



May 19, 2024

County Clerk

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained 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 CTAS website material.

Sincerely,

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County Clerk

Reference Number: CTAS-51

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

General-County Clerk

Reference Number: CTAS-418

Qualifications-County Clerk

Reference Number: CTAS-52

The office of county clerk does not carry any qualifications beyond the general qualifications for county offices.

Oath of Office and Bond-County Clerk

Reference Number: CTAS-53

Before entering into office, the county clerk must take and subscribe to the constitutional oath and the oath of office known as the fidelity oath. T.C.A. § 8-18-111. Oaths of office are covered under the General Information tab of the County Offices topic. The deputy's oath of office is the same as that of the county clerk; it must be certified, filed, and endorsed in the same manner. T.C.A. § 8-18-112.

Prior to entering into the duties of the office, the county clerk must post either a \$100,000 official bond in counties with a population of 15,000 or more, or a \$50,000 bond in counties with a population of less than 15,000. T.C.A. § 18-6-101. The bond must be approved by the county mayor. If a County Clerk is acting as clerk of a court, the judge of that court should also approve the official bond, and may require a greater bond. Bonds are covered in more detail under the General Information tab of the County Offices topic.

Compensation-County Clerk

Reference Number: CTAS-54

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

More information on Compensation can be found under the General Information tab for County Offices.

Fee or Non-Fee Office-County Clerk

Reference Number: CTAS-744

The county clerk's interaction with the county legislative body determines whether or not the county clerk maintains a fee account for the payment of the expenses of the office, including the salary of the county clerk. The two methods for accounting for fees and commissions received by the county clerk, the Fee System and the Salary System, are covered under the County Offices General Information tab.

Deputies and Assistants-County Clerk

Reference Number: CTAS-55

The county clerk may receive authority to employ deputies and assistants through a letter of agreement or court order. If the county clerk decides to petition for additional deputies or assistants or additional salary amounts, the petition is filed in the chancery court and the county mayor defends the salary suit. T.C.A. § 8-20-101. Additional information about deputies and assistants is found under the General Information tab for County Offices.

Duties-County Clerk

Reference Number: CTAS-56

The county clerk has numerous duties, including acting as clerk of the county legislative body, issuing motor vehicle titles and registrations, collecting privilege taxes, and overseeing the issuance of beer permits, marriage licenses, and pawnbroker licenses. In addition to these statutory duties, some county clerks also issue certified copies of birth certificates under T.C.A. § 68-3-206, and some county clerks contract with the department of safety to issue driver licenses under T.C.A. § 55-50-331.

The law regulating the licensing and operations of title pledge lenders is found in Tennessee Title Pledge Act, T.C.A. § 45-15-101 *et seq.*, which was amended in 2005 to transfer responsibility for licensing and regulating title pledge lenders from county clerks to the Tennessee Department of Financial Institutions. This set of statutes is separate from the laws regulating pawnbrokers.

The county clerk was previously responsible for issuing amusement ride permits, but the law was amended in 2008 to transfer this responsibility to the state Department of Commerce And Insurance. T.C.A. § 68-121-101 *et seq.*

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. § 5-5-105;
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.

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.

Notary Public Applications

Reference Number: CTAS-666

A notary public is a state official with statewide jurisdiction whose duties are prescribed by statute. Op. Tenn. Att'y Gen. 07-157 (November 26, 2007). However, the county clerk and the county legislative body are involved in the application and approval process for notaries before they are approved by the governor.

Beginning July 1, 2019, a person who has been commissioned as a notary public may apply to the Tennessee secretary of state to be commissioned as an online notary public under the Online Notary Public Act, T.C.A. §§ 8-16-301 *et seq.* The county clerk and the county legislative body are not involved in the commission of online notaries.

For information about how to become a notary as well as duties and fee information, please refer to the Secretary of State's website: [How to become a Notary | Tennessee Secretary of State \(tn.gov\)](https://www.tn.gov)

Qualifications, Election and Powers

Reference Number: CTAS-667

All notaries must be 18 years of age and be either a United States citizen or a legal permanent resident. T.C.A. § 8-16-101. Notaries are elected by the county legislative body in the county in which they reside or have their principal place of business (T.C.A. § 8-16-101), and are approved by the governor. T.C.A. § 8-16-102. A person with a principal place of business in a Tennessee county may be elected a notary in that county even though that person's residence is in another state. T.C.A. § 8-16-101. The same basic disqualifications exist for notaries as for other county offices. T.C.A. § 8-18-101. A notary may be removed from office just as any other official. The notary's term is four (4) years, beginning on the date of issuance of the commission by the governor T.C.A. § 8-16-103. Renewal is by the same method as the original procedure.

In addition to the qualifications discussed above, an applicant for notary public must certify, under penalty of perjury, that the person (1) has never been removed from office as a notary public for official misconduct, (2) has never had a notarial commission revoked or suspended by this or any other state, and (3) has never been found by a court of his state or any other state to have engaged in the unauthorized practice of law. T.C.A. § 8-16-101.

A fee of twelve dollars (\$12.00) is paid to the county clerk in the county of election for issuance of a commission, (five dollars (\$5.00) to the secretary of state under T.C.A. § 8-21-201 and seven dollars (\$7.00) to the county clerk under T.C.A. §§ 8-16-106 and 8-21-701. The county clerk will certify the election and forward the five dollar (\$5.00) fee to the secretary of state, who, upon receipt of the certificate and the fee, will forward the commission to the county clerk issued by the governor. The county clerk notifies the person to whom the commission was issued, and, after the oath has been taken and bond posted, the county clerk delivers the commission to the person elected. The county clerk receives a fee of two dollars (\$2.00) for taking and recording the official bond under T.C.A. § 8-21-701. The county clerk must keep a record of the issuance and expiration dates of commissions, noting such on the bond and in a minute entry. T.C.A. § 8-16-107.

Notaries are required to live in or have their principal place of business in the county from which they are elected only at the time of their election. If the notary moves to another county, the notary must notify the county clerk in the county from which the notary was elected and pay a fee of seven dollars (\$7.00). The county clerk must notify the secretary of state of the change of address and forward two dollars (\$2.00) of the fee to the secretary of state. The county clerk retains the remaining five dollars (\$5.00). T.C.A. § 8-16-109. If a notary moves out of state, the notary is no longer qualified to act; it is a Class C misdemeanor for a notary to take acknowledgements after moving out of the state. T.C.A. § 8-16-110.

All notaries public are authorized to act in any county in the state and may acknowledge signatures, administer oaths, take depositions, qualify parties in bills in chancery, and take affidavits T.C.A. § 8-16-112. Notaries are entitled to charge reasonable fees for their services, and if a fee is charged the notary must keep a record, either electronically or in a well-bound book, of each of the notary's acts, attestations, protestations, and other instruments of publication. T.C.A. § 8-21-1201.

Notary Public Bonds

Reference Number: CTAS-668

After election by the county legislative body, and before commencing duties or exercising powers, a notary must post bond. T.C.A. § 8-16-104. Bonds are covered in detail under the General Information tab of the County Offices topic.

Oaths-Notary Public

Reference Number: CTAS-669

The notary must take and subscribe to an oath before the County Clerk or a deputy County Clerk to support the Constitutions of the State of Tennessee and the United States and that the notary will, without favor or partiality, honestly, faithfully, and diligently discharge the duties of notary public. T.C.A. § 8-16-105.

Notary Public Seal

Reference Number: CTAS-670

The notary must purchase an official seal. The secretary of state prescribes the design of the seal, which is to be imprinted by a rubber or other type stamp in any color other than black or yellow as long as it is clearly legible and appears black on a non-color copier; however, the law provides that a document will not be invalid nor will there be any criminal or civil liability if a notary uses the wrong color ink. Also, the use of an embossed notary seal after May 12, 2003, does not render an acknowledgment defective. The

seal must be surrendered to the county legislative body upon expiration of the notary's term of office or resignation and the personal representative must surrender the seal in the event of the death of the notary. T.C.A. § 8-16-114. The current design prescribed by the Secretary of State is circular, and has the notary's name (as commissioned) printed at the top, the county of election at the bottom, and State of Tennessee Notary Public in the center. The county clerk may obtain the official seal for the notary public at the notary's request. For providing this service the county clerk may charge a fee not exceeding twenty percent (20%) of the cost of the seal. T.C.A. § 8-16-114.

Statutory Form Acknowledgment

Reference Number: CTAS-671

Statutory forms for acknowledgment of instruments are set out in T.C.A. § 66-22-107 (for natural persons) and T.C.A. § 66-22-108 (for partnerships and corporations) and T.C.A. § 66-22-114 (another general form). A basic form for acknowledgment of instruments signed by a natural person is as follows T.C.A. § 66-22-107:

State of _____

County of _____

Personally appeared before me, [name of officer], [official capacity of officer], [name of the natural person executing the instrument], the within named bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the within instrument for the purposes therein contained.

Witness my hand, at office, this ____ day of _____, 20____.

Although the exact language of the forms is recommended, acknowledgments complying with the substance thereof are valid. T.C.A. § 66-22-114.

In using the above quoted forms, the notary should make certain the proper pronoun, he, she, they, etc., is used. So far as possible, there should be no changes or alterations in the body of the acknowledgment; but should they be required, the notary should initial such changes wherever they appear.

The expiration date of the notary's commission must appear on every certificate of acknowledgment. However, failure to include the expiration date does not invalidate the instrument. T.C.A. § 8-16-115.

Notary Public Fees

Reference Number: CTAS-2203

Under T.C.A. § 8-21-1201, a notary public or the notary's employer may charge reasonable fees and compensation for the notary's services. If a fee is charged, the notary must keep a record either electronically or in a well-bound book of each action. If a separate fee is not charged for the notary's services, the notary is not required to keep a record of the action.

Records-County Clerk

Reference Number: CTAS-672

The county clerk serves as the custodian of a wide variety of records which are required to be filed and maintained in the office of the county clerk. Some of these documents are required to be filed and maintained in the office of the county clerk so that members of the public may verify certain information of public concern. The maintenance of these records is one of the most important duties of the county clerk, as the county clerk's office serves as one of the information centers for the county. Some of the many records maintained in the office of the county clerk are discussed below.

In all national, state, and most local elections, the County Election Commission files one copy of its certificate of election returns in the office of the county clerk immediately after the election. The county clerk must provide a receipt acknowledging that the documents have been filed in the county clerk's office. T.C.A. § 2-8-106.

After an election to abolish a city charter, if the majority of voters approve "no charter" the election commissioners are required to make triplicate certificates of the election, filing one with the original petition with the county clerk. When all certificates have been duly filed, the corporation becomes extinct. If the majority votes for the "charter," the commissioners make only one return which is filed with the county clerk with the original petition to abolish the charter. T.C.A. § 6-52-205.

Copies of a proposed metropolitan charter are filed by the charter commission with the county clerk and other designated officials. The proposed charter must be open to public inspection by any interested

person. T.C.A. § 7-2-105. The election returns are sent by the election commission to the Secretary of State, who issues a proclamation of the adoption or rejection of the proposal. One copy is sent to the county clerk who attaches it to the copy of the proposed charter. If the charter was adopted, the clerk delivers the county clerk's copy of the charter and proclamation to the officer of the new government as the charter may direct. T.C.A. § 7-2-106.

Before a local bar association can receive a copy of each year's acts of the General Assembly for its library, the county clerk must certify the name and address of the association to the Secretary of State. In the event the association ceases to exist or to maintain a law library, all copies of the acts are to be turned over to the county clerk. T.C.A. § 12-6-102.

Pedigree books are maintained by the county clerk for registering the pedigree of jacks or bulls used for public breeding. The registrant makes an oath that the pedigree is genuine. T.C.A. § 44-7-301.

County indigent institution records of vouchers for expenditures and books of accounts are examined by the county mayor at the end of each year. If the vouchers are approved, they are filed in the county clerk's office and preserved in separate files. T.C.A. § 71-5-2208.

Counties are authorized to make appropriations to assist charities. Any charity desiring financial assistance must file an annual report, including a copy of its annual audit, its program which serves the residents of the county, and the proposed use of the county assistance, with the county clerk. Instead of the annual audit, the organization may file an annual report detailing all receipts and expenditures. The report must be prepared and certified by the chief financial officer of the organization. T.C.A. § 5-9-109.

General contractors are no longer required to record their licenses in the office of the county clerk, but the county clerk can obtain a roster of licensed contractors from the state board of licensing contractors by requesting the same in writing. T.C.A. § 62-6-110. Veterinarians also are no longer required to record their licenses in the county clerk's office. T.C.A. § 63-12-118, repealed. The requirement that real estate brokers file a bond with the county clerk has also been repealed. T.C.A. § 62-13-306, repealed. The former duties of the county clerk in filing contractors' bonds to discharge mechanics' and materialmen's liens were transferred to the register of deeds effective in 1994. T.C.A. § 66-11-142.

County clerks are required to index the records in their offices, and to cross-index records pertaining to more than one party. T.C.A. § 10-7-201. Records must be open to public inspection during business hours (T.C.A. § 10-7-503), and copies may be made of any public record. T.C.A. § 10-7-506.

The county legislative body is authorized to have the record books of the county clerk rebound in order to preserve them and keep them in proper condition. T.C.A. § 10-7-119. During the rebinding of these records, the liability of the county clerk on his or her official bond for the proper safekeeping of such books is suspended. T.C.A. § 10-7-120.

Public Records

Reference Number: CTAS-673

All county records, including those in the county clerk's office, must be open for personal inspection by any citizen of Tennessee during business hours of the office. County officials in charge of these records may not refuse the right of any citizen to inspect them unless another statute specifically provides otherwise or they are included in the list of specific records that are to be kept confidential under T.C.A. § 10-7-504 or some other legal authority. Information made confidential by statute must be redacted whenever possible. If it is not practicable for a requested record to be promptly made available for inspection, the records custodian must, within seven (7) business days, either: (i) make the record available; (ii) deny the request in writing stating the basis for the denial; or (iii) furnish the requestor a response form stating the time reasonably necessary to produce such record. T.C.A. § 10-7-503.

The state's Office of Open Records Counsel, created in 2008, was charged with developing a schedule of reasonable charges which may be used as a guideline in establishing charges or fees, if any, to charge a citizen requesting copies of public records. The Office of Open Records Counsel issued its Schedule of Reasonable Charges for Copies of Public Records in October 2008. Records custodians are authorized to charge reasonable costs consistent with the schedule. T.C.A. § 10-7-503. The schedule, together with instructions for records custodians, can be found on the website of the Office of Open Records Counsel.

Charges established under separate legal authority are not governed by the schedule, and are not to be added to or combined with charges authorized under the schedule. Questions regarding the schedule should be directed to the *Office of Open Records Counsel*.

A citizen denied access to a public record is entitled to file a petition for inspection in the circuit court or the chancery court of the county in which the records are located, or in any other court of that county having equity jurisdiction. The county official denying access to the record has the burden of proof to

justify the reason for nondisclosure. If the court directs disclosure, the county official shall not be held criminally or civilly liable for the release of the records, nor shall he or she be responsible for any damages caused by the release of the information. If the refusal to disclose the record is willful, the court may assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the county official. T.C.A. § 10-7-505.

In addition to creating a schedule of charges for records requests, the Office of Open Records Counsel has been charged with the duty to answer questions and issue advisory opinions to public officials regarding public records. T.C.A. § 8-4-601. This office should be a valuable resource for questions on open records.

Confidential Tax Information

Reference Number: CTAS-674

There are specific statutes requiring confidentiality of state tax information. The general statute (T.C.A. § 67-1-1702(a)) provides:

Notwithstanding any law to the contrary, returns, tax information and tax administration information shall be confidential and, except as authorized by this part, no officer or employee of the department or of any office of a district attorney general or any state or local law enforcement agency, and no other person, or officer or employee of the state, who has or had access to such information shall disclose any such information obtained by such officer or employee in any manner in connection with such officer's or employee's service as an officer or employee, or obtained pursuant to this part, or obtained otherwise.

Violation of this confidentiality statute is a criminal offense.

Because the statute makes reference to "tax information" and "returns" which are defined with reference to taxes collected by or on behalf of the state (T.C.A. § 67-1-1701), there has been confusion over the release of tax information which is purely local, such as hotel/motel tax. The Tennessee Attorney General had issued an opinion that information regarding local hotel/motel taxes was subject to the state confidentiality statute (Attorney General Opinion No. U94-059 dated March 24, 1994), but T.C.A. § 67-1-1702 was amended in 2016 to state that these confidentiality provisions (T.C.A. § 67-1-1701 *et seq.*) do not apply to hotel/motel taxes. Accordingly, hotel/motel tax records are no longer confidential.

In addition to the general statute, business tax returns, statements, reports, and audits of the taxpayer's records are confidential and cannot be disclosed except to the taxpayer, the taxpayer's attorney, or an authorized governmental entity (T.C.A. § 67-4-722), but the name and address of any present or former business owner as appearing on a business license or application therefor is expressly declared to be a public record and not confidential. T.C.A. § 67-4-722.

Uniform Motor Vehicle Records Disclosure Act

Reference Number: CTAS-675

Personal information obtained in connection with motor vehicle records is declared confidential and cannot be disclosed except under specified circumstances. "Personal information" is defined as information that identifies a person, and includes an individual's photograph, computerized image, social security number, driver identification number, name, address (but not the five-digit zip code), telephone number, and medical or disability information, but it does not include information on vehicular accidents, driving or equipment-related violations, or driver license or registration status. T.C.A. § 55-25-103. Personal information may be disclosed only under the following circumstances:

1. For safety, environmental and federal compliance purposes, as provided in T.C.A. § 55-25-105.
2. With the written consent of the person who is the subject of the information. T.C.A. § 55-25-106.
3. For use by a government agency, including any court or law enforcement agency, in carrying out its functions, or any private person acting on behalf of a government agency in carrying out its functions. T.C.A. § 55-25-107.
4. For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles, parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers. T.C.A. § 55-25-107.
5. For use in the normal course of business by a legitimate business, but only to verify the

accuracy of personal information submitted by an individual to the business, and if the information submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud, by pursuing legal remedies against, or recovering on a debt or security interest against the individual. T.C.A. § 55-25-107.

6. For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to a court order. T.C.A. § 55-25-107.
7. For use in research activities, and for use in producing statistical reports, so long as the information is not published, redisclosed or used to contact individuals. T.C.A. § 55-25-107.
8. For use by any insurer or insurance support organization, or by a self-insured entity, its agents, employees or contractors, in connection with claims investigation activities, anti-fraud activities, rating or underwriting. T.C.A. § 55-25-107.
9. For use in providing notice to owners of towed or impounded vehicles. T.C.A. § 55-25-107.
10. For use by any private investigative agency or licensed security service for any permitted purpose. T.C.A. § 55-25-107.
11. For use by any employer or its agent or insurer to obtain or verify information relating to the holder of a commercial driver license that is required under the Commercial Motor Vehicle Safety Act of 1986. T.C.A. § 55-25-107.
12. In connection with the operation of private toll transportation facilities. T.C.A. § 55-25-107.
13. For any other use in response to requests for individual motor vehicle records if the state has obtained the express consent of the person to whom the personal information pertains. T.C.A. § 55-25-107.
14. For bulk distribution for surveys, marketing or solicitation in accordance with procedures adopted by the department, after persons have been given an opportunity to prohibit such disclosure. T.C.A. § 55-25-107.
15. By any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains. T.C.A. § 55-25-107.
16. For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety. T.C.A. § 55-25-107.

Personal information may be disclosed to any requesting person, regardless of intended use, if the forms for issuance or renewal of licenses, registrations, titles or identification documents contain a conspicuous notice that the personal information may be disclosed to any person making a request for the information, and provide in a clear and conspicuous manner a method for the applicant to prohibit such disclosure. T.C.A. § 55-25-106. Thus, as long as the forms contain the proper disclosure information, it will be the applicant's responsibility to take action to prohibit disclosure of his or her personal information. Otherwise, the information may be disclosed.

The Department of Safety is authorized to require the requesting person to meet certain conditions relative to the identity of the person, and if relevant, the authorized use of the information, or the consent of the subject. The conditions may include the filing of a written application containing such information and certification requirements as the department may prescribe. T.C.A. § 55-25-109. Anyone who misrepresents his or her identity or makes a false statement in connection with the request for disclosure of personal information is guilty of a Class C misdemeanor, punishable by a fine up to \$1,000. T.C.A. § 55-25-112.

Persons who obtain personal information are limited in their ability to resell or redisclose that information as provided in T.C.A. § 55-25-107, and are required to keep records of the information obtained and the permitted use for which it was obtained for a period of five years. These requirements do not apply, however, if the person who is the subject of the disclosure has not taken action to prohibit disclosure after having been given the opportunity to do so. T.C.A. § 55-25-107.

The department and the county clerk are authorized to charge a reasonable fee not over one dollar (\$1.00) for each person on whom information is requested. T.C.A. § 55-2-106.

Confidential Employee Records

Reference Number: CTAS-676

For county governments, one important class of confidential records involves personal information of

state, county, municipal, and other public employees. An employee's, including a former employee's, home telephone and personal cell phone numbers, bank account information, health savings account information, retirement account information, pension account information, social security number, residential address, driver's license information (except where driving is a part of the employee's job), emergency contact information, and similar information for the employee's family and household members are confidential. Where this confidential information is part of a file or document that would otherwise be public information, such information shall be redacted if possible so that the public may still have access to the non-confidential portion of the file or document. T.C.A. § 10-7-504. The information made confidential under this statute is to be redacted whenever possible so that it does not limit the public's access to other information which is not confidential.

Records on Computer Media

Reference Number: CTAS-677

The county clerk and other governmental officials are authorized to maintain on a computer any information required to be kept as a record, instead of maintaining bound books or paper records, but only if certain standards are met. The standards for maintaining records on computer media are (T.C.A. § 10-7-121):

1. The information must be available for public inspection, unless it is a confidential record according to law;
2. Due care must be taken to maintain the information that is a public record during the time required for retention;
3. All daily information generated and stored in the computer must be copied daily to computer storage media, and all copied storage media over one week old must be stored at another location; and
4. The official must be able to provide a paper copy of the information when needed or when requested by a member of the public.

Also, upon the promulgation of proper rules by the secretary of state, county officers may destroy or archive elsewhere, as appropriate, original paper records upon reproduction onto computer storage media, or in any appropriate electronic medium, after following certain procedures and standards and having the destruction or record transfer approved by the County Public Records Commission and the State Library and Archives. T.C.A. § 10-7-404.

