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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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.

County Offices-General Information

Reference Number: CTAS-28
The following pages contain information applicable to county offices in general. Office-specific information is covered under the individual office headings.

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 unless 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.


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
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
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.

Insurance as a Substitute for Bonds

Reference Number: CTAS-2205

Counties are authorized to purchase insurance policies in place of bonds for both officials and employees. Purchase of such insurance policies is purely optional and at the discretion of the county legislative body. The county legislative body can opt to cover all or some of the county's officials and employees using
insurance rather than bonds.

Under the amended law, codified at T.C.A. § 8-19-101, should a county choose to purchase insurance, the insurance policy must provide minimum coverage of $400,000 per occurrence and provide government crime coverage, employee dishonesty insurance coverage, or equivalent coverage that insures the lawful performance by officials and their employees of their fiduciary duties and responsibilities. Each covered official or office must be listed in the policy. A policy of insurance is deemed to be a blanket official bond for each office and official identified in the policy. A certificate of insurance, a policy or an endorsement must be recorded in the register's office and then filed with the county clerk.

In the event that the policy of insurance maintained by the county ceases to provide coverage to the officeholder for any reason, the officeholder has thirty (30) days from the date of termination of coverage to file a bond or other proof of insurance coverage.

Other entities are authorized to obtain insurance policies in lieu of bonds under various statutes. For example, development districts may opt to obtain insurance under T.C.A. § 13-14-114(a).

Choosing the insurance option does not affect the liability limits provided in the Tennessee Governmental Tort Liability Act.

**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.

Association Dues

Reference Number: CTAS-660
The county legislative body is authorized to appropriate funds for dues to associations of particular county
officeholders or associations made up of groups of officeholders. If the county legislative body
appropriates funds for dues for the county mayor, county highway superintendent, or members of the
county legislative body, then the county legislative body is required to appropriate an amount sufficient to
pay the annual dues in at least one association, up to one hundred dollars ($100.00), for the assessor of
property, county clerk, state court clerks, sheriff, register of deeds, and trustee upon their request. The
county legislative body is authorized to appropriate more than one hundred dollars ($100.00), in its
discretion. None of the money appropriated can be used for lobbying activities (as defined in T.C.A.
§ 3-6-102) for the purpose of influencing legislation relative to benefits or salaries of the association’s
members. T.C.A. § 5-9-111.

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.

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
registrars 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.

Expense Accounts

Reference Number: CTAS-745
The county legislative body may (or may not) by resolution elect to pay the expenses of salaried officials, and may promulgate rules specifying how expenses will be reimbursed and what expenses are reimbursable. In counties providing reimbursement, the county mayor prescribes forms, examines expense reports or vouchers to assure items are legally reimbursable and properly filed, and forwards proper expense reports to the disbursing officer (usually the trustee) for payment. In counties with populations of one hundred thousand (100,000) or more, salaried county officials must be reimbursed for the actual expenses incurred as an incident to holding office, including but not limited to lodging while away on official business and travel on official business, both within and outside the county. The county legislative body in these counties may, by resolution, determine what other expenses are reimbursable. T.C.A. § 8-26-112.

Before any expenses can be reimbursed, the official must submit accurate, itemized expense accounts, showing the date and amount of each item and the purpose for which the item was expended. The official must also take an oath stating that the expense account is correct and that it was actually incurred in the performance of an official duty. Receipts should be obtained and attached to the expense voucher whenever practical; vouchers are required to be numbered and referred to by number. T.C.A. § 8-26-109. Making a false oath on an expense account is perjury. T.C.A. § 8-26-111.

Automobiles. Counties are authorized to provide automobiles or monthly car allowances to any salaried county official who is paid from county funds and who holds office by election of the people, by election of the county legislative body, or by election of any other county board or commission, and any clerk or master appointed by a chancellor. T.C.A. § 8-26-113.

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:

<table>
<thead>
<tr>
<th>Class</th>
<th>Daily Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Third class (50,000-150,000)</td>
<td>$35</td>
</tr>
<tr>
<td>Sixth class (5,500-12,000)</td>
<td>$20</td>
</tr>
<tr>
<td>Fourth class (23,300-50,000)</td>
<td>$30</td>
</tr>
<tr>
<td>Seventh class (3,770-5,500)</td>
<td>$20</td>
</tr>
<tr>
<td>Fifth class (12,000-23,300)</td>
<td>$25</td>
</tr>
<tr>
<td>Eighth class (under 3,770)</td>
<td>$20</td>
</tr>
</tbody>
</table>

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.

Duties of the Chairperson (or Chairperson Pro Tempore)

Reference Number: CTAS-756

The chairperson of the county commission is required to preside over the sessions of the county commission. T.C.A. § 5-5-103. A chairperson “holds over” and is the presiding officer until his or her successor is duly elected. Op.Tenn. Atty Gen. 86-162 (September 15, 1986). Generally, the chairperson’s duties include the following:

1. Opening the session at the proper time by taking the chair and calling the members to order; announcing the business before the body in the order it is to be acted upon; stating and putting to vote all motions, resolutions, amendments or other questions which lawfully come before the body; and announcing the results of the vote.
2. Keeping order, recognizing each member's right to speak on an issue and assigning the floor to those properly entitled to it.
3. Assuring only one main motion or resolution is entertained at a time and disallowing debate on the issue until the motion has been properly seconded and announced.
4. Being fair and impartial while presiding and refraining from discussion on issues; being courteous to those whose views differ from the chairperson’s.
5. Surrendering the chair prior to taking part in debate.
6. Voting if a member of the body; voting only to break a tie vote if a county mayor chairperson.
7. Performing other duties pursuant to procedure adopted by resolution of the body.

When the chair steps down to participate in debate, she/he cannot return to the chair until the issue is disposed of in some manner. It is always improper for the chair to voice an opinion or debate the pending issue while acting as chair. The chair can answer questions, refer questions to the maker of the motion, rule on parliamentary questions, etc., during the debate of any issue.
If the chairperson is unable or fails to attend a meeting of the county commission, it is the duty of the chairperson pro tempore to discharge the duties of the office of chair. If neither the chairperson nor the chairperson pro tempore is present, the county commission appoints a temporary chairperson pro tempore to preside over the meeting. T.C.A. § 5-5-103.

If the county mayor is absent or intends to be absent for more than 21 days, or is incapacitated or unable to perform the duties of the office, the county commission will appoint the chair to serve until the county mayor is no longer absent or disabled. When the chairperson is serving as county mayor, the chair pro tempore presides over the county commission. T.C.A. § 5-5-103.

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.

The Agenda

Reference Number: CTAS-663

The order of business, or the framework for a specific meeting of the county legislative body, is contained in an agenda. Some counties adopt a permanent order of business. If no order of business is established, the chair could decide what order to follow. An agenda, following the adopted order of business, relates to the specific meeting of the body. The agenda is a listing, in order, of the business to be considered at the meeting. The agenda is usually set by the chairman based on information from members and committee chairmen. In some counties, another method of setting the agenda may be established by local rule, e.g. the agenda may be set prior to the meeting by a workshop or small meeting. The county clerk, the county mayor, and citizens may also request that items be placed on the agenda.

Members of the county legislative body should have a copy of the proposed agenda, supporting information, and copies of the minutes of the previous meeting prior to the meeting of the body. Having these materials in advance allows members an opportunity prior to the meeting date to seek answers to questions on topics to be considered at the meeting. Receiving an advance copy of the agenda facilitates the smooth operation of meetings of the county legislative body and, since the members are better informed, fewer items may need to be deferred until the next meeting for further study, and meetings
may also be shorter. The county commission can ensure that its members receive copies of the agenda prior to the meeting by making such a requirement a part of the local rules. Also, some county commissions, by local rule, require a two-thirds vote to amend the agenda to include a new item of business that has not been provided in advance to the county commissioners once the agenda has been adopted following the procedure established for adoption of the agenda.

County clerks may be asked to prepare the agenda. A typical Sample Agenda would be:

1. Call to order by chair.
2. Roll call by county clerk.
3. Approval of agenda (if needed).
4. Reading and approval of the minutes from previous meeting.
5. Resolutions for special recognition.
7. Reports, county officials, standing, and special committees.
8. Unfinished business.
10. Announcements and statements.
11. Adjournment.

In some counties, by locally adopted rule, the county legislative body may have some time set aside on the agenda to take public comments. Often this is done before or after the other items on the agenda are dealt with.

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.

Sample Meeting Transcript

Reference Number: CTAS-2191
Using the sample agenda, the following is a sample transcript of a meeting that has 19 members and a regular member is serving as chair.

Meeting of CTAS County Commission-Transcript of Dialogue

Chairman Wormsley (at the proper time and place, after taking the chair and striking the gavel on the table): This meeting of the CTAS County Commission will come to order. Clerk please call the role. (Ensure that a majority of the members are present.)
Chairman Wormsley: Each of you has received the agenda. I will entertain a motion that the agenda be approved.

Commissioner Brown: So moved.

Commissioner Hobbs: Seconded

Chairman Wormsley: It has been moved and seconded that the agenda be approved as received by the members. All those in favor signify by saying "Aye"?...Opposed by saying "No"?...The agenda is approved. You have received a copy of the minutes of the last meeting. Are there any corrections or additions to the meeting?

Commissioner McCroskey: Mister Chairman, my name has been omitted from the Special Committee on Indigent Care.

Chairman Wormsley: Thank you. If there are no objections, the minutes will be corrected to include the name of Commissioner McCroskey. Will the clerk please make this correction. Any further corrections? Seeing none, without objection the minutes will stand approved as read. (This is sort of a short cut way that is commonly used for approval of minutes and/or the agenda rather than requiring a motion and second.)

Chairman Wormsley: Commissioner Adkins, the first item on the agenda is yours.

Commissioner Adkins: Mister Chairman, I would like to make a motion to approve the resolution taking money from the Data Processing Reserve Account in the County Clerk's office and moving it to the equipment line to purchase a laptop computer.

Commissioner Carmical: I second the motion.

Chairman Wormsley: This resolution has a motion and second. Will the clerk please take the vote.

Chairman Wormsley: The resolution passes. We will now take up old business. At our last meeting, Commissioner McKee, your motion to sell property near the airport was deferred to this meeting. You are recognized.

Commissioner McKee: I move to withdraw that motion.

Chairman Wormsley: Commissioner McKee has moved to withdraw his motion to sell property near the airport. Seeing no objection, this motion is withdrawn. The next item on the agenda is Commissioner Rodgers'.

Commissioner Rodgers: I move adoption of the resolution previously provided to each of you to increase the state match local litigation tax in circuit, chancery, and criminal courts to the maximum amounts permissible. This resolution calls for the increases to go to the general fund.

Chairman Wormsley: Commissioner Duckett

Commissioner Duckett: The sheriff is opposed to this increase.

Chairman Wormsley: Commissioner, you are out of order because this motion has not been seconded as needed before the floor is open for discussion or debate. Discussion will begin after we have a second. Is there a second?

Commissioner Reinhart: For purposes of discussion, I second the motion.

Chairman Wormsley: Commissioner Rodgers is recognized.

Commissioner Rodgers: (Speaks about the data on collections, handing out all sorts of numerical figures regarding the litigation tax, and the county's need for additional revenue.)

Chairman Wormsley: Commissioner Duckett

Commissioner Duckett: I move an amendment to the motion to require 25 percent of the proceeds from the increase in the tax on criminal cases go to fund the sheriff's department.

Chairman Wormsley: Commissioner Malone

Commissioner Malone: I second the amendment.

Chairman Wormsley: A motion has been made and seconded to amend the motion to increase the state match local litigation taxes to the maximum amounts to require 25 percent of the proceeds from the increase in the tax on criminal cases in courts of record going to fund the sheriff's department. Any discussion? Will all those in favor please raise your hand? All those opposed please raise your hand. The amendment carries 17-2. We are now on the motion as amended. Any further discussion?

Commissioner Headrick: Does this require a two-thirds vote?
Chairman Wormsley: Will the county attorney answer that question?
County Attorney Fults: Since these are only courts of record, a majority vote will pass it. The two-thirds requirement is for the general sessions taxes.
Chairman Wormsley: Other questions or discussion? Commissioner Adams.
Commissioner Adams: Move for a roll call vote.
Commissioner Crenshaw: Second
Chairman Wormsley: The motion has been made and seconded that the state match local litigation taxes be increased to the maximum amounts allowed by law with 25 percent of the proceeds from the increase in the tax on criminal cases in courts of record going to fund the sheriff's department. Will all those in favor please vote as the clerk calls your name, those in favor vote "aye," those against vote "no." Nine votes for, nine votes against, one not voting. The increase fails. We are now on new business.
Commissioner Adkins, the first item on the agenda is yours.
Commissioner Adkins: Each of you has previously received a copy of a resolution to increase the wheel tax by $10 to make up the state cut in education funding. I move adoption of this resolution.
Chairman Wormsley: Commissioner Thompson
Commissioner Thompson: I second.
Chairman Wormsley: It has been properly moved and seconded that a resolution increasing the wheel tax by $10 to make up the state cut in education funding be passed. Any discussion? (At this point numerous county commissioners speak for and against increasing the wheel tax and making up the education cuts. This is the first time this resolution is under consideration.) Commissioner Hayes is recognized.
Commissioner Hayes: I move previous question.
Commissioner Crenshaw: Second.
Chairman Wormsley: Previous question has been moved and seconded. As you know, a motion for previous question, if passed by a two-thirds vote, will cut off further debate and require us to vote yes or no on the resolution before us. You should vote for this motion if you wish to cut off further debate of the wheel tax increase at this point. Will all those in favor of previous question please raise your hand? Will all those against please raise your hand? The vote is 17-2. Previous question passes. We are now on the motion to increase the wheel tax by $10 to make up the state cut in education funding. Will all those in favor please raise your hand? Will all those against please raise your hand? The vote is 17-2. This increase passes on first passage. Is there any other new business? Since no member is seeking recognition, are there announcements? Commissioner Hailey.
Commissioner Hailey: There will be a meeting of the Budget Committee to look at solid waste funding recommendations on Tuesday, July 16 at noon here in this room.
Chairman Wormsley: Any other announcements? The next meeting of this body will be Monday, August 19 at 7 p.m., here in this room. Commissioner Carmical.
Commissioner Carmical: There will be a chili supper at County Elementary School on August 16 at 6:30 p.m. Everyone is invited.
Chairman Wormsley: Commissioner Austin.
Commissioner Austin: Move adjournment.
Commissioner Garland: Second.
Chairman Wormsley: Without objection, the meeting will stand adjourned.

Voting

Reference Number: CTAS-661
There are many methods of taking votes. Those most often used are: voice, roll call vote, raising the right hand, rising, or "aye" or "no." Many groups use ballot voting, but it must be remembered that secret votes are prohibited in meetings of the county legislative body. All votes must be a public vote. T.C.A § 8-44-104. There are no provisions in the law allowing voting by proxy.
For voice voting, the following form is very common: “It has been moved and seconded that: (state the question). As many as are in favor of the motion say aye,” and after the affirmative voice is expressed, “those who are opposed say nay or no.” The same type of language is used when calling for a vote by show of hands or asking the membership to rise to express their votes.
When a voice vote is taken, the chair should announce the results in the following form: “The motion or resolution is carried - the motion or resolution is adopted.” If, when the results are announced, any member doubts the vote, that member may call for a “division.” The chair will announce that “a division is called for” and the vote will be verified by a roll call or a show of hands. Votes will be counted and the results announced.

Another type of voting is called voting by “yeas” and “nays.” In this method, the chair states both sides of the question at once. The County Clerk then calls the roll and each member answers yes or no. Each member's vote on the issue is recorded by the member's name and the total affirmative and negative vote is counted and the results are announced by the chair.

A roll call vote is required when the county legislative body is making an appropriation of money. T.C.A. § 5-9-302.

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.

<table>
<thead>
<tr>
<th>Number of Members</th>
<th>9</th>
<th>10</th>
<th>11</th>
<th>12</th>
<th>13</th>
<th>14</th>
<th>15</th>
<th>16</th>
<th>17</th>
<th>18</th>
<th>19</th>
<th>20</th>
<th>21</th>
<th>22</th>
<th>23</th>
<th>24</th>
<th>25</th>
</tr>
</thead>
<tbody>
<tr>
<td>Majority</td>
<td>5</td>
<td>6</td>
<td>6</td>
<td>7</td>
<td>7</td>
<td>8</td>
<td>8</td>
<td>9</td>
<td>9</td>
<td>10</td>
<td>10</td>
<td>11</td>
<td>11</td>
<td>12</td>
<td>12</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>Two-Thirds</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>8</td>
<td>9</td>
<td>9</td>
<td>10</td>
<td>10</td>
<td>11</td>
<td>12</td>
<td>12</td>
<td>13</td>
<td>14</td>
<td>14</td>
<td>15</td>
<td>16</td>
<td>16</td>
</tr>
</tbody>
</table>

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.

Types of Motions

Reference Number: CTAS-2192

Review the following chart to learn about the different types of motions. Motions that are not debatable are immediately put to a vote.
<table>
<thead>
<tr>
<th>Motion</th>
<th>Second Needed?</th>
<th>Debate or Discussion?</th>
<th>Amendable?</th>
<th>Majority or Two-Thirds Vote?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main Motion — Present business to the body. Only one main motion can be considered at a time.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority, except when two-thirds is required by law.</td>
</tr>
<tr>
<td>Subsidiary Motions — These motions are not questions before the body by themselves but relate to a main motion (or resolution) that is before the body. They may be made after the main motion and must be dealt with before voting on the main motion to which it relates. Yields to privileged and incidental motions. Listed in order of rank (meaning a motion of higher rank can always be entertained while a lower rank motion is pending, but not vice versa; there can be more than one subsidiary motion at a time— for example, a motion to amend a main motion, or an amendment, may be “tabled”).</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
</tr>
<tr>
<td>Table (Is immediately put to a vote; if not taken from the table in the same meeting, the motion is dead; generally used as an attempt to kill a motion.)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
</tr>
<tr>
<td>Previous question call for a vote, close debate (This motion is to cut off debate and force a vote on the issue.)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Two-thirds (Remember, this is under Robert’s Rules; local rules may only require a majority.)</td>
</tr>
<tr>
<td>Limit or extend debate (Limit discussion to a certain time.)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Two-thirds (Remember, this is under Robert’s Rules; local rules may only require a majority.)</td>
</tr>
<tr>
<td>Postpone to a certain time</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
</tr>
<tr>
<td>Amend a main motion (If adopted, the chairman should restate the main motion, as amended before the vote.)</td>
<td>Yes, but debate should be confined to the amendment</td>
<td>Yes, but only once (Amendments to a main motion can be amended, but an amendment to an amendment cannot be amended.)</td>
<td>Majority</td>
<td></td>
</tr>
<tr>
<td>Postpone indefinitely</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
</tr>
</tbody>
</table>

Incidental Motions — These motions are of no special rank, but yield to privileged motions meaning that if one of these motions is before the body and one of the privileged motions listed below is made, the privileged motion will have to be voted on or withdrawn before the body can proceed to consider these incidental motions. Otherwise, these motions are dealt with as they arise and take precedence over subsidiary motions.

Point of order (A member may interrupt the speaker who has the floor for this motion); the chair deals with this motion.

Withdraw a motion | No | No | No | Majority (However no vote is taken unless there is an objection to the withdrawal.)
Suspend the rules (To allow the county commission to violate its own rules; the rules should provide the method for “suspending the rules.”) | Yes | No | No | Two-thirds (Remember, this is under Robert’s Rules; local rules may only require a majority.)
Method of voting | Yes | No | Yes | Majority
Request for information; the chair deals with this motion.

Question of quorum; the chair deals with this motion.

Privileged Motions-These motions take precedence over other motions and are allowed to interrupt the considerations of other business. When privileged motions are not interrupting other business, they are main motions.

Fix time to adjourn  Yes  No  Yes  Majority

Adjourn  Yes  No  No  Majority

Recess  Yes  No  Yes  Majority

Raise question of privilege (To bring up an urgent matter such as noise, discomfort, etc.); the chair deals with this motion.

Call for orders of the day (Keep the meeting to the order of business or agenda that is adopted); the chair deals with this motion.

Unclassified Motions-These are main motions that are often used to take up business again. They are not ranked.

Take from table (This is to bring up for consideration a motion or resolution that was tabled previously in the meeting)  Yes  Yes  No  Majority

Reconsider (A person on the prevailing side, a person who will change his or her vote, is supposed to make this motion.)  Yes  Yes  No  Majority

Rescind  Yes  Yes  Yes  Majority (A motion to rescind may require a two-thirds vote if the action required a two-thirds vote for passage.)

Ratify  Yes  Yes  Yes  Majority (Private acts and many local option laws require two-thirds vote.)

**Required Training**

Reference Number: CTAS-2468
Beginning September 1, 2018, newly elected or appointed county legislative body members will be required to complete orientation training provided by CTAS within 120 days of their election or appointment. T.C.A. § 5-5-113. In addition, those newly elected members will also be required to complete seven hours of continuing education provided or approved by CTAS on an annual basis. Incumbents are exempt from the continuing education requirement unless they are separated from office and then subsequently reelected. In addition, any commissioner that has served for eight years or more is exempt from the continuing education requirement.

The comptroller will annually publish a list of commissioners and the hours of training required and the hours each commissioner has obtained.

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.

**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.

**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.

County Mayor
Reference Number: CTAS-21

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
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.

Assessor of Property

Reference Number: CTAS-43
The assessor of property was a statutory office for many decades before it became a constitutional office following the 1978 amendments to the Tennessee Constitution. The assessor of property is elected to a four-year term in the August general election in even numbered years in which there is not an election for governor. T.C.A. § 67-1-502. This places the election of the assessor in years different from the other county constitutional officers who are popularly elected.

Qualifications-Assessor of Property

Reference Number: CTAS-44
The office of assessor of property does not carry any election qualifications beyond the general qualifications for county offices. However, the state board of equalization is authorized to prescribe educational and training courses to be taken by assessors and their deputies and to specify qualification requirements for certification of anyone who is to be engaged to appraise and assess property for purpose of taxation and be deemed a “qualified local assessor of property.” T.C.A. § 67-1-509.

Oath of Office and Bond-Assessor of Property

Reference Number: CTAS-45
Each assessor and deputy assessor must take and subscribe to a special oath of office. Oaths of office are covered under the General Information tab of the County Offices topic.

The oath, which is different from that of other county officials, is to be attached to and filed with the bond in the amount of $ 50,000 in the county clerk's office. T.C.A. §§ 67-1-505, 67-1-507. Bonds are covered under the General Information tab of the County Offices topic.

Compensation-Assessor of Property

Reference Number: CTAS-46
The assessor of property is listed as one of the "general officers" who must receive at least the minimum salary amount determined by statute. The county legislative body may set a greater amount for the "general officers." T.C.A. § 8-24-102. Also, the county legislative body may set a greater amount just for the assessor if in the judgment of the county commissioners, additional compensation is necessary to attract and retain the service of assessors of professional competence, technical skills and needed administrative abilities. T.C.A. § 67-1-508. The state board of equalization prescribes educational and training courses to be taken by assessors and their deputies and provides certification to those who complete these courses. T.C.A. § 67-1-509. Assessors (and deputy assessors) may be additionally compensated by the state board if necessary course work and training has been completed and the assessor has been designated as a "Certified Assessment Evaluator" by the International Association of Assessing Officers. The additional compensation ranges from $750 to $1,500 annually. Also, any assessor (or deputy assessor) who has completed the necessary courses of study and training and has been designated a "Tennessee Certified Assessor" or a "Residential Evaluation Specialist" by the International Association of Assessing Officers will receive from the state an additional $750 per year. T.C.A. § 67-1-508. Any assessor or deputy assessor who has been designated as a "Master Assessor" will receive from the state additional compensation of $1,000 per year. T.C.A. § 67-1-508. Additionally, T.C.A. § 67-1-508(c)(1) provides that the State Board of Equalization may provide grants to counties to provide cash salary bonus supplements to property assessors and deputies meeting certain educational and training criteria.

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

Deputies and Assistants-Assessor of Property

Reference Number: CTAS-47
Unlike many other officials who obtain authority for deputies and assistants through court order or letter of agreement, the assessor is limited by the budget adopted by the county legislative body with the following restriction: The assessor is authorized by statute to appoint one deputy for each 4,500 parcels of property over and above the first 4,500 parcels in the county. Each deputy has the same power, duties, and liabilities as the assessor concerning the appraisal, classification, and assessment of property. If an
assessor does not have enough parcels of property to qualify for a deputy, a secretary may be employed

Duties-Assessor of Property

Reference Number: CTAS-48

The assessor's duties include two basic functions: appraisal and assessment of taxable real and personal

property in the county that is not appraised by the state. For more information, see Assessment in

Property Taxes under the Revenue topic.

Relationship to County Legislative Body and Other Officials-Assessor of Property

Reference Number: CTAS-49

The assessor must interact with the county mayor and/or a finance/budget director as well as the county

legislative body regarding the assessor's budget and budget amendments. The exact procedures vary

from county to county depending upon whether the county operates under a charter or optional general

law regarding budgeting, or has a private act dealing with this subject. However, all assessors must

submit budget requests in a timely manner in the first half of each calendar year for inclusion in the

county's annual budget. Most counties have budget committees that may recommend appropriations for

the assessor's budget that differ from that submitted by the assessor. The county legislative body
determines the amount of the assessor's budget, subject to certain restrictions such as the requirement to

fund a deputy for each 4500 parcels of land in the county over the first 4500 parcels.

The assessor has an important relationship with the county trustee. The assessor annually submits to the

trustee the tax roll of the county, which includes the appraised and assessed valuation, including use

value for "greenbelt" qualifying property; submits certification to the trustee for errors discovered in the
tax rolls within specified time limits, as well as back assessments and reassessments of property; and
certifies to the trustee changes in the classification of "greenbelt" property that requires the collection of
rollback taxes.

The assessor also has an important relationship with the register of deeds in gathering information as

each change of property ownership must be noted by the assessor as well as changes in value reflected in

affidavits of value on deeds subject to the state transfer tax. Some county legislative bodies cause the

offices of register and assessor to be located next to each other to facilitate the transfer of information.
Other changes of ownership may be reflected in probated wills and divorce decrees; therefore, a good
working relationship with the clerks of court also helps the assessor maintain up-to-date assessment rolls.

The assessor must also interact with county and state boards of equalization in determining the correct
valuation of property when the taxpayer appeals the assessment.

The assessor receives assistance from the Division of Property Assessments, which has a major role in the
periodic reassessment of property in the county. Certain utility property, such as that of
telecommunications companies, railroad companies and pipeline companies, are centrally assessed by the
Office of State Assessed Properties (OSAP), Comptroller of the Treasury. The state Board of Equalization
reviews the assessments made by the comptroller and upon certification of these assessments, the
comptroller certifies these valuations to the assessor and trustee of the county where the properties lie.
T.C.A. §§ 67-5-1329, 67-5-1331. The assessor incorporates these central assessments into the county's
tax roll.

County Clerk

Reference Number: CTAS-51

The county clerk, formerly the county court clerk, was a statutory official for many decades prior to
becoming a constitutional office in the 1978 amendments to the Tennessee Constitution. The county clerk
is elected to a four-year term in the August general election in the same even-numbered year that the
governor is elected. T.C.A. § 18-6-101.

General-County Clerk

Reference Number: CTAS-418

Qualifications-County Clerk
Reference Number: CTAS-52
In addition to the general qualifications for county offices, to qualify for election to the office of county clerk, a person must be a qualified voter and a resident of the county for one year prior to the qualifying deadline for running for county clerk. T.C.A. § 18-6-101.

Oath of Office and Bond-County Clerk
Reference Number: CTAS-53
Before entering into office, the county clerk must take and subscribe to the constitutional oath and the oath of office known as the fidelity oath. T.C.A. § 8-18-111. Oaths of office are covered under the General Information tab of the County Offices topic. The deputy's oath of office is the same as that of the county clerk; it must be certified, filed, and endorsed in the same manner. T.C.A. § 8-18-112.

Prior to entering into the duties of the office, the county clerk must post either a $100,000 official bond in counties with a population of 15,000 or more, or a $50,000 bond in counties with a population of less than 15,000. T.C.A. § 18-6-101. The bond must be approved by the county mayor. If a County Clerk is acting as clerk of a court, the judge of that court should also approve the official bond, and may require a greater bond. Bonds are covered in more detail under the General Information tab of the County Offices topic.

Compensation-County Clerk
Reference Number: CTAS-54
County clerks must receive an annual minimum salary in the amount for a general officer as formulated in T.C.A. § 8-24-102. The county legislative body may increase the salary of general officers above the minimum amount, but may not increase the salary of the county clerk without also increasing the salary of other general officers. The amount due the county clerk as compensation does not vary with the amount of fees collected regardless of whether the salary of the county clerk is paid from the clerk's fee account or from the general fund.

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

Fee or Non-Fee Office-County Clerk
Reference Number: CTAS-744
The county clerk's interaction with the county legislative body determines whether or not the county clerk maintains a fee account for the payment of the expenses of the office, including the salary of the county clerk. The two methods for accounting for fees and commissions received by the county clerk, the Fee System and the Salary System, are covered under the County Offices General Information tab.

Deputies and Assistants-County Clerk
Reference Number: CTAS-55
The county clerk may receive authority to employ deputies and assistants through a letter of agreement or court order. If the county clerk decides to petition for additional deputies or assistants or additional salary amounts, the petition is filed in the chancery court and the county mayor defends the salary suit. T.C.A. § 8-20-101. Additional information about deputies and assistants is found under the General Information tab for County Offices.

Duties-County Clerk
Reference Number: CTAS-56
The county clerk has numerous duties, including acting as clerk of the county legislative body, issuing motor vehicle titles and registrations, collecting privilege taxes, and overseeing the issuance of beer permits, marriage licenses, and pawnbroker licenses. In addition to these statutory duties, some county clerks also issue certified copies of birth certificates under T.C.A. § 68-3-206, and some county clerks contract with the department of safety to issue driver licenses under T.C.A. § 55-50-331.

The law regulating the licensing and operations of title pledge lenders is found in Tennessee Title Pledge Act, T.C.A. § 45-15-101 et seq., which was amended in 2005 to transfer responsibility for licensing and regulating title pledge lenders from county clerks to the Tennessee Department of Financial Institutions. This set of statutes is separate from the laws regulating pawnbrokers.

The county clerk was previously responsible for issuing amusement ride permits, but the law was
amended in 2008 to transfer this responsibility to the state Department of Commerce And Insurance. T.C.A. § 68-121-101 et seq.

Clerk of the County Legislative Body

Reference Number: CTAS-664

The county clerk is the clerk of the county legislative body. T.C.A. §§ 18-6-101; 18-6-104. The clerk keeps the official records of the body, sends required notices, and keeps a record of all appropriations and allowances made and all claims chargeable against the county. The clerk may develop the agenda for the county legislative body meetings.

In addition to keeping the minutes, the County Clerk is required to:

1. Notify each member of a special or called session not less than five days in advance of the meeting T.C.A. § 5-5-105;
2. Present each resolution approved by the county legislative body to the county mayor for signature promptly after the meeting of the county legislative body and report the approval or nonapproval at the next meeting in the reading of the minutes. T.C.A. § 5-6-107;
3. Notify members of vacancies which must be filled by the county legislative body, and record each member's vote to fill the vacancy and enter it in the minutes. T.C.A. § 5-5-111; and
4. Carry out any other duties required by local rules of procedure adopted by resolution of the county legislative body or required by statute.

In instances where no statute or rule of procedure adopted locally addresses a question of parliamentary procedure, many county legislative bodies follow Robert's Rules of Order, a set of procedural rules which may or may not be adopted by the body.

Within almost every county there are three major operating department heads: the county mayor, the chief administrative officer of the Highway Department, and the Director of Schools (under the direction of the Board of Education). Income received and disbursements made by these departments must be authorized by the county legislative body, subject to general and private acts of the legislature and to court decisions. Accordingly, no county funds may be expended unless authorized (generally referred to as “appropriated”) by the county legislative body. T.C.A. § 5-9-401.

Appropriations may be made by the county for a number of specifically authorized purposes, or pursuant to the general authorization to appropriate funds for any statutorily authorized purpose. T.C.A. § 5-9-101 et seq. The County Clerk keeps a book of appropriations. T.C.A. § 5-9-301. Once an appropriation is made, warrants signed by the appropriate department head (more than one department head may be required) are drawn on the county treasury (trustee).

To learn more about County Clerks serving as the clerk of the County Legislative Body, review the County Legislative Body topic.

Minutes

Reference Number: CTAS-665

It is very important that the minutes of the county commission be accurate, be reviewed, and be formally approved by the county legislative body. The minutes are required to be promptly and fully recorded and open to public inspection in the clerk’s office. They must include a record of persons present, all motions, proposals and resolutions offered, the results of any vote taken, and a record of individual votes in the event of roll call. All votes of the County Commission must be public; no secret votes or secret ballots can be taken T.C.A. § 8-44-104. Each member’s vote regarding the appointment process shall be recorded by the clerk and entered on the minutes of the county legislative body. T.C.A. § 5-5-111(e). The minutes are the only record of the meeting that will be used if a question arises concerning what happened at the meeting and that will be recognized by a court.

Members of the county legislative body can greatly assist the county clerk in preparation of the minutes by ensuring that all resolutions are presented in writing. This will ensure that the resolution is recorded in the minutes in the proper format and will speed the process of approving and correcting the minutes. However, resolutions that are not presented in writing will have to be reduced to writing by the county clerk.

The minutes should contain what was done by the body and not necessarily what was said by each member. As a general rule the minutes of the County Commission are written in third person and contain the following information:
1. Date, place, and time of the meeting and whether the meeting was a regular or special meeting.
2. Names of the members in attendance and those not in attendance.
3. Approval or correction of the minutes of the previous meeting.
4. Motions and proposals made, along with amendments, the name of the maker, and the vote on the motions. (Motions withdrawn do not have to be included.)
5. Resolutions adopted in full. Resolutions not presented in writing must be reduced to writing by the County Clerk and included in the minutes.
6. Actual vote of each member on roll call votes and “approved by voice vote” or “disapproved by voice vote” for simple voice vote. A count of the votes should be included when voting is done by a show of hands.
7. Summaries or written reports appended to the minutes for committee reports.
8. Committee appointments, elections to fill vacancies or other appointments, and confirmations of appointments.
9. Any special provision required for compliance, such as a two-thirds vote.
10. A notation if the meeting is also serving as a public hearing on an issue.
11. Any other matter directed by the body to be included in the minutes.
12. Time of adjournment.

The approved minutes should be signed by the chair of the county legislative body and the County Clerk. Rough minutes should be retained until the actual minutes are approved, and then may be destroyed. Minutes are kept as permanent records in a minute book which should be well bound and have numbered pages. A method of topical indexing to find minutes of previous meetings should be kept. Under T.C.A. § 10-7-121, the minutes may be maintained in electronic format instead of bound books or paper records, as long as the requirements of that statute are met.

**Notary Public Applications**

Reference Number: CTAS-666

A notary public is a state official with statewide jurisdiction whose duties are prescribed by statute. Op. Tenn. Att’y Gen. 07-157 (November 26, 2007). However, the county clerk and the county legislative body are involved in the application and approval process for notaries before they are approved by the governor.

Beginning July 1, 2019, a person who has been commissioned as a notary public may apply to the Tennessee secretary of state to be commissioned as an online notary public under the Online Notary Public Act, T.C.A. §§ 8-16-301 et seq. The county clerk and the county legislative body are not involved in the commission of online notaries.

For information about how to become a notary as well as duties and fee information, please refer to the Secretary of State’s website: How to become a Notary | Tennessee Secretary of State (tn.gov)

**Qualifications, Election and Powers**

Reference Number: CTAS-667

All notaries must be 18 years of age and be either a United States citizen or a legal permanent resident. T.C.A. § 8-16-101. Notaries are elected by the county legislative body in the county in which they reside or have their principal place of business (T.C.A. § 8-16-101), and are approved by the governor. T.C.A. § 8-16-102. A person with a principal place of business in a Tennessee county may be elected a notary in that county even though that person’s residence is in another state. T.C.A. § 8-16-101. The same basic disqualifications exist for notaries as for other county offices. T.C.A. § 8-18-101. A notary may be removed from office just as any other official. The notary’s term is four (4) years, beginning on the date of issuance of the commission by the governor T.C.A. § 8-16-103. Renewal is by the same method as the original procedure.

In addition to the qualifications discussed above, an applicant for notary public must certify, under penalty of perjury, that the person (1) has never been removed from office as a notary public for official misconduct, (2) has never had a notarial commission revoked or suspended by this or any other state, and (3) has never been found by a court of his state or any other state to have engaged in the unauthorized practice of law. T.C.A. § 8-16-101.
A fee of twelve dollars ($12.00) is paid to the county clerk in the county of election for issuance of a commission, (five dollars ($5.00) to the secretary of state under T.C.A. § 8-21-201 and seven dollars ($7.00) to the county clerk under T.C.A. §§ 8-16-106 and 8-21-701. The county clerk will certify the election and forward the five dollar ($5.00) fee to the secretary of state, who, upon receipt of the certificate and the fee, will forward the commission to the county clerk issued by the governor. The county clerk notifies the person to whom the commission was issued, and, after the oath has been taken and bond posted, the county clerk delivers the commission to the person elected. The county clerk receives a fee of two dollars ($2.00) for taking and recording the official bond under T.C.A. § 8-21-701. The county clerk must keep a record of the issuance and expiration dates of commissions, noting such on the bond and in a minute entry. T.C.A. § 8-16-107.

Notaries are required to live in or have their principal place of business in the county from which they are elected only at the time of their election. If the notary moves to another county, the notary must notify the county clerk in the county from which the notary was elected and pay a fee of seven dollars ($7.00). T.C.A. § 8-16-109. If a notary moves out of state, the notary is no longer qualified to act; it is a Class C misdemeanor for a notary to take acknowledgements after moving out of the state. T.C.A. § 8-16-110.

All notaries public are authorized to act in any county in the state and may acknowledge signatures, administer oaths, take depositions, qualify parties in bills in chancery, and take affidavits T.C.A. § 8-16-112. Notaries are entitled to charge reasonable fees for their services, and if a fee is charged the notary must keep a record, either electronically or in a well-bound book, of each of the notary's acts, attestations, protestations, and other instruments of publication. T.C.A. § 8-21-1201.

**Notary Public Bonds**

Reference Number: CTAS-668

After election by the county legislative body, and before commencing duties or exercising powers, a notary must post bond. T.C.A. § 8-16-104. Bonds are covered in detail under the General Information tab of the County Offices topic.

**Oaths-Notary Public**

Reference Number: CTAS-669

The notary must take and subscribe to an oath before the County Clerk or a deputy County Clerk to support the Constitutions of the State of Tennessee and the United States and that the notary will, without favor or partiality, honestly, faithfully, and diligently discharge the duties of notary public. T.C.A. § 8-16-105.

**Notary Public Seal**

Reference Number: CTAS-670

The notary must purchase an official seal. The secretary of state prescribes the design of the seal, which is to be imprinted by a rubber or other type stamp in any color other than black or yellow as long as it is clearly legible and appears black on a non-color copier; however, the law provides that a document will not be invalid nor will there be any criminal or civil liability if a notary uses the wrong color ink. Also, the use of an embossed notary seal after May 12, 2003, does not render an acknowledgment defective. The seal must be surrendered to the county legislative body upon expiration of the notary’s term of office or resignation and the personal representative must surrender the seal in the event of the death of the notary. T.C.A. § 8-16-114. The current design prescribed by the Secretary of State is circular, and has the notary’s name (as commissioned) printed at the top, the county of election at the bottom, and State of Tennessee Notary Public in the center. The county clerk may obtain the official seal for the notary public at the notary’s request. For providing this service the county clerk may charge a fee not exceeding twenty percent (20%) of the cost of the seal. T.C.A. § 8-16-114.

**Statutory Form Acknowledgment**

Reference Number: CTAS-671

Statutory forms for acknowledgment of instruments are set out in T.C.A. § 66-22-107 (for natural persons) and T.C.A. § 66-22-108 (for partnerships and corporations) and T.C.A. § 66-22-114 (another general form). A basic form for acknowledgment of instruments signed by a natural person is as follows T.C.A. § 66-22-107:
State of __________________
County of __________________
Personally appeared before me, [name of officer], [official capacity of officer], [name of the natural person executing the instrument], the within named bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the within instrument for the purposes therein contained.

Witness my hand, at office, this _____ day of ____________, 20___.

Although the exact language of the forms is recommended, acknowledgments complying with the substance thereof are valid. T.C.A. § 66-22-114.

In using the above quoted forms, the notary should make certain the proper pronoun, he, she, they, etc., is used. So far as possible, there should be no changes or alterations in the body of the acknowledgment; but should they be required, the notary should initial such changes wherever they appear.

The expiration date of the notary’s commission must appear on every certificate of acknowledgment. However, failure to include the expiration date does not invalidate the instrument. T.C.A. § 8-16-115.

Notary Public Fees

Reference Number: CTAS-2203
Under T.C.A. § 8-21-1201, a notary public or the notary's employer may charge reasonable fees and compensation for the notary's services. If a fee is charged, the notary must keep a record either electronically or in a well-bound book of each action. If a separate fee is not charged for the notary’s services, the notary is not required to keep a record of the action.

Records-County Clerk

Reference Number: CTAS-672
The county clerk serves as the custodian of a wide variety of records which are required to be filed and maintained in the office of the county clerk. Some of these documents are required to be filed and maintained in the office of the county clerk so that members of the public may verify certain information of public concern. The maintenance of these records is one of the most important duties of the county clerk, as the county clerk’s office serves as one of the information centers for the county. Some of the many records maintained in the office of the county clerk are discussed below.

In all national, state, and most local elections, the County Election Commission files one copy of its certificate of election returns in the office of the county clerk immediately after the election. The county clerk must provide a receipt acknowledging that the documents have been filed in the county clerk’s office. T.C.A. § 2-8-106.

After an election to abolish a city charter, if the majority of voters approve “no charter” the election commissioners are required to make triplicate certificates of the election, filing one with the original petition with the county clerk. When all certificates have been duly filed, the corporation becomes extinct. If the majority votes for the “charter,” the commissioners make only one return which is filed with the county clerk with the original petition to abolish the charter. T.C.A. § 6-52-205.

Copies of a proposed metropolitan charter are filed by the charter commission with the county clerk and other designated officials. The proposed charter must be open to public inspection by any interested person. T.C.A. § 7-2-105. The election returns are sent by the election commission to the Secretary of State, who issues a proclamation of the adoption or rejection of the proposal. One copy is sent to the county clerk who attaches it to the copy of the proposed charter. If the charter was adopted, the clerk delivers the county clerk’s copy of the charter and proclamation to the officer of the new government as the charter may direct. T.C.A. § 7-2-106.

Before a local bar association can receive a copy of each year’s acts of the General Assembly for its library, the county clerk must certify the name and address of the association to the Secretary of State. In the event the association ceases to exist or to maintain a law library, all copies of the acts are to be turned over to the county clerk. T.C.A. § 12-6-102.

Pedigree books are maintained by the county clerk for registering the pedigree of jacks or bulls used for public breeding. The registrant makes an oath that the pedigree is genuine. T.C.A. § 44-7-301.

County indigent institution records of vouchers for expenditures and books of accounts are examined by the county mayor at the end of each year. If the vouchers are approved, they are filed in the county clerk’s office and preserved in separate files. T.C.A. § 71-5-2208.
Counties are authorized to make appropriations to assist charities. Any charity desiring financial assistance must file an annual report, including a copy of its annual audit, its program which serves the residents of the county, and the proposed use of the county assistance, with the county clerk. Instead of the annual audit, the organization may file an annual report detailing all receipts and expenditures. The report must be prepared and certified by the chief financial officer of the organization. T.C.A. § 5-9-109.

General contractors are no longer required to record their licenses in the office of the county clerk, but the county clerk can obtain a roster of licensed contractors from the state board of licensing contractors by requesting the same in writing. T.C.A. § 62-6-110. Veterinarians also are no longer required to record their licenses in the county clerk’s office. T.C.A. § 63-12-118, repealed. The requirement that real estate brokers file a bond with the county clerk has also been repealed. T.C.A. § 62-13-306, repealed. The former duties of the county clerk in filing contractors’ bonds to discharge mechanics’ and materialmen’s liens were transferred to the register of deeds effective in 1994. T.C.A. § 66-11-142.

County clerks are required to index the records in their offices, and to cross-index records pertaining to more than one party. T.C.A. § 10-7-201. Records must be open to public inspection during business hours (T.C.A. § 10-7-503), and copies may be made of any public record. T.C.A. § 10-7-506.

The county legislative body is authorized to have the record books of the county clerk rebound in order to preserve them and keep them in proper condition. T.C.A. § 10-7-119. During the rebinding of these records, the liability of the county clerk on his or her official bond for the proper safekeeping of such books is suspended. T.C.A. § 10-7-120.

Public Records

Reference Number: CTAS-673
All county records, including those in the county clerk’s office, must be open for personal inspection by any citizen of Tennessee during business hours of the office. County officials in charge of these records may not refuse the right of any citizen to inspect them unless another statute specifically provides otherwise 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 statute must be redacted whenever possible. If it is not practicable for a requested record to be promptly made available for inspection, the records custodian must, within seven (7) business days, either: (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.

The state’s 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. The Office of Open Records Counsel issued its Schedule of Reasonable Charges for Copies of Public Records in October 2008. Records custodians are authorized to charge reasonable costs consistent with the schedule. T.C.A. § 10-7-503. 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.

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 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.

Confidential Tax Information

Reference Number: CTAS-674
There are specific statutes requiring confidentiality of state tax information. The general statute (T.C.A. § 67-1-1702(a)) provides:

Notwithstanding any law to the contrary, returns, tax information and tax administration
information shall be confidential and, except as authorized by this part, no officer or employee of
the department or of any office of a district attorney general or any state or local law enforcement
agency, and no other person, or officer or employee of the state, who has or had access to such
information shall disclose any such information obtained by such officer or employee in any manner
in connection with such officer's or employee's service as an officer or employee, or obtained
pursuant to this part, or obtained otherwise.

Violation of this confidentiality statute is a criminal offense.

Because the statute makes reference to “tax information” and “returns” which are defined with reference
to taxes collected by or on behalf of the state (T.C.A. § 67-1-1701), there has been confusion over the
release of tax information which is purely local, such as hotel/motel tax. The Tennessee Attorney General
had issued an opinion that information regarding local hotel/motel taxes was subject to the state
67-1-1702 was amended in 2016 to state that these confidentiality provisions (T.C.A. § 67-1-1701 et seq.) do not apply to hotel/motel taxes. Accordingly, hotel/motel tax records are no longer confidential.

In addition to the general statute, business tax returns, statements, reports, and audits of the taxpayer's
records are confidential and cannot be disclosed except to the taxpayer, the taxpayer's attorney, or an
authorized governmental entity (T.C.A. § 67-4-722), but the name and address of any present or former
business owner as appearing on a business license or application therefor is expressly declared to be a
public record and not confidential. T.C.A. § 67-4-722.

Uniform Motor Vehicle Records Disclosure Act

Reference Number: CTAS-675

Personal information obtained in connection with motor vehicle records is declared confidential and cannot
be disclosed except under specified circumstances. "Personal information" is defined as information that
identifies a person, and includes an individual's photograph, computerized image, social security number,
driver identification number, name, address (but not the five-digit zip code), telephone number, and
medical or disability information, but it does not include information on vehicular accidents, driving or
equipment-related violations, or driver license or registration status. T.C.A. § 55-25-103. Personal
information may be disclosed only under the following circumstances:

1. For safety, environmental and federal compliance purposes, as provided in T.C.A. § 55-25-105.

2. With the written consent of the person who is the subject of the information. T.C.A. § 55-25-106.

3. For use by a government agency, including any court or law enforcement agency, in
carrying out its functions, or any private person acting on behalf of a government agency in

4. For use in connection with matters of motor vehicle or driver safety and theft; motor
vehicle emissions; motor vehicle product alterations, recalls or advisories; performance
monitoring of motor vehicles, parts and dealers; motor vehicle market research activities,
including survey research; and removal of non-owner records from the original owner

5. For use in the normal course of business by a legitimate business, but only to verify the
accuracy of personal information submitted by an individual to the business, and if the
information submitted is not correct or is no longer correct, to obtain the correct
information, but only for the purposes of preventing fraud, by pursuing legal remedies
against, or recovering on a debt or security interest against the individual. T.C.A. § 55-25-107.

6. For use in connection with any civil, criminal, administrative, or arbitral proceeding in any
court or government agency or before any self-regulatory body, including service of
process, investigation in anticipation of litigation, and execution or enforcement of
judgments and orders, or pursuant to a court order. T.C.A. § 55-25-107.

7. For use in research activities, and for use in producing statistical reports, so long as the
information is not published, redisclosed or used to contact individuals. T.C.A. § 55-25-107.

