LEGAL ISSUES FOR COUNTY TRUSTEES

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COUNTY TECHNICAL ASSISTANCE SERVICE

COLLECTION OF PROPERTY TAXES

COLLECTION OF DELINQUENT PROPERTY TAXES

COLLECTION OF DELINQUENT PERSONAL PROPERTY TAXES

COLLECTION OF PROPERTY TAXES

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COLLECTION OF PROPERTY TAXES

1. Tax Roll – Statutory Requirements & Alterations

One of the trustee's primary functions is the collection of all property taxes levied by the county and by municipalities within the county unless a municipality collects its own taxes. T.C.A. § 67-5-1801.

The trustee's role in this process begins with the tax roll, which is prepared by the assessor and is delivered to the Trustee on or before the first Monday in October of each year. T.C.A. § 67-5-807.

The trustee collects the tax amounts shown in the tax roll. T.C.A. § 67-5-1801.

Tax Roll – Statutory Requirements & Alterations

There are specific statutory requirements for the tax roll (T.C.A. § 67-5-807), but briefly stated, it must be a bound or loose-leaf book, or unit tax ledger cards, arranged by districts or their subdivisions.

It must be ruled to show names of owners in alphabetical order or by parcel numbers and must also contain information regarding lots, blocks, and acreage. Each piece of property must be described and valued, with property located inside municipalities separated from other county property. Personal property values are also listed under appropriate headings. Another column entry indicates taxes, which are calculated from the assessment values according to the rate set by the county legislative body. T.C.A. § 67-5-807.

Tax Roll – Statutory Requirements & Alterations

Computer Storage - However, county officials may maintain such records on computer storage media instead of bound or loose-leaf books if proper standards are maintained. T.C.A. § 10-7-121.

2. Tax Roll – Alterations

The tax roll entries may be altered to reflect changes in the status of property. For example:

Acquisition by an entity which is exempt from taxation. T.C.A. § 67-5-201.

Revisions due to damaged or incomplete improvements. T.C.A. § 67-5-603.

Roll back taxes. T.C.A. § 67-5-1008.

Actions of the State Board of Equalization. T.C.A. § 67-5-1510.

Notice of these revisions is usually provided to the trustee by the assessor in the form of a certificate of correction, T.C.A. § 67-5-509, or by a certificate of assessment from the State Board of Equalization T.C.A. § 67-5-1512.

3. Tax Due Date – First Monday in October

Property taxes imposed by counties are due and payable on the first Monday of October of the tax year. Municipal property taxes collected by the trustee are also due and payable on this date.
T.C.A. §§ 67-1-701 and 67-1-702.

However, when a municipal charter has provided for a consolidation of functions and offices, then the trustee, with the approval of the county legislative body, may establish another municipal due date to maintain existing municipal fiscal policies. T.C.A. § 67-1-701.

Military Extension - No property tax owed by a person in the armed forces of the United States, or called into active military service of the United States, from a reserve or national guard unit, shall be due until one hundred eighty (180) days following the conclusion of hostilities in which such person is actually engaged outside the United States or one hundred eighty (180) days after such person is transferred from the theater of operations of such hostilities, whichever is sooner.

A person claiming this delay must apply to the trustee on or before the day the tax becomes delinquent, and present copies of official orders or other satisfactory proof of such person's deployment and stationing outside the United States during a period of hostilities.

The trustee gives notice of approved applications to city collecting officials and to the clerk and master of the chancery court. T.C.A. § 67-5-2011.

4. Payment of Taxes

The trustee acts as the collector of all county property taxes and of all municipal property taxes when the municipality does not collect its own taxes. T.C.A. § 67-5-1801(a).

A municipality that certifies its delinquent tax list to the trustee or the delinquent tax attorney, is deemed to have authorized, without further action of the municipality, county officers to do all things authorized under Parts 18-28 of this Chapter 5 with respect to the collection of delinquent municipal taxes, including the ability to convey any and all interests of the municipality in the property sold, until such time as the municipality's legislative body determines otherwise and causes a document evidencing the determination to be recorded in the office of the register of deeds. T.C.A. § 67-5-1801(a).

Trustee's Office - Property taxes are paid to the trustee at the trustee's office.

A trustee is authorized to adopt a policy of not accepting current county real property taxes due when delinquent real property taxes are owing; provided, that this prohibition does not apply when the obligor of 1 or more of the prior year's taxes is in bankruptcy or there is a dispute as to the responsibility for such taxes. T.C.A. § 67-5-1801(b).

Bank - The trustee may designate a bank and/or the branches that are located within the county to act as a collection agent for the trustee and accept the deposit of county and municipal property taxes. The trustee must establish an account with the bank for this purpose, which is restricted to the deposit of county and municipal property taxes. T.C.A. § 67-5-1801(c).

Bank - The trustee may designate a bank and/or the branches that are located within the county to act as a collection agent for the trustee and accept the deposit of county and municipal property taxes. The trustee must establish an account with the bank for this purpose, which is restricted to the deposit of county and municipal property taxes. T.C.A. § 67-5-1801(c).

In order to pay at the bank, the taxpayer must show evidence of the amount owed. The bank may not accept delinquent taxes and must provide a deposit form to the taxpayer which states that the bank is acting as agent for the trustee. The taxpayer will be provided a copy of the deposit form at the time of the deposit.

The bank is required to provide the trustee with evidence of the taxes deposited into the account and a copy of the deposit forms at least every 3 business days. T.C.A. § 67-5-1801(c).

Mail - Property tax payments may also be mailed to the trustee. T.C.A. § 67-1-107.

Any tax payment which is transmitted by U.S. mail to the trustee is deemed filed and received on the date on the postmark, or if the postmark is illegible, erroneous, or omitted, on the date the payment was mailed, as established by the sender by competent evidence.

If the payment is postmarked no more than 24 hours subsequent to the last date for the timely payment of taxes, it must be accepted as if timely filed. T.C.A. § 67-1-107.

Currency - The trustee is required to accept constitutional and lawful U.S. currency or warrants on the state treasury legally outstanding in the hands of a person to whom they were issued and unpaid, U.S. coins, U.S. legal tender notes, and federal reserve notes. T.C.A. § 67-1-704(a).

The trustee may also receive payment by check, money order, credit card or debit card.

Non-Payment of Checks - Trustees accepting checks may encounter problems with nonpayment. If checks are not paid, the taxpayer is still liable for the payment of the tax as well as all legal penalties and interest. T.C.A. §§ 9-1-108 & 9-1-109. A "bad" check may be pursued under civil provisions, T.C.A. § 47-29-101, or under criminal provisions, T.C.A. § 39-14-121, of the Code but not under both provisions.

