



# County Technical Assistance Service

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## County Mayors/Executives

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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.

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## Qualifications and Title-County Mayor

### Reference Number: CTAS-22

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. 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.

County mayors serve terms of four years or until their successors are elected and qualified. Terms begin on the first day of September following the election. T.C.A. §§ 5-6-101 and 5-5-102. There is no limitation on the number of terms county mayors may serve in most counties. In counties with a county charter or metropolitan government charter, the term and possible term limitation for county mayors is determined by the county's charter.

The office of county mayor is subject to the [general qualifications](#) for [county offices](#) as well as these specific qualifications.

To hold the office of county mayor in any particular county, a person must be at least 25 years of age and must be a qualified voter of the county. He or she must also have been a resident of the county for one year prior to filing a nominating petition for election to the office. To maintain this office, once elected, the county mayor must continue to reside in the county and may not hold any other public office of profit. T.C.A. § 5-6-104.

County mayors are elected county-wide by the qualified voters of the county. Regular general elections are held on the first Thursday in August in even numbered years for county offices, at the same time as primary elections are held for state offices. T.C.A. §§ 5-6-101, 5-5-102, 2-3-202 and 2-13-202.

After election, the county mayor must take an oath of office and execute a surety bond. [Oaths of office](#) and [Bonds](#) are covered under the [General Information tab](#) of the County Offices topic.

## Compensation-County Mayor

### Reference Number: CTAS-23

The minimum compensation for full time county mayors is set in T.C.A. § 8-24-102 and is determined according to county population by classes. The office 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, although the county legislative body may increase that amount. T.C.A. §§ 8-24-102 and 8-24-114. However, the compensation for the full-time county mayor must be at least five 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 five percent greater than the sheriff's salary.

## Relationship to County Legislative Body-County Mayor

### Reference Number: CTAS-24

The county mayor serves as a nonvoting, ex officio member of the legislative body; as such the county mayor may not make or second a motion. Op. Tenn. Att'y Gen. 86-194 (December 1, 1986).

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 coun-

ty 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. 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.

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. Most mayoral appointments, including appointments of department heads under T.C.A. § 5-6-106(c), are subject to confirmation by the county legislative body.

Additional information about a county mayor's relationship to the county legislative body is under the [County Legislative Body-County Offices](#) tab.

## Meetings and Notice Requirements -CLB

### **Reference Number:** CTAS-15

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. T.C.A. § 5-5-104. Every member of the county legislative body shall be required to attend each and every session of the body. T.C.A. § 5-5-106.

The Open Meetings Law 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.

In counties not operating under 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.

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.

## Chair-CLB

### **Reference Number:** CTAS-14

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 legisla-

tive resolutions of the county legislative body. However, these provisions do not apply in Knox, Hamilton, and Shelby. 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). The county mayor may not make or second a motion. 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.

If the county mayor does not serve as chairman, the county mayor has veto power over legislative resolutions (but not administrative or appellate resolutions) within 10 days of receiving the legislative resolution from the county commission. If a resolution is vetoed, the county mayor must return it to the commission with reasons for the veto. The commission may override the veto at the next regular meeting of the county commission or within 20 days of receiving the veto, whichever is later.

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.

### Duties of the Chairperson (or Chairperson Pro Tempore)

**Reference Number:** CTAS-756

The chairperson of the county commission is required to preside over the sessions of the county commission. T.C.A. § 5-5-103. A chairperson "holds over" and is the presiding officer until his or her successor is duly elected. Op.Tenn. Atty Gen. 86-162 (September 15, 1986). Generally, the chairperson's duties include the following:

1. Opening the session at the proper time by taking the chair and calling the members to order; announcing the business before the body in the order it is to be acted upon; stating and putting to vote all motions, resolutions, amendments or other questions which lawfully come before the body; and announcing the results of the vote.
2. Keeping order, recognizing each member's right to speak on an issue and assigning the floor to those properly entitled to it.
3. Assuring only one main motion or resolution is entertained at a time and disallowing debate on the issue until the motion has been properly seconded and announced.
4. Being fair and impartial while presiding and refraining from discussion on issues; being courteous to those whose views differ from the chairperson's.
5. Surrendering the chair prior to taking part in debate.
6. Voting if a member of the body; voting only to break a tie vote if a county mayor chairperson.
7. Performing other duties pursuant to procedure adopted by resolution of the body.

When the chair steps down to participate in debate, she/he cannot return to the chair until the issue is disposed of in some manner. It is always improper for the chair to voice an opinion or debate the pending issue while acting as chair. The chair can answer questions, refer questions to the maker of the motion, rule on parliamentary questions, etc., during the debate of any issue.

If the chairperson is unable or fails to attend a meeting of the county commission, it is the duty of the chairperson pro tempore to discharge the duties of the office of chair. If neither the chairperson nor the chairperson pro tempore is present, the county commission appoints a temporary chairperson pro tempore to preside over the meeting. T.C.A. § 5-5-103.

If the county mayor is absent or intends to be absent for more than 21 days, or is incapacitated or unable to perform the duties of the office, the county commission will appoint the chair to serve until the county mayor is no longer absent or disabled. When the chairperson is serving as county mayor, the chair pro tempore presides over the county commission. T.C.A. § 5-5-103.

### Clerk of the County Legislative Body

**Reference Number:** CTAS-664

The county clerk is the clerk of the county legislative body. T.C.A. §§ 18-6-101; 18-6-104. The clerk keeps the official records of the body, sends required notices, and keeps a record of all appropriations

and allowances made and all claims chargeable against the county. The clerk may develop the [agenda](#) for the county legislative body meetings.

In addition to keeping the minutes, the County Clerk is required to:

1. Notify each member of a special or called session not less than five days in advance of the meeting T.C.A. § 5-5-106;
2. Present each resolution approved by the county legislative body to the county mayor for signature promptly after the meeting of the county legislative body and report the approval or nonapproval at the next meeting in the reading of the minutes. T.C.A. § 5-6-107;
3. Notify members of vacancies which must be filled by the county legislative body, and record each member's vote to fill the vacancy and enter it in the minutes. T.C.A. § 5-5-111; and
4. Carry out any other duties required by local rules of procedure adopted by resolution of the county legislative body or required by statute.

In instances where no statute or rule of procedure adopted locally addresses a question of parliamentary procedure, many county legislative bodies follow Robert's Rules of Order, a set of procedural rules which may or may not be adopted by the body.

Within almost every county there are three major operating department heads: the county mayor, the chief administrative officer of the Highway Department, and the Director of Schools (under the direction of the Board of Education). Income received and disbursements made by these departments must be authorized by the county legislative body, subject to general and private acts of the legislature and to court decisions. Accordingly, no county funds may be expended unless authorized (generally referred to as "appropriated") by the county legislative body. T.C.A. § 5-9-401.

Appropriations may be made by the county for a number of specifically authorized purposes, or pursuant to the general authorization to appropriate funds for any statutorily authorized purpose. T.C.A. § 5-9-101 *et seq.* The County Clerk keeps a book of appropriations. T.C.A. § 5-9-301. Once an appropriation is made, warrants signed by the appropriate department head (more than one department head may be required) are drawn on the county treasury (trustee).

To learn more about County Clerks serving as the clerk of the County Legislative Body, review the [County Legislative Body](#) topic.

## The Agenda

**Reference Number:** CTAS-663

The order of business, or the framework for a specific meeting of the county legislative body, is contained in an agenda. Some counties adopt a permanent order of business. If no order of business is established, the chair could decide what order to follow. An agenda, following the adopted order of business, relates to the specific meeting of the body. The agenda is a listing, in order, of the business to be considered at the meeting. The agenda is usually set by the chairman based on information from members and committee chairmen. In some counties, another method of setting the agenda may be established by local rule, e.g. the agenda may be set prior to the meeting by a workshop or small meeting. The county clerk, the county mayor, and citizens may also request that items be placed on the agenda.

Members of the county legislative body should have a copy of the proposed agenda, supporting information, and copies of the minutes of the previous meeting prior to the meeting of the body. Having these materials in advance allows members an opportunity prior to the meeting date to seek answers to questions on topics to be considered at the meeting. Receiving an advance copy of the agenda facilitates the smooth operation of meetings of the county legislative body and, since the members are better informed, fewer items may need to be deferred until the next meeting for further study, and meetings may also be shorter. The county commission can ensure that its members receive copies of the agenda prior to the meeting by making such a requirement a part of the local rules. Also, some county commissions, by local rule, require a two-thirds vote to amend the agenda to include a new item of business that has not been provided in advance to the county commissioners once the agenda has been adopted following the procedure established for adoption of the agenda.

County clerks may be asked to prepare the agenda. A typical Sample Agenda would be:

1. Call to order by chair.
2. Roll call by county clerk.
3. Approval of agenda (if needed).
4. Reading and approval of the minutes from previous meeting.
5. Resolutions for special recognition.

6. Elections, appointments, and confirmations.
7. Reports, county officials, standing, and special committees.
8. Unfinished business.
9. New business.
10. Announcements and statements.
11. Adjournment.

In some counties, by locally adopted rule, the county legislative body may have some time set aside on the agenda to take public comments. Often this is done before or after the other items on the agenda are dealt with.

## Minutes

### **Reference Number:** CTAS-665

It is very important that the minutes of the county commission be accurate, be reviewed, and be formally approved by the county legislative body. The minutes are required to be promptly and fully recorded and open to public inspection in the clerk's office. They must include a record of persons present, all motions, proposals and resolutions offered, the results of any vote taken, and a record of individual votes in the event of roll call. All votes of the County Commission must be public; no secret votes or secret ballots can be taken T.C.A. § 8-44-104. Each member's vote regarding the appointment process shall be recorded by the clerk and entered on the minutes of the county legislative body. T.C.A. § 5-5-111(e). The minutes are the only record of the meeting that will be used if a question arises concerning what happened at the meeting and that will be recognized by a court.

Members of the county legislative body can greatly assist the county clerk in preparation of the minutes by ensuring that all resolutions are presented in writing. This will ensure that the resolution is recorded in the minutes in the proper format and will speed the process of approving and correcting the minutes. However, resolutions that are not presented in writing will have to be reduced to writing by the county clerk.

The minutes should contain what was done by the body and not necessarily what was said by each member. As a general rule the minutes of the County Commission are written in third person and contain the following information:

1. Date, place, and time of the meeting and whether the meeting was a regular or special meeting.
2. Names of the members in attendance and those not in attendance.
3. Approval or correction of the minutes of the previous meeting.
4. Motions and proposals made, along with amendments, the name of the maker, and the vote on the motions. (Motions withdrawn do not have to be included.)
5. Resolutions adopted in full. Resolutions not presented in writing must be reduced to writing by the County Clerk and included in the minutes.
6. Actual vote of each member on roll call votes and "approved by voice vote" or "disapproved by voice vote" for simple voice vote. A count of the votes should be included when voting is done by a show of hands.
7. Summaries or written reports appended to the minutes for committee reports.
8. Committee appointments, elections to fill vacancies or other appointments, and confirmations of appointments.
9. Any special provision required for compliance, such as a two-thirds vote.
10. A notation if the meeting is also serving as a public hearing on an issue.
11. Any other matter directed by the body to be included in the minutes.
12. Time of adjournment.

The approved minutes should be signed by the chair of the county legislative body and the County Clerk. Rough minutes should be retained until the actual minutes are approved, and then may be destroyed. Minutes are kept as permanent records in a minute book which should be well bound and have numbered pages. A method of topical indexing to find minutes of previous meetings should be kept. Under T.C.A. § 10-7-121, the minutes may be maintained in electronic format instead of bound books or paper records, as long as the requirements of that statute are met.

## Procedure and Voting Requirements-CLB

### **Reference Number:** CTAS-18

Rules of parliamentary procedure were developed to provide for orderly and courteous meetings. If you have questions about parliamentary procedure at a meeting of your county commission, you should con-

sult your county attorney. You may have your county attorney attend county commission meetings to assist the presiding officer with questions of parliamentary procedure (or be available to provide answers to your questions).

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. During the meeting a commissioner should seek recognition in the manner used by the body which is generally by rising or by raising his/her hand. As a parliamentary courtesy, the member who makes a motion is entitled to speak first on the issue and is entitled to close debate but not until every member who desires to speak has been heard. The member should make the motion, without discussion that is not needed to explain the motion, allow for a second, and then be heard on the motion. A member should confine his/her remarks to the question before the body and should avoid personalities.

Many county legislative bodies adopt *Robert's Rules of Order* when parliamentary questions arise that are not specifically dealt with in their local rules. Whenever specifically adopted local rules differ with *Robert's Rules* (unless the local rules provide *Robert's Rules* control), the local rule would control. Neither *Robert's Rules* nor local rules can take precedence over a statute. When there is a conflict between a statute and a rule, the statute controls.

**Sample rules of procedure.** 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.

## Sample Meeting Transcript

**Reference Number:** CTAS-2191

Using the **sample agenda**, the following is a sample transcript of a meeting that has 19 members and a regular member is serving as chair.

Meeting of CTAS County Commission-Transcript of Dialogue

Chairman Wormsley (at the proper time and place, after taking the chair and striking the gavel on the table): This meeting of the CTAS County Commission will come to order. Clerk please call the roll. (Ensure that a majority of the members are present.)

Chairman Wormsley: Each of you has received the agenda. I will entertain a motion that the agenda be approved.

Commissioner Brown: So moved.

Commissioner Hobbs: Seconded

Chairman Wormsley: It has been moved and seconded that the agenda be approved as received by the members. All those in favor signify by saying "Aye"?...Opposed by saying "No"?...The agenda is approved. You have received a copy of the minutes of the last meeting. Are there any corrections or additions to the meeting?

Commissioner McCroskey: Mister Chairman, my name has been omitted from the Special Committee on Indigent Care.

Chairman Wormsley: Thank you. If there are no objections, the minutes will be corrected to include the name of Commissioner McCroskey. Will the clerk please make this correction. Any further corrections? Seeing none, without objection the minutes will stand approved as read. (This is sort of a short cut way that is commonly used for approval of minutes and/or the agenda rather than requiring a motion and second.)

Chairman Wormsley: Commissioner Adkins, the first item on the agenda is yours.

Commissioner Adkins: Mister Chairman, I would like to make a motion to approve the resolution taking money from the Data Processing Reserve Account in the County Clerk's office and moving it to the equipment line to purchase a laptop computer.

Commissioner Carmical: I second the motion.

Chairman Wormsley: This resolution has a motion and second. Will the clerk please take the vote.

Chairman Wormsley: The resolution passes. We will now take up old business. At our last meeting, Commissioner McKee, your motion to sell property near the airport was deferred to this meeting. You are recognized.

Commissioner McKee: I move to withdraw that motion.

Chairman Wormsley: Commissioner McKee has moved to withdraw his motion to sell property near the airport. Seeing no objection, this motion is withdrawn. The next item on the agenda is Commissioner Rodgers'.

Commissioner Rodgers: I move adoption of the resolution previously provided to each of you to increase the state match local litigation tax in circuit, chancery, and criminal courts to the maximum amounts permissible. This resolution calls for the increases to go to the general fund.

Chairman Wormsley: Commissioner Duckett

Commissioner Duckett: The sheriff is opposed to this increase.

Chairman Wormsley: Commissioner, you are out of order because this motion has not been seconded as needed before the floor is open for discussion or debate. Discussion will begin after we have a second. Is there a second?

Commissioner Reinhart: For purposes of discussion, I second the motion.

Chairman Wormsley: Commissioner Rodgers is recognized.

Commissioner Rodgers: (Speaks about the data on collections, handing out all sorts of numerical figures regarding the litigation tax, and the county's need for additional revenue.)

Chairman Wormsley: Commissioner Duckett

Commissioner Duckett: I move an amendment to the motion to require 25 percent of the proceeds from the increase in the tax on criminal cases go to fund the sheriff's department.

Chairman Wormsley: Commissioner Malone

Commissioner Malone: I second the amendment.

Chairman Wormsley: A motion has been made and seconded to amend the motion to increase the state match local litigation taxes to the maximum amounts to require 25 percent of the proceeds from the increase in the tax on criminal cases in courts of record going to fund the sheriff's department. Any discussion? Will all those in favor please raise your hand? All those opposed please raise your hand. The amendment carries 17-2. We are now on the motion as amended. Any further discussion?

Commissioner Headrick: Does this require a two-thirds vote?

Chairman Wormsley: Will the county attorney answer that question?

County Attorney Fults: Since these are only courts of record, a majority vote will pass it. The two-thirds requirement is for the general sessions taxes.

Chairman Wormsley: Other questions or discussion? Commissioner Adams.

Commissioner Adams: Move for a roll call vote.

Commissioner Crenshaw: Second

Chairman Wormsley: The motion has been made and seconded that the state match local litigation taxes be increased to the maximum amounts allowed by law with 25 percent of the proceeds from the increase in the tax on criminal cases in courts of record going to fund the sheriff's department. Will all those in favor please vote as the clerk calls your name, those in favor vote "aye," those against vote "no." Nine votes for, nine votes against, one not voting. The increase fails. We are now on new business. Commissioner Adkins, the first item on the agenda is yours.

Commissioner Adkins: Each of you has previously received a copy of a resolution to increase the wheel tax by \$10 to make up the state cut in education funding. I move adoption of this resolution.

Chairman Wormsley: Commissioner Thompson

Commissioner Thompson: I second.

Chairman Wormsley: It has been properly moved and seconded that a resolution increasing the wheel tax by \$10 to make up the state cut in education funding be passed. Any discussion? (At this point numer-

ous county commissioners speak for and against increasing the wheel tax and making up the education cuts. This is the first time this resolution is under consideration.) Commissioner Hayes is recognized.

Commissioner Hayes: I move previous question.

Commissioner Crenshaw: Second.

Chairman Wormsley: Previous question has been moved and seconded. As you know, a motion for previous question, if passed by a two-thirds vote, will cut off further debate and require us to vote yes or no on the resolution before us. You should vote for this motion if you wish to cut off further debate of the wheel tax increase at this point. Will all those in favor of previous question please raise your hand? Will all those against please raise your hand? The vote is 17-2. Previous question passes. We are now on the motion to increase the wheel tax by \$10 to make up the state cut in education funding. Will all those in favor please raise your hand? Will all those against please raise your hand? The vote is 17-2. This increase passes on first passage. Is there any other new business? Since no member is seeking recognition, are there announcements? Commissioner Hailey.

Commissioner Hailey: There will be a meeting of the Budget Committee to look at solid waste funding recommendations on Tuesday, July 16 at noon here in this room.

Chairman Wormsley: Any other announcements? The next meeting of this body will be Monday, August 19 at 7 p.m., here in this room. Commissioner Carmical.

Commissioner Carmical: There will be a chili supper at County Elementary School on August 16 at 6:30 p.m. Everyone is invited.

Chairman Wormsley: Commissioner Austin.

Commissioner Austin: Move adjournment.

Commissioner Garland: Second.

Chairman Wormsley: Without objection, the meeting will stand adjourned.

## Voting

### Reference Number: CTAS-661

There are many methods of taking votes. Those most often used are: voice, roll call vote, raising the right hand, rising, or "aye" or "no." Many groups use ballot voting, but it must be remembered that secret votes are prohibited in meetings of the county legislative body. All votes must be a public vote. T.C.A. § 8-44-104. There are no provisions in the law allowing voting by proxy.

