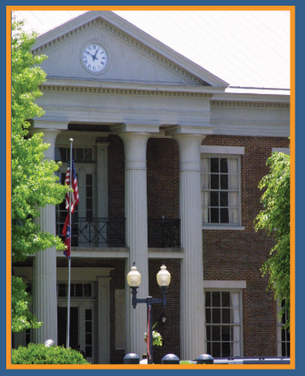
Tennessee County Government Handbook

2010



THE UNIVERSITY of TENNESSEE

COUNTY TECHNICAL ASSISTANCE SERVICE

In cooperation with the Tennessee County Services Association and the County Officials Association of Tennessee

TENNESSEE COUNTY GOVERNMENT HANDBOOK

A General Reference Guide and Summary
of Tennessee and Federal Law Affecting County Governments

County Technical Assistance Service
Institute for Public Service
The University of Tennessee

August 2010

THE UNIVERSITY of TENNESSEE

COUNTY TECHNICAL ASSISTANCE SERVICE

August 2010

Dear County Official:

This *Tennessee County Government Handbook* is intended to be a basic summary of laws affecting county government. We have tried to include sufficient information to make this publication useful and informative, but the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken. Review of the actual laws and/or regulations is especially important because of the frequent changes that occur. This handbook is intended as a general reference guide and not as an authority. Your attorney should be consulted before relying on any statement contained here.

The information included in this publication is general in nature, although references to more detailed information have been included. An important point in searching for a specific reference in the *Tennessee Code Annotated* is that most volumes have a supplement attached in the back of the volume. You should always consult the supplement first so that you will have the latest version of a particular statute. Also, general law statutes that have been very recently enacted may not have been included in the supplements and must be found apart from the *Tennessee Code Annotated* as public Chapters by number for the year in which enacted.

The CTAS staff hopes this manual will be useful to you; reference to it will assist you with most of the questions that will arise in your tenure with county government. However, please feel free to contact us if you have questions or comments regarding this publication.

Sincerely,

Michael R. Garland

Michael R. Garland
Executive Director

BASIC TABLE OF CONTENTS

CHAPTER 1
COUNTY GOVERNMENT UNDER THE TENNESSEE CONSTITUTION 1

CHAPTER 2
COUNTY LEGISLATIVE BODY AND COUNTY MAYOR 4

CHAPTER 3
COUNTY CONSTITUTIONAL OFFICES 16

CHAPTER 4
THE COUNTY DEPARTMENT OF EDUCATION 40

CHAPTER 5
THE COUNTY HIGHWAY DEPARTMENT AND COUNTY ROADS 51

CHAPTER 6
MISCELLANEOUS COUNTY STATUTORY OFFICES AND POSITIONS 66

CHAPTER 7
BOARDS, COMMISSIONS AND COMMITTEES 71

CHAPTER 8
ELECTIONS AND REAPPORTIONMENT 85

CHAPTER 9
VACANCY, REMOVAL FROM OFFICE, ETHICS, AND CONFLICTS OF INTEREST 104

CHAPTER 10
COUNTY CHARTERS, CONSOLIDATED GOVERNMENT CHARTERS, PRIVATE ACTS, AND INTERLOCAL AGREEMENTS 114

CHAPTER 11
SOURCES OF COUNTY REVENUE 120

CHAPTER 12
FINANCIAL STRUCTURE OF COUNTY GOVERNMENT 156

CHAPTER 13
COUNTY FINANCING OF CAPITAL PROJECTS AND DEBT RETIREMENT 172

CHAPTER 14
COURTS 181

CHAPTER 15
PUBLIC SAFETY AND COUNTY CORRECTIONAL FACILITIES 191

CHAPTER 16
SOLID WASTE, ENVIRONMENT AND HEALTH 202

CHAPTER 17
PLANNING, ZONING, AND GROWTH POLICY 219

CHAPTER 18
COUNTY REGULATORY POWERS 233

CHAPTER 19
PERSONNEL MATTERS 240

CHAPTER 20
LIABILITY ASPECTS OF COUNTY GOVERNMENT 258

CHAPTER 21
COUNTY BUILDINGS, PROPERTY AND SPACE ALLOCATIONS 265

CHAPTER 22
COUNTY RECORDS 268

CHAPTER 23
OPEN MEETINGS ACT (SUNSHINE LAW) 274

APPENDIX 279

EXPANDED TABLE OF CONTENTS

CHAPTER 1
COUNTY GOVERNMENT UNDER THE TENNESSEE CONSTITUTION 1
Article VII, Section 1: Elected Officials and Governmental Form 1
Article VII, Section 2: Vacancies In County Offices 2
Article XI, Section 9: Limitation on Power Over Local Affairs 2
Miscellaneous Tennessee Constitutional Provisions Affecting County Government 2

CHAPTER 2
COUNTY LEGISLATIVE BODY AND COUNTY MAYOR 4
Traditional Structure 4
County Legislative Body 4
Nature of the Body 4
Membership, Size and Districts 4
Qualifications 5
Compensation 6
Chair 7
Meetings, Notice Requirements, Filling Vacancies 7
Procedure and Voting Requirements 8
Committees 9
Budgeting and Levying Taxes 10
Private Act Approvals 11
Other Duties 11
County Mayor 12
Qualifications and Title 12
Compensation 13
Relationship to County Legislative Body 13
Fiscal Duties 13
Other Duties 14
Vacancies and Incapacities 15

CHAPTER 3
COUNTY CONSTITUTIONAL OFFICES 16
In General 16
Qualifications 16
Oaths 17
Bonds 17
Compensation 19
Fee System or Salary System 20
Deputies and Assistants 20
Sheriff 21
Qualifications 21
Oath of Office and Bond 22
Compensation 22

Deputies and Assistants 23
Duties..... 24
Relationship to County Legislative Body and Other Officials 24
Vacancies 25
Assessor of Property 25
Qualifications 25
Oath of Office and Bond 25
Compensation..... 26
Deputies and Assistants 26
Duties..... 26
Relationship to County Legislative Body and Other Officials 27
Vacancies 28
County Clerk..... 28
Qualifications 28
Oath of Office and Bond 28
Compensation..... 29
Deputies and Assistants 29
Duties..... 29
Relationship to County Legislative Body and Other Officials 30
Vacancies 31
Register of Deeds..... 31
Qualifications 31
Oath of Office and Bond 31
Compensation..... 31
Deputies and Assistants 32
Duties..... 32
Relationship to County Legislative Body and Other Officials 32
Vacancies 33
County Trustee 33
Qualifications 33
Oath of Office and Bond 33
Compensation..... 35
Deputies and Assistants 35
Duties..... 35
Relationship to County Legislative Body and Other Officials 35
Vacancies 36
Clerks of Court..... 36
Qualifications 37
Oath of Office and Bond 37
Commissioner and Receiver Bond 37
Special Bonds..... 37
Compensation..... 37
Deputies and Assistants 37
Duties..... 38
Relationship to County Legislative Body and Other Officials 39

Vacancies 39
Removal by Judge 39

CHAPTER 4
THE COUNTY DEPARTMENT OF EDUCATION 40
Education Improvement Act and Basic Education Program 40
County Board of Education 41
Meetings County Board of Education 42
Mandatory Duties and Discretionary Powers 42
School Property 44
Donations 44
Student Transfers 44
School Resource Officers 44
State Rules and Regulations 45
Director of Schools 45
County School Budget 46
Maintenance of Effort 47
Fund Balance 47
Continuing Budget 47
State Funds for Education 48
BEP Formula 48
Equalization Formula 48
Required Local Matching Funds 48
Charter Schools 48
Reference Material on County Departments of Education 49

CHAPTER 5
THE COUNTY HIGHWAY DEPARTMENT AND COUNTY ROADS 51
Chief Administrative Officer 51
Qualifications 51
Oath of Office and Bond 52
Salaries and Employees 53
Duties 53
Vacancies 53
County Highway Commissions (Road Boards) 54
Inventory of Machinery and Equipment 54
Purchasing Provisions and Chart of Accounts 54
Prohibited Acts and Penalties 56
Removal From Office and Withholding of State Funds 58
County Roads versus Private Roads 59
County Road List 59
Acceptance and Closing of County Roads 61
Eminent Domain 63
Weight Limits 64
Speed Limits 64
Public Fords, Ferries and Bridges 64

CHAPTER 6

MISCELLANEOUS COUNTY STATUTORY OFFICES AND POSITIONS 66
County Attorney 66
County Medical Examiner 66
County Medical Investigator 67
County Coroner 67
Constable 68
Delinquent Tax Attorney 68
Judicial Commissioner 69
County Surveyor 69
County Fire Marshal 69
Administrator of Elections 70
Finance Director/Director of Accounts and Budgets 70
Financial Structure of County Government 70
Solid Waste Director 70
Building Commissioner 70

CHAPTER 7

BOARDS, COMMISSIONS AND COMMITTEES 71
Introduction 71
Authorities and Corporations 71
Airport Authority Board of Commissioners 71
Emergency Communications District Board of Directors 72
Industrial Development Corporation Board of Directors 72
Public Building Authority Board of Directors 72
Solid Waste Authority 73
Transit Authority Board 73
County Government Administration 73
Adult-Oriented Establishment Board 73
Beer Board 73
County Agricultural Extension Committee 73
County Airport Board 73
County Board of Health 74
County Election Commission 74
County Highway Commission (Road Board or other similar title) 74
County Monument (Veterans Memorial) Commission 74
County Public Records Commission 74
County Government Organization 75
County Consolidation Committee 75
County Charter Commission 75
Metropolitan Government Charter Commission 75
Unification Government Charter Commission 75
Education 75
County Board of Education 75
County Library Board 75

Financial and Tax Administration 76
Audit Committee 76
Auditor Employment Committee 76
Committee for Resale of Land 76
County Board of Equalization 76
County Budget Committee (Budgeting Law of 1957) 77
County Finance Committee 77
County Financial Management Committee (CFMS of 1981) 77
County Insurance Committee 77
County Investment Committee 77
County Investment Committee (CFMS of 1981) 77
County Purchasing Commission (Purchasing Law of 1957) 78
County Revenue Commissioners 78
Law Enforcement and Corrections 78
Board of Jury Commissioners 78
Board of Workhouse Commissioners 78
Community Corrections Advisory Board 79
County Bounty Committee 79
County Sheriff's Civil Service Board 80
Disciplinary Review Board 80
Jail Inspectors 80
Work Release Program Commission 80
Parks, Recreation and Conservation 81
Parks and Recreation Board 81
County Conservation Board 81
Planning, Zoning and Development 81
Airport Zoning Board of Appeals 81
Board of Zoning Appeals 81
Historic Zoning Commission 82
Joint Economic and Community Development Board 82
Regional Planning Commission 82
Solid Waste Management 82
County Board of Sanitation 82
Municipal Solid Waste Regional Board 82
Solid Waste Authority 83
Utilities 83
County Board of Public Utilities 83
Utility District Board of Commissioners 83
Ethics Policies for Utilities 84

CHAPTER 8
ELECTIONS AND REAPPORTIONMENT 85
The County Election Commission 85
Appointment and Removal 85
Qualifications and Disqualifications 85
Oath of Office and Organization 85
Office Hours 85

Meetings 86
Duties 86
Publication of Election Notices 86
Submission of Semiannual Report 86
Promotion of Voter Participation 86
Employment of Administrator of Elections 87
Appointment and Education of Election Officials 87
Compensation and Funding 89
Nominations and Qualifying Deadlines 89
Statewide Organization of Political Parties 89
Nominating Process 90
Nominating Petitions 90
Restrictions on Candidacy 91
Qualifying Deadlines and Procedure 91
Write-In Candidates 92
Tie Votes 92
Procedure for Elections 93
Dates for Regular Elections 93
Special Elections 93
Early Voting Procedures 94
Inactive Voters and Provisional Ballots 94
Referenda 95
National Voter Registration Act 95
Help America Vote Act 96
Campaign Financial Disclosure 96
Campaign Financial Disclosure Act of 1980 96
Reports on Unexpended Balances 97
Contents of Reports 97
Closing Out Accounts and Using Unexpended Funds 97
Enforcement 98
Campaign Contribution Limits 98
Campaign Contribution Limits Act 98
Cash Contributions and Aggregate Contribution Limits 99
Fundraising During General Assembly Session 99
Conflict of Interest Disclosure Statements 100
County Reapportionment 101
Requirements for Reapportionment 101
Reapportionment Process 102
Enforcement 102
School Board and Highway Commission Districts 103
Assistance in Reapportionment 103

CHAPTER 9
VACANCY, REMOVAL FROM OFFICE, ETHICS, AND CONFLICTS OF INTEREST 104
Vacancies in Office 104
Temporary Vacancies 105

Vacancies Due to Military Service 105
Temporary Absence of County Mayor 106
Interim Provisions for Other County Officials 106
Emergency Interim Successors 106
Procedure for Filling Vacancies 107
Election of Successor by the People 107
Removal from Office 108
Ouster 108
Ethics 109
County Ethics Policies 109
Ethics Policies for Utilities 110
Ethics Policies for School Districts 110
Honorariums 110
Consulting Fees 110
Forfeiture of Retirement Benefits 111
Local Government Instances of Fraud Reporting Act 111
Conflicts of Interest 111
Incompatible Offices 113

CHAPTER 10
COUNTY CHARTERS, CONSOLIDATED GOVERNMENT
CHARTERS, PRIVATE ACTS, AND INTERLOCAL AGREEMENTS 114
County Charters 114
City-County Consolidation 115
Metropolitan Government Charters 115
Unification Government Charters 116
Private Acts of the General Assembly 117
Intergovernmental Agreements 118
Interlocal Agreements 118
Mutual Assistance and Mutual Aid Agreements 118
The 2004 Mutual Aid/Emergency/Disaster Assistance Act 119

CHAPTER 11
SOURCES OF COUNTY REVENUE 120
Property Taxes and In Lieu of Tax Payments 120
Property Tax 120
Authority 120
Description 120
Assessment 121
Appraisals 121
Property Tax Freeze Act 122
Property Tax Relief 123
Exemptions 124
Property Tax Rate 124
Certified Tax Rate 124
Administrator 125
Collector 125

Time Payable 126
Partial Payment 126
Discount for Early Payment 126
Commission 126
Interest and Penalties 127
Distribution 127
Collection of Delinquent Taxes 127
Refunds 127
Timetable of Significant Dates and Activities 128
TVA In Lieu of Tax Payments 130
Authority 130
Description 130
Distribution 130
Municipal Electric and Gas System Tax Equivalent Payments 131
Authority 131
Description 131
Distribution 131
Severance Taxes 131
Coal Severance Tax 131
Authority 131
Description 131
Distribution 131
Oil and Gas Severance Tax 132
Authority 132
Description 132
Distribution 132
County Mineral Severance Tax (General Law) 132
Authority 132
Description 132
Distribution 132
County Mineral Severance Tax (Private Act) 132
Sales and Use Taxes 132
State Sales and Use Tax 132
Authority 132
Description 133
Streamlining Sales Tax 133
Distribution 133
Local Option Sales Tax 134
Authority 134
Description 134
Distribution 135
Petroleum Products and Alternative Fuel Taxes 135
Authority 135

Gasoline Tax 135
Description 135
Rate 135
Distribution 136
Diesel Tax 137
Description 137
Rate 137
Distribution 137
Special Privilege Tax on Petroleum Products 137
Description 137
Rate 137
Distribution 137
Liquefied Gas Tax 138
Description 138
Rate 138
Distribution 138
Compressed Natural Gas Tax 139
Description 139
Rate 139
Distribution 139
Highway User Fuel Tax 139
Description 139
Distribution 139
Gasoline Tax for Local Transportation Funding 139
Authority 139
Description 139
Rate 139
Distribution 140
Alocohol and Tobacco Taxes 140
Alcoholic Beverage Tax 140
Authority 140
Description 140
Rate 140
Distribution 140
Mixed Drink Tax (Liquor-by-the-Drink Tax) 140
Authority 140
Description 140
Distribution 141
Beer Tax (Barrels Tax) 141
Authority 141
Description 141
Rate 141
Distribution 142

Wholesale Beer Tax 142
Authority 142
Description 142
Rate 142
Distribution 142
Beer Permit Privilege Tax 143
Authority 143
Description 143
Tobacco Tax 143
Authority 143
Description 143
Motor Vehicle Taxes 143
Motor Vehicle Title and Registration Taxes 143
Authority 143
Description 143
Distribution 144
Mobile Home Registration Fee 144
Authority 144
Description 144
Distribution 144
County Motor Vehicle Privilege Tax (Wheel Tax) 144
Authority 144
Description 144
Distribution 145
Business Taxes 145
Business Tax 145
Authority 145
Description 145
Distribution 145
Excise Tax Applied to Banks 146
Authority 146
Description 146
Distribution 146
Development Taxes and Infrastructure Funding 146
Special Assessments, Impact Fees, and Adequate Facilities Taxes 146
Special Assessments 146
Impact Fees 146
Adequate Facilities Taxes 147
Other Taxes 148
Hall Income Tax 148
Authority 148
Description 148
Distribution 148
Hotel/Motel Tax 148

State Litigation Tax 149
Authority 149
Description 149
Distribution 150
Collection 151
County Litigation Taxes 151
Authority 151
Description 151
Distribution 152
Marriage License Taxes 152
Authority 152
Description 152
Rate 152
Distribution 153
Fees of County Officers 153
Clerks of Court 154
County Clerks 154
Registers 154
Sheriffs 154
Jailers 154
Trustees 154
Accounting for Fees 154

CHAPTER 12
FINANCIAL STRUCTURE OF COUNTY GOVERNMENT 156
Financial Management under the General Law 156
Budgeting 156
Charitable Contributions 157
Accounting 158
Purchasing 158
Education Department Purchasing 158
Highway Department Purchasing 159
General Fund Purchasing 159
County Purchasing Law of 1957 159
County Financial Management System of 1981 159
Other General Law Purchasing Provisions 160
Investment of County Funds 161
Financial Management Under Local Option General Laws 162
Local Option Budgeting Law of 1993 162
County Financial Management System of 1981 163
Fiscal Control Acts of 1957 164
County Budgeting Law of 1957 165
County Fiscal Procedure Law of 1957 165
County Purchasing Law of 1957 166
Financial Management Under Private Acts 167
Financial Management of Fee Offices 167
Local Government Modernization Act of 2005 167

Checks 168
Credit Cards 169
Disposition of Surplus County Property 169
Auditing 170

CHAPTER 13
COUNTY FINANCING OF CAPITAL PROJECTS AND DEBT RETIREMENT 172
Capital Projects 172
Limit on Amount of Outstanding Debt 173
Types of Funding 173
Bonds Issued Under Local Government Public Obligations Act 173
General Obligation Bonds 173
Revenue Bonds 174
Refunding Bonds – General Obligation and Revenue 174
Bond Anticipation Notes 174
Capital Outlay Notes 174
Grant Anticipation Notes 175
Tax (Revenue) Anticipation Notes 175
School Bonds 175
Tennessee Local Development Authority Loans 176
Economic Development Bonds 176
Industrial Development Corporations 177
Industrial Building Bond Act of 1955 178
Industrial Building Revenue Bond Act 178
Other Bonds 178
Special Financing of County Obligations 179
Funding Bonds 179
State Emergency Loans 179
Economic Adjustment Financing 179
Debt Retirement 180
Leases for Capital Improvement Projects 180
Summary 180

CHAPTER 14
COURTS 181
Tennessee Supreme Court 181
Organization 181
Jurisdiction 181
Court of Appeals 181
Organization 181
Jurisdiction 182
Court of Criminal Appeals 182
Organization 182
Jurisdiction 182

Trial Courts 183
Court Clerks 183
Jurisdiction of Circuit Court 184
Jurisdiction of Chancery Court 185
Jurisdiction of Criminal Courts 186
General Sessions and Other Inferior Courts 187
General Sessions Court 187
Jurisdiction of General Sessions Court 188
Juvenile Courts 189
General Sessions Court and Interchange 189
Probate Courts 190
Special Courts 190
Judicial Commissioners 190

CHAPTER 15
PUBLIC SAFETY AND COUNTY CORRECTIONAL FACILITIES 191
County Fire Protection 191
Countywide Fire Departments 191
Volunteer Fire Departments 191
County Fire Marshal 191
Burning Bans 192
Emergency Management (Civil Defense) 192
Emergency Communications Districts 193
County Law Enforcement 194
Newly Elected Sheriff's School 194
In-Service Training 194
Drug Law Enforcement and Drug Abuse Prevention 194
D.U.I. Convicts Performing Litter Removal 196
D.U.I. Forfeitures 196
Fingerprinting 196
Handgun Permits and Firearm Purchases 197
County Correctional Facilities and Prisoner Care 197
Duty to Build and Maintain Jail 197
Location of Jail 197
Replacement of Jail 197
Custody of the Jail 198
Appointment of Jailer 198
Support and Care of Inmates 198
Jail Administrator Statutory Duties 198
Jail Fees 199
Misdemeanant Prisoners 199
Inmate Copay 199
Fees for Issued Items and Special Services 200
Booking Fee 200
Information to At-Risk Employees Regarding Infectious Diseases 201

CHAPTER 16

SOLID WASTE, ENVIRONMENT AND HEALTH 202
Solid Waste Management, Collection, and Disposal 202
Title 5, Chapter 19 202
Title 68, Chapter 211 202
Local Solid Waste Management Planning 202
Startup Procedure 202
Plan Requirements 203
Solid Waste Authority 204
Public Ownership of Solid Waste Facilities 204
Flow Control and Regional Approval Options 204
Sanctions 205
Operational Requirements 205
Minimum Service Levels 205
Problem Wastes 205
Baled Waste and Inspections 206
Education 206
Recycling 206
Reporting Requirements 207
State Revenue, Funding and Grants 207
Local Revenue Sources 207
Tipping Fee 207
Host Fee 208
General Surcharge 208
Disposal Fee 208
Property Tax 208
Service Charge 208
Landfill Approval by County – “Jackson Law” 208
Hazardous Chemical Right-to-Know-Law 209
Purpose and Scope 209
Notice Requirements 209
Labeling Requirements 210
Training Requirements 210
Hazardous Waste and Hazardous Substances 210
Underground Storage Tanks 211
Medical Services 211
County Board of Health 211
County Health Department 212
Community Health Agencies 212
Healthcare Facilities 212
Public School Nurse Program 212
Ambulance and Emergency Medical Services 213
Public Water Supplies and Wastewater Treatment 213
Urban-Type Public Facilities 214
Storm Water Management 214
Phase I 215

Phase II Coverage 215
How to Comply with Phase II 215
Deadlines and Important Dates 216
Authority to Comply and Regulatory Powers 216
Air Pollution Control 217

CHAPTER 17
PLANNING, ZONING, AND GROWTH POLICY 219
Comprehensive Growth Planning 219
1998 Public Chapter 1101 and County Growth Plans 219
Designation of Zones 219
Factors in Determining Zones 219
Extraterritorial Planning Jurisdiction 220
Agreements Regarding Powers 220
Amendment of Growth Plan 220
Joint Economic and Community Development Board 220
Composition 220
Executive Committee 221
Term of Office 221
Meetings 221
Funding 221
Exception 221
Donation of Funds 221
Annexation 221
Annexation after Approval of Growth Plan 221
Annexation Inside the UGB 221
Annexation Outside the UGB 221
Notice of Annexation to County Mayor 222
Annexation Across County Boundaries 222
Distribution of Taxes after Annexation 222
Formula for Distribution 223
Exceptions 223
County Responsibility 223
Incorporation 223
Consolidation of City and County Governments 223
Other Planning Provisions 223
Regional Planning Commission 224
Membership of Planning Commission 224
Duties and Powers of Planning Commission 224
Community Planning 226
County Zoning 226
Zoning Regulation 226
Amendments 227
Board of Zoning Appeals 227
County Building Commissioner 228
Special Zoning Provisions 228
Enforcement and Application 228

Municipal Zoning Outside City Limits 228
Adoption of Building Codes 229
Tennessee Clean Energy Future Act of 2009 230
Industrial and Economic Development 232
Industrial Development Corporations 232
Tennessee Regional Megasite Authority Act of 2007 232

CHAPTER 18
COUNTY REGULATORY POWERS 233
Powers to Prevent and Abate Nuisances 233
Limitations on the Exercise of Regulatory Authority 233
Local Adoption 233
Jurisdiction 233
Exempted Activities 233
Grandfathered Uses 234
Constitutional Limitations 234
Enforcement 234
Cable TV Regulation 235
Debris Removal and Weed Control 236
Regulation of Adult-Oriented Entertainment and Massage 237
Animal Control 237
Regulation of Beer Sales 238
Contractor Permits and Bonds 239
Guns in Parks 239

CHAPTER 19
PERSONNEL MATTERS 240
Personnel Management in Counties 240
Required Personnel Policies 240
Deputies and Assistants 241
Courthouse Hours and Office Space 243
Residence 243
Voting Leave 243
Jury Duty 243
Parental Leave for Birth and Adoption 244
Military Leave 245
The Fair Labor Standards Act 246
Exemptions 246
Compensable Hours 247
Minimum Wage 247
Overtime 247
Compensatory (Comp) Time 248
Recordkeeping Requirements 248
Enforcement and Penalties 248
Equal Pay Provisions 249
Family and Medical Leave Act 249
Americans with Disabilities Act 250

Equal Employment Opportunity 251
Miscellaneous Personnel Matters 251
Insurance 251
Continuation of Insurance Coverage - COBRA 252
Immigration Records 252
Drug and Alcohol Testing 253
Workers' Compensation 253
Unemployment Compensation 254
Termination Pay 255
Retirement 255
Expense Accounts 256
Automobiles 256
Wage Assignments and Garnishments 256
FIT, FICA Withholding, and Miscellaneous Reporting Matters 257
Commercial Driver Licenses 257

CHAPTER 20
LIABILITY ASPECTS OF COUNTY GOVERNMENT 258
Tennessee Governmental Tort Liability Act 258
Liability for Personnel Matters 263
Other Non-Tort Liability 264
Breach of Contract 264
Other Actions 264

CHAPTER 21
COUNTY BUILDINGS, PROPERTY AND SPACE ALLOCATIONS 265
County Buildings 265
Non-Smoker Protection Act 265
Allocation of Courthouse Space 265
Purchase, Sale, and Lease of County Property 265
Libraries 266
Abandoned Personal Property 266

CHAPTER 22
COUNTY RECORDS 268
Open Records Requirement 268
Storage and Disposition of County Records 269
County Public Records Commission 269
Computer Records Storage Requirements 270
Remote Electronic Access to County Records 270
Uniform Electronic Transactions Act 271
Geographic Information Systems Records 272

CHAPTER 23

OPEN MEETINGS ACT (SUNSHINE LAW) 274
Requirements of the Act 274
Meetings Declared Public 274
Adequate Public Notice 276
Minutes of Meetings 277
Limited Exception for Attorney-Client Discussions 277
Electronic Communications Exception 278
Penalties and Remedies for Noncompliance 278

APPENDIX

COUNTY OFFICIALS' EMPLOYEES' MINIMUM BOND 280
OATHS OF OFFICE 282
USING THE TENNESSEE CODE ANNOTATED 286
NUMBER OF VOTES REQUIRED FOR A MAJORITY OF THE COUNTY LEGISLATIVE BODY 288
SAMPLE RULES OF PROCEDURE FOR THE COUNTY LEGISLATIVE BODY 289
SAMPLE RESOLUTION 296
SAMPLE PRIVATE ACT 297
LETTER OF AGREEMENT 301
COUNTY BUDGET LAWS 303
TABLE OF PURCHASING LAWS 304

CHAPTER 1

COUNTY GOVERNMENT UNDER THE TENNESSEE CONSTITUTION

Under the Tennessee Constitution, counties are an extension of the state and are deemed political subdivisions of the state created in the exercise of its sovereign power to carry out the policy of the state. Counties, as the creation of the state, are subject to control by Tennessee's legislature, known as the General Assembly. Although the General Assembly has very broad powers to deal with county government, the state's constitution places some limitation on its discretion regarding counties.

A long line of Tennessee Supreme Court case law has held that counties have no authority except that expressly given them by statute or necessarily implied from it. *Bayless v. Knox County*, 286 S.W.2d 579 (Tenn. 1955). Although statutes are the primary source of county authority, the Tennessee Constitution does contain a few provisions specifically addressed to county government.

Article VII, Section 1: Elected Officials and Governmental Form

Several amendments to the Tennessee Constitution were approved in 1978; among them was an amendment restructuring the basic framework of county government. Article VII, Section 1 of the Tennessee Constitution now provides counties with the following constitutional officers: county executive, sheriff, trustee, register, county clerk, and assessor of property. This Section also requires the election of a legislative body of not more than 25 members, with no more than three members to be elected from a single district. The General Assembly sets the qualifications and duties of these offices. However, a county with a consolidated form of government (merger of the county and at least one municipality) is not required to have a county executive or legislative body as are the other counties. The General Assembly has given the Title "county mayor" to all county executives not in a county with a consolidated city/county government, but the Title may be changed to "county executive" by a private act for the particular county. T.C.A. § 5-6-101. This law was amended in 2007 to remove the authority of county governments to re-designate county mayors as county executives by private act, but private acts enacted prior to the 2007 amendment remain in effect. T.C.A. § 5-6-101.

The General Assembly has given the Title "county commissioner" to all county legislative body members not in a county with a consolidated city/county government. T.C.A. § 5- 5-102(f).

Before the 1978 constitutional changes, county government had been difficult to divide into executive, legislative, and judicial branches. With the creation of the office of county executive and of the county legislative body, along with several judicial interpretations of the powers and duties of each, county government is now more clearly divided into three branches, even though the county executive must share executive powers with other constitutional officers. The legislature is afforded wide latitude in determining the duties that may be assigned to the various constitutional officers. *Metropolitan Government v. Poe*, 383 S.W.2d 265 (Tenn. 1964).

Article VII, Section 1, also provides that the General Assembly "may provide alternate forms of county governments including the right to charter and the manner by which a referendum may be called." The Tennessee Supreme Court has stated that when the General Assembly authorizes any deviation from the government provided for in this article, such action must be ratified by the people in a referendum called for that purpose. *State ex rel. Maner v. Leach*, 588 S.W.2d 534 (Tenn. 1979). Other than the county charter (T.C.A. §§ 5-1-201 through 5-1-214), no additional alternatives are now offered by the General Assembly except for the metropolitan and unification forms of government, discussed below, which were provided for in an earlier constitutional amendment and implementing legislation. Tenn. Const., art. XI, § 9; T.C.A. §§ 7-1-101 through 7-3-313, 7-21-101 through 7-21-408.

Article VII, Section 2: Vacancies In County Offices

Vacancies in county offices are to be filled by the county legislative body, and any person so appointed serves until a successor is elected at the next election after the vacancy. The Tennessee Supreme Court has determined that the term "next election" means the next general election or other countywide election in the county. McPherson *v. Everett*, 594 S.W.2d 677 (Tenn. 1980).

Article XI, Section 9: Limitation on Power Over Local Affairs

The General Assembly has no power to pass a special, local, or private act that would remove an incumbent from any municipal or county office, change the term of office, or alter the salary of the office until the end of the current term.

Any act of the General Assembly that is private or local in form or effect, applicable to a particular county, must require within the terms of the act either approval by a two-thirds vote of the county legislative body or approval by the people of the county in a referendum.

Article XI, Section 9, also provides for optional consolidation of municipal and county government. Such a consolidation must be approved by vote of those residents within the municipality as well as those who reside in the county outside the municipal corporation to be consolidated with the county government.

Miscellaneous Tennessee Constitutional Provisions Affecting County Government

Article II, Section 24, of the Tennessee Constitution, in a portion relevant to counties, states that "no law of general application shall impose increased expenditure requirements on cities and counties unless the General Assembly shall provide that the state share in the cost." Article II, Section 28, of the Tennessee Constitution deals with property taxation and other tax matters. It also states that each respective taxing authority shall apply the same tax rate to all property within its jurisdiction. However, the Supreme Court has found that the General Assembly may authorize counties to levy a different property tax rate on property within and without municipalities for school bonds, county road purposes, and perhaps other services as well. *Albert v. Williamson County*,

798 S.W.2d 758 (Tenn. 1990); Op. Tenn. Att'y Gen. 92-29 (April 7, 1992). Also, so-called "double taxation," levied by a county and city to fund similar services if statutorily authorized, is not unconstitutional. *Oliver v. King*, 612 S.W.2d 152 (Tenn. 1981); Op. Tenn. Att'y Gen. U95-96 (Dec. 22, 1995).

Article II, Section 29, grants the General Assembly the authority to authorize counties and municipalities to impose taxes for county or municipal purposes, in such a manner as is prescribed by law. This Section also states that the credit of a county or municipality may not be given or lent to or in aid of any person, company, association or corporation, except upon an election wherein a three-fourths majority of the voters cast ballots in favor of such an extension of credit.

Article VI, Section 13, provides for the appointment of clerks and masters by chancellors for terms of six years, and for the popular election of clerks of inferior courts, by county or district, for terms of four years. The circuit court clerk is the prime example of a popularly elected inferior court clerk.

Article X, Section 1, requires that every person chosen or appointed to any office of trust or profit under the constitution or any statute must take an oath to support the constitution of this state and of the United States, as well as an oath of office before entering on the duties of the office.

Article X, Section 3, prohibits any official or candidate from accepting any type gift or reward which might be considered a bribe. The Section also provides that any person who directly or indirectly promises or bestows any such gift or reward in order to be elected is punishable as provided by law.

Article X, Section 4, provides the method by which new counties may be established. This Section also restricts the General Assembly in consolidating counties by stating that the seat of justice may not be removed without approval by two-thirds of the voters of the county being abolished (*James County v. Hamilton County*, 89 Tenn. 237, 14 S.W. 601 (1890)), but this limitation does not apply to Obion and Cocke counties. This Section is complicated and limits the discretion of the General Assembly in dealing with the boundaries or existence of certain specified counties (which are often referred to as "constitutional" counties).

Article XI, Section 8, provides that the General Assembly cannot suspend the general law for the benefit of any individual or individuals. This provision has been interpreted by the courts to mean that the General Assembly cannot pass private or local legislation applicable to a single county or counties that contravenes a general law of mandatory statewide application, unless a reasonable basis for the discrimination can be found. *See, e.g., Knox County Educ. Ass'n v. Knox County Bd. of Educ*., 60 S.W.3d 65 (Tenn. Ct. App. 2001).

Article XI, Section 17, provides that no county office created by the legislature shall be filled in any manner other than by vote of the people or by appointment of the county legislative body.

CHAPTER 2

COUNTY LEGISLATIVE BODY AND COUNTY MAYOR

Traditional Structure

The most basic and widely used form of county government in Tennessee is one with a popularly elected county executive, entitled county mayor (T.C.A. § 5-6-101), who is the administrative head of the county, and a popularly elected county legislative body, which the General Assembly has formally entitled board of county commissioners and which is commonly referred to as the county commission. Members are generally referred to as county commissioners. T.C.A. § 5-5-102(f). This is the constitutionally required form of county government unless a county has followed the provisions provided by the Tennessee Constitution and implemented by statute a consolidated form of government with one or more of the county's municipalities, or an alternate form of government. Of course a consolidated government will have a legislative body of some type, but the size limitation of 25 does not apply. TENN. CONST., art. VII, § 1.

County Legislative Body

Nature of the Body. The county legislative body may exercise the powers of a legislative nature granted to it by the General Assembly in public acts (laws of general application or local option application, which may be found in codified form in the *Tennessee Code Annotated*) or in private acts that apply to a particular county (that do not conflict with the general law). The General Assembly has given the county legislative body a considerable array of powers, including the power to levy property taxes without limitation regarding rates, the power to expend funds for any lawful purpose, zoning powers for the unincorporated areas of the county and some regulatory powers, yet the General Assembly has not seen fit to grant to the county legislative body all of the powers that have been granted to Tennessee's incorporated municipalities (cities and towns). Therefore, counties must always look for the source of authority for any action taken, as counties have no authority to act outside the scope of the powers granted by the General Assembly.

Membership, Size and Districts. Except in counties with a consolidated city-county (metropolitan or unification) form of government, the county legislative body is made up of not less than nine nor more than 25 members, elected from districts. No more than three members may be elected from any one district. T.C.A. § 5-5-102. Districts must be reapportioned at least every 10 years, and commissioners must represent substantially equal populations based on the latest federal census. T.C.A. § 5-1-111. Members are elected by the voters in their district for four-year terms and until their successors are elected and qualified. T.C.A. § 5-5-102. The county legislative body determines by resolution whether members in multimember districts are elected at large within the district with the two or three persons receiving the greatest number of votes being elected, or whether candidates must run for designated seats, usually designated A and B, also C in three-member districts. T.C.A. § 5-5-102(h). Members are elected in the

August general elections coinciding with the election of the governor and take office the following September 1 after being qualified to hold office.

Qualifications. There are no extraordinary qualifications to hold the office of county commissioner. However, a person must comply with the general requirements for holding office in this state. All persons 18 years old and over, who are citizens of the United States and of Tennessee, and who meet certain residency requirements are qualified to hold office unless the person:

1. Has been convicted of offering or giving a bribe, of larceny, or of any other offense declared infamous by law, unless the person has been restored to citizenship as prescribed by law;

2. Has been convicted of a state or federal felony related to public service, even if citizenship status is later restored;

3. Has not paid a judgment for money received in an official capacity, which is due to the United States, Tennessee, or any county;

4. Has defaulted to the treasury at the time of election (in which case the election is void);

5. Is a soldier, seaman, marine, or airman in the regular United States Army, Navy or Air Force; or

6. Is a member of Congress or holds any office of profit or trust under any foreign power, other state of the Union, or the United States. T.C.A. §§ 8-18-101, 40-20-114.

County commissioners must reside within and be qualified voters of the district they represent. T.C.A. § 5-5-102. County employees otherwise qualified to serve may hold office as a legislative body member, except that a director of schools who was not a member of the county legislative body on June 18, 2005, is not qualified. T.C.A. § 5-5-102. However, no person elected or appointed as county mayor, sheriff, trustee, register, county clerk, assessor of property, or any other countywide office filled by popular vote or by the legislative body may be elected to the legislative body. T.C.A. § 5-5-102. Additionally, a member of a county legislative body shall resign their seat on such body if they accept an appointment for a vacancy required by the Tennessee Constitution to be filled by the county legislative body. T.C.A. § 5-5-111.

After receiving a certificate of election from the county election commission, a person elected as a county commissioner must take two oaths prior to taking office: the constitutional oath and the oath of office (otherwise known as the fidelity oath). An example of the constitutional oath combined with the statutory oath of office for the county commissioner may be found in the appendix to this handbook.

Oaths of office for county officials, including county commissioners, may be administered by the county mayor, the county clerk, or a judge of any court of record in

the county. Also, the current or a retired judge of the general sessions court may administer oaths of office to all elected and appointed officials. The oath of office for any county official required to file an oath may be administered at any time after the certification of the election returns in the case of elected officials, or after appointment in the case of appointed officials. However, even if the official files an oath before the scheduled start of a term of office, the official may not take office until the term officially begins. T.C.A. § 8-18-109. The oath must be written and subscribed by the person taking it. Accompanying the oath must be a certificate executed by the officer administering the oath, specifying the day and the year it was taken. T.C.A. § 8-18-107. The oath and the certificate are filed in the office of the county clerk, who endorses on them the day and year of filing, and signs the endorsement. T.C.A. §§ 8-18-109, 8-18-110.

Compensation. The compensation of legislative body members is fixed by resolution of the body, although the General Assembly establishes the minimum compensation in certain classes of counties. T.C.A. § 5-5-107. Currently, the legislative body may not set the compensation of its members at less than the following daily amounts in these classes (by population) of counties:

Third class (50,000-150,000)	$35	Sixth class (5,500-12,000)	$20
Fourth class (23,300-50,000)	$30	Seventh class (3,770-5,500)	$20
Fifth class (12,000-23,300)	$25	Eighth class (under 3,770)	$20

These county classes are set by population and are delineated in T.C.A. § 8-24-101. The amount provided above, or a greater amount provided by resolution duly adopted by the legislative body, must be paid to the members for each day's attendance at meetings of the county commission; however, a greater amount may be provided by resolution adopted by the legislative body as a stated salary per month. The compensation fixed by the legislative body for attending authorized committee meetings is one-half the daily compensation paid for attending regular sessions when the compensation is based upon attendance at meetings. T.C.A. § 5-5-107.

Special provisions exist for the state's largest counties: Members of legislative bodies in counties with a population of 100,000 to 600,000 according to the 1970 federal census must receive at least $25,000 per year. T.C.A. § 8-24-115. In Hamilton County, the legislative body was statutorily required to set the compensation of its members by a two-thirds vote effective July 1, 1999; each year on July 1 the compensation is adjusted to reflect the same percentage increase received by the county mayor for that year. T.C.A. § 5-5-107.

The compensation of the chair and chair pro tempore is fixed by the county legislative body but if on a per diem basis cannot be less than the amount fixed for members. The compensation of the chair pro tempore cannot exceed the compensation of the chair for like services. T.C.A. § 5-5-103(e).

Chair. In counties other than those with a consolidated form of government or county charter, the county legislative body elects a chair and a chair pro tempore at its first session on or after September 1 of each year. The county legislative body may elect one of its own members as chair, or it may elect the county mayor; however, the county mayor is not required to take the office and may decline. If the county mayor is elected as chair and accepts the office, then the county mayor relinquishes the power to veto legislative resolutions of the county legislative body. T.C.A. § 5-5-103. A county mayor who assumes the chair may vote to break tie votes of the county legislative body, but otherwise does not vote. T.C.A. § 5-5-109(b). Alternatively, the legislative body may elect one of its own members as chair, in which case the member who is also chair may vote on all issues as a regular member of the body, but may not vote again to break a tie vote. T.C.A. § 5-5-109.

When the regular chair is unable or fails to attend meetings of the county legislative body, the chair is under a duty to notify the chair pro tempore who shall attend and discharge the duties of the chair. If neither is present, the county clerk will call the meeting to order for the election of one of the members to temporarily preside over the meeting. T.C.A. § 5-5-103.

The chair may designate another member of the county legislative body to sit in the chair's place on any board, authority or commission that the chair serves upon by virtue of holding the office of chair. Any such designee may vote or exercise any power the chair could exercise had the chair been in attendance.

Meetings, Notice Requirements, Filling Vacancies. The county legislative body is required by law to meet at least four times annually at a time and place established by resolution of the county legislative body. All meetings must be public and no secret votes may be taken. T.C.A. § 5-5-104. A limited exception to the open meeting rule is provided by case law due to the judicial doctrine of attorney-client privilege; the county legislative body may meet in closed session with the county attorney or other attorney representing the county to discuss with the attorney pending litigation involving the county, but no discussions among members of the body as to the action to be taken or votes or decisions may be made in secret, nor other matters discussed.

The Open Meetings Law (discussed in Chapter 23 of this handbook) requires adequate public notice of regular meetings as well as special meetings. T.C.A. § 8-44-103.

The meetings of the county commission are presided over by a chairperson or the chairperson pro tempore if the chair is not in attendance. T.C.A. § 5-5-103. If the chairperson fails or is unable to attend the meeting, the chairperson pro tempore will discharge the chairperson's duties.

A majority of the membership of the entire county legislative body constitutes a quorum for transaction of business, including election of officials or confirmation of appointees, fixing salaries, appropriating money, and any other business coming before the body. A majority of the full actual membership, not merely a majority of the quorum, is required to pass almost all measures. A vacancy on the county legislative body will lower the

number to determine a majority, but a mere absence will not. T.C.A. §§ 5-5-108, 5-5-109. (See the appendix for a full discussion and table of votes required for a majority.) Also, a county commissioner who abstains from voting for cause due to a conflict of interest on any issue coming before the county commission will not be counted for the purpose of determining a majority vote. T.C.A. § 5-5-102(c)(4)(B).

In counties not operating pursuant to a consolidated government charter or county charter, special meetings of the county legislative body may be called by the county mayor. Also, the chair of the county legislative body may call a special meeting upon application in writing by a majority of the county commissioners. The call for a special meeting must be made by publication in some newspaper published in the county, or by personal notices to the members sent by the county clerk at least five days before the time of convening the special meeting. The call must specify the objects and purposes for which the special meeting is called, and no business not referenced in the call can be transacted at the special meeting. T.C.A. § 5-5-105. This notice is for the purpose of informing the county commissioners and is in addition to the notice to the public required by the Open Meetings Law. However, one notice in a newspaper of general circulation in the county appearing five or more days before the special meeting may serve to meet both requirements.

Also, should any offices need to be filled, or a vacancy occur in any office required to be filled by the county legislative body, the county clerk, or if there is no county clerk, the county clerk's deputy, or if there is no county clerk or deputy county clerk, the acting chair of the county legislative body, is obligated to give 10 days notice to every member of the county legislative body to assemble at the courthouse in order to fill the office or vacancy. T.C.A. § 5-5-113. This notice to inform county commissioners for the purpose of filling an office or vacancy may be for a special meeting or for action to fill an office to be held in conjunction with a regular meeting. When a meeting is to be held to fill an office or vacancy, the chair of the county legislative body is required to give public notice in a newspaper of general circulation in the county at least one week before the meeting, specifying the offices to be filled at that meeting. T.C.A. § 5-5-114.

Procedure and Voting Requirements. As noted earlier, for most business before the county legislative body, a majority of the actual membership and not merely a majority of the quorum is required for passage of a resolution or main motion. However, there are certain optional general laws that require a two-thirds majority for adoption locally, and when a private act calls for local approval by the county legislative body for its effectiveness this also requires a two-thirds vote. The appendix to this handbook provides an outline of the procedure for adopting a resolution of the county legislative body and a chart for the number of votes required for a regular majority or a two-thirds majority.

The county legislative body is usually required to follow procedures mandated by state law, but often the state law is silent on the procedures to be followed. Therefore, it is important for county legislative bodies to adopt rules of procedure to follow when the state law does not provide guidance. A set of sample rules may be found in the appendix to this handbook. These are basic rules and it is suggested, as the sample

does in Rule 11, to adopt a provision that all matters not covered by state law or the adopted rules be governed by Robert's Rules of Order Revised as contained in the latest copyrighted edition.

When electing county officers or filling vacancies in offices required to be filled by the county legislative body, after giving the notices discussed above, the county legislative body will meet to make the election or fill the vacancy. At such a meeting, the chair will announce the office to be filled and ask the members of the public in attendance if anyone is offering himself or herself as a candidate. T.C.A. § 5-5-115. Some counties have adopted local procedures to determine interested candidates prior to the meeting. This is an informational stage of the proceeding and does not necessarily make any candidate a nominee. It is important that the county legislative body establish rules of procedure to deal with the manner of voting and the paring of nominees when no one person receives a majority vote. The state law requires that the voting by the county commissioners be public; secret ballots are prohibited. The county clerk records the vote of each member and gives the result to the chair. Although T.C.A. § 5-5-116 appears to call for a method of voting whereby each member votes aye or nay for each nominee as the name is given, this method has been held to be merely directory by Tennessee Supreme Court. *State ex rel. Wolfe v. Henegar*, 180 Tenn. 425, 175 S.W.2d 553 (1943). Therefore, a county legislative body is not required to follow this method and may use the more common method of the clerk calling the county commissioner's name and the county commissioner then by voice vote tells the clerk and chair the name of the person that is receiving the commissioner's vote. Whatever method is used, an office is not filled until someone receives a majority vote of the actual membership.

Committees. There are many committees, boards and commissions in county government. The laws that apply can be very confusing. It is important to distinguish between internal committees of the county legislative body and committees or boards established or made optional by general law or private acts. Internal committees of the county legislative body have no statutory requirements associated with them, they can be created or not according to the will of the county legislative body, they have no independent power to act and may only make recommendations to the full county legislative body. Therefore, the number, title, composition, method of appointment and other matters pertaining to these committees are determined by resolution of the county legislative body, either directly or through the adopted rules of procedure. *See* e.g., Op. Tenn. Att'y Gen. U91-48 (March 25, 1991). These internal committees may vary greatly from county to county and may change easily within a county. They exist simply to provide advice to the full county legislative body.

On the other hand, a county may have many boards and committees that have their basis in either general state law or private acts. These statutory boards and committees have to be dealt with according to the terms of the laws that created them or authorized their creation. These boards and committees may exercise the powers granted to them by law, but no other powers may be exercised. Some statutory boards or committees may exercise some limited powers directly, and in other matters they may merely make recommendations as would an internal study committee. This handbook will discuss several of the most important statutory boards and committees authorized by general

law according to the subject matter of the chapter. The nature and authority of any particular committee or board in a county must be examined individually on a county-by-county and committee-by-committee basis.

Budgeting and Levying Taxes. The county legislative body assembled in session is authorized to act for the county. T.C.A. § 5-1-103. All funds to be used in the operation of the county must be appropriated for that use by the county legislative body, which can appropriate money only for expenditures sanctioned by state law. T.C.A. § 5-9-401. The county legislative body may appropriate funds for any lawful purpose. T.C.A. § 5-5-118 (incorporating certain municipal powers in T.C.A. § 6-2-201). It is the duty of the county legislative body to adopt a budget and to appropriate funds for the ensuing fiscal year for all county departments and agencies. T.C.A. § 5-9-404. The county mayor who does not chair the county legislative body may veto the entire county budget but may not veto portions of it. T.C.A. § 5-6-107.

A county usually adopts a budget annually, but a county legislative body may prepare and adopt a biennial budget for such departments of the county as are authorized for the particular county by the comptroller of the treasury's state director of local finance. However, such biennial budgets may not be used until changes are made to existing county law in county charters, private acts or resolutions that require annual budgets. T.C.A. § 4-3-305.

The budget adopted by the county legislative body must be balanced, meaning that estimated revenues must at least equal the amounts appropriated plus any reserves required by state law. The county legislative body must levy taxes sufficient to meet appropriations (with other revenues such as state shared taxes included in the determination) and to meet all debt retirement and interest obligations. T.C.A. § 9-11-115. The county budget must meet all state law requirements. The failure to meet these requirements can cause the loss or withholding of state shared funds, such as education funds. Besides the requirements of balance and meeting debt obligations, the budget must also meet several other requirements such as the maintenance of effort requirement for education funding, the five-year average requirement for highway funding, the requirement not to lower the funds available to the sheriff for personnel costs without the consent of the sheriff, the mandatory minimum salaries of county officials, any court decrees providing the number and salaries of deputies and assistants of county officials, the requirement to have adequate correctional facilities (alone or in conjunction with one or more other counties) and any other mandates that state law places on the county. Many of these mandates will be discussed in this handbook in the Chapter dealing with the particular subject matter.

The county property tax is the only significant source of revenue that the county legislative body can levy without limitation as to rate and without being subject to referendum (directly or if an adequate petition is filed) or requiring the passage of a private act. The sources of county revenue are discussed in Chapter 10 of this handbook and more detailed information can be found in the *County Revenue Manual*, a CTAS publication that can be found at the CTAS Web site (www.ctas.utk.edu).

Private Act Approvals. Private acts of the General Assembly are a source of authority for counties in areas not covered by the general law. Examples of private acts include those levying hotel/motel taxes and development taxes as there is no general law authority for counties to levy these particular taxes. Under Article XI, Section 9, of the Tennessee Constitution, private acts are not effective until approved locally by the county (or city) to which they apply by the terms of the private act. Local approval of a private act for a particular county can occur by a majority vote in a referendum by the qualified voters of the county who vote in the referendum, or by a two-thirds majority vote of the county legislative body. The method of local approval must be specified in the private act. Sometimes private acts provide that they must be approved by a certain date or they will not become effective. However, if there is not a deadline for local approval in the private act, general law requires that approval take place by December 1 in the year that the private act passed the General Assembly. The approval or rejection of a private act that requires approval by two-thirds vote of the county legislative body is certified by the chair of the county legislative body to the secretary of state of Tennessee.

The county legislative body may request by resolution that members of the General Assembly representing the people of the county introduce and work for the passage of a particular private act. Such a resolution has no legal effect, but members of the General Assembly prefer to see such a resolution, particularly if passed by the number of votes that will be necessary to approve the private act, before they introduce the private act bill. However, members of the General Assembly are under no legal obligation to introduce the requested private act bill. Further, although this rarely occurs, they may introduce and work for the passage of a private act bill that provides for referendum approval against the wishes of the county legislative body.

Other Duties. The county legislative body has important duties that are dealt with in other Chapters of this handbook. For example, the county legislative body has duties with respect to the acceptance of county roads, the annual updating and approval of the county road list, and the closing of roads not deemed worthy of inclusion on the county road list. Chapter 5 of this handbook provides a more detailed discussion of these road-related duties. The county legislative body may adopt optional general laws in the areas of financial management, budgeting and purchasing. These matters are discussed in Chapter 12. The county legislative body has important duties with respect to approving the issuance of county debt instruments such as bonds and notes. These matters are discussed in some detail in Chapter 13. The county legislative body has a duty to provide courthouse space for the state courts and jail facilities (alone or in conjunction with one or more counties) as well as for certain county officials. These issues are addressed in Chapters 14, 15, and 21. The county legislative body may adopt comprehensive zoning for the area of the county outside the corporate limits of the municipalities. Planning and zoning issues are discussed in Chapter 17. The county legislative body has a duty to have a countywide personnel policy (although several offices may have their own policy separate from the general county policy). The county legislative body may provide medical and life insurance benefits to county employees and county officials through insurance or self-insurance. These matters are discussed in Chapter 19. The county legislative body has the authority to regulate dogs, cats and

stray animals. The county legislative body may, by two-thirds vote of the county legislative body, adopt regulations to prevent public nuisances. Also, the county legislative body may determine whether or not to adopt a distance rule regarding the sale of beer at retail. These regulatory matters are discussed in Chapter 18. The county legislative body must determine how to deal with its liability risks through either insurance, self-insurance, or joint self-insurance through an insurance pool. These matters are reviewed in Chapter 20. Many of the records of the county are very valuable and the county legislative body has an important role with the county public records commission and other county officials to preserve records of permanent value and to manage the county's records efficiently. Chapter 22 deals with county records.

The county legislative body has a role in either electing or approving the appointment of many county officials and department heads. Some of these are detailed in Chapter 6. Also, the county legislative body may decide to limit the duties of constables to process serving and take away law enforcement powers, or to abolish the office at the end of the terms of the incumbent constables. The procedure for doing this is detailed in Chapter 6.

County Mayor

Qualifications and Title. The office of county executive was created by the 1978 amendment to Article 7, Section 1, of the Tennessee Constitution, when county executive was added to the list of county officials named in the Tennessee Constitution. The list also includes the sheriff, trustee, register, county clerk, assessor of property and members of the county legislative body. In the implementing legislation, the General Assembly chose to designate members of the county legislative body as county commissioners, but left the county executive with the Title given in the constitution with the option of establishing a different Title by private act. This law was changed in 2003 to provide that the chief executive officer of each county, excepting counties with a consolidated (metropolitan) form of government, would hereafter be entitled "county mayor." This law was amended in 2004 to authorize the Title to be changed to "county executive" by private act for the particular county. This law was once again amended in 2007 to remove the authority to re-designate county mayors as county executives by private act, but private acts enacted prior to the 2007 amendment remain in effect. T.C.A. § 5-6-101. The chief executive officers of metropolitan governments continue to use the Title provided for them by their metropolitan government charter.

The county mayor is elected by the people of the county for a term of four years in all counties except those that provide otherwise in a consolidated government charter. T.C.A. § 5-6-102. In order to run for the office a person must be a qualified voter of the county, at least 25 years old, and a resident of the county for at least one full year prior to filing a nominating petition for the office. T.C.A. § 5-6-104. After election, the county mayor must take an oath of office and execute a bond in the amount of $25,000 (in counties with a population of less than 15,000) or $50,000 (in counties with a population of 15,000 or more), although the county legislative body may require a greater amount. T.C.A. § 5-6-109. A sample oath of office is found in the appendix to this handbook.

Compensation. The position is full time, except in counties where the voters have determined by referendum that the workload does not necessitate a full-time mayor. If the county mayor's office is determined by referendum not to be a full-time position, this must be done prior to the election of the county mayor or the county mayor will be entitled to the minimum salary. T.C.A. §§ 5-6-105, 8-24-102(g). A minimum salary, determined by population class, is set by the General Assembly (T.C.A. § 8-24-102), although the legislative body may increase that amount. T.C.A. § 8-24-114. However, the compensation for the full-time county mayor must be at least 5 percent greater than the maximum salary payable to any other constitutional officer. T.C.A. § 8-24-102(g). As the sheriff is the next most highly compensated constitutional officer, the full-time county mayor's compensation must be at least 5 percent greater than the sheriff's salary.

Relationship to County Legislative Body. The county mayor serves as a nonvoting, ex officio member of the legislative body. The county mayor or the county mayor's representative also serves as a nonvoting, ex officio member of each committee of the legislative body, except as provided by law or by the legislative body. T.C.A. § 5-6-106.

The county mayor may be elected chairperson of the legislative body. A county mayor who serves as chair of the legislative body may cast a vote in the event of a tie. T.C.A. § 5-5-109. However, if the county mayor becomes chair, the mayor's veto power is forfeited. T.C.A. § 5-5-103. If not chair of the county legislative body, the county mayor has veto power over legislative resolutions (not administrative or appellate resolutions) adopted by the legislative body. When a resolution is adopted by the legislative body, it should be submitted to the county mayor. Each resolution must be signed, vetoed, or allowed to become effective without the county mayor's signature. If a resolution is signed by the county mayor, it becomes effective immediately or at a later date specified in the resolution. If the county mayor vetoes the resolution, he or she must return the resolution to the legislative body for action on the veto, and the resolution becomes effective only upon subsequent passage by a majority of all legislative body members. Such passage must take place within 20 days of receiving the county mayor's veto or at the legislative body's next regular meeting, whichever is later. If the county mayor does not sign or veto a resolution or report the mayor's action to the legislative body within 10 days after the resolution is submitted to him or her, the resolution becomes effective without the mayor's signature after 10 days or at a later date if the resolution so provides. T.C.A. § 5-6-107. The county mayor who does not chair the county legislative body may veto the entire county budget but may not veto portions of it. T.C.A. § 5-6-107.

Fiscal Duties. The county mayor is the chief financial officer of the county and except in counties that have adopted the 1981 Financial Management System or that have a county charter that provides otherwise, the county mayor signs or co-signs county warrants, at least for general fund expenditures. The county mayor may examine the accounts of the county officers to verify each item of expenditure or revenue. T.C.A. §§ 5-6-110, 5-6-112. The county mayor audits all claims for money against the county. In counties not providing otherwise, the county mayor serves as the chief accounting officer for the county and maintains the general fund accounts. T.C.A. § 5-6-108.

Although the exact role varies depending upon the particular county's adoption of optional general laws, county charters or private acts, the county mayor generally has a strong role in the budgetary process and often presents the consolidated budget for each fiscal year to the county budget committee or county legislative body. A more detailed description of these fiscal duties is provided in Chapter 12 of this handbook.

Other Duties. The county mayor or a designated representative of the county mayor serves as a nonvoting, ex officio member of each committee of the county legislative body and of each board, commission, or authority of the county government. T.C.A. § 5-6-106. Except as provided by general law or private act, the county mayor appoints members of county boards, commissions, and department heads, subject to confirmation by the county legislative body. T.C.A. § 5-6-106. In actual practice, this exception to the county mayor's appointment power is a large one since general laws or private acts provide for the selection of most department heads and membership of most boards.

The county mayor has the care and custody of all county property, unless it is placed with another officer. T.C.A. § 5-6-108. However, the custody and security for the courthouse is placed with the sheriff if the county legislative body does not provide otherwise. T.C.A. § 5-7-108. The county mayor is under a duty to obtain a flag of the state of Tennessee from the adjutant general's office and to fly it upon proper occasions. T.C.A. § 5-7-109. If there is no county attorney, the mayor may employ or retain counsel. T.C.A. § 5-6-112. The mayor may employ clerical assistants needed in the performance of his or her duties and set their compensation within the amount appropriated for that purpose by the county legislative body. T.C.A. § 5-6-116.

The county mayor may enter into letters of agreement with county "fee" officials regarding the number and salary of deputies and assistants if within the budget adopted by the county legislative body or if the fee official is paying the salaries of deputies and assistants from the office fee accounts. If no agreement is reached, the county mayor is a defendant in salary suits that may be brought by these officials. T.C.A. § 8-20-101 *et seq*.

The county mayor has an important role in creating, modifying and merging utility districts as well as the service provided (water, sewer, gas) under the Utility District Law of 1937, as amended. T.C.A. § 7-82-101, *et seq*. The county mayor is authorized to hold hearings on such issues after receiving a petition from at least 25 property owners and the advice of the state's utility management review board. The county mayor is authorized to issue orders concerning these utility districts if in accordance with the rather complicated set of statutes governing utility districts. T.C.A. § 7-82-202.

The county mayor appoints members of the emergency communications district's board of directors subject to confirmation by the county legislative body. If the county legislative body does not act to confirm or reject the appointment within 90 days or the conclusion of its next regularly scheduled meeting after the appointment is made, whichever is later, the appointments take effect without confirmation. T.C.A. § 7-86-105.

The county mayor performs other duties and shares administrative tasks with the other constitutional and statutory county officials. The powers and duties of each county official are specifically established through statute and covered in more detail in Chapter 3 and other Chapters of this publication. The county mayor has other duties and interacts with other county officials in almost every area of local administration. The mayor's role in tax collection, county penal administration, investment of county funds, county health, and care for the poor, among other topics, will be discussed in other Chapters of this handbook.

The county mayor is a member of the board of directors of the development district and human resources agency of which his or her county is a part. T.C.A. §§ 13-14-104, 13-26-103. In this and other ways, the county mayor is often viewed as a "representative" of the county or as the county's leader in dealings with other governmental entities.

Vacancies and Incapacities. Vacancies in the office of county mayor are filled by the legislative body, and the appointee serves until a successor is elected at the next general election. T.C.A. § 5-1-104. Furthermore, a vacancy in the office of county mayor is filled temporarily by the chairperson of the county legislative body (or the chairperson pro tempore in circumstances where the county mayor had been the chairperson) as interim county mayor during the time between the beginning of the vacancy and the appointment of a successor. T.C.A. § 5-5-103(i). If a county mayor is incapacitated or absent from the job for more than 21 days, the legislative body must appoint the chairperson of the legislative body to serve as acting county mayor until the disability or absence is removed. T.C.A. § 5-5-103(g).

CHAPTER 3

COUNTY CONSTITUTIONAL OFFICES

In General

The Tennessee Constitution expressly provides for certain county offices, while others are created by the state legislature. In addition to the office of county executive and the county legislative body discussed in the previous chapter, Article VII, Section 1, of the Tennessee Constitution provides that each county have a sheriff, trustee, register, county clerk, and assessor of property elected by the voters of the county for terms of four years. The Judicial Article of the Tennessee Constitution, Article VI, also provides in Section 13 that any inferior court clerk shall be elected by the people on a district or county basis to a four-year term, and that the chancellors shall appoint a clerk and master for each district or county for a term of six years. Both the circuit court clerk and the clerk and master are currently elected or appointed one per county, but some counties have private acts or charters that establish other inferior court clerks such as general sessions court clerk and juvenile court clerk. All of these constitutional or quasi-constitutional offices except the assessor of property collect fees and are commonly referred to as "fee" offices. The legislature determines the qualifications and duties of each office. Tenn. Const., art. VII, § 1. The duties of these officers in a county with a consolidated city-county government are specified in the charter.

Qualifications. General qualifications of officeholders are located in the *Tennessee Code Annotated*, which provides that all persons 18 years old and over, who are citizens of the United States and of Tennessee, and who meet certain residency requirements are qualified to hold office unless the person:

1. Has been convicted of offering or giving a bribe, of larceny, or, of any other offense declared infamous by law, unless the person has been restored to citizenship as prescribed by law;

2. Has not paid a judgment for money received in an official capacity, which is due to the United States, Tennessee, or any county;

3. Has defaulted to the treasury at the time of election (in which case the election is void);

4. Is a soldier, seaman, marine, or airman in the regular United States Army, Navy or Air Force; or

5. Is a member of Congress or holds any office of profit or trust under any foreign power, other state of the Union, or the United States.

T.C.A. § 8-18-101.

Additional statutory qualifications are required for certain county offices, such as sheriff, and are discussed in the individual county office section. The offices and duties noted in

this Chapter may vary in counties with a metropolitan government charter or a county government charter.

Oaths. Before taking office, the Tennessee Constitution, Article X, Section 1, provides that every person chosen to any office of trust must take an oath to "support the Constitution of this state and of the United States, and an oath of office." Examples of these oaths for each particular office are provided in the appendix to this handbook. While there are various statutes in the Tennessee code providing for administering oaths to particular officials, these statutes have been superceded by T.C.A. § 8-18-109(b), which provides that oaths of office for any elected or appointed official may be administered by the county mayor, the county clerk, a judge of any court of record in the county, or the current or a retired judge of the general sessions court. The oath of office for any county official required to file an oath may be administered at any time after the certification of the election returns in the case of elected officials, or after appointment in the case of appointed officials. However, even if the official files an oath before the scheduled start of a term of office, the official may not take office until the term officially begins. T.C.A. § 8-18-109. The oath must be written and subscribed by the person taking it. Accompanying the oath must be a certificate executed by the officer administering the oath specifying the day and the year it was taken. T.C.A. § 8-18-107. The oath and the certificate are filed in the office of the county clerk, who endorses on them the day and year of filing, and signs the endorsement. T.C.A. §§ 8-18-109, 8-18-110.

Bonds. An official bond is an instrument that requires the party or parties designated as sureties to pay a specified sum of money if the official who executes the bond fails to perform certain acts or performs wrongful and injurious acts in the office. In other words, an official bond is a written promise, made by a public official (1) to perform all the duties of the office, (2) to pay over to authorized persons all funds received in an official capacity, (3) to keep all records required by law, (4) to turn over to his or her successor all records, money, and property, and (5) to refrain from anything that is illegal, improper, or harmful while acting in an official capacity. If the official fails to perform the duties, violates the law, or commits a harmful act, the person who is injured may collect damages from the sureties on the official bond. The sureties must be surety companies doing business in Tennessee unless the county commission by two-thirds majority vote authorizes two individuals to act as good sureties instead of a surety company. T.C.A. §§ 8-19-111, 8-19-101, 8-19-301.

The following county constitutional officials must execute a surety bond: county clerk, sheriff, register, property assessor, and trustee. Bond amounts for each official are included in the following material and are summarized in a chart in the appendix to this handbook.

The form of official bonds is prescribed by the comptroller of the treasury, with the approval of the attorney general. T.C.A. § 8-19-101. Blank copies of official bonds, ready for use, are available from the comptroller, Division of Local Finance.

Official bonds of the sheriff, county trustee, county clerk, assessor of property and register of deeds and any other official vested by law the authority to administer state shared funds must be approved by the county legislative body, recorded in the office of the register of deeds and transmitted to the comptroller of the treasury for safekeeping. T.C.A. §§ 8-19-102, 8-19-103, 54-4-103. Official bonds of clerks of court must be approved and certified by the court, entered into the minutes of the court, recorded in the office of register of deeds and transmitted to the comptroller of the treasury for safekeeping. T.C.A. § 8-2-205. The official bonds of other county officials, constables, and county employees required to have bonds shall be approved by the county legislative body, recorded in the office of the register of deeds and transmitted to the office of the county clerk for safekeeping. T.C.A. §§ 8-19-102, 8-19-103, 8-10-106.

The register of deeds of each county must maintain a special record book in which each official bond is recorded unless the register is authorized to use a system of continuous recordings of all instruments. T.C.A. §§ 8-19-104, 8-13-108(d). The register of deeds must endorse on the bond the day and year on which it was recorded and sign the endorsement. Similarly, the county clerk, with respect to bonds filed for safekeeping in the office of county clerk, must endorse the filing date and sign the endorsement. Failure of the register or county clerk to endorse and sign the bond is a misdemeanor. T.C.A. § 8-19-116.

Official bonds of officers, which must be transmitted to the comptroller of the treasury, must be so transmitted for filing within 40 days of election or 20 days after the term of office begins. T.C.A. § 8-19-115.

Any officer who is required by law to give bond and who fails to file it in the proper office within the time prescribed vacates the office. In such cases, the officer in whose office the bond is required to be filed must certify this failure to the appointing power. T.C.A. § 8-19-117. Upon the filing of a complaint alleging the failure of a county officer or constable to enter into an official bond as required by law, the circuit court clerk or the clerk and master having jurisdiction issues a summons that is served, together with a copy of the complaint, upon the county officer or constable in accordance with the Tennessee Rules of Civil Procedure. T.C.A. § 8-19-205. If the official fails or refuses to execute the required bond after receiving a copy of the complaint and a hearing, the court will enter a judgment declaring the office vacant, and the vacancy will be filled according to law. T.C.A. § 8-19-206. In addition, any officer required by law to give bond who performs any official act before the bond is approved and filed as required is guilty of a misdemeanor. T.C.A. § 8-19-119.

County officials must enter into a new bond at the beginning of each term. If the original of any bond is lost or destroyed, the record of the bond will be considered the original and suit may be instituted on the recorded bond. T.C.A. § 8-19-105. The county pays the premiums for official bonds and registration fees of county officials and employees. T.C.A. § 8-19-106. The constable pays all of the costs of obtaining and recording the official bond for his or her office. T.C.A. § 8-10-106.

Compensation. There are specific statutes regarding compensation for each office, which will be discussed later in this chapter. In general, though, statutes prescribe salaries according to county population classes for many officials. The General Assembly has reconfigured the county classification scheme, setting out 17 population classes for the purpose of determining the compensation of county officers. T.C.A. § 8-24-102. This statute provides base minimum salary schedules for three categories of county officers: (1) "general officers," which include assessors of property, county clerks, clerks of court, trustees, and registers of deeds; (2) sheriffs and chief administrative officers of highway departments; and (3) county mayors. These specified minimum salaries cannot be raised or lowered except through subsequent legislation, but since they are minimum salaries, the actual salary may be increased by resolution of the county legislative body, but the class of general officers must all receive the same amount of any increase. The minimum salaries are adjusted annually on July 1 by a dollar amount equal to the average annualized increase in state employees' compensation during the prior fiscal year multiplied by the compensation established for the county officials of the county with the median population of all counties. The adjustment cannot exceed 5 percent in any year; provided, however, the annual percentage increase in the minimum compensation of county officials shall not be less than the percentage increase established for county officials of the county with the median population of all counties. The average annualized general increase in state employees' compensation for purposes of calculating the adjustment in salary for county officials means the average increase in base salary plus the equivalent percentage increase represented by appropriated funds made available to address classification compensation issues, plus the equivalent percentage increase represented by recurring appropriation amounts provided to improve the level of retirement benefits, longevity benefits, deferred compensation benefits and other similar benefits not including health insurance benefits. These adjustments are calculated and certified by May 1 of each year by the commissioner of finance and administration. T.C.A. § 8-24-102.

Full-time county officials, not including general sessions judges, who complete the County Officials Certificate Training Program (COCTP) administered by the University of Tennessee's County Technical Assistance Service (CTAS) and become a "Certified Public Administrator" may receive an annual incentive payment up to a maximum of $1,500 from state-appropriated funds. To continue receiving these payments, certified county officials must take additional training annually. If an official receives incentive pay from the state through other professional development programs, such amounts will be offset so that no official receives more than $1,500 of incentive pay from the state per year; provided, however, certified public administrator educational incentive payments to assessors shall not be offset by the compensation received by assessors for obtaining certain professional designations pursuant to 67-1-508. T.C.A. § 5-1-310(e). These amounts are subject to annual appropriations from the General Assembly and have not reached the maximum allowed by law. County legislative bodies may appropriate additional amounts as incentive payments to county officials and employees who have become Certified Public Administrators in an amount not exceeding $3,000 minus payments made by the state. Educational incentive pay received by an official does not affect the calculation of compensation for officials provided in other statutes. CTAS is required to submit a list to the state treasurer, by

August 31 each year, of all county officers who have completed all requirements of the COCTP to attain or maintain the designation of Certified Public Administrator. This list replaces individual applications submitted by county officials for purposes of determining eligibility for the educational incentive payment. T.C.A. § 5-1-310.

Fee System or Salary System. The sheriff, trustee, county clerk, register of deeds and court clerks receive fees from the public for services they perform; for this reason these officials are sometimes referred to as "fee officials." There are two methods of accounting for the fees received by these officers. The first and oldest is the "fee system." Under this system each official remits to the trustee quarterly all of the fees and charges collected by the official in excess of expenses for the following items: salaries of the official's deputies and assistants, necessary expenses of the office, and the official's salary as established by statute. T.C.A. § 8-22-104. The official is also authorized to maintain a reserve in an amount equal to three times the monthly salaries of the official, deputies, and assistants. If the fees are insufficient to pay the regular expenses of the office, including the statutory salary of the official and the salaries of deputies and assistants, the deficit is to be paid out of county general funds. T.C.A. § 8-24-107. Excess fees are placed in the county general fund as a source of county revenue.

The county commission is authorized to adopt an alternative system for fee officials, often called the "budget" or "salary" system, although the sheriff is always under this alternative system. T.C.A. § 8-24-103. This budget system can be adopted for some or all of the officials. T.C.A. § 8-22-104. Under this method, the official pays over to the trustee all of the fees, commissions, and charges collected by the office on a monthly basis. The county commission must, in return, budget for expenses, authorizing the trustee to pay the official's salary, salaries of deputies and assistants, and authorized expenses of the office. These salaries and other proper costs of the office are included in the budget and must be paid even if the fees are insufficient to cover them.

Deputies and Assistants. Generally, county "fee officials" (those county officials who regularly collect fees for their services) must have authority other than the county budget resolution before they can hire employees. This authority may come directly from statute, by court order, or through a contract called a letter of agreement. T.C.A. § 8-20-101. If the county official's own salary and that of deputies and assistants is paid directly from the county general fund and the county fee official agrees with the amount appropriated for deputies and assistants as set forth in the budget adopted by the county legislative body, the official enters into a letter of agreement with the county mayor, using a form prepared by the state comptroller, that is then filed with the court. T.C.A. § 8-20-101. If the county official does not agree with the amount appropriated, a salary suit may be filed by petition of the county official. The county mayor is named as defendant and the county mayor is required to file an answer within five days after service of the petition. The petition must be filed by the fee official within 30 days after the final adoption of a budget by the county legislative body. Also, a new officeholder has 30 days from the day of taking office to file a petition. The court will then hold a hearing and issue an order determining the appropriate number and compensation of deputies and assistants. T.C.A. § 8-20-102.

If the fee official is under the fee system and pays deputies and assistants directly from the official's bank account, the official can negotiate a letter of agreement with the county for the number and compensation of deputies and assistants. If the fee official cannot reach an agreement with the county mayor, the fee official must file suit to obtain authority to hire deputies and assistants.

Sheriff

The office of sheriff is ancient in origin; its beginning can be traced back centuries to medieval England. The office of sheriff has been provided for in each of Tennessee's three constitutions (1796, 1835 and 1870) and was retained in the latest amendment in 1978. The sheriff is elected to a four-year term in the August general election in the same year in which the governor is elected. T.C.A. § 2-3-202.

Qualifications. The sheriff, in all counties except those with a metropolitan form of government in which law enforcement powers have been assigned to some other official, must have the following specific qualifications in addition to the general qualifications noted earlier in this chapter:

1. Must be a United States citizen;

2. Must be 25 years of age prior to the qualifying date;

3. Must be a qualified voter of the county;

4. Must have obtained a high school diploma or its equivalent as recognized by the Tennessee State Board of Education;

5. Must not have been convicted, pled guilty or pled nolo contendere to any felony charge or any violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances, so long as the violation involves an offense that consists of moral turpitude, or a misdemeanor crime of domestic violence;

6. Must be fingerprinted under the direction of the Tennessee Bureau of Investigation (TBI) and have the TBI make a search of local, state and federal fingerprint files for any criminal record;

7. Must not have been released from the armed forces of the United States with a dishonorable or bad conduct discharge, or as a consequence of conviction at court martial for either state or federal offenses;

8. Must have been certified by a qualified professional in the psychiatric or psychological fields to be free of all apparent mental disorders as described in the *Diagnostic and Statistical Manual of Mental Disorders, Third Edition*, of the American Psychiatric Association or its successor;

9. Must possess a current and valid peace officer certification as issued by the Tennessee Peace Officer Standards and Training (POST) Commission within 12 months of qualification for the election of the sheriff. However, this qualification is waived for first-time elected sheriffs who must enroll in a recruit training program within six months after taking office and be POST certified in order to qualify for re-election.

Every person who is elected sheriff after August 1, 2006, in a regular August election for a four year term and is a first term sheriff, regardless of the person's previous law enforcement experience, must successfully complete the newly elected sheriff's school before September 1 immediately following their election. Thereafter the new sheriff must successfully complete 40 hours of appropriate annual in-service training. Any newly elected sheriff who does not fulfill these training obligations loses the power of arrest. Any cost associated with the newly elected sheriff attending the newly elected sheriff's school is paid by the county. T.C.A. § 8-8-102. Finally, no person shall engage in the practice of law or serve as a member of the general assembly while serving as sheriff. T.C.A. § 8-8-101

Oath of Office and Bond. In addition to filing the required bond and the usual oath of office, a sheriff must "take an oath that [he or she] has not promised or given, nor will give, any fee, gift, gratuity, or reward for the office or for aid in procuring such office, that [he or she] will not take any fee, gift, or bribe, or gratuity for returning any person as a juror or for making any false return of any process, and that [he or she] will faithfully execute the office of sheriff to the best of [his or her] knowledge and ability agreeably to law." T.C.A. § 8-8-104. Sheriff's deputies must take the same oaths as the sheriff, which are certified, filed, and endorsed in the same manner as the sheriff's. T.C.A. § 8-18-112. An example of the full oath of office for a sheriff and regular deputies is provided in the appendix to this handbook.

Before entering into the duties of the office, the sheriff must enter into an official bond prepared as noted earlier in this Chapter for county officials. The bond amount is $25,000 or such greater sum as the county legislative body determines is appropriate. The sheriff's bond is payable to the state and conditioned on the sheriff to well and truly execute and make due return of all process directed to the sheriff, and to pay all fees and sums of money received by the sheriff or levied by virtue of any process into the proper office or to the person entitled, and faithfully to execute the office of sheriff and perform its duties and functions during the person's continuance in office. This bond must be acknowledged before the county legislative body, in open session, approved by it, recorded upon the minutes, and recorded in the office of the register of deeds and transmitted to the comptroller of the treasury for safekeeping. T.C.A. § 8-8-103. A surety bond is designed to protect the state and county from wrongdoing by the sheriff, particularly as regards the custody of money. If the surety has to pay any funds to the state or county under the terms of the bond, the surety may seek recovery of these funds from the sheriff personally.

Compensation. The sheriff receives a minimum statutory compensation amount according to county population class as explained earlier. T.C.A. § 8-24-102. The

compensation statute provides for the sheriff to receive 10 percent more than the general officers. The county legislative body may increase the compensation of the sheriff above the minimum amount required by the state law. However, if the sheriff is not certified by the POST commission at the time of election, the sheriff's salary is reduced during each year the sheriff is not so certified, by 15 percent the first year, 20 percent the second year, 25 percent the third year, and 30 percent the fourth year, subject to the salary being raised to the standard amount the next month after being certified by the POST Commission. T.C.A. § 8-8-102.

Deputies and Assistants. As with many other county officers, the sheriff may employ deputies and other staff under a letter of agreement or a court order. If the sheriff chooses to petition a court for additional deputies or assistants or for greater salaries than the budget adopted by the county legislative body would permit, the sheriff files the petition with the state trial court exercising criminal jurisdiction in the county, either criminal court or circuit court. The county mayor defends these salary suits. T.C.A. § 8-20-101. Although the sheriff and deputies collect fees for services performed, this office is always on the "budget" system rather than the "fee" system, turning over fees and other revenues monthly to the trustee and receiving appropriations for salaries and expenses. These costs are paid out of the county general fund rather than out of fees to help insure the fair and impartial administration of law enforcement duties. T.C.A. § 8-24-103. The county legislative body may not adopt a budget that reduces the salaries and number of employees of the sheriff's office without the sheriff's consent. T.C.A. § 8-20-120. If the legislative body fails to appropriate any salary expenditure necessary to discharge the sheriff's duties – as determined by the courts pursuant to T.C.A. § 8-20-101, *et seq*. – the sheriff may seek a writ of mandamus to compel such appropriation. *Jones v. Mankin*, 1989 Tenn.App. LEXIS 325 (Tenn.Ct.App. May 5, 1989). T.C.A. § 8-20-120. Any deputy employed after July 1, 1981, and any special or part-time deputy employed after January 1, 1989, must meet certain minimum standards similar to those required for sheriffs. T.C.A. § 38-8-106. In order to deal with any emergency, the sheriff may deputize any citizen of the county to assist in carrying out the duties of the office. T.C.A. § 8-8-213. Any person employed as a jail administrator, jailor, corrections officer, or guard in a county jail or workhouse must have qualifications similar to those required of other deputy sheriffs if the person is hired on or after July 1, 2006. T.C.A. § 41-4-144.

In addition to regular deputies and nondeputized assistants who are employees of the sheriff's office and receive a salary, the sheriff may deputize special deputies for particular purposes and may exchange officers with other law enforcement agencies pursuant to agreements. T.C.A. § 8-8-212. Special deputies who are not employees of the sheriff's office must show financial responsibility evidenced by a corporate surety bond or liability insurance policy of the employer of at least $50,000. The sheriff has immunity from suit under state law for acts of special deputies employed by others when acting within the scope of their employment, but this immunity does not extend to special deputies who serve as volunteer or reserve deputies while performing official law enforcement duties under the supervision of the sheriff. T.C.A. § 8-8-303.

Also, the sheriff may appoint a citizen of this state who is of legal age to serve civil process when service has been attempted by the sheriff's office and returned unserved. Such an appointment of a civil process server must be made in writing and filed with the court. The appointee receives the fees for this service directly. T.C.A. § 8-8-220.

Duties. The duties of the sheriff are described primarily in general law codified in the *Tennessee Code Annotated* and fall generally into three basic areas: (1) conservator of the peace/law enforcement, (2) civil process, and (3) corrections. In counties with a metropolitan form of government, some of these functions may be assigned by the charter to other officials. The sheriff's duties regarding law enforcement and corrections are described in Chapter 15 of this handbook, which deals with public safety and county correctional facilities. The sheriff is obligated to execute and return, according to law, the process and orders of the courts of record, and of all officers of competent authority, with due diligence, when delivered to the sheriff. The sheriff must attend upon all of the courts held in the county, cause the courtroom to be kept in order and obey the lawful orders and directions of the court. The sheriff also may be ordered to levy execution upon a defendant's property, first upon goods or chattels, if there are any, and land in order to satisfy judgment, and upon a surety's property in the proper case. Many of the sheriff's duties regarding service of process and other matters are detailed in T.C.A. § 8-8-201. The sheriff is charged with the custody and security of the courthouse unless the county legislative body assigns this duty to someone else. T.C.A. § 5-7-108.

Relationship to County Legislative Body and Other Officials. The sheriff must interact with the county mayor and/or a finance/budget director as well as the county legislative body regarding the sheriff's budget and budget amendments. The exact procedures vary from county to county depending upon whether the county operates under a charter or optional general law regarding budgeting or has a private act dealing with this subject. However, all sheriffs must submit budget requests in a timely manner in the first half of each calendar year for inclusion in the county's annual budget. Most counties have budget committees that may recommend appropriations for the sheriff's budget that differ from the budget submitted by the sheriff. The county legislative body determines the amount of the sheriff's budget, subject to certain restrictions, such as not reducing the sheriff's budget for personnel without the consent of the sheriff and following the requirements of any court order regarding a salary suit for deputies or assistants or any other lawsuit that may have been filed to require the county legislative body to fund an adequate jail or otherwise meet its statutory or constitutional duties. In many counties, depending upon the applicable law, the county mayor has the authority to approve line item amendments to the sheriff's budget within major categories unrelated to personnel costs, whereas major category amendments require the approval of the county legislative body. T.C.A. § 5-9-407.

