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# County Public Records Commission

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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 Public Records Commission

Reference Number: CTAS-211

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

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

<sup>[2]</sup>T.C.A. § 10-7-401.

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

## Creation and Membership

Reference Number: CTAS-1146

The commission is required to be composed of at least six members. Three of the members are appointed by the county mayor subject to the confirmation of the county legislative body. Of those three, one appointee is to be a member of the county legislative body, one is to be a judge of one of the courts of record in the county (or the designee of the judge), and one is to be a genealogist. In addition to these appointees, certain county officers automatically become members of the county public records commission by nature of the office they hold. These *ex officio* members include the county clerk (or the designee of the county clerk), county register (or the designee of the register), county historian and, in those counties with a duly appointed archivist, the county archivist. In counties having a technology department or information technology department, the county legislative body may designate the director of such department as an *ex officio* member of the commission, and if so designated, the director or designee of the director shall also serve as an *ex officio* member of the commission. The *ex officio* members remain on the commission for as long as they hold their office. The appointed members of the commission serve until they vacate office, at which time the county mayor appoints a replacement in the same manner as provided above.<sup>[1]</sup> Since the state statute mandating the records commission places no limitations on the *ex officio* members, there are no distinctions between the *ex officio* members and appointed members. All members of the County Public Records Commission have the same rights and privileges, including voting rights.<sup>[2]</sup> If your county does not have a public records commission or if your records commission has become inactive, it is strongly recommended that you begin taking steps to comply with the law and establish the commission.

Sample resolution for creating a public records commission

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<sup>[1]</sup>T.C.A. § 10-7-401.

<sup>[2]</sup>Op. Tenn. Att’y Gen. No. 98-114 (June 23, 1998).

## Organization and Compensation

Reference Number: CTAS-174

The commission is directed to elect a chairperson and a secretary and to keep minutes of all its proceedings and transactions.<sup>[1]</sup> Members of the commission are not paid a salary except that any member of the commission who does not already receive a fixed annual salary from the state or the county may receive a per diem of \$25 for each day of actual meeting. All members may be reimbursed for

actual necessary expenses incurred in performing the duties of the records commission.<sup>[2]</sup> Although active commissions may meet more regularly, the state law requires that the County Public Records Commission meet at least twice each year.<sup>[3]</sup>

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<sup>1</sup>T.C.A. § 10-7-402.

<sup>2</sup>T.C.A. § 10-7-402.

<sup>3</sup>T.C.A. § 10-7-402.

## Jurisdiction and Authority of the Public Records Commission

Reference Number: CTAS-179

The county public records commission is granted the power to oversee the preservation and authorize the destruction of any and all public records as defined by the law to be within the jurisdiction of the commission.

Those records within the jurisdiction of the county public records commission include—

- All documents, papers, records, books, and books of account in all county offices;
- The pleadings, documents, and other papers filed with the clerks of all courts including the courts of record, general sessions courts, and former courts of justices of the peace and the minute books and other records of these courts; and
- The minutes and records of the county legislative body.<sup>[1]</sup>

Note: Prior to 1999, the County Public Records Commission also technically had jurisdiction over municipal records. As a practical matter, few municipalities were working with the county public records commission to manage their records. Since a legislative change in 1999,<sup>[2]</sup> municipal records are no longer within the purview of the County Public Records Commission.

### Oversight Over the Disposal and Final Disposition of Records

The most important role of the County Public Records Commission is to provide oversight and make determinations regarding the ultimate disposition of the records of county offices. County governments in Tennessee are not highly centralized. Individual elected officials have a great deal of independence in the management of their own offices. Recognizing this, and realizing the danger of a single official having the sole discretion regarding whether to keep important public records, the state legislature created the county public records commission and provided it with the authority to decide whether county records should be retained or destroyed.<sup>[3]</sup> It is the responsibility of the commission to ensure that no county records that need to be preserved are destroyed prematurely and to ensure that original records which have been reproduced into other storage media have been properly duplicated before the originals are destroyed. In working with county officials, the commission should strive to balance this responsibility to protect records against the need to manage records efficiently. Since destroying records is absolutely necessary for keeping the records of an office manageable, the commission should encourage and cooperate with local officials in culling the obsolete and unnecessary records from their offices. There are two primary circumstances where the public records commission may authorize destruction of records. First, the records commission may authorize the destruction of temporary value records and working papers that are no longer needed by county offices and departments through its rules and regulations.<sup>[4]</sup> Second, the commission may authorize the destruction of original paper records that must be retained permanently once those records have been successfully preserved in another format.<sup>[5]</sup>