8. For use by any insurer or insurance support organization, or by a self-insured entity, its
agents, employees or contractors, in connection with claims investigation activities,
anti-fraud activities, rating or underwriting. T.C.A. § 55-25-107.

10. For use by any private investigative agency or licensed security service for any permitted purpose. T.C.A. § 55-25-107.

11. For use by any employer or its agent or insurer to obtain or verify information relating to the holder of a commercial driver license that is required under the Commercial Motor Vehicle Safety Act of 1986. T.C.A. § 55-25-107.


13. For any other use in response to requests for individual motor vehicle records if the state has obtained the express consent of the person to whom the personal information pertains. T.C.A. § 55-25-107.

14. For bulk distribution for surveys, marketing or solicitation in accordance with procedures adopted by the department, after persons have been given an opportunity to prohibit such disclosure. T.C.A. § 55-25-107.

15. By any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains. T.C.A. § 55-25-107.

16. For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety. T.C.A. § 55-25-107.

Personal information may be disclosed to any requesting person, regardless of intended use, if the forms for issuance or renewal of licenses, registrations, titles or identification documents contain a conspicuous notice that the personal information may be disclosed to any person making a request for the information, and provide in a clear and conspicuous manner a method for the applicant to prohibit such disclosure. T.C.A. § 55-25-106. Thus, as long as the forms contain the proper disclosure information, it will be the applicant’s responsibility to take action to prohibit disclosure of his or her personal information. Otherwise, the information may be disclosed.

The Department of Safety is authorized to require the requesting person to meet certain conditions relative to the identity of the person, and if relevant, the authorized use of the information, or the consent of the subject. The conditions may include the filing of a written application containing such information and certification requirements as the department may prescribe. T.C.A. § 55-25-109. Anyone who misrepresents his or her identity or makes a false statement in connection with the request for disclosure of personal information is guilty of a Class C misdemeanor, punishable by a fine up to $1,000. T.C.A. § 55-25-112.

Persons who obtain personal information are limited in their ability to resell or redisclose that information as provided in T.C.A. § 55-25-107, and are required to keep records of the information obtained and the permitted use for which it was obtained for a period of five years. These requirements do not apply, however, if the person who is the subject of the disclosure has not taken action to prohibit disclosure after having been given the opportunity to do so. T.C.A. § 55-25-107.

The department and the county clerk are authorized to charge a reasonable fee not over one dollar ($1.00) for each person on whom information is requested. T.C.A. § 55-2-106.

Confidential Employee Records

Reference Number: CTAS-676

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), emergency contact information, 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 non-confidential portion of the file or document. T.C.A. § 10-7-504. The information made confidential under this statute is to be redacted whenever possible so that it does not limit the public’s access to other information which is not confidential.

Records on Computer Media

Reference Number: CTAS-677

The county clerk and other governmental officials are authorized to maintain on a computer any information required to be kept as a record, instead of maintaining bound books or paper records, but only
if certain standards are met. The standards for maintaining records on computer media are (T.C.A. § 10-7-121):

1. The information must be available for public inspection, unless it is a confidential record according to law;
2. Due care must be taken to maintain the information that is a public record during the time required for retention;
3. All daily information generated and stored in the computer must be copied daily to computer storage media, and all copied storage media over one week old must be stored at another location; and
4. The official must be able to provide a paper copy of the information when needed or when requested by a member of the public.

Also, upon the promulgation of proper rules by the secretary of state, county officers may destroy or archive elsewhere, as appropriate, original paper records upon reproduction onto computer storage media, or in any appropriate electronic medium, after following certain procedures and standards and having the destruction or record transfer approved by the County Public Records Commission and the State Library and Archives. T.C.A. § 10-7-404.

Effective in 2008, all municipalities and counties must create safeguards and procedures for ensuring that confidential information regarding citizens is securely protected on all laptop computers and other removable storage devices used by such municipality or county. Failure to comply creates a cause of action or claim for damages against the municipality or county if a citizen of this state proves by clear and convincing evidence that such citizen was a victim of identity theft due to a failure to provide safeguards and procedures regarding that citizen’s confidential information. T.C.A. § 47-18-2901.

Storage and Disposition of Records

Reference Number: CTAS-678
A large number of records are required to be maintained by the county clerk. Storage problems usually occur which require the county clerk to seek a method to dispose of old and obsolete records. Since many of the records maintained by the county clerk are historically significant, great care must be taken in the storage and/or disposition of old or less frequently utilized records.

Recognizing the problems that counties encounter with records disposition, the General Assembly created a statutory framework for the storage or disposition of county records T.C.A. § 10-7-401 et seq. Each county is required to establish a County Public Records Commission to oversee the storage or disposal process. The county clerk serves as a member of the Commission. T.C.A. § 10-7-401. Original permanent records which have been reproduced or microfilmed cannot be legally destroyed without approval of the Commission. T.C.A. § 10-7-404. See Retention Schedules for county clerks.

Archives and Records Management Fee

Reference Number: CTAS-679
All counties with a County Public Records Commission are authorized to establish by resolution of the county legislative body, and collect through all entities creating public records (except the register of deeds and court clerks) an archives and records management fee of up to five dollars ($5.00) per document filed. The county is authorized to collect an archives and records management fee of up to five dollars ($5.00) through court clerks on documents filed with the clerk for the purpose of initiating a legal proceeding. Monies collected through these fees must be designated exclusively for duplicating, storing, and maintaining any records required by law to be kept permanently. T.C.A. § 10-7-408.

Privilege Taxes

Reference Number: CTAS-680
The county clerk serves as the collector of certain privilege taxes imposed by the state, county or municipality on merchants, persons, companies, firms, corporations or agents, unless otherwise provided by law. T.C.A. § 67-4-103. In addition to the privilege taxes on marriage, privilege taxes which may be collected by the county clerk include the annual privilege tax on the business of selling, distributing, storing or manufacturing beer (T.C.A. § 57-5-104), the county motor vehicle privilege tax (T.C.A. § 5-8-102), and county hotel/motel taxes. The county clerk also issues business licenses and collects the $15 fee (T.C.A. § 67-4-723), and collects the privilege tax on transient vendors, including antique malls, flea markets, antique shows, craft shows, gun shows, and auto shows (T.C.A. § 67-4-710); however, business taxes are collected by the state department of revenue.
There are several methods for levying privilege taxes. For example, the county motor vehicle privilege tax (wheel tax) can be levied by private act, by referendum approved by resolution of the county legislative body, or by passage of a resolution of the county legislative body by a two-thirds (2/3) vote at two (2) consecutive meetings (with the potential for a referendum upon petition of the voters). T.C.A. § 5-8-102. Hotel/motel taxes are levied by private act of the General Assembly, with a few exceptions. Some privilege taxes are levied under general law, such as the annual beer tax under T.C.A. § 57-5-104. Each tax usually contains provisions for collection of that tax and mechanisms for collecting delinquent taxes. General law provisions for collection of privilege taxes may also apply.

The county clerk collects all taxes on merchants, persons, companies, firms, corporations, agents, or traders, and all privileges, unless otherwise provided by law. T.C.A. § 67-4-103. Licenses for exercising all privileges for which specific license provisions are not otherwise made are to be issued when the applicant pays to the county clerk the appropriate taxes and fees for the exercise of the privilege. T.C.A. § 67-4-104. The person, partnership, or corporation is required to complete an application signed by all owners, and the application is retained in a book maintained by the county clerk for public inspection. No license may be issued until such an application is completed and delivered to the county clerk. T.C.A. § 67-4-105. The county clerk can issue licenses quarterly, unless the term of the license is provided for in the legislation authorizing the privilege tax. T.C.A. § 67-4-104. At the time the license is issued, all privilege taxes must be paid to the county clerk, and the county clerk is subject to certain fines and penalties for failing to pay these taxes over to the commissioner of revenue, county trustee, or municipal authorities, as appropriate. T.C.A. § 67-4-103. Certain persons are exempt from paying privilege taxes on selling taxable articles, including indigent persons, certain agricultural association business agents, and blind persons who have received an exemption from the county legislative body. T.C.A. § 67-4-102.

The assessor is required to notify the county clerk of all persons engaged in business in any way liable for the payment of privilege taxes and the county clerk and the county mayor are to compare the list of names provided by the assessor with the list of persons paying privilege taxes, and report the result to the county legislative body at the July meeting, at which time the list is to be read and entered into the minutes. T.C.A. § 67-4-108. If any person sells goods or exercises any privilege without obtaining a required license, the county clerk is directed to issue distress warrants to the sheriff requiring the sheriff to levy a tax in double the amount of the highest tax imposed upon such privilege, plus costs and commission, by seizing and selling the property of the taxpayer; in the alternative, suit may be brought in circuit or chancery court for such double tax. T.C.A. § 67-4-109. Also, if the taxpayer is required to post a bond, the county clerk is required to turn over such bonds to the county attorney within thirty (30) days after the bond is due and payable, and notify the Commissioner of Revenue and the county legislative body that such bonds were turned over for collection. T.C.A. § 67-4-112.

The statute of limitations for collection of state, county, and municipal privilege taxes collected by the county clerk is six years, after which time collection is barred. This six-year period commences on January 1 of the year in which the taxes were to be paid by the taxpayer. T.C.A. § 67-1-1501.

Motor Vehicle Titling and Registration

Reference Number: CTAS-681

The county clerk, as agent for the State Department of Revenue's Vehicle Services Division, has very important duties with regard to the titling and registration of motor vehicles, motorized bicycles, trailers or semi-trailers when moved or driven on the highways of this state, and titling of certain mobile homes/ manufactured homes. These matters are covered in materials provided by the Tennessee Department of Revenue.

2021 Precious Cargo Act — Effective January 1, 2022, Public Chapter 55, known as the "2021 Precious Cargo Act" empowers citizens with an intellectual disability, developmental disability, or a medical condition, that may impede communications to law enforcement and first responders during a traffic stop or welfare check, to request the department include a designation of the need for assistance in the Tennessee Vehicle Title and Registration System (VTRS) database. Citizens must request the designation with the initial application to register the motor vehicle or upon renewal. The request must be accompanied by a written statement from a licensed physician, psychiatrist, psychologist, senior psychological examiner, or neurologist, stating that the operator of the vehicle has a disability or condition that may impede communications with law enforcement or first responders. See Title 55, Chapter 21 of the Tennessee Code Annotated.

The information submitted to the department must be provided to law enforcement and only be used to help ensure safe and efficient interaction with law enforcement and the person with a disability or medical condition. Title 55, Chapter 21 of the Tennessee Code Annotated.

Mail Orders of Plates and Decals — The county clerk provides a mail order service for the renewals of
registrations. Registrants may apply for and receive renewal plates or decals through the United States postal service. Each county clerk may impose a fee of $5.00 for plates and $2.00 for decals for the service and handling mail orders. Each county clerk may increase the fees provided above in an amount not to exceed an applicable United States postal service price increase in a given year. T.C.A. § 55-4-105.

Manufactured Homes

Reference Number: CTAS-682

A "manufactured home" is defined as a structure which is transportable in one or more sections and which, in the traveling mode, is at least eight feet in width and at least forty (40) feet in length, or when erected on site is at least three hundred twenty (320) square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems; a manufactured home also may be any structure that meets all of the foregoing requirements except size, and which the manufacturer has voluntarily filed a certification with the Department of Housing and Urban Development and complies with the standards of that agency. Manufactured homes are sometimes referred to as mobile homes or house trailers. T.C.A. § 55-1-105.

Titling of Manufactured Homes

Reference Number: CTAS-683

The ownership of a manufactured home is legally recorded by either obtaining a certificate of title from the county clerk or by filing an affidavit of affixation with the register of deeds. These types of structures generally are considered personal property and are titled in a manner similar to motor vehicles by certificate of title, but under certain circumstances these structures may be so permanently affixed to the land that they become more like a house, and ownership is recorded in the real property records. Whether the structure is considered personal property or real property is important to lenders trying to perfect a security interest in these structures. The distinction is also important for bankruptcy law purposes, because a debtor in bankruptcy is allowed certain preferences with regard to real property that is the debtor’s principal residence.

Affidavit of Affixation

Reference Number: CTAS-684

When the real estate and the manufactured home are owned by the same owner(s), and the manufactured home is affixed to the real estate, the owner(s) may record an Affidavit of Affixation. T.C.A. § 55-3-128. The recording of an Affidavit of Affixation in the register of deeds’ office will be prima facie evidence that the manufactured home is affixed to real property as an improvement to the property, so that lenders will be able to rely on the affidavit to file and properly perfect their liens, and bankruptcy judges may rely on the affidavit in connection with determining whether a manufactured home qualifies as a principal residence. This also means that the manufactured home is to be taxed as part of the real property to which it is affixed, so the assessor of property will need to know when these affidavits are filed so that the property may be added to the county’s tax rolls.

The Affidavit of Affixation is required to be substantially in the form set out in T.C.A. § 55-3-128. The owner of the manufactured home and real property must answer the questions listed on the affidavit under oath, and then file the completed affidavit in the office of the register of deeds. The register records the instrument with the real estate records after receiving the proper fees. A copy of the affidavit also must be filed with the assessor of property.

The Affidavit of Affixation is to be used only when the owner of the manufactured home also owns the real estate to which the home is affixed. If the land is owned by someone other than the owner of the manufactured home, a certificate of title must be obtained regardless of whether the home is affixed to the land.

Certificate of Title

Reference Number: CTAS-685

Manufactured homes which are not affixed to land, and those which are affixed to land owned by someone other than the owner of the manufactured home, are issued certificates of title. For manufactured homes that are affixed to the owner’s land and for which an Affidavit of Affixation has been recorded, no certificate of title is necessary. For example, it is not necessary to issue a certificate of title for a new manufactured home purchased by a land owner to be affixed to that land if the owner is filing an Affidavit
of Affixation with the register of deeds.

If a manufactured home is affixed to a parcel of real property with the same owner, upon filing an Affidavit of Affixation the owner is required to surrender the title for cancellation by providing the following documentation to the county clerk:

1. The certificate(s) of title to the manufactured home duly endorsed to show release of any lienholders; or if the manufactured home is new, the manufacturer’s statement or certificate of origin; or if the manufactured home is not covered by a certificate of title and the owner is unable to produce the manufacturer’s certificate of origin, a statement to that effect in the Affidavit of Affixation;
2. A certified copy of the deed to the real property to which the manufactured home has been affixed as recorded in the register’s office; and
3. A certified copy of the Affidavit of Affixation recorded in the register’s office.

T.C.A. § 55-3-128.

No fee is provided in the statute for either the county clerk or the state for the surrender of the certificate of title.

The surrender of the certificate of title is mandatory. The owner cannot continue to hold a certificate of title for the manufactured home after filing an Affidavit of Affixation with the register.

If the owner of a manufactured home who has surrendered the certificate of title later wants to have the title reissued (which may happen if the owner sells the manufactured home without selling the real property), this may be done by applying for a new certificate of title with the county clerk and providing the following:

1. An abstract of title showing legal ownership of the manufactured home and real property and any mortgages recorded on the real property;
2. For every lienholder shown on the title abstract, either a release of the lien or a lienor’s statement that the lien is to be recorded on the certificate of title; and
3. Payment of the required fees for issuance of the certificate of title.

T.C.A. § 55-3-129.

Installation Permits

Reference Number: CTAS-686
County clerks are responsible for selling installation permits to licensed installers of manufactured homes. Under T.C.A. § 68-126-406, prior to installing a manufactured home an installer must obtain a permit and pay an inspection fee of forty-five dollars ($45.00). A permit is required for each installation. The permit is purchased from the county clerk of any county by paying the inspection fee. The county clerk issues a permit decal which must be placed on the electrical panel box cover of the manufactured home. The installer must write the address of the home on the permit, and the electrical inspector cannot authorize the electricity to be turned on at the home if no installation permit decal is present.

Of the $45.00 fee, the county clerk retains eight dollars ($8.00) and remits thirty-seven dollars ($37.00) to the commissioner of commerce and insurance (to be used to defray inspection costs) on a monthly basis, no later than the twentieth (20th) day of the month following the month in which the fee is paid, with a report showing the license numbers of the installers and retailers who purchase permits and the corresponding permit numbers sold. The decals are furnished to the county clerks by the commissioner. County clerks are required to account for each permit decal issued.

If a permit is lost or destroyed, the county clerk may issue a replacement decal upon payment of an additional forty-five dollars ($45.00) and submission of an affidavit stating that the decal was lost or destroyed. The county clerk retains eight dollars ($8.00) and remits a copy of the affidavit and thirty-seven dollars ($37.00) to the commissioner of commerce and insurance with the monthly report.

Inspections are handled by the Department of Commerce and Insurance, as is licensing of installers and retailers of manufactured homes. The responsibilities of the county clerk are limited to selling installation permits, collecting the inspection fees, and filing reports and remitting fees monthly to the commissioner of commerce and insurance.

Miscellaneous Powers and Duties of the County Clerk

Reference Number: CTAS-687
The county clerk has many miscellaneous powers and duties which he or she is authorized or required to perform by various statutes. These powers and duties include such varied tasks as serving as the clerk of drainage districts, taking depositions, and issuing copies of birth certificates.

**Drainage and Levee Districts**

**Reference Number: CTAS-688**

The county clerk has numerous responsibilities with regard to drainage or levee districts located in the county. The county clerk receives petitions for the establishment of drainage and levee districts, and approves and determines the amount of the bond which is filed with the county clerk at the time of the filing of the petition to secure the cost of establishing the drainage and levee district. T.C.A. § 69-5-103. In counties where a district is sought to be established, the county clerk maintains a book known as the “drainage record” of all proceedings involving the creation and operation of the drainage district (T.C.A. § 69-5-140), prepares the assessment rolls for use by the county trustee in collecting drainage assessments to finance construction by a drainage district (T.C.A. §§ 69-5-110; 69-5-111; 69-5-127; 69-5-128), prepares and maintains the “drainage assessment book” showing all parcels of land affected by the drainage district upon which a drainage assessment is made and provides a copy of this book to the county trustee (T.C.A. § 69-5-813), and also advises the trustee of changes in ownership of said parcels of land. T.C.A. § 69-5-815.

The county clerk receives from the county trustee the assessments for drainage and levee districts collected by the trustee and pays the expenses of the drainage and levee district as approved by the county legislative body. T.C.A. §§ 69-5-127; 69-5-804. The county clerk is required to post a bond for double the amount received from the county trustee prior to receiving said funds from the trustee. T.C.A. §§ 69-5-113; 69-5-130; 69-5-805. Also, the county clerk receives claims of persons claiming damages incurred in the construction of a drainage district (T.C.A. § 69-5-201), receives reports and drawings of engineers designated to perform work for such districts (T.C.A. § 69-5-115), serves notice upon persons whose land is within the scope of a proposed drainage district (T.C.A. § 69-5-120), receives the bond of engineers employed to supervise construction of drainage or levee improvements (T.C.A. § 69-5-708), and receives monthly reports of engineers responsible for supervising construction of levee and water work improvements. T.C.A. § 69-5-709. If bonds are sold to finance a district, the county clerk may receive the full assessment from any property owner prior to the bonds being issued (T.C.A. § 69-5-902), and countersigns any bonds issued by such a district. T.C.A. § 69-5-903.

The county clerk is authorized to collect fees for performing these duties in the same amount as authorized for similar services, or additional amounts for extra services or for services not covered by existing fee statutes as authorized by the county legislative body. T.C.A. § 69-5-141.

The county clerk also receives petitions for the creation of watershed districts (T.C.A. § 69-6-103), but may not collect any fees for the filing of such petitions or any other services required under the laws governing watershed districts. T.C.A. § 69-6-115.

**Hunting and Fishing Licenses**

**Reference Number: CTAS-689**

The county clerk may act as an agent for the Tennessee Wildlife Resources Agency (TWRA) for purposes of issuing hunting, fishing, and other licenses and collecting the appropriate fees. T.C.A. § 70-2-106. County clerks who are authorized agents of TWRA may be required to post a bond in an amount determined by the TWRA executive director. T.C.A. § 70-2-106. The executive director is required to deliver blank licenses to the county clerk at least ten days prior to March 1 of each year, and charge the clerk with the number issued to him or her. T.C.A. § 70-2-105. The clerk may charge a flat fee of one dollar ($1.00) on any one annual license, permit or stamp issued by the clerk and fifty cents (50¢) on any one license, permit or stamp which is valid for a specified day or number of days. T.C.A. § 70-2-106.

The county clerk must maintain all funds collected on behalf of TWRA in a checking account available for electronic transfer within 24 hours. The penalty for failure to make the required remittance available is five percent (5%) of all funds owing and not remitted within the time prescribed. Also, the county clerk may forfeit the privilege to sell licenses in the future until a full and final settlement has been made. T.C.A. § 70-2-105.

The license or permit must be filled out in ink, indelible pencil, typewriter, punched or stamped or otherwise marked to prevent erasure. T.C.A. §§ 70-2-201; 70-2-202. All licenses and permits are dated the true date of issue, except that annual sport licenses are issued for the year beginning March 1 and ending the last day of February of the next year. T.C.A. § 70-2-107. Any person who violates the licensing or permitting requirements will be guilty of a Class C misdemeanor. T.C.A. § 70-2-107.
The rules and regulations governing the issuance of these permits and licenses are governed by state law and TWRA regulations. The county clerk should follow all guidance issued by TWRA with regard to issuance of the licenses and permits, including the appropriate fees.

**Boat Identification Numbers**

Reference Number: CTAS-690

The Tennessee Wildlife Resources Agency (TWRA) issues certificates of number for boats. The TWRA also may authorize the county clerk to issue certificates of number for boats. The TWRA issues to the county clerk, a block of numbers and certificates, and upon issuance, the county clerk is entitled to a fee of twenty-five cents (25¢) for each certificate issued. All registration monies, except the twenty-five cents (25¢) fee allowed, must be remitted monthly to the Tennessee Wildlife Resources Commission, on or before the 10th of each month. T.C.A. § 69-9-208.

All vessels propelled by sail or machinery, or both, on the waters of Tennessee are required to be numbered, except those set out in T.C.A. § 69-9-206:

1. A vessel with a valid document issued by the United States Bureau Of Customs or any successor federal agency must be registered with the TWRA but is not required to display numbers;
2. A vessel with a valid number issued by pursuant to federal law or a federally-approved numbering system of another state, unless Tennessee has become the state of principal use and the vessel has been in this state for more than sixty (60) days;
3. A vessel from another country temporarily using the waters of this state;
4. A vessel used in public service and owner by the United States government or a state or political subdivision thereof;
5. A ship’s lifeboat;
6. A motorboat belonging to a class of boats which has been exempted by the Tennessee Wildlife Resources Commission;
7. A vessel owned by a volunteer rescue squad and used solely for emergency or rescue work.


Certificates are valid for one (1) year, or upon application of the owner, up to three (3) years. The fees for certificates of number are set out in T.C.A. § 69-9-206.

The Tennessee Wildlife Resources Commission issues rules and regulations governing the numbering of boats, including regulations for the issuance of special registration numbers for use by boat manufacturers and dealers for demonstration and transportation purposes, and the issuance of special numbers to the owners of fleets of boats for hire or rent. T.C.A. § 69-9-209.

**Boat Trailer Registration**

Reference Number: CTAS-2475

Under T.C.A. § 55-4-226, manufacturers and dealers or persons and businesses that transport boats for hire may operate a boat trailer without registering it if the boat trailer operates solely for the purpose of delivery of a boat to a customer, and the boat trailer displays special purpose boat transport plates. A boat manufacturer, dealer, person, or business who operates a boat trailer for hire to deliver boats may apply with any county clerk for one or more special purpose boat transport plates. The fee for the first plate is $47.30, and the fee for any additional plates is $23.55. The special purpose boat transport plates expire May 31 of each year. Issuance of plates begins each year on May 1, upon payment of the fee and proof that the applicant is still engaged in the business of transporting boats for hire. No business license is required as proof that a person or business transports boats for hire.

**Acknowledgment of Instruments, Affidavits, and Administration of Oaths**

Reference Number: CTAS-691

The county clerk and deputy county clerks are authorized to take acknowledgments of instruments within the state under T.C.A. § 66-22-102. The clerk is entitled to the fee provided in T.C.A. § 8-21-701 for this service.
County clerks are also authorized under T.C.A. § 18-6-114 to take affidavits and administer oaths using their official seals, to the same extent as general sessions judges and notaries public. For this service, the county clerk is entitled to receive a fee of twenty-five cents (25¢).

Other Powers and Duties

Reference Number: CTAS-692

A few county clerks act as the clerk of the probate court and/or juvenile court. Although most county clerks are no longer clerks of court, county clerks are authorized and empowered to take depositions in any legal proceeding or to take affidavits and administer oaths for general purposes to the same extent and in the same manner as notaries public. T.C.A. §§ 18-6-113; 18-6-114.

The county road list, which is approved by the county legislative body each year, is entered of record in the office of the county clerk in a book kept for that purpose. T.C.A. § 54-10-103.

County personnel policies are also filed in the office of the county clerk as a record of the base personnel policies in effect in each county office. T.C.A. § 5-23-101 et seq.

County clerks may, but are not required to, participate in a pilot program with the state department of health to issue certified copies of birth certificates to walk-in customers under T.C.A. § 68-3-206.

County clerks are authorized, but not required, to contract with the department of safety to issue driver licenses under T.C.A. § 55-50-331.

County clerks are required to verify that anyone conducting a motor vehicle race in the county has the required insurance under T.C.A. § 55-22-101. For additional information, see Motor Vehicle Races.

County clerks issue permits to transitory vendors under T.C.A. § 62-30-101 et seq., and collect a fee of $50.00 for issuance of the mobile vendor permit to the transitory vendor.

Denial of Licenses for Failure to Pay Child Support

Reference Number: CTAS-693

State law provides for denial or revocation of licenses for failure to pay child support, including licenses, certifications, registrations, permits, approvals and similar documents that grant authority to engage in a profession, trade, occupation, business, or industry, to hunt or fish, and to operate motor vehicles or other conveyances, but not licenses to practice law unless guidelines are established by the Supreme Court. T.C.A. § 36-5-701 et seq.

When records of the court clerk or Department of Human Services ("DHS") show that child support payments have become delinquent, DHS is authorized to serve notice upon the obligor of the department’s intent to notify licensing authorities that the person is not in compliance with the order of support. The person is entitled to request an administrative hearing with DHS or make arrangements to correct the delinquency, and to judicial review of the department’s decision. If the person does not comply with the order, request a hearing, or make arrangements to pay within twenty (20) days of service, DHS may proceed to notify licensing authorities by certifying in writing or by electronic data exchange that the person is not in compliance with the support order. T.C.A. § 36-5-701 through 36-5-705.

A certification from DHS requires the licensing authority to deny any renewal request, revoke the obligor’s license, or refuse to issue or reinstate the license, as the case may be, until the obligor provides the licensing authority with a release from DHS stating that the obligor is in compliance with the order of support. T.C.A. §§ 36-5-702; 36-5-706. Upon receipt of a certification from DHS, the licensing authority is required to notify the obligor of the action taken against the license. The notice is to be sent by regular mail and must state that the obligor’s application for issuance, renewal or reinstatement has been denied, or that the current license has been suspended or revoked due to certification by DHS that the obligor is not in compliance with an order of support. A notice of suspension must specify the reason and statutory grounds for suspension and the effective date for the suspension. The notice must also state that a release from DHS is required before the license can be issued, reinstated, or renewed. T.C.A. § 36-5-706. When the delinquency has been corrected, DHS is required to inform the licensing authority of compliance. Unless the time has passed for a new periodic license fee, the obligor is not required to pay a new fee for the remainder of the licensing period; however, the licensing authority may impose a reinstatement fee not to exceed five dollars ($5.00). T.C.A. § 36-5-706; 36-5-707.

On or before July 1, 1996, or as soon thereafter as economically feasible and at least annually thereafter, all licensing authorities are required to provide DHS with a database of information on magnetic tape or other machine-readable format (or if this information is not available on magnetic format, in a format...
agreed upon by the commission of DHS and the licensing authority). That data shall include information about both applicants and all current licensees (including those currently suspended or revoked if able to be reinstated). If available, the information is to include name, date of birth, address, social security number or federal employer ID number, description, type of license, effective date and expiration date of license, and status of the license. T.C.A. § 36-5-711.

Courts are also authorized to order the denial, revocation or suspension of a license in connection with proceedings to enforce orders of child support. If the obligee specifically requests the court to revoke a license, the court may order any or all of the obligor’s licenses be subject to revocation, denial or suspension. In that case, the clerk of the court will send a copy of the court order to the appropriate licensing authorities, and the licensing authority is required to revoke, deny or suspend the license in accordance with the court’s order. When the obligor is in compliance with the order of support, the court will enter an order showing a finding of compliance which the clerk will send to each licensing authority, and the licensing authority will then issue, reinstate or reissue the license. T.C.A. § 36-5-101.

All applications for professional licenses, driver licenses, occupational licenses, hunting and fishing licenses or recreational licenses, or marriage licenses issued on and after July 1, 1997 are required to contain the social security number of each applicant. (Note that in connection with marriage licenses, the Tennessee Attorney General has opined that applicants who have not been issued a social security number are not required to provide one in order to obtain a marriage license. Op. Tenn. Att’y Gen. 08-126 (July 22, 2008)). This principle should apply to other licenses that are subject to this statute, so that applicants are required to provide their social security numbers only if they have one. This information is to be provided to the Department of Human Services or its contractors or agents enforcing Title IV-D of the Social Security Act, to the extent possible in electronic or magnetic automated formats. T.C.A. § 36-5-1301.

Relationship to County Legislative Body and Other Officials-
County Clerk

Reference Number: CTAS-57

The many and varied duties of the county clerk’s office necessitate interaction with numerous county and state officials. The primary interactions which occur between the county clerk, the county mayor, and the county legislative body result from the county clerk’s duties as the clerk of the county legislative body. T.C.A. §§ 18-6-101; 18-6-104. In this role, the county clerk works closely with these officials in keeping the minutes and other records of actions taken by the county legislative body. The county legislative body as a whole, or a committee selected by the county legislative body, serves as the county beer board, and the county clerk often assists the beer board in taking applications for permits to sell beer, recording the actions of the beer board and issuing permits.

After the county mayor has approved the bonds for county officials and bonded employees, the bonds must be 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.

Certification by the county clerk of other matters, such as approval of a wheel tax, mineral severance tax, or private act, may be necessary to the Department of Revenue, Secretary of State, or other officials as required by law.

The county clerk as the collector of certain state revenue works very closely with officials of the Department of Revenue. As a registrar of motor vehicles, the county clerk works very closely with officials of the Tennessee Department of Revenue’s Vehicle Services Division. In connection with the issuance of hunting and fishing licenses (T.C.A. § 70-2-106) and boat registration numbers (T.C.A. § 69-9-208), the county clerk acts as agent for the Tennessee Wildlife Resources Agency and interacts with the appropriate officials of that agency.

The county clerk deals with the trustee regarding the remittance of fees (monthly or quarterly) to the general fund and the remittance of taxes collected by the county clerk, usually monthly. Although the county clerk is no longer directly responsible for collecting the business tax, the county clerk still works closely with the Department of Revenue to assist in their collection efforts, and the county clerk continues to register businesses and issue business licenses. T.C.A. § 67-4-701 et seq.

Because the County Clerk is responsible for the issuance of marriage licenses, the County Clerk interacts with the Department of Health, Office of Vital Records, to ensure that the proper information is gathered and transmitted to the Office of Vital Records. The County Clerk’s duties with respect to notaries public necessitate interaction with the appropriate officials in the office of the Secretary of State.

The county clerk, as the collector of various privilege taxes, interacts with the assessor of property. The assessor is required to notify the county clerk of all persons engaged in business who would be liable for
the payment of privilege taxes collected by the county clerk, and the county clerk and the county mayor compare the assessor’s list with the list of persons paying privilege taxes and report the result to the county legislative body. T.C.A. § 67-4-108. In addition, the county clerk records the oaths of the assessor and assessor’s deputies, and forwards these oaths to the State Board of Equalization T.C.A. § 67-5-302.

The county clerk may also interact with the assessor in those counties in which the county legislative body requires the county clerk to prepare the property tax rolls from the assessment records. When the tax roll is completed, the county clerk delivers it to the county trustee on or before the first Monday in October each year for collection of the property taxes. The county clerk also prepares a statement showing the aggregate amount of the value of real and personal property, and the tax thereon, contained in the county, and in each municipality within the county, broken down by civil districts and wards. A copy of this statement must be forwarded to the Commissioner of Revenue and to the mayor of each municipality by the first Monday in November of each year. T.C.A. § 67-5-807.

The county clerk, as an ex officio member of the county public records commission, interacts with other records commission members, such as the register, and with the Tennessee State Library and Archives. In those counties where the county clerk serves as a clerk of court for such courts as probate or juvenile, the clerk works closely with the judges of those particular courts.

Financial Matters-County Clerk

Reference Number: CTAS-746

Fees-County Clerk

Reference Number: CTAS-747

County clerks may not demand or receive any fees or compensation not specified by law (T.C.A. § 8-21-101), and may not receive any authorized fees until the duty or service for which the fee is granted has been performed, unless specifically allowed by law. T.C.A. § 8-21-102. A county clerk who demands or receives fees higher than those prescribed by law may be liable to the party charged in the amount of fifty dollars ($50.00), and is also guilty of a misdemeanor. T.C.A. § 8-21-103. It is the duty of the courts to decide, upon application by the county clerk, any question arising under law and such decision will protect the county clerk acting pursuant to the decision. T.C.A. § 8-21-105.

County clerks should always check the current statutes to confirm the correct amount of fees to be charged. The general fee statute (T.C.A. § 8-21-701) for the county clerk provides the fees for issuance of marriage licenses, transferring business licenses, certifying a notary public’s election, recording official bonds, receiving and paying over revenue, for copies and certified copies of documents, and other fees.

In addition to the fees set out in the county clerk’s fee statute above, the county clerk may be entitled to other fees for specific duties the clerk performs. The fees associated with the county clerk’s duties in motor vehicle titling and registration are set out in Title 55, Chapters 4 and 6 of the Tennessee Code Annotated, and the current amounts of these fees may be obtained from the State Department of Revenue’s Taxpayer and Vehicle Services Division (Vehicle Services Section).

Under T.C.A. § 55-6-104(a)(3), county clerks receive a fee of $8.50 for or receiving and forwarding to the department of revenue each application for certificates of title, including all acknowledgments of signatures, provided, that three dollars ($3.00) of the fee must be earmarked for the provision of services directly related to titling and registration and must not revert to the county general fund at the end of a budget year if unexpended.

Fees associated with issuance of business licenses are found in Title 67, Chapter 4, Part 7. There are other fees set out in other parts of the Tennessee Code Annotated for miscellaneous duties the clerk may perform, such as issuing hunting and fishing licenses.

The county clerk is not entitled to any fees for certificates and seals in the application for pension and pensioners’ money, or upon powers of attorney for that purpose and the taking or receiving of fees in any such cases shall be a misdemeanor. T.C.A. § 8-21-703. A county clerk who also acts as a clerk of court is authorized to demand and receive the same fees as the other court clerks when performing court clerk’s duties. These fees are set forth in T.C.A. § 8-21-401 et seq. County clerks acting as court clerks also collect the applicable sheriff’s fees.T.C.A. § 8-21-901 et seq. Any county clerk with court clerk duties can take additional training courses with regard to those court clerk duties by taking training courses designed for clerks of court.

County clerks are prohibited from requiring or encouraging persons who pay by personal check to make the check out to any individual in his or her personal capacity. All checks received by the county clerk
should be made out in the name of the appropriate governmental entity or to the county clerk’s office, or in the name of the county clerk in his or her official capacity. T.C.A. § 9-1-117.

All county officials, including county clerks, are authorized to accept payment by credit card or debit card for any public taxes, licenses, fines, fees or other monies collected. Beginning June 7, 2001, the county legislative body may waive the processing fee that otherwise would be added to the amount collected when payment is made using a credit or debit card. T.C.A. § 9-1-108. The credit card numbers and related personal identification numbers are confidential records. T.C.A. § 10-7-504.

County clerks are required to adopt a policy for handling refunds of amounts overpaid, which must include one or more of the following: contacting the person or entity tendering the payment for specific instructions for handling the excess amount; allowing the county clerk's office to retain reasonable overage amounts as fees of the office; or providing a refund of the excess money less a reasonable amount retained as fees of the office. T.C.A. 8-21-701.

**Official Bank Account-County Clerk**

Reference Number: CTAS-748

Every county official handling public funds, including the county clerk, is required to maintain an official bank account in a bank or banks within this state and to deposit any public funds to the official account or accounts within three (3) days of receipt. All county funds deposited with a bank or financial institution must be secured by collateral in the same manner and under the same conditions as state deposits as provided in Title 9, Chapter 4, *Tennessee Code Annotated,* and county clerks who maintain official accounts are authorized to enter into agreements with banks and other financial institutions as necessary for the maintenance of collateral to secure the funds on deposit. All disbursements from these accounts must be made by consecutively pre-numbered checks. A county clerk may also maintain a petty cash fund in an amount sufficient to transact the official business of the office. Any violation of the provisions governing official bank accounts is a Class C misdemeanor. T.C.A. § 5-8-207.

Deposit slips, deposit books, bank statements, canceled checks, and check books must be accurately maintained. As a practical matter, a county clerk should keep all available cash in daily interest bearing accounts. In one instance, a county official was charged with felony misappropriation because the official had agreed not to deposit a check at the request of a citizen until sufficient funds were in the bank to cover the check.

**Duties as to Revenue-County Clerk**

Reference Number: CTAS-749

The county clerk is required to maintain a revenue docket which includes a record of all sources of county revenue. T.C.A. § 5-8-106. The county clerk also performs various duties in relation to state revenue. T.C.A. § 18-6-105.

**Auditing-County Clerk**

Reference Number: CTAS-750

The records of all county clerks must be audited on an annual basis. T.C.A. § 4-3-304(4). The Comptroller is given the authority to establish auditing standards, and 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; 4-3-304. Auditors of the Division of Local Government Audit of the State Comptroller’s Office or the independent certified public accountant will audit the county clerk's books, accounts, and records annually to ascertain any errors, irregularities or defaults. T.C.A. §§ 4-3-304; 9-3-201. The fiscal year for a county clerk’s office is July 1 through June 30. County clerks must use the uniform chart of accounts.

**Purchasing-County Clerk**

Reference Number: CTAS-751

There are three sets of statutes, and many private acts, concerning purchasing by counties. Therefore, there is little uniformity in purchasing procedures in Tennessee’s counties. The three major sets of statutes (general laws) affecting counties are: the County Purchasing Law of 1983, which provides some minimum requirements for general fund purchases for counties in which no local option purchasing law is in effect; the local option County Purchasing Law of 1957; and the local option County Financial Management Act of 1981. Also, in those counties that operate under metropolitan or charter forms of
government, the county’s purchasing procedures will appear in the metropolitan or county charter. For additional information, see Purchasing.

Budgeting-County Clerk

Reference Number: CTAS-752
The Accounting/Budgeting/Finance tab contains information about budgeting and the various budgeting laws.

Beer

Reference Number: CTAS-333

Definition of Beer

Reference Number: CTAS-334
The transportation, storage, sale, distribution, possession, and manufacture of "beer" in Tennessee is regulated under the statutes set out in Tennessee Code Annotated, Title 57, Chapter 5. "Beer" is defined as "beer, ale or other malt beverages having an alcoholic content of not more than eight percent (8%) by weight, except wine as defined in T.C.A. § 57-3-101(a)(24); provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol." T.C.A. § 57-5-101. The statutory definition of "beer" is based on alcoholic content, so that any beverage containing the percentage of alcohol set out in the statutory definition is regulated under these statutes regardless of the identity of the fruit or grain used to produce it. Attorney General Opinion 94-75 (7/8/94) (refers to older statute which defined beer as 5% alcohol or less). All references to "beer" herein refer to the statutory definition.

All businesses engaged in the sale, distribution, manufacture and storage of beer are required to obtain a permit from the county or city where the business is located. T.C.A. § 57-5-103.

Wine and alcoholic beverages having more than eight percent (8%) in alcoholic content are not regulated locally, but are regulated at the state level by the Tennessee Alcoholic Beverage Commission ("ABC"). T.C.A. §§ 57-3-104, 57-4-201. These beverages may not be sold unless the city or county has authorized their sale by local referendum. T.C.A. § 57-3-102. Once such a referendum has passed, permits are issued by the ABC. T.C.A. § 57-3-104.

Classification of Counties

Reference Number: CTAS-335
Tennessee counties are classified into two categories for the purpose of licensing, regulating and controlling the transportation, storage, sale, distribution, possession, receipt and manufacture of beer. Class A includes all counties which are not governed by metropolitan governments. Class B includes those counties which are governed by metropolitan governments (currently, only Davidson, Moore, and Trousdale counties). T.C.A. § 57-5-103(b).

Authority of Cities and Class B (Metropolitan Government) Counties

Reference Number: CTAS-336
Cities and Class B counties are authorized to pass ordinances governing the issuance and revocation or suspension of licenses for the storage, sale, manufacture and distribution of beer within their corporate limits, and within the general services district of Class B counties outside the limits of any smaller cities. Cities and Class B counties may impose restrictions in addition to those set out by statute, fix zones and territories, provide hours of operation and impose other rules and regulations to promote public health, morals and safety. Cities and Class B counties may authorize the sale of beer in hotel and motel rooms and in clubs and lodges. T.C.A. § 57-5-106. Cities and Class B counties have extensive authority to regulate the sale of beer, which includes the authority to limit the number and location of retail outlets. See, e.g., State ex rel Amvets Post 27 v. Beer Board, 717 S.W.2d 878 (Tenn. 1986). The powers of cities and Class B counties to regulate the sale of beer extends even to the extent of prohibition. Ketner v. Clabo, 225 S.W.2d 54 (Tenn. 1949). Cities and Class B counties may establish different distance requirements for the sale of beer in different, well-defined sections of their jurisdictions. Attorney General
Opinion 02-092 (8/28/02).

**Authority of Class A Counties**

Reference Number: CTAS-337

_Tennessee Code Annotated_ § 57-5-105 sets out the requirements an applicant must meet in order to obtain a beer permit from a Class A county. This statute also sets out the limited power of a Class A county to impose restrictions on the issuance of permits. The Tennessee Supreme Court has summarized the lack of authority of Class A counties to impose any additional conditions or restrictions as follows:

> A county beer board must issue a license to anyone who meets the requirements laid out in this section, and they may not prescribe conditions for the issuance of a permit in addition to those set out in the statute. _Howard v. Willocks_, 525 S.W.2d 132 (Tenn. 1975).

Class A counties must look exclusively to the statutes and the case law explaining the statutes to determine the limits of their authority to regulate the issuance and revocation of permits to sell beer. Attorney General Opinion U91-51 (4/9/91). Class A counties have no authority to set any requirements in addition to those contained in the statutes. For example, the Attorney General has opined that a Class A county has no authority to prohibit the sale of cold beer at convenience stores and grocery stores. Attorney General Opinion 05-024 (3/14/05).

Class A counties are authorized to review applications for beer licenses and must grant any application which meets the statutory requirements. _T.C.A. _§ 57-5-105(e)._ The statutes allow county legislative bodies to adopt resolutions establishing “distance rules” which prohibit the issuance of a permit for an establishment to sell beer within 2,000 feet of schools, churches or other places of public gathering, or prohibit the sale of beer within 300 feet of residential dwellings in accordance with the guidelines outlined in the statute. Class A counties also may refuse to issue a beer permit if the issuance would interfere with public health, safety, and morals. _T.C.A. _§ 57-5-105(b)(1).

**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.

**Board Membership**

Reference Number: CTAS-339

The statutes do not establish who will serve on the beer board, how many members the board will have, a term of office for board members or whether the members of the board will be compensated for their time. If the county legislative body chooses to establish a county beer board, there should be a resolution of the county legislative body setting out specific information concerning the appointment procedure, qualifications of members, term of office, compensation and other necessary guidelines for the board. A county beer board serves at the will and pleasure of the county legislative body which appointed it; therefore, the county legislative body has the power to discharge the board and replace its members. Attorney General Opinion 82-325 (6/24/82). While there is no prohibition against a member of a county beer board obtaining or holding a license to sell beer, the Attorney General has opined that it is “undesirable” for a beer board member to obtain a beer permit as it presents an appearance of impropriety. Attorney General Opinion 84-209 (6/27/84).

**Board Authority**

Reference Number: CTAS-340

Once appointed, the county beer board may exercise the same discretion as the county legislative body to grant, deny, suspend or revoke permits to sell beer, and to impose civil penalties, within the limits of the authority granted by the statutes (and any distance rules or extended hours of operation which may have been established by resolution of the county legislative body). In discussing the exercise of such discretion, the courts make no distinction between the county legislative body and the county beer board.
State ex rel. Simmons v. Latimer, 186 Tenn. 577, 212 S.W.2d 386 (1948). However, the beer board is not authorized to establish distance rules or to extend the hours for the sale of beer; this authority may be exercised only by resolution of the county legislative body. T.C.A. § 57-5-105.

The county legislative body is authorized to impose training or certification restrictions or requirements on employees of beer permit holders. Only the county legislative body, and not the beer board, is authorized to impose these requirements. These requirements cannot be applied to any employee who holds a valid server permit issued by the ABC under Title 57, Chapter 3, Part 7 (the Alcohol Server Responsibility and Training Act of 1995). T.C.A. § 57-5-105(j). Once these requirements have been established by resolution of the county legislative body, the beer board has the authority to administer the provisions of the resolution within the limits of the authority granted by the resolution. However, counties have no authority to impose a tax or fee on servers or sellers of beer, for training or for any other purpose, except as expressly provided by state law. Attorney General Opinions U96-009 (2/8/96) and 97-077 (5/21/97).

A county beer board has the authority to conduct investigations of beer permit holders. In an unpublished opinion of the Tennessee Court of Appeals, the court found that a beer board was empowered to employ an undercover investigator after the county sheriff had refused to conduct an investigation concerning illegal sales of beer to minors. Jackson v. Franklin County Beer Board, 1993 WL 46524 (Tenn. Ct. App. 1993). Relying on this opinion, the Attorney General also opined that the beer board may hire a private investigatory firm to conduct undercover investigations concerning the sale of beer to minors, and that minors may be used in these investigations. Attorney General Opinion 01-062 (4/20/01).

Beer Permits

Reference Number: CTAS-341

It is unlawful to operate any business engaged in the sale, distribution, manufacture or storage of beer without first obtaining a permit from the city or county in which the business is located. The county issues permits only to businesses located in the unincorporated areas of the county; cities are responsible for issuance of permits to businesses located within any incorporated areas. T.C.A. §§ 57-5-105, 57-5-106. No city or county permit is required for a wholesaler unless the wholesaler operates a warehouse in the city or county. T.C.A. § 57-5-103. Selling, distributing, manufacturing, or storing beer without the required permit is a Class C misdemeanor. T.C.A. § 57-5-303. Sample Beer Permit

There are exceptions --

(1) caterers licensed by the Alcoholic Beverage Commission, in accordance with T.C.A. § 57-4-101(l) and 57-4-203(l)(3), are authorized to sell beer and other alcoholic beverages in conjunction with their catering services;

(2) retail liquor store owners licensed under T.C.A. § 57-3-204 are permitted to sell beer and other malt beverages without obtaining a beer permit from the county or city, and these beer sales are regulated by the ABC under T.C.A. § 57-3-404(e);

(3) a beer permit is not required for the making of "homemade beer" when it is done in accordance with the provisions of T.C.A. § 57-5-111; and

(4) under T.C.A. § 57-3-224, delivery services that deliver prepared food from restaurants may obtain a delivery service license issued by the ABC to deliver sealed packages of beer and alcoholic beverages; drivers must be licensed by the ABC under T.C.A. § 57-3-225.

Permits - To Whom Issued

Reference Number: CTAS-342

Beer permits are issued to the owner of the business or other entity responsible for the premises for which the permit is sought, whether a person, firm, corporation, joint-stock company, syndicate, association, or a local governmental entity when the governing body has authorized such sales of beer. A permit is valid only for the owner to whom it is issued, and it cannot be transferred to another owner. When the owner is a corporation, a change in ownership (necessitating a new permit) occurs when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner. T.C.A. § 57-5-103(a). A beer permit does not transfer by corporate merger. Mapco Petroleum, Inc. v. Basden, 774 S.W.2d 598 (Tenn. 1989). Similarly, permits are valid only for the business operating under the name identified in the permit application. T.C.A. § 57-5-103(a)(2)(C). If the name of the business changes, a new permit must be obtained.
Permitted Location
Reference Number: CTAS-343
A permit is valid only for a single location, which includes all decks, patios, and other outdoor serving areas contiguous to the location. If an owner operates two or more restaurants or other businesses within the same building, the owner may, in the owner's discretion, operate some or all of the businesses under the same permit. Permits are not transferable from one location to another. T.C.A. § 57-5-103(a).

