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County Highway Officials

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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Qualifications-Highways

Reference Number:

CTAS-232

The Qualifications for holding the office of county highway superintendent, or chief administrative officer by whatever title, are determined by the general law and are covered under the General Information tab of the County Offices topic. Under the CUHL, at T.C.A. § 54-7-104, the chief administrative officer must have:

1. A high school education or general equivalency diploma (GED) [Note: This is only satisfied by having an actual diploma from a high school or an equivalent degree recognized by the Tennessee State Board of Education.], and
2. At least one of the following:
 - (a) Be a graduate of an accredited school of engineering, with at least two (2) years of experience in highway construction or maintenance;
 - (b) Be licensed to practice engineering in Tennessee; or
 - (c) Have had at least four (4) years' experience in a supervisory capacity in highway construction or maintenance; or a combination of education and experience equivalent to (a) or (b), as evidenced by affidavits filed with the board.

The CUHL does not apply to Shelby, Davidson, Knox and Hamilton counties. T.C.A. § 54-7-102. The qualifications of department heads in these counties are determined by private act or according to the metropolitan charter, in the case of Davidson County.

The CUHL provides that incumbents in office on December 31, 2012, who have met the qualifications for the office of chief administrative officer applicable to them in effect at the time of their last election shall be able to succeed themselves in office without meeting the qualifications set forth in this section for as long as such incumbents continuously hold office. If such incumbent leaves office for any reason and then subsequently is elected or appointed to the office of chief administrative officer, such incumbent shall then be subject to the qualifications set forth in this section.

Under prior law, if the chief highway administrator was an elected official, the highway committee of the county legislative body certified to the county election commission that each candidate's qualifications were acceptable prior to the candidate's name being placed on the ballot. This law changed in 1989, so that the state coordinator of elections, not the county highway committee of the county legislative body, examined the candidates' qualifications and certified them to the county election commission. The law changed yet again in 1997 with the creation of the Tennessee Highway Officials Certification Board. This board consists of one member appointed by the Secretary of State, one member appointed by the director of the Tennessee chapter of the American Public Works Association, one member appointed by the Governor from a list of nominees submitted by the professional engineering society of Tennessee, one member appointed by the Comptroller and one member appointed by the director of the Tennessee County Services Association. This body reviews the qualifications of all candidates for the position of chief administrative officer of the county highway or public works department. This includes those appointed as well as elected positions.

Candidates for a popularly elected office of chief administrative officer still file affidavits and such other evidence of their qualifications with the state coordinator of elections at least fourteen (14) days prior to the qualifying deadline for candidates in the election. The coordinator of elections forwards the materials to the board which rules on the qualifications and certifies that a candidate is qualified to be placed on the ballot. A certificate of qualification must be filed with a candidate's qualifying petition prior to the qualifying deadline. Subject to the approval of the Secretary of State, the Tennessee Highway Officials Certification Board may promulgate rules to be followed by persons wishing to submit themselves for certification as qualified to seek the office of chief administrative officer of the county highway department. The current board has established some rules and guidelines for submitting qualifications to the board. Persons appointed to the office of highway superintendent are required to file proof of their qualifications with the board prior to their appointment. T.C.A. § 54-7-104.

Challenges to qualifications must be filed in writing with the certification board by noon on the third day after the qualifying deadline in counties filling the position by popular election. The local appointing authority determines the deadline for challenges where the position is filled by appointment. T.C.A. § 54-7-104.

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.

Oath of Office and Bond-Highways

Reference Number:
CTAS-235

Oath of Office is covered under the General Information tab of the County Offices topic. Bonds are covered under the General Information tab of the County offices topic.

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.

Compensation-Highways

Reference Number:

CTAS-234

The chief administrative officer must receive at least the minimum salary stated under T.C.A. § 8-24-102. If two or more CAOs are elected or appointed with equal duties, the compensation is divided equally between them. T.C.A. § 54-7-106. The legislative body may at any time increase or decrease the salary of the CAO as long as it is maintained at or above the minimum salary level. T.C.A. § 54-7-106. The salary of the CAO must be at least 10 percent greater than that of the general officers of the county. T.C.A. § 8-24-102(g).

The CUHL places authority over county highway department personnel with the CAO. The CAO may employ qualified administrative personnel necessary to handle correspondence, maintain accurate records of receipts and expenditures, equipment, supplies, materials, maintenance performed, and other items necessary to operate the highway department. The CAO determines the total number of employees (within the limits of the available budget), personnel policy and work hours, job classifications, and policies and wages within the classifications. The compensation established should be consistent with pay in similar services in the county and surrounding area. T.C.A. § 54-7-109. In addition, the wages must comply with the federal Fair Labor Standards Act regarding minimum wage and overtime compensation as well as other federal and state statutes dealing with personnel.

Additional information about compensation is covered under the General Information tab of the County Offices topic.

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.

Interaction with County Mayor/Executive

Reference Number:

CTAS-833

The CUHL does not specify which county officer should write warrants upon the county highway fund. This authority is usually provided in a private act. When such a private act does not specify the proper officer, the county mayor/executive has authority to write the warrant under T.C.A. § 5-6-108(5). Some private acts provide for co-signature. If a county has adopted the optional County Fiscal Procedure Law of 1957, a director of budgets and accounts issues a disbursement warrant upon receipt of an invoice and verification by the department head receiving the merchandise. T.C.A. § 5-13-107. Similarly, the director of finance in counties which have adopted the 1981 County Financial Management System (T.C.A. §§ 5-21-101, *et seq.*) oversees the disbursement of funds. Therefore, the chief administrative officer of the county highway department in many counties must interact with other county officers in regard to disbursement of highway funds.

The highway officials must prepare a budget estimate for each fiscal year. Depending upon the budgeting system in the county--the 1957 Budgeting Law, 1981 Financial Management System, private act system or only the general law--the county highway official will prepare a budget and submit it to either the county mayor/executive, director of budgets and accounts, or director of finance, who compiles a budget document for review by a committee or the full county legislative body. The deadline for submitting the budget is April 1 unless otherwise provided by law or county legislative body resolution.

Interaction with County Legislative Body

Reference Number:

CTAS-834

County highway officials interact with the county legislative body in several significant ways, including budget approval, classification of county roads, and approval of leases and lease-purchase agreements.

The county legislative body may approve a budget for the highway department as submitted or may reduce the total or vary amounts according to major categories or even by line item. The budget forms are set by the Comptroller. During the year, the county legislative body may amend the current operating budget.

The highway department cannot work on private roads, except to provide routes and turnarounds for postal vehicles and school buses upon written request by the appropriate authorities. T.C.A. § 54-7-202. The county legislative body is mandated to classify the public roads in the county. T.C.A. § 54-10-103. The highway officials need to work closely with the county legislative body to develop an accurate road list so that it will be clear which roads the county highway department is authorized to maintain. The county legislative body must receive a detailed listing of all county roads from the chief administrative officer of the county highway department before making a road classification.

County highway officials cannot execute a lease or lease-purchase agreement for equipment or other property without the approval of the county legislative body. T.C.A. § 7-51-904. As prior approval of the county legislative body is not contemplated by the statute, it is suggested that the lease be bid according to regular purchasing procedures with the clear recital that no bid award is final until approved by the county legislative body. Therefore, lease agreements can be signed if they contain a clause such as: "subject to approval of the county legislative body." The lease or lease-purchase can then be submitted in

such a manner that the county legislative body has the full contract and all of its terms before them. If approved, the chairman of the county legislative body can so endorse the agreement and the contract will be binding.

Interaction with State Offices and Departments

Reference Number:

CTAS-835

At the state level, county highway officials will find that they interact regularly with employees (agents) of the Tennessee Department of Transportation and the Comptroller's Office. In 1995, the legislature added a new section to the CUHL which created a presumption that the chief administrative officer of each county highway department is authorized to sign binding agreements with the state department of transportation on behalf of the county. The presumption is only overcome by provision of notice by the county legislative body that the chief administrative officer does not have the authority to sign the agreements. The department of transportation must acknowledge receiving the notice for it to be effective. T.C.A. § 54-7-116.

Personnel Management

Reference Number:

CTAS-112

In the counties under the CUHL, the chief administrative officer is given the following authority under T.C.A. § 54-7-109:

It is the duty of the chief administrative officer to employ qualified administrative personnel as required to handle all administrative functions, including maintenance of financial records, inventory of equipment, supplies, and materials, preservation of maintenance records, maintenance of the official county road list, and all other functions necessary for the operation of the highway department.

The chief administrative officer is authorized to determine the total number of employees of the highway department, to determine personnel policies, hours of work, to establish job classifications, and to establish policies and wages within the classifications. The compensation established by the chief administrative officer should be in keeping with the compensation paid for similar services in the county and surrounding area.

This act clearly places authority over county highway department personnel with the chief administrative officer in CUHL counties. In other counties not under the CUHL, the private acts, county charter or metropolitan charter must be consulted to determine who has personnel authority.

The department head in all counties must be aware that the department's personnel policies must not conflict with the Federal Fair Labor Standards Act (FLSA) or the anti-discrimination laws. And of course, the number of personnel hired and their compensation is limited by the budget available. Department heads must also conform to T.C.A. §§ 5-23-101 through 5-23-112, which requires all county officials to establish certain basic personal policies, have the policies reviewed by an attorney and file the policies with the county clerk. Failure to do so will allow the county commission to create these policies for the official or, as an alternative, the official may choose to join in a county-wide policy.

Supervision of Road Work

Reference Number:

CTAS-107

In CUHL counties, the chief administrative officer is generally responsible for the use and control of all machinery, tools, supplies and material owned or used by the county in the construction, reconstruction, repair, and maintenance of county roads and bridges. T.C.A. § 54-7-112. Although not as clearly stated in the general law, it appears that the CUHL considers the chief administrative officer responsible for the operational control of all road and bridge work whether or not the chief administrative officer is in personal supervision of a particular project.

In keeping with this general operational supervision of the county roads and bridges, T.C.A. § 54-7-201 authorizes the chief administrative officer in CUHL counties to remove or cause to be removed any fence, gate, or other obstruction from the roads, bridges, and ditches of the county and to clean out and clear all ditches along or adjacent to the county roads. Any person who refuses to remove such an obstruction from a county right-of-way upon direction of the chief administrative officer is guilty of a misdemeanor.

Utilities that have the right or permission to place transmission lines, telephone or telegraph lines or poles

on or along the right-of-way of any county road must do so under the direction of and with the permission of the chief administrative officer. T.C.A. § 54-7-201.

The chief administrative officer is empowered to employ legal counsel or solicit the use of counsel retained by the county to prosecute or defend litigation caused by or necessary to the operation of the county highway department. T.C.A. § 54-7-110.

Annual Work Program

Reference Number:

CTAS-108

In CUHL counties, the chief administrative officer is required to prepare and submit to the county legislative body and to the State Department of Transportation an annual work program to be financed under the state aid highway system program. The priorities for proposed work should consider the degree of deficiencies in the structural condition, capacity, and safety of existing roadway, traffic volume, and the desirable level of service necessary for schools, religious institutions, industry, recreational facilities, and other major uses. T.C.A. § 54-7-111.

