charter. In most counties, however, there is not an office of county attorney; rather, the position is one of employment or retainer under the general law authority of the county mayor to employ or retain counsel when there is no county attorney. An attorney employed or retained by the county mayor is to advise the county mayor and the members of the county legislative body as to their legal rights as members, prepare resolutions for passage by the body, and represent the county either as plaintiff or defendant in such suits as may be brought by or against the county, except suits by the county to collect delinquent taxes. An attorney employed or retained by the county mayor under this general law authority is entitled to a reasonable fee for such counsel's services and/or retention, which amount is to be fixed by a majority vote of the members of the county legislative body at one of its regular meetings and paid out of the general fund of the county. T.C.A. § 5-6-112. The counties that have an office of county attorney or law director by charter or private act may have different duties and compensation schemes, but all play an important role in advising the county mayor or metropolitan mayor and representing the county. The county charter, metropolitan government charter or private acts must be examined to determine the exact role and duties of the county attorney in those counties.

County Medical Examiner

Reference Number:

CTAS-451

The county medical examiner is appointed by the county mayor, subject to confirmation by the county legislative body, based on a recommendation from a convention of physicians resident in the county. A county medical examiner must be a physician who is either a graduate of an accredited medical school authorized to confer upon graduates the degree of doctor of medicine (M.D.) and who is duly licensed in Tennessee, or is a graduate of a recognized osteopathic college authorized to confer the degree of doctor of osteopathy (D.O.) and who is licensed to practice osteopathic medicine in Tennessee, and must be elected from a list of a maximum of two (2) doctors of medicine or osteopathy nominated by convention of the physicians, medical or osteopathic, resident in the county, the convention to be called for this purpose by the county mayor. T.C.A. § 38-7-104.

If it is not possible to obtain an acceptance as a county medical examiner from a physician in a county, authority is given for the election of a county medical examiner from an adjacent or another county. A county medical examiner, when temporarily unable to perform the duties of the office, has the authority to deputize any other physician in the area to act as county medical examiner during the absence. If the county legislative body fails to certify a county medical examiner for a county or if the county medical examiner resigns or is unable to fulfill the duties of the office during the interim between county legislative body sessions and a deputy has not been appointed by the county medical examiner, the chief medical examiner shall have the authority to appoint a county medical examiner to serve until the next session of the county legislative body. T.C.A. § 38-7-104.

A county medical examiner shall serve a five-year term, and shall be eligible for reappointment by the county mayor with confirmation by the county legislative body. T.C.A. § 38-7-104.

County Medical Investigator

Reference Number:

CTAS-452

A medical investigator must be a licensed emergency medical technician (EMT), paramedic, registered nurse, physician's assistant or a person registered by or a diplomat of the American Board of Medicolegal Death Investigators and approved by the county medical examiner as qualified to serve as medical investigator

If the county has an elected coroner, the coroner shall serve as the medical investigator for the county; provided, that the coroner meets the qualifications for a medical investigator. If the coroner is not qualified to serve as medical investigator, then the county legislative body shall, by resolution, either authorize the county medical examiner to appoint a medical investigator subject to confirmation by the county legislative body, or provide for this function through a contract for service approved by the county medical examiner and the county legislative body; provided, however, that, if the county has an elected coroner who has served in that capacity for ten years or more, the coroner shall serve as the medical investigator for the county, regardless of whether the coroner meets the qualifications set out in T.C.A. § 38-7-104(f)(1)

The county medical investigator may conduct investigations when a death is reported, as provided in T.C.A. § 38-7-108, under the supervision of the county medical examiner. The county medical investigator may make pronouncements of death and may recommend to the county medical examiner that an autopsy be ordered. However, the county medical investigator shall not be empowered to sign a death certificate. The county medical examiner may delegate to the county medical investigator the authority to order an autopsy.

T.C.A. § 38-7-104(f).

County Coroner

Reference Number:

CTAS-453

The county legislative body is granted discretionary authority to create the office of county coroner. If such office is created, the county legislative body must elect a coroner who holds office for two years, and until a successor is qualified. However, in those counties that have a county medical examiner, the county legislative body may vest the duties of the county coroner in the county medical examiner and is not required to elect a county coroner. T.C.A. § 8-9-101.

The coroner must, before entering upon the duties of that office, enter into an official bond prepared, executed, filed, and recorded in accordance with Title 8, Chapter 19. The bond must be in the amount of two thousand five hundred dollars (\$2,500), or a greater amount set by the county legislative body by resolution, payable to the state, conditioned truly and faithfully to execute the duties of the office of coroner. The coroner, if failing to give bond within ten days after appointment, shall vacate the office. T.C.A. § 8-9-103.

Constable

Reference Number:

CTAS-454

Constables are optional officers. Constables are independently elected county officials. See AG OP 78-153 (March 31, 1978). Their jurisdiction is county wide. In counties where they exist, they all may serve civil process. In some counties, designated by narrow population class in the general law at T.C.A.

§ 8-10-108(b), the constable has law enforcement powers and, therefore, may enforce the criminal laws of this state. T.C.A. § 8-10-109.

Constables are fee officials. They do not receive a salary. They are not supervised by anybody. See AG OP 02-012 (January 18, 2002). The county would probably be liable for torts committed by a constable that fall within the Governmental Tort Liability Act, T.C.A. §§ 29-20-101, et seq., and for civil rights violations under 42 U.S.C. § 1983. See AG OP 00-050 (March 20, 2000); AG OP 91-70 (August 1, 1991).

In most counties the county legislative body may, by adopting a resolution by two-thirds majority vote at two consecutive meetings, abolish the office of constable for that county or set the term of office for the

constable at either two or four years. Any change would not be effective until the end of the current term being served by the constable. T.C.A. § 8-10-101.

In most counties, the county legislative body may also, by adopting a resolution by a two-thirds vote at two consecutive meetings of the county legislative body, remove the law enforcement powers exercised by the constables of the county. Such action by the county legislative body to remove the law enforcement powers of constables will apply to constables elected to office following the expiration of the term of office of constables in office at the time the action is taken by the county legislative body. T.C.A. § 8-10-109. Note: Some exceptions apply.

In addition to these optional procedures, several counties, by population class exceptions, are exempt from portions of the constable law or have abolished the office of constable entirely. The specific statute should be consulted for provisions applicable to each individual county. T.C.A. § 8-10-101 *et seq.*

Constables are elected from districts established by the legislative body subject to the following limitations: the number of constables elected cannot exceed one-half the number of county commissioners and constable districts must be reasonably compact and contiguous and must not overlap. T.C.A. § 8-10-101. Constables must have the following qualifications:

1. Be at least twenty-one (21) years of age,
2. Be a qualified voter of the district and a resident of the county for one (1) year prior to the date of the qualifying deadline for running as a candidate for constable,
3. Must be able to read and write,
4. Must possess at least a high school diploma or general educational development certificate,
5. Not have been convicted in any federal or state court of a felony, and
6. Not have been separated or discharged from the Armed Forces of the United States with other than an honorable discharge.

There are a few exceptions to the aforementioned qualifications. T.C.A. § 8-10-102.

Any person seeking the office of constable must file with the county election commission, along with the nominating petition, an affidavit signed by the candidate affirming that the candidate meets the requirements in T.C.A. § 8-10-101. In the event that person seeks election to the office of constable by the county legislative body to fill a vacancy in office, the same affidavit shall be filed with the county clerk prior to the election. T.C.A. § 8-10-102.

In 2023, the legislature amended T.C.A. § 8-10-102. Effective July 1, 2023, a person seeking the office of constable must file with the county election commission, along with the nominating petition, a letter from a psychologist licensed in this state who has conducted a cognitive and psychological test on the candidate stating that the candidate is mentally and cognitively fit to perform the duties of a constable. In the event that the candidate seeks election to the office of constable by the county legislative body to fill a vacancy in office, the same letter must be filed with the county clerk prior to the election. Candidates for the office of constable are responsible for covering the costs of cognitive and psychological testing.

Before entering into the duties of the office, the constable must take an oath to support the constitutions of this state and of the United States, and an oath of office, pursuant to T.C.A. § 8-10-108. Each constable must execute an official bond in an amount of \$4,000 or such greater amount as the county legislative body by resolution may determine. The bond must be prepared, executed, filed, and recorded in accordance with Title 8, Chapter 19. The bond as required for a constable shall be a surety bond executed by a surety company authorized to do business in Tennessee as surety. T.C.A. § 8-10-106.

There are permissive specifications regarding uniforms and car markings. T.C.A. §§ 8-10-119, 8-10-120.

Constables' duties may be limited to serving civil process or may include peacekeeping duties; the oath of office differs according to the nature of the duties. T.C.A. § 8-10-108. The duties of the constable are determined according to the population classification of the particular county pursuant to T.C.A. §§ 8-10-108 and 8-10-109, unless the county legislative body has acted to remove law enforcement powers. The legislative body may fill any vacancy by temporary appointment until it is filled by an election. T.C.A. § 5-1-104.

Constables must complete forty hours of in-service course time for each twelve-month period during which the constable holds office, beginning on the date the constable is sworn into office. A constable with twenty years of cumulative service as a constable before May 3, 2018, is exempt. T.C.A. § 8-10-202.

Delinquent Tax Attorney

Reference Number:
CTAS-455

The delinquent tax attorney brings suit on behalf of the county (and any municipality whose property taxes are collected by the county trustee) to collect delinquent property taxes. The delinquent tax attorney is appointed each year by the county trustee subject to approval by the county mayor for the property taxes becoming delinquent in that year. Suits for the collection of delinquent property taxes are to be filed after the trustee delivers the delinquent lists to the attorney by April 1 of each year. The delinquent tax attorney is compensated in an amount determined in advance through negotiations between the trustee and the attorney, subject to the approval of the county legislative body, but in most counties this amount is limited to 10 percent of all delinquent land taxes collected. T.C.A. §§ 67-5-2404, 67-5-2405. In most counties the county attorney may serve as the delinquent tax attorney if selected by the county trustee and approved by the county mayor, but the trustee is under no legal obligation to appoint the county attorney to this position.

County Fire Marshal

Reference Number:
CTAS-457

The County Fire Marshal is responsible for ensuring fire safety compliance in the unincorporated portions of the county. Typical responsibilities include plan reviews of new site developments; new and modified commercial structures and multi-family dwellings; and fire protection systems. Additional duties include inspections of new construction for compliance with the applicable building and fire codes, as well as inspections of existing structures (except one and two-family dwellings) to ensure compliance with the fire prevention code adopted in an effort to reduce the risk of death and injury due to fire.

The County Fire Marshal typically conducts fire scene investigations to determine origin and cause and works closely with the local sheriff's department, district attorney's office, and other state/ federal agencies as needed in cases that involve suspected arson activity. The coordination of fire safety public education efforts is an important function of the County Fire Marshal's duties. In counties that have a countywide fire department, the County Fire Marshal's position can be created within that agency to carry out the provisions of T.C.A. § 5-17-102(8).

In counties that do not have a countywide fire department, the position can be created in accordance with T.C.A. § 5-6-121. The Fire Marshal may also function as a coordinator between the county and the independent fire departments that provide fire protection services to the unincorporated portions of the county.

The K-12 Education System in Tennessee

Reference Number:
CTAS-85

The present system of providing and funding K-12 education in Tennessee has been in place since the enactment of the Education Improvement Act in 1992. Formerly, public education in this state was funded according to the Tennessee Foundation Program (TFP), a system that was found unconstitutional because it denied children in small school systems the same opportunities provided to those in the larger and more affluent ones. *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn. 1993). The TFP was replaced with the Basic Education Program (BEP), a funding formula providing increased and more equalized funding among the state's local school systems. T.C.A. § 49-3-351.

The BEP provides for minimum levels of funding at both the state and local level. The BEP has three major categories: instruction, classroom, and non-classroom. The funds generated by the BEP are divided into state and local shares for each of the three major categories. Student enrollment as measured by average daily membership is the primary driver of funds generated by the BEP. The state and local share for each school system is based on an equalization formula. This equalization formula is the primary factor in determining the state's share of funding versus the local share of funding for each local education agency (LEA). The equalization formula determines the fiscal capacity at the county level and is driven primarily by local property values and sales tax. Local school systems are free to raise additional education dollars in addition to the funds generated by the BEP. The statutes pertaining to education funding are found in Tennessee Code Annotated, Title 49, Chapter 3, Part 3.

The state board of education, in consultation with the commissioner of education, establishes performance goals and measures and sets objectives for achievement for the state and for all local education agencies (LEAs). Schools and LEAs are evaluated annually. T.C.A. § 49-1-602.

On the local level, the management and control of the county schools is the responsibility of the county board of education and the director of schools. Counties are required to have a board of education whose members are popularly elected to staggered four-year terms. T.C.A. § 49-2-201. Each board of education is required to employ a director of schools by contract of up to four years' duration. T.C.A. §§ 49-2-203, 49-2-301. The authority of the board of education and the director of schools is subject to state law, rules and regulations adopted by the state board of education, and the express powers given the state commissioner of education. The county board of education establishes local policies and regulations within the authority given to the board. The director of schools serves as the chief administrative officer to implement board policies and manage the county department of education within the guidelines provided by the state and the county board of education.

Title 49 of Tennessee Code Annotated (Volume 9) defines the funding mechanism for education and sets out the duties and authority of the above-mentioned boards and officials as well as those of the county legislative body and county trustee as they relate to education.

County Board of Education

Reference Number:

CTAS-86

School board members in each county are required to be elected by the people from districts of substantially equal population. Board members must be elected to staggered four-year terms, and may succeed themselves. Board members in special school districts may serve different terms of office established by private act but must be popularly elected on a staggered term basis. T.C.A. § 49-2-201.

Boards of education may have "no more members than the number of members authorized by general law or private act for boards of education in existence on January 1, 1992, or the number of members actually serving on a board on January 1, 1993," or the General Assembly, by private act, may establish the membership of particular school boards at any number not less than three nor more than eleven. T.C.A. § 49-2-201.

Members of the board of education must be residents and voters of the county in which they are elected, and, except in a few counties, must possess a high school degree or G.E.D. Members of the county legislative body and other county officials are not eligible for election to the board of education. T.C.A. § 49-2-202(a). Members of the board of education are not eligible for election as teacher or any other paid position under the board. T.C.A. § 49-2-203(a)(1)(D).

The compensation for the board of education members for attending regular and special meetings and performing duties cannot exceed the compensation fixed by the county legislative body and must be included in the school district budget submitted to the county legislative body. A school board member's compensation shall not be reduced from the prior year. The county trustee is not permitted to pay a voucher issued to members unless the voucher has been approved by the county mayor. School board members may not receive less than four dollars (\$4.00) per day for the member's services. T.C.A. § 49-2-202.

Vacancies are filled by the county legislative body until the next election. T.C.A. § 49-2-202(e) and Tenn. Const., art. VII, § 2, as interpreted in *Marion County Board of Commissioners v. Marion County Election Commission*, 594 S.W.2d 681 (Tenn. 1980). Members must attend annual training sessions as prescribed by the state board of education which must include an annual session. T.C.A. § 49-2-202.

The board is to elect a chair from among its members annually. T.C.A. § 49-2-202. The chair countersigns all warrants approved by the board and issued by the director of schools. T.C.A. § 49-2-205. The chair of the school board also serves as chair of the executive committee, composed of the chair and the director of schools, which functions as purchasing agent for the school board unless there is a separate purchasing board or purchasing agent otherwise established by law, and also monitors accounts to see that the budget is not exceeded. T.C.A. § 49-2-206.

Director of Schools

Reference Number:

CTAS-94

The elected office of county superintendent of public instruction was abolished in 1992, and in its place is a director of schools (who may also be referred to as "superintendent"), who is appointed by the local board of education and is considered an employee of the board. T.C.A. § 49-2-301. A director of schools appointed by the local board of education is only required to have a baccalaureate degree. T.C.A. § 49-2-301(d).

The numerous duties of this position are described in T.C.A. § 49-2-301 and are summarized in part

below:

1. Insure that laws relating to education are faithfully executed;
2. Attend all meetings of the school board and serve on its executive committee;
3. Keep records of meetings, actions, and financial transactions of the school board;
4. Issue, within 10 days, all warrants authorized by the board;
5. Make recommendations to the board, although the director of schools may not vote;
6. Supervise and visit the schools;
7. Enforce the regulations of the commissioner of education regarding courses of study and systems of pupil promotion;
8. Sign certificates and diplomas;
9. Recommend teachers eligible for tenure to the school board;
10. Recommend salaries for teachers;
11. Employ school principals under written contract (T.C.A. § 49-2-303);
12. Assign teachers and educational assistants to specific schools;
13. Keep on file all teachers' licenses and contracts of teachers and other employees;
14. Prepare and submit attendance reports;
15. Prepare full quarterly financial reports and monitor school spending;
16. Prepare and submit a school budget;
17. File a copy of the approved school budget with the commissioner of education within ten days after its adoption by the county legislative body;
18. Furnish a list of teachers and salaries to commissioner of education;
19. Approve access to personnel files when necessary;
20. Employ, transfer, suspend, non-renew and dismiss all personnel within the approved budget and applicable statutes and board policies, rules and regulations, contracts and negotiated agreements; and
21. Submit a report to the General Assembly by January 1 each year relative to the number of students in alternative schools.

The director of schools is a full-time position. It is a misdemeanor for the director to enter into any other contract with the board of education, to take any additional compensation from it, or to act as principal or teacher in any school; a director who violates this provision must be dismissed from the position. T.C.A. § 49-2-301(c). A director of schools is ineligible to serve as a member of the county legislative body; however, this prohibition does not apply to a director of schools who was serving as a member of the county legislative body on June 18, 2005. T.C.A. § 5-5-102(c)(2).

County School Budget

Reference Number:

CTAS-95

The budget for the county school system is developed by the director of schools and board chair and presented to the full board for its consideration. The budget developed by the director and board chair must be prepared according to the revenue estimates and revenue determinations made by the county legislative body as required in T.C.A. § 49-2-101. When the school budget has been approved by the board, it must be submitted to the county legislative body not later than 45 days prior to the July meeting of the county legislative body or 45 days prior to the actual date the budget is to be adopted, if such adoption is scheduled prior to July 1. T.C.A. § 49-2-203(a)(10). Local option budgeting laws and private acts that may be in effect in a particular county will affect the budgeting process and must be consulted.

Under most circumstances, the legislative body either accepts the school budget as submitted by the school board or rejects it, in which case the budget is sent back to the school board with a specified amount of total funding. The school board then revises the specific items to conform with the total appropriated amount. In counties operating under the County Financial Management System of 1981, T.C.A. § 5-21-101 *et seq.*, the county legislative body may alter or revise the total amount of expenditures proposed by the school board in its budget as long as it is in compliance with state law and regulations, and then the director of schools is required to submit a revised budget with the total expenditures approved by the county legislative body within 10 days. The Local Option Budgeting Law of

1993, T.C.A. § 5-12-201 *et seq.*, contains provisions that allow the county legislative body to revise the school budget under specified circumstances, but this law applies only in counties that have adopted its provisions. Regardless of the procedure used to adopt the budget, once a school budget has passed, amendments must be approved by the school board and by the county legislative body. T.C.A. §§ 5-9-407, 49-2-301(b)(1)(W).

School Budget-Maintenance of Effort

Reference Number:

CTAS-96

Of particular interest to local governments is the statutory limitation that prohibits local school boards from submitting a budget that reduces local educational funds, excluding capital outlay and debt service, and then replaces them with money from the state. See T.C.A. §§ 49-2-203(a)(10) and 49-3-314(c). This is commonly known as the "maintenance of effort" requirement or the "supplanting test." These statutes have been consistently interpreted to mean that an LEA cannot use local funds as part of its operating budget and then discontinue this funding and use state funding to fill the gap. See Op. Tenn. Att'y Gen. 09-70 (5/4/09).

There are four exceptions to this rule. First, if the school system has a reduction in student population total funding may be calculated on a per pupil level. Second, if there is a reduction in state funding, then local funds used to offset these funding reductions are not subject to the maintenance of local funding requirement. Third, this restriction does not apply for three years after a city and county system have consolidated into one. Fourth, if in any fiscal year the governing body and the school board enter into a written agreement establishing the non-recurring nature of an appropriation, the appropriation may be excluded from maintenance of effort (and from any applicable apportionment requirements). T.C.A. §§ 49-2-203(a)(10), 49-3-314(c). See also, Op. Tenn. Att'y Gen. 13-107 (12/20/13).

If a school budget violates the maintenance of effort requirement, then the Commissioner of Education may, at his or her discretion, withhold state education funds from the LEA under T.C.A. § 49-3-314(c). See Op. Tenn. Att'y Gen. 09-70 (5/4/09).

More information on Maintenance of Effort can be found under Operating Budgets under Accounting/Budget/Finance.

School Budget Fund Balance

Reference Number:

CTAS-97

Unexpended education funds remaining at the end of a fiscal year are carried forward in the education fund balance. The fund balance may be used to offset shortfalls of budgeted revenue or, with the approval of the school board and the county legislative body, to meet unforeseen increases in operating expenses. Any accumulated fund balance in excess of three percent of the budgeted annual operating expenses for the current fiscal year may be budgeted and expended for any education purposes, but must be recommended by the board of education prior to appropriation by the county legislative body. In any fiscal year in which state-shared revenues distributed to counties are reduced below the levels distributed to counties in the 2002-2003 fiscal year, any or all of the accumulated fund balance may be used for education purposes without restrictions. T.C.A. § 49-3-352.

School Continuing Budget

Reference Number:

CTAS-98

If the county legislative body has not adopted a budget for the operation of the public schools by July 1 of any year, the school budget for the year just ended continues in effect until a new school budget has been approved. Any continuing budget (the previous year's budget as temporary authority to expend funds until new annual budget is adopted) is not valid beyond October 1 of the current fiscal year for purposes of the local education agency's ability to receive state funds. T.C.A. § 49-3-316(d). Therefore, if a budget has not been adopted by October 1, the state may discontinue the county's funding.

Tennessee Investment of Student Achievement (TISA)

Reference Number:

CTAS-99

The Tennessee Investment Achievement Act (TISA) became effective on July 1, 2023 and is

codified at T. C. A. § 49-3-101 et. seq. The TISA replaces the Basic Education Program (BEP), which was previously the state funding formula for over 30 years. The goals of the program are 1) to support third grade reading proficiency; 2) prepare high school graduates to succeed in a postsecondary program or career of the graduate's choice; and 3) to provide all students, regardless of their circumstances, with the resources they need to succeed. The department of education will publish an annual guide for administering the program. The TISA guide, professional development, and additional resources about the new formula can be found on the Tennessee Department of Education's website.

The TISA provides for the following funding allocations under T. C. A. § 49-3-105.

Base Funding. The General Assembly will appropriate a base amount of funding for each student.

Weighted Allocations. A student also generates weighted allocations, none of which is mutually exclusive to another, as follow:

- 25% for an economically disadvantaged student.
- 5% for a student who reside in concentrated poverty.
- 5% for a student who resides in a small district.
- 5% for a student that resides in a sparse district.
- Between 15% and 150% for a student with unique learning needs.

The state will fund 70% of the base and weighted allocations. The local government will fund the remaining 30%. T. C. A. § 49-3-109.

Direct Allocations. The department of education is required to set direct allocation amounts which must be submitted to the state board. The state board is required to issue a positive, neutral, or negative recommendation for the proposed direct allocation amounts. The state board's recommendation must be included in the rule filing with the secretary of state. T. C. A. § 49-3-105. The state is required to pay 100% of the direct allocations. T. C. A. § 49-3-109. Direct allocation amounts are generated for the following students.

- Funding for students K-3 to promote literacy.
- Funding for fourth-grade students who are not proficient in the English language arts based on the student's most recent TCAP test.
- Funding for students for career and technical education.
- Funding for postsecondary readiness assessments for high school juniors and seniors.
- Funding for each charter school student.

Student Membership. A student's membership in an LEA begins on the first day of the student's membership and ends on the last day of the student's membership in the LEA, except that the membership of a student who graduates early is extended to the student's expected graduation date for funding purposes. Funding allocations are based on data collected for an LEA during the immediately preceding school year. T. C. A. § 49-3-105.

Pay Raises. A portion of any annual increase in the base funding amount may be restricted by the general assembly for the sole purpose of providing salary increases to existing educators. If a portion

of an annual increase in the base funding amount is restricted, then an LEA or public charter school must use the portion restricted to provide salary increases to existing educators. The state board shall increase the minimum salary on the state salary schedule, as appropriate, based on the amount of funds restricted for salary increases, if any. T. C. A. § 49-3-105.

Student Outcome Incentives. The department of education will allocate student-generated outcome incentive dollars to an LEA based on the achievement of member students in the LEA's public schools when funds are appropriated. Outcome incentive dollars are based on the prior year's data. T. C. A. § 49-3-106.

Fast-Growth Stipend. Stipends may be available to fast growing school systems when funds are appropriated. An LEA that experiences growth in the total allocation generated by students in non-virtual schools in the current year in excess of 1.25%, as compared to the prior year, is eligible for a fast-growth stipend equal to the increase in allocations in excess of 1.25%. If funds appropriated are insufficient to provide for an LEA's fast-growth stipend, then the commissioner will apply a proportional reduction to the stipend amount each LEA is otherwise eligible to receive. T.C.A. § 49-3-107.

Additionally, subject to available appropriations, an LEA that experiences average daily membership (ADM) growth in non-virtual schools exceeding 2% for each year of a three-consecutive-year period is eligible for an infrastructure stipend. The infrastructure stipend is a per-student flat dollar amount based on the number of member students in non-virtual schools in the LEA for the current school year in excess of a 2% ADM growth in non-virtual schools from the prior year. An infrastructure stipend in a given year must be uniform for all eligible LEAs. T.C.A. § 49-3-107.

Distribution of Funds. The commissioner and each local government will distribute allocated education funding periodically throughout the school year according to a schedule established by the commissioners of education and finance and administration, subject to all applicable restrictions prescribed by law. T. C. A. § 49-3-108.

T. C. A. § 49-3-104 defines baseline funding, in part, as the BEP allocations an LEA received in the 2022--2023 school year. Under T. C. A. § 49-3-108, distributions will be allocated as follows:

- Year 1 - If, during the first year of the TISA, an LEA's allocated TISA funds total less than the LEA's baseline funding amount, then the department will allocate additional funds in an amount equal to 100% of the difference between the LEA's baseline funding amount and the LEA's allocated TISA amount.
- Year 2 – If, during the second year of the TISA, the LEA's allocated TISA funds total less than the LEA's baseline funding amount, then the department will allocate additional funds to the LEA in an amount equal to 75% of the difference between the LEA's baseline funding amount and the LEA's allocated TISA amount.
- Year 3 - If, during the third year of the TISA, the LEA's allocated TISA funds total less than the LEA's baseline funding amount, then the department will allocate additional funds to the LEA in an amount equal to 50% of the difference between the LEA's baseline funding amount and the LEA's allocated TISA amount.

- Year 4 - If, during the fourth year of the TISA, the LEA's allocated TISA funds total less than the LEA's baseline funding amount, then the department will allocate additional funds to the LEA in an amount equal to 25% of the difference between the LEA's baseline funding amount and the LEA's allocated TISA amount.

An LEA's allocated education funding will not decrease more than five percent (5%) from one (1) year to the next year. T. C. A. § 49-3-108(c).

Subject to appropriations, the department will distribute additional grants to LEAs that meet the conditions outlined in T. C. A. § 49-3-108.

If a local government fails to include the local contribution in the local government's budget, then the comptroller of the treasury will not approve the local government's budget. T. C. A. § 49-3-108 (f).

Accountability Requirements. T. C. A. § 49-3-112 requires each LEA to produce an accountability report that:

- Establishes goals for student achievement, including 70% of the LEA's students in third grade taking the English language arts (ELA) portion of the Tennessee comprehensive assessment program (TCAP) tests achieving a performance level rating of “on track” or “mastered” on the ELA portion of the TCAP tests, in the current school year and explains how the goals can be met within the LEA's budget; and
- Describes how the LEA's budget and expenditures for prior school years enabled the LEA to make progress toward the student achievement goals established for the prior school years. Note that this does not apply to the report submitted for the 2023-2024 school year.

The report must be presented to the public for comment before the report is submitted to the department. The report must be submitted to the department by November 1, 2023, and each November 1 thereafter.