### Authorizing Transfer of Records

For records commissions that place a premium on the historical preservation of county records, the law provides an alternative to destruction. Once the County Public Records Commission determines that a county office, department, or court no longer needs to retain a record, the commission may provide for transferring the record to another institution instead of destroying it. The records may be placed into the custody of a local or regional public library, a local, regional or state college library, or the county archives, to be preserved for historical purposes.<sup>[6]</sup> The transfer of the records should be approved by a majority vote of the commission. At any time after the records are transferred to one of the entities listed above, the commission may, after giving one month's notice to the institution holding the record, transfer the records to another institution. If appropriated by the county legislative body, county funds may be expended by the records commission for the purpose of transferring records to an institution or for the

maintenance and preservation of the records.<sup>[7]</sup> If your county chooses to transfer records to another institution for storage and preservation, it is recommended that the county enter into a contractual agreement with that entity specifying that it is only keeping them on behalf of the county and that ownership of the records is not being transferred. Rather than transferring the records to a private library or archives, the Tennessee State Library and Archives recommends that a county should establish its own archives or enter into an interlocal agreement with other local governments for the creation of a regional archives. For additional information, see Establishing Archives.

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<sup>[1]</sup>T.C.A. § 10-7-403.

<sup>[2]</sup> 1999 Public Chapter 167.

<sup>[3]</sup> T.C.A. § 10-7-401, *et seq.*

<sup>[4]</sup>T.C.A. § 10-7-406.

<sup>[5]</sup>T.C.A. § 10-7-404.

<sup>[6]</sup>T.C.A. § 10-7-414.

<sup>[7]</sup>T.C.A. § 10-7-414.

## Miscellaneous Authority

Reference Number: CTAS-175

### Promulgating Rules and Regulations

In conjunction with its general oversight authority the county public records commission is authorized to promulgate rules and regulations over certain matters under its jurisdiction. Pursuant to state law, the records commission has the authority to establish rules and regulations regarding the making, filing, storage, exhibiting, and copying of reproductions of records.<sup>[1]</sup> Such rules and regulations must be approved by the majority of the voting members of the records commission and must be signed by the chair of the commission.<sup>[2]</sup> The rules and regulations should include, but need not be limited to, the following:

1. Standards and procedures for the reproduction of records for security or for disposal of original records in all county offices;
2. Procedures for compiling and submitting to all county offices lists, schedules, or time tables for disposition of particular records within the county; and
3. Procedures for the physical destruction or other disposition of public records.

### Lamination

The law also expressly authorizes the records commission to provide for the lamination of permanent records.<sup>[3]</sup> This, however, is one of those cases where the law was too quick to embrace a technology. Instead of protecting documents, the lamination process too often destroys the very documents it is intended to preserve. For this reason, **the Tennessee State Library and Archives strongly recommends that permanent records not be laminated** but rather encapsulated in mylar sleeves.<sup>[4]</sup>

### Establishing Copying Charges

The records commission has the power to establish charges and to collect such charges for making and furnishing or enlarging copies of records.<sup>[5]</sup> (This authority applies usually to records in county archives. Often, office specific statutes govern the fees charged for copies of records in particular offices such as the register of deeds or court clerk.) While it will be up to the county legislative body to determine how to allocate these revenues, counties may want to consider "re-investing" them in equipment, supplies, or personnel expenses related to records management and records preservation.

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<sup>[1]</sup>T.C.A. § 10-7-411.

<sup>[2]</sup> T.C.A. § 10-7-411(c).

<sup>[3]</sup>T.C.A. § 10-7-413(b).

<sup>[4]</sup> See Tennessee Archives Management Advisory 99-009.

<sup>[5]</sup>T.C.A. § 10-7-409.

# Funding

Reference Number: CTAS-1149

The county legislative body may appropriate such funds as may be required for carrying out the purposes of the County Public Records Commission. This includes, but is not limited to, funding for purchasing or leasing equipment, the equipping of an office and related expenses, hiring administrative assistants, and the employment of expert advice and assistance.<sup>[1]</sup>

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<sup>[1]</sup>T.C.A. § 10-7-408.

