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County Offices-General Information

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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County Offices-General Information

Reference Number: CTAS-28

The following pages contain information applicable to county offices in general. Office-specific information is covered under the individual office headings.

Qualifications

Reference Number: CTAS-2152

General qualifications of officeholders are located in the Tennessee Code Annotated, which provides that all persons 18 years old and over, who are citizens of the United States and of Tennessee, and who meet certain residency requirements are qualified to hold office unless the person:

1. Has been convicted of offering or giving a bribe, of larceny, or, of any other offense declared infamous by law, unless the person has been restored to citizenship (except those who have been convicted of an infamous crime if the offense was committed in the person's official capacity or involved the duties of the person's office, in which case the person shall forever be disqualified from holding office);
2. Has not paid a judgment for money received in an official capacity, which is due to the United States, Tennessee, or any county;
3. Has defaulted to the treasury at the time of election (in which case the election is void);
4. Is a soldier, seaman, marine, or airman in the regular United States Army, Navy or Air Force; or
5. Is a member of Congress or holds any office of profit or trust under any foreign power, other state of the Union, or the United States.

T.C.A. § 8-18-101.

A crime declared infamous by law essentially means a felony, or a crime which is partially punishable by disenfranchisement (loss of the right to vote). Also, there are several criminal statutes related to an official's misconduct in office, such as official misconduct (T.C.A. § 39-16-402), official oppression (T.C.A. § 39-16-403), misuse of official information (T.C.A. § 39-16-404), and conflict of interest (T.C.A. § 12-4-101), which, upon conviction, will result in disqualification to hold office for a period of ten (10) years from the date of conviction (T.C.A. §§ 39-16-406, 12-4-102). Any disqualified person who takes office is guilty of a misdemeanor (T.C.A. § 8-18-102).

The principles for determination of residence for purposes of the election code are (T.C.A. § 2-2-122):

1. The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has a definite intention to return.
2. A change of residence is generally made only by the act of removal joined with the intent to remain in another place. There can be only one residence.
3. A person does not become a resident of a place solely by intending to make it the person's residence. There must be appropriate action consistent with the intention.
4. A person does not lose residence if, with the definite intention of returning, the person leaves home and goes to another country, state, or place within this state for temporary purposes, even if of years duration.
5. The place where a married person's spouse and family have their habitation is presumed to be the person's place of residence, but a married person who takes up or continues abode with the intention of remaining at a place other than where the person's family resides is a resident where the person abides.
6. A person may be a resident of a place regardless of the nature of the person's habitation, whether house or apartment, mobile home or public institution, owned or rented.
7. A person does not gain or lose residence solely by reason of the person's presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while living on a military reservation.
8. No member of the armed forces of the United States, or such member's spouse or dependent, is a resident of this state solely by reason of being stationed in this state.

The following factors, among other relevant factors, may be considered in the determination of where a

person is a resident (T.C.A. § 2-2-122):

- The person's possession, acquisition or surrender of inhabitable property.
- Location of the person's occupation.
- Place of licensing or registration of the person's personal property.
- Place of payment of taxes which are governed by residence.
- Purpose of the person's presence in a particular place.
- Place of licensing activities, such as driving.

These same principles, basically the physical presence with intention to make a place your residence, are also used by the courts in determining residence for other purposes.

Additional statutory qualifications are required for certain county offices, such as sheriff, and are discussed in the individual county office section. The offices and duties may vary in counties with a metropolitan government charter or a county government charter.

Election to Office

Reference Number: CTAS-659

Under Tennessee Code Annotated, Section 2-5-101(f)(5), a candidate for county office is prohibited from running for any other countywide office on the same ballot. This statute provides:

No candidate, whether independent or represented by a political party, may be permitted to submit and have accepted by any Election Commission, more than one (1) qualifying petition, or otherwise qualify and be nominated, or have such candidate's name anywhere appear on any ballot for any election or primary, wherein such candidate is attempting to be qualified for and nominated or elected to more than one (1) state office as described in either § 2-13-202(1) [Governor], or (2) [Member of the General Assembly] or in Article VI of the Constitution of Tennessee [Offices pertaining to the judicial department of the state] or more than one (1) constitutional county office described in Article VII, § 1 of the Constitution of Tennessee [county legislative body, county executive, sheriff, trustee, register, County Clerk, assessor of property] or any other countywide office, voted on by voters during any primary or general election.

