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# County Trustee

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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## County Trustee

Reference Number: CTAS-67

The trustee has been a constitutional office in Tennessee since the beginning of the state, being an appointive office by the county court in the 1796 Constitution but becoming a popularly elective office in the 1835 Constitution and remaining so under the 1870 Constitution and its 1978 amendment. The trustee is elected to a four-year term of office in the August general election in same year that the governor is elected. T.C.A. § 8-11-101. There is no limitation on the number of terms a trustee may serve.

## Qualifications-County Trustee

Reference Number: CTAS-68

The office of trustee does not carry any qualifications beyond the general qualifications for county officers.

## Oath of Office and Bond-County Trustee

Reference Number: CTAS-69

Before entering into office, the trustee must take an oath to support the constitutions of Tennessee and the United States. Oaths of office are covered under the General Information tab of the County Offices topic.

The minimum amount of the official bond executed by the trustee for each term of office is determined from the amount of revenues handled by the trustee during the last fiscal year audited by the Comptroller or from the last Comptroller-approved audit which was prepared by certified public accountants. If the official bond is executed by a surety company authorized to do business in Tennessee (corporate surety), the minimum amount will be based on revenues as follows:

1. 4% up to \$3,000,000 of the funds collected by the office; and
2. 2% of the excess over \$3,000,000 shall be added.

The amounts indicated above are cumulative. T.C.A. § 8-11-103(b).

If the official bond of a trustee is executed by personal sureties, the minimum amount of the bond is based on revenues as follows:

1. 6% up to \$3,000,000 of the funds collected by the office; and
2. 4% of the excess over \$3,000,000 shall be added.

The amounts indicated above are cumulative. T.C.A. § 8-11-103(c).

County officials are prohibited from being sureties for other county officials. T.C.A. §§ 8-19-108; 8-19-109. The amounts stated above are only minimums; the county legislative body may require the trustee to execute a bond in a higher amount. T.C.A. § 8-11-102.

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

## Fee System or Salary System-County Trustee

Reference Number: CTAS-823

Fee System or Salary System is covered under the General Information tab of the County Offices topic.

## Compensation-County Trustee

Reference Number: CTAS-70

Compensation is covered under the General Information tab of the County Offices topic.

## Deputies and Assistants-Trustees

Reference Number: CTAS-71

Deputies and Assistants is covered under the General Information tab of the County Offices topic.

## Duties-County Trustee

## Reference Number: CTAS-72

The county trustee has three major functions: (1) collecting the county's property taxes; (2) accounting for and disbursing county funds (including proper apportionment and determination of fund availability); and (3) investing temporarily idle county funds. The first of these duties, collection of Property Taxes, is covered under the Revenue topic. The second and third primary responsibilities both relate to financial matters. According to T.C.A. § 8-11-104, the trustee's basic duties include the following:

1. Collect all state and county taxes on property;
2. Keep a fair and regular account of all the money received;
3. Receive the county's bills;
4. Keep a successive warrant book, or a book showing all bills received, ruled in columns, showing the number, payee or holder, date of the day of presentation, and amount of the bill;
5. Pay the legal demands (just claims) immediately if there are unappropriated funds sufficient to do so; otherwise, to deliver the demand to the owner endorsed, and pay it in numerical order (Interest might be due if so contracted by the county legislative body, but only until there are funds in the county treasury to make payment. *Davidson County v. Olwill*, 72 Tenn. 28 (1879).);
6. Keep fair and regular accounts of such payments;
7. Furnish the county executive with any papers and vouchers necessary for perfecting any settlement with any person who is accountable for county revenue; and
8. On going out of office:
  - (a) Deliver all books and papers of the office to the successor, especially the book showing warrants payable; and
  - (b) Make settlement with the county executive and pay over the balance of funds remaining to the successor in office, making duplicate receipts (one of which is delivered to the county clerk to be recorded in the revenue docket).

## County Treasurer

### Reference Number: CTAS-824

Acting as treasurer for the county, the trustee receives and pays out county funds. Legislation passed in 1996 prohibits any official, including the trustee, from requiring or encouraging checks to be payable to the official in his or her own name, rather than the name of the governmental entity, the office, or the official's name and title. T.C.A. § 9-1-117.