For voice voting, the following form is very common: "It has been moved and seconded that: (state the question). As many as are in favor of the motion say aye," and after the affirmative voice is expressed, "those who are opposed say nay or no." The same type of language is used when calling for a vote by show of hands or asking the membership to rise to express their votes.

When a voice vote is taken, the chair should announce the results in the following form: "The motion or resolution is carried - the motion or resolution is adopted." If, when the results are announced, any member doubts the vote, that member may call for a "division." The chair will announce that "a division is called for" and the vote will be verified by a roll call or a show of hands. Votes will be counted and the results announced.

Another type of voting is called voting by "yeas" and "nays." In this method, the chair states both sides of the question at once. The County Clerk then calls the roll and each member answers yes or no. Each member's vote on the issue is recorded by the member's name and the total affirmative and negative vote is counted and the results are announced by the chair.

A roll call vote is required when the county legislative body is making an appropriation of money. T.C.A. § 5-9-302.

## Quorum Requirements

### Reference Number: CTAS-662

Voting. A majority of all the members constituting the county legislative body, and not simply a majority of the quorum, is required to take any action, including making appointments, filling vacancies, fixing salaries, appropriating money, and transacting any other business coming before the county legislative body in regular or special meetings. T.C.A. §§ 5-5-108 and 5-5-109. The majority vote requirement

means a majority of the actual membership at the time and not a majority of the total authorized membership, so a vacancy would not be counted in determining the required majority. *Bailey v. Greer*, 468 S.W.2d 327 (Tenn. Ct. App. 1971).

Questions often arise as to the effect of an abstention or “pass” vote. If a member abstains from voting or “passes” for any reason other than a statutory conflict of interest, the vote has the practical effect of a “nay” vote. It is not counted as one of the required “yea” votes necessary to meet the majority approval required for adoption, and yet it must be counted in determining the number necessary for a majority. Attorney General Opinion 86-17 (1/1/86). If, however, a member abstains from voting because of a statutory conflict of interest, that member is not counted for purposes of determining the number necessary for a majority. T.C.A. § 5-5-102(c)(3)(B).

While most business coming before the Commission requires a simple majority vote, some measures require a “supermajority” vote of two-thirds (2/3) of the members. This is true for the approval of private acts, as well as for imposing some tax measures. Where a supermajority is required, it will be stated in the enabling legislation (general law or private act).

The following chart illustrates the number of votes required for a majority of the county legislative body.

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 your county commission has 19 members, 10 votes are needed to pass a resolution (unless there is a vacancy or a member abstains due to a T.C.A. § 12-4-101 conflict of interest, and announces that intention to the chairman of the legislative body). If 15 of the 19 members are present at the meeting, 10 votes are still needed. If a county legislative body has 15 members, 10 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.

Tie votes - If the County Commission is equally divided on any vote, then and only then a county mayor chair may, but is not required, to cast the deciding vote. A member serving as chairman votes as a regular member and cannot vote a second time to break a tie. T.C.A. § 5-5-109.

Procedure - All business for action of the county legislative body must be presented to the chair who announces the business to the body and takes the vote which is recorded by the county clerk. The body cannot act on any business which is not presented to the chair unless the body decides to do so by a majority of those present. T.C.A. § 5-5-110.

## Types of Motions

**Reference Number:** CTAS-2192

Review the following chart to learn about the different types of motions. Motions that are not debatable are immediately put to a vote.

Motion	Second Needed?	Debate or Discussion?	Amendable?	Majority or Two-Thirds Vote?
Main Motion-Present business to the body. Only one main motion can be considered at a time.	Yes	Yes	Yes	Majority, except when two-thirds is required by law.
Subsidiary Motions-These motions are not questions before the body by themselves but relate to a main motion (or resolution) that is before the body. They may be made after the main motion and must be dealt with before voting on the main motion to which it relates. Yields to privileged and incidental motions. Listed in order of rank (meaning a motion of higher rank can always be entertained while a lower rank motion is pending, but not vice versa; there can be more than one subsidiary motion at a time - for example, a motion to amend a main motion, or an amendment, may be "tabled").				

Table (Is immediately put to a vote; if not taken from the table in the same meeting, the motion is dead; generally used as an attempt to kill a motion.)	Yes	No	No	Majority
Previous question call for a vote, close debate (This motion is to cut off debate and force a vote on the issue.)	Yes	No	No	Two-thirds (Remember, this is under <i>Robert's Rules</i> ; local rules may only require a majority.)
Limit or extend debate (Limit discussion to a certain time.)	Yes	No	No	Two-thirds (Remember, this is under <i>Robert's Rules</i> ; local rules may only require a majority.)
Postpone to a certain time	Yes	Yes	Yes	Majority
Amend a main motion (If adopted, the chairman should restate the main motion, as amended before the vote.)	Yes	Yes, but debate should be confined to the amendment	Yes, but only once (Amendments to a main motion can be amended, but an amendment to an amendment cannot be amended.)	Majority
Postpone indefinitely	Yes	Yes	Yes	Majority
Incidental Motions-These motions are of no special rank, but yield to privileged motions meaning that if one of these motions is before the body and one of the privileged motions listed below is made, the privileged motion will have to be voted on or withdrawn before the body can proceed to consider these incidental motions. Otherwise, these motions are dealt with as they arise and take precedence over subsidiary motions.				
Point of order (A member may interrupt the speaker who has the floor for this motion.); the chair deals with this motion.				
Withdraw a motion	No	No	No	Majority (However no vote is taken unless there is an objection to the withdrawal.)
Suspend the rules (To allow the county commission to violate its own rules; the rules should provide the method for "suspending the rules".)	Yes	No	No	Two-thirds (Remember, this is under <i>Robert's Rules</i> ; local rules may only require a majority.)
Method of voting	Yes	No	Yes	Majority

Request for information; the chair deals with this motion.				
Question of quorum; the chair deals with this motion.				
Privileged Motions-These motions take precedence over other motions and are allowed to interrupt the considerations of other business. When privileged motions are not interrupting other business, they are main motions.				
Fix time to adjourn	Yes	No	Yes	Majority
Adjourn	Yes	No	No	Majority
Recess	Yes	No	Yes	Majority
Raise question of privilege (To bring up an urgent matter such as noise, discomfort, etc.); the chair deals with this motion.				
Call for orders of the day (Keep the meeting to the order of business or agenda that is adopted); the chair deals with this motion.				
Unclassified Motions-These are main motions that are often used to take up business again. They are not ranked.				
Take from table (This is to bring up for consideration a motion or resolution that was tabled previously in the meeting)	Yes	Yes	No	Majority
Reconsider (A person on the prevailing side, a person who will change his or her vote, is supposed to make this motion.)	Yes	Yes	No	Majority
Rescind	Yes	Yes	Yes	Majority (A motion to rescind may require a two-thirds vote if the action required a two-thirds vote for passage.)

Ratify	Yes	Yes	Yes	Majority (Private acts and many local option laws require two-thirds vote.)
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### Qualifications-Sheriff

**Reference Number:** CTAS-36

In addition to the general qualifications of officeholders specified in T.C.A. § 8-18-101, 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:

1. Be a citizen of the United States;
2. Be at least 25 years of age prior to the date of qualifying for election;
3. Be a qualified voter of the county and a resident of the county for one full year prior to the date of the qualifying deadline for running as a candidate for sheriff;
4. Have obtained a high school diploma or its equivalent in educational training as recognized by the Tennessee state board of education;
5. Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any misdemeanor crime of domestic violence or any felony charge or violation of any federal or state laws or city ordinances relating to force, violence, theft, dishonesty, gambling, liquor or controlled substances;
6. Be fingerprinted and have the Tennessee Bureau of Investigation (TBI) make a search of local, state and federal fingerprint files for any criminal record. Fingerprints are to be taken under the direction of the TBI. It is the responsibility of the TBI to forward all criminal history results to the Peace Officer Standards and Training (POST) Commission for evaluation of qualifications;
7. Not have been released, separated or discharged 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. Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the applicant's ability to perform an essential function of the job, with or without a reasonable accommodation;
9. Have at least three (3) years of full-time experience as a POST commission certified law enforcement officer in the previous ten (10) years or at least three (3) years of full-time experience as a state or federal certified law enforcement officer with training equivalent to that required by the POST commission in the previous ten (10) years; provided that any person holding the office of sheriff on May 30, 2011 shall be deemed to have met this requirement (does not apply in Davidson County); and
10. Not have been convicted of or pleaded guilty to or entered a plea of nolo contendere to any felony charge or violation of any federal or state laws relating to controlled substance analogues.

T.C.A. § 8-8-102(a). *See also* Rules of the Tennessee Peace Officer Standards and Training Commission, Rule 1110-2-.03 (2). Any full-time deputy employed after July 1, 1981, and any person employed or utilized as a part-time, temporary, reserve, or auxiliary deputy or as a special deputy after January 1, 1989, must meet certain minimum standards similar to those required for sheriffs. T.C.A. § 38-8-106.

### Compensation-Sheriff

**Reference Number:** CTAS-38

The sheriff receives a minimum statutory compensation amount according to county population class. T.C.A. § 8-24-102. Pursuant to T.C.A. § 8-24-102(g), compensation for the sheriff must be at least 10 percent higher than the salary paid to the general officers of the county. However, the county legislative body may increase the compensation of the sheriff above the minimum amount required by the state law. T.C.A. §§ 8-24-103 and 8-24-111.

Additional Compensation

At their first session in each and every year, the county legislative body is required to make an allowance that they in their discretion think sufficient to compensate the sheriff for *ex officio* services. T.C.A. §§

5-9-101(6), 8-24-111. The county legislative body is authorized to pay the sheriff an amount, in addition to the salary allowed by T.C.A. § 8-24-102, for *ex officio* services as the superintendent of the workhouse if the workhouse is combined with the jail as provided for by Title 41, Chapter 2. T.C.A. § 8-24-103(a)(3).

More information about [Compensation](#) can be found under the [General Information](#) tab of the County Offices topic.

## Relationship to County Legislative Body and Other Officials-Sheriff

### **Reference Number:** CTAS-41

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.

## Relationship to County Legislative Body and Other Officials-Assessor of Property

### **Reference Number:** CTAS-49

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 Office of State Assessed Properties (OSAP), 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.

## Relationship to County Legislative Body and Other Officials-County Clerk

### **Reference Number:** CTAS-57

The many and varied duties of the county clerk's office necessitate interaction with numerous county and state officials. The primary interaction which occurs between the county clerk and the county mayor and the county legislative body result from the county clerk's duties as the clerk of the county legislative body. T.C.A. §§ 18-6-101; 18-6-104. In this role, the county clerk works closely with these officials in keeping the minutes and other records of actions taken by the county legislative body. 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.

After the county legislative body has approved the bonds for county officials and bonded employees (T.C.A. § 8-19-101), the bonds must be recorded in the office of the register of deeds and transmitted to the county clerk for safekeeping. T.C.A. § 8-19-102.

Certification by the county clerk of other matters, such as approval of a wheel tax, mineral severance tax, or private act, may be necessary to the Department of Revenue, Secretary of State, or other officials as required by law.

The county clerk as the collector of certain state revenue works very closely with officials of the Department of Revenue. As a registrar of motor vehicles, the county clerk works very closely with officials of the Tennessee Department of Revenue's Vehicle Services Division. In connection with the issuance of hunting and fishing licenses (T.C.A. § 70-2-106) and boat registration numbers (T.C.A. § 69-9-208), the county clerk acts as agent for the Tennessee Wildlife Resources Agency and interacts with the appropriate officials of that agency.

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. Although the county clerk is no longer directly responsible for collecting the business tax, the county clerk still works closely with the Department of Revenue to assist in their collection efforts, and the county clerk continues to register businesses and issue business licenses. T.C.A. § 67-4-701 *et seq.*

Because the County Clerk is responsible for the issuance of marriage licenses, the County Clerk interacts with the Department of Health, Office of Vital Records, to ensure that the proper information is gathered and transmitted to the Office of Vital Records. The County Clerk's duties with respect to notaries public necessitate interaction with the appropriate officials in the office of the Secretary of State.

The county clerk, as the collector of various privilege taxes, interacts with the assessor of property. The assessor is required to notify the county clerk of all persons engaged in business who would be liable for the payment of privilege taxes collected by the county clerk, and the county clerk and the county mayor compare the assessor's list with the list of persons paying privilege taxes and report the result to the county legislative body. T.C.A. § 67-4-108. In addition, the county clerk records the oaths of the assessor and assessor's deputies, and forwards these oaths to the State Board of Equalization T.C.A. § 67-5-302.

The county clerk may also interact with the assessor in those counties in which the county legislative body requires the county clerk to prepare the property tax rolls from the assessment records. When the tax roll is completed, the county clerk delivers it to the county trustee on or before the first Monday in October each year for collection of the property taxes. The county clerk also prepares a statement showing

the aggregate amount of the value of real and personal property, and the tax thereon, contained in the county, and in each municipality within the county, broken down by civil districts and wards. A copy of this statement must be forwarded to the Commissioner of Revenue and to the mayor of each municipality by the first Monday in November of each year. T.C.A. § 67-5-807.

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.

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.

## Relationship to Other County Officials-Registers of Deeds

**Reference Number:** CTAS-65

County Mayor and County Legislative Body. 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.

Assessor of Property. The register interacts with the assessor to assist in providing information regarding the value of property. The grantee or preparer of a deed of conveyance must obtain from the assessor's office the parcel identification number (map and page) of the property being conveyed before the deed is recorded in the register's office. Also, the assessor is interested in maintaining current information on the market value of real property, and as the requirements for the transfer tax mandate an oath of value or consideration on most transfers, the assessor will want to review the deeds recorded in the register's office.

Tennessee Code Annotated, Section 67-5-806(b), requires the assessor to file tax maps (duplicates or microfilm copies) with the register by October 1 of each year which show the status of property as of January 1 of that year. These records are not "recorded" but are open for public inspection.

After a parcel of land has been classified by the assessor as agricultural, forest, or open space land under the so-called Greenbelt Law (T.C.A. § 67-5-1001, et seq.), the assessor is to record with the register the classification of this property. The recording fees are to be paid by the property owner. T.C.A. § 67-5-1008(b). The statutes do not state explicitly in what books these instruments are to be recorded. Since they constitute a form of lien (roll back taxes are due when the use of the land is converted), it may be advisable to record these instruments with other state tax liens.

Tennessee Department of Revenue. The Tennessee Department of Revenue is charged with overseeing the collection and reporting of the state privilege taxes on the transfer of real estate and the recording of instruments evidencing an indebtedness. The register must report on forms required by the Department. The Department will issue memoranda to be used as guides in the administration and collection of these taxes. It is important for the proper conduct of the office of register that the register understands when tax is due. Legal questions in this area should be addressed to the legal staff of the Department.

The register's office is always subject to audit by the Department of Revenue's auditors concerning the collection of tax in addition to the regular audits of the office as a whole, which are conducted by the Division of County Audit, Office of the Comptroller of the Treasury.

Other Offices. 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.

## Relationship to Other County Officials-County Trustee

**Reference Number:** CTAS-73

The trustee's office has significant interaction with almost every other county office and official. The trustee's involvement as county treasurer, issuing checks and county warrants, results in day-to-day contact with other offices. Also, as receiving agent for fees generated by other offices, the trustee is necessarily involved to some extent in the operation of these other county offices. Additionally, the trustee interacts with other officials involved with the investment of idle county funds.

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.

## Relationship to County Legislative Body and Other Officials-Clerks of Court

### **Reference Number:** CTAS-82

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.

## Highway

### **Reference Number:** CTAS-105

Most county highway departments in Tennessee are subject to a set of general state statutes known as the County Uniform Highway Law (CUHL). The CUHL can be found at T.C.A. § 54-7-101 *et seq.*. You can access the law at the Tennessee Code Annotated link above. **PLEASE NOTE:** The CUHL was substantially rewritten in 2012. The new law, enacted by Public Chapter 689, became effective January 1, 2013. [Click here to view Public Chapter 689.](#)

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). 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).

The organization of the highway department varies from county to county. Some counties have a policy making body of a few members known as the county highway commission (or by some similar title) while others do not. Almost all counties have a department head or chief administrative officer (CAO), as that person is referred to in the County Uniform Highway Law found at T.C.A. 54-7-101 *et seq.*, (hereafter CUHL). The titles for chief administrative officer vary from county to county but the most common title is county highway superintendent.

**Method of Election.** The CUHL does not provide for the method of election of the chief administrative officer or other highway officials. Therefore, the method of election may be provided by private act. Such a private act must be in effect in order for a popular election to take place. In counties with a county charter or a metropolitan government charter, the charter determines whether or not a separate highway department exists, and whether the department head is a popularly elected or appointed official with a term of office or an appointed position subject to removal by the appointing authority.

**Term of Office.** The CUHL specifies that in those counties in which it applies, the chief administrative officer shall serve a term of four (4) years. Elected chief administrative officers are to take office on September 1, following their election. T.C.A. § 54-7-105. The terms of office of other highway officials, such as highway commissioners or members of a road board, in counties under the CUHL, are set forth in private acts affecting the particular county.

## Qualifications-Highways

### Reference Number: CTAS-232

The **Qualifications** for holding the office of county highway superintendent, or chief administrative officer by whatever title, are determined by the general law and are covered under the **General Information** tab of the County Offices topic. Under the CUHL, at T.C.A. § 54-7-104, the chief administrative officer must have:

1. A high school education or general equivalency diploma (GED) [Note: This is only satisfied by having an actual diploma from a high school or an equivalent degree recognized by the Tennessee State Board of Education.], and
2. At least one of the following:
  - (a) Be a graduate of an accredited school of engineering, with at least two (2) years of experience in highway construction or maintenance;
  - (b) Be licensed to practice engineering in Tennessee; or
  - (c) Have had at least four (4) years' experience in a supervisory capacity in highway construction or maintenance; or a combination of education and experience equivalent to (a) or (b), as evidenced by affidavits filed with the board.

The CUHL does not apply to Shelby, Davidson, Knox and Hamilton counties. T.C.A. § 54-7-102. The qualifications of department heads in these counties are determined by private act or according to the metropolitan charter, in the case of Davidson County.

The CUHL provides that incumbents in office on December 31, 2012, who have met the qualifications for the office of chief administrative officer applicable to them in effect at the time of their last election shall be able to succeed themselves in office without meeting the qualifications set forth in this section for as long as such incumbents continuously hold office. If such incumbent leaves office for any reason and then subsequently is elected or appointed to the office of chief administrative officer, such incumbent shall then be subject to the qualifications set forth in this section.

Under prior law, if the chief highway administrator was an elected official, the highway committee of the county legislative body certified to the county election commission that each candidate's qualifications were acceptable prior to the candidate's name being placed on the ballot. This law changed in 1989, so

that the state coordinator of elections, not the county highway committee of the county legislative body, examined the candidates' qualifications and certified them to the county election commission. The law changed yet again in 1997 with the creation of the Tennessee Highway Officials Certification Board. This board consists of one member appointed by the Secretary of State, one member appointed by the director of the Tennessee chapter of the American Public Works Association, one member appointed by the Governor from a list of nominees submitted by the professional engineering society of Tennessee, one member appointed by the Comptroller and one member appointed by the director of the Tennessee County Services Association. This body reviews the qualifications of all candidates for the position of chief administrative officer of the county highway or public works department. This includes appointed as well as elected positions.