Since the sheriff waits upon the courts and serves process directed to the sheriff, the sheriff must interact with judges and chancellors holding court in the county as well as with the clerks serving these courts. Clerks of court routinely add sheriff's fees to the bills of costs that are prepared in each case and collect these fees along with the fees of the clerks of court and other costs. Also, the sheriff or deputy must go before an official

deemed a "magistrate" by state law to obtain arrest warrants, search warrants, and orders to a jailer to incarcerate a prisoner (mittimus).

The sheriff interacts with the office of the district attorney general in the vast majority of counties wherein the sheriff has law enforcement duties. It is the district attorney's office that prosecutes criminal cases in the courts with criminal jurisdiction that are held in the county. Therefore, a good working relationship with the district attorney's office is vital to successful law enforcement in the county. The district attorney's office also has investigators who can be very valuable in helping the sheriff carry out the sheriff's law enforcement duties.

Vacancies. If the sheriff's office becomes vacant due to death, resignation, incapacity, or other causes, the duties are temporarily discharged by the chief deputy, administrative assistant, or other highest ranking member of the sheriff's office, until the sheriff is able to reassume office or until the legislative body appoints a successor. T.C.A. §§ 8-8-106, 8-8-107. The county legislative body fills vacancies in the office of sheriff pending election of a successor at a general election for the balance of the unexpired term or for a new term depending upon the time the vacancy occurs. Chapter 9 of this handbook deals with vacancies in county offices in greater detail.

Assessor of Property

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

Qualifications. The office of assessor of property does not carry any election qualifications beyond the general qualifications noted earlier in this Chapter for county officers. However, the state board of equalization is authorized to prescribe educational and training courses to be taken by assessors and their deputies and to specify qualification requirements for certification of anyone who is to be engaged to appraise and assess property for purpose of taxation and be deemed a "qualified local assessor of property." T.C.A. § 67-1-509.

Oath of Office and Bond. Each assessor and deputy assessor must take and subscribe to a special oath of office. The assessor's oath of office and constitutional oath may be found in the appendix to this handbook. The oath, which is different from that of other county officials, is to be attached to and filed with the bond in the amount of $10,000 in the county clerk's office. T.C.A. §§ 67-1-505, 67-1-507. The official bond of the assessor must be approved by the county mayor as well as the county legislative body, recorded in the office of the register and transmitted to the comptroller of the treasury. Also, the county legislative body by a two-thirds vote is required to determine whether the assessor's official bond will be with two or more good sureties approved by the body or with a corporate surety. T.C.A. § 67-1-505.

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

Deputies and Assistants. Unlike many other officials who obtain authority for deputies and assistants through court order or letter of agreement, the assessor is limited by the budget adopted by the county legislative body with the following restriction: The assessor is authorized by statute to appoint one deputy for each 4,500 parcels of property over and above the first 4,500 parcels in the county. Each deputy has the same power, duties, and liabilities as the assessor concerning the appraisal, classification, and assessment of property. If an assessor does not have enough parcels of property to qualify for a deputy, a secretary may be employed to assist in the operation of the office, with the approval of the legislative body. T.C.A. § 67-1-506.

Duties. The assessor's duties include two basic functions: appraisal and assessment of taxable real and personal property in the county that is not appraised by the state. After the assessor has determined the appraised value of property in the county, the assessed value is calculated. This is done by applying the classification percentage, as stated in the Tennessee Constitution, to the appraised value of the property. TENN. CONST., art. II, § 28; T.C.A. § 67-5-901. For example, real property will have the constitutional percentages applied (public utility - 55 percent, industrial and commercial - 40 percent, residential and farm - 25 percent) to the appraised value to determine the assessed value of nonexempt real property. For purposes of ad valorem taxation of property, the assessor of property places a value on commercial, industrial, residential, and farm land, including mineral rights and taxable leaseholds, but public utility property is valued by the state. T.C.A. §§ 67-5-101, 67-5-1301. Superimposed upon this classification scheme for real property is the special treatment for so-called "greenbelt" property under the Agricultural, Forest, and Open Space Land Act. Pursuant to that act,

land classified as "greenbelt" receives valuation based upon its use value rather than its potential for other higher uses (e.g., market value) unless the use or classification changes. In that case, taxes known as rollback taxes are assessed on the difference between the assessment as "greenbelt" property and the property's reclassified use to recapture "lost" tax revenue for up to three years for agricultural land and five years for open space land. T.C.A. § 67-5-1008.

The assessor also appraises and assesses taxable tangible personal property. T.C.A. § 67-5-901 *et seq*. The assessor must assess and place a value on all county property for taxation purposes by May 20 of each year; the date of valuation is January 1. T.C.A. § 67-5-504. This assessed amount is taxed according to the rate established by the county legislative body. In order to keep appraisals current, reappraisals are done on a four-, five- or six-year cycle. In counties using a six-year cycle, updating is done in the third year of the cycle. Counties with a four- or five- year cycle do no updating or indexing to reflect current value as do those on a six-year cycle. However, in order to use the alternative five-year cycle, the assessor and the county legislative body must agree to its use. Assessors are also required to maintain the property maps of the county. T.C.A. § 67-5-1601. The assessor also makes "back" assessments of property, land or improvements, that were omitted from the tax rolls or escaped taxation and makes corrections of erroneous assessments within certain time limitations. T.C.A. §§ 67-1-1001, 67-5-509.

A more detailed description of the duties of the assessor is found in the *County Property Tax Manual*, a CTAS publication that may be found on the CTAS Web site at www.ctas.utk.edu. Also, the division of property assessments of the office of the comptroller of the treasury provides assessment manuals for the assessor.

Relationship to County Legislative Body and Other Officials. The assessor must interact with the county mayor and/or a finance/budget director as well as the county legislative body regarding the assessor's budget and budget amendments. The exact procedures vary from county to county depending upon whether the county operates under a charter or optional general law regarding budgeting, or has a private act dealing with this subject. However, all assessors must submit budget requests in a timely manner in the first half of each calendar year for inclusion in the county's annual budget. Most counties have budget committees that may recommend appropriations for the assessor's budget that differ from that submitted by the assessor. The county legislative body determines the amount of the assessor's budget, subject to certain restrictions such as the requirement to fund a deputy for each 4500 parcels of land in the county over the first 4500 parcels.

The assessor has an important relationship with the county trustee. The assessor annually submits to the trustee the tax roll of the county, which includes the appraised and assessed valuation, including use value for "greenbelt" qualifying property; submits certification to the trustee for errors discovered in the tax rolls within specified time limits, as well as back assessments and reassessments of property; and certifies to the trustee changes in the classification of "greenbelt" property that requires the collection of rollback taxes.

The assessor also has an important relationship with the register of deeds in gathering information as each change of property ownership must be noted by the assessor as well as changes in value reflected in affidavits of value on deeds subject to the state transfer tax. Some county legislative bodies cause the offices of register and assessor to be located next to each other to facilitate the transfer of information. Other changes of ownership may be reflected in probated wills and divorce decrees; therefore, a good working relationship with the clerks of court also helps the assessor maintain up-to-date assessment rolls.

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

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

Vacancies. As with other county offices, vacancies in the office of the assessor are filled by the county legislative body. The appointee will hold office until a successor is elected at the first regular August election after the vacancy. The new assessor holds office until the close of the term for which the predecessor was elected. T.C.A. § 67-1-504. If the office becomes vacant due to death, resignation, or removal, the assessor's duties must be temporarily discharged by the chief deputy or by the deputy designated by the assessor in writing as the temporary successor until a successor is elected or appointed and qualified according to law. T.C.A. § 67-1-504.

County Clerk

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

Qualifications. The office of county clerk does not carry any qualifications beyond the general qualifications noted earlier in this Chapter for county officers.

Oath of Office and Bond. Before entering into office, the county clerk must take and subscribe to the constitutional oath and the oath of office known as the fidelity oath. An example of this oath for the county clerk is included in the appendix to this handbook. The deputy's oath of office is the same as that of the county clerk; it must be certified, filed, and endorsed in the same manner. T.C.A. § 8-18-112. Also, prior to entering into

the duties of the office, the county clerk must post either a $50,000 official bond in counties with a population of 15,000 or more, or a $25,000 bond in counties with a population of less than 15,000. T.C.A. § 18-2-201.

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

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

Duties. The general duties of the county clerk are set out in T.C.A. § 18-6-101 *et seq*. Other duties are found in various other sections of the Tennessee Code. The county clerk performs a wide variety of functions, which generally include: (1) keeping the official records of the county legislative body; (2) collecting certain local and state taxes (such as local wheel taxes, local hotel/motel taxes, beer taxes, business taxes, and vehicle registration fees); (3) issuing motor vehicle titles and registrations; (4) issuing marriage licenses; (5) issuing business licenses; (6) processing applications for beer permits; (7) processing applications for notaries public; (8) issuing pawnbroker licenses; and (9) issuing hunting and fishing licenses. The county clerk receives fees for the services rendered by the office. Fees for the various duties performed by the county clerk are found in T.C.A. §§ 8-21-701 and 8-21-401, as well as in statutes relating to the particular subject matter, such as Title 55 for motor vehicle titling and registration. Fee officers, including county clerks, are required to collect all fees to which they are entitled. T.C.A. § 8-22-102.

In some counties, the county clerk also serves as clerk of court for such courts as juvenile or probate. This is a legacy of the time when the former county court clerk was clerk for the county judge or chairman, who exercised judicial powers in this area prior to the creation of the office of county executive in the 1978 amendments to the Tennessee Constitution. Under legislation passed in 2003, clerking duties for probate and juvenile courts are required to be transferred from the county clerk to the clerk of another court by July 1, 2006, unless the county was exempted in the legislation or unless otherwise provided by law. T.C.A. §§ 18-6-106, 37-1-210.

Whenever the county clerk is disqualified because of interest or relationship from performing an official act required by law, the county mayor or appropriate judge must perform the act. T.C.A. § 18-6-112.

The duties of the county clerk are dealt with in greater detail in Legal Issues for County Clerks, a CTAS publication for the *County Officials Certificate Training Program* (COCTP). This publication may be found on the CTAS Web site at www.ctas.utk.edu.

Relationship to County Legislative Body and Other Officials. The county clerk has a close relationship with the county legislative body as the county clerk serves as the clerk to this body, performing duties such as calling the roll, recording votes, and taking minutes. The county legislative body as a whole, or a committee selected by the county legislative body, serves as the county beer board, and the county clerk often assists the beer board in taking applications for permits to sell beer, recording the actions of the beer board and issuing permits. Similarly, the county clerk handles applications for notaries public and presents the applications to the county legislative body for approval. And of course, the county clerk's budget is approved by the county legislative body. Further, the county legislative body determines whether or not the county clerk's office operates under the "fee" system, whereby the county clerk pays the salaries of the clerk and deputies and office expenses out of the fee account, or whether all fees are paid over to the general fund monthly, with all salaries and expenses being budgeted. T.C.A. § 8-22-104.

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

The county clerk also interacts with the county mayor in either entering into letters of agreement regarding the number and salaries of deputies and assistants or litigating with the county mayor as a defendant in a salary suit.

The county clerk deals with the trustee regarding the remittance of fees (monthly or quarterly) to the general fund and the remittance of taxes collected by the county clerk, usually monthly.

The county clerk, as an ex officio member of the county public records commission, interacts with other records commission members, such as the register, and with the Tennessee State Library and Archives.

The county clerk interacts regularly with the motor vehicle division of the state Department of Safety in taking applications for motor vehicle titles and registering motor vehicles. In issuing marriage licenses, the county clerk interacts with the office of vital records of the state Department of Health. In counties where the county clerk issues hunting and fishing licenses, the county clerk works with the Tennessee Wildlife Resources Agency.

In those counties where the county clerk serves as a clerk of court for such courts as probate or juvenile, the clerk works closely with the judges of those particular courts.

Vacancies. Vacancies in the county clerk's office are filled by the county legislative body in the manner discussed in the Chapter 9 of this handbook. T.C.A. §§ 5-1-104, 18-6- 101. If the office becomes vacant due to death, resignation, or removal, the county clerk's duties are temporarily discharged by the chief deputy, or by the deputy designated as the temporary successor by the county clerk in writing, until a successor county clerk is elected or appointed and qualified according to law. T.C.A. § 18-6-115.

Register of Deeds

The register has been a constitutional office in Tennessee since the beginning of the state, being an appointive office by the county court in the 1796 Constitution, but becoming a popularly elective office in the 1835 Constitution and remaining so under the 1870 Constitution and its 1978 amendment. The register is elected to a four-year term of office in the August general election in the same year that the governor is elected.

Qualifications. The office of register does not carry any qualifications beyond the general qualifications noted earlier in this Chapter for county officers.

Oath of Office and Bond. Before entering into office, the register must take and subscribe to the constitutional oath and the oath of office known as the fidelity oath as well as give bond as required. An example of this oath for the register is included in the appendix to this handbook. The deputy's oath of office is the same as that of the register; it must be certified, filed, and endorsed in the same manner. T.C.A. § 8-18-112. The register enters into a four-year term of office only after taking the prescribed oath and posting the required bond in the amount of $15,000 (in counties of less than 15,000), $25,000 (in counties with 15,000 or more), or in a greater amount required by the county legislative body. T.C.A. §§ 8-13-101, 8-13-102.

Compensation. As discussed earlier in this chapter, the register must receive an annual minimum salary in the amount for a general officer as formulated in T.C.A. § 8-24-102. The county legislative body may increase the salary of the general officers above the minimum amount, but may not increase the salary of the register without also increasing the salary of the other general officers. The amount due the register as compensation does not vary with the amount of fees collected regardless of whether the salary of the register is paid from the register's fee account or from the general fund.

Deputies and Assistants. The register may receive authority to employ deputies and assistants through a letter of agreement or court order as explained earlier in this chapter. If the register decides to petition for additional deputies or assistants or additional salary amounts, the petition is filed in the chancery court and the county mayor defends the salary suit. T.C.A. § 8-20-101.

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

The register has specific directions on how to index, record, and maintain the records. T.C.A. § 8-13-108. The register must perform the following functions: (1) require specific information on instruments registered in the office; (2) perform assigned tasks in a diligent manner, since the notice of a recorded instrument may affect who holds legal Title to property and who has priority in liens against property; (3) carefully place the time of receipt of instruments into the notebook, record the instruments in the correct book, and index the instrument properly; (4) keep accurate records of the fees, commissions, and taxes collected as well as of office expenses; (5) make reports on the fees, commissions, and expenses to the county; and (6) make reports on the taxes collected to the revenue department. T.C.A. §§ 8-13-108, 67-4-409. The register's fees vary according to the type and length of the document and whether more than one instrument is included in a single document. T.C.A. § 8-21-1001. Fee officials, including registers, must collect all fees to which they are entitled. T.C.A. § 8-22-102.

The register is responsible for collecting "transfer" and "mortgage" taxes. T.C.A. § 67-4-409. With some statutory exceptions, the register must collect a tax on the transfer of all interests in real estate and the "mortgage" tax on recording instruments that evidence indebtedness. T.C.A. § 67-4-409.

Fees for the various duties performed by the register are found primarily in T.C.A. § 8-21-1001, although other fees are found within the statutes relating to the subject matter as, for example, U.C.C. instruments in *Tennessee Code Annotated*, Title 47, Chapter 9.

The duties of the register are dealt with in greater detail in *Legal Issues for Registers of Deeds*, a CTAS publication for the *County Officials Certificate Training Program* (COCTP). This publication may be found on the CTAS Web site at www.ctas.utk.edu.

Relationship to County Legislative Body and Other Officials. The register must interact with the county mayor and/or a finance/budget director as well as the county legislative body regarding the register's budget and budget amendments. The exact procedures vary from county to county depending upon whether the county operates under a

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

The register interacts with the assessor to assist in providing information regarding the value of property. The register also records the official bonds of all county officials. The register deals with the trustee regarding the remittance of fees (monthly or quarterly) to the general fund.

The register, as an ex officio member of the county public records commission, interacts with other records commission members, such as the county clerk, and with the Tennessee State Library and Archives.

The register interacts regularly with the Tennessee Department of Revenue since the register collects the state transfer and "mortgage" taxes, reports and remits this revenue to the department monthly by the 15th day following the month of collection – after deducting a commission of 5 percent, 52 percent of which goes to fund the county officials' retirement, and the balance is retained as fees of the office. T.C.A. § 67-4-409.

Vacancies. Vacancies in the register's office are filled by the county legislative body in the manner discussed in the following chapter. T.C.A. § 5-1-104. If the office becomes vacant due to death, resignation, or removal, the register's duties may be temporarily discharged by the deputy designated by the register in writing as the temporary successor, until the vacancy is filled by the legislative body. T.C.A. § 18-6-115.

County Trustee

The trustee has been a constitutional office in Tennessee since the beginning of the state, being an appointive office by the county court in the 1796 Constitution but becoming a popularly elective office in the 1835 Constitution and remaining so under the 1870 Constitution and its 1978 amendment. The trustee is elected to a four-year term of office in the August general election in same year that the governor is elected. T.C.A. § 8-11-101.

Qualifications. The office of trustee does not carry any qualifications beyond the general qualifications noted earlier in this Chapter for county officers.

Oath of Office and Bond. In addition to the usual oath, the trustee must take an additional oath, which is set out in T.C.A. § 67-5-1901, stating:

I do solemnly swear that I will faithfully collect and account for all taxes for my county, or cause the same to be done, according to law, and that I will use all lawful means in my power to find out and assess such property as may not have been assessed for taxation in my county, and return a list of the same on settlement.

An example of all of the oaths required of the trustee is found in the appendix to this handbook. Trustee's deputies must take the same oath of office as the trustee, and the oath is certified, filed, and endorsed in the same manner. T.C.A. § 8-18-112.

The amount of the trustee's bond is determined by the amount of revenues handled by the trustee during the last fiscal year audited by the state comptroller, or from the last approved audit prepared by a public accountant. T.C.A. § 8-11-103. If the official bond of the county trustee is executed by a surety company authorized to transact business in the state of Tennessee, the minimum amount of the bond is based on revenues as follows:

1. Less than $50,000 – a base bond of $5,000.

2. From $50,000 to $500,000 – an amount equal to ten (10) percent of the funds collected by the office.

3. Five percent (5%) of the excess of $500,000 to $1 million shall be added.

4. Three percent (3%) of the excess of $1 million to $3 million shall be added.

5. Two percent (2%) of the excess of $3 million shall be added.

Amounts in items two through five are cumulative. If the official bond of a county trustee is executed by personal sureties, the minimum amount of the bond shall be based on revenues as follows:

1. Less than $50,000 – a base bond of $5,000.

2. From $50,000 to $500,000 – an amount equal to 20 percent (20%) of the funds collected by the office.

3. Ten percent (10%) of the excess of $500,000 to $1million shall be added.

4. Six percent (6%) of the excess of $1 million to $3 million shall be added.

5. Four percent (4%) of the excess of $3 million shall be added.

Amounts indicated in items two through five are cumulative. The amounts stated above are only minimums; the county legislative body may require the trustee to execute a bond in a greater amount. T.C.A. §§ 8-11-103, 8-11-102.

Compensation. As discussed earlier in this chapter, the trustee must receive an annual minimum salary in the amount for a general officer as formulated in T.C.A. § 8-24-102. The county legislative body may increase the salary of the general officers above the minimum amount, but may not increase the salary of the trustee without also increasing the salary of other general officers. The amount due the trustee as compensation does not vary with the amount of fees or commissions collected regardless of whether the salary of the trustee is paid from the trustee's fee account or from the general fund.

Deputies and Assistants. The trustee may receive authority to employ deputies and assistants through a letter of agreement or court order as explained earlier in this chapter. If the trustee decides to petition for additional deputies or assistants or additional salary amounts, the petition is filed in the chancery court and the county mayor defends the salary suit. T.C.A. § 8-20-101.

Duties. The trustee serves three primary functions: (1) collecting all county property taxes; (2) keeping a fair regular account of all money received; and (3) investing temporarily idle county funds. T.C.A. § 8-11-104. In addition, the trustee disburses sales tax revenues and may collect municipal property taxes and other state and local taxes. The trustee generally acts as treasurer for the county, receiving and paying out funds. The trustee must keep a detailed account of these transactions. The trustee receives funds for the county from various sources, including the fees of the county "fee" officials. The trustee has an important role in the disbursement of county funds that varies in detail from county to county depending upon whether the warrant or the optional check system is used in the particular county. T.C.A. § 5-8-210. At least once every four years and not less than once every term of office, the trustee is required to evaluate whether the contract for the county's bank account(s) should be rebid. T.C.A. § 5-8-201. The trustee is to obtain proposals from at least two banks or other financial institutions, prepare a written evaluation of the proposals, and preserve the evaluations for at least three years. Prior to investing county funds, the trustee is required to obtain and document at least two proposals from banks or other financial institutions to assure the county receives the highest and best rate of return, and this documentation must be retained in the trustee's office for at least three years. T.C.A. § 5-8-301. The trustee appoints the delinquent tax attorney subject to the approval of the county mayor. T.C.A. § 67-5-2404. The duties of the trustee regarding the collection of property taxes are described in the *County Property Tax Manual*, a CTAS publication that may be found on the CTAS Web site at www.ctas.utk.edu. Also at the CTAS Web site is Legal Issues for County Trustees, another publication that describes the duties of the trustee in greater detail.

Relationship to County Legislative Body and Other Officials. The trustee must interact with the county mayor and/or a finance/budget director as well as the county legislative body regarding the trustee's budget and budget amendments. The exact procedures vary from county to county depending upon whether the county operates under a charter or optional general law regarding budgeting, or has a private act dealing with this subject. However, all trustees must submit budget requests in a timely manner in the first half of each calendar year for inclusion into the county's annual budget. Most counties have budget committees that may recommend appropriations for the trustee's

budget that differ from those submitted by the trustee. The county legislative body determines the amount of the trustee's budget, subject to certain restrictions, such as following the requirements of any court order regarding a salary suit for deputies or assistants. In many counties, depending upon the applicable law, the county mayor has the authority to approve line item amendments to the trustee's budget within major categories not affecting personnel, whereas major category amendments require the approval of the county legislative body. T.C.A. § 5-9-407.

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

The trustee interacts regularly with all the "fee" officials as each fee official either turns over all fees collected monthly or turns over "excess" fees quarterly. When under the "fee" system as opposed to the "budget" system, the trustee must keep an account of the "excess" fees deposited and any "advances" that may be made from the general fund to the fee official at the beginning of a term. The trustee interacts with other officials or department heads of the county that receive monies in the course of their activities that must be deposited in a county fund, whereupon the trustee keeps an accurate record of these transactions.

Vacancies. If there is a vacancy in the office of trustee, the chief deputy or another deputy designated in writing by the trustee temporarily carries out the trustee's duties until a replacement is chosen by the county legislative body. T.C.A. §§ 8-11-111, 5-1-104.

Clerks of Court

The Tennessee Constitution in Article VI places the judicial power of the state in one supreme court and in such circuit, chancery and other inferior courts as the legislature creates. The Constitution further provides in Article VI, Section 13, that chancellors appoint the clerk and master for a six-year term and that clerks of other inferior courts are elected for a four-year term. The Tennessee Constitution provides that the clerks of the inferior courts may be chosen on a district or county basis. Many counties have only the circuit court clerk and clerk and master to perform clerking duties for all of the courts held in the county, but others have additional court clerks established by private act or charter, such as general sessions court clerk or juvenile court clerk. In any county in which a separate general sessions clerk is created by private act, the clerk serves in accordance with the private act. T.C.A. § 16-15-301. In counties without a separate general sessions clerk, the circuit clerk usually serves as the general sessions court clerk. T.C.A. § 16-15-301. In most counties, the circuit court has both civil and criminal jurisdiction and uses only one clerk, but some populous counties have a separate criminal court and elected criminal court clerk.

Qualifications. The clerks of court do not carry any qualifications beyond the general qualifications noted earlier in this Chapter for county officers.

Oath of Office and Bond. Court clerks and their deputies must take an oath of office specific to the office of court clerk as well as the constitutional oath. T.C.A. §§ 18-1-103, 18-1-104. Examples of the oaths required of court clerks and their deputies is found in the appendix. The oath may be administered by the county mayor, county clerk, a judge of any court of record, or the current or a retired judge of the general sessions court. T.C.A. § 8-18-109. Clerks of court file their oaths and certificate of election (if popularly elected) with the county clerk.

Every clerk must enter into a bond of $25,000 in counties with a population of less than 15,000 and $50,000 in counties with a population of 15,000 or more, or the court may require a greater bond. T.C.A. § 18-2-201. After being acknowledged before, approved and certified by the court, the bond must be entered upon the minutes of the court within 30 days and must then be recorded in the office the county register of deeds and transmitted to the comptroller of the treasury for safekeeping. T.C.A. § 18-2-205. *See* also T.C.A. § 18-19-103 (Recording of bonds of county officers); T.C.A. § 18-19-115 (Time of filing).

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

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

Compensation. As discussed earlier in this chapter, clerks of court must receive an annual minimum salary in the amount for a general officer as formulated in T.C.A. § 8-24-102. The county legislative body may increase the salary of the general officers above the minimum amount, but may not increase the salary of a court clerk without also increasing the salary of other general officers unless the clerk of court serves more than one court in the county. If the clerk of court serves more than one court in the county, the county legislative body may set additional compensation for such clerk in the amount of 10 percent of the base salary of the clerk of court. The clerk and master is eligible for the additional 10% compensation if the clerk and master serves as clerk of the court that exercises probate jurisdiction, regardless of whether the chancellor or some other judge handles probate matters. 2006 Public Chapter 601. The amount due the court clerk as compensation does not vary with the amount of fees or commissions collected regardless of whether the salary of the court clerk is paid from the clerk's fee account or from the general fund.

Deputies and Assistants. The court clerk may receive authority to employ deputies and assistants through a letter of agreement or court order as explained earlier in this chapter. If the court clerk decides to petition for additional deputies or assistants or

additional salary amounts, the petition is filed in the court that the clerk serves, and the county mayor defends the salary suit. T.C.A. § 8-20-101.

Duties. Clerks serve an important role in the operation of the Tennessee court system, a role that is outlined generally in Title 18 of the *Tennessee Code Annotated*. Some of the clerks' duties include the following: (1) attending each court session with all the papers for the cases on the docket; (2) administering oaths to parties and witnesses who testify; (3) keeping minutes of the court in a well-bound book or in an electronic format so long as certain rules relating to the safekeeping of the records are followed; (4) maintaining the rule docket and an execution docket in which all court judgments or decrees are entered in order of rendition and all receipts and disbursements in a case are entered; (5) maintaining indexes for all books and dockets that are kept by the office; and (6) investing funds pursuant to T.C.A. § 18-5-106. T.C.A. §§ 18-5-102, 18-1-105. The clerk must reside in the county where the court is held and maintain an office in the county seat. T.C.A. § 18-1-102.

General sessions clerks have duties similar to other court clerks: (1) retaining, preserving, and filing in order all papers in civil cases; (2) transmitting papers when an appeal has been taken to circuit court; and (3) keeping in a well-bound book a docket of all judgments and executions, or storing such information in an electronic format in accordance with rules for the safekeeping of these records. T.C.A. § 16-15-303.

Because court clerks deal with voluminous paperwork, the storage and retention of documents are important aspects of these offices, and it is extremely important that the records of the clerk's office be well organized and accurate.

Clerks collect state and county litigation taxes, criminal injuries compensation tax in courts with criminal jurisdiction, county expense fees, and depending upon the particular court, funds for the impaired driver's trust fund, Tennessee Bureau of Investigation fees, misdemeanant jail per diems, fines, sheriff's fees, clerk's fees, witness fees and other items of court costs. Clerks prepare bills of costs in cases, account for these monies and make collection efforts when these amounts are unpaid. Clerks maintain a cash journal (general ledger) to account for and summarize the cash transactions of the office and issue receipts for all collections.

Clerks invest idle funds according to T.C.A. § 8-21-401, and often serve in a fiduciary capacity to invest funds held for third parties. Additionally, clerks and masters conduct delinquent tax sales, and clerks more generally may conduct sales of property ordered by the court. Clerks, depending upon the particular court, may collect support, including alimony and child support, pursuant to court order and the general law although the responsibility for collecting support in many cases has been transferred to a central state collecting agency.

It is the official duty of each clerk of court to attend meetings of the state court clerks' conference unless the clerk is otherwise officially engaged or is unable to attend for good and sufficient reasons. T.C.A. § 18-1-501 *et seq*.

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

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

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

Vacancies. Vacancies in offices of elected clerks are filled by the county legislative body as described in Chapter 8. T.C.A. § 5-1-104. If there is a vacancy in the office of clerk and master, a new clerk is appointed by the chancellor for another six-year term, beginning with the date of the appointment. T.C.A. § 18-5-501. In case of death of any clerk, the deputy holds office until the vacancy is filled. T.C.A. § 18-1-401.

Removal by Judge. Clerks of court may be removed from office for misconduct by summary proceedings by the judge of the court they serve, under the provisions of T.C.A. § 18-1-301 *et seq*.

CHAPTER 4

THE COUNTY DEPARTMENT OF EDUCATION

Article XI, Section 12 of the Tennessee Constitution declares that the state of Tennessee recognizes the inherent value of education and encourages its support. The constitution mandates that the General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly has addressed this constitutional mandate through a complex set of statutes wherein the cost and administration of the public school system for grades kindergarten through 12 is shared among the state and counties and also municipalities that operate school systems as well as some special school districts.

Education Improvement Act and Basic Education Program

The Education Improvement Act, which was passed by the General Assembly in 1992, made sweeping changes in the method by which local education programs are funded in Tennessee and changed their organization and administration at the local level. Formerly, public education in this state was funded according to the Tennessee Foundation Program (TFP), a system that was found unconstitutional because it denied children in small school systems the same opportunities provided to those in the larger and more affluent ones. *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn. 1993). The TFP has been replaced with the Basic Education Program (BEP), a funding formula providing increased and more equalized funding among the state's local school systems. T.C.A. § 49-3-351.

There are several statutory provisions under the BEP that directly affect the administration of the county school system. The General Assembly has directed the state board of education, in consultation with the commissioner of education, to establish "performance goals and measures" that require each school district to achieve an established rate of academic progress measured by the Tennessee comprehensive assessment program (TCAP) tests. All schools are also expected to maintain appropriate levels of school attendance and dropout rates set by the state board of education. T.C.A. § 49-1-601. The commissioner, with the approval of the state board, may place on probation any school or school system that does not meet academic, attendance, or dropout goals, and ultimately, if the problems are not remedied, may order the removal of some or all of the local board members as well as the director of schools. T.C.A. § 49-1-602.

One of the most significant provisions under this law is the requirement for lower average and maximum class sizes, which are set by statute; waivers from these requirements are not permitted. T.C.A. § 49-1-104. Additional school buildings and additional teachers have been required in many counties in order to meet these class size requirements. Failure to meet the class size requirements can result in a loss of state funding. T.C.A. § 49-3-314.

On the local level, the management and control of the county schools is the responsibility of the county board of education and the director of schools. Counties are required to have a board of education whose members are popularly elected to staggered four-year terms. T.C.A. § 49-2-201. A director of schools, who is an employee of the local board of education, has taken the place of a popularly elected office of superintendent of education. T.C.A. § 49-2-301.

The authority of the board of education and the director of schools is subject to state law, rules and regulations adopted by the state board of education, and the express powers given the state commissioner of education. The county board of education establishes local policies and regulations within the authority given to the board. The director of schools serves as the chief administrative officer to implement board policies and manage the county department of education within the guidelines provided by the state and the county board of education.

Title 49 of *Tennessee Code Annotated* (Volume 9) defines the duties and authority of the above-mentioned boards and officials as well as those of the county legislative body and county trustee as they relate to education. In this Chapter some of the major areas of the administration of the county education department will be discussed.

County Board of Education

School board members in each county are required to be elected by the people from districts of substantially equal population. Board members must be elected to staggered four-year terms, and may succeed themselves. Board members in special school districts may serve different terms of office established by private act but must be popularly elected on a staggered term basis. T.C.A. § 49-2-201.

Boards of education may have "no more members than the number of members authorized by general law or private act for boards of education in existence on January 1, 1992, or the number of members actually serving on a board on January 1, 1993," or the General Assembly, by private act, may establish the membership of particular school boards at any number not less than three nor more than eleven. T.C.A. § 49-2-201.

Members of the board of education must be residents and voters of the county in which they are elected, and, except in a few counties, must possess a high school degree or G.E.D. Members of the county legislative body and other county officials are not eligible for election to the board of education. T.C.A. § 49-2-202(a). Members of the board of education are not eligible for election as teacher or any other paid position under the board. T.C.A. § 49-2-203(a)(1)(D).

The compensation of the board of education is fixed by the county legislative body. T.C.A. § 49-2-202. Vacancies are filled by the county legislative body until the next election. T.C.A. § 49-2-202(e) and Tenn. Const., art. VII, § 2, as interpreted in *Marion County Board of Commissioners v. Marion County Election Commission*, 594 S.W.2d 681 (Tenn. 1980). Members must attend annual training sessions as prescribed by the

state board of education which must include an annual session; members may be removed from office by the commissioner of education for failure to attend the annual training. T.C.A. § 49-2-202.

The board is to elect a chair from among its members annually, who countersigns all warrants approved by the board and issued by the director of schools. T.C.A. § 49-2-205. The chair of the school board also serves as chair of the executive committee, composed of the chair and the director of schools, which functions as purchasing agent for the school board unless there is a separate purchasing board or purchasing agent otherwise established by law, and also monitors accounts to see that the budget is not exceeded. T.C.A. § 49-2-206.

Meetings County Board of Education. The county board of education must hold regular meetings at least quarterly, although the chair may call special meetings. T.C.A. § 49-2-202. All business coming before the county school board must be passed by a majority of the membership of the school board and not just a majority of the quorum. T.C.A. § 49-2-202(g).

Mandatory Duties and Discretionary Powers. There are certain duties listed in T.C.A. § 49-2-203 that the board of education is required by law to perform. Some of the more significant duties are summarized as follows:

1. To employ a director of schools under written contract of up to four years duration, which may be renewed. This director may be referred to as "superintendent" and replaces the former superintendent of schools. The school board is the sole authority in appointing a director of schools.

2. Upon the recommendation of the director of schools, to elect teachers who have attained or who are eligible for tenure, to fix their salaries, and to make contracts with them.

3. To manage and control all public schools under its jurisdiction.

4. To purchase all supplies, furniture, fixtures, and materials of every kind through the executive committee. Expenditures over $10,000 must be publicly advertised and competitively bid.

5. To dismiss teachers, principals, supervisors and other employees upon sufficient proof of improper conduct, inefficient service or neglect of duty. Such employees must be given written notice and an opportunity to make their defense.

6. To suspend or dismiss pupils when the progress or efficiency of the school makes it necessary.

7. To require the director of schools and the chair of the local board to prepare a budget on forms furnished by the commissioner of education and, when the budget has been approved by the local board, to submit it

to the county legislative body. No school budget may be submitted to the legislative body that directly or indirectly supplants or proposes to use state funds to supplant any local current operation funds, excluding capital outlay and debt service.

8. To develop and implement an evaluation plan for all certified employees in accordance with the guidelines and criteria of the state board of education, and submit such plan to the commissioner of education for approval.

9. Such other duties as are required by law. In addition to the duties specifically required in T.C.A. § 49-2-203, the local board is given certain discretionary powers.

These are things the board is empowered, but not required, to do. Briefly summarized, these discretionary powers include the following:

1. To consolidate schools under its jurisdiction;

2. To require school children and employees to submit to a physical examination by a competent physician under certain circumstances;

3. To establish night or part-time schools;

4. To permit school buildings and property to be used for public, community or recreational purposes, subject to rules and regulations adopted by the board;

5. To employ legal counsel;

6. To make rules providing for school safety patrols;

7. To establish minimum attendance requirements or standards as a condition for passing a course or grade;

8. To provide written notice to probationary teachers of specific reasons for failure of reelection and provide a hearing to determine the validity of the reasons, upon request;

9. To offer and pay monetary incentives to encourage the retirement of any teacher or other employee who is eligible to retire;

10. To lease or sell buildings and property, or portions thereof, in such a manner as is deemed by the board to be in the best interest of the school system and the community it serves, including sales or leases to public or private entities;

11. To establish and operate before- and after-school care programs in connection with any schools, before and after the regular school day and while school is not in session;

12. To establish and operate evening alternative schools for students in grades 6 through 12; and

13. To provide pre-kindergarten programs for at-risk children who reach the age of four-years by September 30, and for other children when an insufficient number of at-risk children are enrolled to fill a classroom, in accordance with the "Voluntary Pre- K for Tennessee Act of 2005." T.C.A. § 49-6-101 through 49-6-110.

School Property. The board of education is empowered to exercise the right of eminent domain for public school purposes. T.C.A. § 49-2-2001. The board has the power to purchase land and to erect and equip buildings for public schools, and the board holds Title to property so acquired. The board has the power to dispose of real property to which it has Title in accordance with T.C.A. § 49-6-2006. Personal property that has become surplus is required to be sold by the board in accordance with T.C.A. § 49-6-2007. The board is permitted to transfer surplus real or personal property to the county or to any municipality within the county for public use, without the requirement of competitive bidding or sale. T.C.A. §§ 49-6-2006 and -2007. The board of education is not authorized to donate surplus real or personal property to charitable or nonprofit organizations; the board may, however, sell or lease surplus property to such organizations. T.C.A. §§ 49-2-203(b)(10)(A), 49-6-2006, 49-6-2007; Op. Tenn. Att'y Gen. 96-046 (March 14, 1996). Public school buildings and property may not be used for private benefit. T.C.A. § 49-2-203(b)(10)(A).

Donations. The board of education is authorized to receive donations of money, property or securities from any source for the benefit of the public schools, which the board is to disburse in good faith in accordance with the conditions of those gifts. T.C.A. § 49-6-2006.

Student Transfers. A local school board may choose to accept transfers of students from outside its school systems. T.C.A. § 49-6-3104. The receiving system may charge tuition in an amount equal to the total funds actually raised and used for school purposes by the board, divided by the number of pupils in average daily attendance during the preceding school year. T.C.A. § 49-6-3003. State school funds follow the transfer student into the receiving school system. The approval of the school system from which the student is transferring is not necessary if the transfer occurs at least two weeks prior to the beginning of the school year; if the transfer occurs within two weeks of the beginning of the school year or during the year, approval of both the sending and receiving school systems is required. T.C.A. § 49-6-3104.

School Resource Officers. The board of education is authorized to enter into an agreement of understanding with a local law enforcement agency to have a school resource officer (SRO) assigned to a school. The SRO must be a law enforcement

officer as defined under T.C.A. § 39-11-106, and must be in compliance with all rules and regulations of the POST commission. An SRO is required to complete 40 hours of basic training in school policing within twelve months of assignment and at least 16 hours annually thereafter. T.C.A. § 49-6-4217.

State Rules and Regulations. The authority of the county board of education is limited by the rules and regulations of the state board of education as enforced by the commissioner of education. It is the duty of the state board to prescribe rules and regulations for all public schools, kindergarten through the 12th grade, to prescribe curricula, and to approve courses of study adopted by local boards of education. T.C.A. § 49-1-302. The state regulations extend to such matters as personnel evaluation, classroom size, pupil-teacher ratios, building suitability and other matters that directly impact the budget process.

Director of Schools

The office of county superintendent of public instruction was abolished in 1992, and in its place is a director of schools (who may also be referred to as "superintendent"), who is appointed by the local board of education and is considered an employee of the board. T.C.A. § 49-2-301. T.C.A. § 49-2-301.

School superintendents who were elected by the people or appointed by the county legislative body were required to have (1) a teacher's license with a principal and/or supervisor endorsement, (2) a master's degree in educational administration, and (3) five years teaching and administrative experience. T.C.A. §§ 49-2-301(a)(2), 49-2-301(i). A director of schools appointed by the local board of education is required only to have a baccalaureate degree. T.C.A. § 49-2-301(i).

The numerous duties of this position are described in T.C.A. § 49-2-301 and are summarized in part below:

1. Insure that laws relating to education are faithfully executed;

2. Attend all meetings of the school board and serve on its executive committee;

3. Keep records of meetings, actions, and financial transactions of the school board;

4. Issue, within 10 days, all warrants authorized by the board;

5. Make recommendations to the board, although the director of schools may not vote;

6. Supervise and visit the schools;

7. Enforce the regulations of the commissioner of education regarding courses of study and systems of pupil promotion;

8. Sign certificates and diplomas;

9. Recommend teachers eligible for tenure to the school board;

10. Recommend salaries for teachers;

11. Employ school principals under written contract (T.C.A. § 49-2-303);

12. Assign teachers and educational assistants to specific schools;

13. Keep on file all teachers' licenses and contracts of teachers and other employees;

14. Prepare and submit attendance reports;

15. Prepare full quarterly financial reports and monitor school spending;

16. Prepare and submit a school budget;

17. File a copy of the approved school budget with the commissioner of education within ten days after its adoption by the county legislative body;

18. Furnish a list of teachers and salaries to commissioner of education;

19. Approve access to personnel files when necessary;

20. Employ, transfer, suspend, non-renew and dismiss all personnel within the approved budget and applicable statutes and board policies, rules and regulations, contracts and negotiated agreements; and

21. Submit a report to the General Assembly by January 1 each year relative to the number of students in alternative schools.

The director of schools is a full-time position. It is a misdemeanor for the director to enter into any other contract with the board of education, to take any additional compensation from it, or to act as principal or teacher in any school; a director who violates this provision must be dismissed from the position. T.C.A. § 49-2-301(c). A director of schools is ineligible to serve as a member of the county legislative body; however, this prohibition does not apply to a director of schools who was serving as a member of the county legislative body on June 18, 2005. T.C.A. § 5-5-102(c)(2).

County School Budget

The budget for the county school system is developed by the director of schools and board chair and presented to the full board for its consideration. When the school budget has been approved by the board, it must be submitted to the county legislative body not later than 45 days prior to the July meeting of the county legislative body or 45 days prior to the actual date the budget is to be adopted, if such adoption is scheduled prior to July 1. T.C.A. § 49-2-203(a)(10). Local option budgeting laws and private acts

that may be in effect in a particular county will affect the budgeting process and must be consulted.

Under most circumstances, the legislative body either accepts the school budget as submitted by the school board or rejects it, in which case the budget is sent back to the school board with a specified amount of total funding. The school board then revises the specific items to conform with the total appropriated amount. However, the County Financial Management System of 1981, codified in T.C.A. § 5-21-101 *et seq*., seems to indicate that the county legislative body, in those counties that have adopted the act, may amend the budget proposed by the board of education and adopt a school budget without further action by the board of education. T.C.A. § 5-21-111. In spite of the statutory language, the state court of appeals has found that the county legislative body has no authority under the 1981 act to revise line items in the school budget, but may decrease the overall amount. *Morgan County Board of Commissioners v. Morgan County Board of Education*, No. 03A01-9308-CV-00290, 1994 WL 111457 (Tenn. Ct. App. April 6, 1994). A more recently enacted law, the Local Option Budgeting Law of 1993, T.C.A. § 5-12-201 *et seq*., contains provisions that do allow the county legislative body to revise the school budget under specified circumstances, but this law applies only in counties that have adopted its provisions. Regardless of the procedure used to adopt the budget, once a school budget has passed, amendments must be approved by the school board and by the county legislative body. T.C.A. §§ 5-9-407, 49-2-301(b)(1)(W).

Maintenance of Effort. Of particular interest to local governments is the statutory limitation that prohibits local school boards from submitting a budget that reduces local educational funds, excluding capital outlay and debt service, and then replaces them with money from the state. (This is commonly known as the "maintenance of effort" requirement or the "supplanting test.") There are two exceptions to this rule. First, if there is a reduction in state funding, then local funds used to offset these funding reductions are not subject to the maintenance of local funding requirement. Second, this restriction does not apply for three years after a city and county system have consolidated into one. T.C.A. §§ 49-2-203(a)(10), 49-3-314(c).

Fund Balance. Unexpended education funds remaining at the end of a fiscal year are carried forward in the education fund balance. The fund balance may be used to offset shortfalls of budgeted revenue or, with the approval of the school board and the county legislative body, to meet unforeseen increases in operating expenses. Any accumulated fund balance in excess of three percent of the budgeted annual operating expenses for the current fiscal year may be budgeted and expended for any education purposes, but must be recommended by the board of education prior to appropriation by the county legislative body. In any fiscal year in which state-shared revenues distributed to counties are reduced below the levels distributed to counties in the 2002-2003 fiscal year, any or all of the accumulated fund balance may be used for education purposes without restrictions. T.C.A. § 49-3-352.

Continuing Budget. If the county legislative body has not adopted a budget for the operation of the public schools by July 1 of any year, the school budget for the year just

ended continues in effect until a new school budget has been approved. Any continuing budget (the previous year's budget as temporary authority to expend funds until new annual budget is adopted) is not valid beyond October 1 of the current fiscal year for purposes of the local education agency's ability to receive state funds. T.C.A. § 49-3-316(d). Therefore, if a budget has not been adopted by October 1, the state may discontinue the county's funding.

State Funds for Education

As mentioned earlier, the method for allocating state funding for local education is the Basic Education Program (BEP), which has been in place since 1992. The purpose of the BEP is to allocate state funding fairly and equitably, taking into account the ability of local jurisdictions to raise revenues. T.C.A. § 49-3-356.

BEP Formula. Under the BEP, state appropriations for education are allocated to a formula devised by the state board of education and calculated for each local education agency (LEA) on the basis of the prior year's average daily membership (ADM) or full-time equivalent average daily membership (FTEADM), or identified and served special education students (I&S) as appropriate (with special provisions for LEAs experiencing extraordinary growth). T.C.A. § 49-3-351. The state provides 75 percent of the funds generated by the BEP formula in classroom components and 50 percent in nonclassroom components, as these components are defined by the state board of education. The remaining funds must be provided locally (see Required Local Matching Funds, below). T.C.A. § 49-3-356. The dollar value of the BEP instructional positions component will be $38,000 beginning with the 2007-08 fiscal year and will be adjusted each year in the same manner as other BEP components. T.C.A. § 49-3-366.

Equalization Formula. Revenues generated under the BEP formula are distributed to LEAs based upon an equalization formula adopted by the state board of education "to provide funding on a fair and equitable basis by recognizing the differences in the ability of local jurisdictions to raise local revenues." T.C.A. § 49-3-356. Because of this equalization of funding, the actual percentage paid by the state for classroom and nonclassroom components in each school system will vary from the percentages applied to the BEP formula noted above.

Required Local Matching Funds. Application of the BEP formula as equalized through the equalization formula results in the actual amount of state funding provided, and the corresponding amount of local funding required, for each LEA. The local government is statutorily required to fund its share of the BEP program, and the school term may not begin until the local portion has been included in the budget approved by the local legislative body. T.C.A. § 49-3-356.

Charter Schools

Charter schools in Tennessee were authorized by the Tennessee Public Charter Schools Act of 2002, T.C.A. § 49-13-101 *et seq*. Charter schools may be formed to provide alternatives for students in schools failing to make adequate yearly progress, to

address the special needs of students eligible for special education services, to provide an institution devoted exclusively to the re-enrollment of high school students who have dropped out or to provide local school systems the opportunity to work with the state's public higher education teacher training institutions. The entity operating a charter school must be a nonprofit organization with 501(c)(3) exemption from federal taxation. A charter school may be formed by creating a new school or by converting an existing eligible public school. The application for charter status is filed with the local board of education. If the local board of education denies the charter school application, the sponsor may appeal to the state board of education, whose decision is not appealable.

A charter school sponsor cannot be a for-profit entity, a private school, a religious or church school, or an individual, group or organization promoting the agenda of any religious entity or denomination. No private, parochial, cyber-based or home-based school may be converted to a charter school, and no cyber-based charter school may be authorized. Charter schools must meet the same performance standards as other public schools and cannot discriminate on the basis of disability, race, creed, color, national origin, religion, ancestry, or need for special education services. Charter schools are accountable to the chartering local board of education to ensure compliance with the charter agreement and the law; the comptroller's office is authorized to audit any charter school when deemed necessary.

Bidding is required for goods and services over $5,000. The governing body is subject to the conflict of interest provisions of T.C.A. §§ 12-4-101 and -102, and its meetings are subject to the Open Meetings Act. All teachers must be licensed or meet the minimum requirements for a license. Charter schools are entitled to receive 100 percent of the per-pupil expenditure allocated in the LEA and may also be funded by grants, gifts and donations. Participation in a charter school is by parental choice, and charter schools must accept all applications timely submitted, up to capacity of the school. Pupil transportation may be provided at the election of the charter school. Employees of a charter school may organize for collective bargaining purposes in accordance with general law and may participate in the state group insurance plans. Charter school employees participate in the LEA's retirement program. The state department of education provides information on its Web site on how to organize a public charter school.

Reference Material on County Departments of Education

The material included in this handbook is intended only as an overview of the educational system at the county level, a complex and extensive area of the law. The reader is referred to the following publications for additional information:

1. *Tennessee Code Annotated*, Volume 9, Title 49.

2. *Rules, Regulations, and Minimum Standards of the State Board of Education* – available from the Tennessee Commissioner of Education, Sixth Floor Andrew Johnson Tower, 710 James Robertson Parkway,

Nashville, Tennessee 37243-0375 or from the office of the local director of schools, or on the Internet at tennessee.gov/sos/rules/0520/0520.htm.

3. *Annual Statistical Report of the Department of Education* and other reports published by the state department of education are available from the commissioner of education at the above address, at the Web site of the department of education at www.tn.gov/education, or from the office of the local director of schools.

4. Numerous publications by the *Tennessee Advisory Commission on Intergovernmental Relations* (TACIR) relative to education funding in Tennessee are available on the TACIR Web site at www.tn.gov/tacir.

CHAPTER 5

THE COUNTY HIGHWAY DEPARTMENT AND COUNTY ROADS

Most county highway departments in Tennessee are subject to a set of general state statutes known as the County Uniform Highway Law (CUHL). T.C.A. § 54-7-101 *et seq*. The County Uniform Highway Law does not apply in Shelby, Davidson, Knox and Hamilton counties. T.C.A. § 54-7-102. Those counties operate their highway or public works departments pursuant to either a metropolitan government charter (Davidson), county charter (Shelby, Knox) or private act (Hamilton). Some counties have also attempted to "opt out" of portions of the CUHL by narrow population classes applicable to individual counties, even though the attorney general has stated that such exclusions are constitutionally suspect. Although the CUHL deals with many important aspects of the county highway department, it does not deal with all aspects, such as how the head of the department is selected or who purchases for the department. Therefore, most counties also have private acts that deal with issues not addressed by the CUHL. Some of these private acts were enacted prior to the adoption of the CUHL in 1974 and have provisions that conflict with the CUHL. In those instances, the CUHL will override any conflicting provisions in the private act unless a rational basis exists for suspending the general law for the particular county. Op. Tenn. Att'y Gen. 99-058 (March 10, 1999).

Chief Administrative Officer

Under the Tennessee County Uniform Highway Law, the chief administrative officer (or CAO) has oversight of the county highway department and may be called by such titles as county road superintendent, county road supervisor, director of public works, county engineer, or a similar name. The CAO has general control over the construction and maintenance of county roads. T.C.A. §§ 54-7-103, 54-7-109. However, where a county has an elected road commission, the commission may exercise some control over these functions if the private act grants it such authority. T.C.A. § 54-7-109.

Qualifications. The CAO may be elected or appointed to a four-year term pursuant to a general law or private act, although some counties are excluded from the term of office provision by narrow population class. T.C.A. §§ 54-7-103, 54-7-105. In addition to the general qualifications to hold office, the CAO must meet the following requirements:

1. Must have a high school education or general equivalency diploma (GED) recognized by the Tennessee State Board of Education; and

2. Must have at least one of the following:

   (a) A diploma from an accredited school of engineering, with at least two years experience in highway construction or maintenance, or a license to practice engineering in Tennessee; or

   (b) Four years experience in a supervisory capacity in highway construction or maintenance; or

(c) A combination of education and experience equivalent to either of the above as evidenced by affidavits filed with the appointing authority or with the state coordinator of elections when the chief administrator is an elected official.

T.C.A. § 54-7-104.

Candidates for election must file affidavits and other evidence supporting the candidate's qualifications with the Tennessee Highway Officials Certification Board at least 14 days prior to the qualifying deadline. A certificate of qualification from the certification board must be filed with the candidate's qualifying petition prior to the qualifying deadline before the candidate's name is placed on the ballot. Also, candidates for appointment to the office of CAO must file evidence satisfactory to the board that they meet the qualifications to hold the office prior to their appointment to the position. T.C.A. § 54-7-104. Some counties are excluded from certain of the qualification requirements by narrow population classification, but as was mentioned above, these narrow population classifications are constitutionally suspect. Davidson County (metropolitan government and over 100,000 population) is also excluded. The qualifications do not apply to an incumbent highway administrator in office on April 5, 1974, or to any candidate for the office qualifying for and elected to the office in 1974 if that person remains in office. T.C.A. § 54-7-104. If the CAO is appointed, a private act governs the method of appointment (but it should conform to the limitations of Article XI, Section 17 of the Tennessee Constitution, which requires election by the county legislative body if the official is not popularly elected). T.C.A. § 54-7-103. Except in those counties excluded from the CUHL, counties cannot add additional qualifications for the CAO by private act or resolution of the county legislative body.

Oath of Office and Bond. Before taking office, the CAO must take and subscribe to the oath of office. An example of a oath of office for a CAO may be found in the appendix. The oath of office may be administered at any time after the certification of the election returns, in the case of elected officials, or after appointment, in the case of appointed officials. However, even if the official files an oath before the scheduled start of a term of office, the official may not take office until the term officially begins. T.C.A. § 8-18- 109. The oath must be written and subscribed by the person taking it. Accompanying the oath must be a certificate executed by the officer administering the oath, specifying the day and the year it was taken. T.C.A. § 8-18-107. The oath and the certificate are filed in the office of the county clerk, who endorses on them the day and year of filing and signs the endorsement. T.C.A. §§ 8-18-109, 8-18-110.

The CAO must also enter into a bond of $100,000 or a greater amount if the county legislative body so requires. T.C.A. § 54-7-108. This bond, payable to the state, is to indemnify the county against the loss of any funds occurring as a result of unlawful or dishonest acts. T.C.A. § 54-4-103. The official bond of a CAO must be approved by the county legislative body, recorded in the office of the register of deeds and transmitted to the county clerk for safekeeping. T.C.A. §§ 8-19-102, 8-9-103, 8-10-106.

Salaries and Employees. The chief administrative officer must receive at least the minimum salary stated under T.C.A. § 8-24-102. If two or more CAOs are elected or appointed with equal duties, the compensation is divided equally between them. T.C.A. § 54-7-106. The legislative body may at any time increase or decrease the salary of the CAO as long as it is maintained at or above the minimum salary level. T.C.A. § 54-7-106. The salary of the CAO must be at least 10 percent greater than that of the general officers of the county. T.C.A. § 8-24-102(g).

The CUHL places authority over county highway department personnel with the CAO. The CAO may employ a qualified secretary and other office personnel necessary to handle correspondence, maintain accurate records of receipts and expenditures, equipment, supplies, materials, maintenance performed, and other items necessary to operate the highway department. The CAO determines the total number of employees (within the limits of the available budget), personnel policy (but *see* Chapter 19) and work hours, job classifications, and policies and wages within the classifications. The compensation established should be consistent with pay in similar services in the county and surrounding area. T.C.A. § 54-7-109. In addition, the wages must comply with the federal Fair Labor Standards Act regarding minimum wage and overtime compensation as well as other federal and state statutes dealing with personnel.

Duties. The CAO is the head of the county highway department and has general control over the location, relocation, construction, reconstruction, repair, and maintenance of the county road system, including bridges and ferries, except roads and bridges under the supervision of the state Department of Transportation. T.C.A. § 54-7-109. However, in counties which have private acts providing for popularly elected road commissioners with general control over location, construction and maintenance of county roads, the control remains as provided under the private act. T.C.A. § 54-7-109; *see also* Op. Tenn. Att'y Gen. 88-01 (Jan. 4, 1988).

The CAO may employ legal counsel or solicit legal counsel retained by the county to prosecute or defend litigation caused by or necessary to operating the highway department. However, in counties with road commissions, the general control and authority to hire legal counsel remains as provided by private act. T.C.A. § 54-7-110.

The CAO must prepare and submit an annual work program to be financed under the state-aid highway system program to the county legislative body and the state Department of Transportation. Priorities for the proposed work program are established by considering the degree of deficiencies in the structural condition, capacity and safety of existing roadways; traffic volume; and desirable level of services necessary for schools, religious institutions, industry, recreational facilities and other major uses. T.C.A. § 54-7-111.

Other specific duties of the CAO are discussed in more detail later in this chapter.

Vacancies. In case of a vacancy in an elected office, a qualified successor is to be chosen by the county legislative body as discussed in Chapter 9. T.C.A. §§ 5-1-104, 54-7-107. If the CAO is appointed, the vacancy is filled as provided by private act. Pursuant

to T.C.A. § 54-7-107, each CAO shall designate in writing an interim successor to perform the duties of the office in the event of a vacancy due to death, resignation or removal from office. The interim successor serves during the time period between when the vacancy occurs and when the county legislative body appoints a qualified successor. The chief administrative officer files the designation with the highway commission and county clerk, or with the county legislative body and county clerk if the county does not have a highway commission.

County Highway Commissions (Road Boards)

County highway commissions, often called road boards, are not required by general law. However, the CUHL recognizes that these boards have been created in many counties by private act. The general law at T.C.A. § 54-7-109 provides that in counties that have popularly elected road commissioners, if the private act grants to the road board powers concerning the general control of the highway department, such as setting general priorities over road work, that the private act will be effective to that extent and somewhat limit the authority of the CAO. Also, private acts may grant road boards a role in budgeting and purchasing for the road department. Some road boards are popularly elected and some are appointed by the county legislative body. It is only those that are popularly elected that may exercise general supervision over the highway department. Op. Tenn. Atty. Gen. 88-11 (January 4, 1988). However, private acts cannot allow even popularly elected road boards to encroach upon the personnel policy powers and day-to-day administrative authority of the CAO over the personnel of the highway department and other powers given to the CAO in the CUHL.

Inventory of Machinery and Equipment

The CAO supervises, controls and is responsible for all the machinery, equipment, tools, supplies and materials owned or used by the county in the construction, repair and maintenance of county roads and bridges. Within 60 days after taking office, the CAO must make a complete inventory and file copies with the county governing body and the county mayor. The inventory must be revised annually, effective July 1 of each year and submitted by September 1. T.C.A. § 54-7-112.

All machinery, equipment and tools must be plainly marked as the property of the road department, and each item must be numbered and entered on the inventory filed by the CAO. The county mayor must examine the inventory for compliance with the law, and if the inventory does not comply, funds shall be withheld from the chief administrative officer until compliance is made. T.C.A. § 54-7-112. The inventory filed by the CAO shall be maintained and made available to the comptroller of the treasury for audit purposes. T.C.A. § 54-7-112.

Purchasing Provisions and Chart of Accounts

All funds received by the county for road or highway purposes must be promptly deposited with the trustee and should be expended only upon disbursement warrant drawn upon the trustee according to law. Expenditures of funds to operate the road

department must be made within the limits of the approved budget and the appropriations made for the department. T.C.A. § 54-7-113.

The following purchasing procedures apply to all CUHL counties that have not established any other private act or general law purchasing procedure prior to July 1, 1980:

1. All purchases of $10,000 or more must be publicly advertised and competitively bid;

2. Purchases of like items that individually cost less than $10,000 but are customarily purchased in lots of two or more must be advertised and bid if the total purchase price of these items is expected to exceed $10,000 during any fiscal year;

3. Repair of heavy road building machinery or other heavy machinery for which limited repair facilities are available need not be bid;

4. Purchases of any supplies, materials, or equipment for immediate delivery may be made without bidding in actual emergencies arising from unforeseen causes but such emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs;

5. Leases or lease-purchase arrangements requiring payment of $10,000 or more, or continuing for 90 days or more, must be advertised and competitively bid; and

6. All purchases costing less than $10,000 may be made in the open market without newspaper notice, but, wherever possible, should be based upon at least three competitive bids.

T.C.A. § 54-7-113.

The CUHL does not repeal existing statutes, including private acts, that establish purchasing provisions for a county road department. However, no county road department shall be required to publicly advertise and competitively bid purchases of $10,000 or less even if they are now required to do so by public or private act. T.C.A. § 54-7-113.

Each CAO must maintain a chart of accounts in conformity with the uniform chart of accounts developed by the comptroller of the treasury. T.C.A. § 54-7-113. Additional information on the proper accounting procedures is available through the county audit division of the comptroller's office.

There is a presumption that the CAO is authorized to sign agreements with the Tennessee Department of Transportation on behalf of the county. Once the agreement is executed, it is fully binding on the county. This presumption is overcome only if the county legislative body provides notice to the state Department of Transportation that

the CAO does not have the authority to execute these agreements. Receipt of this notice must be acknowledged by the department in order to overcome the presumption. T.C.A. § 5-7-116.

Prohibited Acts and Penalties

The CAO must not authorize or knowingly permit trucks or road equipment, rock, crushed stone or any other road material to be used for any private use or for the use of any individual for private purposes. A violation of this provision is a Class C misdemeanor, and each separate use of the same for other than authorized purposes constitutes a separate offense and is subject to a separate punishment. Any employee who uses any road equipment or materials for personal use or sells or gives away any such materials or equipment must be immediately discharged. No truck or other road equipment shall be used to work private roads or for private purposes of the owners. T.C.A. § 54-7-202. Any person whose property is improved by the use of county road equipment or material is liable for the value of the improvements, including legal fees, which will be distributed to the county road department. T.C.A. § 54-7-202. However, an exception to these rules provides that if requested by the U.S. Postal Service or local board of education in writing, the county highway department may maintain areas on private property for the purpose of providing public school buses and postal vehicles with a route and turnaround if the landowner consents in writing. T.C.A. § 57-7-202. A county highway department should only improve or maintain a road that has been declared public by the county legislative body or the courts. Op. Tenn. Att'y Gen. U95-064 (July 17, 1995). Absent such a determination by one of those two bodies, the CAO should not work on that road even if the CAO "thinks" the road is public.

One other exception in the law provides that the county legislative body may authorize the road department to perform work for other government entities if the cost is reimbursed to the road department. T.C.A. § 54-7-202. For example, in 1995 the state Attorney General opined that the county highway department may not maintain areas to provide school buses with a route or turnaround without requiring at least partial reimbursement. Op. Tenn. Att'y Gen. U95-064 (July 17, 1995). The county may even contract with the commissioner of transportation to perform maintenance upon state rights-of-way outside municipalities and metropolitan governments. The Department of Transportation will reimburse the county on an actual cost basis. T.C.A. § 54-5-139.

If a CAO commits a theft, either directly or indirectly, of more than $1,000 of county highway or road money, the officer is guilty of a felony. Upon conviction, the CAO shall be punished by imprisonment in the penitentiary for any time not less than three years nor more than twenty years. T.C.A. § 54-7-206. If the theft is $1,000 or less, the CAO is guilty of a misdemeanor. Upon conviction, the CAO shall be punished by confinement for not more than one year. T.C.A. § 54-7-206.

If a CAO, who is charged with the collection, safekeeping, transfer, or disbursement of money or property belonging to the county highway department, uses or diverts any part of the money or property by loan, investment, or otherwise without authority of law, or converts any part to his own use in any manner, the CAO is guilty of embezzlement. For

every such act, upon conviction, the CAO shall be punished as in the case of larceny, and must pay to the court an amount equal to the amount embezzled. Such amount shall be forwarded by the clerk to the county highway department. T.C.A. § 54- 7-206.

Under T.C.A. § 12-8-101, counties and municipalities may individually or jointly own or operate a hot mix asphalt facility but only if certain conditions are met. A financial feasibility study using factors specified by the statute must be completed and reviewed by a three-member feasibility oversight committee consisting of members named by the comptroller of the treasury, the Tennessee Road Builders Association, and the Tennessee County Highway Officials Association. The completed study must be filed with the comptroller of the treasury and the county mayor and be available for public inspection. The committee's function is to review the feasibility study to determine if all appropriate costs are included and publically disclosed. The committee either approves the study or disapproves the study if it is deemed incomplete and lacks substantial information to provide an accurate estimate of the costs and benefits of owning and operating a plant. The committee is to itemize any deficiencies and return the study to the local government or governments for modification and resubmission. If after a second submission a majority of the committee determines the study to be incomplete, it will be forwarded to the county or municipal governing body with a negative recommendation within 30 days after the meeting. Any minority report must also be forwarded. The county legislative body or municipal governing body then determines whether or not to approve or deny any action required to acquire an asphalt facility. The resolution or ordinance requires a two-thirds majority vote before any public funds may be expended on a hot mix asphalt facility. Asphalt produced from such a public facility must be used exclusively for paving public streets, roads or highways under control of the unit of local government that owns the plant. Asphalt facilities owned by local governments on March 29, 1976, and all metropolitan governments, are exempt from the additional requirements of T.C.A. § 12-8-101. All local governments acting under the new public Chapter that own and operate an asphalt facility are required to solicit bids annually for hot mix asphalt products but may reject any and all bids. T.C.A. § 12- 8-101.

All counties and municipalities that did not own or operate an aggregate facility for the production of crushed limestone, commercial lime, agricultural lime, sand, gravel, or any other product resulting from the processing of aggregate on June 7, 2005, are prohibited from acquiring such a facility unless the county or municipality prepares a financial feasibility study comparable to the one required for asphalt facilities and a review procedure substantially similar to the one for asphalt facilities is used. The acquisition of such an aggregate facility also requires a two-thirds majority vote of the county legislative body or municipal governing body as appropriate. A local government that owns and operates an aggregate facility may transfer materials to another entity of that local government only if a study has been completed to determine the actual costs of producing that material and reimbursement of actual costs is made. Otherwise, it is unlawful for crushed limestone, commercial lime, agricultural lime, gravel, or any other product resulting from processing of stone, produced in whole or in part by any governmentally owned or operated plant, quarry, crusher, or stone processing plant to be sold, traded, bartered, lent, or given away . T.C.A. § 12-8-101. A violation of this

Section results in a Class C misdemeanor. T.C.A. § 12-8-102. However, counties may sell agricultural lime to farmers for their own farming activity. T.C.A. § 12-8-103.

Counties may make improvements to existing highways in the state highway system within the particular county, but only with the approval of the Commissioner of Transportation. These improvements may be made by the highway department or through contract with private companies, if approved by the commissioner. Maintenance of improvements by the county that benefit the state highway system becomes the responsibility of the state when the county work is completed. T.C.A. § 54- 5-140.

County highway departments may accept donations of materials, property, services, funds, or supplies for their benefit if used in good faith according to the terms of the donation. Also, the highway department may allow a private person or entity to repair county roads damaged by that person or entity to meet the roads' condition or standard prior to the damage. T.C.A. § 54-7-115.

Local governments may participate with a railroad authority in constructing, reconstructing or repairing railroad crossings. This work may be performed by private parties under contract or by local government employees. T.C.A. § 65-11-101.

The CAO, highway commissioner, legislative body member or road department employee must not be financially interested in or have any personal interest, either directly or indirectly, in the purchase of any supplies, machinery, or materials, nor in any firm, corporation, association or individuals selling or furnishing any such materials or equipment to the road department. Violation of this provision constitutes official misconduct and is a Class C misdemeanor and is grounds for removal from office. T.C.A. § 54-7-203. This conflict of interest statute is more restrictive than the statute generally applicable to county officials. *See* T.C.A. § 12-4-101.

The CAO may remove any fence, gate or other obstruction from the roads, bridges and ditches of the county and clean out and clear all fences and ditches along or adjacent to the county roads. Any person who places or maintains an obstacle or obstruction on the right-of-way of a county road and refuses to remove it commits a Class C misdemeanor. T.C.A. § 54-7-201. *See* also Op. Tenn. Atty Gen. 00-072 (April 17, 2000) for a more detailed discussion of this issue.

Removal From Office and Withholding of State Funds

If any provision of the CUHL is violated, the commissioner may withhold state-aid highway system funds until the deficiency is corrected to the commissioner's satisfaction. T.C.A. § 54-7-204. In addition to any proceeding under Title 8, Chapter 47, of the *Tennessee Code Annotated*, the CAO of a county road department may be removed from office in accordance with the provisions of T.C.A. § 54-7-205. If the investigation by the district attorney general and the state attorney general indicates willful misfeasance, malfeasance or nonfeasance by the chief administrative officer, the district attorney general shall proceed, pursuant to Title 8, Chapter 47, to remove the

CAO from office, and the officer will be ineligible to seek the office again. T.C.A. § 54-7-205.

County Roads versus Private Roads

All roads in a county are not county roads, as some are private roads, state highways or city streets. Private roads are the most difficult to distinguish from county roads. Private roads are generally: (1) used by only one or a few property owners, such as a driveway; or (2) one where the landowner allows the general public to use, but (a) the road has never been formally accepted by the legislative body as a county road or (b) the landowner has never given the public any rights either express or implied.

A public highway or road is "such a passageway as any and all members of the public have an absolute right to use as distinguished from a permissive privilege of using same." *Standard Life Ins. Co. v. Hughes*, 315 S.W. 2d 239, 242 (Tenn. 1958). This case provides that a road may become public in one of the following ways:

1. Act of a public authority;
2. Express dedication by the owner;
3. Implied dedication – use and acceptance by the public with the intention of the owner that the use become public; or
4. Adverse use continuing for 20 years, creating a prescriptive right.

Accordingly, unless the public has acquired an absolute right to use the road under one of these methods, any public use is either by permission or license and not by right, and the road remains a private road. *Id*.

<u>County Road List</u>. The statutes do not make a clear distinction between "public" and "county" roads. All county roads are public roads, but not all public roads are county roads. Some public roads are maintained by other governmental entities such as the state or city governments. Some roads not maintained by any governmental entity may be public (the public has a right to traverse) while others are private. The county legislative body is required to annually classify the public roads in the county after receiving the recommendation of the CAO of the county highway department. This classification should be accomplished, or at least the process begun, each January. The process begins when the CAO submits a listing of all county roads to the county legislative body. This listing must include a summary of all changes from the road listing submitted the previous year. The summary is to provide the road name, date the change was approved by the county legislative body and the reason for the change (including but not limited to, opening, closing, reduction or extension in length, or correction of error). The CAO must also include a recommendation for classifying the roads. T.C.A. § 54-10-103. Roads classified by the county legislative body as public roads to be maintained by the county are listed with a classification according to width. T.C.A. § 54-10-104. This county road list is a public record kept by the county clerk. T.C.A. § 54-10-103. The county highway department should also have an up-to-date county road list.

A private road often used by members of the public and a public road that has not been maintained by the county highway department are often difficult to distinguish. Although a court called upon to decide such an issue may apply the tests set forth in the Hughes case noted above and decide a road is a public road, the county highway department should work only on the public roads named on the county road list to avoid the possibility of working on private roads (except as permitted in limited circumstances described below). The CUHL states that the CAO may only use county vehicles, equipment, supplies or road materials for official county road purposes. T.C.A. § 54-7-202(d). Therefore, the CAO operates clearly within the authority of the law when county road work is limited to public roads classified on the county road list.

As mentioned previously, the CUHL does allow work on private roads under very narrow circumstances, such as when the United States Postal Service or the school board or education department requests the provision of a route and turnaround area. Before the county highway department performs any work so requested, the CAO must receive the request in writing from the postal or school officials and must also receive written permission of the owner of the property proposed to be used as a turnaround area. The highway department (CAO or elected highway commission) and the appropriate postal authority or school board or department of education must determine whether all or part of the cost of the work will be reimbursed to the county highway department prior to commencing work on the project T.C.A. § 54-7-202(g). This provision for the postal service and school board is the only exception to the rule that the county highway department cannot work on private roads.

An up-to-date road list is vital for the protection of the highway officials. With a current road list on file, highway officials will know exactly which roads can be maintained and which roads are illegal to maintain. T.C.A. § 54-10-103. The highway department should not begin work on a road until it has been officially accepted by the legislative body and added to the county road list. There may be some confusion in counties that have a planning commission because road approval by a planning commission is one step in the acceptance process. However, approval of a plat by the planning commission does not constitute acceptance of a platted road as a county road. T.C.A. § 13-3-405.

The county legislative body must update and maintain the county road list after receiving the CAO's recommendation. The road list is not difficult to compile and should contain eight factors:

1. Type of road (county or state-aid road);
2. State-aid road description (only for county roads included in the state-aid road system);
3. Local name of road;
4. Beginning and ending point of road (describe by reference to geographical features);
5. Miles (length of road to nearest one-tenth mile);
6. Class (classify according to width);
7. Right of way width (in feet); and
8. Roadbed width (in feet).

T.C.A. §§ 54-10-103, 54-10-104.

Frequently, only a portion of a total road may be accepted as a county road. Accordingly, the beginning and ending points, total miles, and other road list items should refer only to the part of the road that is a county road.

Acceptance and Closing of County Roads. The statutory law regarding acceptance of new county roads and the closure of existing county roads is very confusing, and the county attorney should be consulted to determine the proper procedure to follow in the particular county. However, some general observations may be helpful. The relatively new CUHL must be reconciled to the greatest degree possible with the old general law on opening, closing and changing roads found in Title 54, Chapter 10 of the *Tennessee Code Annotated*, as well as other general law such as the general law granting certain powers to regional planning commissions and the state Department of Transportation in some instances.

The State Attorney General has opined that in counties under the CUHL, the CAO of the county highway department, or the elected highway commission or board (if a private act grants general control of the county road system to the elected board) in the counties with such an elected board, has general control of the county highway system and this includes approving the acceptance of a new road, changing the route of an existing road or closing an existing county road before such a change may take place. Op. Tenn. Att'y Gen. U89-10 (January 31, 1989). However, this is not the only step involved. The county legislative body must pass on additions or deletions to the classifications of county roads in the county road list after receiving the recommendation of the CAO. T.C.A. § 54-10-103. However, if a road has obtained a public character under the standard in the Hughes case, it is doubtful whether the CAO or elected highway board may prevent the county legislative body from adding such a road to the county road list or prevent a court from declaring the road public and part of the county road system. *Hackett v. Smith County*, 807 S.W.2d 695 (Tenn. Ct. App. 1990); *Rogers v. Sain*, 679 S.W.2d 450 (Tenn. Ct. App. 1984).

In *Hackett v. Smith County*, 807 S.W.2d 695 (Tenn. Ct. App. 1990), the court held an implied dedication of the roads in a subdivision had occurred through extended use and acceptance by the public although the county had not placed the roads on the county road list. In the case of *Shahan v. Franklin County*, 2003 WL 23093836 (Tenn.Ct.App.), a developer and residents of a subdivision sued the county over the maintenance of roads within the subdivision. The county had declined an offered dedication. Although the court found evidence of public use of the roads, it held that the doctrine of implied dedication did not apply because the roads were in an unapproved subdivision in a county that had established regulations that included minimum road standards. Reading Hackett and Shahan together, subdivision roads can be expected to become the responsibility of the county unless it can be demonstrated that the developer failed to comply with minimum road standards established in subdivision regulations.

Once a road is a part of the county road system, a county commission cannot merely rescind its action in accepting a public road, but must follow the statutory procedures for road closures. In arriving at this opinion, the state Attorney General stated that it is well established that an action can be undone only by following procedures specified by statute, or, if there are none, by an act of "equal dignity" with the method of enactment. Op. Tenn. Att'y Gen. U96-010 (February 8, 1996).

If bonds are issued for construction of county roads or bridges, the approval of the CAO, the county legislative body and the Tennessee Department of Transportation must be obtained. T.C.A. §§ 54-9-139, 54-9-202. Also, the regional planning commission has authority to approve plats of subdivisions that may contain plans for roads or streets, and the planning commission has power to set standards for such roads or streets in the subdivision. T.C.A. §§ 13-3-401, 13-3-402, 13-3-406. However, the statutes specifically state that the approval of a plat by the regional planning commission shall not be deemed to constitute or effect an acceptance by any county or by the public of the dedication of any road or other ground shown upon a plat. T.C.A. § 13-3-405; *Foley v. Hamilton*, 659 S.W.2d 356, 360 (Tenn. 1983).

The old general law found in Title 54, Chapter 10, Part 2, dealing with petitions to open, change or close public roads must be considered when dealing with certain changes to the county highway system. As stated earlier, this old law must be reconciled to the extent possible with the newer statutes found in the CUHL. For example, before a road is closed, adjacent landowners or those controlling the land touched by the proposed road must be notified. T.C.A. §§ 54-10-202, 54-10-203. Since these changes may involve damages to property owners, a jury of view is provided for to determine if damages exist and to what extent. T.C.A. § 54-10-204. The exact workings of a petition process, jury of view, any necessary hearings and other procedural matters should be worked out with the consultation of the county attorney so as to reconcile the conflicting statutes to the greatest extent possible.

In 1995, the General Assembly enacted an alternative local option procedure for closing public roads that are not maintained by any other governmental entity. If the county legislative body adopts these alternative measures by a two-thirds majority vote, the following procedures apply for that county. An application to close a public road is made to the CAO. The CAO gives notice of this application to interested parties (adjacent property owners). The CAO makes a recommendation to the regional planning commission regarding whether or not the road should be closed. The planning commission then provides written notice to affected property owners or newspaper notice of an impending recommendation 14 days prior to making the commission's recommendation to the county legislative body. After receiving the recommendation of the regional planning commission, with the CAO's recommendation attached, the county legislative body may order closure of the public road by resolution. T.C.A. § 54- 10-216. The CAO has the authority to temporarily close roads or bridges as necessary for new construction or repair. Op. Tenn. Att'y Gen. 81-618 (Dec. 7, 1981).

Eminent Domain

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. Limitations on the use of this power of eminent domain were added in 2006 Public Chapter 863. 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:

1. The acquisition of any interest in land for a road, bridge, or other public transportation project;

2. The acquisition of any interest in land necessary to the function of a utility;

3. The acquisition of property by a housing authority or community development agency for urban renewal or redevelopment under Title 13, Chapters 20 and 21;

4. Private use that is incidental to a public use if no land is condemned primarily to convey or permit the incidental private use; and

5. The acquisition of property by a county or municipality for an industrial park under Title 13, Chapter 16, Part 2.

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. The county may exercise the power of eminent domain for an industrial park anywhere in the county and within urban growth boundaries and planned growth areas, and a municipality may exercise the power anywhere within its boundaries and urban growth area. A county and municipality, or both, operating a joint park may exercise the power anywhere within the jurisdictional boundaries and within an urban growth boundary or planned growth area. T.C.A. § 13-26-207.

A certificate of public purpose and necessity is required for the exercise of eminent domain for an industrial park even if no funds will be borrowed and the bonded debt limit does not apply. The issuance of the certificate must be based upon a finding that the local government has been unable, through good faith negotiations, to obtain the property or other property that would be of comparable suitability. Good faith negotiation is established if the local government made an offer to purchase the property for an amount equal to or in excess of at least two appraisals by independent qualified appraisers. T.C.A. § 13-16-207.

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. 2006 Public Chapter 863.

Weight Limits

The general statutory law limits the weight of vehicles over the public roads of the state according to weight per axle or group of axles. T.C.A. § 55-7-203. However, the state commissioner of transportation may lower the gross weight of freight motor vehicles operating over the highways and secondary roads where through weakness of structure in either the surface of the road or the bridges, the maximum loads provided by law, in the opinion of the commissioner, injure or damage such roads and bridges. "Appropriate county officials" have the same authority for county roads. T.C.A. § 55-7- 205. It is not perfectly clear who the "appropriate county officials" are. Therefore, to insure that any weight limits placed on county roads are enforced, the CAO of the highway department should seek approval from an elected road board if one exists in the county with general supervisory powers, and also the county legislative body if the weight limit is to be permanent. Also, the limit should be based on a study or recommendation of an engineer if the limit is to be permanent in nature. Further, it is important for enforcement that an adequate number of signs be employed, and it is recommended that notice be given in a newspaper of general circulation in the county of the roads and bridges that will have the new limits. Regional engineers of the Tennessee Department of Transportation may be helpful in establishing weight limits.

Speed Limits

State law establishes the speed limit on all non-interstate highways and roads in Tennessee at 65 mph, if a lower limit has not been set as provided in the statutes. T.C.A. § 55-8-152. The county legislative body has the authority to set lower speed limits on county roads. If this is done, the county legislative body is directed to provide funds for the erection of signs and traffic signals as appropriate to warn the public of these lower limits. T.C.A. § 55-8-153.

Public Fords, Ferries and Bridges

Counties may supervise fords, ferries and bridges. T.C.A. § 54-11-101 *et seq*. Counties may issue bonds for the construction of county highways, roads and bridges and pledge up to 50 percent of state-aid grant funds derived from the state gasoline tax for the

retirement of such bonds. However, state funds used in matching federal funds may not be included in this amount. T.C.A. § 54-9-201. The legislative body may build a bridge or bridges over and across any stream or river running through the county. T.C.A. § 54-11-207. However, as with roads, such authority applies only to public bridges. A county highway department does not have any responsibility to maintain bridges on private property. Op. Tenn. Att'y Gen. 01-080 (May 17, 2001).

CHAPTER 6

MISCELLANEOUS COUNTY STATUTORY OFFICES AND POSITIONS

In addition to the county constitutional offices and important statutory offices such as the chief administrative officer of the county highway department and the important employment position of director of schools, counties have various other offices and employment positions that have been created by either general law or private act. Some of the offices and positions described below are not found in all counties but are fairly common.

County Attorney

The county attorney or law director is a popularly elected official in a few counties by private act (e.g., Anderson) or county charter (e.g., Knox), an officer elected for a term of office by the county legislative body under a private act in a few others (e.g., Cocke), an executive appointed department head in others by county or metropolitan government charter (e.g. Shelby and Davidson). In most counties, however, there is not an office of county attorney; rather, the position is one of employment or retainer under the general law authority of the county mayor to employ or retain counsel when there is no county attorney. An attorney employed or retained by the county mayor is to advise the county mayor and the members of the county legislative body as to their legal rights as members, prepare resolutions for passage by the body, and represent the county either as plaintiff or defendant in such suits as may be brought by or against the county, except suits by the county to collect delinquent taxes. An attorney employed or retained by the county mayor under this general law authority is entitled to a reasonable fee for such counsel's services and/or retention, which amount is to be fixed by a majority vote of the members of the county legislative body at one of its regular meetings and paid out of the general fund of the county. T.C.A. § 5-6-112. The counties that have an office of county attorney or law director by charter or private act may have different duties and compensation schemes, but all play an important role in advising the county mayor or metropolitan mayor and representing the county. The county charter, metropolitan government charter or private acts of each county must be examined to determine the exact role and duties of the county attorney in the particular county.

County Medical Examiner

Every county is required to have a county medical examiner. T.C.A. § 38-7-104. The principal function of the medical examiner is to investigate deaths occurring under certain circumstances described by statute and to provide information to law enforcement officials. T.C.A. §§ 38-7-106 through 38-7-116. The county commission may assign the county coroner's duties to the medical examiner and eliminate the office of coroner. T.C.A. § 8-9-101. The county medical examiner may order autopsies in cases where the death is sudden or is possibly not from natural causes.

The county medical examiner is appointed by the legislative body from a list of two doctors of medicine or osteopathy nominated by a convention of physicians residing in

the county. In counties with a metropolitan form of government, the medical examiner is appointed by the chief executive officer subject to confirmation by the metropolitan council. T.C.A. § 38-7-104. The county legislative body may appoint a medical examiner from another county if it is impossible to obtain acceptance from a physician in the county. If the legislative body fails to certify a medical examiner, the state's chief medical examiner may appoint a medical examiner for the county until the legislative body takes such action. T.C.A. § 38-7-104.