Effective in 2008, all municipalities and counties must create safeguards and procedures for ensuring that confidential information regarding citizens is securely protected on all laptop computers and other removable storage devices used by such municipality or county. Failure to comply creates a cause of action or claim for damages against the municipality or county if a citizen of this state proves by clear and convincing evidence that such citizen was a victim of identity theft due to a failure to provide safeguards and procedures regarding that citizen's confidential information. T.C.A. § 47-18-2901.

Storage and Disposition of Records

Reference Number: CTAS-678

A large number of records are required to be maintained by the county clerk. Storage problems usually occur which require the county clerk to seek a method to dispose of old and obsolete records. Since many of the records maintained by the county clerk are historically significant, great care must be taken in the storage and/or disposition of old or less frequently utilized records.

Recognizing the problems that counties encounter with records disposition, the General Assembly created a statutory framework for the storage or disposition of county records T.C.A. § 10-7-401 *et seq.* Each county is required to establish a County Public Records Commission to oversee the storage or disposal process. The county clerk serves as a member of the Commission. T.C.A. § 10-7-401. Original permanent records which have been reproduced or microfilmed cannot be legally destroyed without approval of the Commission. T.C.A. § 10-7-404. See Retention Schedules for county clerks.

Archives and Records Management Fee

Reference Number: CTAS-679

All counties with a County Public Records Commission are authorized to establish by resolution of the county legislative body, and collect through all entities creating public records (except the register of deeds and court clerks) an archives and records management fee of up to five dollars (\$5.00) per document filed. The county is authorized to collect an archives and records management fee of up to five

dollars (\$5.00) through court clerks on documents filed with the clerk for the purpose of initiating a legal proceeding. Monies collected through these fees must be designated exclusively for duplicating, storing, and maintaining any records required by law to be kept permanently. T.C.A. § 10-7-408.

Privilege Taxes

Reference Number: CTAS-680

The county clerk serves as the collector of certain privilege taxes imposed by the state, county or municipality on merchants, persons, companies, firms, corporations or agents, unless otherwise provided by law. T.C.A. § 67-4-103. In addition to the privilege taxes on marriage, privilege taxes which may be collected by the county clerk include the annual privilege tax on the business of selling, distributing, storing or manufacturing beer (T.C.A. § 57-5-104), the county motor vehicle privilege tax (T.C.A. § 5-8-102), and county hotel/motel taxes. The county clerk also issues business licenses and collects the \$15 fee (T.C.A. § 67-4-723), and collects the privilege tax on transient vendors, including antique malls, flea markets, antique shows, craft shows, gun shows, and auto shows (T.C.A. § 67-4-710); however, business taxes are collected by the state department of revenue.

There are several methods for levying privilege taxes. For example, the county motor vehicle privilege tax (wheel tax) can be levied by private act, by referendum approved by resolution of the county legislative body, or by passage of a resolution of the county legislative body by a two-thirds (2/3) vote at two (2) consecutive meetings (with the potential for a referendum upon petition of the voters). T.C.A. § 5-8-102. Hotel/motel taxes are levied by private act of the General Assembly, with a few exceptions. Some privilege taxes are levied under general law, such as the annual beer tax under T.C.A. § 57-5-104. Each tax usually contains provisions for collection of that tax and mechanisms for collecting delinquent taxes. General law provisions for collection of privilege taxes may also apply.

The county clerk collects all taxes on merchants, persons, companies, firms, corporations, agents, or traders, and all privileges, unless otherwise provided by law. T.C.A. § 67-4-103. Licenses for exercising all privileges for which specific license provisions are not otherwise made are to be issued when the applicant pays to the county clerk the appropriate taxes and fees for the exercise of the privilege. T.C.A. § 67-4-104. The person, partnership, or corporation is required to complete an application signed by all owners, and the application is retained in a book maintained by the county clerk for public inspection. No license may be issued until such an application is completed and delivered to the county clerk. T.C.A. § 67-4-105. The county clerk can issue licenses quarterly, unless the term of the license is provided for in the legislation authorizing the privilege tax. T.C.A. § 67-4-104. At the time the license is issued, all privilege taxes must be paid to the county clerk, and the county clerk is subject to certain fines and penalties for failing to pay these taxes over to the commissioner of revenue, county trustee, or municipal authorities, as appropriate. T.C.A. § 67-4-103. Certain persons are exempt from paying privilege taxes on selling taxable articles, including indigent persons, certain agricultural association business agents, and blind persons who have received an exemption from the county legislative body. T.C.A. § 67-4-102.

The assessor is required to notify the county clerk of all persons engaged in business in any way liable for the payment of privilege taxes and the county clerk and the county mayor are to compare the list of names provided by the assessor with the list of persons paying privilege taxes, and report the result to the county legislative body at the July meeting, at which time the list is to be read and entered into the minutes. T.C.A. § 67-4-108. If any person sells goods or exercises any privilege without obtaining a required license, the county clerk is directed to issue distress warrants to the sheriff requiring the sheriff to levy a tax in double the amount of the highest tax imposed upon such privilege, plus costs and commission, by seizing and selling the property of the taxpayer; in the alternative, suit may be brought in circuit or chancery court for such double tax. T.C.A. § 67-4-109. Also, if the taxpayer is required to post a bond, the county clerk is required to turn over such bonds to the county attorney within thirty (30) days after the bond is due and payable, and notify the Commissioner of Revenue and the county legislative body that such bonds were turned over for collection. T.C.A. § 67-4-112.

The statute of limitations for collection of state, county, and municipal privilege taxes collected by the county clerk is six years, after which time collection is barred. This six-year period commences on January 1 of the year in which the taxes were to be paid by the taxpayer. T.C.A. § 67-1-1501.

Motor Vehicle Titling and Registration

Reference Number: CTAS-681

The county clerk, as agent for the State Department of Revenue's Vehicle Services Division, has very important duties with regard to the titling and registration of motor vehicles, motorized bicycles, trailers or semi-trailers when moved or driven on the highways of this state, and titling of certain mobile homes/

manufactured homes. These matters are covered in materials provided by the Tennessee Department of Revenue.

2021 Precious Cargo Act — Effective January 1, 2022, Public Chapter 55, known as the “2021 Precious Cargo Act” empowers citizens with an intellectual disability, developmental disability, or a medical condition, that may impede communications to law enforcement and first responders during a traffic stop or welfare check, to request the department include a designation of the need for assistance in the Tennessee Vehicle Title and Registration System (VTRS) database. Citizens must request the designation with the initial application to register the motor vehicle or upon renewal. The request must be accompanied by a written statement from a licensed physician, psychiatrist, psychologist, senior psychological examiner, or neurologist, stating that the operator of the vehicle has a disability or condition that may impede communications with law enforcement or first responders. See Title 55, Chapter 21 of the Tennessee Code Annotated.

The information submitted to the department must be provided to law enforcement and only be used to help ensure safe and efficient interaction with law enforcement and the person with a disability or medical condition. Title 55, Chapter 21 of the Tennessee Code Annotated.

Mail Orders of Plates and Decals — The county clerk provides a mail order service for the renewals of registrations. Registrants may apply for and receive renewal plates or decals through the United States postal service. Each county clerk may impose a fee of \$5.00 for plates and \$2.00 for decals for the service and handling mail orders. Each county clerk may increase the fees provided above in an amount not to exceed an applicable United States postal service price increase in a given year. T.C.A. § 55-4-105.

Manufactured Homes

Reference Number: CTAS-682

A “manufactured home” is defined as a structure which is transportable in one or more sections and which, in the traveling mode, is at least eight feet in width and at least forty (40) feet in length, or when erected on site is at least three hundred twenty (320) square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems; a manufactured home also may be any structure that meets all of the foregoing requirements except size, and which the manufacturer has voluntarily filed a certification with the Department of Housing and Urban Development and complies with the standards of that agency. Manufactured homes are sometimes referred to as mobile homes or house trailers. T.C.A. § 55-1-105.

Titling of Manufactured Homes

Reference Number: CTAS-683

The ownership of a manufactured home is legally recorded by either obtaining a certificate of title from the county clerk or by filing an affidavit of affixation with the register of deeds. These types of structures generally are considered personal property and are titled in a manner similar to motor vehicles by certificate of title, but under certain circumstances these structures may be so permanently affixed to the land that they become more like a house, and ownership is recorded in the real property records. Whether the structure is considered personal property or real property is important to lenders trying to perfect a security interest in these structures. The distinction is also important for bankruptcy law purposes, because a debtor in bankruptcy is allowed certain preferences with regard to real property that is the debtor’s principal residence.

Affidavit of Affixation

Reference Number: CTAS-684

When the real estate and the manufactured home are owned by the same owner(s), and the manufactured home is affixed to the real estate, the owner(s) may record an Affidavit of Affixation. T.C.A. § 55-3-128. The recording of an Affidavit of Affixation in the register of deeds’ office will be prima facie evidence that the manufactured home is affixed to real property as an improvement to the property, so that lenders will be able to rely on the affidavit to file and properly perfect their liens, and bankruptcy judges may rely on the affidavit in connection with determining whether a manufactured home qualifies as a principal residence. This also means that the manufactured home is to be taxed as part of the real property to which it is affixed, so the assessor of property will need to know when these affidavits are filed so that the property may be added to the county’s tax rolls.

The Affidavit of Affixation is required to be substantially in the form set out in T.C.A. § 55-3-128. The

owner of the manufactured home and real property must answer the questions listed on the affidavit under oath, and then file the completed affidavit in the office of the register of deeds. The register records the instrument with the real estate records after receiving the proper fees. A copy of the affidavit also must be filed with the assessor of property.

The Affidavit of Affixation is to be used only when the owner of the manufactured home also owns the real estate to which the home is affixed. If the land is owned by someone other than the owner of the manufactured home, a certificate of title must be obtained regardless of whether the home is affixed to the land.

Certificate of Title

Reference Number: CTAS-685

Manufactured homes which are not affixed to land, and those which are affixed to land owned by someone other than the owner of the manufactured home, are issued certificates of title. For manufactured homes that are affixed to the owner's land and for which an Affidavit of Affixation has been recorded, no certificate of title is necessary. For example, it is not necessary to issue a certificate of title for a new manufactured home purchased by a land owner to be affixed to that land if the owner is filing an Affidavit of Affixation with the register of deeds.

If a manufactured home is affixed to a parcel of real property with the same owner, upon filing an Affidavit of Affixation the owner is required to surrender the title for cancellation by providing the following documentation to the county clerk:

1. The certificate(s) of title to the manufactured home duly endorsed to show release of any lienholders; or if the manufactured home is new, the manufacturer's statement or certificate of origin; or if the manufactured home is not covered by a certificate of title and the owner is unable to produce the manufacturer's certificate of origin, a statement to that effect in the Affidavit of Affixation;
2. A certified copy of the deed to the real property to which the manufactured home has been affixed as recorded in the register's office; and
3. A certified copy of the Affidavit of Affixation recorded in the register's office.

T.C.A. § 55-3-128.

No fee is provided in the statute for either the county clerk or the state for the surrender of the certificate of title.

The surrender of the certificate of title is mandatory. The owner cannot continue to hold a certificate of title for the manufactured home after filing an Affidavit of Affixation with the register.

If the owner of a manufactured home who has surrendered the certificate of title later wants to have the title reissued (which may happen if the owner sells the manufactured home without selling the real property), this may be done by applying for a new certificate of title with the county clerk and providing the following:

1. An abstract of title showing legal ownership of the manufactured home and real property and any mortgages recorded on the real property;
2. For every lienholder shown on the title abstract, either a release of the lien or a lienor's statement that the lien is to be recorded on the certificate of title; and
3. Payment of the required fees for issuance of the certificate of title.

T.C.A. § 55-3-129.

Installation Permits

Reference Number: CTAS-686

County clerks are responsible for selling installation permits to licensed installers of manufactured homes. Under T.C.A. § 68-126-406, prior to installing a manufactured home an installer must obtain a permit and pay an inspection fee of forty-five dollars (\$45.00). A permit is required for each installation. The permit is purchased from the county clerk of any county by paying the inspection fee. The county clerk issues a permit decal which must be placed on the electrical panel box cover of the manufactured home. The installer must write the address of the home on the permit, and the electrical inspector cannot authorize the electricity to be turned on at the home if no installation permit decal is present.

Of the \$45.00 fee, the county clerk retains eight dollars (\$8.00) and remits thirty-seven dollars (\$37.00) to the commissioner of commerce and insurance (to be used to defray inspection costs) on a monthly

basis, no later than the twentieth (20th) day of the month following the month in which the fee is paid, with a report showing the license numbers of the installers and retailers who purchase permits and the corresponding permit numbers sold. The decals are furnished to the county clerks by the commissioner. County clerks are required to account for each permit decal issued.

If a permit is lost or destroyed, the county clerk may issue a replacement decal upon payment of an additional forty-five dollars (\$45.00) and submission of an affidavit stating that the decal was lost or destroyed. The county clerk retains eight dollars (\$8.00) and remits a copy of the affidavit and thirty-seven dollars (\$37.00) to the commissioner of commerce and insurance with the monthly report.

Inspections are handled by the Department of Commerce and Insurance, as is licensing of installers and retailers of manufactured homes. The responsibilities of the county clerk are limited to selling installation permits, collecting the inspection fees, and filing reports and remitting fees monthly to the commissioner of commerce and insurance.

Miscellaneous Powers and Duties of the County Clerk

Reference Number: CTAS-687

The county clerk has many miscellaneous powers and duties which he or she is authorized or required to perform by various statutes. These powers and duties include such varied tasks as serving as the clerk of drainage districts, taking depositions, and issuing copies of birth certificates.

Drainage and Levee Districts

Reference Number: CTAS-688

The county clerk has numerous responsibilities with regard to drainage or levee districts located in the county. The county clerk receives petitions for the establishment of drainage and levee districts, and approves and determines the amount of the bond which is filed with the county clerk at the time of the filing of the petition to secure the cost of establishing the drainage and levee district. T.C.A. § 69-5-103. In counties where a district is sought to be established, the county clerk maintains a book known as the "drainage record" of all proceedings involving the creation and operation of the drainage district (T.C.A. § 69-5-140), prepares the assessment rolls for use by the county trustee in collecting drainage assessments to finance construction by a drainage district (T.C.A. §§ 69-5-110; 69-5-111; 69-5-127; 69-5-128), prepares and maintains the "drainage assessment book" showing all parcels of land affected by the drainage district upon which a drainage assessment is made and provides a copy of this book to the county trustee (T.C.A. § 69-5-813), and also advises the trustee of changes in ownership of said parcels of land. T.C.A. § 69-5-815.

The county clerk receives from the county trustee the assessments for drainage and levee districts collected by the trustee and pays the expenses of the drainage and levee district as approved by the county legislative body. T.C.A. §§ 69-5-127; 69-5-804. The county clerk is required to post a bond for double the amount received from the county trustee prior to receiving said funds from the trustee. T.C.A. §§ 69-5-113; 69-5-130; 69-5-805. Also, the county clerk receives claims of persons claiming damages incurred in the construction of a drainage district (T.C.A. § 69-5-201), receives reports and drawings of engineers designated to perform work for such districts (T.C.A. § 69-5-115), serves notice upon persons whose land is within the scope of a proposed drainage district (T.C.A. § 69-5-120), receives the bond of engineers employed to supervise construction of drainage or levee improvements (T.C.A. § 69-5-708), and receives monthly reports of engineers responsible for supervising construction of levee and water work improvements. T.C.A. § 69-5-709. If bonds are sold to finance a district, the county clerk may receive the full assessment from any property owner prior to the bonds being issued (T.C.A. § 69-5-902), and countersigns any bonds issued by such a district. T.C.A. § 69-5-903.

The county clerk is authorized to collect fees for performing these duties in the same amount as authorized for similar services, or additional amounts for extra services or for services not covered by existing fee statutes as authorized by the county legislative body. T.C.A. § 69-5-141.

The county clerk also receives petitions for the creation of watershed districts (T.C.A. § 69-6-103), but may not collect any fees for the filing of such petitions or any other services required under the laws governing watershed districts. T.C.A. § 69-6-115.

Hunting and Fishing Licenses

Reference Number: CTAS-689

The county clerk may act as an agent for the Tennessee Wildlife Resources Agency (TWRA) for purposes of issuing hunting, fishing, and other licenses and collecting the appropriate fees. T.C.A. § 70-2-106.

County clerks who are authorized agents of TWRA may be required to post a bond in an amount determined by the TWRA executive director. T.C.A. § 70-2-106. The executive director is required to deliver blank licenses to the county clerk at least ten days prior to March 1 of each year, and charge the clerk with the number issued to him or her. T.C.A. § 70-2-105. The clerk may charge a flat fee of one dollar (\$1.00) on any one annual license, permit or stamp issued by the clerk and fifty cents (50¢) on any one license, permit or stamp which is valid for a specified day or number of days. T.C.A. § 70-2-106.

The county clerk must maintain all funds collected on behalf of TWRA in a checking account available for electronic transfer within 24 hours. The penalty for failure to make the required remittance available is five percent (5%) of all funds owing and not remitted within the time prescribed. Also, the county clerk may forfeit the privilege to sell licenses in the future until a full and final settlement has been made. T.C.A. § 70-2-105.

The license or permit must be filled out in ink, indelible pencil, typewriter, punched or stamped or otherwise marked to prevent erasure. T.C.A. §§ 70-2-201; 70-2-202. All licenses and permits are dated the true date of issue, except that annual sport licenses are issued for the year beginning March 1 and ending the last day of February of the next year. T.C.A. § 70-2-107. Any person who violates the licensing or permitting requirements will be guilty of a Class C misdemeanor. T.C.A. § 70-2-107.

The rules and regulations governing the issuance of these permits and licenses are governed by state law and TWRA regulations. The county clerk should follow all guidance issued by TWRA with regard to issuance of the licenses and permits, including the appropriate fees.

Boat Identification Numbers

Reference Number: CTAS-690

The Tennessee Wildlife Resources Agency (TWRA) issues certificates of number for boats. The TWRA also may authorize the county clerk to issue certificates of number for boats. The TWRA issues to the county clerk, a block of numbers and certificates, and upon issuance, the county clerk is entitled to a fee of twenty-five cents (25¢) for each certificate issued. All registration monies, except the twenty-five cents (25¢) fee allowed, must be remitted monthly to the Tennessee Wildlife Resources Commission, on or before the 10th of each month. T.C.A. § 69-9-208.

All vessels propelled by sail or machinery, or both, on the waters of Tennessee are required to be numbered, except those set out in T.C.A. § 69-9-206:

1. A vessel with a valid document issued by the United States Bureau Of Customs or any successor federal agency must be registered with the TWRA but is not required to display numbers;
2. A vessel with a valid number issued by pursuant to federal law or a federally-approved numbering system of another state, unless Tennessee has become the state of principal use and the vessel has been in this state for more than sixty (60) days;
3. A vessel from another country temporarily using the waters of this state;
4. A vessel used in public service and owned by the United States government or a state or political subdivision thereof;
5. A ship's lifeboat;
6. A motorboat belonging to a class of boats which has been exempted by the Tennessee Wildlife Resources Commission;
7. A vessel owned by a volunteer rescue squad and used solely for emergency or rescue work.

All exempt vessels must prominently display identification by name on the vessel. T.C.A. § 69-9-206. A violation of the boat registration laws is a Class C misdemeanor. T.C.A. § 69-9-219.

Certificates are valid for one (1) year, or upon application of the owner, up to three (3) years. The fees for certificates of number are set out in T.C.A. § 69-9-207.

The Tennessee Wildlife Resources Commission issues rules and regulations governing the numbering of boats, including regulations for the issuance of special registration numbers for use by boat manufacturers and dealers for demonstration and transportation purposes, and the issuance of special numbers to the owners of fleets of boats for hire or rent. T.C.A. § 69-9-209.

Boat Trailer Registration

Reference Number: CTAS-2475

Under T.C.A. § 55-4-226, manufacturers and dealers or persons and businesses that transport boats for

hire may operate a boat trailer without registering it if the boat trailer operates solely for the purpose of delivery of a boat to a customer, and the boat trailer displays special purpose boat transport plates. A boat manufacturer, dealer, person, or business who operates a boat trailer for hire to deliver boats may apply with any county clerk for one or more special purpose boat transport plates. The fee for the first plate is \$47.30, and the fee for any additional plates is \$23.55. The special purpose boat transport plates expire May 31 of each year. Issuance of plates begins each year on May 1, upon payment of the fee and proof that the applicant is still engaged in the business of transporting boats for hire. No business license is required as proof that a person or business transports boats for hire.

Acknowledgment of Instruments, Affidavits, and Administration of Oaths

Reference Number: CTAS-691

The county clerk and deputy county clerks are authorized to take acknowledgments of instruments within the state under T.C.A. § 66-22-102. The clerk is entitled to the fee provided in T.C.A. § 8-21-701 for this service.

County clerks are also authorized under T.C.A. § 18-6-114 to take affidavits and administer oaths using their official seals, to the same extent as general sessions judges and notaries public. For this service, the county clerk is entitled to receive a fee of twenty-five cents (25¢).

Other Powers and Duties

Reference Number: CTAS-692

A few county clerks act as the clerk of the probate court and/or juvenile court. Although most county clerks are no longer clerks of court, county clerks are authorized and empowered to take depositions in any legal proceeding or to take affidavits and administer oaths for general purposes to the same extent and in the same manner as notaries public. T.C.A. §§ 18-6-113; 18-6-114.

The county road list, which is approved by the county legislative body each year, is entered of record in the office of the county clerk in a book kept for that purpose. T.C.A. § 54-10-103.

County personnel policies are also filed in the office of the county clerk as a record of the base personnel policies in effect in each county office. T.C.A. § 5-23-101 *et seq.*

County clerks may, but are not required to, participate in a pilot program with the state department of health to issue certified copies of birth certificates to walk-in customers under T.C.A. § 68-3-206.

County clerks are authorized, but not required, to contract with the department of safety to issue driver licenses under T.C.A. § 55-50-331.

County clerks are required to verify that anyone conducting a motor vehicle race in the county has the required insurance under T.C.A. § 55-22-101. For additional information, see Motor Vehicle Races.

County clerks issue permits to transitory vendors under T.C.A. § 62-30-101 *et seq.*, and collect a fee of \$50.00 for issuance of the mobile vendor permit to the transitory vendor.

