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Laws that Require Records to Be Kept

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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Not every record in a government office has a corresponding statute or regulation requiring that record be kept. Many records are generated simply as an ordinary course of business without any legal authority mandating their creation. But the creation and preservation of certain other records are required by specific laws. The laws affecting individual records are referenced in the retention schedules.

Federal Laws and Regulations

County officials should be aware that federal laws and regulations require them to keep certain records. This is particularly true of payroll information and other employment-related records. Most of the laws regarding how we hire, fire, compensate, and treat employees are generated at the federal level. The Family and Medical Leave Act, the Fair Labor Standards Act, the Occupational Safety and Health Act are just a few of the laws that place certain burdens on employers to keep records regarding their employees. These statutes also generate a whole other layer of federal regulations that govern the implementation and enforcement of the acts. In addition to personnel issues, federal laws and regulations also touch such diverse topics as student records and voter registration. Laws passed by the U.S. Congress are codified in the United States Code (U.S.C. or U.S.C.A. for United States Code Annotated). The massive amounts of rules and regulations generated by the different federal agencies are primarily found in the Code of Federal Regulations (C.F.R.).

State Laws and Regulations

Since county governments are instrumentalities of the state, most of the laws regarding what records need to be kept by county offices and how those records should be managed are found in the Tennessee Code Annotated (T.C.A.). As with the federal government, the state of Tennessee also has a set of rules and regulations promulgated by state agencies, boards, and commissions which are published by the secretary of state and known as the Official Compilation Rules and Regulations of the State of Tennessee.

The duties of most county officials can be found spelled out in Title 8 of the Tennessee Code Annotated. For most offices, a requirement is included in the duties of the office to keep and preserve specific types of records. Certain county offices, such as the register of deeds, the clerks of the various courts of the county, and the county clerk, have a primary function of record keeping. The proper and efficient performance of these duties is necessary not only for the continued operation of the county government, but also for the preservation of order in our society. Without them, our criminal justice system, our civil courts, and our rights of property ownership would be thrown into chaos. But even offices without a primary record keeping function are required to keep records.

Even though county officials may change with every election, the offices themselves must maintain a level of continuity. To ensure this, the responsibility for keeping and turning over the records of county offices was specifically addressed in the statutes requiring county officials to be bonded. Part of what is insured by the bond of an official is the fulfillment of a duty to "...faithfully and safely keep all records required in such principal's official capacity, and at the expiration of the term... turn over to the successor all records and property which have come into such principal's hands..."^[1] Failure to do so can result in recovery against the insurance company or sureties on the bond who may in turn proceed against the official in his or her individual capacity for subrogation of the claim. It is the solemn obligation of each county official to act as the legal custodian of the records of that office, to provide for their security and care, and to turn them over in good order to his or her successor.

[1] Bayless v. Knox County, 286 S.W.2d 597 (Tenn. 1955).

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