If a check is not paid, most trustees void the receipt and proceed as if no check were tendered.

FEES & PENNIES (ROUNDING)

RULE 1

8-21-101. Express authorization required.

No officer is allowed to demand or receive fees or other compensation for any service further than is expressly provided by law.

FEES & PENNIES (ROUNDING)

RULE 2

8-21-103. Penalty for excessive fees charged.

If any officer demands or receives any other or higher fees than are prescribed by law, such officer is liable to the party aggrieved in the penalty of fifty dollars ($50.00), to be recovered before any judge of the court of general sessions, and the officer also commits a Class C misdemeanor.

FEES & PENNIES (ROUNDING)

RULE 3

8-22-105. Liability for failure to collect or account.

Any officer enumerated in § 8-22-101, who evades the letter or the spirit of chapters 21 and 22 of this title by failing to charge or collect from the one liable therefor, every fee, commission, perquisite, emolument, or compensation that the county may be entitled to, and which, by the exercise of reasonable diligence could have been collected, or by failing to present the statement of receipts as herein directed, shall be held individually liable to the county for the amount that should have been collected, and the same shall be charged against the officer and be deducted from the officer's salary, or collected from the officer by law.

PENNIES –ROUNDING FEES

Under current law – you have no authority to round fees up or down.

It is clearly the law in the State of Tennessee that public officers can receive no fees or costs except as expressly authorized by law. State ex rel. v. Cement Company, 151 Tenn. 47, 268 S.W. 115 (1924); Railroad v. Boswell, 104 Tenn. 529, 58 S.W. 117 (1900).

AG OP 79–184 (April 23, 1979).

The amount of the fees set by statute are not subject to alteration or adjustment - either downward or upward.

AG OP 17-013 (February 24, 2017).

Rounding Property Tax Bills

In 2006, Bobby Lee, the General Counsel for the Comptroller's Office sent a letter to all county trustees regarding the rounding of property tax bills.

The letter included a resolution authorizing counties to round property taxes, interest, and penalties.

Note: the legislature has since removed the term penalties from the law as it applies to property taxes.

CTAS has updated the resolution removing of the term penalties and put it into a Word document that can be shared with counties, as necessary.

5. Tax Statements

The use of mailed tax bills or statements is not specifically authorized or required except as authorized in counties with consolidated forms of government. T.C.A. § 7-3-203.

Owners of land are presumed to know taxes are due without demand or personal notice. M'Carrol's Lessee v. Weeks, 6 Tenn. (5 Hayw.) 246 (1814).

However, tax statements are uniformly used to remind taxpayers of their obligations to pay property taxes. The widespread use of mailed tax statements has been recognized in legislation dealing with notices of delinquent taxes, which requires these notices to be mailed with tax statements. T.C.A. § 67-5-2402.

The Trustee must send a notice of delinquent taxes with the current tax bill for any taxpayer having delinquent taxes as of June 1 of each year. The property owners to whom this notice is sent is obtained from the delinquent taxpayers list and from the list of property owners whose property is subject to a lawsuit to enforce the tax lien. T.C.A. §§ 67-5-2402 and 67-5-2403.

6. Partial Payments / Prepayments

Partial Payments

AFTER THE TAX RATE IS SET - Any trustee may accept partial payments of property taxes. Prior to the trustee accepting partial payment of property taxes, the trustee must file a plan with the comptroller.

The plan must indicate that the trustee's office has the accounting system technology to implement a program for partial payment of property taxes.

The plan must also indicate whether such a program will be implemented within the existing operating resources of the office or indicate prior approval of the county legislative body if additional operating resources are needed.

T.C.A. § 67-5-1801(e)(1) & (2).

Partial Payments

AFTER THE TAX RATE IS SET

A county trustee may accept taxes paid by electronic funds transfer, including, but not limited to, bank customer preauthorized payments, wire transfers or ACH credits.

If the entire amount of taxes due is not paid prior to the delinquency date for such taxes, the entire property shall be subject to the tax lien and enforcement by a tax sale or other legally authorized procedures.

T.C.A. § 67-5-1801(e)(3).

Partial Payments

AFTER THE TAX RATE IS SET

Unless partial payment is made by electronic transfer of funds, if the county trustee accepts partial payment within ten (10) days of the delinquency date, or at any time following such delinquency date, then prior to accepting such payment the county trustee must inform the taxpayer of the delinquency date and must advise such taxpayer that the property may be subjected to tax lien and enforcement by tax sale or other legally authorized procedures.

T.C.A. § 67-5-1801(e)(3).

Partial Payments

AFTER THE TAX RATE IS SET

Direct bank transfers and partial payments are subject to the following guidelines:

1. Vouchers issued pursuant to the tax relief program shall be used as all or a portion of the final payment;

T.C.A. § 67-5-1801(e)(4)(A) & (B).

Partial Payments - AFTER THE TAX RATE IS SET

2. A receipt shall be issued to the taxpayer for any partial payment of taxes.

The receipt shall state that:

- The payment is a partial payment of property taxes;
- The balance owing on such taxes that must be paid prior to the delinquency date; and
- A failure to pay the entire amount of the taxes prior to the delinquency date subjects any unpaid taxes to the interest applicable to delinquent taxes and subjects the entire property on which there is a lien for taxes to a tax sale. The final partial payment shall show that a zero (0) balance is owing or shall state that the taxes are paid in full. Receipts shall also be sent to the taxpayer for payments made by direct bank transfer of funds; and

T.C.A. § 67-5-1801(e)(4)(A) &(B).

Partial Payments - AFTER THE TAX RATE IS SET

In any county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census, the trustee may set a minimum requirement of no more than the lesser of fifteen percent (15%) or twenty-five dollars ($25.00) for any partial payment.

T.C.A. § 67-5-1801(e)(4)(C).

Prepayments

BEFORE THE TAX RATE IS SET

The trustee may accept prepayments of property taxes for the current tax year prior to the date the tax rate is established for the current tax year.

Any prepayment of property taxes for the current tax year that is received before the later of July 1 or the date the property tax rate for the current year is established shall be held in a designated revenue account established to hold undistributed taxes and then transferred to the revenue account established for the current year's taxes after the later of July 1 or the date the property tax rate for the current year is adopted by the county legislative body. T.C.A. § 67-5-1808(a).

Prepayments

BEFORE THE TAX RATE IS SET

The Trustee must file a plan with the Comptroller of the Treasury at least thirty (30) days prior to the acceptance of the payments. T.C.A. § 67-5-1808(b).

The delinquent date for property taxes and interest applicable to delinquent property taxes is not affected by application of a prepayment. Interest applies only to the amount of delinquent property taxes remaining due as of the date property taxes become delinquent. T.C.A. § 67-5-1808(c).

