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Forms of County Government

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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Forms of County Government

Reference Number: CTAS-214

County Government under the Tennessee Constitution

Reference Number: CTAS-443

Under the Tennessee Constitution, counties are an extension of the state and are deemed political subdivisions of the state created in the exercise of its sovereign power to carry out the policy of the state. Counties, as the creation of the state, are subject to control by Tennessee's legislature, known as the General Assembly. Although the General Assembly has very broad powers to deal with county government, the state's constitution places some limitation on its discretion regarding counties.

A long line of Tennessee Supreme Court case law has held that counties have no authority except that expressly given them by statute or necessarily implied from it. *Bayless v. Knox County*, 286 S.W.2d 579 (Tenn. 1955). Although statutes are the primary source of county authority, the Tennessee Constitution does contain a few provisions specifically addressed to county government. Counties have only the implied power to do acts necessary to enable them to exercise their expressed powers or to accomplish the objectives for which they were created.

Article VII, Section 1: Elected Officials and Governmental Form

Reference Number: CTAS-5

Several amendments to the Tennessee Constitution were approved in 1978; among them was an amendment restructuring the basic framework of county government. Article VII, Section 1 of the Tennessee Constitution now provides counties with the following constitutional officers: county executive, sheriff, trustee, register, county clerk, and assessor of property. This Section also requires the election of a legislative body of not more than 25 members, with no more than three members to be elected from a single district. The General Assembly sets the qualifications and duties of these offices.

Before the 1978 constitutional changes, county government had been difficult to divide into executive, legislative, and judicial branches. With the creation of the office of county executive and of the county legislative body, along with several judicial interpretations of the powers and duties of each, county government is now more clearly divided into three branches, even though the county executive must share executive powers with other constitutional officers. The legislature is afforded wide latitude in determining the duties that may be assigned to the various constitutional officers. *Metropolitan Government v. Poe*, 383 S.W.2d 265 (Tenn. 1964).

Article VII, Section 1, also provides that the General Assembly "may provide alternate forms of county governments including the right to charter and the manner by which a referendum may be called." The Tennessee Supreme Court has stated that when the General Assembly authorizes any deviation from the government provided for in this article, such action must be ratified by the people in a referendum called for that purpose. *State ex rel. Maner v. Leach*, 588 S.W.2d 534 (Tenn. 1979). Other than the county charter (T.C.A. §§ 5-1-201 through 5-1-214), no additional alternatives are now offered by the General Assembly except for the metropolitan and unification forms of government which were provided for in an earlier constitutional amendment and implementing legislation. Tenn. Const., art. XI, § 9; T.C.A. §§ 7-1-101 through 7-3-313, 7-21-101 through 7-21-408.

Article VII, Section 2: Vacancies In County Offices

Reference Number: CTAS-7

Vacancies in county offices are to be filled by the county legislative body, and any person so appointed serves until a successor is elected at the next election after the vacancy. The Tennessee Supreme Court has determined that the term "next election" means the next general election or other countywide election in the county. *McPherson v. Everett*, 594 S.W.2d 677 (Tenn. 1980). There is a statute (T.C.A. 18-1-402)

that says judges fill the vacancy in the office of court clerk but that statute (from 1858) has been superseded by the 1978 amendment to the state constitution (Art. VII, Sec. 2) requiring vacancies in county offices to be filled by the county legislative body. See AG Op. No. 88-131.

Article XI, Section 9: Limitation on Power Over Local Affairs

Reference Number: CTAS-6

The General Assembly has no power to pass a special, local, or private act that would remove an incumbent from any municipal or county office, change the term of office, or alter the salary of the office until the end of the current term. Any act of the General Assembly that is private or local in form or effect, applicable to a particular county, must require within the terms of the act either approval by a two-thirds vote of the county legislative body or approval by the people of the county in a referendum.

Article XI, Section 9, also provides for optional consolidation of municipal and county government. Such a consolidation must be approved by vote of those residents within the municipality as well as those who reside in the county outside the municipal corporation to be consolidated with the county government.