Additionally, an LEA that operates a public school that receives a “D” or “F” letter grade pursuant to § 49-1-228 may be required to appear for a hearing before the state board, or a committee of the state board appointed by the chair of the state board, to report on the public school's performance and how the LEA's spending decisions may have affected the ability of the LEA's public schools to achieve certain performance goals. At the conclusion of a hearing, the board may recommend that the department impose corrective actions as provided in T. C. A. § 49-3-112.

Highway

Reference Number:
CTAS-105

Most county highway departments in Tennessee are subject to a set of general state statutes known as the County Uniform Highway Law (CUHL). The CUHL can be found at T.C.A. § 54-7-101 *et seq.*. You can access the law at the Tennessee Code Annotated link above. **PLEASE NOTE:** The CUHL was substantially rewritten in 2012. The new law, enacted by Public Chapter 689, became effective January 1, 2013. Click here to view Public Chapter 689.

The County Uniform Highway Law does not apply in Shelby, Davidson, Knox and Hamilton counties. T.C.A. § 54-7-102. Those counties operate their highway or public works departments pursuant to either a metropolitan government charter (Davidson), county charter (Shelby, Knox) or private act (Hamilton). Although the CUHL deals with many important aspects of the county highway department, it does not deal with all aspects, such as how the head of the department is selected or who purchases for the department. Therefore, most counties also have private acts that deal with issues not addressed by the CUHL. Some of these private acts were enacted prior to the adoption of the CUHL in 1974 and have provisions that conflict with the CUHL. In those instances, the CUHL will override any conflicting provisions in the private act unless a rational basis exists for suspending the general law for the particular county. Op. Tenn. Att'y Gen. 99-058 (March 10, 1999).

The organization of the highway department varies from county to county. Some counties have a policy making body of a few members known as the county highway commission (or by some similar title) while others do not. Almost all counties have a department head or chief administrative officer (CAO), as that person is referred to in the County Uniform Highway Law found at T.C.A. 54-7-101 *et seq.*, (hereafter CUHL). The titles for chief administrative officer vary from county to county but the most common title is county highway superintendent.

Method of Election. The CUHL does not provide for the method of election of the chief administrative officer or other highway officials. Therefore, the method of election may be provided by private act. Such a private act must be in effect in order for a popular election to take place. In counties with a county charter or a metropolitan government charter, the charter determines whether or not a separate highway department exists, and whether the department head is a popularly elected or appointed official with a term of office or an appointed position subject to removal by the appointing authority.

Term of Office. The CUHL specifies that in those counties in which it applies, the chief administrative officer shall serve a term of four (4) years. Elected chief administrative officers are to take office on September 1, following their election. T.C.A. § 54-7-105. The terms of office of other highway officials, such as highway commissioners or members of a road board, in counties under the CUHL, are set forth in private acts affecting the particular county.

Duties-Highways

Reference Number:
CTAS-106

County highway commissions, often called road boards, are not required by general law. They are created by private act. Some road boards are popularly elected and some are appointed by the county legislative body. Private acts may grant road boards a role in budgeting and purchasing for the road department. Private acts cannot, however, authorize road boards to encroach upon the personnel policy powers or day-to-day administrative authority of the CAO over the personnel of the highway department or encroach upon other powers given to the CAO by the CUHL, such as authority over the county road system.

County-Aid Funds

Reference Number:
CTAS-837

The state provides to counties rather large sums of money in the form of "county-aid funds" primarily from the state gasoline tax. County-aid highway funds may be used in the building, repairing and improvement of county roads and bridges or for the funding of mass transit systems (not to exceed 22.2% of total). T.C.A. § 54-4-103. There are further restrictions on the use of these funds detailed in the gasoline tax distribution statute, T.C.A. § 67-3-901. If a county is to receive its full allocation of county-aid funds under the basic formula: 50% equally to all counties, 25% according to population, and 25% according to area, the county must appropriate for road purposes from local revenue sources an amount equal or greater than the average of the preceding 5 years from local sources. The county highway officials must certify these items to the DOT each year. It should be noted here that some counties have not appropriated local revenue in the past 5 years; if so, the state will not diminish the county-aid funds so long as this fact is certified by the county officials. Also, the portion of the gasoline tax proceeds from 3¢ of the total gasoline tax (effective since 1985) which become county-aid funds must be used for the purposes of resurfacing and upgrading county roads, including paving of gravel roads. T.C.A. § 67-3-901.

Boards, Commissions, and Committees

Reference Number:

CTAS-216

There are various boards, commissions and committees in county government in Tennessee. Almost all of the boards, commissions and committees are either required or authorized by state general law. It is important to distinguish between boards, commissions and committees that have their basis in state statutory law and exercise authority independently of other bodies or officials as differing from those committees created by resolution of the county legislative body to study and make recommendations to the county legislative body that have no authority to act independently. Study committees created by the county legislative body to make recommendations to the body are not discussed.

If the statute provides for a board to be elected/appointed by the county legislative body, then the members of the county legislative body cannot serve on this board unless specifically authorized by statute. It violates public policy for an appointing body to confer office upon one of its own members. However, if board members are appointed by the county mayor or some other officer subject to confirmation of the county legislative body, then county legislative body members may be appointed, unless this is expressly prohibited.

The power to confirm appointments is different from the power to appoint for purposes of analyzing potential conflicts of interest under the common law rule enunciated in *State ex rel. v. Thompson*, 193 Tenn. 395, 246 S.W.2d 59 (1952), that it violates public policy for an appointing body to confer office upon one of its own members. The Attorney General has opined that the county legislative body's power to confirm candidates appointed by the county executive does not amount to a power of appointment for purposes of the principles applied in *Thompson and State ex rel. Bugbee v. Duke* (Tenn., filed at Nashville, August 29, 1988), an unpublished opinion of the Tennessee Supreme Court. See Op. Tenn. Att'y Gen. 94-013 (Feb 3, 1994).

A county legislative body may, by a two-thirds (2/3) vote, remove any member of an appointed board or commission, if such removal is recommended by the appointing authority and the member of the board or commission is given at least five (5) business days' notice of the meeting when the vote on removal will occur. This section does not apply in a county that has a charter provision or resolution providing for the removal of members of boards and commissions prior to April 3, 2025. T.C.A. § 5-5-128.

Airport Authority Board of Commissioners

Reference Number:

CTAS-481

A county legislative body may, by resolution, create an airport authority. If the county creates an airport authority, the county legislative body appoints at least five and no more than 11 commissioners to manage the affairs of the airport authority. After the initial appointments for one, two, three, four and five years to create staggered terms, the commissioners are appointed for terms of five years. T.C.A. § 42-3-103. Two or more counties or municipalities may form a regional airport authority. If such a regional airport authority is formed, the governing body of each participating local government by agreement appoints one or two commissioners to serve on the regional airport board. If each local government appoints one commissioner and this results in an even number, then the governor appoints an additional commissioner. If the method of each local government appointing two commissioners is chosen, then when the appointed commissioners convene, they appoint one additional commissioner, and if they cannot agree the governor makes the appointment. T.C.A. § 42-3-104. An additional method of forming a regional airport authority by three or more municipalities, counties and at least one political subdivision of another state is provided in § 42-3-104. Airport commissioners serve without compensation but are entitled to necessary expenses, including traveling expenses, incurred in the discharge of their duties. T.C.A. § 42-3-107.

Additionally, any county or counties may enter into an agreement for a joint action with other public agencies form a joint airport authority. T.C.A. § 42-3-202. If such joint action is taken a joint board is established pursuant to an agreement approved by the governing body of all participating governmental entities. The number of members, their terms and compensation, if any, are determined by the agreement. T.C.A. § 42-3-203.

Emergency Communications District Board of Directors

Reference Number:

CTAS-482

A county legislative body may by resolution create an emergency communications district within all or a part of the territory of the county if the creation of the district is approved by the voters at a referendum election in the area proposed for the district. T.C.A. § 7-86-104. In most counties, if an emergency communications district is created, its board of directors consists of seven to nine members appointed by

the county mayor subject to confirmation by the county legislative body for terms of four years, except for the initial terms of two, three and four years to create a staggered system. Requirements regarding membership on the board of directors in Shelby, Davidson, Knox and Hawkins counties are somewhat different due to exceptions made by narrow population class in the general law. T.C.A. § 7-86-105. This board manages the emergency communication system (911) within its area according to the powers given to it by general law at T.C.A. § 7-86-101 *et seq.*

Industrial Development Corporation Board of Directors

Reference Number:

CTAS-483

After a certificate of incorporation has been issued by the secretary of state establishing an industrial development corporation for a county, the corporation is managed by a board of directors of any number not less than seven as established in the certificate of incorporation. The directors must be qualified voters and taxpayers of the county. T.C.A. § 7-53-301. The Attorney General has opined that "taxpayers of the county" includes individuals making payment of any type of tax--not just property tax. Thus, membership cannot be limited to only landowners within the county. Tenn. Op. Atty. Gen. No. 99-142.

The directors of a county-sponsored industrial development corporation are elected by the county legislative body for terms of six years except for the initial election of three groups of directors with terms of two, four and six years to create staggered terms. No director of a county-sponsored industrial development corporation may be an officer or employee of the county. T.C.A. § 7-53-301. County officials may serve on the board of directors of a joint industrial development corporation; however, county employees are not eligible to serve on joint corporation boards. T.C.A. § 7-53-104. Directors serve without compensation except for reimbursement of actual expenses incurred in performance of their duties. T.C.A. § 7-53-301. Directors are required to complete a conflict of interest statement acknowledging that they have received a copy of § 12-4-101. The statement must include acknowledgements that the director understands that they are required to refrain from voting on matters in which the director is directly interested and that the director must disclose any matter in which they are indirectly interested before voting on the matter. A sample conflict of interest statement is available on the Tennessee Ethics Commission's website.

Public Building Authority Board of Directors

Reference Number:

CTAS-484

A county public building authority is formed when three or more people who are qualified to vote in the county apply to the county legislative body to incorporate a public building authority and the county legislative body approves the application. A public building authority is a public nonprofit corporation and an instrumentality of the county that may be used in the financing, construction, maintenance, leasing or disposition of public buildings and infrastructure. The board of directors of the public building authority is appointed by the county mayor subject to confirmation by the county legislative body in a number not less than seven who serve terms of six years except for the initial appointments to terms of two, four and six years to create staggered terms. A director of a county public building authority cannot be a county officer or employee. The directors serve without compensation except for reimbursement of expenses. A municipality may also form a public building authority. T.C.A. § 12-10-101 *et seq.*

Solid Waste Authority

Reference Number:

CTAS-519

A county or any of the counties in a municipal solid waste region may decide to form a solid waste authority to operate all solid waste systems within the region. (See the Solid Waste Authority Act in T.C.A. §§ 68-211-901 through 68-211-925.) A municipality with most of its territory in the county creating the authority may participate. T.C.A. § 68-211-903. Similarly, the authority can be dissolved by agreement of its participating counties and cities. The board of directors may be composed of the same members as the region's solid waste board, but this is not required. The method of selection, officers required, terms of office, and vacancy procedures are described in T.C.A. §§ 68-211-904, 68-211-905.

The advantage of using a solid waste authority to oversee the region's waste management lies in the authority's broad statutory powers. The solid waste authority is a separate legal entity that may issue bonds, incur debts, enter into contracts, and exercise the power of eminent domain. With the concurrence of the counties and municipalities participating in the solid waste authority, it may exercise exclusive control over the publicly owned solid waste systems within its boundaries. T.C.A. § 68-211-906.

Adult-Oriented Establishment Board

Reference Number:
CTAS-500

In counties that have adopted the Adult-Oriented Establishment Registration Act of 1998, codified at T.C.A. § 7-51-1101 *et seq.*, by a two-thirds majority vote of the county legislative body, an adult-oriented establishment board must be established to administer the provisions of this law. The board consists of five members, appointed by the county mayor, who serve for terms of four years. Board members serve without compensation but receive reimbursement for actual expenses for attending meeting of the board. T.C.A. § 7-51-1103. More on Regulation of Adult-Oriented Entertainment and Massage can be found in County Powers/Regulatory Powers.

County Agricultural Extension Committee

Reference Number:
CTAS-501

All counties cooperating with the state agricultural extension service operated by the University of Tennessee must have an agricultural extension committee. This committee consists of seven people elected by the county legislative body. Three members must be members of the county legislative body and four members must not be members of the county legislative body. Of these four members, two must be farmers and two must be farm women, residing in different civil districts. The members are elected for terms of two years, but one farmer and one farm woman is elected in even-numbered years and the balance elected in odd-numbered years. No member may be elected to more than three consecutive terms. The committee works with the U.T. agricultural extension representative in formulating the county extension budget for presentation to the county legislative body and serves in an advisory capacity on activities regarding the extension program in the county. T.C.A. § 49-50-104.

County Airport Board

Reference Number:
CTAS-502

The county legislative body of a county that has an airport under the authority of T.C.A. § 42-5-101 *et seq.* may by resolution delegate its powers regarding the airport to a board whose number of members, terms, method of appointment, powers and duties are specified in the resolution. T.C.A. § 42-5-112. Joint airport boards, consisting of one or more counties and other public agencies, are also authorized for joint action regarding or joint operation of an airport. T.C.A. § 42-5-202. Joint airport boards consist of members appointed by the governing bodies of the public agencies participating. The number of members, the length of the term and compensation, if any, are determined by the joint agreement. T.C.A. § 42-5-203.

County Public Records Commission

Reference Number:
CTAS-211

In 1959, the Tennessee General Assembly first made provision in the Tennessee Code for the creation of a county public records commission.^[1] Although the creation of the commission was optional at the time, the organization and responsibilities of the commission under the 1959 law were very similar to what one finds in the state law today. The express purpose of the commission is "to provide for the orderly disposition of public records created by agencies of county government."^[2] While minor revisions and additions to the statutes regarding this commission have occurred over the last few decades, the most significant change in the county public records commission occurred in the mid-1990s, when the legislature amended the law to mandate the creation of this body.^[3] Ever since 1994, every county in Tennessee has been required by law to have a County Public Records Commission.

^[1]1959 Public Chapter 253.

^[2]T.C.A. § 10-7-401.

^[3]1994 Public Chapter 884.

Audit Committee

Reference Number:

CTAS-505

The Local Government Modernization Act of 2005 encourages counties to form an audit committee, and the comptroller of the treasury may require it if a local government is not in compliance with Government Accounting and Standards Board (GASB) standards or has recurring findings of material weakness in internal control for three or more consecutive years. This committee is created by the county legislative body, which selects the members. The members of this committee must be external to the management and may be members of the county legislative body, citizens or a combination of both. Since the statute does not specify the number of members on this committee this is determined by the county legislative body. The duties of this committee are to be established in a resolution approved first by the comptroller and then by the county legislative body. The audit committee responsibilities include, at a minimum, financial and other reporting practices, internal control, compliance with laws and regulations and ethics. T.C.A. § 9-3-405. The audit committee is also required to establish a process for employees, taxpayers, and citizens to report suspected fraudulent, illegal, wasteful, or improper activity confidentially to the audit committee. If the chair believes the activity may have occurred, the chair is required to report it to the comptroller. The detailed information received and generated pursuant to a report of suspected activity is not an open record. T.C.A. § 9-3-406.

County Board of Equalization

Reference Number:

CTAS-1496

The county board of equalization is the first level of administrative appeal for all complaints regarding the assessment, classification and valuation of property for tax purposes. Board duties include examining and equalizing county assessments, assuring that all taxable properties are included on the assessment lists, eliminating exempt properties from taxation, hearing complaints of aggrieved taxpayers, decreasing over-assessed property, increasing under-assessed property and correcting clerical mistakes. T.C.A. §§ 67-1-401 *et seq.*, 67-5-1401 *et seq.*

Composition of the Board

At the April session in each even year, the county legislative body elects five "freeholders and taxpayers" from the different sections of the county to serve as the county board of equalization.¹ (Note: T.C.A. § 67-1-401 contains numerous exceptions for counties and cities specified through population class.) Members of the board of equalization serve two year terms. If the county legislative body fails to elect these members, then the county mayor makes the appointments and fills the vacancies as they occur.² Magistrates along with state, municipal or county legislative and executive officials, as well as their employees, are ineligible to serve, except in some circumstances in Shelby County.³

In addition to its regular appointments, an appointing authority may designate one or more alternates, and the board of equalization chair may call upon an alternate to sit for a regular member who becomes unavailable for a particular hearing due to disqualification or other reason. A duly appointed alternate shall be sworn in the same manner as regular members, and any action taken by a duly appointed alternate shall be as effective as if taken by the unavailable individual.⁴

¹T.C.A. § 67-1-401(a).

²T.C.A. § 67-1-401(b).

³T.C.A. § 67-1-401(c). See Op. Tenn. Atty. Gen. 90-106 (December 27, 1990) which states that it is a prohibited conflict of interest for a county trustee, a municipal tax collector, or an employee of either to sit on a county board of equalization. See *also* Op. Tenn. Atty. Gen. U92-82 (June 30, 1992) which opines that this provision regarding Shelby County is constitutionally suspect.

⁴T.C.A. § 67-1-401(d).

Parks and Recreation Board

Reference Number:

CTAS-512

The county legislative body may delegate, by resolution, to a parks and recreation board (or commission) the authority to conduct a parks and recreation program. Such a board consists of five members, at least two of whom may be members of the school staff, appointed by the chairperson of the county legislative body. Board members serve terms of five years except for the initial appointments so that the term of one

member expires annually. Members of this board serve without pay. T.C.A. § 11-24-104. Any two or more counties or municipalities may form a joint board to conduct a joint parks and recreation program by agreement approved by the governing bodies participating. T.C.A. § 11-24-105.

County Conservation Board

Reference Number:

CTAS-513

The county legislative body may, by resolution, create a county conservation board. Also, if 200 qualified voters of the county petition the county legislative body for such a board, a referendum on this question will be held at the next countywide election, and if approved by the voters, the county legislative body is required to create a county conservation board within 60 days after the election. The board consists of five to nine members who hold office for staggered terms not to exceed five years as determined by resolution of the county legislative body. The members serve without compensation but may be reimbursed for actual expenses in carrying out their duties. T.C.A. § 11-21-102. The county conservation board has the custody and control of all real and personal property of the county acquired for public parks, preserves, parkways, playgrounds, recreation centers, county forests, county wildlife areas and other county conservation and recreation lands. T.C.A. § 11-21-104.

Planning, Zoning and Development

Reference Number:

CTAS-467

Boards and committees involved with planning, zoning and development include all of the following. Click on these links for an explanation of the committees included in Land Use, Planning and Zoning under the County Operations topic.

Board of Zoning Appeals

Joint Economic and Community Development Board

Regional Planning Commission

County Board of Public Utilities

Reference Number:

CTAS-516

Counties are authorized to establish, construct, install, acquire and maintain urban-type public facilities for utility services such as water and sewer, and may manage such utility services through a board of public utilities. T.C.A. § 5-16-102. If such a board is established by resolution of the county legislative body, it shall consist of either three or five members, except in Anderson County where the board may have seven members. The county mayor appoints members of this board subject to confirmation by the county legislative body. The terms are for three years after initial appointments for one, two and three years to create staggered terms. The members of this board serve without compensation except for reimbursement for actual expenses incurred in the performance of their duties except in a few counties where this is authorized by narrow population class exceptions. T.C.A. § 5-16-103.

Utility District Board of Commissioners

Reference Number:

CTAS-517

A utility district formed pursuant to the Utility District Law of 1937, codified at T.C.A. §§ 7-82-101 *et seq.*, is governed by a board of commissioners. The original petition for creation nominates three people who are residents of the proposed district to become the original utility district commissioners. Upon approval of the petition, these three initial commissioners serve terms of two, three and four years, respectively, to create staggered terms. T.C.A. §§ 7-82-202, 307. However, multicounty districts may have additional commissioners and some other districts that had a greater number of commissioners on May 6, 2004 under special provisions in earlier statutes may have additional commissioners. T.C.A. § 7-82-307. The most common method of appointment after the initial appointment of utility district commissioners is by a procedure wherein the utility district board of commissioners submits a list of three people to the county mayor as nominees. The county mayor may select one of the three or reject this list and require a new list to be provided. If the county mayor takes no action, the first person listed is appointed by operation of law. T.C.A. § 7-82-307. See T.C.A. § 7-82-307 for the complete procedure and for a modified procedure for multi-county districts.

Ethics Policies for Utilities

Reference Number:

CTAS-518

Utility districts are considered separate governmental entities to be governed by ethical standards established by the board of commissioners of the utility district in conformity with T.C.A. § 8-17-105(b). T.C.A. § 8-17-102(c). Water, wastewater and gas authorities created by a private act or under the general law are considered separate governmental entities and shall be governed by ethical standards established by the governing board of the water, wastewater or gas authority in conformity with T.C.A. § 8-17-105(b). The Tennessee Association of Utility Districts (TAUD) must prepare a model of ethical standards for officials and employees of water, wastewater and gas authorities which must be submitted to the Utility Management Review Board for its approval, and the model must be approved by the board before it can be adopted by any water, wastewater or gas authority. T.C.A. § 8-17-105. After the board approves the model, it must be filed with the state ethics commission. The governing body of a water, wastewater or gas authority or utility district must adopt either the approved TAUD model of ethical standards or standards which are more stringent than the TAUD model. If a water, wastewater or gas authority or a utility district adopts ethical standards which are different from and more stringent than the TAUD model, those standards must be submitted to the board for a determination that the standards are more stringent than the TAUD model. Any water, wastewater or gas authority or any utility district that adopts the TAUD model is not required to file its ethical standards with the commission but must notify the commission in writing that the TAUD model was adopted and the date of adoption. Any water, wastewater or gas authority or any utility district which does not adopt the TAUD model of ethical standards or ethical standards more stringent than the TAUD model will be governed by the ethical standards established by the county legislative body of the county in which the water, wastewater or gas authority or the utility district has the largest number of customers.

The County Election Commission

Reference Number:

CTAS-847

Appointment and Removal. The basic unit that regulates elections at the county level is the county election commission. The five commissioners for each county are appointed by the state election commission; three must be members of the majority party in the state, appointed by members of the state election commission from that party, while the other two will be of the minority party, similarly appointed by the minority members of the state election commission. T.C.A. § 2-12-103. Majority and minority parties are defined as the political parties whose members hold the largest and second largest number of seats in the combined houses of the General Assembly. T.C.A. § 2-1-104. Before appointing county election commissioners, members of the state election commission are directed to consult with members of the General Assembly from each county regarding whom to appoint as county election commissioners. T.C.A. § 2-12-103.

Qualifications and Disqualifications

Reference Number:

CTAS-848

County election commissioners must be registered voters who have been residents of the state for five years and residents of the county for which they are appointed for two years (with an exception for counties with a population between 276,000 and 277,000). Elected officials, employees of elected officials and employees of a state, county, municipal, or federal government body or agency are not eligible to serve on the election commission. However, this statute does not disqualify the following people: a notary public, employees of county or city school systems who do not work directly under the supervision of an elected official, or a member of a reserve unit of the U. S. armed services or National Guard, unless on active duty. T.C.A. § 2-1-112. If a county election commissioner qualifies as a candidate for any public office, that member will be automatically disqualified and a vacancy will be created on the commission. T.C.A. § 2-12-102.

Oath of Office and Organization

Reference Number:

CTAS-849

Within 20 days after their appointment, county election commissioners must qualify by filing an oath of office with the secretary of the state election commission. Failure to qualify will vacate the office. T.C.A. § 2-12-104. Also within 20 days the commission is to organize by electing a chairperson and a secretary

from among their number, each of different parties. Within 10 days of this selection, the commission must report the names and addresses of the officers and other members to the state election commission. T.C.A. § 2-12-105.

Office Hours

Reference Number:
CTAS-850

Each county election commission must have an office in the county courthouse or another public building, and may designate additional locations if they are needed. A schedule of minimum office hours, which depends on the population of the county and the certification status of the administrator, is set out in T.C.A. § 2-2-108. The county election commission may also keep additional office hours as needed to (1) register qualified applicants, (2) replace lost registration cards, (3) transfer or change registrations, and (4) perform its other duties. T.C.A. § 2-2-108.

Meetings

Reference Number:
CTAS-851

The county election commission meets on the call of its chairperson (if there is no chair, the oldest member presides). T.C.A. § 2-1-113. All meetings must be open to the public and preceded by adequate notice, as required by Tennessee's sunshine law. T.C.A. § 8-44-101 *et seq.* This notice must give the time, place, and purpose for the meeting, although the requirement may be met by permanently posting a conspicuous meeting notice in the commission office. The commission must keep official minutes of each meeting, including the vote of each member on all issues, and must allow reasonable times for public examination. A majority of the members constitutes a quorum, and a measure passes on a majority vote of the members present. Any action taken that does not meet these requirements can be voided at the request of anyone who may be adversely affected. T.C.A. § 2-1-113.

Publication of Election Notices

Reference Number:
CTAS-853

The county election commission is required to publish in a newspaper of general circulation in the county a notice of all elections, except special elections, at least twenty-one (21) days before the qualifying deadline. A notice of elections on questions must be published sometime between twenty (20) and thirty (30) days before election day, and must include in its entirety the resolution or other instrument that is to be decided. Finally, a notice of every election, stating the day, time, and polling places, must be published sometime between ten (10) and three (3) days before the election. T.C.A. § 2-12-111.

At least five days before the start of early voting and at least five days before election day the election commission must also publish a sample ballot in a newspaper of general circulation; however, a sample ballot does not have to be published if the election commission instead mails a sample ballot to all registered voters at least five days prior to the beginning of the early voting period. T.C.A. § 2-5-211. Also, at least five days before the start of early voting and at least five days before election day, the election commission must post a sample ballot on a website maintained by the county election commission or, if the county election commission does not have or maintain a website, on the website maintained by the secretary of state. T.C.A. § 2-5-211.

Submission of Semiannual Report

Reference Number:
CTAS-854

The county election commission is required to provide a semiannual voter registration report to the state coordinator of elections. The content of this report has changed significantly with the implementation of the National Voter Registration Act. See T.C.A. § 2-12-114 or contact the coordinator of elections for information about the requirements of this report.

Promotion of Voter Participation

Reference Number:
CTAS-855

The county election commission is charged with the general duty of encouraging wider participation in the electoral process. Generally these duties involve the selection of the administrator of elections and then

assistance with the following responsibilities of that office: approving an annual budget for the commission, approving purchases of voting machines and seeing to their maintenance, hiring legal counsel, designating polling places and precinct boundaries, and assisting in obtaining poll workers. Additionally, the commission must ensure the fairness and smooth functioning of elections by certifying voting machines, taking responsibility for absentee ballot boxes, assisting election personnel on election day, certifying election results and election expenses, determining a uniform time for the opening of polls, and maintaining the security of the election commission office and facilities. T.C.A. § 2-12- 116.

At least quarterly, during a county election commission meeting, a county election commission member of the majority and the minority party shall inspect random voter registration forms accepted by the county election commission since the previous inspection. T.C.A. § 2-2-120. If a deficiency is found, the deficiency must be recorded and a written report must be prepared including the name of the administrator at the time the voter registration form was filed, the nature of the deficiency, and whether the individual has voted since the deficient form was filed and accepted. The report must be filed with the state coordinator of elections. If a significant number of deficient voter registration forms are discovered, then the administrator of elections may be subject to discipline by the state election commission or may be terminated by the county election commission. T.C.A. § 2-2-120.

Election Administrators

Reference Number:

CTAS-520

Tennessee statutes require election commissions to employ an administrator of elections (formerly known as the registrar- at-large), who is the chief administrative officer of the commission and who is responsible for daily operations of the office. The duties of the administrator include, but are not limited to, the following:

1. Employment of office personnel;
2. Preparation and presentation of the annual budget;
3. Requisition and purchase of supplies;
4. Maintenance of voter registration files, campaign disclosure records, and other required records;
5. Instruction of poll workers;
6. Preparation of notices for publication;
7. Preparation and maintenance of all fiscal records;
8. Dissemination of information regarding all aspects of the electoral process;
9. Promotion of the electoral process;
10. Attendance at educational seminars;
11. Knowledge of current laws pertaining to the electoral process;
12. Assistance in planning and implementing apportionment plans;
13. Preparation of a plan for placing precinct voting locations and presentation of such plan to the election commission for approval;
14. Preparation of a plan for early voting sites and presentation of such plan to the election commission for approval; and
15. Upon request, assist with redistricting.

T.C.A. § 2-12-201.