Denial of Licenses for Failure to Pay Child Support

Reference Number: CTAS-693

State law provides for denial or revocation of licenses for failure to pay child support, including licenses, certifications, registrations, permits, approvals and similar documents that grant authority to engage in a profession, trade, occupation, business, or industry, to hunt or fish, and to operate motor vehicles or other conveyances, but not licenses to practice law unless guidelines are established by the Supreme Court. T.C.A. § 36-5-701 *et seq.*

When records of the court clerk or Department of Human Services ("DHS") show that child support payments have become delinquent, DHS is authorized to serve notice upon the obligor of the department's intent to notify licensing authorities that the person is not in compliance with the order of support. The person is entitled to request an administrative hearing with DHS or make arrangements to correct the delinquency, and to judicial review of the department's decision. If the person does not comply with the order, request a hearing, or make arrangements to pay within twenty (20) days of service, DHS may proceed to notify licensing authorities by certifying in writing or by electronic data exchange that the person is not in compliance with the support order. T.C.A. § 36-5-701 through 36-5-705.

A certification from DHS requires the licensing authority to deny any renewal request, revoke the obligor's

license, or refuse to issue or reinstate the license, as the case may be, until the obligor provides the licensing authority with a release from DHS stating that the obligor is in compliance with the order of support. T.C.A. §§ 36-5-702; 36-5-706. Upon receipt of a certification from DHS, the licensing authority is required to notify the obligor of the action taken against the license. The notice is to be sent by regular mail and must state that the obligor's application for issuance, renewal or reinstatement has been denied, or that the current license has been suspended or revoked due to certification by DHS that the obligor is not in compliance with an order of support. A notice of suspension must specify the reason and statutory grounds for suspension and the effective date for the suspension. The notice must also state that a release from DHS must be obtained before the license can be issued, reinstated, or renewed. T.C.A. § 36-5-706. When the delinquency has been corrected, DHS is required to inform the licensing authority of compliance. Unless the time has passed for a new periodic license fee, the obligor is not required to pay a new fee for the remainder of the licensing period; however, the licensing authority may impose a reinstatement fee not to exceed five dollars (\$5.00). T.C.A. § 36-5-706; 36-5-707.

On or before July 1, 1996, or as soon thereafter as economically feasible and at least annually thereafter, all licensing authorities are required to provide DHS with a database of information on magnetic tape or other machine-readable format (or if this information is not available on magnetic format, in a format agreed upon by the commission of DHS and the licensing authority). That data shall include information about both applicants and all current licensees (including those currently suspended or revoked if able to be reinstated). If available, the information is to include name, date of birth, address, social security number or federal employer ID number, description, type of license, effective date and expiration date of license, and status of the license. T.C.A. § 36-5-711.

Courts are also authorized to order the denial, revocation or suspension of a license in connection with proceedings to enforce orders of child support. If the obligee specifically requests the court to revoke a license, the court may order any or all of the obligor's licenses be subject to revocation, denial or suspension. In that case, the clerk of the court will send a copy of the court order to the appropriate licensing authorities, and the licensing authority is required to revoke, deny or suspend the license in accordance with the court's order. When the obligor is in compliance with the order of support, the court will enter an order showing a finding of compliance which the clerk will send to each licensing authority, and the licensing authority will then issue, reinstate or reissue the license. T.C.A. § 36-5-101.

All applications for professional licenses, driver licenses, occupational licenses, hunting and fishing licenses or recreational licenses, or marriage licenses issued on and after July 1, 1997 are required to contain the social security number of each applicant. (Note that in connection with marriage licenses, the Tennessee Attorney General has opined that applicants who have not been issued a social security number are not required to provide one in order to obtain a marriage license. Op. Tenn. Att'y Gen. 08-126 (July 22, 2008)). This principle should apply to other licenses that are subject to this statute, so that applicants are required to provide their social security numbers only if they have one. This information is to be provided to the Department of Human Services or its contractors or agents enforcing Title IV-D of the Social Security Act, to the extent possible in electronic or magnetic automated formats. T.C.A. § 36-5-1301.

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 interactions which occur between the county clerk, 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 mayor has approved the bonds for county officials and bonded employees, 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, 8-19-103.

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.

Financial Matters-County Clerk

Reference Number: CTAS-746

Fees-County Clerk

Reference Number: CTAS-747

County clerks may not demand or receive any fees or compensation not specified by law (T.C.A. § 8-21-101), and may not receive any authorized fees until the duty or service for which the fee is granted has been performed, unless specifically allowed by law. T.C.A. § 8-21-102. A county clerk who demands or receives fees higher than those prescribed by law may be liable to the party charged in the amount of fifty dollars (\$50.00), and is also guilty of a misdemeanor. T.C.A. § 8-21-103. It is the duty of the courts to decide, upon application by the county clerk, any question arising under law and such decision will protect the county clerk acting pursuant to the decision. T.C.A. § 8-21-105.

County clerks should always check the current statutes to confirm the correct amount of fees to be charged. The general fee statute (T.C.A. § 8-21-701) for the county clerk provides the fees for issuance of marriage licenses, transferring business licenses, certifying a notary public's election, recording official bonds, receiving and paying over revenue, for copies and certified copies of documents, and other fees.

In addition to the fees set out in the county clerk's fee statute above, the county clerk may be entitled to other fees for specific duties the clerk performs. The fees associated with the county clerk's duties in motor vehicle titling and registration are set out in Title 55, Chapters 4 and 6 of the Tennessee Code Annotated, and the current amounts of these fees may be obtained from the State Department of Revenue's Taxpayer and Vehicle Services Division (Vehicle Services Section).

Under T.C.A. § 55-6-104(a)(3), county clerks receive a fee of \$8.50 for or receiving and forwarding to the

department of revenue each application for certificates of title, including all acknowledgments of signatures, provided, that three dollars (\$3.00) of the fee must be earmarked for the provision of services directly related to titling and registration and must not revert to the county general fund at the end of a budget year if unexpended.

Fees associated with issuance of business licenses are found in Title 67, Chapter 4, Part 7. There are other fees set out in other parts of the Tennessee Code Annotated for miscellaneous duties the clerk may perform, such as issuing hunting and fishing licenses.

The county clerk is not entitled to any fees for certificates and seals in the application for pension and pensioners' money, or upon powers of attorney for that purpose and the taking or receiving of fees in any such cases shall be a misdemeanor. T.C.A. § 8-21-703. A county clerk who also acts as a clerk of court is authorized to demand and receive the same fees as the other court clerks when performing court clerk's duties. These fees are set forth in T.C.A. § 8-21-401 *et seq.* County clerks acting as court clerks also collect the applicable sheriff's fees. T.C.A. § 8-21-901 *et seq.* Any county clerk with court clerk duties can take additional training courses with regard to those court clerk duties by taking training courses designed for clerks of court.

County clerks are prohibited from requiring or encouraging persons who pay by personal check to make the check out to any individual in his or her personal capacity. All checks received by the county clerk should be made out in the name of the appropriate governmental entity or to the county clerk's office, or in the name of the county clerk in his or her official capacity. T.C.A. § 9-1-117.

All county officials, including county clerks, are authorized to accept payment by credit card or debit card for any public taxes, licenses, fines, fees or other monies collected. Beginning June 7, 2001, the county legislative body may waive the processing fee that otherwise would be added to the amount collected when payment is made using a credit or debit card. T.C.A. § 9-1-108. The credit card numbers and related personal identification numbers are confidential records. T.C.A. § 10-7-504.

County clerks are required to adopt a policy for handling refunds of amounts overpaid, which must include one or more of the following: contacting the person or entity tendering the payment for specific instructions for handling the excess amount; allowing the county clerk's office to retain reasonable overage amounts as fees of the office; or providing a refund of the excess money less a reasonable amount retained as fees of the office. T.C.A. 8-21-701.

Official Bank Account-County Clerk

Reference Number: CTAS-748

Every county official handling public funds, including the county clerk, is required to maintain an official bank account in a bank or banks within this state and to deposit any public funds to the official account or accounts within three (3) days of receipt. All county funds deposited with a bank or financial institution must be secured by collateral in the same manner and under the same conditions as state deposits as provided in Title 9, Chapter 4, *Tennessee Code Annotated*, and county clerks who maintain official accounts are authorized to enter into agreements with banks and other financial institutions as necessary for the maintenance of collateral to secure the funds on deposit. All disbursements from these accounts must be made by consecutively pre-numbered checks. A county clerk may also maintain a petty cash fund in an amount sufficient to transact the official business of the office. Any violation of the provisions governing official bank accounts is a Class C misdemeanor. T.C.A. § 5-8-207.

Deposit slips, deposit books, bank statements, canceled checks, and check books must be accurately maintained. As a practical matter, a county clerk should keep all available cash in daily interest bearing accounts. In one instance, a county official was charged with felony misappropriation because the official had agreed not to deposit a check at the request of a citizen until sufficient funds were in the bank to cover the check.

Duties as to Revenue-County Clerk

Reference Number: CTAS-749

The county clerk is required to maintain a revenue docket which includes a record of all sources of county revenue. T.C.A. § 5-8-106. The county clerk also performs various duties in relation to state revenue. T.C.A. § 18-6-105.

Auditing-County Clerk

Reference Number: CTAS-750

The records of all county clerks must be audited on an annual basis. T.C.A. § 4-3-304(4). The Comptroller is given the authority to establish auditing standards, and 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; 4-3-304. Auditors of the Division of Local Government Audit of the State Comptroller's Office or the independent certified public accountant will audit the county clerk's books, accounts, and records annually to ascertain any errors, irregularities or defaults. T.C.A. §§ 4-3-304; 9-3-201. The fiscal year for a county clerk's office is July 1 through June 30. County clerks must use the uniform chart of accounts.

Purchasing-County Clerk

Reference Number: CTAS-751

There are three sets of statutes, and many private acts, concerning purchasing by counties. Therefore, there is little uniformity in purchasing procedures in Tennessee's counties. The three major sets of statutes (general laws) affecting counties are: the County Purchasing Law of 1983, which provides some minimum requirements for general fund purchases for counties in which no local option purchasing law is in effect; the local option County Purchasing Law of 1957; and the local option County Financial Management Act of 1981. Also, in those counties that operate under metropolitan or charter forms of government, the county's purchasing procedures will appear in the metropolitan or county charter.

For additional information, see Purchasing.

Budgeting-County Clerk

Reference Number: CTAS-752

The Accounting/Budgeting/Finance tab contains information about budgeting and the various budgeting laws.

Beer

Reference Number: CTAS-333

Definition of Beer

Reference Number: CTAS-334

The transportation, storage, sale, distribution, possession, and manufacture of "beer" in Tennessee is regulated under the statutes set out in *Tennessee Code Annotated*, Title 57, Chapter 5. "Beer" is defined as "beer, ale or other malt beverages **having an alcoholic content of not more than eight percent (8%) by weight**, except wine as defined in T.C.A. § 57-3-101(a)(24); provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol." T.C.A. § 57-5-101. The statutory definition of "beer" is based on alcoholic content, so that any beverage containing the percentage of alcohol set out in the statutory definition is regulated under these statutes regardless of the identity of the fruit or grain used to produce it. Attorney General Opinion 94-75 (7/8/94) (refers to older statute which defined beer as 5% alcohol or less). All references to "beer" herein refer to the statutory definition.

All businesses engaged in the sale, distribution, manufacture and storage of beer are required to obtain a permit from the county or city where the business is located. T.C.A. § 57-5-103.

Wine and alcoholic beverages having more than eight percent (8%) in alcoholic content are not regulated locally, but are regulated at the state level by the Tennessee Alcoholic Beverage Commission ("ABC"). T.C.A. §§ 57-3-104, 57-4-201. These beverages may not be sold unless the city or county has authorized their sale by local referendum. T.C.A. § 57-3-102. Once such a referendum has passed, permits are issued by the ABC. T.C.A. § 57-3-104.

Classification of Counties

Reference Number: CTAS-335

Tennessee counties are classified into two categories for the purpose of licensing, regulating and controlling the transportation, storage, sale, distribution, possession, receipt and manufacture of beer.

Class A includes all counties which are not governed by metropolitan governments. Class B includes those counties which are governed by metropolitan governments (currently, only Davidson, Moore, and Trousdale counties). T.C.A. § 57-5-103(b).

Authority of Cities and Class B (Metropolitan Government) Counties

Reference Number: CTAS-336

Cities and Class B counties are authorized to pass ordinances governing the issuance and revocation or suspension of licenses for the storage, sale, manufacture and distribution of beer within their corporate limits, and within the general services district of Class B counties outside the limits of any smaller cities. Cities and Class B counties may impose restrictions in addition to those set out by statute, fix zones and territories, provide hours of operation and impose other rules and regulations to promote public health, morals and safety. Cities and Class B counties may authorize the sale of beer in hotel and motel rooms and in clubs and lodges. T.C.A. § 57-5-106. Cities and Class B counties have extensive authority to regulate the sale of beer, which includes the authority to limit the number and location of retail outlets. See, e.g., *State ex rel Amvets Post 27 v. Beer Board*, 717 S.W.2d 878 (Tenn. 1986). The powers of cities and Class B counties to regulate the sale of beer extends even to the extent of prohibition. *Ketner v. Clabo*, 225 S.W.2d 54 (Tenn. 1949). Cities and Class B counties may establish different distance requirements for the sale of beer in different, well-defined sections of their jurisdictions. Attorney General Opinion 02-092 (8/28/02).

Authority of Class A Counties

Reference Number: CTAS-337

Tennessee Code Annotated § 57-5-105 sets out the requirements an applicant must meet in order to obtain a beer permit from a Class A county. This statute also sets out the limited power of a Class A county to impose restrictions on the issuance of permits. The Tennessee Supreme Court has summarized the lack of authority of Class A counties to impose any additional conditions or restrictions as follows:

A county beer board must issue a license to anyone who meets the requirements laid out in this section, and they may not prescribe conditions for the issuance of a permit in addition to those set out in the statute. *Howard v. Willocks*, 525 S.W.2d 132 (Tenn. 1975).

Class A counties must look exclusively to the statutes and the case law explaining the statutes to determine the limits of their authority to regulate the issuance and revocation of permits to sell beer. Attorney General Opinion U91-51 (4/9/91). Class A counties have no authority to set any requirements in addition to those contained in the statutes. For example, the Attorney General has opined that a Class A county has no authority to prohibit the sale of cold beer at convenience stores and grocery stores. Attorney General Opinion 05-024 (3/14/05).

Class A counties are authorized to review applications for beer licenses and must grant any application which meets the statutory requirements. T.C.A. § 57-5-105(e). The statutes allow county legislative bodies to adopt resolutions establishing "distance rules" which prohibit the issuance of a permit for an establishment to sell beer within 2,000 feet of schools, churches or other places of public gathering, or prohibit the sale of beer within 300 feet of residential dwellings in accordance with the guidelines outlined in the statute. Class A counties also may refuse to issue a beer permit if the issuance would interfere with public health, safety, and morals. T.C.A. § 57-5-105(b)(1).

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.

Board Membership

Reference Number: CTAS-339

The statutes do not establish who will serve on the beer board, how many members the board will have, a term of office for board members or whether the members of the board will be compensated for their time. If the county legislative body chooses to establish a county beer board, there should be a resolution of the county legislative body setting out specific information concerning the appointment procedure, qualifications of members, term of office, compensation and other necessary guidelines for the board. A county beer board serves at the will and pleasure of the county legislative body which appointed it; therefore, the county legislative body has the power to discharge the board and replace its members. Attorney General Opinion 82-325 (6/24/82). While there is no prohibition against a member of a county beer board obtaining or holding a license to sell beer, the Attorney General has opined that it is "undesirable" for a beer board member to obtain a beer permit as it presents an appearance of impropriety. Attorney General Opinion 84-209 (6/27/84).

Board Authority

Reference Number: CTAS-340

Once appointed, the county beer board may exercise the same discretion as the county legislative body to grant, deny, suspend or revoke permits to sell beer, and to impose civil penalties, within the limits of the authority granted by the statutes (and any distance rules or extended hours of operation which may have been established by resolution of the county legislative body). In discussing the exercise of such discretion, the courts make no distinction between the county legislative body and the county beer board. *State ex rel. Simmons v. Latimer*, 186 Tenn. 577, 212 S.W.2d 386 (1948). However, the beer board is not authorized to establish distance rules or to extend the hours for the sale of beer; this authority may be exercised only by resolution of the county legislative body. T.C.A. § 57-5-105.

The county legislative body is authorized to impose training or certification restrictions or requirements on employees of beer permit holders. Only the county legislative body, and not the beer board, is authorized to impose these requirements. These requirements cannot be applied to any employee who holds a valid server permit issued by the ABC under Title 57, Chapter 3, Part 7 (the Alcohol Server Responsibility and Training Act of 1995). T.C.A. § 57-5-105(j). Once these requirements have been established by resolution of the county legislative body, the beer board has the authority to administer the provisions of the resolution within the limits of the authority granted by the resolution. However, counties have no authority to impose a tax or fee on servers or sellers of beer, for training or for any other purpose, except as expressly provided by state law. Attorney General Opinions U96-009 (2/8/96) and 97-077 (5/21/97).

A county beer board has the authority to conduct investigations of beer permit holders. In an unpublished opinion of the Tennessee Court of Appeals, the court found that a beer board was empowered to employ an undercover investigator after the county sheriff had refused to conduct an investigation concerning illegal sales of beer to minors. *Jackson v. Franklin County Beer Board*, 1993 WL 46524 (Tenn. Ct. App. 1993). Relying on this opinion, the Attorney General also opined that the beer board may hire a private investigatory firm to conduct undercover investigations concerning the sale of beer to minors, and that minors may be used in these investigations. Attorney General Opinion 01-062 (4/20/01).

Beer Permits

Reference Number: CTAS-341

It is unlawful to operate any business engaged in the sale, distribution, manufacture or storage of beer without first obtaining a permit from the city or county in which the business is located. The county issues permits only to businesses located in the unincorporated areas of the county; cities are responsible for issuance of permits to businesses located within any incorporated areas. T.C.A. §§ 57-5-105, 57-5-106. No city or county permit is required for a wholesaler unless the wholesaler operates a warehouse in the city or county. T.C.A. § 57-5-103. Selling, distributing, manufacturing, or storing beer without the required permit is a Class C misdemeanor. T.C.A. § 57-5-303. Sample Beer Permit

There are exceptions --

- (1) caterers licensed by the Alcoholic Beverage Commission, in accordance with T.C.A. § 57-4-101(i) and 57-4-203(i)(3), are authorized to sell beer and other alcoholic beverages in conjunction with their catering services;
- (2) retail liquor store owners licensed under T.C.A. § 57-3-204 are permitted to sell beer and other malt beverages without obtaining a beer permit from the county or city, and these beer sales are regulated by the ABC under T.C.A. § 57-3-404(e);
- (3) a beer permit is not required for the making of "homemade beer" when it is done in accordance with the provisions of T.C.A. § 57-5-111; and

(4) under T.C.A. § 57-3-224, delivery services that deliver prepared food from restaurants may obtain a delivery service license issued by the ABC to deliver sealed packages of beer and alcoholic beverages; drivers must be licensed by the ABC under T.C.A. § 57-3-225.

Permits - To Whom Issued

Reference Number: CTAS-342

Beer permits are issued to the owner of the business or other entity responsible for the premises for which the permit is sought, whether a person, firm, corporation, joint-stock company, syndicate, association, or a local governmental entity when the governing body has authorized such sales of beer. A permit is valid only for the owner to whom it is issued, and it cannot be transferred to another owner. When the owner is a corporation, a change in ownership (necessitating a new permit) occurs when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner. T.C.A. § 57-5-103(a). A beer permit does not transfer by corporate merger. Mapco Petroleum, Inc. v. Basden, 774 S.W.2d 598 (Tenn. 1989). Similarly, permits are valid only for the business operating under the name identified in the permit application. T.C.A. § 57-5-103(a)(2)(C). If the name of the business changes, a new permit must be obtained.

Permitted Location

Reference Number: CTAS-343

A permit is valid only for a single location, which includes all decks, patios, and other outdoor serving areas contiguous to the location. If an owner operates two or more restaurants or other businesses within the same building, the owner may, in the owner's discretion, operate some or all of the businesses under the same permit. Permits are not transferable from one location to another. T.C.A. § 57-5-103(a).

Under this statute, a beer permit issued for a clubhouse or restaurant on a golf course does not allow the permit holder to sell beer on the golf course itself because the golf course, while it may be contiguous, does not constitute an "outdoor serving area" within the meaning of the statute. Attorney General Opinion 01-117 (7/24/01).

A beer board could, in its discretion, issue an on-premises beer permit to a golf course, thereby allowing the sale of beer within the confines of the golf course property. Or, if a golf course clubhouse has been issued an off-premises permit, a patron could purchase beer in the clubhouse and take it onto the golf course to drink it. Also, a beer board may issue a permit to an applicant for an outdoor event that is not contiguous to the applicant's building. Attorney General Opinion 08-09 (1/18/08).

Beer permit holders may sell beer online for curbside pickup at the permit holder's location. The beer must be delivered to a vehicle located within a paved parking area adjacent to the permitted business, and the beer must be pulled from the retailer's inventory at the permitted location. The employee delivering the beer to the vehicle must confirm that the individual receiving the beer is at least twenty-one (21) years of age. T.C.A. § 57-5-103(a).

On-Premises or Off-Premises Consumption

Reference Number: CTAS-344

A business may sell beer for both on-premises and off-premises consumption under the same permit. T.C.A. § 57-5-103(a)(5). However, a permit is not valid for on-premises consumption unless the application so states. T.C.A. § 57-5-105(b)(5). If a permit holder for either off-premises or on-premises consumption wishes to change the method of sale, the permit holder must apply for a new permit. T.C.A. § 57-5-105(c)(8).

Class A counties which have adopted distance rules cannot draw a distinction between on-premises consumption of beer as opposed to off-premises consumption in the calculation of the minimum footage requirements. Attorney General Opinions U93-74 (6/17/93) and 01 157 (10/25/01). However, cities and Class B (metropolitan government) counties may set different requirements for businesses selling beer for on-premises consumption versus those selling for off-premises consumption. See Attorney General Opinion 02-092 (8/28/02).

Microbreweries and Brew Pubs

Reference Number: CTAS-345

Under T.C.A. § 57-5-101(a), brewers and wholesalers are prohibited from having any interest in the retail beer business; a brewer cannot sell beer at retail or operate a restaurant at which it sells its own beer. However, an exception to this rule allows a manufacturer in any county in Tennessee who meets necessary federal, state, and local licensing requirements to operate as a retailer at or contiguous to the manufacturer's location for sales of not more than 25,000 barrels per year for consumption on or off the premises, in accordance with the provisions of T.C.A. § 57-5-101(c); Attorney General Opinion 00-087 (5/5/00).

