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# Financial Structure of County Government

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Dear Reader:

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

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

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# Financial Structure of County Government

Reference Number: CTAS-694

Financial structure on the county level generally is organized around each local official and the revenues and expenses of each of these offices, which operate separately within the framework of the county financial structure as a whole. The trustee acts as the county banker and handles receipts and disbursements, the latter of which must be authorized by the county legislative body according to statutes enacted by the General Assembly and decisions rendered by the state courts. No county funds may be expended unless authorized ("appropriated") by the county legislative body. T.C.A. § 5-9-401. This appropriation procedure is a phase of the annual budgeting process that begins in January and usually ends in July with the approval of the budget.

County financial functions involve current operations as well as capital project financing and debt retirement. Day- to-day expenses relating to personnel, supplies, materials, utilities, contracted services, upkeep of facilities, and similar costs of providing county services are referred to as current operating expenses. To pay for these expenses the county collects fees authorized by statute, levies and collects taxes, and receives revenues from the state and federal governments. Like a business, the county has income (referred to as revenues) and expenses. Also like a business, the county's financial management involves budgeting, accounting, purchasing, payroll, cash flow, and related areas. Unlike a business, a county has very limited implied powers. It must operate strictly by the express provisions of the law in carrying out these functions. There are three types of state laws applicable to the county financial function: general laws, general laws with local option application, and private acts for a specific county. Also, the general law provides for county charters and metropolitan government charters to structure financial management in the counties that have adopted these charters.

The management of county finances under the general law allows practically every department to make purchases, make disbursements, receive funds without the trustee's involvement and maintain separate accounting records. With this type of system, it is difficult to manage the cash flow for investing temporarily idle cash funds and to properly communicate the county's financial condition on a monthly and uniform basis. In an attempt to address these and other problems, the General Assembly has passed three sets of local option acts governing one or more aspects of county financial management which may be adopted by referendum or two-thirds county commission approval (the 1993 law may be adopted only by the county commission).

1. Local Option Budgeting Law of 1993,
2. 1981 Financial Management System, and
3. 1957 Fiscal Acts,

These acts provide a means for counties to consolidate functions, establish uniform financial procedures and incorporate efficient business practices into the management of county finances.

For a chart showing which budget law each county has adopted, click here: [County Budget Laws](#).

## Financial Management under the General Law

Reference Number: CTAS-695

The day-to-day expenses relating to personnel, supplies, materials, utilities, contracted services, upkeep of facilities and other such costs are referred to as current operating expenses. To finance these functions the county levies and collects taxes and receives revenues from the state and federal governments. The county's financial management of these costs and revenues involves budgeting, accounting, purchasing, payroll, cash flow and related areas. Unless a county has elected to operate under a local option law or has adopted a private act, the county must manage its finances in accordance with the general law. General laws provide guidance in the areas of budgeting, accounting, purchasing, and investment of temporarily idle county cash funds.

The laws regarding purchasing for county governments are not uniform. There are state laws of general application, as well as local option laws that may apply. Also, private acts govern purchasing in some counties. County purchasing laws and procedures are covered under the Purchasing topic.

## Budgeting under General Law

## Reference Number: CTAS-697

Historically, there has been little guidance for those counties operating under the general budgeting laws. Legislation passed in 2016, however, now provides some guidelines for those counties. Public Chapter 1080 amended T.C.A. § 5-9-402 to provide a budget adoption timeline and procedures for counties operating under the general law. Pursuant to T.C.A. § 5-9-402, general budgeting law counties must follow the timeline set forth in the statute or adopt their own timeline. The statutory timeline can be found below. Should a county legislative body choose to adopt its own budget timeline, it must also receive the approval of the county board of education for the portion of the timeline established for the LEA. The provisions in § 5-9-402 do not apply to Davidson, Hamilton, Knox or Shelby counties.

Another provision enacted by Public Chapter 1080 creates a deadline for enactment of the education budget by operation of law. Now, under T.C.A. § 5-9-404, if the county legislative body and the county school board fail to agree on a budget for the county department of education by August 31, then, by operation of law, the budget for the county department of education will be equal to the minimum budget required to comply with the local match and maintenance of effort provisions of the BEP. If this occurs for three consecutive years, the budget for the third year will include a three percent increase in the required local funding amount for schools unless the LEA failed to comply with the applicable budgetary timeline. The provisions in § 5-9-404 do not apply to Davidson, Hamilton, Knox or Shelby counties.

Budget development under General Law is also covered under Operating Budgets of the Accounting/Budget/Finance tab.

### **Statutory Timeline for County Budget Law 2016 – Public Chapter 1080**

**All Funds except Education** - In the absence of a locally adopted schedule and locally adopted procedures, the budgetary procedures for the county shall be as follows:

No later than **February 1** - Forms for all budget requests shall be delivered to all departments, commissions, institutions, boards, offices, and agencies.

No later than **March 1** - All departments, commissions, institutions, boards, offices, and agencies except the local board of education shall deliver the budget request to the county budget committee.

County budget committee shall vote upon the proposed budget and shall notify the department, commission, institution, board, office, or agency whether the county budget committee approves or rejects the proposed budget.

No later than **April 1** - If approved, the county budget committee or the committee's designee shall immediately forward the proposed budget to the county legislative body for consideration.