In fulfilling these duties, the administrator and election commission must keep in mind that after July 1, 2011, the administrator of elections may not appoint or hire, except in the event of and during an emergency, members of the county election commission, or spouses, parents, brothers, sisters or children, including in-laws of commission members or spouses, parents, brothers, sisters or children, including in-laws of the administrator of elections as deputies, clerical assistants, absentee voting deputies, machine technicians, poll officials or as members of the absentee counting board. T.C.A. §§ 2-12-116, 2-12-201. The election laws also provide for the certification of administrators of elections, T.C.A. § 2-11-202, and for their compensation. T.C.A. §§ 2-12-208, 2-12-209.

Appointment and Education of Election Officials

Reference Number:

CTAS-856

The appointment of county election officials normally begins with a nomination process. The county primary board for each party shall (and the executive committee of each party may) submit names to the county election commission 30 days prior to the appointment time. If the nominees meet the qualifications to serve, the election commission shall appoint them. T.C.A. §§ 2-4-103 through -106. However, the commission may refuse to appoint any person who, in the opinion of the commission members from his or her political party, is unfit to serve. If there is an inadequate number of nominees, the county election commission may appoint as many additional people as necessary. T.C.A. § 2-4-106.

From these nominees, if possible, the majority and minority party factions of the county election commission each appoint one precinct registrar for each polling place. For most counties, these appointments are made for each election, but they are made for two-year terms in Shelby County (identified by population class). T.C.A. § 2-12-202. The county election commission is also directed to appoint, at a minimum, one officer of elections and three judges for each polling place. Two of the judges appointed shall concurrently serve as the precinct registrars in accordance with T.C.A. § 2-12-202. In precincts where voting machines are used, any judge not serving as a precinct registrar shall concurrently serve as a machine operator. One machine operator can operate up to two voting machines. T.C.A. § 2-4-102. Each of these officers, as well as precinct registrars and assistant precinct registrars, must be registered voters and shall reside in the county in which they are appointed to serve. T.C.A. § 2-4-103. If any election official fails to appear at the polling place, the officer of elections or, in such officer's absence, a majority of the election officials attending, shall select a person to fill the vacancy who is a registered voter of the county. Persons chosen to fill vacancies shall be, whenever practical, members of the same party as the person they are replacing. T.C.A. § 2-7-105. Notwithstanding any other provision of law to the contrary, a county election commission may appoint a person who has reached the age of 17 years as an election official provided that they meet all the other requirements to serve. T.C.A. § 2-4-103(e).

The election commission may also appoint as many inspectors as they deem necessary, who must be registered voters and inhabitants of the county. Inspectors investigate the conduct of elections on behalf of the election commission and report any irregularities to the commission. T.C.A. § 2-4-102.

Not more than two judges at a polling place may be of the same political party if those from different parties are willing to serve. T.C.A. § 2-4-104. If it is practicable, no more than one-half of the election officials at one polling place, and one-half the total number of county inspectors, may be of the same political party. If only one party elects to hold a primary, then only members of that party may serve as election officials. T.C.A. § 2-4-105. Election officials are to be notified of their appointments on a statutorily prescribed form. T.C.A. § 2-4-107.

The county election commission is also responsible for instructing the election officials in their duties. After the appointment of the election officials pursuant to T.C.A. § 2-4-102, a meeting is to be held for this purpose; attendance may be limited to those who are inexperienced or otherwise in need of such training. The officials are to be paid \$10 each for the time spent in training and qualifying but only if they serve in the election. T.C.A. § 2-4-108. They are to be paid \$50 for service on election day. The amounts of compensation can be increased by the county legislative body. T.C.A. § 2-4-109.

Compensation and Funding

Reference Number:
CTAS-857

A minimum compensation for members of the county election commission is specified by statute and varies according to the population of the county. These amounts may be increased in any county by resolution of the county legislative body. In order to trigger the daily rate, a commissioner must work at least one hour in any given 24 hour period, but payment is made for meetings lasting less than one hour if they are required by statute, budget preparation, or litigation. T.C.A. § 2-12-108.

A separate statute, T.C.A. § 2-12-208, provides for the compensation of certified administrators of elections, whose salaries are based on a percentage of the salary of the assessor of property. The salary specified by statute for the certified administrator of elections is a minimum that may be increased by the county legislative body. Any certified administrator of elections in a county where the election commission office is open five full days a week is required to receive as a base salary at least 90 percent of the salary of the assessor of property in the county. If the administrator's salary is less than this level on June 18, 2005, then the salary must be increased in the two subsequent fiscal years by at least 5 percent per year to reach the 90 percent level.

Basically, the funding of each county election commission is the responsibility of that county which, if not provided for, will be compelled by the chancery court. However, each municipality is responsible for expenses the county election commission incurs in holding municipal elections, and for the additional

expenses attributable to the municipal election when it is held on the same day as a countywide election. Similarly, elections for the sole purpose of choosing a member of the General Assembly are to be funded by the state, as are presidential preference primaries. The state will also fund county primaries that are held along with the presidential primary. All expenses must be properly reviewed and certified in order to be paid. T.C.A. § 2-12-109.

Statewide Organization of Political Parties

Reference Number:

CTAS-859

Organization of the party begins with the state executive committee of each political party, since it also functions as the state primary board for the party. T.C.A. § 2-13-102. Members of this committee are elected in the regular August primary election immediately prior to the election for governor. One man and one woman from each party are elected from every senatorial district to serve four-year terms beginning on September 15 following their election. They must take the oath of office, filing it with the state coordinator of elections. T.C.A. § 2-13-103.

The state executive committee is to meet at least once in even-numbered years to appoint the county primary boards, made up of five people from each county appointed for two year terms. T.C.A. § 2-13-108. The members of this board are chosen from a list of names submitted by county executive committees, although two of the members may be appointed without regard to the lists if the names on them are not fairly divided among the elements of the party. If no list is submitted, the state primary board is to draw up its own list from which to make appointments, or it may designate the county election commission to act as the county primary board. T.C.A. § 2-13-110.

Nominating Process

Reference Number:

CTAS-860

There are several methods by which a candidate may appear on the ballot. One method, party primary at the regular August election, is statutorily required for several offices: (1) governor, (2) members of the General Assembly, (3) U.S. Senator, and (4) members of the U.S. House of Representatives. T.C.A. § 2-13-202. Nominations for offices other than those listed above can be made either by primary or by any other method authorized under party rules. T.C.A. § 2-13-203. The office of the coordinator of elections should be contacted for information regarding procedures for recognizing a new political party.

In 2011, the General Assembly removed the code provisions relative to candidates appearing on a ballot as the nominee of a local political party and provided that no person's name may be shown on a ballot as the nominee of a political party for any office to be voted on by the voters of a county, unless the political party: (1) Is a statewide political party or a recognized minor party; and (2) Has nominated the person substantially in compliance with Chapter 13 of Title 2.

In an election involving only voters of one county or part of one county, candidates nominated by a method other than primary are to be certified to the county election commission by the qualifying deadline. If a method other than primary election is used to fill an office involving voters in more than one county, the candidate is to be certified to the coordinator of elections, who then certifies that candidate to the election commissions in the proper counties. T.C.A. § 2-13-203.

According to T.C.A. § 2-13-203, if a statewide political party decides to nominate by primary election, the county executive committee shall, at least ninety 180 days before the qualifying deadline, direct, in writing, the county election commission of each county whose voters are entitled to vote to fill the office to hold the election. The decision to nominate by primary election may be revoked up until 90 days before the qualifying deadline. Primaries, if any, for nominating candidates for any office which will appear on the regular August election ballot shall be held on the first Tuesday in May before the August election. In the years in which an election will be held for president of the United States, a political party primary for offices to be elected in the regular August election may be held on the same day as the presidential preference primary. In such event, the qualifying deadline for candidates and for delegate-candidates shall be twelve o'clock (12:00) noon, prevailing time, on the date established in § 2-5-101(a)(2).

Nominating Petitions

Reference Number:

CTAS-861

All independent and primary candidates must submit a nominating petition in order for their names to appear on the ballot. (Candidates nominated by a method other than primary, however, are certified

directly to the election commission by the party.) T.C.A. § 2-5-101. Nominating petition forms are furnished by the county election commission and, for some offices, by the coordinator of elections. T.C.A. § 2-5-102. These petitions are not to be issued more than 60 days before the qualifying deadline for the office sought. T.C.A. § 2-5-102(b)(5).

For most offices, the nominating petition must be signed by the candidate as well as a minimum of 25 or more registered voters who are eligible to fill the office (presidential and delegate candidates have different requirements). Either the signer's normal or legal signature is acceptable. The voter must also include the residence or other address as shown on the voter registration card. Including additional information on the petition that does not appear on the voter registration card will not disqualify the signature if there is no conflict in the information. T.C.A. § 2-5-101.

Restrictions on Candidacy

Reference Number:

CTAS-862

Under T.C.A. § 2-5-101, there are certain restrictions on how a candidate may qualify:

1. No one may qualify with more than one political party for the same office;
2. No one may qualify as an independent and a primary candidate for the same office in the same year;
3. No one defeated in the primary or party caucus may qualify or appear on the ballot as the nominee of a different political party or as an independent in the general election;
4. No primary candidate may appear on the ballot for the general election as a nominee of a different political party or as an independent; and
5. No one may qualify for more than one state office or more than one constitutional county office or countywide office in an election. (Note that unless the qualifications for a particular office prevent it, a candidate may run for one county and one state office in the same election.)

Qualifying Deadlines and Procedure

Reference Number:

CTAS-863

Candidates are required to qualify for an election by certain statutorily prescribed times. Although these times vary in certain circumstances, the default rule is that a candidate must qualify by 12 noon, prevailing time, on the third Thursday in the third calendar month before an election or a primary. T.C.A. § 2-5-101. However, there are a number of exceptions based on the office sought and whether or not a primary is being held. For information on specific qualifying deadlines for any election or primary it is always advisable to call the county election commission, regarding local elections, or the state coordinator of elections regarding state elections.

Candidates for some offices are required to file certified duplicate copies of the original nominating petition. For example, candidates for statewide offices, as well as for representative to the U.S. Congress, must file the original petition with the State Election Commission and file duplicates with the coordinator of elections and the party's state executive committee (for primary candidates only). T.C.A. § 2-5-103. Candidates for other offices must file the original nominating petition with the county election commission in the county of residence, and file duplicates with the election commissions of all counties served by the office which the candidate seeks. T.C.A. § 2-5-104.

Candidates for chief administrative officer of county highway departments are required to certify their qualifications under the County Uniform Highway Law by filing affidavits with the Tennessee Highway Officials Certification Board at least 14 days before the qualifying deadline. This board is responsible for certifying that the qualifications are acceptable. This certification, which is filed with the qualifying petition, is required before the candidate's name may be placed on the ballot. All correspondence with this board should be submitted through the office of the coordinator of elections. T.C.A. § 54-7-104.

Any candidate for a judicial office that must be filled by an attorney must certify that he or she is licensed to practice law in this state and must place his or her supreme court registration number on the nominating petition. T.C.A. § 2-5-106.

Similarly to highway officials, sheriffs must file certain materials with the POST Commission 14 days prior to the qualifying deadline for election to the office of sheriff. The POST Commission is responsible for certifying to the election commission that the qualifications are acceptable. This certification is required before the candidate's name may be placed on the ballot. See T.C.A. § 8-8-102 for more details on these

requirements.

Tie Votes

Reference Number:

CTAS-865

According to T.C.A. § 2-8-111, the following bodies are to cast the deciding vote (or call for a runoff election) if any of these general elections results in a tie:

1. Elections involving a single county or a part of a county - county legislative body (or the legislative body may call for a runoff);
2. Municipal elections - municipal legislative body (or the legislative body may call for a runoff);
3. Elections for U.S. Congress - governor;
4. Election for governor - General Assembly;
5. Any other election except U.S. Senator (see below) - state election commission.

If a tie vote occurs in a primary election, the tie shall be broken according to the rules of the political party. T.C.A. § 2-8-114. An election for U.S. Senator is void if it results in a tie, and the governor is to order a special election. T.C.A. § 2-8-111.

Dates for Regular Elections

Reference Number:

CTAS-867

Regular general elections are held in every even-numbered year on the first Thursday in August for county offices, and on the first Tuesday after the first Monday in November for state offices. Elections for the following offices are to be held at the regular August election when the election immediately precedes the commencement of a full term:

1. Sheriff;
2. Constable;
3. Assessor of property;
4. County clerk and clerks of the circuit and other courts;
5. Register;
6. County trustee;
7. Members of the county legislative body;
8. Judges of all courts; and
9. District attorney general.

T.C.A. § 2-3-202.

Elections for the following offices are to be held at the regular November election when the election immediately precedes the commencement of a full term:

1. Representative in the General Assembly;
2. Representative in the United States Congress;
3. Senator in the General Assembly;
4. Senator in the United States Congress;
5. Governor; and
6. Electors for the president and vice-president.

T.C.A. § 2-3-203.

Special Elections

Reference Number:

CTAS-868

A special election must be held whenever a vacancy in any office is required to be filled by election at a time other than the time fixed for general elections. T.C.A. § 2-14-101. For all county and municipal offices, special elections are ordered by the county election commission, while the governor orders those for all other offices. T.C.A. § 2-14-103. Special elections must be held from 75 to 80 days after notice of

the need for an election is received. However, if a regular general election or primary is scheduled within 30 days of the time required for a special election, then the special election may be held on that day. If the day of the election is moved, then all other dates are adjusted accordingly. T.C.A. § 2-14-102. The county election commission must publish notice of the special election within 10 days after it receives the election order. T.C.A. § 2-14-105. In most cases, candidates in a special election must qualify as in regular elections, although the deadline for filing qualifying petitions and party nominations is 12 noon on the sixth Thursday before the day of the special election. T.C.A. § 2-14-106.

Early Voting Procedures

Reference Number:

CTAS-869

In 1994 the General Assembly passed legislation that adopted an early voting period and amended absentee voting procedures. T.C.A. § 2-6-101 et seq. This act replaced the procedure to vote absentee by personal appearance (T.C.A. § 2-6-109) with an early voting period, which starts 20 days before an election and runs through the fifth day before the election (seventh day if the election is held at the same time as a presidential preference primary), in which any registered voter may vote (although different time periods may apply to municipalities). Upon the request of a municipality holding an election at some time other than the regular August or November election, the county election commission shall establish a satellite voting location within the corporate limits of the municipality. The municipality must pay the costs of the location. T.C.A. § 2-6-103. For early voting the county election commission may choose to use voting machines, paper ballots, or a combination of both. The state coordinator of elections is to promulgate rules for voting machine use, as well as forms for early voter and absentee ballot applications, determining distinguishable colors for each type of envelope. Instead of the state forms, a county election commission may use its own computer-generated forms with the approval of the coordinator of elections. T.C.A. § 2-6-312. Voters who are unable to vote either during the early voting period or on election day may submit an application to vote absentee but must meet the statutory requirements. For specific absentee voting procedures, see T.C.A. § 2-6-101 et seq.

Inactive Voters and Provisional Ballots

Reference Number:

CTAS-870

County election commissions are permitted to establish a centrally located polling place for voters whose registration is inactive or whose registration has been transferred to a new precinct. T.C.A. §§ 2-7-140 and 2-7-141. When a voter attempts to vote at a precinct where he or she is no longer eligible to vote, the election official at the voter's old polling place would notify the voter that he or she has the choice to vote at either the centrally located place or the new polling place. If the central location is other than the county election commission office, then the site must be equipped with computers linked to the county election commission office to allow voters' records to be changed.

In 2003, the General Assembly authorized provisional ballots in Tennessee. T.C.A. § 2-7-112. Under this law, a person shall be entitled to vote a provisional ballot if they claim to be properly registered in the county and eligible to vote at the precinct, but their eligibility cannot be determined by the computer signature list or by examination of the permanent registration records or an election official asserts that the individual is not eligible to vote.

Referenda

Reference Number:

CTAS-871

For a referendum to be held, it must be authorized or mandated by statute. The county legislative body does not have a general power to submit questions; the body has power only to submit questions to the voters that have been granted by general law or private act. Certain questions are required by law to be submitted to the people in referendum for their approval or disapproval. In a referendum election held by a local government, any question submitted to a vote of the people shall be printed on the ballot followed by the words "yes" and "no." The law requires that the language of the question must be worded on the ballot so that a "yes" vote indicates support for the measure and a "no" indicates opposition to the measure. T.C.A. § 2-5-208.

Generally, if the law does not provide otherwise, referendum elections submitted to the people are to be

held on dates set by the county election commission but not less than 75 days or more than 90 days after the county election commission is directed to hold the election. However, resolutions, ordinances or petitions requiring the holding of elections on questions submitted to the people that are to be held with the regular August election, the regular November election or the presidential preference primary shall be filed with the county election commission not less than 75 days prior to that election. T.C.A. § 2-3-204. If the date set for a referendum falls within 90 days of an upcoming regular election or primary, the election commissions of the counties involved may reset the date of the referendum to coincide with the regular general or primary election. All other dates dependent on the election date will be adjusted accordingly. If the referendum is to be held in more than one county, the election commissions for both counties must meet and set a date jointly. T.C.A. § 2-3-204. Uniform procedures for the filing and acceptance of petitions in governmental entities that allow for recall, referendum, or initiative elections pursuant to terms of the charter of that government can be found in T.C.A. § 2-5-151.

National Voter Registration Act

Reference Number:

CTAS-872

In 1993 the U.S. Congress passed the National Voter Registration Act, codified as 52 U.S.C. § 20501 - 52 U.S.C. § 20511. The law has been commonly dubbed the "Motor Voter" program due to the law's requirement that driver's license facilities (as well as a number of other agencies) offer voter registration services to their clients. Congress required most states to pass legislation and implement the programs of the act by January 1, 1995. Tennessee fully implemented the program by that date. Some of the act's programs (such as by-mail voter registration) were already available in Tennessee. Under this legislation, Tennessee established a network of cooperative efforts between local county election commissions and numerous state and local agencies. The participating voter registration agencies in Tennessee are the following: the Department of Safety (motor vehicles division), Department of Health (WIC program), Department of Human Services, Department of Mental Health and Mental Retardation, Department of Veterans Affairs, public libraries, public high schools, county clerks, and registers of deeds. T.C.A. § 2-2-202.

In addition to expanding the locations for voter registration, the law made substantial reforms in voter registration record keeping and maintenance. It eliminates purging a voter record for non-voting (formerly practiced in Tennessee) and requires election commissions to accommodate voters who have moved within a county but failed to update their voter registration.

Help America Vote Act

Reference Number:

CTAS-873

The Help America Vote Act is a federal law to improve state and local voting procedures. In order to comply with the federal law and receive funding under this new act, Tennessee's General Assembly enacted 2005 Public Chapter 308, codified at *Tennessee Code Annotated*, Title 2, Chapter 2, Part 3. This state law provides for a statewide voter registration database maintained by the Tennessee coordinator of elections. This law establishes the Automated Electoral System as the official list of registered voters in the state and requires data from county election commissions to be transferred to the state via the Automated Electoral System not less than once daily.

County election commissions are required to purge voting registrations of all deceased registered voters appearing on the report transmitted by the coordinator of elections at least every 30 days, and beginning with the first day of any period of early voting, purges must be made daily, through the day of the election as the information is received from the coordinator of elections. T.C.A. § 2-2-133.

Campaign Financial Disclosure Act of 1980

Reference Number:

CTAS-874

This act requires all candidates for public office to file a report of campaign contributions and expenditures, except that candidates for part-time offices paying less than \$1,000 per month are exempt from these requirements. The exemption does not apply, however, to a candidate for a chief administrative office or whose campaign expenditures exceed \$1,000. T.C.A. § 2-10-101. Enforcement and administration are the responsibility of the Registry of Election Finance.

Before a candidate or campaign committee can make or receive campaign contributions or expenditures, it must file the name and address of the political treasurer with the Registry of Election Finance for state elections, or with the county election commission for local elections. The candidate may serve as political

treasurer, but if he or she appoints someone else, the candidate must co-sign the required statements. T.C.A. § 2-10-105. A statement certifying a candidate's treasurer must contain the office the candidate is seeking and the year of the election. If the candidate or committee files this statement prior to January 1 of the year in which the candidate expects to be involved, then a financial report must be filed with the proper agency by January 31 and July 15 immediately succeeding the filing, and semiannually thereafter until the year of the election. However, a semiannual report need not be filed if the reporting date falls within 60 days of a report otherwise required by the election laws. During an election year, reports are filed quarterly and are due within 10 days of the periods ending March 31, June 30, September 30 and January 15. The candidate is also required to file a pre-primary and pre-general statement covering activity from the last quarterly report until the 10th day prior to the primary or election. These reports are due seven days before the primary or election. T.C.A. § 2-10-105.

Reports for both primary and general elections must be filed separately, even for the same office in the same year. However, appointment of the political treasurer for the primary election is also valid for the general election for the same office. All records used in preparing financial disclosure statements must be retained for at least two years after the election or after the date of the statement, whichever is later. T.C.A. § 2- 10-105.

In addition to the financial transactions shown in these regular statements, substantial contributions or loans received within 10 days of any election must also be reported. In a state election this means that any transfer of funds over \$5,000 must be reported by the end of the next business day to the state Registry of Election Finance. Any amount over \$2,500 in a local election triggers the requirements of this Section and must be reported to the county election commission by the end of the next business day. The report is to be submitted on forms furnished by the registry and should include the following information: amount, date contributed or loan reported, description and valuation of in-kind contributions, and for a loan, the name and address of lender, name of recipient, and details of any security agreement for the loan's repayment. T.C.A. § 2- 10-105.

Reports on Unexpended Balances

Reference Number:
CTAS-875

If the final statement of a candidate shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry (for state offices) or county election commission (for local offices) a supplemental semiannual statement of contributions and expenditures. These reports begin after filing the first quarterly report due after an election and will continue to be filed until the account shows no unexpended balance, continuing debts and obligations, expenditures, or deficit. T.C.A. § 2-10-106.

Contents of Campaign Finance Reports

Reference Number:
CTAS-876

Financial statements submitted under the act must contain specified information about all income and expenditures during the period covered by the report. If neither expenditures nor contributions exceeded \$1,000 during this time period, the report may simply state that fact. Otherwise the report should list separately any single contribution or expenditure over \$100, including full name, address, occupation and employer of each contributor. For expenditures, the report must indicate the full name and address of each person to whom a total of more than \$100 was paid, the total amount paid to that person and the purpose of the expenditure. Contributions of \$100 or less are to be totaled and listed together, as are expenditures of this amount, though the latter are to be grouped by category. "In-kind contributions," those other than money, are to be reported in a similar manner, though once again those of \$100 or less are to be totaled. T.C.A. § 2-10-107. The Registry of Election Finance should be consulted for more specific information regarding reporting requirements.

Closing Out Accounts and Using Unexpended Funds

Reference Number:
CTAS-877

When a candidate or political campaign committee desires to close out a campaign account, it may file a statement to that effect at any time; however, the statement must show no unexpended balance, continuing obligations, or deficits. T.C.A. § 2-10-107. A candidate may close out a campaign account by transferring any remaining funds to another campaign fund and commencing annual filings on that account. T.C.A. § 2-10-106. Other permissible uses for unexpended campaign funds are listed in T.C.A.

§ 2-10-114. It is not permissible to disburse such funds for personal use. T.C.A. § 2-10-114.

Enforcement-Campaign Finance

Reference Number:

CTAS-878

All campaign financial statements are available for public inspection, either at the Registry of Election Finance, for state elections, or the county election commission for local elections. T.C.A. §§ 2-10-206, 2-10-103. The county election commission is required to notify the state election commission and the Registry of Election Finance of each local election held in the county. Each time that campaign statements are due in a local election, the county election commission is required to file a report with the registry certifying that all candidates have filed timely or provide a list of all who have failed to report timely. T.C.A. §2-10-111. The registry may impose a civil penalty of not more than \$25 per day up to a maximum of \$750 for late filings. Notice of a failure to file is required to be sent to candidates who did not timely file. A failure to file a report within 35 days after receiving such notice is considered a class 2 offense and punishable by a maximum civil penalty of not more than \$10,000. T.C.A. § 2-10-110. Any registered voter who believes information has been omitted or misstated may file a sworn complaint with the Registry of Election Finance (state elections) or the district attorney general where the voter resides (local elections). However, anyone who knowingly files a false complaint or one for harassment purposes is liable for civil penalties and attorney's fees. T.C.A. § 2-10-108. The Registry of Election Finance or the district attorney general is responsible for investigating complaints and seeking injunctions to enforce these provisions. T.C.A. § 2-10-109.

Campaign Contribution Limits

Reference Number:

CTAS-879

In 1995 the General Assembly passed the Campaign Contribution Limits Act, codified in T.C.A. Title 2, Chapter 10, Part 3. As with most other areas of campaign finance, the Registry of Election Finance has administrative and enforcement powers over this act.

The act prohibits contributions by a person to any candidate that, in the aggregate, exceed \$2,500 in a statewide election or \$1,000 in other state or local elections. Multicandidate political campaign committees are limited to contributions of \$7,500 in statewide elections and \$5,000 in other state and local elections.

Candidates running in statewide elections are prohibited from accepting more than 50 percent of their total contributions from multicandidate political campaign committees. For any other office there is a simple \$75,000 limit on the total contributions from multicandidate committees. These calculations do not include contributions made to the candidate by a political party.

Some contributions may be indirectly attributed to the candidate. Anyone involved in campaign or fundraising activities should examine the rules regarding these contributions. T.C.A. § 2-10-303.

The limitations of this statute do not apply to loans of money by a financial institution as defined in T.C.A. § 45-10-102(3) if they meet certain qualifications. There are also limits on the aggregate contributions allowed by political parties. They are: \$250,000 in statewide elections, \$40,000 for candidates for the Senate, and \$20,000 for elections to other state or local public office. T.C.A. § 2-10-306.

Contribution limits are adjusted to reflect the percentage of change in the average consumer price index (all items-city average), as published by the United States Department of Labor, Bureau of Labor Statistics, for the period of January 1, 1996, through December 31, 2010. The Registry of Election Finance publishes each such adjusted amount on its Web site. T.C.A. § 2-10-302.

The term "contributions" as used in these statutes is defined very broadly. T.C.A. § 2-10-306. Once again, anyone involved in fundraising or campaign activities should take a close look at these statutes or contact the Registry of Election Finance for advice. Contributions that exceed the limit will not be considered a violation of these laws if the candidate or political campaign committee returns the contribution to the person who made the contribution within 60 days of the receipt of the contribution. T.C.A. § 2-10-307.

The registry may impose a penalty up to \$10,000 or 115 percent of the contributions that exceed the limits. If the penalty is not paid for 30 days, the candidate becomes ineligible to qualify for election until the penalty is paid.

Each candidate for local public office or political campaign committee for a local election shall file with each county election commission of the county where the election is held a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee. T.C.A. § 2-10-105(b). Penalties for failure to timely file the statement of contributions and expenditures are

found in T.C.A. § 2-10-110.

Cash Contributions and Aggregate Contribution Limits

Reference Number:

CTAS-880

Under the 2006 Comprehensive Governmental Ethics Reform Act, a new statute was enacted under Title 2, Chapter 10, Part 3, to prohibit a person from making cash contributions to any candidate with respect to any election that, in the aggregate, exceed \$50. T.C.A. §§ 2-10-302 and 2-10-306 also place limits on aggregate contributions from individuals and from political campaign committees. These limits (besides the cash contribution limit) are adjusted every two years and the registry of election finance publishes the adjusted amounts on its website.