A business engaged in the sale and manufacturing of beer must obtain a permit from the city or county in which the business is located. T.C.A. § 57-5-103. Also, note that beer falls within the definition of food as defined in T.C.A. § 53-1-102, and therefore manufacturing beer is subject to regulation by the Tennessee Department of Agriculture. Accordingly, these establishments must also obtain a food manufacturing license from the Department of Agriculture.

Temporary Beer Permits

Reference Number: CTAS-346

Temporary beer permits, not to exceed thirty (30) days, may be issued at the request of an applicant, upon the same conditions governing permanent permits. However, a temporary permit cannot be issued to authorize the sale, storage or manufacture of beer on publicly owned property (except in Class B counties and counties with a population over 300,000 by a bona fide charitable or nonprofit political organization with the approval of the appropriate governmental authority charged with the management of the property and the approval of the county beer board). T.C.A. § 57-5-105(g).

Beer Permit Application

Reference Number: CTAS-347

The owner of a business desiring to sell, distribute, manufacture or store beer in a Class A county outside the limits of any incorporated town or city must file an application for a permit with the county beer board. T.C.A. § 57-5-105. The application must be filed by the owner of the business, and it must contain the following information as set out in T.C.A. § 57-5-105(c):

1. Name of the applicant (the owner of the business);
2. Name of the business;
3. Location of the business by street address or other geographical description sufficient to determine conformity with applicable requirements;
4. If the applicant desires to sell beer at two or more restaurants or other businesses within the same building under the same permit, a description of each of the businesses;
5. All persons, firms, corporations, joint-stock companies, syndicates or associations having at least a five percent (5%) ownership interest in the applicant (owner of the business);
6. Identity and address of a representative to receive annual tax notices and any other communication from the county beer board;
7. That no person, firm, joint-stock company, syndicate or association having at least a five percent (5%) interest in the applicant nor any person to be employed in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years;
8. Whether the applicant is applying for a permit which would allow the sale of beer for either on-premises consumption or for off-premises consumption, or both;
9. Any other information as may reasonably be required by the county beer board.

Sample Beer Permit Application

An applicant (and a permit holder) is required to amend or supplement the application promptly if a change in circumstances occurs which would affect the responses given in the application. T.C.A. § 57-5-105(c)(9). Any applicant who makes a false statement in the application shall forfeit the applicant's permit and shall not be eligible for a permit for a period of ten (10) years. T.C.A. § 57-5-105(d).

In order to receive a permit, an applicant also must establish that:

1. No beer will be sold except at places where the sale will not cause congestion of traffic or interference with schools, churches, or other places of public gathering, or otherwise

interfere with public health, safety and morals (and if the county legislative body has adopted a distance rule by resolution, that the business is not in violation of the rule). T.C.A. § 57-5-105(b)(1).

2. No sale will be made to minors. T.C.A. § 57-5-105(b)(2).
3. That no person, firm, corporation, joint-stock company, syndicate or association having at least a five percent (5%) ownership interest in the business has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance or controlled substance analogue, or any crime involving moral turpitude within the past ten (10) years. T.C.A. § 57-5-105(b)(3).
4. No person employed by the applicant in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance that is listed in Schedules I through V in title 39, chapter 17, part 4, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance analogue, or any crime involving moral turpitude within the last 10 years. T.C.A. § 57-5-105(b)(4).
5. That no sales for on-premises consumption will be made unless the application so states. T.C.A. § 57-5-105(b)(5).

Crimes involving moral turpitude refer to acts of baseness, vileness, or depravity in the private and social duties which a person owes to other persons or to society in general, contrary to the accepted rules of right and duty. Brooks v. State, 187 Tenn. 67, 213 S.W.2d 7 (1948). Crimes of rolling high dice for a Coke and failing to immediately release 17 bluegills are not crimes involving moral turpitude. Gibson v. Ferguson, 562 S.W.2d 188 (Tenn. 1976). Driving under the influence (DUI) and reckless driving are not considered crimes of moral turpitude. Attorney General Opinions 95-37 (4/19/97) and 08-108 (5/14/08). The sale of beer to a minor or to a person not presenting proper identification is not a crime of moral turpitude. Attorney General Opinion 09-41 (3/25/09) (however, this would be a violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages). The offense of vehicular homicide, on the other hand, is a crime of moral turpitude. Attorney General Opinion 98 225 (12/1/98). In Opinion No. 08-108 (5/14/08), the Attorney General discusses the law on moral turpitude in detail and lists other behavior that has been held to constitute moral turpitude.

In addition to the requirements listed above, all beer permit holders are required to provide the county with documentation that they are duly registered with the Commissioner of Revenue for sales tax purposes. A new permit holder must provide this documentation within ten (10) days following approval of the permit. The required documentation is an actual copy of the registration certificate indicating that the purchase of beer is "for resale" by the beer permit holder. Permit holders are required to maintain a copy of a valid resale certificate on file with the county. T.C.A. § 57-5-103. Persons engaging in the manufacture or wholesale distribution of beer are also required to register with the Commissioner of Revenue and receive a certificate of registration, which must be posted at the location prior to commencement of any business. T.C.A. § 57-5-102.

A 2015 amendment to T.C.A. § 57-5-103(a) provides that a beer permit cannot be issued to an applicant who has not been a citizen or lawful resident of the United States for at least one year immediately prior to the date of the application. However, the constitutionality of this provision has been called into question by the Tennessee Attorney General in Opinion No. 16-09 (3/4/16).

Application Fee for Beer Permit

Reference Number: CTAS-348

Each applicant is required to pay an application fee of \$250 to the county or city in which the business is located prior to consideration of an application to sell beer. No portion of this fee can be refunded to the applicant regardless of whether the application is approved or denied. T.C.A. § 57-5-104(a).

An annual privilege tax is imposed on the business of selling, distributing, storing or manufacturing beer in Tennessee in the amount of \$100 per year, which is due each January 1. At the time a new permit is issued, the permit holder is required to pay this tax on a prorated basis for each month or portion of a month remaining until the next payment date. T.C.A. § 57-5-104(b)(5).

Background Checks

Reference Number: CTAS-349

The beer board may wish to request background checks on applicants for a beer permit. Under T.C.A. § 57-5-103(e), a city or county is authorized to seek criminal history background or fingerprint checks on applicants for beer permits. These criminal background checks may include fingerprint checks against state and federal criminal records maintained by the Tennessee bureau of investigation and the federal bureau of investigation. The Tennessee bureau of investigation is authorized to assess fees for the searches in accordance with the fee schedule established by the bureaus. Also, criminal history information (intrastate) may be obtained from the Tennessee Bureau of Investigation for a fee of \$29.00 per name submitted, under T.C.A. § 38-6-120. Because no statutory authorization exists for requiring the applicant to pay these fees, the beer board cannot recover the fee from the applicant. Attorney General Opinion 97-077 (5/21/97).

Public Notice of Applications and Hearings

Reference Number: CTAS-351

Meetings at which the county beer board considers applications for permits must be public hearings at which members of the public and their attorneys are allowed to speak. T.C.A. § 57-5-105(f). Under the Open Meetings Act ("Sunshine Law"), adequate public notice of the meeting must be given. T.C.A. § 8-44-103. Before issuing a permit, the beer board is authorized to publish a notice in a newspaper of general circulation in the county stating the name of the applicant, the address of the location, whether the application is for on-premises or off-premises consumption, and the date and time of the meeting at which the application will be considered. T.C.A. § 57-5-105(f). The minutes of the meeting must be recorded and open to public inspection, and all votes of the beer board must be by public vote, public ballot, or roll call. T.C.A. § 8-44-104.

Denial of Beer Permits

Reference Number: CTAS-352

A beer permit application may be denied for failure of the applicant to meet the statutory requirements discussed above. While cities and Class B counties can impose additional restrictions under T.C.A. § 57-5-106, Class A counties are required to grant any application which meets the statutory requirements set out in T.C.A. § 57-5-105.

A beer board may not avoid issuing a permit by simply refusing to take action on the application. If a board needlessly prolongs an application for a permit by tabling it, the board has in effect denied the application and the applicant is entitled to seek judicial review. McCarter v. Goddard, 609 S.W.2d 505 (Tenn. 1980).

Counties may deny a permit if the issuance would interfere with public health, safety, and morals. T.C.A. § 57-5-105(b)(1). The case law which has developed on the issue of whether issuing a beer permit would interfere with the public health, safety, and morals of a community limits the discretion of the beer board in most instances. A permit cannot be denied based on a generalized belief that the sale of beer is detrimental to the public health, safety and morals. For instance, it has been held that where all the requirements for issuance of a permit are met, a beer permit cannot be denied by a county beer board based on a board members' philosophy that:

the sale and consumption of beer destroys the home, creates poverty and misery, dethrones reason, defiles innocence, - yea, literally takes the bread from the mouths of little children, and topples men and women from the pinnacles of righteousness and gracious living into the bottomless pits of degradation and despair, shame and helplessness and hopelessness. Coffman v. Hammer, 548 S.W.2d 310, 312 (Tenn. 1977).

The record must contain factual evidence showing how or why the particular permit would interfere with public, health, safety, or morals. The expression of fears, speculation, and apprehension of witnesses who appear to have a fixed opinion that sale of beer is harmful and immoral per se is immaterial. Harvey v. Rhea County Beer Board, 563 S.W.2d 790 (Tenn. 1978).

On the issue of safety, the Tennessee Supreme Court has found that in order for traffic congestion to constitute a valid basis for denying a permit to sell beer in the package, it must be shown that the issuance of the beer permit would cause traffic to be more congested and more hazardous than it was prior to the issuance of the beer permit. Hinkle v. Montgomery, 596 S.W.2d 800 (Tenn. 1980). This rule makes it difficult for a beer board to deny a permit based on traffic hazard, especially with existing establishments.

The court has found that there is no difference, in principle, between the purchase of a six-pack of beer to go and the purchase of a six-pack of a non-alcoholic beverage as "in each case the purchaser comes, he

buys and he goes." Concerns about increased littering are also not enough to deny a beer permit as the court has found that alcoholic beverages do not cause any more littering problems than non-alcoholic beverages. Coffman, at page 312. Concerns that young people congregate in and about the establishment have also been found insufficient to deny a permit to a convenience store. Ashley v. Bryant, 1989 WL 145886 (Tenn. Dec. 4, 1989).

Insufficient evidence of detriment to public health, safety, and morals was found in Al Koshshi v. Memphis Alcohol Commission, 2005 WL 1692947 (Tenn. Ct. App. 2005). In that case the beer board had based its denial on the business being in the vicinity of neighborhood schools, its location at a busy intersection, and problems with littering, loitering, and prostitution, but the court found that there was not enough evidence to deny the permit on these grounds.

Title deficiencies also are not a legitimate concern of beer boards. If an applicant for a beer permit leases a premises knowing that there is a restrictive covenant precluding the sale of alcoholic beverages, then this is a matter that addresses itself solely to the applicant's judgment and discretion and as to which the beer board has no concern. Lones v. Blount County Beer Board, 538 S.W.2d 386, 390 (Tenn. 1976).

However, where an applicant had a record for violation of laws relating to the sale of beer and the gambling laws and her husband had a serious drinking problem, granting her a permit to sell beer at an establishment 35 miles from the nearest police authority was found to have been detrimental to the public health, safety and morals of those living in the community and was sufficient grounds to refuse the permit. Tippit v. Obion County, 651 S.W.2d 211 (Tenn. 1983).

Although a building itself cannot have a "bad reputation," the reputation and past history of persons proposing to operate the business is of legitimate concern, and the proposed site itself may be unsuitable. Where a site was found to have been plagued with constant complaints of fighting and other disorderly conduct, and was located in an unpatrolled, remote, rural area sixteen miles from the sheriff's office, the beer board could deny a permit based on the public health, safety and welfare of the county. Lynn v. Blue, 1998 WL 730191 (Tenn. App. Oct. 21, 1998).

The sale of beer at a market in which there is a gun shop has been found to interfere with the public health, safety and morals of a community. In Gibbs v. Blount County Beer Board, 664 S.W.2d 68 (Tenn. 1984), the court found that the general public could not distinguish between persons carrying weapons for unlawful purposes, from those persons coming into the store to have a weapon repaired. However, after this case was decided the General Assembly repealed T.C.A. § 39-17-1305 and made it lawful for a person with a handgun carry permit to possess a handgun in a place where alcoholic beverages are sold if the person is not consuming alcoholic beverages. Accordingly, the validity of this case is uncertain under current law.

The court found sufficient evidence of detriment to public health, safety, and morals to justify denial of a beer permit in Suleiman v. City of Memphis, 290 S.W.3d 844 (Tenn. Ct. App. 2008). In this case specific instances directly related to the applicant and the market in question, rather than generalized fears, were presented as evidence.

Permits may be denied for violation of any distance rules which have been validly adopted by resolution of the county legislative body. T.C.A. §§ 57-5-105(b)(1) and 57-5-105(i). However, before a permit may be denied for violation of a 300' rule for proximity to a residential dwelling, the owner of the residential dwelling must appear in person before the beer board and object to the issuance of the permit. T.C.A. § 57-5-105(i).

If a beer permit is denied based on the testimony of a person at a hearing, the beer board is required to notify the person who testified if the applicant applies for a permit again at the same location within 12 months. The person who testified may submit the person's remarks in writing to the beer board at any additional hearing, in lieu of making a personal appearance. T.C.A. § 57-5-105(k).

If a permit application is denied three times, the applicant may not reapply for a permit on the same premises until one year from the date of the third refusal, and only if the circumstances have substantially changed. T.C.A. § 57-5-105(h). An applicant who makes a false statement on the application must forfeit his or her permit and is ineligible to receive a permit for ten (10) years. T.C.A. § 57-5-105(d).

Expiration/Termination of Beer Permits

Reference Number: CTAS-442

A beer permit has no expiration date, and counties and cities are prohibited from requiring periodic permit renewals. T.C.A. § 57-5-103(a)(9). A beer permit expires upon termination of the business, change in ownership, relocation of the business, or change in the name of the business. A permit holder is required to return the permit to the county or city that issued it within fifteen days of the occurrence of one of

these events, but the permit expires regardless of whether the permit is returned. T.C.A. § 57-5-103(a)(6). Unless one of these events occurs, a beer permit is valid until suspended or revoked in accordance with T.C.A. § 57-5-108.

Hours of Operation

Reference Number: CTAS-355

The general law provisions regarding the hours of operation for businesses selling beer are found in T.C.A. § 57-5-301. This statute prohibits the sale of beer during the following hours:

1. No beer or like beverage shall be sold between the hours of twelve o'clock (12:00) midnight and six o'clock a.m. (6:00 a.m.), Monday through Saturday;
2. No beer or like beverage shall be sold between the hours of twelve o'clock (12:00) midnight on Saturday and eleven fifty-nine o'clock p.m. (11:59 p.m.) on Sunday (Sunday night).
3. No such beverage shall be consumed, or opened for consumption, on or about any licensed premises, in either bottle, glass, or other container, after twelve fifteen o'clock a.m. (12:15 a.m.).

However, county legislative bodies are authorized to extend the hours for the sale of beer in their counties by resolution. T.C.A. § 57-5-301(b)(1). (Sample resolution to extend hours). The county legislative body has no authority to shorten the hours for the sale of beer. Attorney General Opinion 86-202 (12/19/86). The power to extend the hours for the sale of beer must be exercised by resolution of the county legislative body, and cannot be delegated to the beer board. See Attorney General Opinion 82-325 (also cited 82-186) (6/24/82).

Regardless of the hours established for the sale of beer, any establishment that has a permit from the ABC to sell liquor or wine for on-premises consumption under Title 57, Chapter 4, is allowed to sell beer at any time the establishment is legally authorized to sell liquor or wine, provided that the establishment has obtained a beer permit. T.C.A. § 57-5-113.

The hours for the sale of beer in "clubs" as defined in T.C.A. § 57-4-102 must conform to the hours for sale of liquor by the drink as provided in T.C.A. § 57-4-203(d) and cannot be changed by resolution of the county legislative body. T.C.A. § 57-5-301(b)(1).

In counties that have adopted liquor by the drink by countywide referendum, county legislative bodies may fix the hours for the sale of beer within the county, but these hours have no effect on business establishments selling liquor by the drink. T.C.A. § 57-5-301(b)(4).

In counties that have not adopted liquor by the drink in a countywide referendum but where a municipality in the county has approved liquor by the drink in a referendum, the hours for sale of beer in the entire county are automatically altered to so that the hours for beer sales are the same as the hours established in T.C.A. § 57-4-203(d) for the sale of liquor by the drink, except in other municipalities within the county that have not approved liquor by the drink. T.C.A. § 57-5-301(b)(5) and Attorney General Opinions 86-202 (12/19/86), U94-50 (3/21/94), and 99-187 (9/22/99). If an incorporated municipality is partially located in more than one county, then the hours established by T.C.A. § 57-4-203(d) will apply to each of the counties. Attorney General Opinion 85-7 (1/7/85). The county legislative body is free to extend (but not decrease) the hours for the sale of beer. T.C.A. § 57-5-301(b)(5) and Attorney General Opinion U94-50 (3/21/94).

The hours for sale of liquor by the drink are established in T.C.A. § 57-4-203(d). These hours also apply to the sale of beer in "clubs" as defined in T.C.A. § 57-4-102, and in counties where a municipality has approved liquor by the drink. The hours established by T.C.A. § 57-4-203(d)(1) prohibit the sale of alcoholic beverages in most establishments as follows:

Hotels, clubs, zoological institutions, public aquariums, museums, motels, convention centers, restaurants, community theaters, historic interpretive centers, and urban park centers, licensed as provided herein to sell alcoholic beverages, and/or malt beverages, and/or wine may not sell, or give away, alcoholic beverages and/or malt beverages and/or wine between the hours of three o'clock a.m. (3:00 a.m.) and eight o'clock a.m. (8:00 a.m.) on weekdays, or between the hours of three o'clock a.m. (3:00 a.m.) and twelve o'clock (12:00) noon on Sundays.

The ABC is authorized to extend the hours of sale in jurisdictions which have approved liquor by the drink by referendum. T.C.A. § 57-4-203(d)(5). Under Rule 0100-1-.03(2), the ABC has extended the hours as follows:

- (2) Consumption on Licensed Premises. Except as provided for in 0100-01-.08 below [dealing with terminal buildings of a commercial air carrier], no licensee shall permit alcoholic or malt beverages

to be consumed and/or sold on the licensed premises between the hours of 3 a.m. and 8 a.m. on Monday through Saturday or between the hours of 3 a.m. and 10 a.m. on Sunday unless the local jurisdiction has opted out of the expanded hours. If such is the case, then the consumption and/or sale of alcoholic beverages may begin at 12 noon on Sunday.

Municipalities and metropolitan governments which have adopted liquor by the drink are authorized to opt out of the extended hours set by the ABC rule and go back to the hours established under the statute.

T.C.A. § 57-4-203(d)(5). The hours for sale of beer in the county will be the same as the extended hours set by the ABC rule regardless of whether the city has opted out of those hours, unless the county legislative body by 2/3 vote sets the hours for Sunday beer sales in accordance with T.C.A. § 57-5-301(b)(1) to apply in the county. T.C.A. § 57-4-203(d)(5).

In any jurisdiction that has voted to accept Tennessee River Resort District status under T.C.A. § 67-6-103(a)(3)(F) and is considered a Tennessee River Resort District for purposes of Title 57, Chapter 4, Part 1, the hours for the sale of beer within the district cannot be less than the hours for the sale of liquor and wine for on-premises consumption. T.C.A. § 57-5-301(b)(5)(B).

Distance Rules

Reference Number: CTAS-356

County legislative bodies do have certain statutory powers concerning the regulation of the sale of beer in the county which are not shared by the county beer board and cannot be delegated to the board. Only the county legislative body can adopt a resolution to extend the hours for selling beer in the county, and only the county legislative body can adopt distance resolutions, like the 2,000 foot rule and the 300-foot rule. T.C.A. § 57-5-105. Attorney General Opinion 82-325 (6/24/82).

When construing the statutes governing distance rules, it is generally the policy of the courts to construe the statutory provisions liberally in favor of the regulations and the places or institutions they are designed to protect, and strictly against the applicants for the beer permits. Y & M v. Beer Commission or Beer Board of Johnson County, 679 S.W.2d 446 (Tenn. 1984); St. John v. Beer Permit Board, 1998 WL 832392 (Tenn. App. 1998).

Distance rules must be applied uniformly. The Attorney General has opined that a Class A county cannot draw a distinction between on-premises and off-premises consumption for purposes of distance rules, so the same distance rule must be applied regardless of whether the establishment sells beer for consumption on-premises or off-premises. Attorney General Opinions U93-74 (6/17/93) and 01-157 (10/25/01). The Attorney General has also opined that a county cannot enact different distance rules in different areas of the county. Op. Tenn. Att'y Gen. 02-092 (8/28/02) at *7.

If a county changes its distance requirements, it is the distance rule in effect at the time the board votes on the application for a permit that controls that permit application. Attorney General Opinion 10-98 (9/15/10).

Holders of state licenses to sell liquor by the drink are not exempt from local distance rules. If they wish to sell beer, they are subject to the same distance requirements as other beer permit holders. Attorney General Opinion 99-098 (4/30/99).

The 2,000 Foot Rule

Reference Number: CTAS-357

County legislative bodies are given the authority to forbid the sale, storage and manufacture of beer within 2,000 feet of schools, churches and other places of public gathering. T.C.A. § 57-5-105(b)(1). The 2,000 foot rule applies even where the church, school or public gathering place is across state lines. Y & M v. Beer Commission or Beer Board of Johnson County, 679 S.W.2d 446 (Tenn. 1984).

A "church" has been defined by the Attorney General as a building regularly used for public worship. Attorney General Opinion 97-060 (5/1/97). A "place of public gathering" has been defined as a place which the general public has a right to visit and which is in fact visited by many people. Attorney General Opinion U90-121 (8/17/90). A public gathering place is usually confined to schools, churches, and similar public places, and does not include commercial establishments such as stores, filling stations, or dance halls. See Wright v. State, 171 Tenn. 628, 106 S.W.2d 866 (1937). A public cemetery may constitute a public gathering place, depending upon the nature of the cemetery. Attorney General Opinions 91-57 (6/10/91), 92-51 (9/16/92), and 12-02 (1/6/12). A day care center, whether privately owned or owned by a church, meets the definition of "public gathering place." Attorney General Opinions 97-060 (5/1/97) and 98-069 (3/25/98). A baptismal site located on private property is not considered a public gathering place because the public has no right to use the site. Adams v. Monroe County Quarterly Court, 379

S.W.2d 769 (Tenn. 1964). A sports complex containing a day care center is a place of public gathering, but a National Guard armory is not. Tennessee Sports Complex, Inc. v. Lenoir City Beer Board, 106 S.W.3d 33 (Tenn. Ct. App. 2002).