If rejected, the department, commission, institution, board, office, or agency shall submit a revised budget proposal to the county budget committee within ten (10) business days after receipt of notice that the budget proposal was rejected.

**Education** - In the absence of a locally adopted schedule and locally adopted procedures, the budgetary procedures for the county shall be as follows:

No later than **May 1** - Each **LEA** shall submit a proposed budget to the county budget committee; provided that, the LEA may amend the proposed budget after May 1.

County budget committee shall vote upon the proposed budget and shall notify the LEA whether the county budget committee approves or rejects the LEA's proposed budget.

No later than **June 1** - If approved, the county budget committee or the committee's designee shall immediately forward the proposed budget to the county legislative body for consideration.

If rejected, the LEA shall submit a revised budget proposal to the county budget committee within ten (10) business days after receipt of notice that the budget proposal was rejected.

If the county budget committee of the local governing body rejects the first and second budget proposals from any department, commission, institution, board, office, or agency, then the third and any subsequent proposals shall be delivered directly to the county legislative body which shall approve or reject the proposal within ten (10) business days of the body's receipt of the amended proposal.

If rejected, the department, commission, institution, board, office, or agency shall submit a revised budget proposal to the county legislative body within ten (10) business days after receipt of notice that the budget proposal was rejected.

***The budget must be approved on or before August 31, unless an extension is approved by the Comptroller's Office of State and Local Finance***

*And remember, if the county legislative body and the county school board fail to agree on a budget for the county department of education by August 31, then, by operation of law, the budget for the county department of education shall be equal to the minimum budget required to comply with the local match and maintenance of effort provisions of the BEP. If this occurs for three consecutive years, the budget for the third year shall include a three percent increase in the required local funding amount for schools unless the LEA failed to comply with the applicable budgetary timeline. However, this increase shall not be required if during any of those three years the school board failed to submit its budget proposals in accordance with the timeline above. This section does not apply to Hamilton, Knox, Davidson and Shelby counties.*

## Charitable Contributions

Reference Number: CTAS-696

The county legislative body may appropriate general funds for the financial aid of any nonprofit charitable organization or any nonprofit civic organization having federal tax exempt status under Section 501(c)(4) of the Internal Revenue Code and chambers of commerce qualifying under Section 501(c)(6) of the Internal Revenue Code. A nonprofit organization requesting assistance must submit financial reports to the county clerk and these are available for public inspection. To satisfy this requirement, nonprofits may submit a copy of their annual audit or an annual report detailing all receipts and expenditures in a form prescribed by the comptroller. The county legislative body is mandated to provide guidelines for the expenditure of these funds. Notice must be given in a newspaper of general circulation in the county of the intent to make an appropriation to a nonprofit but not charitable organization before the appropriation is made. T.C.A. § 5-9-109.

Also, a county may receive charitable contributions for the general fund. If funds are given subject to certain conditions as to their use, the county legislative body must approve acceptance of the gift and it must be used for such purposes. If funds are restricted, the money is placed in the county general fund and appropriated according to normal budgetary process. If the gift is personal or real property that is subsequently sold by the county, the revenue from such sale must be deposited in the general fund. T.C.A. § 5-8-101.

## Accounting under General Law

Reference Number: CTAS-698

The state comptroller of the treasury, with the approval of the governor, is required to devise a modern and effective bookkeeping and accounting system to be used by all county officials and agencies handling the revenues of the state or its political subdivisions, and is to prescribe the minimum standards required under that system. T.C.A. § 5-8-501. Each county and agency of the county is required to meet these standards; if it fails to do so, the county is obligated to pay the actual cost of auditing above the standard fee prescribed in T.C.A. § 9-3-210 (the standard fee is \$0.36 per person in the county with an annual 3% increase beginning July 1, 2017). T.C.A. §§ 5-8-502, 5-8-503. Each department must file an annual financial report for the fiscal year ending June 30 with the county mayor and the county clerk, who provides copies to members of the county legislative body. T.C.A. § 5-8-505. The report must be filed before the first Monday in September upon a form provided by the comptroller. T.C.A. § 67-5-1902. There is no longer a publication requirement for these financial reports.

There are also some specific statutorily required accounting procedures for certain county offices and departments. Accounting procedures for the county mayor are found in T.C.A. § 5-6-108; for the county education department, see T.C.A. §§ 49-2-203 and 49-2-301; and for the county highway department, see T.C.A. § 54-7-113.

Under T.C.A. § 9-2-102, counties that are subject to the comptroller's audit requirements and that handle public funds must have their official accounting records closed and available for audit no later than two months after the close of the fiscal year.

## Investment of County Funds

Reference Number: CTAS-699

Each county is directed by general state law to invest all idle county funds to the maximum practical extent. T.C.A. § 5-8-301(a). Counties are authorized to invest in instruments designated by general law

as a safe temporary medium. These temporary investments must either be approved by the county legislative body, be in compliance with an investment policy adopted by the county legislative body, or be approved by an investment committee appointed by the county legislative body. T.C.A. §§ 5-8-301, 5-8-302.

In counties that have not adopted the County Financial Management System of 1981, the county legislative body may create an investment committee to determine the investment of idle county funds from the statutory list of approved investments. The number of members on this committee and the mode of selection is according to resolution of the county legislative body. T.C.A. § 5-8-302.