Candidates for a popularly elected office of chief administrative officer still file affidavits and such other evidence of their qualifications with the state coordinator of elections at least fourteen (14) days prior to the qualifying deadline for candidates in the election. The coordinator of elections forwards the materials to the board which rules on the qualifications and certifies that a candidate is qualified to be placed on the ballot. A certificate of qualification must be filed with a candidate's qualifying petition prior to the qualifying deadline. Subject to the approval of the Secretary of State, the Tennessee Highway Officials Certification Board may promulgate rules to be followed by persons wishing to submit themselves for certification as qualified to seek the office of chief administrative officer of the county highway department. The current board has established some rules and guidelines for submitting qualifications to the board. Persons appointed to the office of highway superintendent are required to file proof of their qualifications with the board prior to their appointment. T.C.A. § 54-7-104.

Challenges to qualifications must be filed in writing with the certification board by noon on the third day after the qualifying deadline in counties filling the position by popular election. The local appointing authority determines the deadline for challenges where the position is filled by appointment. T.C.A. § 54-7-104.

## Compensation-Highways

**Reference Number:** CTAS-234

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 qualified administrative 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 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.

Additional information about [compensation](#) is covered under the [General Information](#) tab of the County Offices topic.

## Duties-Highways

**Reference Number:** CTAS-106

County highway commissions, often called road boards, are not required by general law. They are created by private act. Some road boards are popularly elected and some are appointed by the county legislative body. Private acts may grant road boards a role in budgeting and purchasing for the road department. Private acts cannot, however, authorize road boards to encroach upon the personnel policy powers or day-to-day administrative authority of the CAO over the personnel of the highway department or encroach upon other powers given to the CAO by the CUHL, such as authority over the county road system.

## Purchasing-Highways

### Reference Number: CTAS-115

The CUHL provides some rules in regard to purchasing, but it does not specify the purchasing agent for the county highway department. The CUHL statute on this subject, T.C.A. § 54-7-113(c)(3), states that the CUHL rules on purchasing found in this statute do not have the effect of repealing existing statutes, including private acts, which establish purchasing provisions for a county road department; however, no county road department is required to publicly advertise and competitively bid purchases of \$10,000 or less even if such bids are now required by public or private act.

Therefore, in CUHL counties, the purchasing agent for the department may be the chief administrative officer of the highway department or some other official under the provisions of a private act, the county purchasing agent under the optional 1957 County Purchasing Law (T.C.A. § 5-14-101 *et seq.*), or the Director of Finance under the County Financial Management System of 1981 (T.C.A. § 5-21-101 *et seq.*). However, in CUHL counties without specific purchasing policies under these other authorities, purchasing should be done in accordance with the procedures found in T.C.A. § 54-7-113(c).

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 [Also, leases and lease-purchase agreements must be approved by the county legislative body. T.C.A. § 7-51-904]; 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.

County highway departments are authorized to purchase used or secondhand articles from any federal, state or local governmental unit or agency without public advertisement and competitive bidding. They are also authorized to purchase used or secondhand articles from any private individual or entity without public advertisement and competitive bidding as long as they document the general range of value of the item through a listing in a nationally recognized publication or through an appraisal by a licensed appraiser and the price is not more than five percent (5%) higher than the highest value of the documented range. T.C.A. § 12-3-1202. See also Attorney General Opinion 13-044 (6/10/13) (stating that the general range of value may not be documented using advertised prices found on the Internet).

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. § 12-3-1208. 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.

Counties are also authorized to enter into negotiated contracts, including joint contracts with other counties and/or municipalities, with a bank, investment bank or other similar financial institution to stabilize fuel expenses. Any contract entered into under this section must be for a term of no more than twenty-four (24) months. T.C.A. § 7-51-911.

The CUHL does not specify the officials who must sign warrants on the county highway fund for funds to be disbursed. This is a matter left to the private acts or local option laws and will vary from county to county. In some counties, co-signatures of the chief administrative officer and the county mayor/execu-

tive are required, but in a large number of counties, the lone signature of the chief administrative officer of the highway department will be honored by the trustee.

## County Public Roads v. Private Roads

### Reference Number: CTAS-841

One of the main duties of the chief administrative officer of county highways is to exercise supervision over the construction, repair and maintenance of county roads. T.C.A. § 54-7-109. The chief administrative officer must be careful not to work on private roads. T.C.A. § 54-7-202 forbids the use of any county highway materials or equipment to improve or repair private roads, with the limited exception for school bus and postal vehicle turnarounds. A chief administrative officer who authorizes or knowingly permits county equipment to be used for private purposes is guilty of a misdemeanor. T.C.A. § 54-7-202.

All roads running through a county are not county public roads. Some are private roads, others are state highways or city streets. Private roads are the most difficult to distinguish from county public roads. Private roads are generally one of two types. First, a private road may be one used by only one or a few property owners, such as a driveway; or second, it may be a road which the landowner allows the general public to use but which has never been formally accepted by the county legislative body as a county road, or which 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 [the] same.” Standard Life Ins. Co. v. Hughes, 315 S.W.2d 239, 242 (1958). In this case, the court stated 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.
4. Adverse use continuing for twenty (20) years, creating a prescriptive right.

Accordingly, unless the public has acquired an absolute right to use the road in one of the ways mentioned above, any public use is either by permission or license, not by right, and the road remains a private road.

## Sources of Revenue for the Highway Department

### Reference Number: CTAS-2007

All counties rely heavily on county-aid highway funds and to a lesser degree on state-aid highway funds to support the activities of the county highway department. These basic state sources are supplemented from time to time by special state sponsored activities such as bridge funds which are in turn sometimes supported in whole or part by federal funds. Many counties also appropriate local tax revenue for the use of the county highway department. Petroleum products taxes and state severance taxes are chief sources of revenue for the county highway department. The most common local sources are the property tax, wheel tax and mineral severance tax. All revenue, from whatever source, must be budgeted and appropriated by the county legislative body before the county highway officials can use the funds. Although counties may borrow funds through notes or bonds, ultimately this borrowing must be paid off from revenue from one or more of these sources.

The property tax is the most common form of county tax. In some counties a portion of the total property tax rate is allocated to the county highway department. Many counties have a special property tax by private act with proceeds earmarked for the highway department. The property tax is one of the few taxes wherein the rate of the county tax is not limited by state law and is subject to the discretion of the county legislative body.

These taxes are described in more detail under the [Revenue](#) topic.

## Interaction with County Mayor/Executive

### Reference Number: CTAS-833

The CUHL does not specify which county officer should write warrants upon the county highway fund. This authority is usually provided in a private act. When such a private act does not specify the proper officer, the county mayor/executive has authority to write the warrant under T.C.A. § 5-6-108(5). Some private acts provide for co-signature. If a county has adopted the optional County Fiscal Procedure Law of 1957, a director of budgets and accounts issues a disbursement warrant upon receipt of an invoice

and verification by the department head receiving the merchandise. T.C.A. § 5-13-107. Similarly, the director of finance in counties which have adopted the 1981 County Financial Management System (T.C.A. §§ 5-21-101, *et seq.*) oversees the disbursement of funds. Therefore, the chief administrative officer of the county highway department in many counties must interact with other county officers in regard to disbursement of highway funds.

The highway officials must prepare a budget estimate for each fiscal year. Depending upon the budgeting system in the county--the 1957 Budgeting Law, 1981 Financial Management System, private act system or only the general law--the county highway official will prepare a budget and submit it to either the county mayor/executive, director of budgets and accounts, or director of finance, who compiles a budget document for review by a committee or the full county legislative body. The deadline for submitting the budget is April 1 unless otherwise provided by law or county legislative body resolution.

## Interaction with County Legislative Body

**Reference Number:** CTAS-834

County highway officials interact with the county legislative body in several significant ways, including budget approval, classification of county roads, and approval of leases and lease-purchase agreements.

The county legislative body may approve a budget for the highway department as submitted or may reduce the total or vary amounts according to major categories or even by line item. The budget forms are set by the Comptroller. During the year, the county legislative body may amend the current operating budget.

The highway department cannot work on private roads, except to provide routes and turnarounds for postal vehicles and school buses upon written request by the appropriate authorities. T.C.A. § 54-7-202. The county legislative body is mandated to classify the public roads in the county. T.C.A. § 54-10-103. The highway officials need to work closely with the county legislative body to develop an accurate road list so that it will be clear which roads the county highway department is authorized to maintain. The county legislative body must receive a detailed listing of all county roads from the chief administrative officer of the county highway department before making a road classification.

County highway officials cannot execute a lease or lease-purchase agreement for equipment or other property without the approval of the county legislative body. T.C.A. § 7-51-904. As prior approval of the county legislative body is not contemplated by the statute, it is suggested that the lease be bid according to regular purchasing procedures with the clear recital that no bid award is final until approved by the county legislative body. Therefore, lease agreements can be signed if they contain a clause such as: "subject to approval of the county legislative body." The lease or lease-purchase can then be submitted in such a manner that the county legislative body has the full contract and all of its terms before them. If approved, the chairman of the county legislative body can so endorse the agreement and the contract will be binding.

## Boards, Commissions, and Committees

**Reference Number:** CTAS-216

There are various boards, commissions and committees in county government in Tennessee. Almost all of the boards, commissions and committees 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.

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.

## Airport Authority Board of Commissioners

**Reference Number:** CTAS-481

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. § 42-3-104. An additional method of forming a regional airport authority by three or more municipalities, counties and at least one political subdivision of another state is provided in § 42-3-104. 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

**Reference Number:** CTAS-482

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

**Reference Number:** CTAS-483

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. § 7-53-301. The Attorney General has opined that "taxpayers of the county" includes individuals making payment of any type of tax--not just property tax. Thus, membership cannot be limited to only landowners within the county. Tenn. Op. Atty. Gen. No. 99-142.

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. No director of a county-sponsored industrial development corporation may be an officer or employee of the county. T.C.A. § 7-53-301. County officials may serve on the board of directors of a joint industrial development corporation; however, county employees are not eligible to serve on joint corporation boards. T.C.A. § 7-53-104. Directors serve without compensation except for reimbursement of actual expenses incurred in performance of their duties. T.C.A. § 7-53-301.

### Public Building Authority Board of Directors

**Reference Number:** CTAS-484

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

**Reference Number:** CTAS-519

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.

## Transit Authority Board

**Reference Number:** CTAS-486

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.

## Adult-Oriented Establishment Board

**Reference Number:** CTAS-500

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. More on [Regulation of Adult-Oriented Entertainment and Massage](#) can be found in [County Powers/Regulatory Powers](#).

## The County Beer Board

**Reference Number:** CTAS-338

The county legislative body may, but is not required to, appoint a committee (known as the "beer board") to administer the laws relating to the sale of beer in the county. If the county legislative body does not appoint a beer board, the county legislative body acts as the beer board. The beer board is authorized to act on behalf of the county in all matters relative to the administration of the beer laws. However, the county legislative body retains the sole authority to adopt distance rules or to extend hours for the sale of beer. T.C.A. § 57-5-105. A county beer board has the same discretionary power in the issuance and revocation of beer permits as the county legislative body which appoints it. Attorney General Opinion 82-325 (6/24/82). [Sample resolution establishing a beer board](#).

## Commission for the Poor

**Reference Number:** CTAS-757

The Commission for the Poor is a mandatory committee of three members appointed by the county commission. In the selection, the county legislative body shall, at its October session, choose at the beginning one (1) commissioner to hold for the term of one (1) year, another for the term of two (2) years, and a third for a term of three (3) years, and annually thereafter for three (3) years each, and to hold until

the successor of each is selected and qualified. Should the court omit to make the appointment at that session, it may be done at any subsequent session. T.C.A. § 71-5-2201 *et seq.*

## County Agricultural Extension Committee

**Reference Number:** CTAS-501

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

**Reference Number:** CTAS-502

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

**Reference Number:** CTAS-503

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.

## The County Election Commission

**Reference Number:** CTAS-847

**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.

## County Monument (Veterans Memorial) Commission

**Reference Number:** CTAS-504

Under a law enacted in 1919, counties are authorized to appropriate up to \$30,000 to erect monuments, buildings, libraries, and other evidence or appreciation of veterans of wars in which Tennesseans have fought, and in such event 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 -- 58-4-205.

Another law was enacted in 1945 to authorize both cities and counties to appropriate money to erect memorials to veterans of the various wars in which Tennesseans have fought, which was codified as T.C.A. §§ 58-4-206 -- 58-4-208. This act did not reference the 1919 act, and it contains no limitation on the amount of the appropriations and no requirement for a monument commission.

## County Public Records Commission

**Reference Number:** CTAS-211

In 1959, the Tennessee General Assembly first made provision in the Tennessee Code for the creation of a county public records commission.<sup>[1]</sup> Although the creation of the commission was optional at the time, the organization and responsibilities of the commission under the 1959 law were very similar to what one finds in the state law today. The express purpose of the commission is “to provide for the orderly disposition of public records created by agencies of county government.”<sup>[2]</sup> While minor revisions and additions to the statutes regarding this commission have occurred over the last few decades, the most significant change in the county public records commission occurred in the mid-1990s, when the legislature amended the law to mandate the creation of this body.<sup>[3]</sup> Ever since 1994, every county in Tennessee has been required by law to have a County Public Records Commission.

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<sup>[1]</sup>1959 Public Chapter 253.

<sup>[2]</sup>T.C.A. § 10-7-401.

<sup>[3]</sup>1994 Public Chapter 884.

## County Library Board

**Reference Number:** CTAS-463

The county legislative body may establish a county library board consisting of seven (7), nine (9) or eleven (11) members. Not more than one (1) county official shall serve on this board. The members shall serve without salary, at least three (3) for one (1) year, two (2) for two (2) years, and two (2) for three (3) years. If the board expands to more than seven (7) members, the additional members shall be appointed by the county legislative body to terms of one (1), two (2) or three (3) years. All successors shall serve for terms of three (3) years. Board members may serve two (2) consecutive terms and may be reappointed after a minimum three-year break in service. 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. Counties and cities with populations over four hundred thousand (400,000) may, by 2/3 majority vote, vest supervisory authority over the public library system with the mayor. T.C.A. § 10-3-103. The library board directs the affairs of the library system, including the appointment of a library administrator. The library administrator directs the internal affairs of the library, including hiring and directing such assistants as may be necessary. T.C.A. § 10-3-104.

## Financial and Tax Administration

**Reference Number:** CTAS-464

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. The finance committees that exist in a county is dependent on the type of state law underwhich the county operates.

County Board of Equalization

County Budget Committee (County Budgeting Law of 1957)

County Financial Management Committee (County Financial Management Systems of 1981)

County Investment Committee

County Purchasing Commission (County Purchasing Law of 1957)

## Audit Committee

**Reference Number:** CTAS-505

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 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. The audit committee is also required to establish a process for employees, taxpayers, and citizens to report suspected fraudulent, illegal, wasteful, or improper activity confidentially to the audit committee. If the chair believes the activity may have occurred, the chair is required to report it to the comptroller. The detailed information received and generated pursuant to a report of suspected activity is not an open record. T.C.A. § 9-3-406.

## Auditor Employment Committee

**Reference Number:** CTAS-506

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 *et seq.*

## Committee for Resale of Land

**Reference Number:** CTAS-507

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

**Reference Number:** CTAS-1496

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. §§ 67-1-401 *et seq.*, 67-5-1401 *et seq.*

#### Composition of the Board

At the April session in each even year, the county legislative body elects five “freeholders and taxpayers” from the different sections of the county to serve as the county board of equalization.<sup>1</sup> (Note: T.C.A. § 67-1-401 contains numerous exceptions for counties and cities specified through population class.) Members of the board of equalization serve two year terms. If the county legislative body fails to elect these members, then the county mayor makes the appointments and fills the vacancies as they occur.<sup>2</sup> Magistrates along with state, municipal or county legislative and executive officials, as well as their employees, are ineligible to serve, except in some circumstances in Shelby County.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-1-401(a).

<sup>2</sup>T.C.A. § 67-1-401(b).

<sup>3</sup>T.C.A. § 67-1-401(c). See Op. Tenn. Atty. Gen. 90-106 (December 27, 1990) which states that it is a prohibited conflict of interest for a county trustee, a municipal tax collector, or an employee of either to sit on a county board of equalization. See *also* Op. Tenn. Atty. Gen. U92-82 (June 30, 1992) which opines that this provision regarding Shelby County is constitutionally suspect.

## County Finance Committee

### **Reference Number:** CTAS-509

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 Insurance Committee

### **Reference Number:** CTAS-510

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 Purchasing Commission

### **Reference Number:** CTAS-898

The county purchasing commission consists of five members, one of whom must be the county mayor and the remaining four are appointed by the county mayor with approval of the county legislative body. The duty of the county purchasing commission is to assist the purchasing agent in establishing policies, procedures, and regulations for making purchases and contracts; however, the actual administration of purchasing activities is the sole responsibility of the purchasing agent. T.C.A. § 5-14-106.

## County Revenue Commissioners

### **Reference Number:** CTAS-511

Prior to 2016, the county legislative body was required to elect three competent citizens to be county revenue commissioners every two years during its July meeting. These revenue commissioners were 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 were required to report the results of their investigations at the end of each quarter. T.C.A. § 5-8-601 *et seq.* In 2016, the legislature deleted the provisions relating to revenue commissioners (Public Chapter 624). The legislative changes did not remove incumbents from office, but no new revenue commissioners will be elected.

## Board of Workhouse Commissioners

### Reference Number: CTAS-1433

When the county has established a separate workhouse, or the jail has been declared a workhouse, the county legislative body shall elect four competent persons, who, in conjunction with the county mayor, shall be known as the board of workhouse commissioners, of which the county mayor shall be, *ex officio*, chair of the board. T.C.A. § 41-2-104(a). Pursuant to the common law, county commissioners may not elect themselves to the board of workhouse commissioners. *State ex rel. v. Thompson*, 395, 246 S.W.2d 59 (Tenn. 1952) (Under the common law it is a violation of public policy for an appointing body to confer office upon one of its own members.). See *also* Op. Tenn. Atty. Gen. No. 04-070 (April 21, 2004) (A local legislative body cannot elect or appoint one of its own members to an office over which it has the power of election or appointment.); Op. Tenn. Atty. Gen. No. 98-004 (January 5, 1998); Op. Tenn. Atty. Gen. No. U92-129 (December 14, 1992); Op. Tenn. Atty. Gen. No. 88-166 (September 9, 1986).

Two of the workhouse commissioners shall serve for the term of one year and two for the term of two years; and annually thereafter, on the first Monday in January, the county legislative body shall elect two workhouse commissioners for the term of two years, and all vacancies shall be filled by like election for the unexpired term of the workhouse commissioner whose place is to be supplied. T.C.A. § 41-2-104(b).