Prepayments do not release the tax lien on the property upon which the taxes are assessed. And, Prepayments are non-refundable. T.C.A. § 67-5-1808(d).

7. Receipts

Numbered – Dated – Amount - The trustee is required to issue a numbered and dated receipt, printed or written in ink or indelible pencil, for all property taxes paid by each taxpayer. This receipt must show the amount of the county tax levy and must show separately any state amounts; however, if receipts are mechanically produced, these amounts may be omitted (unless the taxpayer specifically requests that the information be placed on the receipt). T.C.A. § 67-1-704.

If a portion of the tax notice is to be retained by the taxpayer, in lieu of the trustee mailing a separate receipt of the payment to the taxpayer, the tax notice shall:

(A) Clearly state such fact; and

(B) Inform the taxpayer that, if the taxpayer desires the trustee to mail a separate receipt of the payment to the taxpayer, the taxpayer must include a self-addressed, stamped envelope when the taxes are paid.

T.C.A. § 67-1-704.

8. Early Payment and Discounts

Early Payment - Upon the adoption of a resolution by the county legislative body, the trustee may accept property taxes at any time after July 10 and after the tax rates are finally set, the trustee's tax rolls are received, and the trustee's receipts are prepared. T.C.A. § 67-1-702(b).

Tax relief applications may be accepted on the same date on which the trustee accepts property tax payments. T.C.A. § 67-1-702(b).

Discounts for Early Payment - Counties and municipalities are authorized to provide, by ordinance or resolution, a discount of taxes under one of two possible statutory systems.

First, the governing body of any county may provide by a resolution *adopted in connection with the levy of ad valorem real property taxes* for any year for a discount of:

2% for taxes paid within thirty days of the tax due date (in other words, between October 1 and October 31) and/or

1% for taxes paid more than thirty days, but within sixty days of the tax due date (between November 1 and November 30).

T.C.A. § 67-5-1804(a).

Discounts for Early Payment - Alternative Method

Under the alternative method, if the county legislative body has given the trustee the authority to collect taxes at any time after July 10, pursuant to T.C.A. § 67-1-702, then the county legislative body may provide by resolution for a discount of:

3 % for property taxes paid by the end of July;
2 % if paid by the end of August; and
1 % if paid by the end of September.

T.C.A. § 67-5-1804(c).

Discounts for Early Payment - Alternative Method

The trustee may accept early payments, in the trustee's discretion, based upon the trustee's capacity to effectively account for the payments. The governing body may rescind the adoption of discounts at any time. T.C.A. § 67-5-1804(c).

Although former law required mortgage holders to take advantage of these discounts and to notify customers of their availability, the current statute explicitly states that this is no longer the case. T.C.A. § 67-5-1804(d).

9. Delinquency Date and Interest

Property taxes collected by the trustee are delinquent on the first day of March following the tax due date. For example:

> 2026 taxes are due and payable on the first Monday in October of 2026.
> 2026 taxes become delinquent on March 1, 2027.

See T.C.A. § 67-5-2010.

The trustee is required to continue collection of delinquent taxes, as well as interest, until the time the delinquent taxes are turned over to the delinquent tax attorney for collection. T.C.A. § 67-5-2008.

Special provisions may apply to persons in military service under the Soldier's and Sailor's Civil Relief Act (50 U.S.C.A. 560) as well as under state law. T.C.A. § 67-5-2011. Special interest rates may also apply when the Federal Deposit Insurance Corporation owes the property taxes under 12 U.S.C.A. 1825(b)(3).

Interest - On the first day of March following the tax due date, interest of 1.5% is added to delinquent county and municipal taxes collected by the trustee. The interest amount is thereafter added to delinquent taxes on the first day of each succeeding month until the taxes are paid.
T.C.A. § 67-5-2010.

There is no statutory authority which authorizes the Trustee to waive accrued interest. Courts, using equitable powers, may relieve a taxpayer of interest and penalty under certain conditions; however, a taxpayer's inability to pay because of financial misfortune will not excuse the imposition of penalty and interest on the unpaid taxes.

T.C.A. § 67-5-2803

NO AUTHORITY TO WAIVE

In order to promote equality and uniformity of taxation, except as provided in this part, 67-5-1806, 67-5-2507, or 67-5-2508, no person, public official, governmental entity or court shall have the power or authority to waive, compromise, remit, prorate, apportion or release property taxes, penalty, interest or court costs nor the first lien securing the same.

T.C.A. § 67-5-2803.

10. Settlement of Taxes – Report of Delinquent Taxes and Double Assessments

Monthly Settlement - On or before the 10th day of each month, the trustee must make a settlement for all taxes collected during the preceding month by reporting to the county mayor (and the treasurer of any municipality) and by paying over the taxes collected to the proper account (i.e. the account for which the tax was levied, since a tax can only be lawfully spent for the purpose for which it was levied).

T.C.A. § 67-5-1902(a).

Annual Financial Report - The trustee must make a full and complete financial report on or before the first Monday in September, for the year ended June 30, of the condition of the trustee's office. This annual financial report is filed with the county mayor and with the county clerk who provides a copy to each member of the county legislative body on or before the next meeting of the county legislative body. T.C.A. § 67-5-1902. This is the same report as required pursuant to T.C.A. § 5-8-505.

A trustee who fails to make the report is not allowed any commissions. Upon settling the office's accounts with the county mayor, the trustee gets credit for commissions and all legal disbursements.

T.C.A. §§ 67-5-1902, 67-5-1905.

Report of Delinquent Taxes and Double Assessments - In addition to the annual financial report required in September, the trustee is also required to submit a report, verified by affidavit, to the county legislative body during its July term. This report lists all delinquent taxes and double assessments in the county.

After submission of the report, the trustee is allowed a credit for double assessments and for taxes reported insolvent or delinquent, if the county legislative body is satisfied that the taxes are uncollectible due to reasons other than the failure of the trustee to collect them.

T.C.A. § 67-5-1903.

The trustee is not allowed a credit for items the county legislative body feels are inaccurate. All items which the county legislative body does not allow as a credit are charged against the trustee or the trustee’s surety.

This report must not include delinquent taxes that have been delivered by the trustee to the delinquent tax attorney for the filing of court actions to collect the taxes.

T.C.A. § 67-5-1903.

11. Refunds of Tax Payments

Taxes collected by the trustee are held in trust for the public, and therefore any disbursement, including refunds of overpaid taxes, must be made in strict compliance with statutory authority.