Miscellaneous Tennessee Constitutional Provisions Affecting County Government

Reference Number: CTAS-8

Article II, Section 24, of the Tennessee Constitution, in a portion relevant to counties, states that "no law of general application shall impose increased expenditure requirements on cities and counties unless the General Assembly shall provide that the state share in the cost." Article II, Section 28, of the Tennessee Constitution deals with property taxation and other tax matters. It also states that each respective taxing authority shall apply the same tax rate to all property within its jurisdiction. However, the Supreme Court has found that the General Assembly may authorize counties to levy a different property tax rate on property within and without municipalities for school bonds, county road purposes, and perhaps other services as well. *Albert v. Williamson County*, 798 S.W.2d 758 (Tenn. 1990); *Op. Tenn. Att'y Gen. 92-29* (April 7, 1992). Also, so-called "double taxation," levied by a county and city to fund similar services if statutorily authorized, is not unconstitutional. *Oliver v. King*, 612 S.W.2d 152 (Tenn. 1981); *Op. Tenn. Att'y Gen. U95-96* (Dec. 22, 1995).

Article II, Section 29, grants the General Assembly the authority to authorize counties and municipalities to impose taxes for county or municipal purposes, in such a manner as is prescribed by law. This Section also states that the credit of a county or municipality may not be given or lent to or in aid of any person, company, association or corporation, except upon an election wherein a three-fourths majority of the voters cast ballots in favor of such an extension of credit.

Article VI, Section 13, provides for the appointment of clerks and masters by chancellors for terms of six years, and for the popular election of clerks of inferior courts, by county or district, for terms of four years. The circuit court clerk is the prime example of a popularly elected inferior court clerk.

Article X, Section 1, requires that every person chosen or appointed to any office of trust or profit under the constitution or any statute must take an oath to support the constitution of this state and of the United States, as well as an oath of office before entering on the duties of the office.

Article X, Section 3, prohibits any official or candidate from accepting any type gift or reward which might be considered a bribe. The Section also provides that any person who directly or indirectly promises or bestows any such gift or reward in order to be elected is punishable as provided by law.

Article X, Section 4, provides the method by which new counties may be established. This Section also restricts the General Assembly in consolidating counties by stating that the seat of justice may not be removed without approval by two-thirds of the voters of the county being abolished (*James County v. Hamilton County*, 89 Tenn. 237, 14 S.W. 601 (1890)), but this limitation does not apply to Obion and Cocke counties. This Section is complicated and limits the discretion of the General Assembly in dealing with the boundaries or existence of certain specified counties (which are often referred to as "constitutional" counties).

Article XI, Section 8, provides that the General Assembly cannot suspend the general law for the benefit of any individual or individuals. This provision has been interpreted by the courts to mean that the General Assembly cannot pass private or local legislation applicable to a single county or counties that contravenes

a general law of mandatory statewide application, unless a reasonable basis for the discrimination can be found. See, e.g., *Knox County Educ. Ass'n v. Knox County Bd. of Educ.*, 60 S.W.3d 65 (Tenn. Ct. App. 2001).

Article XI, Section 17, provides that no county office created by the legislature shall be filled in any manner other than by vote of the people or by appointment of the county legislative body.

Traditional Structure

Reference Number: CTAS-444

The most basic and widely used form of county government in Tennessee is one with a popularly elected county executive, entitled county mayor (T.C.A. § 5-6-101), who is the administrative head of the county, and a popularly elected county legislative body, which the General Assembly has formally entitled board of county commissioners and which is commonly referred to as the county commission. Members are generally referred to as county commissioners. T.C.A. § 5-5-102(f). This is the constitutionally required form of county government unless a county has followed the provisions provided by the Tennessee Constitution and implemented by statute a consolidated form of government with one or more of the county's municipalities, or an alternate form of government. Of course a consolidated government will have a legislative body of some type, but the size limitation of 25 does not apply. Tenn. Const., art. VII, § 1.

County Charters

Reference Number: CTAS-445

The 1978 amendments to the Tennessee Constitution revised Article VII, Section 1, of the Tennessee Constitution, including adding the third paragraph as follows:

The General Assembly may provide alternative forms of county government including the right to charter and the manner by which a referendum may be called. The new form of government shall replace the existing form if approved by a majority of the voters in the referendum.

