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Laws that Govern How You Manage Your Records

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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Good Record Keeping as a Bedrock of Law and Government

If you ever thought the way we do things seems to have come from the dark ages, you were right. Some practices of record keeping in government offices, particularly certain local government offices, are literally ancient. The importance of keeping accurate records of property transactions and legal proceedings is a bedrock of English law and goes back a thousand years. Laws that require the recording of documents in "well bound books," the necessity of having a written record to show property ownership, the creation of specific offices to keep these records all go back to the Middle Ages. Up until the advent of the computer, we had been doing things pretty much the same way they had been done since the 13th century. Even today, some of the laws in our Tennessee code regarding the records of the register's office and the offices of the clerks of court retain elements of this language from more than 700 years ago. Something does not last that long without there being a good reason. Basic rights that we take for granted, such as the rule of law and the sanctity of private property, are impossible without a good, durable record keeping system. All this should impress the Tennessee county official that he or she is the inheritor of a great and solemn tradition of responsible record keeping. Generations of clerks, registers, and officials before them have discharged this public trust and, hopefully, passed the records on to you in good shape.

Basic Record Keeping Statutes

Both the older state laws on records management and their more modern counterparts are found primarily in Title 10, Chapter 7 of the Tennessee Code Annotated. Parts 1 and 2 of that chapter contain a number of statutes about preserving, transcribing, and indexing records. The statutes require the county to "procure for the register's office well-bound books for the purpose of registering therein such instruments of writing as are required by law to be registered...".^[1] Among other things, the laws direct how to transcribe information from books that have been "damaged or mutilated by fire or otherwise,"^[2] require the county to appropriate money to rebind books when necessary,^[3] and designate how the clerks of courts and the register are to properly index the books.^[4] As was discussed earlier, the county official can be held liable for failure to safely keep the records of his or her office. An exemption is granted here relieving an official of liability during the time record books are out of the custody of the county clerk, clerk and master, circuit court clerk, or register for the purpose of having books rebound.^[5]

Not all of our records statutes are steeped in the past. Although many of the laws found in these parts seem headed the way of the dinosaur, there are some that point to the future. One of these newer, more progressive statutes authorizes maintaining any information required to be kept by a government official on a computer or on removable computer storage media instead of bound books or paper if certain standards are met.^[6] Another authorizes county officials to provide computer access and remote electronic access to information maintained on computer media in the office.^[7] A third authorizes the register to maintain all indices required of the office on a computer instead of index books.^[8] When granting new authority to adapt to modern technology, our state legislature has been cautious. All of these statutes condition the use of electronic media on a number of safeguards and restrictions.

The State Public Records Commission

Part 3 of Chapter 7 of the Tennessee Code, Title 10, establishes the State Public Records Commission and designates the Records Management Division of the Department of General Services as the primary records manager for all state government records.^[9] Currently, these entities do not take jurisdiction over county government records, but they can be looked to as examples for proper records management and preservation. There are similarities between the responsibilities and powers of the State Public Records Commission and the county public records commissions that have jurisdiction over county records. The county public records commission is vital to any records management program for county governments.

[1] T.C.A. § 10-7-102.

[2] T.C.A. § 10-7-104

[3] T.C.A. § 10-7-105.

[4] T.C.A. § 10-7-201, et seq.

[5] T.C.A. § 10-7-120.

[6] T.C.A. § 10-7-121.

[7] T.C.A. § 10-7-123.

[8] T.C.A. § 10-7-202

[9] T.C.A. § 10-7-301, et seq.

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