Under this statute, a beer permit issued for a clubhouse or restaurant on a golf course does not allow the permit holder to sell beer on the golf course itself because the golf course, while it may be contiguous, does not constitute an "outdoor serving area" within the meaning of the statute. Attorney General Opinion 01-117 (7/24/01).

A beer board could, in its discretion, issue an on-premises beer permit to a golf course, thereby allowing the sale of beer within the confines of the golf course property. Or, if a golf course clubhouse has been issued an off-premises permit, a patron could purchase beer in the clubhouse and take it onto the golf course to drink it. Also, a beer board may issue a permit to an applicant for an outdoor event that is not contiguous to the applicant's building. Attorney General Opinion 08-09 (1/18/08).

Beer permit holders may sell beer online for curbside pickup at the permit holder's location. The beer must be delivered to a vehicle located within a paved parking area adjacent to the permitted business, and the beer must be pulled from the retailer's inventory at the permitted location. The employee delivering the beer to the vehicle must confirm that the individual receiving the beer is at least twenty-one (21) years of age. T.C.A. § 57-5-103(a).

On-Premises or Off-Premises Consumption
Reference Number: CTAS-344
A business may sell beer for both on-premises and off-premises consumption under the same permit. T.C.A. § 57-5-103(a)(5). However, a permit is not valid for on-premises consumption unless the application so states. T.C.A. § 57-5-105(b)(5). If a permit holder for either off-premises or on-premises consumption wishes to change the method of sale, the permit holder must apply for a new permit. T.C.A. § 57-5-105(c)(8).

Class A counties which have adopted distance rules cannot draw a distinction between on-premises consumption of beer as opposed to off-premises consumption in the calculation of the minimum footage requirements. Attorney General Opinions U93-74 (6/17/93) and 01 157 (10/25/01). However, cities and Class B (metropolitan government) counties may set different requirements for businesses selling beer for on-premises consumption versus those selling for off-premises consumption. See Attorney General Opinion 02-092 (8/28/02).

Microbreweries and Brew Pubs
Reference Number: CTAS-345
Under T.C.A. § 57-5-101(a), brewers and wholesalers are prohibited from having any interest in the retail beer business; a brewer cannot sell beer at retail or operate a restaurant at which it sells its own beer. However, an exception to this rule allows a manufacturer in any county in Tennessee who meets necessary federal, state, and local licensing requirements to operate as a retailer at or contiguous to the manufacturer's location for sales of not more than 25,000 barrels per year for consumption on or off the premises, in accordance with the provisions of T.C.A. § 57-5-101(c); Attorney General Opinion 00-087 (5/5/00).

A business engaged in the sale and manufacturing of beer must obtain a permit from the city or county in which the business is located. T.C.A. § 57-5-103. Also, note that beer falls within the definition of food as defined in T.C.A. § 53-1-102, and therefore manufacturing beer is subject to regulation by the Tennessee Department of Agriculture. Accordingly, these establishments must also obtain a food manufacturing license from the Department of Agriculture.

Temporary Beer Permits
Reference Number: CTAS-346
Temporary beer permits, not to exceed thirty (30) days, may be issued at the request of an applicant, upon the same conditions governing permanent permits. However, a temporary permit cannot be issued
to authorize the sale, storage or manufacture of beer on publicly owned property (except in Class B counties and counties with a population over 300,000 by a bona fide charitable or nonprofit political organization with the approval of the appropriate governmental authority charged with the management of the property and the approval of the county beer board). T.C.A. § 57-5-105(g).

**Beer Permit Application**

**Reference Number: CTAS-347**

The owner of a business desiring to sell, distribute, manufacture or store beer in a Class A county outside the limits of any incorporated town or city must file an application for a permit with the county beer board. T.C.A. § 57-5-105. The application must be filed by the owner of the business, and it must contain the following information as set out in T.C.A. § 57-5-105(c):

1. Name of the applicant (the owner of the business);
2. Name of the business;
3. Location of the business by street address or other geographical description sufficient to determine conformity with applicable requirements;
4. If the applicant desires to sell beer at two or more restaurants or other businesses within the same building under the same permit, a description of each of the businesses;
5. All persons, firms, corporations, joint-stock companies, syndicates or associations having at least a five percent (5%) ownership interest in the applicant (owner of the business);
6. Identity and address of a representative to receive annual tax notices and any other communication from the county beer board;
7. That no person, firm, joint-stock company, syndicate or association having at least a five percent (5%) interest in the applicant nor any person to be employed in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years;
8. Whether the applicant is applying for a permit which would allow the sale of beer for either on-premises consumption or for off-premises consumption, or both;
9. Any other information as may reasonably be required by the county beer board.

**Sample Beer Permit Application**

An applicant (and a permit holder) is required to amend or supplement the application promptly if a change in circumstances occurs which would affect the responses given in the application. T.C.A. § 57-5-105(c)(9). Any applicant who makes a false statement in the application shall forfeit the applicant's permit and shall not be eligible for a permit for a period of ten (10) years. T.C.A. § 57-5-105(d).

In order to receive a permit, an applicant also must establish that:

1. No beer will be sold except at places where the sale will not cause congestion of traffic or interference with schools, churches, or other places of public gathering, or otherwise interfere with public health, safety and morals (and if the county legislative body has adopted a distance rule by resolution, that the business is not in violation of the rule). T.C.A. § 57-5-105(b)(1).
2. No sale will be made to minors. T.C.A. § 57-5-105(b)(2).
3. That no person, firm, corporation, joint-stock company, syndicate or association having at least a five percent (5%) ownership interest in the business has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance or controlled substance analogue, or any crime involving moral turpitude within the past ten (10) years. T.C.A. § 57-5-105(b)(3).
4. No person employed by the applicant in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance analogue, or any crime involving...
moral turpitude within the last 10 years. T.C.A. § 57-5-105(b)(4).
5. That no sales for on-premises consumption will be made unless the application so states. T.C.A. § 57-5-105(b)(5).

Crimes involving moral turpitude refer to acts of baseness, vileness, or depravity in the private and social duties which a person owes to other persons or to society in general, contrary to the accepted rules of right and duty. Brooks v. State, 187 Tenn. 67, 213 S.W.2d 7 (1948). Crimes of rolling high dice for a Coke and failing to immediately release 17 bluegills are not crimes involving moral turpitude. Gibson v. Ferguson, 562 S.W.2d 188 (Tenn. 1976). Driving under the influence (DUI) and reckless driving are not considered crimes of moral turpitude. Attorney General Opinions 95-37 (4/19/97) and 08-108 (5/14/08). The sale of beer to a minor or to a person not presenting proper identification is not a crime of moral turpitude. Attorney General Opinion 09-41 (3/25/09) (however, this would be a violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages). The offense of vehicular homicide, on the other hand, is a crime of moral turpitude. Attorney General Opinion 98-225 (12/1/98). In Opinion No. 08-108 (5/14/08), the Attorney General discusses the law on moral turpitude in detail and lists other behavior that has been held to constitute moral turpitude.

In addition to the requirements listed above, all beer permit holders are required to provide the county with documentation that they are duly registered with the Commissioner of Revenue for sales tax purposes. A new permit holder must provide this documentation within ten (10) days following approval of the permit. The required documentation is an actual copy of the registration certificate indicating that the purchase of beer is “for resale” by the beer permit holder. Permit holders are required to maintain a copy of a valid resale certificate on file with the county. T.C.A. § 57-5-103. Persons engaging in the manufacture or wholesale distribution of beer are also required to register with the Commissioner of Revenue and receive a certificate of registration, which must be posted at the location prior to commencement of any business. T.C.A. § 57-5-102.

A 2015 amendment to T.C.A. § 57-5-103(a) provides that a beer permit cannot be issued to an applicant who has not been a citizen or lawful resident of the United States for at least one year immediately prior to the date of the application. However, the constitutionality of this provision has been called into question by the Tennessee Attorney General in Opinion No. 16-09 (3/4/16).

Application Fee for Beer Permit

Reference Number: CTAS-348
Each applicant is required to pay an application fee of $250 to the county or city in which the business is located prior to consideration of an application to sell beer. No portion of this fee can be refunded to the applicant regardless of whether the application is approved or denied. T.C.A. § 57-5-104(a).

An annual privilege tax is imposed on the business of selling, distributing, storing or manufacturing beer in Tennessee in the amount of $100 per year, which is due each January 1. At the time a new permit is issued, the permit holder is required to pay this tax on a prorated basis for each month or portion of a month remaining until the next payment date. T.C.A. § 57-5-104(b)(5).

Background Checks

Reference Number: CTAS-349
The beer board may wish to request background checks on applicants for a beer permit. Under T.C.A. § 57-5-103(e), a city or county is authorized to seek criminal history background or fingerprint checks on applicants for beer permits. These criminal background checks may include fingerprint checks against state and federal criminal records maintained by the Tennessee bureau of investigation and the federal bureau of investigation. The Tennessee bureau of investigation is authorized to assess fees for the searches in accordance with the fee schedule established by the bureaus. Also, criminal history information (intrastate) may be obtained from the Tennessee Bureau of Investigation for a fee of $29.00 per name submitted, under T.C.A. § 38-6-120. Because no statutory authorization exists for requiring the applicant to pay these fees, the beer board cannot recover the fee from the applicant. Attorney General Opinion 97-077 (5/21/97).

Public Notice of Applications and Hearings

Reference Number: CTAS-351
Meetings at which the county beer board considers applications for permits must be public hearings at which members of the public and their attorneys are allowed to speak. T.C.A. § 57-5-105(f). Under the Open Meetings Act ("Sunshine Law"), adequate public notice of the meeting must be given. T.C.A.
8-44-103. Before issuing a permit, the beer board is authorized to publish a notice in a newspaper of general circulation in the county stating the name of the applicant, the address of the location, whether the application is for on-premises or off-premises consumption, and the date and time of the meeting at which the application will be considered. T.C.A. § 57-5-105(f). The minutes of the meeting must be recorded and open to public inspection, and all votes of the beer board must be by public vote, public ballot, or roll call. T.C.A. § 8-44-104.

Denial of Beer Permits

Reference Number: CTAS-352

A beer permit application may be denied for failure of the applicant to meet the statutory requirements discussed above. While cities and Class B counties can impose additional restrictions under T.C.A. § 57-5-106, Class A counties are required to grant any application which meets the statutory requirements set out in T.C.A. § 57-5-105.

A beer board may not avoid issuing a permit by simply refusing to take action on the application. If a board needlessly prolongs an application for a permit by tabling it, the board has in effect denied the application and the applicant is entitled to seek judicial review. McCarter v. Goddard, 609 S.W.2d 505 (Tenn. 1980).

Counties may deny a permit if the issuance would interfere with public health, safety, and morals. T.C.A. § 57-5-105(b)(1). The case law which has developed on the issue of whether issuing a beer permit would interfere with the public health, safety, and morals of a community limits the discretion of the beer board in most instances. A permit cannot be denied based on a generalized belief that the sale of beer is detrimental to the public health, safety and morals. For instance, it has been held that where all the requirements for issuance of a permit are met, a beer permit cannot be denied by a county beer board based on a board members’ philosophy that:

- the sale and consumption of beer destroys the home, creates poverty and misery, dethrones reason, defiles innocence, - yea, literally takes the bread from the mouths of little children, and topplles men and women from the pinnacles of righteousness and gracious living into the bottomless pits of degradation and despair, shame and helplessness and hopelessness. Coffman v. Hammer, 548 S.W.2d 310, 312 (Tenn. 1977).

The record must contain factual evidence showing how or why the particular permit would interfere with public, health, safety, or morals. The expression of fears, speculation, and apprehension of witnesses who appear to have a fixed opinion that sale of beer is harmful and immoral per se is immaterial. Harvey v. Rhea County Beer Board, 563 S.W.2d 790 (Tenn. 1978).

On the issue of safety, the Tennessee Supreme Court has found that in order for traffic congestion to constitute a valid basis for denying a permit to sell beer in the package, it must be shown that the issuance of the beer permit would cause traffic to be more congested and more hazardous than it was prior to the issuance of the beer permit. Hinkle v. Montgomery, 596 S.W.2d 800 (Tenn. 1980). This rule makes it difficult for a beer board to deny a permit based on traffic hazard, especially with existing establishments.

The court has found that there is no difference, in principle, between the purchase of a six-pack of beer to go and the purchase of a six-pack of a non-alcoholic beverage as “in each case the purchaser comes, he buys and he goes.” Concerns about increased littering are also not enough to deny a beer permit as the court has found that alcoholic beverages do not cause any more littering problems than non-alcoholic beverages. Coffman, at page 312. Concerns that young people congregate in and about the establishment have also been found insufficient to deny a permit to a convenience store. Ashley v. Bryant, 1989 WL 145886 (Tenn. Dec. 4, 1989).

Insufficient evidence of detriment to public health, safety, and morals was found in Al Koshshi v. Memphis Alcohol Commission, 2005 WL 1692947 (Tenn. Ct. App. 2005). In that case the beer board had based its denial on the business being in the vicinity of neighborhood schools, its location at a busy intersection, and problems with littering, loitering, and prostitution, but the court found that there was not enough evidence to deny the permit on these grounds.

Title deficiencies also are not a legitimate concern of beer boards. If an applicant for a beer permit leases a premises knowing that there is a restrictive covenant precluding the sale of alcoholic beverages, then this is a matter that addresses itself solely to the applicant's judgment and discretion and as to which the beer board has no concern. Lones v. Blount County Beer Board, 538 S.W.2d 386, 390 (Tenn. 1976).

However, where an applicant had a record for violation of laws relating to the sale of beer and the gambling laws and her husband had a serious drinking problem, granting her a permit to sell beer at an
establishment 35 miles from the nearest police authority was found to have been detrimental to the public
health, safety and morals of those living in the community and was sufficient grounds to refuse the
permit.  **Tippit v. Obion County**, 651 S.W.2d 211 (Tenn. 1983).

Although a building itself cannot have a "bad reputation," the reputation and past history of persons
proposing to operate the business is of legitimate concern, and the proposed site itself may be unsuitable.
Where a site was found to have been plagued with constant complaints of fighting and other disorderly
conduct, and was located in an unpatrolled, remote, rural area sixteen miles from the sheriff's office, the
beer board could deny a permit based on the public health, safety and welfare of the county.  **Lynn v.

The sale of beer at a market in which there is a gun shop has been found to interfere with the public
health, safety and morals of a community.  In **Gibbs v. Blount County Beer Board**, 664 S.W.2d 68 (Tenn.
1984), the court found that the general public could not distinguish between persons carrying weapons for
unlawful purposes, from those persons coming into the store to have a weapon repaired.  However, after
this case was decided the General Assembly repealed  T.C.A. § 39-17-1305 and made it lawful for a
person with a handgun carry permit to possess a handgun in a place where alcoholic beverages are sold if
the person is not consuming alcoholic beverages.  Accordingly, the validity of this case is uncertain under
current law.

The court found sufficient evidence of detriment to public health, safety, and morals to justify denial of a
beer permit in  **Suleiman v. City of Memphis**, 290 S.W.3d 844 (Tenn. Ct. App. 2008).  In this case specific
instances directly related to the applicant and the market in question, rather than generalized fears, were
presented as evidence.

Permits may be denied for violation of any distance rules which have been validly adopted by resolution of
the county legislative body.  T.C.A. §§ 57-5-105(b)(1) and 57-5-105(i).  However, before a permit may be
denied for violation of a 300' rule for proximity to a residential dwelling, the owner of the residential
dwelling must appear in person before the beer board and object to the issuance of the permit.  T.C.A.
§ 57-5-105(i).

If a beer permit is denied based on the testimony of a person at a hearing, the beer board is required to
notify the person who testified if the applicant applies for a permit again at the same location within 12
months.  The person who testified may submit the person's remarks in writing to the beer board at any
additional hearing, in lieu of making a personal appearance.  T.C.A. § 57-5-105(k).

If a permit application is denied three times, the applicant may not reapply for a permit on the same
premises until one year from the date of the third refusal, and only if the circumstances have substantially
changed.  T.C.A. § 57-5-105(h).  An applicant who makes a false statement on the application must forfeit
his or her permit and is ineligible to receive a permit for ten (10) years.  T.C.A. § 57-5-105(d).

**Expiration/Termination of Beer Permits**

Reference Number: CTAS-442

A beer permit has no expiration date, and counties and cities are prohibited from requiring periodic permit
renewals.  T.C.A. § 57-5-103(a)(9).  A beer permit expires upon termination of the business, change in
ownership, relocation of the business, or change in the name of the business.  A permit holder is required to
return the permit to the county or city that issued it within fifteen days of the occurrence of one of
these events, but the permit expires regardless of whether the permit is returned.  T.C.A.
§ 57-5-103(a)(6).  Unless one of these events occurs, a beer permit is valid until suspended or revoked in
accordance with T.C.A. § 57-5-108.

**Hours of Operation**

Reference Number: CTAS-355

The general law provisions regarding the hours of operation for businesses selling beer are found in T.C.A.
§ 57-5-301.  This statute prohibits the sale of beer during the following hours:

1. No beer or like beverage shall be sold between the hours of twelve o'clock (12:00) midnight
   and six o'clock a.m. (6:00 a.m.), Monday through Saturday;
2. No beer or like beverage shall be sold between the hours of twelve o'clock (12:00) midnight
   on Saturday and eleven fifty-nine o'clock p.m. (11:59 p.m.) on Sunday (Sunday night);
3. No such beverage shall be consumed, or opened for consumption, on or about any licensed
   premises, in either bottle, glass, or other container, after twelve fifteen o'clock a.m. (12:15
   a.m.).
However, county legislative bodies are authorized to extend the hours for the sale of beer in their counties by resolution. T.C.A. § 57-5-301(b)(1). (Sample resolution to extend hours). The county legislative body has no authority to shorten the hours for the sale of beer. Attorney General Opinion 86-202 (12/19/86). The power to extend the hours for the sale of beer must be exercised by resolution of the county legislative body, and cannot be delegated to the beer board. See Attorney General Opinion 82-325 (also cited 82-186) (6/24/82).

Regardless of the hours established for the sale of beer, any establishment that has a permit from the ABC to sell liquor or wine for on-premises consumption under Title 57, Chapter 4, is allowed to sell beer at any time the establishment is legally authorized to sell liquor or wine, provided that the establishment has obtained a beer permit. T.C.A. § 57-5-113.

The county legislative body has no authority to shorten the hours for the sale of beer. Attorney General Opinion 86-202 (12/19/86). The power to extend the hours for the sale of beer must be exercised by resolution of the county legislative body. T.C.A. § 57-5-301(b)(1).

In counties that have adopted liquor by the drink by countywide referendum, county legislative bodies may fix the hours for the sale of beer within the county, but these hours have no effect on business establishments selling liquor by the drink. T.C.A. § 57-5-301(b)(4).

In counties that have not adopted liquor by the drink in a countywide referendum but where a municipality in the county has approved liquor by the drink in a referendum, the hours for sale of beer in the entire county are automatically altered to so that the hours for beer sales are the same as the hours established in T.C.A. § 57-4-203(d) for the sale of liquor by the drink, except in other municipalities within the county that have not approved liquor by the drink. T.C.A. § 57-5-301(b)(5) and Attorney General Opinions 86-202 (12/19/86), U94-50 (3/21/94), and 99-187 (9/22/99). If an incorporated municipality is partially located in more than one county, then the hours established by T.C.A. § 57-4-203(d) will apply to each of the counties. Attorney General Opinion 85-7 (1/7/85). The county legislative body is free to extend (but not decrease) the hours for the sale of beer. T.C.A. § 57-5-301(b)(5) and Attorney General Opinion U94-50 (3/21/94).

The hours for sale of liquor by the drink are established in T.C.A. § 57-4-203(d). These hours also apply to the sale of beer in "clubs" as defined in T.C.A. § 57-4-102, and in counties where a municipality has approved liquor by the drink. The hours established by T.C.A. § 57-4-203(d)(1) prohibit the sale of alcoholic beverages in most establishments as follows:

Hotels, clubs, zoological institutions, public aquariums, museums, motels, convention centers, restaurants, community theaters, historic interpretive centers, and urban park centers, licensed as provided herein to sell alcoholic beverages, and/or malt beverages, and/or wine may not sell, or give away, alcoholic beverages and/or malt beverages and/or wine between the hours of three o'clock a.m. (3:00 a.m.) and eight o'clock a.m. (8:00 a.m.) on weekdays, or between the hours of three o'clock a.m. (3:00 a.m.) and twelve o'clock (12:00) noon on Sundays.

The ABC is authorized to extend the hours of sale in jurisdictions which have approved liquor by the drink by referendum. T.C.A. § 57-4-203(d)(5). Under Rule 0100-1-.03(2), the ABC has extended the hours as follows:

(2) Consumption on Licensed Premises. Except as provided for in 0100-01-.08 below [dealing with terminal buildings of a commercial air carrier], no licensee shall permit alcoholic or malt beverages to be consumed and/or sold on the licensed premises between the hours of 3 a.m. and 8 a.m. on Monday through Saturday or between the hours of 3 a.m. and 10 a.m. on Sunday unless the local jurisdiction has opted out of the expanded hours. If such is the case, then the consumption and/or sale of alcoholic beverages may begin at 12 noon on Sunday.

Municipalities and metropolitan governments which have adopted liquor by the drink are authorized to opt out of the extended hours set by the ABC rule and go back to the hours established under the statute. T.C.A. § 57-4-203(d)(5). The hours for sale of beer in the county will be the same as the extended hours set by the ABC rule regardless of whether the city has opted out of those hours, unless the county legislative body by 2/3 vote sets the hours for Sunday beer sales in accordance with T.C.A. § 57-5-301(b)(1) to apply in the county. T.C.A. § 57-4-203(d)(5).

In any jurisdiction that has voted to accept Tennessee River Resort District status under T.C.A. § 67-6-103(a)(3)(F) and is considered a Tennessee River Resort District for purposes of Title 57, Chapter 4, Part 1, the hours for the sale of beer within the district cannot be less than the hours for the sale of liquor and wine for on-premises consumption. T.C.A. § 57-5-301(b)(5)(B).

Distance Rules
Reference Number: CTAS-356

County legislative bodies do have certain statutory powers concerning the regulation of the sale of beer in the county which are not shared by the county beer board and cannot be delegated to the board. Only the county legislative body can adopt a resolution to extend the hours for selling beer in the county, and only the county legislative body can adopt distance resolutions, like the 2,000 foot rule and the 300-foot rule. T.C.A. § 57-5-105. Attorney General Opinion 82-325 (6/24/82).

When construing the statutes governing distance rules, it is generally the policy of the courts to construe the statutory provisions liberally in favor of the regulations and the places or institutions they are designed to protect, and strictly against the applicants for the beer permits. Y & M v. Beer Commission or Beer Board of Johnson County, 679 S.W.2d 446 (Tenn. 1984); St. John v. Beer Permit Board, 1998 WL 832392 (Tenn. App. 1998).

Distance rules must be applied uniformly. The Attorney General has opined that a Class A county cannot draw a distinction between on-premises and off-premises consumption for purposes of distance rules, so the same distance rule must be applied regardless of whether the establishment sells beer for consumption on-premises or off-premises. Attorney General Opinions U93-74 (6/17/93) and 01-157 (10/25/01). The Attorney General has also opined that a county cannot enact different distance rules in different areas of the county. Op. Tenn. Att'y Gen. 02-092 (8/28/02) at *7.

If a county changes its distance requirements, it is the distance rule in effect at the time the board votes on the application for a permit that controls that permit application. Attorney General Opinion 10-98 (9/15/10).

Holders of state licenses to sell liquor by the drink are not exempt from local distance rules. If they wish to sell beer, they are subject to the same distance requirements as other beer permit holders. Attorney General Opinion 99-098 (4/30/99).

The 2,000 Foot Rule

Reference Number: CTAS-357

County legislative bodies are given the authority to forbid the sale, storage and manufacture of beer within 2,000 feet of schools, churches and other places of public gathering. T.C.A. § 57-5-105(b)(1). The 2,000 foot rule applies even where the church, school or public gathering place is across state lines. Y & M v. Beer Commission or Beer Board of Johnson County, 679 S.W.2d 446 (Tenn. 1984).

A "church" has been defined by the Attorney General as a building regularly used for public worship. Attorney General Opinion 97-060 (5/1/97). A "place of public gathering" has been defined as a place which the general public has a right to visit and which is in fact visited by many people. Attorney General Opinion U90-121 (8/17/90). A public gathering place is usually confined to schools, churches, and similar public places, and does not include commercial establishments such as stores, filling stations, or dance halls. See Wright v. State, 171 Tenn. 628, 106 S.W.2d 866 (1937). A public cemetery may constitute a public gathering place, depending upon the nature of the cemetery. Attorney General Opinions 91-57 (6/10/91), 92-51 (9/16/92), and 12-02 (1/6/12). A day care center, whether privately owned or owned by a church, meets the definition of "public gathering place." Attorney General Opinions 97-060 (5/1/97) and 98-069 (3/25/98). A baptismal site located on private property is not considered a public gathering place because the public has no right to use the site. Adams v. Monroe County Quarterly Court, 379 S.W.2d 769 (Tenn. 1964). A sports complex containing a day care center is a place of public gathering, but a National Guard armory is not. Tennessee Sports Complex, Inc. v. Lenoir City Beer Board, 106 S.W.3d 33 (Tenn. Ct. App. 2002).

The adoption of the 2,000 foot rule is discretionary. A county legislative body must adopt a resolution implementing the 2,000 foot rule before it can be enforced in the county. Once enacted by the county legislative body, the county beer board can enforce the rule and deny beer permits which violate the rule. T.C.A. § 57-5-105(b)(1). A county beer board issuing a permit contrary to a distance rule adopted by the county legislative body has violated its obligation of upholding and enforcing the laws. Attorney General Opinion 82-325 (6/24/82). (Sample resolution to enact a 2,000 foot rule for the sale of beer).

Once the 2,000 foot rule is adopted, it must be enforced uniformly, and discretionary application of the rule renders it invalid. Serv-U-Mart, Inc. v. Sullivan County, 527 S.W.2d 121 (Tenn. 1975). An invalid distance resolution cannot be used as grounds for denial of a beer permit. Seay v. Knox County Quarterly Court, 541 S.W.2d 946 (Tenn. 1976). (See the discussion under Restoring an Invalid Distance Rule below.)

Distance Rules of Less than 2,000 Feet
While the statute speaks only of a 2,000 foot rule, the Tennessee Supreme Court has held that the authority to impose a 2,000 foot rule implies that a county may impose a rule prohibiting the sale of beer within a lesser radius from churches, schools or places of public gathering. *Youngblood v. Rutherford County Beer Board*, 707 S.W.2d 507 (Tenn. 1986). Thus, the statute establishes only the maximum distance within which the county can prohibit beer sales, and counties may prohibit the sale of beer within any lesser distance. Attorney General Opinion U93-74 (6/17/93). However, once the county's distance rule is established, it must be uniformly enforced or it will become invalid.

### The 300 Foot Rule

The county legislative body may adopt a resolution to forbid the sale of beer within 300 feet of a residential dwelling, measured from building to building. (Sample resolution to enact 300 foot rule for the sale of beer). In order to use this distance rule to deny an application for a beer permit, the owner of the residential dwelling must appear before the county beer board, in person, and object to the issuance of the permit. The term "residential dwelling" is not defined in the statute; however, it has been interpreted to include a trailer that was occasionally occupied for residential purposes. *St. John v. Beer Permit Board*, 1998 WL 832392 (Tenn. App. Dec. 2, 1998). This statute applies to zoned as well as unzoned property. This distance rule does not apply to locations where beer permits were issued prior to the date the rule was adopted by the county legislative body, nor does the rule apply to applications for a change in the licensee or permittee at such locations. T.C.A. § 57-5-105(i).

### Measuring to Enforce Distance Rules

The Tennessee Supreme Court, in *Jones v. Sullivan County Beer Board*, 292 S.W.2d 185 (Tenn. 1956), held that the exclusive method for measuring distance requirements between beer establishments and schools, churches and other places of public gathering is the straight-line method, unless a different method is prescribed by statute. There is no statute in Tennessee prescribing a method for such measurements. The straight-line method of measuring requires that the distance be measured in a straight line between the properties, at their nearest points, rather than by driving distance or other method. The measurement is made from building to building with respect to distance, because T.C.A. § 57-5-105(b)(1) requires measurement from the "place of gathering," which would be the building. *Ewin v. Richardson*, 399 S.W.2d 318 (Tenn. 1966). According to the Attorney General, the measurement must be taken from the nearest portion of the entire building, and not just from the nearest portion of a structurally distinct portion of that building that houses the business engaged in the sale of beer. *Attorney General Opinion 05-144 (9/27/05)*. A distance rule will be enforced even when the church, school, or other place of public gathering is located across the state line. *Y & M v. Beer Board of Johnson County*, 679 S.W.2d 446 (Tenn. 1984).

### Grandfather Provisions

When a county adopts a distance rule, the rule cannot be used as grounds to revoke a permit where a church, school or other place of public gathering is built after a beer permit is issued, as that would constitute an arbitrary and unreasonable exercise of discretion. *Sparks v. Beer Committee of Blount County*, 339 S.W.2d 23 (Tenn. 1960). The court stated that while there is no property right in a permit to sell beer, there are some rights which cannot be taken away by unreasonable regulations adopted after the permit was granted. *Sparks*, at page 24. See also Attorney General Opinion 02-061 (5/8/02).

Under T.C.A. § 57-5-109, a beer permit cannot be suspended, revoked or denied on the basis of proximity to a school, residence, church or other place of public gathering if a valid permit was issued to any business on that same location. The phrase "on that same location" is defined in the statute as being within the boundaries of the real property on which the business was located, and the protection applies regardless of whether the business moves the building on the location or whether the business was a conforming or nonconforming use at the time of the move. T.C.A. § 57-5-109(b). Under this statute, a validly permitted building which meets the distance requirements can be demolished and rebuilt in a different location on the same property which does not meet the distance requirements and the permit cannot be denied. *Exxonmobil Oil Corp. v. Metropolitan Government of Nashville*, 2005 WL 1528252 (Tenn. Ct. App. 12/12/05).

This grandfather provision does not apply if there has been a six-month gap in beer sales at the location.
However, if the discontinuance of beer sales for more than six months is caused by a beer board’s refusal to issue a permit, the applicant does not lose the protection of the statute if the applicant appeals the denial; a new six- (6) month period begins to run on the date when the appeal of the denial is final. T.C.A. § 57-5-109(c).

The current provisions of this statute are a result of litigation between Exxon and the Metropolitan Government of Nashville and Davidson County. See Exxon Corp. v. Metropolitan Government of Nashville of Nashville and Davidson County, 72 S.W.3d 638 (Tenn. 2002) and Exxonmobil Oil Corp. v. Metropolitan Government of Nashville and Davidson County, 2005 WL 1528252 (Tenn. Ct. App. 12/12/05). In the Exxon cases, the original building was not in violation of the distance requirement. Exxon purchased the business, demolished the building and relocated it in a position that did violate the distance requirement. The statute was amended to allow Exxon to fall within its provisions regardless of whether the business was conforming at the time the building was moved. This has caused the statute to be broader than a typical “grandfather” provision.

### Restoring an Invalid Distance Rule

Reference Number: CTAS-362

When a county issues beer permits in violation of an established distance rule, the rule becomes invalid and it can no longer be used as a basis for denying other permits. Cox Oil Co., Inc. v. City of Lexington Beer Board, 2002 WL 31322533 (Tenn. Ct. App. 2002); Randolph v. Coffee County Beer Board, 2002 WL 360335 (Tenn. Ct. Ap. 2002); Reagor v. Dyer County, 651 S.W.2d 700 (Tenn. 1983); Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983); Henry v. Blount County Beer Board, 617 S.W.2d 888 (Tenn. 1981); City of Murfreesboro v. Davis, 569 S.W.2d 805 (Tenn 1978); Seay v. Knox County Quarterly Court, 541 S.W.2d 946 (Tenn. 1976). Restoring an invalid distance rule is a difficult process which usually results in costly litigation, and the law on this subject is complex and confusing. To avoid problems, distance rules should be carefully enforced.

To restore an invalid distance rule, the county legislative body generally has two options. The first option is to rescind the existing distance rule and establish a less restrictive rule within which all issued beer permits would fall. A new distance rule could be established by measuring the shortest distance between an existing licensee and the nearest school, residence, church or other place of public gathering. This new rule could then be uniformly applied. Youngblood v. Rutherford County Beer Board, 707 S.W.2d 507 (Tenn. 1986); Attorney General Opinion U88-17 (2/18/88).

The second option is to pass a new resolution reinstating the distance rule, but in order to do this all permits that were issued in violation of the distance rule must be eliminated by revocation or some other method. Henry v. Blount County Beer Board, 617 S.W.2d 888 (Tenn. 1981); Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983); Randolph v. Coffee County Beer Board, 2002 WL 360335 (Tenn. Ct. Ap. 2002). As a practical matter, this means that all invalidly issued permits must be revoked. However, permits that were issued in conformance with the distance rules in existence at the time they were issued are validly issued permits protected under T.C.A. § 57-5-109, and these permits cannot be revoked.

In theory the distance rule also may be restored by elimination of the discriminatorily issued permits through attrition. Attorney General Opinion 87-34 (3/6/87); see also Attorney General Opinion U91-51 (4/9/91). However, in practice this could be a lengthy process and the distance rule could be challenged and declared invalid if the county allows discriminatorily issued permits to remain in use while using the distance rule to deny other applications for permits. An earlier opinion of the Attorney General states that elimination through attrition is in the nature of a post facto amendment which does not cure an invalid distance ordinance. Attorney General Opinion 82-325 (6/24/82). See also City of Murfreesboro v. Davis, 569 S.W.2d 805 (Tenn. 1978).

To complicate matters, courts occasionally find that permits issued invalidly cannot be revoked, usually in the context of detrimental reliance. In Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983), there had been a full hearing prior to the issuance of the permit, the applicant made it clear that he would not build if the permit was not issued, the permit was issued and the permit holder operated his business there for over 10 years. Under these circumstances the court found that the permit could not be revoked. In other cases courts have required issuance of permits even though they violate the existing distance rule. In Coffman v. Beer Board of City of Jellico, 1992 WL 122676 (Tenn. Ct. App. 1992), the court found that building a convenience mart in reliance on a city ordinance stating that the distance was to be measured along right-of-way was sufficient “detrimental reliance” to prohibit the beer board from refusing to issue a permit based on the Supreme Court’s opinion that distance must be measured by the straight line method.
Prohibition of Beer in Public Parks

Reference Number: CTAS-363
The county legislative body may also, by resolution, prohibit or restrict the consumption of any alcoholic beverage or beer in public parks or recreation areas which are not within the corporate boundaries of a municipality. Such areas must be prominently posted by the county in order to give the public reasonable notice. A violation of the resolution is a misdemeanor. T.C.A. § 5-5-127. While the statute only refers to consumption, restrictions on the sale of beer within park boundaries are so closely tied to consumption that they come within the intent of the statute. However, the statute does not seem to be intended to prohibit the mere possession of beer or alcoholic beverages in Class A counties. Attorney General Opinion U87-19 (2/10/91). (Sample resolution to restrict/prohibit the consumption of beer in public parks or recreation areas).

Prohibited Acts

Reference Number: CTAS-364
In addition to possible suspension or revocation of the beer permit or the imposition of civil penalties, persons violating the laws, rules and regulations (including validly enacted resolutions of the county legislative body) governing beer and like beverages may be prosecuted criminally. The criminal provisions are set out in Tennessee Code Annotated, Title 57, Chapter 5, Part 3, and the penalties are set out in T.C.A. § 40-35-111.

Minors and the Beer Laws

Reference Number: CTAS-365
Several statutes dealing with the sale or possession of beer have special provisions dealing with the purchase or possession of beer by minors. When used in Title 57 of the Tennessee Code Annotated with respect to purchasing, consuming or possessing alcoholic beverages (including beer), “minor” means any person who has not attained 21 years of age. T.C.A. § 1-3-105(1). However, any person who is 18 years of age or older may transport, possess, sell or dispense alcoholic beverages (including beer) in the course of that person’s employment. T.C.A. § 1-3-113.

In summary, the statutes dealing with minors provide as follows:

1. It is unlawful for any person under the age of 21 to purchase, possess, transport or consume alcoholic beverages (including beer), except that persons who are 18 or over may transport, possess, sell or dispense alcoholic beverages (including beer) in the course of their employment. T.C.A. §§ 1-3-113 and 57-5-301(e). A person under the age of 18 cannot process a sale or bag beer in the course of his or her employment. Attorney General Opinion U90-116 (8/15/90).

2. Anyone purchasing beer for off-premises consumption must present a valid, government-issued form of identification that contains a photo and the birth date of the consumer. Persons exempt under state law from the requirement of having a photo ID must present other identification acceptable to the permit holder. Beer cannot be sold to anyone who does not present the required identification showing that the person is an adult. However, a permit holder cannot be criminally prosecuted or civilly punished for any sale made to a person who is or reasonably appears to be over the age of 50 and failed to present the required identification. T.C.A. § 57-5-301(a)(1).

3. It is unlawful for any person engaged in the sale, manufacture or distribution of beer to make or permit to be made any sale to minors. T.C.A. § 57-5-301(a)(1). The first offense of selling beer to a minor is a Class A misdemeanor. T.C.A. § 57-5-301(a)(2). A second offense of selling beer to a minor is a Class E felony. Upon the second conviction, the permit of such person shall be automatically and permanently revoked regardless of any other penalty actually imposed. T.C.A. § 57-5-303(c). However, the permit cannot be revoked (but may be suspended for up to 10 days or a penalty up to $1,500 may be imposed) if an operator or any person working for the operator sold beer to a minor over the age of 18 after the minor exhibited identification (false or otherwise) indicating the minor’s age to be 21 or over, the minor reasonably appeared to be of that age, and the person making the sale did not know that the person was a minor. T.C.A. § 57-5-108(b). Note that the penalties for sale of beer to minors are different if an off-premises permit holder has been certified as a "Responsible Vendor" under T.C.A. § 57-5-606.

4. It is unlawful for any person under the age of 21 to purchase or attempt to purchase beer.
T.C.A. § 57-5-301(d)(1). While a store owner or employee cannot hold a driver's license or other identification as evidence of a violation, a violator may be detained until proper authorities are called and arrive, provided that the offense was committed in the owner’s or employee's presence and delivery of the offender to proper authorities occurs without unnecessary delay. Attorney General Opinion U88-59 (5/26/88).

5. It is unlawful for anyone to purchase beer or like beverages for anyone under the age of 21. T.C.A. § 57-5-301(d)(2).

6. It is unlawful for any person under the age of twenty-one (21) to exhibit false identification or to make false statements to the effect that he or she is 21 years of age for the purpose of purchasing beer. T.C.A. § 57-5-301(d)(3).

7. It is unlawful for the management of any place where beer is sold to allow minors to loiter in such places. The burden of ascertaining the age of minor customers is on the owner or operator of the business. T.C.A. § 57-5-301(c).

The law does not establish a minimum age for applicants for beer permits. Attorney General Opinion 87-28 (2/23/87). However, T.C.A. § 1-3-114 provides that any person 18 years old or older must not be prohibited from entering into any profession or from performing any services on the basis of the person’s minority. Therefore, an 18-year-old person could obtain a permit to sell beer, if the person is otherwise qualified. A county or city could not set a minimum age requirement for obtaining a permit to sell beer at greater than 18 years of age.

The Attorney General has opined that an individual under the age of 18 is not eligible to obtain a permit for the retail sale of alcoholic beverages, pursuant to T.C.A. § 57-3-210(h), if the person intends to engage in the physical manufacture, storage, sale, or distribution. However, T.C.A. § 57-3-210(h) does not apply to corporations and thus does not prohibit the carrying on of a retail liquor business by a corporation which has a minority or majority stockholder under the age of 18, so long as the stockholder is not engaged in any of the prohibited acts under that subsection. While that code section does not apply to the sale of beer, it could be inferred from the opinion that a Class B county or city could reasonably set a minimum age at 18 in order to obtain a beer permit, but if the applicant was a corporation with a stockholder under the age of 18, a permit could still be issued. Attorney General Opinion 87-28 (2/23/87) and Attorney General Opinion U86-101 (7/2/86).

**Sting Operations Using Minors**

Reference Number: CTAS-375

Law enforcement may conduct sting operations using minors in accordance with the requirements of T.C.A. § 39-15-413. Criminal prosecutions for unlawful sales of beer for off-premises consumption to underage persons as a result of a sting operation using a person under the age of 21 cannot be commenced unless the person or law enforcement officer supervising the person used in the sting operation obtains the name of the permit holder and the employee of the permit holder from whom the beer was purchased or attempted to be purchased. The law enforcement officer is required to notify the permit holder in writing within 10 days of the sting that the action occurred, giving the name of the permit holder and the employee involved, and whether the person was successful in making the purchase. T.C.A. § 39-15-413.

**Employing Persons Convicted of Certain Crimes**

Reference Number: CTAS-366

It is unlawful for the holder of a beer permit or any employee of a person engaged in the business of selling beer to be a person who has been convicted of any violation of the laws against possession, sale, manufacture or transportation of intoxicating liquor or any crime involving moral turpitude, within the last 10 years. T.C.A. § 57-5-301(a). The 10-year period begins on the date of conviction and ends 10 years from that date. Attorney General Opinion U90-116 (8/15/90).

**Sale of Untaxed Beer - Contraband**

Reference Number: CTAS-367

No beer retailer may purchase beer from anyone other than duly licensed wholesalers (and certain Tennessee manufacturers, as set out in T.C.A. § 57-5-101) located in Tennessee. T.C.A. § 57-5-201. Any beer sold or offered for sale by or in the possession of a retailer, purchased from any person or firm other than a duly licensed Tennessee wholesaler or distributor, is declared to be contraband and is subject to confiscation. T.C.A. § 57-5-409. The beer board may revoke or suspend the permit of any retailer who is
found to possess beer on which the state barrel-age tax and the city and county wholesale beer tax have not been paid. T.C.A. § 57-5-108(m).

Storage at Other Than Permit Address

Reference Number: CTAS-368
It is unlawful for any retailer to store beer purchased for a specific retail location at any place other than that specific retail location. T.C.A. § 57-5-416. No retailer may store any alcoholic beverages, wine, or beer at any location other than the licensed premises and the retailer shall not hold, store, or accept delivery of any products intended for another retailer. T.C.A. § 57-3-406(g).

Outdoor Signs

Reference Number: CTAS-369
No outdoor sign, advertisement or display that advertises beer may be erected or maintained on the property on which a retail beer establishment is located other than one sign, advertisement or display which makes reference to the fact that the establishment sells beer but does not use brand names, pictures, numbers, prices or diagrams relating to beer. The prohibition does not apply to any sign, advertisement or display erected or maintained by or at the request of a temporary beer permittee or to any sports arena, stadium or entertainment complex. T.C.A. § 57-5-304. This statute does not specifically prohibit the use of slogans, trademarks or symbols, so their use is not prohibited except where they may consist of a picture, diagram, or both. Attorney General Opinion U89-140 (12/7/89). According to the Tennessee Attorney General, this statute is susceptible to challenge under the First Amendment and it is unlikely to survive such a challenge. Op. Tenn. Att’y Gen. 15-04 (1/14/15).

Wholesaler/Retailer Relationship

Reference Number: CTAS-370
Retailers are prohibited from purchasing beer from anyone other than a wholesaler licensed and located in Tennessee, and wholesale distributors are prohibited from purchasing beer from anyone other than a manufacturer, importer, or other Tennessee wholesaler licensed in Tennessee. T.C.A. § 57-5-201(c). Brewers and wholesalers are prohibited from making any loan, furnishing any fixtures of any kind, or having any interest, direct or indirect, in the business of any retailer, or in the premises of any retailer. T.C.A. § 57-5-101(a). A limited exception to these rules exists for breweries which are located in counties having a population of 75,000 or more or in a premier resort city that has adopted liquor by the drink. T.C.A. § 57-5-101(c). See "Microbreweries and Brew Pubs" herein.

Tennessee Responsible Vendor Act

Reference Number: CTAS-371
The Tennessee Responsible Vendor Act of 2006, codified at T.C.A. § 57-5-601 et seq., is a program administered by the Tennessee Alcoholic Beverage Commission (ABC) for vendors who sell beer for off-premises consumption. The program is an effort to curb the sale of beer to minors and to reduce intoxication and accidents, injuries and deaths related to intoxication. The program is voluntary; vendors are not required to participate. Vendors who do elect to participate in the program and who receive and maintain their certification as a responsible vendor are entitled to reduced penalties for offenses related to the sale of beer to minors.

ABC Fees. The ABC charges the following fees, set out in T.C.A. § 57-5-609, in connection with the administration of the responsible vendor program:

- Annual fee for entities approved to conduct responsible vendor training--$ 35
- Annual fee for responsible vendors:
  - 0 - 15 certified clerks--$ 25
  - 16 - 49 certified clerks--$ 75
  - 50 - 100 certified clerks--$150
  - Over 100 certified clerks--$250

Responsible Vendor Certification

Reference Number: CTAS-372
Under T.C.A. § 57-5-606, the ABC will certify a beer vendor as a “responsible vendor” upon compliance with the following:

1. All clerks who sell beer for off-premises consumption must successfully complete a responsible vendor training program and become certified within 61 days after being employed by the vendor, and the vendor must verify with the ABC prior to employing a clerk that the clerk is eligible for certification.
2. Each clerk must be issued a name badge with the clerk’s first name clearly visible, and must wear the badge at all times while on duty.
3. The vendor must provide employees with instruction approved by the ABC which includes the laws regarding the sale of beer for off-premises consumption, methods for recognizing and dealing with underage customers, and procedures for refusing to sell beer to underage customers and for dealing with intoxicated customers.
4. The vendor must require all certified clerks to attend at least one annual meeting at which the vendor disseminates updated information prescribed by the ABC.
5. The vendor must maintain employment and training records.

Responsible Vendor Signage

Reference Number: CTAS-373
Responsible vendors are required to post signs on their premises informing customers of their policy against selling beer to underage persons. These signs must be at least 8½" x 11" and must contain the following language: “STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER.” T.C.A. § 57-5-301(a)(1).

Responsible Vendor Provisions Affecting Beer Boards

Reference Number: CTAS-374
The following provisions of the Tennessee Responsible Vendor Act relate to the operation of the beer board:

1. If a beer board finds that any off-premises beer permit holder made a sale to a minor, the beer board must report the name of the clerk who made the sale to the ABC within 15 days of finding that the sale occurred. The clerk’s certification is invalidated and the clerk cannot reapply for one year from the date of the beer board’s determination. The ABC will notify the responsible vendor of their certified clerks who have lost their certification within 15 days after notification by the beer board (and the responsible vendor cannot allow these clerks to sell beer). T.C.A. § 57-5-607.
2. The beer board cannot suspend or revoke a responsible vendor’s beer permit based on the sale of beer to a minor if the clerk who sold the beer was certified and attended annual meetings since the certification, or was within the 61-day period after employment. However, the ABC will revoke the responsible vendor’s certification if the vendor knew or should have known about the violation, or participated in or committed the violation, and the beer board may then impose penalties as if the vendor had not been certified as a responsible vendor. Also, the ABC will revoke the vendor’s responsible vendor certification for a period of three years if there are two violations within a 12-month period. T.C.A. § 57-5-608.
3. Penalties that may be imposed on responsible vendors for violations involving the sale of beer to minors are lower than those for vendors who do not participate in the program. A responsible vendor’s permit cannot be revoked or suspended for a clerk’s illegal sale of beer to a minor as long as the responsible vendor and the clerk were in compliance with the act; a civil penalty not exceeding $1,000 may be imposed instead. T.C.A. § 57-5-108(a)(2)(A).
4. Vendors who are not in compliance with the responsible vendor program are subject to suspension or revocation of their beer permit for the sale of beer to minors. These non-complying vendors may be offered the alternative of paying a civil penalty not exceeding $2,500 for each sale to a minor, or a penalty not exceeding $1,000 for any other offense. T.C.A. § 57-5-108(a)(2)(B).
5. The beer board is required to file an annual report with the ABC by February 1 each year containing the following statistical information for the preceding calendar year: (a) total number of permits issued for off-premises consumption, (b) number of violations for sale of beer for off-premises consumption to a minor resulting from a sting, and arrests made not related to a sting, (c) whether the violations reported occurred at an establishment participating in the responsible vendor program, (d) for stings conducted at establishments participating in the
Revocation, Suspension, and Imposition of Civil Penalties

Reference Number: CTAS-376

The beer board or county legislative body which issued a beer permit (hereinafter referred to as the “board”) is authorized to suspend or revoke the permit as provided in T.C.A. § 57-5-108. Suspension, revocation, or imposition of a civil penalty may be made for violation of any provision of the beer laws set out in Title 57, Chapter 5, of the Tennessee Code Annotated, or whenever it satisfactorily appears that the licensed premises are being maintained and operated in a manner which is detrimental to the public health, safety or morals. T.C.A. § 57-5-108(c). Special rules apply to suspensions, revocations, and imposition of civil penalties for sales of beer to minors for vendors who have been certified as responsible vendors under the ABC’s responsible vendor certification program.