Conflict of Interest Disclosure Statements

Reference Number:

CTAS-881

Each candidate for public office is required to file a disclosure statement regarding possible conflicts of interest. Items to be listed in this report include the following:

1. The major source or sources of private income of more than one thousand dollars (\$1,000), including, but not limited to, offices, directorships, and salaried employments of the person making disclosure, the spouse, or minor children residing with such person, but no dollar amounts need be stated. However, the disclosure of any client list or customer list is not required;
2. Any investment which the person making disclosure, that person's spouse, or minor children residing with that person has in any corporation or other business organization in excess of ten thousand dollars (\$10,000) or five percent (5%) of the total capital; however, it shall not be necessary to state specific dollar amounts or percentages of such investments;
3. Any person, firm, or organization for whom compensated lobbying is done by any associate of the person making disclosure, that person's spouse, or minor children residing with the person making disclosure, or any firm in which the person making disclosure or they hold any interest, complete to include the terms of any such employment and the measure or measures to be supported or opposed;
4. In general terms by areas of the client's interest, the entities to which professional services, such as those of an attorney, accountant, or architect, are furnished by the person making disclosure or that person's spouse;
5. By any member of the general assembly, the amount and source, by name, or any: (A) Contributions from private sources for use in defraying the expenses necessarily related to the adequate performance of that member's legislative duties; (B) Travel expenses, including any expenses incidental to such travel, paid on behalf of the member by a person with an interest in a public policy of this state if the travel was for the purpose of informing or advising the member with respect to the public policy. Travel expenses do not include expenses for travel, if such expenses are paid for or reimbursed by a governmental entity or an established and recognized organization of elected or appointed state government officials, staff of state government officials, or both officials and staff, or any other established and recognized organization that is an umbrella organization for such officials, staff, or both officials and staff;
6. Any retainer fee which the person making the disclosure receives from any person, firm, or organization who is in the practice of promoting or opposing, influencing or attempting to influence, directly or indirectly, the passage or defeat of any legislation before the general assembly, the legislative committees, or the members to such entities;
7. Any adjudication of bankruptcy or discharge received in any United States district court within five (5) years of the date of the disclosure;
8. Any loan or combination of loans of more than one thousand dollars (\$1,000) from the same source made in the previous calendar year to the person making disclosure or to the spouse or minor children unless: (A) The loan is from an immediate family member (spouse, parent, sibling or child); (B) The loan is from a financial institution whose deposits are insured by an entity of the federal government, or such loan is made in accordance with existing law and is made in the ordinary course of business. A loan is made in the ordinary

course of business if the lender is in the business of making loans, and the loan bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule; (C) The loan is secured by a recorded security interest in collateral, bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule; (D) The loan is from a partnership in which the legislator has at least ten percent (10%) partnership interest; or (E) The loan is from a corporation in which more than fifty percent (50%) of the outstanding voting shares are owned by the person making disclosure or by a member of such person's immediate family; and

9. Such additional information as the person making disclosure might desire. T.C.A. § 8-50-502.

Prior to October 1, 2006, candidates in local elections filed their conflict of interest statement with the county election commission in the county of the candidate's residence, while state election candidates filed with the Registry of Election Finance. However, all such statements are now to be filed with the newly formed State Ethics Commission. T.C.A. § 8-50-501. Statements must be filed within 30 days after the qualifying deadline for the desired office. The disclosure must be written on the form prescribed by the Tennessee ethics commission and must be signed by one attesting witness. The statement becomes a public record after it is filed. T.C.A. § 8-50-501. As with improper financial disclosure, failure to report possible conflicts of interest can result in civil penalties. T.C.A. §§ 8-50-505, 2-10-110. Candidates running for reelection to the same office or position they currently hold are not required to file a conflict of interest statement as long as they are in compliance with T.C.A. §§ 8-50-503 and 8-50-504 (filing of amended disclosure statements).

Requirements for Reapportionment

Reference Number:
CTAS-882

The Tennessee Constitution in Article VII, Section 1, provides for the election of a county legislative body in each county that should equally represent all areas of the county:

The legislative body shall be composed of representatives from districts in the county as drawn by the county legislative body pursuant to statutes enacted by the General Assembly. Districts shall be reapportioned at least every ten (10) years based upon the most recent federal census. The legislative body shall not exceed twenty-five (25) members, and no more than three representatives shall be elected from a district.

The statutes implementing this constitutional provision are T.C.A. §§ 5-1-110 through 5-1-112, which require the legislative body of each county to meet at least once every 10 years for the purpose of adopting a plan of reapportionment. By a majority vote of the membership, each county legislative body is to change the boundaries of districts, redistrict the county entirely, or increase or decrease the number of districts, if necessary, to apportion the county legislative body so that the members represent substantially equal populations. Although in the past local governments have employed a number of different population indicators in drawing districts, now the law requires them to use the latest federal census data. T.C.A. § 5-1-111.

Reapportionment Process

Reference Number:
CTAS-883

The first step a county legislative body should take when it prepares to develop a redistricting plan is to appoint a reapportionment committee. Although this committee is not a statutory requirement, most counties find that it greatly facilitates the process. In selecting the committee the legislative body will wish to achieve broad representation of the county, but a committee that is too large can prove cumbersome. Membership in the county legislative body is not required to serve on the reapportionment committee, and the inclusion of others is often helpful. After the committee has formed and the official county population from the latest federal census is known, the committee should determine the population in each voting precinct and then group these into "reasonably compact and contiguous" districts with substantially equal population and representation.

Districts cannot overlap one another, and no voting precinct may be split into different districts, except that in counties with 20 or more county legislative body districts, the election commission may establish a precinct that encompasses two or more districts with written approval from the coordinator of elections.

T.C.A. § 5-1-111. Although the new voting districts need not conform to the boundaries of the original civil districts, these latter areas are to be preserved as they existed at the time of the first apportionment, for record-keeping purposes. T.C.A. § 5-1-112.

Before the new reapportionment plan takes effect, it must be put into writing and adopted by a majority of the county legislative body. Finally, the county legislative body must commission a map or maps showing the new voting districts as well as the original civil districts. Copies must be filed with the county clerk, comptroller and the secretary of state; revised maps must be filed within 90 days of any revision. T.C.A. § 5-1-110.

Enforcement-Reapportionment

Reference Number:

CTAS-884

Any citizen of the county may challenge the reapportionment plan in the county's chancery court, which has the power to order amendments to bring the plan into compliance with state law. If the county legislative body fails to make apportionment, the court can order it to be done. T.C.A. § 5-1-111; Op. Tenn. Att'y Gen. 92-21 (March 4, 1992). Since the provisions of this statute make a challenge of a county's reapportionment plan so simple, it is extremely important that each county follow the law as closely as possible and document each step taken in the preparation of a reapportionment plan.

School Board and Highway Commission Districts

Reference Number:

CTAS-885

Like other voting districts, school board and highway commission districts must conform to the "one person, one vote" reapportionment standard in order to be constitutionally acceptable. Most counties establish school and highway districts through private acts of the General Assembly; reapportionment of these districts must be accomplished by private act if a private act established the original districts. Many counties provide that school board districts and highway commission districts are to coincide with the county commission districts of the county. This practice can substantially simplify the reapportionment process.

Assistance in Reapportionment

Reference Number:

CTAS-886

Counties may obtain assistance in developing a reapportionment plan from the County Technical Assistance Service or the comptroller of the treasury's Office of Local Government.

Vacancies in Office

Reference Number:

CTAS-580

Vacancies can occur in county offices for a variety of reasons. According to the state constitution, county officials "shall be removed from office for malfeasance or neglect of duty," as these terms are defined by the legislature. Tenn. Const., art. VII, § 1. Similarly, court clerks may be removed for "malfeasance, incompetency or neglect of duty." Tenn. Const., art. VI, § 13. According to statute, any of the following results in a vacancy in office:

1. Death of the incumbent;
2. Resignation, when permitted by law;
3. Ceasing to be a resident of the state, district, circuit, or county for which elected or appointed;
4. Decision of a competent tribunal declaring the election or appointment void or the office vacant;
5. An act of the General Assembly abridging the term of office, where it is not fixed by the Constitution;
6. Sentencing the incumbent, by any competent tribunal in this or any other state, to the penitentiary, subject to restoration if the judgment is reversed but not if the incumbent is pardoned;
7. Adjudicating the incumbent insane; or

8. Failure to satisfy bond requirement.

T.C.A. §§ 8-48-101, 8-19-117.

As stated above, moving out of the state, district, circuit, or county from which one was elected or appointed is a cause of vacancy under T.C.A. § 8-48-101. If disputed, the determination of residency is a question of fact. See *Bailey v. Greer*, 468 S.W.2d 327 (Tenn. Ct. App. 1971). A declaratory judgment may be necessary to determine residency. The following principles, outlined in T.C.A. § 2-2-122, are helpful but not binding in making the determination of residency:

1. The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has a definite intention to return;
2. A change of residence is generally made only by the act of removal joined with the intent to remain in another place. There can be only one (1) residence;
3. A person does not become a resident of a place solely by intending to make it the person's residence. There must be appropriate action consistent with the intention;
4. A person does not lose residence if, with the definite intention of returning, the person leaves home and goes to another country, state or place within this state for temporary purposes, even if of one or more years duration;
5. The place where a married person's spouse and family have their habitation is presumed to be the person's place of residence, but a married person who takes up or continues abode with the intention of remaining at a place other than where the person's family resides is a resident where the person abides;
6. A person may be a resident of a place regardless of the nature of the person's habitation, whether house or apartment, mobile home or public institution, owned or rented; however, a commercial address may not be used for residential purposes, unless the applicant provides evidence of such applicant's residential use of such address;
7. A person does not gain or lose residence solely by reason of the person's presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while living on a military reservation; and
8. No member of the armed forces of the United States, or such member's spouse or dependent, is a resident of this state solely by reason of being stationed in this state.

Information on Removal from Office-Ouster can be found under Ethics.

Temporary Vacancies

Reference Number:

CTAS-581

Vacancies Due to Military Service

A temporary vacancy exists when a county official, except for a member of the county board of education, is inducted into military service such as the United States Army or any of its branches, the Navy, Air Force, Marine Corps, Coast Guard, Merchant Marine, or any other military activity. T.C.A. § 8-48-202. Upon the official's return from military service, he or she is entitled to resume the office for the remainder of the term, if it has not already expired. T.C.A. § 8-48-202. If the official does not return from military service prior to the expiration of the term, a successor is elected in the regular manner prescribed by law. T.C.A. § 8-48-203.

When a county official, except for a member of the county board of education, is inducted into the United States military service, the office duties are discharged temporarily during the official's absence by another person legally qualified, and the office is to be filled temporarily by the legislative body. T.C.A. §§ 8-48-204, 8-48-205. However, if a clerk and master is inducted into military service, the chancellor appoints a qualified person to fill the office temporarily. T.C.A. § 8-48-205. Any person temporarily appointed or elected to an office must execute a bond and subscribe to an oath to discharge the duties of the office. T.C.A. § 8-48-207. The temporary official receives the salary and has the same power, authority, and privileges as the regular official. T.C.A. § 8-48-208. The temporary official may not remove assistants appointed by the regular official; that power remains with the regular official. T.C.A. § 8-48-209. All persons chosen to fill offices temporarily must satisfy all qualifications required to hold the office. T.C.A. § 8-48-206.

Temporary Absence of County Mayor

If the county mayor is absent or intends to be absent for more than 21 days, or is incapacitated or

otherwise unable to perform the duties of the mayor's office, the legislative body appoints the chairperson to serve until the absence or disability is removed. Any contest of disability or its removal shall be adjudicated in chancery court. While the chairperson is serving as mayor, the chairperson pro tempore presides over legislative body sessions. T.C.A. § 5-5-103(g). Note that subsection (g) applies to a temporary absence, not a vacancy.

Interim Successors

Reference Number:

CTAS-585

The law provides for a temporary successor to fill vacancies in the offices of trustee, register, county clerk, sheriff, highway chief administrative officer, and assessor of property, in addition to the provisions for an interim county mayor. T.C.A. §§ 8-11-111, 8-13-105, 18-6-115, 8-8-107, 54-7-107, 67-1-504. The duties of the office are to be temporarily discharged either by the chief deputy or by a deputy designated as temporary successor by the official in writing. It is important to note that this law applies only to the duties of the office and not to the office itself. In case of death of a clerk of court, the deputy holds office until the vacancy is filled. T.C.A. § 18-1-401. There is a statute (T.C.A. § 18-1-402) that says judges fill the vacancy in the office of court clerk but that statute (from 1858) has been superseded by the 1978 amendment to the state constitution (Art. VII, Sec. 2) requiring vacancies in county offices to be filled by the county legislative body. See AG Op. No. 88-131. If there is a vacancy in the office of clerk and master, a new clerk is appointed by the chancellor for another six-year term, beginning with the date of the appointment. T.C.A. § 18-5-101.

Procedure for Filling Vacancies

Reference Number:

CTAS-586

Vacancies in elected county offices are filled temporarily by the county legislative body. The appointee serves until a successor is elected at the next countywide general election for which the candidate has sufficient time to qualify. T.C.A. § 5-1-104; *see also* Tenn. Const., art. VII, § 2. The county clerk, or if there is no county clerk the county clerk's deputy, or if there is no county clerk or deputy, the acting chair of the county legislative body, shall provide notice to every member of the county legislative body of the need to fill the office or vacancy. This notice may be waived by the members of the county legislative body if all members have constructive notice of the vacancy through other sources of information. Additionally, the presiding officer of the county legislative body shall cause public notice to be given in a newspaper of general circulation in the county at least seven (7) days prior to the meeting at which the office is to be filled, notifying the public of the vacancy or opening and specifying the office or offices to be filled at the meeting. T.C.A. § 5-5-111.

Except in Davidson and Shelby counties, the county commission must fill a vacancy within 120 days of receiving notice from the county clerk unless during that time there is a general election scheduled in the county and there is sufficient time for the vacancy to be placed on the ballot. T.C.A. § 5-1-104.

Registered voters of the county may submit names to the commission for consideration; however, to be nominated, a member of the commission must subsequently nominate such person. Nominations do not require a second. If a person nominated is not present, the person making the nomination must submit a signed statement from the nominee that the nominee is willing to serve. The commission is required to adopt rules of procedure for eliminating nominees in cases where there are multiple nominees for an appointment and no nominee receives the majority of votes. No secret balloting is permitted and each member's vote regarding the appointment process must be recorded by the clerk and entered in the minutes. Any challenge to the legality of an appointment must be filed with the chancery court within 10 days of the appointment. T.C.A. § 5-5-111.

A commissioner who has accepted a nomination cannot vote on the appointment and for purposes of determining a majority the membership is reduced for each member accepting a nomination. County commissioners must resign their office only if they are actually appointed by the commission to fill the vacancy. T.C.A. § 5-5-111.

Election of Successor by the People

Reference Number:

CTAS-587

Any person appointed by the county legislative body to fill a vacancy serves in that capacity until a successor is elected by the county voters at the next general election. If the vacancy occurs after the time for filing nominating petitions for the party primary election and more than 60 days before the party

primary election, the political party nominees should be selected in the primary election, and a successor should be elected in the August general election. If the vacancy occurs less than 60 days before the party primary election, but 60 days or more before the August election, the political party nominees should be selected by party convention and a successor elected in the August election. If the vacancy occurs less than 60 days before the August election, but 60 days or more before the November election, the political party nominees should be selected by party convention and a successor elected in the November election. T.C.A. § 5-1-104. All candidates for vacancies should qualify by filing nominating petitions no later than 12 noon on the 55th day before the election. T.C.A. § 5-1-104.

Removal From Office-Ouster

Reference Number:
CTAS-657

Article 7, Section 1 of the Tennessee Constitution provides that county officers shall be removed from office for malfeasance or neglect of duty. "The terms 'malfeasance' and 'neglect of duty' are comprehensive terms and include any wrongful conduct that affects, interrupts, or interferes with the performance of official duty." *State ex rel. Complainant v. Ward*, 43 S.W.2d 217, 219 (Tenn. 1931).

Pursuant to T.C.A. § 8-47-101, county officials may be ousted from office for:

1. Knowing or willful misconduct in office;
2. Knowing or willful neglect of duties required by law;
3. Voluntary intoxication in a public place;
4. Engaging in illegal gambling; or
5. Committing any act violating any penal statute involving moral turpitude.

Participating in the Tennessee lottery or other activity which is conducted pursuant to law and authorized by the Constitution of Tennessee is not considered gambling. T.C.A. § 8-47-127.

"Proceedings under the Ouster Act should never be brought unless there is a clear case of official dereliction. This is a very drastic statute and should not be invoked except in plain cases that can be certainly proved." *State ex rel. Wilson v. Bush*, 208 S.W. 607, 609 (Tenn. 1919). *See, e.g., McDonald v. Brooks*, 387 S.W.2d 803, 806 (Tenn. 1965) (ouster suits should be brought only where the evidence of official dereliction is clear and convincing). As has been noted by the Tennessee Supreme Court:

The Ouster statute is a salutary one, but those administering it should guard against its overencroachment. Shreds of human imperfections gathered together to mold charges of official dereliction should be carefully scanned before a reputable officer is removed from office. These derelictions should amount to knowing misconduct or failure on the part of the officer if his office is to be forfeited; mere mistakes in judgment will not suffice.

Vandergriff v. State ex rel. Davis, 206 S.W.2d 395, 397 (Tenn. 1937) (emphasis added).

"Misconduct that would sustain an indictment under the common law would support a proceeding under the Ouster Law." *State ex rel. Carney v. Crosby*, 255 S.W.3d 593, 597 (Tenn.Ct.App. 2008). Nevertheless, a plaintiff in an ouster suit shoulders a heightened burden of proof. *Id.* The Tennessee Court of Appeals has noted:

As used in reference to the ouster statute, the terms "knowingly" and "willfully" have been defined as encompassing "a mental attitude of indifference to consequences or failure to take advantage of means of knowledge of the rights, duties or powers of a public office holder." *Tennessee ex rel. Leech v. Wright*, 622 S.W.2d 807, 817 (Tenn.1981) (citing *Jordan v. State*, 217 Tenn. 307, 397 S.W.2d 383, 398 (1965)). The *Jordan* court also noted that the terms "knowingly" and "willfully" as used in ouster proceedings are "not confined to a studied or deliberate intent to go beyond the bounds of the law." *Jordan*, 397 S.W.2d at 399. However, it requires more than "simple negligence" to constitute willful or knowing misconduct. *Id.* (holding "simple negligence in discharging the duties of an officer does not constitute or amount to an officer acting knowingly or willfully").

Id. at 598.

Ouster is purely a civil proceeding and the rights granted to defendants in criminal cases are not applicable under the ouster statutes. *State ex rel. Leech v. Wright*, 622 S.W.2d 807 (Tenn. 1981). Ouster proceedings may be instituted by the attorney general, district attorney general, or county attorney, either on their own initiative or after a complaint has been made. T.C.A. § 8-47-102. County attorneys, within their respective jurisdictions, are required to investigate any complaint made in writing alleging that a county officer is guilty of any of the acts, omissions, or offenses set out in T.C.A. § 8-47-101, and upon determination of reasonable cause, to institute a proceeding in the appropriate court to oust such official.

T.C.A. § 8-47-103. See Op. Tenn. Atty. Gen. 07-169 (December 21, 2007); Op. Tenn. Atty. Gen. 00-126 (August 7, 2000). Note that the county commission is not authorized by statute to bring ouster proceedings against county officials. "Nor, is the county executive authorized under the ouster statutes to bring such a suit." *Duncan v. Cherokee Ins. Co.*, 1987 WL 11329 (Tenn.Ct.App. 1987).

County attorneys have the power and are directed, whenever a complaint has been made, and the names of the witnesses have been furnished to them, or whenever they deem necessary, to issue subpoenas for witnesses and other persons they believe have knowledge of the complaint, to appear before them at a time and place designated in the subpoena and testify concerning the subject matter set out in the complaint. T.C.A. § 8-47-104. Each witness must be sworn and the testimony of each witness must be reduced to writing and signed by the witness. County attorneys may administer the necessary oaths and affirmations to the witnesses. T.C.A. § 8-47-105. Disobedience of a subpoena, or refusal to answer proper questions propounded by the county attorney at the inquiry, is a Class C misdemeanor. T.C.A. § 8-47-106.

The privilege against self incrimination does not apply in ouster proceedings. No person will be excused from testifying under the ouster statutes on the ground that the person's testimony may incriminate him or her. However, no person may be prosecuted or punished on account of any transaction, matter, or thing concerning which the person was compelled to testify, and the testimony cannot be used against the person in prosecutions for any crime or misdemeanor under the laws of this state. T.C.A. § 8-47-107. Citizens may also file ouster proceedings. Ten citizens and freeholders are required to institute the proceedings and they must post security for the costs of the lawsuit. T.C.A. § 8-47-110. *State ex rel. Wolfenbarger v. Moore*, 2010 WL 520995 (Tenn.Ct.App. 2010). It is the duty of the county attorney, upon request of relator citizens and freeholders, to aid and assist in the prosecution of the proceedings against county officers. T.C.A. § 8-47-111.

When an ouster petition or complaint is filed the court may suspend the accused officer from performing any of the duties of their office, pending a final hearing and determination of the matter. The vacancy should be filled as the law provides for the filling of vacancies in that office. The person filling the vacancy carries on the duties of the office until the hearing is concluded or until a successor is elected. T.C.A. § 8-47-116. The officer temporarily filling the office receives the same salary and fees as paid to the suspended officer. T.C.A. § 8-47-121.

At least five days before an official is suspended, the official must receive a notice setting forth the time and place of the hearing on the suspension application. The officer has the right to appear and make any defense that the officer may have, and shall be entitled to a full hearing upon the application for the order of suspension. No order of suspension shall be made, except upon finding of good cause. T.C.A. § 8-47-117.

Ouster proceedings have precedence over civil and criminal actions, and must be tried at the first term after the filing of the complaint or petition, provided that the answer of the accused officer has been on file at least ten days before the day of trial. The accused officer is entitled to demand and have a trial by jury as to any issue of fact. T.C.A. § 8-47-119. Likewise, plaintiffs in an ouster suit are entitled to a trial by jury as to any issue of material fact. *State ex rel. Wolfenbarger v. Moore*, 2010 WL 520995 (Tenn.Ct.App. 2010). If the officer is found guilty, the officer shall be ousted from office and must pay the full costs adjudged in the case. T.C.A. §§ 8-47-120 and 8-47-122.

If, after the final hearing the officer is not removed from office, the officer shall, if the officer has been suspended, be immediately restored to office and be allowed the officer's full costs and the salary and fees of the officer's office during the time of the officer's suspension. After the final hearing, any officer not removed from office may be reimbursed reasonable attorney fees. However, if either party appeals no such reimbursement shall be made until a final judgment is rendered. T.C.A. § 8-47-121. See *State ex rel. Carney v. Crosby*, 255 S.W.3d 593, 602 (Tenn.Ct.App. 2008) (denying attorney fees). See also *Marshall v. Sevier County*, 639 S.W.2d 440 (Tenn.Ct.App. 1982).

Either party to an ouster proceeding may appeal, but the appeal does not operate to suspend or to vacate the trial court's judgment or decree, which remains in full force until vacated, revised or modified. T.C.A. § 8-47-123. An ouster suit has priority on appeal and will be heard at the first term after such appeal is perfected and filed. T.C.A. § 8-47-125.

County Ethics Policies

Reference Number:
CTAS-621

The "Comprehensive Governmental Ethics Reform Act of 2006" is codified in T.C.A. § 8-17-101 *et seq.* Pursuant to the Ethics Reform Act all counties were required to adopt local ethics policies by June 30,

2007. The law directed CTAS to develop a model policy.

These ethics policies are required to include rules and regulations regarding limits on, and/or reasonable and systematic disclosure of, gifts or other things of value received by officials and employees that impact or appear to impact their discretion, and rules and regulations regarding reasonable and systematic disclosure by officials and employees of their personal interests that impact or appear to impact their discretion. T.C.A. § 8-17-102(a)(3). It is important to note that the provisions of state law, to the extent that they are more restrictive, control. Additionally, the Ethics Reform Act expressly states that these policies cannot include personnel or employment policies, or policies or procedures related to operational aspects of governmental entities. T.C.A. § 8-17-102(a)(3).

The ethics policies adopted by a county commission 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. However, ethics policies adopted by the county commission do not apply to utility districts or schools which must adopt their own ethics policies. T.C.A. §§ 8-17-102(c) and 8-17-102(d).

If a board, commission, authority, corporation or other instrumentality is created by two or more local government entities, such creating entities are required, by amendment to the interlocal agreement or other agreement creating such joint instrumentality, to designate the ethical standards that govern the jointly created instrumentality. T.C.A. § 8-17-102(b).

Violations of ethics policies by officials or employees covered by the local ethics policy are enforced in accordance with the provisions of existing state law. T.C.A. § 8-17-106(b).

In 2023, the legislature amended T.C.A. § 8-17-104. By no later than January 1, 2024, each entity covered by this chapter shall notify the ethics commission, either in writing or electronically by email, of the primary person responsible for administering and enforcing the entity's ethical standards. The entity also shall provide the commission with the person's contact information, including the person's business address, phone number, and email address. The entity shall notify the commission of any change in such responsibility within thirty (30) calendar days of such change and shall provide the name and contact information for an interim official serving in this capacity until such time as a permanent successor can be identified.

County Ethics Committees

Reference Number:
CTAS-622

The ethics legislation that was passed in 2005 and 2006 does not require a county to have an ethics committee. Nevertheless, many counties have established county ethics committees to deal with potential ethics complaints. Bear in mind that a county ethics committee has very little, if any, authority to do anything other than to screen ethics complaints and direct the complaint to the proper county official or county or state agency that can take appropriate action on the complaint.

As previously stated, the county ethics policy is required to cover the acceptance of and disclosure of gifts accepted by officials and employees and the disclosure of conflicts of interest. Accordingly, an ethics complaint received by a county ethics committee that does not address either the acceptance and/or disclosure of a gift or a conflict of interest need not be pursued by the ethics committee.

Note that the County Purchasing Law of 1957, T.C.A. § 5-14-101 *et seq.*, and the 1981 Financial Management Act, T.C.A. § 5-21-101 *et seq.*, both contain conflict of interest provisions and prohibitions on the acceptance of gifts. It is important to note that in counties that have adopted either of these two Acts, the provisions of these state laws control to the extent that they are more restrictive than the county's ethics policy.

County officials who serve on a county ethics committee should review ethics complaints to make sure that the complaint first addresses either the acceptance/disclosure of a gift or a conflict of interest. If the ethics complaint does not address one of these two issues, the ethics committee should direct the complainant to the appropriate person or agency that may properly address the complaint and proceed no further.

If the complaint does address an issue covered by the county ethics policy, the committee should proceed to determine if the complaint bears further inquiry. If the complaint states a possible violation of the county ethics policy, the committee should turn the complaint over to the proper county official who actually has the authority to deal with the violation. Depending upon the stated complaint, that could be a county office holder, if the complaint is against an employee, or the county attorney if the complaint is against an elected county official. If the complaint states a possible criminal violation, the committee should turn the matter over to the district attorney's office. In addition, if the information contained in the

complaint reasonably causes the committee members to believe that a theft, forgery, credit card fraud, or any other act of unlawful taking of public money, property, or services has occurred, the committee must report the information in a reasonable amount of time to the office of the Comptroller of the Treasury. T.C.A. § 8-4-503(a).

In order to do the job effectively, members of the ethics committee must be well versed in the state conflict of interest laws that apply to their particular county. A general understanding of criminal law would also be helpful.

Prohibition on Consulting Fees

Reference Number:
CTAS-631

In 2005, the General Assembly passed a law to prohibit state and local government elected officials from receiving a fee, commission or any other form of compensation for consulting services from any person or entity, other than compensation paid by the state, a county or municipality. T.C.A. §§ 2-10-123(a) and 2-10-124(a). A violation of this statutory prohibition is a Class A misdemeanor unless the conduct giving rise to the violation would also constitute the offense of bribery in which case the offense is a Class C felony. A person convicted of any violation under this statute is forever afterwards disqualified from holding any office under state law or the Tennessee Constitution. T.C.A. §§ 2-10-123(c) and 2-10-124(c). See also T.C.A. §§ 39-16-103 and 40-20-114.

As defined with respect to local officials, including a member-elect of a municipal or county legislative body, the term "consulting services" means services to advise or assist a person or entity in influencing municipal or county legislative or administrative action, including, but not limited to, services to advise or assist in maintaining, applying for, soliciting or entering into a contract with the local government represented by such official. T.C.A. § 2-10-122(2).

There are certain types of gifts and benefits listed in T.C.A. § 3-6-305(b) which are not prohibited. The list follows:

- Benefits resulting from business, employment, or other outside activities of a candidate or official or the immediate family of a candidate or official, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the candidate or official. T.C.A. § 3-6-305(b)(1).
- Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication. T.C.A. § 3-6-305(b)(2).
- Gifts that are given for a non-business purpose and motivated by close personal friendship, but only to the extent such gifts are specifically defined and authorized by the rules of the ethics commission. T.C.A. § 3-6-305(b)(3).
- Sample merchandise, promotional items, and appreciation tokens, if such merchandise, items and tokens are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business. T.C.A. § 3-6-305(b)(4).
- Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento and similar items; provided, that any such item shall not be in a form which can be readily converted to cash. T.C.A. § 3-6-305(b)(5).
- Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to:
 - Discounts afforded to the general public or specified groups or occupations under normal business conditions, except that such discounts may not be based on the status of the candidate or official; and
 - Prizes and awards given in public contests.T.C.A. § 3-6-305(b)(6).