Inventory and Other Records

Reference Number:

CTAS-109

The CUHL states that the chief administrative officer shall make or cause to be made a complete inventory of all machinery, equipment, tools, supplies and materials and file copies of the complete inventory with the county governing body and the chief executive officer of the county within sixty (60) days after taking office and thereafter a revised current inventory must be submitted by September 1 of each year effective the preceding July 1 of each year. This inventory also shall be maintained by the chief administrative officer and made available to the Comptroller for audit purposes. T.C.A. § 54-7-112.

All machinery, equipment, and tools are required to be plainly marked as the property of the county highway department. Each item must be numbered with the number entered on the inventory filed by the chief administrative officer. The county mayor/executive is obligated to examine these inventories for compliance with the law and may withhold funds from the county highway department until the chief administrative officer is in compliance. T.C.A. § 54-7-112.

Another type of record that the highway department must be careful with are personnel records. An employee's, including a former employee's, home telephone and personal cell phone numbers, bank account information, health savings account information, retirement account information, pension account information, Social Security number, residential address, driver's license information (except where driving is a part of the employee's job), and similar information for the employee's family and household members are confidential. Where this confidential information is part of a file or document that would otherwise be public information, such information shall be redacted if possible so that the public may still have access to the non-confidential portion of the file or document. T.C.A. § 10-7-504(f) & (g).

Duties of the Chief Administrative Officer

Reference Number:

CTAS-110

In counties under the CUHL, the chief administrative officer of the county highway department has general control over the location, relocation, construction, reconstruction, repair, and maintenance of the county road system as well as the other administrative tasks which are conferred by the general law, plus any other authority granted by private act which does not conflict with the general law. T.C.A. 54-7-109.

In many counties without a highway commission, a committee of the county legislative body is often formed as a liaison and advisory board, but in CUHL counties, this committee only recommends actions to the chief administrative officer and advises the county legislative body as a whole on road matters.

Duties of Popularly Elected Highway Commissions

Reference Number:

CTAS-113

The authority given by private act to highway commissions must be consulted along with the CUHL to determine what powers such highway commissions may exercise. The private acts are effective with regard to the county highway commission and county highway department except where they conflict with the general law (particularly the CUHL). County highway officials in doubt as to the officer or commission with authority over a particular issue should consult with their own attorney, the county attorney, or the

legal staff of The University of Tennessee's County Technical Assistance Service (CTAS).

Duties of Appointed Highway Commissions

Reference Number:

CTAS-114

County highway commissions that are not popularly elected, such as those elected by the county legislative body, or appointed by the county mayor/executive, may serve as an advisory body to the chief administrative officer. Appointed highway commissions may play a role in budgeting in some counties. In determining the exact role of the appointed highway commission, the private act establishing duties of the appointed highway commission must be carefully studied in light of the CUHL and other general laws.

Purchasing-Highways

Reference Number:

CTAS-115

The CUHL provides some rules in regard to purchasing, but it does not specify the purchasing agent for the county highway department. The CUHL statute on this subject, T.C.A. § 54-7-113(c)(3), states that the CUHL rules on purchasing found in this statute do not have the effect of repealing existing statutes, including private acts, which establish purchasing provisions for a county road department; however, no county road department is required to publicly advertise and competitively bid purchases of \$25,000 or less even if such bids are now required by public or private act.

Therefore, in CUHL counties, the purchasing agent for the department may be the chief administrative officer of the highway department or some other official under the provisions of a private act, the county purchasing agent under the optional 1957 County Purchasing Law (T.C.A. § 5-14-101 *et seq.*), or the Director of Finance under the County Financial Management System of 1981 (T.C.A. § 5-21-101 *et seq.*). However, in CUHL counties without specific purchasing policies under these other authorities, purchasing should be done in accordance with the procedures found in T.C.A. § 54-7-113(c).

The following purchasing procedures apply to all CUHL counties that have not established any other private act or general law purchasing procedure prior to July 1, 1980:

1. All purchases of \$25,000 or more must be publicly advertised and competitively bid;
2. Purchases of like items that individually cost less than \$25,000 but are customarily purchased in lots of two or more must be advertised and bid if the total purchase price of these items is expected to exceed \$25,000 during any fiscal year;
3. Repair of heavy road building machinery or other heavy machinery for which limited repair facilities are available need not be bid;
4. Purchases of any supplies, materials, or equipment for immediate delivery may be made without bidding in actual emergencies arising from unforeseen causes but such emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs;
5. Leases or lease-purchase arrangements requiring payment of \$25,000 or more, or continuing for 90 days or more, must be advertised and competitively bid [Also, leases and lease-purchase agreements must be approved by the county legislative body. T.C.A. § 7-51-904]; and
6. All purchases costing less than \$25,000 may be made in the open market without newspaper notice, but, wherever possible, should be based upon at least three competitive bids.

T.C.A. § 54-7-113.

County highway departments are authorized to purchase used or secondhand articles from any federal, state or local governmental unit or agency without public advertisement and competitive bidding. They are also authorized to purchase used or secondhand articles from any private individual or entity without public advertisement and competitive bidding as long as they document the general range of value of the item through a listing in a nationally recognized publication or through an appraisal by a licensed appraiser and the price is not more than five percent (5%) higher than the highest value of the documented range. T.C.A. § 12-3-1202. See also Attorney General Opinion 13-044 (6/10/13) (stating that the general range of value may not be documented using advertised prices found on the Internet).

County governments may purchase goods and services through a competitive reverse auction process that allows offerors to bid on specified goods or services electronically and adjust bid pricing during a specified time period in accordance with T.C.A. § 12-3-1208. Before initial use of a reverse auction, the county

must file a plan with the Comptroller stating the technology to be used, whether a third party will conduct the auctions, describing the policies and procedures to be used, documenting internal controls, and stating whether additional operating resources will be needed and if so, indicating prior approval of the local governing body. Items and services that cannot be purchased through a reverse auction are: construction services (except maintenance, repairs, and renovations costing less than \$25,000); architectural or engineering services; new or unused motor vehicles (except school buses, garbage trucks, fire trucks, ambulances, and other special purpose vehicles); and new or unused construction equipment.

Counties are also authorized to enter into negotiated contracts, including joint contracts with other counties and/or municipalities, with a bank, investment bank or other similar financial institution to stabilize fuel expenses. Any contract entered into under this section must be for a term of no more than twenty-four (24) months. T.C.A. § 7-51-911.

The CUHL does not specify the officials who must sign warrants on the county highway fund for funds to be disbursed. This is a matter left to the private acts or local option laws and will vary from county to county. In some counties, co-signatures of the chief administrative officer and the county mayor/ executive are required, but in a large number of counties, the lone signature of the chief administrative officer of the highway department will be honored by the trustee.

Contracts with other Governmental Entities; No Private Use of Equipment

Reference Number:

CTAS-116

T.C.A. § 54-7-202 generally prohibits the use of county highway department equipment or material for any purpose other than a county highway purpose. Work on private roads or for private purposes is strictly forbidden. Neither can rock, crushed stone, or any other road material be sold or given away. If any employee of the county road department uses any truck, equipment, or any rock or material for personal use or sells or gives anything belonging to the county away, the chief administrative officer is obligated to discharge the employee immediately. The county highway department cannot legally gravel churchyards, privately-owned graveyards, or privately-owned roads leading either to churchyards or to privately owned cemeteries. Tenn. Op. Atty. Gen. 84-300 (November 8, 1984).

The CUHL prohibits a county official from using county equipment to perform work on a private road or for private purposes even if the county is reimbursed for the work. T.C.A. § 54-7-202(c). The only exception regarding working on a private road exists when a local board of education or the appropriate postal authorities request in writing that the county highway department provide a route and a turnaround area. The county highway department is not required to honor such a request, but may do so if the county obtains the written permission of the owner of any property to be used for the postal service or school bus turnaround. The county highway department and the postal authority or board of education shall determine whether all or part of the cost of such work will be reimbursed to the county highway department before any work commences on the project. T.C.A. § 54-7-202(g).

The county legislative body may authorize the county road department to "perform work" for other governmental entities, provided that the cost of the projects are reimbursed to the county road department. T.C.A. § 54-7-202(d). For example, the county legislative body could authorize the county highway department to repair certain city streets for a certain fair cost, as this is to be "work performed." However, the rock could not be sold to the city for a certain sum. Likewise, the county legislative body could allow the county highway department to gravel a school parking lot, but would have to cause a transfer of funds from the school fund to the highway fund.

Cities and counties may perform certain tasks jointly by interlocal agreement. Joint purchases could be made by interlocal agreement to buy a greater quantity in an effort to lower costs.

County highway departments may perform work on private residential property on behalf of the county in order to clean up property after natural disasters pursuant to T.C.A. § 7-51-1601. The county legislative body must approve the work being done prior to it being performed by the highway department and the highway department must be reimbursed for its costs associated with the clean up.

While TDOT is responsible for maintaining roads and bridges within state parks, counties may enter into agreements with TDOT to perform the maintenance work under T.C.A. § 54-1-126.

A county highway department may receive "gifts" of materials, property, services, funds or supplies for the benefit of the county highway department which can be used or disbursed in good faith in accordance with the terms of the donation. Any funds so received must be paid into the county trustee's office, credited to the county highway fund, and disbursed according to law as other funds of the county highway

department. Also, the county highway department may adopt a policy to authorize private persons or entities to repair county roads to bring a road damaged by that person or entity up to the condition or standard of the road prior to the damage caused by the private person or entity. T.C.A. § 54-7-115.

Asphalt Plants

Reference Number:

CTAS-117

Under a statute enacted in 2005 (2005 Public Chapter 344 amending T.C.A. § 12-8-101), counties and municipalities may individually or jointly own or operate a hot mix asphalt facility but only if certain conditions are met. A financial feasibility study, conducted jointly by all participating local governments, using factors specified by the statute must be completed and reviewed by a three-member feasibility oversight committee consisting of members named by the Comptroller, the Tennessee Road Builders Association, and the Tennessee County Highway Officials Association. The completed study must be filed with the Comptroller and the county mayor/executive and be available for public inspection. The committee's function is to review the feasibility study to determine if all appropriate costs are included and publically disclosed. The committee either approves the study or disapproves the study if it is deemed incomplete and lacks substantial information to provide an accurate estimate of the costs and benefits of owning and operating a plant. The committee is to itemize any deficiencies and return the study to the local government or governments for modification and resubmission. If after a second submission a majority of the committee determines the study to be incomplete, it will be forwarded to the county or municipal governing body with a negative recommendation within thirty (30) days after the meeting. Any minority report must also be forwarded. The county legislative body or municipal governing body then determines whether or not to approve or deny any action required to acquire an asphalt facility. The resolution or ordinance requires a two-thirds majority vote before any public funds may be expended on a hot mix asphalt facility. Asphalt produced from such a public facility must be used exclusively for paving public streets, roads or highways under control of the unit of local government that owns the plant. Asphalt facilities owned by local governments on March 29, 1976, and all metropolitan governments are exempt from the additional requirements of 2005 Public Chapter 344. All local governments acting under the new public chapter that own and operate an asphalt facility are required to solicit bids annually for hot mix asphalt products but may reject any and all bids. T.C.A. § 12-8-101.