The Tennessee Supreme Court has determined that the Tennessee Constitution allows for three types or forms of county government: (1) the basic form which includes the constitutional offices, (2) consolidated city-county government, and (3) an alternative form, such as a county charter. The alternative form of county government authorized under the third paragraph of Article VII, Section 1 of the Tennessee Constitution may be created by the legislature without regard to the general type established in Article VII provided the legislature's action is ratified by referendum. *State ex rel. Maner v. Leech*, 588 S.W.2d 534 (Tenn. 1979), *Bailey v. County of Shelby*, 188 S.W.3d 539 (Tenn. 2006).

The General Assembly has provided an alternative to the standard form of government provided in the first paragraph of Article VII, Section 1 of the Tennessee Constitution through the means of a county charter. The county charter enabling law is found in *Tennessee Code Annotated*, Title 5, Chapter 1, Part 2. County charters are often referred to as "home rule" charters due to the discretion given by the legislature to the citizens of the county to alter the form or structure of the county government through the charter writing and referendum approval process. The legislature has also granted to counties with charters the power to adopt ordinances in a manner similar to that of a city government. Charter counties may adopt ordinances relating to purely county affairs and cannot interfere with the local affairs of any municipality. The county legislative body is authorized to provide penalties for the violation of ordinances, but these penalties cannot exceed certain statutory maximums. T.C.A. § 5-1-211. The Tennessee Supreme Court has ruled that a county charter may impose term limits on certain county officials although none is required by general law. *Bailey v. County of Shelby*, 188 S.W.3d 539 (Tenn. 2006); *Jordan v. Knox County*, 213 S.W.3d 751 (Tenn. 2007).

Any county wishing to adopt a charter must first create a charter commission by one of four possible methods--

1. Resolution of the county legislative body,
2. Proclamation of the county mayor ratified by a two-thirds majority vote of the county legislative body,
3. Petition by 10 percent of the qualified voters, or
4. Private act of the General Assembly.

Members of the charter commission are elected by popular vote if the resolution or petition method is

used. If a proclamation by the county mayor is used, charter commission members are appointed in the proclamation from county legislative body districts with no more than three members from any one county legislative body district. Within nine months the charter commission must present a proposed charter, which is then submitted for approval in a referendum. The state statutes enabling a county charter require that the charter contain provisions assigning the functions and duties of the officers of the county, and state that the duties of the constitutional officers as prescribed by the general assembly cannot be diminished under the new charter government. T.C.A. § 5-1-210. Thus, the county charter must provide for the constitutional county offices or otherwise assign the duties of the constitutional county offices to another office, agency, or official. *Jordan v. Knox County*, 213 S.W.3d 751, 773 (Tenn. 2007).

The statutes authorizing a county charter provide for organizational changes and ordinance powers but do not provide any extension of the authority for home rule in vital areas such as local option taxation. To date, only Shelby and Knox counties have chosen county charters, although other counties have studied the matter.

County Consolidation Committee

Reference Number: CTAS-446

If a petition to consolidate a county or a portion of a county with one or more adjoining counties is signed by the qualified voters of any one county in a number equal to at least 25 percent of the number of votes cast in the county for governor in the last general election, then the state consolidation committee created by T.C.A. § 5-3-101 is required to appoint a county consolidation committee for the petitioning county. The county consolidation committee is composed of the county mayor and county trustee of the petitioning county and the county mayors of the adjoining counties and five signers of the petition designated by the governor. T.C.A. § 5-3-102. The state consolidation committee and the county consolidation committee act as a joint committee to consider the request for consolidation and hold hearings within the petitioning county. The joint committee reports its findings within 90 days of receiving the petition. If favorable to consolidation, the joint committee recommends the county or counties with which the petitioning county should be consolidated and sets new proposed boundaries. T.C.A. § 5-3-103. After proper publication in a newspaper or newspapers of general circulation in the affected counties, the proposed consolidation is subject to referendum called by the county election commission. T.C.A. § 5-3-104. The consolidation plan is approved if two-thirds of the qualified voters in the petitioning county vote in favor of the proposed consolidation. T.C.A. § 5-3-105.