Still, most anything of value provided by a vendor to a county official for advice or assistance in influencing county legislative or administrative action, such as getting a contract with the county, is prohibited under the law.

Prohibition on Honorariums

Reference Number:
CTAS-632

The acceptance of an honorarium by a public official in such person's capacity as a public official is prohibited. "Honorarium" means a payment of money or any thing of value for an appearance, speech or article, but does not include actual and necessary travel expenses, meals and lodging associated with such appearance, speech or article. T.C.A. § 2-10-116(a). The acceptance of an honorarium for an appearance, speech or article by a public official in such person's capacity as a private business person, professional or tradesperson is not prohibited. T.C.A. § 2-10-116(b). See Op. Tenn. Atty. Gen. 08-11 (January 25, 2008).

Felonies in Office-Forfeiture of Retirement Benefits

Reference Number:

CTAS-635

Under the 2006 Ethics Act, each time a person is elected to a public office, that person, as a condition of their election, is deemed to consent and agree to the forfeiture of that person's retirement benefits from the Tennessee Consolidated Retirement System, any superseded retirement system or any other public pension system if that person is convicted in any state or federal court of a felony arising out of that person's official capacity, constituting malfeasance in office. This new law applies regardless of the date the person became a member of the public pension system. T.C.A. § 8-35-124(a)(3).

Reporting Fraud

Reference Number:

CTAS-655

In 2007, the General Assembly passed the "Local Government Instances of Fraud Reporting Act," codified at T.C.A. § 8-4-501 *et seq.* The act requires public officials to report the unlawful taking of public money, property, or services to the comptroller of the treasury. The act states:

A public official with knowledge based upon available information that reasonably causes the public official to believe that a theft, forgery, credit card fraud, or any other act of unlawful taking of public money, property, or services has occurred shall report the information in a reasonable amount of time to the office of the comptroller of the treasury.

T.C.A. § 8-4-503(a).

"Unlawful conduct" means theft, forgery, credit or debit card fraud, or any other act of unlawful taking, waste, or abuse of, or official misconduct, as defined in T.C.A. § 39-16-402, involving public money, property, or services. T.C.A. § 8-4-502(4). "Reasonable amount of time" means any amount of time that is reasonable under the particular circumstances, but shall not under any circumstances exceed five working days. T.C.A. § 8-4-502(3).

An official who, acting in good faith, makes a report shall not be held liable in any civil or criminal action that is based solely upon (1) the person's decision to report what the person believed to be unlawful conduct; (2) the person's belief that reporting the unlawful conduct was required by law; or (3) the fact that a report of unlawful conduct was made. T.C.A. § 8-4-504(a). However, no immunity is conferred if the person reporting the unlawful conduct participated in or benefitted from the conduct. T.C.A. § 8-4-504(b).

Additionally, the comptroller is required to maintain a hotline whereby government employees and citizens can report alleged fraud, abuse, or wrongdoing by local governments and private corporations that contract with a local government to receive one or more community grants. The comptroller is required to investigate the information received through the calls to the hotline or refer such information to the appropriate program or investigative agency. Upon receiving the information relating to a call, a local government or community grant agency must undertake investigatory and remedial measures. T.C.A. §§ 8-4-402, -404 and -406.

Conflicts of Interest

Reference Number:

CTAS-623

Most county governments in Tennessee do not experience lobbying at the local level in the same way it happens at the General Assembly. Generally speaking, where there is a danger of a conflict of interest or undue influence of a county official, it relates not to the exercise of legislative authority but to the exercise of purchasing power, such as when the county commission votes on a county contract.

General Conflict of Interest Law

Reference Number:

CTAS-2463

In this area county officials and employees in all counties are subject to T.C.A. § 12-4-101. Under T.C.A. § 12-4-101(a)(1), it is unlawful for a public official, or other person, whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract with the county, to be directly interested in any such contract. "Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest.

In *Madison County v. Alexander*, 94 S.W. 604 (Tenn. 1906), the Tennessee Supreme Court noted that "[i]t is the policy of the law to prohibit members of the county court from making contracts with their own members (meaning the county court), for any purpose which calls for compensation out of the county treasury." The Court stated:

The underlying principle is that no man shall be allowed to make a contract with the county, whose duty it is to pay for such contract. In other words, he cannot make a contract to pay himself out of the public treasury for any purpose. That such a rule may operate harshly is no argument against it. It is based on a wise purpose and principle, that is, to prevent public officials from using their public functions and duties to subserve their private interests. It does not matter that the service is rendered faithfully and inures to the benefit of the county, or that the material may be necessary and cheaply furnished.

Id. See also *Cagle, for Use of Cagle v. Benton County*, 181 S.W.2d 1 (Tenn. 1944).

Because the making of a general appropriation out of which contractual funds are eventually expended makes the appropriating body a superintending agency, a county commissioner may be said to be superintending county contracts. See Op. Tenn. Atty. Gen. 03-034 (April 1, 2003); Op. Tenn. Atty. Gen. 08-15 (January 30, 2008) (the Attorney General's office has taken the view that those who vote on budgets and appropriations superintend the contracts paid for by those budgets and appropriations). Accordingly, it would be unlawful for a county commissioner who owns a wrecker service to do business with the county even if he abstains from voting on the wrecker contract.

The Attorney General has opined that the term "directly interested" refers to a personal pecuniary interest (Op. Tenn. Atty. Gen. U96-043 (June 4, 1996)) and has concluded that T.C.A. § 12-4-101(a)(1) prohibits an officer from being directly interested in a contract, whether or not he or she abstains from voting on it. Op. Tenn. Atty. Gen. 04-016 (February 5, 2004).

The Attorney General has opined that a county commissioner has a direct interest in a contract for the sale of his land to the county and that such a contract is prohibited under T.C.A. § 12-4-101(a). Op. Tenn. Atty. Gen. 04-016 (February 5, 2004). A county commissioner whose duty it is to provide funds for construction contracts entered into by the county school board cannot enter into a construction contract with the county board of education without violating T.C.A. § 12-4-101(a). Op. Tenn. Atty. Gen. 91-31 (April 9, 1991). See also Op. Tenn. Atty. Gen. 83-336 (October 5, 1983) (a county commissioner cannot contract with the board of education of his county to provide school bus service); Op. Tenn. Atty. Gen. 83-229 (May 3, 1983) (a county commissioner cannot contract with his county hospital to provide computer services to the county hospital).

An official who violates the provisions of T.C.A. § 12-4-101 shall forfeit all pay and compensation under the contract and shall be dismissed from office and shall be ineligible for the same or a similar position for ten years. T.C.A. § 12-4-102. See *State v. Perkinson*, 19 S.W.2d 254 (Tenn. 1929) (contracts by officers with county subject officials to removal); *Madison County v. Alexander*, 94 S.W. 604 (Tenn. 1906) (member of county court was refused recovery for supplies sold to county workhouse in violation of the statute); *Hope v. Hamilton County*, 47 S.W. 487 (Tenn. 1898) (member of the county court was held not to be able to recover from the county for services performed for the county); *M. F. Parsley & Co., Inc., v. Cole & Miller*, 1926 WL 1963 (Tenn.Ct.App. 1926) (member of the county court who was the stockholder of a corporation owning a lumber yard could not lawfully contract with the county for building a school). See also Op. Tenn. Atty. Gen. 04-016 (February 5, 2004) (an officer who enters into a contract in violation of T.C.A. § 12-4-101 must forfeit compensation received under the contract, and a suit to enforce this provision is a quo warranto action ordinarily brought by the District Attorney General).

Besides prohibiting direct conflicts of interest, the statute also requires disclosure of any indirect financial interests. The statute states in pertinent part:

It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any

municipal corporation county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges such officer's interest. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county.

T.C.A. § 12-4-101(b). See Op. Tenn. Atty. Gen. 09-48 (April 2, 2009) (the chairman of the county school board who is employed by an architectural firm that contracts with the school board has an indirect interest which must be disclosed); Op. Tenn. Atty. Gen. 09-109 (June 8, 2009) (purchase of building materials - sole supplier); Op. Tenn. Atty. Gen. 99-185 (September 17, 1999) (contract for services - sole supplier).

The question often arises whether it is proper for a county official to have authority over a matter that will have a direct financial benefit to a relative. This question arises most often when the person who will receive the direct financial benefit is the spouse of a county official. In opinions dealing with T.C.A. § 12-4-101, the Attorney General has opined that when spouses commingle assets, a person has an indirect interest in any contract directly affecting his or her spouse's employment. Op. Tenn. Atty. Gen. 05-017 (February 3, 2005); Op. Tenn. Atty. Gen. 00-181 (November 22, 2000); Op. Tenn. Atty. Gen. 88-122 (July 13, 1988); Op. Tenn. Atty. Gen. 84-030 (January 27, 1984). Accordingly, if a county commissioner and his wife commingle assets he is "indirectly interested" in any contract his wife's company may enter into with the county. Under T.C.A. § 12-4-101, the commissioner must disclose any indirect pecuniary interest in a contract with the county if he has the duty to vote for, let out, or superintend that contract. See also Op. Tenn. Atty. Gen. 05-017 (February 3, 2005) (official should abstain from voting or participating in official acts or proceedings that directly affect contracts with a relative).

The disclosure of indirect interests required by the statute calls for the "public acknowledgment" of such interests. What is necessary for public acknowledgment is unclear, especially in the context of an official such as the register of deeds acting independently, as opposed to a member of the county legislative body announcing at a regular meeting that the member has an indirect interest prior to a vote. A county official should therefore be careful in indirect conflict of interest situations to provide public notice of these interests prior to taking any action. For example, if a county clerk purchases supplies from a corporation in which the clerk owns a small minority (not plurality) interest, this interest must be disclosed publicly. Because the county clerk has no natural public forum, some form of written public notice via bulletin boards in the courthouse or notice in a newspaper of general circulation in the county may be appropriate.

Special Rules for County Commissioners who are County Employees

Reference Number:
CTAS-625

Countywide officeholders, such as the county mayor, sheriff, trustee, register, county clerk, or assessor of property, are statutorily prohibited from being nominated for or elected to membership in the county legislative body. T.C.A. § 5-5-102. However, county employees may hold the office of county legislative body member. Any county employee who is otherwise qualified may serve as a member of the county legislative body, notwithstanding the fact that such person is a county employee. T.C.A. § 5-5-102.

In 2016, the Legislature enacted Public Chapter 1072, effective May 20, 2016. This new law changes the conflict of interest provisions for county commissioners who are county employees or whose spouses are county employees. Pursuant to the new law, no member of the county legislative body who is also an employee of the same county or whose spouse is an employee of the same county may vote on matters in which the member has a conflict of interest. The new law provides that a conflict of interest is created when a member is voting on a matter which, if approved by the legislative body, would increase the pay or benefits of that member or that member's spouse. However, the new law does not prohibit a member from voting on the budget, appropriation resolution, or tax rate resolution, or amendments thereto, unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which the member has a conflict of interest. If a member of a county governing body who is voting on a proposed budget, appropriation resolution, or tax rate resolution, or amendments thereto, has a conflict of interest, then the member must declare the conflict of interest at the meeting prior to casting the member's vote. A member who abstains from voting for cause on any issue coming to a vote before the body is not counted for the purpose of determining a majority vote. These new provisions have been codified as T.C.A. § 5-5-112.

Dual Office Holders - Incompatible Offices

Reference Number:

CTAS-633

Several state statutes prohibit a person from holding more than one county office. Pursuant to T.C.A. § 5-5-102(c)(2), no person elected or appointed to fill the office of county mayor, sheriff, trustee, register, county clerk, assessor of property, or any other county-wide office filled by vote of the people or the county legislative body, shall also be nominated for or elected to membership in the county legislative body.

No member of the county legislative body nor any other county official shall be eligible for election as a member of the county board of education. T.C.A. § 49-2-202(a)(2). This statute prevents one person from holding an elected county office and being a member of the school board. Op. Tenn. Atty. Gen. 01-144 (September 4, 2001). Note also that pursuant to T.C.A. § 5-5-102(c)(2) a director of schools cannot serve as a member of the county legislative body. Pursuant to T.C.A. § 7-53-301, a county commissioner cannot serve on the board of a county industrial development board. Pursuant to T.C.A. § 67-1-401, a county commissioner cannot serve on the county board of equalization. See also Op. Tenn. Atty. Gen. 90-106 (December 27, 1990) (it is an inherent and unlawful conflict of interest for a county trustee or municipal tax collector or employee thereof to sit on a county board of equalization).

INCOMPATIBLE OFFICES

In addition to statutory provisions regarding dual office-holding, there is a well recognized common law prohibition against a public officer holding two incompatible offices at the same time. State ex rel. Little v. Slagle, 89 S.W. 316, 326-327 (Tenn. 1905). Moreover, another aspect of the same common law principle dictates that the acceptance of a second office which is incompatible with one already held automatically terminates the first office "without judicial proceedings of any kind." State v. Thompson, 193 Tenn. 395, 399, 246 S.W.2d 59, 61 (1952), citing, State ex rel. Little v. Slagle, supra.

The question of incompatibility depends on the circumstances of each individual case, and the issue is whether the occupancy of both offices by the same person is detrimental to the public interest, or whether the performance of the duties of one interferes with the performance of those of the other. 67 C.J.S. Officers § 38 (2008). Tennessee courts have recognized that an inherent inconsistency exists where one office is subject to the supervision or control of the other. State ex rel. v. Thompson, 193 Tenn. 395, 246 S.W.2d 59 (1952). In Thompson, the Tennessee Supreme Court concluded that the offices of city manager and member of the city council were incompatible because the council had the authority to appoint, remove, and supervise the city manager, and no statute then in effect permitted the same individual to hold these offices. The Court found, therefore, that the common law principle of incompatible offices prohibited the same individual from acting as city manager and city council member.

The question often arises whether a county commissioner can simultaneously hold the office of city alderman or city councilman. Conceivably, circumstances could develop such as would make the offices so incompatible that one could not continue to hold them simultaneously. A court could conclude that it is a conflict of interest under the common law prohibition against a public officer holding two incompatible offices at the same time because the occupancy of both offices by the same person is detrimental to the public interest.

Counties and cities can, and often do, enter into contracts and other agreements with one another with respect to many subjects. Accordingly, the offices of county commissioner and city alderman/councilman can quickly become incompatible.

The Attorney General has noted that:

In all of these matters the terms upon which the project is to be pursued are left to the agreement of the public bodies. In the negotiations the county board is bound to consider the interests of all of its citizens while the local governing body has a like obligation to the citizenry of the municipality alone. No man, much less a public fiduciary, can sit on both sides of a bargaining table. He cannot in one capacity pass with undivided loyalty upon proposals he advances in his other role.

McDonough v. Roach, 35 N.J. 153, 171 A.2d 307, 309 (N.J. 1961).

Op. Tenn. Atty. Gen. 08-129 (August 8, 2008).

See also Op. Tenn. Atty. Gen. 08-177 (November 20, 2008) (constable and county commissioner); Op. Tenn. Atty. Gen. 08-107 (May 9, 2008) (county board of education member also serving as city council member and city board of education member); Op. Tenn. Atty. Gen. 07-159 (December 6, 2007) (deputy

sheriff and county bus driver); Op. Tenn. Atty. Gen. 02-109 (October 2, 2002) (constable and judicial commissioner); Op. Tenn. Atty. Gen. 02-012 (January 18, 2002) (offices of sheriff and constable incompatible under the common law); Op. Tenn. Atty. Gen. 00-050 (March 20, 2000) (constable serving as a full-time or part-time deputy sheriff); Op. Tenn. Atty. Gen. 99-160 (August 19, 1999) (constable serving as deputy sheriff); Op. Tenn. Atty. Gen. U86-77 (April 30, 1986) (city commissioner and county commissioner); Op. Tenn. Atty. Gen. 84-209 (June 27, 1984) (county commissioner and city alderman).

Notably, Public Chapter 763, effective 2024, enacts a new subdivision at 5-5-102(c) and a new section at Title 6, Chapter 54, Part 1, to provide that a member of a county governing body shall not simultaneously serve as a member of the governing body of a municipality within the county for whom the member is a commissioner during the member's term of office if the member's county adopts this subdivision by a 2/3 vote of the county legislative body. Only counties with a population of more than 200,000, according to the 2020 or a subsequent federal census, may vote to adopt this subdivision. Provides that a member of a county governing body simultaneously serving on the governing body of a municipality on the effective date

Juvenile Courts

Reference Number:
CTAS-496

The general sessions court, except those with a special juvenile court established by private act, has juvenile court jurisdiction. T.C.A. § 37-1-203. Every court having juvenile jurisdiction must have a sign in a conspicuous place identifying it as "Juvenile Court." T.C.A. § 37-1-206. The general sessions court when acting as juvenile court has the Title and style of "Juvenile Court of _____ County." T.C.A. § 37-1-204. However, the legislature did not intend to make the juvenile court a general sessions court. The intent was to transfer juvenile court jurisdiction to the general sessions court and to make the general sessions court a juvenile court when the subject matter before the court was within the jurisdiction conferred upon juvenile courts. *State ex rel. Winberry v. Brooks*, 670 S.W.2d 631 (Tenn. Ct. App. 1984). Only general sessions judges who are licensed to practice law in Tennessee may order commitment of a juvenile to the Department of Correction. T.C.A. § 37-1-203. If the judge is not licensed to practice in Tennessee, a lawyer-referee is appointed to handle such matters. T.C.A. § 37-1-107. The juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings arising from the 1980 Hague Convention on the Civil Aspects of International Child Abduction. T.C.A. § 37-1-104.

Pursuant to T.C.A. § 37-1-702, juvenile judges are authorized to establish a teen court program. The teen court is given the authority to conduct proceedings, receive evidence, hear testimony related to the dispositional stage and recommend disposition of the case. For any particular case, the teen court consists of five teen members chosen from a panel of 12 or more teenagers appointed by the juvenile court judge.

Probate Court

Reference Number:
CTAS-498

Chancery court has exclusive jurisdiction to probate wills and administer estates, unless provided otherwise by law. T.C.A. § 16-16-201. The clerk and master exercises probate jurisdiction, unless otherwise provided.

Special Courts

Reference Number:
CTAS-499

Occasionally, public or private acts create courts to exercise particular jurisdiction in a county. Some counties have chosen through private acts to have separate special jurisdiction courts. Probate jurisdiction is in chancery court unless it is placed in another court by a special act. Similarly, general sessions court has juvenile jurisdiction, unless it is placed in another court by private act. Some counties have combined specialized jurisdictions to create new court titles. The clerk of these courts is designated in the private acts creating these courts. The judge's salary is determined according to the special legislation. Cases from these special inferior courts may be appealed to the circuit court for a de novo trial.

Judicial Commissioner

Reference Number:
CTAS-476

In most counties (and all under 200,000 population) the legislative body may appoint one or more people to serve as judicial commissioners whose duties include, but are not limited to:

1. Issuing arrest and search warrants upon a finding of probable cause;
2. Issuing mittimus following compliance with lawful procedures;
3. Appointing attorneys for indigent defendants;
4. Setting and approving bonds and the release on recognizance of defendants; and
5. Issuance of injunctions and other appropriate orders in cases of alleged domestic violence.

T.C.A. § 40-1-111.

A judicial commissioner appointed by the county legislative body is considered a county officer and serves a fixed term set by the county legislative body, but the term may not be longer than four years. Judicial commissioners are compensated from the county's general fund in an amount determined by the legislative body. All fees collected by judicial commissioners must be paid to the county general fund.

T.C.A. § 40-1-111. No search warrant, arrest warrant or mittimus may be issued by an official whose compensation is contingent in any manner upon the issuance or nonissuance of such warrants or mittimus. T.C.A. § 40-5-106.

Fire Safety

Reference Number:

CTAS-185

Countywide Fire Departments. The county legislative body may form an agency to provide countywide fire protection whose powers and duties are delegated by the legislative body and provided by statute. T.C.A. §§ 5-17-101, 5-17-102. The countywide fire department is empowered to do all things necessary to provide coordinated fire protection to all areas of the county. T.C.A. § 5-17-102. The county fire chief is appointed by the county mayor subject to confirmation by the county legislative body. T.C.A. § 5-17-103.

The county fire department must have one or more districts comprising the entire county outside the incorporated municipalities if property taxes are used to fund the department. However, a municipality may contract with the county for inclusion in the district. T.C.A. § 5-17-105. A county may fund protection of the unincorporated areas of the county with general fund revenues so long as the revenues were generated by situs based taxes collected in the unincorporated areas, are monies that have already been shared with municipalities, or are contributions to the county. T.C.A. § 5-17-101. The countywide fire department must prepare an annual budget of anticipated receipts and expenditures, which must be submitted to the legislative body. T.C.A. § 5-17-104. If fire tax districts are created, then the legislative body must levy an annual fire tax upon the property owners of each district sufficient to pay the district's share of the total budget of the countywide fire department. T.C.A. § 5-17-106. See Op. Tenn. Atty. Gen. 07-134 (Sept. 11, 2007).

Volunteer Fire Departments. The county legislative body may appropriate general fund money to assist nonprofit volunteer fire departments. T.C.A. § 5-9-101. Counties may also contract with municipalities to furnish fire protection in the unincorporated areas as an alternative to forming a county fire department. Op. Tenn. Atty. Gen. 93-53 (Aug. 9, 1993); Op. Tenn. Atty. Gen. 07-87 (June 5, 2007); Op. Tenn. Atty. Gen. 07-134 (Sept. 11, 2007).

No county, municipality or other organization (i.e., volunteer fire department) may operate a fire department in Tennessee unless it has been duly recognized by the state fire marshal's office. In order to obtain recognition, the county, municipality or other organization must file an application to begin service or a renewal application to continue service. Once recognized, each fire department will be classified as career, volunteer or combination. The recognition certificate is valid for three years. After July 1, 2003, no new fire department may be established or recognized without the approval of the local elected governing body with jurisdiction over the territory to be served by the proposed new department. T.C.A. § 68-102-301 *et seq.*

County Fire Marshal. The county mayor may also appoint a county fire marshal, whose duty shall be to coordinate the efforts of volunteer fire departments, enforce local fire safety regulations and assist in the prevention of fire and arson. The county mayor shall establish the fire marshal's compensation within the amount appropriated for such purpose by the county legislative body. T.C.A. § 5-6-121.

Burning Bans. In 2008, T.C.A. §§ 39-14-304(a) and 39-14-306 were amended to authorize the commissioner of agriculture, in consultation with the state forester and the county mayors of impacted counties, to issue a burning ban prohibiting all open air fire in any area of the state. A violation of the ban would be considered reckless burning, which is a Class A misdemeanor. This would not apply to fires that may be set within the corporate limits or any incorporated town or city that has passed an ordinance

controlling the setting of fires.

Emergency Management (Civil Defense)

Reference Number:

CTAS-186

The Tennessee Emergency Management Agency (TEMA) under the direction of the governor is in charge of managing disasters occurring in this state. T.C.A. § 58-2-101 *et seq.* Counties must establish a county emergency management agency alone or in conjunction with other local governments. Each county organization must have a director appointed by the county mayor subject to confirmation by the county legislative body. The emergency management director is subject to the direction and control of the county mayor and not the county legislative body. Each county must have an emergency management plan and program that is coordinated with TEMA. Each county emergency management agency has jurisdiction over the entire county unless there exists an interjurisdictional emergency management agreement that has been recognized by the governor by executive order or rule. Under this law, counties have extensive power to provide funds, make contracts, employ personnel, assign and make available county personnel and resources to perform emergency management functions, and to establish, as necessary, a primary and one or more secondary emergency operating centers. In the event of an emergency, the county may waive the procedures and formalities otherwise required by law. Two or more counties may join together to provide emergency management services if approved by the governor. This may occur by request of the counties or upon a finding by the governor that the conditions of the counties require such pooling of resources. T.C.A. § 58-2-110.

The act grants to the governor extraordinary powers in a state of emergency, including direction (orders) to local law enforcement officers and agencies as may be reasonable and necessary, and may delegate emergency powers and responsibilities to county officers and agencies. T.C.A. § 58-2-107.

In 2007, the General Assembly amended T.C.A. § 58-2-107 to prohibit the state, any political subdivision, or any public official from prohibiting or imposing additional restrictions on the lawful possession, transfer, sale, transport, carrying, storage, display, or use of firearms and ammunition or firearm and ammunition components during any state of emergency, major disaster or natural disaster.

For more information on the ability of counties to respond to disaster situations, see Mutual Assistance and Mutual Aid Agreements under Forms of Government.

Emergency Communications Districts

Reference Number:

CTAS-187

The establishment of a uniform emergency number to shorten the time required for a citizen to request and receive emergency aid is intended to save lives, reduce the destruction of property, quickly apprehend criminals and save money. Therefore, the legislative body may create an emergency communications district within all or part of its boundaries if the eligible voters in the district approve. The 911 service is funded by an emergency telephone service charge in telephone bills and county appropriations. T.C.A. §§ 7-86-102, 7-86-109.

Except as otherwise provided by law, an emergency communications district shall have a board of directors composed of no fewer than seven nor more than nine members to govern the affairs of the district. For districts created by a county legislative body, the county mayor shall appoint the members of the board of directors subject to confirmation by the county legislative body. When the county mayor names an appointee to the board, the county legislative body has ninety days or until the conclusion of its next regularly scheduled meeting, whichever is later, to confirm or reject the appointment. If the legislative body does not act within this time period, the appointment shall take effect without confirmation.. T.C.A. § 7-86-105(b).

An emergency communications district is not part of the county government. It is a separate governmental entity. Once created, the emergency communications district "shall be a 'municipality' or public corporation in perpetuity under its corporate name, and the district shall in that name be a body politic and corporate with power of perpetual succession, but without any power to levy or collect taxes." T.C.A. § 7-86-106. Pursuant to T.C.A. § 7-86-106, the District is an independent "municipality" or public corporation, not an arm of the county. Op Tenn. Atty. Gen 09-13 (February 6, 2009).

Any board member, executive committee member, employee, officer, or other authorized person of an emergency communications district who receives public funds, has authority to make expenditures from public funds, or has access to public funds is required to provide a corporate surety bond in a reasonable amount determined by the amount of revenues handled by the district. The minimum amounts for these

bonds are set out in T.C.A. § 7-86-119. These bonds must be recorded in the office of the register of deeds and filed in the office of the county clerk.

Purchasing by an emergency communications district is to be carried out in accordance with the County Purchasing Law of 1983, compiled in title 5, chapter 14, part 2 of the Tennessee Code Annotated. The district board of directors is deemed to be the governing body for purposes of these statutes. T.C.A. § 7-86-121.

Regardless of agency or governmental jurisdiction, each emergency call taker or public safety dispatcher who receives an initial or transferred 911 call from the public is subject to the training and course of study requirements established by the state board. T.C.A. § 7-86-205.

Pursuant to T.C.A. § 7-86-301 *et seq.*, there is a nine-member statewide emergency communications board in the state Department of Commerce and Insurance to oversee the implementation of enhanced 911 service to wireless telephone users. In addition to levying a service charge on wireless phone service and implementing the new network, this board has certain supervisory powers over local 911 boards, particularly as it relates to financial stability. The board can set rules and regulations for the operation of emergency communications districts, examine the financial condition of districts, prescribe a rate structure, raise rates or order the consolidation of districts. The board is also authorized to order an election for the purpose of establishing a district for any county that failed to create a district by 2001. If a member of a local board of directors of an emergency communications district fails to attend meetings, refuses to carry out the orders of the state board, or otherwise neglects his or her duties, the state board, the city, or the county may pursue an action in the chancery court to remove the member. T.C.A. § 7-86-314. See Op. Tenn. Atty. Gen. 09-13 (February 6, 2009).