The trustee is authorized to make refunds of tax overpayments only upon receipt of certification from the assessor that the original assessment was in error. This refund must be made within sixty (60) days after the receipt of certification from the assessor and can be made even though the taxes were not paid under protest. If the Trustee receives the certification prior to the receipt of the tax payment, the taxes must be collected only on the corrected assessment.

T.C.A. § 67-5-509. See also T.C.A. § 67-5-1809.

Tax payments, even overpayments, which are voluntarily made cannot be recovered by the taxpayer. A payment is voluntary unless made pursuant to an immediate and urgent necessity for making the payment. Payment made due to mistake of law or its application is a voluntary payment and cannot be recovered. Hertz Corp. v. County of Shelby, 667 S.W.2d 66 (Tenn. 1984).

Subrogation

When any person pays property taxes that are the legal obligation of a third party by mistake, inadvertence or otherwise, the person making the payment is subrogated to the rights of the government to which the property taxes are paid, against the person whose property taxes were paid. However, at any judicial sale of such property, the clerk shall not enter a bid as provided in § 67-5-2506, or any other provision of law, on behalf of any government entity. T.C.A. § 67-5-509(d).

COLLECTION OF DELINQUENT PROPERTY TAXES

Collection of Delinquent Taxes – March 1, 2026 to January 1, 2027

1. Delinquent Tax Deputies
2. Delinquent Tax List
3. Partial Payment of Delinquent Tax
4. Collection of Delinquent Real Property Taxes
5. Delinquent Tax Attorney
6. Tax Suit
7. Tax Sale

1. Delinquent Tax Deputies

Pursuant to T.C.A. § 67-5-2001, the trustee is authorized to appoint the deputies necessary to collect delinquent taxes, who must take the same oaths required of the trustee. T.C.A. §§ 8-18-112; 67-5-1901.

The official bond of the trustee is held liable for the acts of these deputies, as well as for the actions of any constable or deputy sheriff who collects delinquent taxes. T.C.A. § 67-5-2001. However, the trustee may require these officials to post a bond securing the faithful performance of their duties before turning over the delinquent tax list to them. T.C.A. § 67-5-2001.

2. Delinquent Tax List

The trustee is required to prepare a list of delinquent taxpayers which is then turned over to the delinquent tax deputies for collection. T.C.A. § 67-5-2001. This list must contain a description of the property and the amount of taxes due from each taxpayer.

For real property, the list must identify the current owner and the owner's last known mailing address, if the owner can be identified; in these cases, there is no need to identify any former owners of the real property. However, identification of the current owner on the delinquent tax list does not alter the liability of the owner of the property as of January 1 of the tax year.

Deputies who have not received copies of the delinquent tax list have no authority to collect delinquent taxes. Deputies who have received copies of the list are to collect delinquent taxes, make periodic settlements of the amounts collected, make final settlement, and return the delinquent tax list to the trustee by January 1 of the following year.

T.C.A. §§ 67-5-2001, 67-5-2006.

Publication - The trustee has the discretion to publish the delinquent tax list in one or more county newspapers. T.C.A. § 67-5-2002.

Trustees who decide to publish the list must give it to the newspapers at least twenty days before it is turned over to the delinquent tax attorney. However, failure of any taxpayer’s name to appear on a delinquent tax list publication, or the publication of incorrect information, is not a defense to any suit for tax collection. T.C.A. § 67-5-2002.

3. Partial Payment of Delinquent Tax

The trustee may accept partial payments of delinquent property taxes, including, but not limited to, payment by electronic transfers, bank customer preauthorized payments, wire transfers or ACH credits. T.C.A. § 67-5-2001(d)(2).

If the entire amount of delinquent taxes due is not paid prior to the date the trustee delivers the delinquent tax lists to the delinquent tax attorney, the entire property shall be subject to the tax lien and enforcement by a tax sale or other legally-authorized procedures. T.C.A. § 67-5-2001(d)(2).

Partial Payment of Delinquent Tax

Prior to the trustee accepting partial payment of delinquent property taxes, the trustee must file a plan with the Comptroller at least 30 days prior to the acceptance of the payments. T.C.A. § 67-5-2001(d)(3).

The plan must contain the following:

- A description of the accounting system technology or manual processes to be used to record partial payments of delinquent property taxes;

- A statement indicating that funds received as partial payments on delinquent property taxes reduce the amount of delinquent property tax, interest, statutory fees, and court costs, by relative amounts on the pro-rata basis as described in subdivision (d)(4);

Partial Payment of Delinquent Tax

- A statement indicating whether such a process of collecting delinquent property taxes will be implemented within the existing operating resources of the office or an indication of prior approval by the county legislative body if accounting system upgrades or additional operating resources are needed; and

- Documentation of the internal controls that ensure all delinquent property tax payments are being recorded and accounted for as required by law.

T.C.A. § 67-5-2001(d)(3).

Partial Payment of Delinquent Tax

The delinquent date for property taxes and interest applicable to delinquent property taxes is not affected by application of a partial payment system established in the county.

After a partial payment is applied to delinquent property taxes and interest in accordance with subdivision (d)(4), interest applies only to the amount of delinquent property taxes remaining due.

If a partial payment of delinquent property taxes is accepted, then the partial payment does not release the tax lien on the property upon which the taxes were assessed.

T.C.A. § 67-5-2001(d)(6)-(8).

Partial Payment of Delinquent Tax

T.C.A. § 67-5-2001(d) does not authorize a clerk of a court in which a proceeding is pending, to accept a partial payment of delinquent taxes, interest, or court costs, except pursuant to part 28 of this chapter, T.C.A. § 67-5-2003(g)(5), or a payment distribution plan approved in a bankruptcy proceeding.

As used in this subdivision “proceeding” means a judicial proceeding filed by a governmental entity for the purpose of collecting delinquent property taxes owing the entity.

T.C.A. § 67-5-2001(d)(9).

Collection Of Excessive Tax Prohibited

It is a Class C misdemeanor for a collector of taxes to collect, under the color or pretense of office, more money, in the name of taxes, than is directed by law.

T.C.A. § 67-1-706.

4. Collection of Delinquent Real Property Taxes

Tax Lien - To aid in the collection of real property taxes, there exists a lien on the property to secure payment of the tax. The lien for taxes becomes a first lien on the real estate as of January 1 of the tax year and takes priority over pre-existing liens on the real estate. T.C.A. §§ 67-5-2101; 67-5-2102.

The tax lien is superior to mortgage liens, regardless of whether the taxes accrue before or after the execution of the mortgage. However, this first lien may be superseded by pre-filed federal tax liens.

In addition to the lien, property taxes are also a personal debt of the property owner as of January 1; if taxes are delinquent, they may be collected by suit as any other debt. The claims for the debt and for enforcement of the lien may be joined. T.C.A. § 67-5-2101.