The adoption of the 2,000 foot rule is discretionary. A county legislative body must adopt a resolution implementing the 2,000 foot rule before it can be enforced in the county. Once enacted by the county legislative body, the county beer board can enforce the rule and deny beer permits which violate the rule. T.C.A. § 57-5-105(b)(1). A county beer board issuing a permit contrary to a distance rule adopted by the county legislative body has violated its obligation of upholding and enforcing the laws. Attorney General Opinion 82-325 (6/24/82). (Sample resolution to enact a 2,000 foot rule for the sale of beer).

Once the 2,000 foot rule is adopted, it must be enforced uniformly, and discretionary application of the rule renders it invalid. Serv-U-Mart, Inc. v. Sullivan County, 527 S.W.2d 121 (Tenn. 1975). An invalid distance resolution cannot be used as grounds for denial of a beer permit. Seay v. Knox County Quarterly Court, 541 S.W.2d 946 (Tenn. 1976). (See the discussion under Restoring an Invalid Distance Rule below.)

Distance Rules of Less than 2,000 Feet

Reference Number: CTAS-358

While the statute speaks only of a 2,000 foot rule, the Tennessee Supreme Court has held that the authority to impose a 2,000 foot rule implies that a county may impose a rule prohibiting the sale of beer within a lesser radius from churches, schools or places of public gathering. Youngblood v. Rutherford County Beer Board, 707 S.W.2d 507 (Tenn. 1986). Thus, the statute establishes only the maximum distance within which the county can prohibit beer sales, and counties may prohibit the sale of beer within any lesser distance. Attorney General Opinion U93-74 (6/17/93). However, once the county's distance rule is established, it must be uniformly enforced or it will become invalid.

The 300 Foot Rule

Reference Number: CTAS-359

The county legislative body may adopt a resolution to forbid the sale of beer within 300 feet of a residential dwelling, measured from building to building. (Sample resolution to enact 300 foot rule for the sale of beer). In order to use this distance rule to deny an application for a beer permit, the owner of the residential dwelling must appear before the county beer board, in person, and object to the issuance of the permit. The term "residential dwelling" is not defined in the statute; however, it has been interpreted to include a trailer that was occasionally occupied for residential purposes. St. John v. Beer Permit Board, 1998 WL 832392 (Tenn. App. Dec. 2, 1998). This statute applies to zoned as well as unzoned property. This distance rule does not apply to locations where beer permits were issued prior to the date the rule was adopted by the county legislative body, nor does the rule apply to applications for a change in the licensee or permittee at such locations. T.C.A. § 57-5-105(i).

Measuring to Enforce Distance Rules

Reference Number: CTAS-360

The Tennessee Supreme Court, in Jones v. Sullivan County Beer Board, 292 S.W.2d 185 (Tenn. 1956), held that the exclusive method for measuring distance requirements between beer establishments and schools, churches and other places of public gathering is the straight-line method, unless a different method is prescribed by statute. There is no statute in Tennessee prescribing a method for such measurements. The straight-line method of measuring requires that the distance be measured in a straight line between the properties, at their nearest points, rather than by driving distance or other method. The measurement is made from building to building with respect to distance, because T.C.A. § 57-5-105(b)(1) requires measurement from the "place of gathering," which would be the building. Ewin v. Richardson, 399 S.W.2d 318 (Tenn. 1966). According to the Attorney General, the measurement must be taken from the nearest portion of the entire building, and not just from the nearest portion of a structurally distinct portion of that building that houses the business engaged in the sale of beer. Attorney General Opinion 05-144 (9/27/05). A distance rule will be enforced even when the church, school, or other place of public gathering is located across the state line. Y & M v. Beer Board of Johnson County, 679 S.W.2d 446 (Tenn. 1984).

Grandfather Provisions

Reference Number: CTAS-361

When a county adopts a distance rule, the rule cannot be used as grounds to revoke a permit where a church, school or other place of public gathering is built after a beer permit is issued, as that would constitute an arbitrary and unreasonable exercise of discretion. Sparks v. Beer Committee of Blount County, 339 S.W.2d 23 (Tenn. 1960). The court stated that while there is no property right in a permit to sell beer, there are some rights which cannot be taken away by unreasonable regulations adopted after the permit was granted. Sparks, at page 24. See also Attorney General Opinion 02-061 (5/8/02).

Under T.C.A. § 57-5-109, a beer permit cannot be suspended, revoked or denied on the basis of proximity to a school, residence, church or other place of public gathering if a valid permit was issued to any business on that same location. The phrase "on that same location" is defined in the statute as being within the boundaries of the real property on which the business was located, and the protection applies regardless of whether the business moves the building on the location or whether the business was a conforming or nonconforming use at the time of the move. T.C.A. § 57-5-109(b). Under this statute, a validly permitted building which meets the distance requirements can be demolished and rebuilt in a different location on the same property which does not meet the distance requirements and the permit cannot be denied. Exxonmobil Oil Corp. v. Metropolitan Government of Nashville, 2005 WL 1528252 (Tenn. Ct. App. 12/12/05).

This grandfather provision does not apply if there has been a six-month gap in beer sales at the location. However, if the discontinuance of beer sales for more than six months is caused by a beer board's refusal to issue a permit, the applicant does not lose the protection of the statute if the applicant appeals the denial; a new six- (6) month period begins to run on the date when the appeal of the denial is final. T.C.A. § 57-5-109(c).

The current provisions of this statute are a result of litigation between Exxon and the Metropolitan Government of Nashville and Davidson County. See Exxon Corp. v. Metropolitan Government of Nashville and Davidson County, 72 S.W.3d 638 (Tenn. 2002) and Exxonmobil Oil Corp. v. Metropolitan Government of Nashville and Davidson County, 2005 WL 1528252 (Tenn. Ct. App. 12/12/05). In the Exxon cases, the original building was not in violation of the distance requirement. Exxon purchased the business, demolished the building and relocated it in a position that did violate the distance requirement. The statute was amended to allow Exxon to fall within its provisions regardless of whether the business was conforming at the time the building was moved. This has caused the statute to be broader than a typical "grandfather" provision.

Restoring an Invalid Distance Rule

Reference Number: CTAS-362

When a county issues beer permits in violation of an established distance rule, the rule becomes invalid and it can no longer be used as a basis for denying other permits. Cox Oil Co., Inc. v. City of Lexington Beer Board, 2002 WL 31322533 (Tenn. Ct. App. 2002); Randolph v. Coffee County Beer Board, 2002 WL 360335 (Tenn. Ct. App. 2002); Reagor v. Dyer County, 651 S.W.2d 700 (Tenn. 1983); Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983); Henry v. Blount County Beer Board, 617 S.W.2d 888 (Tenn. 1981); City of Murfreesboro v. Davis, 569 S.W.2d 805 (Tenn. 1978); Seay v. Knox County Quarterly Court, 541 S.W.2d 946 (Tenn. 1976). Restoring an invalid distance rule is a difficult process which usually results in costly litigation, and the law on this subject is complex and confusing. To avoid problems, distance rules should be carefully enforced.

To restore an invalid distance rule, the county legislative body generally has two options. The first option is to rescind the existing distance rule and establish a less restrictive rule within which all issued beer permits would fall. A new distance rule could be established by measuring the shortest distance between an existing licensee and the nearest school, residence, church or other place of public gathering. This new rule could then be uniformly applied. Youngblood v. Rutherford County Beer Board, 707 S.W.2d 507 (Tenn. 1986); Attorney General Opinion U88-17 (2/18/88).

The second option is to pass a new resolution reinstating the distance rule, but in order to do this all permits that were issued in violation of the distance rule must be eliminated by revocation or some other method. Henry v. Blount County Beer Board, 617 S.W.2d 888 (Tenn. 1981); Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983); Randolph v. Coffee County Beer Board, 2002 WL 360335 (Tenn. Ct. App. 2002). As a practical matter, this means that all invalidly issued permits must be revoked. However, permits that were issued in conformance with the distance rules in existence at the time they were issued are validly issued permits protected under T.C.A. § 57-5-109, and these permits cannot be revoked.

In theory the distance rule also may be restored by elimination of the discriminatorily issued permits through attrition. Attorney General Opinion 87-34 (3/6/87); see also Attorney General Opinion U91-51 (4/9/91). However, in practice this could be a lengthy process and the distance rule could be challenged

and declared invalid if the county allows discriminatorily issued permits to remain in use while using the distance rule to deny other applications for permits. An earlier opinion of the Attorney General states that elimination through attrition is in the nature of a post facto amendment which does not cure an invalid distance ordinance. Attorney General Opinion 82-325 (6/24/82). See also City of Murfreesboro v. Davis, 569 S.W.2d 805 (Tenn. 1978).

To complicate matters, courts occasionally find that permits issued invalidly cannot be revoked, usually in the context of detrimental reliance. In Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983), there had been a full hearing prior to the issuance of the permit, the applicant made it clear that he would not build if the permit was not issued, the permit was issued and the permit holder operated his business there for over 10 years. Under these circumstances the court found that the permit could not be revoked. In other cases courts have required issuance of permits even though they violate the existing distance rule. In Coffman v. Beer Board of City of Jellico, 1992 WL 122676 (Tenn. Ct. App. 1992), the court found that building a convenience mart in reliance on a city ordinance stating that the distance was to be measured along right-of-way was sufficient "detrimental reliance" to prohibit the beer board from refusing to issue a permit based on the Supreme Court's opinion that distance must be measured by the straight line method.

Prohibition of Beer in Public Parks

Reference Number: CTAS-363

The county legislative body may also, by resolution, prohibit or restrict the consumption of any alcoholic beverage or beer in public parks or recreation areas which are not within the corporate boundaries of a municipality. Such areas must be prominently posted by the county in order to give the public reasonable notice. A violation of the resolution is a misdemeanor. T.C.A. § 5-5-127. While the statute only refers to consumption, restrictions on the sale of beer within park boundaries are so closely tied to consumption that they come within the intent of the statute. However, the statute does not seem to be intended to prohibit the mere possession of beer or alcoholic beverages in Class A counties. Attorney General Opinion U87-19 (2/10/91). (Sample resolution to restrict/prohibit the consumption of beer in public parks or recreation areas).

Prohibited Acts

Reference Number: CTAS-364

In addition to possible suspension or revocation of the beer permit or the imposition of civil penalties, persons violating the laws, rules and regulations (including validly enacted resolutions of the county legislative body) governing beer and like beverages may be prosecuted criminally. The criminal provisions are set out in Tennessee Code Annotated, Title 57, Chapter 5, Part 3, and the penalties are set out in T.C.A. § 40-35-111.

Minors and the Beer Laws

Reference Number: CTAS-365

Several statutes dealing with the sale or possession of beer have special provisions dealing with the purchase or possession of beer by minors. When used in Title 57 of the *Tennessee Code Annotated* with respect to purchasing, consuming or possessing alcoholic beverages (including beer), "minor" means any person who has not attained 21 years of age. T.C.A. § 1-3-105(1). However, any person who is 18 years of age or older may transport, possess, sell or dispense alcoholic beverages (including beer) in the course of that person's employment. T.C.A. § 1-3-113.

In summary, the statutes dealing with minors provide as follows:

1. It is unlawful for any person under the age of 21 to purchase, possess, transport or consume alcoholic beverages (including beer), except that persons who are 18 or over may transport, possess, sell or dispense alcoholic beverages (including beer) in the course of their employment. T.C.A. §§ 1-3-113 and 57-5-301(e). A person under the age of 18 cannot process a sale or bag beer in the course of his or her employment. Attorney General Opinion U90-116 (8/15/90).
2. Anyone purchasing beer for off-premises consumption must present a valid, government-issued form of identification that contains a photo and the birth date of the consumer. Persons exempt under state law from the requirement of having a photo ID must present other identification acceptable to the permit holder. Beer cannot be sold to anyone who does not present the required identification showing that the person is an adult. However, a permit holder cannot be criminally prosecuted or civilly punished for any

sale made to a person who is or reasonably appears to be over the age of 50 and failed to present the required identification. T.C.A. § 57-5-301(a)(1).

3. It is unlawful for any person engaged in the sale, manufacture or distribution of beer to make or permit to be made any sale to minors. T.C.A. § 57-5-301(a)(1). The first offense of selling beer to a minor is a Class A misdemeanor. T.C.A. § 57-5-301(a)(2). A second offense of selling beer to a minor is a Class E felony. Upon the second conviction, the permit of such person shall be automatically and permanently revoked regardless of any other penalty actually imposed. T.C.A. § 57-5-303(c). However, the permit cannot be revoked (but may be suspended for up to 10 days or a penalty up to \$1,500 may be imposed) if an operator or any person working for the operator sold beer to a minor over the age of 18 after the minor exhibited identification (false or otherwise) indicating the minor's age to be 21 or over, the minor reasonably appeared to be of that age, and the person making the sale did not know that the person was a minor. T.C.A. § 57-5-108(b). Note that the penalties for sale of beer to minors are different if an off-premises permit holder has been certified as a "Responsible Vendor" under T.C.A. § 57-5-606.
4. It is unlawful for any person under the age of 21 to purchase or attempt to purchase beer. T.C.A. § 57-5-301(d)(1). While a store owner or employee cannot hold a driver's license or other identification as evidence of a violation, a violator may be detained until proper authorities are called and arrive, provided that the offense was committed in the owner's or employee's presence and delivery of the offender to proper authorities occurs without unnecessary delay. Attorney General Opinion U88-59 (5/26/88).
5. It is unlawful for anyone to purchase beer or like beverages for anyone under the age of 21. T.C.A. § 57-5-301(d)(2).
6. It is unlawful for any person under the age of twenty-one (21) to exhibit false identification or to make false statements to the effect that he or she is 21 years of age for the purpose of purchasing beer. T.C.A. § 57-5-301(d)(3).
7. It is unlawful for the management of any place where beer is sold to allow minors to loiter in such places. The burden of ascertaining the age of minor customers is on the owner or operator of the business. T.C.A. § 57-5-301(c).

The law does not establish a minimum age for applicants for beer permits. Attorney General Opinion 87-28 (2/23/87). However, T.C.A. § 1-3-114 provides that any person 18 years old or older must not be prohibited from entering into any profession or from performing any services on the basis of the person's minority. Therefore, an 18-year-old person could obtain a permit to sell beer, if the person is otherwise qualified. A county or city could not set a minimum age requirement for obtaining a permit to sell beer at greater than 18 years of age.

The Attorney General has opined that an individual under the age of 18 is not eligible to obtain a permit for the retail sale of alcoholic beverages, pursuant to T.C.A. § 57-3-210(h), if the person intends to engage in the physical manufacture, storage, sale, or distribution. However, T.C.A. § 57-3-210(h) does not apply to corporations and thus does not prohibit the carrying on of a retail liquor business by a corporation which has a minority or majority stockholder under the age of 18, so long as the stockholder is not engaged in any of the prohibited acts under that subsection. While that code section does not apply to the sale of beer, it could be inferred from the opinion that a Class B county or city could reasonably set a minimum age at 18 in order to obtain a beer permit, but if the applicant was a corporation with a stockholder under the age of 18, a permit could still be issued. Attorney General Opinion 87-28 (2/23/87) and Attorney General Opinion U86-101 (7/2/86).

Sting Operations Using Minors

Reference Number: CTAS-375

Law enforcement may conduct sting operations using minors in accordance with the requirements of T.C.A. § 39-15-413. Criminal prosecutions for unlawful sales of beer for off-premises consumption to underage persons as a result of a sting operation using a person under the age of 21 cannot be commenced unless the person or law enforcement officer supervising the person used in the sting operation obtains the name of the permit holder and the employee of the permit holder from whom the beer was purchased or attempted to be purchased. The law enforcement officer is required to notify the permit holder in writing within 10 days of the sting that the action occurred, giving the name of the permit holder and the employee involved, and whether the person was successful in making the purchase. T.C.A. § 39-15-413.

Employing Persons Convicted of Certain Crimes

Reference Number: CTAS-366

It is unlawful for the holder of a beer permit or any employee of a person engaged in the business of selling beer to be a person who has been convicted of any violation of the laws against possession, sale, manufacture or transportation of intoxicating liquor or any crime involving moral turpitude, within the last 10 years. T.C.A. § 57-5-301(a). The 10-year period begins on the date of conviction and ends 10 years from that date. Attorney General Opinion U90-116 (8/15/90).

Sale of Untaxed Beer - Contraband

Reference Number: CTAS-367

No beer retailer may purchase beer from anyone other than duly licensed wholesalers (and certain Tennessee manufacturers, as set out in T.C.A. § 57-5-101) located in Tennessee. T.C.A. § 57-5-201. Any beer sold or offered for sale by or in the possession of a retailer, purchased from any person or firm other than a duly licensed Tennessee wholesaler or distributor, is declared to be contraband and is subject to confiscation. T.C.A. § 57-5-409. The beer board may revoke or suspend the permit of any retailer who is found to possess beer on which the state barrel-age tax and the city and county wholesale beer tax have not been paid. T.C.A. § 57-5-108(m).

Storage at Other Than Permit Address

Reference Number: CTAS-368

It is unlawful for any retailer to store beer purchased for a specific retail location at any place other than that specific retail location. T.C.A. § 57-5-416. No retailer may store any alcoholic beverages, wine, or beer at any location other than the licensed premises and the retailer shall not hold, store, or accept delivery of any products intended for another retailer. T.C.A. § 57-3-406(g).

Outdoor Signs

Reference Number: CTAS-369

No outdoor sign, advertisement or display that advertises beer may be erected or maintained on the property on which a retail beer establishment is located other than one sign, advertisement or display which makes reference to the fact that the establishment sells beer but does not use brand names, pictures, numbers, prices or diagrams relating to beer. The prohibition does not apply to any sign, advertisement or display erected or maintained by or at the request of a temporary beer permittee or to any sports arena, stadium or entertainment complex. T.C.A. § 57-5-304. This statute does not specifically prohibit the use of slogans, trademarks or symbols, so their use is not prohibited except where they may consist of a picture, diagram, or both. Attorney General Opinion U89-140 (12/7/89). According to the Tennessee Attorney General, this statute is susceptible to challenge under the First Amendment and it is unlikely to survive such a challenge. Op. Tenn. Att'y Gen. 15-04 (1/14/15).

Wholesaler/Retailer Relationship

Reference Number: CTAS-370

Retailers are prohibited from purchasing beer from anyone other than a wholesaler licensed and located in Tennessee, and wholesale distributors are prohibited from purchasing beer from anyone other than a manufacturer, importer, or other Tennessee wholesaler licensed in Tennessee. T.C.A. § 57-5-201(c). Brewers and wholesalers are prohibited from making any loan, furnishing any fixtures of any kind, or having any interest, direct or indirect, in the business of any retailer, or in the premises of any retailer. T.C.A. § 57-5-101(a). A limited exception to these rules exists for breweries which are located in counties having a population of 75,000 or more or in a premier resort city that has adopted liquor by the drink. T.C.A. § 57-5-101(c). See "Microbreweries and Brew Pubs" herein.

Tennessee Responsible Vendor Act

Reference Number: CTAS-371

The Tennessee Responsible Vendor Act of 2006, codified at T.C.A. § 57-5-601 et seq., is a program administered by the Tennessee Alcoholic Beverage Commission (ABC) for vendors who sell beer for off-premises consumption. The program is an effort to curb the sale of beer to minors and to reduce intoxication and accidents, injuries and deaths related to intoxication. The program is voluntary; vendors are not required to participate. Vendors who do elect to participate in the program and who receive and

maintain their certification as a responsible vendor are entitled to reduced penalties for offenses related to the sale of beer to minors.

ABC Fees. The ABC charges the following fees, set out in T.C.A. § 57-5-609, in connection with the administration of the responsible vendor program:

Annual fee for entities approved to conduct responsible vendor training--\$ 35

Annual fee for responsible vendors:

0 - 15 certified clerks--\$ 25

16 - 49 certified clerks--\$ 75

50 - 100 certified clerks--\$150

Over 100 certified clerks--\$250

Responsible Vendor Certification

Reference Number: CTAS-372

Under T.C.A. § 57-5-606, the ABC will certify a beer vendor as a "responsible vendor" upon compliance with the following:

1. All clerks who sell beer for off-premises consumption must successfully complete a responsible vendor training program and become certified within 61 days after being employed by the vendor, and the vendor must verify with the ABC prior to employing a clerk that the clerk is eligible for certification.
2. Each clerk must be issued a name badge with the clerk's first name clearly visible, and must wear the badge at all times while on duty.
3. The vendor must provide employees with instruction approved by the ABC which includes the laws regarding the sale of beer for off-premises consumption, methods for recognizing and dealing with underage customers, and procedures for refusing to sell beer to underage customers and for dealing with intoxicated customers.
4. The vendor must require all certified clerks to attend at least one annual meeting at which the vendor disseminates updated information prescribed by the ABC.
5. The vendor must maintain employment and training records.

Responsible Vendor Signage

Reference Number: CTAS-373

Responsible vendors are required to post signs on their premises informing customers of their policy against selling beer to underage persons. These signs must be at least 8½" x 11" and must contain the following language: "STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER." T.C.A. § 57-5-301(a)(1).

Responsible Vendor Provisions Affecting Beer Boards

Reference Number: CTAS-374

The following provisions of the Tennessee Responsible Vendor Act relate to the operation of the beer board:

1. If a beer board finds that any off-premises beer permit holder made a sale to a minor, the beer board must report the name of the clerk who made the sale to the ABC within 15 days of finding that the sale occurred. The clerk's certification is invalidated and the clerk cannot reapply for one year from the date of the beer board's determination. The ABC will notify the responsible vendor of their certified clerks who have lost their certification within 15 days after notification by the beer board (and the responsible vendor cannot allow these clerks to sell beer). T.C.A. § 57-5-607.
2. The beer board cannot suspend or revoke a responsible vendor's beer permit based on the sale of beer to a minor if the clerk who sold the beer was certified and attended annual meetings since the certification, or was within the 61-day period after employment. However, the ABC will revoke the responsible vendor's certification if the vendor knew or should have known about the violation, or participated in or committed the violation, and the beer board may then impose penalties as if the vendor had not been certified as a responsible vendor. Also, the ABC will revoke the vendor's responsible vendor certification for a period of three years if there are two violations within a 12-month period. T.C.A. § 57-5-608.