In order to maintain adequate 911 funding provided to emergency communications districts, the state board annually distributes to each emergency communications district a base amount equal to the average of total recurring annual revenue the district received from distributions from the state board and from direct remittance of 911 surcharges for fiscal years 2010, 2011, and 2012; however, in no event shall such distribution be less than the amount the district received in fiscal year 2012. On or before December 1, 2014, the state board shall publish on its web site the base amount for each emergency communications district. The state board may not reduce the base amount for any emergency communications district unless the local government funding for such emergency communications district is reduced, in which case the board may reduce the base amount by the same amount as the local funding reduction. Any emergency communication district established after January 1, 2015, shall be entitled to receive a base amount from the board in an amount determined by the board. Disbursal of the base amount to emergency communications districts shall be conducted in the following manner:

(1) The board shall distribute one-sixth ($\frac{1}{6}$) of the base amount for each emergency communications district every two (2) months, beginning at the end of the second month of each fiscal year; and

(2) Any emergency communications district with a locally established 911 surcharge in effect as of July 1, 2011, less than the maximum allowable surcharge then in effect shall be eligible to apply to the board for an increase in the base amount. The board shall promulgate rules and regulations to facilitate such a request and to set minimum criteria that the emergency communication district must satisfy to obtain increased funding. The board shall not be obligated to increase the base amount if the board lacks sufficient funds or if the board, after reviewing its criteria as set out in its rules, finds the emergency communication district has not met the guidelines.

T.C.A. § 7-86-303(e).

Title 5, Chapter 19

Reference Number:
CTAS-525

Counties are authorized to provide garbage and rubbish collection and disposal services to the entire county or to special districts within the county and are also granted the power to do all things necessary to carry out these functions. T.C.A. §§ 5-19-101, 5-19-107. This authority is exercised through resolution by the county legislative body and carried out by an existing agency, a county sanitation department, or a county board of sanitation appointed by the county mayor and confirmed by the county legislative body. Also, a county may contract with a private company or another governmental entity to

provide these services for county residents. T.C.A. § 5-19-104. If a municipality within the county furnishes garbage (solid waste) collection and disposal services, the county must establish service districts outside the municipality to fund this county service if the property tax is a source of funding for the county solid waste services. T.C.A. § 5-19-108. If the county services are provided within special service districts, they are funded by user fees, or a property tax levied only within the district served, or a combination of the two. T.C.A. §5-19-109. Plans for collection and disposal services must be submitted to the regional planning commission for study before they are carried out. T.C.A. § 5-19-112. The county must inspect these facilities at least once every quarter, and the commissioner of health may also investigate and make recommendations for improvement. T.C.A. §§ 5-19-113, 5-19-114.

Local Solid Waste Management Planning

Reference Number:

CTAS-527

In an effort to coordinate and plan for safe, efficient solid waste disposal in the state, the Tennessee General Assembly has enacted several pieces of legislation, which are compiled in Title 68, Chapter 211 of the *Tennessee Code Annotated*. To comply with the requirements of this chapter, all local governments must engage in specified planning and organizational activities. See the Solid Waste Management Act of 1991, T.C.A. §§ 68-211-801 through 68-211-874.

Landfill Approval by County - "Jackson Law"

Reference Number:

CTAS-542

The so-called "Jackson Law" is an optional general law that may be adopted by a county or municipal legislative body by a two-thirds (2/3) majority vote. If adopted, it provides that no new construction will be initiated for a landfill without the approval of the county legislative body unless the landfill only accepts waste generated by its owner and all such waste is generated in the same county as the landfill.

Additionally, if such proposed construction is in an incorporated area or within one mile of an incorporated area, the governing body of the municipality must also approve before construction can be initiated.

T.C.A. § 68-211-701. Public notice and public hearings are required before the vote of the legislative body. T.C.A. § 68-211-703. This law states criteria that must be considered by the legislative body in determining whether or not to approve the construction. Judicial review of the legislative body's determination may be had before the chancery court for the county in which the landfill is to be located.

T.C.A. § 68-211-704. The Tennessee Court of Appeals upheld a decision by the Davidson County Chancery Court that exclusion of county and municipal landfills from application of the Jackson Law as provided in T.C.A. § 68-211-706(b) is unconstitutional as a violation of the equal protection clause since there is no rational basis for this discrimination against private landfills. However, the Court applied the doctrine of elision (removal of offending provision, exemption of public landfills) and upheld the remainder of the act. *Profill Development, Inc. v. Dills*, 960 S.W.2d 17 (Tenn. App. 1977).

In 2013, the Jackson Law was amended to increase the scope of the law to include a change in classification of a landfill to a classification with higher standards. However, this amendment provides that it only applies if independently approved by a two-thirds vote of the county legislative body if the county adopted the Jackson Law prior to May 13, 2013.

In a statute separate from the "Jackson Law," municipalities must obtain the approval of the county legislative body at two consecutive regularly scheduled meetings before the municipality may exercise the power of eminent domain to obtain property to be used as a landfill for solid waste disposal outside of the corporate limits of the municipality. T.C.A. § 68-211-122.

County Growth Plans

Reference Number:

CTAS-590

In 1998 the Tennessee General Assembly passed Public Chapter 1101, which requires a coordinated planning effort among a variety of public and private entities throughout the state. The legislation also reforms procedures and requirements for annexation and incorporation. Public Chapter 1101 was codified in T.C.A. § 6-58-101 *et seq.* The law calls for the development of a comprehensive growth plan in each county, covering projected growth for 20 years.

Amendment of Growth Plan

Reference Number:

CTAS-594

Unless there are "extraordinary circumstances," the initial growth plan remains in place for three (3) years. After the three years, the growth plan may be amended as often as necessary. T.C.A.

§ 6-58-104(d)(1). Municipal or county mayors are to propose amendments to the growth plan. The mayor proposing the amendment is to file notice of the amendment with the county mayor and mayors of all the municipalities in the county. Upon receiving the notice, the county mayor shall reconvene or reestablish the coordinating committee within sixty (60) days. The coordinating committee then has six (6) months from the date of its first meeting on the proposed amendment to submit its recommendation to the local governing bodies. The amendment shall become part of the county's growth plan after being approved by the local governing bodies and the local government planning advisory committee. The burden of proving the reasonableness of the change is on the party proposing it.

Joint Economic and Community Development Board

Reference Number:

CTAS-596

In addition to the coordinating committee that is formed to formulate a growth plan and any amendments to it, the law requires a board with representatives from both public and private segments of the community to engage in long-term planning and maintain communication among the various interest groups.

Composition. The final makeup of each board is to be established by interlocal agreement, but at a minimum must include the county mayor, the mayor or city manager of each city in the county (in a county with multiple cities, the smaller cities may rotate for representation, according to interlocal agreement), and an owner of greenbelt property. Boards are encouraged to include school system representatives as well. A county or city mayor or city manager may designate an alternative representative on the board and its executive committee so long as the alternative has experience or education in administration, economic or community development, or planning and be able to speak for the represented official.

Executive Committee. The executive committee is to be selected by the entire board but must consist of at least the county mayor and the mayors of the larger municipalities.

Powers. Boards are authorized to exercise on behalf of constituent members any authority contained in the interlocal agreement that may be exercised separately by the constituent member. Such authority includes the authority to contract with an industrial development corporation, development district, human resources agency, nonprofit corporation, or private business to deliver services that further economic growth in the community.

Term of Office. The terms are to be determined by interlocal agreement, with a maximum of four (4) years; all terms must be staggered except for those of elected officials, whose terms of service on the board coincide with their terms of office.

Meetings. The full board must meet a minimum of four (4) times a year, and the executive committee must also meet at least four (4) times annually with an executive committee meeting occurring at least once in each calendar quarter. Both bodies are subject to the open meetings law and are required to keep minutes and attendance.

Funding. Costs are shared jointly among participating governments according to a statutory formula based upon population. The board may accept donations and grants. It must adopt a budget by April 1 each year; While participating governments retain full authority to approve their contributions to the board, if a participating government does not contribute its share, the board may impose such sanctions or conditions as it deems proper. Before applying for any state grant, local governments must certify their compliance with these provisions.

Exception. If a county has previously formed a similar agency, it may apply to the local government planning advisory committee for an exception to these provisions.

Donation of Funds. A joint economic and community development board is authorized to transfer or donate funds that it has received from participating governments and outside sources to other public or non-profit entities within the county to be used for economic or industrial development purposes. T.C.A. § 6-58-114.

Regional Planning Commission

Reference Number:

CTAS-605

In addition to comprehensive growth planning, there are other planning provisions in Tennessee statutes.

The Department of Economic and Community Development has created and defined the boundaries of other planning regions, which are drawn without regard to county lines or other existing boundaries.

T.C.A. § 4-3-701 *et seq.* For each planning region the department also creates a regional planning commission, or a municipal planning commission may direct regional planning under certain circumstances. T.C.A. §§ 13-3-101, 13-3-102. In actual practice, most planning regions consist of a single county.

Zoning Regulation

Reference Number:

CTAS-610

The county legislative body is authorized to regulate land areas outside incorporated municipalities in such matters as the location and size of buildings; the percentage of a lot that may be occupied; the size of yards, courts, and other open spaces; the density and distribution of population; and the uses of buildings and land. T.C.A. § 13-7-101. To carry out this authority the county legislative body may implement the zoning plans created by the regional planning commission.

After a planning commission certifies a zoning plan, including both the text of a zoning ordinance and a zoning map, then the county legislative body must hold a public hearing on the plan. Statutory requirements regarding notice, publication, and amendment procedures must be observed before the zoning ordinance can take effect. T.C.A. §§ 13-7-104, 13-3-105.

In formulating a zoning scheme, the regional planning commission may develop a single plan or successive plans for parts of the county it deems appropriate for development. These plans divide the territory of a county lying outside incorporated municipalities into zoning districts. All regulations must be uniform for each class of building throughout the district, but the regulations in one district may differ from those in another. The zoning plan may also provide for the transfer of development rights. T.C.A. § 13-7-101(a)(2). If the county legislative body chooses to enact the zoning plan for more or less territory than that encompassed in the plan certified by the planning commission, then it must resubmit the plan to the commission for approval. If the revised plan is disapproved by the commission, then at least two-thirds (2/3) of the entire county legislative body membership must vote for its approval for the revision to pass. T.C.A. § 13-7-102.

Board of Zoning Appeals

Reference Number:

CTAS-612

The county legislative body is authorized to create a board of zoning appeals to make special exceptions to zoning regulations, assist in settling boundary line disputes, interpret zoning maps, and consider similar questions. T.C.A. §§ 13-7-106 through 13-7-109. The county legislative body appoints three, five, seven or nine regular members of the appeals board, along with one or more associate members who can sit for regular members under some temporary disability. A joint board of zoning appeals may be appointed by two or more counties. Compensation and length of terms are determined by the county legislative body within certain statutory guidelines. Vacancies are filled for the unexpired term and in the same manner as the original appointments. The county legislative body may remove any member for cause upon written charges and after a public hearing. T.C.A. § 13-7-106.

The county legislative body must provide and specify, in its zoning or other ordinance, general rules to govern the organization, procedure, and jurisdiction of the board of appeals. The board may adopt supplemental rules of procedure. The general and supplemental rules of procedure must require:

- (i) Maintenance of a record of the board's proceedings, including resolutions, transactions, motions, and actions, which are public records;
- (ii) Election from its membership of a chair and other officers as the board deems necessary; and
- (iii) The presentation of relevant proof by parties to the proceedings; and

May address the inclusion of statements of reasons for the board's actions as part of each motion or action, including such findings of fact and statements of material evidence as the board may deem pertinent. T.C.A. § 13-7-107.

The zoning ordinance may provide that the board of appeals may, in appropriate cases and subject to appropriate principles, standards, rules, conditions and safeguards set forth in the ordinance, make special exceptions to the terms of the zoning regulations in harmony with their general purpose and intent. The county legislative body may also authorize the board of appeals to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar questions as they arise in the administration of the zoning regulations. T.C.A. § 13-7-107.

Under T.C.A. § 13-7-108, grants or denial of a building permit be in writing and include information of the right to appeal the decision to the board of zoning appeals. Under T.C.A. § 13-7-109, the board must inform parties of their right to seek judicial review of the board's decisions pursuant to Title 27, Chapter 9. Land use decisions made by the board of zoning appeals, other than variances, must be consistent with the regional plan if the county legislative body adopts the general regional plan in the form of a resolution. T.C.A. § 13-3-304.

County Building Commissioner

Reference Number:
CTAS-522

The county is authorized to establish the position of county building commissioner, who is appointed by the county mayor and confirmed by the county legislative body. The building commissioner considers building permit applications and issues permits to those who comply with zoning regulations. Before any structure within the region is built, altered, or used, it must fully conform to all zoning regulations, and this compliance must be evidenced by a building permit. T.C.A. § 13-7-110. Building permit rules may also be enacted by private act. Any grant or refusal of a permit, or any other decision of the building commissioner, may be appealed to the board of zoning appeals. T.C.A. § 13-7-108. In the event any building official is denied permission to make an inspection, the official may obtain an administrative search warrant from a person authorized by law to issue warrants or from any court of record in the county where the official works. T.C.A. § 68-120-117.

Adoption of Building Codes

Reference Number:
CTAS-616

The county legislative body may enact a resolution that adopts by reference any prepared building, plumbing, gas or fire prevention code. At least 90 days before the adoption of a resolution incorporating a code by reference, at least one copy of the code must be filed in the office of the county clerk. No resolution that adopts a code by reference will be effective until it is published in a newspaper of general circulation. T.C.A. § 5-20-102. Any code adopted by reference must be retained on file as a public record. T.C.A. § 5-1-116. These provisions apply only to the unincorporated area of a county and to those incorporated cities and towns within the county that do not elect to adopt their own codes regulating the same subject areas. T.C.A. § 5-20-106.

The adopting resolution may also incorporate by reference the administrative provisions of any code, or may include in the adopting resolution any suggested administrative provisions found in a code. If a code does not contain administrative provisions, the administrative provisions of another code may be adopted and included in the resolution. However, the penalty clause contained in such a code may not be incorporated by reference. T.C.A. § 5-20-105(a). Any official within the existing framework of county government may be charged with enforcing the code, including but not limited to officials who administer zoning regulations. T.C.A. § 5-20-103. A violation of any code is a misdemeanor. T.C.A. § 5-20-105(b). Additional enforcement power is vested in the county attorney or other designated county official who may, in addition to other remedies provided by law, obtain an injunction to prevent violation of any provision of the code. T.C.A. § 5-20-104.

Pursuant to T.C.A. § 68-120-101(a)(8), if a local government seeks to require sprinklers in residential construction, such requirements must be adopted by a 2/3 vote only after reading such ordinance or resolution in open session of the legislative body at meetings specially called on two (2) different days that are no less than two (2) weeks apart. Also requires that mandatory sprinkler requirements shall be voted on in an ordinance or resolution separate from any other ordinance or resolution addressing building construction safety standards.

The state fire marshal will recognize and accept certification of state, county and municipal employees from the National Fire Protection Association or the International Code Council, as satisfying the standards and qualifications for fire prevention and building officials. A county or other employing governmental

entity must have all newly employed applicants for fire safety and building inspectors certified within 12 months of employment. T.C.A. § 68-120-113. Additionally, 2007 Public Chapter 582 enacted T.C.A § 68-120-118, which requires that all persons entering into employment after July 1, 2008 as inspectors to enforce plumbing, mechanical and fuel gas codes be certified by the state fire marshal. Inspectors hired after July 1, 2008 have up to 12 months from their date of employment to obtain certification; those who were already employed on July 1, 2008, are deemed to meet the certification requirements for 3 years from the date of certification, but will have to meet the requirements upon re-certification at the end of the initial 3 years. All certifications must be renewed every 3 years. The state fire marshal is directed to issue rules and regulations regarding standards and qualifications for certification, as well as a form application for certification.

Effective October 1, 2024, persons are authorized to engage third party inspectors and plans examiners rather than local jurisdictions. T.C.A. § 68-120-101.

Tennessee Clean Energy Future Act of 2009

Reference Number:

CTAS-617

In order to increase the state's energy efficiency, the Tennessee General Assembly enacted the Tennessee Clean Energy Future Act of 2009. 2009 Public Chapter 529. As part of this Act, the legislature amended T.C.A § 68-120-101, which provides for minimum statewide building construction standards.

Minimum statewide building construction standards existed before the passage of the Act. The standards, which include provisions relating to structural strength and stability, means of egress, and fire safety, are set by the state fire marshal and apply to state, city, county, and private buildings other than one and two family dwellings. The standards do not, however, apply to buildings in local jurisdictions that have adopted and are enforcing the International Building Code and either the International Fire Code or the Uniform Fire Code. Local jurisdictions can lose this exemption if they fail to adequately enforce the codes or if the codes they have adopted are not current within seven years of the latest edition (unless otherwise approved by the state fire marshal). For those buildings and jurisdictions that are subject to the state standards, the state fire marshal enforces the codes by reviewing and approving plans and specifications and charges fees to cover the costs.

As part of the effort to improve energy efficiency in the state, the Act amended T.C.A § 68-120-101 to add energy efficiency as an area that must be addressed in the minimum statewide building construction standards. The Act also added one and two family dwellings to the list of structures that are covered by the statewide standards. The Act did, however, exempt renovations to such one- and two- family dwellings from the statewide standards. In addition, the Act made it clear that the statewide standards will not include mandatory sprinklers for one and two family dwellings but local governments may adopt more stringent standards should they choose to do so.

The biggest, and most complex, changes to T.C.A § 68-120-101 related to exemptions available to local governments. A new provision in T.C.A § 68-120-101, not found in the prior law, allows local governing bodies to exempt their jurisdictions from the application of minimum statewide standards to one and two family dwellings regardless of whether the local jurisdiction is enforcing its own codes or has no codes at all. This exemption requires a two-thirds (2/3) vote by the local governing body and expires 180 days after the next local legislative body election (or at an earlier date set out in the resolution). Thus, should a county legislative body choose to opt out of the application of minimum statewide standards to one and two family dwellings in its jurisdiction, the exemption will only last from the effective date of the resolution until 180 days after the next county legislative body election. At such time, the county legislative body will have to pass another resolution (again, by a two-thirds (2/3) vote) should they choose to continue the exemption.

Should a local governing body change its mind about exempting its jurisdiction's one and two family dwellings from minimum statewide construction standards, the Act does permit local governing bodies to reverse their action at any time by a simple majority vote. Taking such action would make one and two family dwellings subject to the minimum statewide construction standards. Under the Act, local governing bodies are required to transmit any resolutions done under T.C.A § 68-120-101, whether they are opting out or back in, to the state fire marshal's office.

Effective May 4, 2017, residents in counties that have opted out of statewide residential building codes are authorized to request the state fire marshal to inspect their buildings for compliance with the statewide code. T.C.A § 68-120-101(b)(1).

As in the prior version of T.C.A § 68-120-101, local government jurisdictions can be exempt from statewide standards by enforcing standards themselves. The Act revises the criteria for this exemption.

Under the Act, in order for local government jurisdictions to be exempt from the minimum statewide standards, they must demonstrate one of the following:

1. The local government has chosen to adopt and enforce building codes for all types of buildings and it has adopted the International Residential Code (for one- and two-family dwellings), the International Building Code (for all other types of buildings), and either the International Fire Code or the Uniform Fire Code; or
2. The local government has chosen to adopt and enforce building codes for all types of buildings other than one- and two-family dwellings and it has adopted the International Building Code and either the International Fire Code or the Uniform Fire Code; or
3. The local government has chosen to adopt and enforce building codes for one- and two-family dwellings only and it has adopted the International Residential Code and either the International Fire Code or the Uniform Fire Code; or
4. For one-family and two-family construction, the local government has adopted the International Energy Conservation Code, published by the International Code Council, and such Code is not more stringent than the state minimum standards.

To remain exempt, local jurisdictions must adequately enforce the codes and review plans and specifications and conduct inspections. And, as with the prior law, the codes adopted by local jurisdictions must be current within seven years of the date of the latest editions.

The Act provides that the state fire marshal will enforce minimum statewide standards with respect to buildings for which the local jurisdiction has not adopted and is not enforcing codes. For example, if a local jurisdiction has adopted and is enforcing codes for all buildings other than one and two family dwellings, the state fire marshal will enforce the minimum statewide standards for the one and two family dwellings (unless the governing body has exempted out one and two family dwellings as explained above)

The provisions of the Act amending T.C.A. § 68-120-101 became effective on July 1, 2010.

Industrial Development Corporations—Purpose and Authority

Reference Number:
CTAS-619

Industrial development corporations were authorized by the General Assembly to maintain and increase employment, increase agricultural and industrial production, and reduce pollution. These corporations can figure prominently in a county's economic development activities. They are considered to be public instrumentalities of their creating municipalities (which can be a county, city or a combination of both), and thus, any property owned by an industrial development corporation is tax exempt. T.C.A. § 7-53-305. Counties and municipalities are authorized to appropriate funds to make contributions or loans with reasonable interest, to industrial development corporations in the county. County legislative bodies are also authorized to borrow funds for the purpose of making contributions or loans to industrial development corporations. T.C.A. § 6-54-118.

The powers and duties of industrial development corporations are set forth in T.C.A. § 7-53-101 *et seq.* These statutes are to be broadly construed to further the health, welfare, and safety of citizens. T.C.A. § 7-53-102. Industrial development corporations are authorized to acquire projects, improve and/or maintain projects, lease projects, sell projects and enter into loan agreements relating to projects to facilitate their economic development goals. T.C.A. § 7-53-302. What constitutes a "project" is defined in T.C.A. § 7-53-101 and includes examples such as manufacturing facilities, office buildings, public buildings, healthcare facilities, amusement parks, and multifamily low-income housing. Industrial development corporations are authorized to sell, exchange, convey or donate any or all of their property. T.C.A. § 7-53-302. Industrial development corporations can also issue bonds or otherwise borrow money, mortgage or pledge projects as collateral for their bonds or notes, and pledge revenue or receipts from projects. T.C.A. § 7-53-302. It is important to note that industrial development corporations cannot pledge the general taxing power of the creating municipality without the municipality first obtaining a certificate of public purpose and necessity and then holding an election in which 75% of the voters approve pledging the municipality's credit. T.C.A. § 7-53-306 and T.C.A. § 7-53-307.

Industrial development corporations can also be formed for specific purposes. Pursuant to T.C.A. § 7-53-318, housing opportunity counties may create industrial development corporations to support additional residential housing. Industrial development corporations formed under § 7-53-318 have the following additional powers:

- (1) To construct and install public infrastructure for qualified residential developments or contract with a private party for the construction and installation of such public infrastructure;
- (2) To accept loans and grants of money from this state or the United States or any agency or instrumentality of this state or the United States, upon such terms and conditions as this state, the United States, or the agency or instrumentality may impose, for purposes of carrying out the design, construction, installation, financing, or undertaking of public infrastructure; and
- (3) To make loans and grants of money to private entities constructing and installing public infrastructure for qualified residential developments within the boundaries of the housing opportunity county upon such terms as the industrial development corporation deems advisable.

In addition, industrial development corporations may also be established and operated solely to assist and benefit locally owned businesses and small businesses. T.C.A. § 7-53-319. Furthermore, T.C.A. § 7-53-320 authorizes counties to provide assistance to industrial development corporations involved in public-private partnerships.

Industrial development corporations have two additional powers which are important economic development tools--the power to enter into payment in lieu of tax (PILOT) agreements and the power to enter into tax increment financing (TIF) agreements.

Powers to Prevent and Abate Nuisances

Reference Number:
CTAS-563

In 2002, the General Assembly amended a part of the County Powers Act to authorize counties without zoning to exercise the certain regulatory powers granted to municipalities under T.C.A. § 6-2-201(22) and (23). T.C.A. § 5-1-118. The powers are described in the law as the ability to:

- Define, prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, businesses, occupations, callings, trades, uses of property and all other things whatsoever detrimental, or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the municipality, and exercise general police powers; and
- Prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of the people may lawfully be established, conducted or maintained. T.C.A § 6-2- 201(22) and (23).

The next year, the General Assembly revisited the statute and expanded its application to allow all counties the ability to use these powers after adoption of a local resolution by a two-thirds (2/3) vote of the county legislative body.

Limitations on the Exercise of Regulatory Authority. While this new authority is a broad expansion of county regulatory power, the grant of authority came with several restrictions. The exercise of these powers by counties is limited in a number of ways by both the statute itself and the state and federal constitutions.

Debris Removal and Weed Control

Reference Number:
CTAS-571

Counties are granted permissive authority regarding the removal of overgrown vegetation, accumulated debris, and vacant dilapidated buildings or structures in the county. Owner-occupied residences are not included, except in certain counties designated by narrow population class. T.C.A. § 5-1-115. Owners of the property are to be provided with notice to remedy the situation before the county may act. Counties are granted a lien on the property for the cost of remedying or removing the situation. This statute's enforcement mechanisms include the placing of lien on the property to reimburse the county for the cost of removing the garbage, litter or refuse and imposing a monetary penalty enforceable in general sessions court. T.C.A. § 5-1-121.

Additionally, counties are authorized to adopt regulations for litter control under T.C.A. § 39-14-508. The regulations promulgated by a county pursuant to this statute may require property owners to conform their property to the regulations by removal of garbage, litter, refuse or rubbish. The statute requires the county to send a statement to the owner itemizing the cost of the removal and provides that the statement shall constitute a lien upon the property if the owner fails to reimburse the county for the cost of the removal within sixty (60) days, sets out the priority of the lien when filed, and specifies that the lien

shall be filed with the register of deeds of the county in which the property lies. The full resolution, or the caption and a complete summary of the resolution, must be published after its final passage in a newspaper of general circulation in the county and the resolution cannot take effect until it is published.

Regulation of Adult-Oriented Entertainment and Massage

Reference Number:

CTAS-572

The primary state law that grants counties the authority to license and regulate adult-oriented establishments and entertainers is the Adult-Oriented Establishment Registration Act of 1998, T.C.A. § 7-51-1101 *et seq.* This act replaces a former and somewhat similar registration act, which was declared unconstitutional by a federal district court. *Brothers Three Enterprises v. Knox County*, No. CIV-3-89-0035 (E.D. Tenn., N.D., February 4, 1991). This registration law is optional for county governments and may be adopted by a two-thirds (2/3) majority of the county legislative body. An important change to this act occurred in 2008. In 2008 Public Chapter 1085, T.C.A. §§ 7-51-1102, 7-51-1109, and 7-51-1110 were amended to permit county legislative bodies to choose an alternative appeals procedure for denials of adult establishment applications and revocations of permits for adult establishments. Currently, if the adult-oriented establishment board affirms the denial of an application or the revocation of a permit, the county attorney files suit for declaratory judgment to confirm the decision was properly made. The county legislative body can now opt into a different procedure in which the aggrieved party shall have the right to appeal the board's decision by common-law writ of certiorari. The county legislative body may rescind its election at any time.

Another general state law governs the location and hours of operation of adult-oriented establishments codified at T.C.A. § 7-51-1401 *et seq.* This law prohibits these businesses, except those offering only live stage shows, adult cabaret, or dinner show type settings, from opening before 8 a.m. or remaining open after midnight Monday through Saturday. On Sundays and legal holidays they must remain closed. Local governments may establish shorter hours of operation, but may not extend the hours. The act provides that these businesses cannot be located within 1000 feet of child care facilities, public/private charter schools, public parks, residences, family recreation centers or places of worship. The act also contains regulations regarding the structure and type of lighting in viewing booths, and specifies penalties for violations.

Although under previous law counties could adopt an optional act to regulate massage services within the county, those statutes have been repealed and superseded by general law enacting a state licensing system in T.C.A. § 63-18-101 *et seq.* Under that law, a state board performs all licensing and regulatory functions that were formerly under the authority of the county board.

Animal Control

Reference Number:

CTAS-573

The county legislative body, by resolution, may "license and regulate dogs and cats, establish and operate shelters and other animal control facilities, and regulate, capture, impound and dispose of stray dogs, stray cats and other stray animals." T.C.A. § 5-1-120.

It is unlawful to own, keep or harbor a dog or cat six months old or older that has not been vaccinated for rabies by or under the supervision of a veterinarian. Counties and municipalities are authorized to adopt local resolutions or ordinances to require registration of dogs or cats in their jurisdiction. Any such local laws must include methods for collecting registration fees and must require expenditure of the funds solely to establish and maintain a rabies control program, to conduct animal control activities, to ensure that dogs and cats are properly vaccinated and that biting animals or rabies suspects are observed or confined in accordance with state law and regulations. If the local law meets or exceeds the minimum requirements of the state law, the local law, not the state law, will apply in that jurisdiction. T.C.A. § 68-8-101, *et seq.*

Personnel Authority in Counties

Reference Number:

CTAS-123

As a general rule, each county official in Tennessee has authority over the employees within his or her office. This authority includes the hiring and firing of office employees and day-to-day office management within the parameters established by state and federal laws. It also includes responsibility for ensuring compliance with applicable laws. The funds available for county employee compensation and benefits is established by action of the county legislative body, but the official retains some discretion with regard to

the compensation of individual employees within the office.