Collection of Delinquent Real Property Taxes

Tax Suit Procedures – Notices - Prior to the commencement of legal proceedings to sell real property for delinquent taxes, the trustee has several important notification responsibilities. The completion of these is vital, since the validity of the subsequent enforcement proceedings depends upon strict compliance with statutory requirements.

1. Notice of Delinquent Taxes on Current Bill

2. Publication of Notice of Intent to File Suit

Notice of Delinquent Taxes on Current Bill - Pursuant to T.C.A. § 67-5-2402, the trustee must send with the current tax bill for any taxpayer having delinquent taxes as of June 1 of each year a notice with the following or equivalent language:

> *In addition to this amount, you owe back taxes. Contact this office immediately or your property may be sold.*

This notice should be sent to all property owners on the trustee's list of delinquent taxpayers as well as those appearing on the list of owners whose property is subject to a delinquent tax lawsuit; the appropriate court clerk must provide this list to the trustee between June 1 and July 1 of each year.

T.C.A. § 67-5-2403.

Publication of Notice of Intent to File Suit - Pursuant to T.C.A. § 67-5-2401, the Trustee must also publish the following notice before the lawsuit is filed:

> *You are advised that after February 1, additional penalties and costs will be imposed in consequence of suits to be filed for enforcement of the lien for property taxes for prior years; until the filing of such suits, taxes may be paid in my office.*

This notice must appear in one or more county newspapers, at least once a week for two consecutive weeks in January. The county pays the publication cost. If there is no newspaper published in the county, this notice must be posted at the courthouse. T.C.A. § 67-5-2401.

It is advisable for the trustee to also post this notice at other suitable locations both within the courthouse and at other public places.

Publication of Notice of Intent to File Suit

Note: this notice requirement should not be confused with the provision in T.C.A. § 67-5-2002 regarding publication of the delinquent tax list.

Delivery of Delinquent Tax List - After the trustee has published the notice of intent to file tax suit discussed above, the trustee must deliver a list of all unpaid taxes to the delinquent tax attorney. The list must be delivered between February 1 and April 1. T.C.A. § 67-5-2404(a)(1).

The Trustee may accept payment for delinquent taxes until the suit is filed. T.C.A. § 67-5-2008.

5. Delinquent Tax Attorney

The delinquent tax attorney is chosen by the county trustee with the approval of the county mayor. T.C.A. § 67-5-2404(a)(1). Only one attorney each year is to be appointed to collect the delinquent taxes shown on the delinquent tax lists prepared for that year. Op. Tenn. Atty. Gen. 88-100 (May 19, 1988)(only one attorney may be appointed each year to collect all delinquent taxes as shown on the delinquent lists prepared for that year).

It is the duty of the trustee and the mayor to cause the attorney to prepare and file suits in the chancery or circuit court for the collection of all delinquent land taxes, and all arrears of taxes due the state, county and municipality. T.C.A. § 67-5-2404(a)(3).

Authority of Trustee After Suit is Filed

Although the county trustee chooses the attorney, it appears that the county trustee is not responsible for, and has no authority with respect to, the subsequent collection of the delinquent taxes after suit has been filed. *See Brown v. Helvering*, 97 F.2d 189 (D.C. Cir. 1938).

AG OP 81-159 (March 13, 1981).

Delinquent Tax Attorney

Compensation - In most counties the compensation of the delinquent tax attorney is determined in advance through negotiations between the trustee and the attorney, subject to the approval of the county legislative body. In these counties, the amount of compensation cannot exceed 10% of all delinquent land taxes collected by the attorney.
T.C.A. §§ 67-5-2404(a); 67-5-2410(a)(1)(A).

In most of the remaining counties, and in counties with metropolitan forms of government, there is no negotiation, a penalty of 10% of the delinquent taxes must be paid exclusively to the delinquent tax attorney.
T.C.A. §§ 67-5-2404(b); 67-5-2410(b)(1).

Op. Tenn. Atty. Gen. 07-34 (March 23, 2007) (delinquent tax attorney fees discussed).

Delinquent Tax Attorney - Compensation

The delinquent tax attorney is not entitled to compensation until the tax suits for the year have been filed. *State ex. rel. v. Allen*, 145 S.W.2d 769, 770 (Tenn. 1940); *State v. Bayless*, 209 S.W.2d 504 (Tenn.Ct.App. 1947).

It is clear that once a delinquent tax attorney files suit there is a lien in favor of the attorney.

State ex rel. v. Allen, 12 Beeler 670, 176 Tenn. 670, 145 S.W.2d 769 (1940) (Delinquent tax attorneys employed to collect taxes had the right to appear in their own interest in proceeding under statute for settlement of tax liens against insolvent property, to claim statutory attorneys' fees which accrued when they filed tax bills.).

Delinquent Tax Attorney

Failure to Prosecute - Upon the failure of the trustee and the mayor to employ an attorney and institute suits for the collection of delinquent taxes, and within the time provided, the district attorney general has the power and the duty to:

(1) Employ an attorney to institute and prosecute suits for the collection of such taxes; or

(2) Maintain an action for a writ of mandamus to compel the trustee and mayor to employ an attorney to institute and prosecute suits for the collection of such taxes.

T.C.A. § 67-5-2406(a).

Delinquent Tax Attorney

Failure to Prosecute - Lien For Attorney's Fees

In the event a delinquent tax attorney has not prosecuted delinquent tax suits to a sale of the property within five (5) years of the filing of the suit, the court, on motion of the county mayor and county trustee or the district attorney general, may remove the attorney from all delinquent tax suits the attorney is prosecuting, unless satisfactory explanation of the delay is proven to the court. Upon the attorney's removal, the lien for attorney's fees on any remaining unpaid taxes shall be extinguished as to such attorney. T.C.A. § 67-5-2406(b).

6. Tax Suit

The delinquent tax attorney is required to file suit between February 1 and April 1. Delinquent tax suits are filed in the circuit or chancery court of the county and are brought in the name of the county.

The complaint shall be in substance and form as other complaints for the enforcement of liens and may be filed against and contain the names of all the delinquent taxpayers in the county.

Additional defendants and delinquent taxes may be added to the suit as a matter of right upon the filing of a notice on behalf of the complainant to add additional defendants and without the necessity of amending the complaint.

T.C.A. § 67-5-2405.

Tax Suit

Upon the filing of suits to enforce the tax lien against real or personal property, an additional penalty of ten percent (10%) upon all delinquent taxes shall accrue and the penalty is imposed upon the amount due from any defendant to the county or municipality, which penalty shall be devoted to the expense of prosecuting the suits. The penalty shall be computed on the base amount of delinquent taxes, not including accrued interest. T.C.A. § 67-5-2410(a)(1) and (b)(1).