City-County Consolidation

Reference Number: CTAS-447

In 1953, Article XI, Section 9, of the Tennessee Constitution was amended to permit the General Assembly to "...provide for the consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located." The General Assembly has devised two statutory processes through which counties may consolidate with the cities within them: the metropolitan government charter process codified in T.C.A. §§ 7-1-101 through 7-3-316, and the unification government charter process codified at T.C.A. §§ 7-21-101 through 7-21-408.

Metropolitan Government Charters

Reference Number: CTAS-477

The metropolitan form of government combines the powers of a county with those of cities generally. T.C.A. § 7-2-108. Therefore, a metropolitan government can exercise more powers than a county charter government and can exercise these powers throughout the county, with some limitation regarding smaller municipalities within the county that retain their charters. Key features of a metropolitan government include the following:

1. A general services district for the entire county;
2. An urban services district;
3. Possible special service districts;
4. A unified school system;

5. Wide discretion on allocation of duties among officials, including those of constitutional officers, as determined by the charter;
6. The size of the legislative body (metro council) is determined in the charter (up to 20 voting members);
7. The existence, nature and extent of the executive and/or administrative offices are determined in the charter;
8. Optional control over and consolidation of utility districts; and
9. Full ordinance powers.

Although the metropolitan government may not act in contravention of general law, the wide powers granted to the metropolitan government by the legislature means that this form of government comes closest to "home rule" as is permitted under our current law.

The process to form a metropolitan government begins with the selection of a charter commission. A charter commission may be created by one of three methods. The most commonly used method is one in which the charter commission is created by a majority vote on a resolution approved by the governing bodies of both the most populous city (or, in certain circumstances, the county seat) and the county. A second method is by private act of the General Assembly. The third method is by petition signed by qualified voters in the county in a number equaling at least 10 percent of the votes cast in the county for governor in the last gubernatorial election. The commission members are either appointed by the county mayor and the mayor of the county's major city or elected by the voters as determined by the resolution or petition, if those methods are used, or by resolution if the petition does not specify a method of selecting charter members. If a private act is used, the private act determines the method of selection. If the resolution method is used, the county mayor appoints 10 members and the mayor of the most populous city appoints five members to a 15-member charter commission.

The charter must contain provisions for general services and urban services districts, for a metropolitan council and election of members to terms of office, for the selection of administrative and executive officers, for an education department, and for other administrative departments. Smaller (less populous) cities within the county may retain their charters if their governing bodies choose not to send representatives to the charter commission to write an appendix to the charter for inclusion of the smaller cities. Several cities and counties have formed charter commissions and voted on consolidation under the metropolitan government statutes, but only Nashville-Davidson County, Lynchburg-Moore County and Hartsville-Trousdale County have adopted a consolidated form of government as of this writing. One obvious difficulty in adopting a metropolitan form of government is the requirement that the metropolitan government charter receive a majority of the referendum votes both within the city and outside the city that is to consolidate with the county.

The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) has produced an excellent publication entitled *Forming a Metropolitan Government*.

Unification Government Charters

Reference Number: CTAS-478

The unification charter form of government is similar to the metropolitan model; however, while the latter form is available to all counties, the unification form is available only to counties with a county or metropolitan charter. T.C.A. §§ 7-21-101 through 7-21-408. The unification government charter process may differ somewhat from that of the metropolitan government charter process. The unification government charter commission may be initiated by proclamation of the county mayor or resolution of the county legislative body, but the mayor's proclamation is subject to ratification by the county legislative body. Also, the county's action must be approved by the legislative body of the most populous city in the county for a charter commission to be formed. A county proclamation must appoint eight members to the charter commission, then the city mayor appoints eight members, and one member is appointed by the mayor of any smaller city electing to participate. A noteworthy substantive difference from a metropolitan government is that the unification charter must provide for a chief executive and a legislative body of a limited size--nine to 19 members.

As of this writing no county has adopted a unification charter although it has been the subject of a vote in Knoxville and Knox County.

