



# County Technical Assistance Service

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## The County Purchasing Law of 1957-Conflict of Interest

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Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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## The County Purchasing Law of 1957-Conflict of Interest

**Reference Number:** CTAS-627

As previously noted, the County Purchasing Law of 1957 contains a separate, and more stringent, conflict of interest provision. *Tenn. Code Ann.* § 5-14-114(a) prohibits the county purchasing agent, members of the county purchasing commission, members of the county legislative body, and other officials of the county, from being financially interested or having any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any supplies, materials, equipment or contractual services used by or furnished to any department or agency of the county government. An official who violates this statute commits a Class D Felony. While the Tennessee Court of Criminal Appeals found this penalty to be unenforceable, *State v. Whitehead*, 43 S.W.3d 921 (Tenn.Crim.App. 2000), a violation could constitute official misconduct. See Op. Tenn. Atty. Gen. 94-073 (June 16, 1994).

In *Garner v. Blount County*, 2000 WL 116026 (Tenn Ct. App., 2000), the court found that a contract between a county building authority and a corporation in which a county commissioner owned an interest was unlawful under T.C.A. § 5-14-114. See also Op. Tenn. Atty. Gen. 98-218 (November 25, 1998); Op. Tenn. Atty. Gen. 00-152 (October 6, 2000) (county commissioner prohibited under T.C.A. § 5-14-114(a) from working part-time as independent contractor for department of county government); Op. Tenn. Atty. Gen. 07-141 (October 10, 2007) T.C.A. § 5-14-114 prohibits a shareholder of a bank that conducts business with the county from serving as county commissioner, member of the county budget committee, or county purchasing commission).

The statute does not define the term, “personal beneficial interest.” However, in *State v. Whitehead*, 43 S.W.3d 921 (Tenn.Crim.App., 2000) the Court of Criminal Appeals found that the County Purchasing Law of 1957:

prohibits a county official from having any *personally favorable interest* in a county contract, regardless of whether that interest is direct or circuitous. While the statute prohibits a broad range of conduct by county officials, it is not so vague that the prohibited conduct cannot be ascertained.

*Id.* at 929 (emphasis added).

Further, T.C.A. § 5-14-114(b) prohibits the same group of individuals from accepting or receiving, directly or indirectly, from any person, firm or corporation to which any contract or purchase order may be awarded, by rebate, gift or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. See Op. Tenn. Atty. Gen. 94-073 (June 16, 1994) (in counties that have adopted the County Purchasing Law of 1957, there is a blanket prohibition against the acceptance of gifts of any value by county officials from any company to which a contract may be awarded; depending upon the circumstances, the acceptance of such gifts may constitute the criminal offense of official misconduct).

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