When it is not prohibited by statute, a candidate may also run for an office other than a countywide office at the same election, even though the person may not be able to serve in both capacities if elected.

Article 2, Section 26 of the Tennessee Constitution provides:

No Judge of any Court of law or equity, Secretary of State, Attorney General, Register, Clerk of any court of Record, or person holding any office under the authority of the United States, shall have a seat in the General Assembly; nor shall any person in this State hold more than one lucrative office at the same time; provided, that no appointment in the Militia, or the office of Justice of the peace, shall be considered a lucrative office, or operative as a disqualification to a seat in either House of the General Assembly.

The Attorney General has issued several opinions over the years interpreting Article 2, Section 26. For example, the Attorney General has opined that Article 2, Section 26 does not prohibit a person from seeking the office of state senator and assessor at the same time, but that person could not hold both offices if elected to both of them. Attorney General Opinion U90-61 dated March 29, 1990; see also Attorney General Opinion 90-11 dated February 6, 1990, which opines that the prohibition against holding two lucrative offices is only applicable to state offices.

Oaths

Reference Number: CTAS-30

Before taking office, the Tennessee Constitution, Article X, Section 1, provides that every person chosen to any office of trust must take an oath to "support the Constitution of this state and of the United States, and an oath of office." Review Oaths of Office for examples of different oaths.

There are various statutes throughout the Tennessee code providing for administering oaths to particular officials. There is also a general provision found at T.C.A. § 8-18-109(b), which provides that oaths of office for any elected or appointed official may be administered by the county mayor, the county clerk, a judge (current or retired) of any court of record in the county, or a current or retired judge of the general sessions court. In addition, under § T.C.A. 8-18-107, the governor, an active or retired supreme court justice, an active or retired inferior court judge, or an active or retired general sessions judge may administer the oath of office to an inferior court judge and, except as otherwise provided by law, to any

other elected or appointed official. Notaries public are authorized to administer oaths pursuant to T.C.A. § 8-16-112. Members of the general assembly are also authorized to administer oaths to county officials. T.C.A. § 3-1-105. The oath of office for any county official required to file an oath may be administered at any time after the certification of the election returns by the appropriate legal authority in the case of elected officials, or after appointment in the case of appointed officials. However, even if the official files an oath before the scheduled start of a term of office, the official may not take office until the term officially begins. T.C.A. § 8-18-109.

The oath must be written and subscribed by the person taking it. Accompanying the oath must be a certificate executed by the officer administering the oath specifying the day and the year it was taken. T.C.A. § 8-18-107. The oath and the certificate are filed in the office of the county clerk, who endorses on them the day and year of filing, and signs the endorsement. T.C.A. §§ 8-18-109, 8-18-110. Any county official who fails to take and file the required oaths is guilty of a misdemeanor. T.C.A. § 8-18-113.

Bonds

Reference Number: CTAS-31

An official bond is an instrument that requires the sureties to pay a specified sum of money if the official who executes the bond fails to perform certain acts or performs wrongful and injurious acts in the office. In other words, an official bond is a written promise, made by a public official (1) to perform all the duties of the office, (2) to pay over to authorized persons all funds received in an official capacity, (3) to keep all records required by law, (4) to turn over to his or her successor all records, money, and property, and (5) to refrain from anything that is illegal, improper, or harmful while acting in an official capacity. If the official fails to perform the duties, violates the law, or commits a harmful act, the person who is injured may collect damages from the sureties on the official bond. The sureties must be surety companies authorized to do business in Tennessee. If no surety company is willing to serve as surety for a particular person, the county legislative body may, by resolution, authorize the use of personal sureties approved by the mayor or the use of a cash bond approved by the mayor. T.C.A. §§ 8-19-111, 8-19-101, 8-19-102, 8-19-301.