Private Acts

Reference Number: CTAS-2186

Counties have relied upon private acts of the General Assembly to provide authority where none was granted by the general law, and to provide for offices not established by the general law. The 1978 amendment to Article VII, Section 1, was an attempt to provide greater uniformity in county governmental structure; the implementing legislation passed by the General Assembly provided that all conflicting general laws or private acts were repealed by it. This means that counties with varying structures under private acts adopted prior to 1978 were required to conform to the uniform pattern provided by the General Assembly. Counties having structures of county government varying from the general law pattern under private acts adopted prior to 1978 have since taken action to elect county mayors and legislative bodies and otherwise conform to the required pattern. Private acts continue to provide authority for actions that are not specifically authorized in the general law and for officials or bodies not provided by general law, such as county highway commissions in many counties. Private acts are the authority for some taxing powers in many counties, such as hotel/motel taxes and development taxes (e.g., adequate facilities taxes). The general law provides the county legislative body the authority to adopt a wheel tax subject to a referendum or by a two-thirds vote at two consecutive regular meetings subject to a referendum only if an adequate petition is filed (10 percent of the votes cast in the last gubernatorial election), but this general law also recognizes that a private act may serve as authority for a county wheel tax. T.C.A. § 5-8-102. Also, private acts are needed in counties without county charters or consolidated government charters to determine the method of selecting the chief administrative officer of the county highway department. Therefore, private acts remain useful additions to the general law authority that counties may exercise.

When a county legislative body deems a private act is in the best interest of the county, it usually adopts a resolution requesting a member of the General Assembly representing the people of the county to introduce such a bill. Such a resolution is not required by law but is a commonly accepted practice. After a private act bill passes the General Assembly and becomes law either upon the signature of the governor or after being on the governor's desk without veto for the constitutionally required 10 calendar days, Sundays excepted, the private act must still obtain local approval before the act is effective. Tenn. Const., art. III, § 18 and art. XI, § 9. The method of local approval is provided for in the act itself and is either by two-thirds majority of the county legislative body or by a majority of the voters in a referendum. Also, for the private act to become effective, local approval must take place within any time limit set in the act, or if no time limit is set in the act, then by December 1 of the year of enactment. Local approval must be certified to the secretary of state by the presiding officer (chair) of the county legislative body or the chair of the county election commission, as appropriate. T.C.A. § 8-3-202.

On the CTAS website you can view the most current versions of the private acts.

Intergovernmental Agreements

Reference Number: CTAS-449

The Constitution of Tennessee, legislation enacted by the General Assembly and administrative rules and regulations issued by agencies of the executive branch control the relationship between the State of Tennessee and its political subdivisions. The courts of the state interpret the provisions of the Constitution and ultimately determine the validity of statutes and regulations. The attorney general regularly issues opinions on the constitutionality, operation and effect of statutes. Opinions by the attorney general are particularly influential in Tennessee. For example, county officials frequently resolve disputes over various interpretations of law following the issuance of an attorney general's opinion, avoiding the necessity and expense of a court test. Also, legislators often request opinions about the authority of counties to perform functions contemplated in pending legislation or about what actions the state can legally take with regard to county governmental affairs.

County officials and personnel deal with state government as a matter of course in their daily activities. The county is not separate from the state, but is part of the state. It is a basic unit in the organization of political parties and in the administration of elections. County officials administer what are essentially state programs in areas of health and welfare, schools, courts and the collection of license fees and taxes. Counties supply services the state cannot provide or chooses not to provide. County sheriffs enforce state law and counties incarcerate thousands of state prisoners in local jails. The state oversees these activities performed on its behalf and often provides county programs with administrative and financial assistance.

The state comptroller's office has a division of local government audit responsible for seeing that local government finances are audited properly, while watching for potential financial difficulties. Another official in the office of the comptroller reviews local bond issues and advises local governments on bond

problems. The state provides an Elections Coordinator in the office of the Secretary of State who works with local governments on local election problems and issues, giving assistance in election law and procedures. The Tennessee Emergency Management Agency is available to assist any local government in times of disaster. The Police Officers Standards Commission prescribes qualifications and training for local law enforcement officers. County jails are inspected in accordance with state laws.