County Medical Investigator

The county legislative body has discretionary authority to establish the position of medical investigator to assist the county medical examiner. Generally, this position must have one of the following qualifications: a licensed EMT, paramedic, registered nurse, physician's assistant or a person registered by or a diplomat of the American Board of Medicolegal Death Investigators; and the person must be approved by the county medical examiner as qualified to serve. If a county has a coroner elected by the county legislative body, then the coroner acts as the medical investigator if the coroner is qualified, but if the coroner has served for 10 years or more the coroner is not required to be otherwise qualified. If the position of medical investigator is established and the coroner is not qualified to serve as medical investigator, then the county legislative body must either authorize the county medical examiner to appoint someone subject to confirmation of the county legislative body or provide for this function through a contract for service approved by the county medical examiner and the county legislative body. The county medical investigator may conduct investigations of possible unnatural death under the supervision of the county medical examiner and may make pronouncements of death but cannot sign a death certificate. The medical investigator may recommend an autopsy but cannot order one unless this authority is delegated to the medical investigator by the county medical examiner. T.C.A. § 38-7-104(g).

County Coroner

The county legislative body has discretionary authority to create the county coroner's office. If the office is created, the legislative body appoints a coroner for a two-year term. T.C.A. § 8-9-101. The coroner must take an oath of office and enter into a $2,500 surety bond. T.C.A. §§ 8-9-103, 8-9-104.

The coroner may hold an inquest upon receiving an affidavit signed by two or more reliable persons stating that a death has occurred and that there is good reason to believe that the death was due to unlawful violence. T.C.A. § 38-5-101 *et seq*. Courts of general sessions also have the power to hold an inquest upon receiving the proper affidavit. T.C.A. § 38-5-103. The coroner may also serve certain process when the sheriff is an interested party, and must make reports of any traffic-related deaths as required by the Department of Safety. T.C.A. §§ 8-9-106, 55-10-112.

As noted above, the county legislative body may abolish the office of coroner and assign the duties of the coroner to the county medical examiner. T.C.A. § 8-9-101.

Constable

Constables are optional officers. In counties where they exist, they all may serve civil process. In some counties, designated by narrow population class in the general law at T.C.A. § 8-10-108(b), the constable has law enforcement powers and, therefore, may enforce the criminal laws of this state. T.C.A. § 8-10-109. A county legislative body may, by adopting a resolution by two-thirds majority vote at two consecutive meetings, abolish the office of constable for that county or set the term of office for the constable at either two or four years. Any change would not be effective until the end of the current term being served by the constable. T.C.A. § 8-10-101. Also, a county legislative body may, by adopting a resolution by two-thirds majority vote at two consecutive meetings, remove any law enforcement powers exercised by the constables of the county. Unlike the abolition of the office by the county legislative body, the removal of law enforcement powers may take effect with the adoption of the resolution. In addition to these optional procedures, several counties, by population class exceptions, are exempt from portions of the constable law or have abolished the office of constable entirely. The specific statute should be consulted for provisions applicable to each individual county. T.C.A. § 8-10-101 *et seq*.

Constables are elected from districts established by the legislative body subject to the following limitations: the number of constables elected cannot exceed one-half the number of county commissioners and constable districts must be reasonably compact and contiguous and must not overlap. T.C.A. § 8-10-101. Constables must have the following qualifications: (1) 21 years old, (2) a qualified voter of the district, (3) ability to read and write, (4) no felony convictions, and (5) no armed forces discharge other than honorable. A candidate must file an affidavit stating that he or she meets these qualifications with the county election commission along with the nominating petition. T.C.A. § 8-10-102. There are also permissive specifications regarding uniforms and car markings. T.C.A. §§ 8-10-119, 8-10-120. Prior to taking office, constables must, at their own expense, enter into a surety bond of not less than $4,000 nor more than $8,000, at the legislative body's discretion. T.C.A. § 8-10-106. Constables' duties may be limited to serving civil process or may include peacekeeping duties; the oath of office differs according to the nature of the duties. T.C.A. 8-10-108. The duties of the constable are determined according to the population classification of the particular county under T.C.A. §§ 8-10-108 and 8-10-109, unless the county legislative body has acted to remove law enforcement powers. The legislative body may fill any vacancy by temporary appointment until it is filled by an election. T.C.A. §§ 8-10-104, 8-10-105.

For their official bonds, constables must use a surety company authorized to do business in Tennessee. T.C.A. § 8-10-106. The constable pays all of the costs of obtaining and recording the official bond for his or her office. T.C.A. § 8-10-106.

Delinquent Tax Attorney

The delinquent tax attorney brings suit on behalf of the county (and any municipality whose property taxes are collected by the county trustee) to collect delinquent property taxes. The delinquent tax attorney is appointed each year by the county trustee subject

to approval by the county mayor for the property taxes becoming delinquent in that year. Suits for the collection of delinquent property taxes are to be filed after the trustee delivers the delinquent lists to the attorney by April 1 of each year. The delinquent tax attorney is compensated in an amount determined in advance through negotiations between the trustee and the attorney, subject to the approval of the county legislative body, but in most counties this amount is limited to 10 percent of all delinquent land taxes collected. T.C.A. §§ 67-5-2404, 67-5-2405. In most counties the county attorney may serve as the delinquent tax attorney if selected by the county trustee and approved by the county mayor, but the trustee is under no legal obligation to appoint the county attorney to this position.

Judicial Commissioner

Judicial commissioners generally have the power to issue arrest warrants, search warrants, and mittimus, to appoint attorneys for indigent defendants, and to set and approve bonds. As a "magistrate" the judicial commissioner has the important duty to make a determination of probable cause in deciding whether to issue an arrest warrant when a crime is alleged to have been committed. Legislative bodies in counties with populations less than 200,000 as well as those in metropolitan counties and in a few other counties, have the authority (but are not required) to create the office of judicial commissioner. T.C.A. §§ 40-1-111, 40-5-201. There may be one or more judicial commissioners who are appointed by the legislative body in most counties (T.C.A. §§ 40-1-111, 40-5-201) or by general sessions judges in other counties (T.C.A. § 40-1-111). Usually the county legislative body sets the term of office, although it cannot exceed four years. T.C.A. §§ 40-1-111, 40-5-202. Judicial commissioners take the same general oath of office as other county officials. The salary is set by the county legislative body in most counties, although in metropolitan counties it is set by a majority of the general sessions judges with the approval of the legislative body. T.C.A. §§ 40-1-111, 40-5-203. Salaries are paid from the county general fund. T.C.A. § 40-1- 111.

County Surveyor

The legislative body elects the county surveyor at its January session for a four-year term. T.C.A. § 8-12-101. The surveyor must take an oath of office and enter into a $2,000 bond. T.C.A. § 8-12-102. The legislative body may fix the compensation of the surveyor, his chain bearers and markers where the fees are not already established by law. T.C.A. § 8-12-107. The surveyor may appoint two deputies who must take the surveyor's oath of office; appointment takes place before the legislative body. T.C.A. § 8-12-104. The surveyor must maintain all office records in the county seat. T.C.A. § 8-12-103.

County Fire Marshal

The County Fire Marshal is responsible for ensuring fire safety compliance in the unincorporated portions of the county. Typical responsibilities include plan reviews of new site developments; new and modified commercial structures and multi-family dwellings; and fire protection systems. Additional duties include inspections of new

construction for compliance with the applicable building and fire codes, as well as inspections of existing structures (except one and two-family dwellings) to ensure compliance with the fire prevention code adopted in an effort to reduce the risk of death and injury due to fire.

The County Fire Marshal typically conducts fire scene investigations to determine origin and cause and works closely with the local sheriff's department, district attorney's office, and other state/ federal agencies as needed in cases that involve suspected arson activity. The coordination of fire safety public education efforts is an important function of the County Fire Marshal's duties. In counties that have a countywide fire department, the County Fire Marshal's position can be created within that agency to carry out the provisions of T.C.A. § 5-17-102(8).

In counties that do not have a countywide fire department, the position can be created in accordance with T.C.A. § 5-6-121. The Fire Marshal may also function as a coordinator between the county and the independent fire departments that provide fire protection services to the unincorporated portions of the county.

Administrator of Elections

See Chapter 8, Elections and Reapportionment

Finance Director/Director of Accounts and Budgets

See Chapter 12, Financial Structure of County Government

Solid Waste Director

See Chapter 16, Solid Waste, Environment and Health

Building Commissioner

See Chapter 17, Planning, Zoning and Growth Policy

CHAPTER 7

BOARDS, COMMISSIONS AND COMMITTEES

Introduction

This Chapter will briefly describe the various boards, commissions and committees commonly occurring in county government in Tennessee that are not described in other parts of this handbook. Almost all of the boards, commissions and committees dealt with in this Chapter are either required or authorized by state general law. It is important to distinguish between boards, commissions and committees that have their basis in state statutory law and exercise authority independently of other bodies or officials as differing from those committees created by resolution of the county legislative body to study and make recommendations to the county legislative body that have no authority to act independently. Study committees created by the county legislative body to make recommendations to the body are not discussed further in this chapter.

If the statute provides for a board to be elected/appointed by the county legislative body, then the members of the county legislative body cannot serve on this board unless specifically authorized by statute. However, if board members are appointed by the county mayor or some other officer subject to confirmation of the county legislative body, then county legislative body members may be appointed unless this is expressly prohibited. Nevertheless, the member so appointed must not participate in his or her confirmation vote.

Authorities and Corporations

Airport Authority Board of Commissioners. A county legislative body may, by resolution, create an airport authority. If the county creates an airport authority, the county legislative body appoints at least five and no more than 11 commissioners to manage the affairs of the airport authority. After the initial appointments for one, two, three, four and five years to create staggered terms, the commissioners are appointed for terms of five years. T.C.A. § 42-3-103. Two or more counties or municipalities may form a regional airport authority. If such a regional airport authority is formed, the governing body of each participating local government by agreement appoints one or two commissioners to serve on the regional airport board. If each local government appoints one commissioner and this results in an even number, then the governor appoints an additional commissioner. If the method of each local government appointing two commissioners is chosen, then when the appointed commissioners convene, they appoint one additional commissioner, and if they cannot agree the governor makes the appointment. T.C.A. § 42-3-103. Airport commissioners serve without compensation but are entitled to necessary expenses, including traveling expenses, incurred in the discharge of their duties. T.C.A. § 42-3-107.

Additionally, any county or counties may enter into an agreement for a joint action with other public agencies form a joint airport authority. T.C.A. § 42-3-202. If such joint

action is taken a joint board is established pursuant to an agreement approved by the governing body of all participating governmental entities. The number of members, their terms and compensation, if any, are determined by the agreement. T.C.A. § 42-3- 203.

Emergency Communications District Board of Directors. A county legislative body may by resolution create an emergency communications district within all or a part of the territory of the county if the creation of the district is approved by the voters at a referendum election in the area proposed for the district. T.C.A. § 7-86-104. In most counties, if an emergency communications district is created, its board of directors consists of seven to nine members appointed by the county mayor subject to confirmation by the county legislative body for terms of four years, except for the initial terms of two, three and four years to create a staggered system. Requirements regarding membership on the board of directors in Shelby, Davidson, Knox and Hawkins counties are somewhat different due to exceptions made by narrow population class in the general law. T.C.A. § 7-86-105. This board manages the emergency communication system (911) within its area according to the powers given to it by general law at T.C.A. § 7-86-101 *et seq*.

Industrial Development Corporation Board of Directors. After a certificate of incorporation has been issued by the secretary of state establishing an industrial development corporation for a county, the corporation is managed by a board of directors of any number not less than seven as established in the certificate of incorporation. The directors must be qualified voters and taxpayers of the county. T.C.A. § 7-53-202. The directors of a county-sponsored industrial development corporation are elected by the county legislative body for terms of six years except for the initial election of three groups of directors with terms of two, four and six years to create staggered terms. An officer of a municipality, city manager, or other comparable chief administrative officer of a municipality may serve on the board of directors of a joint industrial development corporation, however, no other employee is eligible to serve. Directors serve without compensation except for reimbursement of actual expenses incurred in performance of their duties. T.C.A. § 7-53-301. *See also* Industrial Development Corporations under Economic Development Bonds under the topic Types of Funding in Chapter 13, County Financing of Capital Projects and Debt Retirement.

Public Building Authority Board of Directors. A county public building authority is formed when three or more people who are qualified to vote in the county apply to the county legislative body to incorporate a public building authority and the county legislative body approves the application. A public building authority is a public nonprofit corporation and an instrumentality of the county that may be used in the financing, construction, maintenance, leasing or disposition of public buildings and infrastructure. The board of directors of the public building authority is appointed by the county mayor subject to confirmation by the county legislative body in a number not less than seven who serve terms of six years except for the initial appointments to terms of two, four and six years to create staggered terms. A director of a county public building authority cannot be a county officer or employee. The directors serve without compensation except for reimbursement of expenses. A municipality may also form a public building authority. T.C.A. § 12-10-101 *et seq*.

Solid Waste Authority. *See* Solid Waste Authority under Local Solid Waste Management Planning in the Section entitled Solid Waste Management, Collection and Disposal in Chapter 16, Solid Waste, Environment and Health.

Transit Authority Board. Any county or municipality, or combination thereof, may establish a transit authority for public transportation. The county or county and other counties or municipalities creating the transit authority may create a board or other management entity and prescribe the qualifications and eligibility of members of such transit authority. T.C.A. § 7-56-101.

County Government Administration

Adult-Oriented Establishment Board. In counties that have adopted the Adult-Oriented Establishment Registration Act of 1998, codified at T.C.A. § 7-51-1101 *et seq*., by a two-thirds majority vote of the county legislative body, an adult-oriented establishment board must be established to administer the provisions of this law. The board consists of five members, appointed by the county mayor, who serve for terms of four years. Board members serve without compensation but receive reimbursement for actual expenses for attending meeting of the board. T.C.A. § 7-51-1103. *Also, see* Regulation of Adult-Oriented Entertainment and Massage in Chapter 18, County Regulatory Powers.

Beer Board. *See* Regulation of Beer Sales in Chapter 18, County Regulatory Powers.

County Agricultural Extension Committee. All counties cooperating with the state agricultural extension service operated by the University of Tennessee must have an agricultural extension committee. This committee consists of seven people elected by the county legislative body. Three members must be members of the county legislative body and four members must not be members of the county legislative body. Of these four members, two must be farmers and two must be farm women, residing in different civil districts. The members are elected for terms of two years, but one farmer and one farm woman is elected in even-numbered years and the balance elected in odd-numbered years. No member may be elected to more than three consecutive terms. The committee works with the U.T. agricultural extension representative in formulating the county extension budget for presentation to the county legislative body and serves in an advisory capacity on activities regarding the extension program in the county. T.C.A. § 49-50-104.

County Airport Board. The county legislative body of a county that has an airport under the authority of T.C.A. § 42-5-101 *et seq*. may by resolution delegate its powers regarding the airport to a board whose number of members, terms, method of appointment, powers and duties are specified in the resolution. T.C.A. § 42-5-112. Joint airport boards, consisting of one or more counties and other public agencies, are also authorized for joint action regarding or joint operation of an airport. T.C.A. § 42-5-202. Joint airport boards consist of members appointed by the governing bodies of the public agencies participating. The number of members, the length of the term and compensation, if any, are determined by the joint agreement. T.C.A. § 42-5-203.

County Board of Health. Each county is required to have a health department. The county legislative body of each county may establish a board of health consisting of the following: (1) the county mayor, (2) the director of schools or his or her designee, (3) two physicians licensed to practice in Tennessee nominated by the medical society serving that county, (4) one dentist licensed to practice in Tennessee nominated by the dental society serving that county, (5) one pharmacist licensed to practice in Tennessee nominated by the pharmaceutical society serving that county, (6) one registered nurse licensed to practice in Tennessee nominated by the nurses association serving that county, (7) the county health director and county health officer, (8) at the option of the county legislative body, a doctor of veterinary medicine, and (9) at the option of the county legislative body, a citizen representative who not now nor ever has been a healthcare provider or the spouse of one. In the event that a nomination is not timely made, the county legislative body may proceed to elect an otherwise qualified member. All members must be residents of the county. In the event that the required members are not available from within the county, the board remains duly constituted. The members who are not ex officio are appointed by the county legislative body to serve for terms of four years. The county board of health governs the policies of full-time county health departments, implements state health rules and regulations through the county health director and/or the county health officer, and adopts rules and regulations as may be necessary and appropriate to protect the general health and safety of the citizens of the county. T.C.A. § 68-2-601.

Contiguous counties may by agreement adopted by their respective legislative bodies form a district health department and have a joint district board of health instead of their own county health departments and boards of health when such a combination is determined by the Tennessee Commissioner of Health to be economical. T.C.A. § 68-2-701. A joint district board of health consists of the county mayor, director of schools and one licensed physician from each participating county. T.C.A. § 68-2-702.

County Election Commission. *See* The County Election Commission in Chapter 8, Elections and Reapportionment.

County Highway Commission (Road Board or other similar title) . *See* County Highway Commissions (Road Boards) in Chapter 5, The County Highway Department and County Roads.

County Monument (Veterans Memorial) Commission. When the county makes an appropriation to erect a suitable public memorial honoring the veterans of the various wars in which Tennesseans have fought, the county legislative body is required to select five reputable citizens of the county over 18 years of age to serve as the county monument commission. It is the duty of the county monument commission to oversee the erection of the monument or memorial and when completed to report this in a detailed writing to the county legislative body. T.C.A. § 58-4-201, *et seq*.

County Public Records Commission. *See* County Public Records Commission under Storage and Disposition of County Records in Chapter 22, County Records.

County Government Organization

County Consolidation Committee. If a petition to consolidate a county or a portion of a county with one or more adjoining counties is signed by the qualified voters of any one county in a number equal to at least 25 percent of the number of votes cast in the county for governor in the last general election, then the state consolidation committee created by T.C.A. § 5-3-101 is required to appoint a county consolidation committee for the petitioning county. The county consolidation committee is composed of the county mayor and county trustee of the petitioning county and the county mayors of the adjoining counties and five signers of the petition designated by the governor. T.C.A. § 5-3-102. The state consolidation committee and the county consolidation committee act as a joint committee to consider the request for consolidation and hold hearings within the petitioning county. The joint committee reports its findings within 90 days of receiving the petition. If favorable to consolidation, the joint committee recommends the county or counties with which the petitioning county should be consolidated and sets new proposed boundaries. T.C.A. § 5-3-103. After proper publication in a newspaper or newspapers of general circulation in the affected counties, the proposed consolidation is subject to referendum called by the county election commission. T.C.A. § 5-3-104. The consolidation plan is approved if two-thirds of the qualified voters in the petitioning county vote in favor of the proposed consolidation. T.C.A. § 5-3-105.

County Charter Commission. *See* County Charters in Chapter 10, County Charters, Consolidated Government Charters, Private Acts and Interlocal Agreements.

Metropolitan Government Charter Commission. *See* Metropolitan Government Charters under City-County Consolidation in Chapter 10.

Unification Government Charter Commission. *See* Unification Government Charters under City-County Consolidation in Chapter 10.

Education

County Board of Education. *See* County Board of Education in Chapter 4, The County Department of Education.

County Library Board. The county legislative body may establish a county library board consisting of seven members. Not more than one county official may serve on this board. The members are appointed by the county legislative body for terms of three years, except for the initial terms of one year for three members, two years for two members, and three years for two members to create staggered terms. Not more than five members may be of the same gender. A narrow population class exception in the general law for Knox County allows for a board of nine members. Joint library boards with one or more other counties or municipalities may be formed by agreement of the governing bodies of the participating local governments. The members of such joint boards are appointed by the governing bodies of the participating local governments in accordance with the ratio of population in each participating municipality and in the county outside the participating municipality or alternatively, according to an contract

providing otherwise or a private act. T.C.A. § 10-3-103. The library board directs the affairs of the library system, including the appointment of a librarian and such assistants as may be necessary. T.C.A. § 10-3-104

Financial and Tax Administration

Audit Committee. The Local Government Modernization Act of 2005 encourages counties to form an audit committee, and the comptroller of the treasury may require it if a local government is not in compliance with Government Accounting and Standards Board (GASB) standards by June 30, 2008, or has recurring findings of material weakness in internal control for three or more consecutive years. This committee is created by the county legislative body, which selects the members. The members of this committee must be external to the management and may be members of the county legislative body, citizens or a combination of both. Since the statute does not specify the number of members on this committee this is determined by the county legislative body. The duties of this committee are to be established in a resolution approved first by the comptroller and then by the county legislative body. The audit committee responsibilities include, at a minimum, financial and other reporting practices, internal control, compliance with laws and regulations and ethics. T.C.A. § 9- 3-405.

Auditor Employment Committee. The county legislative body may create a committee of not less than three members of the county legislative body to employ an auditor to audit the books of the officers and employees of the county. T.C.A. § 8-15-101.

Committee for Resale of Land. When real property is bought by the county at a delinquent tax sale due to the lack of an adequate bid by another party, after the year for redemption has passed the county is obligated to resell the real property bid in by the county. The county legislative body elects four people from its membership who, with the county mayor, form a committee to place a fair price on each tract of land bought by the county at delinquent tax sales. T.C.A. § 67-5-2507.

County Board of Equalization. The county legislative body at the April meeting of each even year elects from different sections of the county five freeholders and taxpayers to the county board of equalization. In some counties the number of county members varies from this standard of five due to population class exceptions in T.C.A. § 67-1-403. Also, municipalities often are authorized to appoint members to the county board of equalization in a manner described in detail in T.C.A. § 67-1-403. Generally, state, county and municipal officials and employees are ineligible for positions on the county board of equalization, but people who receive compensation on a per diem basis for services in lieu of expenses may serve. The county legislative body sets the compensation for the services of board members. The county board of equalization is the first level of administrative appeal for all complaints regarding the assessment, classification and valuation of property for tax purposes. Board duties include examining and equalizing county assessments, assuring that all taxable properties are included on the assessment lists, eliminating exempt properties from taxation, hearing complaints of aggrieved taxpayers, decreasing over-assessed property, increasing under-assessed property and correcting clerical mistakes. T.C.A. §§ 67-5-401 *et seq*., 67-5-1401 *et seq*.

See also the current edition of the *County Property Tax Manual* published by CTAS for a more detailed discussion of the activities of this board.

County Budget Committee (County Budgeting Law of 1957). *See County Budgeting Law of 1957*, under Fiscal Control Acts of 1957 in the Section entitled Financial Management Under General Laws With Local Application, in Chapter 12, Financial Structure of County Government.

County Finance Committee. The county legislative body may appoint three of its members, who in conjunction with the county trustee and county mayor form a county finance committee to contract with banks or other financial institutions for the deposit of county funds. T.C.A. § 5-8-201 *et seq*.

County Financial Management Committee (County Financial Management System of 1981). *See* The County Financial Management System of 1981 under Financial Management Under General Laws With Local Option Application, in Chapter 12, Financial Structure of County Government.

County Insurance Committee. The county legislative body may appoint a committee consisting of some number of its members to prepare and present to the county legislative body one or more contracts with one or more insurance companies or other corporations authorized to provide any of the following types of insurance for county employees and officials: group life, hospitalization, disability and medical. The number of members is not specified by statute and is determined by county legislative body resolution. T.C.A. § 8-27-501 *et seq*.

County Investment Committee. In counties that have not adopted the County Financial Management System of 1981, the county legislative body may create an investment committee to determine the investment of idle county funds from the statutory list of approved investments. The number of members on this committee and the mode of selection is according to resolution of the county legislative body. T.C.A. § 5-8-302. *Also, see* Investment of Idle Funds under Financial Management under the General Law in Chapter 12, Financial Structure of County Government.

County Investment Committee (County Financial Management System of 1981). In counties that have adopted the optional County Financial Management System of 1981, the county legislative body may establish an investment committee composed of five members appointed by the county legislative body. The members may or may not be members of the county legislative body. If the county has adopted this 1981 law, the county legislative body may choose to have the financial management committee perform the functions of the investment committee. The investment committee under the 1981 law establishes and approves policies and procedures for cash management and investing idle cash funds in the investments authorized by law. T.C.A. § 5-21-105. *Also, see* County Financial Management System of 1981 in the Section entitled Financial Management Under General Laws With Local Option Application, in Chapter 12, Financial Structure of County Government.

County Purchasing Commission (County Purchasing Law of 1957). *See* County Purchasing Law of 1957 under Fiscal Control Acts of 1957 in the Section entitled Financial Management Under General Laws With Local Option Application, in Chapter 12, Financial Structure of County Government.

County Revenue Commissioners. The county legislative body during its July meeting every two years is required to elect three competent citizens to be county revenue commissioners. No member of the county legislative body or county clerk or deputy county clerk may be elected as a county revenue commissioner. One member must be an expert accountant. Their terms of office are for two years and begin on September 1 after the election. These revenue commissioners are required to meet four times a year to examine the settlements of the county mayor with all of the officers of the county who collect money, review all of the financial reports, review disbursements from the county treasury and examine the books of these officers if necessary. The county revenue commissioners are required to report the results of their investigations at the end of each quarter. T.C.A. § 5-8-601 *et seq*.

Law Enforcement and Corrections

Board of Jury Commissioners. In most counties of this state, a three-member board of jury commissioners is appointed by the judge or judges of the circuit and criminal courts in the county and any chancellor or other judge with the duty to hold circuit or criminal court in the county. In most counties, jury commissioners must be at least 25 years of age and residents of the county for five years, reside in different sections of the county, not be practicing attorneys or state or county officers, and not have any suits pending in any of the courts noted above. The legislative body of any county with a population in excess of 50,000 according to the 1980 or subsequent federal census may by resolution adopted by a two-thirds majority vote increase the number of jury commissioners to either five or seven. T.C.A. § 22-2-201. Jury commissioners are compensated for each day or portion of a day discharging the duties of the board in accordance with T.C.A. § 22-2-201. Jury commissioners serve a term of four years. T.C.A. § 22-2-202(b) The board of jury commissioners meets every two years to create from available and reliable sources a list of people qualified to serve as jurors in the circuit and criminal courts of the county in such number as specified by the judges selecting the board. T.C.A. § 22-2-302. Also, the board of jury commissioners oversees the process of selection of names for jury service from the list of eligible residents. T.C.A. § 22-2-304.

Board of Workhouse Commissioners. If a county has established a workhouse for prisoners separate from the county jail, then the county legislative body is required to elect four persons who, with the county mayor, form the board of workhouse commissioners. The term of office is two years except for the first elections where two members are appointed for one year to create staggered terms. However, a county with a separate workhouse is not required to have a board of workhouse commissioners if, by a two-thirds majority vote of the county legislative body, the administrative control of the workhouse is placed with the county mayor; or with the recommendation of the county mayor and approval by the county legislative body, administrative control of the workhouse is placed under the sheriff. Knox County is excepted from these alternatives

by narrow population class. The board members' compensation is determined by the county legislative body. The board of workhouse commissioners has general supervision of the workhouse including the appointment of a superintendent of the workhouse. T.C.A. § 41-2-104. *See also* Custody of the Workhouse and Work and Education Programs under County Correctional Facilities and Prisoner Care in Chapter 15, Public Safety and County Correctional Facilities.

Community Corrections Advisory Board. In order for a county to be eligible to receive state funding under the Tennessee Community Corrections Act of 1985, codified at T.C.A. § 40-36-101 *et seq*., the county legislative body must establish a community corrections advisory board. This board must have at least 10 members including at least the following:

- A representative of the county government nominated by the county mayor subject to confirmation by the county legislative body;
- The sheriff;
- The district attorney general;
- A criminal defense attorney residing in the county nominated by presiding judge of the judicial district in which the count is located subject to confirmation by the county legislative body;
- A representative of a nonprofit human service agency nominated by the county mayor and the other community corrections advisory board members who serve by virtue of their office subject to confirmation by the county legislative body;
- Two state probation and parole officers assigned to work in the county nominated by the board of probation and parole and confirmed by the county legislative body; and
- At least three private county residents nominated by the county mayor and the other community corrections advisory board members who serve by virtue of their office subject to confirmation by the county legislative body.

If a municipality participates, a citizen is nominated by the mayor and confirmed by the city council. Any additional members are determined by resolution of the county legislative body. T.C.A. § 40-36-201. For additional information concerning this board, *see* Community Corrections Act of 1985 under County Correctional Facilities and Prisoner Care in Chapter 15, Public Safety and County Correctional Facilities.

County Bounty Committee. The county legislative body may form a committee to administer and implement the provisions of the County Bounty Act. T.C.A. § 38-11-201 *et seq*. If formed, the committee consists of the director of schools or the director's designee, the sheriff or the sheriff's designee and an alliance member for a drug-free Tennessee appointed by the county mayor. This committee reviews the record of prosecutions and convictions for illegal drug trafficking in the county and compiles data to determine whether or not the county is following a pattern of aggressive action to eliminate illegal drug trafficking from within its boundaries. The committee makes a determination regarding what financial incentives are appropriate for the period under consideration and with the approval of the sheriff determines the percentage of funds

from goods seized and forfeited from drug-related convictions that will be made available to the county school system for drug education and prevention programs subject to matching funds from county, state or federal governments.

County Sheriff's Civil Service Board. Upon adoption of the optional County Sheriff's Civil Service Law of 1974 by a two-thirds majority vote of the county legislative body, the county legislative body selects three people to serve on a civil service board. These three members must be at least 18 years of age, be residents of the county and cannot hold any elected or appointed office within the county. The term of office is three years except for the initial appointments for one, two and three years to create a staggered system. This board may or may not be compensated at the discretion of the county legislative body. The board adopts a classification plan, determines the requirements of each position and performs other duties specified in this optional law. Some counties have similar boards created by private act. T.C.A. § 8-8-401 *et seq*.

Disciplinary Review Board. A disciplinary review board is required for each separate correctional facility, such as a jail and workhouse, of the county, except for Shelby County. This board consists of six members, one or more of whom may be members of the jail or workhouse staff who are appointed by the sheriff or the superintendent of the jail or workhouse, subject to approval by the county legislative body. Members of this board serve terms of two years. This board reviews actions of the sheriff or superintendent of the institution in revoking all or any portion of a prisoner's good time credit for violating the rules and regulations of the jail or workhouse or otherwise behaving improperly, and may reverse such action after a hearing. T.C.A. § 41-2-111.

Jail Inspectors. The county legislative body is authorized to appoint at its January meeting three householders or freeholders who are residents of the county to serve as jail inspectors for a term of one year. The county legislative body cannot appoint its own members to this committee. Op. Tenn. Atty. Gen. 04-070. The county mayor also serves ex officio as a jail inspector. The jail inspectors have a duty to visit and examine the county jail at least once each month. The jail inspectors are to make rules and regulations for the preservation of the health and decorum of the prisoners, decide disputes between the jailer and the prisoners, and report to the county legislative body regarding the state and condition of the prisoners and the jail. T.C.A. § 41-4-116.

Work Release Program Commission. In most counties, a three-member commission exists to review petitions for work release and permit defendants to leave the workhouse during approved hours to work and return to the workhouse each day after work. In Shelby and Davidson counties 12 members are appointed who serve in three-person panels. The workhouse superintendent appoints the members of this commission subject to the approval of the county legislative body. The members serve terms of four years. *See also* Work Release in Work and Education Programs under County Correctional Facilities and Prisoner Care in Chapter 15, Public Safety and County Correctional Facilities.

Parks, Recreation and Conservation

Parks and Recreation Board. The county legislative body may delegate, by resolution, to a parks and recreation board (or commission) the authority to conduct a parks and recreation program. Such a board consists of five members, at least two of whom may be members of the school staff, appointed by the chairperson of the county legislative body. Board members serve terms of five years except for the initial appointments so that the term of one member expires annually. Members of this board serve without pay. T.C.A. § 11-24-104. Any two or more counties or municipalities may form a joint board to conduct a joint parks and recreation program by agreement approved by the governing bodies participating. T.C.A. § 11-24-105.

County Conservation Board. The county legislative body may, by resolution, create a county conservation board. Also, if 200 qualified voters of the county petition the county legislative body for such a board, a referendum on this question will be held at the next countywide election, and if approved by the voters, the county legislative body is required to create a county conservation board within 60 days after the election. The board consists of five to nine members who hold office for staggered terms not to exceed five years as determined by resolution of the county legislative body. The members serve without compensation but may be reimbursed for actual expenses in carrying out their duties. T.C.A. § 11-21-102. The county conservation board has the custody and control of all real and personal property of the county acquired for public parks, preserves, parkways, playgrounds, recreation centers, county forests, county wildlife areas and other county conservation and recreation lands. T.C.A. § 11-21-104.

Planning, Zoning and Development

Airport Zoning Board of Appeals. Counties with airport zoning must have a board of airport zoning appeals, or the county legislative body must designate the board of zoning appeals created under Title 13, Chapter 7, of the Tennessee Code or by private or other local act to hear appeals from airport zoning resolutions or ordinances. If an airport zoning board of appeals is created by resolution of the county legislative body, then the county legislative body specifies whether the board will have three or five members and the mode of appointment of members and their terms, but the terms must be arranged so that the term of one member expires each year. The county legislative body also determines the compensation, procedure and extent of jurisdiction consistent with state law. Appeals to this board may be made by any person aggrieved under airport zoning resolutions or ordinances, such as by alleged errors made by the building commissioner in denying a building permit. Also, the board may authorize a variance in an airport zoning resolution or ordinance in cases of exceptional hardship when this can be done without substantially impairing the intent and purpose of the zoning plan and may condition the a permit for a variance. T.C.A. § 42-6-108 *et seq*.

Board of Zoning Appeals. *See* Board of Zoning Appeals under County Zoning in Chapter 17, Planning, Zoning and Growth Policy.

Historic Zoning Commission. A historic zoning commission must be created by the county legislative body if it establishes historic zones or districts and regulates the construction, repair, alteration, rehabilitation, relocation and demolition of any building or other structure that is located or proposed to be located within such a historic zone. A county historic zoning commission consists of at least five and not more than nine members appointed by the county mayor subject to confirmation by the county legislative body and must include a representative of a local patriotic or historical organization, an architect, if available, and a person who is a member of the local planning commission. The terms of the members is five years, except for the initial members who are appointed for lesser terms to create staggered terms. Members serve without compensation. Also, a regional historic zoning commission may be created by the county and city legislative bodies in the area served by a regional planning commission. T.C.A. § 13-7-403. The historic zoning commission makes recommendations to the county and/or city legislative bodies regarding the creation of historic districts or zones and provides a set of review guidelines for the proposed district or zone. T.C.A. §§ 13-7-405, 13-7-406. The county legislative body may grant to the county historic zoning commission the authority to review applications for construction, repair, alteration, rehabilitation, relocation and demolition of any building or other structure in a historic zone and issue (or refuse) a certificate of appropriateness. T.C.A. § 13-7-407.

Joint Economic and Community Development Board. *See* Joint Economic and Community Development Board in the topic Public Chapter 1101 and County Growth Plans under Growth Planning in Chapter 17, Planning, Zoning and Growth Policy.

Regional Planning Commission. *See* Regional Planning Commission under Other Planning Provisions in Chapter 17, Planning, Zoning and Growth Policy.

Solid Waste Management

County Board of Sanitation. One of the options given to counties for management of solid waste operations is through a county board of sanitation. T.C.A. § 5-19-103. Such a board may be established by resolution of the county legislative body and consists of three members appointed by the county mayor subject to confirmation of the county legislative body. The members of this board serve for terms of three years except for the initial appointments for one, two and three years to create a staggered system. Members of this board may be compensated according to a resolution of the county legislative body. T.C.A. § 5-19-104. This board has general supervision and control of the acquisition, improvement, operation and maintenance of all solid waste collection and disposal systems operated by the county. If this board is established, then it appoints a superintendent to be in charge of daily solid waste management operations. T.C.A. § 5-19-105. *See* also Title 5, Chapter 19, under Solid Waste Management, Collection and Disposal in Chapter 16, Solid Waste, Environment and Health.

Municipal Solid Waste Regional Board. Each county, alone or with other counties, is required to plan for solid waste management through a municipal solid waste regional board. These regional boards are established by resolution of the county legislative

body or by agreement of each participating county adopted by resolution of each county legislative body in the region and may be modified by agreement of the county legislative bodies. The board consists of an odd number of not fewer than five nor more than 15. Each member county must be represented by at least one board member. Municipalities that provide solid waste collection or disposal services, either directly or by contract, must be represented on the board. However, municipalities entitled to representation may agree to joint or multiple representation by a board member or for a county member to represent one or more municipalities upon agreement of the local governing bodies that share representation. Any such agreement must specify the method of making the shared appointment. Otherwise, members are appointed by the county and municipal mayors of the participating counties and municipalities, subject to confirmation by their respective legislative or governing bodies. Members of county and municipal governing bodies, county and municipal mayors, county and municipal officers and department heads as well as other citizens may be appointed to the board. Members serve terms of six years, except for initial appointments for two, four and six years to create staggered terms. The primary function of this board is to make and annually update a plan for a 10-year disposal capacity and to achieve compliance with the waste reduction and recycling goal required by T.C.A. §§ 68-211-861, T.C.A. § 68-211-813. *See* Local Solid Waste Management Planning under Solid Waste Management, Collection and Disposal in Chapter 16, Solid Waste, Environment and Health.

Solid Waste Authority. *See* Solid Waste Authority under Local Solid Waste Management Planning in the Section entitled Solid Waste Management, Collection and Disposal in Chapter 16, Solid Waste, Environment and Health.

Utilities

County Board of Public Utilities. Counties are authorized to establish, construct, install, acquire and maintain urban-type public facilities for utility services such as water and sewer, and may manage such utility services through a board of public utilities. T.C.A. § 5-16-102. If such a board is established by resolution of the county legislative body, it shall consist of either three or five members, except in Anderson County where the board may have seven members. The county mayor appoints members of this board subject to confirmation by the county legislative body. The terms are for three years after initial appointments for one, two and three years to create staggered terms. The members of this board serve without compensation except for reimbursement for actual expenses incurred in the performance of their duties except in a few counties where this is authorized by narrow population class exceptions. T.C.A. § 5-16-103.

Utility District Board of Commissioners. A utility district formed pursuant to the Utility District Law of 1937, codified at T.C.A. §§ 7-82-101 *et seq*., is governed by a board of commissioners. The original petition for creation nominates three people who are residents of the proposed district to become the original utility district commissioners. Upon approval of the petition, these three initial commissioners serve terms of two, three and four years, respectively, to create staggered terms. T.C.A. §§ 7-82-202, -307. However, multicounty districts may have additional commissioners and some other

districts that had a greater number of commissioners on May 6, 2004 under special provisions in earlier statutes may have additional commissioners. T.C.A. § 7-82-307. The most common method of appointment after the initial appointment of utility district commissioners is by a procedure wherein the utility district board of commissioners submits a list of three people to the county mayor as nominees. The county mayor may select one of the three or reject this list and require a new list to be provided. If the county mayor takes no action, the first person listed is appointed by operation of law. T.C.A. § 7-82-307. *See* T.C.A. § 7-82-307 for the complete procedure and for a modified procedure for multi-county districts.

Ethics Policies for Utilities. Utility districts are considered separate governmental entities to be governed by ethical standards established by the board of commissioners of the utility district in conformity with T.C.A. § 8-17-105(b). T.C.A. § 8-17-102(c). Water, wastewater and gas authorities created by a private act or under the general law are considered separate governmental entities and shall be governed by ethical standards established by the governing board of the water, wastewater or gas authority in conformity with T.C.A. § 8-17-105(b). The Tennessee Association of Utility Districts (TAUD) must prepare a model of ethical standards for officials and employees of water, wastewater and gas authorities which must be submitted to the Utility Management Review Board for its approval, and the model must be approved by the board before it can be adopted by any water, wastewater or gas authority. T.C.A. § 8-17-105. After the board approves the model, it must be filed with the state ethics commission. The governing body of a water, wastewater or gas authority or utility district must adopt either the approved TAUD model of ethical standards or standards which are more stringent than the TAUD model. If a water, wastewater or gas authority or a utility district adopts ethical standards which are different from and more stringent than the TAUD model, those standards must be submitted to the board for a determination that the standards are more stringent than the TAUD model. Any water, wastewater or gas authority or any utility district that adopts the TAUD model is not required to file its ethical standards with the commission but must notify the commission in writing that the TAUD model was adopted and the date of adoption. Any water, wastewater or gas authority or any utility district which does not adopt the TAUD model of ethical standards or ethical standards more stringent than the TAUD model will be governed by the ethical standards established by the county legislative body of the county in which the water, wastewater or gas authority or the utility district has the largest number of customers.

CHAPTER 8

ELECTIONS AND REAPPORTIONMENT

The County Election Commission

Appointment and Removal. The basic unit that regulates elections at the county level is the county election commission. The five commissioners for each county are appointed by the state election commission; three must be members of the majority party in the state, appointed by members of the state election commission from that party, while the other two will be of the minority party, similarly appointed by the minority members of the state election commission. T.C.A. § 2-12-103. Majority and minority parties are defined as the political parties whose members hold the largest and second largest number of seats in the combined houses of the General Assembly. T.C.A. § 2-1-104. Before appointing county election commissioners, members of the state election commission are directed to consult with members of the General Assembly from each county regarding whom to appoint as county election commissioners. T.C.A. § 2-12-103.

Qualifications and Disqualifications. County election commissioners must be registered voters who have been residents of the state for five years and residents of the county for which they are appointed for two years (with an exception for counties with a population between 276,000 and 277,000). Elected officials, employees of elected officials and employees of a state, county, municipal, or federal government body or agency are not eligible to serve on the election commission. T.C.A. § 2-12-102. However, this statute does not disqualify the following people: a notary public, an employee of an institution of higher learning, a school teacher or a member of a reserve unit of the U. S. armed services or National Guard, unless on active duty. T.C.A. § 2-1-112. If a commissioner qualifies as a candidate for any public office, that member will be automatically disqualified and a vacancy will be created on the commission. T.C.A. § 2-12-102.

Oath of Office and Organization. Within 20 days after their appointment, county election commissioners must qualify by filing an oath of office with the secretary of the state election commission. Failure to qualify will vacate the office. T.C.A. § 2-12-104. Also within 20 days the commission is to organize by electing a chairperson and a secretary from among their number, each of different parties. Within 10 days of this selection, the commission must report the names and addresses of the officers and other members to the state election commission. T.C.A. § 2-12-105.

Office Hours. Each county election commission must have an office in the county courthouse or another public building, and may designate additional locations if they are needed. A schedule of minimum office hours, which depends on the population of the county and the certification status of the administrator, is set out in T.C.A. § 2-2- 108. The county election commission may also keep additional office hours as needed to (1) register qualified applicants, (2) replace lost registration cards, (3) transfer or change registrations, and (4) perform its other duties.

Meetings. The county election commission meets on the call of its chairperson (if there is no chair, the oldest member presides). T.C.A. § 2-1-113. All meetings must be open to the public and preceded by adequate notice, as required by Tennessee's sunshine law. T.C.A. § 8-44-101 *et seq*. This notice must give the time, place, and purpose for the meeting, although the requirement may be met by permanently posting a conspicuous meeting notice in the commission office. The commission must keep official minutes of each meeting, including the vote of each member on all issues, and must allow reasonable times for public examination. A majority of the members constitutes a quorum, and a measure passes on a majority vote of the members present. Any action taken that does not meet these requirements can be voided at the request of anyone who may be adversely affected. T.C.A. § 2-1-113.

Duties

Publication of Election Notices. The county election commission is required to publish in a newspaper of general circulation in the county a notice of all elections, except special elections, at least ten (10) days before the qualifying deadline. A notice of elections on questions must be published sometime between twenty (20) and thirty (30) days before election day, and must include in its entirety the resolution or other instrument that is to be decided. Finally, a notice of every election, stating the day, time, and polling places, must be published sometime between ten (10) and three (3) days before the election. T.C.A. § 2-12-111. The election commission must also publish a sample ballot in a newspaper of general circulation twice, at least five days before the start of early voting and at least five days before election day; however, a sample ballot does not have to be published if the election commission instead mails a sample ballot to all registered voters at least five days prior to the beginning of the early voting period. T.C.A. § 2-5-211.

Submission of Semiannual Report. The county election commission is required to provide a semiannual voter registration report to the state coordinator of elections. The content of this report has changed significantly with the implementation of the National Voter Registration Act. *See* T.C.A. § 2-12-114 or contact the coordinator of elections for information about the requirements of this report.

Promotion of Voter Participation. The county election commission is charged with the general duty of encouraging wider participation in the electoral process. Except in counties whose population falls between 825,000 and 830,000, where the organization is slightly different (See T.C.A. §§ 2-12-112, 2-12-116, 2-12-201, 2-12-202), these duties involve the selection of the administrator of elections and then assistance with the following responsibilities of that office: approving an annual budget for the commission, approving purchases of voting machines and seeing to their maintenance, hiring legal counsel, designating polling places and precinct boundaries, and assisting in obtaining poll workers. Additionally, the commission must ensure the fairness and smooth functioning of elections by certifying voting machines, taking responsibility for absentee ballot boxes, assisting election personnel on election day, certifying election results and election expenses, determining a uniform time for the opening of polls, and

maintaining the security of the election commission office and facilities. T.C.A. § 2-12-116.

At least quarterly at a regularly scheduled county election commission meeting, every new voter registration form which has been filed since the last regularly scheduled meeting of the county election commission must be inspected by a county election commission member of the majority party and the minority party. T.C.A. § 2-2-120. If a deficiency is found, the deficiency must be recorded and a written report must be prepared including the name of the administrator at the time the voter registration form was filed, the nature of the deficiency, and whether the individual has voted since the deficient form was filed and accepted. The report must be filed with the state coordinator of elections. If a significant number of deficient voter registration forms are discovered, then the administrator of elections may be subject to discipline by the state election commission or may be terminated by the county election commission. T.C.A. § 2-2-120.

Employment of Administrator of Elections. Tennessee statutes require election commissions to employ an administrator of elections (formerly known as the registrar-at-large), who is the chief administrative officer of the commission and who is responsible for daily operations of the office. The duties of the administrator include, but are not limited to, the following: (1) employment of office personnel; (2) preparation and submission of the annual budget; (3) requisition and purchase of supplies; (4) maintenance of voter registration files, campaign disclosure records, and other required records; (5) instruction of poll workers; (6) preparation of notices for publication; (7) preparation and maintenance of all fiscal records; (8) dissemination of information regarding all aspects of the electoral process; (9) promotion of the electoral process; (10) attendance at educational seminars; (11) knowledge of current laws pertaining to the electoral process; and (12) assistance in planning and implementing apportionment plans. T.C.A. § 2-12-201. In fulfilling these duties, the administrator and election commission must keep in mind that, except in an emergency, the commission may not employ, nor ask the administrator of elections to employ, the commissioners themselves or members of their families nor, after July 1, 1999, the spouse, parents or children of the administrator of elections. T.C.A. §§ 2-12-116, 2-12-201. Note that Macon County has some special provisions regarding hiring family members that are included in the law under a narrow population classification. The election laws also provide for the certification of administrators of elections, T.C.A. § 2-11-202, and for their compensation. T.C.A. §§ 2-12-208, 2-12-209.

Appointment and Education of Election Officials. The appointment of county election officials normally begins with a nomination process. The county primary board for each party shall (and the executive committee of each party may) submit names to the county election commission 30 days prior to the appointment time. If the nominees meet the qualifications to serve, the election commission shall appoint them. T.C.A. §§ 2-4-103 through -106. However, the commission may refuse to appoint any person who has previously served and who, in the opinion of the commission members from his or her political party, is unreliable, incompetent or otherwise unfit to serve. If there is an

inadequate number of nominees, the county election commission may appoint as many additional people as necessary. T.C.A. § 2-4-106.

From these nominees, if possible, the majority and minority party factions of the county election commission each appoint one precinct registrar for each polling place. For most counties, these appointments are made for each election, but they are made for two-year terms in Shelby County (identified by population class). T.C.A. § 2-12-202. The county election commission is also directed to appoint, at a minimum, one officer of elections and three judges for each polling place. Two of the judges appointed shall concurrently serve as the precinct registrars in accordance with T.C.A. § 2-12-202. In precincts where voting machines are used, any judge not serving as a precinct registrar shall concurrently serve as a machine operator. One machine operator can operate up to two voting machines. T.C.A. § 2-4-102. Each of these officers, as well as precinct registrars and assistant precinct registrars, must be registered voters at the polling place and inhabitants of the precinct for which they are appointed; however, in counties with a population under 600,000, the precinct registrar need only be a registered voter and inhabitant of the county and, in metropolitan counties, the precinct registrar need only be a registered voter and inhabitant of the legislative district. T.C.A. § 2-4-103. If any election official fails to appear at the polling place, the officer of elections or, in such officer's absence, a majority of the election officials attending, shall select a person to fill the vacancy who is a registered voter of the county. Persons chosen to fill vacancies shall be, whenever practical, members of the same party as the person they are replacing. Notwithstanding any other provision of law to the contrary, a county election commission may appoint a person who has reached the age of 17 years as an election official provided that they meet all the other requirements to serve. T.C.A. § 2- 4-103(e).

The election commission may also appoint as many inspectors as they deem necessary, who must be registered voters and inhabitants of the county. Inspectors investigate the conduct of elections on behalf of the election commission and report any irregularities to the commission. T.C.A. § 2-4-102.

Not more than two judges at a polling place may be of the same political party if those from different parties are willing to serve. T.C.A. § 2-4-104. If it is practicable, no more than one-half of the election officials at one polling place, and one-half the total number of county inspectors, may be of the same political party. If only one party elects to hold a primary, then only members of that party may serve as election officials. T.C.A. § 2-4-105. Election officials are to be notified of their appointments on a statutorily prescribed form. T.C.A. § 2-4-107.

The county election commission is also responsible for instructing the election officials in their duties. Within 30 days of each election, a meeting is to be held for this purpose; attendance may be limited to those who are inexperienced or otherwise in need of such training. The officials are to be paid $10 each for the time spent in training and qualifying but only if they serve in the election. T.C.A. § 2-4-108. They are to be paid $50 for service on election day. The amounts of compensation can be increased by the county legislative body. T.C.A. § 2-4-109.

Compensation and Funding. A minimum compensation for members of the county election commission is specified by statute and varies according to the population of the county. These amounts may be increased in any county by resolution of the county legislative body. In order to trigger the daily rate, a commissioner must work at least one hour in any given 24 hour period, but payment is made for meetings lasting less than one hour if they are required by statute, budget preparation, or litigation. T.C.A. § 12-12-108.

A separate statute, T.C.A. § 2-12-208, provides for the compensation of certified administrators of elections, whose salaries are based on a percentage of the salary of the assessor of property. The salary specified by statute for the certified administrator of elections is a minimum that may be increased by the county legislative body. Any certified administrator of elections in a county where the election commission office is open five full days a week is required to receive as a base salary at least 90 percent of the salary of the assessor of property in the county. If the administrator's salary is less than this level on June 18, 2005, then the salary must be increased in the two subsequent fiscal years by at least 5 percent per year to reach the 90 percent level.

Basically, the funding of each county election commission is the responsibility of that county which, if not provided for, will be compelled by the chancery court. However, each municipality is responsible for expenses the county election commission incurs in holding municipal elections, and for the additional expenses attributable to the municipal election when it is held on the same day as a countywide election. Similarly, elections for the sole purpose of choosing a member of the General Assembly are to be funded by the state, as are presidential preference primaries. The state will also fund county primaries that are held along with the presidential primary. All expenses must be properly reviewed and certified in order to be paid. T.C.A. § 2-12-109.

Nominations and Qualifying Deadlines

Statewide Organization of Political Parties. Organization of the party begins with the state executive committee of each political party, since it also functions as the state primary board for the party. T.C.A. § 2-13-102. Members of this committee are elected in the regular August primary election immediately prior to the election for governor. One man and one woman from each party are elected from every senatorial district to serve four-year terms beginning on September 15 following their election. They must take the oath of office, filing it with the state coordinator of elections. T.C.A. § 2-13-103.

The state executive committee is to meet at least once in even-numbered years to appoint the county primary boards, made up of five people from each county appointed for two year terms. T.C.A. § 2-13-108. The members of this board are chosen from a list of names submitted by county executive committees, although two of the members may be appointed without regard to the lists if the names on them are not fairly divided among the elements of the party. If no list is submitted, the state primary board is to draw up its own list from which to make appointments, or it may designate the county election commission to act as the county primary board. T.C.A. § 2-13-110.

Nominating Process. There are several methods by which a candidate may appear on the ballot. One method, party primary at the regular August election, is statutorily required for several offices: (1) governor, (2) members of the General Assembly, (3) U.S. Senator, and (4) members of the U.S. House of Representatives. T.C.A. § 2-13-202. Nominations for offices other than those listed above can be made either by primary or by any other method authorized under party rules. T.C.A. § 2-13-203. Apart from some special provisions related to presidential candidates (see T.C.A. § 2-5-208), only statewide political parties may nominate candidates to appear on the ballot in any election involving voters of more than one county. The office of the coordinator of elections should be contacted for information regarding procedures for recognizing a new political party. For local elections, a political party must have achieved significant voter support, as defined in T.C.A. § 2-13-201, in order to place its candidates on the ballot. According to the statute, the local party must have had a candidate that received at least 20 percent of the total vote at the most recent local election or must file a petition for recognition with the county election commission signed by at least 5 percent of the registered voters of the county or municipality within one year before the election.

In an election involving only voters of one county or part of one county, candidates nominated by a method other than primary are to be certified to the county election commission by the qualifying deadline. If a method other than primary election is used to fill an office involving voters in more than one county, the candidate is to be certified to the coordinator of elections, who then certifies that candidate to the election commissions in the proper counties. T.C.A. § 2-13-203.

According to T.C.A. § 2-13-203, if a party decides to nominate candidates by primary election, the county executive committee of the party must direct the election commission, in writing, to hold a primary at least thirty (30) days before the qualifying deadline for the primary. County primary elections are held on the first Tuesday in May for candidate selection in the August election. In presidential election years, the primary may also be held on the same day as the presidential preference primary. In 2003, the General Assembly moved the date of the presidential preference primary in Tennessee back from March to the second Tuesday in February. T.C.A. § 2-13-205. If a county primary is held on that date, the qualifying deadline for the primary is 12 noon on the second Thursday in December. T.C.A. § 2-13-203. Procedures for conducting the presidential preference primary and for selecting convention delegates are detailed in Title 2, Chapter 13, Part 3 of the *Tennessee Code Annotated*.

Municipal elections are specifically excepted from these provisions in that municipal elections are to be nonpartisan. In other words, unless a city charter states otherwise, municipal elections may not require candidates to be nominated by political parties. T.C.A. § 2-13-208.

Nominating Petitions. All independent and primary candidates must submit a nominating petition in order for their names to appear on the ballot. (Candidates nominated by a method other than primary, however, are certified directly to the election commission by the party.) T.C.A. § 2-5-101. Nominating petition forms are furnished by the county election commission and, for some offices, by the coordinator of elections.

T.C.A. § 2-5-102. These petitions are not to be issued more than 90 days before the qualifying deadline for the office sought. T.C.A. § 2-5-102(b)(5).

For most offices, the nominating petition must be signed by the candidate as well as a minimum of 25 or more registered voters who are eligible to fill the office (presidential and delegate candidates have different requirements). Either the signer's normal or legal signature is acceptable. The voter must also include the residence or other address as shown on the voter registration card. Including additional information on the petition that does not appear on the voter registration card will not disqualify the signature if there is no conflict in the information. T.C.A. § 2-5-101.

Restrictions on Candidacy. Under T.C.A. § 2-5-101, there are certain restrictions on how a candidate may qualify:

1. No one may qualify with more than one political party for the same office;
2. No one may qualify as an independent and a primary candidate for the same office in the same year;
3. No one defeated in the primary may qualify as an independent in the general election;
4. No primary candidate may appear on the ballot for the general election as a nominee of a different political party or as an independent; and
5. No one may qualify for more than one state office or more than one constitutional county office or countywide office in an election. (Note that unless the qualifications for a particular office prevent it, a candidate may run for one county and one state office in the same election.)

Qualifying Deadlines and Procedure. Candidates are required to qualify for an election by certain statutorily prescribed times. Although these times vary in certain circumstances, generally a candidate must qualify by 12 noon, prevailing time, on the third Thursday in the third calendar month before an election or a primary. T.C.A. § 2-5-101. However, there are a number of exceptions based on the office sought and whether or not a primary is being held. For example, in a presidential election year, if a party calls for a county primary in February, the qualifying deadline is the first Thursday in November. T.C.A. § 2-5-101(a)(2). For information on specific qualifying deadlines for any election or primary it is always advisable to call the county election commission, regarding local elections, or the state coordinator of elections regarding state elections.

Candidates for some offices are required to file certified duplicate copies of the original nominating petition. For example, candidates for statewide offices, as well as for representative to the U.S. Congress, must file the original petition with the State Election Commission and file duplicates with the coordinator of elections and the party's state executive committee (for primary candidates only). T.C.A. § 2-5-103. Candidates for other offices must file the original nominating petition with the county election commission in the county of residence, and file duplicates with the election commissions of all counties served by the office which the candidate seeks. T.C.A. § 2-5-104.

Candidates for chief administrative officer of county highway departments are required to certify their qualifications under the County Uniform Highway Law by filing affidavits with the Tennessee Highway Officials Certification Board at least 14 days before the qualifying deadline. This board is responsible for certifying that the qualifications are acceptable. This certification, which is filed with the qualifying petition, is required before the candidate's name may be placed on the ballot. All correspondence with this board should be submitted through the office of the coordinator of elections. T.C.A. § 54-7-104.

Any candidate for a judicial office that must be filled by an attorney must certify that he or she is licensed to practice law in this state and must place his or her supreme court registration number on the nominating petition. T.C.A. § 2-5-106.

Similarly to highway officials, sheriffs must file certain materials with the POST Commission 14 days prior to the qualifying deadline for election to the office of sheriff. The POST Commission is responsible for certifying to the election commission that the qualifications are acceptable. This certification is required before the candidate's name may be placed on the ballot. *See* T.C.A. § 8-8-102 for more details on these requirements.

Write-In Candidates. Any person trying to receive a party nomination or be elected by write-in ballot must complete a notice to the county election commission of each county of the district requesting that his or her ballots be counted no later than 50 days before the primary or 50 days before a general election. T.C.A. §§ 2-7-133 and 2-8-113. The county election commission is required to promptly notify the state coordinator of elections and the registry of election finance as well as other candidates participating in the affected primary or election of the write-in notice. A write-in candidate will only have votes counted in counties where the notice was completed and timely filed. Write-in candidates for the offices of governor, United States Senator, and members of the United States House of Representatives are required to file their notice with the state coordinator of elections. In a primary election, a write-in candidate for that office must receive a vote equal to at least 5 percent of the total number of registered voters of the district, and receive more votes than any other candidate, to receive the party's nomination. T.C.A. § 2-8-113. Furthermore, a write-in candidate for county or municipal office must receive a minimum of 25 votes in the primary before being placed on the ballot for the general election, a requirement that cannot be modified by private act or charter. T.C.A. § 2-5-119. In an election where voting machines are used, a voter may write-in a name not listed on the ballot if the voter requests a paper ballot from the ballot judge before operating a voting machine. After receiving a paper ballot, a voter may not enter a voting machine. T.C.A. § 2-7-117.

Tie Votes. According to T.C.A. § 2-8-111, the following bodies are to cast the deciding vote if any of these general elections results in a tie:

1. Elections involving a single county or a part of a county - county legislative body;

2. Municipal elections - municipal legislative body (or the legislative body may call for a runoff);
3. Elections for U.S. Congress - governor;
4. Election for governor - General Assembly;
5. Any other election except U.S. Senator (see below) - state election commission.

If a tie vote occurs in a primary election, the tie shall be broken according to the rules of the political party. T.C.A. § 2-8-114. An election for U.S. Senator is void if it results in a tie, and the governor is to order a special election. T.C.A. § 2-8-111.

Procedure for Elections

Dates for Regular Elections. Regular general elections are held in every even-numbered year on the first Thursday in August for county offices, and on the first Tuesday after the first Monday in November for state offices. Elections for the following offices are to be held at the regular August election when the election immediately precedes the commencement of a full term:

1. Sheriff;
2. Constable;
3. Assessor of property;
4. County clerk and clerks of the circuit and other courts;
5. Register;
6. County trustee;
7. Members of the county legislative body;
8. Judges of all courts; and
9. District attorney general.

T.C.A. § 2-3-202.

Elections for the following offices are to be held at the regular November election when the election immediately precedes the commencement of a full term:

1. Representative in the General Assembly;
2. Representative in the United States Congress;
3. Senator in the General Assembly;
4. Senator in the United States Congress;
5. Governor; and
6. Electors for the president and vice-president.

T.C.A. § 2-3-203.

Special Elections. A special election must be held whenever a vacancy in any office is required to be filled by election at a time other than the time fixed for general elections. T.C.A. § 2-14-101. For all county and municipal offices, special elections are ordered by the county election commission, while the governor orders those for all other offices. T.C.A. § 2-14-103. Special elections must be held from 75 to 80 days after notice of the

need for an election is received. However, if a regular general election or primary is scheduled within 30 days of the time required for a special election, then the special election may be held on that day. If the day of the election is moved, then all other dates are adjusted accordingly. T.C.A. § 2-14-102. The county election commission must publish notice of the special election within 10 days after it receives the election order. T.C.A. § 2-14-105. In most cases, candidates in a special election must qualify as in regular elections, although the deadline for filing qualifying petitions and party nominations is 12 noon on the sixth Thursday before the day of the special election. T.C.A. § 2-14-106.

Early Voting Procedures. In 1994 the General Assembly passed legislation that adopted an early voting period and amended absentee voting procedures. T.C.A. § 2-6-101 *et seq*. This act replaced the procedure to vote absentee by personal appearance (T.C.A. § 2-6-109) with an early voting period, which starts 20 days before an election and runs through the fifth day before the election, in which any registered voter may vote (although different time periods may apply to municipalities). Upon the request of a municipality holding an election at some time other than the regular August or November election, the county election commission shall establish a satellite voting location within the corporate limits of the municipality. The municipality must pay the costs of the location. T.C.A. § 2-6-103. For early voting the county election commission may choose to use voting machines, paper ballots, or a combination of both. The state coordinator of elections is to promulgate rules for voting machine use, as well as forms for early voter and absentee ballot applications, determining distinguishable colors for each type of envelope. Instead of the state forms, a county election commission may use its own computer-generated forms with the approval of the coordinator of elections. T.C.A. § 2-6-312. Voters who are unable to vote either during the early voting period or on election day may submit an application to vote absentee but must meet the statutory requirements. For specific absentee voting procedures, *see* T.C.A. § 2-6-101 *et seq.*

Inactive Voters and Provisional Ballots. County election commissions are permitted to establish a centrally located polling place for voters whose registration is inactive or whose registration has been transferred to a new precinct. T.C.A. §§ 2-7-140 and 2-7-141. When a voter attempts to vote at a precinct where he or she is no longer eligible to vote, the election official at the voter's old polling place would notify the voter that he or she has the choice to vote at either the centrally located place or the new polling place. If the central location is other than the county election commission office, then the site must be equipped with computers linked to the county election commission office to allow voters' records to be changed.

In 2003, the General Assembly authorized provisional ballots in Tennessee. T.C.A. § 2-7-112(a). Under this law, a person who claims to be properly registered but whose eligibility cannot be determined by the computer signature list or the permanent registration records on file with the election commission is entitled to vote a provisional ballot. Procedures for voting provisional ballots, determining their validity and counting such ballots are found in T.C.A. § 2-7-112.

Referenda. For a referendum to be held, it must be authorized or mandated by statute. The county legislative body does not have a general power to submit questions; the body has power only to submit questions to the voters that have been granted by general law or private act. Certain questions are required by law to be submitted to the people in referendum for their approval or disapproval. In a referendum election held by a local government, any question submitted to a vote of the people shall be printed on the ballot followed by the words "yes" and "no." The law requires that the language of the question must be worded on the ballot so that a "yes" vote indicates support for the measure and a "no" indicates opposition to the measure. T.C.A. § 2-5-208. Generally, if the law does not provide otherwise, referendum elections submitted to the people are to be held on dates set by the county election commission but not less than 45 days or more than 60 days after the county election commission is directed to hold the election. However, resolutions, ordinances or petitions requiring the holding of elections on questions submitted to the people that are to be held with the regular August election, the regular November election or the presidential preference primary shall be filed with the county election commission not less than 60 days prior to that election. T.C.A. § 2-3-204. If the date set for a referendum falls within 30 days of an upcoming regular election or primary, the election commissions of the counties involved may reset the date of the referendum to coincide with the regular general or primary election. All other dates dependent on the election date will be adjusted accordingly. If the referendum is to be held in more than one county, the election commissions for both counties must meet and set a date jointly. T.C.A. § 2-3-204. Uniform procedures for the filing and acceptance of petitions in governmental entities that allow for recall, referendum, or initiative elections pursuant to terms of the charter of that government can be found in T.C.A. § 2-5-151.

National Voter Registration Act

In 1993 the U.S. Congress passed the National Voter Registration Act, codified as 42 U.S.C. §1973gg *et seq*. The law has been commonly dubbed the "Motor Voter" program due to the law's requirement that driver's license facilities (as well as a number of other agencies) offer voter registration services to their clients. Congress required most states to pass legislation and implement the programs of the act by January 1, 1995. Tennessee fully implemented the program by that date. Some of the act's programs (such as by-mail voter registration) were already available in Tennessee. Under this legislation, Tennessee established a network of cooperative efforts between local county election commissions and numerous state and local agencies. The participating voter registration agencies in Tennessee are the following: the Department of Safety (motor vehicles division), Department of Health (WIC program), Department of Human Services, Department of Mental Health and Mental Retardation, Department of Veterans Affairs, public libraries, public high schools, county clerks, and registers of deeds. T.C.A. § 2-2-202.

In addition to expanding the locations for voter registration, the law made substantial reforms in voter registration record keeping and maintenance. It eliminates purging a voter record for non-voting (formerly practiced in Tennessee) and requires election

commissions to accommodate voters who have moved within a county but failed to update their voter registration.

Help America Vote Act

The Help America Vote Act is a federal law to improve state and local voting procedures. In order to comply with the federal law and receive funding under this new act, Tennessee's General Assembly enacted 2005 Public Chapter 308, codified at *Tennessee Code Annotated*, Title 2, Chapter 2, Part 3. This state law provides for a statewide voter registration database maintained by the Tennessee coordinator of elections. This law establishes the Automated Electoral System as the official list of registered voters in the state and requires data from county election commissions to be transferred to the state via the Automated Electoral System not less than once daily.

County election commissions are required to purge voting registrations of all deceased registered voters appearing on the report transmitted by the coordinator of elections at least every 30 days, and beginning with the first day of any period of early voting, purges must be made daily, through the day of the election as the information is received from the coordinator of elections. 2006 Public Chapter 578; T.C.A. § 2-2-106.

Campaign Financial Disclosure

Campaign Financial Disclosure Act of 1980. This act requires all candidates for public office to file a report of campaign contributions and expenditures, except that candidates for part-time offices paying less that $500 per month are exempt from these requirements. The exemption does not apply, however, to a candidate for a chief administrative office or whose campaign expenditures exceed $1,000. T.C.A. § 2-10-101. Enforcement and administration are the responsibility of the Registry of Election Finance.

Before a candidate or campaign committee can make or receive campaign expenditures, it must file the name and address of the political treasurer with the Registry of Election Finance for state elections, or with the county election commission for local elections. The candidate may serve as political treasurer, but if he or she appoints someone else, the candidate must co-sign the required statements. T.C.A. § 2-10-105. If the candidate or committee files this statement prior to January 1 of the year in which the candidate expects to be involved, then a financial report must be filed with the proper agency by January 31 and July 15 immediately succeeding the filing, and semiannually thereafter until the year of the election. However, a semiannual report need not be filed if the reporting date falls within 60 days of a report otherwise required by the election laws. During an election year, reports are filed quarterly and are due within 10 days of the periods ending March 31, June 30, September 30 and January 15. The candidate is also required to file a pre-primary and pre-general statement covering activity from the last quarterly report until the 10th day prior to the primary or election. These reports are due seven days before the primary or election. T.C.A. § 2-10-105.

Reports for both primary and general elections must be filed separately, even for the same office in the same year. However, appointment of the political treasurer for the primary election is also valid for the general election for the same office. All records used in preparing financial disclosure statements must be retained for at least two years after the election or after the date of the statement, whichever is later. T.C.A. § 2- 10-105.

In addition to the financial transactions shown in these regular statements, substantial contributions or loans received within 10 days of any election must also be reported. In a state election this means that any transfer of funds over $5,000 must be reported by the end of the next business day to the state Registry of Election Finance. Any amount over $2,500 in a local election triggers the requirements of this Section and must be reported to the county election commission by the end of the next business day. The report is to be submitted on forms furnished by the registry and should include the following information: amount, date contributed or loan reported, description and valuation of in-kind contributions, and for a loan, the name and address of lender, name of recipient, and details of any security agreement for the loan's repayment. T.C.A. § 2-10-105.

Reports on Unexpended Balances. If the final statement of a candidate shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry (for state offices) or county election commission (for local offices) a supplemental semiannual statement of contributions and expenditures. These reports begin after filing the first quarterly report due after an election and will continue to be filed until the account shows no unexpended balance, continuing debts and obligations, expenditures, or deficit. T.C.A. § 2-10-106.

Contents of Reports. Financial statements submitted under the act must contain specified information about all income and expenditures during the period covered by the report. If neither expenditures nor contributions exceeded $1,000 during this time period, the report may simply state that fact. Otherwise the report should list separately any single contribution or expenditure over $100, including full name, address, occupation and employer of each contributor. For expenditures, the report must indicate the full name and address of each person to whom a total of more than $100 was paid, the total amount paid to that person and the purpose of the expenditure. Contributions of $100 or less are to be totaled and listed together, as are expenditures of this amount, though the latter are to be grouped by category. "In-kind contributions," those other than money, are to be reported in a similar manner, though once again those of $100 or less are to be totaled. T.C.A. § 2-10-107. The Registry of Election Finance should be consulted for more specific information regarding reporting requirements.

Closing Out Accounts and Using Unexpended Funds. When a candidate or political campaign committee desires to close out a campaign account, it may file a statement to that effect at any time; however, the statement must show no unexpended balance, continuing obligations, or deficits. T.C.A. § 2-10-107. A candidate may close out a campaign account by transferring any remaining funds to another campaign fund and

commencing annual filings on that account. T.C.A. § 2-10-106. Other permissible uses for unexpended campaign funds are listed in T.C.A. § 2-10-114. These include returning funds to contributors, transferring them to the political party, contributing them to an education trust fund or other specified tax-exempt organization, using them to defray costs necessitated by the office, and contributing them to any institute of public or private education in the state to supplement the funds of an existing scholarship trust or program. T.C.A. § 2-10-114. It is not permissible to disburse such funds for personal use. T.C.A. § 2-10-114.

Enforcement. All campaign financial statements are available for public inspection, either at the Registry of Election Finance, for state elections, or the county election commission for local elections. T.C.A. §§ 2-10-206, 2-10-103. The county election commission is required to notify the state election commission and the Registry of Election Finance of each local election held in the county. Each time that campaign statements are due in a local election, the county election commission is required to file a report with the registry certifying that all candidates have filed timely or provide a list of all who have failed to report timely. T.C.A. §2-10-111. The registry may impose a civil penalty of not more than $25 per day up to a maximum of $750 for late filings. Notice of a failure to file is required to be sent to candidates who did not timely file. A failure to file a report within 35 days after receiving such notice is considered a class 2 offense and punishable by a maximum civil penalty of not more than $10,000. T.C.A. § 2-10-110. Any registered voter who believes information has been omitted or misstated may file a sworn complaint with the Registry of Election Finance (state elections) or the district attorney general where the voter resides (local elections). However, anyone who knowingly files a false complaint or one for harassment purposes is liable for civil penalties and attorney's fees. T.C.A. § 2-10-108. The Registry of Election Finance or the district attorney general is responsible for investigating complaints and seeking injunctions to enforce these provisions. T.C.A. § 2-10-109.

Campaign Contribution Limits

Campaign Contribution Limits Act. In 1995 the General Assembly passed the Campaign Contribution Limits Act, codified in T.C.A. Title 2, Chapter 10, Part 3. As with most other areas of campaign finance, the Registry of Election Finance has administrative and enforcement powers over this act.

The act prohibits contributions by a person to any candidate that, in the aggregate, exceed $2,500 in a statewide election or $1,000 in other state or local elections. Multicandidate political campaign committees are limited to contributions of $7,500 in statewide elections and $5,000 in other state and local elections.

Candidates running in statewide elections are prohibited from accepting more than 50 percent of their total contributions from multicandidate political campaign committees. For any other office there is a simple $75,000 limit on the total contributions from multicandidate committees. These calculations do not include contributions made to the candidate by a political party.

Some contributions may be indirectly attributed to the candidate. Anyone involved in campaign or fundraising activities should examine the rules regarding these contributions. T.C.A. § 2-10-303.

The limitations of this statute do not apply to loans of money by a financial institution as defined in T.C.A. § 45-10-102(3) if they meet certain qualifications. There are also limits on the aggregate contributions allowed by political parties. They are: $250,000 in statewide elections, $40,000 for candidates for the Senate, and $20,000 for elections to other state or local public office. T.C.A. § 2-10-306.

The term "contributions" as used in these statutes is defined very broadly. T.C.A. § 2-10-306. Once again, anyone involved in fundraising or campaign activities should take a close look at these statutes or contact the Registry of Election Finance for advice. Contributions that exceed the limit will not be considered a violation of these laws if the candidate or political campaign committee returns the contribution to the person who made the contribution within 60 days of the receipt of the contribution. T.C.A. § 2-10-307.

The registry may impose a penalty up to $10,000 or 115 percent of the contributions that exceed the limits. If the penalty is not paid for 30 days, the candidate becomes ineligible to qualify for election until the penalty is paid.

Each candidate for local public office or political campaign committee for a local election shall file with each county election commission of the county where the election is held a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee. T.C.A. § 2-10-105(b). Penalties for failure to timely file the statement of contributions and expenditures are found in T.C.A. § 2-10- 110.

Cash Contributions and Aggregate Contribution Limits

In addition, under the 2006 Comprehensive Governmental Ethics Reform Act, a new statute was enacted under Title 2, Chapter 10, Part 3, to prohibit a person from making cash contributions to any candidate with respect to any election that, in the aggregate, exceed $50. Further provisions of that act also prohibit any individual from contributing more than $101,400 in the aggregate to all candidates, multicandidate political campaign committees, and political campaign committees controlled by a political party. Of this amount, no more than $40,000 may be contributed toward candidates. These limits are increased in every odd-numbered year to reflect the percentage of change in the average consumer price index; however, the $50 limit on cash contributions does not increase.

Fundraising During General Assembly Session. From the time the General Session convenes until the last day of the regular session or June 1 in odd-numbered years or May 15 if that date is earlier, and during special or extraordinary sessions, no member of the General Assembly or candidate for the General Assembly or governor can conduct a fundraiser or solicit or accept contributions for the benefit of the caucus, a caucus member, or candidate for the General Assembly or governor. Certain political

campaign committees are likewise prohibited from this type of fundraising during the same time period. T.C.A. § 2-10-310. Excess funds raised for election to a local public office cannot be transferred to a campaign account for election to the General Assembly or governor.

Conflict of Interest Disclosure Statements

Each candidate for public office is required to file a disclosure statement regarding possible conflicts of interest. Items to be listed in this report include the following:

1. The major source or sources of private income of more than one thousand dollars ($1,000), including, but not limited to, offices, directorships, and salaried employments of the person making disclosure, the spouse, or minor children residing with such person, but no dollar amounts need be stated. However, the disclosure of any client list or customer list is not required;

2. Any investment which the person making disclosure, that person's spouse, or minor children residing with that person has in any corporation or other business organization in excess of ten thousand dollars ($10,000) or five percent (5%) of the total capital; however, it shall not be necessary to state specific dollar amounts or percentages of such investments;

3. Any person, firm, or organization for whom compensated lobbying is done by any associate of the person making disclosure, that person's spouse, or minor children residing with the person making disclosure, or any firm in which the person making disclosure or they hold any interest, complete to include the terms of any such employment and the measure or measures to be supported or opposed;

4. In general terms by areas of the client's interest, the entities to which professional services, such as those of an attorney, accountant, or architect, are furnished by the person making disclosure or that person's spouse;

5. By any member of the general assembly, the amount and source, by name, or any contributions from private sources for use in defraying the expenses necessarily related to the adequate performance of that member's legislative duties;

6. Any retainer fee which the person making the disclosure receives from any person, firm, or organization who is in the practice of promoting or opposing, influencing or attempting to influence, directly or indirectly, the passage or defeat of any legislation before the general assembly, the legislative committees, or the members to such entities;

7. Any adjudication of bankruptcy or discharge received in any United States district court within five (5) years of the date of the disclosure;

8. Any loan or combination of loans of more than one thousand dollars ($1,000) from the same source made in the previous calendar year to the person making disclosure or to the spouse or minor children unless: (A) The loan is from an immediate family member (spouse, parent, sibling or child); (B) The loan is from a financial institution whose deposits are insured by an entity of the federal government, or such loan is made in accordance with existing law and is made in the ordinary course of business. A loan is made in the ordinary course of business if the lender is in the business of making loans, and the loan bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule; (C) The loan is secured by a recorded security interest in collateral, bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule; (D) The loan is from a partnership in which the legislator has at least ten percent (10%) partnership interest; or (E) The loan is from a corporation in which more than fifty percent (50%) of the outstanding voting shares are owned by the person making disclosure or by a member of such person's immediate family; and

9. Such additional information as the person making disclosure might desire. T.C.A. § 8-50-502.

Prior to October 1, 2006, candidates in local elections filed their conflict of interest statement with the county election commission in the county of the candidate's residence, while state election candidates filed with the Registry of Election Finance. However, all such statements are now to be filed with the newly formed State Ethics Commission. T.C.A. § 8-50-501. Statements must be filed within 30 days after the qualifying deadline for the desired office. The disclosure must be written on the form prescribed by the Tennessee ethics commission and must be signed by one attesting witness. The statement becomes a public record after it is filed. T.C.A. § 8-50-501. As with improper financial disclosure, failure to report possible conflicts of interest can result in civil penalties. T.C.A. §§ 8-50-505, 2-10-110. Candidates running for reelection to the same office or position they currently hold are not required to file a conflict of interest statement as long as they are in compliance with T.C.A. §§ 8-50-503 and 8-50-504 (filing of amended disclosure statements).

County Reapportionment

Requirements for Reapportionment. The Tennessee Constitution in Article VII, Section 1, provides for the election of a county legislative body in each county that should equally represent all areas of the county:

The legislative body shall be composed of representatives from districts in the county as drawn by the county legislative body pursuant to statutes enacted by the General

Assembly. Districts shall be reapportioned at least every ten (10) years based upon the most recent federal census. The legislative body shall not exceed twenty-five (25) members, and no more than three representatives shall be elected from a district.

The statutes implementing this constitutional provision are T.C.A. §§ 5-1-110 through 5-1-112, which require the legislative body of each county to meet at least once every 10 years for the purpose of adopting a plan of reapportionment. By a majority vote of the membership, each county legislative body is to change the boundaries of districts, redistrict the county entirely, or increase or decrease the number of districts, if necessary, to apportion the county legislative body so that the members represent substantially equal populations. Although reapportionment is required at least once every 10 years, the county legislative body is given the flexibility to determine when reapportionment is necessary, and may adopt a new scheme any time it is needed to maintain substantially equal representation of the county's population. Although in the past local governments have employed a number of different population indicators in drawing districts, now the law requires them to use the latest federal census data. T.C.A. § 5-1-111.

Reapportionment Process. The first step a county legislative body should take when it prepares to develop a redistricting plan is to appoint a reapportionment committee. Although this committee is not a statutory requirement, most counties find that it greatly facilitates the process. In selecting the committee the legislative body will wish to achieve broad representation of the county, but a committee that is too large can prove cumbersome. Membership in the county legislative body is not required to serve on the reapportionment committee, and the inclusion of others is often helpful. After the committee has formed and the official county population from the latest federal census is known, the committee should determine the population in each voting precinct and then group these into "reasonably compact and contiguous" districts with substantially equal population and representation.

Districts cannot overlap one another, and no voting precinct may be split into different districts, except that in counties with 20 or more county legislative body districts, the election commission may establish a precinct that encompasses two or more districts with written approval from the coordinator of elections. T.C.A. § 5-1-111. Although the new voting districts need not conform to the boundaries of the original civil districts, these latter areas are to be preserved as they existed at the time of the first apportionment, for record-keeping purposes. T.C.A. § 5-1-112.

Before the new reapportionment plan takes effect, it must be put into writing and adopted by a majority of the county legislative body. Finally, the county legislative body must commission a map or maps showing the new voting districts as well as the original civil districts, complete with written descriptions of all boundaries. Copies must be filed with the county clerk and the secretary of state; revised maps must be filed within 90 days of any revision. T.C.A. § 5-1-110.

Enforcement. Any citizen of the county may challenge the reapportionment plan in the county's chancery court, which has the power to order amendments to bring the plan

into compliance with state law. If the county legislative body fails to make apportionment, the court can order it to be done. T.C.A. § 5-1-111; Op. Tenn. Att'y Gen. 92-21 (March 4, 1992). Since the provisions of this statute make a challenge of a county's reapportionment plan so simple, it is extremely important that each county follow the law as closely as possible and document each step taken in the preparation of a reapportionment plan.

School Board and Highway Commission Districts. Like other voting districts, school board and highway commission districts must conform to the "one person, one vote" reapportionment standard in order to be constitutionally acceptable. Most counties establish school and highway districts through private acts of the General Assembly; reapportionment of these districts must be accomplished by private act if a private act established the original districts. Many counties provide that school board districts and highway commission districts are to coincide with the county commission districts of the county. This practice can substantially simplify the reapportionment process.

Assistance in Reapportionment. Counties may obtain assistance in developing a reapportionment plan from the County Technical Assistance Service, the Department of Economic and Community Development's Division of Local Planning, or the comptroller of the treasury's Office of Local Government.

CHAPTER 9

VACANCY, REMOVAL FROM OFFICE, ETHICS, AND CONFLICTS OF INTEREST

Vacancies in Office

Vacancies can occur in county offices for a variety of reasons. According to the state constitution, county officials "shall be removed from office for malfeasance or neglect of duty," as these terms are defined by the legislature. Tenn. Const., art. VII, § 1. Similarly, court clerks may be removed for "malfeasance, incompetency or neglect of duty." Tenn. Const., art. VI, § 13. According to statute, any of the following results in a vacancy in office:

1. Death of the incumbent;
2. Resignation, when permitted by law;
3. Ceasing to be a resident of the state, district, circuit, or county for which elected or appointed;
4. Decision of a competent tribunal declaring the election or appointment void or the office vacant;
5. An act of the General Assembly abridging the term of office, where it is not fixed by the Constitution;
6. Sentencing the incumbent, by any competent tribunal in this or any other state, to the penitentiary, subject to restoration if the judgment is reversed but not if the incumbent is pardoned;
7. Adjudicating the incumbent insane; or
8. Failure to satisfy bond requirement.

T.C.A. §§ 8-48-101, 8-19-117.