The bond protects the state, the county, and the citizens in the event the county official fails to perform his or her duties properly. The bond does not protect county officials from liability. If a payment is made under the bond, the county official's sureties may have a right to recover the amount paid from the county official. This action against the county official by the sureties is known as subrogation. The following county constitutional officials must execute a surety bond: county clerk, court clerks, sheriff, register, property assessor, and trustee. Also, bonds are required for the finance director, director of accounts and budgets, county auditor, constable, coroner, road commissioners, county surveyor, director of schools, purchasing agent, and notaries. A blanket bond is required for all county employees that are not otherwise covered. The specific bond amounts are set out in the table entitled County Officials'/Employees' Minimum Bond.

The form of official bonds is prescribed by the comptroller of the treasury, with the approval of the attorney general. T.C.A. § 8-19-101. Blank copies of official bonds, ready for use, are available from the comptroller, Division of Local Finance.

The official bond of every county public official must be conditioned in the following manner: T.C.A. § 8-19-111.

That if the _____ (principal) shall:

1. Faithfully perform the duties of the office of _____ of _____ County during such person's term of office or continuance therein; and
2. Pay over to the persons authorized by law to receive them, all moneys, properties, or things of value that may come into such principal's hands during such principal's term of office or continuance therein without fraud or delay, and shall faithfully and safely keep all records required in such principal's official capacity, and at the expiration of the term, or in case of resignation or removal from office, shall turn over to the successor all records and property which have come into such principal's hands, then this obligation shall be null and void; otherwise to remain in full force and effect.

Some counties also use "blanket bonds" for all of the county officeholders. T.C.A. § 8-19-101.

Additionally, counties that have chosen to self-insure their liability under the GTLA may also elect to self-insure their risk of loss rather than obtain bonds or insurance. Such an election must be made by resolution, adopted by a 2/3 vote of the governing body. T.C.A. § 8-19-101.

Official bonds of the sheriff, county trustee, county clerk, register of deeds, assessors of property, and persons vested by law with the authority to administer county highway and bridge funds must be approved by the county mayor, recorded in the office of the register of deeds and transmitted to the county clerk for safekeeping. T.C.A. §§ 8-19-102, 8-19-103, 67-1-505, 54-4-103(c), 54-7-108. Official bonds of clerks of court must be approved and certified by the court, entered into the minutes of the court, recorded in the office of register of deeds and transmitted to the county clerk for safekeeping. T.C.A. § 18-2-205. The official bond of the director of schools must be approved by the county mayor, recorded in the office of the register of deeds and transmitted to the office of the county clerk for safekeeping. T.C.A. §§ 49-2-102, 9-3-301. The official bonds of other county officials, constables, and county employees required to have bonds shall be approved by the county mayor, recorded in the office of the register of deeds and transmitted to the office of the county clerk for safekeeping. T.C.A. §§ 8-19-102, 8-19-103. Official bonds of officers which must be transmitted to the county clerk must be filed in the clerk's office within thirty (30) days after the election or appointment of the person named in the bond. T.C.A. § 8-19-115.

The register of deeds must endorse on the bond the day and year on which it was recorded and sign the endorsement. Similarly, the county clerk, with respect to bonds filed for safekeeping in the office of county clerk, must endorse the filing date and sign the endorsement. Failure of the register or county clerk to endorse and sign the bond is a misdemeanor. T.C.A. § 8-19-116.