Workhouse commissioners shall take an oath faithfully to discharge and perform the duties of their office, which oath shall be filed with the county clerk, and a record of the same made on the minutes of the county legislative body; and they shall appoint one of their number secretary. T.C.A. § 41-2-104(c). The board of workhouse commissioners shall each receive such compensation as may be fixed by the county legislative body to be paid quarterly upon warrant of the executive. T.C.A. § 41-2-104(g).

### Duties and Powers

Where a separate workhouse has been established, the workhouse commissioners shall have charge, supervision and control of the workhouse in all of its departments, the convicts, the appointment or selection of a superintendent of the workhouse, all necessary guards and other employees, the discharging thereof at any time, in the discretion of the workhouse commissioners, and generally to regulate and control that department of the county's business. T.C.A. § 41-2-104(d).

Three members of the board shall constitute a quorum for the transaction of business. The board of workhouse commissioners shall:

1. Meet once each month, and more often if necessary, to transact business, at the office of the county mayor;
2. Keep, in a well-bound book to be furnished by the county, full and complete minutes of their proceedings;
3. Examine all accounts submitted to them by the superintendent, approve the accounts if found correct, and enter them on their minutes, showing from whom supplies were furnished and for what purpose and the amount. The chair and secretary shall sign the accounts and deliver them to the county mayor, who shall issue a warrant for their payment and keep a record of the accounts, designating to whom issued and for what purpose and shall preserve the vouchers; and
4. Visit and inspect the workhouse prisoners, where at work, as often as necessary.

T.C.A. § 41-2-104(e) and (f).

### Quarterly Audit

The board of workhouse commissioners shall, at the close of each quarter and at least two days before the meeting of the county legislative body, submit the book kept by the superintendent and the minute book of the board to the county mayor, for settlement and comparison with the audited account kept in the county mayor's office. If found correct, the county mayor shall endorse on such books "examined and approved" and sign the books officially. T.C.A. § 41-2-106.

## Community Corrections Advisory Board

### Reference Number: CTAS-1646

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 ten (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 court 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.

## County Bounty Committee

**Reference Number:** CTAS-1647

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

**Reference Number:** CTAS-1648

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

**Reference Number:** CTAS-1397

Each county is required to have a disciplinary review board that shall be composed of six impartial members, one or more of whom may be members of the jail staff. Members of the disciplinary review board are appointed by the sheriff or the jail administrator, subject to approval by the county legislative body. Members serve for a period of two years, except that appointments made to fill unexpired terms are for the period of such unexpired terms. No less than one and no more than three of the members of the disciplinary review board are required to transact the business authorized by law. Members of the board, while acting in good faith, shall not be subject to civil liability relative to the performance of duties delegated to the board by law. T.C.A. § 41-2-111(c).

The prisoner shall be given notice of the disciplinary hearing and shall have the right to call witnesses in the prisoner's behalf. Decisions of the disciplinary review board may be appealed to the sheriff. T.C.A. § 41-2-111(d).

Except in Shelby County, the county legislative body is authorized to establish the rate of compensation for members of the disciplinary review board. T.C.A. § 41-2-111(c)(5).

## County Jail Inspectors

**Reference Number:** CTAS-1427

The county legislative body may, at its January term each year, appoint three householders or freeholders, residents of the county, of lawful age, to act as jail inspectors for the ensuing year, or the court may appoint such inspectors at any other time to act for a shorter period. The county mayor is an *ex officio* inspector of the jail in each county. T.C.A. § 41-4-116(a) and (b).

It is the duty of the inspectors appointed to:

1. Visit and examine the county jail at least once each month;
2. Make rules and regulations to preserve the health and decorum of the prisoners;
3. Decide all disputes between the jailer and the prisoners;
4. Provide for the restraint by ironing or segregation of prisoners who offer violence to fellow prisoners or to the jailer or the jailer's assistants, or for attempting to break jail; and
5. Make a report at each meeting of the county legislative body of the state and condition of the prisoners and the jail.

T.C.A. § 41-4-116(c).

The county commission may not appoint commission members as jail inspectors under T.C.A. § 41-4-116. Op. Tenn. Atty. Gen. No. 04-070 (April 21, 2004).

Jail inspectors do not have the authority to audit or otherwise inquire into the use of county drug funds held under T.C.A. §§ 39-17-328 or 39-17-420. Op. Tenn. Atty. Gen. No. 04-070 (April 21, 2004).

In *Connell v. Davidson County Judge*, 39 Tenn. 189 (1858), the Tennessee Supreme Court held that “[t]he power conferred upon Jail Inspectors, to ‘make rules and regulations for the preservation of the health and decorum of the prisoners,’ is confined to general sanitary and police regulations. It does not authorize them to charge the county with physicians’ bills for medical attention to the prisoners.”

The attorney general has opined that the appointed jail inspectors must exercise their powers consistently with other applicable provisions of state law. For example, any rules made by these inspectors must be consistent with standards adopted by the Tennessee Corrections Institute under T.C.A. § 41-4-140 to the extent that statute applies to the county jail. Furthermore, the county legislative body may not expand the jail inspectors' duties beyond those in the statute and consistent with other state laws. Op. Tenn. Atty. Gen. No. 99-153 (August 16, 1999).

The attorney general has opined that whenever the jail inspectors convene to make a decision or to deliberate toward a decision, their gathering is a meeting subject to the notice and other requirements of the Open Meetings Act. At the same time, on-site inspections of the jail, whether the inspectors conduct them alone or with one another, would ordinarily not be meetings subject to the Open Meetings Act so long as the inspectors do not, in conjunction with the inspection, deliberate toward a decision. Op. Tenn. Atty. Gen. No. 04-070 (April 21, 2004).

## Work Release Programs by Counties

**Reference Number:** CTAS-1460

All counties in the state, except as set forth below, may institute a work release program in accordance with the provisions of Title 41, Chapter 2. T.C.A. § 41-2-133(a).

The provisions of T.C.A. § 41-2-133 do not apply to any county having a population of: \_\_\_\_\_

Not less than	Nor more than
14,400	14,500
19,500	19,600
20,200	20,300
28,000	28,100
30,400	30,500

according to the 1970 federal census or any subsequent federal census. T.C.A. § 41-2-133(b). As of 2006, the excepted counties include Bedford, Crockett, Dyer, Haywood, Lauderdale, and Tipton.

Work Release Commission

*Tennessee Code Annotated* section 41-2-134(a) creates a commission in each county not excepted by T.C.A. § 41-2-133(b) with the authority to authorize prisoners to come under a work release program whenever any person has been committed to the workhouse or similar place of confinement and to approve educational programs established pursuant to T.C.A. § 41-2-145.

The commission as authorized in T.C.A. § 41-2-134 is authorized and empowered to permit prisoners to leave the workhouse during approved working hours to work at a place of employment and to earn a living to meet in whole or in part the cost of the prisoner's current financial obligations. The prisoner must return to the workhouse each day after work and may be released only for related rehabilitative purposes as recommended by the correctional/rehabilitation work release coordinator. T.C.A. § 41-2-134(b).

In Shelby and Davidson Counties, the commission shall be composed of not more than 12 members nor fewer than three members, who shall meet as three-member panels to review and approve applications for work release. In other counties, the commission shall be composed of three members. T.C.A. § 41-2-134(c)(1) and (c)(2).

In all counties:

1. The sheriff or workhouse superintendent shall appoint the members of the commission subject to the approval of the county legislative body;
2. Each member shall serve a four-year term; and
3. A person appointed to fill a vacancy shall serve for the remainder of the unexpired term.

T.C.A. § 41-2-134(c)(3).

The commission shall meet weekly or at the call of the sheriff at the sheriff's office. T.C.A. § 41-2-134(d).

## Parks and Recreation Board

**Reference Number:** CTAS-512

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

**Reference Number:** CTAS-513

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

**Reference Number:** CTAS-467

Boards and committees involved with planning, zoning and development include all of the following. Click on these links for an explanation of the committees included in Land Use, Planning and Zoning under the County Operations topic.

[Board of Zoning Appeals](#)

[Joint Economic and Community Development Board](#)

[Regional Planning Commission](#)

## Airport Zoning Board of Appeals

**Reference Number:** CTAS-514

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.*

## County Board of Public Utilities

**Reference Number:** CTAS-516

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

**Reference Number:** CTAS-517

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

**Reference Number:** CTAS-518

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.

## Revenue

### Reference Number: CTAS-199

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.

## Property Taxes

### Reference Number: CTAS-225

The primary source of revenue in most counties is the ad valorem property tax, an assessment based on the value of the property. Ad valorem taxes are imposed directly upon property, and the tax generally follows the property even if it is sold or transferred to a different owner.<sup>1</sup>

Article II, Section 28 of the Tennessee Constitution is the basic constitutional authorization to tax; it provides that counties and municipalities are authorized to levy a property tax on all property--real, personal or mixed--based on the value of the property. Pursuant to this constitutional authorization, the General Assembly enacted T.C.A. § 67-5-101, which provides that all property, real and personal, shall be assessed for taxation for state, county, and municipal purposes, except for the property declared exempt. In addition, the General Assembly has enacted legislation to enforce the power to tax, to declare certain property exempt from taxation, and to determine various methods of ascertaining "fair market value." Counties<sup>2</sup> and municipalities<sup>3</sup> are authorized by the General Assembly to levy real property,<sup>4</sup> tangible personal property,<sup>5</sup> intangible personal property,<sup>6</sup> and public utility property<sup>7</sup> taxes within their boundaries.<sup>8</sup> Taxing power is legislative and cannot be delegated except as the Constitution authorizes.<sup>9</sup>

It is essential that a valid assessment and levy of the tax occur in order to lawfully collect delinquent taxes. Assessment and levy are presumed to be properly completed even if the record does not reflect each step, unless an issue is raised as to the proper procedure.<sup>10</sup> Statutes imposing taxes are construed in favor of a taxpayer and strictly construed against the taxing authority; in other words, ambiguities in interpretation of taxing statutes are construed against the county.<sup>11</sup> Although a taxing statute is construed strictly against the taxing authority and in favor of the taxpayer, the court must give full scope to the legislative intent and apply a rule of construction that will not defeat the plain purpose of the statute.<sup>12</sup>

While the Tennessee Constitution mandates taxation according to value, the General Assembly determines the proper method for ascertaining value to insure uniform and equal taxation.<sup>13</sup> In order to further the constitutional mandate, the legislature has defined value, for property tax purposes, to be fair market value: basically, the price the property would bring if it were voluntarily sold by an informed buyer to an informed seller, each acting sensibly and without undue pressure.<sup>14</sup> The uniformity requirement means that the tax burden is to be applied equally to nonexempt property within a constitutional classification in order to achieve uniformity in rate, valuation, and assessment.<sup>15</sup> Furthermore, "[u]niformity of taxation refers, not only to a uniform valuation and rate, but also to uniformity in dates of maturity and the time when interest, penalties, and costs may be imposed upon the taxpayer."<sup>16</sup> Tax increment financing does not violate this uniformity provision.<sup>17</sup> Application of the uniformity provisions established by Article II, Section

28 of the Tennessee Constitution is subject to the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution.<sup>18</sup>

Article XI, Section 8 of the Tennessee Constitution prohibits the exemption of individual counties by population classification from the operation of a general law unless there is a rational basis for the exemption. Several provisions in the tax statutes provide exemptions or special rules for counties with certain population classifications. These provisions are included in this manual without any opinion as to their constitutionality.

"Taxes are distinguished from fees by the objectives for which they are imposed. If the imposition is primarily for the purpose of raising revenue it is a tax; if it's [sic] purpose is for the regulation of some activity under the police power of the governing authority it is a fee."<sup>19</sup> Taxes are also different from special assessments. "There is a clear and manifest distinction between a tax and a special assessment. A tax is imposed for a general or public purpose. It is levied for the purpose of carrying on the government. It is a charge on lands and other property which lessens its value, and in the proportion in which the owner is required to pay is his pecuniary ability diminished. This is the sense in which the term 'taxation' is used and understood. On the other hand, a special assessment contains none of the distinctive features of a tax. It is assessed or levied for a special purpose, and not for a general purpose. It is not a charge on property which reduces its value. The assessment is made in the ratio of advantages accruing to the property in consequence of the improvement. In no case can the assessment exceed the advantages accruing to the property assessed. It is therefore regarded but an equivalent or compensation for the increased value the property will derive from the improvement the assessment is levied to discharge."<sup>20</sup>

<sup>1</sup>T.C.A. § 67-5-2101. See also *State v. Nashville C. & St. L. Ry.*, 137 S.W.2d 297 (Tenn. 1938).

<sup>2</sup>T.C.A. § 67-5-102.

<sup>3</sup>T.C.A. § 67-5-103.

<sup>4</sup>T.C.A. §§ 67-5-801 *et seq.*

<sup>5</sup>T.C.A. §§ 67-5-901 *et seq.*

<sup>6</sup>T.C.A. §§ 67-5-1101 *et seq.*, 67-5-1201 *et seq.*

<sup>7</sup>T.C.A. §§ 67-5-1301 *et seq.*

<sup>8</sup>*Edmondson v. Walker*, 195 S.W. 168 (Tenn. 1917).

<sup>9</sup>*Gibson County Special School District v. Palmer*, 691 S.W.2d 544, 550 (Tenn. 1985); Op. Tenn. Atty. Gen. 01-172 (December 18, 2001).

<sup>10</sup>Griffith and Stokes, *Collection of Delinquent Real Property Ad Valorem Taxes in Tennessee*, Revised Edition (1979) at page 7 citing *East Tennessee, V. & G. Ry. Co. v. Morristown*, 35 S.W. 771 (Tenn. Ct. App. 1895); *Obion Valley Land and Investment Co. v. Southern Gen. Life Co.*, 125 S.W.2d 482 (Tenn. 1939); *Nance v. Hopkins*, 78 Tenn (10 Lea) 508 (1882); *Grant Bond & Mortgage Co. v. Ogle*, 65 S.W.2d 1091 (Tenn. Ct. App. 1933).

<sup>11</sup>See 23 *Tenn. Juris.* "Taxation" § 3 at page 345 (1998).

<sup>12</sup>*Knox v. Emerson*, 131 S.W. 972, 973 (Tenn. 1910).

<sup>13</sup>*Southern Express Co. v. Patterson*, 123 S.W. 353, 357 (Tenn. 1909).

<sup>14</sup>Tenn. Const., art. II, §§ 28 & 29; T.C.A. § 67-5-601. See *In Re All Assessments 1999 & 2000*, 67 S.W.3d 805, 820-821 (Tenn.Ct.App. 2001) ("the fair market value basis is not constitutionally mandated, and the legislature is free to determine the method and means of valuing property").

<sup>15</sup>Tenn. Const., art. II, § 28; T.C.A. § 67-5-503; *Treadwell Realty Co. v. Memphis*, 116 S.W.2d 997, 999 (Tenn. 1938).

<sup>16</sup>*Shipp v. Cummings*, 14 S.W.2d 747, 748 (Tenn. 1929).

<sup>17</sup>*Metropolitan Dev. & Hous. Agency v. Leech*, 591 S.W.2d 427, 429-430 (Tenn. 1979). Tax increment financing refers to the allocation of property taxes attributable to an increase in a property's value after development to retire the bond issue used to develop the property.

<sup>18</sup>*Louisville & N.R.R. v. Public Serv. Comm'n*, 631 F.2d 426, 432 (6th Cir. 1980), *cert. denied*, 450 U.S. 959, (1981). See also the Federal "Four R" Act and the Motor Carrier Act.

<sup>19</sup>*S & P Enters, Inc. v. City of Memphis*, 672 S.W.2d 213, 215 (Tenn. Ct. App. 1983), *citing*, *Memphis Retail Liquor Dealers' Ass'n, Inc. v. City of Memphis*, 547 S.W.2d 244 (Tenn. 1977). For a discussion of the difference between a fee and a tax, see Op. Tenn. Atty Gen. 93-57 (September 3, 1993).

<sup>20</sup>*Weakley Co. v. Odle*, 654 S.W.2d 402, 405 (Tenn. Ct. App. 1983), *quoting* Justice Chambliss in, *Obion County v. Massengill*, 151 S.W.2d 156, 159 (Tenn. 1941).

## Tax Relief

### Reference Number: CTAS-1559

The legislature has provided authority for tax relief programs in which the state pays a portion of the county property taxes due on residences of qualified taxpayers. The program authorizes payment, or reimbursement of taxes already paid, to the following taxpayers: (1) elderly low-income homeowners, (2) disabled homeowners, and (3) disabled veterans.<sup>1</sup>

Counties may not provide tax relief by setting a lower tax rate, or by reducing penalty and interest, for particular classes of residents. Such provisions violate the uniformity provisions of Tenn. Const. art. II, § 28.<sup>2</sup> However, in 2006, the legislature amended T.C.A. § 67-5-701(j) to allow all counties to appropriate funds for tax relief for elderly low income homeowners, disabled homeowners and disabled veterans. 2006 Public Chapter 739. 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.<sup>3</sup>

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<sup>1</sup>T.C.A. § 67-5-701 *et seq.*

<sup>2</sup>Ops. Tenn. Atty. Gen. 96-044 (March 13, 1996) and 89-111 (September 5, 1989).

<sup>3</sup>T.C.A. § 67-5-701(j)

## Property Tax Freeze Act

### Reference Number: CTAS-1565

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. The base tax shall be recalculated in any year in which the actual tax due is less than the previously established base tax for the property, and the recalculated base tax shall apply until further recalculated. "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.

## TVA In Lieu of Tax Payments

**Reference Number:** CTAS-220

**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 federal 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

**Reference Number:** CTAS-1611

*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.

## County Mineral Severance Tax (General Law)

**Reference Number:** CTAS-1614

*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)

**Reference Number:** CTAS-1615

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.

## Local Option Sales Tax

**Reference Number:** CTAS-1618

*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 by a manner in which it could be adopted. 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.* Revenue from local option sales tax levied by counties 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.

## Gasoline Tax

**Reference Number:** CTAS-1619

*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-four cents (24¢) per gallon, effective July 1, 2017, twenty-five cents (25¢) per gallon, effective July 1, 2018 and twenty-six cents (26¢) per gallon, effective July 1, 2019. T.C.A. § 67-3-201.

*Distribution.* The distribution formula for twenty cents (20¢) of 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. 28.68 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. 14.38 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.

The revenue from the increases in gasoline tax passed in 2017 as part of the IMPROVE Act is distributed as follows:

1. 25.4 percent to counties per T.C.A. § 54-4-103;
2. 12.7 percent to cities per T.C.A. § 54-4-103; and
3. 61.9 percent to the state highway fund.

## Alcoholic Beverage Tax

**Reference Number:** CTAS-1626

**Authority.** T.C.A. §§ 57-3-301 through 57-3-308.

**Description.** This tax is on the sale or distribution by sale or gift of wine, beer 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. Notwithstanding T.C.A. § 57-3-302, the state tax on intoxicating liquor or alcoholic beverages with an alcoholic content of seven percent (7%) or less shall be one dollar and ten cents (\$1.10) per gallon and no identification stamps shall be required to be fixed to the retail container of such alcoholic beverage. T.C.A. §§ 57-3-303(l) and 57-3-308.