The board may, at the time it imposes suspension or revocation, offer the permit holder the alternative of paying a civil penalty not exceeding $2,500 for each offense involving sales to minors, or $1,000 for any other offense. However, if the permit holder is a certified responsible vendor and both the permit holder and the clerk are in compliance with T.C.A. § 57-5-606, the board may not revoke or suspend a permit for an illegal sale of beer to a minor, but may instead impose a civil penalty of $1,000 for each offense of selling beer to a minor. T.C.A. § 57-5-108(a)(2).

If a civil penalty is offered as an alternative to suspension or revocation, the permit holder must be given seven days within which to pay the penalty before the suspension or revocation can be imposed. If the civil penalty is paid within that time, the suspension or revocation is deemed withdrawn. T.C.A. § 57-5-108(a)(2)(G) The beer board is authorized to accept at any time the payment of a civil penalty, not exceeding the stated amounts, from a permit holder charged with a violation, and the payment will be deemed an admission of the violation and no other penalty can be imposed. T.C.A. § 57-5-108(a)(3).

A permit cannot be revoked on the grounds that beer was sold to a minor over the age of 18 years if the minor presented identification, false or otherwise, indicating the minor’s age to be 21 or over, and the minor reasonably appeared to have been of the age indicated in the identification and was unknown to the person making the sale. In this event, the permit can be suspended for a period not exceeding 10 days or a civil penalty of up to $1,500 may be imposed. T.C.A. § 57-5-108(b).

The county legislative body or the county beer board may, in its discretion, revoke or suspend the permit of any beer retailer within its jurisdiction who is found in possession of untaxed beer. The burden of proof is on the retailer to prove that the beer has been taxed. T.C.A. § 57-5-108(m). The beer board also may suspend or revoke a permit for failure to pay the annual privilege tax after the required notices have been sent. T.C.A. § 57-5-104(b)(3).

A beer board or county legislative body is prohibited from imposing a fine or penalty on a beer permit holder based solely on a report by a county office or department, other than law enforcement as a predicate to citing or entering the permit holder’s premises. T.C.A. § 57-5-108(n)(1). Except as otherwise provided in 57-5-108, the beer board or county legislative body may only issue a citation to a permit holder after its own independent investigation. T.C.A. § 57-5-108(n)(2).

The beer board or county legislative body, in considering suspension or revocation of the permit holder is required to consider repeated violations of any local resolution or state law involving prohibited sexual contact on the premises of an adult oriented establishment. T.C.A. § 57-5-108(c).

When a permit is revoked by the county beer board, a new permit for the sale of beer on the same premises shall not be issued for one year following the final effective date of the revocation. However, the board may, in its discretion, issue a new permit on the same premises before the expiration of the one year period if the individual applying for the permit is not the original holder of the permit or any family member who could inherit from such individual by intestate succession. T.C.A. § 57-5-108(k).

Permanent revocation of beer permits can only be imposed when the permit holder has at least two violations within a 12-month period. Revocation of beer permits applies only to the permit holder and only at that location; penalties cannot be applied to other beer permits held by the permittee at other locations. Revocations do not stay with the property when the property changes hands. Revocation at one location should not be the sole disqualifying factor when considering issuance of beer permits at different locations. T.C.A. § 57-5-108(a)(2).
Any decision concerning revocation, suspension or civil penalties must be based on the facts of the particular situation. There are very few situations which are exactly alike. The county beer board is authorized to revoke a beer permit for any of the reasons which would disqualify an applicant in the first instance. Each fact situation must be considered individually. The cases cited throughout the material show that a county must have a valid reason for the denial, revocation or suspension of a beer permit.

Dallas’s Law

Dallas’s Law became effective on January 1, 2023. The law requires all security guards that work in establishments that sell alcohol in Tennessee to complete additional training in de-escalation, safe restraint, first aid, and CPR. The law prohibits a beer permit holder from knowingly employing a security guard who does not hold a valid registration card. If a violation occurs, the beer board is required to suspend a beer permit for on-premises consumption for a period of one month per violation. This law does not limit a beer board’s ability to seek to revoke or summarily suspend the permit. In 2023, the law was amended to add that the suspension of the ABC license or beer permit holder shall not be suspended for one month when the improperly registered or unregistered security guard was employed by a contract security company at the establishment that holds the license to serve alcohol for on-premises consumption. T.C.A. § 62-35-134.

Investigations

Reference Number: CTAS-377
When a beer board receives information concerning possible violations of the law by a beer permit holder, the board should refer the matter to appropriate law enforcement authorities. When necessary, however, the beer board may take investigatory action itself. The Tennessee Court of Appeals has held that a county beer board possesses continuing, supervisory powers to police permit holders after the issuance of the permit. In an unpublished opinion, the court of appeals found that a beer board was empowered to employ an undercover investigator after the county sheriff had refused to conduct an investigation concerning illegal sales of beer to minors. Jackson v. Franklin County Beer Board, 1993 WL 46524 (Tenn. Ct. App. 1993). Relying on this opinion, the Attorney General has opined that a beer board may hire a private investigatory firm to conduct undercover investigations concerning the sale of beer to minors, and that minors may be used in these investigations. Attorney General Opinion 01-062 (4/20/01).

Hearings and Due Process

Reference Number: CTAS-378
While no one has a right to a beer permit in the first instance, once a permit has been issued it becomes a valuable property right which is protected under the state and federal constitutions and a permit holder must be afforded due process with respect to deprivation of the privilege granted by the permit. Due process is a flexible standard, calling for the procedural protections that the particular situation demands. In general, the factors to be considered are: (1) the nature and importance of the private interest at stake, (2) the risk of erroneous deprivation of the interest and the probable value of additional safeguards, and (3) the governmental interest, including any additional burdens that procedural safeguards might entail. A beer permit is a very important interest because a person’s livelihood may depend upon it. A permit holder is entitled to notice and an opportunity to be heard that is reasonable under the circumstances. Attorney General Opinion 94-064 (4/28/94).

The due process requirements may extend to persons other than the permit holder. The Attorney General has opined that the statute which prohibits the issuance of a beer permit for one year on premises where a permit has been revoked could be unconstitutional in application if the property owner is different from the permit holder and the property owner is not given an opportunity to show that he or she was innocent of wrongdoing and had taken all action which reasonably could be expected to prevent the violation. Attorney General Opinion 90-77 (8/13/90).

Reciprocal Notices of Suspensions and Revocations with ABC

Reference Number: CTAS-2120
When the Alcoholic Beverage Commission (ABC) suspends or revokes an on-premises liquor license, the ABC is required to send notice by certified mail to the local beer board in the county in which the holder of the ABC license is located. Upon receipt of the notice, the beer board may temporarily suspend the establishment’s beer permit and shall schedule a hearing for the next regularly scheduled meeting of the beer board that is at least 14 days after receipt of the notice, and notify the permit holder of the date and
time to appear and show cause why the on-premises beer permit should not be suspended or revoked. If
the permit is suspended or revoked, no permit to sell beer on premises shall be issued to any person for
that location for the period of time stated in the decision of the ABC. The beer board’s decision is final and
may be appealed. T.C.A. § 57-1-214.

When a beer board suspends or revokes an on-premises beer permit, the beer board is required to send
notice by certified mail to the executive director of the Alcoholic Beverage Commission (ABC), including
the record of evidence and the determination made by the board in suspending or revoking the permit.
T.C.A. § 57-1-214.

These reciprocal notification provisions apply in all counties other than Hancock, Union, Grainger,
Claiborne, Cocke, Jefferson, Hawkins, Hamilton, and Knox, which counties are participating in a similar
reciprocal notification program enacted as a pilot project enacted under T.C.A. § 57-5-108(o)(1).

Judicial Review of Beer Board Action

Reference Number: CTAS-379
Any applicant who complies with the conditions and provisions of T.C.A. § 57-5-105 must be issued the
necessary permit and in the event the permit is denied, the applicant is entitled to have the denial
reviewed before the chancery or circuit court. T.C.A. § 57-5-105(e). The procedure for judicial review of
beer board actions, including the denial, suspension or revocation of a beer permit, or imposition of a civil
penalty, is set out in T.C.A. § 57-5-108. The action of the beer board is reviewed when a dissatisfied party
files a statutory writ of certiorari in the circuit or chancery court in the county where the beer board is
located. Immediately upon the grant of the writ of certiorari, the beer board is required to cause to be
made, certified and forwarded to the court a complete transcript of the proceedings of the beer board. The
proceedings will be a trial de novo, meaning that the court will hear all evidence and will not rely on the
record of the proceedings before the beer board. The judge to which the petition for certiorari is addressed
has the authority to supersede, stay or enjoin the beer board’s order of revocation, suspension, or
imposition of a civil penalty, upon a showing of good cause on the part of the petitioning party. Any party
dissatisfied with the decree of the trial court may appeal the decision, and the case will be heard upon the
transcript of the records from the trial court. If a final judgment is entered by the trial court superseding
the revocation or suspension order, and the cause is appealed by the beer board, the final judgment of the
trial court will remain in force until final appellate disposition of the case. T.C.A. § 57-5-108.

A beer permit applicant may seek review from the circuit or chancery court before the final decision of the
beer board in certain limited situations. For instance, if a beer board needlessly prolongs an application for
a beer permit, the beer board has, in effect, denied the application so that the applicant may seek court
review. City of Murfreesboro v. Fortner, 570 S.W.2d 859 (Tenn. 1978). While action by the beer board
tabling an application for a permit until the beer board’s next quarterly meeting is not generally an "order"
as used in the statute allowing review by the circuit or chancery court by writ of certiorari of any order of
any agency, if a beer board tables an application for reasons completely extraneous to the qualifications of
an applicant (e.g., building set-back) such that further pursuit of a permit through administrative channels
would be futile, then the courts should grant the writ. McCarter v. Goddard, 609 S.W.2d 505 (Tenn.
1980).

State Barrels Tax

Reference Number: CTAS-380
Every person, firm, corporation, joint-stock company, syndicate or association in this state storing, selling,
distributing or manufacturing beer and like beverages must pay a special privilege tax levied at the rate of
$4.29 per barrel (31 liquid gallons) of beer stored, sold, distributed by gift or sale, or manufactured in
Tennessee. T.C.A. § 57-5-201. The Commissioner of Revenue is the administrator and collector of the
tax. T.C.A. § 57-5-202. This tax is a state privilege tax, and counties cannot levy any like tax. T.C.A.
§ 57-5-201(b).

Exemptions to this tax are as follows:
1. Beer manufactured in Tennessee but exported for sale, distribution or gift. T.C.A.
   § 57-5-201(a)(1).
2. Beer dispensed gratuitously and consumed on the premises. T.C.A. § 57-5-201(a)(1).
3. Beer sold for consumption on a U. S. military or naval installation or to post exchanges,
   ship service stores, commissaries and messes operated by the U. S. armed forces.
   T.C.A. § 57-5-208.

Wholesalers and manufacturers of beer must apply to the Commissioner of Revenue and receive a
certificate of registration. This registration costs $20.00 for wholesalers and $40.00 for manufacturers. T.C.A. § 57-5-102. In addition, wholesalers and manufacturers of beer must execute a bond securing the payment of the state privilege tax, payable to the Commissioner of Revenue. T.C.A. § 57-5-110.

Proceeds of the tax are distributed as follows:

1. Up to 4% to the Department of Revenue to defray the expenses of administration of this tax. T.C.A. § 57-5-202.
2. Of the amount paid into the state treasury:
   - 10.05% to the several counties equally for general purposes.
   - 10.05% to the incorporated municipalities according to population for general purposes.
   - .41% to the Department of Mental Health and Mental Retardation to assist municipalities and counties in carrying out the provisions of the “Comprehensive Alcohol and Drug Treatment Acts of 1973.”
   - Remainder (79.49%) to the state general fund. T.C.A. § 57-5-205.

The tax is due and payable on or before the 20th day of the month following the month in which it accrues. T.C.A. § 57-5-203. The Commissioner of Revenue is authorized to suspend or revoke the certificate of registration, or impose civil penalties, for failure to make the required reports or to pay the tax when due. T.C.A. §§ 57-5-108(l), 57-5-204. Persons delinquent in making reports or paying taxes are subject to a penalty of 5 percent of the unpaid tax for each thirty (30) days that the tax is unpaid up to a maximum of twenty-five percent (25%) of the unpaid amount, with minimum penalty of $15. Additional penalties can be imposed by the Commissioner of Revenue for negligence (10 percent of underpayment) or fraud (100 percent of underpayment). Interest is charged at the legal (formula) rate. T.C.A. §§ 67-1-801, 67-1-804.

Wholesale Beer Tax

Reference Number: CTAS-381

A tax is imposed on the sale of beer and like beverages at wholesale. T.C.A. §§ 57-6-102, 57-6-103. Beer or ale sold to any port exchange, ship service store, commissary, open mess, officers' club, N.C.O. club or other organization recognized by and located on any fort, base, camp or post of the U.S. armed forces is exempted from this tax. T.C.A. § 57-6-111.

The rate of the tax is thirty-five dollars and sixty cents ($35.60) per barrel of thirty-one gallons (31 gals.) of beer sold. Barrels containing more or less than thirty-one gallons (31 gals.) shall be taxed at a proportionate rate. T.C.A. § 57-6-103(a).

The Commissioner of Revenue administers the tax. The wholesale beer distributor collects the tax and remits the proceeds as follows:

1. Seventeen cents (17¢) of the gross tax owed per barrel to the Department of Revenue, to be kept in a special fund and used only for expenses in administration of this tax. T.C.A. § 57-6-103(f)
2. Ninety-two cents (92¢) of the gross tax owed per barrel retained by the wholesaler or manufacturer operating as a retailer to defray the cost of collecting and remitting the tax. T.C.A. § 57-6-103(g)
3. The remainder of the tax to the city or county in which the sale is made. T.C.A. § 57-6-103.

The tax collected on sales to licensed retailers is to be paid to the county or city in which the retailer's place of business is located, and the tax on all other sales made at the wholesaler's place of business is to be paid to the county or city in which the wholesaler's business is located. T.C.A. § 57-6-103(d). All sales made at the wholesaler's place of business as well as any sale or transfer contemplated by §57-5-101(c)(2) by a manufacturer operating as a retailer to a location owned or operated by such manufacturer-retailer are deemed to be wholesale sales and the tax must be collected. T.C.A. § 57-6-103(c).

An annexing or newly-incorporated municipality is required to provide written notice of the date of annexation or incorporation, together with a list of retailers located in the territory, to each wholesale beer distributor within the territory. T.C.A. § 57-6-103(i)(1). After annexation, the wholesale beer taxes generated within the annexed territory are apportioned between the city and the county in accordance with the provisions of T.C.A. § 6-51-115. For newly incorporated areas, the taxes generated within the newly-incorporated area are apportioned between the city and the county in accordance with the provisions of T.C.A. §§ 6-1-220, 6-18-115, or 6-30-108, as applicable, as well as T.C.A. §§ 6-58-112(c) and 6-51-115(b).
The tax is due and payable monthly on or before the 20th day of each month for the tax collected on sales of the previous month. T.C.A. § 57-6-103(a). If a wholesaler fails or refuses to remit the tax when due, the concerned county or city or the Department of Revenue is authorized to institute legal action for collection by any method authorized by law for collection of delinquent privilege taxes (see Title 67, Tennessee Code Annotated), or by filing suit against the wholesaler. In addition, the city or county may revoke or suspend the permit or impose civil penalties, or the Commissioner may revoke or suspend the wholesaler’s certificate of registration or impose civil penalties. T.C.A. §§ 57-6-107 and 57-5-108.

Persons delinquent in making reports or paying taxes are subject to a penalty of five percent of the unpaid tax for each 30 days that the tax is unpaid up to a maximum of 25 percent of the unpaid amount, with minimum penalty of $15. Additional penalties can be imposed by the Commissioner of Revenue for negligence (10 percent of underpayment) or fraud (100 percent of underpayment). Interest is charged at the legal (formula) rate. T.C.A. §§ 67-1-801, 67-1-804.

Wholesalers must furnish an indemnity or personal bond, subject to annual renewal, satisfactory to the Department of Revenue in an amount equal to the amount of tax payable based on the highest month’s sales of the previous year or estimate thereof, not to exceed $10,000, or in lieu of the bond the Commissioner of Revenue may allow a certificate of deposit. T.C.A. § 57-6-107.

Persons convicted of violating any provision of the wholesale beer tax laws are guilty of a Class C misdemeanor, which may subject the convicted person to imprisonment of up to thirty (30) days and a fine of up to $50, or both. T.C.A. §§ 57-6-114, 40-35-111. In addition, the beer board is required to suspend a wholesaler’s license for 30 days for violation of any provision of T.C.A. § 57-6-104 (regulations governing wholesale pricing, container sizes, and sales territories). T.C.A. § 57-6-114(b).

Annual Privilege Tax
Reference Number: CTAS-382
An annual privilege tax in the amount of one hundred dollars ($100.00) is imposed on the selling, distributing, storing or manufacturing of beer in Tennessee. Any person, firm, corporation, joint-stock company, syndicate or association engaged in selling, distributing, storing or manufacturing beer is required to remit the tax annually on January 1 to the county or city in which the business is located. The county clerk collects this tax for counties, and the funds may be used for any public purpose. T.C.A. § 57-5-104(b).

The county is required to mail written notice of the tax to each permit holder at least thirty (30) days prior to January 1 each year. If the permit holder does not remit the tax by January 31 (or within thirty (30) days after notice is mailed, whichever is later), the county is required to notify the permit holder by certified mail that the tax payment is past due. If the permit holder does not pay the tax within ten (10) days after receiving the certified notice, the permit may be revoked by the beer board. T.C.A. § 57-5-104(b).

When a new permit is issued, the permit holder is required to pay the tax on a prorated basis for each month or portion of a month remaining until the next tax payment date. T.C.A. § 57-5-104(b)(5).

Marriage
Reference Number: CTAS-390
In Tennessee, marriage is controlled by statute and not governed by common law rules. Obtaining a marriage license is a condition precedent to the solemnization of a valid marriage under Tennessee law. See, e.g., Ochalek v. Richmond, 2008 WL 2600692 (Tenn. Ct. App. 2008), and cases cited therein. See also Op. Tenn. Att’y Gen. 06-110 (July 12, 2006) (no one can be legally married in Tennessee without first obtaining a valid marriage license). Marriage licenses are issued by the county clerk. T.C.A. § 36-3-103.

Marriage is a civil contract, Cole v. Cole, 37 Tenn. 57, 5 Sneed 57 (Tenn. 1857), but unlike most civil contracts that can be voluntarily entered into and terminated by the parties, marriages contracted under Tennessee law require state action to be entered into and to be dissolved. Public policy considerations make the marriage contract one of the most ceremonious and serious contracts a person enters and the public policy of Tennessee is to sustain the validity of marriages. Madewell v. U.S., 84 F. Supp. 329 (D. C. Tenn. 1949).

Forced marriages are against public policy in Tennessee. A marriage entered into without valid, freely-given consent from both parties is void and unenforceable upon a court's finding of forced marriage, under T.C.A. § 36-3-201. A party who is forced into marriage, whether by violence, threats, or coercion, has a cause of action against any party who forced the person to marry. Damages include liquidated
damages of two hundred fifty thousand dollars ($250,000), attorneys' fees, and court costs.

Who Can Marry?
Reference Number: CTAS-391
Prohibited Degrees of Relationship
Tennessee law defines prohibited degrees of relationship for marriages, generally considered "incestuous." Marriage cannot be contracted with a lineal ancestor (parents, grandparents, great-grandparents, etc.) or descendant (children, grandchildren, great-grandchildren, etc.), nor the lineal ancestor of either parent (grandparents, great-grandparents, etc.) or descendant of either parent (brothers, sisters, half-brothers, half-sisters, nieces and nephews, grandnieces and grandnephews, etc.), nor the lineal descendant of a grandparent (aunts, uncles, first cousins), nor the lineal descendants of spouse (spouse's children, grandchildren, stepchildren, step-grandchildren, etc.), nor the husband or wife of a parent (stepmother, stepfather) or lineal descendent. T.C.A. § 36-3-101. A marriage entered into in violation of this statute is void in Tennessee regardless of whether the marriage was entered into in Tennessee or in another state where the marriage would be valid. *Rhodes v. McAfee*, 224 Tenn. 495, 457 S.W.2d 522 (1970) (declaring void the marriage of a stepdaughter to her stepfather after the divorce of the stepfather and the mother).

Effect of Adoption
The signing of a final order of adoption establishes the relationship of parent and child between the adoptive parent and the adoptive child as if the adopted child had been born to the adoptive parent, and the adopted child is deemed the lawful child of the adoptive parent for all legal consequences and incidents of the biological relation of parents and children. T.C.A. § 36-1-121.

Bigamy
Reference Number: CTAS-421
A second marriage cannot be contracted before the dissolution of the first. However, the first marriage is regarded as dissolved for this purpose if either party has been absent five (5) years, and is not known to the other to be living. T.C.A. § 36-3-102; *Douglas v. Douglas*, 6 Tenn. App. 12 (1927); *Hall v. Hall*, 13 Tenn. App. 683 (1932). Bigamy is a Class A misdemeanor. T.C.A. § 39-15-301.

Because bigamous marriages are prohibited by statute, such marriages are void ab initio (i.e., void from the beginning). These marriages are not recognized by the courts and cannot be ratified by the parties. *Guzman v. Alvares*, 205 S.W.3d 375 (Tenn. 2006).

Common Law Marriages
Reference Number: CTAS-423
Marriage is controlled by statute and not common law in Tennessee. Although Tennessee does not recognize common law marriages, Tennessee will recognize a valid common law marriage entered into in a jurisdiction which recognizes common law marriages. *In re Estate of Glover*, 882 S.W.2d 789 (Tenn. App. 1994); *Andrew v. Signal Auto Parts, Inc.*, 492 S.W.2d 222 (Tenn. 1972); *Lightsey v. Lightsey*, 407 S.W.2d 684, 56 Tenn. App. 394 (Tenn. App. 1966); *Troxel v. Jones*, 322 S.W.2d 251, 45 Tenn. App. 264 (Tenn. App. 1959). But see *Crawford v. Crawford*, 198 Tenn. 9, 277 S.W.2d 389 (1955) (under exceptional circumstances, parties may be estopped to deny their marriage under the doctrine of marriage by estoppel).

Obtaining a Marriage License
Reference Number: CTAS-392
Before being joined in marriage, the parties must present to the minister or other official performing the ceremony a license issued by a county clerk in the State of Tennessee, authorizing the solemnization of a marriage between the parties. The license may be issued by the county clerk in any county in Tennessee, without regard to the residence of the parties or the county where the ceremony is to be performed. A marriage license is valid for thirty (30) days from the date of issuance by the county clerk. T.C.A. § 36-3-103. A marriage license may be issued to persons otherwise complying with the requirements of the law who intend to have their marriage solemnized outside the state of Tennessee. Ops. Tenn. Att’y Gen. 06-110 (July 12, 2006) and 85-243 (9/18/85). A valid marriage will not result from a ceremony performed in Tennessee without first obtaining a marriage license. *Stovall v. City of Memphis*, 2004 WL 1872896 (Tenn. Ct. App. 2004); Op. Tenn. Att’y Gen. 90-49 (4/9/90).
Requirements of a License
Reference Number: CTAS-424
Before being joined in marriage, the parties must present to the minister or other official performing the ceremony a license issued by a county clerk in the State of Tennessee, authorizing the solemnization of a marriage between the parties. The license may be issued by the county clerk in any county in Tennessee, without regard to the residence of the parties or the county where the ceremony is to be performed. A marriage license is valid for thirty (30) days from the date of issuance by the county clerk. T.C.A. § 36-3-103. A marriage license may be issued to persons otherwise complying with the requirements of the law who intend to have their marriage solemnized outside the state of Tennessee. Ops. Tenn. Att'y Gen. 06-110 (July 12, 2006) and 85-243 (9/18/85). A valid marriage will not result from a ceremony performed in Tennessee without first obtaining a marriage license. Stovall v. City of Memphis, 2004 WL 1872896 (Tenn. Ct. App. 2004); Op. Tenn. Att'y Gen. 90-49 (4/9/90).

Issuance of the License
Reference Number: CTAS-425
County clerks, and deputy county clerks, are authorized to issue a marriage license only upon the following conditions:

1. **Written Application.** Each of the parties must appear and make application in writing, stating the names, ages and addresses of the proposed contracting parties. Applicants under the age of 18 are required to provide the names and addresses of the parents, guardian or next of kin. The application must be sworn to by both applicants. T.C.A. § 36-3-104. Sample Marriage License application.

2. **Social Security Number.** Under T.C.A. § 36-3-104, applicants are required to provide their social security numbers on the application for a marriage license. However, the statute does not require that an applicant have a social security number to qualify for a marriage license, so applicants who have not been issued a social security number are not required to provide one in order to obtain a marriage license. Op. Tenn. Att'y Gen. 08-126 (July 22, 2008). For opinions of the Attorney General discussing the collection and disclosure of social security numbers, see Ops. Tenn. Att'y Gen. 98-065 (March 17, 1998), 99-132 (July 7, 1999), 02-003 (January 2, 2002), and 02-016 (February 6, 2002).

3. **Appearance by Affidavit (incarcerated, disabled, or deployed military applicants).** If either individual is incarcerated at the time, the inmate is not required to appear but may instead submit a notarized statement containing the name, age, current address, and the name and address of the person’s parents, guardian or next of kin. If either individual has a disability which prevents the person from appearing, that person may submit a notarized statement containing the name, age, current address, and the name and address of the person’s parents, guardian or next of kin. T.C.A. § 36-3-104. Sample affidavit (incarcerated) Sample affidavit (disability)

If an applicant is a member of the armed forces of the United States stationed in another country in support of combat or another military operation, the applicant shall submit: (a) a notarized statement containing the applicant’s name, age, address in the United States, if applicable, and the names and addresses of the applicant’s parents, guardian, or next of kin; (b) a certified copy of the applicant's deployment orders; and (c) an affidavit from the battalion, ship, or squadron commander, as applicable, notarized by the judge advocate stating that the applicant is deployed. If the applicant intends to appear for the marriage ceremony via video conferencing pursuant to T.C.A. § 36-3-302, the applicant must indicate that intention in the statement. T.C.A. § 36-3-104. Sample affidavit (military)

4. **Parental Consent.** In addition to the requirements set out above, T.C.A. § 36-3-106 provides that if either applicant is under 18 years of age, the parents, next of kin, guardian, or person having custody of the applicant are required to join in the application, under oath, stating that the applicant is 17 years of age or over and that the applicant has their consent to marry. The term “parent” or “parents” is defined in T.C.A. § 36-3-106 to mean a person or persons listed as a parent on the child’s birth certificate or who have been adjudicated to be the legal parent of the child by a court of competent jurisdiction. If the applicant is in the legal custody of any public or private agency or in the legal custody of any person other than a parent, guardian or next of kin, then such person or the duly authorized representative of such agency must join in the application with the parent, guardian or next of kin, stating under oath that the applicant is 17 years of age or older but less than 18 years of age and that the applicant has their consent to marry. This provision does not apply to applicants who are in the custody of the department of mental health or the department of intellectual and developmental disabilities. T.C.A. § 36-3-106. The parents may join in the application by submitting a sworn affidavit as authorized under T.C.A. § 36-3-104(b)(3). Sample Affidavit (Parent/Guardian/Next-of-Kin) Parental consent is not required if the minor has been emancipated. T.C.A. § 36-3-106.
The law does not prescribe a particular form for the application, as long as the required information is obtained. The application may, but is not required to, contain a space to be completed by the county clerk as a permanent public record showing that the marriage was solemnized.

Minimum Age of Applicants

Reference Number: CTAS-426
It is unlawful for any county clerk or deputy county clerk in this state to issue a marriage license when either of the contracting parties is under the age of seventeen (17) years, or where one of the parties is at least seventeen (17) years of age but less than eighteen (18) years of age and the other party is four (4) or more years older than the minor party. Any marriage contracted in violation of this provision may be annulled upon proper proceedings. T.C.A. § 36-3-105. However, a marriage entered into in violation of this section is valid until set aside by a court. The court has discretion whether to set aside the marriage, and the court is not required to declare the marriage void. Further, cohabitation after attaining marriageable age may validate the marriage. See Keith v. Pack, 182 Tenn. 420, 187 S.W.2d 618 (1945).

Minimum Age of Applicants

When either applicant is under the age of eighteen (18), the parents, next of kin, guardian or party having custody of the applicant shall join in the application, under oath, stating that the applicant is seventeen (17) years of age or over and that the applicant has their consent to marry. The term "parent" or "parents" is defined in T.C.A. § 36-3-106 to mean a person or persons listed as a parent on the child’s birth certificate or who have been adjudicated to be the legal parent of the child by a court of competent jurisdiction. If the applicant is in the legal custody of any public or private agency or is in the legal custody of any person other than a parent, next of kin, or guardian, then such person or the duly authorized representative of such agency shall join in the application with the parent, next of kin, or guardian stating, under oath, that the applicant has their consent to marry. The parents, guardian, next of kin, other person having custody of the applicant, or duly authorized representative of a public or private agency having legal custody of the applicant may join in the application either by personal appearance before the county clerk or deputy county clerk, or by submitting a sworn and notarized affidavit. This provision does not apply to applicants who are in the legal custody of the department of mental health and mental retardation. Consent also is not required if the minor applicant has been emancipated, by court order or by previous marriage. T.C.A. § 36-3-106.

Issuance to Incapacitated Persons Forbidden

Reference Number: CTAS-427
No license shall be issued when it appears that the applicants or either of them is at the time drunk, insane or an imbecile. T.C.A. § 36-3-109. This statute must be very narrowly construed to avoid a finding of unconstitutionality as a result of unreasonable interference with the fundamental right of persons to marry. Op. Tenn. Att’y Gen. 98-011 (January 9, 1998). Marriages entered into in disregard of this statutory requirement are not void, but merely voidable after an appropriate proceeding. Bryant v. Townsend, 188 Tenn. 630, 221 S.W.2d 949 (1949); Hunt v. Hunt, 56 Tenn. App. 683, 412 S.W.2d 7 (1965); Coulter v. Hendricks, 918 S.W.2d 424 (Tenn. App. 1995).

False Documents

Reference Number: CTAS-428
Fraudulently signing or knowingly using any false document purporting to be one provided for in T.C.A. § 36-3-104(a) or § 36-3-106 is a Class C misdemeanor, punishable by imprisonment not greater than thirty (30) days or a fine not to exceed fifty dollars ($50.00) or both. T.C.A. §§ 36-3-112, 40-35-111.

County Clerk Violations

Reference Number: CTAS-429
Any county clerk or deputy clerk who, not acting in good faith, issues a marriage license without compliance with the provisions of the last sentence in T.C.A. § 36-3-103(c)(1), §§ 36-3-104 through 36-3-106, § 36-3-109, § 36-3-110, or § 36-3-113 (regarding § 36-3-113, see Obergefell v. Hodges, 135 S.Ct. 2584 (2015); see also Op. Tenn. Att’y Gen. 17-29) is guilty of a Class C misdemeanor, which is punishable by imprisonment not greater than thirty (30) days or a fine not to exceed fifty dollars ($50.00) or both. T.C.A. §§ 36-3-111, 40-35-111.

Contesting the Issuance of a Marriage License
Reference Number: CTAS-393
Any interested person has the right to contest the issuance of the marriage license, which contest must be
filed, heard and determined by the judge of the probate court, or judge of the juvenile court, or any judge
or chancellor; provided, that a contest cannot be filed without a cost bond in the sum of at least fifty
dollars ($50.00) with solvent sureties executed by the contestant, conditioned as in civil cases, and the
cost of the contest will be adjudged against the losing party. T.C.A. § 36-3-110.

Solemnizing a Marriage
Reference Number: CTAS-394
Who Can Solemnize a Marriage?
The rite of matrimony may be solemnized by any of the persons listed in T.C.A. § 36-3-301:
1. All regular ministers, preachers, pastors, priests, rabbis and other religious leaders of every
religious belief, more than eighteen (18) years of age, having the care of souls.
2. Current and former members of county legislative bodies.
3. County mayors/executives and former county mayors/executives.
4. Current and former judges and chancellors of this state, including federal judges and
federal administrative law judges.
5. Current and former judges of general sessions courts.
7. The governor.
8. The county clerk of each county, and former county clerks who occupied the office on or
after July 1, 2014.
9. Current and former speakers of the senate and speakers of the house of representatives.
10. Mayors of municipalities.
11. Current and former members of the general assembly who have filed notice with the office
of vital records. Former members must have filed notice with the office of vital records
while serving the general assembly.
12. Law enforcement chaplains duly appointed by the heads of authorized state and local law
enforcement agencies.
13. Members of municipal legislative bodies.
15. District attorneys general and former district attorneys general who have filed notice with
the office of vital records.

The statute provides that in order to solemnize the rite of matrimony a minister, preacher, pastor, priest,
rabbi or other spiritual leader must be ordained or otherwise designated in conformity with the customs of
a church, temple or other religious group or organization, and such customs must provide for ordination or
designation by a considered, deliberate and responsible act. T.C.A. § 36-3-301(a)(2). Courts look to the
tenets of the particular religion to determine whether a particular person is a regular minister or other
spiritual leader having the care of souls. Op. Tenn. Att'y Gen. 14-90 (9/30/14). The county clerk has
neither the authority nor the duty to examine the qualifications of persons seeking to solemnize the rite of
officiant is, in fact, a minister or other authorized person. Op. Tenn. Att’y Gen. 87-151 (9/17/87).

Ordinarily, elected officials are not authorized to act outside the jurisdiction from which they were
elected. See Op. Tenn. Att'y Gen. 85-189 (6/10/85) (under prior law, elected officials had no jurisdiction
to perform marriages outside their jurisdiction). However, in 1997 the General Assembly authorized all
elected officials and former officials who are authorized to perform marriages to do so in any county in the
State of Tennessee. T.C.A. § 36-3-301(i).

For marriage purposes, the several judges of the United States courts, including United States magistrates
and United States bankruptcy judges, who are citizens of Tennessee are deemed to be judges of this
state. However, the term "former judges" does not include any judge who has been convicted of a felony
or who has been removed from office. T.C.A. § 36-3-301(a). The term "retired judges of this state"
includes persons who served as judges of any municipal or county court in any county which has adopted
a metropolitan form of government and persons who served as county judges (judges of the quarterly
county court) prior to the 1978 constitutional amendments. T.C.A. § 36-3-301(e). Also, any person who
was a member of a quarterly county court on August 1, 1984 can perform marriages. T.C.A. § 17-1-206. All judges, including city judges, are included among the officials who may solemnize marriages. A city judge may perform a marriage in any county in Tennessee, regardless of whether the judge was elected or appointed. T.C.A. § 36-3-301(k).

Deputy county clerks who are duly authorized by the county clerk have the power to perform marriage ceremonies, under the authority granted under T.C.A. § 18-1-108(4). Op. Tenn. Att’y Gen. 85-243 (9/18/85).

**Marriage Ceremony**

Reference Number: CTAS-431

No formula need be observed in solemnizing a marriage, except that the parties must respectively declare, in the presence of the minister or officer, that they accept each other in marriage. T.C.A. § 36-3-302. This statute has been interpreted by the Attorney General as requiring that the parties personally appear together before a person authorized by law to solemnize marriages, so that a marriage ceremony cannot be performed by telephone. Op. Tenn. Att’y Gen. 90-71 (7/16/90). The statute was amended in 2017 to authorize participation by video conference, but only for members of the armed forces who are stationed in another country in support of combat or another military operation.

Since many officials asked to perform marriage ceremonies may do so infrequently, here is an example of a typical ceremony. This sample ceremony certainly is not legally required, and it may be altered as the persons being married desire, so long as the parties do each declare in the presence of the marrying official that they accept each other as spouses, respectively. The traditional marriage rite of the Religious Society of Friends (Quakers), whereby the parties simply pledge their vows one to another in the presence of the congregation, constitutes an equally effective solemnization. T.C.A. § 36-3-301(b).

**Out-of-State Ceremonies**

Reference Number: CTAS-432

If a marriage license issued by a county clerk in Tennessee is used to solemnize a marriage outside Tennessee, the marriage and parties, their property and their children have the same status as if the marriage were performed in Tennessee. T.C.A. § 36-3-103(c). However, the officials who are authorized under T.C.A. § 36-3-301 to solemnize marriages in Tennessee are not authorized to perform marriage ceremonies outside Tennessee. Op. Tenn. Att’y Gen. 15-47 (June 3, 2015).

**Remuneration for Solemnizing a Marriage**

Reference Number: CTAS-433

Any gratuity received by a county mayor/executive, municipal mayor, county commissioner, or county clerk for the solemnization of a marriage, whether performed during or after their regular working hours, shall be retained by them as personal remuneration for such services in addition to any other sources of compensation they might receive, and such gratuity shall not be paid into the county general fund. T.C.A. § 36-3-301. However, a county mayor/executive, municipal mayor, county commissioner, or county clerk is prohibited from charging a fee or demanding compensation of any kind for the solemnization of a marriage. Such a public officer who knowingly charges a fee or demands compensation of any kind for the solemnization of a marriage commits a Class C misdemeanor, and such violation creates a rebuttable presumption that there is an actionable basis to institute ouster proceedings. T.C.A. § 36-3-301.


**Certification and Return of the License**

Reference Number: CTAS-434

The county clerk is required to place on each license the following form of certificate, to be signed by the person solemnizing the marriage:

"I solemnized the rite of matrimony between the above (or within) named parties on the ___ day of ______, 20__.” T.C.A. § 36-3-304.

Sample marriage license with the required certificate.
The authorized officiant who performs the marriage ceremony is required to endorse on the license the fact and time of the marriage, and sign his or her name thereto, and return the license to the county clerk within three (3) days from the date of the marriage. Failure to return the license as required is a misdemeanor. T.C.A. § 36-3-303. The Certificate of Marriage required by the Tennessee Department of Health, Office of Vital Records, also must be completed and returned to the county clerk within this three-day time frame. T.C.A. § 68-3-401. In the case of marriages solemnized among the Religious Society of Friends (Quakers), the functions, duties and liabilities of the party solemnizing marriages are incumbent upon the clerk of the congregation, or in the clerk’s absence, the clerk’s duly designated alternate. T.C.A. § 36-3-303.

A county clerk has no authority to require proof that an officiant is a "regular minister of the gospel" or other authorized person who meets the criteria of T.C.A. § 36-3-301, and must presume that the marriage is valid. Op. Tenn. Att’y Gen. 87-151 (9/17/87).

Failure of an officiant to return the marriage license to the issuing clerk within three days after the ceremony as required by the statute does not invalidate the marriage. Aghili v. Saadatnejadi, 958 S.W.2d 784 (Tenn. Ct. App. 1997).

Solemnizing Marriage Between Incapable Persons

Reference Number: CTAS-438

If any minister or officer knowingly joins together in matrimony two persons not capable thereof, he or she shall be guilty of a misdemeanor, and shall also forfeit and pay the sum of five hundred dollars ($500), to be recovered by action of debt, for the use of the person suing. T.C.A. § 36-3-305.

Marriage Records

Reference Number: CTAS-395

Marriage Book

The county clerk is required to record in a well-bound book the names of the parties and the date of the issuance of the marriage license, and to copy immediately under or opposite thereto the return of the proper officiant who solemnized the rite of matrimony and the date thereof. T.C.A. § 18-6-109.

Marriage Certificate

Most county clerks, after receiving the completed and signed marriage license after the ceremony has been performed, forward a marriage certificate to the newly married couple, showing the fact that the marriage has been duly recorded in the county’s marriage records. However, some county clerks have a two part license with a detachable certificate. Sample marriage certificate.

State Marriage Records filed with the Office of Vital Records

A record of each marriage performed in this state is required to be filed with the Tennessee Department of Health, Office of Vital Records, and shall be registered if it has been properly completed and filed. The county clerk who issues the marriage license is required to prepare the record on the form Certificate of Marriage furnished by the state registrar upon the basis of information obtained from the parties to be married. The Certificate of Marriage requires the signature of both the applicants in the presence of the county clerk; however, where an applicant is authorized by T.C.A. § 36-3-104 to apply by submitting a sworn affidavit, personal appearance before the county clerk is not required. The Certificate of Marriage also contains spaces for the officiant who performs the ceremony to certify the marriage of the persons, a witness to the marriage to sign (although a witness is not required by law), the county of marriage, and whether the marriage is a religious or civil service. This Certificate of Marriage, like the marriage license, must be returned to the county clerk within three (3) days of the performing of the marriage ceremony. T.C.A. § 68-3-401. Certificate of Marriage form required by the TN Department of Health, Office of Vital Records

The county clerk must complete and forward the records of marriages filed during the preceding calendar month on or before the tenth day of each calendar month to the Office of Vital Records. A marriage not filed within these time requirements may be registered in accordance with the regulations of the Office of Vital Records. If a marriage license has been obtained by incorrect identification, the fraudulent records should be voided and a correct certificate of marriage placed on file by order of a court in the county where the license was issued in accordance with the regulations established by the Department of Health. T.C.A. § 68-3-401. The requirements and procedures for amending state vital records, including marriage records, are found in T.C.A. § 68-3-203 and Tenn. Comp. R. & Regs. 1200-07-01-.10.

The county clerk is authorized to record and certify any license used to solemnize a marriage which is
properly signed by the officiant when the license is returned to the issuing county clerk. The issuing county clerk then forwards the record to the Office of Vital Records to be filed and registered. This includes Tennessee marriage licenses which are used to officiate out-of-state ceremonies. T.C.A. § 36-3-103(c)(1).

Fees and Taxes

Reference Number: CTAS-396

State and Local Taxes and Fees

There are two (2) state privilege taxes on marriage, and one (1) local option tax which can be levied in an amount up to $5.00. T.C.A. §§ 67-4-411, 67-4-502, 67-4-505. The collector of both state and local marriage taxes is the county clerk. The county clerk earns fees for performing these duties. The taxes and fees associated with the issuance of a marriage license are as follows:

State Privilege Tax, T.C.A. § 67-4-411  $15.00
State Privilege Tax, T.C.A. § 67-4-505  5.00
Optional County Tax, T.C.A. § 67-4-502  5.00
County Clerk’s fee for issuance of marriage license, T.C.A. § 8-21-701(1)  10.00

The following fees may or may not apply, depending on whether the services are provided:

County Clerk’s fee if copies requested by the parties, per page, T.C.A. § 8-21-701(12)  $.50
County Clerk’s fee for certifying a copy of a document, T.C.A. 8-21-701(11)  5.00

The $5.00 state tax is retained by the county and must be used for county school purposes. T.C.A. § 67-4-505. The local option tax, if levied, is retained by the county and used as directed by the county legislative body. The $15.00 state tax is paid over to the state commissioner of revenue. T.C.A. § 67-4-411.

State and Local Taxes and Fees

Reference Number: CTAS-439

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County Clerk’s fee for certifying a copy of a document, T.C.A. 8-21-701(11)  5.00

The $5.00 state tax is retained by the county and must be used for county school purposes. T.C.A. § 67-4-505. The local option tax, if levied, is retained by the county and used as directed by the county legislative body. The $15.00 state tax is paid over to the state commissioner of revenue. T.C.A. § 67-4-411.

Additional Fee, Premarital Preparation Course

Reference Number: CTAS-440

Under T.C.A. § 36-6-413, there is imposed an additional fee of $62.50 on the issuance of a marriage license. This $62.50 fee is in addition to all of the fees county clerks charge for issuance of a marriage license.
Applicants are exempt from payment of $60.00 of the fee if:

1. They have completed a four-hour premarital preparation course and provide the county clerk with a valid and timely Certificate of Completion; or
2. They obtain their marriage license in a county having a municipality defined as a premier type tourist resort pursuant to T.C.A. § 67-6-103(a)(3)(B)\(^2\) and both applicants provide the county clerk with an affidavit of non-residency or valid driver license establishing that they are not Tennessee residents.

To qualify for the exemption by attending a premarital preparation course, both applicants must submit a Certificate of Completion\(^1\) showing that they have attended a course, together or separately, within one year of the date of the application for the marriage license. The course must have been at least four (4) hours in length.

The law does not provide details as to the content of the course, other than to say that it may include conflict management, communication skills, financial responsibilities, children and parenting responsibilities, and data concerning problems reported by married couples who seek counseling. Premarital preparation courses may be taught by any of the following:

1. Psychologist
2. Clinical social worker
3. Licensed marital and family therapist
4. Clinical pastoral therapist
5. Professional counselor
6. Psychological examiner
7. Official representative of a religious institution
8. Any other approved instructor who meets qualifying guidelines that may be established by the judicial district for the county in which the marriage license is issued.

The Certificate of Completion form is to be completed by the instructor of the course. Applicants for a marriage license must present a copy of the completed form to the county clerk in order to qualify for the exemption on this basis.

The entire $60.00 fee (when it is collected) is to be remitted by the county clerk to the state. The state is responsible for distribution of the fee to various agencies in accordance with the provisions of the law. T.C.A. § 36-6-413.

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\(^1\)The Certificate of Completion form has been developed by the Administrative Office of the Courts.

\(^2\)Currently, this exemption includes only Sevier County. Non-residents in all other counties must pay the $60.00 fee unless they have completed a premarital preparation course.

### Failure to Perform Collection Duties

**Reference Number: CTAS-441**

Any county clerk or other official who fails or refuses to collect and pay over any taxes he or she is legally charged to collect and pay over to the department of revenue is liable therefor and his or her official bondsman is also liable for the amount of such failure. T.C.A. § 67-4-210(b). Any county clerk failing in any way, either in person or by agent, to enforce these tax statutes shall be forfeit in each case the sum of $250 to the state and shall be subject to ouster proceedings. T.C.A. § 67-4-211(a).

### Pawnbrokers

**Reference Number: CTAS-399**

As a general rule, pawnbrokers make loans of money on the security of personal property which the pawnbroker holds until the loan is repaid, and title pledge lenders make loans on the security of automobiles and other titled property, with the pledgor usually retaining possession of the vehicle and the title pledge lender holding the certificate of title as security. Although a single business can and often does operate as both a pawnbroker and a title pledge lender, each activity is separately regulated under Tennessee law. In order to conduct a pawnbroker business, the business must obtain a pawnbroker license and operate under the requirements of the Tennessee Pawnbrokers Act of 1988. In order to
conduct a title pledge lender business, the business must obtain a title pledge lender license and operate under the requirements of the Tennessee Title Pledge Act. The requirements of each act are similar, but there are significant differences both in the requirements for licensure and in the rules for operation of the business.

A pawnbroker license does not authorize its holder to act as a title pledge lender, and a title pledge license does not authorize its holder to act as a pawnbroker. The requirements for each license must be met separately. With the appropriate license(s), a business can operate as either a pawnbroker, a title pledge lender, or both.

Overview

Reference Number: CTAS-400

The current law regulating the licensing and operations of pawnbrokers is the Tennessee Pawnbrokers Act of 1988, codified as T.C.A. § 45-6-201 et seq. Pawnbrokers who were under the law as it existed prior to that law’s effective date of July 1, 1988, were granted special “grandfather” rights to continue to operate under the prior law. These persons, firms and corporations may remain subject to the bonding and licensing requirements which were applicable to them on June 30, 1988, as long as they retain their valid pawnbroker licenses.

Since the 1988 act repealed the prior law, it can no longer be found in Tennessee Code Annotated. Former Law Governing Pawnbrokers contains selected statutes from the repealed laws for reference purposes. All pawnbrokers licensed after July 1, 1988 must operate under current law.

License Required

Reference Number: CTAS-401

It is unlawful for any person, firm, or corporation to establish or conduct a business of pawnbroker without having first procured a pawnbroker license. T.C.A. § 45-6-205. Operating without a license is a Class A misdemeanor which, upon conviction, subjects the violator to a fine not exceeding two thousand five hundred dollars ($2,500.00) for each offense, or imprisonment not greater than eleven (11) months and twenty-nine (29) days, or both. T.C.A. § 45-6-218, T.C.A. § 40-35-111.

Eligibility for License

Reference Number: CTAS-402

To be eligible for a pawnbroker's license, an applicant (and if the applicant is a business entity, each operator or beneficial owner, and as to a corporation, each officer, shareholder, and director) must:

(a) Be of good moral character;

(b) Have net assets\(^1\) of at least seventy-five thousand dollars ($75,000), readily available for use exclusively in conducting the business of each licensed pawnbroker;

(c) Show that the business will be operated lawfully and fairly within the purpose of the act; and

(d) Not have had a prior felony conviction within ten (10) years immediately preceding the date of the application which directly relates to the duties and responsibilities of the occupation of pawnbroker, or otherwise makes the applicant presently unfit for a pawnbroker's license, as determined by the county clerk.