State laws, and sometimes resolutions of the county legislative body, establish the way that employees in various county offices are hired. The county mayor has the authority to hire secretaries and assistants where necessary to properly and efficiently transact the business of that office under T.C.A. § 5-6-116, as long as sufficient funds have been appropriated for this purpose. The chief administrative officer of the county highway department in the vast majority of counties has the authority to hire assistants under

T.C.A. § 54-7-109, within the amounts set forth for that purpose in the highway budget.^[1] County fee officials (which include clerks of court, clerk and masters, county clerks, trustees, registers of deeds and sheriffs) are authorized to hire deputies and assistants as necessary to properly conduct the business of their respective offices under the statutory framework set out in T.C.A. § 8-20-101 *et seq.*, which requires either a letter of agreement or a court order establishing the number and compensation of these employees. The assessor of property hires deputies under the provisions of T.C.A. § 67-1-506.

The county legislative body has basic personnel authority over some employees under general law. Appointed department heads will find the authority under which the employees of their offices are hired either in the state law (public or private act) or in the resolution of the county legislative body which created their department. For example, in counties under the County Financial Management System of 1981, the finance director is authorized to hire employees for that office within the budget established by the county legislative body and in accordance with the policies promulgated by the financial management committee, as provided in T.C.A. § 5-21-107.

Under a state law^[2] enacted in 1997, county officials in almost all counties are required to establish written policies for compliance with certain laws, and the county legislative body is required to establish written policies for all employees who are not under written policies established by a county official. Finally, centralized personnel departments have been authorized by private act of the General Assembly in a very limited number of counties, and in some counties civil service laws have been enacted by general law or private act covering the sheriff's office.

It is important to determine who has the personnel authority in a particular office, as well as the extent of that authority. In general, the authority to hire employees carries with it the authority to terminate those employees; even if employment is subject to approval by the county legislative body, the employee generally may be dismissed without county legislative body approval.^[3]

[1] Only Shelby, Davidson, Knox, and Hamilton counties are excluded from the Tennessee County Uniform Highway Law. T.C.A. § 54-7-102.

[2] T.C.A. § 5-23-101 *et seq.*

[3] See Op. Tenn. Att'y Gen. 81-73 (No. 268) (February 2, 1981).

Liability for Personnel Matters

Reference Number:

CTAS-767

Important employment law considerations include hiring, compensation, benefits, termination, retirement, the federal Fair Labor Standards Act ("FLSA"), right-to-know statutes, military and reserve service, jury service, the Occupational Safety and Health Act, the Equal Pay Act, the Immigration Control Act, the insurance provisions of the Consolidated Omnibus Budget Reduction Act ("COBRA"), FICA and FIT withholdings and the Family and Medical Leave Act ("FMLA").

As employers, county officials must refrain from retaliating or firing based on the employee's exercise of a protected constitutional right (e.g., freedom of speech), or a statutory right (e.g., filing a workers' compensation claim). Discrimination must be avoided in every aspect of employment. Under state and federal law, an employer cannot discriminate against an employee or a potential employee based upon race, color, sex, religion, national origin, age or disability (including infectious, contagious or similarly transmittable diseases). Further, any form of sexual harassment is illegal. An individual may file a discrimination complaint with the Equal Employment Opportunity Commission ("EEOC") or the Tennessee Human Rights Commission ("THRC").

An employer cannot fire an employee solely for: (1) refusing to participate or remain silent about illegal activities; or (2) using an agricultural product not regulated by the alcoholic beverage commission that is not otherwise prohibited by law (i.e., smoking) if the employee follows the employer's guidelines regarding the use of the product while at work. T.C.A. § 50-1-304).

Finally, the First Amendment to the United States Constitution applied to the states through the

Fourteenth Amendment prohibits patronage dismissals of certain types of governmental employees. *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 64 (1990). Patronage dismissals are those based upon political activity or affiliation.

Tennessee Governmental Tort Liability Act

Reference Number:

CTAS-766

Prior to 1973, Tennessee counties were subject to the state's sovereign immunity for governmental acts, but were liable for damages resulting from proprietary activities. Governmental acts were those activities that were peculiar to governments, or activities only governments could provide, such as police protection, fire protection, education or tax collection. Proprietary activities were those that could be provided by private as well as governmental entities, such as water and sewer service, electrical services and mass transit.

In 1973, the Tennessee General Assembly enacted the Tennessee Governmental Tort Liability Act (T.C.A. § 29-20-101 et seq.), which provides that counties are immune under state law from all suits arising out of their activities, either governmental or proprietary, unless immunity is specifically removed by the law. It is important to remember that this immunity does not extend to liability under federal law.

In cases where the county is immune, county officials and employees may be individually liable, but only up to the liability limits established in the Tennessee Governmental Tort Liability Act. T.C.A. § 29-20-310(c). When the case is one where the county can be liable, the official or employee is immune. T.C.A. § 29-20-310(b). Willful, malicious or criminal acts, or acts committed for personal gain, do not fall under the personal liability protective provisions of the Tennessee Governmental Tort Liability Act (nor do medical malpractice actions brought against a health care provider).

Members of all county boards, commissions, agencies, authorities and other governing bodies created by public or private act, whether compensated or not, are absolutely immune from suit under state law arising from the conduct of the entity's affairs. This immunity is removed when the conduct is willful, wanton or grossly negligent. T.C.A. § 29-20-201.

Areas in which the Tennessee Governmental Tort Liability Act removes governmental immunity (i.e., kinds of actions for which the county can be sued) are:

1. Claims arising from the negligent operation of motor vehicles;
2. Claims arising from negligently constructing or maintaining streets, alleys or sidewalks;
3. Claims arising from the negligent construction or maintenance of public improvements; and
4. Claims arising from the negligence of county employees. T.C.A. §§ 29-20-202 through 29-20-205).

In 2022, the Tennessee Supreme Court held that the waiver of immunity in T.C.A. § 29-20-205 for "negligent" acts includes only ordinary negligence, not gross negligence or recklessness. *Lawson v. Hawkins County*, --- S.W.3d ---- 2023 WL 2033336 (Tenn. May 25, 2022).

There are exceptions to these areas where immunity is removed. These activities, for which the county is immune under state law, but for which an officer or employee may be liable, include claims arising from:

1. The exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;
2. False imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of privacy or civil rights;
3. Issuing, denying, suspending, or revoking, or the failure to refuse to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization;
4. Failing to inspect or negligently inspecting any property;
5. Instituting or prosecuting any judicial or administrative proceeding;
6. Negligent or intentional misrepresentation;
7. Riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances; or
8. Assessing, levying or collecting taxes. T.C.A. § 29-20-205.

Persons other than elected or appointed officials and members of boards, agencies and commissions are not considered county employees for purposes of the Governmental Tort Liability Act unless the court

specifically finds that all of the following elements exist:

1. The county selected and engaged the person in question to perform services;
2. The county is liable for the compensation for the performance of such services and the person receives all compensation directly from the county’s payroll department;
3. The person receives the same benefits as all other county employees, including retirement benefits and eligibility to participate in insurance programs;
4. The person acts under the control and direction of the county not only as to the result to be accomplished but as to the means and details by which the result is accomplished; and
5. The person is entitled to the same job protection system and rules, such as civil service or grievance procedures, as other county employees. T.C.A. § 29-20-107.

A regular member of the county voluntary or auxiliary fire fighting, police or emergency assistance organization is considered to be a county employee without regard to the elements listed above. 29-20-107(d). The county cannot extend immunity to independent contractors or other persons or entities by contract. T.C.A. § 29-20-107(c).

The county may now insure, either by self-insurance or purchasing insurance, or indemnify (up to the new limits set in the Tennessee Governmental Tort Liability Act) its employees and officials for their liability exposure under the Tennessee Governmental Tort Liability Act. T.C.A. § 29-20-310(c).

The following liability limits under the Tennessee Governmental Tort Liability Act (T.C.A. § 29-20-403) are for occurrences or accidents occurring on or after July 1, 2007 and are as follows:

Type of Claim	Limit
Bodily injury or death of any one person in any one accident, occurrence or act	\$300,000
Bodily injury or death of all persons in any one accident, occurrence or act	\$700,000
Injury to or destruction of property of others in any one accident	\$100,000

It is very important to know that these limits do not apply to federal civil rights actions in state or federal courts.

Actions under the Governmental Tort Liability Act must be commenced within 12 months after the cause of action arises (T.C.A. § 29-20-305), like other tort claims. This one-year statute of limitations can be extended when claims involve persons under legal disabilities (incompetents, minors, etc.) or when the injured party has reasonably failed to discover the existence of his or her cause of action against the county, county officials or employees

Other Non-Tort Liability

Reference Number:
CTAS-768

The Tennessee Governmental Tort Liability Act does not apply to many types of actions filed in both state and federal courts. In state court, for example, compensation, breach of contract, inverse condemnation and many other types of common law and statutory causes of action can be the basis of a non-tort action. The limits of the Tennessee Governmental Tort Liability Act do not apply to these non-tort actions.

County Buildings, Hours, and Office Space

Reference Number:
CTAS-576

The county legislative body is required to provide funds to erect a courthouse, jail and other necessary county buildings, but the jail may be a joint facility operated with one or more other counties. T.C.A. §§ 5-7-104, 5-7-105. The courthouse and all county buildings for county officers except the jail and the county highway garage must be erected within the limits of the county town. T.C.A. § 5-7-105. Although not required to do so, the county legislative body may provide offices for the county clerk and other officials outside of the county town so long as an office is maintained in the county town for offices where a county town office is mandated. T.C.A. § 5-7-103. County buildings are to be kept in order and repair at the expense of the county, under the direction of the county legislative body, and a special tax may be levied for this purpose. T.C.A. § 5-7-106.

Under T.C.A. § 5-7-108, the sheriff is charged with the custody and security of the courthouse unless the county legislative body assigns this duty to someone else. It is the duty of the sheriff to prevent trespasses, exclude intruders, and keep the courthouse and the courthouse grounds in order, reporting from time to time the repairs required, and the expense, to the county legislative body. As custodian of the courthouse, the sheriff is a mere agent or administrator of the county legislative body. *Driver v. Thompson*, 358 S.W.2d 477 (Tenn. 1962). See also *Ferriss v. Williamson*, 67 Tenn. 424 (1874);

Under T.C.A. § 5-6-108, the county mayor is designated the custodian of county property that is not by law placed in the custody of other officers. As custodian of these properties, the county mayor acts as an agent or administrator of the county legislative body and must report from time to time when repairs are needed and must obtain authorization from the county legislative body for major repairs that are required. *See Driver v. Thompson*, 358 S.W.2d 477 (Tenn. 1962).

While it is true that the sheriff is charged with the custody and security of the courthouse, unless the county legislative body assigns this duty to someone else, individual county office holders may prescribe rules and regulations with respect to access to their offices, to include but not limited to the times when their office will be open to the public and who may be given access to their offices. Neither the sheriff or the county mayor may dictate to the other county office holders who may or may not have access to their offices. *See Shelby County v. Memphis Abstract Co.*, 203 S.W. 339 (Tenn. 1918); *Driver v. Thompson*, 358 S.W.2d 477 (Tenn. 1962).

Non-Smoker Protection Act. Under the Non-Smoker Protection Act, T.C.A. § 39-17-1801 *et seq.*, smoking, which includes the use of vapor products, is prohibited in any enclosed area of any place to which the public is invited or in which the public is permitted and in any enclosed area under the control of a public or private employer that employees normally frequent during the course of employment including private offices and vehicles. The act requires "No Smoking" signs or the international "No Smoking" symbol be clearly and conspicuously posted at every entrance to every public place and place of employment where smoking is prohibited by the act by the owner, operator, manager, or other person in control of that place. A person who smokes in an area where smoking is prohibited shall be subject to a fifty-dollar (\$50) fine. In addition, counties are authorized to prohibit the use of tobacco and vapor products on the grounds of public parks, playgrounds, greenways or any other public property accessible to use by youth (persons under 21) with the exception of sidewalks and roads. T.C.A. § 39-17-1551(e).

Courthouse Hours and Allocation of Courthouse Space. The county legislative body has no statutory authority to establish uniform office hours for the courthouse and require other officials to remain open or closed during these scheduled hours. *Op. Tenn. Att'y Gen. U97-005*, cited in 98-058. However, elected officials cannot neglect the business of the office without being subject to removal from office in an ouster suit. T.C.A. § 8-47-101. Therefore, each official is under a duty to maintain office hours that will allow the public reasonable access to the offices and allow the work of the office to be performed in a timely and efficient manner. *See also Boarman v. Jaynes*, 109 S.W.3d 286, 291 fn4 (Tenn. 2003) (. . . we construe "working time" to mean a reasonable number of hours. Thus, as the Court of Appeals stated in *Jenkins v. Armstrong*, 31 Tenn.App. 33, 211 S.W.2d 908 (1947), public officials could not be held to the duty of an unreasonable working time beyond what was considered as usual office hours.).

Each official can decide whether to remain open on holidays. T.C.A. § 15-1-101. See e-Li Reference Number: CTAS-178.

The county commission has complete control over county building office space and has the authority to assign office space within the courthouse. *See Anderson County Quarterly Court v. Judges of the 28th Judicial Circuit*, 579 S.W.2d 875 (Tenn. Ct. App. 1978). County buildings are public property held by the county in trust for the public use and are under the jurisdiction of the county commission as the representative agency of the County at large. *Henry v. Grainger County*, 290 S.W. 2, 3 (Tenn. 1926) (any rule other than the one we declare would lead to entanglements and abuses against which the public should be protected as a matter of public policy). There is neither express or implied authority for the sheriff or the mayor to dictate to the other elected officials of the County what space they shall occupy in county buildings and other such matters affecting them in the discharge of their official duties. *Driver v. Thompson*, 358 S.W.2d 477 (Tenn. 1962) (assignment of office space is peculiarly a function of the county legislative body as to matters in its jurisdiction). *See also Easterly v. Harmon*, 1997 WL 718430, n4 (Tenn.Ct.App.,1997) (County fee officials are independent entities. They do not work for and are not subject to the mayor's control.).

ADA Compliance. T.C.A. § 68-120-204(a)(1) requires public buildings constructed, enlarged or substantially altered or repaired after July 1, 2012 be designed and constructed pursuant to standards approved by the responsible authority. The minimum standards shall be the 2010 ADA Standards for Accessible Design and any amendments thereto. If a local building inspector is the responsible authority, the local government may use the 2010 ADA Standards for Accessible Design or choose other standards from the codes or publications of other nationally recognized agencies or organizations.

Purchase, Sale and Lease of County Property

Reference Number:
CTAS-577

Counties are statutorily authorized to acquire and hold property for county purposes. They may also make contracts governing its management, control, and improvement and may also dispose of their properties. T.C.A. § 5-7-101; Op. Tenn. Att'y Gen. 87- 133 (Aug. 5, 1987). Counties have the authority to levy taxes to build, extend, or repair county buildings. T.C.A. § 5-5-122. Counties are authorized under T.C.A. § 5-7-116 to lease land and buildings owned by them.

Counties are also authorized by T.C.A. § 7-51-901 *et seq.* to enter into long and short-term contracts, leases, and lease-purchase agreements. Long-term contracts are specifically authorized by statute, although lease terms for capital improvement property may not exceed forty (40) years or the useful life of the property, whichever is less. T.C.A. § 7-51-902. When the term of the contract, lease, or lease-purchase agreement is less than five (5) years, the agreement must be approved by a resolution of the county legislative body. If the agreement is for a term greater than five (5) years, county legislative body approval is also required, and public notice of the proposed contract must be given at least seven (7) days prior to the meeting at which it is to be considered. T.C.A. § 7-51-904.

Before the county may sell, lease, exchange, option or make any material disposition of the assets of a hospital owned or operated by the county, the county must comply with the Public Benefit Hospital Sales and Conveyance Act of 2006. This act requires the county to give written notice to the state attorney general containing such information regarding the proposed action as the attorney general may require and then to publish this notice in a newspaper of general circulation in the county. The attorney general will examine the proposed transaction and report on it. T.C.A. § 48-68-204.

Libraries

Reference Number:

CTAS-578

The legislative body of any county and/or the governing body of any incorporated city or town has the power to establish and maintain a free public library, give support to any free public library already in existence, contract with another library for library service for its citizens, or enter into contractual agreements with one or more counties or cities for joint operation of a free public library. T.C.A. § 10-3-101 *et seq.* To fund these services a county may levy a property tax or may use funds raised for general county or municipal purposes. Libraries established under these statutes must be free to all inhabitants of the county and/or city; the city or county may allow use of the library by those residing outside its territorial boundaries upon such terms as it may deem proper. T.C.A. § 10-3-107.

Counties may participate in the state's regional library system. The regional library system is composed of such regional offices as the secretary of state may establish, each office providing support and assistance to the public libraries in the counties assigned to it under the direction of the state librarian and archivist. The secretary of state may establish criteria for joining and for continuing participation in the regional library system. Local public libraries meeting such criteria may join or leave the regional library system by vote of the county commission or city governing body. T.C.A. § 10-5-101.

Open Meetings Act (Sunshine Law)

Reference Number:

CTAS-2420

In enacting the Tennessee Open Meetings Act, the General Assembly declared it to be "the public policy of the state that the formation of public policy and decisions is public business and shall not be conducted in secret." T.C.A. § 8-44-101. As recognized by the Tennessee Court of Appeals, "Our Open Meetings Law is perhaps one of the most comprehensive and extensive in the nation. There are no exceptions except those situations which may be in conflict with the constitution." *Lakeway Publishers, Inc. v. Civil Service Board*, 1994 WL 315919 (Tenn. Ct. App.). Ironically, the General Assembly itself is not subject to this law. *See Mayhew v. Wilder*, 46 S.W.3d 760 (Tenn. Ct. App. 2001).

Requirements of the Open Meetings Act

Reference Number:

CTAS-2421

The Open Meetings Act, commonly referred to as the "Sunshine Law," is found in T.C.A. § 8-44-101 *et seq.* The requirements of this law are as follows:

1. All meetings of any governing body are declared to be public meetings and must be open to the public at all times. T.C.A. § 8-44-102;
2. Adequate public notice of all regular and special meetings must be given. T.C.A. § 8-44-103;

3. The minutes of the meetings must be recorded and open to public inspection and at a minimum must contain a record of the persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of a roll call. T.C.A. § 8-44-104(a); and
4. All votes must be by public vote, public ballot, or public roll call; secret votes are prohibited. T.C.A. § 8-44-104(b).

Any action taken in a meeting in violation of any of the foregoing requirements is void. T.C.A. § 8-44-105.

Meetings Declared Public

Reference Number:

CTAS-2422

All meetings of any governing body are declared to be public meetings. T.C.A. § 8-44-102. "Meeting" is statutorily defined as "the convening of a governing body of a public body to make a decision or to deliberate toward a decision on any matter." T.C.A. § 8-44-102(b)(2). "Governing body" is defined in the statute as "any public body consisting of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration." T.C.A. § 8-44-102(b)(1). Notably, while county mayors are ex officio members of the county legislative body, they are not considered to be members of the county legislative body for purposes of the Open Meetings Act. Also, one or more members of a local legislative body can meet with one or more members of their state legislative delegation to exchange information (and not deliberate) without falling under the Open Meetings Act. T.C.A. § 8-44-102.

The Tennessee Supreme Court has held that the act was intended to apply to "any governmental board, commission, committee, agency or authority whose members have authority to make policy or administrative decisions." *Dorrier v. Dark*, 537 S.W.2d 888 (Tenn. 1976). In *Dorrier*, the Supreme Court created a two-part test for determining whether an organization is subject to the Sunshine Law: (1) whether its origin and authority may be traced to state, city or county legislative action, and (2) whether its members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people.

The application of the Sunshine Law is very broad. Included, for example, are planning commission meetings (Op. Tenn. Att'y Gen. 88-132 (July 29, 1988)), conferences between a public body and its attorney except those concerning pending litigation (*Smith County Education Ass'n v. Anderson*, 676 S.W.2d 328 (Tenn. 1984)), local school board meetings (*Dorrier*), tenure hearings (*Kendall v. Board of Education*, 627 F.2d 1 (6th Cir. 1980)), work sessions of a legislative body (*State ex rel. Akin v. Town of Kingston Springs*, 1993 WL 339305 (Tenn. Ct. App. 9/8/93)), an out-of-state meeting of some school board members and the superintendent (*Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. Ct. App. 1990)), meetings of a county hospital board (Op. Tenn. Atty. Gen. 01-042 (March 19, 2001)), dismissal or suspension hearings for tenured teachers (Op. Tenn. Att'y Gen. 98-111 (June 12, 1998)), councils on aging and senior citizen center boards (Op. Tenn. Atty. Gen. 84-310 (November 19, 1984)), and the board of directors of a preferred provider organization (PPO) that was a subsidiary of a county hospital district (*Souder v. Health Partners, Inc.*, 997 S.W.2d 140 (Tenn. Ct. App. 1998)).

The statute declares that a meeting occurs whenever a public body convenes for one of two purposes: to make a decision or to deliberate toward a decision. T.C.A. § 8-44-102(b)(2). Therefore, it is not necessary that a decision be reached before the Sunshine Law applies. The statute does state that a chance meeting between two or more members of a public body should not be considered a public meeting subject to the terms of the act. However, the same statute goes on to warn that chance meetings shall not be used to deliberate public business in circumvention of the spirit of the act. T.C.A. § 8-44-102. In the past, courts have held that informal assemblages of a governing body at which public business is discussed and deliberated, including informal telephone discussions between members of a governing body, fall under the Sunshine Law. See, e.g., *Littleton v. City of Kingston*, 1990 WL 198240 (Tenn. Ct. App. 1990). Because of how broadly the courts and the legislature have interpreted this act, the attorney general's office offered the following advice: "Two or more members of a governing body should not deliberate toward a decision or make a decision on public business without complying with the Open Meetings Act." Op. Tenn. Atty. Gen. 88-169 (Sept. 19, 1988). More recently, however, the Court of Appeals has taken a more narrow approach to what constitutes a "meeting" under the Act, holding that email communications between members of the Nashville Metropolitan Council, even emails copied to the entire council, did not constitute a "meeting" as defined in T.C.A. § 8-44-102(b)(2). According to the Court, "Even though several emails copied all members of the Council, the exchanges among the members do not reflect either an intentional or inadvertent 'convening ... for which a quorum is required'

for the purpose of making a decision." *Johnston v. Metropolitan Gov't of Nashville and Davidson County*, 320 S.W.3d 299 (Tenn. Ct. App. 2009), permission to appeal denied (Tenn. 2010). The Court found that some of the emails violated T.C.A. § 8-44-102(c), which prohibits electronic communications from being used to decide or deliberate public business in circumvention of the Act. In that same case, the Court held that council members gathering in a council meeting room for the purpose of obtaining information--the council members reviewed survey data and petitions and were able to ask questions of various persons involved in the matter at issue--did not constitute a "meeting" within the meaning of the Act.

Local governing bodies and school boards are authorized to communicate via electronic forums only if they follow the procedures set out in T.C.A. § 8-44-109, which requires that such body:

1. Ensures that the forum through which the electronic communications are conducted is available to the public at all times other than that necessary for technical maintenance or unforeseen technical limitations;
2. Provides adequate public notice of the governing body's intended use of the electronic communication forum;
3. Controls who may communicate through the forum;
4. Controls the archiving of the electronic communications to ensure that the electronic communications are publicly available for at least one (1) year after the date of the communication; provided, that access to the archived electronic communications is user-friendly for the public; and
5. Provides reasonable access for members of the public to view the forum at the local public library, the building where the governing body meets or other public building.

The statute also requires that prior to a governing body initially utilizing a forum to allow electronic communications by its members the governing body shall file a plan with the office of open records counsel. The governing body may not initiate the forum until it receives a report of compliance from the office of open records counsel.

The Sunshine Law does not apply to meetings pertaining to decisions that are to be made by a single public official. For example, if a decision is to be made by a county official acting alone, then meetings of a committee appointed to make recommendations to the county official regarding this decision would not fall under the Sunshine Law. See, e.g., *Metropolitan Air Research Testing Authority, Inc. v. Metropolitan Gov't*, 842 S.W.2d 611 (Tenn. Ct. App. 1992). Also, on-site inspections of any project or program are excluded from the definition of "meeting." T.C.A. § 8-44-102(b)(2).

Adequate Public Notice

Reference Number:
CTAS-2423

In order to meet the requirements of the Sunshine Law, "adequate public notice" must be given before all meetings to which the act applies. T.C.A. § 8-44-103. The statute does not elaborate on the requirements for this notice. The Tennessee Supreme Court considered the phrase "adequate public notice" as contained in the statute and observed, "We think it is impossible to formulate a general rule in regard to what the phrase 'adequate public notice' means. However . . . adequate public notice means adequate public notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public." *Memphis Publishing Co. v. City of Memphis*, 513 S.W.2d 511 (Tenn. 1974).

If the meeting is one that would not be expected to be of interest to the general public, the notice requirements may not be as stringent as if the issue is one that is expected to be of great public concern. For example, adequate public notice was found to have been given for a special meeting of a city council to hear the appeal of a police officer who had been dismissed, where the meeting had been advertised by posting notice inside city hall where water bills were paid and over the entrance to the police department and council room and on the bulletin board at the post office because this was a personnel matter involving one individual. *Kinser v. Town of Oliver Springs*, 880 S.W.2d 681 (Tenn. Ct. App. 1994). On the other hand, in *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. Ct. App. 1990), the court found that the issue of clustering students in the same grade at one school was of "pervasive importance" and "arguably the most important action taken by the Board in many years." The notice was held to have been inadequate under the circumstances because the public was not notified that clustering would be discussed. Even though at that time Tennessee law did not require notice of a regularly scheduled meeting include an agenda of the meeting, the court found that the importance of the clustering issue

required that the public be advised that it would be discussed at the meeting.

When faced with determining whether notice of a special meeting fairly informed the public under the totality of the circumstances, the Tennessee Court of Appeals outlined a three-prong test for "adequate public notice" of special meetings under the Sunshine Law, which includes the following: (1) Notice must be posted in a location where a member of the community could become aware of the notice, (2) the contents of the notice must reasonably describe the purpose of the meeting or the action to be taken, and (3) the notice must be posted at a time sufficiently in advance of the meeting to give citizens an opportunity to become aware of the meeting and to attend. *Englewood Citizens for Alternate B v. Town of Englewood*, 1999 WL 419710 (Tenn. Ct. App. 1999). In *Englewood*, the court noted that the town could provide adequate public notice by simply choosing reasonable public locations and posting notices at these locations on a consistent basis.

The notice requirements of the Sunshine Law are in addition to, and not in substitution for, any other notice that may be required by law. T.C.A. § 8-44-103(c). Meetings of county legislative bodies, for example, are also governed by the provisions of T.C.A. §§ 5-5-104 and -105, under which regular meetings must be set by resolution of the county legislative body, and special called meetings require newspaper notice at least five days prior to the meeting that contains the agenda for the meeting. When publishing notices in the newspaper, you should be aware that newspapers are now required to also publish the notices on their own websites as well as on a statewide website maintained by Tennessee newspapers at no extra charge. T.C.A. § 1-3-120.

Minutes of Meetings

Reference Number:

CTAS-2424

The minutes of meetings to which the Sunshine Law applies must be recorded and open to public inspection, and must contain a record of the persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of a roll call. T.C.A. § 8-44-104(a). Strict compliance with the statute is necessary. For example, the actions of a beer board denying a beer permit were invalidated because the minutes of the meeting did not contain the required information, and the court required the beer board to reconvene and consider anew the application for a beer permit in question. *Grace Fellowship Church of Loudon County, Inc. v. Lenoir City Beer Board*, 2002 WL 88874 (Tenn. Ct. App. 1/23/02).

Limited Exception for Attorney-Client Discussions

Reference Number:

CTAS-2425

In *Smith County Education Association v. Anderson*, 676 S.W.2d 328 (Tenn. 1984), the Tennessee Supreme Court recognized a narrow exception to the Sunshine Law for meetings between a public body and its attorney concerning pending litigation. The exception applies only to discussions between the members of the public body and the attorney; once any discussion begins among members of the public body as to what action should be taken based on the advice of counsel, those discussions must be open to the public.