Any defendant may have the case dismissed as to his or her property upon the payment of the amount of taxes due from the defendant, together with interest and penalty, and such court costs as may have accrued against the defendant in consequence of the filing of the proceedings. T.C.A. § 67-5-2411(a).

Tax Suit

In the event the payment is made by a method such as a check which fails to clear, counterfeit money or other method which results in a failure of the payment, the payment and any receipt issued therefor, shall be void and the proceedings shall be automatically reinstated without further order of a court. T.C.A. § 67-5-2411(a).

NOTE: The court has no authority to order taxes, interest, and other charges to be paid on an installment basis. Op. Tenn. Atty. Gen. 86-130 (July 22, 1986).

Tax Suit

Amounts To Be Recovered – Delinquent property taxes due the county and municipality (if delinquent municipal taxes have been turned over to the trustee), as well as the interest and costs attached to and a part of such property taxes. T.C.A. § 67-5-2405.

Fees and Expenses of Tax Suit - There is no litigation tax in delinquent tax suits. In addition to the 10% penalty for expenses of prosecuting the suit, clerk's and sheriff's statutory fees are added, as are other court ordered clerk's fees for basic services; the sheriff is to receive a $7.50 fee for service of process on each defendant when the sheriff serves the summons. T.C.A. § 67-5-2410(c).

Tax Suit

Fees and Expenses of Tax Suit

If necessary to the prompt dispatch of suits, the court may order paid out of delinquent tax money on hand all reasonable expenses of prosecuting these suits in addition to that otherwise provided. T.C.A. § 67-5-2410(c).

Additional expenses ordered by the court, including but not limited to title examination fees, extra publication costs, survey fees, or other necessary costs, are considered as part of the court costs for purposes of the tax suit. T.C.A. § 67-5-2410(d).

Tax Suit

Credit To Trustee After Suit Filed - After the suit is filed, the trustee submits a list of uncollected taxes to the county legislative body and receives credit for any taxes included in the lawsuit. T.C.A. § 67-5-2407.

7. Tax Sale

After the conclusion of the delinquent tax suit, the county holds a tax sale to sell property in order to collect delinquent taxes.

The court shall order a sale of the parcel for cash, certified funds, cashier's check, money order, or automated clearing house transfer, as applicable. All sales are subject to the equity of redemption. Such sale may be conducted by internet sale in lieu of public outcry. T.C.A. § 67-5-2501(a)(1).

Tax Sale

If no one bids at least the amount of the debt ascertained to be due for taxes, interest, and the costs and fees incident to the collection thereof, the clerk of the court bids in that amount on behalf of the county; provided, that, when the legislative body determines that the environmental risks or financial liabilities associated with the property are such that it is not in the best interests of the county for a minimum bid to be offered at the tax sale, the clerk shall not offer a bid on the property at the tax sale. T.C.A. § 67-5-2501(a)(2).

A court clerk is not authorized to require a deposit as a condition of bidding at a delinquent tax sale. See Op. Tenn. Atty. Gen. 23-008 (May 22, 2023) (The Attorney General opined that there is no statutory requirement that to qualify to bid a potential bidder must make a deposit.).

Tax Sale Proceeds

The tax sale proceeds must be distributed according to the following priorities:

(i) Amounts owing the delinquent tax attorneys prosecuting the cause; then

(ii) The costs of the proceeding exceeding the attorneys' fees; then

(iii) Amounts owing the taxing entities which are parties in the cause; then

(iv) Amounts owing to tax entities filing a claim for current and other delinquent taxes and interest due them as stated in claims filed in response to notices sent them pursuant to T.C.A. §§ 26-5-108 and 67-5-2416 and for which no action has been filed pursuant to this chapter, divided prorated upon the amount of the base taxes due each; then

Tax Sale Proceeds

(v) Any other property taxes and expenses owing any taxing entity secured by a tax lien on the parcel; then

(vi) Any remaining proceeds must be distributed in accordance with T.C.A. § 67-5-2702 (excess sale proceeds).

T.C.A. § 67-5-2501(a)(3)(A)(i)-(vi).

Tax Sale Proceeds

Excess Tax Sale Proceeds – "The surplus of a tax sale remaining after payment of the taxes, interest, and costs belongs to the owner of the property at the time of the sale." 85 C.J.S. Taxation § 817(a) (1954). "The proceeds of a tax sale are applied in the discharge of delinquent taxes against the property for which the land was sold, and of interest, costs, and penalties, in the manner and order directed by statute. Any surplus remaining after the payment of taxes, interest, costs, and penalties must ordinarily be paid over to the landowner." 72 Am.Jur.2d State and Local Taxation § 911 (1974).

AG OP 85–201 (June 24, 1985).

Tax Sale

NOTE

If there are not sufficient funds to pay all of the amounts stated in subdivisions (a)(3)(A)(i)-(iii), the tax liens of the taxing entities securing such amounts must lapse upon expiration of the redemption period, it being the intent of the general assembly that a parcel sold at a tax sale be conveyed free of any remaining tax liens other than taxes levied for the current year. However, a taxing entity retains any personal right of action it may have against prior owners of the parcel.

T.C.A. § 67-5-2501(a)(3)(B).

Tax Sale

If a taxing entity purchases a parcel pursuant to this section, the taxing entity shall pay to the clerk all amounts owing as court costs, including the amount owing the attorney prosecuting the case, within sixty (60) days after the order confirming the sale becomes final.

The taxing entity may by motion request the court for an extension of time in which to pay such amount. The court may grant such extension for such period as the court determines proper not to exceed three (3) years and may award interest to accrue during such extension at a rate determined by the court. In making such determinations, the court shall consider the financial condition of the taxing entity.

T.C.A. § 67-5-2501(a)(4)(A).

COLLECTION OF DELINQUENT PERSONAL PROPERTY TAXES

1. Collection Methods
2. Transfer of Business Liability
3. Security Interest Sales

1. Collection Methods

Delinquent personal property taxes may be immediately collected by:

1. Distraint (distress warrant) and sale of any personal property liable therefor,
2. A suit at law against the taxpayer,
3. Garnishment, and/or by
4. An agent to collect the delinquent tangible personal property taxes, plus interest authorized by law, reasonable costs, and legal fees.

Collection Methods

Distraint (Distress Warrant) - All delinquent personal property taxes, including but not limited to, public utility personal property taxes, may be immediately collected by the trustee, with the assistance of the delinquent tax attorney, if the delinquent tax attorney's assistance is requested by the trustee.