T.C.A. § 45-6-206.

County clerks have little direct guidance on exactly what felony offenses would make a person ineligible to hold a pawnbroker license. However, general guidance could be gleaned from the cases interpreting felonies which make a person unfit to hold public office and offenses which are the basis for denial of a beer permit. In addition, other provisions of the law require an affidavit from each applicant stating that he or she has not been convicted of a felony within the past ten (10) years that directly affects his or her ability to lawfully and fairly operate a pawnbroker business, and a certificate from the sheriff/chief of police/Tennessee bureau of investigation that the applicant has not been convicted of any felony within the past ten (10) years. T.C.A. § 45-6-207. Applicants are no longer required to be Tennessee residents in order to obtain a pawnbroker license; that requirement was deleted from T.C.A. § 45-6-206 in 1995.

In addition to the above requirements, in counties where the local law enforcement agency has requested pawnbrokers to transfer pawn transactions electronically, the applicant must also have a computer system that is capable of electronically transferring information so that when licensed, the pawnbroker can comply with the requirements of T.C.A. § 45-6-221. T.C.A. § 45-6-206(a)(4).

If an applicant is a business entity, the eligibility requirements apply to each operator or beneficial owner.
If the applicant is a corporation, the eligibility requirements apply to each officer, shareholder, and director. T.C.A. § 45-6-206(c).

1 "Net assets" is defined as the book value of the current assets of a person or pawnbroker less its applicable liabilities. "Current assets" include the investment made in cash, bank deposits, merchandise inventory, and loans due from customers excluding the pawnshop charge; "current assets" do not include investments made in fixed assets of real estate, furniture, fixtures, or equipment, investments made in stocks, bonds, or other securities or investments made in prepaid expenses or other general intangibles. "Applicable liabilities" include trade or other accounts payable; accrued sales, income, or other taxes; accrued expenses and notes or other payable that are unsecured or secured in whole or part by current assets; "applicable liabilities" do not include liabilities secured by assets other than current assets. Net assets must be represented by capital investment unencumbered by any liens or other encumbrances to be subject to the claims of general creditors. If the pawnshop is a corporation, the capital investment consists of common or preferred shares and capital or earned surplus as those terms are defined by the Tennessee Business Corporation Act, as amended; if it is any other form of business entity, the capital investment consists of a substantial equivalent of that of a corporation and is determined by generally accepted accounting principles. T.C.A. § 45-6-203.

Application for License

Reference Number: CTAS-403

In order to receive a pawnbroker license, an eligible person, firm or corporation is required to make application to the county clerk in the county in which the business is to be operated. T.C.A. § 45-6-207. The application must contain the following:

(1) The name of the person1, and in case of a firm or corporation, the names of the persons composing the firm or the officers and stockholders of the corporation;

(2) The place, street, and number where the business is to be carried on;

(3) Specify the amount of net assets or capital proposed to be used in the business, accompanied by an unaudited statement from a certified public accountant containing the following statement:

"According to the information provided to me, the net assets, as defined in Tennessee Code Annotated, § 45-6-203, or proposed capital to be used by the applicant, ___________________________ (name), in the pawnbroker business, are valued at not less than seventy-five thousand dollars ($75,000)."

(4) The signature of at least ten (10) freeholders, citizens of the county in which the applicant resides, of good reputation, certifying to the good reputation and moral character of the applicant or applicants;

(5) An affidavit by each applicant that he or she has not been convicted of a felony within the past ten (10) years that directly affects the applicant's ability to lawfully and fairly operate under the provisions of the law;

(6) A certificate from the chief of police and/or sheriff and/or the Tennessee bureau of investigation that the applicant (each operator, beneficial owner, officer, shareholder and director) is of good moral character and has not been convicted of a felony within the past ten (10) years; and

(7) Certified funds in the amount of fifty dollars ($50.00) payable to the county clerk. T.C.A. § 45-6-207.

The county clerk has no authority to refund the fifty dollar fee once received. The funds are to be used to defray the costs of the county clerk's investigation of the application. In addition, the applicant is required to pay directly the costs of the city, sheriff, and/or Tennessee bureau of investigation investigating the applicant. T.C.A. § 45-6-207. Sample application.

1 "Person" is defined as any individual, corporation, joint venture, association or any other legal entity however organized. T.C.A. § 45-6-203.

Issuance of License

Reference Number: CTAS-404

Persons, firms, or corporations having satisfied the qualification requirements and having paid the business tax and any other taxes, and having produced to the county clerk satisfactory evidence of good character as to being a suitable person or persons to carry on the business of pawnbroker, shall be granted a license. The license must contain the following information:
(1) The name of the person, firm, or corporation to whom issued;
(2) The place of business and street number where the business is located; and
(3) The amount of capital employed in the business.
T.C.A. § 45-6-208.

The license entitles the holder to do business at the place designated. Only one place of business may be operated under a license. T.C.A. § 45-6-212. Therefore, the requirements of the act must be met separately for each location.

Insurance Requirement

Reference Number: CTAS-405
Every licensed pawnbroker is required to maintain sufficient insurance coverage on the property held on the pledge for the benefit of the pledgor, to pay the stated value as recited on the pawn stub of the pawned article, in case of fire or other catastrophe. The policy must be payable in case of loss to the county clerk or city clerk for the benefit of the pledgor, and the policy must be deposited with the county or city clerk. T.C.A. § 45-6-215. If the county clerk knows of a violation of this provision or believes the insurance policy filed with the county clerk’s office is insufficient to cover the aggregate stated values of pawned articles, the county clerk should notify the district attorney general serving the county clerk’s district. Failure to meet the insurance requirement is a Class A misdemeanor. T.C.A. § 45-6-218.

Transferability of License

Reference Number: CTAS-406
Licenses may not be transferred from one person to another but may be transferred from one location to another within the same county by consent of the county clerk on payment of a transfer fee of ten dollars ($10.00) to the county clerk. T.C.A. § 45-6-208; Op. Tenn. Att’y Gen. 90-88 (9/19/90) (a license cannot be transferred outside the county in which it was issued; a new license must be obtained from the county clerk in the new county).

Authority of Licensed Pawnbrokers

Reference Number: CTAS-407
A pawnbroker license entitles the holder to do any or all of the following:
(1) Make loans on the security of pledged goods as a pawn or pawn transaction;
(2) Purchase tangible personal property under a buy-sell agreement from individuals as a pawn transaction on the condition it may be redeemed or repurchased by the seller at a fixed price within a fixed time not to be less than sixty (60) days;
(3) Lend money on bottomry (ships) and respondentia (cargo) security, at marine interest;
(4) Deal in bullion, stocks and public securities;
(5) Make loans on real estate, stocks and personal property;
(6) Purchase merchandise for resale from dealers and traders;
(7) Make over-the-counter purchases of goods which the seller does not intend to buy back. The pawnbroker is required to hold such goods for a period of not less than fifteen (15) days before offering the merchandise for resale; and
(8) Use its capital and funds in any lawful manner within the general purposes and scope of its creation.

Notwithstanding the foregoing, however, before engaging in any of the above-listed transactions other than a “pawn” or “pawn transaction,” a pawnbroker must comply with the provisions of any other applicable laws regulating such transactions. T.C.A. § 45-6-204.

1 “Pledged goods” means tangible personal property, other than choses in action, securities, printed evidences of indebtedness or title documents, which tangible personal property is purchased by, deposited with, or otherwise actually delivered into the possession of the pawnbroker. T.C.A. § 45-6-203.
2 “Pawn” or “pawn transaction” includes buy-sell agreements and loans of money. “Buy-sell agreement” is defined as any agreement whereby a pawnbroker agrees to hold property (pledged goods) for a specified period of time not less than sixty (60) days to allow the seller the exclusive right to repurchase the property; a buy sell agreement is not a loan of money, but must still meet all recording procedures to law enforcement officers as with a pawn transaction. A loan of money is defined as any loan of money on
the security of pledged goods and being a written bailment of pledged goods as a security lien for such loan, for the cash advanced, interest and fees authorized by the pawnbroker law, redeemable on certain terms and with the implied power of sale on default. T.C.A. § 45-6-203.

Operation of the Business and Recordkeeping Requirements

Reference Number: CTAS-408

The operating, recordkeeping, and inspection rules under current law apply to all pawnbrokers, even those licensed under provisions of prior law. A general discussion of the basic requirements for operation of the pawnbroker business follows. However, county clerks should never attempt to advise pawnbrokers as to specific legal requirements for operation of the business; pawnbrokers should always be advised to consult their attorneys for advice.

Recordkeeping and Notice Requirements

Reference Number: CTAS-409

Pawnbrokers are required to keep a consecutively numbered record of each pawn transaction which must correspond in all essential particulars to the detachable pawn ticket attached. At the time of making a pawn and/or buy sell transaction, the pawnbroker is required to record the following information, in ink and in English, on the pawnshop copy as well as on the pawn ticket:

1. A clear and accurate description of the property, including the serial number if the pledged article has one;
2. The date of the pawn transaction;
3. The amount of cash loan advanced on the pawn transaction;
4. The exact value of the property as stated by the pledgor;
5. The maturity date of the pawn transaction, which date shall not be less than thirty (30) days after the date of the pawn transaction; and
6. The name, race, sex, height, weight, date of birth, residence address, and numbers from the item(s) used as identification.

T.C.A. §§ 45-6-209, 45-6-213.

In addition to the foregoing, the following language is required to be printed on all tickets:

ANY PERSONAL PROPERTY PLEDGED TO A PAWNBROKER WITHIN THIS STATE IS SUBJECT TO SALE OR DISPOSAL WHEN THERE HAS BEEN NO PAYMENT MADE ON THE ACCOUNT FOR A PERIOD OF THIRTY (30) DAYS AFTER THE MATURITY DATE OF THE PAWN TRANSACTION AND NO FURTHER NOTICE IS NECESSARY.

THE PLEDGOR OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, IT HAS NO LIENS OR ENCUMBRANCES AGAINST IT AND THE PLEDGOR HAS THE RIGHT TO SELL OR PAWN THE ITEM. THE ITEM PAWNED IS REDEEMABLE ONLY BY THE BEARER OF THIS TICKET.

T.C.A. § 45-6-211.

Both the pledgor and the pawnbroker are required to sign the stub, and the detached pawn ticket must be given to the pledgor. T.C.A. § 45-6-209. The records are required to be delivered to the appropriate law enforcement agency, by mail or in person, within forty-eight (48) hours following the day of the transactions. The records also must be available for inspection each business day, except Sunday, by the sheriff of the county and the chief of police of the municipality (if applicable) in which the pawnshop is located. Records must be carefully preserved without alterations. T.C.A. § 45-6-209. If requested by the law enforcement agency, the pawnbroker is required to transfer the required information electronically in text file format to the law enforcement agency in accordance with T.C.A. § 45-6-221.

Pawnbrokers are also required to furnish to law enforcement agencies, upon request, the names of suppliers from whom the pawnbroker has purchased merchandise for resale. This information is not to be recorded nor sent to the law enforcement agency, but shall be maintained at the pawnshop for a period of at least one (1) year from the date of purchase. T.C.A. § 45-6-216.

Interest Rate and Fees
Reference Number: CTAS-410
The interest rate charged by pawnbrokers is limited to two percent (2%) per month. The pawnbroker also may charge a fee not to exceed one fifth (1/5) of the amount of the loan advance for investigating the title, storage, insuring the pledged goods, closing the loan, making reports to local law enforcement officials, and for other expenses, losses of every nature, and all other services. No other charge of any description may be made by the pawnbroker. The allowable interest and fee are deemed owing on the date of the pawn transaction and on the same day of each subsequent month. T.C.A. § 45-6-210.

Default
Reference Number: CTAS-411
The pawnbroker must retain the pledged goods for thirty (30) days after the maturity date of the transaction. If the pledgor fails to redeem the pledged goods within the thirty (30) day period, the pawnbroker acquires absolute title to the goods and the debt becomes satisfied. The pawnbroker may then sell or otherwise dispose of the goods. T.C.A. § 45-6-211.

Hours of Operation
Reference Number: CTAS-412
Pawnbrokers may operate their businesses from eight o’clock in the morning (8:00 a.m.) until six o’clock in the evening (6:00 p.m.). From November 25 through December 24 each year, the business may remain open until nine o’clock in the evening (9:00 p.m.). T.C.A. § 45-6-212.

Prohibited Acts
Reference Number: CTAS-413
There are prohibited acts for pawnbrokers that, like any other violation of the act, constitute Class A misdemeanors that will subject the violator upon conviction to a fine of up to two thousand five hundred dollars ($2,500.00) for each offense and imprisonment for up to eleven (11) months and twenty-nine (29) days under T.C.A. § 45-6-218. These prohibited acts include:

(1) Accepting a pledge from a person under the age of eighteen (18) years; from a person who appears intoxicated; or from any person the pawnbroker knows to be a thief, or to have been convicted of larceny, burglary or robbery, without first notifying a police officer;

(2) Making any agreement requiring the personal liability of a pledgor in connection with a pawn transaction;

(3) Accepting any waiver (in writing or otherwise) of any right or protection accorded a pledgor under the act;

(4) Failing to exercise reasonable care to protect pledged goods from loss or damage;

(5) Failing to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event the pledged goods are lost or damaged while in the possession of the pawnbroker, it is the responsibility of the pawnbroker to replace the goods with like kinds of merchandise or make reimbursement;

(6) Purchasing property in a pawn transaction for the pawnbroker’s own personal use;

(7) Taking any article that is known to the pawnbroker to be stolen;

(8) Selling, exchanging, bartering, or removing from the business, or permitting to be redeemed, any goods for a period of forty-eight (48) hours after making the required report to law enforcement agencies;

(9) Operating more than one house, shop or place of business under one license;

(10) Keeping the business open during prohibited hours; and

(11) Entering into a pawn transaction with a maturity date of less than thirty (30) days after the date of the pawn transaction.
T.C.A. § 45-6-212.

If the violation is knowingly committed by an owner or major stockholder and/or managing partner, T.C.A. § 45-6-218 provides that the license of the pawnbroker may be suspended or revoked at the discretion of the county clerk. However, the Tennessee Attorney General has opined that this portion of that statute is unconstitutional. Op. Tenn. Att’y Gen. 89-53 (4/10/89).
Recovery of Stolen Property

Reference Number: CTAS-414

To obtain possession of purchased or pledged goods held by a pawnbroker which a claimant claims to be misappropriated or stolen, the claimant must notify the pawnbroker by certified mail or in person, giving a complete and accurate description of the goods together with a copy of the applicable law enforcement agency's report on the misappropriation or theft of the property. The claimant and the pawnbroker must in good faith attempt to resolve the claim within 10 days after notification to the pawnbroker. T.C.A. § 45-6-213.

If the claim is not resolved within the 10-day period, either (1) the claimant may petition a court for the return of the property and the pawnbroker must hold the property until either the claim is settled or the court orders disposition of the property, or (2) a law enforcement official having probable cause to believe that the property is misappropriated or stolen may place a hold order on the property. The hold order cannot exceed 90 days unless extended by court order. Upon expiration of the holding period, the pawnbroker must notify the law enforcement official by certified mail that the holding period has expired. If, within 10 days, the pawnbroker has not received a court order extending the hold order on the property and the property is not the subject of a court proceeding, the pawnbroker obtains title to the property. T.C.A. § 45-6-213.

A pawnbroker is not required to relinquish an item believed to be misappropriated or stolen unless a court has ordered the pawnbroker to do so. T.C.A. § 45-6-303.

Register of Deeds

Reference Number: CTAS-59

The office of register in Tennessee can be traced back to the period when this region was part of the English colony of Carolina. The office was provided for in the colony's first fundamental law, known as the "Concessions and Agreements" of 1665. This office was patterned along the English model. The register's general duties have always been to record various types of legal instruments and transactions, particularly those conveying title to land. The register's office in Carolina continued under the colony's "Fundamental Constitution" of 1715. The qualified voters elected three freeholders who became candidates for the office. The governor then appointed one of these three small landowners to be the register. The register was to serve during good behavior.

When Tennessee became a state in 1796, the first constitution included a provision for a register to be elected by the county court in every county. The term of office was indefinite and the register was to serve "during good behavior." The Tennessee Constitution of 1835 provided for the popular election of the register for a term of four years, reflecting the trend of the Jacksonian era. Tennessee's Constitution of 1870 retained the office of register and continued the term of office at four years. The 1978 amendments to the Tennessee Constitution retained the four-year term for the register.

Tennessee's Constitution does not specify any duties for the office of register. Therefore, the Legislature is free to determine the duties of the register by statute and has done so.

The duties of the register first centered on registering or recording, by transcription, deeds to real property. This basic function, in regard to land titles, remains a vital one. However, over the years, other types of instruments have been added to those eligible for registration. Today, many of the basic duties of the office are listed in Tennessee Code Annotated, Section 8-13-108. Many other statutes must be referred to in order to complete the list of duties that the register must perform in today's office.

Qualifications—Register of Deeds

Reference Number: CTAS-60

The office of register does not carry any qualifications beyond the qualifications listed under the General Information tab for county officers.

Oath of Office and Bond—Register of Deeds

Reference Number: CTAS-61

Before entering into office, the register must take and subscribe to the constitutional oath and the oath of office known as the fidelity oath as well as give bond as required. Oaths of office are covered under the General Information tab of the County Offices topic. The deputy's oath of office is the same as that of the register; it must be certified, filed, and endorsed in the same manner. T.C.A. § 8-18-112.
The register enters into a four-year term of office only after taking the prescribed oath and posting the required bond. T.C.A. §§ 8-13-101, 8-13-102. Bonds are covered under the General Information tab of the County Offices topic.

Compensation-Registers of Deed
Reference Number: CTAS-62
The register must receive an annual minimum salary in the amount for a general officer as formulated in T.C.A. § 8-24-102. Compensation is covered under the General Information tab for County Offices.

Deputies and Assistants-Registers of Deed
Reference Number: CTAS-63
Deputies and assistants are covered under the General Information tab for County Offices.

Duties-Register of Deeds
Reference Number: CTAS-64
The primary function of the register is to make and preserve a record of instruments required or allowed by law to be filed or recorded, including but not limited to deeds, powers of attorney, deeds of trust, mortgages, liens, contracts, plats, leases, judgments, wills, court orders, military discharges, records under the Uniform Commercial Code (primarily fixture filings), and other types of documents. T.C.A. § 66-24-101. The records provide public notice of property ownership, liens, contracts, and other transactions that affect the public interest. The register’s office is in the county seat, and the records and papers must remain in the office at all times. T.C.A. §§ 8-13-106, 8-13-107.

Instruments to be Recorded or Filed
Reference Number: CTAS-772
Most of the instruments recorded or filed in the register’s office relate to determining interests or rights in either real or personal property. Some instruments received also deal with a person’s legal status with regard to other persons or legal entities.

Bundle of Rights Theory
Reference Number: CTAS-771
Interests in real property are usually conveyed; that is, ownership interests are transferred, by instruments known as deeds. A person may convey all or part of what he or she owns by deed. Ownership interests or estates in land may be thought of as a bundle of sticks. A deed may convey one stick, two or three sticks, or the entire bundle. The person or group of persons, or legal entity such as a corporation, which owns a full bundle of all the “sticks” (all that it is possible to own under our law) has what is known as a fee simple absolute estate in the real property. This type of ownership involves complete control of the land, subject only to the requirements of government such as taxes which can encumber the property, the right of government to take the property for a public purpose for just compensation (power of eminent domain), and land use restrictions in the form of zoning and the prohibition against creating a public nuisance. The owner of the fee can convey interests and still be considered the owner of the fee. An example of this is an easement, which is a right to use the land for a certain purpose, such as movement over the land. Another example is mineral interests. The interests which can be conveyed by deed are known as freehold interests because they do not end at a certain time. Most are perpetual, but need not be, as in the case of the life estate, which is a transfer of interests for the duration of the life of someone alive at the time of the conveyance. The person who has the ownership interest in the future after the expiration of the life estate has a remainder interest. The interest which does not constitute a form of “ownership” but represents a possessory interest for a fixed period of time is a leasehold interest. The transfer of a leasehold interest is by an instrument referred to as a lease agreement or contract.

Even within freehold estates alone, there exists the major division possibility between so-called “legal” and “equitable” interests. “Legal” interests refer to formal legal title and are commonly conveyed to someone who holds this interest “in trust” for the benefit of lenders of money, such as banks and savings and loan associations, by instruments known as deeds of trust which is the usual method in Tennessee of establishing a mortgage. The person conveying the “legal” interest retains the “equitable” interest (an interest a court doing equity will enforce) and is generally considered the “owner” of the property and must pay taxes as the owner, although many mortgage companies pay this and recoup this by payments
from the equitable owner. The holder of the legal interest, of course, cannot take possession of the land unless there is default on the loan and unless the terms of the deed of trust allow the trustee to sell the property and to use the proceeds to satisfy the lender.

Going back to our analogy, the “owner” of real property may have the most “sticks,” but he or she may have conveyed many other “sticks,” such as an easement to a water company to run a pipe line under the surface and along a certain path, mineral or subsurface rights to a coal company, and the “legal” interest to a trustee for the benefit of a bank to secure a loan. Most of these types of transfers of interest are evidenced by some form of deed.

**Identification and Purpose of Most Common Instruments Relating to Real Property**

**Reference Number: CTAS-773**

**Affidavits of Affixation.** An affidavit of affixation is filed where a party who has legal ownership of both real property and a manufactured home(s) on the parcel states that the manufactured home has become affixed to the real property. Pursuant to T.C.A. § 55-3-128, affidavits of affixation are to be filed with the register as separate documents.

**Affidavits of Scrivener’s Error And Other Affidavits Helping Identify Title To Land.** These are affidavits filed to correct drafting errors in instruments or to clarify the identity of title holders to land. The affiant in the case of any affidavit of scrivener's error may attach a document, including a document previously recorded with corrections made by the affiant, with the affidavit. T.C.A. § 66-24-101(a)(27).

**Appointment of a Substitute Trustee.** An appointment of a substitute trustee is an instrument which designates a person as a successor to the trustee originally named in a deed of trust.

**Assignment of a Deed of Trust.** An assignment of a deed of trust is the transfer of the rights of the lender or mortgagee to another person or institution.

**Assumption Agreements.** An assumption agreement is an instrument whereby the maker assumes the mortgage (the obligation to pay the loan evidenced by the original note and deed of trust) and becomes personally liable for its payment. The assumption agreement usually appears in a deed and is registered with it, but occasionally it is prepared as a separate document.

**Bond to Discharge Lien.** A bond to discharge a lien is really a bond to indemnify against a mechanic's or materialmen's lien claim which operates as a discharge of the lien. The bond is conditioned upon the obligor satisfying any judgment that may be rendered in favor of the person asserting the lien.

**Court Decrees.** Various types of court decrees or orders may be registered which affect title or interests in real estate. Examples are: (1) memoranda of judgments; (2) certified copies of decrees divesting title to land from one person and vesting it in another; (3) certified copies of petitions in bankruptcy and decrees of adjudication.

**Deed of Correction.** As the name implies, this instrument is used to correct errors made in an original deed. These corrections may be made by the parties in interest or by judicial order.

**Deed of Trust.** This is an instrument taking the place of and serving the uses of a common law mortgage, by which the legal title to realty is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions. See T.C.A. § 66-24-117 to see how to treat master forms of mortgages or deeds of trust.

**Installment Deed.** An installment deed provides for the conveyance of equitable interests with the equitable owner paying the consideration in installments, with conveyance of full legal title occurring upon completion of the payments. Until the payments are complete, the seller (grantor) is in a position similar to the beneficiary under a deed of trust.

**Instruments Relating To Mineral Claims.** Two (2) types of instruments relate to mineral claims.

- **Declaration of Interest.** A declaration of interest is an instrument filed in the register's office by a surface owner to claim an abandoned mineral interest. T.C.A. § 67-5-2502.

- **Statement of Claim.** A statement of claim is an instrument filed in the register's office by a mineral interest owner to preserve that person's claim to an abandoned mineral interest. T.C.A. § 66-5-108.

**Liens (Generally).** A lien is a claim made on certain real estate to serve as security for a debt. A lien may be voluntarily granted or may arise by operation of law. It constitutes an encumbrance on the real estate. Various types of liens exist, such as tax liens, liens created against a leasehold of gas, oil, or
minerals to secure the payment of labor or materials furnished to the lessee, mechanic's (e.g., laborers) and materialmen's liens.

**Negative Pledge.** An instrument that provides that a party agrees not to take any action regarding any interest in real property, such as a pledge not to mortgage or encumber or transfer certain real property.

**Notice of Meth Lab Quarantine / Certificate of Fitness.** A notice of meth lab quarantine is a notice filed by a law enforcement official identifying real property where methamphetamine has been manufactured. The signature of a law enforcement official shall be accepted in lieu of acknowledgment. The owner of the real property is deemed the grantor and the agency giving notice is deemed the grantee on this notice. No fees shall be collected by the register for recording the quarantine notice. When the property is deemed safe for human use by an industrial hygienist, a *Certificate of Fitness* may be filed for recording. The owner of the real property is deemed the grantee, and the law enforcement agency that issued the quarantine is the grantor. This certificate must be acknowledged, and fees shall be collected for recording it. T.C.A. § 68-212-507.

**Oil, Gas or Mineral Lease.** An oil, gas, or mineral lease is a contract conveying a leasehold interest in real property for a specified period to allow the lessee to explore for and remove oil, gas, or minerals for a certain consideration.

**Order Sustaining Petition For Condemnation Of Property.** This instrument evidences the transfer of private real property to a government or governmental instrumentality by the government's exercise of the power of eminent domain. The land is taken for a public use without the landowner's consent but with compensation to be awarded according to law.

**Partition Deed.** A partition deed is a conveyance between two or more property holders by which they divide property they hold in common among themselves or as joint tenants each taking a distinct part.

*NOTE:* Property may be held in common where each person owns a fraction or share, as joint tenants where the interests are undivided and the surviving tenant has a right to the interest of the other joint tenant in the property, and as tenants by the entirety which is a joint tenancy with right of survivorship among married couples.

**Plat.** A plat is a map or survey of land showing the division of land into parcels or lots and delineating streets, utility easements, and other information relevant to the future use of the land. Once a properly approved plat is registered, lots may be conveyed by reference to the plat's lot number instead of by more particular metes and bounds descriptions.

**Quitclaim Deed.** A quitclaim deed is a conveyance by the grantor to the grantee of whatever interest, title or claim the grantor has in the property described in the deed. The quitclaim deed does not guarantee title. Such an instrument may convey what is described, or it may not, depending on the status of the grantor's title in the property. These deeds have historically been used to clear up title disputes and to convey supposed interest where title is unclear; but in recent years, it has been used in lieu of a warranty deed to try to avoid the state real estate transfer tax. This subject will be dealt with further in the later section on the state taxes.

**Real Estate Contract.** A real estate contract is an agreement between the seller (grantor) and buyer (grantee) for the seller to convey certain described real estate for a certain consideration. This is not an option contract because the rights and duties of the parties have become fixed. The buyer obtains an equitable interest in the real estate through the contract, but does not obtain legal title until the deed is actually delivered.

**Restrictive Covenant.** A restrictive covenant is an agreement between grantor and grantee restricting or regulating the use of the real property or the location, kind or character of buildings or structures which may be erected. The restrictive covenant generally binds the grantees successors in title. Restrictive covenants are usually incorporated in a deed, but these agreements may be created in a separate instrument.

**Timber Deed.** A timber deed is a conveyance of living trees upon certain described land. Timber is considered to be a part of the real estate until cut and removed from the land, whence it becomes personal property.

**Warranty Deed.** A warranty deed is the most common form of conveyance of a freehold interest, whether it is the conveyance of a fee simple or a life estate. This instrument is called a warranty deed because the grantor warrants or guarantees to the grantee that the grantor is the lawful holder of the interest or interests which are conveyed and is obligated to defend the title, which is to say, to bear the expense of defending the title in court.

**Wills.** A will is an instrument effective upon the death of a testator (maker of the will) wherein the testator transfers his or her property. Title to real estate may be devised (transferred) by will in
Tennessee. Wills are probated (proved) and are of record in the office of the probate court clerk (usually clerk and master, sometimes county clerk). Copies of probated wills, certified by the clerk of the court where probated, in this state or another state, may be registered in the county where the land lies as a muniment (evidence of title) T.C.A. § 32-5-109. Wills devising land in Tennessee or certified copies thereof may be recorded only if duly admitted to probate in Tennessee and the will is presented for recording together with copies of related probate orders. T.C.A. § 66-24-101(a)(16).

**Instruments Affecting Interests in Personal Property**

Reference Number: CTAS-774

Instruments evidencing ownership interests in personal property, such as bills of sale or simple contracts of sale of personal property, usually are not registered, but may be registered. (See T.C.A. § 66-24-101 for a listing of most instruments eligible for registration.) All agreements for the conveyance of real or personal property are eligible for registration. T.C.A. § 66-24-101(a)(1) & (5).

**Uniform Commercial Code Records**

Reference Number: CTAS-775

When personal property, including personal property affixed to real estate, is used as security for debt, the Uniform Commercial Code (UCC) usually governs the transaction. The UCC is a body of statutory law based on a model code which has been adopted by almost all of the states of the Union, with minor variations from state to state, so that the law governing commercial transactions such as the law of sales, commercial paper, bank deposits and collection, letters of credit, bulk transfers, and secured transactions will be as similar as possible across the nation in order to facilitate commerce. The register's office is impacted by the requirements of Article 9 of the UCC dealing with secured transactions, and more particularly, Part 5 dealing with filing. The Tennessee version of Article 9 is found in Chapter 9 of Title 47, Tennessee Code Annotated. Basically, the Chapter (Article) 9 framework involves the filing of documents to provide notice of liens on personal property and fixtures. Not all UCC Article 9 records are filed with the Register. Most are filed with the Secretary of State. Initial financing statements that are filed in Tennessee should be filed with the Secretary of State except the following which should be filed with the Register of Deeds:

1. Initial financing statements with “as extracted” collateral; “as extracted” collateral means oil, gas, or other minerals that are subject to a security interest that is created by a debtor having an interest in the minerals before extraction and attaches to the minerals as extracted, or accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

2. Initial financing statements with timber to be cut as collateral;

3. Fixture filings--initial financing statements where the collateral is goods that are or are to become fixtures (goods that have become so related to particular real property that an interest in them arises under real property law), except where the filing's collateral, including fixtures, is of a transmitting utility -- these should be filed with the Secretary of State. A “transmitting utility” includes railways, pipelines, sewers, transmitting communications (whether electrically, electromagnetically or by light). T.C.A. §§ 47-9-501, 47-9-102.

Some financing statements formerly filed in Tennessee should be filed in another state under the new law.

_The Register should not advise the customer regarding the proper place to file a UCC record, but may suggest that the customer should consult with his attorney to determine the proper place to file to perfect the security interest._

**Identification and Purpose of UCC Instruments (Records)**

Reference Number: CTAS-776

_Amendment._ A record which modifies a filed financing statement; includes the formerly separate assignment, continuation statement, release (now referred to as a collateral change), and termination statement as well as the former amendment function. An amendment must contain the file number of the initial financing statement that is being amended.

_Assignment._ An amendment to the initial financing statement or a component of an initial financing statement that transfers a security interest to a new secured party. A separate amendment with an assignment must contain the file number of the initial financing statement.
**Continuation Statement.** An amendment to the initial financing statement which identifies, by its file number, the initial financing statement to which it relates and indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement. T.C.A. § 47-9-102(27).

**Financing Statement.** This record is a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

**Information Statement.** A record which identifies the record to which it relates by file number assigned to the initial financing statement, indicates that it is an information statement and provides the basis for the person's belief that the earlier filed record is inaccurate and indicates the manner in which the person believes the record should be amended to cure any inaccuracy or the basis for the person's belief that the earlier record should not have been filed. T.C.A. § 47-9-518.

**Initial Financing Statement.** A summary or abstract of a security agreement that contains information designed to place the public on notice concerning the basic facts of the security interest that has been created. At a minimum, it identifies the debtor and secured party and the collateral subject to the security agreement. An initial financing statement may also include an assignment of the security interest to a new secured party. The initial financing statement may state that the document is to be recorded in the real estate records.

**Release.** An amendment whereby a secured party ceases to have a lien on certain “released” collateral. This was a separate instrument under the former UCC. The current UCC provides for the deletion of collateral on the amendment form. The term "release" is not a part of the vocabulary of the current UCC law. Instead, the partial release of collateral is referred to as a collateral change. The amendment deleting collateral from that given in the initial financing statement must contain the file number of the initial financing statement.

**Security Agreement.** The security agreement is the basic instrument which creates or provides for a security interest and establishes the terms of the secured transaction. T.C.A. § 47-9-102(74). This is often a long and detailed legal instrument and usually is not filed with either the register or the Secretary of State.

**Termination Statements.** A termination statement is an amendment of a financing statement which identifies, by its file number, the initial financing statement to which it relates, and indicates either that it is a termination statement or that the identified financing statement is no longer effective. T.C.A. § 47-9-102(80).

### Other Documents

**Reference Number: CTAS-777**
The register's office receives for registration documents which have legal significance other than the ones already mentioned affecting real or personal property. The following is a short description of some of the other instruments that the Register is likely to encounter.

**Depositions.** Under the Rules of Civil Procedure (Rule 27.04), a deposition to perpetuate testimony is filed with the clerk of the court in which the action is pending or in which the petition was filed. A copy of the deposition may also be sent to the register in the county where the petition was filed, and the register records such copies.

**Officials’ Bonds.** The various county officials are required to obtain bonds payable to the state or county which protect the state or county against loss of funds handled by these officials. These bonds are recorded in the register’s office. T.C.A. § 8-19-103.

**Powers Of Attorney.** Powers of attorney are instruments whereby the maker grants to another party or parties the authority to act for the maker with regard to some or all of the maker’s property and to exercise some or all of the maker's legal rights. Also, durable powers of attorney for health care allow the maker to grant to another party the power to make certain decisions regarding health care for the maker. Powers of attorney may be revoked by the maker in a later document.

**Revenue Reports.** The clerks of the various courts operating in the county are required by statute (T.C.A. § 9-2-109) to file with the register reports on the revenue collected by the clerk.

### Requirements for Acceptance of Instruments

**Reference Number: CTAS-778**
Depending upon the skill and care of the draftsperson, an instrument may or may not accomplish what it is intended to do. In other words, an instrument may or may not be legally sufficient. Although the
statutory law places certain duties upon a register to determine whether an instrument is acceptable for registration, this is not a determination of legal sufficiency. For example, a deed must have upon it a reference to the last recorded instrument relating to the property referred to in the deed before the register may record the deed. But, even if not recorded, the deed may be effective between the parties to convey the legal and equitable title. Conversely, a deed may meet all of the requirements for acceptance and yet contain defects in draftsmanship which would make the deed functionally inoperative.

The register should not try to determine the legal sufficiency of an instrument, but must determine whether or not it is acceptable for registration.

**Legibility/Language**

Reference Number: CTAS-779

The register may refuse to register any writing listed in T.C.A. § 66-24-101(a) (which includes documents relating to real property and some other documents, but not UCC records or corporate charters and certificates of limited partnership) if such writing, in the opinion of the register, is illegible or cannot be legibly reproduced, unless the person seeking to register the writing attaches to the document for recording an affidavit providing the following:

1. A statement that the writing is the best available original;
2. The type of document or instrument;
3. The grantor(s) and grantee(s);
4. The date of execution;
5. The name of the person or persons authenticating or acknowledging the signature of the grantor, and their title, if any;
6. A description of the real property, if any, being affected; and
7. All other information or recitals required by law for registration.

The register may also refuse to register any writing eligible to be recorded if the writing or a substantial portion of it is written in a language other than English unless the person seeking to register it attaches an affidavit which gives a complete translation of the writing into English. This affidavit must be recorded with the original writing. The original writing and the affidavit shall be treated as one instrument.

**Authentication/Acknowledgment**

Reference Number: CTAS-780

Tennessee Code Annotated, Section 66-22-101 states:

Unless otherwise provided by law, to authenticate an instrument or document for registration or recording in the office of the county register, the maker or the natural person acting on behalf of the maker shall execute the instrument or document by that person’s original signature and such signature shall be either acknowledged according to law or proved by at least two (2) subscribing witnesses. The county register may refuse to record any instrument or document not authenticated in accordance with this section. [T.C.A. § 66-22-101 was amended in 2004 to clearly authorize the register to refuse to register documents not signed or authenticated according to statute.]

The courts in Tennessee have held that before a writing listed in T.C.A. § 66-24-101 as being eligible for registration can be recorded, it must be acknowledged. McDonnel v. Amo, 162 Tenn. 36, S.W.2d 212 (1931); Henderson v. Watson, 25 Tenn. App. 506, 106 S.W.2d 429 (1942); Chattanooga Lumber & Coal Corp. v. Phillips, 202 Tenn. 266, 304 S.W.2d 82 (1957). However, the Tennessee Supreme Court has also held that notices of federal tax liens need not be acknowledged or witnessed as required by the Tennessee statutes, as federal law controls the practice. Howard v. United States, 566 S.W.2d 521 (Tenn. 1978); Copus v. Tidwell, 601 S.W.2d 708 (Tenn. 1980). Master forms for a mortgage or deed of trust do not need to be acknowledged to be eligible for recording. T.C.A. § 66-24-117.

T.C.A. § 66-22-115 provides that the form of a certificate of acknowledgment used by a person whose authority is recognized under T.C.A. §§ 66-22-103 and -104 to take acknowledgments in others states, territories or countries, shall be accepted in Tennessee if the certificate is in a form prescribed by the laws or regulations of Tennessee, or the certificate is in the form prescribed by the laws or regulations applicable in the other state, territory, or foreign country in which the acknowledgment is taken.

The register is not eligible to take an acknowledgment. The persons who are eligible to take acknowledgments are listed in T.C.A. § 66-22-102; they are county clerks or legally appointed deputy county clerks, clerks and masters of chancery courts, or a notary public of some county in this state. If a
person executing an instrument is not a resident of this state, but resides within the Union or its territories, the instrument must be acknowledged by the procedure found in T.C.A. § 66-22-103 requiring special certification of the taker of the acknowledgment in some instances. **Any certificate clearly evidencing intent to authenticate, acknowledge or verify a document constitutes a valid certificate of acknowledgment. No specific form or wording is required.** T.C.A. § 66-22-114.

**Name and Address of Owner and Taxpayer**

Reference Number: CTAS-781

The register is prohibited from recording a deed of conveyance of real property, except for a deed of trust or mortgage, unless there is included on the instrument, the name and address of a property owner and the name and address of the person or entity responsible for the payment of the real property taxes. T.C.A. § 66-24-114.

**Reference to Previously Registered Instruments**

Reference Number: CTAS-782

The register may not register any instrument affecting interests in real property, except releases of liens, unless the instrument contains a recital designating the deed, will, court decree or other source from which the grantor received the equitable interest. If the source of equitable interest is a deed or other instrument recorded in the register's office or a will or court decree of record in the county, the type of instrument, office, book and page number of such instrument shall be recited on the instrument offered for registration. If the source of equitable title is inheritance under the laws of intestate succession, then it shall be recited that the grantor took title by inheritance and the last recorded instrument conveying the equitable interest shall be named with the office, book and page number where such instrument is recorded. If no such preceding instrument has been recorded, this must be recited on the instrument. Also, the register may not record an instrument releasing a lien on real property unless it contains a recital designating the type of instrument, office, book and page number of the instrument which created the lien being released. In most cases, the preparer of the instrument is required to enter this information. However, there is an exception to the general rule that the preparer must complete a recital referencing the deed or other recorded instrument wherein the grantor of an instrument received the equitable interest in the real estate. Under this exception, if the deed or other instrument from which the grantor received the equitable interest is received by the register simultaneously with the instrument upon which the recital is required, then the preparer is required to leave blanks in the recital for the book and page number or other appropriate reference and the register is then obligated to enter the appropriate reference after the deed or other instrument has been recorded. T.C.A. § 66-24-110.

**Name and Address of Preparer**

Reference Number: CTAS-783

No instrument, by which title to real or personal property passes or any interest therein passes or is encumbered, is eligible for registration without the name and address of the person or governmental agency which prepared the instrument appearing within the instrument, except for Uniform Commercial Code instruments (including fixture filings). Powers of attorney, including durable powers of attorney for health care, must also have the name and address of the preparer. T.C.A. § 66-24-115.

**Parcel Identification Number**

Reference Number: CTAS-784

No deed or other instrument transferring ownership of real property, but not including a deed of trust or mortgage, may be recorded unless it shall contain the parcel identification number assigned by the county assessor of property or a sworn affidavit that such information was requested from the assessor and was not furnished promptly. T.C.A. § 66-24-122.

**Payment of Transfer or Mortgage Tax**

Reference Number: CTAS-785

When either the state tax on the transfer of freehold interests in real property or the state tax on the recording of instruments evidencing an indebtedness is due, the register must receive these taxes before the offered instrument is registered. However, certain instruments are exempt from either the transfer tax or the tax on instruments evidencing an indebtedness. T.C.A. § 67-4-409.
Electronic Records
Reference Number: CTAS-786
With some exceptions, Tennessee law allows records that have to be created or retained to be kept in electronic format. If such a record created or retained in electronic format is a writing eligible to be recorded, a copy of such writing, in lieu of the original electronic format record, may be registered. The original electronic record must have been created or retained in accordance with the Electronic Transactions Act (T.C.A. §§ 47-10-101 through 47-10-123) or other provision of law. A licensed attorney or other custodian of the record must certify that the copy is a true and accurate copy of the original electronic record and the signature of the attorney or custodian must be notarized. The register may specify whether the copy to be registered shall be in paper or electronic form. The certification of electronic document shall be notarized and shall substantially follow the form prescribed in statute. T.C.A. § 66-24-101(d).

Specific Rules for UCC Records
Reference Number: CTAS-787
Uniform Commercial Code (UCC) records do not have to be acknowledged in order to be filed in the register's office. However, the state tax on the filing or recording of instruments evidencing an indebtedness ("mortgage" tax), if due, must be paid before the register accepts the instrument. T.C.A. § 67-4-409. The register's fee must also be paid before the UCC instrument is accepted. T.C.A. § 47-9-516 lists the reasons a register may refuse to accept and file or record a UCC record:
1. The record is not communicated by a method or medium of communication authorized by the register.
2. The amount tendered is not equal to or greater than the sum of the filing fee plus recording tax ("mortgage" tax) on indebtedness, if any.
3. The register is unable to index the record because:
   a. In the case of an initial financing statement, a name for the debtor is not provided.
   b. In the case of an amendment or information statement, the record does not identify the initial financing statement or identifies an initial financing statement whose effectiveness has lapsed.
   c. Where the debtor's name is given in the initial financing statement or an amendment as an individual and the record does not identify the debtor's last name.
   d. In a fixture filing, the record does not provide the name of the debtor and a sufficient description of the real property to which it relates (we would advise you to accept the filing if any attempt to describe the property is made).
4. In the case of an initial financing statement or an amendment that adds a secured party, the record does not provide a name and mailing address for the secured party of record.
5. In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement, the record does not provide a mailing address for the debtor or indicate whether the debtor is an individual or an organization.
6. In the case of an assignment reflected in an initial financing statement or an amendment, the record does not provide a name and mailing address of the assignee.
7. In the case of a continuation statement, the record is not filed within the 6-month period.
8. The record does not contain, either on its face or in an accompanying sworn statement, the language required under the "mortgage" tax law.
9. If the information in the record is unable to be read or deciphered by the Register's office.

Filing a UCC in the wrong office is NOT a reason to reject a UCC record. Also, lack of a signature is NOT a reason to reject a UCC record. Generally, if the register receives sufficient fees and taxes due and can properly index the UCC record, it is advisable to accept the record.

Specific Rules for Plats
Reference Number: CTAS-788
Plats of certain subdivisions of real estate require particular endorsements before the register can accept the plat for registration. A plat of a subdivision under the regional planning regulations is defined as a plan of division of a tract or parcel of land into two (2) or more lots, sites, or other divisions requiring new
street or utility construction, or any division of less than five (5) acres for the purpose, whether immediate or future, of sale or building development, and includes re-subdivision. T.C.A. § 13-3-401. In any county which has a regional planning commission that has filed a certified copy of a major road plan in the register's office, the register cannot file for record or record a plat of a subdivision, as defined in T.C.A. § 13-3-401, for the area outside of the boundaries of a municipal corporation without the approval of the regional planning commission, or planning staff in certain situations, evidenced by an endorsement in writing on the plat. T.C.A. § 13-3-402.

The same provisions relating to a plat of a subdivision apply to plats in a municipality when the municipal planning commission has filed a major street plan with the register. T.C.A. § 13-4-301, -302. Also, additional rules for what constitutes a subdivision apply to municipalities in Marion County. T.C.A. § 13-4-301.

Plats dividing a tract into no more than twenty-five lots, if the development received preliminary plan approval through the planning commission, or five lots if the development did not require preliminary plan approval through the planning commission do not require planning commission approval. Such plats may be endorsed by the secretary or other designee of the planning commission. T.C.A. § 13-3-402.

Further, the register may not register a plat or a survey unless the document has impressed on it the seal of a registered land surveyor who prepared the document. Also, such instruments may not be accepted for registration as a plat, map or survey unless all the words and figures are legible and provide sufficient clarity for reduction and/or reproduction. T.C.A. § 66-24-116.

Although the local planning commissions must ensure that plats of subdivisions receive the approval of the local health authorities before approving the plat, it is no longer the responsibility of the register to require the approval of the local health authorities before registering the plat. T.C.A. § 68-211-407.

Each plat approved by a regional planning commission must contain the most recent recorded deed book number and page number for each deed constituting part of the property being platted. T.C.A. § 13-3-402. This same requirement does not appear in the law applicable to municipal planning commission approval. But, as noted above, all plats, maps and surveys must contain sufficient words necessary for clear and accurate determination of metes, bounds, and easements that can be reproduced.

Any change to a plat (regardless of whether it is designated as an amendment, modification, correction, etc.) must also receive approval of the planning commission in the same manner as described above for the original plat before it can be recorded. The only exception to this rule is that an easement or survey attached to an easement is not considered to be a change to the plat when the grantee is the state, a county, municipality, metropolitan government, or any entity of such government.

Plats and plans related to condominiums are treated differently under the Tennessee Condominium Act of 2008, codified in Title 66, chapter 27, parts 2-5. Under T.C.A. § 66-27-309, plats and plans are a part of the condominium declaration. Separate plats and plans are not required if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and must contain all information required by this section. The plat or plan, or both, can be attached to the declaration and incorporated therein, or it or they may be referenced in the declaration and recorded in a plat book at the appropriate register's office. In either event, the plat(s) or plan(s), or both, shall be deemed acceptable for recording without further action if it or they comply with this section. Each plat or plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.

Payment of the Statutory Fees

Reference Number: CTAS-789
The register is entitled to demand and receive the fees listed in the statutes for recording various instruments before accepting an instrument for registration. Generally, no person or entity, governmental or private, is exempt from the fee requirement. T.C.A. § 8-13-111. However, no fee is to be charged for the filing of a county growth plan. T.C.A. § 6-58-104(C)(2). Although the State of Tennessee generally has to pay recording fees, the register is required to extend credit to the State of Tennessee. The register submits the bill for fees due from the State to the Commissioner of Finance and Administration. T.C.A. § 12-2-106. Also, the register must extend credit to the United States for recording fees due on notices of federal liens and submit the bill at the end of the month to the district director of the Internal Revenue Service or other appropriate federal official in order to obtain payment. T.C.A. § 66-21-201.

Proper Fees for Recording or Filing

Reference Number: CTAS-790
The register is not obligated to receive any deed or other document whereupon a fee attaches unless the fees accompany the document. T.C.A. §§ 8-13-111; 47-9-403. Registers are not allowed to receive any fees or other compensation for any service other than those expressly provided by law. T.C.A. § 8-21-101. In most cases, the fee must accompany the instrument, but T.C.A. § 12-2-106 requires registers to extend credit to the Commissioner of Finance and Administration for recording documents for the State of Tennessee and to submit a bill for the same. Also, the register must extend credit to the United States for recording fees related to notices of federal liens and certificates discharging the federal liens. T.C.A. § 66-21-201. If a question arises as to the proper fee to charge for the service of a register, the register may apply to a court to determine any question arising under the law. T.C.A. § 8-21-105.

The most basic statute relating to Register's fees is T.C.A. § 8-21-1001. Other fees are generally found with the statutes relating to the subject matter, e.g., UCC instruments or corporate charters.