An officer required by law to give an official bond who fails to execute the bond when the bond is available and transmit the bond to the proper officer for approval within thirty (30) days from the time the bond becomes available for execution, forfeits the office and a vacancy in the office occurs, whether or not the officer has taken an oath of office. It is the duty of the officer who is to receive the executed official bond to certify the failure to execute and transmit the bond in the time required by this section to the official or body who has the power to elect or appoint a successor to the office. T.C.A. § 8-19-117. Upon the filing of a complaint alleging the failure of a county officer or constable to enter into an official bond as required by law, the circuit court clerk or the clerk and master having jurisdiction issues a summons that is served, together with a copy of the complaint, upon the county officer or constable in accordance with the Tennessee Rules of Civil Procedure. T.C.A. § 8-19-205. If the official fails or refuses to execute the required bond after receiving a copy of the complaint and a hearing, the court will enter a judgment declaring the office vacant, and the vacancy will be filled according to law. T.C.A. § 8-19-206.

County officials must enter into a new bond at the beginning of each term. If the original of any bond is lost or destroyed, the record of the bond will be considered the original and suit may be instituted on the recorded bond. T.C.A. § 8-19-105. The county pays the premiums for official bonds and registration fees of county officials and employees. T.C.A. § 8-19-106.

Insurance as a Substitute for Bonds

Reference Number: CTAS-2205

Counties are authorized to purchase insurance policies in place of bonds for both officials and employees. Purchase of such insurance policies is purely optional and at the discretion of the county legislative body. The county legislative body can opt to cover all or some of the county's officials and employees using insurance rather than bonds.

Under the amended law, codified at T.C.A. § 8-19-101, should a county choose to purchase insurance, the insurance policy must provide minimum coverage of \$400,000 per occurrence and provide government crime coverage, employee dishonesty insurance coverage, or equivalent coverage that insures the lawful performance by officials and their employees of their fiduciary duties and responsibilities. Each covered official or office must be listed in the policy. A policy of insurance is deemed to be a blanket official bond for each office and official identified in the policy. A certificate of insurance, a policy or an endorsement must be recorded in the register's office and then filed with the county clerk.

In the event that the policy of insurance maintained by the county ceases to provide coverage to the officeholder for any reason, the officeholder has thirty (30) days from the date of termination of coverage to file a bond or other proof of insurance coverage.

Other entities are authorized to obtain insurance policies in lieu of bonds under various statutes. For example, development districts may opt to obtain insurance under T.C.A. § 13-14-114(a).

Choosing the insurance option does not affect the liability limits provided in the Tennessee Governmental Tort Liability Act.

Fee System or Salary System

Reference Number: CTAS-33

The sheriff, trustee, county clerk, register of deeds and court clerks receive fees from the public for services they perform; for this reason, these officials are sometimes referred to as "fee officials." There are two methods of accounting for the fees received by these officers. The first and oldest is the "fee system." Under this system, each official remits to the trustee quarterly all of the fees and charges collected by the official in excess of expenses for the following items: salaries of the official's deputies and assistants, necessary expenses of the office, and the official's salary as established by statute. The official is also authorized to maintain a reserve in an amount equal to three times the monthly salaries of the official, deputies, and assistants. T.C.A. § 8-22-104. If in any month the total amount of fees and commissions are insufficient to pay the total amount of the official's salary, the salaries of deputies and assistants, plus the other expenses of the office for the month, the amount of the deficiency may be paid out of any excess fees received by the official during any preceding or succeeding months of the terms for which the official is elected. T.C.A. § 8-22-108. If the fees are insufficient to pay the regular expenses of the office, including the statutory salary of the official and the salaries of deputies and assistants, the minimum salary of the official is to be paid out of county general funds. T.C.A. § 8-24-107. Excess fees are placed in the county general fund as a source of county revenue.

The county commission is authorized to adopt an alternative system for fee officials, often called the "budget" or "salary" system, although the sheriff is always under this alternative system. T.C.A. § 8-24-103. This budget system can be adopted for some or all of the officials. T.C.A. § 8-22-104. Under this method, the official pays over to the trustee all of the fees, commissions, and charges collected by the office on a monthly basis. The county commission must, in return, budget for expenses, authorizing the trustee to pay the official's salary, salaries of deputies and assistants, and authorized expenses of the office. These salaries and other proper costs of the office are included in the budget and must be paid even if the fees are insufficient to cover them.