Monies that the county trustee receives in the role of treasurer for the county must be allocated to one of the county's various funds such as the general fund, school fund, highway fund, solid waste management fund, or debt service fund. Other special purpose funds may be established according to law by the county legislative body or new funds may be authorized by act of the General Assembly. Generally, monies placed in a fund may only be used for the purposes of the particular fund and may not be transferred from one fund to another. The authority to disburse monies from these funds comes from the county legislative body through appropriation resolutions and expenditures for particular purposes are established in annual budget resolutions adopted by the county legislative body. The appropriation and budget actions may be contained in one resolution and may be amended from time to time during the fiscal year which begins July 1 of each year.

Other officials receiving funds turn over some or all of these to the trustee. Under the fee system excess fees and commissions from fee officers, including the clerk and master, the county clerk, court clerks, and the register, are turned over to the trustee and become part of the county's revenue (county general fund). The trustee's excess commissions likewise become part of the county general fund. T.C.A. § 8-22-103. These excess commissions are paid over quarterly on the tenth of January, April, July, and October. The trustee must keep an accurate account of the commissions and transfer excess commissions of the trustee's office from the office commission account to the general fund by these quarterly dates. T.C.A. § 8-22-104.

As soon as possible after the quarterly dates, the trustee files a sworn report with the county mayor/executive showing the funds received from the other county offices and the excess commissions transferred by the trustee to the general fund. The trustee also files a sworn, itemized monthly statement with the county mayor/executive. T.C.A. § 8-22-104. If an official's salary is supplemented from county funds (in order to receive the statutory salary), that official must keep records and make an annual report of collections to the county mayor/executive. Filing such a report is a prerequisite to receiving the county

funds since supplementary compensation is computed on the basis of the report. T.C.A. §§ 8-22-108 and 8-24-106.

The county legislative body may choose to operate under the salary system instead of the fee system, paying salaries and expenses of an office and requiring all fees to be turned over monthly to the trustee. T.C.A. § 8-22-104(a)(3). Sheriff's offices always turn over all fees to the trustee and do not operate using the fees collected. T.C.A. § 8-24-103. The sheriff's fees received by the trustee are held in the general fund of the county in a separate designated account. The trustee reports these funds at each regular meeting of the county legislative body, a report which is retained as a permanent record. T.C.A. § 8-22-113. Trustees also handle the accounting for drug fund monies, for which special accounts must be maintained. T.C.A. § 53-11-415.

## Disbursement Warrants-County Trustee

Reference Number: CTAS-825

In the county financial context, a warrant is an order by which the drawer (the person with authority to make the order) commands the county trustee to pay a particular sum of money to a payee (person or entity) from funds in the county treasury which are or may become available. Although the drawer may have a legal duty only to limit the issuance of warrants according to the amounts appropriated (budgeted) for the purpose of the warrant, the county trustee has a duty to review the warrant and determine whether or not actual monies are currently available to honor the warrant. The county trustee should make arrangements with the bank or other financial institution with accounts holding county monies to insure that overdrafts of county funds are not made. The county trustee must take action to insure that the payee of a warrant is promptly paid when demand is made unless the trustee has clear evidence that disbursements have exhausted money on hand. Failure to honor warrants when monies are in hand is Class C misdemeanor and grounds for removal from office. T.C.A. § 8-11-105. If money is not on hand when a warrant is presented, the warrant must be delivered to the owner with a new number endorsed on the warrant so as to enable the county trustee afterwards to pay it in its numerical order relative to other warrants that have not been honored. A validly issued warrant remains a claim upon the county treasury until honored. The county trustee must keep record of all warrants presented to the trustee for payment, and show the number, payee or holder, date of warrant, date of presentation and amount. The county trustee must keep good records of all payments and balances. T.C.A. § 8-11-104.

The county officers with the power to write warrants vary from county to county according to the applicable laws. The county mayor in most counties has the power to issue a warrant on the county general fund, debt service fund and other special funds. T.C.A. § 5-6-108. However, the power to issue warrants may also extend to the chief administrative officer of the county highway department regarding highway funds or the director of schools jointly with the chairperson of the county board of education with respect to school funds. T.C.A. § 49-2-205. In those counties operating under the County Fiscal Procedure Law of 1957, disbursement warrant must be consigned by the director of accounts and budgets. T.C.A. § 5-13-105. The director of finance must sign disbursement warrants in counties operating under the 1981 Financial Management System. T.C.A. § 5-21-116. Private acts often provide warrant issuing authority to the chief administrative officer of county highway departments. The county trustee should consult with the county attorney to determine exactly which officials have the power to write a warrant on county funds in his or her particular county.