As stated above, moving out of the state, district, circuit, or county from which one was elected or appointed is a cause of vacancy under T.C.A. § 8-48-101. If disputed, the determination of residency is a question of fact. *See Bailey v. Greer*, 468 S.W.2d 327 (Tenn. Ct. App. 1971). A declaratory judgment may be necessary to determine residency. The following principles, outlined in T.C.A. § 2-2-122, are helpful but not binding in making the determination of residency:

1. The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has a definite intention to return;

2. A change of residence is generally made only by the act of removal joined with the intent to remain in another place. There can be only one (1) residence;

3. A person does not become a resident of a place solely by intending to make it the person's residence. There must be appropriate action consistent with the intention;

4. A person does not lose residence if, with the definite intention of returning, the person leaves home and goes to another country, state or place within this state for temporary purposes, even if of one or more years duration;

5. The place where a married person's spouse and family have their habitation is presumed to be the person's place of residence, but a married person who takes up or continues abode with the intention of remaining at a place other than where the person's family resides is a resident where the person abides;

6. A person may be a resident of a place regardless of the nature of the person's habitation, whether house or apartment, mobile home or public institution, owned or rented; however, a commercial address may not be used for residential purposes, unless the applicant provides evidence of such applicant's residential use of such address;

7. A person does not gain or lose residence solely by reason of the person's presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while living on a military reservation; and

8. No member of the armed forces of the United States, or such member's spouse or dependent, is a resident of this state solely by reason of being stationed in this state.

Temporary Vacancies

Vacancies Due to Military Service. A temporary vacancy exists when a county official is inducted into military service such as the United States Army or any of its branches, the Navy, Air Force, Marine Corps, Coast Guard, Merchant Marine, or any other military activity. T.C.A. § 8-48-202. Upon the official's return from military service, he or she is entitled to resume the office for the remainder of the term, if it has not already expired. T.C.A. § 8-48-202. If the official does not return from military service prior to the expiration of the term, a successor is elected in the regular manner prescribed by law. T.C.A. § 8-48-203.

When a county official is inducted into the United States military service, the office duties are discharged temporarily during the official's absence by another person legally qualified, and the office is to be filled temporarily by the legislative body. T.C.A. §§ 8-48-204, 8-48-205. However, if a clerk and master is inducted into military service, the chancellor appoints a qualified person to fill the office temporarily. T.C.A. § 8-48-205. Any person temporarily appointed or elected to an office must execute a bond and subscribe to an oath to discharge the duties of the office. T.C.A. § 8-48-207. The temporary official receives the salary and has the same power, authority, and privileges as the regular official. T.C.A. § 8-48-208. The temporary official may not remove assistants appointed by the regular official; that power remains with the regular official.

T.C.A. § 8-48-209. All persons chosen to fill offices temporarily must satisfy all qualifications required to hold the office. T.C.A. § 8-48-206.

Temporary Absence of County Mayor. If the county mayor is absent or intends to be absent for more than 21 days, or is incapacitated or otherwise unable to perform the duties of the mayor's office, the legislative body appoints the chairperson to serve until the absence or disability is removed. Any contest of disability or its removal shall be adjudicated in chancery court. While the chairperson is serving as mayor, the chairperson pro tempore presides over legislative body sessions. T.C.A. § 5-5-103. Note that this statute applies to a temporary absence, not to a vacancy. An interim county mayor may serve from the time the office becomes vacant until the county legislative body can appoint a successor; the chairperson of the county legislative body (or the chairperson pro tempore in circumstances where the county mayor had been the chairperson) serves in the interim. T.C.A. § 5-5-103.

Interim Provisions for Other County Officials. The law provides for a temporary successor to fill vacancies in the offices of trustee, register, county clerk, sheriff, highway chief administrative officer, and assessor of property, in addition to the provisions for an interim county mayor as discussed above. T.C.A. §§ 8-11-111, 8-13-105, 18-6-115, 8-8-107, 54-7-107, 67-1-504. The duties of the office are to be temporarily discharged either by the chief deputy or by a deputy designated as temporary successor by the official in writing. It is important to note that this law applies only to the duties of the office and not to the office itself. In case of death of a clerk of court, the deputy holds office until the vacancy is filled. T.C.A. § 18-1-401.

<u>Emergency Interim Successors</u>. In 1961, at the height of the Cold War, T.C.A. §§ 8-48-110 and 8-48-110 were enacted to provide for interim successors during times of crisis. The statutes are based on provisions in a model act dealing with nuclear war and have remained unchanged since being enacted. The first emergency interim successor statute, T.C.A. § 8-48-110, provides that county legislative bodies may enact resolutions or ordinances providing for emergency interim successors to the lesser local offices over which the county legislative body has plenary control. The second emergency interim successor statute, T.C.A. § 8-48-111, provides that officers of counties may designate, by Title or named person, emergency interim successors and specify their order of succession. This statute provides that if the officer is "unavailable, the powers of the office shall be exercised and the duties shall be discharged by the officer's designated emergency interim successors in the order specified." Tennessee courts have never interpreted the meaning of "unavailable" in this statute, however, the case law in Tennessee indicates that a person is considered "unavailable" for purposes of a court proceeding when beyond the jurisdiction of the court or is suffering from such infirmities of body or mind as to preclude appearance. *State v. Freeman*, 669 S.W.2d 688 (Tenn. Crim. App. 1983). This unavailability does not create a vacancy, but does allow a named emergency interim successor to act for the officer when the officer is unavailable, in the order specified by the officer. This law provides that the officer will name from three to seven deputies or emergency interim successors or combination thereof. These designations should be given in writing and filed with the county mayor.

Procedure for Filling Vacancies. 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. When a vacancy occurs in a county office, the county clerk must give ten (10) days notice to every member of the legislative body to fill the vacancy. T.C.A. § 5-5-113. In addition to the county clerk's notice to all legislative body members, the presiding officer of the legislative body must give public notice in a newspaper of general circulation in the county at least one week prior to the meeting. T.C.A. § 5-5-114. The legislative body does not have to wait for notice from the clerk to act but may act on information from other sources. T.C.A. §§ 8-48-105, 8-48-108. The members may draw one day's compensation; a majority of all members is necessary to constitute a quorum. T.C.A. § 5-5-113. The vote of the legislative body members should be public by voice vote. The county clerk calls and records the name of each member and the member's vote, which is entered on the minutes. T.C.A. § 5-5-116. A majority of all members constituting the legislative body (not a majority of the quorum) is required to elect county officials. T.C.A. § 5-5-109.

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. § 5-5-104. A commissioner who has accepted a nomination cannot vote on the appointment; for purposes of determining a majority, the membership of the commission 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. 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. Any challenge to the legality of an appointment must be filed with the chancery court within 10 days of the appointment. T.C.A. § 5-1-111.

Election of Successor by the People. 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.

Removal from Office

Ouster. Any county official, except those that the constitution provides are removable only and exclusively by other means, may be ousted for any of the following:

1. Knowing or willful misconduct in office;
2. Knowing or willful neglect of duties required by law;
3. Voluntary intoxication in a public place;
4. Illegal gambling; or
5. Commission of an act violating any statute if the act involves moral turpitude. T.C.A. § 8-47-101.

Participating in the Tennessee lottery is not considered gambling. T.C.A. § 8-47-127.

The Tennessee attorney general, district attorney general, or county attorney may investigate a complaint against a county official after receiving notice in writing that such official has been guilty of any acts, omissions, or offenses set forth in T.C.A. § 8- 47-101, discussed above. If upon investigation there is reasonable cause for the complaint, an ouster proceeding may be instituted. T.C.A. § 8-47-103.

In an ouster proceeding the prosecuting attorney may issue subpoenas to witnesses. T.C.A. § 8-47-104. If a witness disobeys the subpoena or refuses to answer any proper questions, the witness is guilty of a Class C misdemeanor. T.C.A. § 8-47-106. No one is excused from testifying before the attorney general, district attorney, or county attorney at any investigation, or from testifying in any proceeding brought in court, on the ground that the testimony is self-incriminating. T.C.A. § 8-47-107. However, no one will be prosecuted or punished because of anything about which he or she has been compelled to testify, nor shall the testimony be used against the person in prosecutions for any crime or misdemeanor under state law. T.C.A. § 8-47-107.

Under an alternative procedure, a petition or complaint for ouster may be filed by 10 or more county citizens, who generally must post security for the costs of the lawsuit. T.C.A. § 8-47-110. Upon request of the citizens, the attorney general, the district attorney, or the county attorney must assist the citizens in prosecuting the proceedings. T.C.A. § 8-47-111.

When a petition or complaint of ouster is filed, the judge may suspend the accused official from performing any official duties, pending a final hearing and determination. The temporary vacancy should be filled as required by law; the appointee serves until the accused official is exonerated of the charge or a successor is elected. T.C.A. § 8-47-116. The appointee temporarily filling the office should receive the same salary and fees as paid to the suspended officeholder. T.C.A. § 8-47-121.

At least five days before an official is suspended, he or she must receive a notice that specifies the time and place of the hearing on the suspension application. The accused

official may appear and present a defense and is entitled to a full hearing. No suspension order will be made except upon a good cause finding. T.C.A. § 8-47-117. An official who successfully defends an ouster suit will be restored to office and will be allowed full costs, salary, and fees during the suspension period. T.C.A. § 8-47-121. The court may order the complaining party to pay costs and attorney's fees if the complaint is withdrawn or if the court finds the charges to be without merit. However, if the official is found guilty, he or she will be ousted from office and must pay the full costs adjudged in the case. T.C.A. §§ 8-47-120, 8-47-122.

Either party may appeal from the final judgment. However, the appeal will not suspend or vacate the judgment, which will remain in effect until it is vacated, reversed, or modified. T.C.A. § 8-47-123. An ouster suit has priority on appeal and will be heard at the first term after the appeal is perfected and filed. T.C.A. § 8-47-125.

Ethics

County Ethics Policies. The Comprehensive Governmental Ethics Reform Act of 2006 made numerous amendments to campaign finance laws, creating a new state ethics commission and enacting substantial new provisions regulating lobbying at the state level. This act also mandated local governments to adopt ethical standards by June 30, 2007. The county commission is required to adopt these standards for the entire county, which is broadly defined to include all boards, commissions, authorities, corporations or other instrumentalities of the county as well as the county election commission and health department. T.C.A. § 8-17-101 through 8-17-106. Utility districts are considered separate governmental entities to be governed by ethical standards established by the board of commissioners of the utility district. County, municipal, and special school districts are considered separate governmental entities to be governed by ethical standards established by the district's board of education. T.C.A. § 8-17-102.

The ethical standards adopted by the county commission are required to include rules and regulations regarding limits on, and/or reasonable and systematic disclosure of, gifts or other things of value received by officials and employees that impact or appear to impact their discretion. The standards must also include rules and regulations regarding reasonable and systematic disclosure by officials and employees of their personal interests that impact or appear to impact their discretion. To the extent that one of these issues is covered by a general law or other law of local application, the standards adopted by the county commission cannot be less restrictive. The term "ethical standards" under the act does not include personnel or employment policies or policies or procedures related to operational aspects of the county. The County Technical Assistance Service was directed to develop and disseminate a model policy of ethical standards for counties. If a county develops and adopts a standard of its own, it must forward a copy of that standard to the state ethics commission and maintain a copy for public inspection. If a county adopts a CTAS model, it reports this fact to the state ethics commission instead of filing a copy with that entity. If the county governing body fails to adopt ethical standards in accordance with the act, the members are subject to ouster. Violations of any local ethical standards are enforced in accordance with provisions of prior law. *See* T.C.A. §§ 8-17-101 through 8-17-106.

Ethics Policies for Utilities. Utility districts are considered separate governmental entities to be governed by ethical standards established by the board of commissioners of the utility district in conformity with T.C.A. § 8-17-105(b). T.C.A. § 8-17-102(c). Water, wastewater and gas authorities created by a private act or under the general law are considered separate governmental entities and shall be governed by ethical standards established by the governing board of the water, wastewater or gas authority in conformity with T.C.A. § 8-17-105(b). The Tennessee Association of Utility Districts (TAUD) must prepare a model of ethical standards for officials and employees of water, wastewater and gas authorities which must be submitted to the Utility Management Review Board for its approval, and the model must be approved by the board before it can be adopted by any water, wastewater or gas authority. T.C.A. § 8-17-105. After the board approves the model, it must be filed with the state ethics commission. This topic is discussed in further detail in Chapter 7 of this publication.

Ethics Policies for School Districts. County, municipal and special school districts are considered separate governmental entities and are governed by ethical standards established by the board of education of the school district. T.C.A. § 8-17-102(d). The Tennessee School Boards Association (TSBA) must prepare a model of ethical standards for school officials and employees of school districts and file the model policy with the state ethics commission. If a school board develops and adopts a standard of its own, it must forward a copy of that standard to the state ethics commission and maintain a copy for public inspection. School boards that adopt the standards promulgated by the TSBA are not required to file the policy with the commission, but rather, must notify the commission in writing that the policy has been adopted and the date such action was taken. T.C.A. § 8-17-105.

Honorariums. Public officials, defined to include each person holding any local public office filled by the people, are prohibited from accepting honorariums for an appearance, speech, or Article in such person's capacity as a public official. However, the official may receive actual and necessary travel expenses, meals and lodging expenses for these activities. T.C.A. § 2-10-116.

Consulting Fees. Elected county officials, including a member-elect of a county legislative body, are prohibited from taking consulting fees (which are broadly defined to include receiving anything of value) for advising or assisting a person or entity in influencing county legislative or administrative action. This includes services to assist a person or entity in maintaining, applying for, soliciting or entering into a contract with the county. T.C.A. §§ 2-10-122, 3-6-301. It is an offense for any member of a county legislative body, member-elect of a county legislative body, or other elected county official to knowingly receive a fee, commission or any other form of compensation for consulting services, other than compensation paid by the state, a county or a municipality. T.C.A. § 2-10-124(a). A violation of this provision is a Class A misdemeanor. Any person convicted of such offense shall forever afterwards be disqualified from holding any office under the laws or constitution of this state. T.C.A. § 2-10-124(c). If the conduct giving rise to a violation of this provision would also constitute the offense of bribery, prohibited by the provisions of T.C.A. § 39-16-102, then such violation is a Class C felony. T.C.A. § 2-10-124(c).

Forfeiture of Retirement Benefits. 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).

Local Government Instances of Fraud Reporting Act. This act requires a public official with knowledge that a theft, forgery, credit card fraud, or any other unlawful taking, waste, or abuse of, or official misconduct involving public money, property, or services to report such information to the comptroller of the treasury in a reasonable amount of time. The act removes liability for civil or criminal action against any public official acting in good faith by reporting such information, unless the reporting official also benefitted from the conduct. T.C.A. § 8-4-501 *et seq*.

Additionally, the comptroller is required to maintain a hotline whereby government employees and citizens can report alleged fraud, abuse, or wrongdoing by local governments and private corporations that contract with a local government to receive one or more community grants. The comptroller is required to investigate the information received through the calls to the hotline or refer such information to the appropriate program or investigative agency. Upon receiving the information relating to a call, a local government or community grant agency must undertake investigatory and remedial measures. T.C.A. §§ 8-4-402, -404 and -406.

Conflicts of Interest

A conflict of interest exists if a county officer or employee is required to supervise or vote on a contract in which he or she has some kind of investment or concern. Most of the time a conflict of interest involves a financial relationship, but the interest may also be one of supervisory control: Is the official in the position of supervising himself or herself? Under general state law a "direct" conflict of interest is prohibited, while an "indirect" conflict may be allowed if it is disclosed. The statutory definitions of these terms read as follows:

> "Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation. . . .
>
> "Indirectly interested" means any contract in which the officer is interested but not directly so . . . . T.C.A. § 12-4-101.

In other words, a direct interest exists any time the county enters into an agreement with a county official personally or with any business in which the official is a sole proprietor, a partner, or the person owning the largest number of corporate shares. Basically, an

indirect interest is anything else: It exists in a contract that could result in some type of benefit for a county official, but which does not meet the definition for a direct interest.

The general rule is that a direct conflict is prohibited, while an indirect conflict is permitted if it is publically disclosed; after disclosure the official is not required to abstain from voting on the matter but may do so. T.C.A. § 12-4-101. Although 1998 Public Chapter 774 amending the conflict of interest law appeared to reverse the rule that a person not voting because of a conflict of interest would not be counted in determining a majority on the county commission, this 1998 act did not amend T.C.A. § 5-5-102, which continues to specifically state that any member of county legislative body who abstains for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote.

A special rule exists in the case of a county commissioner who is also an employee of the county. A conflict of interest can come up in this situation any time the county commission votes on appropriations or budgets. A statutory exception allows a member of the county legislative body to vote on these matters if that member was employed by the county before becoming a member of the county commission. But, immediately before the vote the commissioner must read the following disclaimer, which is set out in T.C.A. § 12-4-101:

> Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents.

The vote of any member who is required to make this disclosure and does not do so is void if it is challenged in a timely manner (during the same meeting at which the vote was cast and prior to the transaction of any further business). T.C.A. § 12-4-101. A legislative body member who is also a county employee and whose employment began on or after the date on which the member was initially selected as a member of the governing body may not vote on matters in which the member has a conflict of interest. T.C.A. § 12-4-101.

The preceding paragraphs discuss the general conflict of interest rule and some of the exceptions to it. In some situations, however, officials are held to a more stringent standard of conduct, referred to as the "strict rule." Under this standard both direct and indirect conflicts of interest are prohibited. Although under the general rule indirect interests are allowed if they are disclosed, the strict rule disallows the interest altogether. There are several statutes that prescribe this strict rule. The first is the County Uniform Highway Law, which prohibits any financial or personal interest, either direct or indirect, in the purchase of any supplies or equipment for the county road department. T.C.A. § 54-7-203. The second provision is found in the County Financial Management System of 1981, which applies to any county in which it has been adopted and essentially holds all county officials and employees to the strict rule. T.C.A. § 5-21-121. The third statute requiring a strict standard is the County Purchasing Law of 1957, which similarly applies in counties where it has been adopted. T.C.A. § 5-14-114.

Finally, officers and employees of the schools are prohibited from having any financial interest in contracts for school equipment or supplies, unless a sealed competitive bid system is used and the interested party is not involved in the specifications or selection of bids. T.C.A. § 49-6-2003. *See* 2007 Public Chapters 250 and 290 regarding conflicts of interest of water and wastewater treatment authorities.

Conflict of interest issues arise frequently in county government and each factual situation should be considered on an individual basis. However, as a general rule, a county official should determine who has the decision-making authority in a matter and who may derive a direct or indirect benefit from the decision. A conflict may exist if the benefitted person is a part of the decision-making process. For example, a conflict may arise when a legislative body member sells land or leases space to the county. Penalties for violating conflict of interest rules may be severe, including loss of payment under the contract and dismissal from office. T.C.A. § 12-4-102. In light of these severe penalties, the safest course of action is to err on the side of caution. The attorney general frequently issues conflict of interest opinions which may provide guidelines in specific situations. If in doubt regarding these issues, check with your county attorney.

Incompatible Offices

The common law in Tennessee generally prohibits an individual from holding incompatible offices. *State ex rel. v. Thompson*, 193 Tenn. 395, 246 S.W.2d 59 (1952). This rule applies unless there is a specific statutory authorization that would override the common law rule. The attorney general has stated that the question of incompatibility depends upon the circumstances of each individual case, and the issue is whether the occupancy of both offices by the same person is detrimental to the public interest, or whether the performance of the duties of one interferes with the performance of those of the other. For example, an inherent inconsistency exists where one office is subject to the supervision or control of the other. Op. Tenn. Atty. Gen. 99- 160 (August 19, 1999).

CHAPTER 10

COUNTY CHARTERS, CONSOLIDATED GOVERNMENT CHARTERS, PRIVATE ACTS, AND INTERLOCAL AGREEMENTS

County Charters

The 1978 amendments to the Tennessee Constitution revised Article VII, Section 1, of the Tennessee Constitution, including adding the third paragraph as follows:

> The General Assembly may provide alternative forms of county government including the right to charter and the manner by which a referendum may be called. The new form of government shall replace the existing form if approved by a majority of the voters in the referendum.

The Tennessee Supreme Court has determined that the Tennessee Constitution allows for three types or forms of county government: (1) the basic form which includes the constitutional offices, (2) consolidated city-county government, and (3) an alternative form, such as a county charter. The alternative form of county government authorized under the third paragraph of Article VII, Section 1 of the Tennessee Constitution may be created by the legislature without regard to the general type established in Article VII provided the legislature's action is ratified by referendum. *State ex rel. Maner v. Leech*, 588 S.W.2d 534 (Tenn. 1979), *Bailey v. County of Shelby*, 188 S.W.3d 539 (Tenn. 2006).

The General Assembly has provided an alternative to the standard form of government provided in the first paragraph of Article VII, Section 1 of the Tennessee Constitution through the means of a county charter. The county charter enabling law is found in the *Tennessee Code Annotated*, Title 5, Chapter 1, Part 2. County charters are often referred to as "home rule" charters due to the discretion given by the legislature to the citizens of the county to alter the form or structure of the county government through the charter writing and referendum approval process. The legislature has also granted to counties with charters the power to adopt ordinances in a manner similar to that of a city government. Charter counties may adopt ordinances relating to purely county affairs and cannot interfere with the local affairs of any municipality. The county legislative body is authorized to provide penalties for the violation of ordinances, but these penalties cannot exceed certain statutory maximums. T.C.A. § 5-1-211. The Tennessee Supreme Court has ruled that a county charter may impose term limits on certain county officials although none is required by general law. *Bailey v. County* of Shelby, 188 S.W.3d 539 (Tenn. 2006), *Jordan v. Knox County*, 213 S.W.3d 751 (Tenn. 2007).

Any county wishing to adopt a charter must first create a charter commission by one of four possible methods: (1) resolution of the county legislative body, (2) proclamation of the county mayor ratified by a two-thirds majority vote of the county legislative body, (3) petition by 10 percent of the qualified voters, or (4) private act of the General Assembly. Members of the charter commission are elected by popular vote if the resolution or petition method is used. If a proclamation by the county mayor is used, charter

commission members are appointed in the proclamation from county legislative body districts with no more than three members from any one county legislative body district. Within nine months the charter commission must present a proposed charter, which is then submitted for approval in a referendum. The state statutes enabling a county charter require that the charter contain provisions assigning the functions and duties of the officers of the county, and state that the duties of the constitutional officers as prescribed by the general assembly cannot be diminished under the new charter government. T.C.A. § 5-1-210. Thus, the county charter must provide for the constitutional county offices or otherwise assign the duties of the constitutional county offices to another office, agency, or official. *Jordan v. Knox County*, 213 S.W.3d 751, 773 (Tenn. 2007).

The statutes authorizing a county charter provide for limited organizational changes and ordinance powers but do not provide any extension of the authority for home rule in vital areas such as local option taxation. To date, only Shelby and Knox counties have chosen county charters, although other counties have studied the matter.

City-County Consolidation

In 1953, Article XI, Section 9, of the Tennessee Constitution was amended to permit the General Assembly to "...provide for the consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located." The General Assembly has devised two statutory processes through which counties may consolidate with the cities within them: the metropolitan government charter process codified in T.C.A. §§ 7-1-101 through 7-3-313, and the unification government charter process codified at T.C.A. §§ 7-21-101 through 7-21-408.

Metropolitan Government Charters. The metropolitan form of government combines the powers of a county with those of cities generally. T.C.A. § 7-2-108. Therefore, a metropolitan government can exercise more powers than a county charter government and can exercise these powers throughout the county, with some limitation regarding smaller municipalities within the county that retain their charters. Key features of a metropolitan government include the following:

1. A general services district for the entire county;
2. An urban services district;
3. Possible special service districts;
4. A unified school system;
5. Wide discretion on allocation of duties among officials, including those of constitutional officers, as determined by the charter;
6. The size of the legislative body (metro council) is determined in the charter;
7. The existence, nature and extent of the executive and/or administrative offices are determined in the charter;
8. Optional control over and consolidation of utility districts; and

9. Full ordinance powers.

Although the metropolitan government may not act in contravention of general law, the wide powers granted to the metropolitan government by the legislature means that this form of government comes closest to "home rule" as is permitted under our current law.

The process to form a metropolitan government begins with the selection of a charter commission. A charter commission may be created by one of three methods. The most commonly used method is one in which the charter commission is created by a majority vote on a resolution approved by the governing bodies of both the most populous city and the county. A second method is by private act of the General Assembly. The third method is by petition signed by qualified voters in the county in a number equaling at least 10 percent of the votes cast in the county for governor in the last gubernatorial election. The commission members are either appointed by the county mayor and the mayor of the county's major city or elected by the voters as determined by the resolution or petition, if those methods are used, or by resolution if the petition does not specify a method of selecting charter members. If a private act is used, the private act determines the method of selection. If the resolution method is used, the county mayor appoints 10 members and the mayor of the most populous city appoints five members to a 15 member charter commission. The charter must contain provisions for general services and urban services districts, for a metropolitan council, for elections and terms of office, for an education department, and for other administrative departments. Smaller (less populous) cities within the county may retain their charters if their governing bodies choose not to send representatives to the charter commission to write an appendix to the charter for inclusion of the smaller cities. Several cities and counties have formed charter commissions and voted on consolidation under the metropolitan government statutes, but only Nashville-Davidson County, Lynchburg-Moore County and Hartsville-Trousdale County have adopted a consolidated form of government as of this writing. One obvious difficulty in adopting a metropolitan form of government is the requirement that the metropolitan government charter receive a majority of the referendum votes both within the city and outside the city that is to consolidate with the county.

The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) has produced an excellent publication entitled Forming a Metropolitan Government. This publication may be obtained from TACIR at Suite 508, 226 Capitol Boulevard, Nashville, Tennessee 37243, telephone 615-741-3012, fax 615-532-2443. TACIR's Web site is located at http://state.tn.us/tacir/.

<u>Unification Government Charters</u>. The unification charter form of government is similar to the metropolitan model; however, while the latter form is available to all counties, the unification form is available only to counties with a county or metropolitan charter. T.C.A. §§ 7-21-101 through 7-21-408. The unification government charter process may differ somewhat from that of the metropolitan government charter process. The unification government charter commission may be initiated by proclamation of the county mayor or resolution of the county legislative body, but the mayor's proclamation is subject to ratification by the county legislative body. Also, the county's action must be approved by the legislative body of the most populous city in the county for a charter

commission to be formed. A county proclamation must appoint eight members to the charter commission, then the city mayor appoints eight members, and one member is appointed by the mayor of any smaller city electing to participate. A noteworthy substantive difference from a metropolitan government is that the unification charter must provide for a chief executive and a legislative body of a limited size: nine to19 members.

As of this writing no county has adopted a unification charter although it has been the subject of a vote in Knoxville and Knox County.

Private Acts of the General Assembly

Counties have relied upon private acts of the General Assembly to provide authority where none was granted by the general law, and to provide for offices not established by the general law. The 1978 amendment to Article VII, Section 1, was an attempt to provide greater uniformity in county governmental structure; the implementing legislation passed by the General Assembly provided that all conflicting general laws or private acts were repealed by it. This means that counties with varying structures under private acts adopted prior to 1978 were required to conform to the uniform pattern provided by the General Assembly. Counties having structures of county government varying from the general law pattern under private acts adopted prior to 1978 have since taken action to elect county mayors and legislative bodies and otherwise conform to the required pattern. Private acts continue to provide authority for actions that are not specifically authorized in the general law and for officials or bodies not provided by general law, such as county highway commissions in many counties. Private acts are the authority for some taxing powers in many counties, such as hotel/motel taxes and development taxes (e.g., adequate facilities taxes). The general law provides the county legislative body the authority to adopt a wheel tax subject to a referendum or by a two-thirds vote at two consecutive regular meetings subject to a referendum only if an adequate petition is filed (10 percent of the votes cast in the last gubernatorial election), but this general law also recognizes that a private act may serve as authority for a county wheel tax. T.C.A. § 5-8-102. Also, private acts are needed in counties without county charters or consolidated government charters to determine the method of selecting the chief administrative officer of the county highway department. Therefore, private acts remain useful additions to the general law authority that counties may exercise.

When a county legislative body deems a private act is in the best interest of the county, it usually adopts a resolution requesting a member of the General Assembly representing the people of the county to introduce such a bill. Such a resolution is not required by law but is a commonly accepted practice. After a private act bill passes the General Assembly and becomes law either upon the signature of the governor or after being on the governor's desk without veto for the constitutionally required 10 calendar days, Sundays excepted, the private act must still obtain local approval before the act is effective. Tenn. Const., art. III, § 18 and art. IX, § 9. The method of local approval is provided for in the act itself and is either by two-thirds majority of the county legislative body or by a majority of the voters in a referendum. Also, for the private act to become

effective, local approval must take place within any time limit set in the act, or if no time limit is set in the act, then by December 1 of the year of enactment. Local approval must be certified to the secretary of state by the presiding officer (chair) of the county legislative body or the chair of the county election commission, as appropriate. T.C.A. § 8-3-202.

Intergovernmental Agreements

Interlocal Agreements. Agreements for the joint exercise of powers may be entered into between cities, counties, and other public agencies of the state and the federal government. Under Title 12, Chapter 9, Part 1 of the *Tennessee Code Annotated*, local governments are permitted to cooperate with other localities in an attempt to provide services and facilities in the most efficient and mutually advantageous fashion. Pursuant to this Interlocal Cooperation Act, agreements for the joint exercise of powers may be entered into by cities, counties, and other public agencies of the state and the federal government. T.C.A. § 12-9-104. Governing bodies may enter into contracts "with any one or more public agencies to perform any governmental service, activity or undertaking which each public agency entering into the contract is authorized by law to perform." T.C.A. § 12-9-108. These contracts should set out in detail the "purposes, powers, rights, objectives and responsibilities of the contracting parties" and must be authorized by the governing body of each party to the contract. T.C.A. § 12-9-108. These contracts generally deal with ongoing services. For example, they may govern how a city and county run a joint solid waste transfer station. Also, a municipality may enter into an agreement with the sheriff, court of general sessions and the county legislative body of any county in which it is located to provide for the enforcement of the municipality's ordinances. T.C.A. § 12-9-104. There are also other statutes providing specific authority for an interlocal agreement to deal jointly with a particular activity. Examples are interlocal agreements for joint jails or workhouses among adjoining counties (T.C.A. § 5-7-105) and urban-type public facilities for utilities such as water and sewer services (T.C.A. § 5-16-107).

Any interlocal agreement that creates a local government joint venture must be filed with the comptroller of the treasury within 90 days of its execution. Each county participating in a local government joint venture must file an annual statement with the comptroller stating the names of the parties to the agreement, the annual revenue and expenses of any entity created under the agreement and such other information as the comptroller may require. T.C.A. § 12-9-112(a).

Mutual Assistance and Mutual Aid Agreements. When disasters strike, they often tax the resources and personnel of a local government beyond its capacity to respond properly. In such situations, neighboring cities and counties have the opportunity to be lifesavers, often literally. Under the Mutual Aid and Emergency and Disaster Assistance Act of 2004 (discussed below), a statewide system of mutual assistance exists that may be used at the option of the local government. Prior to the enactment of this legislation, many local governments had mutual aid agreements in place. The local governments that wished to keep these older agreements in force had to adopt a resolution before July 1, 2004, to extend them. If the local government did not pass such a resolution,

then the provisions of the 2004 law are in effect in the county. This re-adoption requirement to keep an old agreement does not affect service and operational agreements between local governments that are not emergency or disaster related. Also, local governments may adopt new mutual aid agreements.

The 2004 Mutual Aid and Emergency and Disaster Assistance Act. This law makes a distinction between aid, which is provided under this law on request in situations in which there has been no declaration of a state of emergency or disaster and for which no cost reimbursement is required, and assistance, which is provided after an emergency or disaster is declared and for which cost reimbursement is required. The law allows municipal and county mayors and executives to declare local states of emergency. Requests for aid or assistance may be made verbally, but such requests must be confirmed in writing within 30 days of the initial request. Parties must keep records of all requests for assistance made under the act. The law allows a responding entity to send personnel and equipment anywhere in the state to respond to a request for aid or assistance, but there is no duty to respond to a request or to stay at a scene for any length of time. Responding employees and entities acting outside their boundaries have the same protections they have in their home jurisdiction. For liability purposes, employees of the responding party will be considered employees of the requesting party while under the requesting party's supervision. At all other times, they will be considered employees of the responding party. The requesting party is required to pay the responding party all documented allowable costs incurred by the responding party in providing assistance after a state of emergency has been declared. The responding party is entitled to one-half its reimbursable costs for the first six hours of its response and 100 percent after six hours are exceeded. This does not apply to responding utilities, which are to be reimbursed for 100 percent of their costs from the beginning of the state of emergency. The requesting party is required to reimburse personnel costs and equipment and material costs according to Federal Emergency Management Agency (FEMA) fee schedules. The responding party must maintain records and submit itemized invoices for reimbursement to the requesting party no more than 60 days after the provision of assistance has ended. This law allows, but does not require, local government entities to provide aid or assistance to any state or federal entity upon request in any part of Tennessee. T.C.A. § 58-8-101 *et seq*.

CHAPTER 11

SOURCES OF COUNTY REVENUE

The county legislative body does not have inherent power to tax or set fees. Instead, all revenue received by the county is derived from, or authorized by, statutory law, either general laws (public acts) or private acts. A county government's chief sources of revenue, property and local option sales taxes, are levied by the county legislative body, but are authorized by the state's general law, codified in the *Tennessee Code Annotated*. Counties receive substantial funds from state taxes on the sale of gasoline and diesel fuel, taxes that the counties do not levy but share in according to a formula in the general law. Counties may supplement these sources of revenue through private acts that levy additional taxes, such as a hotel/motel tax. This Chapter summarily discusses the chief sources of county revenue. For more detailed information regarding individual revenue sources, consult the current edition of the *County Revenue Manual* published by CTAS and the CTAS compilation of private acts for each county. Both the *County Revenue Manual* and the compilations of private acts may be found on the CTAS Web site www.ctas.utk.edu. For more detailed information concerning county property taxes, consult the current edition of *County Property Tax Manual* published by CTAS, which may also be found at the CTAS Web site.

Property Taxes and In Lieu of Tax Payments

Property Tax

Authority. TENN. CONST., art. II, § 28; T.C.A., Title 67, Chapter 5.

Description. All property, real and personal, tangible and intangible, must be assessed for taxation by the state or its political subdivisions unless the property is declared to be exempt by some express provision of Tennessee law. T.C.A. § 67-5-101.

For purposes of taxation, property shall be classified into three classes: real property, tangible personal property, and intangible personal property. TENN. CONST., art. II, § 28. Real property is classified into four subclassifications and is assessed as a percentage of value as follows:

1.	Public Utility Property	55%
2.	Industrial and Commercial Property	40%
3.	Residential Property	25%
4.	Farm Property	25%

(Note that if residential property contains two or more rental units, it is classified as Industrial and Commercial Property.)

Tangible personal property is classified and assessed as a percentage of its value as follows:

1.	Public Utility Property	55%
2.	Industrial and Commercial Property	30%
3.	All other tangible personal property (except for an individual exemption of $7,500 of personal household goods, clothes, etc.)	5%

Assessment. The duty to determine the value of property in Tennessee is divided between the county property assessor and the comptroller of the treasury. T.C.A. § 67-5-1301. The comptroller assesses all property of every description owned by the various utility companies such as railroad companies, telephone companies, gas companies, express companies, and the property of certain bus and truck companies. The county property assessor assesses all other property in the state on a county-by- county basis.

Appraisals. In order to assure fairness in the property tax system, the valuations of real property are periodically reappraised. Reappraisal is done in each county by one of the following methods:

1. A six-year cycle comprised of an on-site review of each parcel with updating of all real property values during the third year of the cycle if the overall level of appraisal in the jurisdiction is less than 90 percent of fair market value;
2. A five-year cycle comprised of an on-site review of each parcel without updating or indexing of values, if approved by the assessor and county legislative body; or
3. A four-year cycle, if approved by the state Board of Equalization, comprised of an on-site review of each parcel without updating or indexing of values.

During the review cycle between revaluations, new improvements discovered by on-site review or otherwise are valued on the same basis as similar improvements were valued during the last revaluation or otherwise as necessary to achieve equalization. T.C.A. § 67-5-1601.

Under the Agriculture, Forest, and Open Space Land Act of 1976 (known as the Greenbelt Law), which is codified in T.C.A. § 67-5-1001 *et seq*., owners of such property may make application to the county property assessor for assessment based on the property's present use value rather than on its market value for some other use. If the greenbelt status results in a tax savings and the property is later converted to a nonqualifying use, the statutes provide a method whereby the county may recapture a portion of this tax savings.

Another statutory exception provides for long-term residential owners. Except in counties with a metropolitan form of government, property that is used solely for

residential purposes, that is occupied by the owner for a period of 25 years or more, and that is zoned for commercial use is assessed based on its value for residential purposes. T.C.A. § 67-5-601.

Property Tax Freeze Act. In 2007, the General Assembly enacted the Property Tax Freeze Act, T.C.A. § 67-5-705. The act authorizes the county legislative body, by resolution, to adopt the property tax freeze program according to the statute. The county legislative body is also authorized to terminate the tax freeze program by resolution, but the resolution terminating the program cannot have the effect of terminating the program until the following tax year.

In counties that have adopted the property tax freeze, taxpayers apply annually to the collecting official (county trustee) by the deadline established in the program rules, and applicants must qualify on the basis of age, income and ownership of eligible property. The trustee determines whether requirements for eligibility have been met, and the trustee's determination is final, subject to audit and recovery of taxes, including penalty and interest at the rates provided for delinquent taxes under T.C.A. § 67-5-2010, if the applicant is later determined to have not been eligible. Any taxpayer who knowingly provides false information concerning the taxpayer's income or other information relative to eligibility for such program commits a Class A misdemeanor.

Once the trustee approves the application, property taxes due upon the applicant's principal residence shall be the lesser of: (1) the actual tax due; or (2) the base tax, provided the base tax shall be adjusted to reflect any percentage increase in the value of the property determined by the assessor to be attributed to improvements made or discovered after the time the base tax was established. "Base tax" is defined as the property tax due on the principal residence of a qualifying taxpayer at the time the jurisdiction levying the tax adopts a resolution approving the property tax freeze; provided, however, if the taxpayer did not qualify or did not own an eligible residence when the freeze was adopted, "base tax" means the maximum property tax due on the taxpayer's eligible residence for the year in which the taxpayer became eligible on the basis of an approved application. If a taxpayer reapplies after acquiring a new residence or after a period of ineligibility, the base tax shall be recalculated for the year of reapplication and reestablishment of eligibility.

To qualify for the property tax freeze, the applicant must be sixty-five (65) years of age by the end of the year in which the application is filed. The applicant must own and use the property as the applicant's principal residence for which the tax freeze is sought in the year of application or reapplication and through the deadline date for application or reapplication. The tax freeze only applies to the principal residence and no more than the maximum limit for land established by state rules. The state rules establish the maximum size limits for land which may qualify as a taxpayer's principal residence. The rules are to take into consideration lot size requirements under applicable zoning as well as property actually used to support residential structures; provided, however, the size limit cannot exceed five acres.

In addition to the qualifications stated in above, the applicant's income, combined with the income of any other owners of the property, the income of the applicant's spouse, and the income of any owners of a remainder or reversion in the property who used the property as their principal place of residence at any time during the year may not exceed the income limit set forth in the act. Income for purposes of qualification means income from all sources as defined by the program rules. The act provides that the income limit for the property tax freeze program shall be the greater of weighted average of the median household income for age groups sixty-five to seventy-four, and seventy-five or over, who resided within the county as determined in the most recent federal decennial census, or the applicable state tax relief income limit established under T.C.A. § 67-5-702. This limit is to be adjusted by the comptroller to reflect the cost of living adjustment for social security recipients as determined by the social security administration and shall be rounded to the nearest ten dollars. The adjusted weighted average median household income level for each county shall be published annually by the comptroller. The comptroller is authorized to perform income verification or other related services or assistance at the request of a county or municipality if the county or municipality agrees to pay fees sufficient to reimburse the actual costs of the comptroller in providing such services or assistance, unless or to the extent not appropriated by the General Assembly. Financial records filed for purposes of income verification are declared to be confidential and not subject to inspection under the Tennessee public records act, but are to be made available to local or state officials who administer or enforce the provisions of the law.

The property tax freeze program is subject to any uniform definitions, application forms and requirements, income verification procedures and other necessary or desirable rules, regulations, policies and procedures, not in conflict with the terms of the act, as may be adopted by the State Board of Equalization through the Division of Property Assessments.

Property Tax Relief. Property tax relief programs have been established for certain groups of homeowners in which the state pays an amount necessary to cover a portion of the taxes due or reimburses such taxpayers for a portion of the taxes already paid on their residence. These tax relief programs are detailed in T.C.A. § 67-5-701 *et seq*.

The state tax relief program for low income taxpayers 65 years old or older and for taxpayers who are totally and permanently disabled authorizes payment or reimbursement of taxes paid on the first $25,000 of the full market value of the home, provided the taxpayer's annual income (combined with the income of any other owners of the property, the income of the applicant's spouse, and the income of any owners of a remainder or reversion in the property who used the property as their principal place of residence at any time during the year) from all sources does not exceed $24,000 or such other amount as set forth in the annual state general appropriations act. 2006 Public Chapter 1019; T.C.A. §§ 67-5-702(a)(2), 67-5-703(a)(2). The tax relief program for disabled veterans and prisoners of war authorizes payment or reimbursement of taxes paid on the first $175,000 of the full market value of the home. 2006 Public Chapter 1019; T.C.A. § 67-5-704(a)(2). Property tax relief also applies to the home of the surviving spouse of a veteran whose death resulted from a service connected,

combat related cause and the surviving spouse does not remarry. T.C.A. § 67-5-704(f). There is no age or income limitation on this group of taxpayers T.C.A. § 67-5-704. Applications for property tax relief must be made to the collecting official (county trustee) by the taxpayer within 35 days after the delinquency date. The county trustee makes a preliminary determination of eligibility and forwards the application to the state for final approval. The trustee may give the taxpayer credit for the tax relief if the balance of taxes due is paid. If a taxpayer entitled to tax relief dies after applying for or receiving tax relief, the surviving spouse is qualified for the relief. T.C.A. § 67-5-701.

All counties are authorized to appropriate funds for tax relief for elderly low income homeowners, disabled homeowners, and disabled veterans as described in state law as noted above for the state tax relief program. The total tax relief from the state and local appropriations cannot exceed the total taxes actually paid. Only the taxpayers eligible for the state program are eligible for tax relief from a county appropriation. 2006 Public Chapter 739; T.C.A. § 67-5-701(j).

Exemptions. There are numerous exemptions of certain types of property from property taxation. For a brief enumeration of these exemptions, consult the *County Revenue Manual*.

Property Tax Rate. The county property tax rate is established by the county legislative body on the first Monday in July, or as soon thereafter as practical. T.C.A. § 67-5-510.

Certified Tax Rate. Upon a general reappraisal of property as determined by the state Board of Equalization, the county property assessor must certify to the county legislative body and the governing body of each municipality in the county the total assessed value of taxable property within the county. The assessor must also furnish an estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the assessed value of deletions from the assessment roll. The county legislative body must determine and certify a tax rate that will provide the same ad valorem property tax revenue for the county as levied during the previous tax year. For the purpose of calculating the certified rate, the county legislative body must use the taxable value appearing on the roll exclusive of taxable value of properties appearing for the first time on the assessment roll. T.C.A. § 67-5-1701.

The state Board of Equalization may establish policies providing a procedure or formula for calculating the certified tax rate. Prior to final determination of the certified tax rate by the county legislative body, a proposed certified tax rate, including supporting calculations must be submitted to the executive secretary of the state Board of Equalization for review. The executive secretary has 15 days to report on the board's review of the rate; after this period passes the county legislative body must finally determine the certified tax rate, which may be adjusted in accordance with the executive secretary's report. T.C.A. § 67-5-1701.

No tax rate in excess of the certified rate may be levied until a resolution has been approved according to the following procedure as outlined in T.C.A. § 67-5-1702:

1. The county legislative body must advertise its intent to exceed the certified rate in a newspaper of general circulation in the county. Within 30 days after publication, the county mayor must furnish the state Board of Equalization an affidavit indicating that this publication has occurred;

2. A public hearing must be held on the issue of exceeding the certified rate; and

3. A resolution to levy a tax rate in excess of the certified rate is adopted.

For individual county property tax rate information, consult the CTAS publication entitled *Tennessee County Tax Statistics*.

Administrator. The administration of property tax in Tennessee is a responsibility that is shared by state, county, and city governments. Its most important elements are described as follows:

1. The state Division of Property Assessments, under the supervision of the comptroller of the treasury and subject to the policies, rules and regulations adopted by the state Board of Equalization, has a duty to prescribe rules and regulations approved by the comptroller that relate to the administration of duties of property assessors. T.C.A. § 67-1-202.

2. Generally, the county assessor of property appraises all non-utility property within his or her county in accordance with state requirements. The assessor identifies all taxable property on the assessment records so that tax rolls may be provided for each taxing entity within the jurisdiction. T.C.A. § 67-5-807. The county board of equalization is the first level of administrative appeal for all complaints regarding the assessment, classification and valuation of property for tax purposes. T.C.A. § 67-5-1402. Most municipalities do not have a separate assessor of property or local board of equalization. However, any municipality that lies within the boundaries of two or more counties may maintain an assessment office and local board of equalization separate from the county or may contract with the state Board of Equalization for assessment services. T.C.A. § 67-1-513.

3. The Assessment Appeals Commission, created by the state Board of Equalization, is the administrative board of final recourse for most complaints and appeals regarding the assessment, classification and value of property for taxation purposes. T.C.A. § 67-5-1502. Actions by the Assessment Appeals Commission are final unless the state Board of Equalization, in its sole discretion, decides to review the action of the commission within 45 days of its final action. T.C.A. § 67-5-1502.

Collector. The county trustee collects all state, county and municipal property taxes, except when otherwise provided by law. T.C.A. § 67-1-702. A municipality is authorized to collect its own property taxes. T.C.A. § 67-5-1801.

Time Payable. State, county and municipal property taxes are payable on the first Monday in October in each year, except that certain municipalities may have a different date fixed by law when they collect their own property taxes. However, all municipal taxes collectible by the county trustee are due and delinquent at the same time as county taxes. T.C.A. § 67-1-701. The county legislative body, by resolution, may allow the trustee to collect taxes after the tax rates are finally set, the tax rolls are received by the trustee, and the tax receipts have been prepared, but not earlier than July 11. T.C.A. § 67-1-702(b). The county trustee may (but is not required to) adopt a policy of not accepting current county real property taxes due when delinquent property taxes are owing, except when the obligor is in bankruptcy or a dispute exists over responsibility for these taxes. T.C.A. § 67-5-1801(b). 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 has an 180-day extension on the time that property taxes are due. T.C.A. § 67-5-2011.

Partial Payment. Any county trustee may, but is not required to, accept partial payment of property taxes after filing with the comptroller of the treasury a plan for acceptance of partial payments. Trustees may accept payment by electronic transfers, bank customer preauthorized payments, wire transfers or ACH credits for the current tax year prior to the date the tax rate is established for such a year. Any partial payment for the current tax year 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. §§ 67-5-1801, 67-5-1808. Additionally, T.C.A. § 67-5-1808 requires the trustee, prior to accepting partial payment of property taxes for the current year before the tax rate is established, to file a plan with the comptroller of the treasury at least thirty days prior to the acceptance of payments.

Discount for Early Payment. The county legislative body may, by resolution, authorize a discount for the early payment of property taxes. Alternatives are authorized by statute. Under the first alternative, a 2 percent discount on current taxes is provided if paid by October 31, and a 1 percent discount is granted if these taxes are paid more than 30 but less than 60 days after October 1. Under the second alternative, if the county legislative body has adopted a resolution providing for early payment, that is after July 10 but before October 1, then the county legislative body may provide for a discount of 3 percent if property taxes are paid by July 31, 2 percent if paid by August 31, and 1 percent if paid by September 30. T.C.A. § 67-5-1804.

Commission. The commission of the county trustee for collecting property taxes is as follows:

Six percent (6%) on all sums up to $10,000
Four percent (4%) on all sums from $10,000 to $20,000
Two percent (2%) on all sums in excess of $20,000

T.C.A. §§ 8-11-110, 67-5-1904. The trustee receives a one percent (1%) commission on ad valorem taxes collected for watershed districts. T.C.A. §§ 69-7-139, 69-7-145.

Interest and Penalties. County property taxes become delinquent on March 1 following the tax due date. On March 1, and on the first day of each succeeding month, a penalty of 0.5 percent and interest of 1 percent are added to the amount of tax due and payable. In Shelby County, the legislative body may establish a due date other than the first Monday in October and thus may establish a date other than March 1 that interest and penalty begin to accrue instead of March 1. T.C.A. § 67-5-2010.

Municipal property taxes become delinquent on the delinquency date established by charter or existing law. If municipal taxes are not paid on or before the established delinquency date, a penalty of 0.5 percent and interest of 1 percent shall be added to the amount of the tax due and payable, beginning on the first day of March, following the tax due date and on the first day of each succeeding month. T.C.A. § 67-5-2010(b)(2).

When a reappraisal of property occurs and the property assessments are turned over to the county after October 1, no penalty and interest is added to property taxes until five months following the tax roll completion date. T.C.A. § 67-5-1608.

Distribution. County property tax collections remain in the county to be appropriated by the county legislative body for the purposes for which the tax was levied. T.C.A. §§ 67-5-102, 67-1-603, 67-5-510. However, property taxes for education (operation and maintenance) must be shared with special and municipal school districts located within the county on a weighted full-time equivalent average daily attendance basis (WFTEADA). T.C.A. § 49-3-315.

A special transportation property tax levy is authorized for any county in which only one pupil transportation system is operated and that has within its borders a city or special school district operating a system of public schools. These education transportation funds are not required to be shared with municipal or special district school systems. T.C.A. § 49-3-315.

Collection of Delinquent Taxes. The procedures for collecting delinquent real and personal property taxes are detailed in the *County Property Tax Manual*, which may be found on the CTAS Web site www.ctas.utk.edu.

Refunds. When a county is ordered to make a refund of property taxes and any interest owing to a taxpayer, no specific appropriation is required to authorize the county trustee to make the refund. The trustee may make the ordered refund and any interest owing the taxpayer from any taxes collected for the year or years to which the refund relates, but if the trustee does not have funds collected from the year to which the refund relates, the trustee may make the refund from current collections prior to the allocation of revenue to various county funds. When a refund plus accrued interest exceeds 1 percent of all property taxes levied for the year in which the refund is due, the county trustee may defer the refund for a period of up to three years in equal annual

installments, and the deferred amounts will accrue interest in the manner provided by law. T.C.A. § 67-5-1809.

On the following pages is a summary of significant duties in the assessment and collection of ad valorem property taxes. Property tax assessments for the year 2010 assessments are used as an example; however, the same calendar of activities is followed in the assessment, levy and collection of property taxes for any year.

Timetable of Significant Dates and Activities
In the Assessment and Collection of
Ad Valorem Real Property Taxes

January 1, 2010	Assessor makes assessments as of this date, T.C.A. § 67-5-504; assessed taxes become a first lien on property. T.C.A. § 67-5-2101.
Not later than February 1, 2010	Tax assessor should furnish owners and lessees of business personal property with a tangible personal property schedule. T.C.A. §§ 67-5-902, 67-5-903.
March 1, 2010	Greenbelt applications due. T.C.A. §§ 67-5- 1005 through 67-5-1007.
May 20, 2010	Assessor must note all assessments on his or her books on or before this date, T.C.A. §§ 67- 5-504, 67-5-508; taxpayers must be notified of any change in their assessments by this date. T.C.A. § 67-5-508.
June 1, 2010	Assessor turns over books to the county board of equalization by this date, T.C.A. § 67-5-304; county board of equalization commences its session. T.C.A. § 67-1-404.
1st Monday in July, 2010	County commissions fix tax rate on all properties in their jurisdiction. T.C.A. § 67-5- 510. Trustee to report on all delinquent taxpayers and double assessments in the county. T.C.A. § 67-5-1903.
1st Monday in October, 2010	On or before this date, county tax rolls must be delivered to trustee, T.C.A. § 67-5-807; taxes become due and payable. T.C.A. §§ 67-1-701, 67-1-702.
On or before 1st Monday in November, 2010	County clerk or tax assessor prepares an aggregate statement showing the value of real and personal property to forward to the commissioner of revenue and the mayor of each municipality. T.C.A. § 67-5-807.

March 1, 2011	2010 taxes become delinquent in all counties having less than 700,000 population. A 0.5 percent per month penalty and 1 percent interest begin to accrue. T.C.A. § 67-5-2010.
March 1, 2011	Corrections of assessments must be requested by the taxpayer prior to this date. T.C.A. § 67- 5-509.
September 1, 2011	Back assessments and reassessments must be initiated on or prior to this date. T.C.A. § 67- 1-1005.
1st Monday in September, 2011	Trustee makes a full and complete financial report of the condition of the trustee's office. T.C.A. § 67-5-1902.
January 1, 2012	Tax collectors must make final settlements and return delinquent tax lists to trustee. T.C.A. § 67-5-2006.
January 1-31, 2012	During this period the trustee must cause notice to be published, once a week for two consecutive weeks, that suits will be filed to enforce tax liens. T.C.A. § 67-5-2401.
January 2 (or at least 20 days before turning list over to tax attorney)	The delinquent tax list may be published. T.C.A. § 67-5-2002. This must be done at least 20 days prior to turning the tax list over to the tax attorney.
February 2- April 1, 2012	Tax attorney must file suit during this period for enforcement of tax liens, T.C.A. § 67-5-2405; an additional 10 percent penalty and the additional costs accrue with the filing of such suit. T.C.A. § 67-5-2410.
April 1, 2012	Delinquent municipal real property taxes must be certified to trustee on or before this date. T.C.A.§ 67-5-2005.
June 1 - July 1, 2012	Clerks collecting delinquent taxes are required to provide the trustee with a list of tax suits. T.C.A. § 67-5-2403.
April 1, 2022	All 2010 ad valorem property taxes assessed but not collected by counties are barred and discharged because of the statute of limitations. T.C.A. § 67-5-1806.

TVA In Lieu of Tax Payments

Authority. 16 U.S.C. § 831 *et seq*., T.C.A. §§ 67-9-101 through 67-9-103.

Description. TVA in lieu of tax payments are payments made by the Tennessee Valley Authority to the state for the purpose of replacing tax revenue that TVA would otherwise pay if it were not a tax-exempt federal agency. The amount of the payments is determined by federal law. 16 U.S.C. § 831(L), the TVA Act.

Distribution. First $55.2 million to the state general fund. Any amounts above $55.2 million are distributed as follows:

1. 48.5 % - State
2. 48.5 % - Counties and municipalities to be allocated as follows:

    a. 30 percent of the 48.5 percent to counties on the basis of their percentage of the state's total population.
    b. 30 percent of the 48.5 percent to counties on the basis of the percentage that the total acreage of each county bears to the total acreage of the state.
    c. 10 percent of the 48.5 percent to counties on the basis of the percentage of their land owned by TVA compared to all land owned by TVA in Tennessee.
    d. 30 percent of the 48.5 percent to municipalities on the basis of the population that the municipality bears to the population of all municipalities in the state.

3. Three percent (3%) to local governments impacted by TVA construction activity on facilities to produce electric power. The impacted areas are designated by TVA and payments are made during the period of construction activity and for one full fiscal year after completion of such activity. The comptroller of the treasury allocates the impact funds among the counties and municipalities according to a weighted population formula. If, in any fiscal year, there are remaining impact funds after allocation, or if there are no impacted areas, CTAS may receive an amount not greater than 30 percent of the funds, with up to 20 percent of any remaining funds allocated to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) for an annual inventory of statewide public infrastructure needs, and additional 20 percent, if available, to TACIR for study purposes. The remainder shall be allocated to any regional development authorities that have acquired a former nuclear site from the Tennessee Valley Authority. The funds shall be used to construct roads, install water and wastewater facilities and provide other public infrastructure needs to assist in the development of the sites and other land as regional industrial, business and job incubator facilities consistent with regional development plans. T.C.A. § 67-9-102.

Municipal Electric and Gas System Tax Equivalent Payments

Authority. T.C.A. §§ 7-52-301 through 7-52-310, 7-39-401 through 7-39-406.

Description. Every municipality may pay from its electric system and gas system revenues, each fiscal year, an amount for payments in lieu of taxes ("tax equivalents") on its electric and gas system property and operations. The amount of the payment should represent the fair share of the cost of government as determined by the municipality's governing body, subject to the provisions of T.C.A. §§ 7-39-404 and 7-52-304 relative to the amounts of such payments.

Distribution. Contracts for distribution of municipal electric tax equivalent payments are authorized by T.C.A. § 7-52-306. In the absence of an agreement, a formula for apportionment of municipal electric system tax equivalent payments, wherein the county (or counties) receives 22.5 percent of the total tax equivalent payment, is provided in T.C.A. § 7-52-307.

Severance Taxes

Coal Severance Tax

Authority. T.C.A. §§ 67-7-101 through 67-7-110.

Description. The state levies a per ton severance tax on all coal products severed from the ground in Tennessee. T.C.A. § 67-7-104. The coal severance tax is 50¢ per ton through June 30, 2011, and then 75¢ per ton through June 30, 2013 and thereafter $1.00 per ton. "Coal products" means coal ore and any other substance that might be severed from the earth by the process of producing salable coal, by whatever method of severance used. T.C.A. § 67-7-101.

Distribution. According to T.C.A. § 67-7-110, the tax is collected by the Tennessee Department of Revenue and is distributed as follows:

1. 1.125% is retained by the department of revenue and credited to its current service revenue to cover administrative expenses and tax collection expenses (provided that during fiscal years 2009-10 and 2010-11 only the department of revenue will retain an amount sufficient to recover certain administrative expenses associated with the reduction of this amount from 3 percent pursuant to 2009 Public Chapter 138).

2. 98.875% to the county in which the coal products were severed.

    a. 50 percent for the educational systems of the county.

    b. 50 percent for county highways and stream cleaning systems. 2006 Public Chapter 989; T.C.A. § 67-710

Oil and Gas Severance Tax

Authority. T.C.A. §§ 60-1-301 through 60-1-302.

Description. The state levies a tax of 3 percent of the sales price of all gas and oil removed from the ground in Tennessee. T.C.A. § 60-1-301.

Distribution. The Tennessee Department of Revenue collects the tax and distribution is made as follows:

1. One third (1/3) to the county where the wellhead is located.

2. Two thirds (2/3) to the state general fund. T.C.A. § 60-1-301.

County Mineral Severance Tax (General Law)

Authority. T.C.A. §§ 67-7-201 through 67-7-212.

Description. This is a local option tax wherein a county legislative body by resolution adopted by a two-thirds majority vote may levy a tax on all sand, gravel, sandstone, chert and limestone severed from the ground within the county. T.C.A. §§ 67-7-201, 67-7-212. The county legislative body sets the rate, but the rate cannot exceed 15 cents per ton. T.C.A. § 67-7-203. A tax authorized under this Section may be repealed by a resolution passed by a two-thirds majority of the county legislative body. T.C.A. § 67-7-201.

Distribution. The Tennessee Department of Revenue collects this tax. T.C.A. § 67-7-204. All revenues collected, less administrative expenses, are remitted to the county trustee quarterly and become a part of the county road fund. T.C.A. § 67-7-207.

County Mineral Severance Tax (Private Act)

Several counties have enacted mineral severance taxes by private act. Private acts on this subject are no longer authorized, but private acts on this subject enacted prior to June 5, 1984, remain in effect, except that the rate cannot exceed 15 cents per ton. T.C.A. §§ 67-7-209, 67-7-212. The minerals subject to the tax are delineated in each county's private act, along with provisions regarding rate, collection and distribution of the tax proceeds. Currently, the following counties have a mineral severance tax levied by private act: Benton, Carroll, Carter, Decatur, Giles, Humphreys, Roane, Rutherford, Unicoi, Weakley, White, and Williamson. Annual summaries of the status of these taxes are provided in the CTAS publication entitled *Tennessee County Tax Statistics*, available on the CTAS Web site www.ctas.utk.edu.

Sales and Use Taxes

State Sales and Use Tax

Authority. T.C.A., Title 67, Chapter 6, Parts 1 through 6.

Description. As is discussed in more detail below, the sales and use tax in Tennessee is in the process of undergoing changes as a part of a national effort to streamline sales tax collections. Numerous reforms and changes to Tennessee law have been adopted by the General Assembly but not yet implemented. The implementation dates for these amendments were tied to certain developments at the national level, which have been delayed. As a result, many statutes regarding sales and use tax are expected to change but at an uncertain date. The description of the sales and use tax in this Section reflects the law as it reads prior to the implementation of certain of these changes related to the streamlining effort. The sales and use tax is imposed upon every person who (1) engages in the business of selling tangible personal property at retail in this state; (2) uses or consumes in this state any item or Article of tangible personal property; (3) is the recipient of certain specified things or services or who rents or furnishes any of the things or services taxable; (4) stores for use or consumption in this state any item or Article of tangible personal property; (5) leases or rents such property within the state, or charges admission, dues or fees, or sells space as defined in the statutes dealing with the sales tax; (6) charges a fee for subscription to television services; (7) leases or rents tangible personal property; (8) performs specifically taxable services; (9) sells or uses admissions, dues and fees on amusements; and (10) certain other specifically listed taxable activities. T.C.A. § 67-6-201. The taxable privileges listed above are modified by numerous credits and exemptions that are outlined in the *County Revenue Manual*. This tax is included as a source of county revenue because the state sales and use tax is the source of most of the state funds allocated to county school systems under the Basic Education Program (BEP). Counties do not receive a direct allocation from this tax as do municipalities.

The Tennessee Department of Revenue administers the tax, which is imposed upon every dealer engaging in a taxable privilege under this chapter. T.C.A. § 67-6-501. The current general state sales and use tax rate is 7 percent with an additional state tax of 2.75 percent levied on the amount in excess of $1,600 but less than or equal to $3,200 on sales of any single Article of personal property. T.C.A. §§ 67-6-202 through 67-6-205. Additionally, a number of statutes provide for variation of rates for different products. Some of these rates have been or will be modified through the streamlining effort to achieve greater national uniformity of sales taxation. *See* Title 67, Chapter 6, Part 2. When the state sales tax rate increased from 6 percent to 7 percent in 2002, the rate for the retail sale of food and food ingredients was left at 6 percent. T.C.A. § 67-6-228 (as enacted by 2002 Public Chapter 856).

<u>Streamlining Sales Tax</u>. In 2003 the General Assembly passed a massive act to make a multitude of changes and adjustments to the sales tax laws in order to bring Tennessee into compliance with the provisions of the national Streamlined Sales and Use Tax Agreement. 2003 Public Chapter 357. In 2004 Public Chapter 959, many revisions were made to the 2003 act regarding the streamlined sales tax provisions. The 2004 act revises the distribution of the tax on interstate telecommunications sold to businesses to reflect the change in the tax from a 7.5 percent state rate with no local tax to a 7 percent state tax and up to 2.75 percent local tax. T.C.A. § 67-6-103(g).

Distribution. State sales and use tax revenues are earmarked and allocated as follows:

The first 6 percent of the 7 percent sales tax is allocated:

1. 129.0246 percent to the state general fund.

2. 265.0970 percent exclusively for educational purposes.

3. 34.5925 percent to incorporated municipalities from which a small allocation is made to the University of Tennessee for operation of the Municipal Technical Advisory Service. 2006 Public Chapter 989.

4. 0.3674 percent to the Department of Revenue for sales tax administration.

5. 0.9185 percent to a sinking fund for paying interest and principal on state bonds.

T.C.A. § 67-6-103.

The additional 1 percent of the 7 percent rate that was levied by 2002 Public Chapter 856 is paid into the state's general fund and allocated exclusively for general state purposes.

Local Option Sales Tax

Authority. T.C.A., Title 67, Chapter 6, Part 7.

Description. Any county, by resolution of its legislative body, or any city or town by ordinance of its governing body, may levy a sales tax on the same privileges subject to the state sales tax, with certain exceptions. T.C.A. § 67-6-702. Telecommunications services and certain energy related services are exempt from the local tax or limited in the rate chargeable. T.C.A. §§ 67-6-702 and 704. No local sales tax or increase in the local sales tax is effective until it is approved in a referendum in the county or city levying it. T.C.A. § 67-6-705. If the county has levied the tax at the maximum rate, no city in the county may levy an additional local sales tax. If a county has a sales tax of less than the maximum, a city may levy an additional tax up to the difference between the county rate and the maximum. If a city passes an ordinance to increase its sales tax rate above the county rate, the city ordinance is suspended for 40 days during which time the county legislative body may pass a resolution to increase the county tax. If such a resolution is passed, the ordinance remains suspended until a countywide referendum is held. If the referendum is successful, the city ordinance is dead. However, if the referendum is not successful, the city may proceed with a city referendum on the matter. T.C.A. § 67-6-703. If the city referendum passes, the city receives all revenues generated by the increase above the county level; the first half is not earmarked for education. However, if the county, at a later date, raises its sales tax rate up to the level of the city rate, then the distribution formula outlined below would apply to the entire local option portion of the sales tax. A resolution or ordinance levying the sales tax may be initiated by a petition of 10 percent of the registered voters of the taxing jurisdiction. T.C.A. § 67-6-707. The tax, once levied, is perpetual unless the resolution or ordinance establishes a specific termination date or unless the tax is

repealed in the same manner as it was levied. T.C.A. §§ 67-6-708, 67-6-709. The same exemptions generally apply to the local option sales tax as apply to the state sales tax. The local sales tax cannot exceed 2.75 percent, and applies only up to the first $1,600 on the sale or use of any single Article of personal property. The old law provided for a $5 or $7.50 single item limit on the sale or use of any single Article of personal property. These limits remain effective unless and until the county legislative body removes these old limits by a resolution, whereupon the local option tax will apply to the first $1,600 on the sale or use of any single Article of personal property. T.C.A. § 67-6-702.

Distribution. Local option sales tax revenue is distributed as follows:

1. 50 percent specifically for education, to be distributed in the same manner as the county property tax for school purposes.

2. 50 percent distributed on the basis of where the sale occurred. Taxes collected inside a municipality are distributed to that municipality, and taxes collected in unincorporated areas are distributed to the county. Counties and cities may contract with each other for distribution of the half not allocated to school purposes. T.C.A. § 67-6-712.

In 1998, the General Assembly passed Public Chapter 1101 which was a major reform of the annexation and incorporation laws having a great impact upon the way the local option sales tax is distributed among cities and counties. T.C.A. § 6-51-115. It included a "hold harmless" provision to protect county revenue sources. When a city annexes territory or a new city incorporates, revenue amounts generated in that area by local option sales taxes, which had been received by the county prior to the annexation or incorporation, continue to go to the county for 15 years after the date of the annexation or incorporation. During that time, any increase in the situs-based portion of the revenues generated in the area would be distributed to the annexing or incorporating municipality. Note that this does not affect the distribution of the first half of the local option sales tax, which would continue to go to education funding. If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county.

Petroleum Products and Alternative Fuel Taxes

Authority. *Tennessee Code Annotated*, Title 67, Chapter 3.

<u>Gasoline Tax</u>

Description. The gasoline tax is a privilege tax imposed on all gasoline, fuel alcohol (as defined in T.C.A. § 67-3-103) and substitutes therefor, imported into this state; the tax being levied when the product first comes to rest in this state, subject to certain exceptions that are found in *Tennessee Code Annotated*, Title 67, Chapter 3, Part 4. The tax is administered by the Department of Revenue.

Rate: Twenty cents (20¢) per gallon. T.C.A.§ 67-3-201.

Distribution. The distribution formula for the gasoline tax is as follows (some minor distributions have been omitted):

1. Amount necessary (if any) to fund state debt through sinking fund account. T.C.A. §§ 67-3-901, 9-9-105.

2. Nine cents (9¢) of the twenty cents (20¢) gasoline tax is distributed as follows:

   a. 28.6 percent (less 2 percent of this amount for Department of Revenue administration expenses) to the county aid fund for county road purposes (prior to this distribution, the County Technical Assistance Service is allocated $28,250 per month), which is divided as follows:

      (1) 50 percent is divided equally among the 95 counties;

      (2) 25 percent is divided among the counties on the basis of population; and

      (3) 25 percent is divided among the counties on the basis of geographical area.

   b. 14.3 percent (less one percent (1%) of this amount for Department of Revenue administration expenses) to the various municipalities and the municipal street aid fund according to population.

   c. Remainder (less 2 percent (2%) of this amount for Department of Revenue administration expenses) to the state highway fund. T.C.A. §§ 67-3-901, 54-4-103.

3. Two cents (2¢) of the twenty cents (20¢) gasoline tax is distributed as stated in 2 above, except to receive its portion the county must appropriate funds for road purposes from local revenue sources in an amount not less than the average of the preceding five fiscal years (bond issues are excluded from calculation). If this amount is less than the five-year average, the state allocation will be decreased by the difference between the five-year average and the current amount appropriated from local sources. These funds must be used for resurfacing and upgrading county roads. T.C.A. § 67-3-901.

4. Three cents (3¢) of the twenty cents (20¢) gasoline tax is distributed as follows:

   a. Sixty-Six percent (66%) to the counties as other county aid funds are distributed (less 1 percent of this amount to the Department of Revenue for administration expenses), to be used for resurfacing and upgrading county roads.

b. Thirty-three percent (33%) to the municipalities as other municipal aid funds are distributed (less 1 percent of this amount to the Department of Revenue for administration expenses). T.C.A. § 67-3-901.

However, one cent (1¢) of this three cents (3¢) is subject to the local contribution rule as specified in paragraph 3 above.

5. Six cents (6¢) is distributed to the state highway fund.

Diesel Tax

Description. The diesel tax replaces the former motor vehicle fuel use tax. This tax is a privilege tax imposed on the users of diesel fuel (as defined in T.C.A. § 67-3-103) within this state, with certain exceptions such as fuel dyed in accordance with Internal Revenue Service regulations. T.C.A. § 67-3-202. The tax is administered by the Tennessee Department of Revenue.

Rate: Seventeen cents (17 ¢) per gallon. T.C.A. § 67-3-202.

Distribution. The tax is distributed as follows:

1. 1.62 percent to the state general fund.

2. 24.75 percent to the counties to become a part of the county highway fund in the following manner:

   a. 50 percent equally among all counties;

   b. 25 percent on the basis of population; and

   c. 25 percent on the basis of area.

3. 12.38 percent to the municipalities on the basis of population, with minor exceptions.

4. 61.25 percent to the state highway fund. T.C.A. § 67-3-905.

Special Privilege Tax on Petroleum Products

Description. The special privilege tax on petroleum products is in addition to the gasoline and diesel taxes and is imposed on all petroleum products, subject to certain exceptions. T.C.A. § 67-3-203. This tax is administered by the Tennessee Department of Revenue.

Rate: One cent (1¢) per gallon. T.C.A. § 67-3-203.

Distribution. The special tax on petroleum products is distributed as follows:

1. Two percent (2%) to general fund for administrative purposes

2. $12,017,000 per year to the local government fund

    a. $381,583 monthly to county highway departments on the basis of county population.

    b. $619,833 monthly to cities on the basis of their population, less $10,000 monthly to the Center for Government Training for in-service training of local government officials and employees.

3. Remainder to the state highway fund. T.C.A. § 67-3-906.

Liquefied Gas Tax

Description. This tax is on liquefied gas used for the propulsion of motor vehicles on the public highways of this state. Governmental agencies are exempt. This tax is paid in advance annually by the owner of each motor vehicle licensed in Tennessee using liquefied gas as fuel. Out-of-state users pay upon delivery of the liquefied gas into the fuel supply tank of a motor vehicle. T.C.A. §§ 67-3-1102 through 67-3-1112.

Rate: Fourteen (14¢) per gallon T.C.A. § 67-3-1102.

Distribution. The distribution of the liquefied gas tax is as follows:

1. Nine cents (9¢) of the fourteen cents (14¢) distributed as follows:

    a. 1.58 percent to the general fund.

    b. 28.28 percent to the counties to become a part of the county highway fund as follows:

        (1) Fifty percent (50%) equally among all counties;

        (2) Twenty-five percent (25%) on the basis of population; and

        (3) Twenty-five percent (25%) on the basis of area

    c. 14.14 percent to the municipalities on a population basis, with minor exceptions.

    d. 56 percent to the state highway fund.

2. Three cents (3¢) of fourteen cents (14¢) distributed to the state sinking and highway funds.

3. One cent (1¢) of fourteen cents (14¢) distributed as follows:

a. 66 percent to the counties as other county aid funds are distributed, less one percent (1%) to the Department of Revenue for administration expenses.

b. 33 percent to the municipalities as other municipal aid funds are distributed, less one percent (1%) to the Department of Revenue for administration expenses.

4. One cent (1¢) of fourteen cents (14¢) is distributed to the state highway fund. T.C.A. § 67-3-908.

Compressed Natural Gas Tax

Description. A tax on the privilege of using compressed natural gas for the propulsion of motor vehicles on the public highways of this state. Governmental agencies are exempt. T.C.A. §§ 67-3-1113 through 67-3-1118.

Rate. 13 cents per gallon. For the purpose of determining the tax, a gallon equivalent factor of 5.66 pounds per gallon is used. T.C.A. § 67-3-1113.

Distribution. Same as the diesel tax described above. T.C.A. § 67-3-905.

Highway User Fuel Tax

Description. The highway user fuel tax is imposed on owners and operators of qualified motor vehicles engaged in interstate commerce in or through Tennessee. The amount of tax payable to the state is determined by dividing the total number of miles traveled in the state by the average number of miles traveled per gallon of gasoline or diesel fuel, or the per gallon equivalents of alternative fuels, and multiplying the result by the rates of the tax per gallon on the particular fuel used. T.C.A. §§ 67-3-1201 through 67- 3-1210.

Distribution. Same as the taxes for the particular fuels that are used by the owner or operator.

Gasoline Tax for Local Transportation Funding

Authority. T.C.A. §§ 67-3-1001 through 67-3-1012.

Description. A tax levied by a particular county, municipality, or metropolitan government at its option on the privilege of selling gasoline. The proceeds must be used to support public transportation services. This tax becomes effective only after a favorable referendum vote is taken in the locality for which it is proposed. A county levy precludes a municipal levy within that county.

Rate. One cent (1¢)per gallon. T.C.A. § 67-3-1004.

Distribution. The tax is distributed to the county or municipality that levies the tax less an administrative fee not to exceed $2; however, unless the county and any and all municipalities within it provide otherwise by contract, any county that levies this tax must apportion it so that any municipality that provides public transportation services receives, as a minimum, a percentage of the proceeds equal to its percentage of the county's population. T.C.A. §§ 67-3-1010 and 67-3-1012.

Alcohol and Tobacco Taxes

Alcoholic Beverage Tax

Authority. T.C.A. §§ 57-3-301 through 57-3-307.

Description. This tax is on the sale or distribution by sale or gift of wine and distilled spirits with an alcoholic content of more than 5 percent by weight. T.C.A. § 57-3-301.

Rate: $1.21 per gallon (32 cents per liter) of wine and $4.40 per gallon ($1.17 per liter) of distilled spirits. T.C.A. § 57-3-302.

Distribution. The tax is distributed as follows:

1. Counties where a distillery is located receive four cents (4¢) per liter of the tax imposed on the sale of distilled spirits.

2. Eighty-two and one-half percent (82.5 %) of the remainder to the general fund.

3. Seventeen and one-half percent (17.5%) of the remainder to counties (general fund) as follows:

    a. Seventy-five (75%) percent of this amount is apportioned according to county population.

    b. Twenty-five percent (25%) of this amount is apportioned according to county area.

    c. However, thirty percent (30%) of the amount distributed to counties with a population of more than 250,000 is distributed to cities in the county with population over 150,000. T.C.A. § 57-3-306.

Mixed Drink Tax (Liquor-by-the-Drink Tax)

Authority. T.C.A. §§ 57-4-301 through 57-4-308.

Description. Two (2) related taxes are considered together under this topic. Both taxes are on the privilege of selling alcoholic beverages at retail in this state for consumption on the premises. The first (1st) tax is an annual fixed amount based on the type and size of the business; the second (2nd) tax is a percentage levy fifteen percent (15%) based

on the sales price of alcoholic beverages sold for consumption on the premises. T.C.A. § 57-4-301.

Distribution. These two (2) taxes are distributed as follows:

1. The fixed annual tax goes to the state general fund for state purposes. T.C.A. § 57-4-301.

2. The gross receipts tax is distributed as follows:

    a. Fifty percent (50%) to the state general fund to be earmarked for educational purposes.

    b. Forty-five and one-half percent (45.5%) to local political subdivisions:

        (1) Fifty percent (50%) in the same manner as the county property tax for schools is expended. Except in Bedford County, municipalities that do not operate their own school systems separate from the county must remit one-half of their proceeds from this tax to the county school fund.

        (2) Fifty percent (50%) divided as follows:

            (a) Collections in unincorporated areas, to the county general fund.

            (b) Collections in municipalities, to those municipalities.

        (3) Fifty percent (50%) of the tax allocated to local political subdivisions which is collected in a municipality that is a premier tourist resort goes to the schools of that municipality.

<u>Beer Tax (Barrels Tax)</u>

Authority. T.C.A. §§ 57-5-201 through 57-5-208.

Description. The beer tax is a privilege tax paid by every person, firm, corporation, joint stocks company, syndicate or association in this state storing, selling, distributing or manufacturing beer and alcoholic beverages of less than 5 percent alcoholic content by weight. T.C.A. § 57-5-201. The beer tax is a state tax and no county or municipality may levy any like tax. Individuals or businesses that sell or distribute beer collect this tax and pay over the sums collected to the Department of Revenue on or before the 20th day of the month following the month in which the tax accrues. T.C.A. §§ 57-5-201, 57-5-202, 57-5-203.

Rate. $4.29 per barrel. T.C.A. § 57-5-201.

Distribution. The beer tax is distributed as follows:

1. $3.79 of the $4.29 tax rate is distributed:

    a. Up to 4 percent to the Department of Revenue to defray the expenses of administration of this tax. T.C.A. § 57-5-202.

    b. Of the remainder

        (1) 10.05 percent to the several counties equally for general purposes.

        (2) 10.05 percent to the incorporated municipalities according to population for general purposes.

        (3) 0.41 percent to the Department of Mental Health and Mental Retardation to assist municipalities and counties in carrying out the provisions of the Comprehensive Alcohol and Drug Treatment Acts of 1973.

        (4) The remainder (or 79.49 percent) to the state general fund. T.C.A. § 57-5-205.

2. $0.50 of the $4.29 tax to the state highway fund to be used to fund programs for the prevention and collection of litter and trash. T.C.A. § 57-5-201.

<u>Wholesale Beer Tax</u>

Authority. T.C.A. §§ 57-6-101 through 57-6-118.

Description. This is a state-levied tax on the sale of beer and similar alcoholic beverages of not more than 5 percent alcoholic content by weight, wine excepted, at wholesale. T.C.A. § 57-6-102.

Rate. Seventeen percent (17%) of the wholesale price. T.C.A. § 57-6-103.

Distribution. The tax collected is distributed to the county or municipality of the retailer's place of business, less 3 percent commission for the wholesaler and 0.5 percent remitted to the Department of Revenue for administration of the tax. The tax is remitted to the municipality if retailer's place of business is within the city's or town's boundary; otherwise, the tax is remitted to the county of the retailer's place of business. T.C.A. § 57-6-103.

In 1998, the General Assembly passed Public Chapter 1101, which was a major reform of the annexation and incorporation laws having a great impact upon the way the wholesale beer tax is distributed among cities and counties. T.C.A. § 6-51-115. It included a "hold harmless" provision to protect county revenue sources. When a city

annexes territory or a new city incorporates, revenue amounts generated in that area by the wholesale beer tax that had been received by the county prior to the annexation or incorporation continue to go to the county for 15 years after the date of the annexation or incorporation. During that time, any increase in the situs based portion of the revenues generated in the area would be distributed to the annexing or incorporating municipality. If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county.

Beer Permit Privilege Tax

Authority. T.C.A. § 57-5-104.

Description. This is an annual privilege tax in the amount of $100 paid by any person, firm, corporation, joint-stock company, syndicate or association engaged in selling, distributing, storing or manufacturing beer. The tax is to be paid on January 1 to the county or city in which the business is located. For businesses located in the county outside any incorporated municipality the tax is collected by the county clerk, and for businesses located inside a municipality the tax is collected by the official designated by the city. The county or city may use these funds for any public purpose. T.C.A. § 57-5-104.

Tobacco Tax

Authority. T.C.A. §§ 67-4-1001 through 67-4-1025.

Description. This is a special state-levied privilege tax imposed on every dealer or distributor of cigarettes and other tobacco products. T.C.A. § 67-4-1002. However, the tax is passed on to the consumer. T.C.A. § 67-4-1003. The rate of the tax is 10 mills per cigarette or 20 cents per 20 cigarette pack and 6.6 percent of the wholesale price on all other tobacco products or tobacco substitutes. T.C.A. §§ 67-4-1004, 67-4-1005. This state tax is included in this Chapter on county revenue sources because most of the revenue from this tax is earmarked for public education, grades one through twelve. T.C.A. § 67-4-1025(b).

Motor Vehicle Taxes

Motor Vehicle Title and Registration Taxes

Authority. T.C.A., Title 55, Chapters 1 through 6.

Description. Before operating any motor vehicle upon the streets or highways of this state, the vehicle must be registered (subject to certain exceptions). The registration fee is a privilege tax upon operation. It is administered by the Commissioner of Revenue and collected by the county clerk of the county of the owner's residence or the county wherein the vehicle is based or to be operated. A nonresident may apply directly to the Department of Revenue for registration. T.C.A. §§ 55-4-101(c), 55-6-105. Terms used

in administering titles and registrations are defined in T.C.A. §§ 55-1-101 through 55-1-121.

Distribution. These state registration fees and taxes are retained by the state, with ninety-eight percent (98%) going to the state highway fund and two percent (2%) going to the state general fund. T.C.A. § 55-6-107. However, the increases made to these fees and taxes by 2002 Public Chapter 856 are deposited in the state's general fund and allocated for general state purposes in accordance with the provisions of the General Appropriations Act.

Mobile Home Registration Fee

Authority. T.C.A. § 55-4-111.

Description. The county clerk collects a mobile home registration fee. The amount of the fee varies according to the length and width of the mobile home. T.C.A. § 55-4-111.

Distribution. The fees are distributed as follows:

1. The first $1 to fund police pay supplement fund. T.C.A. § 55-4-111.

2. Five percent (5%) of remaining revenue to the state

3. 95 percent of remaining revenue to the county and city

    a. One half (1/2) of which is distributed in the same manner as the property tax for school purposes.

    b. One half (1/2) of which goes to the county or city general fund (depending on the location of the mobile home), or as such county and city by contract provide. T.C.A. § 55-6-107.

County Motor Vehicle Privilege Tax (Wheel Tax)

Authority. T.C.A. § 5-8-102.

Description. Counties may levy a privilege tax on motor vehicles, commonly called a wheel tax. The tax may be levied by one of the following methods: (1) by passage of a resolution by a two-thirds vote of the county legislative body at two consecutive regular county legislative body meetings; (2) by passage of a resolution by the county legislative body by a regular majority with approval and referendum provided for in the resolution; and (3) by private act. Notwithstanding a population classification exception, the two-thirds majority resolution method is subject to a referendum if a petition signed by a number of registered voters equal to 10 percent of the number of voters in the last gubernatorial election is filed with the county election commission within 30 days of passage. T.C.A. § 5-8-102(b)(1).

Distribution. Distribution of these tax revenues may be for any county purpose specified in the private act or resolution levying the tax.

Business Taxes

Business Tax

Authority. T.C.A. §§ 67-4-701 through 67-4-730.

Description. Certain businesses must pay a privilege tax based on gross receipts in lieu of ad valorem taxes on inventory of merchandise held for sale or exchange. Definitions are found in T.C.A. § 67-4-702. Each county and incorporated municipality in which a business, business activity, vocation or occupation is conducted may levy a business tax not exceeding the rates established by state law. T.C.A. § 67-4-704. The Department of Revenue collects the business tax. T.C.A. § 67-4-703. Every affected business must register with the county clerk for businesses located within the county (and with the city recorder for businesses located within a city) prior to engaging in business. T.C.A. § 67-4-706. Upon receiving the application and a fee of $15.00, the county clerk (and city recorder in the case of a business located within a city) issues a business license. The license is renewed each year upon payment of the business tax for no additional fee. T.C.A. § 67-4-723.