**Distribution.** The tax is distributed as follows:

1. Any county where a distillery is located receives four cents (4¢) per liter of the tax imposed on the sale of distilled spirits.
2. Except for the distribution as provided in (1), eighty-two and one-half percent (82.5 %) of the proceeds of this tax to the state general fund.
3. Except for the distribution as provided in (1), seventeen and one-half percent (17.5%) of the proceeds of this tax 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)

**Reference Number:** CTAS-1627

**Authority.** T.C.A. §§ 57-4-301 through 57-4-308.

**Description.** Two 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 tax is an annual fixed amount based on the type and size of the business; the second 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 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 in accordance with T.C.A. § 57-4-306 as follows:
  - a. Fifty percent (50%) to the state general fund to be earmarked for educational purposes.
  - b. Fifty percent (50%) to local political subdivisions:
    - (1) Fifty percent (50%) for education, in accordance with the statutory formula.
    - (2) Fifty percent (50%) divided as follows:
      - (a) Collections in unincorporated areas, to the county general fund.
      - (b) Collections in municipalities, to those municipalities.

Special provisions apply in Sevier, Hamilton, and Bradley counties.

## Wholesale Beer Tax

**Reference Number:** CTAS-1629

**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 eight percent (8%) alcoholic content by weight, wine excepted, at wholesale. T.C.A. § 57-6-102.

**Rate.** Thirty-five dollars and sixty cents (\$35.60) per barrel of thirty-one gallons (31 gals.) of beer sold. Barrels containing more or less than thirty-one gallons (31 gals.) shall be taxed at a proportionate rate. T.C.A. § 57-6-103(a).

**Distribution.** The tax collected is distributed to the county or municipality of the retailer's place of business, less ninety-two cents (92¢) of the gross tax owed per barrel retained by the wholesaler or manufacturer operating as a retailer and seventeen cents (17¢) of the gross tax owed per barrel 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

**Reference Number:** CTAS-1630

**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.

## County Motor Vehicle Privilege Tax (Wheel Tax)

**Reference Number:** CTAS-1634

*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 by 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(c).

*Distribution.* Distribution of these tax revenues may be for any county purpose specified in the private act or resolution levying the tax.

## Business Tax

**Reference Number:** CTAS-1635

*Authority.* T.C.A. §§ 67-4-701 through 67-4-730.

*Description.* Engaging in any vocation, occupation, business, or business activity listed in T.C.A. § 67-4-708(1)-(5) is a taxable privilege subject to the business tax, a privilege tax levied by the state based on gross receipts in lieu of ad valorem taxes on inventory of merchandise held for sale or exchange. The rates of the tax are set out in T.C.A. § 67-4-709. Businesses described in T.C.A. § 67-4-708(1)-(4) may also be taxed by the municipalities in which they conduct business, in an amount not exceeding the rates established by law. T.C.A. § 67-4-705. The Department of Revenue collects the business tax. T.C.A. § 67-4-703. Business licenses are issued by the county clerk and by the appropriate city official for businesses located within a city, but cities and counties may contract with the commissioner to issue the licenses under T.C.A. § 67-4-723. Every affected business must register with the commissioner of revenue or the county clerk for businesses located within the county (and with the commissioner or the city official for businesses located within a city, or with the commissioner for businesses subject to tax but with no physical location in the state) 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 official 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. Minimal activity licenses are issued upon application and payment of a \$15.00 fee to businesses with gross receipts between \$3,000 and \$10,000 per year within the jurisdiction; businesses with sales of \$3,000 or less may, but are not required to, apply for a minimal activity license. 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 official 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 official 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 \$3.00 is earmarked for computer hardware purchases or replacement or other computer-related expenses. The city official 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 paid by taxpayers located or licensed within the county, and to the city official in the case of taxpayers within the city. Of the remaining proceeds, 43% is deposited in the state's general fund. The remaining proceeds, after deduction of an administrative fee of 1.125% to the department of revenue, are distributed to the county in which the taxpayer is located. Taxes levied by cities are distributed to cities in accordance with the formula set out by statute. Fees imposed by counties and cities on antique malls and transient vendors under T.C.A. § 67-4-710 are

retained by the county or city, with a 5% fee to the county clerk or city officer. Notwithstanding the foregoing, 100% of any tax, interest, and penalties collected from taxpayer that does not have either a license or an established location in any county or city, and 100% of all taxes, penalties and interest assessed by the state as a result of an audit, are retained by the state. T.C.A. § 67-4-724.

For more information about the business tax, see the current edition of the *Business Tax Guide* available on the Tennessee Department of Revenue's [business tax website](#).

## Excise Tax Applied to Financial Institutions

**Reference Number:** CTAS-1636

**Authority.** T.C.A. §§ 67-4-2001 through 67-4-2023.

**Description.** This is a state tax on the net earnings of corporations doing business in Tennessee, but only the portion of this revenue received from financial institutions (banks, savings and loans, loan or trust companies, investment companies, and cemetery companies) is distributed to counties and municipalities under T.C.A. §§ 67-4-2017, 67-4-2020, 67-4-2021, and 67-4-2022. 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.** For excise taxes collected from a bank, loan or trust company, financial institution unitary business, investment company, or cemetery company, the amount distributed to cities and counties is 3 percent of the net earnings less 7 percent of the ad valorem taxes paid by the entity on its real and tangible personal property for the second fiscal year preceding the year in which the distribution is made. These revenues are allocated between the county and the municipal government where the office of the entity is located in the same proportion as the property tax rate of each taxing jurisdiction bears to the sum of the property tax rates. T.C.A. §§ 67-4-2017, 67-4-2020, 67-4-2021, and 67-4-2022.

## Hotel/Motel Tax

**Reference Number:** CTAS-1639

The hotel/motel tax is a tax on the privilege of occupancy of hotel and motel rooms and similar spaces. Counties levy the hotel/motel tax by private act (with the exception of Davidson County which uses a general law, T.C.A. § 7-4-101 *et seq.*, applicable only to counties with a metropolitan form of government). The distribution of the tax is set forth in the private act. Rates vary according to the terms of the private act. There is no statutory limit on the rate that may be imposed by the general assembly in the private act (Op. Tenn. Att'y Gen. 01-141).

Under T.C.A. § 67-4-1425, any private act enacted after May 12, 1988, that authorizes a city or county (with exceptions noted in the statute) 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.

These limitations only apply prospectively and all private acts levying taxes on the privilege of occupancy of hotels enacted prior to May 12, 1988, shall remain in full force and effect. Note that home rule municipalities have separate general law authority to levy hotel/motel taxes. As these taxes are not levied by private act, the limitations listed above do not apply to hotel/motel taxes levied by a home rule municipality.

Beginning January 1, 2021, occupancy taxes on short-term rental units secured through a short-term rental marketplace such as Airbnb or VRBO must be collected and remitted by the short-term rental marketplace to the department of revenue for distribution to the local government levying the tax, in accordance with Title 67, Chapter 4, Part 33, of the Tennessee Code Annotated.

## County Litigation Taxes

**Reference Number:** CTAS-1641

**Authority.** TCA 67-4-601, 16-15-5006, and 16-20-106.

**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, TCA 16-15-5006 authorizes counties 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. The county litigation tax authorized by TCA 16-15-5006 is earmarked for the salary of the general sessions judge.

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 under subsection (b) of TCA 67-4-601. 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.

Originally, the Attorney General issued opinions indicating that counties were limited to a maximum tax levy of \$50 under subsection (b) of TCA 67-4-601 (AG Op. Nos. 08-167 and 12-13). These opinions interpreted subdivisions (b)(1) and (b)(5) of subsection (b) not as separate taxes but linked. The opinions state that (b)(5) only authorizes an increase in the (b)(1) tax to a maximum of \$25. However, in 2016 the Attorney General issued another opinion (Op. No. 16-10) that interprets subdivisions (b)(1) and (b)(5) as unrelated separate taxes. Thus, in the 2016 opinion, the Attorney General opines that counties can levy a maximum \$60 tax under subsection (b) of TCA 67-4-601 (\$10 under subdivision (b)(1), \$25 under (b)(5), and \$25 under (b)(6)). The 2016 opinion appears to supersede the 2008 and 2012 opinions.

In addition to the uses set forth above (i.e., jail/courthouse) as much as \$25 of this tax may be used for courthouse security. Also, up to \$50 of the tax may be used for the purpose of obtaining and maintaining software and hardware associated with collecting, receiving and maintaining records for law enforcement agencies. Finally, the entire amount may also be used for substance abuse prevention purposes.

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.

Finally, per TCA 16-20-106, counties by a two-thirds (2/3) vote may levy an additional \$2 litigation per case to be denominated as a part of the court costs for each petition, warrant and citation, including warrants and citations for traffic offenses, in matters before the local general sessions courts and juvenile courts to be used by the county for the exclusive purpose of supporting a local victim-offender mediation center or centers.

*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.

## Accounting for Fees

**Reference Number:** CTAS-1643

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.

## Financial Structure of County Government

### Reference Number: CTAS-694

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. 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.

The management of county finances under the general law allows practically every department to make purchases, make disbursements, receive funds without the trustee's involvement and maintain separate accounting records. With this type of system, it is difficult to manage the cash flow for investing temporarily idle cash funds and to properly communicate the county's financial condition on a monthly and uniform basis. In an attempt to address these and other problems, the General Assembly has passed three sets of local option acts governing one or more aspects of county financial management which may be adopted by referendum or two-thirds county commission approval (the 1993 law may be adopted only by the county commission).

1. Local Option Budgeting Law of 1993,
2. 1981 Financial Management System, and
3. 1957 Fiscal Acts,

These acts provide a means for counties to consolidate functions, establish uniform financial procedures and incorporate efficient business practices into the management of county finances.

For a chart showing which budget law each county has adopted, click here: [County Budget Laws](#).

## Financial Management under the General Law

**Reference Number:** CTAS-695

The day-to-day expenses relating to personnel, supplies, materials, utilities, contracted services, upkeep of facilities and other such costs are referred to as current operating expenses. To finance these functions the county levies and collects taxes and receives revenues from the state and federal governments. The county's financial management of these costs and revenues involves budgeting, accounting, purchasing, payroll, cash flow and related areas. Unless a county has elected to operate under a local option law or has adopted a private act, the county must manage its finances in accordance with the general law. General laws provide guidance in the areas of budgeting, accounting, purchasing, and investment of temporarily idle county cash funds.

The laws regarding purchasing for county governments are not uniform. There are state laws of general application, as well as local option laws that may apply. Also, private acts govern purchasing in some counties. County purchasing laws and procedures are covered under the [Purchasing](#) topic.

## Charitable Contributions

**Reference Number:** CTAS-696

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. To satisfy this requirement, nonprofits may submit a copy of their annual audit or an annual report detailing all receipts and expenditures in a form prescribed by the comptroller. 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 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.

## Accounting under General Law

**Reference Number:** CTAS-698

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 \$0.36 per person in the county with an annual 3% increase beginning July 1, 2017). 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. The report must be filed before the first Monday in September upon a form provided by the comptroller. T.C.A. § 67-5-1902. 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.

Under T.C.A. § 9-2-102, counties that are subject to the comptroller's audit requirements and that handle public funds must have their official accounting records closed and available for audit no later than two months after the close of the fiscal year.

## Investment of County Funds

### Reference Number: CTAS-699

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, 5-8-302.

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.

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 the 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 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. Under T.C.A. § 5-8-301, all three categories may be invested in any of the following manners:

1. Bonds, notes, or treasury bills of the U.S. as well as other obligations guaranteed by the U.S. or its agencies;
2. Deposits of funds into state and federally chartered banks and savings and loan associations, provided that these investments are properly secured;
3. Obligations of the United States or its agencies under a repurchase agreement for a shorter time than the maturity date of the security itself if the market value of the security itself is more than the amount of funds invested. Counties may invest in repurchase agreements only if the comptroller of the treasury or the comptroller's designee approves repurchase agreements as an authorized investment and if such investments are made in accordance with procedures established by the state funding board;
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:
  - The Federal Home Loan Bank;
  - The Federal National Mortgage Association;
  - The Federal Farm Credit Bank;
  - The federal home loan mortgage corporation; and
  - 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 with 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

### Reference Number: CTAS-700

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 in 1993. 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). [County Budget Laws Table](#).

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.

## Local Option Budgeting Law of 1993

### Reference Number: CTAS-701

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.

This act provides 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 specifies 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 on or before March 15. The assessor is required to furnish his best estimate of the actual assessed value of all taxable property within the county for the ensuing year to the county mayor before March 15. T.C.A. § 5-12-207. All departments, offices and agencies are required to submit a proposed budget to the county mayor or, if a finance director, director of accounts and budgets, or similar person is provided by law, to that official by March 1. Along with their proposed budgets, the departments of education and highways must also submit a form tax rate resolution showing how much property tax they are requesting to fund their budgets. Departments, offices and agencies are authorized to alter or amend their submitted budgets any time prior to when the proposed budget is submitted to the county legislative body. However, the county mayor or budget committee decides whether to allow submission of changes to the proposed budgets after the consolidated budget is submitted to the county legislative body but prior to final approval. T.C.A. § 5-12-208. Procedures for resolving disputes regarding changes made to the proposed budgets submitted by the various departments, offices and agencies are addressed in T.C.A. § 5-12-209.

This act can work in conjunction with either of the other two local option budget laws 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. That section requires that the county legislative body adopt a budget, tax rate, and appropriation resolution no later than July 31. 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 31, then the budget for the department of education will go into effect by operation of law in an amount equal to the minimum budget required to comply with the local match and maintenance of effort provisions of the BEP. If this occurs for three consecutive years, then the education budget in the third year will include a mandatory increase equivalent to 3% of the required local funding unless the LEA failed to comply with the applicable budgetary timeline. T.C.A.

§ 5-12-210. Unlike the other local option budgeting laws, the August 31 deadline also applies to the rest of the 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 if the county legislative body fails to adopt a budget, property tax resolution and appropriation resolution by August 31. 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, 5-12-213.

## County Financial Management System of 1981

### Reference Number: CTAS-702

This act is found in T.C.A. §§ 5-21-101 through 5-21-130 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 \$100,000 for the faithful performance of the director's duties as well as the department's employees. 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.

For those counties operating under the County Financial Management System of 1981, T.C.A. § 5-21-110(a) authorizes the budget committee, in conjunction with the director, to adopt a budget timeline. In the absence of a locally adopted timeline, § 5-21-110(e) provides a statutory timeline. The budgetary timeline provided in T.C.A. § 5-21-110 establishes deadlines for submittal of proposed budgets as

well as deadlines for responding to such proposals. Section 5-21-110 provides that the timeline may be waived or altered upon agreement by the county legislative body and the respective department, commission, institution, board, office or agency. While the timeline may be altered, such changes do not impact the deadlines set forth in T.C.A. § 5-21-111. Under § 5-21-111, if the budget has not been adopted by July 1, the operating budget for the prior year will continue by operation of law without any further action by the county legislative body required. During this time, the budget may be amended just like a final operating budget. This continuing budget may remain in effect for July and August. It can only be extended through September 30 with approval by the comptroller. Further, if the county legislative body and the school board fail to agree on an education budget by August 31, then the education budget will go into effect by operation of law. The budget will be equal to the minimum budget required to comply with the local match and maintenance of effort provisions in the BEP. If this occurs for three consecutive years, then the budget for the third year will include a mandatory increase that is equivalent to 3% of the required funding from local sources for schools. The 3% increase will not be required if the school board failed to comply with the budget timeline during any of those three years.

## Fiscal Control Acts of 1957

### Reference Number: CTAS-703

The Fiscal Control Acts of 1957, found in T.C.A. §§ 5-12- 101 through 5-12-114, 5-13-101 through 5-13-111, and 5-14-101 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.

For those counties operating under the County Budgeting Law of 1957, T.C.A. § 5-12-105 authorizes the county legislative body to adopt a timeline and budgetary procedures for the county, with the caveat that the LEA must concur with its timeline. In the absence of a locally adopted timeline, § 5-12-105 sets forth a statutory timeline. The budgetary timeline provided in T.C.A. § 5-12-105 establishes deadlines for submittal of proposed budgets as well as deadlines for responding to such proposals. Section 5-12-105 provides that the timeline may be waived or altered upon agreement by the county legislative body and the respective department, commission, institution, board, office or agency. While the timeline may be altered, such changes do not impact the deadlines set forth in T.C.A. § 5-12-109. Under § 5-12-109, if the budget has not been adopted by July 1, the operating budget for the prior year will continue by operation of law without any further action by the county legislative body required. During this time, the budget may be amended just like a final operating budget. This continuing budget may remain in effect for July and August. It can only be extended through September 30 with approval by the comptroller. Further, if the county legislative body and the school board fail to agree on an education budget by August 31, then the education budget will go into effect by operation of law. The budget will be equal to the minimum budget required to comply with the local match and maintenance of effort provisions in the BEP. If this occurs for three consecutive years, then the budget for the third year will include a mandatory increase that is equivalent to 3% of the required funding from local sources for schools. The 3% increase will not be required if the school board failed to comply with the budget timeline during any of those three years.

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 amount of the corporate surety bond for the DAB is established by the county mayor in amount not less than \$100,000. 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. The [County Purchasing Law of 1957](#) is covered under the [Purchasing](#) topic.

## Financial Management Under Private Acts

### Reference Number: CTAS-704

Private acts are acts of the General Assembly which apply to only one county or to a very few counties. However, the authority of the legislature to pass a law which is not general in its application is limited by several principles. The first is the requirement of local approval. Article XI, Section 9 of the Tennessee Constitution provides:

Any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

A legislative act may provide a deadline for local approval or disapproval, either by a two-thirds vote of the county legislative body or by referendum. Within 30 days after that approval or disapproval, the chairman of the county legislative body or the chairman of the county election commission, as appropriate, must certify the action to the secretary of state. If the act does not specify a deadline, failure to approve the act by December 1 of the year the act was passed renders the act of no effect. T.C.A. § 8-3-202.

The second limitation is that the General Assembly lacks power to suspend laws for the benefit of any particular individual. This prohibition includes private acts in contravention of the general law for the benefit of particular counties unless there is a rational basis for the exception. *Brentwood Liquors Corp. v. Fox*, 496 S.W.2d 454 (Tenn. 1973). It cannot be circumvented by the use of population classes; when a population class makes an exception for only one county, it will be treated as a private act, requiring local approval under Article XI, Sections 8 and 9 of the Tennessee Constitution. *Op. Tenn. Att'y. Gen. 87-88* (May 14, 1987); *Op. Tenn. Att'y. Gen. (February 4, 1982)*. Furthermore, the use of the words "or any subsequent federal census" in the language setting forth the population classification will not necessarily guarantee the constitutionality of the exception.

In other words, two basic questions arise in the consideration of county-related legislation. The first question is whether a county can be exempted from a requirement of general law without violating the Tennessee Constitution. The second is whether local approval should be required to put such an exception in place. The first question is often restated as whether there exists a rational basis for the exception, and the second, whether certain legislation, irrespective of its form, is local in effect and application, and therefore should be ratified according to the rules for private act ratification.