## Optional Checking Account

Reference Number: CTAS-826

A check differs from a warrant in that a check is a direct draft drawn upon a bank (holding county funds) and is payable upon demand whereas a warrant is an order to the county trustee to pay to the payee monies from the county treasury if and when money is available. As a result of legislation enacted in 1992, county trustees have authority to switch from the traditional warrant system to a checking system for disbursing county funds. T.C.A. § 5-8-210. The trustee may adopt the checking system by giving at least thirty days' notice to each official authorized to sign checks. Under this system the county trustee must certify that funds are available to pay checks before they are released, thereby preventing department heads from issuing disbursement warrants when cash is unavailable in the account. Anyone who signs or issues a check without the required certification is subject to removal from office and personal liability for any improperly disbursed funds. T.C.A. § 5-8-210(k).

## Statutory Commissions

Reference Number: CTAS-827

Trustees receive a commission, for the benefit of the county, for receiving and disbursing funds. However, trustees may not demand or receive any compensation not specified by law, T.C.A. § 8-21-101, and may not receive any authorized commission until the duty or service for which it is granted has been performed, unless specifically allowed by law. T.C.A. § 8-21-102. It is the duty of the courts to decide, upon application by the trustee, any question regarding proper compensation, thereby protecting a trustee acting pursuant to the decision. T.C.A. § 8-21-105. The compensation of the county trustee for receiving and paying over to the rightful authorities all moneys received is listed in the chart below:

1. State, County and Municipal Revenue: T.C.A. § 8-11-110(a).

Sums up to \$10,000	6%
Sums above \$10,000 and up to \$20,000	4%
Sums above \$20,000	2%

2. County Offices: T.C.A. § 8-11-110(e).

Money collected from county officers on fees	1%
Money turned over by clerks of the courts and other collecting office	1%

3. Schools:

Money on the school fund received from the state, except that portion that exceeds the amount of BEP funds provided in the 1991 - 1992 fiscal year. See T.C.A. §§ 8-11-110(e) and 49-3-358. 1%

From federal school lunch program funds handled by the trustee (however, this amount may be paid out of school funds or county general purpose funds if county legislative body so votes) T.C.A. § 8-11-110(f). 1/4%

4. Highways:

For handling county aid funds T.C.A. § 54-4-103(b)(1). 1%

5. Special District Funds:

A. Watershed Districts

For collection of assessments in watershed districts T.C.A. § 69-6-139.	1%
For collection of ad valorem taxes in watershed districts T.C.A. § 69-6-145.	1%

B. Drainage and Levee Districts

For collection of assessments in drainage and levee districts T.C.A. § 69-5-835.	2%
Certified statements, per 100 words T.C.A. § 69-5-835.	\$1
For receiving money from the sale of bonds and warrants T.C.A. § 69-5-931.	½%
For paying out money from the sale of bonds and warrants T.C.A. § 69-5-931.	½%

C. Road Improvement Districts

For collecting and paying out assessments in a road improvement district T.C.A. §§ 54-12-111 and 54-12-424.	2%
Certified statements, per 100 words, for road improvement district T.C.A. § 54-12-424.	\$1
For receiving money from the sale of bonds and warrants T.C.A. § 54-12-425.	½%
For paying out money from the sale of bonds and warrants T.C.A. § 54-12-425.	½%

6. Inquest Proceedings

Disposition of effects found on a dead body T.C.A. §§ 38-5-119 through 38-5-121. 3%

The trustee is entitled to collect a different percentage for collection of municipal taxes upon a negotiated basis pursuant to an approved intergovernmental agreement. T.C.A. § 8-11-110(h).

## Exemptions

Reference Number: CTAS-828

The trustee is not entitled to any commission on money turned over by the trustee's predecessor in office, money borrowed for county use, or money received from proceeds of bond sales. T.C.A. § 8-11-110(d). The trustee is not entitled to any compensation for handling funds paid by the state to the county or to a local education agency for the purpose of funding employees' social security contribution for teachers. T.C.A. § 8-11-110(g). The trustee is not entitled to any commission on state funds available to any LEA that exceed the amount of state funds provided for public education in each respective LEA in the 1991-1992 fiscal year. T.C.A. § 49-3-358. Finally, the trustee receives no commission when the county legislative body, by resolution, elects to have the state spend county aid money. After such a decision, the legislative body may later elect to receive the funds, in which case the trustee once again receives compensation for handling them. T.C.A. § 54-4-103(b)(1) and (2).