There are five classifications of businesses established by the business tax laws, each with different rates. Class Five includes industrial loan companies and is taxable only by the state. Foreign businesses filing within Class Four must file a bond or establish an escrow account with the county clerk (and city recorder for businesses located in the city) in an amount sufficient to pay the anticipated business tax liability for the balance of the tax period for which the license applies. T.C.A. § 67-4-707. Traveling photographers must file a $100 deposit with the county clerk (and city recorder if within the city). T.C.A. § 67-4-729.

The rate of the business tax is a percentage of gross receipts, which varies among the classifications, and is adjusted for various credits and deductions. T.C.A. § 67-4-709.

Distribution. Of the amounts collected by the Department of Revenue, the county clerk receives $7.00 per return filed by a taxpayer located within that county, and of that amount $2.00 is earmarked for computer hardware purchases or replacement or other computer-related expenses. The city recorder receives a like amount for businesses located within the city. After these distributions, 5% of the remaining proceeds are paid to the county clerk in the case of taxes levied by the county, and to the city recorder in the case of taxes levied by a city. Of the remaining proceeds (less a reasonable administrative fee), 57% are distributed to the county or city that levied the tax and 43% are retained by the state. Notwithstanding the foregoing, 100% of any tax, interest, and penalties assessed by the state as a result of an audit shall be retained by the state. T.C.A. § 67-4-724.

Excise Tax Applied to Banks

Authority. T.C.A. §§ 67-4-2001 through 67-4-2017

Description. This is a state tax on the net earnings of all state chartered banks, national banks, and state and federally chartered savings and loans doing business in Tennessee. This tax applies to other corporations doing business in Tennessee, but only the portion of revenue received from banks and savings and loan associations is distributed to counties and municipalities. T.C.A. § 67-4-2017. Net earnings is defined in T.C.A. § 67-4-2006. The tax rate is 6.5 percent of net earnings. T.C.A. § 67-4-2007.

Distribution. Three percent of the net earnings of the bank and the net earnings of a financial institution unitary business determined on a combined basis for the fiscal year second preceding the year in which distribution is made, less 7 percent of the ad valorem taxes paid by the bank or financial institution unitary business on its real property and tangible personal property in that fiscal year, is allocated between the county and the municipal government where the office of the bank or financial institution unitary business is located in the same proportion as the property tax rate of each taxing jurisdiction bears to the sum of the property tax rates. Other adjustments to this basic formula are made to ensure minimum payments and consideration of branch banks in other counties. T.C.A. § 67-4-2017.

Development Taxes and Infrastructure Funding

Special Assessments, Impact Fees, and Adequate Facilities Taxes. In recent years local governments, especially those in counties experiencing heavy growth, have looked for ways by which those benefitting from the growth could also pay for the increased governmental costs resulting from it. There are three main methods by which a local government may make an assessment against property that the owner wishes to develop: special assessments, impact fees, and privilege taxes.

Special Assessments. These are charges levied against specific parcels of property to recoup part or all of the costs of improvements that directly benefit that property: "The differences between a special assessment and a tax are (1) a special assessment can be levied only on land for special purposes; (2) a special assessment is based wholly on lands benefitted."*West Tennessee Flood Control & Soil Conservation Dist. v. Wyatt*, 247 S.W.2d 56 (Tenn. 1952). Counties are authorized to levy special assessments by the County Powers Act. T.C.A. § 5-1-118.

Impact Fees. These fees are a means of regulating new development in a local government. The intent of the fee is to place the financial burden of new growth on areas in which the growth has occurred. The level of the fee must be related to the needs of new development, and revenues generated by the fee should be earmarked for investment in the growth areas. There is no specific statutory authority under general law for counties to impose impact fees; therefore, they may be imposed only by private act.

Adequate Facilities Taxes. These are privilege taxes levied on the privilege of construction or development of property. The primary difference between an impact fee and an adequate facilities tax is one of intent: It is a tax if the primary purpose is to raise revenue, but it is a fee if the purpose is regulation of some activity under the government's police power. *Memphis Retail Liquor Dealer's Ass'n Inc. v. City of Memphis*, 547 S.W.2d 244 (Tenn. 1977). The issue of whether a program is a tax or fee becomes significant in determining the level of scrutiny with which courts will look at the program. Since taxes are not regulatory actions, they do not have to meet the same standards as impact fees.

Before 2006, some counties had levied adequate facilities taxes on the privilege of development under authority granted by private act. In 2006, the General Assembly authorized counties qualifying as "growth counties" to levy a county school facilities tax on residential development. A county may meet the criteria to be a growth county by one of two ways: (1) the county experienced a 20 percent or greater increase in population between the last two federal decennial censuses (or the county experiences that level of growth between any subsequent federal censuses); or (2) the county experienced a 9 percent or greater increase in population over the period from 2000 to 2004 (or over any subsequent four year period). Before the tax may be levied, the county is required to have adopted a capital improvement program. The tax can then be levied by a resolution adopted by a 2/3 vote of the entire membership of the county legislative body at two consecutive, regularly scheduled meetings. The tax may be levied initially at a rate not to exceed $1.00 per square foot. Square footage is determined based on the total heated or air-conditioned residential living space. Once adopted, the rate of the tax cannot be increased for four years. Once the four year period has run, the county legislative body may increase the rate, but by no more than 10 percent. After any increase, the rate is again frozen for a four year period. Public buildings, places of worship, barns and agricultural buildings, replacement buildings for structures damaged by disaster, buildings owned by 501(c)(3) nonprofit corporations, and buildings constructed in an area designated by the federal government as a blighted, distressed, or urban renewal zone are exempt from the tax.

All revenue from this tax is turned over to the county trustee for deposit. The revenue is required by law to be used exclusively for funding growth-related capital expenditures for education, including the retirement of bonded indebtedness. The act establishes this law as the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development. The act prohibits counties from enacting any impact fees or local real estate transfer taxes in the future by either public or private act. The act preserves existing development taxes and impact fees to the extent authorized by any private acts in effect when the act became a law. The act allows a city or county to revise the dedicated use and purpose of the tax levied by a pre-existing tax from public facilities to public school facilities. Counties that levy a development tax or impact fee by private act under prior law may not levy the school facilities tax authorized by this act so long as they are levying and collecting development taxes or impact fees under the authority of the private act. The act includes language that requires the General Assembly to review the provisions of the act to ascertain the effect on and the needs of those counties which did not qualify to levy the tax under the act.

Other Taxes

Hall Income Tax

Authority. T.C.A. §§ 67-2-101 through 67-2-121.

Description. This is a tax on income derived from stocks and bonds, as defined in T.C.A. §§ 67-2-101 and 67-2-102. There are numerous exemptions, including a $1,250 personal exemption on individual returns and $2,500 on joint returns. T.C.A. § 67-2-104. The tax is collected by the Department of Revenue at a rate of 6 percent per annum. T.C.A. § 67-2-102.

Distribution. The tax is distributed as follows:

1. Up to 10 percent of the first $200,000 of taxes collected and 5 percent of amounts over $200,000 go to the Department of Revenue for administration of the tax. T.C.A. § 67-2-117.

2. The taxes collected on income from stocks and bonds after deducting administration expenses are distributed as follows:

    a. Five-eighths (5/8) to the state general fund;

    b. Three-eighths (3/8) to the counties and municipalities of the state. If the taxpayer resides inside the corporate limits of a municipality, then to that municipality; but if the taxpayer resides outside any municipal limits, then to the county of the taxpayer's residence. T.C.A. § 67-2-119.

Hotel/Motel Tax

Approximately 70 counties have levied a tax on the privilege of occupancy of hotel and motel rooms and similar space. In most counties, this levy has been authorized by private act. Davidson County used a general law, T.C.A. § 7-4-101 *et seq*. (known as the Tourist Accommodation Tax), applicable only to counties with a metropolitan form of government.

The rate of the tax varies according to the terms of the various acts. In 2004 the lowest rate was two percent (2%) and the highest seven percent (7%) of the price of the lodgings. Administration and collection procedures and the use of tax proceeds vary from county to county; consequently, each county's private act or the public act applicable to counties with a metropolitan form of government must be consulted for details. A summary of these acts is provided annually in the CTAS publication, *Tennessee County Tax Statistics*, available on the CTAS Web site at www.ctas.utk.edu.

After May 12, 1988, any private act that authorizes a city or county, except for certain counties covered by special provisions in the law, to levy a hotel/motel tax must limit its application as follows:

1. A city shall only levy such tax on occupancy of hotels located within its municipal boundaries.

2. A city shall not be authorized to levy such tax on occupancy of hotels if the county in which such city is located has levied such tax prior to the adoption of the tax by the city; and

3. A county shall only levy such tax on occupancy of hotels within its boundaries but outside of the boundaries of any municipality that has levied a tax on such occupancy prior to the adoption of such tax by the county. T.C.A. § 67-4-1425.

State Litigation Tax

Authority. T.C.A. §§ 67-4-601 through 67-4-606.

Description. The General Assembly has provided a privilege tax on litigation, collected upon the commencement of a civil action, a finding or plea of guilty or submission to a fine in a criminal action, the filing of an appeal or writ of error or certiorari, judgment against the defendant in any original civil action brought by a city, county or the state or upon judgment or final decree against the appellee when the appellant is a city, county or the state. Such tax is administered by the commissioner of revenue and collected by the clerks of Supreme Court, Court of Appeals, circuit courts, criminal courts, probate courts, county court, courts of law and equity, chancery courts, general sessions courts, city courts and any other inferior courts the General Assembly may create.

The following are state privilege taxes upon litigation:

1.	Criminal charges T.C.A. § 67-4-602(a)	$29.50
2.	Civil suits in courts of record T.C.A. § 67-4-602(b)	$23.75
3.	Civil cases in general sessions T.C.A. § 67-4-602(c)	$17.75

When a general sessions court is exercising state court jurisdiction, except with regard to juvenile court, there is levied an additional privilege tax of $1 added to the $23.75 listed above.

In all criminal charges in any state, county or municipal court for any violation of Title 55, Chapter 8, or for any violation of any ordinance governing the use of a public parking space there is levied an additional state litigation tax of $1.

Additionally, T.C.A. § 67-4-602(h) imposes an additional privilege tax on litigation of $1.00 on all criminal charges, upon conviction or by order, instituted in any state or

general sessions court, to be deposited in a special account in the state treasury to be known as the "Statewide Automated Victim Information and Notification System Fund."

Distribution. These various taxes are distributed as follows:

1. 0.0320 percent of the proceeds are deposited in a fund established for the operation of the Tennessee Corrections Institute.

2. 4.4430 percent of the proceeds are credited to a reserve account to be used only by the departments of Education and Safety to promote and expand driver education.

3. 25.4483 percent of the proceeds are allocated to the state general fund.

4. 4.8186 percent of the proceeds are held in the state treasury for the purpose of providing funds to aid in meeting the costs of benefits provided to county judges.

5. 9.4854 percent of the proceeds are held in the state treasury for the purpose of providing funds to aid in meeting the costs of benefits provided to county officials.

6. 0.6553 percent of the proceeds are disbursed only upon request of the administrative director of the courts and used only for the purpose of funding the state court clerks' conference.

7. 0.8406 percent of the proceeds are allocated to the victims of crime assistance fund.

8. 15.8471 percent of the proceeds are allocated to the criminal injuries compensation fund.

9. 1.3755 percent of the proceeds are allocated to the victims of drunk drivers compensation fund.

10. 3.7653 percent of the proceeds are used to fund the provisions of 40-14-207 related to indigent defendants.

11. 0.5529 percent of the proceeds are credited to the administrative director of the courts to be used to defray the expenses of serving the general sessions courts and the Tennessee general sessions judges' conference.

12. 0.5528 percent of the proceeds are used to defray the cost of retirement pay of general sessions judges.

13. 19.2902 percent of the proceeds are credited to the public defender program.

14. 7.4701 percent of the proceeds are credited to the civil legal representation of indigents fund.

15. 2.3056 percent of the proceeds are earmarked for grants to local governments for the purchase and maintenance of electronic fingerprint imaging systems.

16. 0.3426 percent of the proceeds are credited to the sex offender treatment fund.

17. 2.7747 percent of the proceeds are credited to a reserve account to be used by the Department of Education to promote and expand driver education through the public schools of the state.

Collection. State litigation taxes are collected by the various court clerks. For services in collecting and remitting these taxes, clerks are entitled to a 6.75 percent commission. T.C.A. § 8-21-401. As this commission is a change to a uniform percentage from prior law, which provided for different commissions in different courts and counties, the Department of Revenue provided that clerks shall be held harmless and shall not receive a commission that is less than the commission received by the clerk in the fiscal year ending June 30, 2005.

<u>County Litigation Taxes</u>

Authority. T.C.A. §§ 67-4-601, 16-15-5006.

Description. Counties have authority to levy a local litigation tax up to the amount levied as state litigation tax. This local litigation tax may be levied by private act, by resolution of the county legislative body, or by a combination of private acts and county legislative body resolutions. Clerks of the various courts to which such tax applies as specified in the private act or resolution collect the local litigation tax. The private acts and local resolutions of each individual county must be consulted for that county's litigation tax rate.

In addition to matching the state litigation tax, T.C.A. § 16-15-5006 authorizes counties, except counties having a population in excess of 450,000, to levy a litigation tax of up to $6 per case for each case filed in general sessions court or in a court where the general sessions judge serves as judge, except juvenile court, by resolution passed by a two-thirds vote of the county legislative body, proclaimed by the presiding officer and certified to the secretary of state. This statute also contains a provision allowing the litigation tax to be raised above $6 if in any fiscal year the proceeds of the tax do not raise sufficient revenue to fund the salary, under the circumstances specified in the statute. *See* Op. Tenn. Att'y Gen. U94-130.

Counties are authorized to levy an additional local privilege tax on litigation in all civil and criminal cases instituted in the county, not including those instituted in municipal court. This additional tax may be levied by a resolution passed by a two-thirds vote of the county legislative body. Counties are authorized to levy the tax for jail or workhouse

construction, reconstruction or upgrading, or to retire debt, including principal and interest and related expenses, on such construction, reconstruction or upgrading or for courthouse renovation in an amount not exceeding $50, of which as much as $25 may be used for courthouse security. The law contains a sunset provision that causes the tax levy to cease once the costs of the project have been paid or the debt for the project has been retired. T.C.A. § 67-4-601.

Not including the additional local privilege tax and the $1 tax on moving violations and parking tickets, the maximum local litigation tax in all counties except Davidson, Knox and Shelby may be summarized as follows:

Civil cases in general sessions court	$23.75
Criminal cases in general sessions court	$35.50
Civil cases in courts of record	$23.75
Criminal cases in courts of record	$29.50

Distribution. Distribution of county litigation taxes that are to match the state levy may be used for any county purpose or purposes specified in the private acts or resolutions. The county litigation tax authorized by T.C.A. § 16-15-5006 is earmarked for the salary of the general sessions judge.

Marriage License Taxes

Authority. T.C.A. §§ 67-4-411, 67-4-503, 67-4-505, 36-6-413.

Description. There are two state privilege taxes on marriage, and a local option privilege tax on marriage that may be levied in an amount up to $5 by resolution of the county legislative body. The collector of both state and local marriage taxes is the county clerk. The $5 state tax is retained locally and the $15 state tax is forwarded to the commissioner of revenue for distribution. An additional "fee" was imposed on marriage licenses in a 2002 amendment to T.C.A. § 36-6-413, which fee is collected by the county clerk and forwarded to the state treasurer for distribution.

Rate. The rate of these taxes is as follows:

1. State privilege tax, T.C.A. § 67-4-411 ..... $15

2. State privilege tax, T.C.A. § 67-4-505 ..... $5

3. County privilege tax, T.C.A. § 67-4-502, up to $5

4. Additional state "fee" (tax), T.C.A. § 36-6-413 ..... *$60

*This $60 "fee" (tax) is not collected in any county from couples who file a certificate showing they have taken a premarital preparation course, nor is it collected from out-of-state residents who obtain their license in Sevier County (the only county with this special exemption). T.C.A. § 36-6-413.

Distribution. These taxes are distributed as follows:

1. T.C.A. § 67-4-505 state tax ($5) is used:

    a. 5 percent to county clerk as commission for collecting and paying over the revenue, T.C.A. § 8-21-701(55); and

    b. 95 percent used for county school purposes.

2. T.C.A. § 67-4-411 ($15) tax is used:

    a. 5 percent to county clerk as commission, and

    b. The remainder is forwarded to the commissioner of revenue.

3. The county tax is distributed 5 percent to the county clerk as commission for collecting and paying over the revenue and the remainder according to county legislative body resolution.

4. T.C.A. § 36-6-413 additional $60 state fee is forwarded to the state treasurer to be distributed as follows:

    a. $7 to the Administrative Office of the Courts for funding parenting plan requirements;

    b. $15 to the Department of Children's Services for child abuse prevention;

    c. $7.50 to Office of Criminal Justice programs for domestic violence services;

    d. $20.50 to the Tennessee Disability Coalition for families and children with disabilities;

    e. $1.25 to the Tennessee Court Appointed Special Advocates Association;

    f. $4 to the Department of Education for grants to Boys and Girls Clubs;

    g. $3 to the Tennessee Chapter of the National Association of Social Workers to strengthen services to families and children; and

    h. $1.75 to the Weems Academy for foster care children.

Fees of County Officers

The county receives money through fees and commissions for services performed by county officials. The register, county clerk, trustee, sheriff, circuit and criminal court

clerks, and clerk and master receive fees or commissions for their services. Excess fees are a source of county revenue for purposes other than the maintenance of these offices.

The statutory references for the fees of these offices are as follows:

Clerks of Court: T.C.A. §§ 8-21-401 through 8-21-409, 29-22-103, 29-22-105, 32-1-112, 36-5-405, 38-6-103, 40-3-203, 40-3-204, 40-24-101, 40-24-107, 67-8-406. [Note that the clerk of courts' primary fee statute, T.C.A. § 8-21-401, was completely rewritten by 2005 Public Chapter 429.]

County Clerks: T.C.A. §§ 8-21-401 through 8-21-409 and 8-21-701 through 8-21-703, 8-16-106, 8-16-109, 7-81-108, 10-7-117, 36-6-413, 44-7-301, 45-6-207, 45-6-208, 55-4-101, 55-4-105, 55-4-115, 55-4-117, 55-4-123, 55-4-132, 55-4-221, 55-4-223, 55-6-104, 55-50-331, 62-30-103, 67-4-721, 68-3-401, 69-9-208, 70-2-106.

Registers: T.C.A. §§ 8-21-1001, 47-9-525, 7-81-107, 10-7-114, 48-11-303(d), 48-51-303, 48-247-103(e), 61-1-1208(d), 61-2-206, 67-4-409(d).

Sheriffs: T.C.A. §§ 8-21-901 through 8-21-903, 7-81-108, 40-9-127, 67-5-2410.

Jailers: T.C.A. §§ 8-26-105, 41-4-105, 41-4-115, 40-7-122, 41-4-142.

Trustees: T.C.A. §§ 8-11-110, 54-4-103, 54-9-112, 69-7-139, 69-7-145, 69-6-220, 69-6-835, 69-6-931, 54-12-111, 54-12-424, 54-12-425 and 38-5-119 through 38-5-121.

Accounting for Fees. There are two basic methods of using and accounting for fees received. Under the oldest system, the officer remits to the trustee quarterly all fees, commissions, and charges collected in the preceding quarter in excess of deputies' and assistants' salaries, necessary office expenses, and the official's salary. T.C.A. § 8-22-104. Under this system the official may retain fees in an amount equal to three times the official's monthly salary and the deputies' and assistants' salaries. The sheriff is no longer under this first system.

In addition, the legislative body may adopt an alternative system for any of the fee officers or all of them, except for the sheriff, who is required to be under this second system. T.C.A. § 8-22-104. Under this system, the fee officer pays to the trustee monthly all fees, commissions, and charges collected by the office. In return, the legislative body appropriates the officer's salary, the salaries of the deputies and assistants, and authorized office expenses. The sheriff is always under this "alternative" system.

Under both systems, deputies' and assistants' salaries may be determined by court decree or by letter of agreement. Under the latter method, if the fee official and the county mayor agree on the number and salary of deputies and assistants for the office (and this is within the budget amount), a letter of agreement may be signed and entered into the courts' records; no salary suit is necessary. T.C.A. § 8-20-101. The legislative body under the old system does not appropriate funds for the officer's salaries or regular

office expenses unless the office fees are inadequate. However, under the alternative system, the legislative body must appropriate funds for the officer's salary, deputies' and assistants' salaries, and other expenses of the office regardless of the office fees. Excess fees become part of the county general fund and may be appropriated for any proper county purpose. For a more detailed discussion of the fee and salary systems, *see* Chapter 3.

CHAPTER 12

FINANCIAL STRUCTURE OF COUNTY GOVERNMENT

Financial structure on the county level generally is organized around each local official and the revenues and expenses of each of these offices, which operate separately within the framework of the county financial structure as a whole. The trustee acts as the county banker and handles receipts and disbursements, the latter of which must be authorized by the county legislative body according to statutes enacted by the General Assembly and decisions rendered by the state courts. No county funds may be expended unless authorized ("appropriated") by the county legislative body. T.C.A. § 5-9-401. This appropriation procedure is a phase of the annual budgeting process that begins in January and usually ends in July with the approval of the budget.

County financial functions involve current operations as well as capital project financing and debt retirement (the latter two topics are treated separately in Chapter 13). Day- to-day expenses relating to personnel, supplies, materials, utilities, contracted services, upkeep of facilities, and similar costs of providing county services are referred to as current operating expenses. To pay for these expenses the county collects fees authorized by statute, levies and collects taxes, and receives revenues from the state and federal governments. Like a business, the county has income (referred to as revenues) and expenses. Also like a business, the county's financial management involves budgeting, accounting, purchasing, payroll, cash flow, and related areas. Unlike a business, a county has very limited implied powers. It must operate strictly by the express provisions of the law in carrying out these functions. There are three types of state laws applicable to the county financial function: general laws, general laws with local option application, and private acts for a specific county. Also, the general law provides for county charters and metropolitan government charters to structure financial management in the counties that have adopted these charters.

Financial Management under the General Law

Unless a county has elected to operate under a general law with local option application, has adopted a private act passed by the General Assembly, or is operating under a county charter or metropolitan government charter, the county must manage its finances in accordance with the general laws for all counties. General laws provide guidance in the areas of budgeting, accounting, purchasing, and investment of temporarily idle county cash funds.

Budgeting. Under general laws each operating department is required to prepare and submit a budget to the county mayor on or before April 1 of each year, or on another date specified by the county legislative body. T.C.A. § 5-9-402. This budget should provide the county legislative body with an estimate of the funds required by the department during the coming fiscal year. T.C.A. § 5-9-402. The county legislative body will review the submitted departmental budgets and requests for assistance, combine them into one county budget, and approve a budget for the fiscal year, which begins July 1 and ends June 30. The law requires that the proposed annual operating

budget be published in a newspaper of general circulation in the county no later than five days after the budget is presented to the county legislative body if the newspaper is published daily. If such newspaper is published less than daily, then it must be published in the first edition for which the deadline for such publication falls after the budget is presented to the county legislative body. A county may also publish the proposed annual operating budget on the county's Web site, which will be accessible to the public on the day the budget is presented to the county legislative body. The budget cannot be adopted until at least 10 days after publication. The annual operating budget must contain a budgetary comparison for the following four governmental funds: general, highway/public works, general purpose school fund, and debt service. T.C.A. § 5-8-507. The state comptroller of the treasury prescribes the required form of the county budget. T.C.A. § 5-9-403.

The county budget, as approved by the county legislative body, is the guide for determining the appropriation of all county operating funds for county departments, offices, and agencies. T.C.A. § 5-9-401. The budget format has major categories for each department or service, with line items for salaries, supplies, and other expenses under each major category. This format is commonly referred to as a "line item" budget. In this budget the county may appropriate funds for specific purposes as prescribed by state law. *See* T.C.A. §§ 5-9-101 through 5-9-112 (and other code sections specifying other purposes). Also, the county legislative body is generally considered to have the authority to amend, reduce, or add to the budget submitted by county operating departments, except for the education department budget which must be approved or rejected as a whole.

After the budget has been adopted, the county legislative body may not make transfers between the major funds, such as school, highway, general, and debt service, but it may make budget amendments within funds during the course of the fiscal year. T.C.A. § 5-9-407. In some counties, approval of line item amendment requests by department heads is made by the budget committee under authority granted in the annual budget resolution. Amendments to the county education budget must be approved by the board of education and the county legislative body. T.C.A. §§ 5- 9-407, 49-2-301(b)(1)(W).

A county legislative body may prepare and adopt a biennial budget for such departments of the county as are authorized for the particular county by the comptroller of the treasury's director of local finance; however, such biennial budgets may not be used until changes are made to existing county charters, private acts or resolutions that require annual budgets. T.C.A. § 4-3-305.

<u>Charitable Contributions</u>. The county legislative body may appropriate general funds for the financial aid of any nonprofit charitable organization or any nonprofit civic organization having federal tax exempt status under Section 501(c)(4) of the Internal Revenue Code and chambers of commerce qualifying under Section 501(c)(6) of the Internal Revenue Code. A nonprofit organization requesting assistance must submit financial reports to the county clerk and these are available for public inspection. The county legislative body is mandated to provide guidelines for the expenditure of these funds. Notice must be given in a newspaper of general circulation in the county of the

intent to make an appropriation to a nonprofit but not charitable organization before the appropriation is made. T.C.A. § 5-9-109.

Also, a county may receive charitable contributions for the general fund. If funds are given subject to certain conditions as to their use, the county legislative body must approve acceptance of the gift and it must be used for such purposes. If funds are restricted, the money is placed in the county general fund and appropriated according to normal budgetary process. If the gift is of personal or real property that is subsequently sold by the county, the revenue from such sale must be deposited in the general fund. T.C.A. § 5-8-101. Donations for schools and roads are discussed in Chapters 4 and 5 respectively.

Accounting. The state comptroller of the treasury, with the approval of the governor, is required to devise a modern and effective bookkeeping and accounting system to be used by all county officials and agencies handling the revenues of the state or its political subdivisions, and is to prescribe the minimum standards required under that system. T.C.A. § 5-8-501. Each county and agency of the county is required to meet these standards; if it fails to do so, the county is obligated to pay the actual cost of auditing above the standard fee prescribed in T.C.A. § 9-3-210 (the standard fee is based on the county's population and is currently $0.30 per person). T.C.A. §§ 5-8-502, 5-8-503. Each department must file an annual financial report for the fiscal year ending June 30 with the county mayor and the county clerk, who provides copies to members of the county legislative body. T.C.A. § 5-8-505. There is no longer a publication requirement for these financial reports.

There are also some specific statutorily required accounting procedures for certain county offices and departments. Accounting procedures for the county mayor are found in T.C.A. § 5-6-108; for the county education department, *see* T.C.A. §§ 49-2-203 and 49-2-301; and for the county highway department, *see* T.C.A. § 54-7-113.

Purchasing. The laws regarding purchasing for county governments are not uniform. There are state laws of general application, as well as local option laws discussed later in this chapter, that may apply. Also, private acts govern purchasing in some counties. A table listing the purchasing laws under which each county currently operates is included in the appendix to this handbook. County purchasing laws and procedures are covered in greater detail in the CTAS publication entitled *County Purchasing*.

Education Department Purchasing. The county department of education has its own purchasing laws, which appear in Title 49 of the *Tennessee Code Annotated*, but these laws are superseded or modified in those counties that have adopted the optional County Financial Management System of 1981, T.C.A. § 5-21-101 *et seq*. Further, in counties that have adopted the County Purchasing Law of 1957, another optional general law, the county board of education may or may not use the central county purchasing system depending upon the approval of the state commissioner of education. T.C.A. § 5-14-115.

Highway Department Purchasing. The County Uniform Highway Law, at T.C.A. § 54-7-113, provides a purchasing law for the county highway department when purchasing for the department is not governed by private act or when the county has not adopted either the County Purchasing Law of 1957 or the County Financial Management System of 1981. Regardless of the purchasing law under which a county operates, purchases by highway departments of items costing less than $10,000 are not required to be publicly advertised and competitively bid. The County Uniform Highway Law, including these purchasing provisions, does not apply to counties having populations over 200,000 (Shelby, Davidson, Knox and Hamilton). T.C.A. §§ 54-7-102 and 57-7- 113(c).

General Fund Purchasing. Purchases for the general fund in many counties are governed by the County Purchasing Law of 1983, T.C.A. § 5-14-201 *et seq*. This law does not apply to purchases from county highway funds or county education funds, or purchases by counties that have adopted either the County Purchasing Law of 1957 or the County Financial Management System of 1981. This law does not apply in counties operating under a county or metropolitan government charter. The law does not apply to counties with private acts if the private act provides for public advertising and competitive bidding for purchases in excess of $10,000 or a lesser amount as established by the private act.

Under T.C.A. § 5-14-204, all purchases and leases or lease-purchase agreements made under the County Purchasing Law of 1983 must be made or entered into only after public advertisement and competitive bidding, except (1) purchases costing less than $10,000, (2) goods or services that may not be procured by competitive means because of the existence of a single source or because of a proprietary product, (3) supplies, materials or equipment needed in an emergency situation, subject to reporting requirements of the county legislative body and the county mayor, (4) leases or lease-purchase agreements requiring payments of less than $10,000 per year, and (5) fuel and fuel products purchased in the open market by governmental bodies. County legislative bodies may by resolution lower the dollar amount over which competitive bids are required, and may also adopt regulations providing procedures for implementing this act.

County Purchasing Law of 1957. The County Purchasing Law of 1957 is a local option general law found in T.C.A. §§ 5-14-101 through 5-14-116. It may be adopted by the voters in a referendum or by a two-thirds vote of the county legislative body. This act does not apply to school funds unless it is approved by the commissioner of education pursuant to T.C.A. § 5-14-115. This act is one of the three companion Fiscal Control Acts of 1957 discussed in greater detail later in this chapter.

County Financial Management System of 1981. The County Financial Management System of 1981, also discussed later in this chapter, is found in T.C.A. §§ 5-21-101 through 5-21-129. This system must be adopted by a two-thirds vote of the county legislative body or a majority of the voters in order to be effective in any county. T.C.A. § 5-21-126. This law provides for a consolidated financial management system to administer the finances of all county funds that are handled through the office of the trustee, including purchasing procedures. Unlike the 1957 laws, school funds are

managed under this system just like all other county funds, unless the commissioner of education removes the school department from the system. T.C.A. § 5-21-124.

Other General Law Purchasing Provisions. Counties with populations over 150,000 are authorized to make purchases under $10,000 without competitive bids or proposals, but these counties may retain their present competitive bidding requirements or establish different limits by private act or charter provision. T.C.A. § 12-3-1007.

County governments may use pricing discounts obtained by the National Association of Counties (NACo) Purchasing Alliance by considering the NACo price in the same manner as a formal bid or informal quotation under the county's bidding laws. T.C.A. § 12-3-1008. The Tennessee Department of General Services (TDGS) may upon request, purchase supplies and equipment for any county. Counties may purchase under the provisions of contracts or price agreements entered into by TDGS without public advertisement and competitive bidding. Also, county governments may purchase goods, except motor vehicles, under federal General Services Administration (GSA) contracts, to the extent permitted by federal law or regulations. T.C.A. § 12-3-1001.

County governments may distribute solicitations and receive bids, proposals and other offers electronically, but cannot require small or minority-owned businesses to receive or respond electronically. T.C.A. § 12-3-704. Counties, municipalities, utility districts and other local governments may participate in cooperative purchasing agreements for procurement of supplies, services or construction. T.C.A. § 12-3-1009.

County governments may purchase goods and services through a competitive reverse auction process that allows offerors to bid on specified goods or services electronically and adjust bid pricing during a specified time period in accordance with T.C.A. § 12-3-1012. Before initial use of a reverse auction, the county must file a plan with the comptroller stating the technology to be used, whether a third party will conduct the auctions, describing the policies and procedures to be used, documenting internal controls, and stating whether additional operating resources will be needed and if so indicating prior approval of the local governing body. Items and services that cannot be purchased through a reverse auction are: construction services (except maintenance, repairs, and renovations costing less than $25,000); architectural or engineering services; new or unused motor vehicles (except school buses, garbage trucks, fire trucks, ambulances, and other special purpose vehicles); and new or unused construction equipment.

The procurement of professional services, such as architectural, engineering and financial advisory services, is governed by T.C.A. § 12-4-106. There are many other statutes that are not discussed here but that may affect the manner in which purchases of particular goods and services are to be made. These statutes are scattered throughout the *Tennessee Code Annotated*, depending upon the subject area. There are, for example, several statutes dealing with bidding in connection with construction contracts, which appear in Title 62 of the *Tennessee Code Annotated*. Purchasing matters should be carefully reviewed, and county attorneys should be consulted with regard to compliance with the requirements of all applicable statutes. Additional

information on county purchasing may be found in the CTAS publication entitled *County Purchasing*, available on the CTAS Web site.

Investment of County Funds. Each county is directed by general state law to invest all idle county funds to the maximum practical extent. T.C.A. § 5-8-301(a). Counties are authorized to invest in instruments designated by general law as a safe temporary medium. These temporary investments must either be approved by the county legislative body, be in compliance with an investment policy adopted by the county legislative body, or be approved by an investment committee appointed by the county legislative body. T.C.A. §§ 5-8-301, -302. In a county that has adopted the County Financial Management System of 1981, the investment committee (or financial management committee) will set the policies and procedures for investing idle funds and the director of finance has the authority to make the investments within the guidelines set by law and the committee's policies. T.C.A. §§ 5-21-105(e), 5-21-107(a). The organization of the investment committee in counties with a county charter or metropolitan government charter may differ from that provided by the general law.

There are three categories of idle county funds that may be invested: funds derived from bond proceeds; funds from the sale of assets, settlements, or other infrequent occurrences; and other idle county funds. All three categories may be invested in any of the following:

1. Bonds, notes, or treasury bills of the U.S. as well as other obligations guaranteed by the U.S. or its agencies;

2. Certificates of deposit and other evidences of deposit of state and federally chartered banks and savings and loan associations, provided that these investments are properly secured;

3. Obligations of the U. S. or its agencies under a repurchase agreement, if and only if made according to state funding board procedures and approved by the director of local finance;

4. The state investment pool;

5. State bonds, if they have a rating of A or higher;

6. Nonconvertible debt securities of the following issuers provided such securities are rated in the highest category by at least two nationally recognized rating services:

    a. The Federal Home Loan Bank;

    b. The Federal National Mortgage Association;

    c. The Federal Farm Credit Bank;

    d. The federal home loan mortgage corporation; and

e. Any other obligations that are guaranteed as to principal and interest by the United States or any of its agencies.

7. The county's own bonds or notes issued in accordance with Title 9, Chapter 21.

Additionally, counties with a population of 20,000 to 150,000 may invest idle funds in prime commercial paper if it is rated in the highest category by at least two commercial paper rating services and the paper has a remaining maturity of 90 days or less. T.C.A. § 5-8-301.

Counties may invest funds held by them in certificates of deposit through a bank or savings and loan association with a branch in Tennessee under certain conditions, including FDIC insurance of the full amount of principal and interest or collateralization of amounts not so insured. T.C.A. § 9-1-118.

There are other restrictions on the investment of specified county funds, as well as requirements for protection of county funds through proper collateralization of the investment. T.C.A. § 5-8-301. The advice of the state director of local finance, CTAS county government consultant, or county attorney will be helpful in determining available investment options, the correct procedures for making such investments, and the proper collateral to protect county investments.

Financial Management Under General Laws With Local Option Application

As the financial structure of counties has grown more complex and cash flow has increased, many counties have found the general laws to be inadequate. Further, the management of county finances under the general law is a fragmented system in which each department makes purchases without issuing purchase orders and maintains separate accounting records. Under this system it is difficult to manage the cash flow for investing funds and to properly determine the county's financial condition. To compensate for these deficiencies the General Assembly passed the Fiscal Control Acts in 1957, the County Financial Management System in 1981, and the Local Option Budgeting Law in1993. Although these are general laws, they apply only to counties in which they have been approved by a two-thirds vote of the county legislative body (or by referendum in the case of the 1957 and 1981 acts). A table listing the budgeting act under which each county operates is included in the appendix to this handbook.

The primary reasons for these acts were to (1) better use business management techniques, (2) consolidate and establish a uniform financial system, (3) improve utilization of county resources, (4) provide for the employment of a trained technician in finance, and (5) improve county financial information.

<u>Local Option Budgeting Law of 1993</u>. This act, codified at T.C.A. §§ 5-12-201 through 5-12-217, provides an optional budgeting procedure for all county departments that are funded from county appropriations. It may be adopted by a two-thirds vote of the county legislative body pursuant to T.C.A. § 5-12-201.

The primary thrust of this legislation is to provide a system through which a county may develop a consolidated budget for all county appropriations, adopt a tax rate and appropriation resolution to fund that budget, and specify a deadline by which these actions must be taken. In brief outline, this procedure begins no later than February 1 of each year when the county mayor distributes to each department budget forms upon which to submit a proposed budget. T.C.A. § 5-12-206. Additionally, the county mayor furnishes estimated revenue information to the departments of education and highways, based upon the assessor's estimation of property valuation. T.C.A. § 5-12-207. Along with their proposed budgets, those two departments then submit a form tax rate resolution showing how much property tax they are requesting to fund their budgets. The proposed budgets are then consolidated and submitted to the county legislative body on or before June 1. The statute specifies procedures for resolving disputes, T.C.A. § 5-12-209, and for amending the budget. T.C.A. §§ 5-12-209, 5-12-212, 5-12-213.

This act can work in conjunction with either of the other two local option budget laws (discussed below) or with private acts. The only portion of this budgeting plan that cannot be superseded by other general law or private act adopted by the county is found in T.C.A. § 5-12-210. This Section requires that the county legislative body adopt a budget, tax rate, and appropriation resolution no later than July 31 for that fiscal year beginning on the first day of July. The county legislative body can adopt the budget as proposed by the department heads or as consolidated by the county mayor or budget committee. If the budget is not adopted before the beginning of the fiscal year on July 1, then the county operates on a monthly allotment, based upon the preceding year's budget, during the month of July. If the budget still is not adopted by August 15, then the portion of the budget proposed by the department of education, together with any modifications agreed upon by the board of education, will become effective by operation of law. T.C.A. § 5-12-210. This provision also includes the property tax rate and appropriation that the education department has proposed to fund its budget. The operating budget for the remainder of county departments, excluding education, is the consolidated budget, including proposed amendments, that was submitted by the county mayor or the budget committee. This budget, together with the proposed tax rate and appropriation measures required to fund it, also becomes effective by operation of law. Finally, the act requires a balanced budget and contains provisions for adjustments if unanticipated circumstances are likely to result in a budget surplus or deficit. T.C.A. §§ 5-12-215 through 5-12-217. Procedures for amending a budget in effect are described in T.C.A. §§ 5-12-212, -213.

<u>County Financial Management System of 1981</u>. This act is found in T.C.A. §§ 5-21-101 through 5-21-129 and provides for the consolidation of financial functions and the establishment of a financial management system for all county funds handled by the county trustee. (Fee and commission accounts of fee offices are not handled by the county trustee and, therefore, are not included under the act.) The system is similar to that found in the 1957 acts; however, under this plan the county operates under one act rather than three. This system must be approved by a two-thirds vote of the county legislative body or a majority of the voters in order to be effective in any county. T.C.A. § 5-21-126.

Under the County Financial Management System of 1981, a finance department is created to administer the finances of the county for all funds handled by the trustee, in conformity with generally accepted principles of governmental accounting and rules and regulations established by the state comptroller of the treasury, state commissioner of education, and state law. T.C.A. § 5-21-103. Unlike the 1957 laws, this program includes the management of school funds just like all other county funds, although the commissioner of education may remove the school department if records are not properly maintained in a timely manner. T.C.A. § 5-21-124.

This system requires a county financial management committee consisting of the county mayor, supervisor of highways, superintendent of education (director of schools), and four members elected by the county legislative body. These latter four need not be members of the county legislative body, but may be. T.C.A. § 5-21-104(b). The committee establishes policies, procedures, and regulations to implement a sound, efficient county financial system. T.C.A. § 5-21-104(e). Additionally the county legislative body, by resolution, may create special committees or may authorize the financial management committee to assume any or all of the following functions: (1) budgeting, (2) investment, and (3) purchasing. T.C.A. § 5-21-105.

The county financial management committee appoints a director of finance. Minimum requirements for this position include a bachelor of science degree with at least 18 quarter hours in accounting, although the committee may select a person with two years of acceptable experience in a related position. T.C.A. § 5-21-106. The compensation of the director is established by the committee subject to the approval of the county legislative body. T.C.A. § 5-21-106(c). The director oversees the operation of the department of finance and installs and maintains a purchasing, payroll, budgeting, accounting, and cash management system for the county. T.C.A. § 5-21-107. The director must have a blanket bond of at least $50,000 for the faithful performance of the director's duties. T.C.A. § 5-21-109.

The department of finance, under the supervision of the director and subject to the policies and regulations of the county financial management committee, is responsible for the following areas:

1. Budgeting: T.C.A. §§ 5-21-110 through 5-21-114;
2. Accounting Fiscal Procedures: T.C.A. §§ 5-21-115 through 5-21-116;
3. Payroll Account: T.C.A. § 5-21-117;
4. Purchasing: T.C.A. §§ 5-21-118 through 5-21-120;
5. Conflict of Interest - Improper Gifts: T.C.A. § 5-21-121; and
6. Compensation of Committee Members: T.C.A. § 5-21-122.

This system is to be installed within 13 months, beginning on July 1 of the fiscal year after its adoption and being completed by August 1 of the second fiscal year. T.C.A. § 5-21-127.

<u>Fiscal Control Acts of 1957</u>. The Fiscal Control Acts of 1957, found in T.C.A. §§ 5-12-101 through 5-14-116, were intended to provide a means for counties to consolidate

functions, establish uniform financial procedures, and incorporate business practices into the management of county finances. They are divided into three separate acts: budgeting, accounting, and purchasing. A county may enact any or all of the three acts; however, it is difficult to implement fewer than all three acts because each refers to certain provisions of the others. These acts, either individually or together, are adopted by a two-thirds (2/3) vote of the county legislative body or by a majority public vote in a referendum.

If these acts are adopted, all funds managed by the county mayor and the highway supervisor are automatically covered by them. School funds may be placed under the management of these acts only if the state commissioner of education approves the transfer. T.C.A. § 5-13-110.

County Budgeting Law of 1957. This act is found in T.C.A. §§ 5-12-101 through 5-12-114. If adopted by a county, it provides for a budget committee made up of five members who include the county mayor as well as four others appointed by the county mayor and confirmed by the county legislative body. The four appointed members may be members of the county legislative body but are not required to be. The county mayor serves as chairperson of this committee. T.C.A. § 5-12-104. The budget committee performs all duties prescribed by law for the budgeting process, including preparation and control. T.C.A. §§ 5-12-104, 5-12-106, and 5-12-107. Each year while the budget is under consideration, a synopsis of the proposed budget and property tax rate are to be published in a newspaper of general circulation. T.C.A. § 5-12-108. Then the director of accounts and budgets (appointed under T.C.A. § 5-13-103 of the County Fiscal Procedure Law, discussed below) prepares a monthly report showing the condition of the budget and submits this report to the county mayor and the county legislative body. T.C.A. § 5-12-111.

County Fiscal Procedure Law of 1957. This act, found in T.C.A. §§ 5-13-101 through 5-13-111, pertains to accounting for county funds. If this act is adopted by a county, the county mayor, subject to approval by the county legislative body, appoints a director of accounts and budgets (DAB). T.C.A. § 5-13-103(a). The DAB must be qualified by training and experience in the field of accounting to perform the duties of the office. The salary of the DAB cannot be in excess of those salaries allowed county officials in accordance with T.C.A. §§ 8-24-101 and 8-24-102. T.C.A. § 5-13-103(d). The duties and responsibilities of the DAB are established by the county mayor (T.C.A. § 5-13-103(e)) and delineated in T.C.A. § 5-13-105. The corporate surety bond for the DAB cannot be less than $10,000 nor more than $25,000. T.C.A. § 5-13-103(c).

The DAB administers a centralized system of accounting and fiscal procedure for the county. T.C.A. § 5-13-104. The DAB also has the duty to verify all claims against the county and to prepare and sign disbursement warrants only after a careful pre-audit of all invoices and verification by the department head receiving the merchandise. T.C.A. §§ 5-13-105, 5-13-107. At the end of each month the DAB prepares a comprehensive report of all revenues and expenditures of the county and presents it to the county legislative body. T.C.A. § 5-13-105(f).

County Purchasing Law of 1957. This act is found in T.C.A. §§ 5-14-101 through 5-14-116. If adopted, it establishes procedures for county purchasing. Under this act the county mayor appoints a purchasing agent, subject to the approval of the county legislative body. The purchasing agent must be qualified by training and experience to perform the required duties. T.C.A. § 5-14-103. The person appointed as purchasing agent must have a corporate surety bond of not less than $10,000 nor more than $25,000. The salary is not to be in excess of amounts paid to other county officials as prescribed in T.C.A. §§ 8-24-101 and 8-24-102. T.C.A. § 5-14-103(d). The director of accounts and budgets may also serve as the purchasing agent. The primary duties of the purchasing agent are to (1) purchase all supplies, materials, equipment, and contractual services, (2) arrange for rental of all machinery, buildings, and equipment, (3) transfer materials, supplies, and equipment between county departments, and (4) supervise the central storeroom. T.C.A. §§ 5-14-105, 5-14-107, 5-14-108.

A county purchasing commission also is established, consisting of the county mayor and four other members appointed by the county mayor and approved by the county legislative body. T.C.A. § 5-14-106(b). The primary duties of the commission are to establish policies and regulations for making purchases and contracts. T.C.A. § 5-14-106(d).

Competitive bids are required for the following transactions: all purchases of and contracts for supplies, materials, equipment, and contractual services; all contracts for the lease or rental of equipment; and all sales of county-owned property that is surplus, obsolete, or unusable. Certain contracts and purchased items are exempt from this requirement, such as professional service contracts and purchases of fuel and perishable commodities. Sealed bids are required if the amount of the expenditure or sale exceeds $500 or some greater amount not exceeding $10,000 established by resolution of the county legislative body. T.C.A. § 5-14-108.

Except for emergencies, purchases and contracts are not awarded unless first certified by the director of accounts and budgets or other county official or employee in charge of the central accounting records. This certification insures that the unencumbered balance in the appropriation is sufficient to cover the expense. T.C.A. § 5-14-109. Each purchase order or contract issued or executed must be evidenced by a written order signed by the purchasing agent. T.C.A. § 5-14-111. The county is liable for the payment of all purchases made in accordance with the provisions of this act. T.C.A. § 5-14-113.

Neither the purchasing agent, members of the purchasing commission, county legislative body, nor other officials of the county may be financially interested or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order. Such persons are also prohibited from receiving, directly or indirectly, gifts or anything of value whatsoever from anyone who may be awarded a contract or purchase order from the county. T.C.A. § 5-14-114.

Financial Management Under Private Acts

Many counties have adopted private acts passed by the General Assembly that provide procedures for budgeting and purchasing. These acts apply only to the county named in the private act, and many of these acts have not been revised or updated for a number of years. Private acts of this nature should be written so that they will not conflict with the general law. If the private act is in conflict with a general law, the courts generally will hold it unconstitutional, or the state attorney general will issue an opinion that the private act is unconstitutional or constitutionally suspect under Article XI, Section 8, of the TENNESSEE CONSTITUTION. *See, e.g., Algee v. State ex rel. Makin*, 290 S.W.2d 869 (Tenn. 1956); Op. Tenn. Att'y Gen. 87-98 (May 29, 1987).

Financial Management of Fee Offices

As discussed earlier in Chapter 3, the fee offices – clerks of court, county clerk, register of deeds, and trustee – may operate on the fee system (under which office expenses are paid out of fees received) or the salary system (under which office expenses are paid from the county general fund and fees are turned over monthly). Those under the salary system are included in the county budget and operate under the procedures described above. However, the financial operation of fee offices under the fee system is similar to financial procedures commonly used by a business. Each office establishes a checking account, receives payments, makes deposits, and issues checks and receipts. The accounting system is similar to that of a business using a double-entry, general ledger system. All fees and commissions must be accurately accounted for to comply with the duties of the office. Each officer must consult the statutes codified in the *Tennessee Code Annotated* for the prescribed duties of the office and follow the accounting standards as prescribed by the state comptroller of the treasury. T.C.A. §§ 8-11-104, 9-2-102 through 9-2-105. Most of the duties of each office are recorded in Volume 3 of the *Tennessee Code Annotated*, and it is recommended that each officeholder obtain a copy of this volume or at least a copy of the Section pertaining to the office. Excess fees are turned over quarterly. T.C.A. § 8-22-104(a)(2).

Local Government Modernization Act of 2005

The Local Government Modernization Act of 2005, T.C.A. §§ 9-3-401 through 9-3-405, directs the comptroller of the treasury to determine those local governments that are not in compliance with the accounting and reporting model for financial statement presentation established by the Governmental Accounting Standards Board (GASB) in statement 34. Governments not in compliance must submit an implementation work plan to the comptroller. For counties, the county mayor will serve as the primary person with responsibility for the work plan's development and implementation.

Any local government failing to implement GASB standards by June 30, 2008 is subject to penalties and restrictions, including withdrawal of eligibility for economic and community development grants and reduction of bank excise tax and Hall income tax revenues (not to exceed 5 percent of the total amount due in any fiscal year) until the local government is in compliance. If a school system fails to comply, then it will not be

eligible for certain state funded education grants as determined by the comptroller and the commissioner of education. If a county highway department fails to comply, then the comptroller and the commissioner of revenue shall determine the amount reduction of monthly state gasoline tax proceeds going to the county. The gasoline tax proceeds reduced will be held in reserve and allocated to the county upon the county becoming compliant as determined by the comptroller.

The comptroller will provide a list of professional firms to any local government not in compliance with GASB standards to assist in the work plan. The local government must provide funds for the cost of this assistance.

The comptroller will review and evaluate the financial management system in those county governments not in compliance with GASB standards. The comptroller will then make a recommendation to the county legislative body on how to improve the system to facilitate compliance. The county legislative body has 90 days from receiving the recommendation to take action on it.

Local governments are encouraged to form an audit committee, and the comptroller may require it for local governments not in compliance with GASB standards by June 30, 2008, or having recurring findings or material weakness in internal control for three or more consecutive years. T.C.A. § 9-1-105. The audit committee, if created, must establish a process to allow employees, taxpayers, and other citizens to report confidentially any suspected illegal, improper, wasteful or fraudulent activity, and the records of the reports and investigations are declared confidential. T.C.A. § 9-3-406.

Checks

County officials are authorized under T.C.A. § 9-1-108 to receive checks or money orders made payable to the appropriate county officer in payment of any public taxes, licenses, fines, fees or other moneys collected. A county official or employee authorized to receive checks or similar sight orders cannot require or encourage the drawer of the check or order to make the check or order payable to a personal name, as opposed to the name of the government or agency or the official's name and title. T.C.A. § 9-1-117.

If a check or money order is not duly paid, the person by whom the check or money order was tendered remains liable for all taxes, licenses, fees or other obligations and all penalties and interest to the same extent as if the check or money order had not been tendered. In addition to any other penalties provided by law, if a check or money order is not paid, upon written notice and demand sent by the official, the person who tendered the check or money order is required to pay a penalty of 1 percent of the amount of the check or money order, except that if the check or money order is for less than $2,000 the penalty is $20 or the amount of the check, whichever is less. T.C.A. § 9-1-109. Additionally, a handling charge may be assessed against the maker or drawer of the check with insufficient funds in an amount up to $30. T.C.A. § 47-29-102.

Individuals who knowingly tender a worthless check in payment of any fee, fine, taxes, or other obligation to a governmental entity may be criminally prosecuted under

Tennessee's worthless check law, T.C.A. § 39-14-121. Criminal fees in worthless check prosecutions are set out in T.C.A. § 40-3-204. Before commencing a criminal prosecution in a bad check case, the county officer who has received a bad check may apply to the clerk of the court of general criminal jurisdiction in the county where the offense occurred for participation in the bad check restitution program under T.C.A. § 40-3-203. The official completes an application form and pays a fee of $10. The clerk forwards the form to the district attorney general, who sends a letter to the last known address of the violator stating that unless the amount of the check plus the application fee and a handling charge of $10 is paid to the holder of the check within 15 days, a criminal prosecution may be commenced. The application fee is forwarded by the clerk to the county trustee with the clerk retaining $5 as a fee for handling. If the violator does not pay the check and is ultimately convicted of a criminal charge, any order directing the defendant to pay the holder the amount due on the check shall also direct the defendant to reimburse the application fee paid as well as to pay to the holder a handling fee of $10. All of these criminal fees are in addition to the fees provided in other statutes. T.C.A. § 40-3-210. Alternatively, T.C.A. § 47-29-101 governs civil actions brought upon bad checks; however, an election must be made whether to pursue a claim under this Section or under T.C.A. § 39-14-121. T.C.A. § 47-29-101(e).

Credit Cards

County officials or entities may (but are not required to) receive payment by credit card or debit card for any public taxes, licenses, fines, fees or other monies collected. The entity or official collecting payment by credit or debit card must collect a processing fee in an amount equal to the fee charged by the third-party processor for processing the payment, but not exceeding 5 percent of the amount of the payment. The amount or percentage of the processing fee must be stated on the notice sent to the person owing the tax, fine, fee or other money. This processing fee may be waived, however, with approval of the county legislative body. T.C.A. § 9-1-108(c). If payment is not honored by the credit card company or the entity upon which a debit card payment is drawn, the county entity or official may collect a service charge in the same amount charged for the collection of a check drawn on an account with insufficient funds. T.C.A. § 9-1-108(c)(4).

Acceptance of payments by credit cards for clerks of court and county clerks is also authorized under T.C.A. § 8-21-107. Acceptance of credit card or debit card payments for taxes collected by trustees is also covered in T.C.A. §67-1-704. Both of these statutes are substantially the same as T.C.A. § 9-1-108, discussed above.

In credit or debit card transactions, no more than the last five digits of the card number may be printed on the receipt. T.C.A. § 47-18-126.

Disposition of Surplus County Property

Generally, the county legislative body may by resolution direct the sale and conveyance of county real property and personal property other than school property. T.C.A. § 5-7-101. However, in those counties operating pursuant to the County Purchasing Law of

1957, property that is declared surplus, obsolete or unusable must be disposed of by the purchasing agent either by sale at auction or by competitive bid, excepting books and other material in general circulation at a county public library. T.C.A. 5-14-108(o). In counties operating under the County Financial Management System of 1981, the director of finance has responsibility for the public sale of all surplus materials, equipment, buildings and land. T.C.A. § 5-21-118. The county board of education has the authority to determine the sale or transfer of county school property, both real and personal. Surplus school personal property valued at $250 or more is sold to the highest bidder unless sold or transferred to a local government. The county board of education may transfer surplus real property to the county or to a municipality within the county without sale or competitive bidding. T.C.A. §§ 49-6-2006, -2007. All counties may sell surplus property by internet auction whenever they are required by law or their charter to sell surplus property by public auction. T.C.A. § 5-1-128.

Notwithstanding any other laws to the contrary, T.C.A. § 12-3-1005 authorizes counties to establish a procedure by resolution of the governing body for the disposition of used or surplus personal property to other governmental entities, including but not limited to other counties, municipalities, metropolitan governments, state or federal government, any other state governments and their political subdivisions, and instrumentalities of the foregoing, without the necessity of public advertisement or competitive bidding, upon such terms as the governing body may authorize. T.C.A. § 12-3-1005.

Under T.C.A. § 12-9-110, public agencies, including county legislative bodies and boards of education, have broad power to convey or transfer both real property and personal property to other public entities without sale or competitive bidding. The conveyance may be made by an agreement between the governing bodies of the public agencies authorizing the conveyance and determining that the terms and conditions are appropriate. The public agency or agencies receiving the conveyance or transfer must use the property for a public purpose. This provision may be used without declaring property surplus, and it supersedes any contrary requirements in any other general law or private act. T.C.A. § 12-9-110.

Auditing

In Tennessee, the records of all local governments must be audited annually. T.C.A. § 9-3-211. The state comptroller of the treasury through the Division of County Audit is given the authority to establish accounting standards (T.C.A. §§ 5-8-501, 9-3-212(b)) and auditing standards. T.C.A. § 9-3-212(b). The county legislative body contracts with a certified public accountant or the state Division of County Audit to make the annual audit. T.C.A. § 9-3-212. However, the county must receive approval of a private auditor from the Division of County Audit and comply with other requirements of that office. The contract cost to use the state department of audit is $0.30 cents for each person in the county based on the most recent federal census. T.C.A. § 9-3-210. Regardless of who performs the audit, a certified copy of it must be submitted to the state comptroller. T.C.A. § 9-3-213. In the event state-shared funds are misappropriated or misused, the state is authorized to withhold state funds for the amount misused. Also, the state may collect on the individual official's surety bond if the misused funds result from that

official's unlawful or dishonest acts. T.C.A. §§ 9-3-301, 9-3-302. If a public servant, with intent to deceive, to knowingly misrepresents information to an auditor, this action constitutes a Class C misdemeanor. T.C.A. § 39-16-407.

CHAPTER 13

COUNTY FINANCING OF CAPITAL PROJECTS AND DEBT RETIREMENT

Capital Projects

Capital projects include purchases of land, buildings, and equipment; construction of buildings, roads, and bridges; renovation of buildings; and other such improvements that last for many years. Just as in the business world, governmental financing of capital projects involves short-term financing in the form of notes and permanent financing in the form of long-term notes or bonds. In some rare cases, counties levy taxes to fund capital projects. Regardless of the type of financing, the county legislative body must authorize the funding of such projects. Once the method of financing the capital project is approved, the county legislative body must establish a means of paying the principal and interest on the debt created. This process involves establishing of a debt service fund (sometimes referred to as a debt retirement or sinking fund) and imposing a tax or taxes, frequently the property tax or local option sales tax, to retire the debt.

Several steps are involved in initiating a capital project, often beginning with an architect or engineer. When a county decides that a capital project is necessary, the county legislative body may adopt a resolution authorizing funds to contract with an architect, engineer, or consultant service to prepare preliminary plans and cost estimates. According to T.C.A. § 62-2-107, all contracts for construction and maintenance exceeding $25,000 must be under the supervision of a licensed architect or engineer.

Unless the county has the staff and expertise, the services of a financial advisor or bond fiscal agent may be helpful. T.C.A. § 9-21-110. An agent of this type can be of assistance to the county in preparing financial statements, legal opinions, and proper resolutions, in advertising the sale of the notes or bonds, in assisting the county in the timing of the issue, and in seeking bids for issuance. Financial advisors, bond placement agents and underwriters are required to file with the county an estimate of the cost of any debt issuance, including financial advisory fees and related fees and costs before the placement agent or underwriter enters into a bond purchase agreement or bond placement agreement with the county. T.C.A. § 9-21-151. If a county wishes to engage the services of a financial advisor, it is recommended that the county use a Request for Proposals (RFP); CTAS staff can assist the county with preparation of the RFP and solicitation of proposals.

If the county authorizes funding of bonds or notes without the assistance of a financial advisor, the county should call upon the director of local finance in the state comptroller's office or the CTAS county government consultant to provide assistance with the necessary resolutions to authorize the funding. CTAS staff may help the county in the planning stage to determine the projected cost of a debt retirement plan and projected funding sources to retire the debt.

There are many statutes authorizing both long-term notes and bonds, as well as short-term financing notes. Counties must review their financing requirements to determine

which type of bonds or notes would be best for the capital project being considered. In this Chapter we will attempt to summarize the different types of bonds and notes and to give an overview of their uses. However, before considering any bond or note issue, counties are urged to seek the assistance of a financial advisor, the director of local finance in the state comptroller's office, or the CTAS county government consultant for the area.

Limit on Amount of Outstanding Debt

Since nearly all services rendered by the county are required by the state and require sizeable investments in capital improvements, counties are not limited as to the amount of indebtedness. T.C.A. § 9-21-103. However, when a county's debt ratio of outstanding debt to property values exceeds the state average or a national standard recognized by firms who trade municipal bonds, the county may pay a higher interest rate or be unable to issue additional bonds. When a county faces this problem, the county's financial advisor can offer alternatives to fund proposed projects.

Types of Funding

Bonds Issued Under Local Government Public Obligations Act of 1986. This act is codified in T.C.A. §§ 9-21-101 through 9-21-1017. Its purpose was to consolidate statutes pertaining to debt obligations of the county and to provide a uniform and comprehensive statutory framework authorizing any local government to issue long-term debt to fund costly capital improvement projects.

Authorized purposes for issuing notes and bonds are listed under T.C.A. § 9-21-105(20). Also, any local government may issue general obligation bonds under this act for certain unfunded pension obligations if approved by the state funding board after receiving a recommendation by the state director of local finance. T.C.A. § 9-21-127. The powers of local governments are described in T.C.A. § 9-21-107. All interest income received by investors buying notes or bonds issued under this act is generally exempt from federal income taxes, and by statute, exempt from all state, county, and municipal taxation except inheritance, transfer, and estate taxes. T.C.A. § 9-21-117. However, there are federal restrictions regarding earnings from borrowed funds, so it is important for counties to consult with a financial advisor regarding these arbitrage regulations.

All notes issued under this act must first be authorized by resolution adopted by the county legislative body and then approved by the state director of local finance, a division of the state comptroller of the treasury. Before the director of local finance will approve notes, the county must adopt a balanced budget, which must also be approved by this same director. T.C.A. §§ 9-21-403, 9-21-404.

The bonds and notes that can be issued under the Local Government Public Obligations Act are as follows:

1. *General Obligation Bonds*. T.C.A. §§ 9-21-201 through 9-21-216. Upon the issuance of a general obligation (GO) bond, the county pledges the full

faith, credit, and unlimited taxing power of the county as to all taxable property in the county or a designated portion of the county. T.C.A. § 9-21-201. These bonds may be issued with a maturity of up to 40 years; however, investors usually prefer 15 to 20 years. T.C.A. § 9-21-213(a). Counties are generally mandated to provide various services and are given the power to provide funding for these services, with certain restrictions. Under this act, registered voters may petition the county for an election on the issuance of the proposed bonds. T.C.A. § 9-21-207. Also, the county legislative body may hold a voluntary election. T.C.A. § 9- 21-208.

2. *Revenue Bonds*. T.C.A. §§ 9-21-301 through 9-21-316. When revenue bonds are issued, the income or revenues from the project are pledged to secure the debt. Usually, these bonds are issued for water and sewer projects or similar revenue-producing services.

3. *Refunding Bonds - General Obligation and Revenue*. T.C.A. §§ 9-21-901 through 9-21-1017. When general obligation or revenue bonds are issued at high interest rates, they will have a callable feature allowing the county to recall the unpaid bonds or notes. In order to have funds to recall these bonds or notes, the county may issue refunding bonds. These bonds use the same pledge for security and replace the original issue with a lower rate of interest. By issuing the refunding bonds at a lower rate of interest, the county will save by paying less interest over the remaining term of the issue.

4. *Bond Anticipation Notes*. T.C.A. §§ 9-21-501 through 9-21-505. Another method used to avoid paying high interest rates is to issue bond anticipation notes for up to six years in two year intervals. Using these notes allows the county time to wait for better interest rates or marketing conditions.

5. *Capital Outlay Notes*. T.C.A. §§ 9-21-601 through 9-21-611. Capital outlay notes are used by local governments to fund many types of capital improvement projects. The notes may be issued initially for a period not to exceed the end of the third fiscal year following the fiscal year in which the notes were issued, then renewed for two more such periods not exceeding three years each with the approval of the state director of local finance. At least one-ninth of the original principal amount of these notes must be retired each year, unless this requirement is waived by the state director of local finance. T.C.A. § 9-21-604. Notes also may be issued for more than three but no longer than the 12th fiscal year following the fiscal year in which the notes were issued. T.C.A. § 9-21-608. Issues of 12-year notes totaling less than $2 million may be sold at competitive sale or through the informal bid process described in the statute; notes totaling more than $2 million must be sold by competitive sale. T.C.A. § 9-21-608. A major

advantage of issuing capital outlay notes is that the service of a fiscal advisor may not be needed.

6. *Grant Anticipation Notes*. T.C.A. §§ 9-21-701 through 9-21-705. Whenever the county has a contract to receive a grant from the federal or state government, the county can issue grant anticipation notes of up to three years, or for longer specified periods with the approval of the state director of local finance, secured by the funds to be received under the grant. T.C.A. § 9-21-705.

7. *Tax (Revenue) Anticipation Notes*. T.C.A. §§ 9-21-801 through 9-21-803. Whenever cash flow is not sufficient to meet current expenses, which usually occurs as a result of inadequate accumulated fund balances, the county may issue revenue anticipation notes, subject to the approval of the state director of local finance. An important point: These notes must be paid off by June 30th of the fiscal year in which they are issued. This requirement insures against the approval of a deficit budget.

School Bonds. While bonds for school capital purposes can be issued under the Local Government Public Obligations Act, many school bonds are issued under the authority of the school laws. T.C.A. §§ 49-3-1001 through 49-3-1110. These bonds can be issued for almost any school capital project: to purchase property, to erect or repair school buildings, to furnish and equip school buildings, and to refund, call, or make payments of principal and interest on previously issued bonds, as well as to contribute or make grants to state education facilities within the county or in neighboring counties. T.C.A. § 49-3-1004. They may also be issued for the purchase of buses. T.C.A. § 49-3-1006.

These bonds are general obligation bonds, backed by the full faith and credit of the county and by its taxing authority. T.C.A. § 49-3-1005. Only one resolution of the county legislative body is necessary to authorize the issuance of this type of bond. T.C.A. § 49-3-1002. School bonds are not subject to a referendum upon petition as are general obligation bonds under the Local Government Public Obligation Act; however, the county legislative body has the authority to call for a referendum by resolution to ascertain the will of the people regarding the issue. T.C.A. § 49-2-101(5). But, since the county is required to provide public education according to state laws and regulations and is frequently under a mandate to correct deficiencies, such a referendum may serve no real purpose.

School bonds may be issued for a period of up to 40 years; however, market conditions often dictate that the bonds mature in 15 to 20 years.

The law requires counties containing city schools or special school districts to distribute the proceeds from a bond issue for school capital purposes on an average daily attendance basis, unless a tax district outside the city or special school district is established. T.C.A. §§ 49-3-1003, 49-3-1005. If a tax district is not established, city systems and special school districts are entitled to a proportional share of the proceeds

of a school bond issue, or they may waive their rights to such a share. T.C.A. §§ 49-3-1003, 49-3-1005. If a tax district is established so that the school bonds are payable only from funds collected outside the city or special district, then the city or special school districts do not share in the proceeds. T.C.A. § 49-3-1005(b)(2). The same sharing rules now apply to capital outlay notes and bonds issued for school capital purposes under the Local Government Public Obligations Law. However, the disposition of proceeds of any capital outlay notes issued prior to January 15, 1998, without sharing is valid unless the disposition was challenged in court before January 15, 1998. T.C.A. §§ 9-21-120, 9-21-129.

Tennessee Local Development Authority Loans. The Tennessee Local Development Authority (T.C.A. § 4-31-101 *et seq*.) – made up of the governor, secretary of state, state treasurer, comptroller of the treasury, and commissioner of finance and administration – has statutory authority to borrow money in the name of the state and on the credit of the state, allowing it to lend funds to local governments for the following purposes:

1. Correctional facilities. T.C.A. §§ 4-31-102(5), 4-31-401 through 4-31-415.
2. Construction of sewage treatment works. T.C.A. §§ 4-31-102(5), 4-31-401 through 4-31-415.
3. Waterworks. T.C.A. §§ 4-31-102(5), 4-31-401 through 4-31-415.
4. Energy recovery facilities. T.C.A. §§ 4-31-102(5), 4-31-401 through 4-31-415.
5. Solid waste resource recovery facilities. T.C.A. §§ 4-31-102(5), 4-31-401 through 4-31-415.
6. Agriculture development. T.C.A. §§ 4-31-201 through 4-31-206.
7. Industrial development. T.C.A. §§ 4-31-301 through 4-31-308.
8. Rural fire protection equipment. T.C.A. §§ 4-31-501 through 4-31-516.
9. Airports. T.C.A. §§ 4-31-601 through 4-31-615.
10. Health facilities. T.C.A. §§ 4-31-201(5), 4-31-401 through 4-31-415, 4-31-701 through 4-31-711.

In order to borrow from the state, a local government is required to pledge its allocation of state-shared taxes to the state for the annual interest and principal payments in case the county defaults on its obligation to pay.

The Tennessee Local Development Authority, in conjunction with the Tennessee Department of Education, is authorized to develop an enhancement program whereby the authority lends funds to eligible local governments for education capital outlay purposes. Each local government issuing debt under this program, as well as any local education agency for which such debt is issued, is empowered to assign or pledge to the authority for the repayment of the loan available local capital outlay funds, including the state share of the capital outlay portion of the nonclassroom component of BEP funding.

Economic Development Bonds. There are several statutes that provide for commercial or industrial development within counties through the issuance of county bonds.

Counties may use the Local Government Public Obligations Act to issue such bonds. T.C.A. § 9-21-101 *et seq*. However, counties frequently use the authority granted to industrial development corporations or through the Industrial Building Bond Act of 1955.

Industrial Development Corporations. Most bonds for economic development at the city and county level are issued under the authority of industrial development corporations. The statutory authority for this type of bond issue is T.C.A. §§ 7-53-101 through 7-53-311. It is important to note that the Federal Tax Reform Act of 1986 limited the use of economic development bonds, which exempt interest from federal income taxation. *See* also T.C.A. §§ 9-20-101 through 9-20-106 for the state law on allocation of private activity bonds.

A county may authorize an industrial development corporation through a resolution of the county legislative body. T.C.A. §§ 7-53-201 through 7-53-204. Then the county legislative body appoints at least seven directors to the county-sponsored board who are responsible for authorizing all industrial development bonds and notes. T.C.A. § 7-53-301. An officer of a municipality, city manager, or other comparable chief administrative officer of a municipality may serve on the board of directors of a joint industrial development corporation, however, no other employee is eligible to serve.

The county is not liable for the principal or interest on any bonds issued through the corporation; however, the county may pledge its full faith and credit as surety on a bond issue, provided three-fourths of the county's voters approve the pledge. T.C.A. § 7-53-306. The pledge cannot exceed 10 percent of the total assessed valuation of the property of the county. T.C.A. § 7-53-307. Additionally, industrial development corporations may secure debt or obligations of their lessees. T.C.A. § 7-53-302.

After the corporation is established, a business or manufacturer desiring to move to the county or expand its facilities there contacts the industrial development board, usually through an attorney. Normally this contact is made after the business has a commitment from a financial institution to authorize the issuance of notes or bonds. Then, with the approval of the financial institution, a trustee is set up to receive the proceeds from the issue and to disburse the funds for the intended purpose. Once the project is completed, the borrower business makes regular payments to the trustee to amortize the principal and interest. The reason for issuing the bonds through a nonprofit governmental corporation is that the interest income to the lender is tax exempt. This feature will reduce the cost to the business for interest expense.

The business seeking the loan may borrow the principal through the corporation as a loan, or it may lease the property through the corporation. T.C.A. § 7-53-101. If the business borrows the principal through the industrial development corporation, then the property is owned in the name of the business, and property taxes are paid by the business as with any other commercial or industrial taxpayer. If it is a lease arrangement, the ownership of the property may be transferred to the business upon payment of the outstanding debt. In a lease arrangement through the corporation, the business does not pay real property taxes since the property is owned by the tax-

exempt industrial development corporation, although the county may receive payments in lieu of property taxes. T.C.A. § 7-53-305.

Industrial development bonds may be issued for almost any industrial or business purpose as long as it complies with federal Internal Revenue regulations and T.C.A. § 7-53-101(11), and with the allocation limitation established by the state Department of Economic and Community Development under federal guidelines for income tax exempt bonds.

Industrial Building Bond Act of 1955. Bonds issued under this act are general obligation bonds of the county for which the full faith and credit and unlimited taxing power of the county are pledged in the event that rental income from the business is not sufficient to retire the debt. T.C.A. § 7-55-111. Before the bonds are issued, however, they must be approved by a three-fourths majority of the county's registered voters. T.C.A. § 7-55-107. The authority for this type of bond issue is found in T.C.A. §§ 7-55-101 through 7-55-116.

Industrial Building Revenue Bond Act. This act, found in T.C.A. §§ 7-37-101 through 7-37-116, allows the county to issue industrial bonds by pledging only the rental income from the business. Although there is no liability to the county, the voters must approve the issue by a three-fourths majority.

Other Bonds. There are many other statutes that authorize the county to issue bonds. The list below includes many of them:

1. Airports. T.C.A. §§ 42-5-101 through 42-5-205.
2. Conservation of Natural Resources and Public Recreation. T.C.A. §§ 11-21-101 through 11-21-109.
3. Drainage Projects. T.C.A. §§ 69-6-101 through 69-6-1303.
4. Electrical Plants. T.C.A. § 7-52-103.
5. Electric Power Acquisition (revenue bonds). T.C.A. §§ 7-34-102, 7-34-104.
6. Fords, Ferries and Bridges. T.C.A. §§ 54-11-101 through 54-11-308.
7. Forestry Land. T.C.A. §§ 11-23-101 through 11-23-105.
8. Garbage and Disposal Services. T.C.A. § 5-19-111.
9. Highways. T.C.A. §§ 54-9-101 through 54-9-212.
10. Housing Projects. T.C.A. §§ 7-60-101 through 7-60-217; T.C.A. §§ 13-20-501 through 13-20-614.
11. Hospitals, Metropolitan Government. T.C.A. §§ 7-57-101 through 7-57-404.
12. Levees. T.C.A. §§ 69-5-101 through 69-5-108.
13. Libraries. T.C.A. §§ 10-3-101 through 10-3-111.
14. Medical Arts Buildings. T.C.A. §§ 68-11-605 through 68-11-615.
15. Public Building Authority. T.C.A. §§ 12-10-110 through 12-10-122.
16. Recreational Land Facilities. T.C.A. §§ 11-24-103 through 11-24-110.
17. Road Improvement Districts. T.C.A. §§ 54-12-101 through 54-12-426.
18. Solid Waste Disposal. T.C.A. §§ 68-211-901 through 68-211-925.

19. Transportation System (Transit). T.C.A. §§ 7-56-101 through 7-56-109.
20. Transportation System (Rail). T.C.A. §§ 7-56-201 through 7-56-213.
21. Urban Type Public Facilities (Sewer lines, incinerators, water pipelines, and docks). T.C.A. § 5-16-106.
22. Veterans Memorials. T.C.A. §§ 58-4-208 through 58-4-218.
23. Voting Machines. T.C.A. § 2-9-111 (State Financing: T.C.A. § 2-9-112).
24. Water Supply and Waste Treatment. T.C.A. §§ 68-221-101 through 68-221-1015.
25. Watershed Districts and Projects. T.C.A. §§ 69-7-101 through 69-7-149.

Special Financing of County Obligations

When county funds are not properly managed or when economic conditions cause the reduction of revenue sources for the current budget, the county may be forced to issue funding bonds or to seek state emergency loans.

Funding Bonds. Funding bonds are authorized in T.C.A. §§ 9-11-101 through 9-11-119. When a county does not have cash to operate the services authorized by the county or to pay outstanding debts, whether as a result of exceeding the budget authorization or failure of estimated taxes and revenues to materialize, funding bonds may be issued in order to keep the county on a "cash basis." T.C.A. § 9-11-103. All warrants, notes, other indebtedness, and interest that should have been paid at the end of the fiscal year but were unpaid may be funded with the use of funding bonds. T.C.A. § 9-11-103. In order to issue funding bonds, the county legislative body passes a bond order and publishes it for two consecutive weeks. T.C.A. § 9-11-104, 9-11-105. After the bond order is passed, the county legislative body must then pass the proper resolution authorizing the issuance of the funding bonds. T.C.A. § 9-11-107. Finally, the county must submit a financial statement and application, along with the bond order and resolution, to the state director of local finance for approval. T.C.A. § 9-11-108.

State Emergency Loans. These loans are provided for in T.C.A. §§ 9-13-101 through 9-13-107 and T.C.A. § 9-13-201 *et seq*. A prerequisite for a loan under the first Section is a determination by the state Board of Equalization that a county has incurred unanticipated revenue losses resulting from court decrees that have reduced the assessments of railroad or public utility properties. T.C.A. § 9-13-102. The state board is to consider the fiscal condition of the county to determine the necessity for the loan. T.C.A. § 9-13-104. Under T.C.A. § 9-13-201 *et seq*., the state can provide loans to counties under unusual financial stress. Under this law, all of the county's financial activities are supervised by the state director of the Division of Local Finance until the emergency loans are repaid.

Economic Adjustment Financing. Authorization for this type of assistance is found in T.C.A. §§ 9-14-101 through 9-14-108. "Local governments are authorized to participate cooperatively with the state and federal governments in activities designed to alleviate or moderate existing or potential conditions of severe economic adjustment, resulting from termination or closure of major industries or firms, . . . and major disasters." The act describes various methods of funding such projects.

Debt Retirement

To make annual payments on bonds or notes issued by the county or loans received from the state, a debt retirement fund (a separate account with the county trustee) is established to receive taxes and other revenues for paying the annual interest and principal of these obligations. Before a county's budget is approved by the state director of local finance or before new bonds or notes can be issued, the county must provide for the annual payment of the outstanding principal and interest. It is very important when planning capital improvements that the annual funding of the debt be projected. It is best to set the tax rate when the bonds or notes are issued so that the people can see the benefits as well as the costs.

Leases for Capital Improvement Projects

In addition to obtaining property through the funding methods discussed above, county governments also have the authority to enter into contracts, leases, or lease-purchase agreements. T.C.A. § 7-51-901 *et seq*. Leases for capital improvement property cannot exceed 40 years or the useful life of the project and must be approved by the county governing body. T.C.A. §§ 7-51-902 through 7-51-904. If the term of any lease exceeds five years, public notice of the meeting at which the project will be discussed must be given at least seven days prior to the meeting. T.C.A. § 7-51-904.

Summary

Capital improvements are necessary for providing mandated county services. When county officials attempt to delay the construction of schools, jails, and other capital improvements, they add to the problems and increase the cost to all county taxpayers. It is best to realize that capital improvements are just as necessary as the costs of salaries, supplies, and other expenses. Since buildings and equipment must be replaced, the county should have a capital improvements program and financing plan to minimize the impact of such needs and to maintain a high level of service.

CHAPTER 14

COURTS

> "The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish."

TENN. CONST., art. VI, § 1.

Tennessee Supreme Court

Organization. The Supreme Court consists of five justices and no more than two shall reside in any one of the grand divisions. A Supreme Court Justices must be 35 years old, a Tennessee resident for five years, and licensed to practice law in Tennessee. The justices designate their chief justice. The Supreme Court holds court in Knoxville, Nashville and Jackson, but it may be held in other places as the chief justice may designate. However, the Supreme Court must hold court at Knoxville on the second Monday in September, at Nashville on the first Monday in December, and at Jackson on the first Monday in April. Tenn. Const., art. VI, §§ 2, 3; T.C.A. §§ 17-1-106(a), 16-2-102, 16-2-103.

Jurisdiction. The Supreme Court's jurisdiction "shall be appellate only, under such restrictions and regulations as may from time to time be prescribed by law; but it may possess such other jurisdiction as is now conferred by law on the present Supreme Court." Tenn. Const., art. VI, § 2. The court lacks original jurisdiction in any matter, and the legislature lacks authority to confer original jurisdiction upon it. In re Bowers, 192 S.W. 919 (Tenn. 1917). Accordingly, the court may not try cases de novo, *Simm v. Doughtery*, 210 S.W.2d 486 (Tenn. 1948); or render advisory opinions, *Leach v. State*, 491 S.W.2d 81 (Tenn. 1973).

Direct appeals may be taken from the trial court to the Supreme Court only if authorized by statute. However, an appeal by permission may be taken from an appellate court's final decision only upon application and in the court's discretion. Direct appeals may be taken to the Supreme Court in the following cases:

1. Workers' compensation cases. T.C.A. §§ 16-4-108, 50-6-225;
2. Expedited appeals regarding denial of consent for abortion to minors. T.C.A. § 37-10-304(g); and
3. Disciplinary actions involving attorneys. T.C.A. § 23-3-204.

Court of Appeals

Organization. The Court of Appeals is the appellate court for civil cases in Tennessee and consists of 12 judges, of whom not more than four shall reside in one grand division. T.C.A. § 16-4-102. An appellate judge must be 30 years old, a Tennessee resident for five years, and admitted to practice law in Tennessee. T.C.A. § 16-4-102. This court sits in sections of three judges each in Knoxville, Nashville and Jackson, and

hears and decides cases as if all 12 members were present. T.C.A. § 16-4-113. When sitting in sections of three, the concurrence of two judges is sufficient for a decision and is treated as if the entire court had participated. T.C.A. § 16-4-109. When sitting en banc (all 12 judges), the concurrence of seven judges is necessary for a decision. When two sections (eight judges) are sitting, concurrence of five judges is necessary for a decision. T.C.A. § 16-4-109. This court sits in sections concurrently in Knoxville, Nashville and Jackson as ordered by the presiding judge for such time as the court deems necessary for the dispatch of its business. T.C.A. § 16-4-112.

Jurisdiction. The court has only appellate jurisdiction and no original jurisdiction. The appellate jurisdiction extends to all civil cases, except those statutorily authorized for direct appeal to the Supreme Court. The court has appellate jurisdiction over civil or criminal contempt arising out of a civil matter. T.C.A. § 16-4-108.

Court of Criminal Appeals

Organization. The General Assembly established the Court of Criminal Appeals in 1967 pursuant to Tenn. Const., art. VI, § 1. Originally, there were seven members, but the membership was increased to nine in 1976. No more than three judges can reside in any grand division. As with the Court of Appeals, these judges must be at least 30 years of age, a five year resident of the state, and licensed to practice law in Tennessee. T.C.A. § 16-5-102. The court may sit en banc or in panels of three, five or seven judges. However, the concurrence of a majority of judges sitting is necessary for a decision. T.C.A. § 16-5-107.

Court must be held at Knoxville on the fourth Monday in June, at Nashville on the third Monday in February, and at Jackson on the second Monday in October. The court may sit at the above-mentioned places without reference to terms for the purpose of hearing and deciding cases and other matters before it, and for such time as may, in the court's judgment, be necessary for the prompt and orderly dispatch of its business. T.C.A. § 16-5-107.

Jurisdiction. Jurisdiction is appellate only, with the court having no original jurisdiction. T.C.A. § 16-5-108. Jurisdiction extends to review of final judgments of trial courts in the following cases:

1. Criminal cases, both felony and misdemeanor;

2. Habeas corpus and post-conviction proceedings attacking the validity of a final judgment of conviction or the sentence in a criminal case, and other cases or proceedings instituted with reference to or arising out of a criminal case;

3. Civil or criminal contempt proceedings arising out of a criminal matter; and

4. Extradition cases. T.C.A. § 16-5-108.

Direct appeals to the Supreme Court in criminal cases extend only to those cases expressed in the statute. However, an appeal by permission may be taken from a final decision of the Court of Criminal Appeals to the Supreme Court on application and in the court's discretion.

Trial Courts

Organization. The state trial courts were divided into 31 judicial districts in 1984. T.C.A. § 16-2-506. Circuit and chancery courts exist within each district, and some districts have separate criminal courts. Each judicial district selects a presiding judge who assigns cases to reduce delays, distributes the workload equitably, and promotes the orderly and efficient administration of justice in the district. T.C.A. § 16-2-509. The judges of each district must promulgate uniform rules of practice for that district. T.C.A.§ 16-2-511. The administrative director of the courts maintains a list of the local rules. T.C.A. § 16-2-511.

