

SALARY SUITS

2023

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HISTORY

JONES V. MANKIN, 1989 WL 44924 (TENN.CT.APP. 1989)

There was little fiscal coordination among local officials in Tennessee until the early part of the twentieth century.

Prior to that time, many local officials were outside the county budget process because they funded their offices with fees collected for their services.



HISTORY

JONES V. MANKIN, 1989 WL 44924 (TENN.CT.APP. 1989)

The General Assembly did not favor this system, and after four unsuccessful attempts, abolished it in 1921.

Thereafter, the fees were treated as local revenue, the salaries of the local officials were set by statute, and the local offices' budgets were set by the local legislative bodies.



HISTORY

JONES V. MANKIN, 1989 WL 44924 (TENN.CT.APP. 1989)

Many local officials affected by the “anti-fee bill” were popularly elected in their own right. They were not supervised by the county executives, and since they had the same elective mandate as the members of the county legislative body, they were reluctant to surrender any portion of their independence to other county officials.

HISTORY

JONES V. MANKIN, 1989 WL 44924 (TENN.CT.APP. 1989)

Independence fosters budget disagreements.

Accordingly, the General Assembly found it necessary to include a dispute resolution procedure in the “anti-fee bill.”

The procedure chosen by the General Assembly is now embodied in T.C.A. § 8-20-101.



EMPLOYMENT OF DEPUTIES AND ASSISTANTS

Two things are needed to hire deputies and assistants:

Budgetary Authority (county budget)

AND

Legal Authority (court order or letter of agreement)

This class will focus on the legal authority needed to hire deputies and assistants.



EMPLOYMENT OF DEPUTIES AND ASSISTANTS

Tennessee Code Annotated section 8-20-101 provides that when any one of the county fee officials cannot properly and efficiently conduct the affairs and transact the business of such person's office by devoting such person's entire working time thereto, such person may employ such deputies and assistants as may be actually necessary to the proper conducting of such person's office.

T.C.A. § 8-20-101(a).



TWO OPTIONS TO OBTAIN LEGAL AUTHORITY

The county official 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.

See Shelby County Deputy Sheriff's Ass'n v. Gillless, 972 S.W.2d 683 (Tenn.Ct.App. 1997).

TWO OPTIONS TO OBTAIN LEGAL AUTHORITY

If the official does not agree with the budget, the official may file a salary petition, which is an adversary proceeding between the official and the county mayor.

TWO OPTIONS TO OBTAIN LEGAL AUTHORITY

If **the official agrees** with the budget, the official and the mayor can sign a letter of agreement that indicates **the official agrees** with the number of deputies and assistants and the compensation related thereto, as set forth in the adopted budget.

TWO OPTIONS TO OBTAIN LEGAL AUTHORITY

Shelby County Deputy Sheriff's Ass'n v. Gilles, 972 S.W.2d 683 (Tenn.Ct.App. 1997)

Boarman v. Jaynes, 109 S.W.3d 286, 290 (Tenn. 2003)
(suit filed by the clerk and master);

TWO OPTIONS TO OBTAIN LEGAL AUTHORITY

**The official must file a salary suit
or enter into a letter of agreement.**

Doing nothing is not an option.

THE SALARY SUIT

“[The official] 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. Gillless, 972 S.W.2d 683, 686 (Tenn.Ct.App. 1997).

THE SALARY SUIT

County fee officials are independent entities.

They do not work for and are not subject to the mayor's control.

Easterly v. Harmon, 1997 WL 718430, n4 (Tenn.Ct.App.,1997) (The county executive and county clerk are independent entities and Easterly is not subject to his control.).



THE SALARY SUIT WHERE TO FILE

The clerks of the circuit, criminal, and special courts may make application to the judge, or any one (1) of the judges, of their respective courts.

T.C.A. § 8-20-101(a)(1).

THE SALARY SUIT WHERE TO FILE

The sheriff makes application to the judge of the circuit court in the sheriff's county, for deputies and assistants; provided, that in the counties where criminal courts are established, the sheriff makes application to a judge of the criminal court.

T.C.A. § 8-20-101(a)(2).



THE SALARY SUIT WHERE TO FILE

The clerks and masters of the chancery courts, county trustees, county clerks and clerks of the probate courts, and registers of deeds make application to the chancellor, or to one of the chancellors, if there is more than one, holding court in their county.

T.C.A. § 8-20-101(a)(3).