The register must also adopt a policy setting out the procedure to be followed in cases where fees accompanying an instrument for recording exceed the required amount. T.C.A. § 8-13-111. The procedure must include one (1) or more of the following:

1. Establishing a credit, debit or a copy account for individual customers;
2. Contacting the person or entity tendering the instrument to get specific instructions regarding the excess fee;
3. Retaining as fees of the register's office a reasonable overage amount; or
4. Registering every eligible instrument and refunding excess fees, less a reasonable amount of the excess payments retained as fees of the office.

### Standard Fees

Reference Number: CTAS-794

The standard fees which a register may charge are summarized as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Military discharges (T.C.A. § 8-21-1001)</td>
<td>No charge</td>
</tr>
<tr>
<td>2.</td>
<td>For each plat, map or survey (T.C.A. § 8-21-1001)</td>
<td>15.00</td>
</tr>
<tr>
<td>3.</td>
<td>For each document (other than UCC military discharge, plat, map, survey, corporate charter), page size not to exceed 8 1/2 x 14&quot; (T.C.A. § 8-21-1001)</td>
<td>10.00</td>
</tr>
<tr>
<td>4.</td>
<td>For each instrument in a document in excess of one instrument (T.C.A. § 8-21-1001)</td>
<td>5.00</td>
</tr>
<tr>
<td>5.</td>
<td>For each page in a document in excess of two pages (T.C.A. § 8-21-1001)</td>
<td>5.00</td>
</tr>
<tr>
<td>6.</td>
<td>For a certified copy of a plat, map or survey (T.C.A. § 8-21-1001)</td>
<td>5.00</td>
</tr>
<tr>
<td>7.</td>
<td>For a certified copy of a document other than a plat, map or survey, page size not to exceed 8 1/2 x 14&quot;, per page (T.C.A. § 8-21-1001)</td>
<td>1.00</td>
</tr>
<tr>
<td>8.</td>
<td>For filing or recording a UCC record plus per page in excess of ten pages (T.C.A. § 47-9-525)</td>
<td>15.00</td>
</tr>
<tr>
<td>9.</td>
<td>For each additional name in a UCC record required to be indexed (T.C.A. § 47-9-525)</td>
<td>15.00</td>
</tr>
<tr>
<td>10.</td>
<td>For a copy of any UCC record, per page (T.C.A. § 47-9-525)</td>
<td>1.00</td>
</tr>
<tr>
<td>11.</td>
<td>For issuing each receipt for state taxes (T.C.A. § 67-4-409)</td>
<td>1.00</td>
</tr>
<tr>
<td>12.</td>
<td>For recording any corporate charters or related documents plus fifty cents per page in excess of five (T.C.A. § 48-11-303)</td>
<td>5.00</td>
</tr>
<tr>
<td>13.</td>
<td>For recording certificates of limited partnership plus $.50 per page in excess of five (T.C.A. § 61-2-206)</td>
<td>5.00</td>
</tr>
<tr>
<td>14.</td>
<td>For recording limited liability company (LLC) documents plus per page in excess of five (T.C.A. § 48-204-101)</td>
<td>5.00</td>
</tr>
<tr>
<td>15.</td>
<td>For making a transcript, collation, and index regarding worn or mutilated records per 100 words (T.C.A. § 10-7-114)</td>
<td>1.00</td>
</tr>
</tbody>
</table>

A document is defined as the entire writing offered for registration, which may contain one or more instruments. An instrument is defined as a legal writing that gives formal expression to or evidence of a complete legal act or agreement requiring a separate index entry. For example, a document that contains a deed and a release of a deed of trust contains two instruments, and a document that contains three assignments of a deed of trust contains three instruments.

Data Processing Fee

Reference Number: CTAS-791

A fee of $2.00 per non-UCC instrument filed or recorded is collected in addition to the standard fees collected in all counties and this $2.00 fee is earmarked for computerization of the office of register in all but three counties (Morgan, Scott and Sevier). Also, $2.00 of the $15.00 standard fee for filing or recording UCC records is earmarked for computerization of the register's office in all but the three counties noted above.

The law which imposed this fee superseded (put aside) the private acts that some counties had which allowed the register to charge additional fees in his or her particular county so that the total amount of fees collected across the state is now uniform. However, if a county under prior law (general law exception or private act) was authorized to charge an additional register's fee of $1 or $2 per document, and this fee was not earmarked for a particular purpose, the additional general law fee of $2.00 is not earmarked for computerization in those counties (Morgan, Scott and Sevier have been so identified).

The fees earmarked for computerization must be accounted for separately from the other "standard" fees of the office. T.C.A. § 8-21-1001. In addition, as of 2010, upon approval by a two-thirds (2/3) vote of the county legislative body, registers in Marshall, Lincoln, Maury, Rutherford and Hamilton counties may utilize revenue from the data processing fee that is above what is necessary to purchase computer equipment and software, upgrades to computer equipment and software, and supplies, maintenance and services relating to computer equipment and software for other purposes directly related to the official functions of the office. After initial approval by the county legislative body, registers must obtain county legislative body approval prior to making each purchase using this revenue.

Electronic Filing Fee

Reference Number: CTAS-792

T.C.A. § 8-21-1001(j) permits registers, upon receiving county legislative body approval, to charge a $2.00 filing fee for documents filed through the register's county electronic filing portal. Documents filed by federal, state and local governmental entities are exempt from this fee.

Partnership Fee Issues

Reference Number: CTAS-793

The Revised Uniform Partnership Act of 2001 (RUPA), codified at T.C.A. § 61-1-101 et seq., created a new class of documents that have titles such as statement of partnership, statement of partnership authority, statement of denial of partnership, statement of dissociation, statement of dissolution, statement of merger and amendment or cancellation of any of these statements. The standard fees apply to the recording of these types of partnership documents. However, this act did not repeal the older law that provides for the recording of certificates of limited partnership and certificates of merger of limited partnerships and the fee for recording these certificates continues to be $5.00 plus fifty cents per page for each page in excess of five pages. T.C.A. §§ 61-2-206, -211. This same special fee structure of $5.00 plus fifty cents (50¢) per page for each page in excess of five (5) pages also applies to documents of limited liability companies as well as corporate charters and related documents. T.C.A. §§ 48-247-103, 48-11-303, 48-51-303.

UCC Fee Issues

Reference Number: CTAS-795

Confusion has existed in the past concerning the proper charge for UCC financing statements relating to fixtures which are recorded with deeds of trust instead of being filed with the other financing statements. The Attorney General has opined (Op. Tenn. Atty. Gen. No. 333, October 5, 1983) that the proper fee is the fee charged on other UCC financing statements, which is $15.00. The UCC law provides that registers may charge an additional $15.00 for each name required to be indexed. This is usually for additional debtors, but a name such as an individual or corporation d/b/a another name is to be treated as one name. Where a husband and wife are both listed as a debtor on an initial financing statement, this is two names and a fee of $30.00 should be charged. The key to determining whether the extra name should be charged is whether or not the additional name is required to be indexed under the new UCC law.
Collection of State Taxes

Reference Number: CTAS-797
The register is responsible for the collection and transmittal to the Department of Revenue of two related privilege taxes, the state transfer tax, and the state "mortgage" tax (tax on the recording or filing of an instrument evidencing an indebtedness). Both taxes are levied by T.C.A. § 67-4-409. Registers collect a five percent (5%) commission on state transfer and "mortgage" taxes collected. T.C.A. § 67-4-409(d).

Fifty-two percent (52%) of this five percent (5%) commission is remitted monthly to the state treasurer. The remaining forty-eight percent (48%) of this five percent (5%) commission is treated as a standard fee of the office.

Transfer Tax

Reference Number: CTAS-798
The transfer tax is a tax on the privilege of having an instrument recorded where the instrument transfers a freehold interest in real estate, whether by deed, court decree, partition deed or any other instrument. The grantee must pay the tax on the value of the property or the consideration given, whichever is greater, unless the transfer is by quitclaim, whereupon the grantee pays on the basis of the actual consideration for the transfer. The value of the property means the market value or what the property would bring at a fair and voluntary sale.

The rate of the transfer tax is thirty-seven cents (37¢) per one hundred dollars ($100.00) of value or consideration.

Certain transactions listed in T.C.A. § 67-4-409 are exempt from the transfer tax. No transfer tax is due on the transfer of any real estate which is:

1. A leasehold estate (estate for a fixed number of years);
2. The creation or dissolution of a tenancy by the entirety:
   a.) By the conveyance from one (1) spouse to the other;
   b.) By the conveyance from one (1) spouse or both spouses to the original grantor or grantors in the instrument and the original grantor's spouse; or
   c.) By the conveyance from one (1) spouse or both spouses to a trustee and immediate reconveyance by the trustee in the same instrument as tenants in common, tenants in common with right of survivorship, joint tenants or joint tenants with right of survivorship;
3. A deed of division in kind of realty formerly held by tenants in common;
4. A release of a life estate to the beneficiaries of the remainder interest;
5. A deed or deeds executed by an executor to implement a testamentary devise;
6. A domestic settlement decree and/or domestic decrees and/or deeds which are an adjustment of property rights between divorcing parties;
7. A transfer by a transferor of real estate to a revocable living trust created by the same transferor or by a spouse of the transferor, or transfers by the trustee of a revocable living trust back to the same transferor or to the transferor's spouse;
8. A deed executed by the trustee of a revocable living trust to implement a testamentary devise by the trustor of the trust; or
9. A deed executed by the trustee of a testamentary trust or revocable living trust to implement the distribution of the real property to a trust beneficiary or beneficiaries.

No transfer tax is due until the title to the property is transferred by deed.

The grantee, his agent, or a trustee acting for the grantee is required to state under oath upon the face of the instrument offered for record in the presence of the register, or before an officer authorized to administer oaths, the actual consideration or value, whichever is greater, for the transfer of a freehold estate, except that no oath of value is required in any transaction which is exempt, and in the case of the quitclaim deed, the oath must reflect the actual consideration given for that conveyance. Quitclaim deeds are only entitled to this different tax treatment if they merely convey the grantor's interest, whatever that may be. Consideration reflects anything of pecuniary value and need not be money, but its value must be able to be expressed in monetary terms. The Department of Revenue has promulgated rules for the valuation of a life estate and remainder interest based on life expectancy. These should be consulted...
where deeds convey these interests. Knowingly making a false affidavit is perjury (T.C.A. § 39-16-702),
and if the register knows this has been done, it should be reported to the District Attorney General and to
the Department of Revenue.

Mortgage Tax
Reference Number: CTAS-799
The “mortgage” tax is a tax on the privilege of recording or filing any instrument evidencing an
indebtedness, including but not limited to mortgages, deeds of trust, conditional sales contracts, UCC
financing statements and liens on personal property, other than motor vehicles. The mortgage tax is not
levied on the recording of judgment liens, contractor’s liens, subcontractor’s liens, furnisher’s liens,
laborer’s liens, and mechanic’s and materialmen’s liens, nor is the tax due on mortgages or deeds of trust
issued under the Home Equity Conversion Act (i.e., reverse mortgages) and which are labeled as such on
the face of the instrument. Also, no mortgage tax is due on the recording of instruments giving notice of
the creation of a lien, security interest or pledge wherein an energy acquisition corporation formed for the
benefit of a local government is either the secured party or the debtor.

The rate of the mortgage tax is $.115 on each one hundred dollars ($100.00) over two thousand dollars
($2,000.00) of indebtedness. The incidence of the tax is declared to be on the mortgagor, grantor or
debtor, as evidenced by the instrument offered for recording.

The word “indebtedness” as used in this tax law means the principal debt or obligation which is reasonably
contemplated by the parties to be included within the terms of the agreement. If the principal
indebtedness secured is not determinable from the terms of the instrument, then the statute calls for the
tax to be determined according to the value of the property covered by the instrument.

Every recorded instrument evidencing an indebtedness must contain the following language on the face of
the instrument or in an attached sworn statement:

Maximum principal indebtedness for Tennessee recording tax purposes is $______________.

When the collateral is located both within and outside of Tennessee, the tax is calculated according to the
value of the collateral located within Tennessee as a percentage of the total value of collateral securing
the debt.

Except for Uniform Commercial Code transactions, the taxpayer’s security interest will be entitled to
priority only to the amount on which tax has been paid. American City Bank of Tullahoma v. Western
Auto Supply Co., 631 S.W.2d 410 (Tenn. Ct. App. 1981), appeal denied April 12, 1982. However, no link
exists between whether tax is paid and priority of instruments filed under the provisions of the Uniform

There is a special governmental exemption not mentioned earlier. The recording or re-recording of all
transfers of realty in which a “municipality” is the grantee or transferee and all instruments evidencing an
indebtedness in which a “municipality” is the holder or owner of the indebtedness is exempt from the
transfer or “mortgage” tax as the case may be. For the purposes of these two taxes, “municipality”
means the state of Tennessee or any county, or incorporated city or town, utility district, school district,
power district, sanitary district, or other municipal, quasi-municipal, or governmental body or political
subdivision of this state and any agency, authority, branch, bureau, or instrumentality of this state.
T.C.A. § 67-4-409(f). Additionally, when a governmental entity (federal, state or local) is the debtor,
the instrument is exempt from the "mortgage" tax under the judicial doctrine of sovereign immunity.

In transactions involving certain manufacturing type facilities, the total tax is capped at one hundred
thousand dollars ($100,000.00) for the transfer tax and five hundred thousand dollars ($500,000.00) for
the "mortgage" tax. T.C.A. § 67-4-409(h).

Also exempt from the mortgage tax are UCC instruments which secure an interest solely in “investment”
property such as stocks and bonds.

Also, the recording or filing of certain instruments is exempt under federal law. For example, transfers
that are made pursuant to bankruptcy court orders are exempt from the tax.

Most Common Exemptions from Tax
Reference Number: CTAS-800
The following are some of the most common exemptions from tax:

1. Certain Investment Companies: There are exemptions for certain investment companies
and for instruments evidencing an indebtedness of a health and educational facility
corporation formed under Tennessee Code Annotated, Title 48, Chapter 101, Part 3.
2. **Credit Unions (state chartered).** Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 45-4-803.

3. **Electric Cooperatives and Electric Membership Corporations.** Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 65-25-122.

4. **Fannie Mae, Freddie Mac and Sallie Mae.** Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. 12 U.S.C. § 1723a and 12 U.S.C. § 1452.

5. **Farm Credit Services (production credit associations).** Exempt when entity is the debtor or secured party (mortgage tax) or the grantee (transfer tax). 12 U.S.C. § 2077.

6. **Farmer’s Cooperatives:** Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 43-16-145.

7. **Federal Credit Unions.** Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 45-4-803 and 12 U.S.C. § 1768.

8. **FHA.** Same as THDA.

9. **Governmental Entities.** All transfers of realty in which a “municipality” is the grantee or transferee and all instruments evidencing an indebtedness in which a “municipality” is the holder or owner of the indebtedness are exempt from the transfer or “mortgage” tax as the case may be. For the purposes of these two taxes, “municipality” means the state of Tennessee or any county, or incorporated city or town, utility district, school district, power district, sanitary district, or other municipal, quasi-municipal, or governmental body or political subdivision of this state and any agency, authority, branch, bureau, or instrumentality of this state. T.C.A. § 67-4-409(f). Additionally, when a governmental entity (federal, state or local) is the debtor, the instrument is exempt from the "mortgage" tax under the judicial doctrine of sovereign immunity.

10. **Local Utilities.** If the utility is a "municipality" that is a governmental entity (such as a county, municipality, utility district, power district, sanitary district or local authority) then the instrument is exempt from the recording tax if the utility is the owner or holder of the indebtedness (mortgage tax) or is the grantee of a freehold interest in real estate (transfer tax). T.C.A. § 67-4-409(f). A utility that is a governmental entity and is the debtor in an instrument evidencing indebtedness is exempt from paying the mortgage tax under the doctrine of sovereign immunity. Utilities that are not governmental entities, such as private utilities and cooperatives, are not exempt from the transfer or mortgage tax under T.C.A. § 67-4-409(f) and are subject to the recording taxes unless another specific statute (federal or state) provides for an exemption (which is the case in some instances).

11. **Telephone Cooperatives.** Exempt when entity is the debtor (mortgage tax) or the grantee (transfer tax). Instruments are not exempt from the mortgage tax when these entities are the secured party and the debtor is not exempt. T.C.A. § 65-29-129.

12. **THDA.** Exempt when entity is the debtor or the secured party (mortgage tax) or the grantee (transfer tax). This entity is not exempt from the mortgage tax when it is the guarantor and a private party, such as a bank, is the secured party and the debtor is a private party. The recording is exempt from the mortgage tax when THDA is assigned a security interest in the document. T.C.A. §§ 13-23-127(a) and 67-4-409(f).

### Other Tax Issues

**Reference Number:** CTAS-801

**Increase in indebtedness / underpayment.** In the event of an increase in indebtedness beyond the amount stated when the instrument was recorded, the holder of the indebtedness shall pay the tax on the amount of the increase. Such payment is due on the date of the increase, but may be made without penalty if made within sixty (60) days after the increase occurs (time begins on the execution date). T.C.A. § 67-4-409(b)(8).

If the holder of the indebtedness fails to pay or underpays the "mortgage tax" including any tax increase
due to an increase in indebtedness, then the holder of the indebtedness shall be liable for a penalty, in
addition to the tax. The penalty is double the unpaid tax due or two hundred fifty dollars ($250),
whichever is greater. T.C.A. § 67-4-409(b)(12).

The register must report all collections monthly to the Commissioner of Revenue on forms prescribed by
the Commissioner and remit such collections by the fifteenth (15th) day of the month following the month
of collection. For collecting and reporting these taxes, the register retains as a commission five percent
(5%) of the taxes collected, with fifty-two percent (52%) of this amount remitted to the state treasurer
and forty-eight (48%) retained by the register and treated as a standard fee of the office.
T.C.A. § 67-4-409(d).

Also, registers may charge and collect a fee of one dollar ($1.00) for issuing each tax receipt. This fee is
collected along with the other recording or filing fees. T.C.A. § 67-4-409(d).

Notations When Instrument Received

Reference Number: CTAS-802

After a register has determined that an instrument should be received and accepted for recording, the
register must note on the instrument the time (date, hour and minute) the register actually received the
instrument. T.C.A. § 8-13-108(a)(2). The time of reception of the instrument, that is the time of delivery
to the register, and not the time when the register entered the instrument in the notebook, is the proper
time to be entered on the notebook and the instrument. Lee Chatten v. Knoxville Trust Company, 154
Tenn. 345, 289 S.W.2d 536, 50 A.L.R. 537 (1926). The register's office should mark all documents as
"received" when they are physically delivered, regardless of the method of delivery, and documents
arriving in the same mail delivery should be marked with the same date and time. Op. Tenn. Atty. Gen.
94-37 (March 21, 1994). The proper notation of time is of vital importance to all interested parties as the
time of reception can affect priority of title.

The register also enters certain information in a book known as the notebook. The duties of the register in
regard to the notebook are specified in T.C.A. § 8-13-108. The register enters into the notebook the
names of the grantor(s) and grantee(s), the time the instrument was received (date, hour and minute),
and the amount of fees received. The notebook must be maintained in a well bound book or in computer
storage media in accordance with T.C.A. § 10-7-121, which describes the procedures required to maintain
safe copies of the information. The notebook must be maintained as a permanent record.

The register is to note and record the instruments in order of time of reception as nearly as can practically
be done, but entries are to be made without undue delay even if due to the volume of instruments
received the exact order of time of reception cannot be maintained. Nevertheless, no instrument received
on a given day can be entered into the notebook after instruments received on a later day. T.C.A.
§ 8-13-108(a)(4).

The register is required to certify the fact of registration upon every document registered and the time
when it was received. The register is also required to enter on the document the book and page or other
reference where it is recorded or filed, the amount of fees received, if any, and the amount of taxes
received, if any. This certification is accomplished with the signature of the register. If the register
determines that insufficient space exists on the instrument to enter the certification without overlaying
writing on the instrument, then the register may add a page to contain the certification and attach the
page to the instrument, whereupon it becomes a part of the original instrument being registered, and the
register may charge a fee for this additional page. T.C.A. § 8-13-108.

UCC Records. Although the statutes do not require a separate notebook, registers may note the reception
of UCC instruments in a separate notebook for Uniform Commercial Code instruments, naming the
secured party and the debtor, entering the date and time of reception, and the fees received. T.C.A.
§ 8-13-108(a)(3).

Each UCC record must be assigned a unique number. The register must create a record that bears the
number assigned to the filed record and the date and time of filing. T.C.A. § 47-9-519(a).

Under UCC law, a termination statement is treated as an amendment and recorded as any other
amendment. The entire UCC record series from initial financing statement through termination must
remain of record for at least one year after the termination is filed or the financing statement has lapsed.
T.C.A. § 47-9-522.

Recording, Filing and Indexing

Reference Number: CTAS-803

The law for many years required the register of deeds to maintain separate sets of books and indexes for
various recorded or filed instruments. This remains the law if the register has not adopted some form of combined system of recording or "continuous" recording system.

Real Estate Deeds of Title

Reference Number: CTAS-804

After entering the necessary information in the notebook and on the original, the register photocopies or otherwise images the document if the document is to be recorded as opposed to merely being filed. After imaging the document, the register must determine the proper book or record series in which to place the document. If the document deals with equitable title to real estate, such as a standard warranty deed (which also conveys legal title), then the register places the photocopy in the deed book, also called warranty deed book in many counties. The deed books should contain all documents which relate to equitable interest in land, such as court decrees and quitclaim deeds, and not just warranty deeds.

After determining the proper book in which to place the document, the register adds the book and page number and places the document in the book. This book and page number may be added to the notebook although this is not a legal requirement.

The register is required to index the deed or other instrument immediately upon recording it. T.C.A. § 10-7-205. Deeds and related instruments conveying full title or affecting equitable interests in real property are indexed in a direct or grantor index and in a reverse or grantee index.

In the direct index, the register enters first the name(s) of the grantors and then the names of the grantee(s), all in alphabetical order, then enters the kind of instrument, the date of the instrument, the date it was received for recording, and the book and page number where it is recorded. T.C.A. § 10-7-203. Many index books now in use provide space for additional information, such as the civil district where the property is located, the number of acres transferred, and space for comments. The space for comments should be used to inform the public of any unusual references or characteristics of the instrument.

Similarly, the register enters in the reverse index first the names of the grantee(s) and then the names of the grantor(s), the kind of instrument, the date the instrument was executed, the date it was received for recording, and the book and page number where it is recorded. T.C.A. § 10-7-203.

After the register has indexed the instrument, it is returned to the person offering it for recording, if this has not already been done (after photocopy). Although it is not legally required, many registers note in the notebook the date and means by which the instrument is returned.

Deeds of Trust

Reference Number: CTAS-805

After deeds of trust or amendments, assumption agreements, and like instruments are received and noted in the notebook, they are photocopied and placed in a set of books separate and apart from the deeds and other instruments related to transfers of equitable interests in real property. The books are generally known as trust deed books. T.C.A. § 8-13-108.

The register is required to index the deed of trust amendments and other instruments affecting or modifying the original deed of trust in separate direct and reverse indexes in the same manner as warranty deeds are indexed. T.C.A. § 10-7-205. Also in the same manner as warranty deeds, the deed of trust is returned to the person offering it for recording, usually the mortgagee, after it is recorded.

UCC Records

Reference Number: CTAS-806

The UCC allows either the filing or recording through imaging of UCC records. However, fixture filings must be recorded with the real estate records. UCC records must be indexed as follows:

1. Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement.

2. Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

3. If a financing statement is filed as a fixture filing or covers "as-extracted" collateral or timber to be cut, it must be indexed under the names of the debtor and each owner of
record shown on the financing statement as if they were mortgagors under a mortgage of the real property described and also reverse indexed under the name of the secured party as if the secured party were the mortgagee.

4. If a financing statement is filed as a fixture filing or covers "as-extracted" collateral or timber to be cut, an assignment or amendment must be indexed under the name of the assignor or grantor, and reverse indexed under the name of the assignee in the case of an assignment. T.C.A. § 47-9-519.

The register is required to maintain the capability to retrieve a UCC record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates. T.C.A. § 47-9-519.

Miscellaneous Records

Reference Number: CTAS-807

After making a notation in the notebook, the register must decide where to record a variety of miscellaneous records. T.C.A. § 8-13-108 indicates that almost all instruments except those affecting land title, bankruptcies, and the UCC may be recorded with the deeds of trust. However, the statutes referring to mechanic's and materialmen's liens and other types of liens (T.C.A. § 66-11-111, 66-21-103) require the register to keep a lien book. The register must index the recordings of liens and releases and must note the nature of the lien in the index. The register has discretion to maintain a separate direct and reverse index, or to combine the index with the federal lien direct and reverse index or to combine it with the other indexes of the office in a master direct and reverse index. T.C.A. § 66-21-103. For further information on federal tax liens, please refer to Title 66, chapter 21, part 2.

After the completion of improvements to real property, the owner or purchaser, or the contractor, may register a notice of completion in the register's office in order to be protected from lien claims. T.C.A. § 66-11-143. The register is required to make a permanent record of these notices. The register may find it useful to have a separate book for these records and a separate index. The register may use only a direct index for notices of completion. T.C.A. § 10-7-202.

As mentioned above, T.C.A. § 8-13-108 requires a separate book known as record of bankruptcies, where certified copies of petitions in bankruptcy, decrees of adjudication of bankruptcy, and other orders of the bankruptcy court are recorded.

Another group of records which often have separate books and indexes is that of corporate charters and related documents. Also, plats of subdivisions and surveys are usually maintained as separate records. Because of the important legal distinction between a plat which has the approval of a planning commission, and a survey, which does not, these two types of records should be segregated in some fashion.

Statements of claim, declarations of interest and court decrees relating to mineral interests must be recorded in a book known as the Dormant Mineral Interest Record. When a statement of claim is recorded, it must be entered in the index for this type of record and a notation must be made in the index where the instrument creating the original mineral interest is indexed referencing the statement of claim. Orders involving mineral interests must also be referenced in the indexes for the instrument creating the original mineral interest and the instrument creating the interest of the current owner. T.C.A. § 66-5-108. Declaration of interest (in mineral estates) forms must be available in the office of the register. Declaration of interest forms are indexed under the names of the mineral interest owners as grantors and under the names of the surface owners as grantees. T.C.A. § 67-5-2502.

Even if all of the separate books mentioned above are maintained, registers still may keep a miscellaneous book for entry of contracts, leases, powers of attorney and other instruments which do not fit into the other categories. If a separate book is maintained for these records, then a separate direct and reverse index should also be kept.

Combined or Continuous Records

Reference Number: CTAS-808

Tennessee Code Annotated, Section 8-13-108, authorizes counties which have established a county public records commission to forego the various sets of books noted previously and maintain one continuous recording of any and all instruments in one general series of books or film to be designated “official record book.” Likewise, when a system of microphotography is used to record all instruments, the references may be to “book,” “film,” “reel,” or other such designation. Also, some special rules have been allowed for Davidson County in regard to notebook records.
Tennessee Code Annotated, Section 10-7-202(a), authorizes the combining of indexes into a general direct and reverse index. This law supersedes the earlier laws which appear to require separate indexes.

Records and Computers

Reference Number: CTAS-809
Reflecting the more modern systems of maintaining records, T.C.A. § 10-7-202(b) provides for the option of maintaining indexes on a computer. Furthermore, T.C.A. § 10-7-121 authorizes all government officials, including registers, to keep any information required to be kept as a record on a computer or removable storage media, including any appropriate electronic medium, instead of bound books or paper records if the following standards are met:

1. Such information is available for public inspection, unless it is a confidential record according to law;
2. Due care is taken to maintain any information that is a public record during the time required by law for retention;
3. All daily data generated and stored within the computer system must be copied to computer storage media daily, and the newly created computer storage media more than one week old must be stored at a location other than at the building where the original is maintained; and
4. The official can provide a paper copy of the information when needed or when requested by a member of the public.

A new procedure is available for the destruction of original public records which have been reproduced onto computer storage media, including any appropriate electronic medium. These reproductions are required to be done according to regulations promulgated by the Secretary of State regarding approved technology, standards and procedures. Once original permanent records are reproduced properly, they may be destroyed or transferred to a suitable institution upon the approval of the county public records commission. It is important to remember that original public records may not be destroyed without the approval of the county public records commission and after the statutory and regulatory rules have been followed. T.C.A. § 10-7-404.

Registers and other county officials are authorized to provide remote electronic access for viewing of records of the office which are maintained on computer storage media during regular business hours. Registers are authorized to charge users of information through remote access a reasonable amount sufficient to recover the costs of providing this service, and may not charge any more for this service. This charge may not include the cost of storage and maintenance of the records or the cost of the electronic record storage system. Registers may not charge a fee for viewing records in the office, electronically or otherwise. A remote viewing system must not allow the alteration or impairment of the records by the remote viewer. Registers who provide remote electronic access for viewing records must file a statement with the Comptroller of the Treasury describing the computer equipment, software and procedures thirty (30) days prior to offering this service. This statement must describe how the remote access system will prevent remote users from altering the records. Once a remote information system is in place, all members of the public who are willing to pay the user fee must be given access to the system. T.C.A. § 10-7-123.

Uniform Electronic Transactions Act

Reference Number: CTAS-810
The "Uniform Electronic Transactions Act," T.C.A. § 47-10-101 et seq., is intended to establish standards and procedures for the conduct of business transactions via electronic means. The prime concept embodied in the law is that where the law requires a record to be in writing, an electronic record can satisfy that requirement. Similarly, where the law requires a signature, an electronic signature can satisfy the law. Also, the Act states that where a record or signature is required to be notarized, acknowledged, verified or made under oath, the electronic signature of persons authorized to perform those acts can satisfy such requirement. T.C.A. § 47-10-111. The Electronic Transactions Act does not eliminate or alter the need for a transaction to comply with other substantive requirements of law that may affect the transaction.

The law does not require a record or signature to be created, communicated, or stored via electronic means and only applies to transactions between parties that have agreed to conduct transactions by electronic means. Unless otherwise specifically required, the Act also states that county officials shall have the power to determine whether, and the extent to which, they will create and retain electronic records and convert written records to electronic records. T.C.A. § 47-10-117(b). Also, county officials, including
the register, are specifically given the power to determine whether, and the extent to which, they will send and accept electronic records. T.C.A. § 47-10-118(a)(2). Therefore, no register is required to accept electronic transactions.

Should the register choose to utilize electronic transactions, the following principles set forth in the law are of particular importance:

1. Before implementing an electronic transactions system, a county official must file a statement with the comptroller’s office containing information about the hardware and software to be used, policies and procedures related to implementation, estimated costs of the implementation and estimated costs savings. T.C.A. 47-10-119(a).

2. Between twelve (12) and eighteen (18) months after implementation of the system, a post-implementation review must be filed with the comptroller’s office. T.C.A. § 47-10-119(b).

3. An electronic record is received when it enters an information processing system that the recipient has designated to be used and from which the recipient is able to retrieve the electronic record. T.C.A. § 47-10-115(b)(1).

Even if the register does not accept electronic transactions, copies of documents created or retained electronically may be recorded with the appropriate authentication. T.C.A. § 66-24-101(d).

Uniform Real Property Electronic Recording Act ("URPERA")

Reference Number: CTAS-811

The Uniform Real Property Electronic Recording Act ("URPERA") was adopted in 2007 with the goal of making the electronic recording process more uniform throughout the country. Highlights of the URPERA, codified in Title 66, chapter 24, part 2, include:

- Any sort of original document requirement may be satisfied by an electronic document.
- Any signature requirement may be met by an electronic signature or a digitized image of a wet signature.
- Any notary or acknowledgment requirement may be met if the electronic signature or digitized signature of the person notarizing or acknowledging the document is attached or logically associated with the document. Also, a physical or electronic image of the notary stamp or seal does not have to accompany the electronic signature.
- Registers may take an electronic copy of a paper document (as long as the proper certification is attached).
- Registers may accept fees electronically.
- Registers may convert recorded paper documents into electronic format.
- Finally, the standards for registers implementing these functions are to be established by the information systems council.

Notice of Child Support Liens

Reference Number: CTAS-812

Federal law has tried to create a uniform system for enforcing child support. The federal law is found at 42 U.S.C.A. § 651 et seq.—most notably, sections 654, 654(a), and 666. These sections require states to adopt certain centralized procedures for enforcing child support. Tennessee’s procedures are set forth in T.C.A. § 36-5-901 and in regulations found at Tenn. Comp. R. & Regs. 1240-2-5-.01 et seq. The agency in Tennessee that is responsible for enforcement of child support liens is the Department of Human Services. To enforce these liens, the Department can file locally (in the register’s office) or file the liens online.

The Department may require that the register furnish space in his or her office for a computer terminal dedicated to providing information regarding persons with overdue child support obligations. The overdue child support obligation causes, by operation of law, a lien to be placed on the real and personal property of the obligor whenever notice of such lien is placed on the computer showing the existence, amount and date of the lien. T.C.A. § 36-5-901. The register appears to have no obligation regarding the computer terminal other than the provision of space and allowing the public access to the computer terminal.

Issues sometimes arise with regard to out of state liens. Pursuant to T.C.A. § 36-5-902, Tennessee must honor liens arising out of state, as long as the liens are filed in accordance with Tennessee’s procedural rules. Furthermore, the Department is authorized to enforce these out of state liens. T.C.A. § 36-5-902.
Because the procedural rules in Tennessee direct the Department to file child support liens and name the Department as the enforcement agent, it is our opinion that out of state liens should be filed with the Department and not directly with the local register.

Other Records Duties

Reference Number: CTAS-813

All counties are now required to have a county public records commission, and the register serves as an ex-officio member. The register may appoint a designee to serve on the county public records commission instead of the register personally. The county public records commission serves an important function in keeping an efficient records management program. Certain records, after microfilming, may be destroyed or transferred to the state library and archives or some other institution. T.C.A. § 10-7-401 et seq. Otherwise, these originals would be required by law to be kept in the office. The University of Tennessee's County Technical Assistance Service publishes manuals which may be used as guides on the retention and disposition of public records. The county public records commission can affect all of the county offices, but each officeholder may prevent the transfer or destruction of any record in that office.

Generally, the records of the register's office are to be available for public inspection during regular business hours. T.C.A. § 10-7-503. However, certain employee records are confidential. These records include home telephone and personal cell phone numbers, bank account information, Social Security numbers, residential addresses, 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. Where this confidential information is part of a file or document that would otherwise be public information (such as compensation records) the confidential information must be redacted so that the public may still have access to the non-confidential portions of the file or document. T.C.A. § 10-7-504.

Military Discharge Records

Reference Number: CTAS-814

Under T.C.A. § 10-7-513, military discharge records are confidential for 75 years from the time the records are recorded or otherwise come into a register's possession. During this 75-year period, the register may disclose information or may permit inspection or copying only in accordance with § 10-7-513 or a court order.

Only certain persons may inspect or copy military records. Those persons must present proper identification before inspecting or copying the records. The following persons are allowed to inspect or copy military discharge records:

1. The veteran who is the subject of the record;
2. The legal guardian of the veteran;
3. The spouse or a child or parent of the veteran or, if there is no living spouse, child, or parent, the nearest living relative of the veteran;
4. The personal representative of the estate of the veteran;
5. The person named by the veteran, or by a person described by subdivision (2), (3), or (4), in an appropriate power of attorney;
6. Another governmental body; or
7. An authorized representative of the funeral home that assists with the burial of the veteran.

In addition to being authorized to inspect or copy the records, persons described in subdivisions (1) through (5) above are authorized to request removal of the record (except for records preserved on microfilm) or redaction of the social security number from the record (if the record is stored on a medium which allows for redaction). The revised law requires the request be made on a statutorily prescribed form; however, only the form's heading, and not the form itself, appears in the revised law (the entire form was set forth in the prior version of the law). Hopefully this omission will be corrected. Until then, it is our recommendation that the prior statutory form (with some minor revisions) be used. Sample Military Discharge form. Under the revised § 10-7-513, the register is to record the request form.

You should note that if you receive a form requesting redaction and redaction is not practicable, then you should not record the request form, but rather, you are directed to inform the requesting party, either verbally or in writing, that redaction is not practicable and that the person may instead submit a form requesting that the record be removed entirely.

Storage Of Military Discharge Records. Under Title 8, chapter 13, registers are required to record the official discharge of persons who after 1915 have served as members of the United States armed forces,
the United States armed forces reserve, or the United States armed forces auxiliary. Those offices that do not store documents electronically, are required to store discharges recorded after September 1, 2010 in a separate book that only contains official discharge records. All registers must keep books originating prior to, as well as after, September 1, 2010, and which have been designated specifically for the storage of official military discharge records in a location not accessible to the general public, so long as the books do not contain other public documents. In counties that record and store documents electronically, registers shall not make available to the general public any display of military discharge records and shall only provide copies of such records in compliance with § 10-7-513.

Redaction of Personally Identifying Information

Reference Number: CTAS-2202

T.C.A. § 10-7-515 prohibits document preparers from placing personally identifying information on documents, other than powers of attorney, filed or recorded in the register's office. However, registers cannot refuse to record a document based on failure of the preparer to comply with the law. The validity of the document is also not affected by failure of the preparer to comply with this law.

Certain persons may request the register redact their personally identifying information from a document by submitting a written request form to the register. If the record is in a format that permits redaction, the register shall record the request form and then redact the personally identifying information. If redaction is not practicable, the register should not record the request form and should inform the requestor why redaction cannot occur either verbally or in writing.

Registers are authorized, on their own initiative, to redact any personally identifying information that is found on a recorded document maintained on a computer or removable computer storage media, including CD-ROM disk, if the records are stored in a manner that permits redaction.

Compliance with the requirements in § 10-7-515 satisfies all of the obligations of a county register under Section 10-7-504(a)(28) relative to the nondisclosure of personally identifying information.

For purposes of T.C.A. § 10-7-515, "personally identifying information" means:

(i) social security numbers
(ii) official state or government issued driver licenses or identification numbers
(iii) alien registration numbers or passport numbers
(iv) employer or taxpayer identification numbers
(v) unique biometric data (ex. fingerprints)
(vi) unique electronic identification numbers, addresses, routing codes, etc., which would allow an individual to obtain merchandise or otherwise financially encumber the legitimate possessor of the data

Financial Accounting Duties

Reference Number: CTAS-815

The register must keep a record of all funds received by the office. The register is under a duty to use a system of accounting approved by the Comptroller of the Treasury. T.C.A. § 9-2-102. The register should enter in a cash journal (whether kept in book form or on computer media) the date of collection, the name of the person or entity from whom funds are collected, the amount collected, and an earmarking of these funds as a fee or tax. The cash journal should also show disbursements from the account of the register to the county trustee or to the State Department of Revenue.

The accounting system is a double entry system which allows for verification of accounting accuracy through trial balances wherein debits and credits should equal. At least two accounts are affected by each transaction. Debits, or charges, increase the balance of asset and expenditure accounts and decrease the balance of liability, revenue, reserve, or surplus accounts. Credits perform the opposite of debits. Credits decrease the balance of asset and expenditure accounts, and increase the balance of liability, revenue, reserve, or surplus accounts. The trial balance tests whether or not the total debit entries equal the total credit entries. Depending upon whether or not the county has centralized accounting, either the register or the accounting officials use this information to form a general ledger, and from the general ledger an operating statement may be made which details the financial transactions of the office. Operating statements are made on a monthly, quarterly and annual basis. Also, special reports may be requested by the county legislative body.

The complexity of the accounting performed by the register will depend in part on whether or not the
register turns over all fees to the county trustee on a monthly basis, or whether only surplus fees are
turned over quarterly. The county legislative body, by resolution, determines whether or not the fees are
remitted monthly, or whether excess fees are remitted quarterly. T.C.A. § 8-22-104. If the fees are
remitted monthly, the only disbursements that a register will have will be to the county trustee and to the
State Department of Revenue. Conversely, if the register only remits excess fees quarterly to the county
trustee, then the register will have disbursements for such items as the salary of the deputies and
assistants as well as the register’s salary.

Deposits and Bank Accounts-Register of Deeds
Reference Number: CTAS-817
The register, along with every other county official that handles public funds, is required to maintain an
official bank account in a bank within this state, and is required to deposit all public funds received into an
official bank account within three (3) days of receipt of the funds. Also, the register is authorized to enter
into agreements with the bank and with other financial institutions as necessary for the maintenance of
collateral to secure the funds on deposit.

The register is required to make all disbursements by consecutively pre-numbered checks drawn on the
official bank account. T.C.A. § 5-8-207(b).
A violation of any of the duties regarding deposits and the official bank account is a Class C misdemeanor.
T.C.A. § 5-8-207.

Form of Payment
Reference Number: CTAS-818
A register may receive in payment of fees and taxes currency of the United States, checks, money orders,
credit cards or debit cards. The county legislative body is authorized by resolution to waive the processing
fee that is otherwise added to the amount collected when payment is by credit card or debit card. T.C.A.
§ 9-1-108.

Receipts
Reference Number: CTAS-819
Whenever the register receives any money in his or her official capacity, the register must issue to the
payer a receipt and retain a duplicate in the office. T.C.A. § 9-2-103. The duplicate copy of the receipt
must be retained by the register (for at least five (5) years) and be available to state auditors upon
demand. The receipts must be consecutively numbered and kept in a well-bound book or in a manner
approved by the Comptroller of the Treasury. T.C.A. § 9-2-104.

Reports-Register of Deeds
Reference Number: CTAS-820
County Reports. The register is required to keep a complete account of every fee collected and file an
itemized statement monthly, under oath, with the county mayor / executive. T.C.A. § 8-22-104(a). This
is often called the “fee and commission” report. Also, in each county which does not have a central
accounting system approved by the Comptroller of the Treasury, the register must file a sworn quarterly
report with the county mayor / executive showing financial activity by fund accounts which must show all
accounts payable and other obligations. A copy of this report must be filed with the county clerk. T.C.A.
§ 9-2-137. For counties under centralized accounting systems, the register should consult with the
financial officers of the county to insure compliance with the reporting rules applicable in the county.

Report of State Taxes Collected. All registers must make monthly reports of the state taxes collected
to the Department of Revenue on forms prescribed by the Commissioner of Revenue. T.C.A.
§ 67-4-409(d). These reports are filed with the Department of Revenue and the taxes collected are
remitted by the fifteenth day of the month following the month wherein the funds were collected. T.C.A.
§ 67-4-213, 67-4-409(d). If the reports and remittances to the state are not made on time, the register
forfeits the commission on the delinquent amount and is subject to payment of a penalty of five percent
(5%) of the unpaid tax amount for each thirty (30) days or fraction thereof that the tax remains unpaid,
up to a maximum of twenty-five percent (25%) of the unpaid amount. When a report or return is
delinquent, a minimum penalty of fifteen dollars ($15.00) is imposed, regardless of the amount of tax due
or whether there is any tax due. Additionally, if the Commissioner of the Department of Revenue
determines that the failure to report and pay is due to negligence, a penalty of ten percent (10%) of the
underpayment is imposed. T.C.A. § 67-1-804.
Fee System or Salary System-Register of Deeds

Reference Number: CTAS-821
The county legislative body determines whether or not the register maintains a fee account for the payment of the expenses of the office. The two methods for accounting for fees and commissions received by the register, the Fee System and the Salary System, are covered under the County Offices General Information tab.

Relationship to Other County Officials-Registers of Deeds

Reference Number: CTAS-65
County Mayor and County Legislative Body. The register must interact with the county mayor and/or a finance/budget director as well as the county legislative body regarding the register's budget and budget amendments. The exact procedures vary from county to county depending upon whether the county operates under a charter or optional general law regarding budgeting, or has a private act dealing with this subject. However, all registers must submit budget requests in a timely manner in the first half of each calendar year for inclusion in the county's annual budget. Most counties have budget committees that may recommend appropriations for the register's budget that differ from those submitted by the register. The county legislative body determines the amount of the register's budget, subject to certain restrictions, such as following the requirements of any court order regarding a salary suit for deputies or assistants. In many counties, depending upon the applicable law, the county mayor has the authority to approve line item amendments to the register's budget within major categories unrelated to personnel costs, whereas major category amendments require the approval of the county legislative body. T.C.A. § 5-9-407.

Assessor of Property. The register interacts with the assessor to assist in providing information regarding the value of property. The grantee or preparer of a deed of conveyance must obtain from the assessor's office the parcel identification number (map and page) of the property being conveyed before the deed is recorded in the register's office. Also, the assessor is interested in maintaining current information on the market value of real property, and as the requirements for the transfer tax mandate an oath of value or consideration on most transfers, the assessor will want to review the deeds recorded in the register's office.

Tennessee Code Annotated, Section 67-5-806(b), requires the assessor to file tax maps (duplicates or microfilm copies) with the register by April 15 of each year which show the status of property as of January 1 of that year. These records are not "recorded" but are open for public inspection.

After a parcel of land has been classified by the assessor as agricultural, forest, or open space land under the so-called Greenbelt Law (T.C.A. § 67-5-1001, et seq.), the assessor is to record with the register the classification of this property. The recording fees are to be paid by the property owner. T.C.A. § 67-5-1008(b). The statutes do not state explicitly in what books these instruments are to be recorded. Since they constitute a form of lien (roll back taxes are due when the use of the land is converted), it may be advisable to record these instruments with other state tax liens.

Tennessee Department of Revenue. The Tennessee Department of Revenue is charged with overseeing the collection and reporting of the state privilege taxes on the transfer of real estate and the recording of instruments evidencing an indebtedness. The register must report on forms required by the Department. The Department will issue memoranda to be used as guides in the administration and collection of these taxes. It is important for the proper conduct of the office of register that the register understands when tax is due. Legal questions in this area should be addressed to the legal staff of the Department.

The register's office is always subject to audit by the Department of Revenue's auditors concerning the collection of tax in addition to the regular audits of the office as a whole, which are conducted by the Division of County Audit, Office of the Comptroller of the Treasury.

Other Offices. The register also records the official bonds of all county officials. The register deals with the trustee regarding the remittance of fees (monthly or quarterly) to the general fund. The register, as an ex officio member of the county public records commission, interacts with other records commission members, such as the county clerk, and with the Tennessee State Library and Archives.

Sources of Assistance for Register of Deeds

Reference Number: CTAS-822
The legal issues which face the register day-to-day almost always may be solved by reference to statutory law, whether the issue is whether or not to accept an instrument, what fee is due, whether state tax is
due, where to record or file the instrument, how to index the instrument, or any number of other questions involving personnel and responsibilities toward other officials or the public. Therefore, the register should obtain and maintain in current form the most relevant volumes of *Tennessee Code Annotated*. These are Volumes 3, 3A, 8A, 8B (UCC), 8D (Corporations), 11A (Property), and 12 (Taxes). If the register is unable to solve a problem after reference to the statutes, there are sources of assistance available.

**Local Level.** At the local level, the county attorney may be able to offer assistance. This will vary from county to county, as not all county attorneys are obligated to assist the register. The local District Attorney General is obligated by law to respond to questions posed regarding the register's official duties. T.C.A. § 8-7-103(4).

**State Level.** At the state level, the University of Tennessee’s County Technical Assistance Service provides assistance through the regional county government consultants, who are supported by lawyers and other professionals. The County Technical Assistance Service (CTAS) publishes information and emails these items to the register in the form of technical bulletins and "spotlight" memoranda throughout the year.

**Tax Matters.** The Department of Revenue, located in Nashville, can assist the register in administering the state transfer and mortgage taxes. The Department offers memoranda on this subject.

**Financial Reporting.** Division of County Audit, Office of the Comptroller, and its field agents, may be of assistance to the register in financial reporting matters.

## County Trustee

Reference Number: CTAS-67

The trustee has been a constitutional office in Tennessee since the beginning of the state, being an appointive office by the county court in the 1796 Constitution but becoming a popularly elective office in the 1835 Constitution and remaining so under the 1870 Constitution and its 1978 amendment. The trustee is elected to a four-year term of office in the August general election in same year that the governor is elected. T.C.A. § 8-11-101. There is no limitation on the number of terms a trustee may serve.

### Qualifications-County Trustee

Reference Number: CTAS-68

The office of trustee does not carry any qualifications beyond the general qualifications for county officers.

### Oath of Office and Bond-County Trustee

Reference Number: CTAS-69

Before entering into office, the trustee must take an oath to support the constitutions of Tennessee and the United States. Oaths of office are covered under the General Information tab of the County Offices topic.

The minimum amount of the official bond executed by the trustee for each term of office is determined from the amount of revenues handled by the trustee during the last fiscal year audited by the Comptroller or from the last Comptroller-approved audit which was prepared by certified public accountants. If the official bond is executed by a *surety company* authorized to do business in Tennessee (corporate surety), the minimum amount will be based on revenues as follows:

1. 4% up to $3,000,000 of the funds collected by the office; and
2. 2% of the excess over $3,000,000 shall be added.

The amounts indicated above are cumulative. T.C.A. § 8-11-103(b).