In counties that have adopted the optional County Financial Management System of 1981, the county legislative body may establish an investment committee composed of five members appointed by the county legislative body. The members may or may not be members of the county legislative body. If the county has adopted the 1981 law, the county legislative body may choose to have the financial management committee perform the functions of the investment committee. The investment committee under the 1981 law establishes and approves policies and procedures for cash management and investing idle cash funds in the investments authorized by law and the director of finance has the authority to make the investments within the guidelines set by law and the committee's policies. T.C.A. §§ 5-21-105(e), 5-21-107(a). The organization of the investment committee in counties with a county charter or metropolitan government charter may differ from that provided by the general law.

There are three categories of idle county funds that may be invested: funds derived from bond proceeds; funds from the sale of assets, settlements, or other infrequent occurrences; and other idle county funds. Under T.C.A. § 5-8-301, all three categories may be invested in any of the following manners:

1. Bonds, notes, or treasury bills of the U.S. as well as other obligations guaranteed by the U.S. or its agencies;
2. Deposits of funds into state and federally chartered banks and savings and loan associations, provided that these investments are properly secured;
3. Obligations of the United States or its agencies under a repurchase agreement for a shorter time than the maturity date of the security itself if the market value of the security itself is more than the amount of funds invested. Counties may invest in repurchase agreements only if the comptroller of the treasury or the comptroller's designee approves repurchase agreements as an authorized investment and if such investments are made in accordance with procedures established by the state funding board;
4. The state investment pool;
5. State bonds, if they have a rating of A or higher by any nationally recognized statistical rating organization as identified by the United States securities and exchange commission;
6. Nonconvertible debt securities of the following issuers provided such securities are rated in the highest category by at least two nationally recognized statistical rating organizations as identified by the United States securities and exchange commission:
  - The Federal Home Loan Bank;
  - The Federal National Mortgage Association;
  - The Federal Farm Credit Bank;
  - The federal home loan mortgage corporation; and
  - Any other obligations that are guaranteed as to principal and interest by the United States or any of its agencies.
7. The county's own bonds or notes issued in accordance with Title 9, Chapter 21.

Counties with population in excess of 150,000 may invest idle funds in prime banker's acceptances that are eligible for purchase by the federal reserve system and prime commercial paper that is rated at least A1 or equivalent by at least two nationally recognized statistical rating organizations as identified by the United States securities and exchange commission. T.C.A. § 5-8-301.

Additionally, counties with a population of 20,000 to 150,000 may invest idle funds in prime commercial paper if it is rated in the highest category by at least two nationally recognized statistical rating organizations as identified by the United States securities and exchange commission and the paper has a remaining maturity of 90 days or less. T.C.A. § 5-8-301.

Counties may invest funds held by them with a bank or savings and loan association with a branch in Tennessee under certain conditions, including FDIC insurance of the full amount of principal and interest or collateralization of amounts not so insured. T.C.A. § 9-1-118.

There are other restrictions on the investment of specified county funds, as well as requirements for protection of county funds through proper collateralization of the investment. T.C.A. § 5-8-301. The advice of the state director of local finance, CTAS county government consultant, or county attorney will be helpful in determining available investment options, the correct procedures for making such investments, and the proper collateral to protect county investments.

## Financial Management under General Laws with Local Option Application

Reference Number: CTAS-700

As the financial structure of counties has grown more complex and cash flow has increased, many counties have found the general laws to be inadequate. Further, the management of county finances under the general law is a fragmented system in which each department makes purchases without issuing purchase orders and maintains separate accounting records. Under this system it is difficult to manage the cash flow for investing funds and to properly determine the county's financial condition. To compensate for these deficiencies the General Assembly passed the Fiscal Control Acts in 1957, the County Financial Management System in 1981, and the Local Option Budgeting Law in 1993. Although these are general laws, they apply only to counties in which they have been approved by a two-thirds vote of the county legislative body (or by referendum in the case of the 1957 and 1981 acts). County Budget Laws Table.

The primary reasons for these acts were to (1) better use business management techniques, (2) consolidate and establish a uniform financial system, (3) improve utilization of county resources, (4) provide for the employment of a trained technician in finance, and (5) improve county financial information.

## Local Option Budgeting Law of 1993

Reference Number: CTAS-701

This act, codified at T.C.A. §§ 5-12-201 through 5-12-217, provides an optional budgeting procedure for all county departments that are funded from county appropriations. It may be adopted by a two-thirds vote of the county legislative body pursuant to T.C.A. § 5-12-201.

This act provides a system through which a county may develop a consolidated budget for all county appropriations, adopt a tax rate and appropriation resolution to fund that budget, and specifies a deadline by which these actions must be taken. In brief outline, this procedure begins no later than February 1 of each year when the county mayor distributes to each department budget forms upon which to submit a proposed budget. T.C.A. § 5-12-206. Additionally, the county mayor furnishes estimated revenue information to the departments of education and highways, based upon the assessor's estimation of property valuation on or before March 15. The assessor is required to furnish his best estimate of the actual assessed value of all taxable property within the county for the ensuing year to the county mayor before March 15. T.C.A. § 5-12-207. All departments, offices and agencies are required to submit a proposed budget to the county mayor or, if a finance director, director of accounts and budgets, or similar person is provided by law, to that official by March 1. Along with their proposed budgets, the departments of education and highways must also submit a form tax rate resolution showing how much property tax they are requesting to fund their budgets. Departments, offices and agencies are authorized to alter or amend their submitted budgets any time prior to when the proposed budget is submitted to the county legislative body. However, the county mayor or budget committee decides whether to allow submission of changes to the proposed budgets after the consolidated budget is submitted to the county legislative body but prior to final approval. T.C.A. § 5-12-208. Procedures for resolving disputes regarding changes made to the proposed budgets submitted by the various departments, offices and agencies are addressed in T.C.A. § 5-12-209.