All counties and municipalities that did not own or operate an aggregate facility for the production of crushed limestone, commercial lime, agricultural lime, sand, gravel, or any other product resulting from the processing of aggregate on June 7, 2005, are prohibited from acquiring such a facility unless the county or municipality prepares a financial feasibility study comparable to the one required for asphalt facilities and a review procedure substantially similar to the one for asphalt facilities is used. The acquisition of such an aggregate facility also requires a two-thirds majority vote of the county legislative body or municipal governing body as appropriate. A local government that owns and operates an aggregate facility may transfer materials to another entity of that local government only if a study has been completed to determine the actual costs of producing that material and reimbursement of actual costs is made. Otherwise, it is unlawful for crushed limestone, commercial lime, agricultural lime, gravel, or any other product resulting from processing of stone, produced in whole or in part by any governmentally owned or operated plant, quarry, crusher, or stone processing plant to be sold, traded, bartered, lent, or given away. T.C.A. § 12-8-101. A violation of this section results in a Class C misdemeanor. T.C.A. § 12-8-102. However, counties may sell agricultural lime to farmers for their own farming activity. T.C.A. § 12-8-103.

County Public Roads v. Private Roads

Reference Number:

CTAS-841

One of the main duties of the chief administrative officer of county highways is to exercise supervision over the construction, repair and maintenance of county roads. T.C.A. § 54-7-109. The chief administrative officer must be careful not to work on private roads. T.C.A. § 54-7-202 forbids the use of any county highway materials or equipment to improve or repair private roads, with the limited exception for school bus and postal vehicle turnarounds. A chief administrative officer who authorizes or knowingly permits county equipment to be used for private purposes is guilty of a misdemeanor. T.C.A. § 54-7-202.

All roads running through a county are not county public roads. Some are private roads, others are state highways or city streets. Private roads are the most difficult to distinguish from county public roads. Private roads are generally one of two types. First, a private road may be one used by only one or a few property owners, such as a driveway; or second, it may be a road which the landowner allows the general public to use but which has never been formally accepted by the county legislative body as a county road,

or which the landowner has never given the public any rights, either express or implied.

A public highway or road is "such a passageway as any and all members of the public have an absolute right to use as distinguished from a permissive privilege of using [the] same." Standard Life Ins. Co. v. Hughes, 315 S.W.2d 239, 242 (1958). In this case, the court stated that a road may become public in one of the following ways:

1. Act of a public authority.
2. Express dedication by the owner.
3. Implied dedication--Use and acceptance by the public with the intention of the owner that the use become public.
4. Adverse use continuing for twenty (20) years, creating a prescriptive right.

Accordingly, unless the public has acquired an absolute right to use the road in one of the ways mentioned above, any public use is either by permission or license, not by right, and the road remains a private road.

Classification of County Public Roads

Reference Number:

CTAS-842

According to T.C.A. § 54-10-103, the county legislative body is charged with classifying public roads. Before the county legislative body classifies a public road for the county road system, the chief administrative officer of the county highway department is required to submit a detailed listing of all county roads to the legislative body. The listing should include a summary of all changes from the road list previously submitted. More detail about the contents of these reports is discussed below. The chief administrative officer is also to include any suggestions and recommendations for changing road classifications with this report. This section (T.C.A. § 54-10-103) along with several other sections and court cases, concludes that the county legislative body is the proper entity to designate or accept roads as county roads. A road may be a "public" road without being designated as a "county" road by the legislative body. County highway officials may work only on county public roads. They do not have the authority to decide which roads will be county roads. They may only make recommendations to the county legislative body about which roads should be county roads.

The Tennessee Code provides a means by which county officials and any interested citizens can determine exactly which stretches of road are county roads. After receiving reports and recommendations of the highway superintendent, the county legislative body is required to make and maintain a list of all county roads, classify the roads according to width, and then file that list in the county clerk's office. Those code sections relating to the road lists are very old and some counties have not kept an up-to-date road list. In the past, there was less need for the road list, but since the passage of the County Uniform Highway Law (CUHL), that list has become vital for the protection of highway officials. With an up-to-date road list on file, highway officials will know exactly which roads they can maintain and which roads they cannot legally work on. Interested citizens will also have a means of finding out which roads may be maintained by the county. The road list should be amended on an on-going basis throughout the year to ensure it accurately reflects the current inventory of county roads. T.C.A. § 54-10-103.

One major purpose of the road list is to protect the highway officials. For that reason, it is very important not to begin work on a road until it has been officially classified by the legislative body and added to the county road list. In this regard, there may be some confusion in counties that have a planning commission. In such counties, road approval by a planning commission is one step in the acceptance process, but that alone is not enough to make a road a county road. A road is not a county road until the county legislative body has formally classified it, regardless of the action taken by the planning commission. For their own protection, highway officials should not begin work on any road approved by the planning commission until it has also been accepted through the classification process by the county legislative body. T.C.A. § 13-3-406.

The county legislative body is responsible for updating and maintaining the county road list, based on the information and recommendations of the chief administrative officer. The road list is not extremely difficult to compile. It should contain eight (8) items of information regarding each road on the list:

1. Type of road (county or state-aid road)
2. State-aid road description (only for county roads included in the state-aid road system)
3. Local name of road
4. Beginning and ending point of road (describe by reference to geographical features)
5. Miles (length of road to nearest 1/10 mile)

6. Class (classify according to width as set out in T.C.A. §§ 54-10-103 and 54-10-104)
7. Right of way width (in feet)
8. Roadbed width (in feet)

T.C.A. §§ 54-10-103, 54-10-104.

Frequently, only a portion of a total road may be classified as a county road. In such cases, the beginning and ending points, total miles, and other road list items should refer only to the part of the road that is a county road. As was mentioned above, the road list provided to the county legislative body should include a summary of changes to the road list. The summary shall provide the road name, the date the change in classification was approved and the reason for the change.

Opening, Changing and Closing County Roads

Reference Number:

CTAS-843

The statutory law regarding acceptance of new county roads and the closure of existing county roads is very confusing and the county attorney should be consulted to determine the proper procedure to follow in the particular county. However, some general observations may be helpful. The CUHL must be reconciled to the greatest degree possible with the old general law on opening, closing and changing roads found in T.C.A., Title 54, Chapter 10, as well as other general law such as the general law granting certain powers to regional planning commissions and the state department of transportation in some instances. In 1995 the legislature passed a simpler alternative method of closing roads.

The Attorney General has opined that in counties under the CUHL, the CAO of the county highway department, or the elected highway commission or board in the counties with such an elected board (if a private act grants general control of the county road system to the elected board), has general control of the county highway system and this includes approving the acceptance of a new road, changing the route of an existing road or closing an existing county road before such a change may take place. Op. Tenn. Atty. Gen. U89-10 (January 31, 1989) (It should be noted that since that opinion was issued, the CUHL was amended to delete references to such authority held by elected highway commissions or boards.) However, this is not the only step involved. The county legislative body must pass on additions or deletions to the classifications of county roads in the county road list after receiving the recommendation of the CAO. T.C.A. § 54-10-103. However, if a road has obtained a public character under one of the methods in the Standard Life Ins. Co. v. Hughes case, it is doubtful whether the CAO or elected highway board may prevent the county legislative body from adding such a road to the county road list or prevent a court from declaring the road public and part of the county road system. Hackett v. Smith County, 807 S.W.2d 695 (Tenn. Ct. App. 1990); Rogers v. Sain, 679 S.W.2d 450 (Tenn. Ct. App. 1984).

One aspect of the Hackett v. Smith County case which has become significant due to later decisions limiting the application of the case is the fact that the county road commissioner certified on the plats that the streets, utilities and other improvements were installed in an acceptable manner according to county specifications and that a bond had been posted to insure the completion of all required improvements. In December 2003, the Court of Appeals decided a similar case coming out of Franklin County. In Shahan v. Franklin County, 2003 WL 23093836 (Tenn. Ct. App.), a developer and residents of a subdivision sued the county over the maintenance of roads within the subdivision. The county declined an offered dedication of the roads and further denied building permits for additional structures in the subdivision due to the inadequacy of the roads. At that point, the developer and residents sought a declaration of responsibility for road maintenance. The developer asserted that, as in the Hackett case, there had been an implied dedication accepted through public use. Although the court agreed that there was evidence of public use of the roads, it held that the doctrine of implied dedication did not apply because the roads were in an unapproved subdivision.

The court did recognize the Hackett case, however, and described it as the proper limited application of the doctrine of implied acceptance of a dedication in the subdivision setting. The court ruled that the doctrine may be invoked in regards to subdivision property when a local government has declined or refused to accept property after a developer has complied with all applicable regulations. Because of this case, it is more vital than ever for counties to have established subdivision regulations which include thorough specifications for roads and streets. Reading Hackett and Shahan together, subdivision roads can be expected to become the responsibility of the county unless it can be demonstrated that the developer failed to comply with minimum road standards.

If bonds are issued for construction of county roads or bridges, the approval of the CAO, the county legislative body and the Tennessee department of transportation must be obtained. T.C.A. §§ 54-9-139, 54-9-202. Also, the regional planning commission has authority to approve plats of subdivisions which

may contain plans for roads or streets and may set standards for such roads or streets in the subdivision. T.C.A. §§ 13-3-401, 13-3-402, 13-3-406. However, the statutes specifically state that the approval of a plat by the regional planning commission shall not be deemed to constitute or affect an acceptance by any county or by the public of the dedication of any road or other ground shown upon a plat. T.C.A. § 13-3-405; Foley v. Hamilton, 659 S.W.2d 356, 360 (1983).

The old general law found in T.C.A., Title 54, Chapter 10, Part 2, dealing with petitions to open, change or close public roads must be considered when dealing with certain changes to the county highway system. As stated earlier, this old law must be reconciled to the extent possible with the newer statutes found in the CUHL. For example, before a road is closed, adjacent landowners or those controlling the land touched by the proposed road must be notified. T.C.A. §§ 54-10-202, 54-10-203. Since these changes may involve damages to property owners, a jury of view is provided to determine if damages exist and to what extent. T.C.A. § 54-10-204. The exact workings of the petition process, jury of view, any necessary hearings and other procedural matters should be worked out with the consultation of the county attorney as to reconcile the conflicting statutes to the greatest extent possible.