If the official bond of a trustee is executed by *personal sureties*, the minimum amount of the bond is based on revenues as follows:

1. 6% up to $3,000,000 of the funds collected by the office; and
2. 4% of the excess over $3,000,000 shall be added.

The amounts indicated above are cumulative. T.C.A. § 8-11-103(c).

County officials are prohibited from being sureties for other county officials. T.C.A. §§ 8-19-108; 8-19-109. The amounts stated above are only minimums; the county legislative body may require the
trustee to execute a bond in a higher amount. T.C.A. § 8-11-102.

Additional information about Bonds is covered under the General Information tab of the County Offices topic.

Fee System or Salary System-County Trustee
Reference Number: CTAS-823
Fee System or Salary System is covered under the General Information tab of the County Offices topic.

Compensation-County Trustee
Reference Number: CTAS-70
Compensation is covered under the General Information tab of the County Offices topic.

Deputies and Assistants-Trustees
Reference Number: CTAS-71
Deputies and Assistants is covered under the General Information tab of the County Offices topic.

Duties-County Trustee
Reference Number: CTAS-72
The county trustee has three major functions: (1) collecting the county's property taxes; (2) accounting for and disbursing county funds (including proper apportionment and determination of fund availability); and (3) investing temporarily idle county funds. The first of these duties, collection of Property Taxes, is covered under the Revenue topic. The second and third primary responsibilities both relate to financial matters. According to T.C.A. § 8-11-104, the trustee's basic duties include the following:

1. Collect all state and county taxes on property;
2. Keep a fair and regular account of all the money received;
3. Receive the county's bills;
4. Keep a successive warrant book, or a book showing all bills received, ruled in columns, showing the number, payee or holder, date of the day of presentation, and amount of the bill;
5. Pay the legal demands (just claims) immediately if there are unappropriated funds sufficient to do so; otherwise, to deliver the demand to the owner endorsed, and pay it in numerical order (Interest might be due if so contracted by the county legislative body, but only until there are funds in the county treasury to make payment. Davidson County v. Olwill, 72 Tenn. 28 (1879));
6. Keep fair and regular accounts of such payments;
7. Furnish the county executive with any papers and vouchers necessary for perfecting any settlement with any person who is accountable for county revenue; and
8. On going out of office:
   (a) Deliver all books and papers of the office to the successor, especially the book showing warrants payable; and
   (b) Make settlement with the county executive and pay over the balance of funds remaining to the successor in office, making duplicate receipts (one of which is delivered to the county clerk to be recorded in the revenue docket).

County Treasurer
Reference Number: CTAS-824
Acting as treasurer for the county, the trustee receives and pays out county funds. Legislation passed in 1996 prohibits any official, including the trustee, from requiring or encouraging checks to be payable to the official in his or her own name, rather than the name of the governmental entity, the office, or the official’s name and title. T.C.A. § 9-1-117.

Monies that the county trustee receives in the role of treasurer for the county must be allocated to one of the county's various funds such as the general fund, school fund, highway fund, solid waste management fund, or debt service fund. Other special purpose funds may be established according to law by the
Generally, the county trustee and the trustees also handle the accounting for drug fund monies, for which special accounts must be established. The trustee's excess commissions likewise become part of the county general fund. T.C.A. § 8-22-103. These excess commissions are paid over quarterly on the tenth of January, April, July, and October. The trustee must keep an accurate account of the commissions and transfer excess commissions of the trustee's office from the office commission account to the general fund by these quarterly dates. T.C.A. § 8-22-104.

As soon as possible after the quarterly dates, the trustee files a sworn report with the county mayor/executive showing the funds received from the other county offices and the excess commissions transferred by the trustee to the general fund. The trustee also files a sworn, itemized monthly statement with the county mayor/executive. T.C.A. § 8-22-104. If an official's salary is supplemented from county funds (in order to receive the statutory salary), that official must keep records and make an annual report of collections to the county mayor/executive. Filing such a report is a prerequisite to receiving the county funds since supplementary compensation is computed on the basis of the report. T.C.A. §§ 8-22-108 and 8-24-106.

The county legislative body may choose to operate under the salary system instead of the fee system, paying salaries and expenses of an office and requiring all fees to be turned over monthly to the trustee. T.C.A. § 8-22-104(a)(3). Sheriff's offices always turn over all fees to the trustee and do not operate using the fees collected. T.C.A. § 8-24-103. The sheriff's fees received by the trustee are held in the general fund of the county in a separate designated account. The trustee reports these funds at each regular meeting of the county legislative body, a report which is retained as a permanent record. T.C.A. § 8-22-113. Trustees also handle the accounting for drug fund monies, for which special accounts must be maintained. T.C.A. § 53-11-415.

Disbursement Warrants-County Trustee

Reference Number: CTAS-825

In the county financial context, a warrant is an order by which the drawer (the person with authority to make the order) commands the county trustee to pay a particular sum of money to a payee (person or entity) from funds in the county treasury which are or may become available. Although the drawer may have a legal duty only to limit the issuance of warrants according to the amounts appropriated (budgeted) for the purpose of the warrant, the county trustee has a duty to review the warrant and determine whether or not actual monies are currently available to honor the warrant. The county trustee should make arrangements with the bank or other financial institution with accounts holding county monies to insure that overdrafts of county funds are not made. The county trustee must take action to insure that the payee of a warrant is promptly paid when demand is made unless the trustee has clear evidence that disbursements have exhausted money on hand. Failure to honor warrants when monies are in hand is Class C misdemeanor and grounds for removal from office. T.C.A. § 8-11-105. If money is not on hand when a warrant is presented, the warrant must be delivered to the owner with a new number endorsed on the warrant so as to enable the county trustee afterwards to pay it in its numerical order relative to other warrants that have not been honored. A validly issued warrant remains a claim upon the county treasury until honored. The county trustee must keep record of all warrants presented to the trustee for payment, and show the number, payee or holder, date of warrant, date of presentation and amount. The county trustee must keep good records of all payments and balances. T.C.A. § 8-11-104.

The county officers with the power to write warrants vary from county to county according to the applicable laws. The county mayor in most counties has the power to issue a warrant on the county general fund, debt service fund and other special funds. T.C.A. § 5-6-108. However, the power to issue warrants may also extend to the chief administrative officer of the county highway department regarding highway funds or the director of schools jointly with the chairperson of the county board of education with respect to school funds. T.C.A. § 49-2-205. In those counties operating under the County Fiscal Procedure Law of 1957, disbursement warrant must be consigned by the director of accounts and budgets. T.C.A. § 5-13-105. The director of finance must sign disbursement warrants in counties operating under the 1981 Financial Management System. T.C.A. § 5-21-116. Private acts often provide
warrant issuing authority to the chief administrative officer of county highway departments. The county trustee should consult with the county attorney to determine exactly which officials have the power to write a warrant on county funds in his or her particular county.

Optional Checking Account

Reference Number: CTAS-826
A check differs from a warrant in that a check is a direct draft drawn upon a bank (holding county funds) and is payable upon demand whereas a warrant is an order to the county trustee to pay to the payee monies from the county treasury if and when money is available. As a result of legislation enacted in 1992, county trustees have authority to switch from the traditional warrant system to a checking system for disbursing county funds. T.C.A. § 5-8-210. The trustee may adopt the checking system by giving at least thirty days’ notice to each official authorized to sign checks. Under this system the county trustee must certify that funds are available to pay checks before they are released, thereby preventing department heads from issuing disbursement warrants when cash is unavailable in the account. Anyone who signs or issues a check without the required certification is subject to removal from office and personal liability for any improperly disbursed funds. T.C.A. § 5-8-210(k).

Statutory Commissions

Reference Number: CTAS-827
Trustees receive a commission, for the benefit of the county, for receiving and disbursing funds. However, trustees may not demand or receive any compensation not specified by law, T.C.A. § 8-21-101, and may not receive any authorized commission until the duty or service for which it is granted has been performed, unless specifically allowed by law. T.C.A. § 8-21-102. It is the duty of the courts to decide, upon application by the trustee, any question regarding proper compensation, thereby protecting a trustee acting pursuant to the decision. T.C.A. § 8-21-105. The compensation of the county trustee for receiving and paying over to the rightful authorities all moneys received is listed in the chart below:

1. **State, County and Municipal Revenue**: T.C.A. § 8-11-110(a).
   - Sums up to $10,000: 6%
   - Sums above $10,000 and up to $20,000: 4%
   - Sums above $20,000: 2%

2. **County Offices**: T.C.A. § 8-11-110(e).
   - Money collected from county officers on fees: 1%
   - Money turned over by clerks of the courts and other collecting office: 1%

3. **Schools**
   - Money on the school fund received from the state, except that portion that exceeds the amount of BEP funds provided in the 1991 - 1992 fiscal year. See T.C.A. §§ 8-11-110(e) and 49-3-358. 1%

   From federal school lunch program funds handled by the trustee (however, this amount may be paid out of school funds or county general purpose funds if county legislative body so votes) T.C.A. § 8-11-110(f). 1%

4. **Highways**
   - For handling county aid funds T.C.A. § 54-4-103(b)(1). 1%

5. **Special District Funds**
   A. **Watershed Districts**
      - For collection of assessments in watershed districts T.C.A. § 69-6-139. 1%
      - For collection of ad valorem taxes in watershed districts T.C.A. § 69-6-145. 1%
B. Drainage and Levee Districts
For collection of assessments in drainage and levee districts T.C.A. § 69-5-835. 2%
Certified statements, per 100 words T.C.A. § 69-5-835. $1
For receiving money from the sale of bonds and warrants T.C.A. § 69-5-931. ½%
For paying out money from the sale of bonds and warrants T.C.A. § 69-5-931. ½%

C. Road Improvement Districts
For collecting and paying out assessments in a road improvement district T.C.A. §§ 54-12-111 and 54-12-424. 2%
Certified statements, per 100 words, for road improvement district T.C.A. § 54-12-424. $1
For receiving money from the sale of bonds and warrants T.C.A. § 54-12-425. ½%
For paying out money from the sale of bonds and warrants T.C.A. § 54-12-425. ½%

6. Inquest Proceedings
Disposition of effects found on a dead body T.C.A. §§ 38-5-119 through 38-5-121. 3%

The trustee is entitled to collect a different percentage for collection of municipal taxes upon a negotiated basis pursuant to an approved intergovernmental agreement. T.C.A. § 8-11-110(h).

Exemptions
Reference Number: CTAS-828
The trustee is not entitled to any commission on money turned over by the trustee's predecessor in office, money borrowed for county use, or money received from proceeds of bond sales. T.C.A. § 8-11-110(d). The trustee is not entitled to any compensation for handling funds paid by the state to the county or to a local education agency for the purpose of funding employees' social security contribution for teachers. T.C.A. § 8-11-110(g). The trustee is not entitled to any commission on state funds available to any LEA that exceed the amount of state funds provided for public education in each respective LEA in the 1991-1992 fiscal year. T.C.A. § 49-3-358. Finally, the trustee receives no commission when the county legislative body, by resolution, elects to have the state spend county aid money. After such a decision, the legislative body may later elect to receive the funds, in which case the trustee once again receives compensation for handling them. T.C.A. § 54-4-103(b)(1) and (2).

Pursuant to T.C.A. § 67-6-712(b), the trustee in Shelby County will not receive compensation for receiving and distributing local sales tax revenue if the county legislative body adopts this rule by a 2/3 vote.

Investment of County Funds
Reference Number: CTAS-829
Investment of County Funds is covered under the Financial Management under General Law tab of the Accounting/Budget/Finance topic.

Penalties for Failure to Perform Duties
Reference Number: CTAS-830
If the trustee refuses to pay any county warrant or legal demand, it is a Class C misdemeanor for which the trustee may be removed from office unless such disbursement would have exhausted the funds on hand. T.C.A. § 8-11-105. The trustee’s sureties (on the trustee’s bond) may be held liable if the county suffers losses as a result of the trustee’s failure to pay money owing by the county or to collect money due to the county. T.C.A. § 8-11-106. This is also true if the trustee pays claims in the wrong priority. Howard v. Horner, 30 Tenn. 532 (1851).

If a trustee fails to charge or collect from those liable, and if by using reasonable diligence could have collected fees, commissions, or other compensation to which the county is entitled, or if the trustee fails to present the statement of receipts, then the trustee will be held individually liable to the county for the amount which should have been collected. This amount will be charged to the trustee and will be
deducted from the trustee's salary or will be collected from the trustee as a personal debt. T.C.A. § 8-22-105.

A trustee who makes or conspires with anyone, in any manner, to make a false or incorrect exhibit of receipts, statement of expenses, or statement of fact required under the statutes relating to accounting for fees, commits a Class E felony and upon conviction may be fined and imprisoned. T.C.A. § 8-22-106.

If the trustee fails or refuses to furnish the county mayor with any vouchers or papers deemed necessary by the county mayor for perfecting any settlement with any person accountable for county revenue, refuses to receive county warrants in payment of county taxes, or refuses to settle or pay as required by law, the circuit court, upon motion, will impose a $500 forfeiture upon the trustee. T.C.A. § 8-11-108. This forfeiture could be paid from the surety on the trustee's bond. According to this provision the trustee is required to accept a county warrant as payment for county taxes.

A trustee who, upon going out of office, fails to pay over the balance of revenue to the new trustee shall be liable, as are the sureties on the trustee's bond, on motion of the district attorney before the circuit court. T.C.A. § 8-11-109

Relationship to Other County Officials-County Trustee

Reference Number: CTAS-73
The trustee's office has significant interaction with almost every other county office and official. The trustee's involvement as county treasurer, issuing checks and county warrants, results in day-to-day contact with other offices. Also, as receiving agent for fees generated by other offices, the trustee is necessarily involved to some extent in the operation of these other county offices. Additionally, the trustee interacts with other officials involved with the investment of idle county funds.

The trustee must interact with the county mayor and/or a finance/budget director as well as the county legislative body regarding the trustee's budget and budget amendments. The exact procedures vary from county to county depending upon whether the county operates under a charter or optional general law regarding budgeting, or has a private act dealing with this subject. However, all trustees must submit budget requests in a timely manner in the first half of each calendar year for inclusion into the county's annual budget. Most counties have budget committees that may recommend appropriations for the trustee's budget that differ from those submitted by the trustee. The county legislative body determines the amount of the trustee's budget, subject to certain restrictions, such as following the requirements of any court order regarding a salary suit for deputies or assistants. In many counties, depending upon the applicable law, the county mayor has the authority to approve line item amendments to the trustee's budget within major categories not affecting personnel, whereas major category amendments require the approval of the county legislative body. T.C.A. § 5-9-407.

The trustee also interacts with the county mayor in the selection each year of the delinquent tax attorney. The selection of the delinquent tax attorney by the trustee is subject to the approval of the county mayor. T.C.A. § 67-5-2404. The trustee interacts with the delinquent tax attorney preparing the delinquent tax lists and giving proper notice during the collection process. The trustee works with the clerk and master as well as the delinquent tax attorney regarding funds collected in delinquent tax suits.

Clerks of Court

Reference Number: CTAS-75
The Tennessee Constitution in Article VI places the judicial power of the state in one supreme court and in such circuit, chancery and other inferior courts as the legislature creates. The Constitution further 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. The Tennessee Constitution provides that the clerks of the inferior courts may be chosen on a district or county basis. Many counties have only the circuit court clerk and clerk and master to perform clerking duties for all of the courts held in the county, but others have additional court clerks established by private act or charter, such as general sessions court clerk or juvenile court clerk. In any county in which a separate general sessions clerk is created by private act, the clerk serves in accordance with the private act. T.C.A. § 16-15-301. In counties without a separate general sessions clerk, the circuit clerk usually serves as the general sessions court clerk. T.C.A. § 16-15-301. In most counties, the circuit court has both civil and criminal jurisdiction and uses only one clerk, but some populous counties have a separate criminal court and elected criminal court clerk.

Qualifications-Clerks of Court

Reference Number: CTAS-76
The office of clerks of court does not carry any qualifications beyond the general qualifications for county offices.

**Oath of Office and Bond-Clerks of Court**

Reference Number: CTAS-77

Court clerks and their deputies must take an oath of office specific to the office of court clerk as well as the constitutional oath. T.C.A. §§ 18-1-103, 18-1-104. Oaths of office are covered under the General Information tab of the County Offices topic.

Bonds are covered under the General Information tab of the County Offices topic. Every clerk must enter into a bond of $50,000 in counties with a population of less than 15,000 and $100,000 in counties with a population of 15,000 or more, or the court may require a greater bond. T.C.A. § 18-2-201. After being acknowledged before, approved and certified by the court, the bond must be entered upon the minutes of the court within 30 days and must then be recorded in the office the county register of deeds and transmitted to the county clerk for safekeeping. T.C.A. § 18-2-205. See also T.C.A. § 8-19-103 (Recording of bonds of county officers); T.C.A. § 8-19-115 (Time of filing).

Courts may require their clerks to give bond in such sum as the court may deem sufficient to cover property or funds that may at any time come to the hands of such clerks as special commissioners or receivers. T.C.A. § 18-2-202.

The court may also require special bonds to meet particular exigencies, and in a suitable penalty, whenever, in its judgment, the interest of suitors render it necessary. T.C.A. § 18-2-204.

**Compensation-Clerks of Court**

Reference Number: CTAS-79

Clerks of court must receive an annual minimum salary in the amount for a general officer as formulated in T.C.A. § 8-24-102. The county legislative body may increase the salary of the general officers above the minimum amount, but may not increase the salary of a court clerk without also increasing the salary of other general officers unless the clerk of court serves more than one court in the county. If the clerk of court serves more than one court in the county, the county legislative body may set additional compensation for such clerk in the amount of 10 percent of the base salary of the clerk of court. The clerk and master is eligible for the additional 10 percent compensation if the clerk and master serves as clerk of the court that exercises probate jurisdiction, regardless of whether the chancellor or some other judge handles probate matters. T.C.A. § 8-24-102(j)(2). The amount due the court clerk as compensation does not vary with the amount of fees or commissions collected regardless of whether the salary of the court clerk is paid from the clerk's fee account or from the general fund.

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

**Deputies and Assistants-Clerks of Court**

Reference Number: CTAS-80

The court clerk may receive authority to employ deputies and assistants through a letter of agreement or court order. If the court clerk decides to petition for additional deputies or assistants or additional salary amounts, the petition is filed in the court that the clerk serves, and the county mayor defends the salary suit. T.C.A. § 8-20-101.

Additional information about deputies and assistants is found under the General Information tab for County Offices.

**Duties-Clerks of Court**

Reference Number: CTAS-81

Clerks serve an important role in the operation of the Tennessee court system, a role that is outlined generally in Title 18 of the Tennessee Code Annotated. Some of the clerks' duties include the following:

1. Attending each court session with all the papers for the cases on the docket;
2. Administering oaths to parties and witnesses who testify;
3. Keeping minutes of the court in a well-bound book or in an electronic format so long as certain rules relating to the safekeeping of the records are followed;
4. Maintaining the rule docket and an execution docket in which all court judgments or decrees are entered in order of rendition and all receipts and disbursements in a case are
entered;
5. Maintaining indexes for all books and docket that are kept by the office; and
6. Investing funds pursuant to T.C.A. § 18-5-105.

T.C.A. §§ 18-5-102, 18-1-105.
The clerk must reside in the county where the court is held and maintain an office in the county seat.
T.C.A. § 18-1-102.

General sessions clerks have duties similar to other court clerks:
1. Retaining, preserving, and filing in order all papers in civil cases;
2. Transmitting papers when an appeal has been taken to circuit court; and
3. Keeping in a well-bound book a docket of all judgments and executions, or storing such
   information in an electronic format in accordance with rules for the safekeeping of these
   records.


Because court clerks deal with voluminous paperwork, the storage and retention of documents are
important aspects of these offices, and it is extremely important that the records of the clerk's office be
well organized and accurate. Clerks collect state and county litigation taxes, criminal injuries
compensation tax in courts with criminal jurisdiction, county expense fees, and depending upon the
particular court, funds for the impaired driver's trust fund, Tennessee Bureau of Investigation fees,
misdeemeanant jail per diems, fines, sheriff's fees, clerk's fees, witness fees and other items of court costs.
Clerks prepare bills of costs in cases, account for these monies and make collection efforts when these
amounts are unpaid. Clerks maintain a cash journal (general ledger) to account for and summarize the
cash transactions of the office and issue receipts for all collections.

Clerks invest idle funds according to T.C.A. § 8-21-401, and often serve in a fiduciary capacity to invest
funds held for third parties. Additionally, clerks and masters conduct delinquent tax sales, and clerks more
generally may conduct sales of property ordered by the court. Clerks, depending upon the particular court,
may collect support, including alimony and child support, pursuant to court order and the general law
although the responsibility for collecting support in many cases has been transferred to a central state
collecting agency. It is the official duty of each clerk of court to attend meetings of the state court clerks'
conference unless the clerk is otherwise officially engaged or is unable to attend for good and sufficient
reasons. T.C.A. § 18-1-501 et seq.

Relationship to County Legislative Body and Other Officials-
Clerks of Court

Reference Number: CTAS-82

The court clerk must interact with the county mayor and/or a finance/budget director as well as the
county legislative body regarding the clerk's budget and budget amendments. The exact procedures vary
from county to county depending upon whether the county operates under a charter or optional general
law regarding budgeting, or has a private act dealing with this subject. However, all court clerks must
submit budget requests in a timely manner in the first half of each calendar year for inclusion in the
county's annual budget. Most counties have budget committees that may recommend appropriations for
the clerk's budget that differ from those submitted by the court clerk. The county legislative body
determines the amount of the clerk's budget, subject to certain restrictions, such as following the
requirements of any court order regarding a salary suit for deputies or assistants. In many counties,
depending upon the applicable law, the county mayor has the authority to approve line item amendments
to the clerk's budget within major categories not affecting personnel, whereas major category
amendments require the approval of the county legislative body. T.C.A. § 5-9-407.

Of course the clerks have a close working relationship with the judges or chancellors of the courts they
serve. A good working relationship between judge and clerk is vital to the efficient operation of the courts.
Court clerks also interact regularly with the office of sheriff and collect sheriff's fees as part of the bill of
costs. Process directed to the sheriff is returned by the sheriff or deputy to the court clerk. The sheriff
executes on property in proper cases and returns funds to the clerk to allocate according to law. If a
county has constables who serve process, the court clerk may also interact with these officials in the
performance of their duties.

All clerks interact with the trustee in the regular remittance of fees and local litigation taxes. Clerks and
masters interact with the trustee and the delinquent tax attorney regarding collections of delinquent
property taxes and tax sales.

**Sheriff**

**Reference Number: CTAS-35**
The office of sheriff is ancient in origin; its beginning can be traced back centuries to medieval England. The office of sheriff has been provided for in each of Tennessee's three constitutions (1796, 1835 and 1870) and was retained in the latest amendment in 1978. The sheriff is elected to a four-year term in the August general election in the same year in which the governor is elected. Tenn. Const., art. VII, § 1; T.C.A. § 2-3-202. *Smith v. Plummer*, 834 S.W.2d 311, 313 (Tenn. Ct. App. 1992) (Sheriffs are constitutional officers.).

**Persons Ineligible for the Office of Sheriff**
No member of the General Assembly shall be nominated or commissioned, nor shall any practicing attorney be obligated, to act as sheriff. T.C.A. § 8-8-101.

For additional information about the Office of Sheriff, see Law Enforcement and Jail Administration under Public Safety.

**Qualifications-Sheriff**

**Reference Number: CTAS-36**
In addition to the general qualifications of officeholders specified in T.C.A. § 8-18-101, the sheriff, in all counties, except those with a metropolitan form of government in which law enforcement powers have been assigned to some other official, must have the following specific qualifications:

1. Be a citizen of the United States;
2. Be at least 25 years of age prior to the date of qualifying for election;
3. Be a qualified voter of the county and a resident of the county for one full year prior to the date of the qualifying deadline for running as a candidate for sheriff;
4. Have obtained a high school diploma or its equivalent in educational training as recognized by the Tennessee state board of education;
5. Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any misdemeanor crime of domestic violence or any felony charge or violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances;
6. Be fingerprinted and have the Tennessee Bureau of Investigation (TBI) make a search of local, state and federal fingerprint files for any criminal record. Fingerprints are to be taken under the direction of the TBI. It is the responsibility of the TBI to forward all criminal history results to the Peace Officer Standards and Training (POST) Commission for evaluation of qualifications;
7. Not have been released, separated or discharged from the armed forces of the United States with a dishonorable or bad conduct discharge, or as a consequence of conviction at court martial for either state or federal offenses;
8. Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the applicant's ability to perform an essential function of the job, with or without a reasonable accommodation;
9. Have at least three (3) years of full-time experience as a POST commission certified law enforcement officer in the previous ten (10) years or at least three (3) years of full-time experience as a state or federal certified law enforcement officer with training equivalent to that required by the POST commission in the previous ten (10) years; provided that any person holding the office of sheriff on May 30, 2011 shall be deemed to have met this requirement (does not apply in Davidson County); and
10. Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or violation of any federal or state laws relating to controlled substance analogues.

T.C.A. § 8-8-102(a). See also Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.03 (2). Any full-time deputy employed after July 1, 1981, and any person employed or utilized as a part-time, temporary, reserve, or auxiliary deputy or as a special deputy after January 1,
1989, must meet certain minimum standards similar to those required for sheriffs. T.C.A. § 38-8-106.

**Elections-Sheriff**

**Reference Number:** CTAS-1216

The sheriff is elected to a four-year term in the August general election in the same year in which the governor is elected. Elections for the office of sheriff are held on the first Thursday in August at the regular August election when the election immediately precedes the commencement of a full term. Tenn. Const., art. VII, § 1; T.C.A. § 2-3-202.

**Certification by the POST Commission**

Any person seeking the office of sheriff must file with the POST Commission, at least 14 days prior to the qualifying deadline, the following:

1. An affidavit sworn to and signed by the candidate affirming that the candidate meets the requirements of T.C.A. § 8-8-102; and
2. A confirmation of psychological evaluation form certified by the psychologist/psychiatrist providing psychological evaluation as provided for in T.C.A. § 8-8-102(a)(8) for the purposes of sheriff candidacy qualification. The form shall be made available by the POST Commission upon request by any candidate for the office of sheriff.

T.C.A. § 8-8-102(b)(1)(A) and (B).

If the affidavit and psychological evaluation form are not filed with the commission by the 14 day prior to the qualifying deadline, the candidate's name may not be placed on the ballot. The commission has the authority to verify the validity of the affidavit and psychological evaluation form. T.C.A. § 8-8-102(b)(2).

The POST commission must verify peace officer standards and training certification of any person seeking the office of sheriff to the extent subdivision (a)(9) requires such person to have such certification. If the person does not have such certification on the date the person files the affidavit seeking to qualify as a candidate for the office of sheriff, the POST commission shall certify whether the person has the three (3) years of full-time experience as a POST commission certified law enforcement officer and whether the certification is current. If the candidate does not have a current certification, or if the person has the law enforcement experience as a state or federal law enforcement officer pursuant to subdivision (a)(9), then such candidate shall certify with the county election commission by the withdrawal deadline their exemption pursuant to such subdivision. T.C.A. § 8-8-102(b)(3)(A).

The original notarized verification form from the commission must be filed by the commission with the county election commission by the withdrawal deadline. T.C.A. § 8-8-102(b)(3)(B).

If the POST commission or the candidate, as appropriate, has not certified to the county election commission by the withdrawal deadline a person seeking to qualify as a candidate for the office of sheriff as meeting the qualifications as provided for in T.C.A. § 8-8-102, such person's name shall not appear on the ballot. T.C.A. § 8-8-102(b)(3)(C).

**Challenge of Qualifications**

A person may challenge whether a candidate has the required qualifications for sheriff, as identified in T.C.A. § 8-8-102 (a); provided, that the challenge is filed in writing with the POST commission no later than twelve o'clock (12:00) noon prevailing time on the third day after the qualifying deadline, as determined under T.C.A. § 2-5-101(a).

T.C.A. § 8-8-102 (d).

If a candidate's qualifications are challenged pursuant to subsection (d), the POST commission shall:

1. Notify the candidate of the challenge;
2. Review and verify the candidate's required qualifications, identified in subsection (a);
3. Review and verify the candidate's affidavit and psychological evaluation form, in accordance with subsection (b); and
4. If the POST commission determines the candidate does not possess the required qualifications for sheriff:
   A. Disqualify the candidate;
   B. Notify the candidate and county election commission of its determination no later than twelve o'clock (12:00) noon prevailing time on the seventh day after the qualifying deadline, as determined under T.C.A. § 2-5-101(a); and
   C. Request that the county election commission: (i) Not print the candidate's name on
any ballot; and (ii) Remove the candidate's name from any printed ballot. T.C.A. § 8-8-102 (e).

It is an offense for a person to intentionally file a fraudulent challenge. A violation is a Class A misdemeanor punishable by fine only. T.C.A. § 8-8-102 (f).

See Nominations and Qualifying Deadlines, Campaign Financial Disclosure Act of 1980, the Campaign Contribution Limits, and Conflict of Interest Disclosure Statements.

**Oath of Office and Bond-Sheriff**

Reference Number: CTAS-37

In addition to filing the required bond and the usual oath of office, a sheriff must "take an oath that [he or she] has not promised or given, nor will give, any fee, gift, gratuity, or reward for the office or for aid in procuring such office, that [he or she] will not take any fee, gift, or bribe, or gratuity for returning any person as a juror or for making any false return of any process, and that [he or she] will faithfully execute the office of sheriff to the best of [his or her] knowledge and ability agreeably to law." T.C.A. § 8-8-104.

Sheriff's deputies must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff's. T.C.A. § 8-18-112. See Oaths under General Information tab of the County Offices topic for additional information and an example of the full oath of office for a sheriff and regular deputies.

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

**Compensation-Sheriff**

Reference Number: CTAS-38

The sheriff receives a minimum statutory compensation amount according to county population class. T.C.A. § 8-24-102. Pursuant to T.C.A. § 8-24-102(g), compensation for the sheriff must be at least 10 percent higher than the salary paid to the general officers of the county. However, the county legislative body may increase the compensation of the sheriff above the minimum amount required by the state law. T.C.A. §§ 8-24-103 and 8-24-111.

**Additional Compensation**

At their first session in each and every year, the county legislative body is required to make an allowance that they in their discretion think sufficient to compensate the sheriff for ex officio services. T.C.A. §§ 5-9-101(6), 8-24-111. The county legislative body is authorized to pay the sheriff an amount, in addition to the salary allowed by T.C.A. § 8-24-102, for ex officio services as the superintendent of the workhouse if the workhouse is combined with the jail as provided for by Title 41, Chapter 2. T.C.A. § 8-24-103(a)(3).

More information about Compensation can be found under the General Information tab of the County Offices topic.

**In-Service Training-Sheriffs**

Reference Number: CTAS-42

Every person who is elected or appointed to the office of sheriff after May 30, 1997 is annually required during the term of office to complete a 40-hour in-service training course appropriate for the rank and responsibilities of a sheriff. All such training must be approved by the POST Commission. Any sheriff who does not fulfill the obligations of this annual in-service training shall lose the power of arrest. T.C.A. § 8-8-102(c).

All sheriffs must complete annual in-service training as set forth in T.C.A. § 38-8-111. Sheriffs successfully completing annual in-service training receive a cash salary supplement in the same manner and under the same conditions as police officers except that the POST Commission makes the funds for sheriff's salary supplements available to the appropriate counties for payment to sheriffs. In performing its duties, the commission recognizes that the sheriff is an elected official without any employing agency. The commission must issue to any sheriff successfully completing recruit training, or possessing its equivalency and completing continuing annual in-service training, a sheriff's certificate of compliance in the manner in which it issues police officers' certificates of compliance. A sheriff already holding any certificate of compliance from the commission may request the commission to recognize the sheriff's certification. A sheriff receiving a certificate of compliance has a continuing duty to meet all requirements as set forth in T.C.A. §§ 38-8-111 and 8-8-102. In the event a person holding a police officer's certificate of compliance assumes the office of sheriff, the commission must substitute a sheriff's certificate of compliance for the police officer certificate. T.C.A. § 38-8-111(f). See also Rules of the Tennessee Peace
Officer Standards and Training Commission, Rule 1110-2-.03 (2).

The failure of a sheriff to successfully complete the in-service training requirement will result in the sheriff's loss of eligibility for the pay supplement set forth in T.C.A. § 38-8-111. The failure of a sheriff to successfully complete another in-service training session within one year will result in loss of certification. T.C.A. § 38-8-107(b).

Newly Elected Sheriffs’ School

Reference Number: CTAS-1217

Every person who is elected to the office of sheriff after August 1, 2006, in a regular August general election for a four year term, and is a first term sheriff, regardless of their previous law enforcement experience, must successfully complete the newly elected sheriffs’ school prior to the 1st day of September immediately following their election. Thereafter, the sheriff must successfully complete 40 hours of annual in-service training appropriate for the rank and responsibilities of a sheriff. The newly elected sheriffs’ school is taught at the Tennessee Law Enforcement Training Academy during August, only in the years elections for sheriffs are held. Any cost associated with attending the newly elected sheriffs’ school is paid by the county. Any sheriff who does not fulfill the obligations of this training course loses the power of arrest. T.C.A. § 8-8-102(c).

Funding for the Office of Sheriff

Reference Number: CTAS-1218

Sheriffs receive fees from the public for services they perform. However, pursuant to T.C.A. § 8-24-103(a)(2), the sheriff must pay over to the trustee, on a monthly basis, all fees, commissions, and charges collected by the sheriff’s office during the month. Because the sheriff is no longer on the "fee system," it is the duty of the county legislative body to make the necessary appropriation and pay to the sheriff the authorized expenses fixed by law for operating of the sheriff's office, direct from the county trustee in 12 equal monthly installments, irrespective of the fees earned by the sheriff. T.C.A. § 8-24-103(a)(1). Pursuant to T.C.A. § 8-20-120, the county legislative body is required to fund the operations of the sheriff’s office. Accordingly, the county legislative body is authorized to appropriate moneys to purchase all necessary equipment for use by the sheriff for preservation of the peace and for the service and execution of all process, criminal and civil, and to pay the salaries of deputy sheriffs appointed pursuant to the provisions of Title 8, Chapter 20. T.C.A. § 5-9-101(21). All necessary books, stationery, office equipment, stamps, and supplies of all kinds used in the conduct of the sheriff’s office are to be furnished and paid for by the county. T.C.A. § 8-22-107(a). Additionally, the sheriff is authorized to include in the sheriff's expense account, as part of the expenses of the office, the necessary cost of arresting criminals, of furnishing and operating the county jail and maintaining the state and county prisoners therein, and all other necessary and legitimate expenses incurred in the proper and efficient administration of the sheriff's office. T.C.A. § 8-22-110(a).

Deputies and Assistants-Sheriff

Reference Number: CTAS-39

Employment of Deputies and Assistants

Reference Number: CTAS-1221

The county sheriff has two options through which he may obtain authority to employ and compensate personnel to assist him to "properly and efficiently conduct the affairs and transact the business" of his office. T.C.A. § 8-20-101(a) (Supp.1996). The sheriff may either file a salary petition, which is an adversary proceeding between himself and the county executive; or, if the county executive and the sheriff agree on the number of deputies and assistants to be employed and the salary to be paid to them, a letter of agreement may be prepared and submitted to the court for approval. T.C.A. § 8-20-101(a)(2) & (c) (Supp.1996).

Shelby County Deputy Sheriff's Ass'n v. Gilless, 972 S.W.2d 683 (Tenn. Ct. App. 1997).

Tennessee Code Annotatedsection 8-20-101 provides that when the sheriff cannot properly and efficiently conduct the affairs and transact the business of the sheriff’s office by devoting his or her entire working time thereto, he or she may employ such deputies and assistants as may be actually necessary to the proper conducting of the sheriff’s office. T.C.A. § 8-20-101(a). Like other county officials, the sheriff may employ deputies and other staff under a letter of agreement or a court order. The sheriff must file a salary
suit or enter into a letter of agreement. Doing nothing is not an option.

Salary Suits

Reference Number: CTAS-1219

"[T]he sheriff has sole discretion to request the number of assistants he believes are ‘actually necessary to the proper conducting’ of his office, as well as the salaries he feels are necessary to attract and retain them." Shelby County Deputy Sheriff's Ass'n v. Gilless, 972 S.W.2d 683, 686 (Tenn. Ct. App. 1997).

If the sheriff chooses to petition a court for additional deputies or assistants or for greater salaries than the budget adopted by the county legislative body allows, the sheriff must file the petition with the state trial court exercising criminal jurisdiction in the county, either criminal court or circuit court. The petition or application for authority to appoint or employ one or more additional deputies or assistants must be heard and determined by a judge (or chancellor) serving the judicial district in which the petition or application is filed. Public Chapter 276 of the Acts of 2005.

The statutory scheme enacted by the General Assembly for staffing and compensating the sheriff's office through a salary suit is clear. The sheriff must demonstrate that he or she cannot properly and efficiently conduct the affairs and transact the business of his or her office by devoting his or her entire working time thereto; and, the sheriff must show the necessity for the number of deputies and assistants required and the salary that should be paid each. Boarman v. Jaynes, 109 S.W.3d 286, 291 (Tenn. 2003). The sheriff is not required to demonstrate an inability to maintain his or her office by using the efforts of his or her staff as constituted and compensated at the time of the filing of the salary suit. Boarman at 291. Once the necessity of employing deputies or assistants is established, the appropriate trial court is empowered to determine the number of deputies and assistants needed and their salaries. Id. T.C.A. § 8-20-101(a) and (a)(2). See also Shelby County Deputy Sheriffs' Ass'n v. Shelby County, 1998 WL 74314, *3 (Tenn. Ct. App. 1998) (The sheriff has an absolute right to petition the court pursuant to T.C.A. § 8-20-101.); Roberts v. Lowe, 1997 WL 189345 (Tenn. Ct. App. 1997); Easterly v. Harmon, 1997 WL 718430 (Tenn. Ct. App. 1997).

The petition must be filed by the sheriff within 30 days after the date of final adoption of the budget for the fiscal year. No order increasing expenditures shall be effective during any fiscal year if the petition is filed outside the 30-day window unless the order is entered into by agreement of the parties. Also, a new officeholder has 30 days from taking office to file a petition and any order entered with respect to such petition may be effective during the fiscal year in which the petition was filed. T.C.A. § 8-20-101(b).

In the petition, the sheriff must name the county mayor as the party defendant. The county mayor is required to file an answer within five days after service of the petition, either admitting or denying the allegations of the petition or making such answer as the county mayor deems advisable under the circumstances. The petition and the answer are to be docketed, filed, and kept as permanent records of the court. The court must promptly in term or at chambers have a hearing on the application, on the petition and the answer. The court will develop the facts, and the court may hear proof either for or against the petition. The court may allow or disallow the application, either in whole or in part, and may allow the whole number of deputies or assistants applied for or a less number, and may allow the salaries set out in the application or smaller salaries, all as the facts justify. T.C.A. § 8-20-102. See Moore v. Cates, 832 S.W.2d 570, 572 (Tenn. Ct. App. 1992) (These statutes do not authorize the Trial Court to identify deputies by name and award them salary increases for a fixed period in the nature of a judgment against the county. Rather, the Trial Judge under the statutes is limited to authorizing the required number of deputies and fixing salaries for the positions.); Roberts v. Lowe, 1997 WL 189345 (Tenn. Ct. App. 1997).

The trial court does not have the authority to order retroactive pay for personnel hired by the sheriff prior to the filing of the petition to hire and employ deputies.

The only Tennessee decision directly addressing the question of whether a petition to employ and pay deputies may seek retroactive pay for deputies hired prior to the filing of the petition is State ex rel. Obion County v. Bond, 8 S.W.2d 367 (Tenn. 1928). In that case, the court interpreting the predecessor of T.C.A. § 8-20-101, The Public Acts of 1921, chapter 101, section 7, concluded that the intention of the legislature in enacting this legislation was to require the sheriff or other county official named in this statute to petition the appropriate court to hire additional deputies and for the amount of salary to be paid to the additional deputies in advance of the expenditures. Therefore, the court concluded that a petition to employ and pay deputies could not properly seek retroactive pay for deputies hired prior to the filing of the petition. Id. at 368. We believe that in light of this interpretation of the statute by the Tennessee Supreme Court, Sheriff Woods was not authorized to petition the Circuit Court at Henderson County for funds to pay the three additional deputies retroactively that he had hired eight months prior to filing the petition. Accordingly, we
hold that the trial court erred in granting Sheriff Woods’ petition insofar as the petition seeks funds retroactively to pay these three deputies.


The order of the court is to be spread upon the minutes of the court and may from time to time, upon application, be amended or modified by increasing or decreasing the number of deputies and the salaries paid each. However, the sheriff may, without formal application to the court, decrease either the number of deputies or assistants and the salaries of any of them where the facts justify such course. T.C.A. § 8-20-104. See Moore v. Cates, 832 S.W.2d 570 (Tenn. Ct. App. 1992).

Either party dissatisfied with the decree or order of the court in the proceedings set out above has the right of appeal as in other cases. Pending the final disposition of the application to the court, or pending the final determination on appeal, the sheriff may appoint deputies or assistants to serve until the final determination of the case, who shall be paid according to the final judgment of the court. T.C.A. § 8-20-106.

The cost of the suit is paid out of the fees of the sheriff’s office. The sheriff is allowed a credit for the same in settlement with the county trustee. T.C.A. § 8-20-107. See Moore v. Cates, 832 S.W.2d 570, 572 (Tenn. Ct. App. 1992) (Finally, the judgment against the county for attorney’s fees is not authorized. While the Trial Court would have jurisdiction to approve fees for the filing of the application, such fees could only be ordered paid out of the Sheriff’s funds, with the proviso that he receive credit for such items of cost in his settlement with the trustee.).

Pursuant to T.C.A. § 8-20-105, it is the duty of the sheriff to reduce the number of deputies and assistants and the salaries paid them when it can be reasonably done. The court or judge having jurisdiction may, on motion of the county mayor and upon reasonable notice to the sheriff, have a hearing on the motion and may reduce the number of deputies or assistants and the salaries paid any one or more when the public good justifies.

FIELD DEPUTIES. Pursuant to T.C.A. § 8-20-103, if the sheriff cannot establish that he or she is unable to personally discharge the duties of the sheriff’s office by devoting his or her entire working time thereto, no deputy or deputies or assistants shall be allowed except for field deputy sheriffs. In addressing the former version of T.C.A. § 8-20-103, the Tennessee Court of Appeals noted that the “sheriff must apply to the court for the appointment of field deputy sheriffs, but need not show a necessity for their appointment.” Carter v, Jett, 370 S.W.2d 576, 581 (Tenn. Ct. App. 1963).

Neither the current nor former version of T.C.A. § 8-20-103 define the term “field deputy sheriffs.” However, the former version of the code, T.C.A. § 8-2003, stated that “the sheriff in each county may appoint all necessary field deputies for misdemeanor and criminal work and civil work before the justices of the peace; said field deputies to be appointed as provided under §§ 8-2001 and 8-2002. And in Jones v. Mankin, 1989 WL 44924 (Tenn. Ct. App. 1989), the court, in addressing the provisions of T.C.A. 8-20103, refers to field deputies as patrol deputies. Recent appellate court cases dealing with salary suits filed by sheriffs have overlooked or failed to address the clear and unambiguous language of T.C.A. § 8-20103, which does not require the sheriff to demonstrate an inability to discharge the duties of his or her office by devoting his or her entire working time thereto before the court is authorized to award the sheriff additional field deputies, and instead have focused on the language of T.C.A. § 8-20-101 which does require the sheriff to meet the aforementioned threshold showing before the court is authorized to award the sheriff additional field deputy sheriffs.

Letters of Agreement

Reference Number: CTAS-1222

In 1993, the General Assembly amended T.C.A. § 8-20-101, adding the language that is now codified in subsection (c), in order to provide county elected officials with an alternate method of obtaining the authority to employ and compensate personnel. If the sheriff agrees with the number of deputies and assistants and the compensation and expenses related thereto, as set forth in the budget adopted by the county legislative body, a court order is not necessary. Instead of filing a petition in court, the sheriff can enter into a letter of agreement with the county mayor using a form prepared by the comptroller of the treasury, setting forth the fact that they have reached an understanding in this regard. The letter is then filed with the court. Sheriffs must file their letters of agreement with the circuit court except in counties where criminal courts are established, in which case the sheriff must file the letter of agreement with the
criminal court. T.C.A. § 8-20-101(c)(1) and (c)(2). Comptroller's form for Letter of Agreement.

**Funding for Salaries - Writ of Mandamus**

**Reference Number: CTAS-1223**

The county legislative body is required by law to fund authorized expenses fixed by law for the operation of the sheriff's office, including the salary of all the sheriff's deputies. T.C.A. § 8-24-103(a)(1). The county legislative body may not adopt a budget that reduces current levels the salaries and number of employees in the sheriff's office without the sheriff's consent. In the event the county legislative body fails to budget any salary expenditure that is a necessity for the discharge of the statutorily mandated duties of the sheriff, the sheriff may seek a writ of mandamus to compel such appropriation. T.C.A. § 8-20-120. The writ of mandamus authorized by T.C.A. § 8-20-120 "is the same writ that has been recognized by the courts for many years. It can only be sought after the sheriff has gone through the local budget process and the application procedure required by" T.C.A. § 8-20-101(a)(2). *Jones v. Mankin*, 1989 WL 44924, *3 (Tenn. Ct. App. 1989) (If the county legislative body refuses to appropriate the funds required by the court's order, the sheriff may seek a writ of mandamus to compel it to do so.). See also *State ex rel. Ledbetter v. Duncan*, 702 S.W.2d 163, 165 (Tenn. 1985); *Sapp v. State ex rel. Nipper*, 524 S.W.2d 652, 653-54 (Tenn. 1975); *Atkinson v. McClanahan*, 520 S.W.2d 348, 353 (Tenn. Ct. App. 1974) (It would seem to us that the remedy of the sheriff, in the event the decree of the Circuit Judge becomes final and is not carried out and its implementation refused, would be to file a bill for mandamus.); Op. Tenn. Atty. Gen. 04-104 (July 2, 2004).

**Removal of Deputies and Assistants**

**Reference Number: CTAS-1224**

The sheriff may terminate, at will, any and all deputies and assistants in his or her office. T.C.A. § 8-20-109. However, in any county having a civil service system for the sheriff's office pursuant to Title 8, Chapter 8, Part 4, or other provision of general law or the provisions of a private act, or a civil service system for all county employees pursuant to the provisions of such civil service system. The provisions of T.C.A. § 8-20-109 do not apply to counties with civil service. T.C.A. § 8-20-112. *See Patterson v. Rout*, 2002 WL 1592674 (Tenn. Ct. App. 2002).

**Patronage Dismissals**

A sheriff may not dismiss a nonpolicymaking employee for political reasons. Such an unlawful firing may subject the sheriff and the county to liability under the federal civil rights laws.

At the same time that the [United States Supreme] Court has held that "the practice of patronage dismissals is unconstitutional under the First and Fourteenth Amendments," *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), it has held that this protection does not extend to public employees who occupy "policymaking" positions in the government, *id. at 367; see also Rutan v. Republican Party*, 497 U.S. 62, 110 S.Ct. 2729, 111 L.Ed.2d 52 (1990) (extending Elrod’s reasoning to promotions and demotions). Where the effective performance of a particular office demands affiliation with a particular party or subscription to a particular policy, the Constitution permits dismissal based on political grounds. *See Branti v. Finkel*, 445 U.S. 507, 518, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980).

*Cagle v. Headley*, 2005 WL 2108367, *2 (6th Cir. 2005). *See also Garvey v. Montgomery*, 128 Fed.Appx. 453, 463 (6th Cir. 2005) (The First Amendment protection against political discharges does not extend to public employees who hold positions in which "an employee's private political beliefs would interfere with the discharge of his public duties." This principle is known as the Branti/Elrod exception to the general rule that public employees may not be discharged on account of their political affiliations.); *Justice v. Pike County Bd. of Educ.*., 348 F.3d 554, 559 (6th Cir. 2003) ("Limiting patronage dismissals to policymaking positions is sufficient to achieve the valid governmental objective of preventing holdover employees from undermining the ability of a new administration to implement its policies." *Id. in contrast, "[n]opolicymaking individuals usually have only limited responsibilities and are therefore not in a position to thwart the goals of the in-party.") (citations omitted).