This act can work in conjunction with either of the other two local option budget laws or with private acts. The only portion of this budgeting plan that cannot be superseded by other general law or private act adopted by the county is found in T.C.A. § 5-12-210. That section requires that the county legislative body adopt a budget, tax rate, and appropriation resolution no later than July 31. The county legislative body can adopt the budget as proposed by the department heads or as consolidated by the county mayor or budget committee. If the budget is not adopted before the beginning of the fiscal year on July 1, then the county operates on a monthly allotment, based upon the preceding year's budget, during the month of July. If the budget still is not adopted by August 31, then the budget for the department of education will go into effect by operation of law in an amount equal to the minimum budget required to comply with the

local match and maintenance of effort provisions of the BEP. If this occurs for three consecutive years, then the education budget in the third year will include a mandatory increase equivalent to 3% of the required local funding unless the LEA failed to comply with the applicable budgetary timeline. T.C.A. § 5-12-210. Unlike the other local option budgeting laws, the August 31 deadline also applies to the rest of the budget. The operating budget for the remainder of county departments, excluding education, is the consolidated budget, including proposed amendments, that was submitted by the county mayor or the budget committee. This budget, together with the proposed tax rate and appropriation measures required to fund it, also becomes effective by operation of law if the county legislative body fails to adopt a budget, property tax resolution and appropriation resolution by August 31. Finally, the act requires a balanced budget and contains provisions for adjustments if unanticipated circumstances are likely to result in a budget surplus or deficit. T.C.A. §§ 5-12-215 through 5-12-217. Procedures for amending a budget in effect are described in T.C.A. §§ 5-12-212, 5-12-213.

## County Financial Management System of 1981

Reference Number: CTAS-702

This act is found in T.C.A. §§ 5-21-101 through 5-21-130 and provides for the consolidation of financial functions and the establishment of a financial management system for all county funds handled by the county trustee. (Fee and commission accounts of fee offices are not handled by the county trustee and, therefore, are not included under the act.) The system is similar to that found in the 1957 acts; however, under this plan the county operates under one act rather than three. This system must be approved by a two-thirds vote of the county legislative body or a majority of the voters in order to be effective in any county. T.C.A. § 5-21-126.

Under the County Financial Management System of 1981, a finance department is created to administer the finances of the county for all funds handled by the trustee, in conformity with generally accepted principles of governmental accounting and rules and regulations established by the state comptroller of the treasury, state commissioner of education, and state law. T.C.A. § 5-21-103. Unlike the 1957 laws, this program includes the management of school funds just like all other county funds, although the commissioner of education may remove the school department if records are not properly maintained in a timely manner. T.C.A. § 5-21-124.

This system requires a county financial management committee consisting of the county mayor, supervisor of highways, superintendent of education (director of schools), and four members elected by the county legislative body. These latter four need not be members of the county legislative body, but may be. T.C.A. § 5-21-104(b). The committee establishes policies, procedures, and regulations to implement a sound, efficient county financial system. T.C.A. § 5-21-104(e). Additionally the county legislative body, by resolution, may create special committees or may authorize the financial management committee to assume any or all of the following functions: (1) budgeting, (2) investment, and (3) purchasing. T.C.A. § 5-21-105.

The county financial management committee appoints a director of finance. Minimum requirements for this position include a bachelor of science degree with at least 18 quarter hours in accounting, although the committee may select a person with two years of acceptable experience in a related position. T.C.A. § 5-21-106. The compensation of the director is established by the committee subject to the approval of the county legislative body. T.C.A. § 5-21-106(c). The director oversees the operation of the department of finance and installs and maintains a purchasing, payroll, budgeting, accounting, and cash management system for the county. T.C.A. § 5-21-107. The director must have a blanket bond of at least \$100,000 for the faithful performance of the director's duties as well as the department's employees. T.C.A. § 5-21-109.

The department of finance, under the supervision of the director and subject to the policies and regulations of the county financial management committee, is responsible for the following areas:

1. Budgeting: T.C.A. §§ 5-21-110 through 5-21-114;
2. Accounting Fiscal Procedures: T.C.A. §§ 5-21-115 through 5-21-116;
3. Payroll Account: T.C.A. § 5-21-117;
4. Purchasing: T.C.A. §§ 5-21-118 through 5-21-120;
5. Conflict of Interest - Improper Gifts: T.C.A. § 5-21-121; and
6. Compensation of Committee Members: T.C.A. § 5-21-122.

This system is to be installed within 13 months, beginning on July 1 of the fiscal year after its adoption and being completed by August 1 of the second fiscal year. T.C.A. § 5-21-127.