# Establishing a Public Records Commission

Reference Number: CTAS-1150

The Tennessee State Library and Archives (TSLA) has been extremely helpful in the development of the following guidelines and the retention schedules. It has employees on its staff who have the task of working with local officials and records commissions to ensure good county records management and the preservation of important historical documents from Tennessee's history (those from days gone by as well as those we are creating each day). TSLA offers the following list of basic minimum actions that county public records commissions should be taking in order to fulfill their function of basic records management and oversight. For those records commissions that desire and have the resources to be more progressive, there are further recommended courses of action that follow.

## Minimums

- Meet at least twice a year. (This is the statutory minimum.)
- Set a schedule for regular meetings so that county officials can plan ahead for their interactions with the records commission.
- Elect officers (at least a chairman and a secretary).
- Keep minutes and records of decisions and transactions.
- Oversee the preservation and authorize the destruction of any and all public records as defined by the law.
  - Request offices to conduct an inventory of their records and submit that inventory to the PRC.
  - Use records inventories to gauge need for the destruction of temporary records and the sufficiency of storage space for permanent records.
  - Encourage records-keeping officers and PRC members to familiarize themselves with the records retention schedules.
  - Require county offices to begin using a standard Records Disposition Authorization form to document requests for records destruction.
  - Review the request, then authorize or disapprove requests from county offices to destroy original records, using the retention schedules for guidance.
  - Assure that authorizations for destruction of public records are forwarded to TSLA for review within 90 days of the PRC authorization.
  - Follow-up on requests sent to TSLA before destroying any records to make sure that approval of the destruction has been given.
- Establish rules and regulations regarding the making, filing, storage, exhibiting, and copying of reproductions of records.
- Establish procedures for compiling and submitting to all county offices lists, schedules, or time tables for disposition of particular records within the county.
- Establish procedures for the physical destruction or other disposition of public records.

## Progressive Steps

TSLA suggests the following further measures that a PRC can take to strengthen its records management function.

- Hold meetings more than twice a year. (If your county is just beginning an effort to get records

management going, meeting more often will be necessary. Also, if all the offices of a county begin actively participating in records management, two meetings will probably not be sufficient to thoroughly review all requests.)

- Report at least once a year to the county mayor and legislative body on commission activities and the state of records and archives management in the county.
- Review records keeping practices in county offices and recommend to the offices and to the county mayor and legislative body remedies to correct faults and improvements to deal with emerging information and records needs.
- Work with county offices, CTAS, TSLA, and the Records Management Division of the state Department of General Services to draft, review, revise, and issue realistic records management schedules for local government records.
- Encourage the development of disaster recovery and vital records protection plans for all county offices.
- Review and approve all plans by county offices for electronic imaging or data processing systems to assure that
  - (a) the system employed will protect and preserve records designated as permanent by CTAS retention schedules, and
  - (b) a permanent, archival-standard microfilm of permanent records is produced.
- Encourage a regular program of microfilming to protect and preserve permanent records of the county. Send a copy of any microfilm produced to TSLA for quality control testing and storage in the vault.
- Become more familiar with any records you intend to destroy so that you can recognize any that may have historical value or are good candidates for transfer to a county archives or outside institute that can preserve the record for historical purposes.
- Propose to the county cooperative arrangements with other counties or cultural institutions such as libraries and universities for keeping, managing, and allowing for the public inspection of historically valuable records, including permanent public records of the county.
- Advise and propose to the county mayor and the legislative body the planning, development, site selection, establishment, funding, budget, regulation, and operation of a local archives and records office.
- Advise and recommend to the county mayor and legislative body the appointment and removal of personnel, including an archivist as director, for the central records office and archives.
- Review operations of any existing county records offices and archives to assure the county legislative body that they meet records management and archives management standards and satisfy the needs of the county and its citizens.

See Basic Records Management for additional information.

## The Advantages of a Public Records Commission

Reference Number: CTAS-1151

Although the law requires that every county create a public records commission, there are more advantages to creating the commission than simply fulfilling the legal requirement. An active records commission helps to manage the records that your county generates efficiently and legally. Destroying out of date, temporary records alleviates records storage problems and frees up space in offices, possibly postponing the need for renovation or expansion of offices. If the records commission takes the additional measures suggested and works with the county to create an archives, the county has ensured that it has fulfilled its duty to provide long term access to public records as mandated by the Tennessee Code. Additionally, having an active PRC also demonstrates to the citizens of your county that its government is meeting its legal and custodial responsibilities of caring for public records.

For more information on how to get your PRC up and running, contact the Archives Development Program at the Tennessee State Library and Archives.

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