The state is particularly cooperative in county purchasing and financial management. State law empowers counties to make purchases under the state purchasing contract without letting bids. This means automobiles, road salt, typewriters and anything that the state purchases can be purchased by local governments under the same contract. The state operates a Local Development Authority (LDA). Under the LDA, the state issues revenue bonds and loans proceeds to local governments for the construction of wastewater treatment projects. Local governments pay off these bonds through the revenues from local user charges. The state has also authorized a local government investment pool through which counties and other entities can invest idle funds with full protection.

State and counties share some of the same revenue sources. The state collects not only the state sales tax, but also county and municipal sales taxes. The state retains a small administrative fee for collecting local sales taxes and remits the balances to the county trustee for distribution within that county. The state also collects the state gasoline tax which is shared with cities and counties.

There are numerous worthy governmental programs and purposes which could not be performed or executed without extensive state and county cooperation. For example, the state Fire Marshal's office in the Department of Insurance, is responsible for reviewing the plans of all schools, multi-story office buildings and institutional buildings in each local jurisdiction to make sure they are safely constructed. The Department of Health and Environment has a technical assistance program to assist local wastewater treatment facility operators to comply with environmental regulations. The Department of Economic and Community Development works with cities and counties to help them recruit industrial prospects and to publicize local resources. These are a few of the ways counties interact with the state on a daily basis for a variety of reasons and functions.

The state of Tennessee has been divided into nine development districts for the purpose of regional planning, joint community and economic development projects, and the provision of certain services on a regional basis. Each development district serves as an area agency on aging that administers many programs based on federal funds that are passed through the state to the development districts to assist elderly and disabled citizens. Each county, plus each municipality is represented on the board of the development district for the region along with other state representatives. The county mayor represents his or her county on the development district board and may serve on its executive committee.

Another form of intergovernmental cooperation is the representation of local governments on state boards and commissions. Some of the bodies on which county officials are represented include the Tennessee Advisory Commission on Intergovernmental Relations, the Air Pollution Control Board, the Consolidated Retirement System Board of Trustees, the Emergency Medical Services Board, the Tennessee Housing Development Agency, the Peace Officers Standards and Training Commission, the Solid Waste Disposal Control Board, the Water Quality Control Board, and many others. Local government representation on these boards and commissions is provided for by statute.

Interlocal Agreements

Reference Number: CTAS-479

Within county boundaries exist the county government, sometimes several city governments and special service districts. These entities may have contractual relationships for the provision of services with one or more of the others. A county may be part of an economic development district, a planning district, a federal regional project or it may have an agreement with an adjoining county to supply emergency medical or fire fighting services. Examined from the local level upward, the administration of government in Tennessee depends on numerous small units interacting with even smaller units as well as the large agencies and departments of the state. The sheer number of these units raises questions of their necessity, efficiency and ability to interact effectively.

Interlocal agreements, for the joint exercise of powers, may be entered into between cities, counties, and other public agencies of the state and the federal government. Under Title 12, Chapter 9, Part 1 of the Tennessee Code Annotated, local governments are permitted to cooperate with other localities in an attempt to provide services and facilities in the most efficient and mutually advantageous fashion. Pursuant to this Interlocal Cooperation Act, agreements for the joint exercise of powers may be entered into by cities, counties, and other public agencies of the state and the federal government. T.C.A. §

12-9-104. Governing bodies may enter into contracts "with any one or more public agencies to perform any governmental service, activity or undertaking which each public agency entering into the contract is authorized by law to perform". T.C.A. § 12-9-108. These contracts should set out in detail the "purposes, powers, rights, objectives and responsibilities of the contracting parties" and must be authorized by the governing body of each party to the contract. T.C.A. § 12-9-108. These contracts generally deal with ongoing services. For example, they may govern how a city and county run a joint solid waste transfer station. Also, a municipality may enter into an agreement with the sheriff, court of general sessions and the county legislative body of any county in which it is located to provide for the enforcement of the municipality's ordinances T.C.A. § 12-9-104. There are also other statutes providing specific authority for an interlocal agreement to deal jointly with a particular activity. Examples are interlocal agreements for joint jails or workhouses among adjoining counties (T.C.A. § 5-7-105) and urban-type public facilities for utilities such as water and sewer services. T.C.A. §5-16-107.