For those counties operating under the County Financial Management System of 1981, T.C.A. § 5-21-110(a) authorizes the budget committee, in conjunction with the director, to adopt a budget timeline. In the absence of a locally adopted timeline, § 5-21-110(e) provides a statutory timeline. The budgetary timeline provided in T.C.A. § 5-21-110 establishes deadlines for submittal of proposed budgets as well as deadlines for responding to such proposals. Section 5-21-110 provides that the timeline may be waived or altered upon agreement by the county legislative body and the respective department, commission, institution, board, office or agency. While the timeline may be altered, such changes do not impact the deadlines set forth in T.C.A. § 5-21-111. Under § 5-21-111, if the budget has not been adopted by July 1, the operating budget for the prior year will continue by operation of law without any further action by the county legislative body required. During this time, the budget may be amended just like a final operating budget. This continuing budget may remain in effect for July and August. It can only be extended through September 30 with approval by the comptroller. Further, if the county legislative body and the school board fail to agree on an education budget by August 31, then the education budget will go into effect by operation of law. The budget will be equal to the minimum budget required to comply with the local match and maintenance of effort provisions in the BEP. If this occurs for three consecutive years, then the budget for the third year will include a mandatory increase that is equivalent to 3% of the required funding from local sources for schools. The 3% increase will not be required if the school board failed to comply with the budget timeline during any of those three years.

## Fiscal Control Acts of 1957

Reference Number: CTAS-703

The Fiscal Control Acts of 1957, found in T.C.A. §§ 5-12-101 through 5-12-114, 5-13-101 through 5-13-111, and 5-14-101 through 5-14-116, were intended to provide a means for counties to consolidate functions, establish uniform financial procedures, and incorporate business practices into the management of county finances. They are divided into three separate acts: budgeting, accounting, and purchasing. A county may enact any or all of the three acts; however, it is difficult to implement fewer than all three acts because each refers to certain provisions of the others. These acts, either individually or together, are adopted by a two-thirds (2/3) vote of the county legislative body or by a majority public vote in a referendum.

If these acts are adopted, all funds managed by the county mayor and the highway supervisor are automatically covered by them. School funds may be placed under the management of these acts only if the state commissioner of education approves the transfer. T.C.A. § 5-13-110.

County Budgeting Law of 1957. This act is found in T.C.A. §§ 5-12-101 through 5-12-114. If adopted by a county, it provides for a budget committee made up of five members who include the county mayor as well as four others appointed by the county mayor and confirmed by the county legislative body. The four appointed members may be members of the county legislative body but are not required to be. The county mayor serves as chairperson of this committee. T.C.A. § 5-12-104. The budget committee performs all duties prescribed by law for the budgeting process, including preparation and control. T.C.A. §§ 5-12-104, 5-12-106, and 5-12-107. Each year while the budget is under consideration, a synopsis of the proposed budget and property tax rate are to be published in a newspaper of general circulation. T.C.A. § 5-12-108. Then the director of accounts and budgets (appointed under T.C.A. § 5-13-103 of the County Fiscal Procedure Law, discussed below) prepares a monthly report showing the condition of the budget and submits this report to the county mayor and the county legislative body. T.C.A. § 5-12-111.

For those counties operating under the County Budgeting Law of 1957, T.C.A. § 5-12-105 authorizes the county legislative body to adopt a timeline and budgetary procedures for the county, with the caveat that the LEA must concur with its timeline. In the absence of a locally adopted timeline, § 5-12-105 sets forth a statutory timeline. The budgetary timeline provided in T.C.A. § 5-12-105 establishes deadlines for submittal of proposed budgets as well as deadlines for responding to such proposals. Section 5-12-105 provides that the timeline may be waived or altered upon agreement by the county legislative body and the respective department, commission, institution, board, office or agency. While the timeline may be altered, such changes do not impact the deadlines set forth in T.C.A. § 5-12-109. Under § 5-12-109, if the budget has not been adopted by July 1, the operating budget for the prior year will continue by operation of law without any further action by the county legislative body required. During this time, the budget may be amended just like a final operating budget. This continuing budget may remain in effect for July and August. It can only be extended through September 30 with approval by the comptroller.

Further, if the county legislative body and the school board fail to agree on an education budget by August 31, then the education budget will go into effect by operation of law. The budget will be equal to the minimum budget required to comply with the local match and maintenance of effort provisions in the BEP. If this occurs for three consecutive years, then the budget for the third year will include a mandatory

increase that is equivalent to 3% of the required funding from local sources for schools. The 3% increase will not be required if the school board failed to comply with the budget timeline during any of those three years.

County Fiscal Procedure Law of 1957. This act, found in T.C.A. §§ 5-13-101 through 5-13-111, pertains to accounting for county funds. If this act is adopted by a county, the county mayor, subject to approval by the county legislative body, appoints a director of accounts and budgets (DAB). T.C.A. § 5-13-103(a). The DAB must be qualified by training and experience in the field of accounting to perform the duties of the office. The salary of the DAB cannot be in excess of those salaries allowed county officials in accordance with T.C.A. §§ 8-24-101 and 8-24-102. T.C.A. § 5-13-103(d). The duties and responsibilities of the DAB are established by the county mayor (T.C.A. § 5-13-103(e)) and delineated in T.C.A. § 5-13-105. The amount of the corporate surety bond for the DAB is established by the county mayor in amount not less than \$100,000. T.C.A. § 5-13-103(c).