THE SALARY SUIT

Unless otherwise prohibited by law or rule of the supreme court, any petition or application for the authority to appoint or employ one or more additional deputies or assistants filed pursuant to this chapter shall be heard and determined by a judge or chancellor serving the judicial district in which the petition or application is filed.

T.C.A. § 8-20-101(d).



THE SALARY SUIT STATUTORY SCHEME

The statutory scheme enacted by the General Assembly for staffing and compensating the trustee's office through a salary suit is clear.

See Boarman v. Jaynes, 109 S.W.3d 286, 291 (Tenn. 2003) (suit filed by the clerk and master).

THE SALARY SUIT REQUIRED SHOWING T.C.A. § 8-20-101(a)

The office holder must demonstrate: (1) an inability to discharge the duties of a particular office by devoting his or her entire working time thereto; and, (2) the office holder must petition the court and show the necessity for assistants, the number of assistants required, and the salary each should be paid.

See Boarman v. Jaynes, at 291.

THE SALARY SUIT REQUIRED SHOWING T.C.A. § 8-20-101(a)

The requirement for authorization of deputies under T.C.A. § 8-20-101(a) states only that an office holder must demonstrate an inability to “properly and efficiently conduct the affairs and transact the business of such person’s office by devoting such person’s entire working time thereto.”

See Boarman v. Jaynes, at 291.



THE SALARY SUIT REQUIRED SHOWING T.C.A. § 8-20-101(a)

The office holder 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.

See Boarman v. Jaynes, at 291.

IMPORTANT NOTE

DORNING V. BAILEY, 223 S.W.3D
269 (TENN.CT.APP. 2007)

The official is estopped to pursue any claim for funding that was not presented to the county in a budget request proposal submitted to the county legislative body.

The official is estopped to seek funding and personnel beyond that submitted in the budget request proposals.

THE SALARY SUIT JUDICIAL AUTHORITY

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.

See Boarman v. Jaynes, at 291.



THE SALARY SUIT TIMING

The petition must be filed by the office holder within 30 days after the date of final adoption of the budget for the fiscal year.

T.C.A. § 8-20-101(b).

IMPORTANT NOTE

30 DAY WINDOW

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.

T.C.A. § 8-20-101(b).

THE SALARY SUIT TIMING

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.

T.C.A. § 8-20-101(b).

THE SALARY SUIT PROCEDURE T.C.A. § 8-20-102

In 2022, the Legislature passed PC 1079, completely rewriting T.C.A. § 8-20-102.

It became effective on July 1, 2022.

THE SALARY SUIT PROCEDURE T.C.A. § 8-20-102(a)

The general assembly intends this chapter to provide an expedited process for resolving salary disputes in order to provide county officials quick relief and to protect taxpayers from unnecessary costs when gridlock occurs in the county budgeting process and a salary dispute is adjudicated under this chapter.

THE SALARY SUIT PROCEDURE T.C.A. § 8-20-102(b)

In the petition, the official must name the county mayor as the party defendant.

See also Burrus v. Wiseman, 2009 WL 782818 (Tenn.Ct.App. 2009).

THE SALARY SUIT

PROCEDURE T.C.A. § 8-20-102(c)(1)

Petitions brought under this chapter must receive docket priority over all other cases other than those involving the welfare of a child and must be resolved within 120 days of the petition filing date, which may be extended for up to an additional 120 days in the discretion of the court or for good cause shown by the parties.

THE SALARY SUIT

PROCEDURE T.C.A. § 8-20-102(c)(2)

The court shall hold a hearing on the petition and the answer thereto, for purposes of developing the facts and issues in question, and may hear proof for or against the petition.

THE SALARY SUIT

PROCEDURE T.C.A. § 8-20-102(c)(2)

The court may allow or disallow the application, either in whole or in part, and may approve the entire number of deputies or assistants applied for or a lesser number, and may approve the salaries set out in the application or reduced salaries, as the facts justify.

See Boarman v. Jaynes, 109 S.W.3d 286, 291 (Tenn. 2003) (suit filed by the clerk and master).



THE SALARY SUIT PROCEDURE

The county commission has no role in the salary suit.

***Burrus v. Wiseman*, 2009 WL 782818
(Tenn.Ct.App., Mar. 26, 2009)(Benton County).**

T.C.A. § 8-20-102(d) – Amended in 2022



THE SALARY SUIT PROCEDURE T.C.A. § 8-20-102(d)

After passing a county's budget pursuant to applicable budgeting laws, the applicable county commission, both as a body and as individual commissioners, do not have a further role in the budgeting process and do not have standing pursuant to this chapter.