Compensation

Reference Number: CTAS-32

There are specific statutes regarding compensation for each office. In general, though, statutes prescribe salaries according to county population classes for many officials. The General Assembly has established 17 population classes for the purpose of determining the compensation of county officers. T.C.A. § 8-24-102. This statute provides base minimum salary schedules for three categories of county officers: (1) "general officers," which include assessors of property, county clerks, clerks of court, trustees, and registers of deeds; (2) sheriffs and chief administrative officers of highway departments; and (3) county mayors. These specified minimum salaries cannot be raised or lowered except through subsequent legislation, but since they are minimum salaries, the actual salary may be increased by resolution of the county legislative body, but the class of general officers must all receive the same amount of any increase.

The minimum salaries are adjusted annually on July 1 by a dollar amount equal to the average annualized increase in state employees' compensation during the prior fiscal year multiplied by the compensation established for the county officials of the county with the median population of all counties. The adjustment cannot exceed 5 percent in any year; provided, however, the annual percentage increase in the minimum compensation of county officials shall not be less than the percentage increase established for county officials of the county with the median population of all counties. The average annualized general increase in state employees' compensation for purposes of calculating the adjustment in salary for county officials means the average increase in base salary plus the equivalent percentage increase represented by appropriated funds made available to address classification compensation issues, plus the equivalent percentage increase represented by recurring appropriation amounts provided to improve the level of retirement benefits, longevity benefits, deferred compensation benefits and other similar benefits not including health insurance benefits. These adjustments are calculated and certified by May 1 of each year by the commissioner of finance and administration. T.C.A. § 8-24-102.

Full-time county officials, not including general sessions judges, who complete the County Officials Certificate Training Program (COCTP) administered by the University of Tennessee's County Technical Assistance Service (CTAS) and become a "Certified Public Administrator" may receive an annual incentive payment up to a maximum of \$1,500 from state-appropriated funds. To continue receiving these payments, certified county officials must take additional training annually. If an official receives incentive pay from the state through other professional development programs, such amounts will be offset so that no official receives more than \$1,500 of incentive pay from the state per year; provided, however, certified public administrator educational incentive payments to assessors shall not be offset by the

compensation received by assessors for obtaining certain professional designations pursuant to T.C.A. §§ 67-1-508; 5-1-310(e). These amounts are subject to annual appropriations from the General Assembly and have not reached the maximum allowed by law.

County legislative bodies may appropriate additional amounts as incentive payments to county officials and employees who have become Certified Public Administrators in an amount not exceeding \$3,000 minus payments made by the state. Educational incentive pay received by an official does not affect the calculation of compensation for officials provided in other statutes. CTAS is required to submit a list to the state treasurer, by August 31 each year, of all county officers who have completed all requirements of the COCTP to attain or maintain the designation of Certified Public Administrator. This list replaces individual applications submitted by county officials for purposes of determining eligibility for the educational incentive payment. T.C.A. § 5-1-310.

Association Dues

Reference Number: CTAS-660

The county legislative body is authorized to appropriate funds for dues to associations of particular county officeholders or associations made up of groups of officeholders. If the county legislative body appropriates funds for dues for the county mayor, county highway superintendent, or members of the county legislative body, then the county legislative body is required to appropriate an amount sufficient to pay the annual dues in at least one association, up to one hundred dollars (\$100.00), for the assessor of property, county clerk, state court clerks, sheriff, register of deeds, and trustee upon their request. The county legislative body is authorized to appropriate more than one hundred dollars (\$100.00), in its discretion. None of the money appropriated can be used for lobbying activities (as defined in T.C.A. § 3-6-102) for the purpose of influencing legislation relative to benefits or salaries of the association's members. T.C.A. § 5-9-111.