The DAB administers a centralized system of accounting and fiscal procedure for the county. T.C.A. § 5-13-104. The DAB also has the duty to verify all claims against the county and to prepare and sign disbursement warrants only after a careful pre-audit of all invoices and verification by the department head receiving the merchandise. T.C.A. §§ 5-13-105, 5-13-107. At the end of each month the DAB prepares a comprehensive report of all revenues and expenditures of the county and presents it to the county legislative body. T.C.A. § 5-13-105(f).

County Purchasing Law of 1957. This act is found in T.C.A. §§ 5-14-101 through 5-14-116. If adopted, it establishes procedures for county purchasing. The County Purchasing Law of 1957 is covered under the Purchasing topic.

## Financial Management Under Private Acts

Reference Number: CTAS-704

Private acts are acts of the General Assembly which apply to only one county or to a very few counties. However, the authority of the legislature to pass a law which is not general in its application is limited by several principles. The first is the requirement of local approval. Article XI, Section 9 of the Tennessee Constitution provides:

Any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

A legislative act may provide a deadline for local approval or disapproval, either by a two-thirds vote of the county legislative body or by referendum. Within 30 days after that approval or disapproval, the chairman of the county legislative body or the chairman of the county election commission, as appropriate, must certify the action to the secretary of state. If the act does not specify a deadline, failure to approve the act by December 1 of the year the act was passed renders the act of no effect. T.C.A. § 8-3-202.

The second limitation is that the General Assembly lacks power to suspend laws for the benefit of any particular individual. This prohibition includes private acts in contravention of the general law for the benefit of particular counties unless there is a rational basis for the exception. *Brentwood Liquors Corp. v. Fox*, 496 S.W.2d 454 (Tenn. 1973). It cannot be circumvented by the use of population classes; when a population class makes an exception for only one county, it will be treated as a private act, requiring local approval under Article XI, Sections 8 and 9 of the Tennessee Constitution. Op. Tenn. Att'y. Gen. 87-88 (May 14, 1987); Op. Tenn. Att'y. Gen. (February 4, 1982). Furthermore, the use of the words "or any subsequent federal census" in the language setting forth the population classification will not necessarily guarantee the constitutionality of the exception.

In other words, two basic questions arise in the consideration of county-related legislation. The first question is whether a county can be exempted from a requirement of general law without violating the Tennessee Constitution. The second is whether local approval should be required to put such an exception in place. The first question is often restated as whether there exists a rational basis for the exception, and the second, whether certain legislation, irrespective of its form, is local in effect and application, and therefore should be ratified according to the rules for private act ratification.

In considering the question of whether a rational basis exists for a "special classification" (that is, treating one county differently from other counties), courts have held that the reasonable basis for the distinction does not have to appear on the face of the legislation. If any possible reason can be conceived to justify

the classification, it will be upheld and deemed reasonable. Even if there is a rational basis for the statute, it must still be submitted for local ratification unless it is potentially applicable in a genuine sense throughout the state.

Because of the constitutional issues that arise when legislation is drafted with population classifications, it is a good policy to always include a severability clause, a Section contained in the act itself which states, that if any portion of the act is declared unconstitutional, the validity of the remainder of the act will be unaffected. However, all statutes, including private acts, are presumed to be valid unless declared unconstitutional by a court of law.

One basis for questioning the constitutionality of a private act is the method of ratification. Therefore, care must be taken to properly follow the mandates of the local approval requirement of a private act, or public act of local application, which will call for the act to be approved either by a referendum or by a two-thirds vote of the county legislative body; then the results of this action must be certified to the secretary of state.

As a practical matter, your county's representatives in the General Assembly are generally very responsive to the desires of the county commission for the introduction of private acts. Should your county desire to have a private act on an allowable subject introduced, many legislators require a formal requesting resolution passed by a two-thirds vote of your county legislative body before submitting the act to the General Assembly.

Private acts are not included in the Tennessee Code Annotated. Instead, each year the secretary of state publishes a volume of all private acts passed by the General Assembly during that year. Periodically an index is published which lists private acts by the county or city they affect. The County Technical Assistance Service provides a complete compilation of each county's private acts and periodically updates that compilation.

## Financial Management of Fee Offices

Reference Number: CTAS-705

The fee offices – clerks of court, county clerk, register of deeds, and trustee – may operate on the fee system (under which office expenses are paid out of fees received) or the salary system (under which office expenses are paid from the county general fund and fees are turned over monthly). Those under the salary system are included in the county budget and operate under the procedures described above. However, the financial operation of fee offices under the fee system is similar to financial procedures commonly used by a business. Each office establishes a checking account, receives payments, makes deposits, and issues checks and receipts. The accounting system is similar to that of a business using a double-entry, general ledger system. All fees and commissions must be accurately accounted for to comply with the duties of the office. Each officer must consult the statutes codified in the *Tennessee Code Annotated* for the prescribed duties of the office and follow the accounting standards as prescribed by the state comptroller of the treasury. T.C.A. §§ 8-11-104, 9-2-102 through 9-2-105. Most of the duties of each office are recorded in Volume 3 of the *Tennessee Code Annotated*, and it is recommended that each officeholder obtain a copy of this volume or at least a copy of the Section pertaining to the office. Excess fees are turned over quarterly. T.C.A. § 8-22-104(a)(2).