3. Penalties that may be imposed on responsible vendors for violations involving the sale of beer to minors are lower than those for vendors who do not participate in the program. A responsible vendor's permit cannot be revoked or suspended for a clerk's illegal sale of beer to a minor as long as the responsible vendor and the clerk were in compliance with the act; a civil penalty not exceeding \$1,000 may be imposed instead. T.C.A. § 57-5-108(a)(2)(A).
4. Vendors who are not in compliance with the responsible vendor program are subject to suspension or revocation of their beer permit for the sale of beer to minors. These non-complying vendors may be offered the alternative of paying a civil penalty not exceeding \$2,500 for each sale to a minor, or a penalty not exceeding \$1,000 for any other offense. T.C.A. § 57-5-108(a)(2)(B).
5. The beer board is required to file an annual report with the ABC by February 1 each year containing the following statistical information for the preceding calendar year: (a) total number of permits issued for off-premises consumption, (b) number of violations for sale of beer for off-premises consumption to a minor resulting from a sting, and arrests made not related to a sting, (c) whether the violations reported occurred at an establishment participating in the responsible vendor program, (d) for stings conducted at establishments participating in the responsible vendor program, whether the underage person was unsuccessful in making the purchase, (e) type and number of violations, other than sales of beer to minors for off-premises consumption, that occurred at establishments selling beer for off-premises consumption, (f) name of permit holder at location where violations occurred, and (g) specific penalty imposed for each violation. T.C.A. § 57-5-605.

Revocation, Suspension, and Imposition of Civil Penalties

Reference Number: CTAS-376

The beer board or county legislative body which issued a beer permit (hereinafter referred to as the "board") is authorized to suspend or revoke the permit as provided in T.C.A. § 57-5-108. Suspension, revocation, or imposition of a civil penalty may be made for violation of any provision of the beer laws set out in Title 57, Chapter 5, of the Tennessee Code Annotated, or whenever it satisfactorily appears that the licensed premises are being maintained and operated in a manner which is detrimental to the public health, safety or morals. T.C.A. § 57-5-108(c). Special rules apply to suspensions, revocations, and imposition of civil penalties for sales of beer to minors for vendors who have been certified as responsible vendors under the ABC's responsible vendor certification program.

The board may, at the time it imposes suspension or revocation, offer the permit holder the alternative of paying a civil penalty not exceeding \$2,500 for each offense involving sales to minors, or \$1,000 for any other offense. However, if the permit holder is a certified responsible vendor and both the permit holder and the clerk are in compliance with T.C.A. § 57-5-606, the board may not revoke or suspend a permit for an illegal sale of beer to a minor, but may instead impose a civil penalty of \$1,000 for each offense of selling beer to a minor. T.C.A. § 57-5-108(a)(2).

If a civil penalty is offered as an alternative to suspension or revocation, the permit holder must be given seven days within which to pay the penalty before the suspension or revocation can be imposed. If the civil penalty is paid within that time, the suspension or revocation is deemed withdrawn. T.C.A.

§ 57-5-108(a)(2)(G) The beer board is authorized to accept at any time the payment of a civil penalty, not exceeding the stated amounts, from a permit holder charged with a violation, and the payment will be deemed an admission of the violation and no other penalty can be imposed. T.C.A. § 57-5-108(a)(3).

A permit cannot be revoked on the grounds that beer was sold to a minor over the age of 18 years if the minor presented identification, false or otherwise, indicating the minor's age to be 21 or over, and the minor reasonably appeared to have been of the age indicated in the identification and was unknown to the person making the sale. In this event, the permit can be suspended for a period not exceeding 10 days or a civil penalty of up to \$1,500 may be imposed. T.C.A. § 57-5-108(b).

The county legislative body or the county beer board may, in its discretion, revoke or suspend the permit of any beer retailer within its jurisdiction who is found in possession of untaxed beer. The burden of proof is on the retailer to prove that the beer has been taxed. T.C.A. § 57-5-108(m). The beer board also may suspend or revoke a permit for failure to pay the annual privilege tax after the required notices have been sent. T.C.A. § 57-5-104(b)(3).

When a permit is revoked by the county beer board, a new permit for the sale of beer on the same premises shall not be issued for one year following the final effective date of the revocation. However, the board may, in its discretion, issue a new permit on the same premises before the expiration of the one year period if the individual applying for the permit is not the original holder of the permit or any family

member who could inherit from such individual by intestate succession. T.C.A. § 57-5-108(k).

Permanent revocation of beer permits can only be imposed when the permit holder has at least two violations within a 12-month period. Revocation of beer permits applies only to the permit holder and only at that location; penalties cannot be applied to other beer permits held by the permittee at other locations. Revocations do not stay with the property when the property changes hands. Revocation at one location should not be the sole disqualifying factor when considering issuance of beer permits at different locations. T.C.A. § 57-5-108(a)(2).

Any decision concerning revocation, suspension or civil penalties must be based on the facts of the particular situation. There are very few situations which are exactly alike. The county beer board is authorized to revoke a beer permit for any of the reasons which would disqualify an applicant in the first instance. Each fact situation must be considered individually. The cases cited throughout the material show that a county must have a valid reason for the denial, revocation or suspension of a beer permit.

Dallas's Law

Dallas's Law became effective on January 1, 2023. The law requires all security guards that work in establishments that sell alcohol in Tennessee to complete additional training in de-escalation, safe restraint, first aid, and CPR. The law prohibits a beer permit holder from knowingly employing a security guard who does not hold a valid registration card. If a violation occurs, the beer board is required to suspend a beer permit for on-premises consumption for a period of one month per violation. This law does not limit a beer board's ability to seek to revoke or summarily suspend the permit. In 2023, the law was amended to add that the suspension of the ABC license or beer permit holder shall not be suspended for one month when the improperly registered or unregistered security guard was employed by a contract security company at the establishment that holds the license to serve alcohol for on-premises consumption. T.C.A. § 62-35-134.

Investigations

Reference Number: CTAS-377

When a beer board receives information concerning possible violations of the law by a beer permit holder, the board should refer the matter to appropriate law enforcement authorities. When necessary, however, the beer board may take investigatory action itself. The Tennessee Court of Appeals has held that a county beer board possesses continuing, supervisory powers to police permit holders after the issuance of the permit. In an unpublished opinion, the court of appeals found that a beer board was empowered to employ an undercover investigator after the county sheriff had refused to conduct an investigation concerning illegal sales of beer to minors. Jackson v. Franklin County Beer Board, 1993 WL 46524 (Tenn. Ct. App. 1993). Relying on this opinion, the Attorney General has opined that a beer board may hire a private investigatory firm to conduct undercover investigations concerning the sale of beer to minors, and that minors may be used in these investigations. Attorney General Opinion 01-062 (4/20/01).

Hearings and Due Process

Reference Number: CTAS-378

While no one has a right to a beer permit in the first instance, once a permit has been issued it becomes a valuable property right which is protected under the state and federal constitutions and a permit holder must be afforded due process with respect to deprivation of the privilege granted by the permit. Due process is a flexible standard, calling for the procedural protections that the particular situation demands. In general, the factors to be considered are: (1) the nature and importance of the private interest at stake, (2) the risk of erroneous deprivation of the interest and the probable value of additional safeguards, and (3) the governmental interest, including any additional burdens that procedural safeguards might entail. A beer permit is a very important interest because a person's livelihood may depend upon it. A permit holder is entitled to notice and an opportunity to be heard that is reasonable under the circumstances. Attorney General Opinion 94-064 (4/28/94).

The due process requirements may extend to persons other than the permit holder. The Attorney General has opined that the statute which prohibits the issuance of a beer permit for one year on premises where a permit has been revoked could be unconstitutional in application if the property owner is different from the permit holder and the property owner is not given an opportunity to show that he or she was innocent

of wrongdoing and had taken all action which reasonably could be expected to prevent the violation. Attorney General Opinion 90-77 (8/13/90).

Reciprocal Notices of Suspensions and Revocations with ABC

Reference Number: CTAS-2120

When the Alcoholic Beverage Commission (ABC) suspends or revokes an on-premises liquor license, the ABC is required to send notice by certified mail to the local beer board in the county in which the holder of the ABC license is located. Upon receipt of the notice, the beer board may temporarily suspend the establishment's beer permit and shall schedule a hearing for the next regularly scheduled meeting of the beer board that is at least 14 days after receipt of the notice, and notify the permit holder of the date and time to appear and show cause why the on-premises beer permit should not be suspended or revoked. If the permit is suspended or revoked, no permit to sell beer on premises shall be issued to any person for that location for the period of time stated in the decision of the ABC. The beer board's decision is final and may be appealed. T.C.A. § 57-1-214.

When a beer board suspends or revokes an on-premises beer permit, the beer board is required to send notice by certified mail to the executive director of the Alcoholic Beverage Commission (ABC), including the record of evidence and the determination made by the board in suspending or revoking the permit. T.C.A. § 57-1-214.

These reciprocal notification provisions apply in all counties other than Hancock, Union, Grainger, Claiborne, Cocke, Jefferson, Hawkins, Hamilton, and Knox, which counties are participating in a similar reciprocal notification program enacted as a pilot project enacted under T.C.A. § 57-5-108(o)(1).

Judicial Review of Beer Board Action

Reference Number: CTAS-379

Any applicant who complies with the conditions and provisions of T.C.A. § 57-5-105 must be issued the necessary permit and in the event the permit is denied, the applicant is entitled to have the denial reviewed before the chancery or circuit court. T.C.A. § 57-5-105(e). The procedure for judicial review of beer board actions, including the denial, suspension or revocation of a beer permit, or imposition of a civil penalty, is set out in T.C.A. § 57-5-108. The action of the beer board is reviewed when a dissatisfied party files a statutory writ of certiorari in the circuit or chancery court in the county where the beer board is located. Immediately upon the grant of the writ of certiorari, the beer board is required to cause to be made, certified and forwarded to the court a complete transcript of the proceedings of the beer board. The proceedings will be a trial de novo, meaning that the court will hear all evidence and will not rely on the record of the proceedings before the beer board. The judge to which the petition for certiorari is addressed has the authority to supersede, stay or enjoin the beer board's order of revocation, suspension, or imposition of a civil penalty, upon a showing of good cause on the part of the petitioning party. Any party dissatisfied with the decree of the trial court may appeal the decision, and the case will be heard upon the transcript of the records from the trial court. If a final judgment is entered by the trial court superseding the revocation or suspension order, and the cause is appealed by the beer board, the final judgment of the trial court will remain in force until final appellate disposition of the case. T.C.A. § 57-5-108.

A beer permit applicant may seek review from the circuit or chancery court before the final decision of the beer board in certain limited situations. For instance, if a beer board needlessly prolongs an application for a beer permit, the beer board has, in effect, denied the application so that the applicant may seek court review. City of Murfreesboro v. Fortner, 570 S.W.2d 859 (Tenn. 1978). While action by the beer board tabling an application for a permit until the beer board's next quarterly meeting is not generally an "order" as used in the statute allowing review by the circuit or chancery court by writ of certiorari of any order of any agency, if a beer board tables an application for reasons completely extraneous to the qualifications of an applicant (e.g., building set-back) such that further pursuit of a permit through administrative channels would be futile, then the courts should grant the writ. McCarter v. Goddard, 609 S.W.2d 505 (Tenn. 1980).

State Barrels Tax

Reference Number: CTAS-380

Every person, firm, corporation, joint-stock company, syndicate or association in this state storing, selling, distributing or manufacturing beer and like beverages must pay a special privilege tax levied at the rate of \$4.29 per barrel (31 liquid gallons) of beer stored, sold, distributed by gift or sale, or manufactured in

Tennessee. T.C.A. § 57-5-201. The Commissioner of Revenue is the administrator and collector of the tax. T.C.A. § 57-5-202. This tax is a state privilege tax, and counties cannot levy any like tax. T.C.A. § 57-5-201(b).

Exemptions to this tax are as follows:

1. Beer manufactured in Tennessee but exported for sale, distribution or gift. T.C.A. § 57-5-201(a)(1).
2. Beer dispensed gratuitously and consumed on the premises. T.C.A. § 57-5-201(a)(1).
3. Beer sold for consumption on a U. S. military or naval installation or to post exchanges, ship service stores, commissaries and messes operated by the U. S. armed forces. T.C.A. § 57-5-208.

Wholesalers and manufacturers of beer must apply to the Commissioner of Revenue and receive a certificate of registration. This registration costs \$20.00 for wholesalers and \$40.00 for manufacturers. T.C.A. § 57-5-102. In addition, wholesalers and manufacturers of beer must execute a bond securing the payment of the state privilege tax, payable to the Commissioner of Revenue. T.C.A. § 57-5-110.

Proceeds of the tax are distributed as follows:

1. Up to 4% to the Department of Revenue to defray the expenses of administration of this tax. T.C.A. § 57-5-202.
2. Of the amount paid into the state treasury:
 - 10.05% to the several counties equally for general purposes.
 - 10.05% to the incorporated municipalities according to population for general purposes.
 - .41% to the Department of Mental Health and Mental Retardation to assist municipalities and counties in carrying out the provisions of the "Comprehensive Alcohol and Drug Treatment Acts of 1973."
 - Remainder (79.49%) to the state general fund. T.C.A. § 57-5-205.

The tax is due and payable on or before the 20th day of the month following the month in which it accrues. T.C.A. § 57-5-203. The Commissioner of Revenue is authorized to suspend or revoke the certificate of registration, or impose civil penalties, for failure to make the required reports or to pay the tax when due. T.C.A. §§ 57-5-108(l), 57-5-204. Persons delinquent in making reports or paying taxes are subject to a penalty of 5 percent of the unpaid tax for each thirty (30) days that the tax is unpaid up to a maximum of twenty-five percent (25%) of the unpaid amount, with minimum penalty of \$15. Additional penalties can be imposed by the Commissioner of Revenue for negligence (10 percent of underpayment) or fraud (100 percent of underpayment). Interest is charged at the legal (formula) rate. T.C.A. §§ 67-1-801, 67-1-804.

Wholesale Beer Tax

Reference Number: CTAS-381

A tax is imposed on the sale of beer and like beverages at wholesale. T.C.A. §§ 57-6-102, 57-6-103. Beer or ale sold to any port exchange, ship service store, commissary, open mess, officers' club, N.C.O. club or other organization recognized by and located on any fort, base, camp or post of the U. S. armed forces is exempted from this tax. T.C.A. § 57-6-111.

The rate of the tax is 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 galls (31 gals.) shall be taxed at a proportionate rate. T.C.A. § 57-6-103(a).

The Commissioner of Revenue administers the tax. The wholesale beer distributor collects the tax and remits the proceeds as follows:

1. Seventeen cents (17¢) of the gross tax owed per barrel to the Department of Revenue, to be kept in a special fund and used only for expenses in administration of this tax. T.C.A. § 57-6-103(f)
2. Ninety-two cents (92¢) of the gross tax owed per barrel retained by the wholesaler or manufacturer operating as a retailer to defray the cost of collecting and remitting the tax. T.C.A. § 57-6-103(g)
3. The remainder of the tax to the city or county in which the sale is made. T.C.A. § 57-6-103.

The tax collected on sales to licensed retailers is to be paid to the county or city in which the retailer's place of business is located, and the tax on all other sales made at the wholesaler's place of business is to be paid to the county or city in which the wholesaler's business is located. T.C.A. § 57-6-103(d). All sales

made at the wholesaler's place of business as well as any sale or transfer contemplated by §57-5-101(c)(2) by a manufacturer operating as a retailer to a location owned or operated by such manufacturer-retailer are deemed to be wholesale sales and the tax must be collected. T.C.A. § 57-6-103(c).

An annexing or newly-incorporated municipality is required to provide written notice of the date of annexation or incorporation, together with a list of retailers located in the territory, to each wholesale beer distributor within the territory. T.C.A. § 57-6-103(i)(1). After annexation, the wholesale beer taxes generated within the annexed territory are apportioned between the city and the county in accordance with the provisions of T.C.A. § 6-51-115. For newly incorporated areas, the taxes generated within the newly-incorporated area are apportioned between the city and the county in accordance with the provisions of T.C.A. §§ 6-1-220, 6-18-115, or 6-30-108, as applicable, as well as T.C.A. §§ 6-58-112(c) and 6-51-115(b).

The tax is due and payable monthly on or before the 20th day of each month for the tax collected on sales of the previous month. T.C.A. § 57-6-103(a). If a wholesaler fails or refuses to remit the tax when due, the concerned county or city or the Department of Revenue is authorized to institute legal action for collection by any method authorized by law for collection of delinquent privilege taxes (see Title 67, *Tennessee Code Annotated*), or by filing suit against the wholesaler. In addition, the city or county may revoke or suspend the permit or impose civil penalties, or the Commissioner may revoke or suspend the wholesaler's certificate of registration or impose civil penalties. T.C.A. §§ 57-6-107 and 57-5-108.

Persons delinquent in making reports or paying taxes are subject to a penalty of five percent of the unpaid tax for each 30 days that the tax is unpaid up to a maximum of 25 percent of the unpaid amount, with minimum penalty of \$15. Additional penalties can be imposed by the Commissioner of Revenue for negligence (10 percent of underpayment) or fraud (100 percent of underpayment). Interest is charged at the legal (formula) rate. T.C.A. §§ 67-1-801, 67-1-804.

Wholesalers must furnish an indemnity or personal bond, subject to annual renewal, satisfactory to the Department of Revenue in an amount equal to the amount of tax payable based on the highest month's sales of the previous year or estimate thereof, not to exceed \$10,000, or in lieu of the bond the Commissioner of Revenue may allow a certificate of deposit. T.C.A. § 57-6-107.

Persons convicted of violating any provision of the wholesale beer tax laws are guilty of a Class C misdemeanor, which may subject the convicted person to imprisonment of up to thirty (30) days and a fine of up to \$50, or both. T.C.A. §§ 57-6-114, 40-35-111. In addition, the beer board is required to suspend a wholesaler's license for 30 days for violation of any provision of T.C.A. § 57-6-104 (regulations governing wholesale pricing, container sizes, and sales territories). T.C.A. § 57-6-114(b).

Annual Privilege Tax

Reference Number: CTAS-382

An annual privilege tax in the amount of one hundred dollars (\$100.00) is imposed on the selling, distributing, storing or manufacturing of beer in Tennessee. Any person, firm, corporation, joint-stock company, syndicate or association engaged in selling, distributing, storing or manufacturing beer is required to remit the tax annually on January 1 to the county or city in which the business is located. The county clerk collects this tax for counties, and the funds may be used for any public purpose. T.C.A. § 57-5-104(b).

The county is required to mail written notice of the tax to each permit holder at least thirty (30) days prior to January 1 each year. If the permit holder does not remit the tax by January 31 (or within thirty (30) days after notice is mailed, whichever is later), the county is required to notify the permit holder by certified mail that the tax payment is past due. If the permit holder does not pay the tax within ten (10) days after receiving the certified notice, the permit may be revoked by the beer board. T.C.A. § 57-5-104(b).

When a new permit is issued, the permit holder is required to pay the tax on a prorated basis for each month or portion of a month remaining until the next tax payment date. T.C.A. § 57-5-104(b)(5).

Marriage

Reference Number: CTAS-390

In Tennessee, marriage is controlled by statute and not governed by common law rules. Obtaining a marriage license is a condition precedent to the solemnization of a valid marriage under Tennessee law. See, e.g., *Ochalek v. Richmond*, 2008 WL 2600692 (Tenn. Ct. App. 2008), and cases cited therein. See also Op. Tenn. Att'y Gen. 06-110 (July 12, 2006) (no one can be legally married in Tennessee without first

obtaining a valid marriage license). Marriage licenses are issued by the county clerk. T.C.A. § 36-3-103.

Marriage is a civil contract, *Cole v. Cole*, 37 Tenn. 57, 5 Sneed 57 (Tenn. 1857), but unlike most civil contracts that can be voluntarily entered into and terminated by the parties, marriages contracted under Tennessee law require state action to be entered into and to be dissolved. Public policy considerations make the marriage contract one of the most ceremonious and serious contracts a person enters and the public policy of Tennessee is to sustain the validity of marriages. *Madewell v. U.S.*, 84 F. Supp. 329 (D. C. Tenn. 1949).

Forced marriages are against public policy in Tennessee. A marriage entered into without valid, freely-given consent from both parties is void and unenforceable upon a court's finding of forced marriage, under T.C.A. § 36-3-201. A party who is forced into marriage, whether by violence, threats, or coercion, has a cause of action against any party who forced the person to marry. Damages include liquidated damages of two hundred fifty thousand dollars (\$250,000), attorneys' fees, and court costs.

Who Can Marry?

Reference Number: CTAS-391

Prohibited Degrees of Relationship

Tennessee law defines prohibited degrees of relationship for marriages, generally considered "incestuous." Marriage cannot be contracted with a lineal ancestor (parents, grandparents, great-grandparents, etc.) or descendant (children, grandchildren, great-grandchildren, etc.), nor the lineal ancestor of either parent (grandparents, great-grandparents, etc.) or descendant of either parent (brothers, sisters, half-brothers, half-sisters, nieces and nephews, grandnieces and grandnephews, etc.), nor the child of a grandparent (aunts and uncles), nor the lineal descendants of spouse (spouse's children, grandchildren, stepchildren, step-grandchildren, etc.), nor the husband or wife of a parent (stepmother, stepfather) or lineal descendent. T.C.A. § 36-3-101. A marriage entered into in violation of this statute is void in Tennessee regardless of whether the marriage was entered into in Tennessee or in another state where the marriage would be valid. *Rhodes v. McAfee*, 224 Tenn. 495, 457 S.W.2d 522 (1970) (declaring void the marriage of a stepdaughter to her stepfather after the divorce of the stepfather and the mother). In an opinion dated October 24, 1960, the Tennessee Attorney General determined that this statute does not prohibit marriage between first cousins.

Effect of Adoption

The signing of a final order of adoption establishes the relationship of parent and child between the adoptive parent and the adoptive child as if the adopted child had been born to the adoptive parent, and the adopted child is deemed the lawful child of the adoptive parent for all legal consequences and incidents of the biological relation of parents and children. T.C.A. § 36-1-121.

