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# County Statutory Offices and Positions

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Dear Reader:

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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.

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# County Statutory Offices and Positions

Reference Number: CTAS-215

In addition to the county constitutional offices and important statutory offices such as the chief administrative officer of the county highway department and the important employment position of director of schools, counties have various other offices and employment positions that have been created by either general law or private act. Some of the offices and positions described are not found in all counties but are fairly common.

An explanation of the office of Judicial Commissioner can be found under Courts. Election Administrators are covered under Elections and County Building Commissioner is covered under Land Use, Planning and Zoning.

## County Attorney

Reference Number: CTAS-450

The county attorney or law director is a popularly elected official in a few counties by private act or county charter, an officer elected for a term of office by the county legislative body under a private act in a few others, and an executive appointed department head in others by county or metropolitan government charter. In most counties, however, there is not an office of county attorney; rather, the position is one of employment or retainer under the general law authority of the county mayor to employ or retain counsel when there is no county attorney. An attorney employed or retained by the county mayor is to advise the county mayor and the members of the county legislative body as to their legal rights as members, prepare resolutions for passage by the body, and represent the county either as plaintiff or defendant in such suits as may be brought by or against the county, except suits by the county to collect delinquent taxes. An attorney employed or retained by the county mayor under this general law authority is entitled to a reasonable fee for such counsel's services and/or retention, which amount is to be fixed by a majority vote of the members of the county legislative body at one of its regular meetings and paid out of the general fund of the county. T.C.A. § 5-6-112. The counties that have an office of county attorney or law director by charter or private act may have different duties and compensation schemes, but all play an important role in advising the county mayor or metropolitan mayor and representing the county. The county charter, metropolitan government charter or private acts must be examined to determine the exact role and duties of the county attorney in those counties.

## County Medical Examiner

Reference Number: CTAS-451

The county medical examiner is appointed by the county mayor, subject to confirmation by the county legislative body, based on a recommendation from a convention of physicians resident in the county. A county medical examiner must be a physician who is either a graduate of an accredited medical school authorized to confer upon graduates the degree of doctor of medicine (M.D.) and who is duly licensed in Tennessee, or is a graduate of a recognized osteopathic college authorized to confer the degree of doctor of osteopathy (D.O.) and who is licensed to practice osteopathic medicine in Tennessee, and must be elected from a list of a maximum of two (2) doctors of medicine or osteopathy nominated by convention of the physicians, medical or osteopathic, resident in the county, the convention to be called for this purpose by the county mayor. T.C.A. § 38-7-104.

If it is not possible to obtain an acceptance as a county medical examiner from a physician in a county, authority is given for the election of a county medical examiner from an adjacent or another county. A county medical examiner, when temporarily unable to perform the duties of the office, has the authority to deputize any other physician in the area to act as county medical examiner during the absence. If the county legislative body fails to certify a county medical examiner for a county or if the county medical examiner resigns or is unable to fulfill the duties of the office during the interim between county legislative body sessions and a deputy has not been appointed by the county medical examiner, the chief medical examiner shall have the authority to appoint a county medical examiner to serve until the next session of the county legislative body. T.C.A. § 38-7-104.

A county medical examiner shall serve a five-year term, and shall be eligible for reappointment by the county mayor with confirmation by the county legislative body. T.C.A. § 38-7-104.

## County Medical Investigator

Reference Number: CTAS-452

A medical investigator must be a licensed emergency medical technician (EMT), paramedic, registered nurse, physician's assistant or a person registered by or a diplomat of the American Board of Medicolegal Death Investigators and approved by the county medical examiner as qualified to serve as medical investigator

If the county has an elected coroner, the coroner shall serve as the medical investigator for the county; provided, that the coroner meets the qualifications for a medical investigator. If the coroner is not qualified to serve as medical investigator, then the county legislative body shall, by resolution, either authorize the county medical examiner to appoint a medical investigator subject to confirmation by the county legislative body, or provide for this function through a contract for service approved by the county medical examiner and the county legislative body; provided, however, that, if the county has an elected coroner who has served in that capacity for ten years or more, the coroner shall serve as the medical investigator for the county, regardless of whether the coroner meets the qualifications set out in T.C.A. § 38-7-104(f)(1)

The county medical investigator may conduct investigations when a death is reported, as provided in T.C.A. § 38-7-108, under the supervision of the county medical examiner. The county medical investigator may make pronouncements of death and may recommend to the county medical examiner that an autopsy be ordered. However, the county medical investigator shall not be empowered to sign a death certificate. The county medical examiner may delegate to the county medical investigator the authority to order an autopsy.