## Local Government Modernization Act of 2005

Reference Number: CTAS-706

The Local Government Modernization Act of 2005, T.C.A. §§ 9-3-401 through 9-3-407, directs the comptroller of the treasury to determine those local governments that are not in compliance with the accounting and financial reporting standards established by the Governmental Accounting Standards Board (GASB). Governments not in compliance must submit an implementation work plan to the comptroller. For counties, the county mayor will serve as the primary person with responsibility for the work plan's development and implementation.

Any local government failing to implement GASB standards is subject to penalties and restrictions, including withdrawal of eligibility for economic and community development grants and reduction of bank excise tax and Hall income tax revenues (not to exceed 5 percent of the total amount due in any fiscal year) until the local government is in compliance. If a school system fails to comply, then it will not be eligible for certain state funded education grants as determined by the comptroller and the commissioner of education. If a county highway department fails to comply, then the comptroller and the commissioner of revenue shall determine the amount reduction of monthly state gasoline tax proceeds going to the

county. The gasoline tax proceeds reduced will be held in reserve and allocated to the county upon the county becoming compliant as determined by the comptroller.

The comptroller will provide a list of professional firms to any local government not in compliance with GASB standards to assist in the work plan. The local government must provide funds for the cost of this assistance.

The comptroller will review and evaluate the financial management system in those county governments not in compliance with GASB standards. The comptroller will then make a recommendation to the county legislative body on how to improve the system to facilitate compliance. The county legislative body has 90 days from receiving the recommendation to take action on it.

Local governments are encouraged to form an audit committee, and the comptroller may require it for local governments not in compliance with GASB standards, or having recurring findings or material weakness in internal control for three or more consecutive years. T.C.A. § 9-3-405. The audit committee, if created, must establish a process to allow employees, taxpayers, and other citizens to report confidentially any suspected illegal, improper, wasteful or fraudulent activity, and the records of the reports and investigations are declared confidential. T.C.A. § 9-3-406.

## Bank Accounts

Reference Number: CTAS-707

## County Bank Accounts

Reference Number: CTAS-1839

The county legislative body is authorized to adopt a resolution to contract with a bank or banks making the highest and best bid or bids to pay interest on daily balances of the county's funds. The county legislative body may also appoint a finance committee composed of the county mayor, the county trustee and three of its members. T.C.A. § 5-8-201(a)(1).

Prior to contracting with any bank, the trustee is required to take bids from banks and then file an analysis of the bids with the county clerk who shall provide a copy of the trustee's report to each member of the county legislative body on or before its next meeting. The trustee's report shall recommend the bank making the highest and best bid or bids to pay interest on daily balances of the county's funds. T.C.A. § 5-8-201(a)(2).

The finance committee is vested with the authority to formulate, make and sign a contract on behalf of the county with a bank upon the terms and conditions specified in the bid. The contract must be approved by the county mayor, and attested by the county clerk, with the county seal attached. Such contract is binding on the county. T.C.A. § 5-8-202.

If the county finance committee does not contract with a bank or other financial institution, the county trustee may contract with a bank or banks or other financial institutions for deposit, safekeeping, and earning of interest on daily balances of the county's funds, according to the same terms as are required by T.C.A. § 5-8-202 for the county finance committee. Additionally, the county trustee is authorized to enter into such agreements with banks and other financial institutions as necessary for the maintenance of collateral to secure the daily balances of the county's funds on deposit with banks or other financial institutions. T.C.A. § 5-8-201(c).

At least once every four years and not less than once every term of office, the county trustee is required to evaluate whether the county's contract with the bank should be rebid. The trustee is required to obtain proposals from at least two banks or other financial institutions and then prepare a written evaluation of the proposals. The evaluation must be preserved for a period of not less than three years. T.C.A. § 5-8-201(d).

Collateralization of County Funds. Pursuant to T.C.A. § 5-8-201(b), the county shall require any financial institution that becomes a depository of the county's funds to secure the funds as provided in a collateral pool created under Title 9, Chapter 4, Part 5, or in the same manner and under the same conditions as state deposits under Title 9, Chapter 4, Parts 1 and 4. See Op. Tenn. Atty. Gen. 09-146 (August 3, 2009).

## County Officials Bank Accounts

## Reference Number: CTAS-1844

Every county official handling public funds is required to maintain an official bank account in a bank or banks within this state. Within three days after the receipt of any public funds, the official must deposit the funds in the official's official bank account. T.C.A. § 5-8-207(a)(1). A violation of T.C.A. § 5-8-207 is a Class C misdemeanor.

The requirement to maintain an official bank account does not apply to the chief administrative officer (CAO) of the county highway department because T.C.A. § 54-7-113(a) provides that all "funds received by any person for the county for road or highway purposes shall be promptly deposited with the county trustee and shall be expended only upon a disbursement warrant drawn on the trustee in accordance with law. Op. Tenn. Atty. Gen. 85-088 (March 22, 1985).

All disbursements of public funds shall be made by consecutively prenumbered warrants or consecutively prenumbered checks drawn on the county official's official bank account or bank accounts. T.C.A. § 5-8-207(b).

The requirement to maintain an official bank account shall not prohibit a county official handling public funds from maintaining a petty cash fund in an account sufficient for the transaction of the official business of the county official's office. T.C.A. § 5-8-207(a)(3).