THE SALARY SUIT PROCEDURE T.C.A. § 8-20-102(e)

The official who files the petition and the county mayor must engage in mediation within 30 days of filing the petition.

The judge or chancellor presiding over the petition may award sanctions against a party who fails to negotiate in good faith.

THE SALARY SUIT

PROCEDURE T.C.A. § 8-20-102(f)

The county mayor must file an answer to the petition within 5 days from the date of service of the petition, either admitting the allegations of the petition or denying the same, or making such answer as the county mayor deems advisable under the circumstances.

THE SALARY SUIT PROCEDURE T.C.A. § 8-20-102(g)

The court shall schedule a mandatory preliminary conference within 20 days after the answer is filed, or if a judge or chancellor is recused from the case, the court shall schedule the preliminary conference within 20 days after the transfer of the case to another court or to another judge or chancellor, as applicable.

THE SALARY SUIT PROCEDURE T.C.A. § 8-20-102(h)

At the preliminary conference, the petitioner and the defendant present their respective proposed discovery and litigation plans outlining anticipated discovery to the court for approval.

THE SALARY SUIT PROCEDURE T.C.A. § 8-20-102(i)

At the preliminary conference or within 10 business days following the preliminary conference, the court shall enter a scheduling order that must include an approved discovery and litigation plan.

THE SALARY SUIT – COURT ORDER

T.C.A. § 8-20-104

The order of the court shall be spread upon the minutes of the court, as in the case of other judgments and decrees, and the petition and answer thereto shall be docketed, filed, and kept as permanent records of the court.

THE SALARY SUIT – COURT ORDER

T.C.A. § 8-20-104

The order or decree fixing the number of deputies and salaries may be changed or modified by increasing or decreasing the number of deputies and the salaries paid each, from time to time, upon application made in the manner provided by statute.

THE SALARY SUIT

T.C.A. § 8-20-104

The official, without formal application, may decrease either the number of deputies or assistants and the salaries of any of them where the facts justify such course.

THE SALARY SUIT

T.C.A. § 8-20-105

It is the duty of all officers mentioned above to reduce the number of deputies and assistants and/or the salaries paid them when it can be reasonably done.

THE SALARY SUIT

T.C.A. § 8-20-105

The court or judge having jurisdiction may, on motion of the county mayor, and upon reasonable notice to the officer in whose office the deputies or assistants to be affected are, have a hearing of such motion in term or in vacation, at chambers, and may reduce the number of deputies or assistants and/or the salaries paid any one or more when the public good justifies.

THE SALARY SUIT - APPEAL

T.C.A. § 8-20-106

Either party dissatisfied with the decree or order of the court has the right of appeal as in other cases.

THE SALARY SUIT - APPEAL

T.C.A. § 8-20-106

Pending the final disposition of the application to the court, or pending the final determination on appeal, the officer making application 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.

IMPORTANT NOTE

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.

Moore v. Cates, 832 S.W.2d 570, 572
(Tenn.Ct.App. 1992).



THE SALARY SUIT

RETROACTIVE PAY NOT AUTHORIZED

The trial court does not have the authority to order retroactive pay for personnel hired by the official prior to the filing of the petition to hire and employ deputies.

Roberts v. Lowe, 1997 WL 189345 (Tenn.Ct.App. 1997)

Woods v. Smith, 1992 WL 151443 (Tenn.Ct.App. 1992)

State ex rel. Obion County v. Bond, 8 S.W.2d 367 (Tenn. 1928)



THE SALARY SUIT RETROACTIVE PAY IS AUTHORIZED

“We respectfully disagree with those holdings having concluded that the Tennessee Supreme Court’s ruling in *Boarman v. Jaynes* provides the authority to make an award retroactive to the beginning of the fiscal year and therefore requires a different conclusion.” See *Boarman v. Jaynes*, 109 S.W.3d at 290.

Dorning v. Bailey, 223 S.W.3d 269, 276 (Tenn.Ct.App. 2007).

Farthing v. Rial, 2014 WL 793709 (Tenn.Ct.App. 2014).



THE SALARY SUIT - COSTS

T.C.A. § 8-20-107(a)

The cost of the suit is paid out of the fees of the official's office. The official is allowed a credit for the same in settlement with the county trustee.