The basic problem with the general law, found in T.C.A. §§ 54-10-201 *et seq.*, is that it was adopted in 1891 when all counties were required to have highway commissioners who supervised all road work in their respective districts. The law requiring these commissioners was repealed in 1963, but the provisions for accepting and closing county roads were not amended to reflect this change. Therefore, these sections still refer to the authority of highway commissioners within their respective districts. Only one or two counties in the state still have district highway commissioners as contemplated by this statute. In spite of these difficulties, the procedure established under these statutes was referenced in a 1963 court case and appears to be applicable to some extent. The procedures of this chapter may be summarized as follows:

1. A resident of the county may make an application to the highway commissioner of the district through which the road runs to open, change, or close a road through a signed petition. T.C.A. § 54-10-201.
2. A highway commissioner may, without a petition, proceed to open, change, or close a road which is deemed necessary for the public interest. T.C.A. § 54-10-213.
3. Before a road can be opened, closed, or changed, at least five (5) days' notice must be given to all interested parties of the time the road is to be changed. Landowners and those controlling land touched by the road are interested parties. T.C.A. § 54-10-202.
4. Once notice has been given, the highway commissioner in whose district the road runs will pick two other freeholders of the same district who have never been consulted on the issue and who will take an oath of impartiality and these persons will constitute a jury of view. T.C.A. § 54-10-204.
5. The jury of view will assess the damages to any property affected by the closing of the road. T.C.A. § 54-10-205.
6. Any aggrieved party may appeal the action of the jury of view to the Court of General Sessions and from there to circuit and appellate courts. In case of an appeal, the jury of view will forward all the papers in the case to the General Sessions Court. T.C.A. § 54-10-206.

Some counties use the highway committee of the county legislative body to carry out this procedure, with the full membership of the legislative body approving or rejecting the actions of the committee. However, it is noteworthy that the Attorney General, in Opinion No. U89-10, dated January 31, 1989, although stating that the provisions of Chapters 7 and 10 (CUHL), Title 54, T.C.A., must be read together, states that most of the duties to open or close a county road rests with the chief administrative officer of the county highway department where the county does not have a popularly elected highway commission, because of the more recent passage of the CUHL, which will supersede the older law when they are in conflict. However, the Attorney General opined that Chapters 7 and 10 of Title 54, T.C.A., must be reconciled whenever possible. Therefore, the procedure to be followed when opening or closing county roads remains confusing under the current law.

Alternative Procedure for Opening, Changing and Closing County Roads

Reference Number:
CTAS-844

There is a local option law found at T.C.A. § 54-10-216 which provides for a much easier process for opening, changing and closing county roads. The alternative procedure must be adopted by a two-thirds

majority vote of the county legislative body to become effective in a given county. Counties operating under this section have the following method available to them for opening, changing and closing county roads:

1. An application to open, change, or close a designated public road within the county is made in writing to the chief administrative officer.
2. Upon receiving an application, the chief administrative officer must give notice of the application to all interested parties. Interested parties include landowners and those controlling land touched by the road subject to the application.
3. The chief administrative officer must then make a recommendation to the regional planning commission, or a committee of the county legislative body if no such regional planning commission exists, regarding whether the public road should be opened, changed, or closed.
4. After receiving the recommendation of the chief administrative officer, the regional planning commission or committee of the county legislative body must make its recommendation to the county legislative body and must attach the recommendation of the chief administrative officer. Before making any recommendation with respect to opening, changing, or closing a road, the regional planning commission, or committee of the county legislative body, must provide notice of the action either by written notice mailed to affected property owners or by notice advertised in a newspaper of general circulation in the county not less than fourteen (14) days before the recommendation is made.
5. After receiving the required recommendations, the county legislative body may, by resolution adopted by a majority of its members, order the opening, changing, or closure of the public road.

If a county chooses to operate under this alternative procedure and does not have a regional planning commission, a standing committee of the county legislative body will perform the functions of the planning commission. The standing committee must be comprised of five (5) county legislative body members selected by the chair of the county legislative body each year on or before September 1. The committee will only be formed if no regional planning commission exists to perform the functions of the planning commission under the alternative procedure law and will operate for the sole purpose of considering applications to open, change, or close a county road.

Adoption of the alternative procedure does not preclude interested parties from seeking damages arising from the opening, changing, or closing of a county road to which they are otherwise entitled under the law.

As used in T.C.A. § 54-10-216, "change", with respect to the changing of public roads, does not include any proposed or actual reduction of the maximum gross weight limits of freight motor vehicles operating over public roads.

Weight Limits

Reference Number:

CTAS-831

The county may provide for a system whereby overweight or oversize vehicles may travel on county roads after obtaining a permit to so travel. This permit system must be in conformity with rules and regulations promulgated by the commissioner of transportation.

State Highways - Weight Limits

Reference Number:

CTAS-1840

Although county officials have certain powers with regard to weight limits on county roads, this authority is derived from authority possessed by the State Department of Transportation. The ability to regulate weight limits on county roads must fit within the overall scheme of state laws and regulations. For that reason, the following is a summary of the power and authority exercised by the Department of Transportation.

T.C.A. § 55-7-101 - Operation of Vehicles Injurious to Highways Must Conform to Regulations -- No

vehicle, truck, engine, or tractor of any kind, whether such vehicle be propelled by steam, gasoline, or otherwise, shall be permitted to operate upon any street, road, highway, or other public thoroughfare which, either by reason of its weight or the character of its wheels, will materially injure the surface or foundation of such street, road, highway, public thoroughfare, including the bridges thereon, unless and until the owner or operator of such vehicle of any kind shall have complied with such rules and regulations as may be prescribed by the departments of transportation and safety relating to the use of such highways by such vehicles.

Statutes regulating the size, weight, and load of motor vehicles traveling on Tennessee highways are codified as Title 55, Sections 55-7-101 -- 55-7-209.

Section 55-7-103 describes when maximum weight limits may be lowered:

Maximum Weight May be Lowered, When - Notices to be Posted -- (a) From January 15 to April 15 of each year, and at any other time by reason of repairs, weather conditions, or recent construction of the road, the maximum weight herein permitted would damage the road, the [state] department of transportation may specify any lower maximum weight which, in the discretion of such department, is necessary in order to protect such streets, roads, highways, or other public thoroughfares from unnecessary injury or damage.

(b) Notice of such reduction in weight load shall be given by the department by posters posted at the termini of the road and all detours for one (1) week before such reduction of load becomes effective.

Violation of regulations contained in Sections 55-7-101--55-7-103 is a Class C misdemeanor and, upon conviction, subject to imprisonment for not greater than thirty (30) days or to a fine of not more than fifty dollars (\$50.00). (Sections 55-7-104, 40-35-110, 40-35-111) In addition, it is illegal to move an overloaded vehicle until the load has been reduced to bring it into legal compliance, or a special permit obtained. Failure to comply is a Class C misdemeanor.

Sections 55-7-107--55-7-109 relate to securing of loads of vehicles hauling timber, pulpwood, logs (T.C.A. § 55-7-107) and loose material hauled in an open truck bed (T.C.A. § 55-7-109), and penalties for violation of these sections. Sections 55-7-201 and 55-7-202 outline maximum length, width and height regulations.

MAXIMUM WEIGHT LIMITS

Section 55-7-203 sets out weight limits currently established for public highways in Tennessee, as follows:

Gross Maximum Weight Limit 80,000 lbs.

Single Axles 20,000

Tandem Axles 34,000

The maximum weight limits for vehicles equipped with emissions-reduction technology may be increased by the weight of that technology up to 550 lbs. or the maximum amount allowed by federal law.

Section 55-7-203(c) sets out special provisions for nondivisible overweight loads.

Weight limits for the interstate system are slightly different than those outlined above for state highways. (For a complete explanation of weight limits, please refer to Section 55-7-203).

In addition, Section 55-7-203(b)(7), relates to allowances for error on logging trucks, farm trucks, and certain other vehicles:

(b)(7) For purposes of enforcement of this section, weight restrictions shall be deemed to have a margin of error of ten percent (10%) of the true gross or axle weight for all logging, sand, coal, clay, shale, phosphate, solid waste, recovered materials, farm trucks and machinery trucks when being operated over the state highway system other than the portion designated as the interstate system.

The various types of trucks listed in that statute are defined specifically in the law. The application of the margin of error rule to trucks hauling certain types of materials (machinery, sand) is limited to specific circumstances or distances.

OVERWEIGHT, OVERSIZE, OVERLENGTH LOADS

The law not only sets the maximum axle and gross weight limits allowed on Tennessee highways, but also authorizes that "...the commissioner of transportation shall have the authority to grant special permits for the movements of freight motor vehicles carrying gross weights in excess of the gross weights set forth in Section 55-7-203, or dimensions in excess of the dimensions set forth in Sections 55-7-201 and 55-7-202, and shall charge a fee in accordance with the schedules contained in subsection (h) for the issuance of a permit for each movement." (T.C.A. § 55-7-205(a)) These special permit fees are charged in accordance with the following schedules set out in Section 55-7-205 (h):

Excessive Width:

Not More Than 14 Feet \$ 20.00

Over 14 Feet - Not More Than 16 \$ 30.00

Over 16 Feet -- \$ 30.00 plus \$ 5.00 for each additional foot or fraction thereof greater than 16 feet.

Houseboats over 17 feet – two thousand five hundred dollars (\$2,500), plus one hundred dollars (\$100) for each additional inch or fraction thereof greater than seventeen feet (17').

Excessive Height or Length: \$ 20.00

Excessive Weight: \$ 20.00 plus \$.06/Ton per Mile

Evaluation of Bridges and Similar Structures:

> Movements weighing over 165,000 but not more than 250,000 pounds: \$ 100.00

> Movements weighing over 250,000 but not more than 500,000 pounds: \$ 300.00

> Movements weighing over 500,000 pounds: Actual Cost

A permit shall be available from the department of transportation on an annual basis for overdimensional and/or overweight vehicles except for those vehicles specifically permitted and used to transport cotton seed modules, overdimensional boats used for noncommercial purposes and mobile homes.

EXCEPTIONS TO SIZE AND WEIGHT PROVISIONS

Section 55-7-205 (a) allows certain exceptions pertaining to size and/or weight limits as follow:

Farm Equipment:

...It is not necessary to obtain a permit nor is it unlawful to move any vehicle or machinery in excess of the maximum weight and height....used for normal farm purposes only where the same is hauled on a farm truck....or such vehicle or machinery is being transported by a farm machinery equipment dealer or repairman in making a delivery thereof of new or used equipment or machinery to the farm of the purchaser thereof, or in making a pickup and delivery of such farm machinery or equipment from the farm to a shop of a farm equipment dealer or repairman for repairs and return to the farm, and such movement is performed during daylight hours within a radius of fifty (50) miles of the point of origin thereof and no part of such movement is upon any highway designated and known as a part of the national system of interstate and defense highways of any fully controlled access highway facility.

Utility Companies:

No fee authorized by this section shall be charged for the issuance or renewal of such special permits to retail electric service owned by a municipality or electric cooperative corporation, or to any telephone company or to contractors when they are moving utility poles doing work for such utilities. Upon compliance with the appropriate rules and regulations, such electric services, telephone companies, and their contractors when they are moving utility poles may be issued special permits for stated periods not exceeding one (1) year.