Prohibited Degrees of Relationship

Reference Number: CTAS-419

Tennessee law defines prohibited degrees of relationship for marriages, generally considered "incestuous." Marriage cannot be contracted with a lineal ancestor (parents, grandparents, great-grandparents, etc.) or descendant (children, grandchildren, great-grandchildren, etc.), nor the lineal ancestor of either parent (grandparents, great-grandparents, etc.) or descendant of either parent (brothers, sisters, half-brothers, half-sisters, nieces and nephews, grandnieces and grandnephews, etc.), nor the child of a grandparent (aunts and uncles), nor the lineal descendants of spouse (spouse's children, grandchildren, stepchildren, step-grandchildren, etc.), nor the husband or wife of a parent (stepmother, stepfather) or lineal descendent. T.C.A. § 36-3-101. A marriage entered into in violation of this statute is void in Tennessee regardless of whether the marriage was entered into in Tennessee or in another state where the marriage would be valid. *Rhodes v. McAfee*, 224 Tenn. 495, 457 S.W.2d 522 (1970) (declaring void the marriage of a stepdaughter to her stepfather after the divorce of the stepfather and the mother). In an opinion dated October 24, 1960, the Tennessee Attorney General determined that this statute does not prohibit marriage between first cousins.

Bigamy

Reference Number: CTAS-421

A second marriage cannot be contracted before the dissolution of the first. However, the first marriage is

regarded as dissolved for this purpose if either party has been absent five (5) years, and is not known to the other to be living. T.C.A. § 36-3-102; *Douglas v. Douglas*, 6 Tenn. App. 12 (1927); *Hall v. Hall*, 13 Tenn. App. 683 (1932). Bigamy is a Class A misdemeanor. T.C.A. § 39-15-301.

Because bigamous marriages are prohibited by statute, such marriages are void ab initio (i.e., void from the beginning). These marriages are not recognized by the courts and cannot be ratified by the parties. *Guzman v. Alvares*, 205 S.W.3d 375 (Tenn. 2006).

Common Law Marriages

Reference Number: CTAS-423

Marriage is controlled by statute and not common law in Tennessee. Although Tennessee does not recognize common law marriages, Tennessee will recognize a valid common law marriage entered into in a jurisdiction which recognizes common law marriages. *In re Estate of Glover*, 882 S.W.2d 789 (Tenn. App. 1994); *Andrew v. Signal Auto Parts, Inc.*, 492 S.W.2d 222 (Tenn. 1972); *Lightsey v. Lightsey*, 407 S.W.2d 684, 56 Tenn. App. 394 (Tenn. App. 1966); *Troxel v. Jones*, 322 S.W.2d 251, 45 Tenn. App. 264 (Tenn. App. 1959). *But see Crawford v. Crawford*, 198 Tenn. 9, 277 S.W.2d 389 (1955) (under exceptional circumstances, parties may be estopped to deny their marriage under the doctrine of marriage by estoppel).

Obtaining a Marriage License

Reference Number: CTAS-392

Before being joined in marriage, the parties must present to the minister or other official performing the ceremony a license issued by a county clerk in the State of Tennessee, authorizing the solemnization of a marriage between the parties. The license may be issued by the county clerk in any county in Tennessee, without regard to the residence of the parties or the county where the ceremony is to be performed. A marriage license is valid for thirty (30) days from the date of issuance by the county clerk. T.C.A. § 36-3-103. A marriage license may be issued to persons otherwise complying with the requirements of the law who intend to have their marriage solemnized outside the state of Tennessee. Ops. Tenn. Att'y Gen. 06-110 (July 12, 2006) and 85-243 (9/18/85). A valid marriage will not result from a ceremony performed in Tennessee without first obtaining a marriage license. *Stovall v. City of Memphis*, 2004 WL 1872896 (Tenn. Ct. App. 2004); Op. Tenn. Att'y Gen. 90-49 (4/9/90).

Requirements of a License

Reference Number: CTAS-424

Before being joined in marriage, the parties must present to the minister or other official performing the ceremony a license issued by a county clerk in the State of Tennessee, authorizing the solemnization of a marriage between the parties. The license may be issued by the county clerk in any county in Tennessee, without regard to the residence of the parties or the county where the ceremony is to be performed. A marriage license is valid for thirty (30) days from the date of issuance by the county clerk. T.C.A. § 36-3-103. A marriage license may be issued to persons otherwise complying with the requirements of the law who intend to have their marriage solemnized outside the state of Tennessee. Ops. Tenn. Att'y Gen. 06-110 (July 12, 2006) and 85-243 (9/18/85). A valid marriage will not result from a ceremony performed in Tennessee without first obtaining a marriage license. *Stovall v. City of Memphis*, 2004 WL 1872896 (Tenn. Ct. App. 2004); Op. Tenn. Att'y Gen. 90-49 (4/9/90).

Issuance of the License

Reference Number: CTAS-425

County clerks, and deputy county clerks, are authorized to issue a marriage license only upon the following conditions:

1. **Written Application.** Each of the parties must appear and make application in writing, stating the names, ages and addresses of the proposed contracting parties, and the names and addresses of the parents, guardian or next of kin of both parties. The application must be sworn to by both applicants. T.C.A. § 36-3-104. Sample Marriage License application.
2. **Social Security Number.** Under T.C.A. § 36-3-104, applicants are required to provide their social security numbers on the application for a marriage license. However, the statute does not require that an applicant have a social security number to qualify for a marriage license, so applicants who have not been issued a social security number are not required to provide one in order to obtain a marriage license. Op. Tenn. Att'y Gen. 08-126 (July 22, 2008). For opinions of the Attorney General discussing the collection

and disclosure of social security numbers, see Ops. Tenn. Att’y Gen. 98-065 (March 17, 1998), 99-132 (July 7, 1999), 02-003 (January 2, 2002), and 02-016 (February 6, 2002).

3. Appearance by Affidavit (incarcerated, disabled, or deployed military applicants). If either individual is incarcerated at the time, the inmate is not required to appear but may instead submit a notarized statement containing the name, age, current address, and the name and address of the person’s parents, guardian or next of kin. If either individual has a disability which prevents the person from appearing, that person may submit a notarized statement containing the name, age, current address, and the name and address of the person’s parents, guardian or next of kin. T.C.A. § 36-3-104. Sample affidavit (incarcerated) Sample affidavit (disability)

If an applicant is a member of the armed forces of the United States stationed in another country in support of combat or another military operation, the applicant shall submit: (a) a notarized statement containing the applicant's name, age, address in the United States, if applicable, and the names and addresses of the applicant's parents, guardian, or next of kin; (b) a certified copy of the applicant's deployment orders; and (c) an affidavit from the battalion, ship, or squadron commander, as applicable, notarized by the judge advocate stating that the applicant is deployed. If the applicant intends to appear for the marriage ceremony via video conferencing pursuant to T.C.A. § 36-3-302, the applicant must indicate that intention in the statement. T.C.A. § 36-3-104. Sample affidavit (military)

4. Parental Consent. In addition to the requirements set out above, T.C.A. § 36-3-106 provides that if either applicant is under 18 years of age, the parents, next of kin, guardian, or person having custody of the applicant are required to join in the application, under oath, stating that the applicant is 17 years of age or over and that the applicant has their consent to marry. The term “parent” or “parents” is defined in T.C.A. § 36-3-106 to mean a person or persons listed as a parent on the child's birth certificate or who have been adjudicated to be the legal parent of the child by a court of competent jurisdiction. If the applicant is in the legal custody of any public or private agency or in the legal custody of any person other than a parent, guardian or next of kin, then such person or the duly authorized representative of such agency must join in the application with the parent, guardian or next of kin, stating under oath that the applicant is 17 years of age or older but less than 18 years of age and that the applicant has their consent to marry. This provision does not apply to applicants who are in the custody of the department of mental health or the department of intellectual and developmental disabilities. T.C.A. § 36-3-106. The parents may join in the application by submitting a sworn affidavit as authorized under T.C.A. § 36-3-104(b)(3). Sample Affidavit (Parent/Guardian/Next-of-Kin) Parental consent is not required if the minor has been emancipated. T.C.A. § 36-3-106.

The law does not prescribe a particular form for the application, as long as the required information is obtained. The application may, but is not required to, contain a space to be completed by the county clerk as a permanent public record showing that the marriage was solemnized.

Minimum Age of Applicants

Reference Number: CTAS-426

It is unlawful for any county clerk or deputy county clerk in this state to issue a marriage license when either of the contracting parties is under the age of seventeen (17) years, or where one of the parties is at least seventeen (17) years of age but less than eighteen (18) years of age and the other party is four (4) or more years older than the minor party. Any marriage contracted in violation of this provision may be annulled upon proper proceedings. T.C.A. § 36-3-105. However, a marriage entered into in violation of this section is valid until set aside by a court. The court has discretion whether to set aside the marriage, and the court is not required to declare the marriage void. Further, cohabitation after attaining marriageable age may validate the marriage. See *Keith v. Pack*, 182 Tenn. 420, 187 S.W.2d 618 (1945).

When either applicant is under the age of eighteen (18), the parents, next of kin, guardian or party having custody of the applicant shall join in the application, under oath, stating that the applicant is seventeen (17) years of age or over and that the applicant has their consent to marry. The term “parent” or “parents” is defined in T.C.A. § 36-3-106 to mean a person or persons listed as a parent on the child's birth certificate or who have been adjudicated to be the legal parent of the child by a court of competent jurisdiction. If the applicant is in the legal custody of any public or private agency or is in the legal custody of any person other than a parent, next of kin, or guardian, then such person or the duly authorized representative of such agency shall join in the application with the parent, next of kin, or guardian stating, under oath, that the applicant has their consent to marry. The parents, guardian, next of kin, other person having custody of the applicant, or duly authorized representative of a public or private agency having legal custody of the applicant may join in the application either by personal appearance before the county clerk or deputy county clerk, or by submitting a sworn and notarized affidavit. This provision does not apply to applicants who are in the legal custody of the department of

mental health and mental retardation. Consent also is not required if the minor applicant has been emancipated, by court order or by previous marriage. T.C.A. § 36-3-106.

Issuance to Incapacitated Persons Forbidden

Reference Number: CTAS-427

No license shall be issued when it appears that the applicants or either of them is at the time drunk, insane or an imbecile. T.C.A. § 36-3-109. This statute must be very narrowly construed to avoid a finding of unconstitutionality as a result of unreasonable interference with the fundamental right of persons to marry. Op. Tenn. Att'y Gen. 98-011 (January 9, 1998). Marriages entered into in disregard of this statutory requirement are not void, but merely voidable after an appropriate proceeding. *Bryant v. Townsend*, 188 Tenn. 630, 221 S.W.2d 949 (1949); *Hunt v. Hunt*, 56 Tenn. App. 683, 412 S.W.2d 7 (1965); *Coulter v. Hendricks*, 918 S.W.2d 424 (Tenn. App. 1995).

False Documents

Reference Number: CTAS-428

Fraudulently signing or knowingly using any false document purporting to be one provided for in T.C.A. § 36-3-104(a) or § 36-3-106 is a Class C misdemeanor, punishable by imprisonment not greater than thirty (30) days or a fine not to exceed fifty dollars (\$50.00) or both. T.C.A. §§ 36-3-112, 40-35-111.

County Clerk Violations

Reference Number: CTAS-429

Any county clerk or deputy clerk who, not acting in good faith, issues a marriage license without compliance with the provisions of the last sentence in T.C.A. § 36-3-103(c)(1), §§ 36-3-104 through 36-3-106, § 36-3-109, § 36-3-110, or § 36-3-113 (regarding § 36-3-113, see *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015); see also Op. Tenn. Att'y Gen. 17-29) is guilty of a Class C misdemeanor, which is punishable by imprisonment not greater than thirty (30) days or a fine not to exceed fifty dollars (\$50.00) or both. T.C.A. §§ 36-3-111, 40-35-111.

Contesting the Issuance of a Marriage License

Reference Number: CTAS-393

Any interested person has the right to contest the issuance of the marriage license, which contest must be filed, heard and determined by the judge of the probate court, or judge of the juvenile court, or any judge or chancellor; provided, that a contest cannot be filed without a cost bond in the sum of at least fifty dollars (\$50.00) with solvent sureties executed by the contestant, conditioned as in civil cases, and the cost of the contest will be adjudged against the losing party. T.C.A. § 36-3-110.

Solemnizing a Marriage

Reference Number: CTAS-394

Who Can Solemnize a Marriage?

The rite of matrimony may be solemnized by any of the persons listed in T.C.A. § 36-3-301:

1. All regular ministers, preachers, pastors, priests, rabbis and other religious leaders of every religious belief, more than eighteen (18) years of age, having the care of souls.
2. Current and former members of county legislative bodies.
3. County mayors/executives and former county mayors/executives.
4. Current and former judges and chancellors of this state, including federal judges and federal administrative law judges.
5. Current and former judges of general sessions courts.
6. Current and former municipal court judges.
7. The governor.
8. The county clerk of each county, and former county clerks who occupied the office on or after July 1, 2014.
9. Current and former speakers of the senate and speakers of the house of representatives.

10. Mayors of municipalities.
11. Current and former members of the general assembly who have filed notice with the office of vital records. Former members must have filed notice with the office of vital records while serving the general assembly.
12. Law enforcement chaplains duly appointed by the heads of authorized state and local law enforcement agencies.
13. Members of municipal legislative bodies.
14. Notaries Public.

The statute provides that in order to solemnize the rite of matrimony a minister, preacher, pastor, priest, rabbi or other spiritual leader must be ordained or otherwise designated in conformity with the customs of a church, temple or other religious group or organization, and such customs must provide for ordination or designation by a considered, deliberate and responsible act. T.C.A. § 36-3-301(a)(2). Courts look to the tenets of the particular religion to determine whether a particular person is a regular minister or other spiritual leader having the care of souls. Op. Tenn. Att'y Gen. 14-90 (9/30/14). The county clerk has neither the authority nor the duty to examine the qualifications of persons seeking to solemnize the rite of matrimony. Op. Tenn. Att'y Gen. 97-139 (10/9/97). The county clerk cannot require proof that an officiant is, in fact, a minister or other authorized person. Op. Tenn. Att'y Gen. 87-151 (9/17/87).

Ordinarily, elected officials are not authorized to act outside the jurisdiction from which they were elected. See Op. Tenn. Att'y Gen. 85-189 (6/10/85) (under prior law, elected officials had no jurisdiction to perform marriages outside their jurisdiction). However, in 1997 the General Assembly authorized all elected officials and former officials who are authorized to perform marriages to do so in any county in the State of Tennessee. T.C.A. § 36-3-301(i).

For marriage purposes, the several judges of the United States courts, including United States magistrates and United States bankruptcy judges, who are citizens of Tennessee are deemed to be judges of this state. However, the term "former judges" does not include any judge who has been convicted of a felony or who has been removed from office. T.C.A. § 36-3-301(a). The term "retired judges of this state" includes persons who served as judges of any municipal or county court in any county which has adopted a metropolitan form of government and persons who served as county judges (judges of the quarterly county court) prior to the 1978 constitutional amendments. T.C.A. § 36-3-301(e). Also, any person who was a member of a quarterly county court on August 1, 1984 can perform marriages. T.C.A. § 17-1-206.

All judges, including city judges, are included among the officials who may solemnize marriages. A city judge may perform a marriage in any county in Tennessee, regardless of whether the judge was elected or appointed. T.C.A. § 36-3-301(k).

Deputy county clerks who are duly authorized by the county clerk have the power to perform marriage ceremonies, under the authority granted under T.C.A. § 18-1-108(4). Op. Tenn. Att'y Gen. 85-243 (9/18/85).

Marriage Ceremony

Reference Number: CTAS-431

No formula need be observed in solemnizing a marriage, except that the parties must respectively declare, in the presence of the minister or officer, that they accept each other in marriage. T.C.A. § 36-3-302. This statute has been interpreted by the Attorney General as requiring that the parties personally appear together before a person authorized by law to solemnize marriages, so that a marriage ceremony cannot be performed by telephone. Op. Tenn. Att'y Gen. 90-71 (7/16/90). The statute was amended in 2017 to authorize participation by video conference, but only for members of the armed forces who are stationed in another country in support of combat or another military operation.

Since many officials asked to perform marriage ceremonies may do so infrequently, here is an example of a typical ceremony. This sample ceremony certainly is not legally required, and it may be altered as the persons being married desire, so long as the parties do each declare in the presence of the marrying official that they accept each other as spouses, respectively. The traditional marriage rite of the Religious Society of Friends (Quakers), whereby the parties simply pledge their vows one to another in the presence of the congregation, constitutes an equally effective solemnization. T.C.A. § 36-3-301(b).

Out-of-State Ceremonies

Reference Number: CTAS-432

If a marriage license issued by a county clerk in Tennessee is used to solemnize a marriage outside

Tennessee, the marriage and parties, their property and their children have the same status as if the marriage were performed in Tennessee. T.C.A. § 36-3-103(c). However, the officials who are authorized under T.C.A. § 36-3-301 to solemnize marriages in Tennessee are not authorized to perform marriage ceremonies outside Tennessee. Op. Tenn. Att'y Gen. 15-47 (June 3, 2015).

Remuneration for Solemnizing a Marriage

Reference Number: CTAS-433

Any gratuity received by a county mayor/executive, municipal mayor, county commissioner, or county clerk for the solemnization of a marriage, whether performed during or after their regular working hours, shall be retained by them as personal remuneration for such services in addition to any other sources of compensation they might receive, and such gratuity shall not be paid into the county general fund. T.C.A. § 36-3-301. However, a county mayor/executive, municipal mayor, county commissioner, or county clerk is prohibited from charging a fee or demanding compensation of any kind for the solemnization of a marriage. Such a public officer who knowingly charges a fee or demands compensation of any kind for the solemnization of a marriage commits a Class C misdemeanor, and such violation creates a rebuttable presumption that there is an actionable basis to institute ouster proceedings. T.C.A. § 36-3-301.

A judge's receipt of compensation for performing a marriage ceremony violates Article VI, Section 7 of the Tennessee Constitution, T.C.A. § 8-21-101, and the Code of Judicial Conduct. Op. Tenn. Att'y Gen. 84-286 (10/25/84). It appears it is permissible for a judge to accept a check made out to a charity as long as the judge does not treat the funds as income for tax purposes or take a tax deduction for the charitable contribution. Op. Tenn. Att'y Gen. U87-18 (2/10/87).

Certification and Return of the License

Reference Number: CTAS-434

The county clerk is required to place on each license the following form of certificate, to be signed by the person solemnizing the marriage:

"I solemnized the rite of matrimony between the above (or within) named parties on the ____ day of _____, 20__." T.C.A. § 36-3-304.

Sample marriage license with the required certificate.

The authorized officiant who performs the marriage ceremony is required to endorse on the license the fact and time of the marriage, and sign his or her name thereto, and return the license to the county clerk within three (3) days from the date of the marriage. Failure to return the license as required is a misdemeanor. T.C.A. § 36-3-303. The Certificate of Marriage required by the Tennessee Department of Health, Office of Vital Records, also must be completed and returned to the county clerk within this three-day time frame. T.C.A. § 68-3-401. In the case of marriages solemnized among the Religious Society of Friends (Quakers), the functions, duties and liabilities of the party solemnizing marriages are incumbent upon the clerk of the congregation, or in the clerk's absence, the clerk's duly designated alternate. T.C.A. § 36-3-303.

A county clerk has no authority to require proof that an officiant is a "regular minister of the gospel" or other authorized person who meets the criteria of T.C.A. § 36-3-301, and must presume that the marriage is valid. Op. Tenn. Att'y Gen. 87-151 (9/17/87).

Failure of an officiant to return the marriage license to the issuing clerk within three days after the ceremony as required by the statute does not invalidate the marriage. *Aghili v. Saadatnejadi*, 958 S.W.2d 784 (Tenn. Ct. App. 1997).

Solemnizing Marriage Between Incapable Persons

Reference Number: CTAS-438

If any minister or officer knowingly joins together in matrimony two persons not capable thereof, he or she shall be guilty of a misdemeanor, and shall also forfeit and pay the sum of five hundred dollars (\$500), to be recovered by action of debt, for the use of the person suing. T.C.A. § 36-3-305.

Marriage Records

Reference Number: CTAS-395

Marriage Book

The county clerk is required to record in a well-bound book the names of the parties and the date of the

issuance of the marriage license, and to copy immediately under or opposite thereto the return of the proper officiant who solemnized the rite of matrimony and the date thereof. T.C.A. § 18-6-109.

Marriage Certificate

Most county clerks, after receiving the completed and signed marriage license after the ceremony has been performed, forward a marriage certificate to the newly married couple, showing the fact that the marriage has been duly recorded in the county's marriage records. However, some county clerks have a two part license with a detachable certificate. Sample marriage certificate.

State Marriage Records filed with the Office of Vital Records

A record of each marriage performed in this state is required to be filed with the Tennessee Department of Health, Office of Vital Records, and shall be registered if it has been properly completed and filed. The county clerk who issues the marriage license is required to prepare the record on the form Certificate of Marriage furnished by the state registrar upon the basis of information obtained from the parties to be married. The Certificate of Marriage requires the signature of both the applicants in the presence of the county clerk; however, where an applicant is authorized by T.C.A. § 36-3-104 to apply by submitting a sworn affidavit, personal appearance before the county clerk is not required. The Certificate of Marriage also contains spaces for the officiant who performs the ceremony to certify the marriage of the persons, a witness to the marriage to sign (although a witness is not required by law), the county of marriage, and whether the marriage is a religious or civil service. This Certificate of Marriage, like the marriage license, must be returned to the county clerk within three (3) days of the performing of the marriage ceremony. T.C.A. § 68-3-401. Certificate of Marriage form required by the TN Department of Health, Office of Vital Records

The county clerk must complete and forward the records of marriages filed during the preceding calendar month on or before the tenth day of each calendar month to the Office of Vital Records. A marriage not filed within these time requirements may be registered in accordance with the regulations of the Office of Vital Records. If a marriage license has been obtained by incorrect identification, the fraudulent records should be voided and a correct certificate of marriage placed on file by order of a court in the county where the license was issued in accordance with the regulations established by the Department of Health. T.C.A. § 68-3-401. The requirements and procedures for amending state vital records, including marriage records, are found in T.C.A. § 68-3-203 and Tenn. Comp. R. & Regs. 1200-07-01-.10.

The county clerk is authorized to record and certify any license used to solemnize a marriage which is properly signed by the officiant when the license is returned to the issuing county clerk. The issuing county clerk then forwards the record to the Office of Vital Records to be filed and registered. This includes Tennessee marriage licenses which are used to officiate out-of-state ceremonies. T.C.A. § 36-3-103(c)(1).