In considering the question of whether a rational basis exists for a "special classification" (that is, treating one county differently from other counties), courts have held that the reasonable basis for the distinction does not have to appear on the face of the legislation. If any possible reason can be conceived to justify the classification, it will be upheld and deemed reasonable. Even if there is a rational basis for the statute, it must still be submitted for local ratification unless it is potentially applicable in a genuine sense throughout the state.

Because of the constitutional issues that arise when legislation is drafted with population classifications, it is a good policy to always include a severability clause, a Section contained in the act itself which states, that if any portion of the act is declared unconstitutional, the validity of the remainder of the act will be unaffected. However, all statutes, including private acts, are presumed to be valid unless declared unconstitutional by a court of law.

One basis for questioning the constitutionality of a private act is the method of ratification. Therefore, care must be taken to properly follow the mandates of the local approval requirement of a private act, or public act of local application, which will call for the act to be approved either by a referendum or by a two-thirds vote of the county legislative body; then the results of this action must be certified to the secretary of state.

As a practical matter, your county's representatives in the General Assembly are generally very responsive to the desires of the county commission for the introduction of private acts. Should your county desire to have a private act on an allowable subject introduced, many legislators require a formal requesting resolution passed by a two-thirds vote of your county legislative body before submitting the act to the General Assembly.

Private acts are not included in the Tennessee Code Annotated. Instead, each year the secretary of state publishes a volume of all private acts passed by the General Assembly during that year. Periodically an index is published which lists private acts by the county or city they affect. The County Technical Assistance Service provides a complete compilation of each county's private acts and periodically updates that compilation.

## Financial Management of Fee Offices

### Reference Number: CTAS-705

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).

## Disposition of Surplus County Property

### Reference Number: CTAS-709

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. § 12-2-420 (formerly 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. § 12-2-420.

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.

For more detailed information regarding disposition of surplus property, see [CTAS-940 under Purchasing](#).

## Auditing

### Reference Number: CTAS-710

In Tennessee, the financial 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 Local Government 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 Division of Local Government 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 Local Government Audit and comply with other requirements of that office. The contract cost to use the state department of audit was set in 2016 at \$0.36 cents for each person in the county based on the most recent federal census with an annual 3% fee increase beginning July 1, 2017. 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.

Counties with one or more audit findings must submit a corrective action plan to the comptroller setting out the actions taken or to be taken to address the findings. The plan must include contact information for the person responsible for the corrective action, the corrective actions taken or to be taken and the anticipated completion date. If a county disagrees with an audit finding, the plan should include the reasons and justifications for the disagreement. T.C.A. § 9-3-407.

## Capital Budgets

### Reference Number: CTAS-1696

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.

The Tennessee State Funding Board requires counties issuing debt after January 1, 2012 to adopt a written debt management policy that must contain certain minimum requirements. This guidance is intended to guide counties in complying with the State Funding Board's requirement. The minimum topics required are-

- debt,
- transparency and disclosure,
- conflicts of interest,
- costs, and
- professionals.

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 \$50,000 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. 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.

## Duty to Build and Maintain Jail

**Reference Number:** CTAS-1334

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). A facility preventative maintenance program shall be in place. All equipment shall be in working order. Safety and security equipment shall be repaired or replaced without undue delay. The use of padlocks and/or chains to secure inmate cells or housing area doors is prohibited. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.05\(9\) and \(10\)](#).

In construing the provisions of similar Alabama statutes (compare T.C.A. §§ 5-7-104, 5-7-106, and 5-7-110 with Ala. Code §§ 11-14-10 and 11-14-13), the Alabama courts have made it clear that the duty of the county to erect and maintain a county jail pertains exclusively to the physical plant of the jail. The duty to "maintain a jail" under § 11-14-10 is merely the duty to keep the "jail and all equipment therein in a state of repair and to preserve it from failure or decline." *Turquitt v. Jefferson County*, 137 F.3d 1285, 1290 (11th Cir. 1998) *citing Keeton v. Fayette County*, 558 So.2d 884, 886 (Ala. 1989). Accordingly, "the County will have violated Plaintiffs' Eighth Amendment rights if its failure to maintain the Jail constituted deliberate indifference to a substantial risk of serious harm to the prisoners." *Marsh v. Butler County*, 268 F.3d 1014, 1027 (11th Cir. 2001).

Where a municipal body is vested with this sort of fiscal obligation to a jail, its liability for insufficient funding or maintenance will depend on its knowledge of conditions at the jail. *O'Quinn v. Manuel*, 773 F.2d 605, 609 (5th Cir. 1985) (Clearly the [municipality] had a duty to fund and maintain the Jail.). In *Strandell v. Jackson County*, 634 F.Supp. 824, 830 (S.D. Ill. 1986), the court found that the allegations in the complaint, that Jackson County provided inadequate funding for its jail facility and had failed to maintain the jail facility in conformity with state law and constitutional standards, were sufficient to satisfy the "custom" requirement, and that plaintiffs had therefore stated a cause of action against the county. And in *Littlefield v. Deland*, 641 F.2d 729, 732 (10th Cir. 1981), the court upheld a finding of county liability for grossly inadequate facilities for mentally ill detainees where the "nature and extent of jail facilities" were under the county commissioners' control. Even though the facilities' inadequacy had been repeatedly brought to

the county commissioners' attention, the county had "pursued a policy of indifference" that justified holding the county liable for damages under 42 U.S.C. § 1983 based upon the failure of its commissioners to adequately fund the county jail.

In a more recent case, *May v. County of Trumbull*, 127 F.3d 1102 (Table) (6th Cir. 1997), the plaintiff argued "that inadequate funding of the jail and the resulting understaffing of the facility rose to the level of deliberate indifference sufficient to support § 1983 liability for Trumbull County." The Sixth Circuit held that the county's policy decisions and allocation of resources could not form the basis for municipal liability under § 1983 because the evidence presented did not show that the county "made its funding and staffing decisions with a known risk of the potential for detainees' suicides and a conscious disregard of that risk." *Id.* at \*3, citing *Roberts v. City of Troy*, 773 F.2d 720, 725 (6th Cir. 1985) (holding that funding and staffing decisions, even where they did not comply with regulations, could not form the basis for a charge of deliberate indifference because intent and cause had not been demonstrated). See also *Gaston v. Ploeger*, --- F.Supp.2d ---, 2005 WL 3079099, \*11 (D. Kan. 2005) (entering summary judgment in favor of county commissioners in their official capacity on plaintiff's § 1983 claims based upon inadequate funding).

Nevertheless, if the county chooses to run a jail it must do so without depriving inmates of the rights guaranteed to them by the federal Constitution. "It is well established that inadequate funding will not excuse the perpetuation of unconstitutional conditions of confinement nor will an allegedly contrary duty at state law." *Smith v. Sullivan*, 611 F.2d 1039, 1043-1044 (5th Cir. 1980) (citations omitted). See also *Newman v. State of Alabama*, 559 F.2d 283, 286, 291 (5th Cir. 1977) (It should not need repeating that compliance with constitutional standards may not be frustrated by legislative inaction or failure to provide the necessary funds.); *Williams v. Edwards*, 547 F.2d 1206, 1213 (5th Cir. 1977) (Thus lack of funds does not justify operating a prison in an unconstitutional manner.); *Laube v. Haley*, 234 F.Supp.2d 1227, 1252 (M.D. Ala. 2002) (Courts have repeatedly made clear that cost is not a defense to constitutional violations.); *Nicholson v. Choctaw County*, 498 F.Supp. 295, 311 (S.D. Ala. 1980) (The decision to withhold resources from the jail cannot be an adequate justification for depriving inmates of their constitutional rights and of their rights under state law.).

## Replacement of Jail

### Reference Number: CTAS-1337

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. *Henry v. Grainger County*, 290 S.W. 2 (Tenn. 1926) (By statute provision is made for the sale of a courthouse or jail under certain circumstances and the purchase of another site and the erection of a new building.); *Jackson v. Gardner*, 639 F.Supp. 1005 (E.D. Tenn. 1986) (holding that the county must reduce the jail population and build a new workhouse).

## Medical Care of Inmates

### Reference Number: CTAS-1370

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). The Tennessee Supreme Court has recognized that it is the statutory duty of the county legislative body to furnish the services of a physician to treat illnesses of inmates. *George v. Harlan*, 1998 WL 668637, \*4 (Tenn. 1998). See also *Manus v. Sudbury*, 2003 WL 2288883, \*4 (Tenn. Ct. App. 2003) ("By statute, county legislative bodies alone have the power and duty to provide medical care to prisoners confined in their jail."). Cf. *County Hosp. Auth. v. Bradley County*, 66 S.W.3d 888, 889 (Tenn. Ct. App. 2001); *Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1250 (6th Cir. 1989) ("Contracting out prison medical care does not relieve the State of its constitutional duty to provide adequate medical treatment to those in its custody, and it does not deprive the State's prisoners of the means to vindicate their Eighth Amendment rights."); *Willis v. Barksdale*, 625 F.Supp. 411 (W.D. Tenn.

1985) (medical needs); *Andrews v. Camden County*, 95 F.Supp.2d 217, 228 (D. N.J. 2000). See also *West v. Atkins*, 487 U.S. 42, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988).

Pursuant to state regulations, provision of medical services for the jail is to be the responsibility of a designated medical authority such as a hospital, clinic, or physician. There shall be an agreement between the county and the designated medical authority responsible for providing the medical services. The designated medical authority must be notified in instances where an inmate may be in need of medical treatment and the jail must document this notification. The health authority shall meet with the Sheriff and/or facility administrator at least annually. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(2\)](#). Note: Contracting out jail medical care does not relieve the county of its constitutional duty to provide adequate medical treatment to those in its custody. *Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1250 (6th Cir. 1989). Medical decisions are the sole province of the responsible health care provider and shall not be countermanded by non-medical personnel. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(3\)](#)

All health care professional staff shall comply with applicable state and federal licensure, certification, or registration requirements. Verification of current credentials shall be available upon request from the provider. Health care staff shall work in accordance with profession specific job descriptions approved by the health authority. If inmates are assessed or treated by non-licensed health care personnel, the care shall be provided pursuant to written standing or direct orders by personnel authorized to give such orders. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(4\)](#)

In *Chattanooga-Hamilton County Hospital Authority v. Bradley County*, 33 TAM 11-1, 3/10/2008, Ramsey was shot by an off-duty Bradley County law enforcement officer and was transported to Chattanooga-Hamilton County Hospital Authority for treatment. The hospital was notified by a law enforcement officer to hold Ramsey. The Hospital Authority filed suit against Bradley County for Ramsey's medical bills pursuant to T.C.A. 41-4-115. The Trial Court awarded hospital judgment for the amount of bill representing time from admittance of Ramsey until the requested hold was removed. The Tennessee Court of Appeals affirmed the trial court's decision. The Tennessee Supreme Court reversed and dismissed the case holding that simple notification by a county law enforcement agency asking a hospital to secure a patient until time of release from treatment does not operate to establish liability of a county for medical expenses under T.C.A. 41-4-115

In *Cornett v. Mathes*, 2008 WL 5110795 (E.D. Tenn., 2008) a prisoner's federal civil rights claim was dismissed for failure to state a claim for which relief could be granted. The prisoner alleged that the prison and several other defendants violated his Eighth Amendment right not to be subjected to cruel and unusual punishment when he was denied medical care in regards to an injured rib. By the prisoner's own allegation, however, he was seen by a medical provider, escorted to the emergency room for xrays, and later seen by a physician. While the prisoner's contentions may have stated a claim for medical malpractice, no Eighth Amendment claim is stated by allegations that a medical condition has been negligently diagnosed or treated. U.S.C.A. Const.Amend. 8; 42 U.S.C.A. § 1983.

In *Crawley v. Bragg*, 2008 WL 5111116 (M.D. Tenn., 2008), the U.S. District Court of Middle Tennessee determined that a prison did not deny an inmate medical care in violation of the Eighth Amendment. The inmate did not suffer from a serious medical need. Further, even if the inmate had had a serious medical need, the prison did not act with deliberate indifference as the inmate was examined, blood work was done, and he was referred for follow-ups. U.S.C.A. Const.Amend. 8.

"The right to adequate medical care is guaranteed to convicted federal prisoners by the Cruel and Unusual Punishment Clause of the Eighth Amendment, and is made applicable to convicted state prisoners and to pretrial detainees (both federal and state) by the Due Process Clause of the Fourteenth Amendment." *Johnson v. Karnes*, 398 F.3d 868, 873 (6th Cir. 2005).

The Eighth Amendment's proscription of the failure to provide medical care to prisoners was delineated by the United States Supreme Court in *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), as follows:

An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical "torture or a lingering death," the evils of most immediate concern to the drafters of the Amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose.

The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation codifying the common-law view that "(i)t is but just that

the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself.”

We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the “unnecessary and wanton infliction of pain,” proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner’s needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner’s serious illness or injury states a cause of action under § 1983.

*Id.* at 103-105, 97 S.Ct. at 290-291 (citations and footnotes omitted).

Although the Eighth Amendment’s protections apply specifically to post-conviction inmates, the Due Process Clause of the Fourteenth Amendment operates to guarantee those same protections to pretrial detainees as well. Where any person acting under color of state law abridges rights secured by the Constitution or United States laws, including a detainee’s Eighth and Fourteenth Amendment rights, 42 U.S.C. § 1983 provides civil redress.

The Supreme Court has adopted a mixed objective and subjective standard for ascertaining the existence of deliberate indifference in the context of the Eighth Amendment: [A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. The objective component of the test requires the existence of a “sufficiently serious” medical need. A sufficiently serious medical need is predicated upon the inmate demonstrating that he or she “is incarcerated under conditions imposing a substantial risk of serious harm.”

The subjective component, by contrast, requires a showing that the prison official possessed “a sufficiently culpable state of mind in denying medical care.” Deliberate indifference requires a degree of culpability greater than mere negligence, but less than “acts or omissions for the very purpose of causing harm or with knowledge that harm will result.” The prison official’s state of mind must evince “deliberateness tantamount to intent to punish.” “Knowledge of the asserted serious needs or of circumstances clearly indicating the existence of such needs, is essential to a finding of deliberate indifference.” Thus, “an official’s failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.”

*Miller v. Calhoun County*, 408 F.3d 803, 812-813 (6th Cir. 2005) (citations omitted). *See also Butler v. Madison County Jail*, 109 S.W.3d 360, 366 (Tenn. Ct. App. 2002) (“When a prisoner suffers pain needlessly and relief is readily available, they have a cause of action against those whose deliberate indifference is the cause of suffering.”).

“Mere negligence, mistake or difference of medical opinion in the provision of medical care to prisoners do not rise to an Eighth Amendment deprivation under the *Estelle* standard.” *Dawson v. Kendrick*, 527 F.Supp. 1252, 1306 (D.C. W.Va. 1981). *See also Butler v. Madison County Jail*, 109 S.W.3d 360, 366 (Tenn. Ct. App. 2002) (Neither negligence nor gross negligence will support a § 1983 claim.). Moreover, officials are “entitled to rely on the professional judgment of trained medical personnel with regards to a prisoner’s medical history and the need for medical care.” *Miltier v. Beorn*, 896 F.2d 848, 854-855 (4th Cir. 1990). “A prisoner’s difference of opinion with prison physicians regarding the type of treatment he should receive does not rise to the level of a constitutional violation.” *Rauh v. Ward*, 112 Fed.Appx. 692, 695 (10th Cir. 2004); *LaFlame v. Montgomery County Sheriff’s Department*, 3 Fed.Appx. 346 (6th Cir. 2001) (Jail inmate’s difference of opinion with doctor over his diagnosis and treatment does not state an Eighth Amendment claim.); *Westlake v. Lucas*, 537 F.2d 857, 860 n. 5 (6th Cir.1976) (same).

Furthermore, not all inadequate medical treatment rises to the level of an Eighth Amendment violation. “Thus, a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.” *Estelle*, 429 U.S. at 106, 97 S.Ct. at 292. A plaintiff must prove “objectively that he was exposed to a substantial risk of serious harm,” and that “jail officials acted or failed to act with deliberate indifference to that risk,” which requires actual knowledge and deliberate disregard. *Victoria W. v. Larpenter*, 369 F.3d 475, 483 (5th Cir. 2004) (citation omitted). *See also Butler v. Madison*

*County Jail*, 109 S.W.3d 360, 366 (Tenn. Ct. App. 2002) ("In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.") (citation omitted).

Inmates are not entitled to "unqualified access to health care." *Hudson v. McMillan*, 503 U.S. 1, 9, 112 S.Ct. 995, 1000, 117 L.Ed.2d 156 (1992). Nor are they entitled to a medical program that caters to their every whim. *Meadows v. Woods*, 1994 WL 267957, \*2 (W.D. Tenn. 1994). "The right to treatment is ... limited to that which may be provided upon a reasonable cost and time basis and the essential test is one of medical necessity and not simply that which may be considered merely desirable." *Bowring v. Godwin*, 551 F.2d 44, 47-48 (4th Cir. 1977). See also *Dean v. Coughlin*, 804 F.2d 207, 215 (2d Cir.1986) ("The Constitution does not command that inmates be given the kind of medical attention that judges would wish to have for themselves....") (citation omitted); *Woodall v. Foti*, 648 F.2d 268, 272 (5th Cir. 1981) ("[T]he essential test is one of medical necessity and not one simply of desirability."); *Feliciano v. Gonzalez*, 13 F.Supp.2d 151, 208 (D.C. P.R. 1998) (Under the Eighth Amendment, the standard of care for inmates does not include the most sophisticated care that money can buy, but only that which is reasonably appropriate within modern and prudent professional standards in the field of medicine and health.). Cf. *Nicholson v. Choctaw County*, 498 F.Supp. 295, 308 (S.D. Ala. 1980) (The county is under no duty to provide prosthetic devices such as eyeglasses or dentures, or to provide routine diagnostic care for inmates. These services are not provided by the county to its free world citizens, and a person does not gain a greater right to services or benefits upon being convicted of a criminal offense.). But see *Newman v. Alabama*, 349 F.Supp. 278, 286-288 (M.D. Ala. 1972) (Upholding the right to prosthetic care for inmates in a long-term facility.).

Budgetary constraints do not justify the intentional withholding of necessary medical care. *Jones v. Johnson*, 781 F.2d 769, 770-72 (9th Cir. 1986). However, the county is required only to furnish inmates with routine and emergency medical care. The county is not required to furnish other and additional elective medical care, which is not essential to the immediate welfare of the inmates and the lack of which poses no threat to life or limb. See *Kersh v. Bounds*, 501 F.2d 585, 588-589 (4th Cir. 1974); *Jackson v. Fair*, 846 F.2d 811, 817 (1st Cir.1988) ("Although the Constitution does require that prisoners be provided with a certain minimum level of medical treatment, it does not guarantee to a prisoner the treatment of his choice."). See also *Buckley v. Correctional Medical Services, Inc.*, 125 Fed.Appx. 98 (8th Cir. 2005) (Inmate failed to establish that 20-month delay in scheduling elective elbow surgery after it was recommended was deliberate indifference to inmate's serious medical need, as required to support inmate's § 1983 action against medical provider.); *Grundy v. Norris*, 26 Fed.Appx. 588 (8th Cir. 2001) (Delay in shoulder surgery did not amount to constitutional violation where medical evidence showed that the surgery was elective and the delay was not of great concern.); *Olson v. Stotts*, 9 F.3d 1475 (10th Cir. 1993) (An 11-day delay in elective heart surgery did not constitute deliberate indifference.); *Cook v. Hayden*, 1991 WL 75648, \*3 (D. Kan. 1991) ("[T]he mere delay of elective surgery does not establish a violation of an inmate's protected rights."). But see *McCabe v. Prison Health Services*, 117 F.Supp.2d 443, 450 (E.D. Pa. 1997) (The fact that a surgery is elective "does not abrogate the prison's duty, or power, to promptly provide necessary medical treatment for prisoners."); *Delker v. Maass*, 843 F.Supp. 1390, 1400 (D. Or. 1994) ("Where surgery is elective, prison officials may properly consider the costs and benefits of treatment in determining whether to authorize that surgery, but the words 'elective surgery' are not a talisman insulating prison officials from the reach of the Eighth Amendment. Each case must be evaluated on its own merits.").