T.C.A. § 38-7-104(f).

## County Coroner

Reference Number: CTAS-453

The county legislative body is granted discretionary authority to create the office of county coroner. If such office is created, the county legislative body must elect a coroner who holds office for two years, and until a successor is qualified. However, in those counties that have a county medical examiner, the county legislative body may vest the duties of the county coroner in the county medical examiner and is not required to elect a county coroner. T.C.A. § 8-9-101.

The coroner must, before entering upon the duties of that office, enter into an official bond prepared, executed, filed, and recorded in accordance with Title 8, Chapter 19. The bond must be in the amount of two thousand five hundred dollars (\$2,500), or a greater amount set by the county legislative body by resolution, payable to the state, conditioned truly and faithfully to execute the duties of the office of coroner. The coroner, if failing to give bond within ten days after appointment, shall vacate the office. T.C.A. § 8-9-103.

## Constable

Reference Number: CTAS-454

Constables are optional officers. Constables are independently elected county officials. See AG OP 78-153 (March 31, 1978). Their jurisdiction is county wide. In counties where they exist, they all may serve civil process. In some counties, designated by narrow population class in the general law at T.C.A. § 8-10-108(b), the constable has law enforcement powers and, therefore, may enforce the criminal laws of this state. T.C.A. § 8-10-109.

Constables are fee officials. They do not receive a salary. They are not supervised by anybody. See AG OP 02-012 (January 18, 2002). The county would probably be liable for torts committed by a constable that fall within the Governmental Tort Liability Act, T.C.A. §§ 29-20-101, et seq., and for civil rights violations under 42 U.S.C. § 1983. See AG OP 00-050 (March 20, 2000); AG OP 91-70 (August 1, 1991).

In most counties the county legislative body may, by adopting a resolution by two-thirds majority vote at two consecutive meetings, abolish the office of constable for that county or set the term of office for the constable at either two or four years. Any change would not be effective until the end of the current term being served by the constable. T.C.A. § 8-10-101.

In most counties, the county legislative body may also, by adopting a resolution by a two-thirds vote at two consecutive meetings of the county legislative body, remove the law enforcement powers exercised by the constables of the county. Such action by the county legislative body to remove the law

enforcement powers of constables will apply to constables elected to office following the expiration of the term of office of constables in office at the time the action is taken by the county legislative body. T.C.A. § 8-10-109. Note: Some exceptions apply.

In addition to these optional procedures, several counties, by population class exceptions, are exempt from portions of the constable law or have abolished the office of constable entirely. The specific statute should be consulted for provisions applicable to each individual county. T.C.A. § 8-10-101 *et seq.*

Constables are elected from districts established by the legislative body subject to the following limitations: the number of constables elected cannot exceed one-half the number of county commissioners and constable districts must be reasonably compact and contiguous and must not overlap. T.C.A. § 8-10-101. Constables must have the following qualifications:

1. Be at least twenty-one (21) years of age,
2. Be a qualified voter of the district and a resident of the county for one (1) year prior to the date of the qualifying deadline for running as a candidate for constable,
3. Must be able to read and write,
4. Must possess at least a high school diploma or general educational development certificate,
5. Not have been convicted in any federal or state court of a felony, and
6. Not have been separated or discharged from the Armed Forces of the United States with other than an honorable discharge.

There are a few exceptions to the aforementioned qualifications. T.C.A. § 8-10-102.

Any person seeking the office of constable must file with the county election commission, along with the nominating petition, an affidavit signed by the candidate affirming that the candidate meets the requirements in T.C.A. § 8-10-101. In the event that person seeks election to the office of constable by the county legislative body to fill a vacancy in office, the same affidavit shall be filed with the county clerk prior to the election. T.C.A. § 8-10-102.