The 1984 redistricting bill abolished the "terms of court." The minutes of all courts remain open continuously. T.C.A. § 16-2-510. Court is held within each judicial district at times set by the judges of that district and within each county in the district as needed to dispose of the court's business. T.C.A. § 16-2-510.

Circuit and chancery court judges are elected for an eight-year term by the voters of the district or circuit to which they are assigned. Tenn. Const., art. VI, § 4. A judge must be 30 years old, a Tennessee resident for five years, a resident of the circuit or district for one year, Tenn. Const., art. VI, § 4, licensed to practice law in Tennessee, and eligible under the general standards to hold public office. T.C.A. §§ 17-1-106, 8-18-101.

To facilitate the handling of cases, any judge or chancellor may exercise by interchange, appointment, or designation the jurisdiction of any trial court other than that to which he was elected or appointed. T.C.A. § 16-2-502. Legislation passed in 1997 provided that any judge sitting by interchange has the same immunity as the judge he or she is replacing and that the state or county must provide the same defense, if necessary, for the substituting judge. T.C.A. § 16-1-114.

Court Clerks. The circuit court clerk, acting as the principal administrative aide to the circuit court, provides assistance in the areas of courtroom administration and records management, docket maintenance, revenue management, maintenance of court minutes, official communication and various other court-associated duties. T.C.A. Title 18, Chapters 1, 2 and 4. The clerk is elected for a four-year term. T.C.A. § 18-4-101. There is one circuit court clerk in each county.

Likewise, the clerk and master, acting as the principal administrative aide to the chancery court, provides assistance in the areas of courtroom administration and records management, docket maintenance, revenue management, maintenance of court minutes, official communication and various other court-associated duties. T.C.A., Title 18, Chapters 1, 2 and 5. The clerk is appointed by the chancellor for a six-year term. T.C.A. § 18-5-101.

In most counties, the circuit court clerk performs the duties of the criminal court clerk. However, a separate criminal court clerk's office is located in Davidson, Hamilton, Knox, and Shelby counties. For more information about court clerks, *see* Chapter 3 of this handbook.

Jurisdiction of Circuit Court. The General Assembly may establish circuit courts, and may increase or diminish the jurisdiction. TENN. CONST., art. VI, §§ 1, 8. The court has general jurisdiction in all cases where jurisdiction is not conferred on another tribunal. T.C.A. § 16-10-101. The court may hear and determine suits of an equitable nature, if there is no objection, or may transfer such cases to the chancery court. If the circuit court chooses to hear an equity case, it must determine the case upon equity principles and may exercise equitable powers. T.C.A. § 16-10-111.

The circuit court has exclusive original jurisdiction in the following cases:

1. Correction of mistakes in deeds of conveyance of land or registration thereof. T.C.A. § 66-5-107;
2. Applications to restore citizenship by persons who have been rendered infamous by judgments of any court in the state. T.C.A. §§ 16-10-104, 40-29-101;
3. All matters relating to the seizure and destruction of intoxicating liquor if the circuit court has jurisdiction in a particular county over offenses against the state liquor laws. T.C.A. § 57-9-105;
4. Eminent domain cases and *in rem* eminent domain cases brought by the
5. county, state, or United States. T.C.A. §§ 29-16-104, 29-17-601;
6. Motions to impose a $500 forfeiture upon the county trustee for certain breaches of duty, and to impose liability on the trustee and the trustee's surety for breach of duty. T.C.A. § 8-11-106 through 8-11-108;
7. Writs of mandamus to enforce the performance of any duty made incumbent by law upon the county. T.C.A. § 5-1-107;
8. Suits to condemn land for the failure to pay taxes where personal property does not satisfy the distress warrant and where the sheriff has levied upon the real estate. T.C.A. §§ 67-4-110(c), 67-4-215(c);
9. Motions to proceed against any tax collector or other officer of the state who fails to collect taxes, who fails to pay over taxes received by him, or who commits any act of neglect, misprision, misfeasance, or malfeasance in office. T.C.A. §§ 67-1-1602(b), 67-1-1623(a); and
10. Petitions by the circuit court clerk, and the sheriff in counties without a separate criminal court, requesting authority to hire deputies or assistants. T.C.A. § 8-20-101.

Unless otherwise provided, the circuit court has appellate jurisdiction of all actions of any nature instituted before any inferior jurisdiction, whether brought by appeal, certiorari, or in any other manner prescribed by law. T.C.A. § 16-10-112. An appeal may be taken to the circuit court from the judgment of the general sessions court, city judge, recorder or other officer of a municipality. T.C.A. §§ 27-5-101, 27-5-108, 6-21-508. In 1996, the legislature amended Title 4, Chapter 21, to allow the circuit court to

share jurisdiction with the chancery court over human rights actions. In 1997 the legislature also amended T.C.A. § 37-1-159 to give the circuit court appellate jurisdiction over unruly child proceedings and dependent and neglect proceedings heard in the juvenile court. In these cases, the circuit court shall try the case de novo.

Jurisdiction of Chancery Court. The General Assembly determines the chancery court's jurisdiction, and may increase, decrease, or alter its jurisdiction. TENN. CONST., art. VI, § 8. Chancery courts "shall have all the powers, privileges, and jurisdiction properly and rightfully incident to a court of equity." T.C.A. § 16-11-101. This inherent jurisdiction is original and exclusive in cases of an equitable nature, where the debt or demand exceeds $50, unless otherwise provided. It lacks jurisdiction in cases where the debt or demand is less than $50, unless otherwise specifically provided. T.C.A. § 16-11-103. Although this inherent jurisdiction is exclusive, if no objection to jurisdiction is made, a circuit court may hear and determine such suits or may transfer the suit to chancery court. T.C.A. § 16-10-111.

Chancery courts exercise inherent jurisdiction, where the debt or demand exceeds $50, in the following cases:

1. All actions resulting from accidents and mistakes;
2. All actions resulting from frauds, actual and constructive;
3. All actions resulting from trusts, express, constructive and resulting;
4. All actions for the specific performance of contracts;
5. All actions for the reformation, re-execution, rescission and surrender of written instruments;
6. All actions for an accounting, and for surcharging and falsifying accounts;
7. All actions between partners, and to wind up an insolvent partnership;
8. All actions for the administration and marshaling of assets;
9. All actions for subrogation and substitution;
10. All actions for the enforcement of liens created by mortgages, deeds of trust, sales of land on credit, or other equitable consideration;
11. All actions against minors in reference to their estates, not cognizable at law;
12. All actions by wards against guardians, executors, administrators and others, where an accounting or surcharging or falsifying an account is necessary;
13. All actions for an apportionment and contribution;
14. All actions for the marshaling of securities;
15. All actions for relief against forfeitures and penalties;
16. All actions for the redemption of land or other property;
17. All actions to have absolute deeds or bills of sale declared to be mortgages;
18. All actions for the construction and enforcement of wills and trusts;
19. All actions to obtain a set-off against a judgment in favor of a nonresident or insolvent;
20. All actions for the discovery and perpetuation of testimony;
21. All actions to compel claimants to interplead;

22. All actions for equitable attachments and receivers;
23. All actions where a *ne exeat republica* is sought;
24. All actions where an injunction is a substantial part of the relief sought;
25. All actions to remove clouds and quiet titles;
26. All actions for the establishment and execution of charities;
27. All actions for a new trial after a judgment at law;
28. All actions to have void judgments so declared, and to avoid voidable judgments;
29. All actions to execute decrees and to impeach decrees and judgments;
30. All actions to prevent the doing of an illegal or inequitable act to the injury of plaintiff's property rights, or interests, *quia timet*;
31. All actions for the exoneration or protection of sureties; and
32. All other actions where the defendant has done, or is doing, or is threatening to do, some inequitable act to the injury of the plaintiff, and there is no adequate remedy in any other court.

Gibson's Suits in Chancery (7th ed. Inman 1988), § 3.

Jurisdiction has been increased to encompass specific actions, including:

1. To aid judgment creditors to subject a debtor's property that cannot be reached by execution to the satisfaction of the judgment. T.C.A. § 16-11-104;
2. To decide all disputes between the state and corporations, their stockholders or creditors. T.C.A. § 16-11-105;
3. To aid creditors of a corporation, without obtaining a judgment at law, to attach the property of a corporation, and subject the same, by sale or otherwise, to the satisfaction of their debts, when the corporate franchises are not used, or have been granted to others. T.C.A. § 29-12-107;
4. To decide all boundary line disputes. T.C.A. § 16-11-106(a);
5. To enforce foreign judgments against the property of a nonresident debtor when the judgment creditor has exhausted his legal remedies. T.C.A. § 26-6-103 *et seq*.;
6. To approve the sale of property of a minor or disabled person. T.C.A. § 34-11-116);
7. To compel the distribution of estates where there are difficulties, complexities, or conflicting claims. T.C.A. § 30-2-710; and
8. To remove the disability of a minor. T.C.A. § 29-31-101. Concurrent Jurisdiction of Circuit and Chancery Courts. Chancery court has concurrent jurisdiction with circuit court to hear "all civil cases of action, triable in circuit court, except for unliquidated damages for injuries to person or character, and except for unliquidated damages for injuries to property not resulting from a breach of oral or written contract." T.C.A. § 16-11-102.

<u>Jurisdiction of Criminal Courts</u>. The circuit courts have "exclusive original jurisdiction of all crimes and misdemeanors, either at common law or by statute, unless otherwise

expressly provided by statute." T.C.A. § 16-10-102. The criminal and circuit courts have "original jurisdiction of all criminal matters not exclusively conferred by law on some other tribunal." T.C.A. § 40-1-108.

In addition to their original jurisdiction over felonies and misdemeanors, criminal courts have exclusive jurisdiction over special crime-related matters and noncriminal matters, including all matters relating to the seizure and destruction of intoxicating liquors when an offense against a state liquor law has been committed. T.C.A. § 57-9-105. Criminal court judges possess magistrate powers and may issue warrants for the arrest of a person charged with a public offense. T.C.A. §§ 40-5-101, 40-5-102.

Unless otherwise provided, the circuit courts have appellate jurisdiction in all criminal cases and actions originally tried in inferior courts "whether brought by appeal, certiorari, or in any other manner prescribed by law." T.C.A. § 16-10-112. Criminal courts have authority to grant extraordinary relief in appeals from courts of inferior jurisdiction. *Franks v. State*, 565 S.W.2d 36 (Tenn. Crim. App. 1977).

Criminal courts have appellate jurisdiction in post-conviction proceedings. A prisoner in custody under a state sentence may petition for post-conviction relief in the court where the conviction occurred within one year after an appeal is taken to the highest state appellate court. T.C.A. § 40-30-202. The presiding judge will assign a judge to hear the petition. However, if a presiding judge is unable to assign a judge, the chief justice of the Supreme Court will assign the judge. A competency of counsel issue may be heard by a judge other than the original judge. T.C.A. § 40-30-205.

Criminal courts were also granted appellate jurisdiction over delinquency proceedings in the juvenile court by amendments to T.C.A. § 39-1-159 passed in 1997. These appeals are tried de novo by the criminal court.

General Sessions and Other Inferior Courts

General Sessions Court. General sessions court judges must be 30 years old, a Tennessee resident for five years, a resident of the county for one year, and licensed to practice law in Tennessee. T.C.A. §§ 16-15-201, 16-15-5005, TENN. CONST., art.VI, § 4. A judge is elected to an eight-year-term. T.C.A. § 16-15-202. A non-attorney may serve as a general sessions judge only in very limited situations. T.C.A. § 16-15-5005. A county legislative body may not establish and fund additional part-time general sessions judges. The code simply allows private acts that would establish part-time general sessions judges in class 1, 2 or 3 counties. Op. Tenn. Att'y Gen. 93-52 (August 9, 1993). The circuit court clerk acts as a general sessions clerk, unless a separate clerk is created by a private act. T.C.A. § 16-15-301.

Salaries are set by general law according to population class, which differs from the population class set forth for county officials. Judges in certain classes may receive additional compensation for additional jurisdiction. However, no general sessions judge shall receive a salary greater than that of a circuit judge. T.C.A. § 16-15-5003. While annual salary adjustments are built into the law, the general salary structure for judges

may not be altered during their term. TENN. CONST., art. VI, § 7. A new term began September 1, 2006.

The compensation of the judges of courts of general sessions is determined by the administrative office of the courts (AOC) in accordance with the provisions of T.C.A. § 16-15-5003, as amended by 2006 Public Chapter 957. On September 1, 2006, each judge received an increase in the amount of $10,000 or 20% of their total annual compensation as of August 31, 2006, whichever is less, and the compensation of judges in each population classification were to be equalized in accordance with their jurisdictional supplements. In Class 1 the equalization is accomplished by raising the compensation of all judges to the salary of the highest paid judge in Class 1 who is paid under this general law. In Classes 2–7, judges with maximum supplements are raised to the compensation of the highest paid judge in that class with maximum supplements, and all other judges are grouped by jurisdiction and paid the same as the highest paid judge with the same jurisdiction in the same population class. On or before July 15, 2006, each general sessions judge was required to certify to the AOC the total amount of compensation received by the judge as of August 31, 2006, the jurisdictions exercised by such judge and the legal basis therefor, and whether the judge is compensated under the general law or a private act. The AOC thereupon reported to each judge the amount of compensation to be paid to such judge beginning September 1, 2006.

A county, by public or private act in effect on September 1, 2006, may compensate its judges in excess of the amount required under T.C.A. § 16-15-5003 (but not above state judges), but a judge is not to receive compensation based both on this general law and a private act or other public act. No judge is to be paid a salary reflecting jurisdictional supplements the judge is not entitled to exercise. No general sessions judge who engages in the private practice of law will receive any increase under this law if such judge is prohibited by law from engaging in private practice. Judges in Knox County are compensated the same as those in Davidson County under a special provision in this law. T.C.A. § 16-15-5003.

Jurisdiction of General Sessions Court. As of September 1, 2006, the jurisdictional limit of the general sessions court is $25,000 in all civil cases in all counties, except in cases of forcible entry and detainer, where the court has unlimited original jurisdiction, including jurisdiction to award an alternative money judgment. Also, the general sessions court judges have jurisdiction to issue restraining orders and enforce penalty provisions for violation of these restraining orders. 2006 Public Chapter 722; T.C.A. § 15-15-501. Attorney's fees, court costs and discretionary costs are not included in the calculation of whether a judgment entered by the general sessions court exceeds these monetary jurisdictional limits. T.C.A. §§ 16-15-501, 29-30-102. General sessions judges may issue restraining orders and enforce the penalty provisions for violating these orders. T.C.A. § 16-15-501. The court has jurisdiction to try misdemeanor cases and may issue sentences within the limits provided by law for the particular offense. T.C.A. § 40-1-109. Pursuant to T.C.A. § 40-11-204, general sessions judges also hear petitions for relief on forfeited recognizances.

In many counties, the general sessions court may have, by private or public act, other subject matter jurisdiction, including probate, domestic relations, and workers' compensation. *See* T.C.A. §§ 16-15-401, 40-6-214 (arrest warrants), 27-8-105 (certiorari), 17-2-209 (divorce interchange), 17-2-208 (interchange), and private acts relative to jurisdiction in the various counties.

Civil cases, originating in general sessions court and appealed to a higher court, shall not be dismissed for informalities, but shall be tried on the merits of the case. The higher court shall allow all amendments in the form of the action, the parties in the case, or the statement of the cause of action when necessary to reach the merits. The trial, including damages awarded, is de novo. T.C.A. § 16-15-729.

Juvenile Courts. The general sessions court, except those with a special juvenile court established by private act, has juvenile court jurisdiction. T.C.A. § 37-1-203. Every court having juvenile jurisdiction must have a sign in a conspicuous place identifying it as "Juvenile Court." T.C.A. § 37-1-206. The general sessions court when acting as juvenile court has the Title and style of "Juvenile Court of _____ County." T.C.A. § 37-1-204. However, the legislature did not intend to make the juvenile court a general sessions court. The intent was to transfer juvenile court jurisdiction to the general sessions court and to make the general sessions court a juvenile court when the subject matter before the court was within the jurisdiction conferred upon juvenile courts. *State ex rel. Winberry v. Brooks*, 670 S.W.2d 631 (Tenn. Ct. App. 1984). Only general sessions judges who are licensed to practice law in Tennessee may order commitment of a juvenile to the Department of Correction. T.C.A. § 37-1-203. If the judge is not licensed to practice in Tennessee, a lawyer-referee is appointed to handle such matters. T.C.A. § 37-1-107. The juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings arising from the 1980 Hague Convention on the Civil Aspects of International Child Abduction. T.C.A. § 37-1-104.

Pursuant to T.C.A. § 37-1-702, juvenile judges are authorized to establish a teen court program. The teen court is given the authority to conduct proceedings, receive evidence, hear testimony related to the dispositional stage and recommend disposition of the case. For any particular case, the teen court consists of five teen members chosen from a panel of 12 or more teenagers appointed by the juvenile court judge.

General Sessions Court and Interchange. Under T.C.A. § 16-15-209, general sessions and juvenile judges may interchange with each other. The substituting judge need not be a resident of the same county, but must otherwise possess the same qualifications of the absent judge. Under amendments to T.C.A. § 16-15-209 in the same public act, general sessions and juvenile judges who must be absent from court may seek a special judge. The judge must first attempt to interchange within the county, then with a current, former, or retired judge, then apply to the Administrative Office of the Courts for assistance, and finally, after exhausting these options, may appoint a lawyer from a list of qualified attorneys to serve as judge subject to certain limitations. General sessions court judges may sit by interchange for municipal court judges, but not vice versa. 2006 Public Chapter 1004 (T.C.A. Title 16, Chapter 8, Part 3).

Probate Courts. Chancery court has exclusive jurisdiction to probate wills and administer estates, unless provided otherwise by private act. T.C.A. § 16-16-201. The clerk and master exercises probate jurisdiction, unless otherwise provided.

Special Courts. Occasionally, public or private acts create courts to exercise particular jurisdiction in a county. Some counties have chosen through private acts to have separate special jurisdiction courts. As noted above, probate jurisdiction is in chancery court unless it is placed in another court by a special act. Similarly, general sessions court has juvenile jurisdiction, unless it is placed in another court by private act. Some counties have combined specialized jurisdictions to create new court titles. The clerk of these courts is designated in the private acts creating these courts. The judge's salary is determined according to the special legislation. Cases from these special inferior courts may be appealed to the circuit court for a de novo trial.

Judicial Commissioners

In most counties (and all under 200,000 population) the legislative body may elect one or more people to serve as judicial commissioners whose duties include, but are not limited to:

1. Issuing arrest and search warrants upon a finding of probable cause;
2. Issuing mittimus following compliance with lawful procedures;
3. Appointing attorneys for indigent defendants; and
4. Setting and approving bonds and the release on recognizance of defendants.

A judicial commissioner elected by the county legislative body is considered a county officer and serves a fixed term set by the county legislative body, but the term may not be longer than four years. Judicial commissioners are compensated from the county's general fund in an amount determined by the legislative body. All fees collected by judicial commissioners must be paid to the county general fund. T.C.A. § 40-1-111. No search warrant, arrest warrant or mittimus may be issued by an official whose compensation is contingent in any manner upon the issuance or nonissuance of such warrants or mittimus. T.C.A. § 40-5-106.

CHAPTER 15

PUBLIC SAFETY AND COUNTY CORRECTIONAL FACILITIES

County Fire Protection

Countywide Fire Departments. The county legislative body may form an agency to provide countywide fire protection whose powers and duties are delegated by the legislative body and provided by statute. T.C.A. §§ 5-17-101, 5-17-102. The countywide fire department is empowered to do all things necessary to provide coordinated fire protection to all areas of the county. T.C.A. § 5-17-102. The county fire chief is appointed by the county mayor subject to confirmation by the county legislative body. T.C.A. § 5-17-103. The county fire department must have one or more districts comprising the entire county outside the incorporated municipalities if property taxes are used to fund the department. However, a municipality may contract with the county for inclusion in the district. T.C.A. § 5-17-105. A county may fund protection of the unincorporated areas of the county with general fund revenues so long as the revenues were generated by situs based taxes collected in the unincorporated areas, are monies that have already been shared with municipalities, or are contributions to the county. T.C.A. § 5-17-101. The countywide fire department must prepare an annual budget of anticipated receipts and expenditures, which must be submitted to the legislative body. T.C.A. § 5-17-104. If fire tax districts are created, then the legislative body must levy an annual fire tax upon the property owners of each district sufficient to pay the district's share of the total budget of the countywide fire department. T.C.A. § 5-17-106. *See* Op. Tenn. Atty. Gen. 07-134 (Sept. 11, 2007).

Volunteer Fire Departments. The county legislative body may appropriate general fund money to assist nonprofit volunteer fire departments. T.C.A. § 5-9-101. Counties may also contract with municipalities to furnish fire protection in the unincorporated areas as an alternative to forming a county fire department. Op. Tenn. Atty. Gen. 93-53 (Aug. 9, 1993); Op. Tenn. Atty. Gen. 07-87 (June 5, 2007); Op. Tenn. Atty. Gen. 07-134 (Sept. 11, 2007).

No county, municipality or other organization (i.e., volunteer fire department) may operate a fire department in Tennessee unless it has been duly recognized by the state fire marshal's office. In order to obtain recognition, the county, municipality or other organization must file an application to begin service or a renewal application to continue service. Once recognized, each fire department will be classified as career, volunteer or combination. The recognition certificate is valid for three years. After July 1, 2003, no new fire department may be established or recognized without the approval of the local elected governing body with jurisdiction over the territory to be served by the proposed new department. T.C.A. § 68-102-301 *et seq*.

County Fire Marshal. The county mayor may also appoint a county fire marshal, whose duty shall be to coordinate the efforts of volunteer fire departments, enforce local fire safety regulations and assist in the prevention of fire and arson. The county mayor shall

establish the fire marshal's compensation within the amount appropriated for such purpose by the county legislative body. T.C.A. § 5-6-121.

Burning Bans. In 2008, T.C.A. §§ 39-14-304(a) and 39-14-306 were amended to authorize the commissioner of agriculture, in consultation with the state forester and the county mayors of impacted counties, to issue a burning ban prohibiting all open air fire in any area of the state. A violation of the ban would be considered reckless burning, which is a Class A misdemeanor. This would not apply to fires that may be set within the corporate limits or any incorporated town or city that has passed an ordinance controlling the setting of fires.

Emergency Management (Civil Defense)

The Tennessee Emergency Management Agency (TEMA) under the direction of the governor is in charge of managing disasters occurring in this state. T.C.A. § 58-2-101 *et seq*. Counties must establish a county emergency management agency alone or in conjunction with other local governments. Each county organization must have a director appointed by the county mayor subject to confirmation by the county legislative body. The emergency management director is subject to the direction and control of the county mayor and not the county legislative body. Each county must have an emergency management plan and program that is coordinated with TEMA. Each county emergency management agency has jurisdiction over the entire county unless there exists an interjurisdictional emergency management agreement that has been recognized by the governor by executive order or rule. Under this law, counties have extensive power to provide funds, make contracts, employ personnel, assign and make available county personnel and resources to perform emergency management functions, and to establish, as necessary, a primary and one or more secondary emergency operating centers. In the event of an emergency, the county may waive the procedures and formalities otherwise required by law. Two or more counties may join together to provide emergency management services if approved by the governor. This may occur by request of the counties or upon a finding by the governor that the conditions of the counties require such pooling of resources. T.C.A. § 58-2-110.

The act grants to the governor extraordinary powers in a state of emergency, including direction (orders) to local law enforcement officers and agencies as may be reasonable and necessary, and may delegate emergency powers and responsibilities to county officers and agencies. T.C.A. § 58-2-107.

In 2007, the General Assembly amended T.C.A. § 58-2-107 to prohibit the state, any political subdivision, or any public official from prohibiting or imposing additional restrictions on the lawful possession, transfer, sale, transport, carrying, storage, display, or use of firearms and ammunition or firearm and ammunition components during any state of emergency, major disaster or natural disaster. 2007 Public Chapter 129.

For more information on the ability of counties to respond to disaster situations, *see* the section on Mutual Assistance and Mutual Aid Agreements in Chapter 10 of this handbook.

Emergency Communications Districts

The establishment of a uniform emergency number to shorten the time required for a citizen to request and receive emergency aid is intended to save lives, reduce the destruction of property, quickly apprehend criminals and save money. Therefore, the legislative body may create an emergency communications district within all or part of its boundaries if the eligible voters in the district approve. The 911 service is funded by an emergency telephone service charge in telephone bills and county appropriations. T.C.A. §§ 7-86-102, 7-86-105, 7-86-108. The legislative body may, by two-thirds vote, reduce the emergency communications district levy established by the district's board of directors so long as this reduction does not reduce funding below the level reasonably required to fund the authorized activities of the district. The reduced levy remains effective until rescinded by a majority vote of the legislative body. T.C.A. § 7-86-108(c). Revenues from tariffs must be used for operating the district and purchasing necessary equipment. T.C.A. § 7-86-108(d). *See* Op. Tenn. Atty Gen. 08-193 (December 29, 2008).

The board of directors of the emergency communications district consists of seven, eight or nine members as provided by resolution of the county legislative body. The county mayor appoints members to this board, subject to confirmation of the county legislative body. T.C.A. § 7-86-105(b).

Pursuant to T.C.A. § 7-86-301 *et seq*., there is a nine-member statewide emergency communications board in the state Department of Commerce and Insurance to oversee the implementation of enhanced 911 service to wireless telephone users. In addition to levying a service charge on wireless phone service and implementing the new network, this board has certain supervisory powers over local 911 boards, particularly as it relates to financial stability. The board can set rules and regulations for the operation of emergency communications districts, examine the financial condition of districts, prescribe a rate structure, raise rates or order the consolidation of districts. The board is also authorized to order an election for the purpose of establishing a district for any county that failed to create a district by 2001. If a member of a local board of directors of an emergency communications district fails to attend meetings, refuses to carry out the orders of the state board, or otherwise neglects his or her duties, the state board, the city, or the county may pursue an action in the chancery court to remove the member. T.C.A. § 7-86-314. *See* Op. Tenn. Atty. Gen. 09-13 (February 6, 2009).

The statewide emergency communications board may withhold revenue from the charge on commercial mobile radio service to the local emergency communications district if the district is operating in violation of state law or fails to correct a specific violation of state law, including, but not limited to, failing to submit an annual budget or audit. Also, the state board may withhold funds if it deems the district is not taking sufficient actions or acting in good faith to establish, maintain or advance wireline or wireless E-911 service. T.C.A. § 7-86-108.

Every 911 or public safety dispatcher that receives an initial 911 call from the public is subject to the training and course requirements set by the state board. T.C.A. § 58-2-201.

County Law Enforcement

The sheriff is the principal conservator of peace in the county and must suppress all affrays, riots, routs, unlawful assemblies, insurrections, or other breaches of the peace. T.C.A. § 38-3-102. The sheriff is required to patrol county roads, ferret out crimes, secure evidence, apprehend and arrest criminals. The sheriff is to use deputies as necessary to aid him or her in carrying out these duties. T.C.A. §§ 8-8-213, 38-3-102. County law enforcement officers must uphold and enforce state laws dealing with crimes against persons, property, and the administration of government and offenses against the public health, safety and welfare. Sheriffs' offices may also enforce municipal ordinances if the municipality has expressed by ordinance its intent to have the sheriff do so. T.C.A. § 8-8-201. A metropolitan government charter may transfer law enforcement powers from the sheriff, as in Davidson County. T.C.A. § 7-2-108.

Newly Elected Sheriffs' School. Every person who is elected to the office of sheriff after August 1, 2006, and is a first-term sheriff, must successfully complete this school regardless of their previous law enforcement experience. Thereafter, the sheriff must successfully complete 40 hours of annual in-service training appropriate for the rank and responsibilities of a sheriff. The newly elected sheriffs' school is taught at the Tennessee Law Enforcement Training Academy. Any cost associated with attending the newly elected sheriffs' school is paid by the county. Any sheriff who does not fulfill the obligations of this training course loses the power of arrest. T.C.A. § 8-8-102(c).

In-Service Training. Sheriffs must complete 40 hours of annual in-service training pursuant to T.C.A. § 38-8-111. Sheriffs who successfully complete the program will receive cash salary supplements for doing so. Certification under the Peace Officers Standards and Training (POST) Commission is a requirement for sheriffs. Any person elected to the office of sheriff who is not POST certified must enroll in a training course within six months of taking office. The salary of the sheriff is reduced 15 percent if he or she is not POST certified upon taking the office and, until the sheriff becomes certified, will continue to drop an additional 5 percent with each year of the term of office.

Drug Law Enforcement and Drug Abuse Prevention. A significant portion of the sheriff's duties concern enforcing drug laws and preventing drug abuse and illegal drug trafficking in the county. This is an area that has seen a great deal of new legislation in the past decade.

A state fund has been established to provide financial incentives for drug education and prevention. Through the use of such financial incentives, the state encourages counties to aggressively pursue a course to eliminate illegal drug trafficking within their jurisdictional boundaries. Each county legislative body may create a committee composed of the school superintendent, the sheriff, and a member of the Alliance for a Drug Free Tennessee established in the county, to be appointed by the county mayor.

The committee reviews the record of prosecutions and convictions in the county and acts with the sheriff to determine the financial incentives appropriate for any given period and the percentage of goods seized and forfeited that should be made available to the school system for drug education and prevention programs. T.C.A. § 38-11-204.

A minimum fine must be imposed in drug cases unless the defendant is indigent. T.C.A. § 39-17-428. Generally, fines and forfeitures of appearance bonds in drug cases are paid to the county trustee, the state treasurer, the Department of Safety or the Project Caanan coordination office, depending upon the violation. T.C.A. § 39-17-420. Each county trustee must maintain a separate fund, commonly called the drug fund. Formerly, the sheriff, with the approval of the district attorney general, could obtain disbursements from this fund for the local drug law enforcement program or local drug education program. Under T.C.A. § 39-17-420, these monies must now be budgeted. The sheriff recommends a budget for these funds to the county legislative body, which must approve the budget. The funds may be used only for drug education, treatment, and enforcement as well as for nonrecurring law enforcement expenses. Funds used for undercover operations of the sheriff's office must be administered according to procedures established by the comptroller of the treasury. A portion of the monies in this fund is to be set aside for the purchase of electronic fingerprinting equipment for the county.

Under the Meth-Free Tennessee Act of 2005 (Public Chapter 18), and 2005 Public Chapter 347, the powers and duties of the sheriff and other local law enforcement and state agencies regarding the problem of illegal methamphetamine manufacture were clarified. The sheriff may quarantine property that has been used for the illegal manufacture of methamphetamine. When the sheriff or other law enforcement officers quarantine property, the officer must inform the Tennessee Department of Environment and Conservation within seven days of a quarantine order. The department maintains an online registry listing properties that have been quarantined for at least 60 days and removes properties after the quarantine has been removed. T.C.A. § 68-212-503. After the sheriff or other local law enforcement agency quarantines real property, or any structure or room in any structure on any real property due to the manufacture of methamphetamine, the sheriff or other local law enforcement officer must file for recording with the county register of deeds in the county where the real property or a portion thereof is located, a Notice of Methamphetamine Lab Quarantine. The signature of the local law enforcement agent is acceptable instead of an acknowledgment. No fee is collected by the register to make this recording. T.C.A. § 68-212-507. The property will remain under quarantine until a Certificate of Fitness is issued by a certified industrial hygienist or other qualified person as determined and listed by the Tennessee Department of Environment and Conservation. A Certificate of Fitness states that the quarantined property is safe for human use. The owner of the property, not the county, is responsible for cleaning the property. However, a defendant convicted of illegally manufacturing methamphetamine may be ordered by the court to pay restitution to the (innocent) owner of the property. T.C.A. § 39-17-417. The owner or person having an interest in the property, such as a lien holder, may file for recording the Certificate of Fitness with the county register of deeds. After the Certificate of Fitness is issued, the sheriff or other law enforcement agency that ordered the quarantine should remove the

quarantine, and the property is removed from the list maintained by the Tennessee Department of Environment and Conservation. T.C.A. § 68-212-508.

D.U.I. Convicts Performing Litter Removal. When a person is convicted of driving under the influence of an intoxicant for the first time on or after June 15, 2006, litter pickup is a mandatory condition of probation. If the offender is a resident of Tennessee, the litter removal portion of the sentence shall occur in the offender's county of residence. If the offender is not a Tennessee resident, litter removal shall occur in the county where the violation occurred. Each convict under this law must remove litter during the daylight hours from state route or state-aid county roads, unless relieved by the court due to physical limitations. The convict must report to the sheriff of the convict's residence with appropriate documentation to schedule work crews. The sheriff must provide the D.U.I. offender with a list of scheduled times and dates for litter pickup. D.U.I. offenders may be worked separately or in conjunction with other county prisoner litter removal crews. Each D.U.I offender must wear a blaze orange or other distinctly colored vest with the words "I am a DRUNK DRIVER" stenciled or otherwise written on the back of the vest in letters no less than four inches in height. Other than the vest, D.U.I. convicts are required to furnish their own clothes and food while on the litter removal assignment. The sheriff is not responsible for the transportation of the convict/probationer to the work site. The sheriff may enter into agreements with any municipality in the county for D.U.I first offenders to pick up litter on state routes within the municipality; otherwise, the sheriff must work the crews in the unincorporated area of the county. An agreement with the municipality may provide for the municipality taking responsibility for the supervision and control of the offenders while working in the municipality. Also, if a governmental entity receives litter grant funds, the entity receiving such funds will have supervision of the D.U.I. first offenders; otherwise, the sheriff retains the responsibility to supervise these crews. These offenders are required to pay the jailer's fee for misdemeanor convicts under T.C.A. §8-26-105 for each day of litter pickup prior to the sheriff certifying that the condition of probation has been fulfilled. 2006 Public Chapter 880; T.C.A. 55-10-403.

D.U.I. Forfeitures. In a similar manner to drug forfeitures, a driver's vehicle may now be forfeited when the driver is guilty of certain offenses related to driving under the influence of alcohol. T.C.A. §§ 55-50-504, 55-10-403. When vehicles are seized pursuant to these laws, their disposition is determined according to the procedures of T.C.A. § 40-33-211, which provides for an administrative hearing before the Department of Safety. If the vehicle is forfeited and sold, the county is entitled to a portion of those proceeds as reimbursement for the costs of seizing and storing the vehicle. T.C.A. § 40-33-211.

Fingerprinting. In an effort to improve arrest data on dangerous felons, the legislature enacted financial penalties for law enforcement offices that fail to properly fingerprint criminals taken into custody. The sheriff's office is to take two full sets of fingerprints of people arrested for an offense that results in their being incarcerated or having to post bond to avoid incarceration and forward these fingerprints to the TBI. T.C.A. § 8-8-201. The comptroller's office is directed to audit local law enforcement offices to make certain this duty is performed. Failure to retain classifiable fingerprints for at least 85 percent of

people arrested by the office can cause the office to be decertified by the POST Commission and result in the loss of salary supplements. T.C.A. § 8-4-115.

Handgun Permits and Firearm Purchases. As of October 1, 1996, sheriffs ceased to issue handgun permits. The Tennessee Department of Safety has taken over these duties. The department notifies the sheriff or other chief law enforcement officer of the county of the applicant's residence. T.C.A. § 39-17-1351(g)(1)(B). Then the sheriff or other officer conducts a local background investigation regarding the applicant's disclosure on the application. T.C.A. § 39-17-1351(g)(2). The sheriff is required to execute within 15 business days of any request all documents required to be submitted by the purchaser if the purchaser is not prohibited from possessing firearms pursuant to T.C.A. § 39-17-1316. T.C.A. § 39-17-1361.

County Correctional Facilities and Prisoner Care

"The responsibilities related to the care and custody of prisoners held in county facilities are obligations imposed by law upon county sheriffs, sheriffs being the individuals who have been elected by the people of the various counties to perform these and other law enforcement functions."*Cooper v. State*, 106 S.W.3d 688, 691 (Tenn. Ct. App. 2003).

Duty to Build and Maintain Jail. It is the duty of the county legislative body to erect a jail and to keep it in order and repair at the expense of the county, and it may levy a special tax for this purpose. T.C.A. §§ 5-7-104 and 5-7-106. *Ellis v. State*, 20 S.W. 500 (Tenn. 1892); *Henry v. Grainger County*, 290 S.W. 2 (Tenn. 1926); *Storie v. Norman*, 130 S.W.2d 101 (Tenn. 1939) (It is the duty of the county court to erect a jail and keep it in repair at the expense of the county, and it may levy a special tax for that purpose.); *Brock v. Warren County*, 713 F.Supp. 238, 243 (E.D. Tenn. 1989) (holding county liable for commissioners' failure to provide sufficient funds for a habitable jail or training of guards).

Location of Jail. The jail, unlike most other county buildings, may be erected outside the limits of the county town but it must be within the boundaries of the county. However, if two or more counties enter into an interlocal agreement providing for a jail to serve the counties that are parties to the agreement, then a county that is a party to the agreement is not required to have a jail located within the boundaries of the county, but any jail serving more than one county must be located within the boundaries of one of the counties that is a party to the agreement. T.C.A. § 5-7-105. *See* Op. Tenn. Atty. Gen. No. 03-060 (May 6, 2003). In addition to interlocal agreements, counties may also form regional jail authorities pursuant to the *Regional Jail Authority Act* found in *Tennessee Code Annotated*, T.C.A. § 41-12-101 *et seq*.

Replacement of Jail. Whenever, in the opinion of a majority of the members of the county legislative body, two- thirds of them being present, the site of a jail is unhealthy, insecure or inconvenient in its location to the county, the town, or inhabitants of the town in which it is situated, or the interest and convenience of the town would be promoted by the removal of any of the same, the members may order a sale of the site and of the whole or part of the materials used in its construction; and they may also order that a

more eligible, convenient, healthy or secure site be purchased and cause to be erected thereon a new jail better suited to the convenience of the town, and to secure the safe custody, health and comfort of inmates. T.C.A. § 5-7-111.

Custody of the Jail. Pursuant to T.C.A. § 8-8-201(a)(3), it is the duty of the sheriff to take charge and custody of the jail of the sheriff's county and of the prisoners therein; receive those lawfully committed and keep them personally, or by deputies or jailer, until discharged by law; be constantly at the jail or have someone there with the keys to liberate the prisoners in case of fire.

Appointment of Jailer. Under the common law the sheriff had the right to appoint a jailer. *Felts v. City of Memphis*, 39 Tenn. 650 (1859). The right of the sheriff to appoint a jailer has been codified in T.C.A. § 41-4-101, wherein it states that the sheriff is authorized to appoint a jailer for whose acts the sheriff deems civilly responsible.

Support and Care of Inmates. "[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well being ." *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 199-200, 109 S.Ct. 998, 1005-1006, 103 L.Ed.2d 249 (1989).

Jail Administrator Statutory Duties. The jailer, or jail administrator, is charged with the following statutorily mandated duties:

1. Receive and safely keep convicts on their way to the state or federal penitentiary (T.C.A. §§ 41-4-104, 41-4-105);

2. File and keep safe under the sheriff's direction the mittimus or process by which a prisoner is committed or discharged from jail (T.C.A. § 41-4- 106);

3. Provide support to the prisoners and to determine within his discretion what type of precautions to take for guarding against escape and to prevent the importation of drugs (T.C.A. § 41-4-108);

4. Furnish adequate food and bedding (T.C.A. § 41-4-109);

5. Enforce cleanliness in the jail, keep the jail clean, and remove all filth from each cell once every 24 hours (T.C.A. § 41-4-111);

6. Furnish the necessary apparatus for shaving once a week and provide bathing facilities separate for males and females (T.C.A. § 41-4-111);

7. Furnish hot and cold water, clean and sufficient bedding, and laundering once a week to those prisoners who are not able to provide such for themselves (T.C.A. § 41-4-111); and

8. Convey letters from prisoners to their counsel and others, and to admit persons having business with the prisoner (T.C.A. § 41-4-114).

A violation of any of the provisions of T.C.A. §§ 41-4-108 — 41-4-114, whether by the sheriff or by any person selected as jailer or guard by the sheriff, is a Class A misdemeanor. T.C.A. § 41-4-117. Medical Care of Inmates. It is the duty of the county legislative body to provide medical attendance for all prisoners confined in the county jail. The county legislative body shall authorize the compensation of the county jail physician, as agreed upon in writing between the county and the attending jail physician, or as may be fixed by the county legislative body. T.C.A. § 41-4-115(a).

Pursuant to Tennessee law, the sheriff is authorized to hire a female registered nurse and a male registered nurse who are authorized to make complete physical examinations of all persons committed to the custody of the sheriff for the purpose of preventing the spread of any contagious disease. Such physical examinations may include the taking of blood tests and Pap smear tests and any other tests that are approved and recommended by the county health officer. All females committed to the custody of the sheriff are to be examined only by the female registered nurse hired for that purpose, and all males committed to the custody of the sheriff are to be examined by the male nurse hired for that purpose. T.C.A. § 41-4-138. *See George v. Harlan*, 1998 WL 668637, *4 (Tenn. Ct. App. 1998) ("It appears to this Court that the services of nurses to prevent the spread of disease, and the services of a physician to treat illnesses are separate and distinct functions, the furnishing of the former being a statutory duty of the sheriff, and the furnishing of the latter being a statutory duty of the county legislative body.")

Jail Fees

Misdemeanant Prisoners. The county legislative body of each county has the authority to pass a resolution fixing the amount of jailers' fees that may be applied to misdemeanant prisoners. The rate fixed shall apply to such prisoners confined in the county jail or county workhouse or workhouses but not meeting the conditions required for a state subsidy under Title 41, Chapter 8. T.C.A. § 8-26-105(a).

Sheriffs and jailers must make written statements of account, properly proven and sworn to, for the keeping of prisoners, specifying distinctly each item and the amount due for each item. T.C.A. § 41-4-129.

Jail fees are taxed separately from the general bills of costs of criminal cases. All state costs must be properly proved and sworn to before the clerk of the criminal or circuit court of the county and certified by the clerk for payment. T.C.A. § 41-4-131.

Jail fees for county prisoners shall be referred monthly to the county mayor for inspection, who shall audit the fees and cause the clerk to issue a warrant for the amount allowed. T.C.A. § 41-4-136.

Inmate Copay. Any county may, by resolution adopted by a two-thirds vote of the county legislative body, establish and implement a plan authorizing the county jail administrator to charge an inmate in the county jail a copay amount for any medical care, treatment, pharmacy services or substance abuse treatment by a licensed provider provided to the

inmate by the county. A county adopting a copay plan must establish the amount the inmate is required to pay for each service provided. However, an inmate who cannot pay the copay amount established by the plan cannot be denied medical care, treatment, pharmacy services or substance abuse treatment by a licensed provider. T.C.A. § 41-4-115(d).

If an inmate cannot pay the copay amount established by a plan adopted pursuant to T.C.A. § 41-4-115(d), the plan may authorize the jail administrator to deduct the copay amount from the inmate's commissary account or any other account or fund established by or for the benefit of the inmate while incarcerated. T.C.A. § 41-4-115(e).

Fees for Issued Items and Special Services. Any county may, by a resolution adopted by a two-thirds vote of the county legislative body, establish and implement a plan authorizing the jail administrator to charge an inmate committed to the county jail a fee, not to exceed the actual cost, for items issued to the inmate upon each new admission to the county jail. T.C.A. § 41-4-142(a).

Additionally, any county may, by a resolution adopted by a two-thirds vote of its county legislative body, establish and implement a plan authorizing the jail administrator to charge an inmate committed to the jail a nominal fee set by the county legislative body at the time of adoption for the following special services, when provided at the inmate's request:

1. Participation in GED or other scholastic testing for which the administering agency charges a fee for each test administered;

2. Escort by correctional officers to a hospital or other healthcare facility for the purpose of visiting an immediate family member who is a patient at such facility; or

3. Escort by correctional officers for the purpose of visiting a funeral home or church upon the death of an immediate family member.

T.C.A. § 41-4-142(b).

A plan adopted pursuant to T.C.A. § 41-4-142(a) or (b) may authorize the jail administrator to deduct the amount from the inmate's jail trust account or any other account or fund established by or for the benefit of the inmate while incarcerated. Nothing in T.C.A. § 41-4-142 shall be construed as authorizing the jail administrator to deny necessary clothing or hygiene items or to fail to provide the services specified in T.C.A. § 41-4-142(b) based on the inmate's inability to pay such fee or costs. T.C.A. § 41-4-142(c).

Booking Fee. Beginning June 28, 2007, the county legislative body may vote to impose an additional fee of not more than ten dollars ($10.00) for the booking and processing of each person subject to arrest or summons. However, no booking fee may be charged to any person determined by the court to be indigent. T.C.A. § 40-7-122.

Information to At-Risk Employees Regarding Infectious Diseases

Where there has been a potential exposure to an infectious disease in a correctional facility, the institution is required to inform affected employees, contract employees and visitors. When an incident occurs that may have resulted in exposure to disease, the institution must test the inmate, with or without his or her consent, to determine if the inmate is infected with a blood-borne pathogen such as hepatitis B or HIV. The institution is required to disclose the results of the test to each employee, law enforcement officer or visitor who reasonably believes he or she was potentially exposed to a life-threatening disease or pathogen. However, confidential medical information is not to be released to the general public. T.C.A. § 41-51-102.

Similar provisions in T.C.A. § 39-13-112 apply in cases where a law enforcement officer, firefighter, correctional officer, youth services officer, probation and parole officer, employee of the Department of Correction or Department of Children's Services, emergency medical or rescue worker, EMT, or paramedic is the victim of an aggravated assault and comes into actual contact with blood or other body fluid of the arrestee. When that occurs, upon the request of the victim, the arrestee shall undergo HIV testing immediately. The test shall be performed by a licensed medical laboratory at the expense of the arrestee. Test results are not a public record and are available to only the victim and certain other people listed in the statute. If the arrestee is infected with HIV, that person shall be liable for the victim's medical bills and other expenses related to the victims exposure to HIV upon a finding that such exposure was from the arrestee.

For additional information on jails and workhouses please refer to the CTAS publication *Tennessee Sheriff's Handbook*, which is available on the CTAS Website at www.ctas.utk.edu.

CHAPTER 16

SOLID WASTE, ENVIRONMENT AND HEALTH

Solid Waste Management, Collection, and Disposal

One of the more important functions of county government is solid waste disposal. There are three (3) sources of legislative authority that may provide the framework for these services: T.C.A. Title 5, Chapter 19, T.C.A. Title 68, Chapter 211, and, in some cases, private acts, county charter or consolidated government charter.

Title 5, Chapter 19. Counties are authorized to provide garbage and rubbish collection and disposal services to the entire county or to special districts within the county and are also granted the power to do all things necessary to carry out these functions. T.C.A. §§ 5-19-101, 5-19-107. This authority is exercised through resolution by the county legislative body and carried out by an existing agency, a county sanitation department, or a county board of sanitation appointed by the county mayor and confirmed by the county legislative body. Also, a county may contract with a private company or another governmental entity to provide these services for county residents. T.C.A. § 5-19-104. If a municipality within the county furnishes garbage (solid waste) collection and disposal services, the county must establish service districts outside the municipality to fund this county service if the property tax is a source of funding for the county solid waste services. T.C.A. § 5-19-108. If the county services are provided within special service districts, they are funded by user fees, or a property tax levied only within the district served, or a combination of the two. T.C.A. §5-19-109. Plans for collection and disposal services must be submitted to the regional planning commission for study before they are carried out. T.C.A. § 5-19-112. The county must inspect these facilities at least once every quarter, and the commissioner of health may also investigate and make recommendations for improvement. T.C.A. §§ 5-19-113, 5-19-114.

Title 68, Chapter 211. In an effort to coordinate and plan for safe, efficient solid waste disposal in the state, the Tennessee General Assembly has enacted several pieces of legislation, which are compiled in Title 68, Chapter 211 of the *Tennessee Code Annotated*. To comply with the requirements of this chapter, all local governments must engage in specified planning and organizational activities, which are briefly summarized below. (*See* the Solid Waste Management Act of 1991, T.C.A. §§ 68-211-801 through 68-211-874).

Local Solid Waste Management Planning

Startup Procedure. To begin implementation of the Solid Waste Management Act, counties were instructed to form solid waste regions (single or multicounty) and establish a solid waste board and advisory committee for each region. Regional areas (and their boards) may be changed only by approval of the county legislative bodies of the counties involved in the change and with the approval of the Tennessee Department of Environment and Conservation, which will review the new or revised plans and

receive information regarding the new board members. T.C.A. §§ 68-211-811 through 68-211-813. These regional boards are constituted according to the provisions of T.C.A. § 68-211-813. Additionally, each region was required to formulate a plan for collection and disposal of solid waste in the area and submit this plan to the State Planning Office by July 1, 1994. A regional plan may be revised at any time to reflect subsequent developments in the region subject to approval by the Department of Environment and Conservation. Each municipal solid waste region must submit an annual progress report to the department regarding how this annual activity affects the regional plan over the next 10 years. T.C.A. § 68-211-814.

Plan Requirements. The plan, and any revised plan, submitted by each region must be consistent with the state solid waste plan and with all relevant state laws and regulations. At a minimum, each plan must contain the following items:

1. Demographic information;

2. A current system analysis of waste streams, collection capability, disposal capability, costs, and revenues;

3. Adoption of the statutorily required uniform financial accounting system;

4. Anticipated growth trends and waste capacity needs for the next 10 years;

5. Anticipated waste capacity needs;

6. Planned capacity assurance, including a descriptions of planned or needed facilities;

7. A recycling plan;

8. A plan for the disposal of household hazardous wastes;

9. Adoption of the statutorily required reporting requirements;

10. A description of waste reduction and recycling activities designed to attain the goal required by T.C.A. § 68-211-861;

11. A description of education initiatives designed to achieve the goals stated in the statute;

12. An evaluation of multicounty solid waste disposal region options with an explanation of the reasons for adopting or failing to adopt a multicounty regional approach;

13. A timetable for implementation of the plan;

14. A description of the responsibilities of each participating jurisdiction;

15. A certification of review and approval of the plan (or revised plan) from the solid waste authority (organized under Chapter 211, Part 9), if such an authority has been formed, or if no such authority has been formed, from the county legislative body of each county in the region;

16. A plan for managing solid waste generated as a result of disasters or emergencies; and

17. Any other information the commissioner of the Department of Environment and Conservation deems relevant.

T.C.A. § 68-211-815.

Solid Waste Authority. A county (or counties in multicounty solid waste regions) may decide to form a solid waste authority to operate all solid waste systems within the region. (See the Solid Waste Authority Act in T.C.A. §§ 68-211-901 through 68-211-925.) Cities may participate or remain outside the authority, although all counties in the region must agree to the creation of the authority before it may be formed; a municipality with most of its territory in the county creating the authority may participate. T.C.A. § 68-211-903. Similarly, the authority can be dissolved by agreement of its participating counties and cities. The board of directors may be composed of the same members as the region's solid waste board, but this is not required. The method of selection, officers required, terms of office, and vacancy procedures are described in T.C.A. §§ 68-211-904, 68-211-905.

The advantage of using a solid waste authority to oversee the region's waste management lies in the authority's broad statutory powers. The solid waste authority is a separate legal entity that may issue bonds, incur debts, enter into contracts, and exercise the power of eminent domain. With the concurrence of the counties and municipalities participating in the solid waste authority, it may exercise exclusive control over the publicly owned solid waste systems within its boundaries. T.C.A. § 68-211-906.

Public Ownership of Solid Waste Facilities. Counties have several options through which they may fulfill their responsibilities for solid waste management: They may contract with private entities for those services, they may provide services or contract for services through solid waste authorities, or they may provide the services themselves. A county or municipality may apply for a solid waste facility permit. The county or municipality is financially responsible for tests needed to evaluate the application, or it may conduct its own studies to collect the required data. T.C.A. § 68-211-301. A county may execute a contract of obligation instead of a performance bond to insure proper operation and closure of its publicly owned facilities. T.C.A. § 68-211-116. In addition to equipment for collection and disposal of solid waste, a county may also construct and operate energy recovery and resource recovery facilities which process waste into energy fuels. T.C.A. § 68-211-502.

Flow Control and Regional Approval Options. State law appears to grant regions and solid waste authorities powers under certain conditions to direct the flow of solid waste

generated within the region and to restrict the flow of solid waste into the region for disposal. However, federal court decisions, including U.S. Supreme Court rulings, make the validity of Tennessee statutes on flow control very questionable since the case law strongly indicates they may violate the commerce clause of the U.S. Constitution where regulatory power is exercised to control the flow of waste between private parties. *Fort Gratiot Sanitary Landfill Inc. v. Michigan Dept. of Natural Resources*, 112 S.Ct. 2019 (1992); *C & A Carbone, Inc. v. Town of Clarkstown*, N.Y., 114 S.Ct. 1677 (1994).

State law also provides that any construction or expansion of solid waste facilities or incinerators within the region must be approved by the board of the region or the (Part 9) solid waste authority if one has been formed before a permit is issued. The region or solid waste authority is to hold a public hearing after proper notice and may reject the proposal if it is inconsistent with the regional plan. T.C.A. § 68-211-814.

Sanctions. If any region fails to submit a plan in a timely fashion, submits an inadequate plan, or fails to comply with other provisions of this act, then the commissioner of the Department of Environment and Conservation will impose sanctions, including loss of funds from the solid waste management fund and civil penalties of $1,000 to $5,000 per day of noncompliance. T.C.A. § 68-211-816.

Operational Requirements. There are several different sources of authority governing the operation of solid waste disposal facilities, including federal legislation and regulations as well as state law and its implementing rules. In addition to the Solid Waste Management Act, which has been mentioned above, it is important to note the Solid Waste Disposal Act (T.C.A. §§ 68-211-101 through 68-211-121) as well as other relevant sections in Title 68. Furthermore, other governmental entities such as counties, municipalities, and boards of health may also adopt regulations governing solid waste disposal if their standards are at least as stringent as those set out by the state Department of Environment and Conservation and consistent with state and federal law. T.C.A. § 68-211-107.

Although a detailed description of operational requirements for solid waste systems is beyond the scope of this book, a short summary of a few important principles follows.

Minimum Service Levels. Each county must see that there is at least one solid waste collection and disposal system for the needs of county residents; at a minimum there must be one or more convenience centers, unless a higher level of service, such as household garbage pickup, is provided. The service is to be coordinated with those available from municipalities within the county and may be supplied directly by the county, by contract, or through a solid waste authority. The convenience centers must also comply with regulations developed by the Department of Environment and Conservation. T.C.A. § 68-211-851.

Problem Wastes. Certain substances are no longer to be placed in a landfill but are to be disposed of through alternative methods. Among these is household hazardous waste. To provide for the safe collection of these household hazardous wastes, the

Department of Environment and Conservation must provide, directly or by contract, for the collection of such wastes on designated days in each county. The county or authority is responsible for advertising the location of these units, the days and hours on which they will be available, and examples of hazardous household wastes. Furthermore, the county or solid waste authority must appoint at least one person to represent the county or authority to be present at the site on collection days in order to assist those operating the mobile collection unit. T.C.A. § 68-211-829. Depending on a county's population, competitive grants may be available for a permanent household hazardous waste collection site. T.C.A. § 68-211-828.

Other examples of wastes prohibited at landfills include whole waste tires, lead-acid batteries, and used oil, all of which will no longer be accepted at any solid waste disposal facility or incinerator. Each county must provide at least one site to receive and store these materials, recycling as much of it as is reasonably possible. T.C.A. § 68- 211-866. Whole waste tires may not be placed in a landfill. As of July 2, 2002, a county cannot dispose of shredded waste tires in a landfill. The Department of Environment and Conservation's program for beneficial end use of waste tires will provide grants to counties for waste tire management, and the department may contract for the collection, transportation and beneficial end use disposal of waste tires on a multicounty basis, but these contracts are subject to approval by the county legislative body of each county affected. T.C.A. § 68-211-867.

Baled Waste and Inspections. There are special detailed instructions governing the disposal of baled waste. It may not be placed in a landfill unless (1) that facility is licensed to receive hazardous waste, (2) the waste was baled and certified according to the procedure specified by statute, or (3) the waste was properly verified by the supervisor of the receiving landfill. T.C.A. § 68-211-119. A manifest that gives the nature of the waste, its origin and destination, and the names and addresses of all those in possession of it must accompany the baled waste and be maintained for 30 years. T.C.A. § 68-211-120.

In an effort to prevent processing and disposal of unlawful materials, the operator of each facility must inspect the waste. The inspection should be conducted according to a plan that is approved by the commissioner of environment and conservation and is similar to that for baled waste. T.C.A. § 68-211-212.

Education. A component of each region's solid waste plan must be an education program "to assist adults and children to understand solid waste issues, management options and costs, and the value of waste reduction and recycling." T.C.A. § 68-211-842. After a region's plan is approved, the Department of Environment and Conservation may award matching grants for implementing the education program. T.C.A. §68-211-847.

Recycling. Each county must provide at least one site for the collection of recyclable materials within the county. T.C.A. § 68-211-863. From funds available from the solid waste management fund, the Department of Environment and Conservation is required to provide a matching funds grant program for the purchase of equipment needed to

establish or upgrade recycling at a public or not-for-profit recycling collection site. However, these grants will generally not be granted if there is adequate equipment at privately-owned facilities which serve the same area. The eleven counties which generate the greatest amount of solid waste receive a rebate from the state surcharge on waste disposed in the county in accordance with a formula described in T.C.A. § 68-211-825. A county may only expend the rebate for recycling purposes and must expend from local funds an amount equal to the amount of the rebate towards this purpose. Counties which receive recycling rebates are not eligible for the recycling equipment grants.

Reporting Requirements. Each solid waste region must submit an annual report to the Department of Environment and Conservation. This report is to follow the format prescribed by the department, and must contain solid waste information in the following areas: collection, recycling, transportation, disposal, public costs, and any other information which the department deems relevant. In conjunction with the annual report each region must also submit an annual progress report on the implementation of the region's solid waste disposal plan. T.C.A. § 68-211-871. There are additional reporting requirements for operators of recycling collection centers and for owners and operators of solid waste disposal facilities and incinerators. The owner or operator of a Class 1 disposal facility or incinerator must keep records of all amounts and county of origin of solid waste, measured in tons, received at the facility. T.C.A. §§ 68-211-862, 68-211-863.

State Revenue, Funding and Grants. A state fund through which most of the statewide programs are financed is the solid waste management fund. It is funded in part through a state surcharge of 90 cents on each ton of municipal solid waste received at all facilities or incinerators. T.C.A. § 68-211-835. Additionally, the state solid waste management fund receives revenue from a pre-disposal fee of $1.35 per tire collected by dealers upon the sale of a each new tire in this state. T.C.A. § 67-4-1603. Counties, municipalities, and solid waste authorities may be able to receive grants from the fund for such activities as planning assistance (T.C.A. § 68-211-823), programs to establish or upgrade statutorily-required convenience centers (T.C.A. § 68-211-824), recycling (T.C.A. § 68-211-825), education (T.C.A. § 68-211-847), and waste tire collection and disposal (T.C.A. § 68-211-867). Additionally, the Department of Environment and Conservation, from available funds in the solid waste management fund, may directly or through contract, investigate and clean-up unpermitted waste tire disposal sites. T.C.A. § 68-211-831.

Local Revenue Sources. In addition to state aid, there are several other sources through which counties and other governmental entities may fund their solid waste management operations. In general, these options are cumulative; they may be used singly or in mix-and-match combinations to suit each area's needs. These revenue sources include the following choices:

1. *Tipping Fee*. Any county, municipality, or solid waste authority that owns a disposal facility or incinerator may impose a tipping fee on each ton of waste or its volume equivalent. The amount of the fee is determined

according to the cost of providing services, and the uniform solid waste accounting system is to be used to arrive at this cost. Revenue raised by the tipping fee is to be used only for solid waste management purposes. T.C.A. § 68-211-835(a).

2. *Host Fee*. A county that is host to a solid waste disposal facility or incinerator used by other counties in the same region may impose a surcharge on each ton or volume equivalent processed by that facility. The purpose of the host fee is to encourage the use of regional facilities; these revenues may be used only for solid waste management purposes or to offset costs resulting from hosting the facility. T.C.A. § 68-211-835(e).

3. *General Surcharge*. After approving the regional solid waste plan, a municipality, county, or solid waste authority may impose a surcharge on each ton of waste received at a disposal facility within that area. Funds collected through this surcharge may be expended for collection or disposal purposes. T.C.A. § 68-211-835(f).

4. *Disposal Fee*. A county, city, or solid waste authority may collect a mandatory user fee that bears a reasonable relationship to the cost of providing disposal services. This fee may be imposed on residences and businesses. A disposal fee may not be imposed on a waste generator who owns the facility for processing its own waste. A county disposal fee may be imposed on municipal residents if the municipal residents have access to the services funded by the disposal fee, such as a convenience center. Op. Tenn. Att'y Gen. 93-49 (July 23, 1993). Disposal fee revenues may be used only to establish and maintain collection and disposal services to which all county residents have access. Upon agreement with the area's electric utility, these fees may be collected as part of the utility's billing process. T.C.A. § 68-211-835(g).

5. *Property Tax*. A county may levy a general property tax to pay for waste collection and disposal services if these are available to all county residents and no municipality provides its own services. If a city in the county furnishes its own waste collection and disposal, then districts must be established so that property taxes are levied only upon the area to be served. T.C.A. §§ 5-19-108, 5-19-109.

6. *Service Charge*. A county may charge users a reasonable fee for providing waste collection services. T.C.A. § 5-19-107.

Landfill Approval by County - "Jackson Law"

The so-called "Jackson Law" is an optional general law that may be adopted by a county or municipal legislative body by a two-thirds (2/3) majority vote. If adopted, it provides that no new construction will be initiated for a landfill without the approval of

the county legislative body unless the landfill only accepts waste generated by its owner and all such waste is generated in the same county as the landfill. Additionally, if such proposed construction is in an incorporated area or within one mile of an incorporated area, the governing body of the municipality must also approve before construction can be initiated. T.C.A. § 68-211-701. Public notice and public hearings are required before the vote of the legislative body. T.C.A. § 68-211-703. This law states criteria that must be considered by the legislative body in determining whether or not to approve the construction. Judicial review of the legislative body's determination may be had before the chancery court for the county in which the landfill is to be located. T.C.A. § 68-211-704. The Tennessee Court of Appeals upheld a decision by the Davidson County Chancery Court that exclusion of county and municipal landfills from application of the Jackson Law as provided in T.C.A. § 68-211-706(b) is unconstitutional as a violation of the equal protection clause since there is no rational basis for this discrimination against private landfills. However, the Court applied the doctrine of elision (removal of offending provision, exemption of public landfills) and upheld the remainder of the act. *Profill Development, Inc. v. Dills*, 960 S.W.2d 17 (Tenn. App. 1977).

In a more recent statute separate from the "Jackson Law," municipalities must obtain the approval of the county legislative body at two consecutive regularly scheduled meetings before the municipality may exercise the power of eminent domain to obtain property to be used as a landfill for solid waste disposal outside of the corporate limits of the municipality. T.C.A. § 68-211-122.

Hazardous Chemical Right-to-Know-Law

Purpose and Scope. Federal regulations and state law require employers, including counties, to provide their employees with information concerning any hazardous chemicals the employee might contact in the course of employment. Tennessee's "Hazardous Chemical Right-to-Know-Law" is found in T.C.A. § 50-3-2001 *et seq*. The intent of this law is to ensure that information about hazardous chemicals is available to employees, emergency personnel, and the public. The law covers local governments as well as industries that use hazardous chemicals, including manufacturers of the chemicals.

Notice Requirements. The Tennessee Commissioner of Labor and Workforce Development is required to maintain a list of regulated hazardous chemicals that is to be available for public inspection. T.C.A. § 50-3-2006. If county department heads have a question as to whether or not a material is hazardous, they may check the Department of Labor (DOL) list. If the material in question is on the DOL list, the county is then obligated to request a material safety data sheet (MSDS) from the manufacturer and to keep it for review by employees. T.C.A. § 50-3-2008.

Additionally, nonmanufacturing employers, including county governments, must compile a list of hazardous chemicals normally used or stored in the workplace in excess of 55 gallons or 500 pounds. This workplace chemical list must be filed with the commissioner of Labor and Workforce Development and, with some exceptions, with the county health department, and must be maintained by the county for at least 30

years. T.C.A. § 50-3-2015. Furthermore, the employer must file a copy of the workplace chemical list with the fire department serving the workplace, including the name and telephone number of a knowledgeable representative of the employer and, upon written request, a copy of the MSDS for any chemical in the workplace; this information is to be confidential except in an emergency involving the threat of human life. The employer must permit on-site inspections by the fire department and must install signs outside any buildings that contain a Class A or B explosive, poison gas, water-reactive flammable solid, or radioactive material. T.C.A. § 50-3-2014.

Labeling Requirements. Existing labeling on containers of hazardous chemicals is not to be removed or defaced. If the nonmanufacturing employer transfers a hazardous chemical from the original container to another container, the label information must also be transferred. Employees shall not be required to work with a hazardous chemical from an unlabeled container unless the employee places the chemical in a portable container for immediate use. T.C.A. § 50-3-2009.

Training Requirements. Every nonmanufacturing employer must provide an education and training program for its employees who use or handle hazardous chemicals. Additional training must be provided any time a new hazardous chemical is introduced into the workplace or whenever new, significant information is received. The training program must conform to the regulations of the commissioner of labor and workforce development, but at a minimum must include the following: information on interpreting labels and MSDSs as well as the location of these in the workplace, operations where hazardous chemical are present, physical and health dangers of these chemicals, protective measures, frequency of training, and general safety instructions. The employer must keep a record of training dates and provide annual refresher courses. T.C.A. § 50-3-2010.

Hazardous Waste and Hazardous Substances

Hazardous waste storage facilities, treatment facilities and disposal facilities throughout the state are under the supervision of Tennessee's Department of Environment and Conservation. T.C.A. § 68-212-107. Before the state issues a permit for a facility for the storage, treatment, or disposal of hazardous waste, it must give public notice of the application and, within 45 days of that notice, hold a public community meeting concerning the permit application. The county legislative body, the municipal governing body, if any, where the facility is proposed, and the governing body of any municipality located within one mile of the proposed facility must be represented at the meeting; failure to participate is deemed a waiver. The county legislative body or other governing bodies may make reports summarizing issues they feel are appropriate. If the governing body chooses to make a report, it must include a decision to accept, reject, or modify the application. The report must be submitted within 90 days of the community meeting. The decision announced in this report is to be based on the factors listed in T.C.A. § 68-212-108. The commissioner of environment and conservation may then affirm the decision or may modify or reverse it if the decision is based upon improper factors. T.C.A. § 68-212-108. The local governing body may seek judicial review of an adverse determination. T.C.A. § 68-212-111.

There are statutory incentives available to counties in which commercial facilities for the disposal of hazardous waste are located. There is a "responsible waste disposal incentive fund" which, if funded by the legislature, is available to counties meeting the eligibility requirements. T.C.A. § 68-212-210. Furthermore, any local government receiving these funds may levy an additional fee, not to exceed statutory maximums, on the disposal of hazardous wastes at facilities within its jurisdiction. T.C.A. § 68-212-211. The county also has limited monitoring and inspection authority at these sites. T.C.A. § 68-212-208.

In addition to state legislation on hazardous substance management, there are federal provisions with which county governments must comply if they deal with hazardous materials. Local governments should also be aware that landfills containing hazardous waste may be subject to Superfund cleanup requirements.

Underground Storage Tanks

A statewide program, in conjunction with a national effort, is in effect to protect the public and the environment from leaking underground petroleum storage tanks. All owners, including counties, of underground tanks for the storage of petroleum products are subject to the program specifications. Among other requirements, owners must prevent leaks and protect their tanks from corrosion and they must notify the commissioner of environment and conservation and the United States Environmental Protection Agency of the existence of the tank. A fund has been created to help pay for leak cleanups. Owners must contribute fees to this fund, and the proceeds of an environmental assurance fee (four tenths cent per gallon of petroleum products imported into this state or manufactured in this state) are deposited into this fund. T.C.A. § 68-215-101 *et seq*. An owner/operator of a tank must pay all outstanding fees, interest and penalties in order to receive a certificate for the tank. A certificate is necessary to lawfully receive petroleum products into the tank. All applications for the payment of costs of cleanup must be received by the Division of Underground Storage Tanks within one (1) year of the performance of the tasks covered by that application in order to be eligible for reimbursement. Any person who knowingly causes or allows a release of petroleum into the environment commits a Class E felony, punishable by fine only. T.C.A. § 68-215-120.

Medical Services

<u>County Board of Health</u>. The primary agencies for local health services are the county board of health and the county health department. Each county is authorized to establish a board of health that is charged with the following duties: governing the policies of the health department, enforcing state health regulations, adopting rules to promote the general health of the county, and preparing an annual budget. The board must consist of the following members:

1. The county mayor;
2. The county director of schools or his or her designee;
3. Two physicians nominated by the county medical society;

4. One dentist nominated by the county dental society;
5. One pharmacist nominated by the county pharmaceutical society;
6. One registered nurse nominated by the county nurses' association;
7. The county health director (*ex officio* member);
8. The county health officer (*ex officio* member); and
9. A veterinarian and a citizen representative (optional members).

T.C.A. § 68-2-601.

Violation of health board regulations is a Class C misdemeanor, punishable by a fine not to exceed $50 and by imprisonment for up to 30 days, or both. If the county fails to establish an active board of health, the commissioner of health and environment may establish a health advisory committee. T.C.A. § 68-2-601.

County Health Department. Unlike the board of health, the county health department is a required agency. It is to be headed by the county health director, who is appointed by the commissioner of health and is compensated, at least in part, by the state. The commissioner also appoints a county health officer who must be a physician. If the county health director is a physician, he or she may also serve as the county health officer. T.C.A. § 68-2-603.

The county legislative body must provide necessary office facilities and funds for the functioning of the county health department. T.C.A. § 68-2-604. All private acts relative to county boards of health or county health departments remain in effect after the passage of T.C.A. §§ 68-2-601 *et seq*., 68-2-606.

Community Health Agencies. The state commissioner of health is authorized by T.C.A. § 68-2-1101 *et seq*. to establish community health agencies to encourage and coordinate healthcare for indigents. The statute authorizes four metropolitan health agencies (in the state's four largest cities) and eight rural agencies, each directed by its own board. T.C.A. § 68-2-1104. In order to carry out their duties these agencies may execute contracts, acquire property, procure insurance, collect fees, and perform other actions needed to achieve their goals. T.C.A. § 68-2-1106.

Healthcare Facilities. In order to operate in Tennessee, every publicly or privately owned hospital, nursing home, recuperation center, ambulatory surgical treatment center, mental health hospital or home for the aged is required to be licensed by the state Department of Health. T.C.A. § 68-11-201 *et seq*. A county may operate such facilities if they are licensed and maintained according to rules established by the state Department of Health. T.C.A. §§ 68-11-204, 9-21-105(20)(A). The state health care licensing board has exclusive jurisdiction to regulate this area so that any conflicting regulations adopted by local governments are inoperative. The state health care licensing board must approve all new healthcare facilities before construction work may begin. T.C.A. § 68-11-202.

Public School Nurse Program. This program was created as a part of the Department of Health for the purpose of improving school performance, lowering the dropout rate,

and safeguarding the health and well-being of students in Tennessee public schools. Nurses within the program are administratively assigned to various county and district health departments or local education agencies, but remain under the control and direction of the executive director of the school nurse program. This plan does not preempt local education agencies from continuing to employ and supervise school nurses who are not employees of the program. T.C.A. § 68-1-1201 *et seq*.

Ambulance and Emergency Medical Services. A county may, by resolution of the county legislative body, establish a county ambulance service; it may also contract for the provision of this service by private entities or other governmental agencies. Also, two or more counties or municipalities may enter into joint agreements with each other and with a provider of either emergency or nonemergency ambulance service on a countywide basis, except in Davidson and Shelby counties. T.C.A. § 7-61-101 *et seq*. The Emergency Medical Services Act of 1983, T.C.A. § 68-140-501 *et seq*., establishes a state emergency medical services board to regulate agencies that provide ambulance and emergency medical services. Although counties are not required to provide ambulance services (T.C.A. § 68-140-518), they must comply with this act if they choose to provide them. T.C.A. § 68-140-516. Pursuant to T.C.A. § 5-16-101(b)(2), counties are authorized to operate emergency medical services and charge fees or rates for such service under the urban type public facilities law.

Public Water Supplies and Wastewater Treatment

The Department of Environment and Conservation is responsible for supervising the construction, maintenance, and operation of public water supply and sewerage systems throughout the state. T.C.A. § 68-221-101 *et seq*. The Tennessee Safe Drinking Water Act of 1983, T.C.A.§ 68-221-701 *et seq*., provides the state water quality control board with extensive powers to adopt rules and regulations regarding public water systems and public water supplies. T.C.A. § 68-13-704. This Chapter also deals with wastewater treatment, construction and financing of facilities, and the creation of authorities and boards governing the operation and regulation of these facilities. One of these acts is The Wastewater Treatment Works Construction Grant Act of 1984, codified in T.C.A. § 68-22-801 *et seq*. This act provides financial assistance to encourage local governments to construct wastewater treatment facilities. T.C.A. § 68-22-802.

Other sections deal with subsurface sewage disposal systems and set minimum standards with which these systems must comply. T.C.A. § 68-221-401 *et seq*. Subsurface sewage disposal systems are also under the general supervision of the state Department of Environment and Conservation, and therefore are subject to rules, regulations, and standards established by the commissioner of that department. However, county health departments are authorized to enter into agreements with the commissioner to implement the requirements of this part, provided that the county's staff and resources are adequate to comply with the standards of the act. T.C.A. § 68-221-403.

Electricity may not be furnished to newly constructed houses or establishments unless the official electrical inspector verifies that the new construction is served by a public sewerage system or that the builder has applied for a permit for a subsurface sewage disposal system. T.C.A. § 68-221-414. Any county with a countywide building permit program is exempt from the requirements of this Section if it certifies to the commissioner of environment and conservation that its program requires a subsurface sewage disposal system permit before a building permit can be obtained. Any county that subsequently adopts a countywide building permit program will become exempt if it meets the requirements of this section. T.C.A. § 68-221-414. Also, a representative of the commissioner of environment and conservation (county health officer) must approve subdivision plats with parcel of less than five acres when subsurface sewage disposal is to be used. T.C.A. § 68-221-407.

Urban-Type Public Facilities

Counties are authorized to establish, construct, install, acquire, operate, and maintain urban-type public facilities. These include pipelines, docks, and water treatment systems, as well as operations to dispose of wastewater, sewage, garbage, and other waste matter (see discussion above). T.C.A. § 5-16-101. In order to exercise this authority, the county legislative body, by resolution, may designate an existing agency, create a public works department, or establish a board of public utilities to oversee the project. The composition of this board varies depending on the county's population (T.C.A. § 5-16-103), although a superintendent with specific statutory powers and duties is its head. T.C.A. §§ 5-16-104, 5-16-105. The statute also provides for bond issues (T.C.A. § 5-16-106), and addresses the relationship between cities and counties in the operation of these facilities. T.C.A. §§ 5-16-107, 5-16-110, 5-16-111. Before the county legislative body can authorize any of these services, it must submit plans to the regional planning commission for study. T.C.A. § 5-16-112.

Storm Water Management

Many counties, particularly those in urbanized areas, are required to establish a program for storm water management in order to comply with the mandates of the Environmental Protection Agency's (EPA) Storm Water Management program. The Storm Water Program is a series of regulations promulgated by the EPA. The purpose of these regulations is to implement amendments to the Clean Water Act, National Pollutant Discharge Elimination System (NPDES) Storm Water Program. The Storm Water Program is designed to regulate and clean up runoff that is entering water bodies from storm sewer systems, construction sites, and industrial sources.

According to the EPA Office of Water, the quality of waters in the United States has improved dramatically since the passage of the Clean Water Act; however, degraded waterbodies still exist. According to the 1996 National Water Quality Inventory, approximately 40 percent of surveyed U.S. waterbodies are still impaired by pollution and do not meet EPA standards. A major source of the pollution found in our rivers, lakes and streams is runoff. The purpose of the storm water program is to regulate and clean up that runoff.

Phase I. Storm Water Phase I regulations were promulgated by the EPA in 1990. Phase I uses a permit system set up under the NPDES to regulate storm water discharges from three sources:

1. Medium and large municipal separate storm sewer systems (MS4s) serving populations of 100,000 or greater;

2. Construction activity disturbing five acres of land or more; and

3. Ten categories of industrial activity.

Phase II Coverage. Phase II of the program expands Phase I by requiring additional parties to implement programs and practices to control polluted runoff again by using NPDES permits. The Phase II Final Rule automatically covers two groups on a nationwide basis:

1. Operators of small municipal separate storm sewer systems (MS4s) located in "urbanized areas." (As a practical matter, a small MS4 is any MS4 not covered in Phase I.); and

2. Operators of small construction activities that disturb from one to five acres of land.

Further, small MS4s outside of urban areas, construction activity affecting less than one acre and any other storm water discharges may be covered if the NPDES permitting authority or the EPA decides they need to be regulated.

For the most part, the authority to issue permits for storm water discharges has been delegated to the states. (In a few cases, the EPA retains the authority.) In Tennessee, anyone needing an NPDES permit applies to the Tennessee Department of Environment and Conservation (TDEC) for the permit.

How to Comply with Phase II. An operator of a small municipal separate storm sewer system has to apply to TDEC for a permit to discharge storm water and has to implement a series of storm water discharge "best management practices." These practices include the following:

1. An operator must develop, implement and enforce a storm water management program designed to reduce the discharge of pollutants from its MS4 to the "maximum extent practicable," to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act.

2. An operator's program must include six minimum control measures: (1) public education and outreach; (2) public participation/involvement; (3) illicit discharge detection and elimination; (4) construction site runoff control; (5) post-construction runoff control; and, (6) pollution prevention/good housekeeping.

3. An operator must also identify its best management practices and measurable goals in its permit application. An evaluation and assessment of those goals and practices must be included in periodic reports to the NPDES permitting authority.

Deadlines and Important Dates. The Tennessee Department of Environment and Conservation began issuing general permits for small MS4s and small construction activity on December 9, 2002. Counties automatically covered in the program obtain permit coverage within 90 days of permit issuance. After obtaining permit coverage, operators of small MS4s must fully implement storm water management programs by the end of the first permit term, typically a five-year period.

Authority to Comply and Regulatory Powers. In 1993, the Tennessee General Assembly passed a series of statutes to help larger municipalities comply with Phase I of the storm water regulations. These statutes are found in Title 68, Chapter 221, Part 11, of the *Tennessee Code Annotated*. They were intended to facilitate compliance with the environmental regulations by authorizing municipalities to regulate storm water discharges, establish a system of drainage facilities, and fix and require payment of fees for the privilege of discharging storm water. The statutes also authorized municipalities to construct and operate a system of drainage facilities for storm water management and flood control. "Municipality," as defined under that law, included only incorporated cities or towns, metropolitan governments, or special districts of the state that had a population of at least 75,000.

In 2001, the General Assembly passed Public Chapter 119 to expand the definition of municipality under these Tennessee storm water management statutes to include more local governments. T.C.A. § 68-221-1102. Since Phase II of the EPA storm water regulations will affect a significant number of cities and counties that were not under Phase I, the intent of the act was to give those cities and counties the ability to exercise the authority that larger municipalities had under T.C.A. § 68-221-1101 *et seq*. The bill accomplishes this by removing the population limitations from the law and by including "county" within the definition of "municipality."

Under the storm water management statutes, counties are authorized to:

1. Exercise general regulation over the planning, location, construction, and operation and maintenance of storm water facilities in the municipality, whether owned and operated by the county or not;

2. Adopt any rules and regulations deemed necessary to accomplish the purposes of this part, including adopting a system of fees for services and permits;

3. Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants as may be necessary to protect water quality;

4. Review and approve plans and plats for storm water management in proposed subdivisions and commercial developments;

5. Issue permits for storm water discharges, or for the construction, alteration, extension, or repair of storm water facilities;

6. Suspend or revoke permits when it is determined that the permit holder has violated any applicable ordinance, resolution, or condition of the permit;

7. Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and

8. Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources or storm water contamination, whether public or private.

T.C.A. § 68-221-1105 (as amended by Acts of 2001 Public Chapter 119).

It is important to note that as the law currently reads, county authority over storm water discharge may be exercised only outside of municipal boundaries.

In counties that are not in the state's computer assisted appraisal system, the county trustee is authorized to bill and collect storm water fees for the county as a designated item on the ad valorem tax notice issued by the trustee. Municipalities in these counties are authorized to contract with the county to have their storm water fees collected in the same manner. T.C.A. § 68-221-1107.

Air Pollution Control

Under the federal Clean Air Act, 42 U.S.C. § 7401 et seq., and the Tennessee Air Pollution Control Act, T.C.A. § 68-201-101, *et seq*., certain counties may be required by the Tennessee Air Pollution Control Board to implement a motor vehicle inspection and maintenance program in order to attain or maintain compliance with national ambient air standards if (a) the county has been designated by the United States Environmental Protection Agency as a nonattainment county and has more than 50,000 registered vehicles, or (b) is a former nonattainment county with more than 50,000 registered vehicles that is under a maintenance plan designed to continue to meet the national ambient air standards, or (c) the county contributes significantly to nonattainment in another county and has more than 60,000 registered motor vehicles. The Air Pollution Control Board may issue waivers consistent with federal and state law. Also, such a program may exist in counties for which the county legislative body has adopted a resolution that establishes an inspection and maintenance program consistent with the programs required by the state. All counties implementing a vehicle inspection and maintenance program may only charge fees that are directly related to the county's cost of establishing and maintaining the program. Such programs must follow rules established by the Tennessee Air Pollution Control Board. Inspections will occur

annually in conjunction with vehicle registration renewal. 2004 Public Chapter 926; T.C.A. §§ 55-4-128, -130.

CHAPTER 17

PLANNING, ZONING, AND GROWTH POLICY

Comprehensive Growth Planning

1998 Public Chapter 1101 and County Growth Plans. In 1998 the Tennessee General Assembly passed Public Chapter 1101, which requires a coordinated planning effort among a variety of public and private entities throughout the state. The legislation also reforms procedures and requirements for annexation and incorporation. Public Chapter 1101 was codified in T.C.A. § 6-58-101 *et seq*. The law calls for the development of a comprehensive growth plan in each county, covering projected growth in the next 20 years.

Designation of Zones. The law specifies that the comprehensive growth plan must identify the following three (3) types of areas if they exist within the county:

1. Urban Growth Boundary (UGB) - a reasonably compact area that contains the corporate limits of a municipality and the adjoining territory where high density commercial, industrial, or residential growth is expected.

2. Planned Growth Area (PGA) - compact sections outside incorporated municipalities and outside growth boundaries where high or moderate density growth is expected, if there are such areas in the county; new incorporations may occur only within these regions. A county has authority to provide services within a PGA and to set a separate tax rate for these services.

3. Rural Area (RA) - territory that is not within another zone and that is to be preserved for uses other than high density development.

Factors in Determining Zones. Several factors must be taken into account in determining the boundaries of these three (3) areas:

1. Population growth projections, to be developed in conjunction with the University of Tennessee;

2. Current and projected costs of infrastructure, urban services, and public facilities needed for development and methods to finance these needs;

3. The need for additional land area for high density development, after considering the feasibility of redeveloping all sites within the current boundaries;

4. The effect of development upon agricultural land, forests, recreational areas and wildlife management areas; and

5. The likelihood of eventual incorporation into a municipality.

Extraterritorial Planning Jurisdiction. A city that has been granted power to zone beyond its corporate boundaries (T.C.A. § 13-3-102) cannot zone outside of its UGB, regardless of the five-mile limit. However, if the county has no zoning and the city has not received extraterritorial zoning authority under the statute cited above, then the municipality may zone beyond its city limits only with the approval of the county legislative body. This rule includes territory that is outside the city limits but inside the UGB. The county retains authority to enact zoning (T.C.A. § 13-7-101 *et seq*.) within a PGA, an RA, and a UGB (although presumably only that Section of the UGB that is outside of municipal boundaries). The new law does not expand a county's zoning authority or enact statewide zoning.

