



County Technical Assistance Service
INSTITUTE for PUBLIC SERVICE

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Procedure for Filling Vacancies

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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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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