PENALTIES FOR VIOLATIONS

Under T.C.A. § 55-7-206, each violation of Sections 55-7-201--55-7-203, each violation of restrictions on the maximum gross weight of freight motor vehicles adopted by the commissioner of transportation (Section 55-7-205), and each violation of rules and regulations adopted by the commissioner of safety under that section, is a Class C misdemeanor. In addition, when any freight motor vehicle is found to be in violation of only T.C.A. § 55-7-203(b)(3), a fine of twenty-five (\$25.00) is to be imposed. (Section 55-7-206 (d)(1)).

County Roads - Weight Limits

Reference Number:

CTAS-1847

COUNTY OFFICIALS' AUTHORITY - OVERWEIGHT, OVERSIZE VEHICLES

Section 55-7-205(a)(8)(B) provides that the county legislative body shall have the same authority to lower weight limits as the commissioner of transportation as it relates to county roads:

The county legislative body shall have the same authority as to county roads; provided, however, that any proposed reduction below the weight limits set by the commissioner pursuant to this section shall require a two-thirds (2/3) vote of the county legislative body and shall be based upon the same criteria as used by the commissioner.

This is the authority to reduce the maximum gross weight of freight motor vehicles operating over lateral highways and secondary roads where through weakness of structure in either the surface of the road or of

bridges, the maximum loads provided by law, injure or damage such roads or bridges. T.C.A. 55-7-205(a). Whereas the regular maximum weights for freight motor vehicles are set on a weight per axle basis, with the gross maximum weight limit being 80,000 lbs., the lower weight limits may be a certain gross amount per vehicle.

As lowering weight limits on county roads is done by county legislative body vote, violations of the weight limits could subject the offender to a civil monetary penalty of up to \$500 for violation of rules and regulations of the county if so specified by the resolution of the county legislative body. (Section 5-1-121). Subsequent court decisions probably place limits on this monetary penalty. See Chattanooga v. Davis, 54 S.W.3d 248 (Tenn. 2001). According to the Tennessee Supreme Court in that case, a punitive fine levied by a local government cannot exceed \$50 unless the defendant is allowed to have a jury trial. Higher fines could be enforced if they are remedial in nature rather than punitive, but this distinction is difficult to make. Therefore, a county should generally limit monetary penalties to \$50 or less per violation. Penalty provisions of any regulations should be carefully considered by the county attorney.

Furthermore, the weight limits that are set should be reasonable and based on the best information available regarding the weight that the road or bridge will withstand. The Department of Transportation can assist highway departments by conducting engineering studies that can be used to support the need for reduced weight limits.

Signs should be placed at appropriate places along the road or prior to entry upon a bridge to give the public reasonable notice of the lowered weight limits. In addition, appropriate county officials are also authorized to issue special permits for transporting oversize and/or overweight loads on county roads in conformity with rules and regulations prescribed by the commissioner of transportation.

Underground Utilities Damage Prevention Act

Reference Number:
CTAS-2201

The Underground Utilities Damage Prevention Act, found at Title 65, Chapter 31, Part 1, was substantially revised in 2015. The revised law establishes a system of civil, rather than criminal, enforcement for failing to follow the statutory procedures for notifying the Tennessee One-Call system prior to engaging in excavation activities. The new law does carve out an exception for "routine road maintenance activities."

If the work of the highway department falls within this exception, the department is not statutorily required to notify the One-Call system. Failing to provide notification, however, could create safety hazards and expose the county to liability. Penalties for violations of the act include training and civil monetary penalties of up to \$15,000 per incident. The act does provide that local governments will not be fined unless they engage in a pattern of willful noncompliance. The act also establishes an enforcement board and an executive committee, which is responsible for levying the penalties.

Public Fords, Ferries and Bridges

Reference Number:
CTAS-846

Counties may supervise fords, ferries and bridges. T.C.A. § 54-11-101 *et seq.* Additionally, counties may issue bonds for the construction of county highways, roads and bridges and pledge up to 50% of the state-aid grant funds derived from the state gasoline tax for the retirement of such bonds. However, state funds used in matching federal funds may not be included in this amount. T.C.A. § 54-9-201. The legislative body may build a bridge or bridges over and across any stream or river running through the county. T.C.A. § 54-11-207. The CAO has the authority to temporarily close roads or bridges as necessary for new construction or repair. Op. Tenn. Atty. Gen. 81-618 (December 7, 1981).

1990 Bridge Grant Program

Reference Number:
CTAS-838

The 1990 Bridge Grant Program enables the county highway department to replace or rehabilitate certain bridges when the commissioner finds that a bridge is structurally deficient or functionally obsolete. T.C.A. § 54-4-503. Typically, the state share is no more than 80% of the approved project cost and the local government share must be at least 20% of the approved project cost, and may be provided by local government funds and in-kind project work approved by the commissioner, or either of them, wholly or partly. However, the County Bridge Relief Act of 2014, Public Chapter 573, authorized counties to use unexpended state-aid bridge grant funds to pay the county portion of project costs. The Act required counties to provide at least two percent of the project cost from county funds or in-kind contributions. This funding formula was initially available for projects initiated in fiscal years 2014-15 and 2015-16 but

was put in place permanently in 2016. T.C.A. § 54-4-507.

In order to participate in the program, the county highway department must be in compliance with any Department of Transportation recommendations concerning the posting and enforcement of load limits, and the closure of structures, based on the National Bridge Inspection Standards (including ineligibility for a geographic area to participate for the following fiscal year if no county in the area has taken necessary action to assure maximum utilization of the program). T.C.A. § 54-4-504. Once the local governments in a geographic area have addressed project priorities established by the Commissioner of Transportation, application may be made for permission to expend moneys allocated for other roadway purposes. The Commissioner must approve any such expenditure and may require that certain conditions be met in conjunction with the expenditure. T.C.A. § 54-4-506. Projects undertaken under this program must be maintained by the county or other local government where the project lies. T.C.A. § 54-4-508. If the local government fails to maintain these projects in accordance with reasonable standards established by the Commissioner of Transportation, the Commissioner may withhold all funds otherwise available under the bridge program until the insufficiently maintained project is restored to proper condition.

Vacancies in Office

Reference Number:
CTAS-580

Vacancies can occur in county offices for a variety of reasons. According to the state constitution, county officials "shall be removed from office for malfeasance or neglect of duty," as these terms are defined by the legislature. Tenn. Const., art. VII, § 1. Similarly, court clerks may be removed for "malfeasance, incompetency or neglect of duty." Tenn. Const., art. VI, § 13. According to statute, any of the following results in a vacancy in office:

1. Death of the incumbent;
2. Resignation, when permitted by law;
3. Ceasing to be a resident of the state, district, circuit, or county for which elected or appointed;
4. Decision of a competent tribunal declaring the election or appointment void or the office vacant;
5. An act of the General Assembly abridging the term of office, where it is not fixed by the Constitution;
6. Sentencing the incumbent, by any competent tribunal in this or any other state, to the penitentiary, subject to restoration if the judgment is reversed but not if the incumbent is pardoned;
7. Adjudicating the incumbent insane; or
8. Failure to satisfy bond requirement.

T.C.A. §§ 8-48-101, 8-19-117.

As stated above, moving out of the state, district, circuit, or county from which one was elected or appointed is a cause of vacancy under T.C.A. § 8-48-101. If disputed, the determination of residency is a question of fact. See *Bailey v. Greer*, 468 S.W.2d 327 (Tenn. Ct. App. 1971). A declaratory judgment may be necessary to determine residency. The following principles, outlined in T.C.A. § 2-2-122, are helpful but not binding in making the determination of residency:

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 (1) 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 one or more 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; however, a commercial address may not be used for residential purposes, unless the applicant provides evidence of such applicant's residential use of such address;
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; and
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.

Information on Removal from Office-Ouster can be found under Ethics.

Procedure for Filling Vacancies

Reference Number:

CTAS-586

Vacancies in elected county offices are filled temporarily by the county legislative body. The appointee serves until a successor is elected at the next countywide general election for which the candidate has sufficient time to qualify. T.C.A. § 5-1-104; *see also* Tenn. Const., art. VII, § 2. The county clerk, or if there is no county clerk the county clerk's deputy, or if there is no county clerk or deputy, the acting chair of the county legislative body, shall provide notice to every member of the county legislative body of the need to fill the office or vacancy. This notice may be waived by the members of the county legislative body if all members have constructive notice of the vacancy through other sources of information. Additionally, the presiding officer of the county legislative body shall cause public notice to be given in a newspaper of general circulation in the county at least seven (7) days prior to the meeting at which the office is to be filled, notifying the public of the vacancy or opening and specifying the office or offices to be filled at the meeting. T.C.A. § 5-5-111.

Except in Davidson and Shelby counties, the county commission must fill a vacancy within 120 days of receiving notice from the county clerk unless during that time there is a general election scheduled in the county and there is sufficient time for the vacancy to be placed on the ballot. T.C.A. § 5-1-104.

Registered voters of the county may submit names to the commission for consideration; however, to be nominated, a member of the commission must subsequently nominate such person. Nominations do not require a second. If a person nominated is not present, the person making the nomination must submit a signed statement from the nominee that the nominee is willing to serve. The commission is required to adopt rules of procedure for eliminating nominees in cases where there are multiple nominees for an appointment and no nominee receives the majority of votes. No secret balloting is permitted and each member's vote regarding the appointment process must be recorded by the clerk and entered in the minutes. Any challenge to the legality of an appointment must be filed with the chancery court within 10 days of the appointment. T.C.A. § 5-5-111.

A commissioner who has accepted a nomination cannot vote on the appointment and for purposes of determining a majority the membership is reduced for each member accepting a nomination. County commissioners must resign their office only if they are actually appointed by the commission to fill the vacancy. T.C.A. § 5-5-111.

Election of Successor by the People

Reference Number:

CTAS-587

Any person appointed by the county legislative body to fill a vacancy serves in that capacity until a successor is elected by the county voters at the next general election. If the vacancy occurs after the time for filing nominating petitions for the party primary election and more than 60 days before the party primary election, the political party nominees should be selected in the primary election, and a successor should be elected in the August general election. If the vacancy occurs less than 60 days before the party primary election, but 60 days or more before the August election, the political party nominees should be selected by party convention and a successor elected in the August election. If the vacancy occurs less than 60 days before the August election, but 60 days or more before the November election, the political party nominees should be selected by party convention and a successor elected in the November election. T.C.A. § 5-1-104. All candidates for vacancies should qualify by filing nominating petitions no later than 12 noon on the 55th day before the election. T.C.A. § 5-1-104.

Temporary Vacancies

Reference Number:

CTAS-581

Vacancies Due to Military Service

A temporary vacancy exists when a county official, except for a member of the county board of education, is inducted into military service such as the United States Army or any of its branches, the Navy, Air Force, Marine Corps, Coast Guard, Merchant Marine, or any other military activity. T.C.A. § 8-48-202. Upon the official's return from military service, he or she is entitled to resume the office for the remainder of the term, if it has not already expired. T.C.A. § 8-48-202. If the official does not return from military service prior to the expiration of the term, a successor is elected in the regular manner prescribed by law. T.C.A. § 8-48-203.