Agreements Regarding Powers. Counties and cities are authorized to make agreements to refrain from exercising powers, including annexation and receipt of revenue. After five (5) years, agreements to refrain from exercising powers may be renegotiated or terminated upon ninety (90) days notice. The act explicitly allows written contracts between municipalities and owners (developers) regarding annexation, validating those in existence on the effective date of the act.

Amendment of Growth Plan. Unless there are "extraordinary circumstances," the initial growth plan remains in place for three (3) years. After the three years, the growth plan may be amended as often as necessary. T.C.A. § 6-58-104(d)(1). Municipal or county mayors are to propose amendments to the growth plan. The mayor proposing the amendment is to file notice of the amendment with the county mayor and mayors of all the municipalities in the county. Upon receiving the notice, the county mayor shall reconvene or reestablish the coordinating committee within sixty (60) days. The coordinating committee then has six (6) months from the date of its first meeting on the proposed amendment to submit its recommendation to the local governing bodies. The amendment shall become part of the county's growth plan after being approved by the local governing bodies and the local government planning advisory committee. The burden of proving the reasonableness of the change is on the party proposing it.

Joint Economic and Community Development Board. T.C.A. § 6-58-114. In addition to the coordinating committee that is formed to formulate a growth plan and any amendments to it, the law requires a board with representatives from both public and private segments of the community to engage in long-term planning and maintain communication among the various interest groups.

> *Composition*. The final makeup of each board is to be established by interlocal agreement, but at a minimum must include the county mayor, the mayor or city manager of each city in the county (in a county with multiple cities, the smaller cities may rotate for representation, according to interlocal agreement), and an owner of greenbelt property. A county or city mayor or city manager may designate an alternative representative on the board and its executive committee so long as the alternative has experience or education in administration, economic or community development, or planning and be able to speak for the represented official.

Executive Committee. The executive committee is to be selected by the entire board but must consist of at least the county mayor and the mayors of the larger municipalities.

Term of Office. The terms are to be determined by interlocal agreement, with a maximum of four (4) years; all terms must be staggered except for those of elected officials, whose terms of service on the board coincide with their terms of office.

Meetings. The full board must meet a minimum of four (4) times a year, and the executive committee must also meet at least four (4) times annually with an executive committee meeting occurring at least once in each calendar quarter. Both bodies are subject to the open meetings law and are required to keep minutes and attendance.

Funding. Costs are shared jointly among participating governments according to a statutory formula based upon population. The board may accept donations and grants. It must adopt a budget by April 1 each year; if a participating government does not contribute its share, the board may establish sanctions. Before applying for any state grant, local governments must certify their compliance with these provisions.

Exception. If a county has previously formed a similar agency, it may apply to the local government planning advisory committee for an exception to these provisions.

Donation of Funds. A joint economic and community development board is authorized to transfer or donate funds that it has received from participating governments and outside sources to other public or non-profit entities within the county to be used for economic or industrial development purposes. T.C.A. § 6-58-114.

Annexation

Annexation after Approval of Growth Plan. With the development of growth plans for all counties, rules for annexation changed. Municipalities may annex with few limitations within their established urban growth boundaries, but are practically prohibited from annexing outside that boundary. T.C.A. § 6-58-111.

Annexation Inside the UGB. A municipality may use any of the methods previously authorized to annex property inside the UGB, including annexation by ordinance and by referendum. However, in a change from previous law, a challenge to an annexation ordinance inside the UGB is heard by a judge with no option of a jury trial; the burden of proof is on the challenger to prove that the annexation is unreasonable.

Annexation Outside the UGB. Generally, a municipality may annex outside its UGB by one of two methods:

1. Amendment to the UGB - The procedures used to set and approve the original boundary, as explained above, must be repeated to change the boundary; or

2. Referendum, so long as the territory proposed to be annexed is not within the UGB of another municipality.

Additionally, T.C.A. § 6-58-104 permits municipalities (until July 1, 2012) to expand their urban growth boundaries to include tracts of land that meet the following conditions: (1) The tract is contiguous to a tract of land that has the same owner and has already been annexed by the municipality; (2) The tract is being provided water and sewer services; and (3) The owner of the tract consents to being included within the urban growth boundaries. This only approval required for this process is approval of the amendment by the municipality involved.

Notice of Annexation to County Mayor. A municipality is required to notify the county mayor of the county in which an annexation is proposed and to provide a copy of the annexation ordinance and a map of the area being annexed. Also, a copy of the proposed plan of services for the area proposed to be annexed is to be forwarded to the county mayor, including the portion relating to emergency services, and a detailed map goes to any affected emergency communication district. The county mayor must also be notified by the annexing municipality of the final decision in any *quo warranto* proceeding contesting a proposed annexation or the outcome of any referendum regarding annexation. The county mayor is required to notify the appropriate departments and offices of the county regarding information received from the municipality pertaining to a proposed annexation. T.C.A. §§ 6-51-102 through -105.

Annexation Across County Boundaries. After the passage of 1998 Public Chapter 1101, a city may not annex territory outside the county in which the city hall is located unless it meets one of the following exceptions:

1. On November 25, 1997, more than seven percent (7%) of the city's population resided in the second county;

2. The municipality receives approval from the county legislative body in the second county;

3. On January 1, 1998, the municipality provided sewer services to at least 100 customers in the second county; or

4. The annexation ordinance was adopted on final reading before the effective date of the act (May 19, 1998) and the property in the second county is to be used only for industrial purposes.

Distribution of Taxes after Annexation. T.C.A. § 6-51-115. When a city annexes property that generates wholesale beer taxes or local option sales taxes, the amount of revenue produced at the time of the annexation continues to go to the county for a period of 15 years. Any increases over this amount are distributed to the annexing

municipality. Note that this does not affect the distribution of the first half of the local option sales tax, which continues to go to education funding.

> *Formula for Distribution*. If the business operated for a full twelve (12) months before annexation, the county receives the monthly average for that period. If the business operated for at least one (1) full month but fewer than twelve (12) months before annexation, the county receives the average amount of each full month of operation. If the business operated for less than a month before annexation, or if it began operation within three (3) months of annexation, then the revenue for the first three (3) months is averaged and the county receives that amount.
>
> *Exceptions*. There are several exceptions to the distribution formula. If the wholesale beer tax or the local option sales tax is repealed, revenue amounts from the repealed tax will end; similarly, if the distribution to municipalities is reduced by the General Assembly, revenue amounts will be decreased proportionally. Finally, if a business closes or relocates, thereby reducing tax revenues, the city may petition the Department of Revenue no more than once annually for a reduction in amounts. A county may voluntarily waive rights to the revenue.
>
> *County Responsibility*. Upon annexation, each county is responsible for identifying tax-producing properties and providing a list of them to the Department of Revenue. Counties should also monitor the impact of annexations on all revenue-generating properties within the affected area. Some of the taxes received from such areas are not administered by the Department of Revenue. For example, certain of the taxes are collected and remitted by beer wholesalers. If the county does not monitor such transactions and inform the appropriate parties, it may lose out on tax revenue to which it is entitled.

<u>Incorporation</u>. New municipalities may be created in Tennessee only inside a planned growth area as designated in a comprehensive growth plan. Any new municipality must enact a property tax at least equal to its share of state taxes and must adopt a plan of services within six (6) months of incorporation. Before an incorporation election may be held, the county legislative body must approve the city limits and UGB for the proposed municipality. T.C.A. § 6-58-112.

<u>Consolidation of City and County Governments</u>.. After the passage of 1998 Public Chapter 1101, the law allows creation of a consolidation charter commission upon petition by qualified county voters equal to ten percent (10%) of the votes cast in the county for governor in the last gubernatorial election. (Previous law required the county and principal city to call for a consolidation commission.) The law also specifies procedures for appointment to the charter commission (under one (1) method, the county mayor appoints county members, subject to confirmation by the county legislative body). T.C.A. § 7-2-101.

Other Planning Provisions

Regional Planning Commission. In addition to comprehensive growth planning, there are other planning provisions in Tennessee statutes. The Department of Economic and Community Development has created and defined the boundaries of other planning regions, which are drawn without regard to county lines or other existing boundaries. T.C.A. § 4-3-701 *et seq*. For each planning region the department also creates a regional planning commission, or a municipal planning commission may direct regional planning under certain circumstances. T.C.A. §§ 13-3-101, 13-3-102. In actual practice, most planning regions consist of a single county.

Membership of Planning Commission. Except for planning regions consisting of a single county, the Department of Economic and Community Development determines the number of members (not fewer than five (5) nor more than fifteen (15)) on any regional planning commission. T.C.A. § 13-3-101. Before a member can be designated by the department, he or she must first be nominated in writing by the county mayor or the chief elected officer of a municipality within the planning region. The nominations for newly created or vacant positions on the commission must be received by the department within 30 days after the position becomes available. Members of planning commissions in single county planning regions are chosen by the county mayor, subject to the approval of the county legislative body. Members of local legislative bodies may serve; however, members from county and municipal legislative bodies must be fewer in number than a majority of the commission. And, with a few exceptions, public employees and officeholders must also make up less than a majority. T.C.A. § 13-3-101.

Each regional planning commission is to elect a chair from among its appointed members. T.C.A. § 13-3-103. The legislative body of a county or municipality in which the commission operates may establish compensation for regional planning commission or zoning board members. T.C.A. § 13-3-101. The statutes do not specify times or places for planning commission meetings, but they do address terms of office as well as procedures for removal and vacancies. T.C.A. § 13-3-101.

In the absence of any provision in a metropolitan or county charter (or private act or interlocal agreement), the county mayor, county executive or metropolitan mayor or executive shall, in accordance with T.C.A. § 5-6-106, have the authority to appoint a person meeting certain qualifications as planning director. The planning director shall have the power and authority to hire and fix the compensation, within the funds appropriated by the legislative body for this purpose, of such other employees and staff as he or she may deem necessary for the work of the planning commission. T.C.A. § 13-3-103.

Duties and Powers of Planning Commission. The regional planning commission is charged with several specific duties. It is required to adopt a general plan for the physical development of the region, copies of which must be certified to the Department of Economic and Community Development and to the legislative bodies of each county and municipality in the region. T.C.A. §§ 13-3-301, 13-3-304. Furthermore, the planning commission is to advise county and municipal governing bodies in such areas as public improvement programs and construction of roads, bridges, and other public structures.

The regional planning commission should coordinate its efforts with those of any municipal planning regions within its area, cooperate with authorities in neighboring states and regions, and, in general, perform any functions needed to promote regional planning. T.C.A. § 13-3-104. In exercising several of its duties, including the adoption of a regional plan, subdivision regulations and zoning ordinances, planning commissions are charged with identifying areas with inadequate or nonexistent public or private services and facilities necessary for development to occur and including such considerations in the plans, regulations and ordinances.

One of the most important duties of the regional planning commission involves plat approval. After the commission has developed and filed a regional plan, any subdivision, except one lying inside municipal borders, must be approved by the regional planning commission before it may be recorded by the county register. T.C.A. § 13-3-402. Regional planning commissions must approve or disapprove a plat within 60 days after the initial consideration by the commission at a regularly scheduled session, with an exception for holidays and unexpected office closings. Plats must be placed on the commission's agenda within thirty (30) days of the plat's filing or placed on the agenda for the next regularly scheduled commission meeting after the thirty (30) day period. These deadlines may be waived by the applicant. T.C.A. § 13-3-404. What constitutes a subdivision is defined in T.C.A. §§ 13-3-401(4) and 13-4-301(4). A representative of the commissioner of the state Department of Environment and Conservation (usually the county health officer) must approve subdivision plats when subsurface sewage disposal is to be used before the planning commission approves the plat. T.C.A. § 68- 221-407. A plat may be submitted only by the owner of the land (as defined in T.C.A. § 13-3-402) or by a governmental entity, and all plats must include the most recently recorded deed book and page numbers for all property included in the plat. T.C.A. § 13- 3-402. A plat must contain the personal signature and seal of a registered land surveyor or a registered engineer before the plat is eligible for filing in the register's office. T.C.A. § 66-24-116. Amendments, modifications, and corrections to recorded subdivision plats must have the approval of the appropriate regional or municipal planning commission to be eligible for recording with the county register of deeds, except that a survey of an easement or survey attached to an easement granted to a governmental entity may be recorded without planning commission approval, even if it modifies a plat of a recorded subdivision. T.C.A. §§ 13-3-402, 13-4-302.

All of these matters – platting regulations, road and utility requirements, and procedures for submission of plats – are addressed more specifically in T.C.A. § 13-3-403 *et seq*. However, these provisions do not apply to any subdivision plat registered prior to February 14, 1935, or to land partitioned by a court of competent jurisdiction. T.C.A. §§ 13-3-407, 13-3-408. Furthermore, these sections do not repeal or impair private acts relating to planning requirements. T.C.A. § 13-3-409.

Additionally, regional planning commissions are required to adopt rules for the transaction of their business which must include the selection of additional officers from among its members it deems appropriate to fulfill the organizational needs of the regional planning commission, the requirements for the regional planning commission to make findings of fact, statements of material evidence and reasons for its actions as

part of each motion or action of the regional planning commission and the keeping of a record of its resolutions, transactions, motions, actions, and determinations. T.C.A. § 13-3-103.

In order that the regional planning commission may accomplish its functions, it is granted certain statutory powers. One of the most significant is the authority to adopt regulations governing the subdivision of land within its jurisdiction; these regulations provide the requirements for plat approval. Additionally, T.C.A. § 13-3-403(b) allows regional planning commissions to include language in their subdivision regulations providing for an assessment (or other method which assures work will be done at the cost of the property owners) to secure completion of work in lieu of requiring completion of such work prior to the final approval of a plat. Also, the planning commission is entitled to relevant information from local officials, and its members may enter upon property for examination or survey. T.C.A. §13-3-104. The commission may hire employees, with some restrictions, and it may contract with planners and other experts. Expenditures of the commission are governed by T.C.A. § 13-3-103. Under certain circumstances the commission also has the power to combine substandard lots under one owner into one standard lot. T.C.A. § 13-3-402.

Additionally, T.C.A. §13-3-413 authorizes regional planning commissions to promulgate provisions in subdivision regulations and recommend zoning ordinance amendments for the establishment of review and approval powers for site plans and the establishment under the zoning provisions for review and approval of planned unit developments, overlay districts, mixed use developments, condominiums and other types of sustainable design and development of property. Infrastructure and internal development improvements such as public and non-public roads, water and sewer lines, landscaping, green space, sustainable design features and other improvements as required by the planning commission, either through its subdivision regulation or through the local government's zoning ordinance, shall be subject to bonding or other methods of guaranteeing their installation. The planning commission may set and hold the guaranteeing instruments or may designate another governmental body that duty and function.

Community Planning. In addition to regional planning, the General Assembly has also provided means through which unincorporated communities may adopt unified planning strategies. T.C.A. §§13-3-201 through 13-3-203. Any region of less than 10 square miles in area and with more than 500 inhabitants may petition the Department of Economic and Community Development to create a community planning commission, which has all the powers and duties of regional and municipal planning commissions. T.C.A. §§ 13-3-201, 13-3-202.

County Zoning

Zoning Regulation. The county legislative body is authorized to regulate land areas outside incorporated municipalities in such matters as the location and size of buildings; the percentage of a lot that may be occupied; the size of yards, courts, and other open spaces; the density and distribution of population; and the uses of buildings and land.

T.C.A. § 13-7-101. To carry out this authority the county legislative body may implement the zoning plans created by the regional planning commission.

After a planning commission certifies a zoning plan, including both the text of a zoning ordinance and a zoning map, then the county legislative body must hold a public hearing on the plan. Statutory requirements regarding notice, publication, and amendment procedures must be observed before the zoning ordinance can take effect. T.C.A. §§ 13-7-104, 13-3-105.

In formulating a zoning scheme, the regional planning commission may develop a single plan or successive plans for parts of the county it deems appropriate for development. These plans divide the territory of a county lying outside incorporated municipalities into zoning districts. All regulations must be uniform for each class of building throughout the district, but the regulations in one district may differ from those in another. The zoning plan may also provide for the transfer of development rights. T.C.A. § 13-7-101(a)(2). If the county legislative body chooses to enact the zoning plan for more or less territory than that encompassed in the plan certified by the planning commission, then it must resubmit the plan to the commission for approval. If the revised plan is disapproved by the commission, then at least two-thirds (2/3) of the entire county legislative body membership must vote for its approval for the revision to pass. T.C.A. § 13-7-102.

Amendments. The county legislative body is authorized to amend zoning regulations, although any amendment must first be submitted to the regional planning commission, which has thirty (30) days to pass the amendment or to offer suggestions. If the planning commission disapproves, the amendment becomes effective only through a subsequent majority vote of the county legislative body. Before final adoption, the county legislative body must hold a public hearing, giving at least fifteen (15) days notice (thirty (30) days in Shelby County) in a newspaper of general circulation in the county and including a summary of the proposed amendment. T.C.A. § 13-7-105.

Board of Zoning Appeals. The county legislative body is also authorized to create a board of zoning appeals to make special exceptions to zoning regulations, assist in settling boundary line disputes, interpret zoning maps, and consider similar questions. T.C.A. §§ 13-7-106 through 13-7-109. The county legislative body usually appoints from three to five regular members of the appeals board, along with one or more associate members who can sit for regular members under some temporary disability. A joint board of zoning appeals may be appointed by two or more counties. Compensation and length of terms are determined by the county legislative body within certain statutory guidelines. Vacancies are filled for the unexpired term and in the same manner as the original appointments. The county legislative body may remove any member for cause upon written charges and after a public hearing, and may specify rules governing organization, procedure, and jurisdiction of the board. T.C.A. § 13-7-106. The board of zoning appeals may also adopt supplemental rules of procedure if these are consistent with state statutes and rules adopted by the county legislative body. T.C.A. § 13-7-107. Land use decisions made by the board of zoning appeals,

other than variances, must be consistent with the regional plan if the county legislative body adopts the general regional plan in the form of a resolution. T.C.A. § 13-3-304.

County Building Commissioner. The county is authorized to establish the position of county building commissioner, who is appointed by the county mayor and confirmed by the county legislative body. The building commissioner considers building permit applications and issues permits to those who comply with zoning regulations. Before any structure within the region is built, altered, or used, it must fully conform to all zoning regulations, and this compliance must be evidenced by a building permit. T.C.A. § 13-7-110. Building permit rules may also be enacted by private act. Any grant or refusal of a permit, or any other decision of the building commissioner, may be appealed to the board of zoning appeals. T.C.A. § 13-7-108. In the event any building official is denied permission to make an inspection, the official may obtain an administrative search warrant from a person authorized by law to issue warrants or from any court of record in the county where the official works. T.C.A. § 68-120-117.

Special Zoning Provisions. Finally, the county legislative body is also authorized to establish a historic zoning commission (T.C.A. § 13-7-401 *et seq*.), as well as special zones for flood control and solar energy systems. T.C.A. § 13-7-102. However, these special zoning statutes do not apply to land used for agricultural purposes, as long as any structures on the land are incidental to the agricultural purpose unless the property is near state federal-aid highways, public airports, or public parks. T.C.A. § 13-7-114.

Enforcement and Application. Any person or company who violates zoning regulations is guilty of a misdemeanor, and each day the violation continues constitutes a separate offense. In addition, the county legislative body, attorney general, district attorney general, county building commissioner, or neighboring property owner (who would be specially damaged) may initiate appropriate action to prevent or remove the unlawful construction or use. T.C.A. § 13-7-111. Also, under the 1995 County Powers Act, the county legislative body has the authority to establish monetary penalties for violation of lawful county regulations, including zoning regulations. T.C.A. § 5-1-121.

The provisions of T.C.A. § 13-7-101 *et seq*. specify that these zoning provisions do not repeal or modify any private act enacted before 1935 that relates to zoning regulations. T.C.A. § 13-7-115. However, whenever a private act imposes more rigorous standards than those required by statute, then the private act will govern. Conversely, whenever the statute is more stringent, then the provisions of the statute prevail over those of the private act. T.C.A. § 13-7-112.

Municipal Zoning Outside City Limits

A municipality has statutory authority to enact zoning regulations for territory adjacent to but outside of its boundaries if that area has no zoning already in force. T.C.A. § 13-7-302. In order to enact zoning outside its municipal boundaries, the municipal planning commission must also be designated as the regional planning commission (T.C.A. § 13-3-102), and the municipality must file notice of intent with the county mayor at least six (6) months before the final enactment of the ordinance. T.C.A. § 13-7-303. If the

county subsequently adopts zoning covering that territory, the municipal zoning is automatically superseded and repealed. T.C.A. § 13-7-306. According to the comprehensive growth planning law discussed above, a city may not zone outside its urban growth boundary once this boundary is in place. T.C.A. § 6-58-106(d).

Adoption of Building Codes

The county legislative body may enact a resolution that adopts by reference any prepared building, plumbing, or other code, or any federal rules and regulations. At least 90 days before the adoption of a resolution incorporating a code by reference, three copies of the code must be filed in the office of the county clerk. No resolution that adopts a code by reference will be effective until it is published in a newspaper of general circulation. T.C.A. § 5-20-102. Any code adopted by reference must be retained on file as a public record. T.C.A. § 5-1-116. These provisions apply only to the unincorporated area of a county and to those incorporated cities and towns within the county that do not elect to adopt their own codes regulating the same subject areas. T.C.A. § 5-20-106.

The adopting resolution may also incorporate by reference the administrative provisions of any code, or may include in the adopting resolution any suggested administrative provisions found in a code. If a code does not contain administrative provisions, the administrative provisions of another code may be adopted and included in the resolution. However, the penalty clause contained in such a code may not incorporated by reference. T.C.A. § 5-20-105(a). Any official within the existing framework of county government may be charged with enforcing the code, including but not limited to officials who administer zoning regulations. T.C.A. § 5-20-103. A violation of any code is a misdemeanor. T.C.A. § 5-20-105(b). Additional enforcement power is vested in the county attorney or other designated county official who may, in addition to other remedies provided by law, obtain an injunction to prevent violation of any provision of the code. T.C.A. § 5-20-104.

The state fire marshal will recognize and accept certification of state, county and municipal employees from the National Fire Protection Association or the International Code Council, as satisfying the standards and qualifications for fire prevention and building officials. A county or other employing governmental entity must have all newly employed applicants for fire safety and building inspectors certified within 12 months of employment. T.C.A. § 68-120-113. Additionally, 2007 Public Chapter 582 enacted T.C.A § 68-120-118, which requires that all persons entering into employment after July 1, 2008 as inspectors to enforce plumbing, mechanical and fuel gas codes be certified by the state fire marshal. Inspectors hired after July 1, 2008 have up to 12 months from their date of employment to obtain certification; those who were already employed on July 1, 2008, are deemed to meet the certification requirements for 3 years from the date of certification, but will have to meet the requirements upon re-certification at the end of the initial 3 years. All certifications must be renewed every 3 years. The state fire marshal is directed to issue rules and regulations regarding standards and qualifications for certification, as well as a form application for certification.

Tennessee Clean Energy Future Act of 2009

In order to increase the state's energy efficiency, the Tennessee General Assembly enacted the Tennessee Clean Energy Future Act of 2009. 2009 Public Chapter 529. As part of this Act, the legislature amended T.C.A § 68-120-101, which provides for minimum statewide building construction standards.

Minimum statewide building construction standards existed before the passage of the Act. The standards, which include provisions relating to structural strength and stability, means of egress, and fire safety, are set by the state fire marshal and apply to state, city, county, and private buildings other than one and two family dwellings. The standards do not, however, apply to buildings in local jurisdictions that have adopted and are enforcing the International Building Code and either the International Fire Code or the Uniform Fire Code. Local jurisdictions can lose this exemption if they fail to adequately enforce the codes or if the codes they have adopted are not current within seven years of the latest edition (unless otherwise approved by the state fire marshal). For those buildings and jurisdictions that are subject to the state standards, the state fire marshal enforces the codes by reviewing and approving plans and specifications and charges fees to cover the costs.

As part of the effort to improve energy efficiency in the state, the Act amends T.C.A § 68-120-101 to add energy efficiency as an area that must be addressed in the minimum statewide building construction standards. The Act also adds one and two family dwellings to the list of structures that are covered by the statewide standards. The Act does, however, exempt renovations to such one- and two- family dwellings from the statewide standards. In addition, the Act makes it clear that the statewide standards will not include mandatory sprinklers for one and two family dwellings but local governments may adopt more stringent standards should they choose to do so.

The biggest, and most complex, changes to T.C.A § 68-120-101 relate to exemptions available to local governments. A new provision in T.C.A § 68-120-101, not found in the prior law, allows local governing bodies to exempt their jurisdictions from the application of minimum statewide standards to one and two family dwellings regardless of whether the local jurisdiction is enforcing its own codes or has no codes at all. This exemption requires a two-thirds (2/3) vote by the local governing body and expires 180 days after the next local legislative body election (or at an earlier date set out in the resolution). Thus, should a county legislative body choose to opt out of the application of minimum statewide standards to one and two family dwellings in its jurisdiction, the exemption will only last from the effective date of the resolution until 180 days after the next county legislative body election. At such time, the county legislative body will have to pass another resolution (again, by a two-thirds (2/3) vote) should they choose to continue the exemption. It should be noted that the Act does state that local governing bodies may adopt initial resolutions after July 1, 2009 to opt out of the minimum statewide standards for one and two family dwellings to be effective July 1, 2010; however, this provision itself does not take effect until July 1, 2010, so it is unclear as to whether such initial resolutions would be effective. Because of this ambiguity, local governing bodies may wish to adopt such resolutions on or after July 1, 2010.

Should a local governing body change its mind about exempting its jurisdiction's one and two family dwellings from minimum statewide construction standards, the Act does permit local governing bodies to reverse their action at any time by a simple majority vote. Taking such action would make one and two family dwellings subject to the minimum statewide construction standards. Under the Act, local governing bodies are required to transmit any resolutions done under T.C.A § 68-120-101, whether they are opting out or back in, to the state fire marshal's office.

As in the prior version of T.C.A § 68-120-101, local government jurisdictions can be exempt from statewide standards by enforcing standards themselves. The Act revises the criteria for this exemption. Under the Act, in order for local government jurisdictions to be exempt from the minimum statewide standards, they must demonstrate one of the following:

1. The local government has chosen to adopt and enforce building codes for all types of buildings and it has adopted the International Residential Code (for one- and two-family dwellings), the International Building Code (for all other types of buildings), and either the International Fire Code or the Uniform Fire Code; or

2. The local government has chosen to adopt and enforce building codes for all types of buildings other than one- and two-family dwellings and it has adopted the International Building Code and either the International Fire Code or the Uniform Fire Code; or

3. The local government has chosen to adopt and enforce building codes for one- and two-family dwellings only and it has adopted the International Residential Code and either the International Fire Code or the Uniform Fire Code.

To remain exempt, local jurisdictions must adequately enforce the codes and review plans and specifications and conduct inspections. And, as with the prior law, the codes adopted by local jurisdictions must be current within seven years of the date of the latest editions.

The Act provides that the state fire marshal will enforce minimum statewide standards with respect to buildings for which the local jurisdiction has not adopted and is not enforcing codes. For example, if a local jurisdiction has adopted and is enforcing codes for all buildings other than one and two family dwellings, the state fire marshal will enforce the minimum statewide standards for the one and two family dwellings (unless the governing body has exempted out one and two family dwellings as explained above)

The changes made to T.C.A § 68-120-101 will obviously increase the workload for the state fire marshal's office. To handle this increased volume of enforcement, the Act authorizes the state fire marshal to contract with city and county employees, as well as with individuals from the private sector, to act as deputy building inspectors. The

inspectors are authorized to charge fees for the inspections. The schedule of fees will be determined by the state fire marshal.

The provisions of the Act amending T.C.A § 68-120-101 became effective on July 1, 2010. The Act is subject to sunset review in 2014.

Industrial and Economic Development

Industrial Development Corporations. Industrial development corporations were authorized by the General Assembly to maintain and increase employment, increase agricultural and industrial production, and reduce pollution. Their powers and duties are set forth in T.C.A. § 7-53-101 *et seq*. These statutes expressly state that their provisions are to be broadly construed to further the health, welfare, and safety of citizens. Thus, these corporations can figure prominently in a county's planning activities. (For an expanded discussion regarding the formation of industrial development corporations and bond issuance, *see* Chapter 13.)

Industrial development corporations are authorized to prepare and submit to the county or municipality of their creation an economic impact plan for areas affected by projects of the industrial development corporation. The plan must provide that the property taxes collected on property in the plan area, including taxes on personal property, above the base year amount will be allocated to a separate fund of the industrial development corporation and used for industrial development purposes or to pay debt service on the industrial development corporation's obligations. The plan may include an amount greater than the base year amount to be allocated to the taxing local governments. The plan is subject to approval by the county or municipal legislative body that created the industrial development corporation. If the area subject to the plan is within the corporate limits of a city or town, the taxes that would otherwise be payable to the city, town, or county that is not the local government that created the industrial development corporation will not be paid to the industrial development corporation unless such local government has also approved the plan. T.C.A. § 7-53-312.

Counties and municipalities are authorized to appropriate funds to make contributions or loans with reasonable interest, to industrial development corporations in the county. County legislative bodies are authorized to borrow funds for the purpose of making contributions or loans to industrial development corporations. T.C.A. § 6-54-118.

Tennessee Regional Megasite Authority Act of 2007. 2007 Public Chapter 426 provides for the creation of regional megasite authorities which may acquire land and improve, finance, operate, maintain, and market megasites (sites certified as being suitable and available for development for significant economic and industrial development pursuant to T.C.A. § 64-12-103). Regional megasite authorities may be created by two or more counties and/or municipalities.

CHAPTER 18

COUNTY REGULATORY POWERS

Powers to Prevent and Abate Nuisances

In 2002, the General Assembly amended a part of the County Powers Act to authorize counties without zoning to exercise the certain regulatory powers granted to municipalities under T.C.A. § 6-2-201(22) and (23). T.C.A. § 5-1-118. The powers are described in the law as the ability to:

> Define, prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, businesses, occupations, callings, trades, uses of property and all other things whatsoever detrimental, or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the municipality, and exercise general police powers; and
>
> Prescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of the people may lawfully be established, conducted or maintained. T.C.A § 6-2-201(22) and (23).

The next year, the General Assembly revisited the statute and expanded its application to allow all counties the ability to use these powers after adoption of a local resolution by a two-thirds (2/3) vote of the county legislative body.

<u>Limitations on the Exercise of Regulatory Authority</u>. While this new authority is a broad expansion of county regulatory power, the grant of authority came with several restrictions. The exercise of these powers by counties is limited in a number of ways by both the statute itself and the state and federal constitutions.

Local Adoption. Even though all counties are eligible to exercise the powers in T.C.A. § 6-2-201(22) and (23), a county may not pass any such regulations pursuant to that authority unless it first adopts those powers by a resolution passed by a two-thirds (2/3) majority of the county legislative body. Also, Chapter 57 of the Public Acts of 2003 clarified that the county must not only pass such a resolution by a two-thirds (2/3) majority but also must pass any subsequent regulations by a two-thirds (2/3)majority. T.C.A. § 5-1- 118.

Jurisdiction. By law, the authority granted to counties by T.C.A. § 5-1-118(c) may be exercised only in the unincorporated areas of the county. Additionally, the law states that it should not be construed to allow any county to prohibit or in any way impede any municipality in exercising any lawful municipal power or authority.

Exempted Activities. The law also exempts certain businesses and practices from regulation. The powers conferred upon counties by T.C.A. § 5-1-118(c) do not apply to the following activities, which are regulated under other provisions of general law: sale of beer and alcoholic beverages; wholesale of beer; surface mining; production of oil

and gas; activities covered by environmental protection laws and regulations dealing with air pollution, atomic energy, solid waste disposal and management, landfills, hazardous waste management, petroleum underground storage, oil spill cleanup, dry cleaning, water, wastewater and sewerage; water management; wells; and dams. Additionally, T.C.A. § 5-1-118(b) provides that counties may not use these powers to prohibit or regulate normal agricultural activities.

Grandfathered Uses. In T.C.A. § 5-1-118(c)(3), the law provides further that all court decisions and statutory laws relating to variances and nonconforming uses applicable to zoning ordinances and land use controls shall apply to the enforcement and exercise of these new regulatory powers. For example, if a county determined that the sound of planes taking off and landing at an airport could potentially be a nuisance to surrounding residential properties and passed a regulation prohibiting the location of an airport within one-half mile of a residential property, this regulation may limit the location of future airports in the county, but an airport that was in existence at the time the regulation was passed that violated the distance rule would be allowed to continue to operate as a pre-existing nonconforming use.

Constitutional Limitations. As with all government action, regulations passed under this new authority must be both written and enforced in such a manner that they do not violate the constitutional rights of people affected by the regulations. For example, the county could not pass a regulation that prohibited passing out literature of a political nature. This would obviously violate a citizen's First Amendment right to freedom of speech. The county could not pass regulations prohibiting religious ceremonies or the ownership of guns. The regulations could not discriminate on the basis of race, gender, or other protected classes. These limits are obvious. Issues that are more likely to arise would involve challenges that a regulation resulted in taking property without just compensation or failed to provide due process. If the regulation is so burdensome on a property owner that the owner can no longer get use, enjoyment, or value out of the property, a court may find that the regulation effectively "took" the value of the property from the owner without providing compensation. In that case, the regulation may be struck down, or the county may be required to compensate the injured property owner. Due process problems may arise if citizens are not provided a means to dispute or appeal a penalty under the regulation. Part of providing due process in a regulation also involves giving the public adequate notice of the regulation. This standard of adequate notice requires a regulation to be clear in its language and application so that those affected understand the regulation. If a county regulation is so vague that the public cannot ascertain what conduct is regulated or how it is regulated, it may be struck down as unconstitutional.

Enforcement. The laws passed in 2002 and 2003 did not include any specific provisions regarding how these new regulatory powers would be enforced. Therefore, enforcement will fall under existing statutory authority. As part of the original "County Powers Act," the legislature passed T.C.A. §§ 5-1-121 and 5-1-123. These statutes authorize enforcement of county regulations by monetary penalties and direct that the general sessions court is the proper venue for enforcement of the regulations. In T.C.A. § 5-1- 121, the legislature provided that the penalties for violation could be up to $500

per violation; however, subsequent court decisions probably place limits on this monetary penalty. *See Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn. 2001). According to the Tennessee Supreme Court in that case, a punitive fine levied by a local government cannot exceed $50 unless the defendant is allowed to have a jury trial. Higher fines could be enforced if they are remedial in nature rather than punitive, but this distinction is difficult to make. Therefore, a county should generally limit monetary penalties to $50 or less per violation. Penalty provisions of any regulations should be carefully considered by the county attorney. The county attorney should also be involved in the development of any regulations as he or she will most likely be involved in enforcing the regulations and defending any legal challenges to the regulations. Attorney General's Opinion 03-024 states that ordinances or regulations passed under T.C.A. 5-1-118(c) are to be enforced by a civil lawsuit brought on behalf of the county. The attorney general further opined that since the statutory scheme does not designate a specific officer to prosecute ordinance violations, it appears that suits to enforce a regulation would be brought by the county attorney.

Cable TV Regulation

With the passage of the "Competitive Cable and Video Services Act" of 2008, codified at Title 7, Chapter 59, cable providers now have the option of obtaining either a statewide cable franchise or a local cable franchise from a county or municipality. While the cable act does make major changes to state cable franchise law, many areas of the prior law have been expressly preserved. For example, the act does not alter existing state law relating to local control of the public right-of-way nor does it alter existing law relating to the police powers of local governments. Furthermore, the new act does not alter or restrict the right of counties or municipalities to impose ad valorem taxes, sales taxes, or other taxes of general applicability. One important change that was made, however, was to the customer service provisions. Under the new act, FCC customer service standards will apply to statewide franchise holders, while local franchise requirements will continue to be applicable to local franchise holders. For statewide franchise holders, customer complaints will be handled by the Tennessee Regulatory Authority. Local governments will continue to handle complaints under local franchise agreements.

Before taking any action regarding cable television or other telecommunications services, counties must consult three major pieces of federal legislation: the Cable Communications Policy Act of 1984 (47 U.S.C. § 521 *et seq*.), the Cable Television Consumer Protection Act of 1992, and the Telecommunications Act of 1996. This last act, effective as of February 8, 1996, is the first major overhaul of federal telecommunications law since 1934. The intent of the 1996 act is to reduce regulation of these services on all levels and promote competition within and between the different industries that are beginning to overlap due to new technology. Basically, this means that the distinction between cable, telephone, video and other communications industries is becoming blurred as companies begin offering multiple services and many new companies enter this field.

Local and state regulations that prohibit or have the effect of prohibiting any entity from providing telecommunications services are pre-empted by this federal statute (Section 253, Telecommunications Act of 1996). However, this limitation is not intended to prevent local governments from managing public rights of way and receiving fair and reasonable compensation for the use of the right of way, as long as it is done in a competitively neutral and nondiscriminatory manner. Counties should prepare for the expansion of these fields and begin developing a comprehensive plan for the management of public rights of way.

Federal law provides that a state or other franchising authority (including counties) may also hold an ownership interest in a cable service. 47 U.S.C.A. § 533. However, until recently, counties in Tennessee lacked the authority to operate a cable television franchise. Op. Tenn. Att'y Gen. 88-170 (Sept. 20, 1988). In recent years, the General Assembly has amended Title 7, Chapter 52, of the *Tennessee Code Annotated* to allow municipalities that operate an electric plant to enter into the telecommunications service field. "Municipality" is defined under that Chapter of the code to include both metropolitan governments and counties. Under T.C.A. § 7-52-401 *et seq*., municipalities are authorized to provide telephone, telegraph or telecommunications services through the board or supervisory authority that operates the electric system. This industry is highly regulated by both the Tennessee Regulatory Authority and the Federal Communications Commission. Any telecommunications system operated by a county would have to conform to all such regulations and requirements. Also, under T.C.A. § 7-52-601 *et seq*., the same municipalities are authorized to provide cable television services, two-way video transmission, video programming, Internet services or similar services. Title 7, Chapter 52, Parts 4 and 6, include extensive regulations regarding how such services may be provided and how the utility must be structured. These laws, as well as the federal laws discussed above, should be thoroughly consulted by any local government interested in entering these arenas.

Debris Removal and Weed Control

Counties are granted permissive authority regarding the removal of overgrown vegetation, accumulated debris, and vacant dilapidated buildings or structures in the county. Owner-occupied residences are not included, except in certain counties designated by narrow population class. T.C.A. § 5-1-115. Owners of the property are to be provided with notice to remedy the situation before the county may act. Counties are granted a lien on the property for the cost of remedying or removing the situation. This statute's enforcement mechanisms include the placing of lien on the property to reimburse the county for the cost of removing the garbage, litter or refuse and imposing a monetary penalty enforceable in general sessions court. T.C.A. § 5-1-121.

Additionally, counties are authorized to adopt regulations for litter control under T.C.A. § 39-14-508. The regulations promulgated by a county pursuant to this statute may require property owners to conform their property to the regulations by removal of garbage, litter, refuse or rubbish. The statute requires the county to send a statement to the owner itemizing the cost of the removal and provides that the statement shall constitute a lien upon the property if the owner fails to reimburse the county for the cost

of the removal within sixty (60) days, sets out the priority of the lien when filed, and specifies that the lien shall be filed with the register of deeds of the county in which the property lies. The full resolution, or the caption and a complete summary of the resolution, must be published after its final passage in a newspaper of general circulation in the county and the resolution cannot take effect until it is published.

Regulation of Adult-Oriented Entertainment and Massage

The primary state law that grants counties the authority to license and regulate adult-oriented establishments and entertainers is the Adult-Oriented Establishment Registration Act of 1998, T.C.A. § 7-51-1101 *et seq*. This act replaces a former and somewhat similar registration act, which was declared unconstitutional by a federal district court. *Brothers Three Enterprises v. Knox County*, No. CIV-3-89-0035 (E.D. Tenn., N.D., February 4, 1991). This registration law is optional for county governments and may be adopted by a two-thirds (2/3) majority of the county legislative body. An important change to this act occurred in 2008. In 2008 Public Chapter 1085, T.C.A. §§ 7-51-1102, 7-51-1109, and 7-51-1110 were amended to permit county legislative bodies to choose an alternative appeals procedure for denials of adult establishment applications and revocations of permits for adult establishments. Currently, if the board affirms the denial of an application or the revocation of a permit, the county attorney files suit for declaratory judgment to confirm the decision was properly made. The county legislative body can now opt into a different procedure in which the aggrieved party shall have the right to appeal the board's decision by common-law writ of certiorari. The county legislative body may rescind its election at any time.

Another general state law governs the location and hours of operation of adult-oriented establishments codified at T.C.A. § 7-51-1401 *et seq*. This law prohibits these businesses, except those offering only live stage shows, adult cabaret, or dinner show type settings, from opening before 8 a.m. or remaining open after midnight Monday through Saturday. On Sundays and legal holidays they must remain closed. Local governments may establish shorter hours of operation, but may not extend the hours. The act provides that these businesses cannot be located within 1000 feet of child care facilities, public/private charter schools, public parks, residences or places of worship. The act also contains regulations regarding the structure and type of lighting in viewing booths, and specifies penalties for violations.

Although under previous law counties could adopt an optional act to regulate massage services within the county, those statutes (T.C.A. § 63-18-101 *et seq*.) have been repealed and superceded by general law enacting a state licensing system in T.C.A. § 63-18-201 *et seq*. Under the new act, a state board performs all licensing and regulatory functions that were formerly under the authority of the county board.

Animal Control

The county legislative body, by resolution, may "license and regulate dogs and cats, establish and operate shelters and other animal control facilities, and regulate, capture,

impound and dispose of stray dogs, stray cats and other stray animals." T.C.A. § 5-1-120.

It is unlawful to own, keep or harbor a dog or cat six months old or older that has not been vaccinated for rabies by or under the supervision of a veterinarian. Counties and municipalities are authorized to adopt local resolutions or ordinances to require registration of dogs or cats in their jurisdiction. Any such local laws must include methods for collecting registration fees and must require expenditure of the funds solely to establish and maintain a rabies control program, to conduct animal control activities, to ensure that dogs and cats are properly vaccinated and that biting animals or rabies suspects are observed or confined in accordance with state law and regulations. If the local law meets or exceeds the minimum requirements of the state law, the local law, not the state law, will apply in that jurisdiction. T.C.A. § 68-8-101, *et seq*.

Regulation of Beer Sales

All businesses engaged in the sale, distribution, manufacture and storage of beer must obtain a permit from the city or county in which the business is located. T.C.A. § 57-5-103. The administration of the beer laws within the county is performed by either the county legislative body acting as a whole or by a committee appointed by the county legislative body for this purpose (commonly referred to as the "beer board"). T.C.A. § 57-5-105. Although state law establishes most of the parameters within which beer is sold in counties, the county retains some discretion. For example, the hours for the sale of beer are set in T.C.A. § 57-5-301, but the county legislative body is authorized to extend those hours by resolution. The county legislative body also has the authority to establish distance rules forbidding the sale of beer within 2,000 feet of a church, school, or other place of public gathering or within 300 feet of a residential dwelling. T.C.A. § 57-5-105.

State law establishes the requirements that an applicant must meet before a beer permit will be issued, and counties (other than those with metropolitan charter forms of government) may not impose any additional requirements; applicants who meet all of the statutory requirements for issuance of a permit must be issued a beer permit. T.C.A. § 57-5-105.

Permits may be revoked or suspended, or monetary penalties may be imposed, by the beer board (or the county legislative body) for violations of the beer laws or any local regulations promulgated thereunder. T.C.A. § 57-5-108. The permit holder is entitled to a hearing prior to revocation, suspension or imposition of a monetary penalty. *See* Op. Tenn. Att'y Gen. 94-064 (April 28, 1994).

The regulation of the sale of beer within counties and the issuance of beer permits is discussed in depth in the CTAS publication entitled *Tennessee Beer Laws*. This manual is found on the CTAS Web site at www.ctas.utk.edu.

Contractor Permits and Bonds

A county legislative body, by resolution adopted by a two-thirds majority vote, may require certain contractors to register with a department of codes administration or other appropriate agency and post a permit bond before engaging in activities subject to this law. If adopted, the contractors affected include those who contract to perform the following services: construction, erection, alteration, repair, removal, or demolition of any building or structure or part thereof; repair or replacement of any damage to a building or structure caused by insects or natural disaster; erection or construction of signs or billboards; or construction of swimming pools. A bond of $10,000 is required for building permits under $25,000, and a bond of $50,000 is required for permits of $25,000 or more. A bond of $40,000 is required for all gas/mechanical, plumbing and excavation permits. Also, if adopted, this law requires the contractor to secure a contractor's business license. Contractors of multiple trades or contractors involved with work on more than one structure may provide one $50,000 bond to meet the requirements of the law. Nonprofit housing ministries are exempt from this law. T.C.A. § 62-6-137.

Guns in Parks

Pursuant to T.C.A. § 39-17-1311 it is legal for persons authorized to carry a handgun pursuant to T.C.A. § 39-17-1351 to carry a handgun while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway or other similar public place owned or operated by a county or instrumentality thereof unless a county elects, by a majority vote, to prohibit handguns in such places. If a county elects to prohibit handguns in its parks, the prohibition will apply to the entire park. If a park is jointly owned or operated by a county and a municipality, then all affected legislative bodies must vote individually to prohibit handguns in the park. Counties electing to prohibit handguns in parks must prominently display signs in the parks to provide notice that handguns are not allowed. It is a Class A misdemeanor for persons to possess handguns in parks where handguns are prohibited.

CHAPTER 19

PERSONNEL MATTERS

This Chapter contains a general overview of various topics related to the employer-employee relationship and personnel management issues in county governments in Tennessee. For in-depth coverage of all of these topics and more, refer to the CTAS publication entitled *Legal Aspects of Personnel Management*, which is available on the CTAS Web site at www.ctas.utk.edu.

Personnel Management in Counties

Various state statutes grant county officials and department heads authority over personnel matters within their offices or departments. For example, the County Uniform Highway Law provides that the chief administrative officer of the highway department has authority over highway department employees. T.C.A. § 54-7-109. In counties that have adopted the Sheriff's Civil Service Law, the civil service commission establishes certain policies for the sheriff's department, but the sheriff can hire and fire employees pursuant to the policies as established. T.C.A. § 8-8-401 *et seq*. The county board of education is responsible for personnel matters within the department of education. T.C.A. §§ 49-2-203, 49-2-209. Other examples of the authority of county officials with respect to deputies and assistants is discussed in the Section entitled "Deputies and Assistants" below.

Because the state legislature has placed authority over personnel with various individual officeholders, the county legislative body has little control over personnel management in most county offices and departments. For example, the county legislative body generally cannot adopt personnel policies and apply them to all county offices without the agreement of the affected county officials. An exception to this rule has been found by the courts to exist in the largest counties in Tennessee, such as Shelby, which has centralized personnel management authorized by private act, and Davidson, which has centralized personnel management by metropolitan charter. *See Shelby County Civil Service Merit Board v. Lively*, 692 S.W.2d 15 (Tenn. 1985); *Bush v. Employee Benefit Board of Metro. Gov't*, 792 S.W.2d 932 (Tenn. Ct. App. 1990).

Required Personnel Policies

State law requires written personnel policies covering four topics for all employees of county government (except those in Davidson, Moore, Shelby or Trousdale). T.C.A. § 5-23-101 *et seq*. The four topics are leave, wage and hour, nondiscrimination and sexual harassment, and drug and alcohol testing (only for employees required by law to be tested). T.C.A. § 5-23-104.

Under this law, all "county officials" (defined as county trustees, registers of deeds, county clerks, judges who employ county employees, clerks of court, sheriffs, assessors, boards of education, and chief administrative officers of highway or public works departments) are required to have written personnel policies on the four topics specified in the act to govern the employees of their respective offices or departments.

These policies are required to be reviewed by an attorney, submitted to the county legislative body to be included in the minutes, and filed in the office of the county clerk. The county legislative body does not approve these policies. T.C.A. § 5-23-103.

For all other county employees, and for the employees of any county officials who choose not to have separate policies, the county legislative body and the county mayor are jointly responsible for preparing personnel policies on the four topics mentioned above. The policies will be prepared by one person or a group appointed by the county mayor with confirmation by the county legislative body. The policies must be reviewed by an attorney and approved by the county legislative body, and they must be included in the minutes and filed in the office of the county clerk. T.C.A. § 5-23-103. Upon completion of these policies, the county mayor may adopt separate policies for the employees of his or her office if the county mayor so chooses, using the same procedure as the "county officials" discussed above. T.C.A. § 5-23-103(d).

Personnel policies may be amended at any time by the same process used for original adoption. T.C.A. § 5-23-106. Personnel policies do not give rise to any contractual rights or obligations between the county and its employees. T.C.A. § 5-23-106.

Officials and department heads are responsible for distributing copies of the policies to all employees under their direction (with special provisions for boards of education), including a statement that the policies do not affect the employment-at-will status of employees or create a contract of employment, and for having each employee sign an acknowledgment form. These officials and department heads are also responsible for furnishing a copy of T.C.A. § 39-16-504 to each employee, maintaining required personnel records, and ensuring that all required notifications are given to the employees under their direction. T.C.A. § 5-23-107.

Officials and employees whose intentional and knowing illegal acts or omissions in connection with the requirements of this act result in liability for the county that is not covered by insurance may be required to reimburse the county for such liability. T.C.A. § 5-23-109.

Deputies and Assistants

As a general rule, each county official is responsible for hiring any deputies and assistants who may be necessary for his or her particular office. The county mayor has the authority to hire secretaries and assistants where necessary to properly and efficiently transact the business of that office under T.C.A. § 5-6-116, so long as sufficient funds have been appropriated for this purpose. The chief administrative officer of the county highway department has the authority to hire assistants under T.C.A. § 54-7-109. County fee officials (including clerks and masters, clerks of court, county clerks, trustees, registers of deeds, and sheriffs) are authorized to hire deputies and assistants as necessary to properly conduct the business of their respective offices as discussed below.

The number and compensation of deputies and assistants for fee officials (including clerks and masters, clerks of court, county clerks, trustees, registers of deeds, and sheriffs) may be determined either by a letter of agreement or by a court order under T.C.A. § 8-20-101. If the fee official agrees with the amount budgeted by the county legislative body for deputies and assistants, the official and the county mayor may enter into a letter of agreement. The county legislative body is prohibited from reducing the amount budgeted for sheriff's department employees below current levels without the consent of the sheriff under T.C.A. § 8-20-120, but this prohibition does not apply to other offices. Any fee official who does not agree with the budgeted amount must obtain a court order for additional funding by filing a lawsuit as outlined below.

Court orders for deputies and assistants are obtained by filing a petition with the appropriate court setting out the necessity for deputies and assistants, the number required, and the salary that should be paid to each. T.C.A. § 8-20-101. The county mayor is named as the defendant in the petition. The county mayor is required to file an answer within five (5) days after service of the petition, either agreeing with or denying the matters stated in the petition. The court will then hold a hearing and issue an order determining the appropriate number and compensation of deputies and assistants. T.C.A. § 8-20-102. The county legislative body cannot refuse to fund salaries ordered by the court.

The courts in which the petitions are to be filed are set out in T.C.A. § 8-20-101 as follows:

1. Clerks of the circuit, criminal and special courts file their petitions with one of the judges of their respective courts (but upon request of any party the case must be transferred to a court other than the one the clerk serves);

2. The sheriff files his or her petition with the criminal court, if there is one in the county, and otherwise with the circuit court; and,

3. Clerks and masters, trustees, county clerks, probate court clerks, and registers file their petitions with chancery court.

Although court orders setting the number and compensation of deputies and assistants can be modified under T.C.A. § 8-20-104, no court order increasing expenditures will be effective for any fiscal year unless the petition was filed within thirty (30) days after final adoption of the budget for that fiscal year. However, a new officer has thirty (30) days from taking office within which to file a petition. T.C.A. § 8-20-101(b). The number or compensation of deputies and assistants can be decreased at any time by the official without filing a petition. T.C.A. § 8-20-104. The county mayor may request that the court decrease the number or compensation of deputies and assistants under T.C.A. § 8-20- 105. Either party may appeal the court's decision. T.C.A. § 8-20-106. The costs of all cases are paid out of the fees collected by the respective offices. T.C.A. § 8-20-107.

If the county official agrees with amounts set forth in the budget adopted by the county legislative body, a court order is not necessary. Instead of filing a petition, the official can enter into a letter of agreement with the county mayor using the form prepared by the state comptroller for this purpose. The letter of agreement is filed with the same court in which a petition would have been filed, but no litigation taxes, court costs, or attorneys fees can be charged in connection with the filing of the letter of agreement. T.C.A. § 8-20-101(c). A copy of the comptroller's current form for a letter of agreement is included in the appendix to this handbook.

Courthouse Hours and Office Space

The county legislative body has no statutory authority to establish uniform courthouse hours and require other officials to remain open or closed during these scheduled hours. 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. Each official can decide whether to remain open on holidays. T.C.A. § 15-1-101. The county legislative body 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).

Residence

Counties can require all new employees hired after a certain date to be residents of the county. However, counties cannot dismiss or penalize their current employees solely on the basis of nonresidence in the county. Op. Tenn. Att'y Gen. U91-137 (Nov. 19, 1991); Op. Tenn. Att'y Gen. U91-138 (Nov. 19, 1991); T.C.A. § 8-50-107.

Voting Leave

Any employee entitled to vote in an election held in this state may take a reasonable time (not more than three (3) hours) off from work on election day to vote. T.C.A. § 2-1-106. If the polls are open for more than three (3) hours before or after the employee's shift begins or ends, the employee is not entitled to take time off to vote. If time off must be given, the employee is required to give the employer notice by noon on the day before the election, and the employer can specify the voting hours. T.C.A. § 2-1-106.

It is unlawful to coerce or direct an employee to vote or not vote for a candidate or measure, to vote for any candidate, to circulate any statement or report intended to coerce or intimidate an employee to vote in a particular way, or to discipline or discharge an employee for the way he or she votes. T.C.A. § 2-19-134.

Jury Duty

All federal and state officeholders have a limited exemption from jury duty. The limited exemption means that the officeholder is not required to serve on the dates indicated on the summons but must designate a seven-day period when he or she will be available

to serve within the next 12-month period after the date of the summons. Upon receiving the summons, the officeholder must notify the clerk of the court issuing the summons of the seven-day period the officeholder will be available to serve. The officeholder will be required to serve on only one jury during the seven-day period. T.C.A. § 22-1-203.

Employees of officeholders are not exempt from jury duty. Upon receiving a summons to report for jury duty, an employee must present the summons to the supervisor on the next day he or she works. The employee must be excused from work for the entire day or days the employee is required to serve as a juror, except the employee can be required to return to work on days when the employee is required to serve less than three hours. The employee is entitled to his or her usual compensation, less the amount of fee or compensation received for serving as a juror (of course, the employer may pay the employee the usual compensation without deducting the juror fee). The employer is not required to compensate an employee for more time than was actually spent serving and traveling to and from jury duty. These provisions do not apply to any employee who has been employed on a temporary basis less than six (6) months, and special rules apply to night-shift employees. T.C.A. § 22-4-108.

Employers are prohibited from discharging or discriminating against an employee for serving on jury duty if the employee, prior to taking time off, has given the required notice. Any employee who is discharged, demoted, or suspended for having taken time off to serve on jury duty is entitled to reinstatement and reimbursement for lost wages and work benefits. T.C.A. § 22-4-108.

Parental Leave for Birth and Adoption

Tennessee's parental leave statute, T.C.A. § 4-21-408, applies to all employers who employ 100 or more full-time employees at a job site or location. Both male and female employees who have been employed at least twelve (12) months are allowed up to four (4) months off for adoption, pregnancy, childbirth, and nursing an infant. The employee must give at least three (3) months advance notice to the employer of the anticipated date of departure for leave, except in cases of medical emergency that necessitate leave begin earlier than originally anticipated. The notice must state the length of leave and the employee's intention to return to full-time employment after leave. The leave may be with or without pay. The employee must be reinstated to the same or a similar position with no reduction in vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which he or she was eligible at the date of leave, and any other benefits or rights of her employment incident to the employee's position. However, the employer need not pay the cost of any benefits, plans, or programs during the period of leave except to the extent that the employer pays for such benefits for all employees on leave of absence. If an employee's job position is so unique that the employer cannot, after reasonable efforts, fill that position temporarily, then the employer will not be liable for failure to reinstate the employee at the end of the leave period. The law requires that the provisions of the act be included in the next employee handbook published by the employer after May 27, 2005.

The federal Pregnancy Discrimination Act (PDA) amendment to the Civil Rights Act of 1964, 42 U.S.C. § 2000e(k), prohibits employment discrimination against women on the basis of pregnancy, childbirth or related medical conditions. This means that pregnancy-related conditions must be treated the same as any other temporary medical incapacity. The PDA applies to employers who have 15 or more employees. The term "employees" includes local government employees, but does not include elected officials and their personal staff or policy-making appointees. The Tennessee attorney general has opined that Tennessee's maternity leave statute does not conflict with the PDA. Op. Tenn. Att'y Gen. 91-22 (March 12, 1991).

The federal Family and Medical Leave Act (FMLA), 29 U.S.C. § 2654, provides that both male and female employees who have worked at least twelve (12) months for the employer and who have worked at least 1,250 hours during the preceding twelve- (12) month period are eligible for up to twelve (12) workweeks of unpaid leave in connection with the birth of a child or placement of a child for adoption or foster care. The employee must give at least thirty (30) days advance notice of the need for leave, except in cases of emergency. The leave must be concluded within the twelve- (12) month period beginning with the date of birth or placement of the child. The employee must be reinstated to the same or an equivalent position with no loss of accrued benefits. Leave can be requested prior to the birth or placement under certain circumstances such as visits to the doctor and other prenatal care, and for counseling, court appearances, and the like when required for adoption or foster care. If both the husband and wife are employed by the county government and both want to take FMLA leave for the birth or placement of a child, they are limited to a combined total of twelve (12) workweeks.

Military Leave

Both state and federal laws require military leave and reinstatement of employees returning to employment after military service. Federal law does not require paid military leave, but state law does require pay under some circumstances. Of course, employers are free to grant returning veterans benefits in addition to those required by law.

Employers are required under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to allow military leaves of absence for draftees, volunteers, reservists, and the National Guard for active duty, training, and other military obligations. Employers must reinstate returning veterans to their former jobs without loss of seniority or benefits when they are honorably discharged from service in the United States armed forces or National Guard, as long as the returning veteran reports to the employer or submits an application for re-employment in a timely manner. The state law requirements for re-employment rights of public employees returning from active military service are found in T.C.A. § 8-33-101 through 8-33-108.

Under Tennessee law, all county officials and employees who are in any reserve component of the armed forces of the United States, including members of the Tennessee Army and Air National Guard, are entitled to leave of absence from their

duties without loss of time, pay, regular leave or vacation, impairment of efficiency rating, or any other rights or benefits to which otherwise entitled, for all periods of military service. The official or employee is entitled to compensation for a period not exceeding twenty (20) working days per year, plus any additional days that may result from call to active state duty. T.C.A. § 8-33-109. Public employers are authorized to provide partial compensation to employees who are engaged in active military service after the required twenty (20) days of full compensation under T.C.A. § 8-33-109. Local boards of education are authorized under T.C.A. § 49-5-702 to pay teachers the difference between their regular pay and their military pay while they are engaged in military service.

The Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq*., establishes minimum wage, overtime pay, record keeping, and child labor standards for millions of workers in the private sector and in federal, state, and local governments, including counties. Special rules apply to state and local governments in fire protection and law enforcement activities, volunteer services, and compensatory time off in lieu of cash overtime pay. This publication contains only a general overview of selected topics under the FLSA. For a detailed discussion of the requirements of the act, consult the CTAS publication entitled *Legal Aspects of Personnel Management*.

Almost as important as what the FLSA requires is what the act does not require. The FLSA does not require vacation, holiday, severance, or sick pay. The act does not require meal or rest periods or holidays or vacation time off, and it does not limit the number of hours an employee over sixteen (16) years of age may work. (State law regulates the hours that minors can work. *See* T.C.A. § 50-5-105.) The FLSA does not require premium pay for weekend or holiday work, nor does it require pay raises or fringe benefits, discharge notices, reasons for discharge, or immediate payment of final wages. Although the FLSA does not require it, employers are required by state law to inform employees of the amount they will be paid before they are hired. T.C.A. § 50-2-101.

<u>Exemptions</u>. There are certain persons who are not covered by the provisions of the FLSA. These "noncovered employees" include elected officials and their personal staffs, policy-making appointees, and legal advisors who are not covered by civil service laws. Noncovered employees also include bona fide volunteers (not otherwise employed by the county in a similar capacity), true independent contractors, prisoners (while working for the government), and certain trainees. These exclusions are narrowly defined, and the rules are strictly applied.

There are also employees who are exempt from the minimum wage and overtime provisions of the act. These "exempt employees" include (1) "white collar" exemptions, including executive, administrative, or professional employees, the requirements for which are outlined in detail in the federal regulations; (2) seasonal employees as defined in the regulations; and (3) public safety employees where there are fewer than five full-time or part-time law enforcement officers or firefighters. The payment of a

salary rather than an hourly wage is not determinative of whether an employee is exempt from the provisions of the FLSA. All requirements of the federal regulations must be met before an exemption will apply.

Compensable Hours. Compensable hours of work include all times during which the employee is on duty or on the employer's premises available for work or time spent away from the employer's premises under conditions that prevent the employee from using the time for personal activities. Work not requested or required by the employer but allowed or permitted is work time under the FLSA, even if performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that work is being performed, the work must be counted as hours worked.

Generally, periods during which an employee is completely relieved from duty and that are long enough to enable the employee to use the time effectively for his or her own purposes are not hours worked. Rest periods of short duration, from five (5) minutes to about twenty (20) minutes, must be counted as hours worked. Meal periods of at least thirty (30) minutes or more, where an employee is completely relieved from duty, are not a part of hours worked. It is not necessary that an employee be permitted to leave the premises during a meal period so long as he or she is otherwise completely freed from duties. Whether waiting time is time worked under the FLSA depends upon the particular circumstances. Waiting time and sleeping time are specifically addressed in the federal regulations.

Minimum Wage. Effective July 24, 2009, covered nonexempt workers are entitled to a minimum wage of $7.25 an hour. Wages are due on the regular payday for the pay period covered. Deductions made from wages for items such as cash or merchandise shortages, employer-required uniforms, and tools of the trade are illegal if they reduce the employees' wages below the minimum rate or reduce the amount of overtime pay.

Overtime. The FLSA generally requires overtime compensation for hours worked over 40 in a workweek (a consecutive seven-day period). After forty (40) hours of work are completed in a workweek, an employee must receive overtime pay at a rate of not less than one and one-half (1½) times the regular rate of pay. This requirement may not be waived by agreement between the employer and employee. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, will not limit the employer's liability for overtime work the employer "suffers or permits." Regulations detail how to calculate the "time and one- half" amount as applied to an employee's "regular rate of pay," which generally is to be used as the basis for overtime compensation.

The FLSA establishes a somewhat complicated procedure that allows the establishment of work periods longer than seven-day workweeks for public safety employees of state and local governments. Public safety personnel include employees engaged in firefighting and law enforcement activities. The term may also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's fire protection or law enforcement activities. These provisions do not apply in

cases in which public safety services are provided to the city or county under contract with a private organization.

Compensatory ("Comp") Time. Employees of a county may receive compensatory time off in lieu of overtime compensation pursuant to an agreement or understanding with the employee. Like overtime pay, compensatory time accrues at the rate of one and one-half (1½) hours for each hour of overtime worked. The employer can use a combination of comp time and wages so long as the time-and-a-half requirement is met.

There are limits to the amount of compensatory time that may accrue. If the work for which compensatory time is provided is a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue up to 480 hours of compensatory time. For any other work, the employee may accrue up to 240 hours of compensatory time. After the maximum number of hours has accrued, the employee must be paid overtime compensation. Compensation for accrued comp time must be paid at the regular rate earned by the employee at the time of the payment. An employee who has accrued comp time upon termination of employment must be paid the greater of the average regular rate the employee received during the last three (3) years or the final regular rate of pay received by the employee.

When an employee requests the use of accrued comp time, the use must be permitted within a reasonable period after the request as long as the operations of the employer are not unduly disrupted.

Recordkeeping Requirements. Employers must keep records of wages, hours, and other items as specified in U. S. Department of Labor recordkeeping regulations. This type of information is usually maintained by employers in the ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in a certain form, and time clocks do not have to be used. If an employee is subject to both minimum wage and overtime pay provisions, the following records must be kept: (1) personal information, including employee's name, home address, occupation, sex, and birth date (if under 19 years of age); (2) hour and day workweek begins; (3) total hours worked each workday and each workweek; (4) total daily or weekly straight-time earnings; (5) regular hourly pay rate for any week when overtime is worked; (6) total overtime pay for the workweek; (7) deductions from or additions to wages; (8) total wages paid each pay period; and (9) date of payment and pay period covered.

Recordkeeping requirements for exempt employees differ slightly from those for nonexempt workers. Special information is required for employees working under uncommon pay arrangements, employees to whom lodging or other facilities are furnished, and employees receiving remedial education. Employers are not required to keep records for noncovered employees. Each county official responsible for personnel and payroll records should check to ascertain that all the information required is contained in the records.

Enforcement and Penalties. Employers who willfully violate the minimum wage or overtime provisions of FLSA may be fined up to $10,000, and if the employer has been

convicted on a prior occasion he or she also may be imprisoned up to six months. Also, when an employee sues for violation of the minimum wage or overtime provisions, the employer may have to pay the unpaid minimum wage or overtime, as well as an equal amount for liquidated damages, attorneys' fees, costs, and other relief, such as promotions and reinstatement. The U. S. Department of Labor may also initiate action against an employer.

Equal Pay Provisions. The Equal Pay Act, 29 U.S.C. § 206(d), was enacted as an amendment to the Fair Labor Standards Act. The equal pay provisions apply to all employees, even those who are exempt from the minimum wage and overtime provisions of the FLSA. Gender-based wage differentials between men and women employed in the same establishment, on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions, are prohibited. These provisions, and other statutes prohibiting discrimination in employment, are enforced by the Equal Employment Opportunity Commission. For similar state law, *see* T.C.A. § 50-2-202.

Complete information regarding the Fair Labor Standards Act is available from the United States Department of Labor. Additionally, the CTAS publication entitled *Legal Aspects of Personnel Management* contains detailed information regarding the requirements of the FLSA.

Family and Medical Leave Act

Under the federal Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. § 2654, eligible county employees are entitled to up to twelve (12) workweeks of unpaid leave during a twelve- (12) month period for the birth of a child, the placement of a child for adoption or foster care, a serious health condition of the employee that makes the employee unable to perform the functions of his or her job, or the serious health condition of a spouse, son, daughter or parent that requires the employee's presence.

Eligible employees are those who have been employed by the county for at least twelve- (12) months and who have worked at least 1,250 hours during the immediately preceding twelve- (12) month period. The term "employee" as used in the FMLA has the same meaning as under the FLSA; employees who are covered by the FLSA (even if they are "exempt") are covered by the FMLA. Those not covered include elected officials, political appointees, volunteers, and independent contractors.

Subject to certain conditions, accrued paid leave may be substituted for unpaid FMLA leave. Ordinarily, an employee must provide at least 30 days advance notice of the need to take FMLA leave. Medical certification may also be required. Special rules apply for husband and wife employed by the same employer, for highly compensated employees, and for local educational agencies. Upon returning from FMLA leave, the employee must be reinstated to the same or an equivalent position with no loss of accrued benefits.

Two new military family leave entitlements were added to the FMLA in 2008. The first one allows an eligible employee with a spouse, son, daughter, or parent who is serving on active duty or is called to active duty in a foreign country to use FMLA leave for a "qualifying exigency," which may include attending certain military events, arranging for child care, making financial and legal arrangements, attending counseling sessions, and attending post-deployment reintegration briefings.

The second provision allows an eligible employee to take up to 26 workweeks of leave during a single 12-month period to care for a spouse, son, daughter, or parent with a serious injury or illness incurred in the line of duty while serving on active military duty. The 12-month period for this type of FMLA leave begins on the first date the employee takes leave to care for the injured service member and ends 12 months later. If the employee does not take all of the 26 workweeks during the time, the remainder of the leave is forfeited.

For a more complete understanding of the FMLA, consult the federal regulations at 29 C.F.R. part 825. The provisions of this law are discussed in detail in the CTAS publication entitled *Legal Aspects of Personnel Management*.

Americans with Disabilities Act

The federal Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq*., prohibits discrimination against persons with disabilities in employment under Title I, and mandates their full participation in services and activities offered by local governments under Title II.

Title I of the ADA prohibits employers from discriminating against a qualified individual with a disability in all aspects of employment, including job applications, hiring, advancement, discharge, compensation, training, and any other terms, conditions or privileges of employment. Local governments must make reasonable accommodations for known physical or mental limitations of an otherwise qualified individual unless to do so would result in an undue hardship. A local government cannot exclude people with disabilities from job opportunities unless they are unable to perform the essential functions of the job with reasonable accommodations. The employer cannot prefer or select a qualified person without a disability over an equally qualified person with a disability merely because the disabled person will require an accommodation.

The basic rule of Title II of the ADA is that no person is to be excluded from participation in or denied the benefits of the programs, services or activities of local governments on the basis of a disability, nor be subjected to discrimination by local governments. Government services and activities covered under Title II include education, highways and roads, law enforcement, parks, courts, personnel, voting, taxpaying, deed recording, motor vehicle registration, public meetings and public transportation.

Counties are required to have an ADA coordinator and grievance procedures in place to deal with complaints of violations of the ADA. Counties were required to conduct a self-evaluation and make necessary structural changes in existing structures in accordance

with detailed accessibility guidelines by specified deadlines; ADA accessibility guidelines also apply for any new construction.

Equal Employment Opportunity

In addition to the Americans with Disabilities Act and Equal Pay Act, both discussed above, various state and federal laws prohibit discrimination in employment matters, including hiring, firing, promotion, compensation, terms, conditions and privileges of employment. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex or national origin. The Tennessee Human Rights Act, T.C.A. § 4-21-101 *et seq*., contains similar provisions. State law prohibits discrimination by counties in the hiring, firing and other terms and conditions of employment against any applicant for employment based solely upon any physical, mental or visual handicap of the applicant, unless such handicap to some degree prevents the applicant from performing the duties required by the employment sought or impairs the performance of the work involved. Discrimination against blind persons in any employment practices because of the use of a guide dog is also prohibited. T.C.A. § 8-50-103. Discrimination in employment against individuals who are over the age of 40 solely on the basis of their age is prohibited by T.C.A. § 4-21-407. *See* also 29 U.S.C. § 621 *et seq*.

Employees who have been victims of illegal discrimination may be entitled to reinstatement, back pay, compensatory damages, punitive damages, and attorneys' fees.

Miscellaneous Personnel Matters

Insurance. Two sets of statutes coexist that authorize counties to provide group insurance for county employees. Under T.C.A. §§ 8-27-401 through 8-27-403, the county legislative body is authorized to provide group life, hospitalization, disability and medical insurance for county employees and to provide for payment by the county of a portion of the premiums. The county legislative body is authorized to include retired county employees, officials, and their surviving spouses. The county legislative body approves the insurance contracts by majority vote. Counties are authorized to make payroll deductions for the employee portion of health insurance premiums upon request of the employee. 2006 Public Chapter 590; T.C.A. § 50-1-308.

Counties are also authorized to provide group life, hospitalization, disability and medical insurance under T.C.A. § 8-27-501 *et seq*. Under this set of statutes, all county employees and county officials have the option of electing the coverage, and the county is authorized to pay all or any portion of the premiums with the remainder to be deducted from the employees' salaries. The county legislative body is authorized to include retired county employees, officials, and their surviving spouses. A county insurance fund must be established for deposits of the county's share of the premiums as well as the payroll deductions. Once established, the insurance program cannot be discontinued except by a two-thirds vote of the county legislative body and after three months notice to officials and employees.

On the state level, a local government insurance committee was created by the legislature in 1989 to establish a health insurance plan for employees of local governments and certain quasi-governmental organizations, with all costs of the plan to be paid by the participating local governments and eligible quasi-governmental organizations. The staff of the state group insurance program acts as the staff of this program. T.C.A. § 8-27-207.

A state-supported local education employee group insurance program is established under T.C.A. § 8-27-301 *et seq*. Group insurance is available under either the basic state plan or an optional plan. T.C.A. § 8-27-302. The state pays a portion of the cost of participation in the plan. T.C.A. § 8-27-303. Local education agencies that have group insurance determined to be equal to or better than the state plan are eligible for direct payments from the state for a portion of the costs. T.C.A. § 8-27-303.

Under T.C.A. § 56-7-2366(c), counties are required, as they update their plan summaries for any group policy of accident and sickness insurance offered to their employees, to include a notice of the provisions of § 56-7-2366 in the plan summary. The provisions of § 56-7-2366 require insureds and policy holders to notify their covered spouses regarding termination of insurance coverage due to divorce, legal separation, or other separation. Insureds and policy holders must also notify their covered spouses about the availability of continuation of coverage through COBRA.

Counties are authorized under T.C.A. § 8-25-501 to make available to their employees cafeteria plans authorized under § 125 of the Internal Revenue Code. These plans allow a reduction of salary so that pretax dollars can be used to fund certain benefits, such as health insurance premiums.

Continuation of Insurance Coverage - COBRA. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), 29 U.S.C. §§ 1161--1168 and 42 U.S.C. §§ 300bb-1--300bb-8, requires most employers, including counties with more than twenty (20) employees, who offer group health plans to offer continued health plan coverage for eighteen (18) months to terminating employees (unless terminated for gross misconduct) and up to thirty-six (36) months for spouses who become widowed, divorced or legally separated when no longer qualifying for dependent coverage. Special rules apply to disabled qualified beneficiaries. COBRA requires employers to notify all covered employees and their spouses of the provisions.

Immigration Records. Under the federal Immigration Reform and Control Act of 1986, employers must (1) have employees fill out their part of Form I-9 before they start to work, (2) check documents establishing employees' identity and eligibility to work, (3) properly complete the remaining portion of Form I-9, (4) retain the form for at least three years after the date of hire or one year after termination of employment, whichever is later, and (5) be able to present the form for inspection if requested by authorized government officials such as those from federal Immigrations and Customs Enforcement or the U. S. Department of Labor. Failure to comply with the requirements of the act can lead to civil penalties, which can be levied for knowingly hiring unauthorized employees or for failing to comply with record-keeping requirements. The

U. S. Citizenship and Immigration Services, a bureau of the Department of Homeland Security, has publications to assist the employer in completing Form I-9.

Drug and Alcohol Testing. Employers have become increasingly interested in testing employees for drug and alcohol use. Drug testing by government employers is permissible only under certain circumstances because the testing constitutes a "search" under the Fourth and Fourteenth Amendments to the United States Constitution. Any testing must meet the constitutional standard of reasonableness, and testing must be conducted in accordance with the due process and equal protection clauses of the constitution. As a general rule, only employees who are in safety-sensitive positions may be tested. Local governments can be held liable for monetary damages when an employee's constitutional rights have been violated. Before considering any testing program, the employer should consult the sections on drug testing contained in the CTAS publication entitled *Legal Aspects of Personnel Management*.

Federal regulations require testing of employees who are required by law to have commercial driver licenses (CDLs). Employees who must be tested are those who drive (1) vehicles over 26,000 pounds gross vehicle weight rating (GVWR), (2) trailers over 10,000 pounds GVWR if the gross combination weight rating is more than 26,000 pounds, (3) vehicles designed to carry 16 or more passengers including the driver, and (4) any size vehicle used to transport hazardous materials (required to have a placard). These employees have been determined by the federal government to be in safety-sensitive positions. Since January 1, 1996, all county departments where CDL drivers are employed have been required to have a testing program in place for these drivers. The testing program must comply with detailed federal guidelines contained in the federal regulations.

Finally, workers' compensation laws and regulations have created a voluntary program of drug testing that can result in reduced premiums for workers' compensation insurance and denial of workers' compensation benefits to impaired workers. T.C.A. § 50-9-101 *et seq*. This program is optional – employers are not required to participate. The program must be carefully tailored to the needs of the government employer so that the employees' constitutional rights are not infringed.

It is strongly recommended that counties wishing to implement a drug and alcohol testing program, whether under DOT regulations or under the workers' compensation law, contract with a reputable and experienced company to handle all aspects of the testing program on the county's behalf. It is imperative that such a program not be implemented without the advice of the county attorney or another attorney hired to advise the county on this issue.

Workers' Compensation. The workers' compensation laws are a non-fault based statutory scheme for compensating employees who suffer injuries in the scope of their employment. T.C.A. § 50-6-101 *et seq*. In private industry, on-the-job injuries are governed by these laws, but counties are not covered by the workers' compensation laws unless they choose to be covered. T.C.A. § 50-6-106. A county's decision to come under these laws becomes effective 30 days after the county files written notice of

exercising this option with the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development. Coverage may be cancelled at any time by giving the same type of written notice. A county, through its legislative body, can choose to cover only designated departments and may also cancel coverage on a selective basis.

Unemployment Compensation. Under the Tennessee Employment Security Law, T.C.A. § 50-7-101 *et seq*., unemployment insurance coverage is mandatory for county and other local government entity employees. All county employees are covered except popularly elected officials, members of the county legislative body, judges, members of the state National Guard or Air National Guard, employees serving on a temporary basis in case of emergency (fire, storm, snow, earthquake, flood, etc.), and those in a position designated according to law as "a major nontenured policymaker or advisory position" or "a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week." T.C.A. § 50-7-207(c)(6)(D).

Unemployment insurance premiums must be paid by the employer; no part of the premiums can be deducted from employees' wages. Governmental employers may finance unemployment insurance by implementing the reimbursement method or the premium/tax method. Under the reimbursement method, the employer submits quarterly payments to the Department of Employment Security for the exact amount of unemployment benefits paid to former employees and chargeable to the employer's account. Under the premium/tax method, the assigned premium rate will be one and one-half percent (1.5%) until the account has been chargeable with benefits and subject to contributions throughout the thirty-six (36) consecutive calendar-month period ending on the computation date (the December 31 preceding a tax rate year, which begins on July 1). After this condition is met, the governmental employer's premium/tax rate will be computed according to a new rate table for governmental employers only. Tax rates will range from three-tenths percent (.3%) to three percent (3%), depending on the reserve ratio. The reserve ratio is computed by subtracting cumulative benefits charged to the employer's reserve account from cumulative contributions paid and dividing the difference by the average taxable payroll of the three (3) recent calendar years. T.C.A. § 50-7-401 *et seq*.

Counties that wish to change their method of financing must file a written notice with the Department of Employment Security not later than thirty (30) days prior to the beginning of the taxable year the change becomes effective. When a change is made from the reimbursement method to the premium/tax method, the employer remains liable for reimbursement of unemployment benefits paid after the change but which are based on wages paid before the change. Benefit changes can occur up to nine calendar quarters after an employer pays wages to a worker. Either the fee official or the county may be deemed the employer, depending upon whether the fee official or the county pays the deputies and assistants.

The reasons for an employee's termination may affect unemployment compensation benefits. Employees who voluntarily quit or who are discharged for job-related

misconduct are not eligible to receive unemployment compensation benefits. Former employees receiving unemployment benefits must be able to work, available for work, and making reasonable efforts to secure suitable work. T.C.A. § 50-7-303.

Information concerning the application and benefits of this program can be obtained from local offices of the state Department of Employment Security.

Termination Pay. When an individual's employment terminates for any reason, the employee must be paid for all accrued overtime, compensatory time, and regular earnings. In addition, the employee may be entitled to be paid for accrued but unused sick leave, vacation leave, or any other type of compensable leave, depending upon the agreement between the employer and employee. *See Phillips v. Memphis Furniture Mfg. Co.*, 573 S.W.2d 493 (Tenn. Ct. App. 1978).

An employee is entitled to designate a beneficiary to receive payment for any wages or salary due the employee at the time of the employee's death, and employers are encouraged to inform employees of this right at the time the employee is hired. If the deceased employee has not designated a beneficiary, the employer may pay a sum not exceeding $10,000 to the surviving spouse, or if none, to the surviving children as tenants in common. Funds in excess of $10,000 must be paid to the personal representative or as otherwise ordered by a court. T.C.A. § 30-2-103

Retirement. Title 8, Chapter 35 of the *Tennessee Code Annotated* contains the statutory framework for counties to participate in the Tennessee Consolidated Retirement System (TCRS). The county legislative body may, by resolution legally adopted and approved, authorize all of its employees in all of its departments to participate in the TCRS with the county making the employer's contribution into the TCRS. T.C.A. § 8-35-201. Membership is then optional for each employee presently employed at the date of approval of membership by the board of trustees of the TCRS, and is mandatory for all eligible employees entering the employment of the county after that date. T.C.A. § 8-35-203. The county legislative body may make certain elections for coverage of its employees, such as cost-of-living benefits. T.C.A. §§ 8-35-207, 8-35-208. Special rules apply for participation in the TCRS by county officials. *See* T.C.A. §§ 8-35-109, 8-35-116.

To withdraw from the TCRS, the county must give the TCRS board at least one (1) year's notice effective June 30 of the calendar year following the end of the notice period, which must be in the form of a resolution passed by a two-thirds (2/3) vote of the county legislative body. Such resolution to withdraw may be rescinded by a two-thirds (2/3) vote of the county legislative body at any time prior to the end of the one (1) year's notice period. T.C.A. § 8-35-218.

A county may set a mandatory retirement age for members of the TCRS retirement system who are employed as firefighters or law enforcement officers. If these employees are in a supervisory or administrative position, they must be allowed to continue in service until they reach the age at which they are eligible for federal Social Security benefits. Any member who serves as chief of a fire department or police

department may continue in service beyond the age at which the person is eligible for federal Social Security benefits. T.C.A. § 8-36-205.

These retirement statutes are complex, and amendments are made to these statutes by the General Assembly each year. The staff and legal counsel for the TCRS are available to help county officials with questions concerning the retirement program and to help individual participants with benefits questions.

Under T.C.A. §§ 8-25-101 *et seq*. and 8-25-304, counties are authorized to offer their employees tax-deferred compensation plans, which includes plans under § 457 and § 401(k) of the Internal Revenue Code. These plans allow a reduction of salary so that pretax dollars can be used to fund retirement savings accounts.

Expense Accounts. In counties having a population of 100,000 or more according to the latest federal census, salaried county officials who are paid from county funds and are elected by the people, the county legislative body or another board or commission, and any clerk or master appointed by the chancellor, must be reimbursed for actual expenses incurred incident to holding office, including but not limited to lodging while away on official business and travel on official business, both within and outside the county. The county legislative body may by resolution determine what other expenses are reimbursable. T.C.A. § 8-26-112(a).

In all other counties, the county legislative body may by resolution choose to pay the expenses of elected officials and may promulgate procedural rules regarding the method and type of expenses reimbursed. In counties where such a resolution has been adopted, the county mayor (1) prescribes forms to be used to reimburse expenses, (2) examines expense reports or vouchers to ensure items are legally reimbursable and filed according to legislative body rules, and (3) forwards proper expense reports to the disbursing officer for payment. T.C.A. § 8-26-112(b).