Continuity of care is required from admission to transfer or discharge from the facility, including referral to community-based providers, when indicated. When health care is transferred to providers in the community, appropriate information shall be shared with the new providers in accordance with consent requirements. Prior to release from custody or transfer, inmates with known serious health conditions shall be referred to available community resources by the jail's health care provider currently providing treatment. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(5\)](#).

All intersystem transfer inmates (transferred from one confinement facility to another within the same county's jurisdiction) shall receive a health screening by health-trained or qualified health care personnel, which commences on their arrival at the facility. All findings are recorded on a screening form approved by the health authority. At a minimum, the screening includes the following:

- A review of the inmate's medical, dental, and mental health problems;
- Current medications; and
- Current treatment plan. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(10\)](#)

Detoxification from alcohol, opiates, hypnotics, and other stimulants shall be conducted under medical supervision in accordance with local, state, and federal laws. When performed at the facility, detoxifica-

tion shall be prescribed in accordance with clinical protocols approved by the health authority. Specific criteria shall be established for referring symptomatic inmates suffering from withdrawal or intoxication for more specialized care at a hospital or detoxification center. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(16\)](#)

Informed consent standards of the jurisdiction shall be observed and documented for inmate care in a language understood by the inmate. In the case of minors, the informed consent of a parent, guardian, or a legal custodian applies when required by law. Inmates routinely have the right to refuse medical interventions. When health care is rendered against the inmate's will, it shall be in accordance with state and federal laws and regulations. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(22\)](#)

The use of inmates in medical, pharmaceutical, or cosmetic experiments is prohibited. This does not preclude inmate access to investigational medications on a case-by-case basis for therapeutic purposes in accordance with state and federal regulations. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(24\)](#).

When an inmate is paced in segregation for health concerns, health care personnel shall be informed as soon as practical and provide assessment and review as indicated by the protocols established by the health authority. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(27\)](#).

Medical/dental instruments and supplies (syringes, needles, and other sharp instruments) shall be inventoried, securely stored, and use shall be controlled. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(28\)](#).

Pregnant inmates shall have access to obstetrical services (prenatal, partum, and post-partum care) by a qualified health care provider. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(27\)](#)

Inmates with chronic medical conditions, such as diabetes, hypertension, and mental illness shall receive periodic care by a qualified health care provider in accordance with individual treatment plans that include monitoring of medications and laboratory testing. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(30\)](#)

The health authority shall develop and approve protocols for identifying and evaluating major risk management events related to inmate health care, including inmate deaths, preventable adverse outcomes, and serious medication errors. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(33\)](#).

#### Medical Emergencies

In case of medical emergencies, there shall be specific information readily accessible to all employees such as telephone numbers and names of persons to be contacted, so that professional medical care can be received. There shall also be available the names and telephone numbers of persons to contact in case of death. [Rules of the Tennessee Corrections Institute, Rule 1400-1-.13\(25\)](#).

## County Liability for Inmate Medical Care

**Reference Number:** CTAS-1378

In *Chattanooga-Hamilton County Hosp. Authority v. Bradley County*, 66 S.W.3d 888 (Tenn. Ct. App. 2001), the plaintiff hospital (Erlanger Health System) sued the county for the payment of medical bills for care provided to an arrestee who was shot by Bradley County officers during his apprehension. The pertinent facts were as follows. "A Bradley County officer shot Dunn in the process of an arrest, and Bradley County EMS requested an air ambulance service from Erlanger. Dunn was transported to Erlanger, accompanied by a County deputy, and was admitted. Dunn was under a police hold while in Erlanger at the request of Bradley County, and upon his release from the hospital, was picked up by the Bradley County Sheriff's Department and taken to the County Jail." *Id.* at 889.

Noting that the trial court had correctly found that it was the county's duty to provide medical care to Dunn, the Tennessee Court of Appeals cited the United States Supreme Court's opinion in *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983).

In *City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983), officers attempted to detain an individual who attempted to flee, and the individual was shot by an officer. An ambulance was summoned and the individual was taken to Massachusetts General Hospital. The hospital sued the City of Revere seeking payment for medical services rendered. Justice Blackman, speaking for the Court, said at p. 2983 of the Opinion:

The Due Process Clause, however, does require the responsible government or governmental agency to provide medical care to persons, such as Kivlin, who have been injured while being ap-

prehended by the police. In fact, the due process rights of a person in Kivlin's situation are at least as great as the Eighth Amendment protections available to a convicted prisoner. (Citation omitted). We need not define, in this case, Revere's due process obligation to pretrial detainees or to other persons in its care who require medical attention. (Citations omitted). Whatever the standard may be, Revere fulfilled its constitutional obligation by seeing that Kivlin was taken promptly to a hospital that provided the treatment necessary for his injury. And as long as the governmental entity ensures that the medical care needed is in fact provided, the Constitution does not dictate how the cost of that care should be allocated as between the entity and the provider of the care. That is a matter of state law.

*Id.* at 889 - 890.

Pursuant to T.C.A. § 41-4-115, it is the duty of the county legislative body to provide medical attendance for all prisoners confined in the county jail. The statute is silent with respect to persons who have yet to be confined in the county jail. Relying on this statute, the county argued that state law does not require the county to pay for medical services on the facts of this case. Nevertheless, despite the fact that the United States Supreme Court's holding in *Revere* clearly states that the cost of medical care provided to persons such as Dunn is a matter of state law, the Tennessee Court of Appeals held that implicit in the Supreme Court's holding in *Revere* "is the requirement that the State or responsible governmental agency, in discharging its duty to provide these medical services, must provide the method for payment of these services." *Id.* at 890.

To bolster its conclusion, the Court of Appeals cited the Tennessee Supreme Court's decision in *Bryson v. State*, 793 S.W.2d 252 (Tenn. 1990). In *Bryson*, the issue was whether or not the state of Tennessee is liable for the payment of medical expenses incurred by a convict who is injured while on a furlough from a state institution. The Tennessee Supreme Court held that the state is liable for the medical costs of state prisoners who are out of prison on a temporary furlough. Central to the Court's holding were its findings that the prisoner remained in the state's custody while on furlough and remained a prisoner for the purpose of medical treatment, absent a waiver by the prisoner of the right (under state law) to have the state provide him with medical care. *Bryson*, 793 S.W.2d at 254-255.

Noting the Tennessee Supreme Court's finding that being "in custody" was sufficient to trigger governmental liability for the prisoner's care, the Court of Appeals, finding that Dunn was in the custody of the Bradley County Sheriff's Office while he remained in the hospital, held that the county was liable for Dunn's medical expenses even though he was not confined in the county jail. 66 S.W.3d at 891.

In the case of *In re Estate of Davis*, 1994 WL 44448 (Tenn. Ct. App. 1994), the single issue was whether the estate of a deceased state inmate was liable for the decedent's hospital expenses irrespective of the responsibility of the state of Tennessee to the estate of the decedent for these expenses. Noting that "[t]here is nothing in the language of our statutes to suggest Mr. Davis's status as a prisoner precludes him or his estate from being liable to pay the hospital for his medical care," the Tennessee Court of Appeals held that the estate of the deceased state inmate was liable for hospital expenses incurred while the inmate was serving his sentence in the county jail. See also *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 245 n. 7, 103 S.Ct. 2979, 2984 n. 7, 77 L.Ed.2d 605 (1983) ("Nothing we say here affects any right a hospital or government entity may have to recover from a detainee the cost of medical services provided to him.").

The attorney general has opined that if an inmate has health insurance coverage, there appears to be no provision of law that would allow the insurance carrier to avoid paying covered medical costs solely because the insured was incarcerated in the county jail at the time the claim arose. However, an individual loses eligibility for TennCare upon becoming incarcerated. Accordingly, TennCare may properly deny coverage to an individual who is incarcerated either before or after conviction. Op. Tenn. Atty. Gen. 97-010 (February 4, 1997). See also Op. Tenn. Atty. Gen. 95-095 (September 15, 1995) (A county is permitted to collect from a nonindigent inmate housed in the county jail the cost of providing needed medical or dental care to the inmate. However, the county is the party ultimately responsible for paying providers who render medical or dental services to county inmates.).

As a general rule a county may include medical expenses incurred on behalf of an inmate as jailers' fees taxable in the bill of costs. A defendant convicted of a criminal offense is responsible for paying the costs associated with the prosecution. The costs of a criminal case include all costs incident to the arrest and safekeeping of the defendant, including the costs of the jailer. Op. Tenn. Atty. Gen. 03-072 (June 10, 2003).

## Reimbursement for State Inmate Medical Care

### Reference Number: CTAS-1380

The state is liable for expenses incurred from emergency hospitalization and medical treatment rendered to any state prisoner incarcerated in a county jail or workhouse, provided that the prisoner is admitted to the hospital. The sheriff of the county in which the state prisoner is incarcerated must file a petition with the criminal court committing the state prisoner to the county jail or workhouse attaching thereto a copy of the hospital bills of costs for the state prisoner. It is the duty of the court committing the state prisoner to the county jail or workhouse to examine bills of costs, and if the costs are proved, the court is required to certify the fact thereon and forward a copy to the judicial cost accountant. Expenses for emergency hospitalization and medical treatment are paid in the same manner as court costs. T.C.A. § 41-4-115(b).

The state is responsible for transportation costs and cost of any guard necessary when a state prisoner is admitted to a hospital or requires follow-up treatment. Such reimbursement is to be made according to the procedures established by T.C.A. § 41-8-106, but shall be in addition to the per diem established in T.C.A. § 41-8-106. T.C.A. § 41-4-115(c).

No claim against the state for the payment of medical expenses shall be paid unless the claim is submitted to the department of correction within six (6) months from the date the services were provided. No claim against the state for the payment of costs incurred in the prosecution and safekeeping of criminal defendants shall be paid unless the claim is submitted to the department of correction within six (6) months from the date of entry of the judgment of conviction. T.C.A. §§ 40-25-144(a) and 41-4-115(g).

If a defendant serving a felony sentence in a local jail develops medical problems that the local jail is not equipped to treat, the court has the authority to transfer the defendant to the Department of Correction. T.C.A. § 40-35-314(e).

## Jail Fees

### Reference Number: CTAS-1426

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 misdemeanor 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). [Sample Resolution to fix Jailer's Fees.](#)

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.

The fees of jailers is 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.

Jailer's 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.

### Booking Fee

T.C.A. § 40-7-122 provides that in addition to any other fees the sheriff is entitled to demand and receive in accordance with § 8-21-901, a 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. The fee shall be collected at the same time and in the same manner as other fees are collected by a sheriff in accordance with title 8, chapter 21, part 9. The fee shall not be charged to any person determined by the court to be indigent.

### Arrest and Transportation of Prisoners. Bail Bond

1. For executing every capias, criminal warrant, summons or other leading process, making arrests in criminal cases and carrying to jail, prison or other place of incarceration and guarding defendant arrested by warrant involving taking custody of a defendant: \$40.
2. For citation in lieu of arrest or criminal warrant not involving physical custody of a defendant: \$25.
3. For every bail bond to be paid as cost at the time there is a disposition of the case: \$10.
4. If a sheriff is required to act as a guard to escort prisoners, the sheriff is entitled to a per mile fee equal to the mileage allowance granted federal employees. The fee shall be separate for each prisoner and computed on the distance actually traveled with the prisoner and shall be for no more than two guards. The fee shall apply only when the sheriff is required to transport a prison-

er from county to county or from state to state. Similarly, the sheriff is entitled to the same mileage allowance when required to transport a prisoner to a hospital or other mental health facility in another county or state for a judicially ordered evaluation.

5. When two or more criminal warrants are executed at the same time against the same individual, only one arrest fee is allowed when the fee is chargeable to the county or the state.

T.C.A. § 8-21-901(a)(3). *See also* T.C.A. § 40-9-127.

#### Payment for Transporting Prisoners – Limitations on Charges

T.C.A. § 40-25-111 provides for payment for transporting prisoners to the department of corrections.

(a) The sheriff or other officer, conveying an inmate to the penitentiary, shall make out an account in writing, stating the number of miles on the usual route from the place of conviction to the penitentiary, the number of guards necessarily employed to ensure the safe conveyance of the inmate, and the distance each of the guards may have traveled, and make oath to the truth of the account before the warden of the penitentiary, or any judge, who shall certify the fact.

(b) Upon presentation of the account thus sworn to and certified, the director of accounts shall issue a warrant for the amount, as in other cases, if satisfied of the correctness of the account.

(c) It is the duty of the sheriff to carry to the penitentiary, at the same time, all inmates in the sheriff's custody, at that time sentenced to the penitentiary, and the sheriff shall not be entitled to charge for more than one (1) trip.

#### Contracting to House State Prisoners

No county is required to house convicted felons sentenced to more than one year of continuous confinement unless the county, through the authority of its county legislative body, has chosen to contract with the Department of Correction for the purpose of housing certain felons. The department promulgates rules for requirements and procedures for contracting. T.C.A. § 41-8-106(a).

Counties may contract, in writing, with the state or with other counties for responsibility of correctional populations. T.C.A. § 41-8-106(b).

#### Reimbursement for Keeping State Prisoners

Pursuant to T.C.A. § 8-26-106, upon adoption by the county legislative body of a resolution fixing jailers' fees, it is made the duty of the county clerk to promptly transmit to the judicial cost accountant a certified copy of the resolution. The judicial cost accountant shall allow jailers' fees for that particular county for state prisoners at the amount fixed by the resolution on the same terms as the county according to the provisions of T.C.A. § 8-26-105.

However, pursuant to T.C.A. § 8-26-105(b), in lieu of the reimbursement for jailers' fees allowed in T.C.A. § 8-26-106, the state now provides a subsidy pursuant to Title 41, Chapter 8. Pursuant to T.C.A. § 8-26-105(c), references in other sections of the code to jailers' fees for state prisoners specified in T.C.A. § 8-26-105 are deemed to be references to the subsidies specified in T.C.A. § 41-8-106.

As defined in T.C.A. § 41-8-103(12), the "subsidy" referred to in T.C.A. §§ 8-26-105(b) and 41-8-106 means that amount of money paid by the state to a county in accordance with T.C.A. § 41-8-106. Subsidies paid to counties pursuant to Title 41, Chapter 8, is the only compensation from the state to which counties are entitled for housing state prisoners and are in lieu of the fees allowed in T.C.A. § 8-26-106 or any other section of the code. T.C.A. § 41-8-106(e).

Counties are reimbursed for housing convicted felons pursuant to the general appropriations act and according to rules and regulations for determining reasonable allowable costs as promulgated by the Department of Correction, in consultation with the comptroller of the treasury. The department is authorized to include capital costs within the meaning of reasonable allowable costs. Such capital costs may include, but are not limited to, debt service. T.C.A. § 41-8-106(c)(1).

Pursuant to T.C.A. § 41-8-106(g)(1), the Department of Correction is required to take into its custody all convicted felons from any county that had not contracted with the state as authorized by T.C.A. § 41-8-106(b). The department is not required to take actual physical custody of any such felons until 14 days after the department has received all certified sentencing documents from the clerk of the sentencing court.

The commissioner of correction is authorized to compensate any county that has not contracted with the state as authorized by T.C.A. § 41-8-106(b) for such county's reasonable, allowable cost of housing such felons. The rate of this compensation to the noncontracting counties is determined by and is subject to

the level of funding authorized in the appropriations bill. However, the commissioner may not compensate any county that fails or refuses to promptly transfer actual physical custody of an inmate to the Department of Correction after being requested by the department in writing to do so for each day or portion of a day that such county fails to transfer the inmate. The written notice shall include the date it intends to take custody of the inmate for transfer to the department. The notice shall be given as soon as practicable before such transfer date. T.C.A. § 41-8-106(g)(2).

#### Fees lost by escape of prisoner -- Exception

T.C.A. § 40-25-110 states that:

(a) No sheriff, jailer or other officer charged with the custody of the prisoner is entitled to any allowance for keeping or removing the prisoner, if the prisoner escapes from the custody of the sheriff or jailer, or from the officer during removal.

(b) (1) Where prisoners make their escape from jail by means of force, stratagem or other fraudulent device, and reasonable care and diligence were used by the jailer to prevent the escape, or to secure the prisoner or prisoners in jail, the jailer shall be entitled to fees as jailer; provided, that it shall be clearly made to appear to the satisfaction of the judge of the circuit or criminal court in the county where the escape was made or the cause pending, that the escape was effected in the manner and under the circumstances aforementioned, and that the jailer had used the proper efforts on the jailer's part to recover the prisoner or prisoners.

(2) In all cases falling within this subsection (b), it is the duty of the judge to certify the claim for payment as in other bills of cost, and the sheriff or other officers having custody of the prisoner or prisoners shall have all the benefits of this subsection (b).

See [Jailer's Fees](#) under [Sheriff's Fees](#) of the Law Enforcement topic for more information.

## Jailers' Fees

**Reference Number:** CTAS-1332

### 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 misdemeanor 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). See [Sample Resolution to Fix Jailer's Fee](#).

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.

Jailer's 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.

Jailer's 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.

### Federal Prisoners

The jailer is liable for failing to receive and safely keep all persons delivered under the authority of the United States, to the like pains and penalties as for similar failures in the case of persons committed under authority of the state. However, the marshal or person delivering such prisoner under authority of the United States is liable to the jailer for fees and the subsistence of the prisoner while so confined, which shall be the same as provided by law for prisoners committed under authority of the state. The jailer will also collect from the marshal 50 cents a month for each prisoner, under the resolution of the first Congress, and pay the same to the county trustee forthwith, to be accounted for by the trustee as other county funds. T.C.A. § 41-4-105.

### 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

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).

For additional information, see [Jail Fees](#).

## Ambulance and Emergency Medical Services

### **Reference Number:** CTAS-552

Tennessee county governments are authorized to provide emergency medical services (EMS). This authorization is granted by T.C.A. § 7-61-102: "The governing body of any county or city of the state of Tennessee may provide and maintain and do all things necessary to provide ambulance service as a public service." While counties are authorized to provide EMS, they are not required to provide those services. Counties are authorized under T.C.A. § 5-16-101(b)(2) to operate emergency medical services and charge fees or rates for such services under the urban type public facilities law.

