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County Government under the Tennessee Constitution

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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 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.

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