The tax books in the hands of the trustee, sheriff, or the delinquent tax attorney, have the force and effect of a judgment and execution from a court of record. T.C.A. § 67-5-2003(a). The tax books shall be ample authority for the trustee, sheriff, or delinquent tax attorney to distrain and sell a sufficient amount of the personal property to satisfy the delinquent taxes, interest, penalties, costs and attorneys' fees.

T.C.A. § 67-5-2003(a).

Collection Methods - Distraint (Distress Warrant)

NOTE: Leased personal property assessed to a lessee shall not be distrained and sold pursuant to this section.

NOTICE - Prior to distraint (seizure) of any personal property, the trustee or delinquent tax attorney shall give not less than 10 days' written notice of the intended distraint (seizure) by either:

1. Delivering such notice in person;
2. Leaving such notice at the dwelling place or usual place of business of the taxpayer; or
3. By mailing such notice to the taxpayer's last known address.

T.C.A. § 67-5-2003(c).

Collection Methods - Distraint (Distress Warrant)

Ten days' notice of the time and place of any sale of personalty must be given by advertisement posted in three public places in the county, one of which shall be at the courthouse door. In addition, at least ten days' written notice of the sale shall be given to the taxpayer by any of the methods outlined in subsection (c). T.C.A. § 67-5-2003(d).

SHERIFF'S SALE - The official shall in all cases have the personal property present when sold and shall be allowed to retain in addition to the taxes, interest, penalties, costs, and attorney's fees, all commissions, costs and necessary expenses of removing and keeping the property distrained (expenses of seizure, preservation and storage of the property). T.C.A. § 67-5-2003(e).

Collection Methods - Distraint (Distress Warrant)

DELINQUENT TAX ATTORNEY – Pursuant to T.C.A. § 67-5-2003(f), any delinquent tax attorney assisting the trustee shall be allowed attorney's fees, computed as are attorney's fees for collection of real property taxes in T.C.A. § 67-5-2410.

Collection Methods

File A Lawsuit - The trustee may turn over the delinquent personal property tax list 30 days after the taxes become delinquent to the delinquent tax attorney to file suit to collect delinquent personal property taxes:

1. As part of any pending suit to collect real property taxes,
2. As part of a separate mass lawsuit pursuant to the procedures set forth in this chapter, or
3. As a separate lawsuit. This can be done without having first issued a distress warrant.

T.C.A. § 67-5-2003(g)(1).

Collection Methods - File A Lawsuit

In the event the trustee turns over the delinquent list prior to the mailing of the notice pursuant to TCA § 67-5-2402, the trustee shall be required to forward written notice by first class mail to the last known property owner at least 10 days before the delinquent list is turned over to the delinquent tax attorney. T.C.A. § 67-5-2003(g)(2).

If the procedure in this subsection (g) is used, the trustee is also authorized, as with real property tax records, to turn over records to the clerk of court. T.C.A. § 67-5-2003(g)(3).

Collection Methods - File A Lawsuit

A judgment of personal liability for unpaid personal property taxes may be enforced as any other judgment, through:

1. Garnishment,
2. Execution, or
3. Otherwise, and may also be recorded as a lien in one or more offices of registers of deeds.

Any judgment recorded pursuant to this subdivision is subject to the same requirements and attributes of judgment liens, including durability, priority, and renewal, and shall thereafter no longer be subject to the statute of limitation established by this chapter for unpaid property taxes. T.C.A. § 67-5-2003(g)(4).

Collection Methods - File A Lawsuit

However, the interest rate shall continue as established by Title 67, Chapter 5, and upon recording of such judgment, the tax entity shall retain the alternative of enforcing its tax lien against the assessed personal property according to the priority and procedures set forth in Title 67, Chapter 5. T.C.A. § 67-5-2003(g)(4).

Following entry of a personal judgment for delinquent personal property taxes, a tax entity may enter into a written agreement for the payment of such judgment in installments, pursuant to T.C.A. § 26-2-218, on such terms as the tax entity may deem appropriate; provided, that such agreement must provide for payment of all taxes, interest, fees, and costs in full, including any interest that accrue during the term of the installment payments. T.C.A. § 67-5-2003(g)(5).

Collection Methods

Collection By Garnishment - The trustee may proceed against delinquent personal property taxpayers by garnishment proceedings, returnable before any general sessions court in the district where the delinquent taxpayer resides, or to any court, which garnishment shall run in the name of the state for its own behalf and for the use and benefit of the county. T.C.A. § 67-5-2004(a).

Collection Methods

Retention of Collection Agent - The trustee may proceed against a taxpayer who is delinquent in the payment of tangible personal property taxes by retaining an agent to collect the delinquent tangible personal property taxes, plus interest authorized by law, reasonable costs, and legal fees, provided that the collection activities are in compliance with this subsection.
T.C.A. § 67-5-2004(b)(1)(A).

If a collection agent is retained, the trustee must utilize the bidding procedures applicable to the county to select and retain the agent and must notify the county legislative body of such action.
T.C.A. § 67-5-2004(b)(1)(B).

NOTE: CLB permission is not required.

Collection Methods - Retention of Collection Agent

The agent's collection fee shall not exceed 30% of tangible personal property taxes due, and the fee must be added to the total amount of delinquent tangible personal property taxes owed, plus interest authorized by law, reasonable costs, and legal fees.
T.C.A. § 67-5-2004(b)(1)(B).

An agent retained pursuant to this subsection (b) must be licensed and in good standing with the Tennessee Collection Service Board.
T.C.A. § 67-5-2004(b)(1)(E).

Collection Methods - Retention of Collection Agent

All foreclosures, seizures, litigation, or other judicial or non-judicial proceedings to enforce a tax lien or any similar rights to collect delinquent tangible personal property taxes, plus interest authorized by law, reasonable costs, and legal fees, must be in the name of the taxing jurisdiction as the plaintiff or claimant.

T.C.A. § 67-5-2004(b)(1)(F).

2. Transfer of Business Liability

Another effective collection device requires any taxpayer who sells or terminates a business to notify the assessor and trustee and pay all outstanding personal property taxes within fifteen days of the sale or termination.

The buyer must withhold sufficient funds from the purchase price to pay the tax liability, retaining those funds until the seller produces a certificate of compliance from the assessor and receipts from the trustee for the payment of all taxes.

If the buyer does not withhold this amount, the buyer also becomes liable for the unpaid taxes.

Transfer of Business Liability

This provision greatly aids in the collection of personal property taxes, since the buyer who has failed to comply with its requirements can serve as an additional source of funds to satisfy the tax obligation of the seller.

T.C.A. § 67-5-513.