When a county official, except for a member of the county board of education, is inducted into the United States military service, the office duties are discharged temporarily during the official's absence by another person legally qualified, and the office is to be filled temporarily by the legislative body. T.C.A. §§ 8-48-204, 8-48-205. However, if a clerk and master is inducted into military service, the chancellor appoints a qualified person to fill the office temporarily. T.C.A. § 8-48-205. Any person temporarily appointed or elected to an office must execute a bond and subscribe to an oath to discharge the duties of the office. T.C.A. § 8-48-207. The temporary official receives the salary and has the same power, authority, and privileges as the regular official. T.C.A. § 8-48-208. The temporary official may not remove assistants appointed by the regular official; that power remains with the regular official. T.C.A. § 8-48-209. All persons chosen to fill offices temporarily must satisfy all qualifications required to hold the office. T.C.A. § 8-48-206.

Temporary Absence of County Mayor

If the county mayor is absent or intends to be absent for more than 21 days, or is incapacitated or otherwise unable to perform the duties of the mayor's office, the legislative body appoints the chairperson to serve until the absence or disability is removed. Any contest of disability or its removal shall be adjudicated in chancery court. While the chairperson is serving as mayor, the chairperson pro tempore presides over legislative body sessions. T.C.A. § 5-5-103(g). Note that subsection (g) applies to a temporary absence, not a vacancy.

County Ethics Policies

Reference Number:

CTAS-621

The "Comprehensive Governmental Ethics Reform Act of 2006" is codified in T.C.A. § 8-17-101 *et seq.* Pursuant to the Ethics Reform Act all counties were required to adopt local ethics policies by June 30, 2007. The law directed CTAS to develop a model policy.

These ethics policies are required to include rules and regulations regarding limits on, and/or reasonable and systematic disclosure of, gifts or other things of value received by officials and employees that impact or appear to impact their discretion, and rules and regulations regarding reasonable and systematic disclosure by officials and employees of their personal interests that impact or appear to impact their discretion. T.C.A. § 8-17-102(a)(3). It is important to note that the provisions of state law, to the extent that they are more restrictive, control. Additionally, the Ethics Reform Act expressly states that these policies cannot include personnel or employment policies, or policies or procedures related to operational aspects of governmental entities. T.C.A. § 8-17-102(a)(3).

The ethics policies adopted by a county commission apply broadly to all officials and employees in all offices, agencies, and departments of the county and to the members, officers, and employees of all boards, commissions, authorities, corporations, or other instrumentalities of a county. However, ethics policies adopted by the county commission do not apply to utility districts or schools which must adopt their own ethics policies. T.C.A. §§ 8-17-102(c) and 8-17-102(d).

If a board, commission, authority, corporation or other instrumentality is created by two or more local government entities, such creating entities are required, by amendment to the interlocal agreement or other agreement creating such joint instrumentality, to designate the ethical standards that govern the jointly created instrumentality. T.C.A. § 8-17-102(b).

Violations of ethics policies by officials or employees covered by the local ethics policy are enforced in accordance with the provisions of existing state law. T.C.A. § 8-17-106(b).

In 2023, the legislature amended T.C.A. § 8-17-104. By no later than January 1, 2024, each entity

covered by this chapter shall notify the ethics commission, either in writing or electronically by email, of the primary person responsible for administering and enforcing the entity's ethical standards. The entity also shall provide the commission with the person's contact information, including the person's business address, phone number, and email address. The entity shall notify the commission of any change in such responsibility within thirty (30) calendar days of such change and shall provide the name and contact information for an interim official serving in this capacity until such time as a permanent successor can be identified.

County Ethics Committees

Reference Number:

CTAS-622

The ethics legislation that was passed in 2005 and 2006 does not require a county to have an ethics committee. Nevertheless, many counties have established county ethics committees to deal with potential ethics complaints. Bear in mind that a county ethics committee has very little, if any, authority to do anything other than to screen ethics complaints and direct the complaint to the proper county official or county or state agency that can take appropriate action on the complaint.

As previously stated, the county ethics policy is required to cover the acceptance of and disclosure of gifts accepted by officials and employees and the disclosure of conflicts of interest. Accordingly, an ethics complaint received by a county ethics committee that does not address either the acceptance and/or disclosure of a gift or a conflict of interest need not be pursued by the ethics committee.

Note that the County Purchasing Law of 1957, T.C.A. § 5-14-101 *et seq.*, and the 1981 Financial Management Act, T.C.A. § 5-21-101 *et seq.*, both contain conflict of interest provisions and prohibitions on the acceptance of gifts. It is important to note that in counties that have adopted either of these two Acts, the provisions of these state laws control to the extent that they are more restrictive than the county's ethics policy.

County officials who serve on a county ethics committee should review ethics complaints to make sure that the complaint first addresses either the acceptance/disclosure of a gift or a conflict of interest. If the ethics complaint does not address one of these two issues, the ethics committee should direct the complainant to the appropriate person or agency that may properly address the complaint and proceed no further.

If the complaint does address an issue covered by the county ethics policy, the committee should proceed to determine if the complaint bears further inquiry. If the complaint states a possible violation of the county ethics policy, the committee should turn the complaint over to the proper county official who actually has the authority to deal with the violation. Depending upon the stated complaint, that could be a county office holder, if the complaint is against an employee, or the county attorney if the complaint is against an elected county official. If the complaint states a possible criminal violation, the committee should turn the matter over to the district attorney's office. In addition, if the information contained in the complaint reasonably causes the committee members to believe that a theft, forgery, credit card fraud, or any other act of unlawful taking of public money, property, or services has occurred, the committee must report the information in a reasonable amount of time to the office of the Comptroller of the Treasury. T.C.A. § 8-4-503(a).

In order to do the job effectively, members of the ethics committee must be well versed in the state conflict of interest laws that apply to their particular county. A general understanding of criminal law would also be helpful.

Special Rules for County Commissioners who are County Employees

Reference Number:

CTAS-625

Countywide officeholders, such as the county mayor, sheriff, trustee, register, county clerk, or assessor of property, are statutorily prohibited from being nominated for or elected to membership in the county legislative body. T.C.A. § 5-5-102. However, county employees may hold the office of county legislative body member. Any county employee who is otherwise qualified may serve as a member of the county legislative body, notwithstanding the fact that such person is a county employee. T.C.A. § 5-5-102.

In 2016, the Legislature enacted Public Chapter 1072, effective May 20, 2016. This new law changes the conflict of interest provisions for county commissioners who are county employees or whose spouses are county employees. Pursuant to the new law, no member of the county legislative body who is also an

employee of the same county or whose spouse is an employee of the same county may vote on matters in which the member has a conflict of interest. The new law provides that a conflict of interest is created when a member is voting on a matter which, if approved by the legislative body, would increase the pay or benefits of that member or that member's spouse. However, the new law does not prohibit a member from voting on the budget, appropriation resolution, or tax rate resolution, or amendments thereto, unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which the member has a conflict of interest. If a member of a county governing body who is voting on a proposed budget, appropriation resolution, or tax rate resolution, or amendments thereto, has a conflict of interest, then the member must declare the conflict of interest at the meeting prior to casting the member's vote. A member who abstains from voting for cause on any issue coming to a vote before the body is not counted for the purpose of determining a majority vote. These new provisions have been codified as T.C.A. § 5-5-112.

Sources of Revenue for the Highway Department

Reference Number:
CTAS-2007

All counties rely heavily on county-aid highway funds and to a lesser degree on state-aid highway funds to support the activities of the county highway department. These basic state sources are supplemented from time to time by special state sponsored activities such as bridge funds which are in turn sometimes supported in whole or part by federal funds. Many counties also appropriate local tax revenue for the use of the county highway department. Petroleum products taxes and state severance taxes are chief sources of revenue for the county highway department. The most common local sources are the property tax, wheel tax and mineral severance tax. All revenue, from whatever source, must be budgeted and appropriated by the county legislative body before the county highway officials can use the funds. Although counties may borrow funds through notes or bonds, ultimately this borrowing must be paid off from revenue from one or more of these sources.

The property tax is the most common form of county tax. In some counties a portion of the total property tax rate is allocated to the county highway department. Many counties have a special property tax by private act with proceeds earmarked for the highway department. The property tax is one of the few taxes wherein the rate of the county tax is not limited by state law and is subject to the discretion of the county legislative body.

These taxes are described in more detail under the Revenue topic.

Gasoline Tax

Reference Number:
CTAS-1619

Description. The gasoline tax is a privilege tax imposed on all gasoline, fuel alcohol (as defined in T.C.A. § 67-3-103) and substitutes therefor, imported into this state; the tax being levied when the product first comes to rest in this state, subject to certain exceptions that are found in *Tennessee Code Annotated*, Title 67, Chapter 3, Part 4. The tax is administered by the Department of Revenue.

Rate: Twenty-four cents (24¢) per gallon, effective July 1, 2017, twenty-five cents (25¢) per gallon, effective July 1, 2018 and twenty-six cents (26¢) per gallon, effective July 1, 2019 . T.C.A. § 67-3-201.

Distribution. The distribution formula for twenty cents (20¢) of the gasoline tax is as follows (some minor distributions have been omitted):

1. Amount necessary (if any) to fund state debt through sinking fund account. T.C.A. §§ 67-3-901, 9-9-105.
2. Nine cents (9¢) of the twenty cents (20¢) gasoline tax is distributed as follows:
 - a. 28.68 percent (less 2 percent of this amount for Department of Revenue administration expenses) to the county aid fund for county road purposes (prior to this distribution, the County Technical Assistance Service is allocated \$28,250 per month), which is divided as follows:
 - (1) 50 percent is divided equally among the 95 counties;
 - (2) 25 percent is divided among the counties on the basis of population; and
 - (3) 25 percent is divided among the counties on the basis of geographical area.
 - b. 14.38 percent (less one percent (1%) of this amount for Department of Revenue

administration expenses) to the various municipalities and the municipal street aid fund according to population.

c. Remainder (less 2 percent (2%) of this amount for Department of Revenue administration expenses) to the state highway fund. T.C.A. §§ 67-3-901, 54-4-103.

3. Two cents (2¢) of the twenty cents (20¢) gasoline tax is distributed as stated in 2 above, except to receive its portion the county must appropriate funds for road purposes from local revenue sources in an amount not less than the average of the preceding five fiscal years (bond issues are excluded from calculation). If this amount is less than the five-year average, the state allocation will be decreased by the difference between the five-year average and the current amount appropriated from local sources. These funds must be used for resurfacing and upgrading county roads. T.C.A. § 67-3-901.

4. Three cents (3¢) of the twenty cents (20¢) gasoline tax is distributed as follows:

a. Sixty-Six percent (66%) to the counties as other county aid funds are distributed (less 1 percent of this amount to the Department of Revenue for administration expenses), to be used for resurfacing and upgrading county roads.

b. Thirty-three percent (33%) to the municipalities as other municipal aid funds are distributed (less 1 percent of this amount to the Department of Revenue for administration expenses). T.C.A. § 67-3-901.

