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# County Buildings, Property and Space Allocations

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Dear Reader:

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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.

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# County Buildings, Property and Space Allocations

Reference Number: CTAS-160

## County Buildings, Hours, and Office Space

Reference Number: CTAS-576

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

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

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

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

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

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

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

The county commission has complete control over county building office space and has the authority to assign office space within the courthouse. See *Anderson County Quarterly Court v. Judges of the 28th*

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

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

## Eminent Domain

Reference Number: CTAS-2180

Counties, through the county legislative body, may condemn and take property, including land, buildings, privileges, rights and easements of individuals and private corporations and other private entities for county purposes. T.C.A. § 29-17-201. Property owners must be compensated for damages involved in condemnation. The amount of payment may be agreed upon by the parties or determined by a court of law. T.C.A. § 29-17-701.

There are limitations on the use of the power of eminent domain. Private use or the indirect public benefits resulting from private economic development and private commercial enterprise, including increased tax revenue and increased employment opportunity, are generally excluded from the definition of public use for which this power may be used. However, the following designated purposes are excepted and allowed even if there are private benefits:

- The acquisition of any interest in land for a road, bridge, or other public transportation project.
- The acquisition of any interest in land necessary to the function of a utility, common carrier or any entity authorized to exercise the power of eminent domain under Title 65.
- The acquisition of property by a housing authority or community development agency for urban renewal or redevelopment in a blighted area under Title 13, Chapters 20 and 21.
- Private use that is incidental to a public use if no land is condemned primarily to convey or permit the incidental private use.

As of 2017, cities and counties may no longer exercise the power of eminent domain to acquire property to be used for an industrial park. See Public Chapter 422 (2017).

An appraisal of property sought to be condemned is required. The appraisal must be based upon the highest and best use, its use at the time of the taking, and any other use to which the property is legally adaptable at the time of the taking. The appraiser must be a Member of the Appraisal Institute or be otherwise licensed and qualified under Title 62, Chapter 39, Tennessee Code Annotated. The condemning authority must deposit with the court the amount determined as the value by the required appraisal. The deposited amount does not fix the amount to be awarded, and any amount awarded in excess of the deposited amount bears interest from the date of the taking or possession.

The statute provides that under no circumstance may land used predominately in the production of agriculture be considered blighted. T.C.A. § 13-20-201.

Land acquired by eminent domain may be sold, leased, or otherwise transferred to another public entity or to a private person or entity if fair market value is received for the land. T.C.A. § 29-17-1003. T.C.A. § 29-17-1005 provides that if a condemning entity determines that property taken by eminent domain is not used for the purpose for which it was condemned, or for some other authorized public use, or if the condemning entity decides to sell the property within 10 years of taking the property, then the condemning entity must first offer the property for sale to the persons from which the property was taken. Such persons may purchase the property for the lessor of the price paid to the former owner by the local government acquiring the property plus fair market value of any improvements made after condemnation plus the average interest that would have been accrued on the amount paid to the former owner had the money been held in treasury bonds or the fair market value of the property. If the former

owner does not purchase the property within the 30 days, then the property may be sold in any commercially reasonable manner for not less than fair market value plus costs.

Former owners have the right to request a statement of intent for public use from the local government every 24 months following condemnation. T.C.A. § 29-17-1005. The right of the former owner to request such a statement does not transfer to the former owner's heirs or other parties.

## Purchase, Sale and Lease of County Property

Reference Number: CTAS-577

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

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

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

## Libraries

Reference Number: CTAS-578

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

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

## Abandoned Personal Property

Reference Number: CTAS-579

A county may have unclaimed or apparently abandoned funds left in accounts in county offices from several sources. All property held for the owner by any court (including a federal court), public corporation, public authority or agency, public officer, or a political subdivision that has remained unclaimed by the owner for more than one (1) year after the property becomes distributable is presumed abandoned. Exceptions to this rule include property in the custody or control of any state or federal court in any pending action, as well as property that is otherwise disposed of by law. Property described above, without regard to any activity or inactivity within the past one (1) year, is also presumed abandoned if the owner is known to the holder (county) to have died leaving no one to take his or her property by will or by intestate succession. T.C.A. § 66-29-105.

County offices holding funds or other tangible or intangible property that is presumed abandoned must file

a report containing the required statutory information with the state treasurer before May 1 of each year. T.C.A. § 66-29-125. With some exceptions, unclaimed funds and intangible property presumed abandoned must be delivered with the report to the treasurer. Tangible property must be held for 120 days awaiting further instructions from the treasurer or, absent those, delivered to the treasurer at the end of that time. T.C.A. § 66-29-134. Any person delivering property to the treasurer is relieved of liability in respect to that property. T.C.A. § 66-29-135. If someone submits a claim to the county for property already delivered to the treasurer, then the county may pay the claim, and the treasurer will reimburse the county. T.C.A. § 66-29-136.

Not more than one hundred eighty (180) days, nor less than sixty (60) days, before filing the report, holders of abandoned property are required to give notice to apparent owners as provided in T.C.A. § 66-29-128. This notice must be given by mail and also by email if the apparent owner has consented to receiving electronic communications from the holder. The holder must also maintain a record of the last known address for 10 years. T.C.A. § 66-29-126. After the reports are submitted to the treasurer, the treasurer is required to provide notice to apparent owners of abandoned property as prescribed in T.C.A. § 66-29-130.

At the request of any local government whose yearly total for abandoned property exceeds \$100, all unclaimed funds that have been held by the treasurer for at least eighteen (18) months, less administrative costs, are returned. The funds go into the county general fund, except those necessary to maintain a sufficient amount in the unclaimed property accounts to ensure prompt payment of any claims. T.C.A. § 66-29-146.

County officials who fail to carry out their responsibilities regarding unclaimed property may be subject to sanctions. The treasurer may assess against a holder who fails to report, pay, or deliver property within the time prescribed by this part a civil penalty of two hundred dollars (\$200) for each day the duty is not performed, up to a cumulative maximum amount of five thousand dollars (\$5,000). T.C.A. § 66-29-173. There are additional penalties for evading or willfully failing to perform the obligations set forth in the act. T.C.A. § 66-29-174. The treasurer is authorized to waive penalties under the act. T.C.A. § 66-29-175.

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