T.C.A. § 8-20-107; *Patterson v. Wharton*, 2006 WL 1237266 (Tenn.Ct.App. 2006) (holding that the trial court is vested not only with the discretion to award attorney's fees, but also has the discretion to set the amount of such fees.). See also *Farthing v. Rial*, 2014 WL 793709 (Tenn.Ct.App. 2014).



THE SALARY SUIT - COSTS

T.C.A. § 8-20-107(b)

An award of attorney's fees must be consistent with and awarded pursuant to Rule 8 of the Rules of the Supreme Court of the State of Tennessee, Rules of Professional Conduct 1.5, or the corresponding subsequent rule of the Tennessee supreme court.

THE SALARY SUIT - COSTS

T.C.A. § 8-20-107(b)

The court shall determine the reasonableness of attorney's fees for all parties, and in making that determination, the court shall consider the factors in Rule 8 of the Rules of the Supreme Court of the State of Tennessee, Rules of Professional Conduct 1.5.

SHERIFF'S OFFICE - FUNDING

T.C.A. § 8-20-120 (1986)

Notwithstanding any other law to the contrary, county governing bodies shall fund the operations of the county sheriff's department.

The sheriff may appoint such personnel as may be provided for in the budget adopted for such department.



SHERIFF'S OFFICE - FUNDING

T.C.A. § 8-20-120

No county governing body shall adopt a budget absent the consent of the sheriff, which reduces below current levels the salaries and number of employees in the sheriff's department.

WRIT OF MANDAMUS

T.C.A. § 8-20-120

In the event a county governing body fails to budget any salary expenditure which 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.

WRIT OF MANDAMUS

T.C.A. § 8-20-120

Only if the county legislative body refuses to appropriate the funds required by the court's order may the sheriff seek a writ of mandamus to compel it to do so.

See State ex rel. Ledbetter v. Duncan, 702 S.W.2d 163, 165 (Tenn. 1985).



WRIT OF MANDAMUS

T.C.A. § 8-20-120

The writ of mandamus authorized by Tenn. Code Ann. § 8-20-120 can only be sought after the sheriff has gone through both the local budget process and the application procedure required by Tenn. Code Ann. § 8-20-101(a)(2).

See *Jones v. Mankin*, 1989 WL 44924 (Tenn.Ct.App. 1989).



IMPORTANT NOTE

Courts have no jurisdiction to approve funding for vehicles, uniforms, training and equipment.

See Dorning v. Bailey, 2006 WL 287377 (Tenn.Ct.App. 2006).



Letters of Agreement

LETTERS OF AGREEMENT

T.C.A. § 8-20-101(c)

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.

LETTERS OF AGREEMENT

T.C.A. § 8-20-101(c)(1)

If the official 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.**

LETTERS OF AGREEMENT

T.C.A. § 8-20-101(c)(1)

Instead of filing a petition in court, the official 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.

LETTERS OF AGREEMENT

T.C.A. § 8-20-101(c)(2)

The letter is then filed with the court, however, no court costs, litigation taxes or attorney's fees are assessed.

Officials must file their letters of agreement with the same court in which they would file a salary suit.

Do not file your letter in the Mayor's office.

LETTERS OF AGREEMENT

T.C.A. § 8-20-101(c)(3)

Any county official authorized to file a salary petition may use the letter of agreement without regard to whether the county official's office operates under the fee system.

LETTERS OF AGREEMENT NOTES

1. The fee official should fill out the letter of agreement. Not the mayor. Not the budget/finance person.
2. The letter is filed with the court – not in mayor's office.

LETTERS OF AGREEMENT NOTES

3. The letter of agreement should reflect the budget that passed.

LETTERS OF AGREEMENT NOTES

The letter of agreement is a document that signifies that the official agrees with the budget that passed.

It is not the official's budget.

It is a reflection of the budget.