Fees and Taxes

Reference Number: CTAS-396

State and Local Taxes and Fees

There are two (2) state privilege taxes on marriage, and one (1) local option tax which can be levied in an amount up to \$5.00. T.C.A. §§ 67-4-411, 67-4-502, 67-4-505. The collector of both state and local marriage taxes is the county clerk. The county clerk earns fees for performing these duties. The taxes and fees associated with the issuance of a marriage license are as follows:

State Privilege Tax, T.C.A. § 67-4-411	\$15.00
State Privilege Tax, T.C.A. § 67-4-505	5.00
Optional County Tax, T.C.A. § 67-4-502	5.00
County Clerk's fee for issuance of marriage license, T.C.A. § 8-21-701(1)	10.00

The following fees may or may not apply, depending on whether the services are provided:

County Clerk's fee if copies requested by the parties, per page, T.C.A. § 8-21-701(12)	\$5.00
County Clerk's fee for certifying a copy of a document, T.C.A. 8-21-701(11)	5.00

The \$5.00 state tax is retained by the county and must be used for county school purposes. T.C.A. § 67-4-505. The local option tax, if levied, is retained by the county and used as directed by the county

legislative body. The \$15.00 state tax is paid over to the state commissioner of revenue. T.C.A. § 67-4-411.

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County Clerk's fee for issuance of marriage license, T.C.A. § 8-21-701(1)	10.00

The following fees may or may not apply, depending on whether the services are provided:

County Clerk's fee if copies requested by the parties, per page, T.C.A. § 8-21-701(12)	\$.50
County Clerk's fee for certifying a copy of a document, T.C.A. 8-21-701(11)	5.00

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Additional Fee, Premarital Preparation Course

Reference Number: CTAS-440

Under T.C.A. § 36-6-413, there is imposed an additional fee of \$62.50 on the issuance of a marriage license. This \$62.50 fee is in addition to all of the fees county clerks charge for issuance of a marriage license.

Applicants are exempt from payment of \$60.00 of the fee if:

1. They have completed a four-hour premarital preparation course and provide the county clerk with a valid and timely Certificate of Completion; or
2. They obtain their marriage license in a county having a municipality defined as a premier type tourist resort pursuant to T.C.A. § 67-6-103(a)(3)(B)² and both applicants provide the county clerk with an affidavit of non-residency or valid driver license establishing that they are not Tennessee residents.

To qualify for the exemption by attending a premarital preparation course, both applicants must submit a Certificate of Completion¹ showing that they have attended a course, together or separately, within one year of the date of the application for the marriage license. The course must have been at least four (4) hours in length.

The law does not provide details as to the content of the course, other than to say that it may include conflict management, communication skills, financial responsibilities, children and parenting responsibilities, and data concerning problems reported by married couples who seek counseling.

Premarital preparation courses may be taught by any of the following:

1. Psychologist
2. Clinical social worker
3. Licensed marital and family therapist
4. Clinical pastoral therapist
5. Professional counselor
6. Psychological examiner
7. Official representative of a religious institution
8. Any other approved instructor who meets qualifying guidelines that may be established by the judicial district for the county in which the marriage license is issued.

The Certificate of Completion form is to be completed by the instructor of the course. Applicants for a

marriage license must present a copy of the completed form to the county clerk in order to qualify for the exemption on this basis.

The entire \$60.00 fee (when it is collected) is to be remitted by the county clerk to the state. The state is responsible for distribution of the fee to various agencies in accordance with the provisions of the law. T.C.A. § 36-6-413.

¹The Certificate of Completion form has been developed by the Administrative Office of the Courts.

²Currently, this exemption includes only Sevier County. Non-residents in all other counties must pay the \$60.00 fee unless they have completed a premarital preparation course.

Failure to Perform Collection Duties

Reference Number: CTAS-441

Any county clerk or other official who fails or refuses to collect and pay over any taxes he or she is legally charged to collect and pay over to the department of revenue is liable therefor and his or her official bondsman is also liable for the amount of such failure. T.C.A. § 67-4-210(b). Any county clerk failing in any way, either in person or by agent, to enforce these tax statutes shall be forfeit in each case the sum of \$250 to the state and shall be subject to ouster proceedings. T.C.A. § 67-4-211(a).

Pawnbrokers

Reference Number: CTAS-399

As a general rule, pawnbrokers make loans of money on the security of personal property which the pawnbroker holds until the loan is repaid, and title pledge lenders make loans on the security of automobiles and other titled property, with the pledgor usually retaining possession of the vehicle and the title pledge lender holding the certificate of title as security. Although a single business can and often does operate as both a pawnbroker and a title pledge lender, each activity is separately regulated under Tennessee law. In order to conduct a pawnbroker business, the business must obtain a pawnbroker license and operate under the requirements of the Tennessee Pawnbrokers Act of 1988. In order to conduct a title pledge lender business, the business must obtain a title pledge lender license and operate under the requirements of the Tennessee Title Pledge Act. The requirements of each act are similar, but there are significant differences both in the requirements for licensure and in the rules for operation of the business.

A pawnbroker license does not authorize its holder to act as a title pledge lender, and a title pledge license does not authorize its holder to act as a pawnbroker. The requirements for each license must be met separately. With the appropriate license(s), a business can operate as either a pawnbroker, a title pledge lender, or both.

Overview

Reference Number: CTAS-400

The current law regulating the licensing and operations of pawnbrokers is the Tennessee Pawnbrokers Act of 1988, codified as T.C.A. § 45-6-201 *et seq.* Pawnbrokers who were under the law as it existed prior to that law's effective date of July 1, 1988, were granted special "grandfather" rights to continue to operate under the prior law. These persons, firms and corporations may remain subject to the bonding and licensing requirements which were applicable to them on June 30, 1988, as long as they retain their valid pawnbroker licenses.

Since the 1988 act repealed the prior law, it can no longer be found in Tennessee Code Annotated. Former Law Governing Pawnbrokers contains selected statutes from the repealed laws for reference purposes. All pawnbrokers licensed after July 1, 1988 must operate under current law.

License Required

Reference Number: CTAS-401

It is unlawful for any person, firm, or corporation to establish or conduct a business of pawnbroker without having first procured a pawnbroker license. T.C.A. § 45-6-205. Operating without a license is a Class A misdemeanor which, upon conviction, subjects the violator to a fine not exceeding two thousand five hundred dollars (\$2,500.00) for each offense, or imprisonment not greater than eleven (11) months and twenty-nine (29) days, or both. T.C.A. § 45-6-218, T.C.A. § 40-35-111.

Eligibility for License

Reference Number: CTAS-402

To be eligible for a pawnbroker's license, an applicant (and if the applicant is a business entity, each operator or beneficial owner, and as to a corporation, each officer, shareholder, and director) must:

- (a) Be of good moral character;
- (b) Have net assets¹ of at least seventy-five thousand dollars (\$75,000), readily available for use exclusively in conducting the business of each licensed pawnbroker;
- (c) Show that the business will be operated lawfully and fairly within the purpose of the act; and
- (d) Not have had a prior felony conviction within ten (10) years immediately preceding the date of the application which directly relates to the duties and responsibilities of the occupation of pawnbroker, or otherwise makes the applicant presently unfit for a pawnbroker's license, as determined by the county clerk.

T.C.A. § 45-6-206.

County clerks have little direct guidance on exactly what felony offenses would make a person ineligible to hold a pawnbroker license. However, general guidance could be gleaned from the cases interpreting felonies which make a person unfit to hold public office and offenses which are the basis for denial of a beer permit. In addition, other provisions of the law require an affidavit from each applicant stating that he or she has not been convicted of a felony within the past ten (10) years that directly affects his or her ability to lawfully and fairly operate a pawnbroker business, and a certificate from the sheriff/chief of police/Tennessee bureau of investigation that the applicant has not been convicted of any felony within the past ten (10) years. T.C.A. § 45-6-207. Applicants are no longer required to be Tennessee residents in order to obtain a pawnbroker license; that requirement was deleted from T.C.A. § 45-6-206 in 1995.

In addition to the above requirements, in counties where the local law enforcement agency has requested pawnbrokers to transfer pawn transactions electronically, the applicant must also have a computer system that is capable of electronically transferring information so that when licensed, the pawnbroker can comply with the requirements of T.C.A. § 45-6-221. T.C.A. § 45-6-206(a)(4).

If an applicant is a business entity, the eligibility requirements apply to each operator or beneficial owner. If the applicant is a corporation, the eligibility requirements apply to each officer, shareholder, and director. T.C.A. § 45-6-206(c).

¹"Net assets" is defined as the book value of the current assets of a person or pawnbroker less its applicable liabilities. "Current assets" include the investment made in cash, bank deposits, merchandise inventory, and loans due from customers excluding the pawnshop charge; "current assets" do *not* include investments made in fixed assets of real estate, furniture, fixtures, or equipment, investments made in stocks, bonds, or other securities or investments made in prepaid expenses or other general intangibles. "Applicable liabilities" include trade or other accounts payable; accrued sales, income, or other taxes; accrued expenses and notes or other payable that are unsecured or secured in whole or part by current assets; "applicable liabilities" do not include liabilities secured by assets other than current assets. Net assets must be represented by capital investment unencumbered by any liens or other encumbrances to be subject to the claims of general creditors. If the pawnshop is a corporation, the capital investment consists of common or preferred shares and capital or earned surplus as those terms are defined by the Tennessee Business Corporation Act, as amended; if it is any other form of business entity, the capital investment consists of a substantial equivalent of that of a corporation and is determined by generally accepted accounting principles. T.C.A. § 45-6-203.

Application for License

Reference Number: CTAS-403

In order to receive a pawnbroker license, an eligible person, firm or corporation is required to make application to the county clerk in the county in which the business is to be operated. T.C.A. § 45-6-207. The application must contain the following:

- (1) The name of the person¹, and in case of a firm or corporation, the names of the persons composing the firm or the officers and stockholders of the corporation;
- (2) The place, street, and number where the business is to be carried on;
- (3) Specify the amount of net assets or capital proposed to be used in the business, accompanied by an

unaudited statement from a certified public accountant containing the following statement:

"According to the information provided to me, the net assets, as defined in Tennessee Code Annotated, § 45-6-203, or proposed capital to be used by the applicant, _____ (name), in the pawnbroker business, are valued at not less than seventy-five thousand dollars (\$75,000)."

(4) The signature of at least ten (10) freeholders, citizens of the county in which the applicant resides, of good reputation, certifying to the good reputation and moral character of the applicant or applicants;

(5) An affidavit by each applicant that he or she has not been convicted of a felony within the past ten (10) years that directly affects the applicant's ability to lawfully and fairly operate under the provisions of the law;

(6) A certificate from the chief of police and/or sheriff and/or the Tennessee bureau of investigation that the applicant (each operator, beneficial owner, officer, shareholder and director) is of good moral character and has not been convicted of a felony within the past ten (10) years; and

(7) Certified funds in the amount of fifty dollars (\$50.00) payable to the county clerk.

T.C.A. § 45-6-207.

The county clerk has no authority to refund the fifty dollar fee once received. The funds are to be used to defray the costs of the county clerk's investigation of the application. In addition, the applicant is required to pay directly the costs of the city, sheriff, and/or Tennessee bureau of investigation investigating the applicant. T.C.A. § 45-6-207. Sample application.

¹ "Person" is defined as any individual, corporation, joint venture, association or any other legal entity however organized. T.C.A. § 45-6-203.

Issuance of License

Reference Number: CTAS-404

Persons, firms, or corporations having satisfied the qualification requirements and having paid the business tax and any other taxes, and having produced to the county clerk satisfactory evidence of good character as to being a suitable person or persons to carry on the business of pawnbroker, shall be granted a license. The license must contain the following information:

(1) The name of the person, firm, or corporation to whom issued;

(2) The place of business and street number where the business is located; and

(3) The amount of capital employed in the business.

T.C.A. § 45-6-208.

The license entitles the holder to do business at the place designated. Only one place of business may be operated under a license. T.C.A. § 45-6-212. Therefore, the requirements of the act must be met separately for each location.

Insurance Requirement

Reference Number: CTAS-405

Every licensed pawnbroker is required to maintain sufficient insurance coverage on the property held on the pledge for the benefit of the pledgor, to pay the stated value as recited on the pawn stub of the pawned article, in case of fire or other catastrophe. The policy must be payable in case of loss to the county clerk or city clerk for the benefit of the pledgor, and the policy must be deposited with the county or city clerk. T.C.A. § 45-6-215. If the county clerk knows of a violation of this provision or believes the insurance policy filed with the county clerk's office is insufficient to cover the aggregate stated values of pawned articles, the county clerk should notify the district attorney general serving the county clerk's district. Failure to meet the insurance requirement is a Class A misdemeanor. T.C.A. § 45-6-218.

Transferability of License

Reference Number: CTAS-406

Licenses may not be transferred from one person to another but may be transferred from one location to another within the same county by consent of the county clerk on payment of a transfer fee of ten dollars (\$10.00) to the county clerk. T.C.A. § 45-6-208; *Op. Tenn. Att'y Gen.* 90-88 (9/19/90) (a license cannot be transferred outside the county in which it was issued; a new license must be obtained from the county

clerk in the new county).

Authority of Licensed Pawnbrokers

Reference Number: CTAS-407

A pawnbroker license entitles the holder to do any or all of the following:

- (1) Make loans on the security of pledged goods¹ as a pawn or pawn transaction;
- (2) Purchase tangible personal property under a buy-sell agreement from individuals as a pawn transaction on the condition it may be redeemed or repurchased by the seller at a fixed price within a fixed time not to be less than sixty (60) days;
- (3) Lend money on bottomry (ships) and respondentia (cargo) security, at marine interest;
- (4) Deal in bullion, stocks and public securities;
- (5) Make loans on real estate, stocks and personal property;
- (6) Purchase merchandise for resale from dealers and traders;
- (7) Make over-the-counter purchases of goods which the seller does not intend to buy back. The pawnbroker is required to hold such goods for a period of not less than fifteen (15) days before offering the merchandise for resale; and
- (8) Use its capital and funds in any lawful manner within the general purposes and scope of its creation.

Notwithstanding the foregoing, however, before engaging in any of the above-listed transactions other than a "pawn" or "pawn transaction,"² a pawnbroker must comply with the provisions of any other applicable laws regulating such transactions. T.C.A. § 45-6-204.

¹ "Pledged goods" means tangible personal property, other than choses in action, securities, printed evidences of indebtedness or title documents, which tangible personal property is purchased by, deposited with, or otherwise actually delivered into the possession of the pawnbroker. T.C.A. § 45-6-203.

² "Pawn" or "pawn transaction" includes buy-sell agreements and loans of money. "Buy-sell agreement" is defined as any agreement whereby a pawnbroker agrees to hold property (pledged goods) for a specified period of time not less than sixty (60) days to allow the seller the exclusive right to repurchase the property; a buy sell agreement is not a loan of money, but must still meet all recording procedures to law enforcement officers as with a pawn transaction. A loan of money is defined as any loan of money on the security of pledged goods and being a written bailment of pledged goods as a security lien for such loan, for the cash advanced, interest and fees authorized by the pawnbroker law, redeemable on certain terms and with the implied power of sale on default. T.C.A. § 45-6-203.

Operation of the Business and Recordkeeping Requirements

Reference Number: CTAS-408

The operating, recordkeeping, and inspection rules under current law apply to all pawnbrokers, even those licensed under provisions of prior law. A general discussion of the basic requirements for operation of the pawnbroker business follows. However, county clerks should never attempt to advise pawnbrokers as to specific legal requirements for operation of the business; pawnbrokers should always be advised to consult their attorneys for advice.

Recordkeeping and Notice Requirements

Reference Number: CTAS-409

Pawnbrokers are required to keep a consecutively numbered record of each pawn transaction which must correspond in all essential particulars to the detachable pawn ticket attached. At the time of making a pawn and/or buy sell transaction, the pawnbroker is required to record the following information, in ink and in English, on the pawnshop copy as well as on the pawn ticket:

- (1) A clear and accurate description of the property, including the serial number if the pledged article has one;
- (2) The date of the pawn transaction;
- (3) The amount of cash loan advanced on the pawn transaction;
- (4) The exact value of the property as stated by the pledgor;

(5) The maturity date of the pawn transaction, which date shall not be less than thirty (30) days after the date of the pawn transaction; and

(6) The name, race, sex, height, weight, date of birth, residence address, and numbers from the item(s) used as identification. (Acceptable items of identification are one of the following: state-issued driver license, state-issued identification card, passport, valid military identification, resident or nonresident alien border crossing card, or U.S. immigration and naturalization service identification.)

T.C.A. §§ 45-6-209, 45-6-213.

In addition to the foregoing, the following language is required to be printed on all tickets:

ANY PERSONAL PROPERTY PLEDGED TO A PAWNBROKER WITHIN THIS STATE IS SUBJECT TO SALE OR DISPOSAL WHEN THERE HAS BEEN NO PAYMENT MADE ON THE ACCOUNT FOR A PERIOD OF THIRTY (30) DAYS AFTER THE MATURITY DATE OF THE PAWN TRANSACTION AND NO FURTHER NOTICE IS NECESSARY.

THE PLEDGOR OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, IT HAS NO LIENS OR ENCUMBRANCES AGAINST IT AND THE PLEDGOR HAS THE RIGHT TO SELL OR PAWN THE ITEM. THE ITEM PAWNED IS REDEEMABLE ONLY BY THE BEARER OF THIS TICKET.

T.C.A. § 45-6-211.

Both the pledgor and the pawnbroker are required to sign the stub, and the detached pawn ticket must be given to the pledgor. T.C.A. § 45-6-209. The records are required to be delivered to the appropriate law enforcement agency, by mail or in person, within forty-eight (48) hours following the day of the transactions. The records also must be available for inspection each business day, except Sunday, by the sheriff of the county and the chief of police of the municipality (if applicable) in which the pawnshop is located. Records must be carefully preserved without alterations. T.C.A. § 45-6-209. If requested by the law enforcement agency, the pawnbroker is required to transfer the required information electronically in text file format to the law enforcement agency in accordance with T.C.A. § 45-6-221.

Pawnbrokers are also required to furnish to law enforcement agencies, upon request, the names of suppliers from whom the pawnbroker has purchased merchandise for resale. This information is not to be recorded nor sent to the law enforcement agency, but shall be maintained at the pawnshop for a period of at least one (1) year from the date of purchase. T.C.A. § 45-6-216.

Interest Rate and Fees

Reference Number: CTAS-410

The interest rate charged by pawnbrokers is limited to two percent (2%) per month. The pawnbroker also may charge a fee not to exceed one fifth (1/5) of the amount of the loan advance for investigating the title, storage, insuring the pledged goods, closing the loan, making reports to local law enforcement officials, and for other expenses, losses of every nature, and all other services. No other charge of any description may be made by the pawnbroker. The allowable interest and fee are deemed owing on the date of the pawn transaction and on the same day of each subsequent month. T.C.A. § 45-6-210.

Default

Reference Number: CTAS-411

The pawnbroker must retain the pledged goods for thirty (30) days after the maturity date of the transaction. If the pledgor fails to redeem the pledged goods within the thirty (30) day period, the pawnbroker acquires absolute title to the goods and the debt becomes satisfied. The pawnbroker may then sell or otherwise dispose of the goods. T.C.A. § 45-6-211.

Hours of Operation

Reference Number: CTAS-412

Pawnbrokers may operate their businesses from eight o'clock in the morning (8:00 a.m.) until six o'clock in the evening (6:00 p.m.). From November 25 through December 24 each year, the business may remain open until nine o'clock in the evening (9:00 p.m.). T.C.A. § 45-6-212.

Prohibited Acts

Reference Number: CTAS-413

There are prohibited acts for pawnbrokers that, like any other violation of the act, constitute Class A misdemeanors that will subject the violator upon conviction to a fine of up to two thousand five hundred

dollars (\$2,500.00) for each offense and imprisonment for up to eleven (11) months and twenty-nine (29) days under T.C.A. § 45-6-218. These prohibited acts include:

- (1) Accepting a pledge from a person under the age of eighteen (18) years; from a person who appears intoxicated; or from any person the pawnbroker knows to be a thief, or to have been convicted of larceny, burglary or robbery, without first notifying a police officer;
- (2) Making any agreement requiring the personal liability of a pledgor in connection with a pawn transaction;
- (3) Accepting any waiver (in writing or otherwise) of any right or protection accorded a pledgor under the act;
- (4) Failing to exercise reasonable care to protect pledged goods from loss or damage;
- (5) Failing to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event the pledged goods are lost or damaged while in the possession of the pawnbroker, it is the responsibility of the pawnbroker to replace the goods with like kinds of merchandise or make reimbursement;
- (6) Purchasing property in a pawn transaction for the pawnbroker's own personal use;
- (7) Taking any article that is known to the pawnbroker to be stolen;
- (8) Selling, exchanging, bartering, or removing from the business, or permitting to be redeemed, any goods for a period of forty-eight (48) hours after making the required report to law enforcement agencies;
- (9) Operating more than one house, shop or place of business under one license;
- (10) Keeping the business open during prohibited hours; and
- (11) Entering into a pawn transaction with a maturity date of less than thirty (30) days after the date of the pawn transaction.

T.C.A. § 45-6-212.

If the violation is knowingly committed by an owner or major stockholder and/or managing partner, T.C.A. § 45-6-218 provides that the license of the pawnbroker may be suspended or revoked at the discretion of the county clerk. However, the Tennessee Attorney General has opined that this portion of that statute is unconstitutional. Op. Tenn. Att'y Gen. 89-53 (4/10/89).

Recovery of Stolen Property

Reference Number: CTAS-414

To obtain possession of purchased or pledged goods held by a pawnbroker which a claimant claims to be misappropriated or stolen, the claimant must notify the pawnbroker by certified mail or in person, giving a complete and accurate description of the goods together with a copy of the applicable law enforcement agency's report on the misappropriation or theft of the property. The claimant and the pawnbroker must in good faith attempt to resolve the claim within 10 days after notification to the pawnbroker. T.C.A. § 45-6-213.

If the claim is not resolved within the 10-day period, either (1) the claimant may petition a court for the return of the property and the pawnbroker must hold the property until either the claim is settled or the court orders disposition of the property, or (2) a law enforcement official having probable cause to believe that the property is misappropriated or stolen may place a hold order on the property. The hold order cannot exceed 90 days unless extended by court order. Upon expiration of the holding period, the pawnbroker must notify the law enforcement official by certified mail that the holding period has expired. If, within 10 days, the pawnbroker has not received a court order extending the hold order on the property and the property is not the subject of a court proceeding, the pawnbroker obtains title to the property. T.C.A. § 45-6-213.

A pawnbroker is not required to relinquish an item believed to be misappropriated or stolen unless a court has ordered the pawnbroker to do so. T.C.A. § 45-6-303.

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