3. Security Interest Sales

If any individual, partnership, joint venture, corporation, or other legal entity owns tangible or intangible personal property, assessable by the county assessor or other authority and then sells the personalty pursuant to the provisions of T.C.A. § 47-9-101 et seq., the party possessing the security interest must withhold from the proceeds of the sale an amount sufficient to satisfy the personal property taxes.

A secured party selling the property who fails to withhold and pay such amount shall be held to be personally liable for such amount to the trustee to which these personal property taxes are due.

T.C.A. § 67-5-2003(h). See also T.C.A. § 67-5-1805(c).

Security Interest Sales

Payment of Delinquent Taxes by PMSI Holder - Sets forth procedure to determine amount of delinquent taxes owing. Limits secured party's liability to four years. Allows a secured party to pay delinquent personal property taxes on repossessed property.

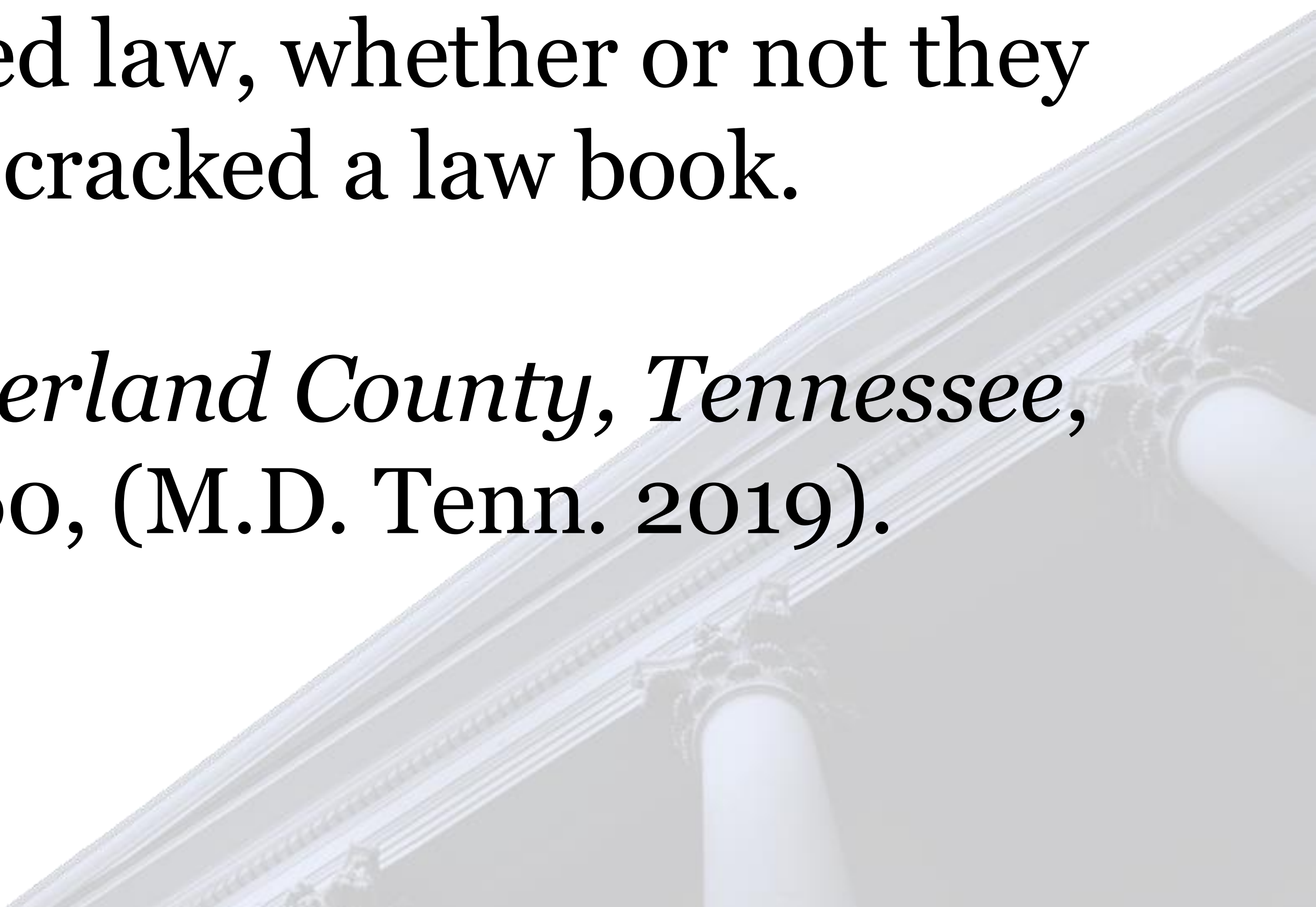
T.C.A. § 67-5-2003(h).

OTHER STUFF

YOU SHOULD 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).



Trustee's Authority

"The rule is that counties have no authority other than that expressly given by statute or that necessarily implied from the provisions of such statute." Bayless v. Knox County, 199 Tenn. 268, 281, 286 S.W.2d 579 (1955).

Thus, a county only possesses the powers granted by the Legislature. Knox County ex rel. Kessel v. Knox County Personnel Board, 753 S.W.2d 357 (Tenn.Ct.App.1988).

Trustee's Authority

Counties are public municipal corporations of limited powers, having no authority other than that expressly given or necessarily implied by statute, and statutes respecting a county's powers are strictly construed.

See Bayless v. Knox County, 199 Tenn. 268, 281, 287-89, 286 S.W.2d 579 (1955); Hagan v. Black, 159 Tenn. 290, 293, 17 S.W.2d 908 (1929); State ex rel. Citizens of Wilson County v. Lebanon & Nashville Turnpike Co., 151 Tenn. 150, 160, 268 S.W. 627 (1924); White's Creek Turnpike Co. v. Davidson County, 82 Tenn. 73, 75 (1884); Weakley County Municipal Electric System v. Vick, 43 Tenn. App. 524, 549, 309 S.W.2d 792 (1957).

Trustee’s Authority

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).

Trustee's Authority

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.).

Duties of the Trustee Upon Leaving Office T.C.A. § 8-11-104 (8) – (11)

Deliver to the trustee's successor all the books and papers of the trustee's office, especially the book in which the warrants payable are listed and numbered.

Make settlement immediately with the county mayor, and pay over the balance found in the trustee's hands to the trustee's successor, taking duplicate receipts.

Duties of the Trustee Upon Leaving Office T.C.A. § 8-11-104 (8) – (11)

Deliver one of the receipts to the county clerk, to be recorded by the county clerk in the revenue docket.

Furnish the county mayor with such papers and vouchers in the county trustee's possession as the county trustee may think necessary for perfecting any settlement with any person who is accountable for county revenue.

FORFEITURE OF RETIREMENT BENEFITS

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

THE END