RECENT CASES

Armstrong v. Morrison, 2019 WL 5847282 (Tenn.Ct.App. 2019)

Farthing v. Rial, 2014 WL 793709 (Tenn.Ct.App. 2014)

Ramey v. Carroll, 2011 WL 1662887 (Tenn.Ct.App., May 3, 2011)

Burrus v. Wiseman, 2009 WL 782818 (Tenn.Ct.App., Mar. 26, 2009)

Dorning v. Bailey, 223 S.W.3d 269 (Tenn.Ct.App., Jan. 3, 2007)

Bane v. Nesbitt, 2006 WL 3694444 (Tenn.Ct.App., Dec. 14, 2006)

Patterson v. Wharton, 2006 WL 1237266 (Tenn.Ct.App. May 10, 2006)

Dorning v. Bailey, 2006 WL 287377 (Tenn.Ct.App., Feb. 6, 2006)

Boarman v. Jaynes, 109 S.W.3d 286 (Tenn. 2003).



The End



And Now
Something
Completely
Different



THINGS YOU NEED TO KNOW AUTHORITY OF COUNTY OFFICIALS

It is axiomatic in county law that a county or county officials have no authority except that expressly given to them by statute or necessarily implied by it.

Bayless v. Knox County, 286 S.W.2d 579 (Tenn.1955).



THINGS YOU NEED TO KNOW AUTHORITY OF THE MAYOR

County fee officials are independent entities.

They do not work for and are not subject to the mayor's control.

Easterly v. Harmon, 1997 WL 718430, n4 (Tenn.Ct.App.,1997) (The county executive and county clerk are independent entities and Easterly is not subject to his control.).



THINGS YOU NEED TO KNOW AUTHORITY OF THE MAYOR

There is neither express or implied authority for the mayor to dictate to the other elected officials of the county what space they shall occupy in the county buildings and other such matters affecting them in the discharge of their official duties.

See *Driver v. Thompson*, 358 S.W.2d 477 (Tenn. 1962).



THINGS YOU NEED TO KNOW AUTHORITY OF THE SHERIFF

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.**

THINGS YOU NEED TO KNOW AUTHORITY OF THE SHERIFF

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.



THINGS YOU NEED TO KNOW OFFICE SPACE

There is neither express or implied authority for the Sheriff to dictate to the other elected officials of the County what space they shall occupy in the Courthouse and other such matters affecting them in the discharge of their official duties. This is peculiarly a function of the [county legislative body] as to matters in its jurisdiction.

Driver v. Thompson, 358 S.W.2d 477 (Tenn. 1962).



THINGS YOU NEED TO KNOW AUTHORITY OF COUNTY COMMISSIONERS

In order for county legislative bodies, or commissioners, to have a particular power, it would have to be granted to them statutorily, by the legislature.

Unless there is a statute that gives an “individual county commissioner” authority to act on his own, he has none.



THINGS YOU NEED TO KNOW AUTHORITY OF COUNTY COMMISSIONERS

“Like the counties themselves, county legislative bodies possess only the powers vested in them by the Tennessee Constitution or by state law.”

State v. Bilbrey, 878 S.W.2d 567, 571 (Tenn.App.1994) (citing State v. Wilson, 194 Tenn. 140, 142-43, 250 S.W.2d 49, 50 (1952)).



THINGS YOU NEED TO KNOW

UNAUTHORIZED EXERCISE OF OFFICIAL POWER

The unauthorized exercise of official power by a public official, depending upon all the facts and circumstances, may constitute official misconduct for which the official might be removed from office if it were knowing or willful on his part.

39-16-402. Official misconduct.

(a) A public servant commits an offense who, with intent to obtain a benefit or to harm another, intentionally or knowingly:

- (1)** Commits an act relating to the public servant's office or employment that constitutes an unauthorized exercise of official power;
- (2)** Commits an act under color of office or employment that exceeds the public servant's official power;
- (3)** Refrains from performing a duty that is imposed by law or that is clearly inherent in the nature of the public servant's office or employment;
- (4)** Violates a law relating to the public servant's office or employment; or
- (5)** Receives any benefit not otherwise authorized by law.

(b) For purposes of subdivision (a)(2), a public servant commits an act under color of office or employment who acts or purports to act in an official capacity or takes advantage of the actual or purported capacity.

THINGS YOU NEED TO KNOW

UNAUTHORIZED EXERCISE OF OFFICIAL POWER

The statute prohibits any conduct which lies beyond the permissible limits of official power granted a public official.

See State v. Szczepanowski, 2002 WL 1358681 (Tenn.Crim.App. 2002).



THINGS YOU NEED TO KNOW

All public officials are presumed to know clearly established law, whether or not they have in fact ever cracked a law book.

Stedam v. Cumberland County, Tennessee, 2019 WL 2501560, (M.D. Tenn. 2019).



The End