Deputies and Assistants

Reference Number: CTAS-34

Generally, county "fee officials" (those county officials who regularly collect fees for their services) must have authority other than the county budget resolution before they can hire employees. This authority may come directly from statute, by court order, or through a letter of agreement. T.C.A. § 8-20-101. If the county official's own salary and that of deputies and assistants is paid directly from the county general fund and the county fee official agrees with the amount appropriated for deputies and assistants as set forth in the budget adopted by the county legislative body, the official enters into a letter of agreement with the county mayor, using a form prepared by the state comptroller, that is then filed with the court. T.C.A. § 8-20-101.

If the county official does not agree with the amount appropriated, a salary suit may be filed by petition of the county official under T.C.A. § 8-20-101. The court in which the petition is filed depends on the official. Clerks of court file their petitions with any one of the judges of their respective courts; sheriffs file in circuit or criminal court; clerks and masters, trustees, county clerks and clerks of probate court, and registers of deeds file with the chancery court. The county mayor is named as defendant and the county mayor is required to file an answer within five days after service of the petition. The petition must be filed by the fee official within 30 days after the final adoption of a budget by the county legislative body. Also, a new officeholder has 30 days from the day of taking office to file a petition. The court will then hold a hearing and issue an order determining the appropriate number and compensation of deputies and assistants. T.C.A. § 8-20-102. If the fee official is under the fee system and pays deputies and assistants directly from the official's bank account, the official can negotiate a letter of agreement with the county for the number and compensation of deputies and assistants. If the fee official cannot reach an agreement with the county mayor, the fee official must file suit to obtain authority to hire deputies and assistants.

County officials have the power to employ and discharge employees. The court decree or letter of agreement merely sets the maximum number and maximum compensation of the employees. It is the county official's duty to reduce the number of deputies and assistants or their salaries when it can reasonably be done. T.C.A. § 8-20-105.

The compensation for deputies and assistants established by court decree or letter of agreement must be sufficient to comply with the Federal Fair Labor Standards Act (FLSA) and its minimum wage and overtime provisions. In general, nonexempt employees must receive overtime compensation at the rate of one and one-half their regular rate of pay for all hours worked in excess of 40 in a week. Compensatory time off is allowed in lieu of overtime compensation, but the employee must receive one and one-half hours off for each hour worked in excess of forty (40), and as a general rule, an employee may not accrue more than

two hundred forty (240) hours of compensatory time.

Expense Accounts

Reference Number: CTAS-745

The county legislative body may (or may not) by resolution elect to pay the expenses of salaried officials, and may promulgate rules specifying how expenses will be reimbursed and what expenses are reimbursable. In counties providing reimbursement, the county mayor prescribes forms, examines expense reports or vouchers to assure items are legally reimbursable and properly filed, and forwards proper expense reports to the disbursing officer (usually the trustee) for payment. In counties with populations of one hundred thousand (100,000) or more, salaried county officials must be reimbursed for the actual expenses incurred as an incident to holding office, including but not limited to lodging while away on official business and travel on official business, both within and outside the county. The county legislative body in these counties may, by resolution, determine what other expenses are reimbursable. T.C.A. § 8-26-112.

Before any expenses can be reimbursed, the official must submit accurate, itemized expense accounts, showing the date and amount of each item and the purpose for which the item was expended. The official must also take an oath stating that the expense account is correct and that it was actually incurred in the performance of an official duty. Receipts should be obtained and attached to the expense voucher whenever practical; vouchers are required to be numbered and referred to by number. T.C.A. § 8-26-109. Making a false oath on an expense account is perjury. T.C.A. § 8-26-111.

Automobiles. Counties are authorized to provide automobiles or monthly car allowances to any salaried county official who is paid from county funds and who holds office by election of the people, by election of the county legislative body, or by election of any other county board or commission, and any clerk or master appointed by a chancellor. T.C.A. § 8-26-113.

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