In 2023, the legislature amended T.C.A. § 8-10-102. Effective July 1, 2023, a person seeking the office of constable must file with the county election commission, along with the nominating petition, a letter from a psychologist licensed in this state who has conducted a cognitive and psychological test on the candidate stating that the candidate is mentally and cognitively fit to perform the duties of a constable. In the event that the candidate seeks election to the office of constable by the county legislative body to fill a vacancy in office, the same letter must be filed with the county clerk prior to the election. Candidates for the office of constable are responsible for covering the costs of cognitive and psychological testing.

Before entering into the duties of the office, the constable must take an oath to support the constitutions of this state and of the United States, and an oath of office, pursuant to T.C.A. § 8-10-108. Each constable must execute an official bond in an amount of \$4,000 or such greater amount as the county legislative body by resolution may determine. The bond must be prepared, executed, filed, and recorded in accordance with Title 8, Chapter 19. The bond as required for a constable shall be a surety bond executed by a surety company authorized to do business in Tennessee as surety. T.C.A. § 8-10-106.

There are permissive specifications regarding uniforms and car markings. T.C.A. §§ 8-10-119, 8-10-120.

Constables' duties may be limited to serving civil process or may include peacekeeping duties; the oath of office differs according to the nature of the duties. T.C.A. § 8-10-108. The duties of the constable are determined according to the population classification of the particular county pursuant to T.C.A. §§ 8-10-108 and 8-10-109, unless the county legislative body has acted to remove law enforcement powers. The legislative body may fill any vacancy by temporary appointment until it is filled by an election. T.C.A. § 5-1-104.

Constables must complete forty hours of in-service course time for each twelve-month period during which the constable holds office, beginning on the date the constable is sworn into office. A constable with twenty years of cumulative service as a constable before May 3, 2018, is exempt. T.C.A. § 8-10-202.

## Delinquent Tax Attorney

Reference Number: CTAS-455

The delinquent tax attorney brings suit on behalf of the county (and any municipality whose property taxes are collected by the county trustee) to collect delinquent property taxes. The delinquent tax attorney is appointed each year by the county trustee subject to approval by the county mayor for the

property taxes becoming delinquent in that year. Suits for the collection of delinquent property taxes are to be filed after the trustee delivers the delinquent lists to the attorney by April 1 of each year. The delinquent tax attorney is compensated in an amount determined in advance through negotiations between the trustee and the attorney, subject to the approval of the county legislative body, but in most counties this amount is limited to 10 percent of all delinquent land taxes collected. T.C.A. §§ 67-5-2404, 67-5-2405. In most counties the county attorney may serve as the delinquent tax attorney if selected by the county trustee and approved by the county mayor, but the trustee is under no legal obligation to appoint the county attorney to this position.

## County Surveyor

Reference Number: CTAS-459

The legislative body elects the county surveyor at its January session for a four-year term. T.C.A. § 8-12-101. The surveyor must take an oath of office and enter into a \$2,000 bond. T.C.A. § 8-12-102. The legislative body may fix the compensation of the surveyor, his chain bearers and markers where the fees are not already established by law. T.C.A. § 8-12-107. The surveyor may appoint two deputies who must take the surveyor's oath of office; appointment takes place before the legislative body. T.C.A. § 8-12-104. The surveyor must maintain all office records in the county seat. T.C.A. § 8-12-103.

## County Fire Marshal

Reference Number: CTAS-457

The County Fire Marshal is responsible for ensuring fire safety compliance in the unincorporated portions of the county. Typical responsibilities include plan reviews of new site developments; new and modified commercial structures and multi-family dwellings; and fire protection systems. Additional duties include inspections of new construction for compliance with the applicable building and fire codes, as well as inspections of existing structures (except one and two-family dwellings) to ensure compliance with the fire prevention code adopted in an effort to reduce the risk of death and injury due to fire.

The County Fire Marshal typically conducts fire scene investigations to determine origin and cause and works closely with the local sheriff's department, district attorney's office, and other state/ federal agencies as needed in cases that involve suspected arson activity. The coordination of fire safety public education efforts is an important function of the County Fire Marshal's duties. In counties that have a countywide fire department, the County Fire Marshal's position can be created within that agency to carry out the provisions of T.C.A. § 5-17-102(8).

In counties that do not have a countywide fire department, the position can be created in accordance with T.C.A. § 5-6-121. The Fire Marshal may also function as a coordinator between the county and the independent fire departments that provide fire protection services to the unincorporated portions of the county.

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