The application of the exception in the Smith County case was limited to cases in which there was present and pending litigation and the public body was named in the lawsuit. In *Van Hoosier v. Warren County Board of Education*, 807 S.W.2d 230 (Tenn. 1991), the Tennessee Supreme Court extended the exception to a meeting of the board with its attorney regarding a pending controversy that was likely to result in litigation. See also *Baltrip v. Norris*, 23 S.W.3d 336 (Tenn. Ct. App. 2000)(school board's private meeting with attorney to discuss legal options concerning a pending charge of unprofessional conduct against a teacher did not violate the Open Meetings Act).

In summary, this narrow exception applies only to meetings between a public body and its attorney that meet the following criteria: (1) The meeting must concern litigation that has already been filed or that is likely to be filed and to which the county is or will be a party, and (2) the private meeting must be limited to discussions between the attorney and members of the public body regarding the public body's legal options, and no discussions between members of the public body as to what action should be taken can take place.

Electronic Communications Exceptions

Reference Number:

CTAS-2426

Members of county commissions and school boards may communicate with each other electronically on a forum over the internet without violating the sunshine law if the commission or board—

1. Ensures that the forum is open to the public at all times;
2. Provides public notice of its intended use of such forum;
3. Controls who may communicate on the forum;
4. Archives all communications and makes such publically available for at least a year; and
5. Provides reasonable access to members of the public to view such forum at the library, courthouse or other public building.

Prior to utilizing a forum for electronic communications by its members, the county commission or school board must file a plan with the office of open records counsel regarding how they plan to ensure compliance with all of the acts conditions and must receive notice from the office of open records counsel that such plan is sufficient. The forum cannot substitute for a meeting of the county commission or school board and no member shall receive a per diem for communicating on the forum. T.C.A. § 8-44-109.

County boards of education may allow a member to attend a scheduled board meeting by by electronic means if the member is absent due to work, family emergency, or military service, as long as the statutory requirements are met. T.C.A. § 49-2-203.

Penalties and Remedies for Noncompliance

Reference Number:

CTAS-2427

Any action taken at a meeting in violation of the Sunshine Law is void. T.C.A. § 8-44-105. While this provision does not forever bar a public body from subsequently ratifying an action taken in violation of the act, it does not allow a public body to ratify an action in a subsequent meeting by perfunctory affirmation of its earlier action. In order to remedy a violation of the Sunshine Law, however, the ultimate decision must be made at a meeting that satisfies the Sunshine Law and there must be new and substantial reconsideration of the issues involved. *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. Ct. App. 1990); *Johnston v. Metropolitan Gov't of Nashville and Davidson County*, 320 S.W.3d 299 (Tenn. Ct. App. 2009), permission to appeal denied (Tenn. 2010). Even if a subsequent meeting is held in compliance with the Sunshine Law, the ratification and confirmation of an action will not remedy a prior violation of the Sunshine Law if it is merely a "perfunctory rubber stamp." *Souder v. Health Partners, Inc.*, 997 S.W.2d 140 (Tenn. Ct. App. 1998).

Under the act, any citizen may bring an action in circuit court, chancery court, or any court of equity to enforce the Sunshine Law. These courts are given broad authority to issue injunctions, impose penalties, and otherwise enforce the purposes of the act. Courts are authorized to assess all or part of petitioners' costs, including attorneys' fees, against the governing body if the court finds the body willfully refused to comply with the open meetings act. In deciding whether the body's actions were willful, authorizes the court to consider the testimony and other guidance provided to the body by the office of open records counsel. T.C.A. § 8-44-106.

Questions concerning the application of this law may be referred to the county attorney or the CTAS staff.

Public Records Act

Reference Number:

CTAS-2428

Generally, county records must be open for personal inspection by any citizen of Tennessee during business hours of the various county offices. County officials in charge of these records may not refuse the right of any citizen to inspect them unless another statute specifically provides otherwise (T.C.A. § 10-7-503) or they are included in the list of specific records that are to be kept confidential under T.C.A. § 10-7-504 or some other legal authority. Information made confidential by Title 10, Chapter 7 must be redacted whenever possible. T.C.A. § 10-7-503(c)(2). In the event it is not practicable for a requested record to be promptly made available for inspection, the records custodian shall within seven business days: (i) make the record available; (ii) deny the request in writing stating the basis for the denial; or (iii) furnish the requestor a response form stating the time reasonably necessary to produce such record. T.C.A. § 10-7- 503(a)(2)(B).

The Office of Open Records Counsel, created in 2008, was charged with developing a schedule of reasonable charges which may be used as a guideline in establishing charges or fees, if any, to charge a citizen requesting copies of public records. On October 1, 2008, the Office of Open Records Counsel issued its Schedule of Reasonable Charges for Copies of Public Records. Records custodians are

authorized by T.C.A. § 10-7-503(a)(7)(C)(i) to charge reasonable costs consistent with the schedule. The schedule, together with instructions for records custodians, can be found on the website of the Office of Open Records Counsel. Charges established under separate legal authority are not governed by the schedule, and are not to be added to or combined with charges authorized under the schedule. Questions regarding the schedule should be directed to the Office of Open Records Counsel.

A citizen denied access to a public record is entitled to file a petition for inspection in the circuit court or the chancery court of the county in which the records are located, or in any other court of that county having equity jurisdiction. The county official denying access to the record has the burden of proof to justify the reason for nondisclosure. If the court directs disclosure, the county official shall not be held criminally or civilly liable for the release of the records, nor shall he or she be responsible for any damages caused by the release of the information. If the refusal to disclose the record is willful, the court may assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the county official. T.C.A. § 10-7-505.

For county governments, one important class of confidential records involves personal information of state, county, municipal, and other public employees. An employee's, including a former employee's, home telephone and personal cell phone numbers, bank account information, health savings account information, retirement account information, pension account information, Social Security number, residential address, driver's license information (except where driving is a part of the employee's job), and similar information for the employee's family and household members are confidential. Where this confidential information is part of a file or document that would otherwise be public information, such information shall be redacted if possible so that the public may still have access to the nonconfidential portion of the file or document. T.C.A. § 10-7-504(f) & (g).

In addition to creating a schedule of charges for records requests, the Office of Open Records Counsel has been charged with the duty to answer questions from and issue advisory opinions to public officials regarding public records. T.C.A. § 8-4-601. This office should be a valuable resource for questions on open records.

Retention Schedules

Reference Number:
CTAS-202

The County Technical Assistance Service, in cooperation with the Tennessee State Library and Archives and the Division of Records Management, is authorized to publish schedules which are to be used as guides by all county public records commissions, county offices, and judges of courts of record in determining which records should, can, and may not be destroyed. T.C.A. § 10-7-404. Those schedules are called the Retention Schedules. The retention schedules describe more than 650 different records series for multiple county offices. This material is organized by county office and by subject. Obviously CTAS recommends that all county public record commissions adopt these schedules as the basis for determining the disposition of county records in their county. When the schedules were developed, they were reviewed and revised by the legal and technical staff of CTAS, by the Division of County Audit in the office of the comptroller, by representatives of the Tennessee State Library and Archives and the Division of Records Management in the State Department of General Services, and by committees and groups of numerous county officials. The language of the statute says that county officials and records commissions shall use these schedules as "guides" in determining whether a record should be kept or destroyed. This does not mean that a County Public Records Commission can never deviate from the CTAS schedules. However, any decision to use a different retention period should be thoughtfully considered and the reasons well documented by the records commission. Any decision to destroy a record sooner than is recommended by the schedules certainly needs to be taken seriously. If your records commission decides that there is a significant reason why a record should be destroyed before the recommended retention period has elapsed, contact CTAS first to discuss the retention period and see if there is a reason why the recommended retention period in the manual should be shortened.

For additional information, see Appraisal and Disposition of Records, Tennessee Archives Management Advisory.

Financial and Tax Administration

Reference Number:
CTAS-464

There are three types of state laws applicable to the county financial function: general laws, general laws with local option application, and private acts for a specific county. The finance committees that exist in a county is dependent on the type of state law under which the county operates.

County Board of Equalization
County Budget Committee (County Budgeting Law of 1957)
County Financial Management Committee (County Financial Management Systems of 1981)
County Investment Committee
County Purchasing Commission (County Purchasing Law of 1957)

County Board of Sanitation

Reference Number:
CTAS-526

One of the options given to counties for management of solid waste operations is through a county board of sanitation. T.C.A. § 5-19-103. Such a board may be established by resolution of the county legislative body and consists of three members appointed by the county mayor subject to confirmation of the county legislative body. The members of this board serve for terms of three years except for the initial appointments for one, two and three years to create a staggered system. Members of this board may be compensated according to a resolution of the county legislative body. T.C.A. § 5-19-104. This board has general supervision and control of the acquisition, improvement, operation and maintenance of all solid waste collection and disposal systems operated by the county. If this board is established, then it appoints a superintendent to be in charge of daily solid waste management operations. T.C.A. § 5-19-105.

Write-In Candidates

Reference Number:
CTAS-864

Any person trying to receive a party nomination or be elected by write-in ballot must complete a notice to the county election commission of each county of the district requesting that his or her ballots be counted no later than 50 days before the primary or 50 days before a general election. T.C.A. §§ 2-7-133 and 2-8-113. The county election commission is required to promptly notify the state coordinator of elections and the registry of election finance as well as other candidates participating in the affected primary or election of the write-in notice. A write-in candidate will only have votes counted in counties where the notice was completed and timely filed. Write-in candidates for the offices of governor, United States Senator, and members of the United States House of Representatives are required to file their notice with the state coordinator of elections. In a primary election, a write-in candidate for that office must receive a vote equal to at least 5 percent of the total number of registered voters of the district, and receive more votes than any other candidate, to receive the party's nomination. T.C.A. § 2-8-113. Furthermore, a write-in candidate for county or municipal office must receive a minimum of 25 votes in the primary before being placed on the ballot for the general election, a requirement that cannot be modified by private act or charter. T.C.A. § 2-5-219. In an election where voting machines are used, a voter may write-in a name not listed on the ballot if the voter requests a paper ballot from the ballot judge before operating a voting machine. After receiving a paper ballot, a voter may not enter a voting machine. T.C.A. § 2-7-117.

A candidate defeated in a primary election shall not complete a notice requesting write-in ballots to be counted in the general election, and any write-in votes cast for the candidate in the general election must not be counted. T.C.A. § 2-7-133.

Jurisdiction of Circuit Court

Reference Number:
CTAS-490

The General Assembly may establish circuit courts, and may increase or diminish the jurisdiction. Tenn. Const., art. VI, §§ 1, 8. The court has general jurisdiction in all cases where jurisdiction is not conferred on another tribunal. T.C.A. § 16-10-101. The court may hear and determine suits of an equitable nature, if there is no objection, or may transfer such cases to the chancery court. If the circuit court chooses to hear an equity case, it must determine the case upon equity principles and may exercise equitable powers. T.C.A. § 16-10-111.

The circuit court has exclusive original jurisdiction in the following cases:

1. Correction of mistakes in deeds of conveyance of land or registration thereof. T.C.A. § 66-5-107;

2. Applications to restore citizenship by persons who have been rendered infamous by judgments of any court in the state. T.C.A. §§ 16-10-104, 40-29-101;
3. All matters relating to the seizure and destruction of intoxicating liquor if the circuit court has jurisdiction in a particular county over offenses against the state liquor laws. T.C.A. § 57-9-105;
4. Eminent domain cases and *in rem* eminent domain cases brought by the county, state, or United States. T.C.A. §§ 29-16-104, 29-17-701;
5. Motions to impose a \$500 forfeiture upon the county trustee for certain breaches of duty, and to impose liability on the trustee and the trustee's surety for breach of duty. T.C.A. § 8-11-106 through 8-11-108;
6. Writs of mandamus to enforce the performance of any duty made incumbent by law upon the county. T.C.A. § 5-1-107;
7. Suits to condemn land for the failure to pay taxes where personal property does not satisfy the distress warrant and where the sheriff has levied upon the real estate. T.C.A. §§ 67-4-110(c), 67-4-215(c);
8. Motions to proceed against any tax collector or other officer of the state who fails to collect taxes, who fails to pay over taxes received by him, or who commits any act of neglect, misprision, misfeasance, or malfeasance in office. T.C.A. §§ 67-1-1602(b), 67-1-1623(a); and
9. Petitions by the circuit court clerk, and the sheriff in counties without a separate criminal court, requesting authority to hire deputies or assistants. T.C.A. § 8-20-101.

Unless otherwise provided, the circuit court has appellate jurisdiction of all actions of any nature instituted before any inferior jurisdiction, whether brought by appeal, certiorari, or in any other manner prescribed by law. T.C.A. § 16-10-112. An appeal may be taken to the circuit court from the judgment of the general sessions court, city judge, recorder or other officer of a municipality. T.C.A. §§ 27-5-101, 27-5-108, 6-21-508. In 1996, the legislature amended Title 4, Chapter 21, to allow the circuit court to share jurisdiction with the chancery court over human rights actions. In 1997 the legislature also amended T.C.A. § 37-1-159 to give the circuit court appellate jurisdiction over unruly child proceedings and dependent and neglect proceedings heard in the juvenile court. In these cases, the circuit court shall try the case de novo.

Concurrent Jurisdiction of Circuit and Chancery Courts.

Reference Number:

CTAS-492

Chancery court has concurrent jurisdiction with circuit court to hear "all civil cases of action, triable in circuit court, except for unliquidated damages for injuries to person or character, and except for unliquidated damages for injuries to property not resulting from a breach of oral or written contract." T.C.A. § 16-11-102.

Trial Courts

Reference Number:

CTAS-474

Organization

The state trial courts are divided into 32 judicial districts. Circuit and chancery courts exist within each district, and some districts have separate criminal courts. Each judicial district selects a presiding judge who assigns cases to reduce delays, distributes the workload equitably, and promotes the orderly and efficient administration of justice in the district. T.C.A. § 16-2-509. The judges of each district must promulgate uniform rules of practice for that district. T.C.A. § 16-2-511. The administrative director of the courts maintains a list of the local rules. T.C.A. § 16-2-511.

The 1984 redistricting bill abolished the "terms of court." The minutes of all courts remain open continuously. T.C.A. § 16-2-510. Court is held within each judicial district at times set by the judges of that district and within each county in the district as needed to dispose of the court's business. T.C.A. § 16-2-510.

Circuit and chancery court judges are elected for an eight-year term by the voters of the district or circuit to which they are assigned. Tenn. Const., art. VI, § 4. A judge must be 30 years old, a Tennessee resident for five years, a resident of the circuit or district for one year (Tenn. Const., art. VI, § 4), licensed to

practice law in Tennessee, and eligible under the general standards to hold public office. T.C.A. §§ 17-1-106, 8-18-101.

To facilitate the handling of cases, any judge or chancellor may exercise by interchange, appointment, or designation the jurisdiction of any trial court other than that to which he was elected or appointed. T.C.A. § 16-2-502. Legislation passed in 1997 provided that any judge sitting by interchange has the same immunity as the judge he or she is replacing and that the state or county must provide the same defense, if necessary, for the substituting judge. T.C.A. § 16-1-114.

The Tennessee Constitution provides in Article VI, Section 13 that chancellors appoint the clerk and master for a six-year term and that clerks of other inferior courts are elected for a four-year term. Clerks of court act as the principal administrative aides to the courts. Additional information about Clerks of Court can be found under County Offices.

Jurisdiction of Criminal Courts

Reference Number:
CTAS-493

The circuit courts have "exclusive original jurisdiction of all crimes and misdemeanors, either at common law or by statute, unless otherwise expressly provided by statute." T.C.A. § 16-10-102. The criminal and circuit courts have "original jurisdiction of all criminal matters not exclusively conferred by law on some other tribunal." T.C.A. § 40-1-108.

In addition to their original jurisdiction over felonies and misdemeanors, criminal courts have exclusive jurisdiction over special crime-related matters and noncriminal matters, including all matters relating to the seizure and destruction of intoxicating liquors when an offense against a state liquor law has been committed. T.C.A. § 57-9-105. Criminal court judges possess magistrate powers and may issue warrants for the arrest of a person charged with a public offense. T.C.A. §§ 40-5-101, 40-5-102.

Unless otherwise provided, the circuit courts have appellate jurisdiction in all criminal cases and actions originally tried in inferior courts "whether brought by appeal, certiorari, or in any other manner prescribed by law." T.C.A. § 16-10-112. Criminal courts have authority to grant extraordinary relief in appeals from courts of inferior jurisdiction. *Franks v. State*, 565 S.W.2d 36 (Tenn. Crim. App. 1977).

Criminal courts were also granted appellate jurisdiction over delinquency proceedings in the juvenile court by amendments to T.C.A. § 37-1-159 passed in 1997. These appeals are tried de novo by the criminal court.

Airport Zoning Board of Appeals

Reference Number:
CTAS-514

Counties with airport zoning must have a board of airport zoning appeals, or the county legislative body must designate the board of zoning appeals created under Title 13, Chapter 7, of the Tennessee Code or by private or other local act to hear appeals from airport zoning resolutions or ordinances. If an airport zoning board of appeals is created by resolution of the county legislative body, then the county legislative body specifies whether the board will have three or five members and the mode of appointment of members and their terms, but the terms must be arranged so that the term of one member expires each year. The county legislative body also determines the compensation, procedure and extent of jurisdiction consistent with state law. Appeals to this board may be made by any person aggrieved under airport zoning resolutions or ordinances, such as by alleged errors made by the building commissioner in denying a building permit. Also, the board may authorize a variance in an airport zoning resolution or ordinance in cases of exceptional hardship when this can be done without substantially impairing the intent and purpose of the zoning plan and may condition the a permit for a variance. T.C.A. § 42-6-108 *et seq.*

Private Act Approvals-CLB

Reference Number:
CTAS-17

Private acts of the General Assembly are a source of authority for counties in areas not covered by the general law. Examples of private acts include those levying hotel/motel taxes and development taxes as there is no general law authority for counties to levy these particular taxes. Under Article XI, Section 9, of the Tennessee Constitution, private acts are not effective until approved locally by the county (or city) to which they apply by the terms of the private act. Local approval of a private act for a particular county can occur by a majority vote in a referendum by the qualified voters of the county who vote in the

referendum, or by a two-thirds majority vote of the county legislative body. The method of local approval must be specified in the private act. Sometimes private acts provide that they must be approved by a certain date or they will not become effective. However, if there is not a deadline for local approval in the private act, general law requires that approval take place by December 1 in the year that the private act passed the General Assembly. The approval or rejection of a private act that requires approval by two-thirds vote of the county legislative body is certified by the chair of the county legislative body to the secretary of state of Tennessee.

The county legislative body may request by resolution that members of the General Assembly representing the people of the county introduce and work for the passage of a particular private act. Such a resolution has no legal effect, but members of the General Assembly prefer to see such a resolution, particularly if passed by the number of votes that will be necessary to approve the private act, before they introduce the private act bill. However, members of the General Assembly are under no legal obligation to introduce the requested private act bill. Further, although this rarely occurs, they may introduce and work for the passage of a private act bill that provides for referendum approval against the wishes of the county legislative body.

General Sessions Court

Reference Number:

CTAS-494

General sessions court judges must be 30 years old, a Tennessee resident for five years, a resident of the county for one year, and licensed to practice law in Tennessee. T.C.A. §§ 16-15-201, 16-15-5005, Tenn. Const., art. VI, § 4. A judge is elected to an eight-year-term. T.C.A. § 16-15-202. A non-attorney may serve as a general sessions judge only in very limited situations. T.C.A. § 16-15-5005. A county legislative body may not establish and fund additional part-time general sessions judges. The code simply allows private acts that would establish part-time general sessions judges in class 1, 2 or 3 counties. Op. Tenn. Att'y Gen. 93-52 (August 9, 1993). The circuit court clerk acts as a general sessions clerk, unless a separate clerk is created by a private act. T.C.A. § 16-15-301.

Salaries are set by general law according to population class, which differs from the population class set forth for county officials. Judges in certain classes may receive additional compensation for additional jurisdiction. However, no general sessions judge shall receive a salary greater than that of a circuit judge. T.C.A. § 16-15-5003. While annual salary adjustments are built into the law, the general salary structure for judges may not be altered during their term. Tenn. Const., art. VI, § 7. A new term began September 1, 2006.

The compensation of the judges of courts of general sessions is determined by the administrative office of the courts (AOC) in accordance with the provisions of T.C.A. § 16-15-5003, as amended by 2006 Public Chapter 957. On September 1, 2006, each judge received an increase in the amount of \$10,000 or 20% of their total annual compensation as of August 31, 2006, whichever is less, and the compensation of judges in each population classification were to be equalized in accordance with their jurisdictional supplements. In Class 1 the equalization is accomplished by raising the compensation of all judges to the salary of the highest paid judge in Class 1 who is paid under this general law. In Classes 2-7, judges with maximum supplements are raised to the compensation of the highest paid judge in that class with maximum supplements, and all other judges are grouped by jurisdiction and paid the same as the highest paid judge with the same jurisdiction in the same population class. On or before July 15, 2006, each general sessions judge was required to certify to the AOC the total amount of compensation received by the judge as of August 31, 2006, the jurisdictions exercised by such judge and the legal basis therefor, and whether the judge is compensated under the general law or a private act. The AOC thereupon reported to each judge the amount of compensation to be paid to such judge beginning September 1, 2006.

A county, by public or private act in effect on September 1, 2006, may compensate its judges in excess of the amount required under T.C.A. § 16-15-5003 (but not above state judges), but a judge is not to receive compensation based both on this general law and a private act or other public act. No judge is to be paid a salary reflecting jurisdictional supplements the judge is not entitled to exercise. No general sessions judge who engages in the private practice of law will receive any increase under this law if such judge is prohibited by law from engaging in private practice. Judges in Knox County are compensated the same as those in Davidson County under a special provision in this law. T.C.A. § 16-15-5003.

Article XI, Section 9: Limitation on Power Over Local Affairs

Reference Number:

CTAS-6

The General Assembly has no power to pass a special, local, or private act that would remove an incumbent from any municipal or county office, change the term of office, or alter the salary of the office until the end of the current term. Any act of the General Assembly that is private or local in form or effect, applicable to a particular county, must require within the terms of the act either approval by a two-thirds vote of the county legislative body or approval by the people of the county in a referendum.

Article XI, Section 9, also provides for optional consolidation of municipal and county government. Such a consolidation must be approved by vote of those residents within the municipality as well as those who reside in the county outside the municipal corporation to be consolidated with the county government.

The County Beer Board

Reference Number:

CTAS-338

The county legislative body may, but is not required to, appoint a committee (known as the "beer board") to administer the laws relating to the sale of beer in the county. If the county legislative body does not appoint a beer board, the county legislative body acts as the beer board. The beer board is authorized to act on behalf of the county in all matters relative to the administration of the beer laws. However, the county legislative body retains the sole authority to adopt distance rules or to extend hours for the sale of beer. T.C.A. § 57-5-105. A county beer board has the same discretionary power in the issuance and revocation of beer permits as the county legislative body which appoints it. Attorney General Opinion 82-325 (6/24/82). Sample resolution establishing a beer board.

Designation of Zones

Reference Number:

CTAS-591

T.C.A. § 6-58-104(a)(2) specifies that the comprehensive growth plan must identify the following three (3) types of areas if they exist within the county:

1. Urban Growth Boundary (UGB) - a reasonably compact area that contains the corporate limits of a municipality and the adjoining territory where high density commercial, industrial, or residential growth is expected.
2. Planned Growth Area (PGA) - compact sections outside incorporated municipalities and outside growth boundaries where high or moderate density growth is expected, if there are such areas in the county; new incorporations may occur only within these regions. A county has authority to provide services within a PGA and to set a separate tax rate for these services.
3. Rural Area (RA) - territory that is not within another zone and that is to be preserved for uses other than high density development.

Several factors must be taken into account in determining the boundaries of these three (3) areas:

1. Population growth projections, to be developed in conjunction with the University of Tennessee;
2. Current and projected costs of infrastructure, urban services, and public facilities needed for development and methods to finance these needs;
3. The need for additional land area for high density development, after considering the feasibility of redeveloping all sites within the current boundaries;
4. The effect of development upon agricultural land, forests, recreational areas and wildlife management areas; and
5. The likelihood of eventual incorporation into a municipality.

T.C.A. § 6-58-106(a).

County Government under the Tennessee Constitution

Reference Number:

CTAS-443

Under the Tennessee Constitution, counties are an extension of the state and are deemed political subdivisions of the state created in the exercise of its sovereign power to carry out the policy of the state. Counties, as the creation of the state, are subject to control by Tennessee's legislature, known as the General Assembly. Although the General Assembly has very broad powers to deal with county

government, the state's constitution places some limitation on its discretion regarding counties.

A long line of Tennessee Supreme Court case law has held that counties have no authority except that expressly given them by statute or necessarily implied from it. *Bayless v. Knox County*, 286 S.W.2d 579 (Tenn. 1955). Although statutes are the primary source of county authority, the Tennessee Constitution does contain a few provisions specifically addressed to county government. Counties have only the implied power to do acts necessary to enable them to exercise their expressed powers or to accomplish the objectives for which they were created.

Annexation

Reference Number:
CTAS-598

In 2014, the law on annexation was substantially revised. Public Chapter 707 made several significant changes to the methods used by municipalities to annex unincorporated territory. Under Public Chapter 707, municipalities may no longer annex by ordinance and may only annex by resolution pursuant to T.C.A. 6-51-104, which generally requires written consent of the affected property owners or approval by referendum. No annexations by resolution of property being used primarily for agriculture will be permitted unless written consent of the property owners is obtained. Municipalities may, by resolution, propose annexation of territory that does not adjoin the boundary of the main part of the municipality if the territory is within the urban growth boundary and is either to be used for industrial, commercial or residential purposes in the future or owned by a governmental entity. Such resolution can only be ratified with written consent of the property owners. T.C.A. § 6-51-104.

Municipalities are required to send a copy of the resolution describing the territory proposed for annexation to the property owners within the territory, adjoining property owners, the county mayor, and the county commissioners whose district includes the territory. Municipalities are also required to post and provide newspaper notice of the resolution. Additionally, municipalities must submit the plan of services to the local planning commission if one exists. The planning commission must study and compile a written report on the plan of services and hold a public hearing on the plan. T.C.A. §§ 6-51-102, 104.

A municipality may expand its urban growth boundaries to annex a tract of land without reconvening the coordinating committee or receiving approval from the county or any other municipality if: (1) The tract is contiguous to a tract of land that has the same owner and has already been annexed by the municipality; (2) The tract is being provided water and sewer services; and (3) The owner of the tract, by notarized petition, consents to being included within the urban growth boundaries of the municipality. T.C.A. § 6-58-118.

Finally, counties having a metropolitan form of government will be permitted to expand their urban services districts using any method authorized by their charter. This includes methods in general law which are referenced in the charter and which were applicable at the time the charter or charter amendment was approved. T.C.A. § 6-51-123.

County Surveyor

Reference Number:
CTAS-459

The legislative body elects the county surveyor at its January session for a four-year term. T.C.A. § 8-12-101. The surveyor must take an oath of office and enter into a \$2,000 bond. T.C.A. § 8-12-102. The legislative body may fix the compensation of the surveyor, his chain bearers and markers where the fees are not already established by law. T.C.A. § 8-12-107. The surveyor may appoint two deputies who must take the surveyor's oath of office; appointment takes place before the legislative body. T.C.A. § 8-12-104. The surveyor must maintain all office records in the county seat. T.C.A. § 8-12-103.

County Library Board

Reference Number:
CTAS-463

The county legislative body may establish a county library board consisting of seven (7), nine (9) or eleven (11) members. Not more than one (1) county official shall serve on this board. The members shall serve without salary, at least three (3) for one (1) year, two (2) for two (2) years, and two (2) for three (3) years. If the board expands to more than seven (7) members, the additional members shall be appointed by the county legislative body to terms of one (1), two (2) or three (3) years. All successors shall serve for terms of three (3) years. Board members may serve two (2) consecutive terms and may be reappointed after a minimum three-year break in service. Joint library boards with one or more other

counties or municipalities may be formed by agreement of the governing bodies of the participating local governments. The members of such joint boards are appointed by the governing bodies of the participating local governments in accordance with the ratio of population in each participating municipality and in the county outside the participating municipality or alternatively, according to a contract providing otherwise or a private act. Counties and cities with populations over four hundred thousand (400,000) may, by 2/3 majority vote, vest supervisory authority over the public library system with the mayor. T.C.A. § 10-3-103. The library board directs the affairs of the library system, including the appointment of a library administrator. The library administrator directs the internal affairs of the library, including hiring and directing such assistants as may be necessary. T.C.A. § 10-3-104.

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