Any interlocal agreement that creates a local government joint venture must be filed with the comptroller of the treasury within 90 days of its execution. Each county participating in a local government joint venture must file an annual statement with the comptroller stating the names of the parties to the agreement, the annual revenue and expenses of any entity created under the agreement and such other information as the comptroller may require. T.C.A. § 12-9-112(a).

While the Intergovernmental Cooperation Act gives broad authority to all governmental units, T.C.A. §§ 5-1-113 and 5-1-114 give specific powers to counties. A county may contract with any city within its borders to conduct, operate and maintain services and functions of the two governments. Also, any two contiguous counties may cooperate to jointly conduct or finance necessary services. No government may agree to cooperate in any activity except one in which each government may participate separately. The Tennessee Code sets out the functions in which a government may engage. Many laws authorizing specific activity often contain permissive clauses for cooperative performance by local governing bodies (see, e.g. T.C.A. §§ 12-9-101 through 12-9-109).

Tennessee Code Annotated § 7-51-402, provides that counties, municipalities, utility districts and cooperatives of this state billing and collecting user fees, rates or charges for a utility service, including but not limited to, water, sanitary sewer and electricity, or for garbage and refuse collection and disposal services, are authorized by resolution to enter into agreements with each other to provide for this billing and collection to be done one for the other on such terms as may be agreed upon.

Mutual Assistance and Mutual Aid Agreements

Reference Number: CTAS-480

When disasters strike, they often tax the resources and personnel of a local government beyond its capacity to respond properly. In such situations, neighboring cities and counties have the opportunity to be lifesavers, often literally. Under the Mutual Aid and Emergency and Disaster Assistance Act of 2004 (discussed below), a statewide system of mutual assistance exists that may be used at the option of the local government. Prior to the enactment of this legislation, many local governments had mutual aid agreements in place. The local governments that wished to keep these older agreements in force had to adopt a resolution before July 1, 2004, to extend them. If the local government did not pass such a resolution, then the provisions of the 2004 law are in effect in the county. This re-adoption requirement to keep an old agreement does not affect service and operational agreements between local governments that are not emergency or disaster related. Also, local governments may adopt new mutual aid agreements.

The 2004 Mutual Aid and Emergency and Disaster Assistance Act makes a distinction between aid, which is provided under this law on request in situations in which there has been no declaration of a state of emergency or disaster and for which no cost reimbursement is required, and assistance, which is provided after an emergency or disaster is declared and for which cost reimbursement is required. The law allows municipal and county mayors and executives to declare local states of emergency. Requests for aid or assistance may be made verbally, but such requests must be confirmed in writing within 30 days of the initial request.

Parties must keep records of all requests for assistance made under the act. The law allows a responding entity to send personnel and equipment anywhere in the state to respond to a request for aid or assistance, but there is no duty to respond to a request or to stay at a scene for any length of time. Responding employees and entities acting outside their boundaries have the same protections they have in their home jurisdiction.

For liability purposes, employees of the responding party will be considered employees of the requesting

party while under the requesting party's supervision. At all other times, they will be considered employees of the responding party. The requesting party is required to pay the responding party all documented allowable costs incurred by the responding party in providing assistance after a state of emergency has been declared. The responding party is entitled to one-half its reimbursable costs for the first six hours of its response and 100 percent after six hours are exceeded.

This does not apply to responding utilities, which are to be reimbursed for 100 percent of their costs from the beginning of the state of emergency. The requesting party is required to reimburse personnel costs and equipment and material costs according to Federal Emergency Management Agency (FEMA) fee schedules. The responding party must maintain records and submit itemized invoices for reimbursement to the requesting party no more than 60 days after the provision of assistance has ended. This law allows, but does not require, local government entities to provide aid or assistance to any state or federal entity upon request in any part of Tennessee. T.C.A. § 58-8-101 *et seq.*

Tennessee Fire Service Emergency Response System--The Tennessee Fire Chiefs Association created the Tennessee Fire Service Emergency Response System to provide for the systematic mobilization, deployment, organization, and management of fire service resources to assist local agencies in a large fire event, disaster, or other major emergency.

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