However, one cent (1¢) of this three cents (3¢) is subject to the local contribution rule as specified in paragraph 3 above.

5. Six cents (6¢) is distributed to the state highway fund.

The revenue from the increases in gasoline tax passed in 2017 as part of the IMPROVE Act is distributed as follows:

1. 25.4 percent to counties per T.C.A. § 54-4-103;
2. 12.7 percent to cities per T.C.A. § 54-4-103; and
3. 61.9 percent to the state highway fund.

Diesel Tax

Reference Number:

CTAS-1620

Description. The diesel tax replaces the former motor vehicle fuel use tax. This tax is a privilege tax imposed on the users of diesel fuel (as defined in T.C.A. § 67-3-103) within this state, with certain exceptions such as fuel dyed in accordance with Internal Revenue Service regulations. T.C.A. § 67-3-202. The tax is administered by the Tennessee Department of Revenue.

Rate: Twenty-one cents (21 ¢) per gallon, effective July 1, 2017, twenty-four cents (24 ¢) per gallon, effective July 1, 2018 and twenty-seven cents (27 ¢) per gallon, effective July 1, 2019. T.C.A. § 67-3-202.

Distribution. Seventeen cents (17¢) of the tax is distributed as follows:

1. 1.62 percent to the state general fund.
2. 24.75 percent to the counties to become a part of the county highway fund in the following manner:
 - a. 50 percent equally among all counties;
 - b. 25 percent on the basis of population; and
 - c. 25 percent on the basis of area.
3. 12.38 percent to the municipalities on the basis of population, with minor exceptions.
4. 61.25 percent to the state highway fund. T.C.A. § 67-3-905.

Revenues from the increases in the tax passed in 2017 as part of the IMPROVE Act are distributed as follows:

1. 17.5 percent to counties per T.C.A. § 54-4-103;
2. 8.8 percent to cities per T.C.A. § 54-4-103; and
3. 73.7 percent to the state highway fund.

Special Privilege Tax on Petroleum Products

Reference Number:

CTAS-1621

Description. The special privilege tax on petroleum products is in addition to the gasoline and diesel taxes and is imposed on all petroleum products, subject to certain exceptions. T.C.A. § 67-3-203. This tax is administered by the Tennessee Department of Revenue.

Rate: One cent (1¢) per gallon. T.C.A. § 67-3-203.

Distribution. The special tax on petroleum products is distributed as follows:

1. Two percent (2%) to general fund for administrative purposes
2. \$12,017,000 per year to the local government fund
 - a. \$381,583 monthly to county highway departments on the basis of county population.
 - b. \$619,833 monthly to cities on the basis of their population, less \$10,000 monthly to the Center for Government Training for in-service training of local government officials and employees.
3. Remainder to the state highway fund. T.C.A. § 67-3-906.

Liquefied Gas Tax

Reference Number:

CTAS-1622

Description. This tax is on liquefied gas used for the propulsion of motor vehicles on the public highways of this state. Governmental agencies are exempt. This tax is paid in advance annually by the owner of each motor vehicle licensed in Tennessee using liquefied gas as fuel. Out-of-state users pay upon delivery of the liquefied gas into the fuel supply tank of a motor vehicle. T.C.A. §§ 67-3-1102 through 67-3-1112.

Rate: Fourteen cents (14¢) per gallon T.C.A. § 67-3-1102.

Distribution. The distribution of the liquefied gas tax is as follows:

1. Nine cents (9¢) of the fourteen cents (14¢) distributed as follows:
 - a. 1.58 percent to the general fund.
 - b. 28.28 percent to the counties to become a part of the county highway fund as follows:
 - (1) Fifty percent (50%) equally among all counties;
 - (2) Twenty-five percent (25%) on the basis of population; and
 - (3) Twenty-five percent (25%) on the basis of area
 - c. 14.14 percent to the municipalities on a population basis, with minor exceptions.
 - d. 56 percent to the state highway fund.
2. Three cents (3¢) of fourteen cents (14¢) distributed to the state sinking and highway funds.
3. One cent (1¢) of fourteen cents (14¢) distributed as follows:
 - a. 66 percent to the counties as other county aid funds are distributed, less one percent (1%) to the Department of Revenue for administration expenses.
 - b. 33 percent to the municipalities as other municipal aid funds are distributed, less one percent (1%) to the Department of Revenue for administration expenses.
4. One cent (1¢) of fourteen cents (14¢) is distributed to the state highway fund. T.C.A. § 67-3-908.

As part of the IMPROVE Act, the tax will increase to seventeen cents (17¢) effective July 1, 2017, to nineteen cents (19¢) effective July 1, 2018 and to twenty-two cents (22¢) effective July 1, 2019. The revenue from this increase goes to the state highway fund.

Compressed Natural Gas Tax

Reference Number:

CTAS-1623

Description. A tax on the privilege of using compressed natural gas for the propulsion of motor vehicles on the public highways of this state. Governmental agencies are exempt. T.C.A. §§ 67-3-1113 through 67-3-1118.

Rate. 13 cents (13¢) per gallon. For the purpose of determining the tax, a gallon equivalent factor of 5.66 pounds per gallon is used. T.C.A. § 67-3-1113.

Distribution. The tax is distributed as follows:

1. 1.62 percent to the state general fund.
2. 24.75 percent to the counties to become a part of the county highway fund in the following manner:
 - a. 50 percent equally among all counties;
 - b. 25 percent on the basis of population; and
 - c. 25 percent on the basis of area.
3. 12.38 percent to the municipalities on the basis of population, with minor exceptions.
4. 61.25 percent to the state highway fund. T.C.A. § 67-3-905.

As part of the IMPROVE Act, the tax will increase to sixteen cents (16¢) effective July 1, 2017, to eighteen cents (18¢) effective July 1, 2018 and to twenty-one cents (21¢) effective July 1, 2019. The revenue from this increase goes to the state highway fund.

Highway User Fuel Tax

Reference Number:

CTAS-1624

Description. The highway user fuel tax is imposed on owners and operators of qualified motor vehicles engaged in interstate commerce in or through Tennessee. The amount of tax payable to the state is determined by dividing the total number of miles traveled in the state by the average number of miles traveled per gallon of gasoline or diesel fuel, or the per gallon equivalents of alternative fuels, and multiplying the result by the rates of the tax per gallon on the particular fuel used. T.C.A. §§ 67-3-1201 through 67-3-1210.

Distribution. Same as the taxes for the particular fuels that are used by the owner or operator.

Severance Taxes

Reference Number:

CTAS-227

Coal Severance Tax

Reference Number:

CTAS-1612

Authority. T.C.A. §§ 67-7-101 through 67-7-110.

Description. The state levies a per ton severance tax on all coal products severed from the ground in Tennessee. T.C.A. § 67-7-104. The coal severance tax is \$1.00 per ton. "Coal products" means coal ore and any other substance that might be severed from the earth by the process of producing salable coal, by whatever method of severance used. T.C.A. § 67-7-101.

Distribution. According to T.C.A. § 67-7-110, the tax is collected by the Tennessee Department of Revenue and is distributed as follows:

1. 1.125% is retained by the department of revenue and credited to its current service revenue to cover administrative expenses and tax collection expenses.
2. 98.875% to the county in which the coal products were severed.
 - a. 50 percent for the educational systems of the county.
 - b. 50 percent for county highways and stream cleaning systems.

Oil and Gas Severance Tax

Reference Number:

CTAS-1613

Authority. T.C.A. §§ 60-1-301 through 60-1-302.

Description. The state levies a tax of 3 percent of the sales price of all gas and oil removed from the ground in Tennessee. T.C.A. § 60-1-301.

Distribution. The Tennessee Department of Revenue collects the tax and distribution is made as follows:

1. One third (1/3) to the county where the wellhead is located.
2. Two thirds (2/3) to the state general fund. T.C.A. § 60-1-301.

County Mineral Severance Tax (General Law)

Reference Number:

CTAS-1614

Authority. T.C.A. §§ 67-7-201 through 67-7-212.

Description. This is a local option tax wherein a county legislative body by resolution adopted by a two-thirds majority vote may levy a tax on all sand, gravel, sandstone, chert and limestone severed from the ground within the county. T.C.A. §§ 67-7-201, 67-7-212. The county legislative body sets the rate, but the rate cannot exceed 15 cents per ton. T.C.A. § 67-7-203. A tax authorized under this Section may be repealed by a resolution passed by a two-thirds majority of the county legislative body. T.C.A. § 67-7-201.

Distribution. The Tennessee Department of Revenue collects this tax. T.C.A. § 67-7-204. All revenues collected, less administrative expenses, are remitted to the county trustee quarterly and become a part of the county road fund. T.C.A. § 67-7-207.

County Mineral Severance Tax (Private Act)

Reference Number:

CTAS-1615

Several counties have enacted mineral severance taxes by private act. Private acts on this subject are no longer authorized, but private acts on this subject enacted prior to June 5, 1984, remain in effect, except that the rate cannot exceed 15 cents per ton. T.C.A. §§ 67-7-209, 67-7-212. The minerals subject to the tax are delineated in each county's private act, along with provisions regarding rate, collection and distribution of the tax proceeds. Currently, the following counties have a mineral severance tax levied by private act: Benton, Carroll, Carter, Decatur, Giles, Humphreys, Roane, Rutherford, Unicoi, Weakley, White, and Williamson.

County Motor Vehicle Privilege Tax (Wheel Tax)

Reference Number:

CTAS-1634

Authority. T.C.A. § 5-8-102.

Description. Counties may levy a privilege tax on motor vehicles, commonly called a wheel tax. The tax may be levied by one of the following methods: (1) by passage of a resolution by a two-thirds vote of the county legislative body at two consecutive regular county legislative body meetings; (2) by passage of a resolution by the county legislative body by a regular majority with approval by referendum provided for in the resolution; and (3) by private act. Notwithstanding a population classification exception, the two-thirds majority resolution method is subject to a referendum if a petition signed by a number of registered voters equal to 10 percent of the number of voters in the last gubernatorial election is filed with the county election commission within 30 days of passage. T.C.A. § 5-8-102(c).

Distribution. Distribution of these tax revenues may be for any county purpose specified in the private act or resolution levying the tax.