The Sixth Circuit Court of Appeals has held "that a deputy sheriff does not fall within the policymaking exception where the position of deputy sheriff was at the bottom of the chain of command in the
[department],’ the primary duty of the deputy sheriff was ‘to patrol the roads of the county’ and the record did not indicate that the deputy had ‘the amount of discretion or policymaking authority[ ] that would make political affiliation an appropriate requirement for employment.’” Cagle at *3 (6th Cir. 2005) quoting Hall v. Tollett, 128 F.3d 418, 429 (6th Cir. 1997). See also Heggen v. Lee, 284 F.3d 675, 684 (6th Cir. 2002) (noting that serving civil and arrest warrants, transporting prisoners and providing courtroom security did not make a deputy sheriff a policymaker); Sowards v. Loudon County, 203 F.3d 426, 438 (jailer was not a policymaker where her duties included "providing for the needs and safety of the jail's inmates, such as providing food, bedding, and support for the inmates, taking precautions to ensure their safety, and arranging communications between inmates and the public"); Ruffino v. Sheahan, 218 F.3d 697, 700 (7th Cir. 2000) (“We note as well that it would be a remarkable extension of the policymaker line of cases to hold that the hundreds of deputy sheriffs in Cook County are all policymakers, for whom the Sheriff has a legitimate interest in insisting on personal and political loyalty.”). By contrast, the Court has held that the position of a chief deputy does qualify as a policymaking position where the employee "assumed the sheriff's duties in the sheriff's absence, supervised the deputies, scheduled their shifts, and recommended employees for dismissal to the sheriff." Hall v. Tollett, 128 F.3d 418, 425 - 426 & n. 4 (6th Cir. 1997). "A sheriff, no less than a governor, is 'entitled to select a person whom he kn[ows] to share his political beliefs to occupy a position with such high levels of discretion and policymaking authority.”” Cagle at *4 quoting Hall at 426. In Cagle, the Court found that the position of lieutenant in the sheriff's office qualified as a policymaking position and held that "political affiliation" was an appropriate requirement for employment where the employee attended weekly and often confidential meetings, possessed the authority to discipline other employees and had managerial power over a division. Cagle at *4. The Court noted that although lieutenants in the sheriff's office were required to handle pedestrian tasks as well as substantial ones and that they were required to "pursue the goals and objectives" of the sheriff, these facts did not prevent their position from being a policymaking one. See also Garvey v. Montgomery, 128 Fed.Appx. 453, 463 (6th Cir. 2005) (Former county employee's position of administrative officer was one in which an employee's private political beliefs would interfere with the discharge of his public duties, and thus, the First Amendment protection against political discharges did not extend to the employee); Fuerst v. Clarke, 389 F.Supp.2d 1042 (E.D. Wis. 2005) (Promotion to sergeant sought by deputy sheriff was for a policymaking position exempt from First Amendment protections, and thus deputy sheriff could not maintain claim against county sheriff, alleging retaliatory failure to promote due to deputy's political activities; sergeants in position at issue worked autonomously and operated with some discretion when performing their duties and had meaningful input into implementation of department policy.).

Deputy Sheriffs

Reference Number: CTAS-1225
A deputy sheriff may be deemed a full-time police officer under the laws pertaining to peace officers. "Full-time police officer" means any person employed by any municipality or political subdivision of the state of Tennessee whose primary responsibility is to prevent and detect crime and to apprehend offenders, and whose primary source of income is derived from employment as a police officer. T.C.A. § 38-8-101(1). See Op. Tenn. Atty. Gen. No. 85-224 (July 30, 1985).

Minimum Qualifications

Reference Number: CTAS-1226
After July 1, 1981, any person employed as a full-time deputy sheriff shall:

1. Be at least 18 years of age;
2. Be a citizen of the United States;
3. Be a high school graduate or possess its equivalency which shall include a general educational development (GED(R)) certificate;
4. Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor, controlled substances or controlled substance analogues;
5. Not have been released or discharged under any other than honorable discharge from any of the armed forces of the United States;
6. Have their fingerprints on file with the Tennessee Bureau of Investigation;
7. Have passed a physical examination by a licensed physician;
8. Have a good moral character as determined by a thorough investigation conducted by the
employing agency; and

9. Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the applicant's ability to perform an essential function of the job, with or without a reasonable accommodation.

T.C.A. § 38-8-106. See also Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.03 (1).

The minimum standards set forth in T.C.A. § 38-8-106 and in Rule 1110-2-.03 (1) are mandatory and are binding upon the county. Any person who appoints an applicant, who, to the knowledge of the appointor, fails to meet the minimum standards as set forth in T.C.A. § 38-8-106 and in Rule 1110-2-.03 (1), and any person who signs the warrant or check for payment of salary of a person who, to the knowledge of the signor, fails to meet the qualifications as a deputy sheriff as provided in T.C.A. § 38-8-106 and in Rule 1110-2-.03 (1), commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding $1,000. T.C.A. § 38-8-105(a) and (b). This provision does not apply to any officer hired by a county prior to July 1, 1982. T.C.A. § 38-8-105(c). See also Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.01 and Rule 1110-2-.02. Nothing in Title 38, Chapter 8, precludes an employing agency from establishing qualifications and standards for hiring and training deputy sheriffs that exceed those set by the POST Commission. T.C.A. § 38-8-109.

Recruit Training and Certification

Reference Number: CTAS-1227

Pursuant to T.C.A. § 38-8-107, all deputy sheriffs employed after July 1, 1983, must successfully complete recruit training within one year of the date of their employment. However, pursuant to POST rules, any officer seeking certification under the POST rules must satisfactorily complete the basic course within six months of initial employment as a law enforcement officer. During this initial six-month period prior to attending the basic course, the recruit must be paired with a field training officer or other certified senior officer. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.01 and Rule 1110-2-.02. The POST Commission will issue a certificate of compliance to any person who meets the qualifications for employment and satisfactorily completes an approved recruit training program. The commission may issue a certificate to any person who has received training in another state provided that the commission makes a determination that the training was at least equivalent to that required by the commission for approved police education and training programs in this state. In addition, the person seeking certification must satisfactorily comply with all of the other requirements of Title 38, Chapter 8. T.C.A. § 38-8-107. See also Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.03 (1).

Bond-Deputy Sheriff

Reference Number: CTAS-1228

There is no general law requirement that regular deputy sheriffs be bonded. However, in 2013, the Legislature amended T.C.A. § 8-19-101 to require county governments to obtain and maintain blanket surety bond coverage for all county employees not covered by individual bonds referenced elsewhere in statute. The minimum amount of such blanket bonds is one hundred fifty thousand dollars. T.C.A. § 8-19-101(e).

In-Service Training Requirements

Reference Number: CTAS-1229

All deputy sheriffs, except those who have attended the Basic Law Enforcement School within the calendar year must successfully complete a POST-approved 40-hour in-service training session appropriate for their rank and responsibilities each calendar year. The failure of an individual deputy to successfully complete the annual in-service training requirement will result in the deputy's loss of eligibility for the pay supplement provided for in T.C.A. § 38-8-111. The failure of this individual deputy to successfully complete another in-service training session within one year will result in the loss of that deputy's certification. Each sheriff's office participating in the POST Commission's training program must file a letter of intent with the commission stating its commitment to mandatory training for all law enforcement officers. The failure of several deputies from one sheriff's office will be cause for the commission to examine that sheriff's office training policy and may result in the office being declared out of compliance with state standards and thereby not eligible to participate in the commission's training programs at no
cost. Any travel expense is the responsibility of the individual sheriff’s office. T.C.A. § 38-8-107; Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.01 (1) and Rule 1110-4-.12.

Certified or recognized courses must be at least 40 hours in duration and established by the sheriff’s office to meet the educational requirements normal to the deputy’s position and responsibility in accord with the course curriculum requirements established by the POST Commission. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.01 (2). Each in-service training session must include at least eight hours of firearms training requalification with the deputy’s service handgun and any other firearm authorized by the sheriff’s office. Each deputy must score at least 75 percent to qualify. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.02. Each in-service training session must also include training in child sexual abuse. This training is mandatory for a deputy to be eligible for the salary supplement authorized in T.C.A. § 38-8-111. T.C.A. § 37-1-603(b)(4)(B); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.05 (4). In addition, pursuant to Public Chapter 243 of the Acts of 2005, each deputy who operates an emergency vehicle must receive no less than two hours of annual training and pass a comprehensive examination covering all applicable laws pertaining to emergency vehicles, the operation of the vehicle in emergency and nonemergency situations, and response to actions of nonemergency vehicles. Each deputy must obtain a passing grade of at least 75 percent on all tests, 75 percent on the firearms qualification, and 75 percent on the defensive driving qualification. The in-service training session is not complete until the officer has taken the test and qualified with his firearm. Any deputy who fails the test or firearms or driving qualification must make up the failing score during the calendar year in order to keep their certification. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.12.

Attendance records must be maintained on each deputy and must be submitted to the POST Commission. An attendance roster listing the names of all deputies attending a scheduled block of training on a particular day must be maintained and kept on file by the sheriff’s office. The sheriff and the instructor must certify to the POST Commission those deputies who successfully complete the in-service training. The certification must include the name of the reporting sheriff’s office and the name, rank, and Social Security number of each deputy along with their test scores and firearm qualification score. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.06.

If a deputy attends a specialized school appropriate to his or her rank and responsibility, the eligibility of the school must be approved by the commission. Only schools of a law enforcement related nature will be considered for in-service credit toward meeting the 40 hour training requirement. A curriculum of each school and proof of successful completion by the individual attendee is required. See Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.09.

Any deputy who successfully completes a law enforcement course at any accredited institution of higher education, college, or university may be considered for annual fulfillment of all or a portion of the required 40 hours in-service credit hours, not including firearms training. See Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.11.

Requests for waivers of in-service training for a calendar year on the basis of medical disability must be submitted to the POST Commission by the chief administrative officer of the sheriff’s office explaining the individual case. A doctor’s statement must accompany the request. Each request will be considered individually. Requests for the waiver of in-service training for a calendar year on the basis that a deputy will retire during that year must be submitted by the deputy to his or her chief administrative officer stating the intention to retire prior to completion of in-service training for the calendar year. If the request is approved by the sheriff’s office, then a letter must be forwarded to the POST Commission for approval. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.10.

### Authority to Carry Handguns

**Reference Number: CTAS-1230**

Pursuant to T.C.A. § 39-17-1315(a)(1), the sheriff has the authority to authorize the carry of handguns by bonded and sworn deputy sheriffs who have successfully completed and continue to successfully complete on an annual basis a firearm training program of at least eight hours duration. The sheriff’s authorization must be made by a written directive, a copy of which must be retained by the sheriff’s office. Pursuant to the sheriff’s written directive, POST certified deputy sheriffs may carry their handgun at all times, regardless of the deputy’s regular duty hours or assignments. Nothing in T.C.A. § 39-17-1315(a)(1) prohibits the sheriff from placing restrictions on when or where a deputy may carry his or her service handgun. See also Op. Tenn. Atty. Gen. No. 99-024 (February 16, 1999).

POST-certified deputy sheriffs and commissioned reserve deputy sheriffs may carry firearms at all times.
and in all places within Tennessee, on-duty or off-duty, regardless of the deputy's regular duty hours or assignments except as provided by T.C.A. § 39-17-1350(c), federal law, lawful orders of court or the written directive of the sheriff. T.C.A. § 39-17-1350(a) and (d).

The authority conferred by T.C.A. § 39-17-1350 does not extend to a deputy sheriff or commissioned reserve deputy sheriff:

1. Who is not engaged in the actual discharge of official duties as a law enforcement officer and carries a firearm onto school grounds or inside a school building during regular school hours unless the officer immediately informs the principal that the officer will be present on school grounds or inside the school building and in possession of a firearm. If the principal is unavailable, the notice may be given to an appropriate administrative staff person in the principal's office;

2. Who is consuming beer or an alcoholic beverage or who is under the influence of beer, an alcoholic beverage, or a controlled substance or controlled substance analogue; or

3. Who is not engaged in the actual discharge of official duties as a law enforcement officer while attending a judicial proceeding.


Finally, T.C.A. §§ 39-17-1315(b)(2) and 39-17-1359 authorize private entities and governmental entities to prohibit the possession of weapons by any person at meetings conducted by, or on premises owned, operated, managed or under the control of the private entity or governmental entity. Notice of such prohibition must be posted and must be displayed in prominent locations. The attorney general has opined that T.C.A. § 39-17-1359 does not allow private entities or governmental entities to prohibit the possession of weapons by law enforcement officers on their property. The Attorney General has also opined that T.C.A. § 39-17-1315(b)(2) does not allow private entities or governmental entities to prohibit the possession of weapons by state law enforcement officers or POST-certified local law enforcement officers on their property. See Op. Tenn. Atty. Gen. No. 00-161 (October 17, 2000). Based upon the attorney general's reasoning, T.C.A. § 39-17-1315(b)(2) does allow private entities or governmental entities to prohibit the possession of weapons by off-duty non-POST certified local law enforcement officers (i.e., reserve, auxiliary, part-time and temporary deputy sheriffs and police officers) on their property.

Salary Supplement-Deputy Sheriffs

Reference Number: CTAS-1231

Every county that requires all deputy sheriffs to complete an annual 40-hour in-service training course appropriate to the deputy's rank and responsibility at a school certified or recognized by the POST Commission is entitled to receive 5 percent of each qualified deputy's annual salary, but not more than $600 for any one deputy in any one year, from the commission to be paid to each deputy in addition to the deputy's regular salary. In the event that 5 percent of a qualified deputy's annual salary does not amount to $600, the deputy is nevertheless entitled to receive the full amount of $600 as is any other qualified deputy, subject only to the specific appropriation of funds in the general appropriations act for the purpose of implementing the provisions of Title 38, Chapter 8. T.C.A. §§ 38-8-111(a)(1) and 38-8-111(c); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-6-.01. 


To be eligible to receive the salary supplement, a deputy sheriff must successfully complete 40 hours of in-service training during the calendar year. A deputy who has not completed eight months of full-time service during the calendar year is not eligible to receive the salary supplement except in the case of the deputy's death, retirement, or medical disability provided that the 40 hours of in-service training was completed prior to the death, retirement, or medical disability. Upon the submission of the proper documentation by a deputy, the commission will include time spent in active military service when calculating the required eight months of full-time service. Deputies who attend the Basic Law Enforcement School are not eligible to receive the salary supplement during that calendar year and are not required to attend in-service training during that year. These deputies are eligible to receive the salary supplement the following calendar year after successfully completing 40 hours of in-service training. Deputies terminated for cause or decertified during the calendar year are not eligible to receive the salary supplement. Notwithstanding any other provision of law, rule or regulation to the contrary, any deputy sheriff who served or serves on active duty in the armed forces of the United States during Operation Enduring Freedom or any other period of armed conflict prescribed by presidential proclamation or federal law that occurs following the period of Operation Enduring Freedom will receive the cash salary.
supplement if his or her service prevented or prevents attending the in-service training program. T.C.A. § 38-8-111(a)(2) and (a)(3); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-6-.02.

POST Commission funds made available to the county under T.C.A. § 38-8-111(a) and (b) must be received, held and expended in accordance with the provisions of T.C.A. § 38-8-111(a)-(c), the rules and regulations issued by the commission, and the following specific restrictions:

1. Funds provided shall be used only as a cash salary supplement to deputy sheriffs;
2. Each deputy sheriff shall be entitled to receive the state supplement which the deputy's qualifications brought to the county;
3. Funds provided shall not be used to supplant existing salaries or as substitutes for normal salary increases periodically due to deputy sheriffs; and
4. The cash salary supplement shall be considered as a bonus for the successful completion of training and shall not be considered as salary for subsequent years' determination of supplement or retirement purposes.

T.C.A. § 38-8-111(b). See also Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-6-.03. All accounts are subject to audit by the state comptroller, and all records pertaining to salary supplements are subject to inspection by personnel of the POST Commission. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-6-.04.

Off-Duty Status

Reference Number: CTAS-1232
There is no statute or rule of law in this state that places a mandatory duty upon police officers to keep the peace when "off duty." "To the contrary, when officers are 'off duty,' our statutes generally treat the officer as an ordinary private citizen and not as an agent or employee of the municipal police department under a general duty to keep the peace." White v. Revco Discount Drug Centers, Inc., 33 S.W.3d 713, 720-721 (Tenn. 2000). "Of course, to say that officers do not continuously function in an official capacity is not to say that off-duty officers are prevented from assuming a duty to remedy a breach of the peace, or that officers are incapable of being summoned to official duty by the municipality. Nevertheless, it is clear that officers are not under a general duty to enforce the law while 'off duty,' and a blanket rule declaring that police officers are under a never-ending duty to keep the peace is contrary to existing Tennessee law." Id. at 721.

Off-Duty Employment

Reference Number: CTAS-1233
The current state of the law regarding off-duty employment by law enforcement officers indicates that law enforcement agencies may constitutionally restrict or prohibit their law enforcement officers from engaging in secondary employment during off-duty time if, at the time in question, the agency had a clear policy restricting or prohibiting such employment and if the agency can articulate how its policy is rationally related to a legitimate government interest (the "rational basis" test). Courts treat cases involving the issue of secondary employment of law enforcement officers on a case-by-case basis. However, generally speaking, if the two requirements stated above are met, courts have upheld restrictions or even prohibitions on secondary employment set by law enforcement agencies. Op. Tenn. Atty. Gen. No. 01-075 (May 8, 2001).

In two cases, the plaintiffs had worked in the outside employment positions before that employment was prohibited by the public employer, "yet the courts nevertheless held that the plaintiffs' due process rights were not violated by the prohibition." Allen v. Miami-Dade County, 2002 WL 732108, *3 (S.D. Fla. 2002) citing Ammon v. City of Coatesville, 1987 WL 15032, *4 (E.D. Pa.) and Ft. Wayne Patrolmen's Ben. Assoc. v. City of Ft. Wayne, 625 F.Supp. 722, 730 (N.D. Ind. 1986). See also Shelby County Deputy Sheriffs' Ass'n v. Gilless, 2003 WL 21206067 (6th Cir. 2003) (Sheriff's regulation prohibiting full-time deputy sheriffs from wearing uniform while performing off-duty work was not unconstitutional.); Campbell v. City of Fort Worth, 69 Fed.Appx. 657 (5th Cir. 2003) (Prohibition on off-duty work by a suspended police officer did not infringe on any interest protected by the Due Process Clause.); Davis v. Carey, 63 F.Supp.2d 361 (S.D. N.Y. 1999) (The regulation of police officers' off-duty employment is commonplace and lawful.); McEvoy v. Spencer, 49 F.Supp.2d 224, 227 (S.D. N.Y. 1999) (holding that "plaintiff does not have any interest of constitutional dimension in being a private investigator in his off-duty hours" and therefore dismissing the plaintiff's due process claim); Puckett v. Miller, 821 S.W.2d 791 (Ky. 1991) (It is widely recognized that the rights of public employees may be abridged in the interest of preventing conflicts with official duties or promoting some legitimate interest of the governmental employer.); Decker...
It is clear that such goals as reducing mental and physical fatigue, limiting litigation and lessening liability insurance expenses serve as legitimate government interests supporting regulation. Because of these legitimate goals, it is also clear that a municipality can regulate and even prohibit off-duty work. (citations omitted); Ammon v. City of Coatesville, 1987 WL 15032 (E.D. Pa.), aff'd 838 F.2d 1205 (3d Cir. 1988) (The majority of courts considering the validity of regulations that in someway restrict the outside employment of government employees have upheld the regulations.); Allison v. Southfield, 432 N.W.2d 369 (Mich. 1988) (holding that secondary employment rule was not void for vagueness and did not violate due process or equal protection, where police officers were unambiguously prohibited from secondary employment unless prior approval had been obtained); Rhodes v. Smith, 254 S.E.2d 49 (S.C. 1979) (Regulations prohibiting all outside employment have been upheld.).

"[P]rivate employers may be held vicariously liable for the acts of an off-duty police officer employed as a private security guard under any of the following circumstances: (1) the action taken by the off-duty officer occurred within the scope of private employment; (2) the action taken by the off-duty officer occurred outside of the regular scope of employment, if the action giving rise to the tort was taken in obedience to orders or directions of the employer and the harm proximately resulted from the order or direction; or (3) the action was taken by the officer with the consent or ratification of the private employer and with an intent to benefit the private employer." White v. Revco Discount Drug Centers, Inc., 33 S.W.3d 713, 724 (Tenn. 2000).

Reserve, Auxiliary, Part-Time, Temporary Deputy Sheriffs

Reference Number: CTAS-1234

Reserve, auxiliary, part-time and temporary deputy sheriff means any person employed by the county whose primary responsibility is to support the sheriff in preventing and detecting crime, apprehending offenders, and assisting in the prosecution of offenders for appropriate remuneration in measure with specifically assigned duties or job description. These deputies may not work more than 20 hours per week for a total of not more than 100 hours per month. Any deputy who works in excess of the prescribed maximum hours must be reclassified to full-time status and must meet all the requirements for standards and training as mandated under the law and the Peace Officer Standards and Training Commission rules. In any situation where a deputy is assigned temporarily for a period of one month or less to work more than 20 hours per week for a total of not more than 100 hours per month, the deputy does not need to be reclassified to full-time status. T.C.A. § 38-8-101(2); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.01.

Minimum Qualifications

After January 1, 1989, any person employed or used as a reserve, auxiliary, part-time or temporary deputy sheriff shall have the same minimum qualifications as a full-time deputy sheriff. T.C.A. § 38-8-106; Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.02.

Reserve, auxiliary, part-time or temporary deputy sheriffs who were employed prior to January 1, 1989, and have had continuous service are exempt from the pre-employment requirements as long as they remain on active service with the sheriff's office that originally employed them. Any reserve, auxiliary, part-time or temporary deputy sheriff who has a break in service of any length whatsoever is required to meet the pre-employment and training standards. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.02..

The minimum standards set forth in T.C.A. § 38-8-106 and in Rule 1110-8-.02 are mandatory and are binding upon the county. Any person who appoints an applicant who, to the knowledge of the appointor, fails to meet the minimum standards as set forth in T.C.A. § 38-8-106 and in Rule 1110-8-.02, and any person who signs the warrant or check for payment of the salary of a person who, to the knowledge of the signer, fails to meet the qualifications as a reserve, auxiliary, part-time or temporary deputy sheriff as provided in T.C.A. § 38-8-106 and in Rule 1110-8-.02, commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding $1,000. T.C.A. § 38-8-105(a) and (b). Nothing in Title 38, Chapter 8, precludes an employing agency from establishing qualifications and standards for hiring and training reserve, auxiliary, part-time or temporary deputy sheriffs that exceed those set by the POST Commission. T.C.A. § 38-8-109.
After January 1, 1989, any person newly employed or used as a reserve, auxiliary, part-time or temporary deputy sheriff must receive 80 hours of training in whatever duties they are required by the sheriff's office to perform. This training must be accomplished during the first calendar year of employment. During this initial period, prior to receiving 80 hours of training, the part-time/temporary/reserve/auxiliary law enforcement officer must be paired with a field training officer or other certified officer. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.03.

Oath

Reserve, auxiliary, part-time and temporary deputy sheriffs must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff’s. T.C.A. § 8-18-112. Oaths are covered under the General Information tab of the County Offices topic.

Bond

There is no general law requirement that reserve, auxiliary, part-time or temporary deputy sheriffs be bonded. However, in 2013, the Legislature amended T.C.A. § 8-19-101 to require county governments to obtain and maintain blanket surety bond coverage for all county employees not covered by individual bonds referenced elsewhere in statute. The minimum amount of such blanket bonds is one hundred fifty thousand dollars. T.C.A. § 8-19-101(e).

In-Service Training Requirements

After the initial training has been completed, all reserve, auxiliary, part-time and temporary deputy sheriffs are required to attend 40 hours of in-service training each calendar year. This training may be spread over a 12-month period, but must be completed during the calendar year. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.04.

Special Deputies Appointed Under T.C.A. § 8-8-212

Reference Number: CTAS-1235

On urgent occasions, or when required for particular purposes, the sheriff may appoint as many special deputies as the sheriff deems proper. T.C.A. § 8-8-212(a). See General Truck Sales, Inc. v. Simmons, 343 S.W.2d 884 (Tenn. 1961) ("This clearly gives the Sheriff the right, when in his judgment it is necessary, to appoint a Special Deputy for any particular occasion"). See also Reves v. State, 79 Tenn. 124, (1883) ("The act of 1870 shows a change of policy by the State, for the sheriff is thereby authorized to appoint as many regular deputies as he pleases, and special deputies on urgent occasions, of which he alone is to judge, 'or when required for particular purposes.'"); State v. Kizer, 36 Tenn. 563 (1857) ("...it is not necessary, to make a valid deputation, that it should appear in the endorsement of the sheriff that an 'urgent occasion' existed, but that will be presumed.").

Special deputy means any person who is assigned specific police functions as to the prevention and detection of crime and general laws of this state on a volunteer basis, whether working alone or with other deputies. A special deputy working on a volunteer basis does not receive pay or benefits, except for honoraria, and may be used for an unlimited number of hours. T.C.A. § 38-8-101(3); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.01.

Minimum Qualifications

After January 1, 1989, any person employed or used as a special deputy shall have the same minimum qualifications as a full-time deputy sheriff. T.C.A. § 38-8-106; Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.02.

Special deputies who were employed prior to January 1, 1989, and have had continuous service are exempt from the pre-employment requirements as long as they remain on active service with the sheriff’s office that originally employed them. Any special deputy who has a break in service of any length whatsoever is required to meet the pre-employment and training standards. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.02.

The minimum standards set forth in T.C.A. § 38-8-106 and in Rule 1110-8-.02 are mandatory and are binding upon the county. Any person who appoints an applicant who, to the knowledge of the appointor, fails to meet the minimum standards as set forth in T.C.A. § 38-8-106 and in Rule 1110-8-.02, and any person who signs the warrant or check for payment of the salary of a person who, to the knowledge of the signer, fails to meet the qualifications as a special deputy as provided in T.C.A. § 38-8-106 and in Rule 1110-8-.02, commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding $1,000. T.C.A. § 38-8-105(a) and (b). Nothing in Title 38, Chapter 8 precludes an employing agency from establishing qualifications and standards for hiring and training special deputies that exceed those set by the POST Commission. T.C.A. § 38-8-109.
Training Requirements
After January 1, 1989, any person newly employed or used as a special deputy must receive 80 hours of training in whatever duties they are required by the sheriff’s office to perform. This training must be accomplished during the first calendar year of employment. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.03.

Oath
Special deputies must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff’s. T.C.A. § 8-18-112. Oaths are covered under the General Information tab of the County Offices topic.

Bond
No person may serve as a special deputy unless that person proves to the appointing sheriff financial responsibility, as evidenced by a corporate surety bond in no less amount than $50,000 or by a liability insurance policy of the employer in no less amount than $50,000. T.C.A. § 8-8-303(c). “The purpose of this provision is to protect third parties who may be injured by the special deputy.” State v. Epps, 1989 WL 28906 (Tenn. Crim. App. 1989). Anyone incurring any wrong, injury, loss, damage, or expense resulting from any act or failure to act on the part of any special deputy appointed by the sheriff but not employed by the sheriff or the county may not bring suit against the sheriff or the county. The sheriff and county are immune from such suits. See Hensley v. Fowler, 920 S.W.2d 649 (Tenn. Ct. App. 1995). The plaintiff must proceed against the special deputy or the employer or employers of the special deputy, whether the special deputy is acting within the scope of employment or not. T.C.A. § 8-8-303(b). See Hensley v. Harbin, 782 S.W.2d 480 (Tenn. Ct. App. 1989) (wrongful death action brought against special deputy).

In-Service Training Requirements.
After the initial training has been completed, all special deputies are required to attend 40 hours of in-service training each calendar year. This training may be spread over a 12-month period but must be completed during the calendar year. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-8-.04.

Special Deputies - Emergency Appointment Under T.C.A. § 8-22-110
Reference Number: CTAS-1236
Pursuant to T.C.A. § 8-22-110(b), the sheriff is authorized to make emergency appointments of special deputies when there is an immediate need for an additional number of deputies to deal efficiently with an emergency situation, such as in the case of a strike, riot, putting down a mob, or other like emergencies.

Oath
Special deputies appointed pursuant to T.C.A. § 8-22-110(b) are not required to take an oath. T.C.A. § 8-18-112.

Limited Appointment
Special deputies appointed under T.C.A. § 8-22-110 may serve only during the term of the emergency.

Payment Authorized
Once the emergency is over, the sheriff is required to make an itemized statement showing the services of the deputies and the time during which the special deputies served. The itemized statement must be presented to the county mayor for auditing and allowance. The mayor is required to authorize payment of the claims once the mayor is satisfied with the justness of the claims provided that no special deputy appointed by the sheriff may receive more than $4 per day for services actually performed.

Bailiffs
Reference Number: CTAS-1237
Except in Davidson County, it is the duty of the sheriff to attend upon all the courts held in the county when in session. T.C.A. § 8-8-201(a)(2). And, unless otherwise provided, it is the duty of the sheriff in every county to provide sufficient bailiffs to serve the general sessions courts. T.C.A. § 16-15-715. Taylor v. Wilson County, 216 S.W.2d 717 (Tenn. 1949) (Sheriff of Wilson County had statutory duty to wait on the general sessions court for Wilson County, and he had the right to collect the compensation provided for by general law for performing required duty of attending the court for a substantial portion of a day);
Op. Tenn. Atty. Gen. No. 05-026 (March 21, 2005) (The sheriff has the duty to appoint court officers for
general sessions courts except in municipalities with a metropolitan form of government and a population
of more than 450,000.). Op. Tenn. Atty. Gen. No. 92-55 (Oct. 6, 1992) (It is the sheriff's responsibility to
assign deputies to wait upon the courts. The judge cannot, however, order the sheriff to assign specific
personnel to the courtroom.). Furthermore, it is the duty of the sheriff to furnish the necessary deputies and
special deputies to attend and dispense with the business of the juvenile courts. T.C.A. § 37-1-213.
Accordingly, the sheriff is authorized to employ deputies to carry out these functions. Jones v. Mankin,

Beginning July 1, 2008, deputy sheriffs newly assigned to courts pursuant to T.C.A. §§ 8-8-201(a)(2)(A),
16-15-715, and 37-1-213 shall participate in forty hours of basic training in courthouse security within
twelve months of assignment to that duty. Every year thereafter the deputies shall participate in a
minimum of sixteen hours of training specific to courthouse security that has been approved by the peace
officers standards and training commission. T.C.A. § 5-7-108(a)(2).

The Attorney General has opined that all bailiffs and court officers must be certified by the Peace Officer
Standards and Training Commission (POST). The Attorney General noted that sheriffs are peace officers
who are under a duty, among other things, to provide courtroom security, attend to the courts, and obey
the lawful orders and directives of the courts. Deputy sheriffs, likewise, are required to be certified as
peace officers within one year of employment. Tenn. Code Ann. §§ 38-8-102 to 122. As with sheriffs, the
Legislature has imposed training requirements for deputy sheriffs who serve as bailiffs. Op. Tenn. Att'y
Gen. 12-32 (March 9, 2012).

The Attorney General noted that reading T.C.A. §§ 5-7-108(a)(2), 8-8-201(a)(2)(A) and 38-8-102 to 122
in pari materia confirms that the Legislature intended to impose certification and training requirements
upon the persons a sheriff assigns to serve as bailiffs and court officers. As this Office previously opined,
to construe such statutes as authorizing a sheriff to circumvent such express requirements by assigning
persons who do not possess the title of deputy sheriff to serve as bailiffs or court officers would be
(October 28, 2010).

Criminal Investigators and Detectives

Reference Number: CTAS-1238
It is the duty of the sheriff to ferret out, detect, and prevent crime; to secure evidence of crimes; and to
apprehend and arrest criminals. Pursuant to statute, the sheriff must furnish the necessary deputies to
carry out these duties. T.C.A. §§ 8-8-213, 38-3-102, and 38-3-108.

Child Sexual Abuse Cases

Child Protective Team
Each county is required by law to have a child protective team. T.C.A. § 37-1-607(a)(1). Pursuant to the
same statute, each team must have a properly trained law enforcement officer with countywide
jurisdiction (i.e., a deputy sheriff) from the county where the child resides or where the alleged offense
occurred. In addition, each team must be composed of one person from the Department of Children’s
Services, one representative from the office of the district attorney general, and one juvenile court officer
or investigator from a court of competent jurisdiction. The team may also include a representative from
one of the mental health disciplines. T.C.A. § 37-1-607(a)(2).

The teams conduct child protective investigations of reported child sexual abuse and also support and
provide appropriate services to sexually abused children. The team determines the level of risk for the
child and the services, including medical evaluations, psychological evaluations and short-term
psychological treatment, and casework and coordination. The Department of Children’s Services is
responsible for coordinating the services of these teams. T.C.A. § 37-1-607(a)(1).

See Department of Children’s Services, Administrative Policies and Procedures: 14.05, Investigation of
Alleged Child Abuse and Neglect. See also Department of Children’s Services, Administrative Policies and
Procedures: 14.28, Child Protective Services Investigation of Children Exposed To Chemical Laboratories
for the Manufacture of Methamphetamine.

Child Sex Crime Investigation Unit
Through legislation, the General Assembly has encouraged each sheriff to establish a child sex crime
investigation unit within the sheriff’s office for the purpose of investigating crimes involving the sexual
abuse of children. T.C.A. § 37-1-603(b)(4)(A)(v). To further this objective, as part of the annual in-service
training requirement the sheriff and every deputy sheriff must receive training in the investigation of cases
involving child sexual abuse, including law enforcement response to and treatment of victims of such
crimes. T.C.A. § 37-1-603(b)(4)(A); Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.05 (4)

For additional information, see Investigation of Child Abuse under the Public Safety topic.

Dispatchers

Reference Number: CTAS-1239

While sheriffs do not have a statutory obligation to provide dispatching services, dispatching is a necessary and reasonable support activity that helps the modern sheriff’s office carry out the sheriff’s statutory duties. Jones v. Mankin, 1989 WL 44924 (Tenn. Ct. App. 1989) (Courts may approve the cost of support personnel when they are required).

Minimum Qualifications.

After May 1, 1989, any person employed as a public safety dispatcher shall:

1. Be at least 18 years of age;
2. Be a citizen of the United States;
3. Be a high school graduate or possess equivalency;
4. Not have been convicted or pleaded guilty to or entered a plea of nolo contendere to any felony charge or to any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances;
5. Not have been released or discharged under other than an honorable or medical discharge from any of the armed forces of the United States;
6. Have their fingerprints on file with the Tennessee Bureau of Investigation;
7. Have passed a physical examination by a licensed physician; and
8. Have a good moral character as determined by a thorough investigation conducted by the employing agency.

T.C.A. § 7-86-205(d).

Notwithstanding other provisions of law to the contrary, the law in effect prior to May 1, 1994, relative to public safety dispatchers applies to any person who had more than five years of continuous employment as a public safety dispatcher on May 1, 1994. T.C.A. § 7-86-205(f).

Training

Pursuant to T.C.A. § 7-86-205(a), all emergency call takers and public safety dispatchers who receive initial or transferred 911 calls from the public are subject to the training and course of study requirements established by the Emergency Communications Board created pursuant to T.C.A. § 7-86-302.

Beginning July 1, 2006, all emergency call takers and public safety dispatchers must have successfully completed a course of study approved by the Emergency Communications Board. All emergency call takers and public safety dispatchers employed after July 1, 2006, have six months from the date of their employment to successfully complete the approved course of study. T.C.A. § 7-86-205(c) and (e).

Jail Personnel

Reference Number: CTAS-1240

Jailer Qualifications

Guard

Reference Number: CTAS-1242

The sheriff is authorized by statute to employ guards to:

1. Protect a defendant from violence, and to prevent the defendant’s escape or rescue in all cases where a defendant charged with the commission of a felony is committed to jail, either before or after trial, and the safety of the defendant, or the defendant’s safekeeping, requires a guard;
2. Transport a prisoner to another jail when the county jail is insufficient for the safekeeping of the prisoner; and
3. Transport a prisoner charged with a crime from one county to another for trial or safekeeping.
T.C.A. §§ 41-4-118, 41-4-121, and 41-4-126.

Minimum Qualifications

After July 1, 2006, any person employed as a corrections officer or guard in a county jail or workhouse must have the same minimum qualifications as a jailer. T.C.A. § 41-4-144.

Oath

Jail deputies must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff’s. T.C.A. § 8-18-112. See Oaths under General Information tab of the County Offices topic for additional information.

Nurse and Cook

Reference Number: CTAS-1243

Nurse

The sheriff is authorized to hire a female registered nurse and a male registered nurse who are authorized to make complete physical examinations of all people committed to the custody of the sheriff for the purpose of preventing the spread of any contagious disease. T.C.A. § 41-4-138. See Haywood County v. Hudson, 740 S.W.2d 718, 719 (Tenn. 1987); George v. Harlan, 1998 WL 668637, *4 (Tenn. 1998) (“It is clear that the Circuit Court has the power to authorize employment of personnel necessary to properly perform the duties of the office of the sheriff and the legislative body has the duty to provide the funds to carry out the order of the Circuit Court.”).

Cook

Pursuant to statute, the jailer has a duty to furnish adequate food to prisoners in the jail. T.C.A. § 41-4-109. Tennessee courts have recognized that cooks are necessary for the operation of a jail. See Jones v. Mankin, 1989 WL 44924, *7 (Tenn. Ct. App. 1989).

Training

Reference Number: CTAS-1244

Each facility is required to offer jail personnel a pre-service orientation program designed to familiarize each person with the functions and mission of the facility. All personnel whose duties include the industry, custody, or treatment of prisoners are required to complete a 40-hour basic training program during the first year of employment. This training is provided by the Tennessee Corrections Institute. Rules of the Tennessee Corrections Institute, Rule 1400-1-.06 (2) and (3). But see Russell v. Robertson County, 99 F.3d 1139 (Table) (6th Cir. 1996) citing Beddingfield v. City of Pulaski, 861 F.2d 968, 971 (6th Cir. 1988) (The City’s decision to exclude its jail personnel from TCI training did not amount to a constitutionally impermissible failure to train “because the City provided its own in-house training program.”).

In-Service Training

All personnel whose duties include the industry, custody, or treatment of prisoners are required to complete 40 hours of in-service training each year covering the specific skill areas of jail operations. At least 16 hours will be provided by the Tennessee Corrections Institute. The remaining 24 hours may be provided by the facility if course content is approved and monitored by the Tennessee Corrections Institute. Rules of the Tennessee Corrections Institute, Rule 1400-1-.06 (4).

The county legislative body may by resolution choose, by a two-thirds vote of its entire membership to establish an in-service training program for certified correction officers employed by the county. Each participating county is required to establish criteria and rules and regulations governing its own program. T.C.A. § 38-8-111(d).

Training in Use of Firearms and Chemical Agents

All jail personnel who are authorized to use firearms or chemical agents must receive basic and ongoing in-service training in the use of these weapons. All such training must be recorded with the dates completed and kept in the officer’s personnel file. Rules of the Tennessee Corrections Institute, Rule 1400-1-.06 (6).

Salary Supplement-Jail Personnel

Reference Number: CTAS-1245

The attorney general has opined that jailers are not entitled to receive the salary supplement provided for in T.C.A. § 38-8-111(a)-(c) because the primary duty of a full-time jailer is the confinement and control of

However, pursuant to T.C.A. § 38-8-111(d), the county legislative body may by resolution choose by a two-thirds vote of its entire membership to establish a cash supplement along with an in-service training program for certified correction officers employed by the county. Each participating county is required to establish criteria and rules and regulations governing its own program.

Process Servers and Warrant Officers

Reference Number: CTAS-1246

It is the duty of the sheriff to execute and return, according to law, the process and orders of the courts of record of this state and of officers of competent authority, with due diligence, when delivered to the sheriff for that purpose. T.C.A. § 8-8-201(a)(1). And, it is the duty of the sheriff to execute all writs and other process legally issued and directed to the sheriff, within the county, and make due return thereof either personally or by a lawful deputy or, in civil lawsuits only, by a lawfully appointed civil process server. T.C.A. § 8-8-201(a)(5)(A). Note, the provisions of T.C.A. § 8-8-201(a)(5)(A) relative to civil process servers do not apply in Hamilton, McMinn, Sullivan and Sumner counties. T.C.A. § 8-8-201(a)(5)(B). See George v. Harlan, 1998 WL 668637 (Tenn. 1998) (The circuit court has jurisdiction to authorize the employment and pay of deputies and assistants needed by the sheriff to perform his statutory duties.).

Training Officers and Instructors

Reference Number: CTAS-1247

General Departmental Instructor.

Each sheriff’s office that conducts a 40-hour in-service training course is required to designate one training officer who meets the POST Commission general departmental instructor standards for certification. The training officer who is designated as the general departmental instructor must apply for and be certified as a general departmental instructor as defined in Rule 1110-3-.04(3) of the Rules of the Tennessee Peace Officer Standards and Training Commission. The general departmental instructor is responsible for coordinating in-service training programs and developing lesson plans, goals and objectives, and may be required to instruct in more than one subject area. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.03.

Instructors

Instructors used for in-service training sessions must be approved by the general department instructor and must be qualified by experience and training. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.04.

In-Service Training

The general departmental instructor and all training officers are required to attend a POST Commission workshop at a time and place determined by the POST Commission and the Tennessee Law Enforcement Training Officer Association as part of their annual in-service training requirement for training officers. Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-4-.03.

Duties-Sheriff

Reference Number: CTAS-40

The sheriff is obligated to execute and return, according to law, the process and orders of the courts of record, and of all officers of competent authority, with due diligence, when delivered to the sheriff. The sheriff must attend upon all of the courts held in the county, cause the courtroom to be kept in order and obey the lawful orders and directions of the court. The sheriff also may be ordered to levy execution upon a defendant’s property, first upon goods or chattels, if there are any, and land in order to satisfy judgment, and upon a surety’s property in the proper case. Many of the sheriff’s duties regarding service of process and other matters are detailed in T.C.A. § 8-8-201. The sheriff is charged with the custody and security of the courthouse unless the county legislative body assigns this duty to someone else. T.C.A. § 5-7-108.

Law enforcement duties, jail administration, and workhouse administration are explained in detail under the Public Safety topic.
Relationship to County Legislative Body and Other Officials-Sheriff

Reference Number: CTAS-41
The sheriff must interact with the county mayor and/or a finance/budget director as well as the county legislative body regarding the sheriff's budget and budget amendments. The exact procedures vary from county to county depending upon whether the county operates under a charter or optional general law regarding budgeting or has a private act dealing with this subject. However, all sheriffs must submit budget requests in a timely manner in the first half of each calendar year for inclusion in the county's annual budget. Most counties have budget committees that may recommend appropriations for the sheriff's budget that differ from the budget submitted by the sheriff. The county legislative body determines the amount of the sheriff's budget, subject to certain restrictions, such as not reducing the sheriff's budget for personnel without the consent of the sheriff and following the requirements of any court order regarding a salary suit for deputies or assistants or any other lawsuit that may have been filed to require the county legislative body to fund an adequate jail or otherwise meet its statutory or constitutional duties. In many counties, depending upon the applicable law, the county mayor has the authority to approve line item amendments to the sheriff's budget within major categories unrelated to personnel costs, whereas major category amendments require the approval of the county legislative body. T.C.A. § 5-9-407.

Since the sheriff waits upon the courts and serves process directed to the sheriff, the sheriff must interact with judges and chancellors holding court in the county as well as with the clerks serving these courts. Clerks of court routinely add sheriff's fees to the bills of costs that are prepared in each case and collect these fees along with the fees of the clerks of court and other costs. Also, the sheriff or deputy must go before an official deemed a "magistrate" by state law to obtain arrest warrants, search warrants, and orders to a jailer to incarcerate a prisoner (mitimus).

The sheriff interacts with the office of the district attorney general in the vast majority of counties wherein the sheriff has law enforcement duties. It is the district attorney's office that prosecutes criminal cases in the courts with criminal jurisdiction that are held in the county. Therefore, a good working relationship with the district attorney's office is vital to successful law enforcement in the county. The district attorney's office also has investigators who can be very valuable in helping the sheriff carry out the sheriff's law enforcement duties.

Duties Upon Leaving Office-Sheriff

Reference Number: CTAS-1248
Upon leaving office, the sheriff must deliver to the sheriff's successor all books and papers pertaining to the office, all property attached and levied on and in the sheriff's hands unless authorized by law to retain the same, and all prisoners in the jail, and take a receipt therefor, which receipt will be an indemnity to the retiring officer. T.C.A. § 8-8-214. Upon the expiration of the sheriff's term, it is the duty of the sheriff to deliver the jail and the prisoners therein, with everything belonging or pertaining thereto, over to the sheriff's successor or any person duly authorized by law to take charge of the jail. The failure to discharge this duty is a misdemeanor. T.C.A. § 41-4-102. The sheriff is allowed two years from the time of leaving office to close unsettled business, with all the power and subject to all the limitations and restrictions of the actual sheriff. T.C.A. § 8-8-215.

UNEXECUTED PROCESS. The sheriff's power after going out of office is confined to unfinished business. It does not extend to the execution of process not yet commenced. The sheriff cannot execute a fieri facias (writ of execution) after the expiration of his term of office unless he has levied it before the expiration of his term. Todd v. Jackson, 22 Tenn. 398 (1842) (Indeed the sheriff has no power to execute or return process after he goes out of office. He can do no further official act. He cannot even return writs executed before he ceases to be an officer where the return day comes after he goes out of office. The writs should be delivered, even in such cases, to the new sheriff, who returns it into court.); Fondrin v. Planters' Bank, 26 Tenn. 447 (1846) (Held that where a sheriff received an execution before his term of service expired, returnable afterward, that unless he had made a levy before the expiration of his term, he had no power to act on the writ afterward, and that he and his sureties would not be liable on motion for its non-return.); State ex rel. Nolin v. Parchmen, 40 Tenn. 609 (1859) (It has been held that where the sheriff's term expires, as in the present case, the only duty imposed upon the outgoing sheriff is to deliver over the process to his successor because he has no power to execute or return the same after his term was at an end unless, while in office, he had begun its execution.); Haynes v. Bridge, Townley & Co., 41 Tenn. 32 (1860).
UNLEVIED EXECUTION. If the outgoing sheriff has not levied an execution before the expiration of his term and the return date is after the expiration of his term, he has no power to act on the writ afterward. His only duty is to deliver it to his successor. This rule applies to all unexecuted process. A failure to execute and return such execution or other process, or deliver it to his successor, is not a breach of the sheriff's bond, and does not render the sheriff's sureties liable. Todd v. Jackson, 22 Tenn. 398 (1842) (If Webb had levied or began the execution of the writ before his term expired, then his securities would have been fixed with the debt.); Sherrell v. Goodrum, 22 Tenn. 419 (1842); Fondrin v. Planters' Bank, 26 Tenn. 447 (1846); State ex rel. Nolin v. Parchmen, 40 Tenn. 609 (1859); Haynes v. Bridge, Townley & Co., 41 Tenn. 32 (1860).

It has been held that the sheriff's failure to deliver an unlevied execution to his successor does not render the sheriff's sureties liable, but the sheriff was liable individually in an action on the case for failure to deliver. State ex rel. Nolin v. Parchmen, 40 Tenn. 609 (1859).

SALE AFTER EXPIRATION OF TERM. If the sheriff has levied an execution on personal property and has not sold it before the expiration of his term of office, the sheriff has to sell it afterward and make return in the same manner as if the sheriff's office had continued. A failure to do so renders the sheriff and the sheriff's sureties liable, and they are not discharged from liability by the sheriff's delivery of the writ and goods to the sheriff's successor. Evans v. Barnes, 32 Tenn. 292 (1852); Campbell v. Cobb, 34 Tenn. 18 (1854); Testaman v. Holt, 2 Shannon's Cases 375 (1877) (The officer who commences execution of a writ of fieri facias is bound to finish it, and if he has levied writ on debtor's goods, he cannot even deliver writ and goods to his successor in discharge of himself but must sell goods and make proper return in same manner as if his office had continued.). See Overton v. Perkins, 18 Tenn. 328 (1837).

A sale of land by a sheriff after the expiration of his term, under a venditioni exponas (a writ of execution commanding the sheriff to sell lands that he has taken in execution by virtue of a fieri facias) issued upon a levy made by the sheriff while in office is void. Bank of Tenn. v. Beatty, 35 Tenn. 305 (1855).

Vacancies in Office

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.


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.

**Vacancies Due to Military Service**

Reference Number: CTAS-582

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.

Interim County Mayor

Reference Number: CTAS-583

If the office of the county mayor becomes vacant pursuant to § 8-48-101, the chair, or if the county mayor served as the chair, the chair pro tempore, serves as interim county mayor until the vacancy is filled pursuant to § 5-1-104. This provision is automatic and requires no action by the county legislative body. T.C.A. § 5-5-103(i).

The interim county mayor has the same powers, duties, and bond provided in Title 5, Chapter 6.

Subsection (i) does not apply if the method of filling the vacancy in the office of the county mayor is established by a metropolitan charter or a private act.

Interim Provisions for Other County Officials

Reference Number: CTAS-584

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. 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.

Clerks of court may be removed from office for misconduct by summary proceedings by the judge of the court they serve, under the provisions of T.C.A. § 18-1-301 et seq.

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 county 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.

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