The Emergency Medical Services Act of 1983, T.C.A. § 68-140-301 *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. § 68-140-318), they must comply with this act if they choose to provide them. T.C.A. § 68-140-316.

In Tennessee, there are several different ways that counties ensure that the citizens are provided with adequate emergency medical care. They include:

- County government-operated exclusive provider
- County EMS providing emergency (911) transportation with a third-party ambulance provider for non-emergency transports
- Third-party EMS services with or without regulation by county government

Regulation of third-party ambulance services is authorized by T.C.A. § 7-61-103:

"The governing body of any county or city may license, franchise, or contract for private operators or nonprofit general welfare corporations to provide ambulance service. In order to protect the public health and welfare, any county or city may adopt and enforce reasonable regulations to control the provision of private or nonprofit ambulance service."

The regulation of third-party EMS services is needed to ensure that an acceptable level of emergency medical service is provided to the citizens of the county. These regulations may include a performance-

based contract with penalty provisions for non-compliance, or a determination that it is in the best interest of the county to be the sole provider of ambulance services.

The Tennessee Court of Appeals found in *Morristown Emergency and Rescue Squad, Inc. v. Volunteer Development Company, Inc.* that ambulance service is a public service and that a lack of regulation and control over these services could injure the public. Additionally, under state law, the decision of a county commission not to recognize an additional ambulance service will not be reviewed by the courts unless a challenger can prove such fraud or abuse. Therefore, the legislature has clearly shown intent with respect to ambulance services to allow county governments to replace open competition with regulation or monopolistic power.

Counties are authorized to provide ambulance service to cities or another county as long as the governing body of that city or county has formalized the arrangement. T.C.A. § 7-61-104 states:

(a) No county may provide and maintain, license, franchise, or contract for ambulance service within the boundaries of a city or another county, and no city may provide and maintain, license, franchise, or contract for ambulance service outside its corporate boundaries, without the approval of the governing body of the area to be served.

(b)(1) Except as provided in subdivision (b)(2) [special provisions for Davidson and Shelby counties], any two (2) or more counties and municipalities may enter into agreements with each other and with persons providing both emergency and nonemergency ambulance service for a county or counties on a county-wide basis, for joint or cooperative action to provide for ambulance service as authorized in this chapter.

Counties that have determined that that it is in their best interest to provide exclusive service of emergency and non-emergency ambulance service will need to enter into an interlocal agreement with the cities in the county to ensure that the county ambulance service is the sole provider.

In summary, counties are authorized but not required to provide an ambulance service. Counties may choose to provide the ambulance service exclusively or to regulate third party services; they may also contract for the provision of this service by private entities or other governmental agencies. The decision to provide the service exclusively will not be reviewed by the courts without evidence of fraud or abuse by the county. Counties are authorized to charge fees or rates for such services under the urban type public facilities law.

## Annexation

### **Reference Number:** CTAS-598

In 2014, the law on annexation was substantially revised. Public Chapter 707 made several significant changes to the methods used by municipalities to annex unincorporated territory. Under Public Chapter 707, municipalities may no longer annex by ordinance and may only annex by resolution pursuant to T.C.A. 6-51-104, which generally requires written consent of the affected property owners or approval by referendum. No annexations by resolution of property being used primarily for agriculture will be permitted unless written consent of the property owners is obtained. Municipalities may, by resolution, propose annexation of territory that does not adjoin the boundary of the main part of the municipality if the territory is within the urban growth boundary and is either to be used for industrial, commercial or residential purposes in the future or owned by a governmental entity. Such resolution can only be ratified with written consent of the property owners. T.C.A. § 6-51-104.

A municipality may expand its urban growth boundaries to annex a tract of land without reconvening the coordinating committee or receiving approval from the county or any other municipality if: (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, by notarized petition, consents to being included within the urban growth boundaries of the municipality. T.C.A. § 6-58-118.

Finally, counties having a metropolitan form of government will be permitted to expand their urban services districts using any method authorized by their charter. This includes methods in general law which are referenced in the charter and which were applicable at the time the charter or charter amendment was approved. T.C.A. § 6-51-123.

## Notice of Annexation

### **Reference Number:** CTAS-599

Before any territory may be annexed, the governing body of the municipality must adopt a plan of services establishing, at a minimum, the services to be delivered and the projected timing of the services. Upon adoption of the plan of services, the municipality must forward a copy of the plan of services to the county mayor in whose county the territory being annexed is located. T.C.A. § 6-51-102. The municipality must also forward a copy of the annexation resolution to the county mayor. T.C.A. § 6-51-104. 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. T.C.A. §§ 6-51-103, 6-51-105. 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.

Annexing municipalities are also required to provide a copy of the annexation resolution, along with a copy of the portion of the plan of services dealing with emergency services and a detailed map designating the annexed area, to any affected emergency communications district upon ratification of a resolution to annex. T.C.A. § 6-51-119.

Once an annexation resolution is approved by referendum, the annexing municipality is required to record the resolution with the register of deeds in the county or counties where the annexation was adopted or approved. The annexing municipality must also send a copy of the resolution to the comptroller and the assessor of property of each county affected by the annexation. T.C.A. § 6-51-121.

## Distribution of Taxes after Annexation

**Reference Number:** CTAS-601

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.

T.C.A. § 6-51-115.

## ADA Title II

**Reference Number:** CTAS-2033

Title II of the ADA applies to all activities, services and programs of public entities. A public entity is any state or local government and any of its departments, agencies or other instrumentalities. 42 U.S.C. § 12131(1).

Included under Title II are activities of State legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, and employment. Under section 504 of the Rehabilitation Act, only programs that receive federal funds are covered. Under Title II of the ADA, all activities of State and local governments are covered whether or not they receive Federal funds.

Private entities that operate public accommodations are covered under Title III of the ADA and public transportation services operated by state and local governments are covered by Department of Transportation (DOT) regulations.

## Retention Schedules

### **Reference Number:** CTAS-202

The County Technical Assistance Service, in cooperation with the Tennessee State Library and Archives and the Division of Records Management, is authorized to publish schedules which are to be used as guides by all county public records commissions, county offices, and judges of courts of record in determining which records should, can, and may not be destroyed. T.C.A. § 10-7-404. Those schedules are called the Retention Schedules. The retention schedules describe more than 650 different records series for multiple county offices. This material is organized by county office and by subject. Obviously CTAS recommends that all county public record commissions adopt these schedules as the basis for determining the disposition of county records in their county. When the schedules were developed, they were reviewed and revised by the legal and technical staff of CTAS, by the Division of County Audit in the office of the comptroller, by representatives of the Tennessee State Library and Archives and the Division of Records Management in the State Department of General Services, and by committees and groups of numerous county officials. The language of the statute says that county officials and records commissions shall use these schedules as "guides" in determining whether a record should be kept or destroyed. This does not mean that a County Public Records Commission can never deviate from the CTAS schedules. However, any decision to use a different retention period should be thoughtfully considered and the reasons well documented by the records commission. Any decision to destroy a record sooner than is recommended by the schedules certainly needs to be taken seriously. If your records commission decides that there is a significant reason why a record should be destroyed before the recommended retention period has elapsed, contact CTAS first to discuss the retention period and see if there is a reason why the recommended retention period in the manual should be shortened.

For additional information, see [Appraisal and Disposition of Records](#), Tennessee Archives Management Advisory.

## Current Retention Schedules

### **Reference Number:** CTAS-2068

#### **Policy Statement**

The Tennessee State Library and Archives (TSLA) is given authority by T.C.A. § 10-7-413 to review proposed destruction of county records and to take into the state archives such records proposed for destruction as may have historical research value. TSLA has reviewed and approved these retention guidelines prepared by the County Technical Assistance Service (CTAS).

#### **Permanent Records.**

With respect to records designated in these guidelines as "permanent," TSLA-

1. Concurs entirely with all guidelines herein that appraise records series to be of permanent value;
  2. Reminds local governments that they are obliged by the provisions of T.C.A. § 10-7-503 to make such records permanently and consistently available for public inspection;
  3. Advises that a county archives, which is an integral office of local government and responsible to the local county mayor through the public records commission, is the most effective and economical means of doing this; and
  4. Encourages local governments to establish, support, and maintain such archives.
- In cooperation with CTAS and other agencies, TSLA has designated certain records as permanent based on their value as legal and historical evidence to document the collective experience of the citizens of the community. Such records should be retained and made available to the public in public archives in accordance with T.C.A. § 10-7-503.

#### **Temporary Records.**

TSLA has appraised for historical value the descriptions of temporary records series that are herein recommended for destruction at the ends of their retention terms. Because of the confidence we have in this review and in the guidelines, TSLA certifies that-

- Destruction of records in accordance with these guidelines may be authorized by local public records commissions;

- Public records commissions may issue continuing records disposition authorizations for routine disposals, so that local offices do not have to present repeated requests to the public records commission; and that
- Disposal may then proceed without further review by TSLA; *provided that*
  - (1) Local officials report all such disposals to the local public records commission;
  - (2) The local public records commission certifies to the county mayor that destruction has been authorized in accordance with these guidelines;
  - (3) The certification cites the specific applicable guideline in each case of authorized destruction; and that
  - (4) Local public records commissions consider carefully the needs of local historical and genealogical societies, consult with them, and upon their advice or request use the provisions of T.C.A. § 10-7-414(a) to authorize transfer of records otherwise scheduled for destruction (e.g. marriage bonds or court case files) to the local historical society for retention and historical research.

In the interest of building and maintaining a strong sense of community history, TSLA further encourages local public records commissions, executives, and legislative bodies to provide material and financial support for the local preservation and public inspection of such transferred records in accordance with T.C.A. § 10-7-414(c).

Questions about the possible disposition of county records and the establishment of a county archives and records program for the preservation of permanent value records can be referred to-

Tennessee State Library and Archives  
 403 7th Avenue North  
 Nashville, Tennessee 37243  
 (615) 741-2764

## County Mayor Records

**Reference Number:** CTAS-2051

**County Mayor Records.** The records included in this schedule are only those specific to the office of the county mayor. Records that may be kept in the same format by several county offices (such as employment records, purchasing records, etc.) will be found listed under topical retention schedules elsewhere in this manual. To a certain extent, the records kept by county offices vary from county to county in either the format of record kept, the name given to the record, or the frequency of its occurrence. Since the County Mayor may supervise different departments from county to county, you may find some records of interest to the county mayor in the retention schedule for Accounting, Purchasing and Miscellaneous Records. The fact that a certain record is listed in this schedule does not necessarily indicate that you should have it in your office. It may be a format for record-keeping that was never utilized in your county, or you may keep the record under a different name. If you have records in your office that are not listed in this schedule by name, check the descriptions of the records to see if we may have called it by a different term. If you still cannot locate any entry relative to the record, contact us at the County Technical Assistance Service for guidance in determining the proper disposition of the record and so that we can make note of that record's existence to include it in future revisions of this manual.

Retention Schedule for the Office of the County Mayor		
Description of Record	Retention Period	Legal Authority/Rationale
<b>03-001 Accounts Paid Files and Ledgers—</b> Paid invoices filed by vendor showing company, date, amount, date paid, and warrant number. Ledgers show name of vendor, amount of each invoice, amount paid on each account, and amount outstanding.	Retain five years after creation, then destroy.	Keep for audit and review purposes (T.C.A. § 10-7-404(a)).

<b>Retention Schedule for the Office of the County Mayor</b>		
<b>Description of Record</b>	<b>Retention Period</b>	<b>Legal Authority/Rationale</b>
<b>03-002 Audits, Annual</b> —Audit reports of the offices of county judge, county mayor, trustee, county clerk, register of deeds, circuit court clerk, clerk and master, sheriff, school superintendent, highway chief administrative officer and other offices. Audit reports show name of offices, name of fund or account, account of all receipts and disbursements, date of audit, and signature of auditor.	Preserve one copy of all audits at least 25 years.	Keep for historical purposes and audit and review purposes (T.C.A. § 10-7-404(a)).
<b>03-003 Bids (On Equipment and Supplies)</b> —Shows bidder's name, complete description of item(s), delivery date, amount of bid, and correspondence with bidder.	Successful bids—retain seven years after contract expires, then destroy.  Unsuccessful bids—retain one year after audit, then destroy. Unless under the 1957 Purchasing act in which case they should be kept five years.	Based on statute of limitations for breach of contract actions plus one year (T.C.A. § 28-3-109).  Keep record of unsuccessful bids in case of challenge to bid process (T.C.A. § 5-14-108(g)).
<b>03-004 Bills of Costs</b> —Certified bills of costs in criminal cases submitted for payment by the circuit court clerk, showing names of plaintiff and defendant, offense charged, date of initial action, items of cost, amount of each, date process issued, signature of officer issuing warrant, date filed with circuit court clerk for trial, clerk's certification, date judgment paid, and number of warrant issued in payment.	Retain five years after close of case, then destroy.	Keep for audit and review purposes (T.C.A. § 10-7-404(a)).
<b>03-005 Bonded Indebtedness, Record of</b> — Register book or other accounting showing bond issue, date, and amount set up by year; as bonds and coupons are returned, these are shown in the book.	Permanent record.	Important record of county debt and borrowing.
<b>03-006 Bonds and Coupons</b>	Bonds and coupons may be destroyed after the audit is complete for the fiscal year during which the bonds were duly paid and canceled.	Based on procedures established in T.C.A. § 9-21-123.
<b>03-007 Budget Records and Reports</b> — These pertain to the general fund and highway fund, debt service fund, and general purpose school fund and all other county funds. They show anticipated revenues, anticipated expenditures for	Annual budget preserved permanently in county legislative body minutes. Retain other budget records and reports five years, then destroy.	Temporary record. Keep for audit purposes (T.C.A. § 10-7-404(a)).

<b>Retention Schedule for the Office of the County Mayor</b>		
<b>Description of Record</b>	<b>Retention Period</b>	<b>Legal Authority/Rationale</b>
the year, and fund balance at the end of the year.		
<b>03-008 Contracts</b> —Contracts between county and contractors for construction work, showing name of contractor, date, building specifications, and amount of consideration.	Retain seven years or until expiration of guarantees, then destroy. If no guarantees are involved, destroy seven years after completion of contract.	Based on statute of limitations for breach of contracts (T.C.A. § 28-3-109).
<b>03-009 Easements, Highway Right-of-way</b> — Shows signature of property owner, date, width of easement, and name of road.	To be recorded as a permanent record in register's office. Other copies may be destroyed.	Additional copies are temporary records. Recorded copy is necessary to preserve county property rights.
<b>03-010 Federal Occupational Health and Safety Administration Reports</b> —Annual reports of accidents, inspection, etc.	See listing for OSHA records under the separate retention schedule in this manual for employment records.	
<b>03-011 Federal Revenue Sharing Records</b> — Actual use reports, notices of public hearings, calculation form (SRS9), basic grant records, etc.	Retain five years after creation of record, then destroy.	Keep for audit and review purposes (T.C.A. § 10-7-404(a)).
<b>03-012 General Ledger Accounts</b>	See retention schedule 15 for General Accounting and Purchasing Records.	
<b>03-013 Highway Commission Minutes (If County Mayor serves as Chairman)</b> — Minutes of monthly and other meetings showing actions on any improvements, rebuilding of roads and bridges, awarding bids on equipment for the highway department, and setting salaries for department personnel.	Permanent record.	Actions recorded in minutes are effective until superseded or rescinded. Also keep for historical purposes.
<b>03-014 Insurance Policies</b> —Policies insuring county and/or its departments against risk of loss.	Retain seven years after expiration or replacement by new policy, then destroy, provided all claims on the policy have been settled.	Based on statute of limitations for breach of contract actions (T.C.A. § 28-3-109).
<b>03-015 Invoices</b>	Refer to Accounts Paid Files and Ledgers, above.	
<b>03-016 Mutual Aid Records</b> —Records regarding requests for assistance during emergencies or disasters or responses to requests for assistance, including invoices for reimbursement as required by T.C.A. §§ 58-5-105 and 58-8-111	Retain five years after occurrence.	Keep in case of tort liability or worker's comp cases arise and for audit purposes. Also kept in case event is eligible for FEMA reimbursement.
<b>03-017 Payroll Records</b>	See separate retention schedule for employment records elsewhere in this manual.	

<b>Retention Schedule for the Office of the County Mayor</b>		
<b>Description of Record</b>	<b>Retention Period</b>	<b>Legal Authority/Rationale</b>
<b>03-018 Receipt Books</b> — Shows name, reason for payment, date, and account from which money came.	Retain five years after issuance of last receipt, then destroy.	Keep for audit and review purposes (T.C.A. § 10-7-404(a)).
<b>03-019 Receivable Warrant Books</b> —Stubs or duplicates of warrants issued for money received by the county, showing date, warrant number, amount, from whom received, and to whom distributed.	Retain five years after last entry, then destroy.	Keep for audit and review purposes (T.C.A. § 10-7-404(a)).
<b>03-020 Relief Orders</b> —Record of orders given by the Relief Committee to needy persons and families to be honored by merchants for merchandise and charged to the county.	Destroy annually after audit. (This record series is obsolete in many counties).	Temporary record. Of no use after audit is completed.
<b>03-021 Reports of County Officials</b> — Monthly, quarterly, and annual reports submitted by the various county officials showing revenue and fees collected, reports on persons to whom payments are due for services rendered as jurors, and as court officers; also reports of highway department chief administrative officer and other officials when required by law. These reports should be recorded in the minutes of the county legislative body.	Retain original reports three years, then destroy. If reports are not recorded, preserve permanently one copy of annual reports, or if there is no annual report preserve permanently one copy of all monthly, quarterly, or semiannual reports.	Useful in preparation of budgets for subsequent years. A copy should be retained in county clerk's office with legislative body minutes to cover any historical concerns. So long as that is preserved, this record may be destroyed when no longer useful.
<b>03-022 Trustee's Cash Reconciliation Report</b> —Shows balances at beginning of month, outstanding warrants, cash balances, warrants issued during month, warrants paid, trustee's cash, and outstanding warrants at end of the month.	Retain one year after audit, then destroy.	Keep for audit and review purposes (T.C.A. § 10-7-404(a)).
<b>03-023 Vouchers</b>	Refer to Accounts Paid Files and Ledgers, above.	
<b>03-024 Warrants</b> —Canceled warrants showing date issued, warrant number, amount of warrant, name of payee, and purpose of payment.	Retain five years, then destroy.	Keep for audit and review purposes (T.C.A. § 10-7-404(a)).
<b>03-025 Warrant Duplicate Records (Carbon Copies)</b> —Stubs, carbon copies, or other duplicates of warrants issued by the county mayor in payment of general county expenses showing date issued, warrant number, amount of payment, name of payee, and account chargeable.	Retain five years, then destroy.	Keep for audit and review purposes (T.C.A. § 10-7-404(a)).
<b>03-026 Warrant Registers (Refer to General Ledger Accounts, above)</b> —A record of warrants issued by the county	Retain for 20 years, then destroy.	Keep for audit and review purposes (T.C.A. § 10-7-404(a)).

Retention Schedule for the Office of the County Mayor			
Description of Record	Retention Period	Legal Rationale	Authority/Rationale
mayor or county judge in payment of general county expenses showing warrant number, name of payee, purpose of payment, date issued, amount of warrant, and amount chargeable.			

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