All officials who are authorized to incur reimbursable expenses are required to make out accurate, itemized expense accounts showing the date and amount of each item and the purpose for which the item was expended. The official must swear before an officer qualified to administer oaths that the expense account is correct and that the expenses were actually incurred in the performance of an official duty. Receipts should be attached to the expense voucher whenever practical, and vouchers must be numbered and referred to by number. T.C.A. § 8-26-109. Making a false oath on an expense account constitutes perjury. T.C.A. § 8-26-111.

Automobiles. Depending upon population classification, certain counties may provide cars for the salaried county officials' use. In a few counties, officials may receive a monthly car allowance in lieu of a county-owned car. T.C.A. § 8-26-113.

Wage Assignments and Garnishments. Garnishment of wages, salaries or other compensation due from a county to any of its officers or employees is permitted. T.C.A. § 26-2-221. Employers cannot retaliate against an employee based on a wage assignment for alimony or child support, but the employer may impose a service charge

of up to five percent (5%), not to exceed five dollars ($5) per month. T.C.A. § 36-5-501. The maximum amount of earnings that may be garnished is set out in T.C.A. § 26-2-106. *See also* 15 U.S.C. § 1672(b).

FIT, FICA Withholding, and Miscellaneous Reporting Matters. Counties are responsible for making the proper FICA and FIT withholdings. The county makes quarterly payments and reports to the Internal Revenue Service and the Social Security Administration. Counties must be aware of the taxation of fringe benefits, particularly the use of county-owned vehicles, as being income to the employees. If the county fails to make the proper withholdings from income, serious penalties can be imposed by the Internal Revenue Service. County officials may be responsible for filing Form 1099s with the IRS to report these benefits.

Commercial Driver Licenses. County employees operating commercial type vehicles and those requiring a special endorsement must obtain a commercial driver license in order to operate many county vehicles. Vehicles (including vehicle combinations) that fall within the commercial classification include the following:

1. Vehicles weighing more than 26,000 pounds (gross vehicle weight rating);
2. Vehicles designed to transport more than fifteen (15) passengers (including the driver); and
3. Vehicles transporting hazardous material requiring placarding. T.C.A. § 55-50-102.

Vehicles requiring a special endorsement listing on a driver license include:

1. Those authorized to pull multiple trailers;
2. Those designed to carry more than fifteen (15) passengers (including the driver);
3. Tank vehicles;
4. Those transporting hazardous materials requiring placarding; and
5. School buses.

The commercial driver license requirements include passing grades on certain knowledge and skills tests as well as a good driving record. A "grandfather" provision exists that exempts certain drivers from having to take the skills test. Furthermore, operators of emergency vehicles are exempt from these provisions.

School bus drivers must have a Class C commercial license with school bus endorsement. T.C.A. § 55-50-102; Op. Tenn. Att'y Gen. 89-122 (Sept. 21, 1989). This endorsement may be issued only if the applicant has had five years of unrestricted driving experience and can demonstrate good character, competency, and fitness. T.C.A. § 55-50-302.

CHAPTER 20

LIABILITY ASPECTS OF COUNTY GOVERNMENT

Liability exposure, both personal liability exposure for county officials and county liability exposure, is a topic of great importance to county governments due to the ever-increasing number of lawsuits being filed and the corresponding rise in insurance costs. Both tort and non-tort liability can be extremely costly to county officials and employees, as well as to counties as a whole. This Chapter will discuss tort and non-tort liability, including certain immunity provisions of law. Liability associated with personnel, one of the fastest growing areas, will also be discussed briefly.

A tort is a civil action based on a violation of a duty imposed by law. A tort can be the result of an intentional act or a negligent act. An action can be both a tort and a crime, as, for instance, an assault could result in both criminal liability and civil liability. The plaintiff who claims to have suffered a tort must show an act, intentional or negligent, that violates a duty imposed by law, generally the standard of care an ordinary person would exercise in like circumstances, and damages resulting from the breach of duty. The violation of duty can be through misfeasance (the improper doing of an act) or nonfeasance (omitting to do an act).

Tennessee Governmental Tort Liability Act

Prior to 1973, Tennessee counties were protected under the state's sovereign immunity for governmental acts but were liable for damages resulting from proprietary activities. Governmental acts were those that were peculiar to governments or activities only governments could provide, such as police protection, fire protection, education, or tax collection. Proprietary activities were those that could be provided by private as well as governmental entities, such as water and sewer service, electrical services, and mass transit.

In 1973, the Tennessee General Assembly enacted the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-101 *et seq*., which provides that counties are immune under state law from all suits arising out of their activities, regardless of whether the activities are governmental or proprietary, unless immunity is specifically removed by statute. T.C.A. § 29-20-201. This immunity does not extend to liability under federal law; conduct that is immune under state law can still give rise to a cause of action under federal law.

County immunity is removed (i.e., the county can be sued) for injuries arising from the:

1. Negligent operation of a motor vehicle;

2. Negligent construction or maintenance of streets, alleys, sidewalks, or highways, including traffic control devices;

3. Negligent construction or maintenance of a public building, structure, dam, reservoir, or other public improvement owned and controlled by the governmental entity;

4. Negligent acts or omissions by a county employee acting within the scope of employment, with exceptions noted below.

T.C.A. §§ 29-20-202 through 29-20-205.

Exceptions to the areas where the county's immunity is removed (in other words, the county is immune from suit) include claims arising from:

1. The exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;

2. False imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of privacy, or civil rights;

3. Issuing, denying, suspending, or revoking, or failing to refuse to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization;

4. Failing to inspect or negligently inspecting any property;

5. Instituting or prosecuting any judicial or administrative proceeding;

6. Negligent or intentional misrepresentation;

7. Riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances; or

8. Assessing, levying or collecting taxes.

T.C.A. § 29-20-205.

Because a county can act only through its officers and employees, it is important to determine whose action or inaction will trigger potential county liability and how the Tennessee Governmental Tort Liability Act will apply. Elected or appointed officials and members of boards, agencies and commissions are easily identifiable representatives of the county. A person who is not an elected or appointed official or a member of a board, agency or commission will be considered a county employee only if the court specifically finds that all of the following elements exist:

1. The county selected and engaged the person in question to perform services;

2. The county is liable for compensation for the performance of such services, and the person receives all compensation directly from the county's payroll department;

3. The person receives the same benefits as all other county employees, including retirement benefits and eligibility to participate in insurance programs;

4. The person acts under the control and direction of the county not only as to the result to be accomplished but as to the means and details by which the result is accomplished; and

5. The person is entitled to the same job protection system and rules, such as civil service or grievance procedures, as other county employees. T.C.A. § 29-20-107.

A regular member of a county voluntary or auxiliary firefighting, police or emergency assistance organization is considered to be a county employee without regard to the elements listed above. T.C.A. § 29-20-107(d). The county cannot extend immunity to independent contractors or other individuals or entities by contract. T.C.A. § 29-20-107(c).

Before a county can be held liable for damages, the court must first determine that the employee's or employees' act or acts were negligent and the proximate cause of plaintiff's injury, that the employee or employees acted within the scope of their employment and that none of the exceptions listed in T.C.A. § 29-20-205 apply to the facts before the court. T.C.A. § 29-20-310.

The immunity granted to governmental entities under T.C.A. § 29-20-205 does not extend to officers and employees of that governmental entity in their individual capacities. However, limited immunity is granted to county officials and employees under T.C.A. § 29-20-310. In cases where the county cannot be held liable, the individual county officials and employees may be held liable but only up to the liability limits established in the Tennessee Governmental Tort Liability Act. T.C.A. § 29-20-310(c). When the case is one in which the county can be held liable, the official or employee can be held liable only for that part of a judgment that exceeds the county's liability limits under the act. T.C.A. § 29-20-310(b). Willful, malicious, or criminal acts, or acts committed for personal gain, do not fall under the personal liability protective provisions of the Tennessee Governmental Tort Liability Act (nor do medical malpractice actions brought against a healthcare provider). T.C.A. § 29-20-310.

By statute, some county officials and employees are declared immune from suit for their activities on behalf of the county. Members of county boards, commissions, agencies, authorities, and other governing bodies created by public or private act, whether compensated or not, are absolutely immune from suit (under state law) arising from the conduct of the entity's affairs. This immunity is removed only when the conduct is willful, wanton, or grossly negligent. T.C.A. § 29-20-201. Similarly, emergency

communications district boards and their board members are immune (under state law) from any claim, complaint, or suit of any nature that relates to or arises from the conduct of the board's affairs, except in cases of gross negligence by the board or its members. T.C.A. § 29- 20-108. Also, employees of local education agencies, including board members, superintendents, teachers, and nonprofessional staff members, are absolutely immune from liability (under state law) for acts or omissions within the scope of the employee's office arising from the detection, management, or removal of asbestos from buildings and other structures owned or controlled by the local education agency when the agency has complied with federal environmental regulations relative to asbestos in schools. However, this immunity does not apply if the employee's acts or omissions were grossly negligent, willful, malicious, criminal, or done for personal gain. T.C.A. § 29-20-109.

The county may elect to insure or indemnify its employees for claims for which the county is immune. However, the indemnification may not exceed the liability limits established in T.C.A. § 29-20-403 except in causes of action in which the county employees' liability is not limited by the legislature. T.C.A. § 29-20-310(d). The county also may elect to insure or indemnify its volunteers. T.C.A. § 29-20-310(e).

No judgment or award rendered against a county may exceed the minimum amounts of insurance coverage for death, bodily injury, and property damage liability specified in T.C.A. § 29-20-403 unless the county has secured insurance coverage in excess of the minimum requirements, and the judgment or award may not exceed the limit provided in the insurance policy. T.C.A. § 29-20-311.

Whenever a county or other governmental entity is found liable under the Governmental Tort Liability Act for any injury arising out of the provision of emergency services under any mutual aid or similar agreement, the governmental entity benefitting from the provision of services may pay any judgment or award against the provider unless otherwise provided in the agreement, up to the limits of the Governmental Tort Liability Act. T.C.A. § 29-20-207.

The county may create and maintain a reserve or special fund to pay claims against it. Any two or more counties may enter into an agreement for joint or cooperative action to pool their financial and administrative resources to provide risk management, insurance, reinsurance, self-insurance for liabilities created under this act, workers' compensation, unemployment compensation, and motor vehicle insurance. T.C.A. § 29-20-401.

In 2001 the General Assembly enacted amendments to the limits of liability under the Tennessee Governmental Tort Liability Act. For actions arising on or after July 1, 2002, but before July 1, 2007, the liability limits were as follows:

Type of Claim	**Limit**
Bodily injury or death of any one person in any one accident, occurrence or act.	250,000

Bodily injury or death of all persons in any one accident, occurrence or	.....$600,000
Injury to or destruction of property of others in any one accident	.....$85,000

For actions arising after July 1, 2007, the liability limits are as follows:

Type of Claim	Limit
Bodily injury or death of any one person in any one accident, occurrence or act.	.....$300,000
Bodily injury or death of all persons in any one accident, occurrence or act	.....$700,000
Injury to or destruction of property of others in any one accident	.....$100,000

T.C.A. § 29-20-403.

These limits do not apply to federal civil rights actions in state or federal courts. Suit must be commenced within twelve (12) months after the cause of action arises. T.C.A. § 29-20- 305. However, the one-year statute of limitations may be extended when claims involve people under legal disabilities (incompetence, minor) or when the injured party has reasonably failed to discover the cause of action against the county, county officials, or employees.

The county or its insurer shall not be held liable for any claim arising under state law for which the county is immune under the act unless the county has expressly waived such immunity. The county or its insurer shall not be held liable for any judgment in excess of the limits of liability set forth in T.C.A. § 29-20-403 unless the county has expressly waived such limits. T.C.A. § 29-20-404. However, the act does not prohibit or limit a county from purchasing an insurance policy or contract in such amounts as it deems proper for liabilities that may arise under federal law. T.C.A. § 29-20-404.

The county may insure any or all of its employees against all or any part of their liability for injury or damage resulting from a negligent act or omission. The expenditure is deemed a public purpose and may be paid from funds derived from the tax levy authorized in T.C.A. § 29-20-402. T.C.A. § 29-20-406.

Any sheriff or group of sheriffs may purchase insurance or enter into an agreement to insure such sheriff and any or all employees against all or any part of their personal

liability for injury or damages arising as a result of the act or omission of the sheriff or employee. T.C.A. § 29-20-406.

Counties, school districts, public hospitals, and other listed entities must file an annual report regarding their tort liability activities for the previous year with the office of the state treasurer beginning on March 30, 2001, and every year thereafter for a period of three years. The form is to be prescribed by the state treasurer. T.C.A. § 29-20-110.

Liability for Personnel Matters

Important employment law considerations include hiring, compensation, benefits, termination, retirement, the federal Fair Labor Standards Act (FLSA), the federal Family and Medical Leave Act (FMLA), right-to-know statutes, reserve service, jury service, the Occupational Safety and Health Act, the Equal Pay Act, the Immigration Control Act, the insurance provisions of the Consolidated Omnibus Budget Reduction Act (COBRA), FICA and FIT withholdings, and maternity leave.

An employer must refrain from retaliating or firing based on the employee's exercise of a protected constitutional right, i.e., freedom of speech, or statutory right, i.e., workers' compensation. Discriminatory motives should be avoided in every employment aspect. Under state and federal law, an employer may not discriminate against an employee or a potential employee based upon race, color, sex, religion, national origin, age, or disability (including infectious, contagious or similarly transmittable diseases). Further, any form of sexual harassment is illegal. An individual may file a discrimination complaint with the Equal Employment Opportunity Commission (EEOC) or the Tennessee Human Rights Commission (THRC).

Specifically, an employer may not fire an employee solely for (1) refusing to participate or remain silent about illegal activities, or using an agricultural product not regulated by the alcoholic beverage commission that is not otherwise prohibited by law, i.e., smoking, if the employee follows the employer's guidelines regarding the use of the product while at work. T.C.A. § 50-1-304. Further, the First Amendment to the United States Constitution prohibits dismissals of certain types of governmental employees based on their political affiliation. *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 64 (1990). Whether party affiliation is an appropriate requirement for the effective performance of the public office depends on whether the job requires trust and confidentiality. *Williams v. City of River Rouge*, 909 F.2d 151, 155 (6th Cir. 1990). "[G]overnment officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. "*Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). However, "[p]ublic officials are expected to be aware of clearly established law governing their conduct. "*Long v. Norris*, 929 F.2d 1111, 1115 (6th Cir.) 1991., cert. denied, 112 S. Ct. 187 (1991).

Other Non-Tort Liability

The limitations of the Tennessee Governmental Tort Liability Act do not apply to many types of state and federal court actions. For example, in state court, actions for workers' compensation, breach of contract, inverse condemnation, and other common law and statutory violations may be the basis of a non-tort action.

Breach of Contract. If a county enters into a contract and then breaches, the county is responsible for damages. The extent of liability depends upon the contract's terms and damages suffered by the parties. If an official does not have actual authority to enter into a contract, the court may require the individual to specifically perform the contract.

Other Actions. Lawsuits may be brought against the county if law enforcement or other court personnel engage in illegal behavior affecting search and seizure, voting rights, arrest, discriminatory enforcement of statutes, or unlawful use of force. These actions may be brought in federal court under the federal Civil Rights Act, 42 U.S.C. § 1983, or in state court under the same federal statute or common law. *Poling v. Goins*, 713 S.W. 2d 305 (Tenn. 1986).

Damages are not recoverable for antitrust violations from any local government or official or employee acting in an official capacity. 15 U.S.C. § 35. In addition, damages are not recoverable for antitrust violations in any claim against a person based on any official action directed by the county or official or employee acting in an official capacity. 15 U.S.C. § 36. However, counties should be careful in restricting competition through granting exclusive franchises, making referrals to attorneys or lending institutions, or granting access to records.

A substantial amount of litigation involves county employees and other matters such as injuries to students during school hours, operating a county vehicle, county health department matters, failure to make necessary repairs on county roads, the existence of a dangerous condition, or the absence of a safety device. County officials should seek advice from the county attorney when questions arise with liability implications.

CHAPTER 21

COUNTY BUILDINGS, PROPERTY AND SPACE ALLOCATIONS

County Buildings

The county legislative body is required 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.

Non-Smoker Protection Act. Effective October 1, 2007, Public Chapter 410 amended Title 39, Chapter 17, to prohibit smoking 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.

Allocation of Courthouse Space. The county legislative body 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).

Purchase, Sale, and Lease of County Property

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 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 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

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.

If two (2) or more counties have qualified for participation in the state's multicounty regional library program, have been recognized as a region by the State Library and Archives Management Board, and have made the minimum local appropriation of funds required by the management board, then they may execute contracts with each other to create a regional library board to administer the library services within the region. The State Library and Archives Management Board manages regional libraries, whose employees are employees of the state. After the governing body of a county authorizes participation, municipalities within the county may also participate in the regional library service as long as the county participates. Larger single counties may also constitute a region upon recognition by the State Library and Archives Management Board by executing a contract between the county and one (1) or more cities within the county. T.C.A. § 10-5-101. The formation and creation of these boards is not mandatory for any county. T.C.A. § 10-5-107.

Abandoned Personal Property

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 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. § 66-29-110.

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. All 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. § 66-29-115. Any person delivering property to the treasurer is relieved of liability in respect to that property. 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. § 66-29-116.

Within 120 days of filing the report, the holder of the property must use all diligence to find the owner and must send written notice to the apparent owner at his last known address. The holder must also maintain a record of the last known address for 10 years. T.C.A. § 66-29-113. After the reports are submitted, the treasurer is required to publish a list of the names and last known addresses of the apparent owners. Publication should be done in a manner designed to inform owners that their property has been reported and where further information may be obtained. T.C.A. § 66-29-114.

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 insure prompt payment of any claims. T.C.A. § 66-29-121. If a person claims an interest in property that has been returned to the county from the state, and the claim is allowed, that person receives the property without deduction for administrative costs or service charges. The county must submit an annual report of the claims received on a form provided by the treasurer; this report is to be filed before September 1 and should include claims received as of the previous June 30. T.C.A. § 66-29-123.

County officials who fail to carry out their responsibilities regarding unclaimed property may be subject to sanctions. First, the treasurer may examine the records of any person whom the treasurer believes may have failed to file the required reports. T.C.A. § 66-29-127. Any person who fails to report abandoned property or to perform other required duties shall be fined $25 for each day the report is withheld, but not more than $1,000. Furthermore, if a holder fails to deliver property as required to the treasurer, then the treasurer may compel delivery in an appropriate court and shall assess a civil penalty equal to twenty-five percent (25%) of the value of the property that should have been delivered. T.C.A. § 66-29-129.

CHAPTER 22

COUNTY RECORDS

Open Records Requirement

All county records must be open for personal inspection by any citizen of Tennessee during business hours of the various county offices. County officials in charge of these records may not refuse the right of any citizen to inspect them unless another statute specifically provides otherwise (T.C.A. § 10-7-503) or they are included in the list of specific records that are to be kept confidential under T.C.A. § 10-7-504 or some other legal authority. Information made confidential by Title 10, Chapter 7 must be redacted whenever possible. T.C.A. § 10-7-503(c)(2). In the event it is not practicable for a requested record to be promptly made available for inspection, the records custodian shall within seven business days: (i) make the record available; (ii) deny the request in writing stating the basis for the denial; or (iii) furnish the requestor a response form stating the time reasonably necessary to produce such record. T.C.A. § 10-7-503(a)(2)(B).

The Office of Open Records Counsel, created in 2008, was charged with developing a schedule of reasonable charges which may be used as a guideline in establishing charges or fees, if any, to charge a citizen requesting copies of public records. On October 1, 2008, the Office of Open Records Counsel issued its Schedule of Reasonable Charges for Copies of Public Records. Records custodians are authorized by T.C.A. § 10-7-503(a)(7)(C)(i) to charge reasonable costs consistent with the schedule. The schedule, together with instructions for records custodians, can be found on the website of the Office of Open Records Counsel: http://www. /comptroller1.state.tn.us//openrecords/index.asp. Charges established under separate legal authority are not governed by the schedule, and are not to be added to or combined with charges authorized under the schedule. Questions regarding the schedule should be directed to the Office of Open Records Counsel at (615) 401-7891 or (866) 831-3750, or e-mail open.records@tn.us.gov

A citizen denied access to a public record is entitled to file a petition for inspection in the circuit court or the chancery court of the county in which the records are located, or in any other court of that county having equity jurisdiction. The county official denying access to the record has the burden of proof to justify the reason for nondisclosure. If the court directs disclosure, the county official shall not be held criminally or civilly liable for the release of the records, nor shall he or she be responsible for any damages caused by the release of the information. If the refusal to disclose the record is willful, the court may assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the county official. T.C.A. § 10-7-505.

For county governments, one important class of confidential records involves personal information of state, county, municipal, and other public employees. An employee's, including a former employee's, home telephone and personal cell phone numbers, bank account information, health savings account information, retirement account

information, pension account information, Social Security number, residential address, driver's license information (except where driving is a part of the employee's job), and similar information for the employee's family and household members are confidential. Where this confidential information is part of a file or document that would otherwise be public information, such information shall be redacted if possible so that the public may still have access to the nonconfidential portion of the file or document. T.C.A. § 10-7-504(f) & (g).

In addition to creating a schedule of charges for records requests, the Office of Open Records Counsel has been charged with the duty to answer questions from and issue advisory opinions to public officials regarding public records. T.C.A. § 8-4-601. This office should be a valuable resource for questions on open records.

Storage and Disposition of County Records

In recognition of the problems that counties encounter with records disposition, the general assembly has created statutory procedures for the storage or disposition of county records. T.C.A. § 10-7-401 *et seq*. Records management is an important function of each county office. Some records must be permanently preserved and made available for public use because of their administrative, legal, fiscal, or historical value. Other records, lacking these qualities, are considered of temporary value.

County Public Records Commission. Each county is required to establish a county public records commission composed of at least six (6) members, including a member of the county legislative body, a judge of a county court of record, and a genealogist, all appointed by the county mayor and confirmed by the county legislative body. The county clerk (or his or her designee), county register (or his or her designee), county historian, and county archivist (if the county has such a position) are *ex officio* members. This commission has the authority to promulgate reasonable rules and regulations pertaining to the making, filing, storage, exhibiting, and copying of records. T.C.A. § 10-7-401. Questions regarding the storage, retention, or destruction of county records may be addressed to the county public records commission. For more information on the county public records commission and its operation consult the CTAS manual entitled *Records Management for County Governments*.

That manual also contains schedules of retention and disposition for records of each county office as required by T.C.A. § 10-7-404. By using these records disposition guides, officials may, with the approval of the public records commission, appropriately schedule records for destruction, thus avoiding the expense and inconvenience of keeping obsolete records as well as making space available for current and permanent value records. However, both temporary value records and paper original copies of permanent records must generally have the approval of the county public records commission before they can be destroyed. The law does allow destruction of original paper versions of a permanent record if they can be successfully reproduced onto another medium that still allows for permanent preservation of the record, such as microfilm. T.C.A. §§ 10-7-404, 10-7-406, 10-7-413.

All counties with a county public records commission are authorized to establish and collect, through all entities creating public records, except the register of deeds and court clerks, an archives and records management fee of up to $5.00 per document filed. Additionally, the county is authorized to collect an archives and records management fee of up to $5.00 through court clerks on documents filed with the clerk for the purpose of initiating a legal proceeding. Monies collected through these fees must be designated exclusively for duplicating, storing, and maintaining any records required by law to be kept permanently. T.C.A. § 10-7-408.

Computer Records Storage Requirements. Any information required to be kept as a record by any government official may be maintained on computer storage media instead of bound books or paper records if the following conditions are met:

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

T.C.A. § 10-7-121.

Also, upon the promulgation of proper rules by the secretary of state, county officers may destroy or archive elsewhere, as appropriate, original paper records upon reproduction onto computer storage media such as CD-ROM disks after following certain procedures and standards and having the destruction or record transfer approved by the county public records commission and the State Library and Archives. T.C.A. § 10-7-404.

Effective in 2008, all municipalities and counties must create safeguards and procedures for ensuring that confidential information regarding citizens is securely protected on all laptop computers and other removable storage devices used by such municipality or county. Failure to comply creates a cause of action or claim for damages against the municipality or county if a citizen of this state proves by clear and convincing evidence that such citizen was a victim of identity theft due to a failure to provide safeguards and procedures regarding that citizen's confidential information. 2008 Public Chapter 688.

Remote Electronic Access to County Records

Each county official has the authority to provide computer access and remote electronic access for inquiry only to information contained in the records of the office that are maintained on computer storage media in that office, during and after regular business

hours. However, remote electronic access to confidential records is prohibited. The official may charge a fee to users of information provided through remote electronic access, but the fees must be in a reasonable amount determined to recover the cost of providing this service and no more. The cost to be recovered must not include the cost of electronic storage or maintenance of the records. Any such fee must be uniformly applied. The official offering remote electronic access must file with the comptroller of the treasury a statement describing the equipment, software, and procedures used to ensure that this access will not allow a user to alter or impair the records. This statement must be filed 30 days before offering the service unless the official has implemented such a system before June 28, 1997. T.C.A. § 10-7-123.

Uniform Electronic Transactions Act

In 2001, the state legislature enacted the Uniform Electronic Transactions Act. T.C.A. §§ 47-10-101 through 47-10-123. The law applies to electronic records and electronic signatures relating to a "transaction" sent or received after the effective date of the act except the following:

1. Transactions governed by the law regarding wills, codicils or testamentary trusts; and,
2. Transactions covered by the Uniform Commercial Code, Title 47, Chapters 1-9, except for waivers and renunciations under T.C.A. § 47-1-107, the statute of frauds for certain personal property transfers under T.C.A. § 47-1-206 and Chapters 2 and 2A covering sales and leases.

T.C.A. §§ 47-10-103 and 47-10-104.

The act does not require a record or signature to be created, sent, generated, etc., in electronic format and applies only to transactions where all parties have agreed to conduct the transaction electronically, but it does provide broad authorization for the use of electronic records and signatures. T.C.A. § 47-10-105. The act provides that if the law requires a record or signature to be in writing, an electronic record or signature satisfies the requirement (T.C.A. § 47-10-107); however, the law also provides that if a law other than this act requires a record to be posted or displayed in a certain manner; to be sent, communicated or transmitted by a specified method; or to contain information that is formatted in a certain manner; then the record must be posted, displayed, sent, communicated or transmitted in accordance with that law. T.C.A. § 47-10-108(b). Similarly, if a law requires a record to be retained, the requirement is satisfied by keeping it electronically if the electronic record accurately reflects the information in the record and if the electronic record remains accessible for later reference. T.C.A. § 47-10-112. One provision of the act notably states that the act does not preclude a governmental agency of this state (which is defined to include county governments) from specifying additional requirements for retaining a record subject to the agency's jurisdiction. T.C.A. § 47-10-112(g). The act provides that evidence of a record may not be excluded solely because it is in electronic form. T.C.A. § 47-10-113. The act sets presumptions for determining time and place of sending and

receiving an electronic record, especially for automated transactions. T.C.A. § 47-10-115.

The creation and retention of electronic records and conversion of written records by governmental agencies is addressed in T.C.A. § 47-10-117 Pursuant to this section, the Information Systems Council (ISC) determines whether, and the extent to which, the state or any of its agencies will create and retain electronic records and convert written records to electronic records. T.C.A. § 47-10-117(a). Subject to the "interoperability" provisions of T.C.A. § 47-10-120, officials of counties and municipalities and other political subdivisions shall determine for themselves whether, and the extent to which, they will create and retain electronic records and convert written records to electronic records. T.C.A. § 47-10-117(b). Those officials can also determine whether, and the extent to which, the governmental agency will send and accept electronic records and signatures to and from other persons. T.C.A. § 47-10-118(a). To the extent that any governmental agency chooses to do this, the ISC may establish certain rules and regulations governing the process. T.C.A. § 47-10-118(b). Local government officials who choose to send and receive electronic records that contain electronic signatures must file certain documentation with the comptroller prior to offering such service as well as provide a post-implementation review. T.C.A. § 47-10-119. The provisions of this act serve as a substitute for the former provisions of Title 5, Chapter 24, The Electronic Commerce Act of 2000, which was repealed by the Uniform Electronic Transactions Act. This act became effective on July 1, 2001.

Geographic Information Systems Records

In 2000, the General Assembly also passed Public Chapter 868 to authorize counties to charge increased fees to people purchasing copies of a certain type of record for commercial purposes. Under the new law all state and local governments maintaining geographic information systems (GIS) are authorized to charge enhanced fees for reproductions of public records that have commercial value and include a computer generated map or similar geographic data. Prior to the passage of this act, local governments could charge only for the actual costs of reproduction of such data (usually a minimal charge for the costs of the computer disk or other copying media) unless they were in one (1) of five (5) counties designated by narrow population classes that had specific authorization to charge higher fees under the law. Under T.C.A. § 10-7- 506(c), local government entities that have the primary responsibility for maintaining a GIS can also include annual maintenance costs and a portion of the overall development costs of the GIS in the fees charged to users who want to purchase a copy of the information for commercial use. If the system is maintained by the county, the county legislative body establishes the fees. If GIS is maintained by a utility, the board of directors establishes the fees. Two groups are exempt from the higher fees: individuals who request a copy of the information for nonbusiness purposes and members of the news media who request the information for news-gathering purposes. These exempt parties will be charged only the actual costs for reproducing the data. Development costs that may be recovered by the fees charged to commercial users are capped at ten percent (10%) of the total development costs unless some additional steps are taken. For local governments, the local legislative body and the state ISC must approve a business plan

that explains and justifies the need for additional cost recovery above ten percent (10%). Even with the approval of such a plan, development cost recovery cannot exceed twenty percent (20%). However, these limits do not apply to annual maintenance costs, which may be fully recovered in the fees charged to commercial users. The recovery of development costs of a system is subject to audit by the comptroller of the treasury. Once the allowable portion of the development costs of the system have been recovered by the additional fees charged to commercial users, then the fees must be reduced to cover only the costs of maintaining the data and ensuring that it is accurate, complete, and current for the life of the system.

CHAPTER 23

OPEN MEETINGS ACT (SUNSHINE LAW)

In enacting the Tennessee Open Meetings Act, the General Assembly declared it to be "the public policy of the state that the formation of public policy and decisions is public business and shall not be conducted in secret." T.C.A. § 8-44-101. As recognized by the Tennessee Court of Appeals, "Our Open Meetings Law is perhaps one of the most comprehensive and extensive in the nation. There are no exceptions except those situations which may be in conflict with the constitution. "*Lakeway Publishers, Inc. v. Civil Service Board*, 1994 WL 315919 (Tenn. Ct. App.). Ironically, the General Assembly itself is not subject to this law. *See Mayhew v. Wilder*, 46 S.W.3d 760 (Tenn. Ct. App. 2001).

Requirements of the Act

The Open Meetings Act, commonly referred to as the "Sunshine Law," is found in T.C.A. § 8-44-101 *et seq*. The requirements of this law are as follows:

1. All meetings of any governing body are declared to be public meetings and must be open to the public at all times. T.C.A. § 8-44-102;

2. Adequate public notice of all regular and special meetings must be given. T.C.A. § 8-44-103;

3. The minutes of the meetings must be recorded and open to public inspection and at a minimum must contain a record of the persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of a roll call. T.C.A. § 8-44-104(a); and

4. All votes must be by public vote, public ballot, or public roll call; secret votes are prohibited. T.C.A. § 8-44-104(b).

Any action taken in a meeting in violation of any of the foregoing requirements is void. T.C.A. § 8-44-105.

<u>Meetings Declared Public</u>. All meetings of any governing body are declared to be public meetings. T.C.A. § 8-44-102. "Meeting" is statutorily defined as "the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision." T.C.A. § 8-44-102(b)(2). "Governing body" is defined in the statute as "any public body consisting of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration." T.C.A. § 8-44-102(b)(1).

The Tennessee Supreme Court has held that the act was intended to apply to "any governmental board, commission, committee, agency or authority whose members have authority to make policy or administrative decisions. "*Dorrier v. Dark*, 537 S.W.2d

888 (Tenn. 1976). In *Dorrier*, the Supreme Court created a two-part test for determining whether an organization is subject to the Sunshine Law: (1) whether its origin and authority may be traced to state, city or county legislative action, and (2) whether its members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people.

The application of the Sunshine Law is very broad. Included, for example, are planning commission meetings (Op. Tenn. Att'y Gen. 88-132 (July 29, 1988)), conferences between a public body and its attorney except those concerning pending litigation (Smith County Education *Ass'n v. Anderson*, 676 S.W.2d 328 (Tenn. 1984)), local school board meetings (*Dorrier*), tenure hearings *(Kendall v. Board of Education*, 627 F.2d 1 (6th Cir. 1980)), work sessions of a legislative body (*State ex rel. Akin v. Town of Kingston Springs*, 1993 WL 339305 (Tenn. Ct. App. 9/8/93)), an out-of-state meeting of some school board members and the superintendent (*Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. Ct. App. 1990)), meetings of a county hospital board (Op. Tenn. Att'y Gen. 01-042 (March 19, 2001)), dismissal or suspension hearings for tenured teachers (Op. Tenn. Att'y Gen. 98-111 (June 12, 1998)), councils on aging and senior citizen center boards (Op. Tenn. Att'y Gen. 84-310 (November 19, 1984)), and the board of directors of a preferred provider organization (PPO) that was a subsidiary of a county hospital district (*Souder v. Health Partners, Inc.*, 997 S.W.2d 140 (Tenn. Ct. App. 1998)).

The statute declares that a meeting occurs whenever a public body convenes for one of two purposes: to make a decision or to deliberate toward a decision. T.C.A. § 8-44-102(b)(2). Therefore, it is not necessary that a decision be reached before the Sunshine Law applies. The statute does state that a chance meeting between two or more members of a public body should not be considered a public meeting subject to the terms of the act. However, the same statute goes on to warn that chance meetings shall not be used to deliberate public business in circumvention of the spirit of the act. T.C.A. § 8-44-102. Courts have held that informal assemblages of a governing body at which public business is discussed and deliberated, including informal telephone discussions between members of a governing body, fall under the Sunshine Law. *See, e.g., Littleton v. City of Kingston*, 1990 WL 198240 (Tenn. Ct. App. 1990). Because of the broad interpretation with which both the courts and the legislature have applied this act, the attorney general's office offers the following advice: "Two or more members of a governing body should not deliberate toward a decision or make a decision on public business without complying with the Open Meetings Act." Op. Tenn. Atty. Gen. 88-169 (Sept. 19, 1988).

The purpose of the act is to prevent public officials from deciding or deliberating public business in chance meetings, informal assemblages, or by electronic communications. The form of the meeting is not important; the statute is to be construed to frustrate all evasive devices. *State ex rel. Matthews v. Shelby County Board of Commissioners*, 1990 WL 29276 (Tenn. Ct. App. 1990). While the Sunshine Law was amended in 1990 to add authorization for meetings to be held by electronic means under certain circumstances, this statute applies only to state government and not to local governments. *See* T.C.A. § 8-44-108.

The Sunshine Law does not apply to meetings pertaining to decisions that are to be made by a single public official. For example, if a decision is to be made by a county official acting alone, then meetings of a committee appointed to make recommendations to the county official regarding this decision would not fall under the Sunshine Law. *See, e.g., Metropolitan Air Research Testing Authority, Inc. v. Metropolitan Gov't*, 842 S.W.2d 611 (Tenn. Ct. App. 1992). Also, on-site inspections of any project or program are excluded from the definition of "meeting." T.C.A. § 8-44- 102(b)(2).

While the Sunshine Law requires that all meetings of governing bodies be "open to the public," the right of the public to be present does not necessarily include the right to participate in the meeting itself. *State ex rel. Akin v. Town of Kingston Springs*, 1993 WL 339305 (Tenn. Ct. App. 9/8/93).

Adequate Public Notice. In order to meet the requirements of the Sunshine Law, "adequate public notice" must be given before all meetings to which the act applies. T.C.A. § 8-44-103. The statute does not elaborate on the requirements for this notice. The Tennessee Supreme Court considered the phrase "adequate public notice" as contained in the statute and observed, "We think it is impossible to formulate a general rule in regard to what the phrase ‘adequate public notice' means. However . . . adequate public notice means adequate public notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public. "*Memphis Publishing Co. v. City of Memphis*, 513 S.W.2d 511 (Tenn. 1974).

If the meeting is one that would not be expected to be of interest to the general public, the notice requirements may not be as stringent as if the issue is one that is expected to be of great public concern. For example, adequate public notice was found to have been given for a special meeting of a city council to hear the appeal of a police officer who had been dismissed, where the meeting had been advertised by posting notice inside city hall where water bills were paid and over the entrance to the police department and council room and on the bulletin board at the post office because this was a personnel matter involving one individual. *Kinser v. Town of Oliver Springs*, 80 S.W.2d 681 (Tenn. Ct. App. 1994). On the other hand, in *Neese v. Paris* Special School District, 813 S.W.2d 432 (Tenn. Ct. App. 1990), the court found that the issue of clustering students in the same grade at one school was of "pervasive importance" and "arguably the most important action taken by the Board in many years." The notice was held to have been inadequate under the circumstances because the public was not notified that clustering would be discussed. Even though Tennessee law does not require that notice of a regularly scheduled meeting include an agenda of the meeting, the court found that the importance of the clustering issue required that the public be advised that it would be discussed at the meeting.

When faced with determining whether notice of a special meeting fairly informed the public under the totality of the circumstances, the Tennessee Court of Appeals outlined a three-prong test for "adequate public notice" of special meetings under the Sunshine Law, which includes the following: (1) Notice must be posted in a location where a member of the community could become aware of the notice, (2) the contents of the notice must reasonably describe the purpose of the meeting or the action to be taken,

and (3) the notice must be posted at a time sufficiently in advance of the meeting to give citizens an opportunity to become aware of the meeting and to attend. *Englewood Citizens for Alternate B v. Town of Englewood*, 1999 WL 419710 (Tenn. Ct. App. 1999). In Englewood, the court noted that the town could provide adequate public notice by simply choosing reasonable public locations and posting notices at these locations on a consistent basis.

The notice requirements of the Sunshine Law are in addition to, and not in substitution for, any other notice that may be required by law. T.C.A. § 8-44-103(c). Meetings of county legislative bodies, for example, are also governed by the provisions of T.C.A. §§ 5-5-104 and -105, under which regular meetings must be set by resolution of the county legislative body, and special called meetings require newspaper notice at least five days prior to the meeting that contains the agenda for the meeting.

Minutes of Meetings. The minutes of meetings to which the Sunshine Law applies must be recorded and open to public inspection, and must contain a record of the persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of a roll call. T.C.A. § 8-44-104(a). Strict compliance with the statute is necessary. For example, the actions of a beer board denying a beer permit were invalidated because the minutes of the meeting did not contain the required information, and the court required the beer board to reconvene and consider anew the application for a beer permit in question. *Grace Fellowship Church of Loudon County, Inc. v. Lenoir City Beer Board*, 2002 WL 88874 (Tenn. Ct. App. 1/23/02).

Limited Exception for Attorney-Client Discussions. In *Smith County Education Association v. Anderson*, 676 S.W.2d 328 (Tenn. 1984), the Tennessee Supreme Court recognized a narrow exception to the Sunshine Law for meetings between a public body and its attorney concerning pending litigation. The exception applies only to discussions between the members of the public body and the attorney; once any discussion begins among members of the public body as to what action should be taken based on the advice of counsel, those discussions must be open to the public.

The application of the exception in the Smith County case was limited to cases in which there was present and pending litigation and the public body was named in the lawsuit. In *Van Hoosier v. Warren County Board of Education*, 807 S.W.2d 230 (Tenn. 1991), the Tennessee Supreme Court extended the exception to a meeting of the board with its attorney regarding a pending controversy that was likely to result in litigation. *See also Baltrip v. Norris*, 23 S.W.3d 336 (Tenn. Ct. App. 2000)(school board's private meeting with attorney to discuss legal options concerning a pending charge of unprofessional conduct against a teacher did not violate the Open Meetings Act).

In summary, this narrow exception applies only to meetings between a public body and its attorney that meet the following criteria: (1) The meeting must concern litigation that has already been filed or that is likely to be filed and to which the county is or will be a party, and (2) the private meeting must be limited to discussions between the attorney and members of the public body regarding the public body's legal options, and no

discussions between members of the public body as to what action should be taken can take place.

Electronic Communications Exception. Members of county commissions and school boards may communicate with each other electronically on a forum over the internet without violating the sunshine law if the commission or board : (1) insures that the forum is open to the public at all times; (2) provides public notice of its intended use of such forum; (3) controls who may communicate on the forum; (4) archives all communications and makes such publically available for at least a year; and (5) provides reasonable access to members of the public to view such forum at the library, courthouse or other public building. Prior to utilizing a forum for electronic communications by its members, the county commission or school board must file a plan with the office of open records counsel regarding how they plan to ensure compliance with all of the acts conditions and must receive notice from the office of open records counsel that such plan is sufficient. The forum cannot substitute for a meeting of the county commission or school board and no member shall receive a per diem for communicating on the forum. T.C.A. §§ 8-44-109, 8-44-110.

Penalties and Remedies for Noncompliance

Any action taken at a meeting in violation of the Sunshine Law is void. T.C.A. § 8-44-105. While this provision does not forever bar a public body from subsequently ratifying an action taken in violation of the act, it does not allow a public body to ratify an action in a subsequent meeting by perfunctory affirmation of its earlier action. In order to remedy a violation of the Sunshine Law, however, the ultimate decision must be made at a meeting that satisfies the Sunshine Law and there must be new and substantial reconsideration of the issues involved. *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. Ct. App. 1990). Even if a subsequent meeting is held in compliance with the Sunshine Law, the ratification and confirmation of an action will not remedy a prior violation of the Sunshine Law if it is merely a "perfunctory rubber stamp." *Souder v. Health Partners, Inc*., 997 S.W.2d 140 (Tenn. Ct. App. 1998).

Under the act, any citizen may bring an action in circuit court, chancery court, or any court of equity to enforce the Sunshine Law. These courts are given broad authority to issue injunctions, impose penalties, and otherwise enforce the purposes of the act. T.C.A. § 8-44-106.

Questions concerning the application of this law may be referred to the county attorney or the CTAS staff.

APPENDIX

COUNTY OFFICIALS'/EMPLOYEES' MINIMUM BOND*

Official	Minimum Amount of Bond	Code Sections
Accounts and Budget Director	Not less than $10,000 nor more than $25,000	T.C.A. § 5-13-103
Assessor of Property	$10,000	T.C.A. § 67-1-505
Auditor	Determined by county legislative body	T.C.A. § 8-15-102
Circuit Court Clerk	$50,000 in counties with population greater than 15,000; $25,000 in counties with population less than 15,000. Courts can require additional bond to cover property in hands of clerk or when the clerk acts as a commissioner or receiver.	T.C.A. § 18-2-201
Clerk and Master	Same as circuit court clerk	T.C.A. § 18-2-201
Constable	Not less than $4,000 nor more than $8,000	T.C.A. § 8-10-106
Coroner	$2,500	T.C.A. § 8-9-103
County Clerk	Same as circuit court clerk	T.C.A. § 18-2-201
County Mayor	$50,000 in counties with population greater than 15,000; $25,000 in counties with population less than 15,000	T.C.A. § 5-6-109
Finance Director	Not less than $50,000	T.C.A. § 8-12-102
General Sessions Clerk	Same as circuit court clerk	T.C.A. § 5-21-109
Highway Chief Administrator	$100,000	T.C.A. § 18-2-201
County Surveyor	$2,000	T.C.A. § 54-7-108
Notaries Public	$10,000	T.C.A. § 8-16-104

Official	Minimum Amount of Bond	Code Sections
Purchasing Agent (1957 Act Counties)	Not less than $10,000 nor more than $25,000	T.C.A. § 5-14-103
Registers	$25,000 in counties with population greater than 15,000; $15,000 in counties with population less than 15,000	T.C.A. § 8-13-103
Director of Schools	$50,000	T.C.A. §§ 9-3-301, 49-2-102
Sheriff	$25,000	T.C.A. § 8-8-103
Trustee	Based upon amount of office revenues	T.C.A. §§ 8-11-102, 8-11-103
County Road Commission	Set by county legislative body	T.C.A. §§ 54-8-101, 54-9-116 and 119

---

*The bond amounts listed are only the minimum amounts required by law. Bonds of greater amounts may be required by the approving authority.

OATHS OF OFFICE

The oath of office for any elected or appointed county official may be administered by the county mayor, the county clerk, a judge of any court of record in the county, or the current or a retired judge of the general sessions court. T.C.A. § 8-18-109.

All elected county officials and the appointed officers such as clerk and master, and deputies to these officers, are required to take an oath of office that actually consists of two oaths: the constitutional oath and an oath for the particular office or fidelity oath (TENN. CONST. Art. X, Sec. 1).

The following is a combination fidelity and constitutional oath:

> I do solemnly swear that I will perform with fidelity the duties of the office to which I have been elected, and which I am about to assume. I do solemnly swear to support the constitutions of Tennessee and the United States and to faithfully perform the duties of the office of _____ for _____ County , Tennessee.

The simple constitutional oath and fidelity oath are taken by those who do not have a more specific oath prescribed by law (T.C.A. § 8-18-111). This basic oath is used upon entering the following offices:

> **County Mayor**
> **County Clerk** (or deputy county clerk by substituting the word "appointed" for "elected")
> **County Register** (or deputy register by substituting the word "appointed" for "elected")
> **Chief administrative officer of the county highway department**

County commissioners may the use the same basic oath as noted above but phrased as follows:

> I do solemnly swear that I will perform with fidelity the duties of the office to which I have been elected, and which I am about to assume. I do solemnly swear to support the constitutions of Tennessee and the United States and to faithfully perform the duties of the office of county commissioner representing the _____ district of _____ County, Tennessee.

Clerks of court take the following oath prescribed by T.C.A. § 18-1-103:

> I do solemnly swear to support the constitutions of Tennessee and the United States. I do solemnly swear that I will execute the duties of the office of _____ without prejudice, partiality, or favor, to the best of my skill and ability; that I have neither given nor will give any person any gratuity, gift, fee or reward in consideration of support for this office and I have neither sold nor offered to sell, nor will sell, my interest in this office.

Deputy clerks of court must take the following oath prescribed by T.C.A. § 18-1-104:

> I do solemnly swear that I will perform with fidelity the duties of the office to which I have been appointed and which I am about to assume and that I will faithfully discharge the duties of the office of _____ to the best of my skill and ability. I do solemnly swear to support the constitutions of Tennessee and the United States.

Sheriffs take the following oath according to T.C.A. § 8-8-104:

> I do solemnly swear that I will perform with fidelity the duties of the office to which I have been elected, and which I am about to assume. I do solemnly swear to support the constitutions of Tennessee and the United States and to faithfully perform the duties of the office of sheriff for _____County, Tennessee. I further swear that I have not promised or given, nor will I give any fee, gift, gratuity, or reward for this office or for aid in procuring this office; that I will not take any fee, gift, or bribe, or gratuity for returning any person as a juror or for making any false return of any process and that I will faithfully execute the office of sheriff to the best of my knowledge and ability, agreeably to law.

Deputy sheriffs take an oath similar to the sheriff (according to T.C.A. § 8-18-112) as follows:

> I do solemnly swear that I will perform with fidelity the duties of the office to which I have been appointed, and which I am about to assume. I do solemnly swear to support the constitutions of Tennessee and the United States and to faithfully perform the duties of the office of deputy sheriff for _____ County , Tennessee. I further swear that I have not promised or given, nor will I give any fee, gift, gratuity, or reward for this office or for aid in procuring this office; that I will not take any fee, gift, or bribe, or gratuity for returning any person as a juror or for making any false return of any process and that I will faithfully execute the office of deputy sheriff to the best of my knowledge and ability, agreeably to law.

County trustees takes the following oath:

> I do solemnly swear that I will perform with fidelity the duties of the office to which I have been elected, and which I am about to assume. I do solemnly swear to support the constitutions of Tennessee and the United States and to faithfully perform the duties of the office of trustee for _____County , Tennessee.

Deputy trustees take the same oath but substitute the word "appointed" for "elected."

Additionally, at the time of executing bonds, the trustee must take an additional oath according to T.C.A. § 67-5-1901, as follows:

> I do solemnly swear that I will faithfully collect and account for all taxes for my county, or cause the same to be done, according to law, and that I will use all lawful means in my power to find out and assess such property as may not have been assessed for taxation in my county, and return a list of the same on settlement.

Assessors of property and deputy assessors must take and subscribe an oath of office according to T.C.A. § 67-1-507 as follows:

> I, _____, assessor of property (or deputy assessor) of the County of _____, State of Tennessee, do solemnly swear (or affirm) that I will appraise, classify, and assess all taxable property of the County of _____, according to the Constitution of Tennessee and the laws of the state; that I will truly report all persons who fail or refuse to list their taxable property or who have to my knowledge returned a fraudulent list, and that I will faithfully, impartially, and honestly discharge my duties as assessor of property according to the law, to the best of my knowledge and ability, without fear, favor, or affection, so help me God.

Assessors and their deputies must also take the constitutional oath, to wit:

> I do solemnly swear to support the constitutions of Tennessee and of the United States and to faithfully perform the duties of assessor (or deputy assessor) which I am about to assume.

Constables without law enforcement powers take the following oath according to T.C.A. § 8-10-108(a):

> I do solemnly swear that I will well and truly serve the state of Tennessee in the office of constable and that I will faithfully, and without delay, execute and return all lawful process directed to me, and that I will well and truly, according to my power and ability, do and execute all other duties of the office of constable. I do solemnly swear to support the constitutions of Tennessee and the United States.

Constables with law enforcement powers take the following oath according to T.C.A. § 8-10-108(b):

> I do solemnly swear that I will well and truly serve the state of Tennessee in the office of constable, will cause the peace of the state to be kept to the best of my power and that I will arrest all persons that go in my sight armed offensively or who commit any riot, affray, or other breach of the peace, and will use my best endeavor, on complaint made, to apprehend all felons, rioters, or persons riotously assembled; and if such persons flee or make resistance, I will pursue and make hue and cry, according to law; and that I will faithfully, and without delay, execute and return all lawful process directed to me, and that I will well and truly, according to my power and ability, do and execute all other duties of the office of

> constable. I do solemnly swear to support the constitutions of Tennessee and the United States.

General sessions court judges take an oath of office (usually administered by a chancellor or circuit judge) pursuant to T.C.A. §§ 16-15-203 and 17-1-104, as follows:

> I do solemnly swear that I will support the Constitution of the United States and the Constitution of Tennessee, and that I will administer justice without respect of persons and impartially discharge all of the duties incumbent upon a judge of a general sessions court in the State of Tennessee to the best of my skill and ability.

School board members:

> I, _____, do solemnly swear that I will perform with fidelity the duties of the office to which I have been elected, and which I am about to assume. I do solemnly swear to support the constitutions of Tennessee and the United States and to faithfully perform the duties of the office of member of the board of education representing the___ education district of _____County, Tennessee.

USING THE *TENNESSEE CODE ANNOTATED*

Tennessee Code Annotated

The *Tennessee Code Annotated* is the codification of the statutory laws of Tennessee. All of the laws of general application passed by the General Assembly and approved by the governor or passed over the governor's veto, are codified in this publication. Each volume contains a pocket supplement that reflects recent amendments to existing laws and new laws passed by the General Assembly dealing with the subject matter covered in the main volume. These supplemental pocket parts are replaced each year, and the main volume is revised and reprinted periodically. Subscription to the Tennessee Code can be obtained via e-mail at customer.support@lexisnexis.com, or by writing the publisher, Tennessee Editor, Lexis Nexis, P.O. Box 7587, Charlottesville, Virginia, 22906-7587.

Each Section of the Tennessee Code is referenced by a numbering system. The code commission has changed the numbering system from a two-tier to a three-tier numbering system. Each new volume contains a parallel reference table that refers to the two-tier number and the new three-tier number. An example of this change is as follows:

Under the old two-tier system, T.C.A. § 4-2901 would be referred to as Title 4, Chapter 29, Section 01. Under the current three-tier system, it is T.C.A. § 4-29-101 and referred to as Title 4, Chapter 29, Part 1, Section 01.

When you look up a Section in the Tennessee Code be sure to look in the pocket supplement for any recent changes in the section. Following each Section in the supplement there are "amendment notes," which describe exactly what changes the General Assembly has made in the statute. Statutes may also be followed by "compiler's notes," which contain a variety of information to inform the reader of special circumstances concerning the statute. There is also a reference to other Code sections that may affect the Code Section being read and cross references to other Code sections that mention the Section being read. Each Section is also followed by a list of cases in which the Section has been cited and a brief annotation of cases that construe or apply to the statute.

Indexes. Volumes 14, 15, and 16 comprise the General Index for the *Tennessee Code Annotated*. These paperback volumes are revised and replaced annually. In addition, at the back of each bound volume in the set, there is a volume index that indexes all material contained in that particular volume. The pocket part supplement to each bound volume contains a "Ready- Reference Index," which gives a brief description of the statutory material contained in the supplement.

Tables. The Tables Volume (Volume 13) of the *Tennessee Code Annotated* contains parallel tables referring the user from all previously two-tier Section numbers to the new three-tier Section numbers. It also contains "disposition tables," which list public Chapters passed by the General Assembly and indicate where each has been codified.

Other helpful information contained in this volume are the mortality table, annuity valuation tables, interest tables, a perpetual calendar, a table of county populations based on the federal census, and a table showing the incorporation date of Tennessee municipalities.

Private Acts. Private acts applying to only one county are not included in the *Tennessee Code Annotated*. Each year the secretary of state publishes a volume containing all private acts passed that year by the General Assembly. CTAS collects the private acts applying to each county and publishes individual volumes of private acts for each county. These volumes are updated periodically and provided to county officials upon request.

NUMBER OF VOTES REQUIRED FOR A MAJORITY OF THE COUNTY LEGISLATIVE BODY

One issue that comes up occasionally concerns the number of county commission members needed to pass a particular measure. A majority of the members of the county legislative body constitutes a quorum, that is, a sufficient number to hold a meeting. (T.C.A. § 5-5-108). However, T.C.A. § 5-5-109 states that a "majority of the members constituting the county legislative body, and not merely a majority of the quorum" is, in general, required to transact business. And, even though a majority vote is normally needed, certain statutes require a two-thirds vote before a specific action can be taken. Again, this language refers to the percentage of the entire membership, not merely of those present, although vacancies in office should not be counted when figuring either a two-thirds or a majority. The following chart illustrates these principles:

Number of Members:	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Majority:	5	6	6	7	7	8	8	9	9	10	10	11	11	12	12	13	13
Two-Thirds:	6	7	8	8	9	10	10	11	12	12	13	14	14	15	16	16	17

For example, if a county legislative body has 15 members, ten of whom are present for a meeting, all ten of those would have to vote in the affirmative in order to pass a measure requiring a two-thirds vote; eight of the ten present would constitute a majority.

SAMPLE RULES OF PROCEDURE FOR THE COUNTY LEGISLATIVE BODY

RULE 1
CONVENING THE BOARD

The Board shall meet at the County Courthouse, 9:30 A.M. on the first Monday in January, April, July and October. Should any prescribed meeting date fall on a legal holiday or if an emergency should arise, the Board shall meet at 9:30 A.M. on the following day. Notification of the members for regular meetings shall be left to the discretion of the Chairperson and Clerk (County Clerk).

RULE 2
QUORUM

A quorum for the transaction of business shall be a majority of the duly qualified and acting members of the Board of County Commissioners. Vacancies shall not be included in determining the membership of the Board.

RULE 3
ORDER OF BUSINESS

1. Call to order by Chairperson. In the absence of the Chairperson, the Chairperson Pro Tempore shall preside.

2. Roll call

3. Reading and approval of the minutes

4. Resolutions for special recognition, memorials, etc.

5. Elections, appointments and confirmations

6. Reports - county officials, standing and special committees

7. Unfinished business

8. New business

9. Announcement and statements

10. Adjournment

RULE 4
GENERAL

4A. *WHO MAY ADDRESS THE BOARD*: It is a commissioner's right to address the Chairperson and the Board at any appropriate time after proper recognition by the Chairperson. It may be allowable for non-commission members to address the Board if there is no objection by the Board or if a majority of the membership vote to allow such participation. The Chairperson may set a limit on the time a non-commission member may be allowed to speak.

4B. *GAINING THE FLOOR*: In all cases, the member who shall first rise and address the Chairperson shall be entitled to speak first; but when two or more members shall rise and address the Chairperson at the same time, the Chairperson shall name the member who shall speak first.

4C. *SPEAKING*: When any member is about to speak in debate, discussion or deliver any address on any matter whatsoever to the Board, the member shall rise and respectfully address the Chairperson and shall, after being recognized by the Chairperson proceed with the intended remarks, confining such remarks strictly to the question under debate and avoiding all personalities.

4D. *CONSENT TO YIELD*: While a member is speaking s/he is not to be interrupted, except for a question by another member. If the speaker declines to yield the floor for a question, then s/he shall not be interrupted, but shall yield to questions at the end of the presentation.

4E. *POINTS OF ORDER*: If any member, speaking or otherwise, transgresses the Rules of the Board, the Chairperson shall, or any member may, call to order, in which case the member so called to order shall immediately sit down. When the point of order has been decided by the Chairperson, the member having the floor can proceed, subject to the decision made.

4F. *APPEAL ON RULING:* Any member of the Board may appeal to the Board from the ruling of the Chairperson and a majority vote of the members present shall decide the appeal.

RULE 5
MOTIONS

5A. *INTRODUCTION AND DEBATE*: Motions may be made only by members. No motion shall be debated until the same is seconded and stated by the Chairperson.

5B. *MOTIONS IN WRITING*: When a motion is made and seconded, it shall be reduced to writing by the Clerk, and read by the Chairperson prior to any debate or vote.

5C. *REQUIRING ROLL CALL*: Motions shall be put to the Board for a voice vote, by the Chairperson; provided however, any three members of the Board may require a roll call by raising of hand or indicating otherwise.

RULE 6
RESOLUTIONS

6A. *INTRODUCTION*: Any proposed resolution may be introduced only by a member of the Board, and the Clerk or Chairperson shall not receive or file any resolution that is not reduced to writing and signed by at least two members of the Board.

6B. *AUTHOR*: A resolution may have as many signatures as there are members of the Board. However, the first two signatures on the resolution shall be deemed the authors for the purpose of debate.

6C. *ROLL CALL VOTE*: Resolutions shall be put to the Board for a roll call vote by the Clerk. Each member shall vote "yes" or "no" on its passage when the Clerk calls his/her name.

6D. *CHANGING VOTE*: Any member of the Board may change his/her vote before the results of a roll call is announced by the Clerk. It shall be the duty of the Clerk, at the end of each roll call, to inquire of those who passed or were absent when the roll was called if they desire to vote; also, if anyone who has voted wishes to change his/her vote. Then, the results shall be announced by the Clerk.

6E. *SUCCESSFUL RESOLUTIONS*: All successful resolutions shall be submitted to the Chairperson for his/her signature and attested by the signature of the Clerk. The resolution along with the vote of the members shall then be submitted to the County Mayor, within five days of its passage, for his/her consideration.

RULE 7
ELECTIONS AND APPOINTMENTS

7A. *ELECTIONS AND NOMINATIONS FROM THE FLOOR*: When the Chairperson is to receive nominations from the floor, a member may nominate only one person. The floor will be kept open until every member has had an opportunity to make nominations or until a motion has been made and seconded that nominations cease and a majority of those present so vote.

7B. *APPOINTMENTS AND CONFIRMATIONS*: When the Board is called upon to appoint someone from a list of nominees (such as a county medical examiner) or to confirm an appointee of the County Mayor (such as a department head) then the name or names of those being considered for the position shall be read to the membership and discussion of each such appointee shall follow.

7C. *ELECTION OR CONFIRMATION:* All ballots for election or confirmation shall be cast by voice vote as each member's name is called by the Clerk. If the vote is on confirmation of an appointee each member will vote either "yes" or "no" on the confirmation. A majority of the membership of the full Board is required for election or confirmation.

7D. *SECOND BALLOT*: If no one is elected on a given ballot, the nominee receiving the smallest number of votes will be dropped and the vote will be taken again until a nominee is elected by the required majority of the membership.

RULE 8
COMMITTEE MEMBERSHIP

NOMINATING COMMITTEE: The Chairperson shall, at the July meeting, appoint a nominating committee from the membership of the Board. It shall be the duty of this nominating committee to recommend Board members for appointment to the standing committees of the Board. This committee shall make its report and recommendations to the full Board at the October meeting. However, members of the Board may also make committee nominations from the floor. All standing committees shall be elected annually at the regular October meeting.

RULE 9
APPROPRIATION REQUESTS

REQUESTS FOR APPROPRIATION: Requests for appropriations in addition to those within the annual budget shall be submitted in the following manner:

9A. The request shall be submitted in writing to the appropriate committee of the Board and shall reflect the estimated cost which shall be attached to the proposed resolution.

9B. All requests for appropriations falling in this area shall be summarized and submitted in writing to each member of the Board at least seven days prior to the regular or called meeting such request is to be submitted.

9C. The committee to which the request has been referred shall in open meeting of the Board, assume one of the following positions: (1) Adoption recommended (2) Rejection recommended or (3) Submitted to the Board without recommendation.

9D. The budget committee chairperson or a member designated by him/her shall advise the Board as to fund availability before a vote is taken on appropriations in any amount which are in addition to those of the annual budget.

9E. The resolution requesting such appropriations shall be voted upon by membership of the Board as provided by Rule 6 of these rules.

RULE 10
SUSPENDING THE RULES

Any rule or rules may be suspended by a two-thirds majority vote of the members present.

RULE 11
ROBERT'S RULES OF ORDER

All matters not covered herein shall be governed by Robert's Rules of Order Revised, as contained in the latest copyrighted edition.

RULE 12
THE CHAIRPERSON

12A. *ELECTION*: Annually, at its October regular meeting the Board shall elect a Chairperson and a Chairperson Pro Tempore. The Chairperson may be one of the membership of the Board or the County Mayor. If the Board elects as its Chairperson the County Mayor and s/he accepts the position, then the County Mayor shall relinquish his/her veto power.

12B. VOTING BY THE CHAIRPERSON: The County Mayor Chairperson may vote only in the case of a tie. A member chairperson may vote on all issues coming before the body, just as any other member.

12C. *CALL TO ORDER*: The Board shall be called to order by the Chairperson. In the absence of the Chairperson, the Chairperson Pro Tempore shall preside. In the absence of the Chairperson Pro Tempore, the Board shall be called to order by the County Clerk, and shall elect one of its members to preside over the deliberations.

12D. SPEAKING: Should the Chairperson desire to speak upon any subject either in the negative of the affirmative, s/he may do so, provided s/he vacates the chair. Whereupon the Chairperson Pro Tempore shall preside until the matter under consideration is disposed of by the Board. However, the Chairperson may answer questions, provide information, and give explanations from the chair, the Board not objecting.

12E. *PRESERVE ORDER*: The Chairperson shall preserve order and decorum. S/he may speak to points of order in preference to other members, rising from his/her seat for that purpose. The Chairperson shall decide questions of order, subject to an appeal to the Board of any member.

12F. *ORDER OF RECOGNITION*: Before a member is allowed to speak twice on the same subject the Chairperson shall inquire if there is another member who has not spoken on that subject and who wishes to speak.

12G. *MOTIONS*: Once a motion has been made and duly seconded, the Chairperson shall state the motion so that debate on the motion may begin.

12H. *CLARIFICATION*: The Chairperson shall rise to state or put a question and shall clearly state the question before the Board before the vote on the question is taken. A member may ask for clarification of the question up until the result of the vote is announced.

12I. *AGENDA*: The Chairperson will forward to each member of the Board the tentative agenda of the next Board meeting not less than five days prior to meeting date.

RULE 13
THE CLERK

13A. *NOTICE*: The Clerk shall notify each member of the Board of any special or called meetings not less than five days in advance thereof. Notification of regular meetings shall be within the discretion of the Clerk and the Chairperson.

13B. *MINUTES*: The Clerk shall reduce the minutes of each Board meeting to writing and attach a copy of each resolution considered and the vote thereon. The minutes shall be prepared within five days after said meeting and placed in a well bound book for public inspection. A copy of the minutes of the last meeting shall be forwarded to each board member with the prepared agenda or meeting notice.

13C. *RESOLUTIONS*: A copy of all resolutions approved by the Board shall be submitted to the County Mayor, within five days after such approval, for his/her consideration and signature.

13D. *ROLL CALL*: In all instances involving authorization to expend public funds, the Clerk shall call the roll for "yes" and "no" votes. In all instances where the roll is called for any vote, the Clerk shall make such roll call and the vote of each member a part of the record of the meeting and include it in the official minutes.

13E. CHANGE OF VOTE: It shall be the duty of the Clerk, at the end of each roll call, to inquire of those who passed or were absent when the roll was called if they desire to vote; also, if any member who has voted wishes to change his vote. Subsequently, the Clerk shall announce the results.

RULE 14
SHERIFF

The Sheriff or a designated deputy shall attend each session of the Board. That officer shall preserve order and carry out orders of the presiding officer of the Board. The attending officer shall be paid for these services, unless such officer is performing this duty during regular working hours, paid by the county, and is not working overtime.

RULE 15
COUNTY ATTORNEY

The County Attorney shall, as legal consultant, attend all meetings of the Board. It shall be the duty of the County Attorney to voice his/her negative opinion when, in his/her opinion, the Board is in the process of taking action outside of its jurisdiction, or in any manner proceeding illegally, and to give his/her legal opinion on any subject where such guidance is requested by the Chairperson.

RULE 16
COMMITTEES

16A. All committees, standing and temporary, shall meet and elect from their membership a Chairperson. The election of a Secretary shall be optional in the absence of a specific mandate of the Board.

16B. Standing committee chairmen shall report to and confer with the Chairperson on all pertinent matters to be presented at the next meeting of the Board.

16C. All committee chairpersons shall contact the County Attorney on matters appearing to warrant legal evaluation prior to presentation to the Board.

16D. Should questions arise as to jurisdiction of any committee it shall be referred to the Chairperson and/or to the County Attorney for determination, subject to an appeal to the Board at its next regular meeting.

16E. The following procedure shall be followed pertinent to committee reports and related action:

1. The committee chairperson or a member designated by him/her shall make the presentation in an open meeting of the Board.

2. Upon completion of a report the speaker shall yield to questions.

3. There shall be a vote on the proposition when discussion is complete and when there is a call for the question by the Board.

16F. If for any reason the chairperson of a committee fails or refuses to call a meeting, the Chairperson of the Board, or a majority of the committee membership may do so.

RULE 17
CONFLICT WITH LAW

In the event any of the foregoing rules are determined to be in conflict with statutory provisions, then that part in conflict shall be null and void.

SAMPLE RESOLUTION

RESOLUTION NO. _____

RESOLUTION TO FIX THE JAILER'S FEE OF _____ COUNTY

WHEREAS, *Tennessee Code Annotated*, Section 8-26-105, authorizes county legislative bodies to pass a resolution fixing the amount of jailer's fees which may be applied to misdemeanant prisoners for each twenty-four hour period the prisoner is confined to the local facility, (jail or workhouse) and,

WHEREAS, the county legislative body of _____ County is desirous that it be fully compensated for the housing of misdemeanant prisoners.

NOW, THEREFORE, BE IT RESOLVED by the county legislative body of _____ County, meeting this _____ day of _____, 20__, that:

SECTION 1. The jailer's fee for _____ County is hereby fixed at _____ dollars ($_____) per misdemeanor prisoner per twenty-four hour period of confinement in the county jail or county workhouse.

SECTION 2. The jailer's fee herein fixed shall be collected by the clerk of the appropriate court as a part of the fines and costs imposed in each misdemeanor case upon a finding of guilt.

SECTION 3. A copy of this Resolution shall be transmitted to each clerk of court hearing criminal matters in _____ County and shall be spread upon the minutes of this meeting by the County Clerk.

SECTION 4. This resolution shall take effect upon adoption, the general welfare requiring it.

Adopted this _____ day of _____, 20__.

APPROVED:

_____
County Mayor

ATTEST:

_____
County Clerk

SAMPLE PRIVATE ACT

AN ACT relative to the levy of a privilege tax on the occupancy of any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourist courts, tourist cabins, motel or any place in which rooms, lodgings, or accommodations are furnished for transients for a consideration in _____ County.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. For the purposes of this Act:

a. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, governmental unit other than the United States or any of its agencies, or any other group or combination acting as a unit.

b. "Hotel" means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.

c. "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings or accommodations in any hotel.

d. "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than thirty (30) continuous days.

e. "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.

f. "County" means _____ County, Tennessee.

g. "Operator" means the person operating the hotel whether as owner, lessee or otherwise, and shall include governmental entities.

h. "Clerk" means the county clerk of _____ County, Tennessee.

SECTION 2. _____ County is authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient, in the amount of five percent (5%) of the rate charged by the operator.

SECTION 3. The proceeds received by the county from the tax shall be designated and used for (specify purpose).

SECTION 4. Such tax shall be added by each and every operator to each invoice prepared by the operator for the occupancy of his or her hotel and to be given directly or transmitted to the transient and shall be collected by such operator from the transient and remitted to _____ County.

When a person has maintained occupancy for thirty (30) continuous days, that person shall receive from the operator a refund or credit for the tax previously collected from or charged to him or her, and the operator shall receive credit for the amount of such tax if previously paid or reported to the county.

SECTION 5. (a) The tax levied shall be remitted by all operators who lease, rent or charge for any rooms or spaces in hotels within the county, to the county clerk or such other officer as may by resolution be charged with the duty of collection thereof, said tax to be remitted to such officer not later than the twentieth (20th) day of each month for the preceding month. The operator is hereby required to collect the said tax from the transient at the time of the presentation of the invoice for said occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the county entitled to such tax shall be that of the operator.

(b) For the purpose of compensating the operator in accounting for remitting the tax levied by these sections the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the clerk in the form of a deduction in submitting his or her report and paying the amount due by such operator, provided the amount due was not delinquent at the time of payment.

SECTION 6. The clerk, or other authorized collector of the tax, shall be responsible for the collection of said tax and shall place the proceeds of such tax in accounts for the purposes stated herein. A monthly tax return shall be filed under oath with the clerk by the operator with such number of copies thereof as the clerk may reasonably require for the collection of such tax. The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the clerk and approved by the county legislative body prior to use. The clerk shall audit each operator in the county at least once per year and shall report on the audits made on a quarterly basis to the county legislative body.

The county legislative body is hereby authorized to adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this Act, including the form for such reports.

SECTION 7. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded.

SECTION 8. Taxes collected by an operator which are not remitted to the county clerk on or before the due dates shall be delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and in addition for penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. Each occurrence of willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is unlawful and shall constitute a misdemeanor punishable upon conviction of a fine not in excess of fifty dollars ($50.00).

SECTION 9. It shall be the duty of every operator liable for the collection and payment to the county of any tax imposed by this Act to keep and preserve for a period of three (3) years all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the county, which records the county clerk shall have the right to inspect at all reasonable times.

SECTION 10. The county clerk in administering and enforcing the provisions of this Act shall have as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67 of *Tennessee Code Annotated* or otherwise provided by law for the county clerks.

For his or her services in administering and enforcing the provisions of this Act, the county clerk shall be entitled to retain as a commission five percent (5%) of the taxes so collected.

Upon any claim of illegal assessment and collection, the taxpayer shall have the remedies provided in Title 67, *Tennessee Code Annotated*, it being the intent of this Act that the provisions of law which apply to the recovery of state taxes illegally assessed and collected under the authority of this Act; provided further, the county clerk shall possess those powers and duties as provided in *Tennessee Code Annotated*, § 67-1-707 for the county clerks.

With respect to the adjustment and settlement with taxpayers, all errors of county taxes collected by the county clerk under the authority of this Act shall be refunded by the county clerk.

Notice of any tax paid under protest shall be given to the county clerk and the resolution authorizing levy of the tax shall designate a county officer against whom suit may be brought for recovery.

SECTION 11. The proceeds of the tax authorized by this Act shall be allocated to and placed in the General Fund (or other fund) of _____ County to be used for the purposes stated in Section 3 of this Act.

SECTION 12. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SECTION 13. This Act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of _____ County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by the presiding officer of the county legislative body to the Secretary of State.

SECTION 14. For the purpose of approving or rejecting the provisions of this Act, it shall become effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided by Section 13.

LETTER OF AGREEMENT

COMPENSATION OF EMPLOYEES

_____ COUNTY, TENNESSEE

Pursuant to *Tennessee Code Annotated*, Section 8-20-101, this agreement by and between _____ and _____
(Official/Office) (County Mayor)
is for the purpose of establishing the number of employees and the authorized salaries for the _____.
(Office)

The parties named herein have agreed and do hereby enter into this agreement according to the provisions set forth herein:

A. The term of this agreement will be from _____ to _____.
(Beginning Date) (Ending Date)

B. In order to ensure the efficient operation of the office, it is agreed that the official is authorized to employ the following employees at salaries not to exceed the specified amounts:

Number of Employees in Job Classification	Job Classification	Annual Salary for Each Employee in Job Classification Not to Exceed

C. It is further agreed that part-time help may be employed at a rate of up to $_____ an hour with a total cost not to exceed $_____ for the term of this agreement.

D. The parties agree to the following special provisions: _____

_____

_____.

E. It is further agreed that in no event shall the amount of this agreement exceed $_____ .

In witness whereof, the parties have set their signatures.

_____	_____
OFFICIAL	DATE
_____	_____
COUNTY MAYOR	DATE

COUNTY BUDGET LAWS[1]

Charters

Shelby	Charter
Knox	Charter
Davidson	Metro Charter
Moore	Metro Charter
Trousdale	Metro Charter

1957 Act

Anderson	Schools Included
Blount	Schools Included
Cheatham	Schools Excluded
Cocke	Schools Excluded
Greene	Schools Excluded
Johnson	Schools Included
Lawrence	Schools Excluded
Loudon	Schools Included
Montgomery	Schools Excluded
Overton	Schools Excluded
Polk	Schools Excluded
Roane	Schools Included
Sullivan	Schools Excluded
Warren	Schools Excluded
Washington	Schools Excluded
Williamson (with 1990 Budget Law)	Schools Excluded

Private Acts
Benton
Dyer
Gibson
Grainger
Hamilton
Hardeman
Henry
Marshall
Maury
McNairy
Meigs
Rutherford
Sumner

1981 Act
Bedford
Campbell
Carter
Claiborne
Cumberland
Fentress
Franklin
Giles
Henderson
Hickman
Jefferson
Lincoln
McMinn
Madison
Monroe
Morgan
Rhea
Robertson
Scott
Weakley
White
Wilson

1993 Law
Decatur
DeKalb
Hardin

[1] All other counties are under general law budgeting provisions.

TABLE OF PURCHASING LAWS

FOR TENNESSEE COUNTY GOVERNMENTS

COUNTY	GENERAL	HIGHWAY	SCHOOLS
ANDERSON	1957	1957	1957
BEDFORD	1981	1981	1981
BENTON	1939 Priv. Act Ch. 541	1943 Priv. Act Ch. 250/ CUHL	49-2-203
BLEDSOE	1983	1941 Priv. Act Ch. 153/ CUHL	49-2-203
BLOUNT	1957	1957	1957
BRADLEY	1951 Priv. Act Ch. 313	1947 Priv. Act Ch. 354/ CUHL	49-2-203
CAMPBELL	1981	1981	1981
CANNON	1983	1933 Priv. Act Ch. 788/ CUHL	49-2-203
CARROLL[1]	1975 Priv. Act Ch. 23	1975 Priv. Act Ch. 23/ 1986 Priv. Act, Ch. 148/ CUHL	1975 Priv. Act Ch. 23/ 49-2-203
CARTER	1981	1981	1981
CHEATHAM	1933 Priv. Act Ch. 250/ 1983	1933 Priv. Act Ch. 250/ 1945 Priv. Act, Ch. 309/ CUHL	49-2-203
CHESTER	1983	1951 Priv. Act Ch. 68/ CUHL 1949 Priv. Act, Ch. 277	49-2-203
CLAIBORNE	1981	1981	1981
CLAY	1983	1951 Priv. Act Ch. 565/ CUHL	49-2-203
COCKE	1957	1957	49-2-203
COFFEE	1957	1957	49-2-203

COUNTY	GENERAL	HIGHWAY	SCHOOLS
CROCKETT	1937 Priv. Act Ch. 806/ 1983	1937 Priv. Act Ch. 806/ 1933 Priv. Act, Ch. 826/ CUHL	1937 Priv. Act Ch. 806/ 49-2-203
CUMBERLAND	1981	1981	1981
DAVIDSON	Metro Charter	Metro Charter	Metro Charter
DECATUR	1983	CUHL	49-2-203
DEKALB	1979 Priv. Act Ch. 63	1979 Priv. Act Ch. 63/ CUHL	1979 Priv. Act Ch. 63/ 49-2-203
DICKSON[2]	1957	1957	1951 Priv. Act Ch. 16/ 49-2-203
DYER	1983	1929 Priv. Act Ch. 421/ CUHL	49-2-203
FAYETTE	1983	1974 Priv. Act Ch. 234/ CUHL	49-2-203
FENTRESS	1981	1981	1981
FRANKLIN	1981	1981	1981
GIBSON	1983	1929 Priv. Act Ch. 111/ CUHL	49-2-203
GILES	1981	1981	1981
GRAINGER	1983	1980 Priv. Act Ch. 232/ CUHL	49-2-203
GREENE	1957	1957	49-2-203
GRUNDY	1983	1939 Priv. Act Ch. 435/ CUHL	49-2-203
HAMBLEN	1983	1949 Priv. Act Ch. 313/ CUHL	49-2-203
HAMILTON	1983 Priv. Act Ch. 90	1983 Priv. Act Ch. 90	1983 Priv. Act Ch. 90/ 49-2-203

COUNTY	GENERAL	HIGHWAY	SCHOOLS
HANCOCK	1983	1941 Priv. Act Ch. 149/ CUHL	49-2-203
HARDEMAN	1989 Priv. Act Ch. 90	1989 Priv. Act Ch. 90/ CUHL	1989 Priv. Act Ch. 90/ 49-2-203
HARDIN	1983	1929 Priv. Act Ch. 113/ CUHL	49-2-203
HAWKINS	1957 Priv. Act Ch. 256	1957 Priv. Act Ch. 256/ CUHL	1957 Priv. Act Ch. 256/ 49-2-203
HAYWOOD	1983	1963 Priv. Act Ch. 129/ CUHL	49-2-203
HENDERSON	1981	1981	1981
HENRY	1983 Priv. Act Ch. 137/ 1983	CUHL	49-2-203
HICKMAN	1981	1981	1981
HOUSTON	1983	1945 Priv. Act Ch. 366/ CUHL	49-2-203
HUMPHREYS	1983	1935 Priv. Act Ch. 634/ CUHL	49-2-203
JACKSON	1983	1951 Priv. Act Ch. 111/ CUHL	49-2-203
JEFFERSON	1981	1981	1981
JOHNSON	1957	1957	49-2-203
KNOX	1980 Priv. Act Ch. 286 (county charter)	1980 Priv. Act Ch. 286	1980 Priv. Act Ch. 286/ 49-2-203
LAKE	1983	1980 Priv. Act Ch. 262/ CUHL	49-2-203
LAUDERDALE	1983	1929 Priv. Act Ch. 304/ CUHL	49-2-203

COUNTY	GENERAL	HIGHWAY	SCHOOLS
LAWRENCE	1957	1957	49-2-203
LEWIS	1983	1937 Priv. Act Ch. 395/ CUHL	49-2-203
LINCOLN	1981	1981	1981
LOUDON	1957	1957	1957
MCMINN	1981	1981	1981
MCNAIRY	1990 Priv. Act Ch. 171	CUHL	49-2-203
MACON	1937 Priv. Act Ch. 161/ 1983	1965 Priv. Act Ch. 234/ CUHL	49-2-203
MADISON	1981	1981	1981
MARION	1983	1933 Priv. Act Ch. 24/ CUHL	49-2-203
MARSHALL	1965 Priv. Act. Ch. 69/ 1983	1965 Priv. Act Ch. 69/ 1955 Priv. Act, Ch. 238/ CUHL	49-2-203
MAURY	1957	1957	49-2-203
MEIGS	2007 Priv. Act Ch. 28	2007 Priv. Act Ch. 28/ CUHL	49-2-203
MONROE	1981	1981	1981
MONTGOMERY	1957	1957	49-2-203
MOORE	Metro Charter	Metro Charter	Metro Charter
MORGAN	1981	1981	1981
OBION	1983	CUHL	49-2-203
OVERTON	1957	1957	49-2-203
PERRY	1983	1977 Priv. Act Ch.18/ CUHL	49-2-203

COUNTY	GENERAL	HIGHWAY	SCHOOLS
PICKETT	1983	1957 Priv. Act Ch. 104/ CUHL	49-2-203
POLK	1957	1957	49-2-203
PUTNAM	1981 Priv. Act Ch. 63	1989 Priv. Act Ch. 122 CUHL	49-2-203
RHEA	1981	1981	1981
ROANE	1957	1957	1933 Priv. Act Ch. 477, 49-2-203 (informally 1957)
ROBERTSON	1981	1981	1981
RUTHERFORD	1943 Priv. Act Ch. 421	1951 Priv. Act Ch. 55/CUHL	49-2-203
SCOTT	1981	1981	1981
SEQUATCHIE	1983	CUHL	49-2-203
SEVIER	1983	1969 Priv. Act Ch. 133/ CUHL	49-2-203
SHELBY	1974 Priv. Act Ch. 260	1974 Priv. Act Ch. 260	1974 Priv. Act Ch. 260; 49-2-203
SMITH	1983	CUHL	49-2-203
STEWART	1983	1951 Priv. Act Ch. 171/ CUHL	49-2-203
SULLIVAN	1947 Priv. Act Ch. 261	1947 Priv. Act Ch. 261/ CUHL	1947 Priv. Act Ch. 261/ 49-2-203
SUMNER	2002 Priv. Act Ch. 113	2002 Priv. Act Ch. 113/ CUHL	2002 Priv. Act Ch. 113
TIPTON	1941 Priv. Act Ch. 518	1973 Priv. Act Ch. 114/ CUHL	49-2-203
TROUSDALE	Metro Charter	Metro Charter	Metro Charter

COUNTY	GENERAL	HIGHWAY	SCHOOLS
UNICOI	1983	1949 Priv. Act Ch. 678/ CUHL	49-2-203
UNION	1983	1943 Priv. Act Ch. 154/ CUHL	49-2-203
VAN BUREN	1983	1951 Priv. Act Ch. 460/ 1986 Priv. Act, Ch. 111/ CUHL	49-2-203
WARREN	1957	1957	49-2-203
WASHINGTON	1957	1957	49-2-203
WAYNE	1983	1941 Priv. Act Ch. 32/ CUHL	49-2-203
WEAKLEY	1981	1981	1981
WHITE	1981	1981	1981
WILLIAMSON	1957	1957	49-2-203
WILSON	1981	1981	49-2-203

[1] Carroll County - 1975 Priv. Act Ch. 23 is applicable to schools, but only for transportation purchases.

[2] Dickson County - 1951 Priv. Act Ch. 16 does not apply to school buildings.

The University of Tennessee does not discriminate on the basis of race, sex, color, religion, national origin, age, disability, or veteran status in provision of educational programs and services or employment opportunities and benefits. This policy extends to both employment by and admission to the university.

The university does not discriminate on the basis of race, sex, or disability in its education programs and activities pursuant to the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) of 1990.

Inquiries and charges of violation concerning Title VI, Title IX, Section 504, ADA, or the Age Discrimination in Employment Act (ADEA) or any of the other above-referenced policies should be directed to the Office of Diversity Resources (DRES), 2110 Terrace Avenue, Knoxville, Tennessee 37996-3560, telephone (865) 974-2498 (V/TTY available) or (865) 974-2440. Requests for accommodation of a disability should be directed to the ADA Coordinator at the Office of Human Resources, 600 Henley Street, Knoxville, Tennessee 37996-4125.