Pursuant to T.C.A. § 67-6-712(b), the trustee in Shelby County will not receive compensation for receiving and distributing local sales tax revenue if the county legislative body adopts this rule by a 2/3 vote.

## Investment of County Funds

Reference Number: CTAS-829

Investment of County Funds is covered under the Financial Management under General Law tab of the Accounting/Budget/Finance topic.

## Penalties for Failure to Perform Duties

Reference Number: CTAS-830

If the trustee refuses to pay any county warrant or legal demand, it is a Class C misdemeanor for which the trustee may be removed from office unless such disbursement would have exhausted the funds on hand. T.C.A. § 8-11-105. The trustee's sureties (on the trustee's bond) may be held liable if the county suffers losses as a result of the trustee's failure to pay money owing by the county or to collect money due to the county. T.C.A. § 8-11-106. This is also true if the trustee pays claims in the wrong priority. *Howard v. Horner*, 30 Tenn. 532 (1851).

If a trustee fails to charge or collect from those liable, and if by using reasonable diligence could have collected fees, commissions, or other compensation to which the county is entitled, or if the trustee fails to present the statement of receipts, then the trustee will be held individually liable to the county for the amount which should have been collected. This amount will be charged to the trustee and will be deducted from the trustee's salary or will be collected from the trustee as a personal debt. T.C.A. § 8-22-105.

A trustee who makes or conspires with anyone, in any manner, to make a false or incorrect exhibit of receipts, statement of expenses, or statement of fact required under the statutes relating to accounting for fees, commits a Class E felony and upon conviction may be fined and imprisoned. T.C.A. § 8-22-106.

If the trustee fails or refuses to furnish the county mayor with any vouchers or papers deemed necessary by the county mayor for perfecting any settlement with any person accountable for county revenue, refuses to receive county warrants in payment of county taxes, or refuses to settle or pay as required by law, the circuit court, upon motion, will impose a \$500 forfeiture upon the trustee. T.C.A. § 8-11-108. This forfeiture could be paid from the surety on the trustee's bond. According to this provision the trustee is required to accept a county warrant as payment for county taxes.

A trustee who, upon going out of office, fails to pay over the balance of revenue to the new trustee shall be liable, as are the sureties on the trustee's bond, on motion of the district attorney before the circuit court. T.C.A. § 8-11-109

## Relationship to Other County Officials-County Trustee

Reference Number: CTAS-73

The trustee's office has significant interaction with almost every other county office and official. The trustee's involvement as county treasurer, issuing checks and county warrants, results in day-to-day

contact with other offices. Also, as receiving agent for fees generated by other offices, the trustee is necessarily involved to some extent in the operation of these other county offices. Additionally, the trustee interacts with other officials involved with the investment of idle county funds.

The trustee must interact with the county mayor and/or a finance/budget director as well as the county legislative body regarding the trustee's budget and budget amendments. The exact procedures vary from county to county depending upon whether the county operates under a charter or optional general law regarding budgeting, or has a private act dealing with this subject. However, all trustees must submit budget requests in a timely manner in the first half of each calendar year for inclusion into the county's annual budget. Most counties have budget committees that may recommend appropriations for the trustee's budget that differ from those submitted by the trustee. The county legislative body determines the amount of the trustee's budget, subject to certain restrictions, such as following the requirements of any court order regarding a salary suit for deputies or assistants. In many counties, depending upon the applicable law, the county mayor has the authority to approve line item amendments to the trustee's budget within major categories not affecting personnel, whereas major category amendments require the approval of the county legislative body. T.C.A. § 5-9-407.

The trustee also interacts with the county mayor in the selection each year of the delinquent tax attorney. The selection of the delinquent tax attorney by the trustee is subject to the approval of the county mayor. T.C.A. § 67-5-2404. The trustee interacts with the delinquent tax attorney preparing the delinquent tax lists and giving proper notice during the collection process. The trustee works with the clerk and master as well as the delinquent tax attorney regarding funds collected in delinquent tax suits.

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