



# County Technical Assistance Service

Published on e-Li (<http://ctas-eli.ctas.tennessee.edu>)

August 04, 2020

## Crimes Involving Public Officials

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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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## Crimes Involving Public Officials

**Reference Number:** CTAS-634

### Felonies in Office-Forfeiture of Retirement Benefits

**Reference Number:** CTAS-635

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and agree to the forfeiture of that person's retirement benefits from the Tennessee Consolidated Retirement System, any superseded retirement system or any other public pension system if that person is convicted in any state or federal court of a felony arising out of that person's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

### Bribery of Public Servant

**Reference Number:** CTAS-636

It is a criminal offense for an elected official to accept a bribe. T.C.A. § 39-16-102. See *State v. Frost*, 2003 WL 21339225 (Tenn.Crim.App. 2003) (constable convicted of soliciting a bribe).

The statute provides:

A person commits an offense who:

- (1) Offers, confers, or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion or other action in the public servant's official capacity; or
- (2) While a public servant, solicits, accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that the public servant's vote, opinion, judgment, exercise of discretion or other action as a public servant will thereby be influenced.

T.C.A. § 39-16-102(a)(1) & (2).

It is no defense to a prosecution for bribery that the person sought to be influenced was not qualified to act in the desired way because the person had not yet assumed office, lacked jurisdiction, or for any other reason. T.C.A. § 39-16-102(b).

Bribery is a Class B felony. T.C.A. § 39-16-102(c). A county official convicted under this statute may be punished by imprisonment of not less than eight (8) years nor more than thirty (30) years. In addition, the jury may assess a fine not to exceed twenty-five thousand dollars (\$25,000). T.C.A. § 40-35-111. Persons convicted of bribing a public official are subject to the same punishment. An elected official who is convicted of bribery under state or federal law is forever afterwards disqualified from holding any office under the laws or constitution of this state. T.C.A. § 39-16-103. The same is true even if citizenship status is later restored. T.C.A. § 40-20-114(b).

### Soliciting Unlawful Compensation

**Reference Number:** CTAS-637

A public servant who requests a pecuniary benefit for the performance of an official action knowing that he or she was required to perform that action without compensation or at a level of compensation lower than that requested has committed the offense of solicitation of unlawful compensation, a Class E felony. T.C.A. § 39-16-104.

In addition, pursuant to T.C.A. § 8-21-101, a county official is not allowed to demand or receive fees or other compensation for any service further than is expressly provided by law. If any officer demands or receives any other or higher fees than are prescribed by law, such officer is liable to the party aggrieved in the penalty of \$50.00, to be recovered before any judge of the court of general sessions, and the officer also commits a Class C misdemeanor. T.C.A. § 8-21-103. See *State v. Dixie Portland Cement Co.*,

267 S.W. 595 (Tenn. 1925) (public officers can receive no fees or costs, except as expressly authorized by law). See also Op. Tenn. Atty. Gen. 95-118 (November 28, 1995) (As previously opined by this office, under *Bayless v. Knox County*, 199 Tenn. 268, 286 S.W.2d 579 (1955), and Tenn. Code Ann. § 8-21-101, a county or a county's chief law enforcement officer may only require or accept payment or other compensation if expressly authorized by statute. Op. Tenn. Atty. Gen. 91-76 (August 20, 1991). Op. Tenn. Atty. Gen. U91-76 (May 22, 1991). Op. Tenn. Atty. Gen. 88-199 (November 10, 1988). Op. Tenn. Atty. Gen. 88-93 (April 20, 1988)).

## Buying and Selling in Regard to Offices

**Reference Number:** CTAS-638

This offense is committed when any person holding any office, or having been elected to any office, enters into any bargain and sale for any valuable consideration whatever in regard to the office, or sells, resigns, or vacates the office or refuses to qualify and enter upon the discharge of the duties of the office for pecuniary consideration. This offense is also committed when any person offers to buy any office by inducing the incumbent thereof to resign, to vacate, or not to qualify, or when a person directly or indirectly engages in corruptly procuring the resignation of any officer for any pecuniary or other valuable consideration. This offense is a Class C felony. T.C.A. § 39-16-105.

## Exceptions and Defenses

**Reference Number:** CTAS-639

It is an exception to the offenses of bribery, solicitation, and buying and selling public office that the benefit involved is a fee prescribed by law to be received by a public servant or any other benefit to which the public servant was lawfully entitled. Additionally, it is a defense that the benefit was a trivial benefit incidental to personal, professional, or business contacts, which involves no substantial risk of undermining official impartiality, or a lawful contribution made for the political campaign of an elective public servant when the public servant is a candidate for nomination or election to public office. T.C.A. § 39-16-106.

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