Retention Schedules

Reference Number:

CTAS-202

The County Technical Assistance Service, in cooperation with the Tennessee State Library and Archives and the Division of Records Management, is authorized to publish schedules which are to be used as guides by all county public records commissions, county offices, and judges of courts of record in determining which records should, can, and may not be destroyed. T.C.A. § 10-7-404. Those schedules are called the Retention Schedules. The retention schedules describe more than 650 different records series for multiple county offices. This material is organized by county office and by subject. Obviously CTAS recommends that all county public record commissions adopt these schedules as the basis for determining the disposition of county records in their county. When the schedules were developed, they were reviewed and revised by the legal and technical staff of CTAS, by the Division of County Audit in the office of the comptroller, by representatives of the Tennessee State Library and Archives and the Division of Records Management in the State Department of General Services, and by committees and groups of numerous county officials. The language of the statute says that county officials and records commissions shall use these schedules as "guides" in determining whether a record should be kept or destroyed. This

does not mean that a County Public Records Commission can never deviate from the CTAS schedules. However, any decision to use a different retention period should be thoughtfully considered and the reasons well documented by the records commission. Any decision to destroy a record sooner than is recommended by the schedules certainly needs to be taken seriously. If your records commission decides that there is a significant reason why a record should be destroyed before the recommended retention period has elapsed, contact CTAS first to discuss the retention period and see if there is a reason why the recommended retention period in the manual should be shortened.

For additional information, see Appraisal and Disposition of Records, Tennessee Archives Management Advisory.

Current Retention Schedules

Reference Number:
CTAS-2068

Policy Statement

The Tennessee State Library and Archives (TSLA) is given authority by T.C.A. § 10-7-413 to review proposed destruction of county records and to take into the state archives such records proposed for destruction as may have historical research value. TSLA has reviewed and approved these retention guidelines prepared by the County Technical Assistance Service (CTAS).

Permanent Records.

With respect to records designated in these guidelines as "permanent," TSLA-

1. Concurs entirely with all guidelines herein that appraise records series to be of permanent value;
2. Reminds local governments that they are obliged by the provisions of T.C.A. § 10-7-503 to make such records permanently and consistently available for public inspection;
3. Advises that a county archives, which is an integral office of local government and responsible to the local county mayor through the public records commission, is the most effective and economical means of doing this; and
4. Encourages local governments to establish, support, and maintain such archives.

In cooperation with CTAS and other agencies, TSLA has designated certain records as permanent based on their value as legal and historical evidence to document the collective experience of the citizens of the community. Such records should be retained and made available to the public in public archives in accordance with T.C.A. § 10-7-503.

Temporary Records.

TSLA has appraised for historical value the descriptions of temporary records series that are herein recommended for destruction at the ends of their retention terms. Because of the confidence we have in this review and in the guidelines, TSLA certifies that-

- Destruction of records in accordance with these guidelines may be authorized by local public records commissions;
- Public records commissions may issue continuing records disposition authorizations for routine disposals, so that local offices do not have to present repeated requests to the public records commission; and that
- Disposal may then proceed without further review by TSLA;

provided that

- (1) Local officials report all such disposals to the local public records commission;
- (2) The local public records commission certifies to the county mayor that destruction has been authorized in accordance with these guidelines;
- (3) The certification cites the specific applicable guideline in each case of authorized destruction; and that
- (4) Local public records commissions consider carefully the needs of local historical and genealogical societies, consult with them, and upon their advice or request use the provisions of T.C.A. § 10-7-414(a) to authorize transfer of records otherwise scheduled for destruction (e.g. marriage bonds or court case files) to the local historical society for retention and historical research.

In the interest of building and maintaining a strong sense of community history, TSLA further encourages local public records commissions, executives, and legislative bodies to provide material and financial

support for the local preservation and public inspection of such transferred records in accordance with T.C.A. § 10-7-414(c).

Questions about the possible disposition of county records and the establishment of a county archives and records program for the preservation of permanent value records can be referred to-

Tennessee State Library and Archives
 403 7th Avenue North
 Nashville, Tennessee 37243
 (615) 741-2764

Highway Department Records

Reference Number:
 CTAS-2058

Highway Department. The records included in this schedule are only those specific to the office of the Highway Department. Records that may be kept in the same format by several county offices (such as employment records, purchasing records, etc.) will be found listed under topical retention schedules elsewhere in this manual. Included in this table is a listing of “obsolete” records. Your office should no longer be generating these records. They are still included in the disposition schedule so that anyone discovering those materials in older records of the office will know how to deal with them. To a certain extent, the records kept by county offices vary from county to county in either the format of record kept, the name given to the record, or the frequency of its occurrence. The fact that a certain record is listed in this schedule does not necessarily indicate that you should have it in your office. It may be a format for record-keeping that was never utilized in your county, or you may keep the record under a different name. If you have records in your office that are not listed in this schedule by name, check the descriptions of the records to see if we may have called it by a different term. If you still cannot locate any entry relative to the record. Contact us at the County Technical Assistance Service for guidance in determining the proper disposition of the record and so that we can make note of that record’s existence to include it in future revisions of this manual.

Retention Schedule for the Office of the County Highway Department

| Description of Record | Retention Period | Legal Authority/ Rationale |
|--|--|--|
| 10-001 Annual Work Program for State Aid —Plans made annually projecting roads, projects, etc. | Retain one year after audit, then destroy. | T.C.A. §§ 54-4-403, 54-7-111. |
| 10-002 Bids —All bids for goods or services, including any advertisements. | Successful bids—retain seven years after contract expires, then destroy. Unsuccessful bids— retain one year after audit, then destroy. | Based on statute of limitations for legal action for breach of contract plus one year. (T.C.A. § 28-3-109). |
| 10-003 Bridge Project Files, Federal, State and Local — Project files, including contracts and invoices. | Retain seven years, then destroy. | Based on statute of limitations for legal actions for breach of contract plus one year (T.C.A. § 28-3-109). |
| 10-004 County Road List —Record of all roads under the control of the county (T.C.A. § 54-10-103) and any associated maps. | Permanent record. | Necessary for operation of the office and to protect Highway Department from allegations of working on private property. |
| 10-005 Deeds of Rights of Way, Easements, Etc. —Instruments of conveyance of interests in real property to the county so that the county may establish a roadway. | Permanent record. | Important for establishing property rights of the county. |
| 10-006 Equipment Inventory — Record of all equipment of the highway dept. showing the manufacturer’s serial number and other descriptions. | Retain five years from date of creation. | Keep for audit and review purposes (T.C.A. §§ 54-7-112, 10-7-404(a)). |
| 10-007 Fence Row Agreement — | Retain five years from date of | Keep in case any liability or |

Retention Schedule for the Office of the County Highway Department

| Description of Record | Retention Period | Legal Authority/ Rationale |
|--|--|---|
| Documentation of agreements between a landowner and the county granting permission for the highway department to push out a fence row. | creation. | litigation arises from the action. |
| 10-008 Grant Documentation and Files — Records and materials regarding grants applied for and/or money received through state and federal grants. These records may include info regarding monies received and expended under the litter grant program. | Retain seven years, then destroy. | Based on statute of limitations for legal actions for breach of contract plus one year (T.C.A. § 28-3-109). |
| 10-009 Insurance Policies | Retain seven years after expiration, then destroy. | Based on statute of limitations for contracts plus one year (T.C.A. § 28-3-109). |
| 10-010 Invoices (not part of a bridge or road project file) | Retain five years, then destroy. | Keep for audit and review purposes. |
| 10-011 Mining Report —Copies of quarterly report to U.S. Bureau of Mines containing information on the quantity of stone mined and the use made of the stone. | Retain five years, then destroy. | Keep for audit and review purposes. |
| 10-012 Minutes of Bid Openings —Record of bid openings showing item vendor, bid price and whether bid was successful. | Retain five years (unless part of highway commission minutes), then destroy. | Necessary in case of challenge to bid award. |
| 10-013 Minutes of Highway Commission Meetings | Permanent record. | Actions taken in meetings will be effective until superceded or rescinded. Record also has historical significance. |
| 10-014 OSHA Records and other Records on Injuries | See schedule for employment records in retention schedule 16. | |
| 10-015 Outstanding Warrants, List of | Retain one year after audit, then destroy. | Keep for audit purposes (T.C.A. § 10-7-404(a)). |
| 10-016 Personnel Records | See schedule for employment records in retention schedule 16. | |
| 10-017 Reports to County Legislative Body | Retain three years, then destroy. | Keep for audit purposes (T.C.A. § 10-7-404(a)). |
| 10-018 Road Project Files —Project files, including contracts and invoices. | Retain seven years after completion of project, then destroy. | Based on statute of limitations for legal actions for breach of contract plus one year (T.C.A. § 28-3-109). |
| 10-019 Settlement | | |
| Agreements —Instruments evidencing the settlement of claims against the county highway department. | Retain seven years, then destroy. | Based on statute of limitations for legal actions for breach of contract plus one year (T.C.A. § 28-3-109). |
| 10-020 Sign Inventory —List of all traffic signs and traffic signals in the county. | Retain a current copy at all times. | Necessary to track inventory and maintenance of signs. |
| 10-021 Vehicle Maintenance Records —Record of repairs, service, etc. related to county owned vehicles. | Retain five years or life of vehicle, whichever is longer. | Keep for management purposes. |
| 10-022 Warrants (copies) and/or Warrant Book Stubs —Copies of warrants and/or stubs showing date warrant was issued, amount, payee and purpose of | Retain five years, then destroy. | Keep for audit purposes (T.C.A. § 10-7-404). |

Retention Schedule for the Office of the County Highway Department

| Description of Record | Retention Period | Legal Authority/ Rationale |
|--|--------------------|---|
| warrant. 10-023 Work Orders —For repair and maintenance of roads, traffic signs, traffic signals and utilities. | Retain five years. | Possible evidence in lawsuit arising from road and bridge maintenance issues. |
| Obsolete Records | | |
| 10-024 Gasoline Report to State (copy) —Monthly report of number of gallons of gasoline purchased for use by the county highway department. | | Destroy. This record is obsolete. There is no need to retain it. |

Relocation of Utilities

Reference Number:

CTAS-2464

Sometimes a county road project will require the relocation of utilities placed within the county right-of-way. Utilities can be required to move their facilities if relocation is necessary for the road project. The question often arises as to who is responsible for paying the costs associated with the utility relocation. Tennessee follows the common law rule that in the absence of a statute providing otherwise, public utilities must remove their facilities at their own expense *Pack v. Southern Bell Tel. & Tel. Co.*, 387 S.W.2d 789 (1965); *State v. Southern Bell Tel. & Tel. Co.*, 319 S.W.2d 90 (1958) (cert. denied by U.S. Supreme Court, *Memphis Transit Co v. Tennessee ex rel Leech*, 359 U.S. 1011 (1959)); *Bristol Tenn. Housing Authority v. Bristol Gas Corp.*, 407 S.W.2d 681 (1966); *Metropolitan Development and Housing Agency v. South Central Bell Telephone Co.*, 562 S.W.2d 438 (Tenn. App. 1978).

Statutory authority exists for the state to reimburse utilities for their costs in relocating facilities involved in projects undertaken by TDOT. T.C.A. § 54-5-804. This statute authorizes, but does not require, reimbursement. In contrast, T.C.A. § 13-20-303 requires municipalities, housing authorities and other public bodies of the state to reimburse utilities for relocation costs if the relocation is related to a redevelopment or urban renewal project. Aside from these two statutes, there does not appear to be any statutory authorization or requirement to reimburse utilities for relocation expenses.

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