Collateralization of Funds. Each county official maintaining an official bank account is authorized to enter into such agreements with banks and other financial institutions as necessary for the maintenance of collateral to secure the funds on deposit. All funds deposited with a bank or other financial institution shall be secured by collateral in the same manner and under the same conditions as state deposits under Title 9, Chapter 4, Parts 1 and 4, or as provided in a collateral pool created under Title 9, Chapter 4, Part 5. T.C.A. § 5-8-207(a)(1) and (2).

Application to Schools. The provisions of T.C.A. § 5-8-207 do not apply to county school officials because of the more specific provisions of T.C.A. §§ 49-2-103 and 49-2-110. The latter statutes are more specific and therefore control. See *Watts v. Putnam County*, 525 S.W.2d 488, 492 (Tenn.1975). Op. Tenn. Atty. Gen. 85-088 (March 22, 1985).

## Bank Account for Property Tax Collections

### Reference Number: CTAS-1845

Pursuant to T.C.A. § 67-5-1801(c), the county trustee may designate a bank and/or the branches that are located within the county to act as a collection agent for the trustee and accept the deposit of county and municipal property taxes. The county trustee is authorized to establish an account with the bank for such purpose, which shall be restricted to the deposit of county and municipal property taxes.

## Sheriff's Confidential Bank Account

### Reference Number: CTAS-1848

The sheriff may maintain a confidential bank account in accordance with state regulations for use in undercover investigative drug enforcement operations. Pursuant to T.C.A. § 39-17-420(a)(1), cash transactions related to undercover investigative operations of county drug enforcement programs shall be administered in compliance with procedures established by the comptroller of the treasury. The comptroller's guidelines, *Procedures for Handling Cash Transactions Related to Undercover Investigative Operations of County and Municipal Drug Enforcement Programs*, have the authority of law. See also T.C.A. § 53-11-415.

## Disbursement Warrants

### Reference Number: CTAS-1841

The county officers with the power to write warrants vary from county to county according to the applicable laws.

## County Mayor - Disbursement Warrants

## Reference Number: CTAS-1846

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. The county mayor shall be the accounting officer and general agent of the county; and, as such, it shall be the county mayor's duty to-

Draw, without seal, all warrants upon the county treasury; T.C.A. § 5-6-108(5)

Enter in a book, to be known as the warrant book, in the order of issuance, the number, date, amount and name of the drawee of each warrant drawn upon the treasury; T.C.A. § 5-6-108(8).

Pursuant to this statute, the county mayor must track and document all county payments, audit all claims for money against the county, draw all warrants on the county treasury, require county officers to settle their accounts, keep a record of all receipts and disbursements, and report to the county legislative body on the county's financial condition. See Op. Tenn. Atty. Gen. 99-051 (March 4, 1999) (powers and duties of county mayor as county's fiscal agent).

Pursuant to T.C.A. § 5-6-110(1), it is the duty of the county mayor to draw the county mayor's warrant on the county trustee for the payment of any judgment recovered against, or debt due from, the county.

Finally, pursuant to T.C.A. § 5-9-307(a), no money shall be drawn out of the treasury of the county except upon the warrant of the county mayor. The foregoing provisions are general in nature and may be modified or superceded in counties operating under local option general laws, private acts, or charter forms of government. See, e.g., *Shelby County v. Blanton*, 595 S.W.2d 72 (Tenn. App. 1978) (the county mayor and director of finance are the proper persons to sign the warrants of Shelby County).

## Highway Department Disbursement Warrants

### Reference Number: CTAS-1849

Under the Tennessee County Uniform Highway Law the chief administrative officer (CAO) has oversight of the county highway department. Pursuant to T.C.A. § 54-7-113, which governs the receipt and disbursement of county highway funds as well as county highway purchases, the funds of the county highway department shall be expended only upon a disbursement warrant drawn on the trustee in accordance with law. See Op. Tenn. Atty. Gen. 01-084 (May 23, 2001) (funds for the county road system must be expended upon the warrant of the county trustee). Note that some private acts provide warrant issuing authority to the CAO of county highway departments.

## Schools Disbursement Warrants

### Reference Number: CTAS-1850

*Board of Education.* It is the duty of the local board of education to order warrants drawn on the county trustee. T.C.A. § 49-2-203(a)(4).

*Chair of the Local Board of Education.* It is the duty of the chair of the local board of education to countersign all warrants authorized by the board of education and issued by the director of schools for all expenditures of the school system. T.C.A. § 49-2-205(4). See Op. Tenn. Atty. Gen. 79-180 (April 19, 1979).

*Director of Schools.* It is the duty of the director of schools to issue, within ten days, all warrants authorized by the board for expenditures for public school funds. T.C.A. § 49-2-301(b)(1)(E).

*Mechanical Signing of Warrants.* Pursuant to T.C.A. § 49-2-113, a board of education, with the permission of its chair, is empowered to authorize, with the consent of the commissioner of education and the comptroller, the use of mechanical signing equipment approved by the commissioner and comptroller of the treasury, to affix the signature of the chair of the board of education and of the director of schools to the original of a public school warrant; provided, that a clear duplicate of the warrant is kept on file in the office of the director of schools, together with the proper supporting papers to justify the issuance of the warrant.

*County Trustee.* It is the duty of the county trustee to require the director of schools to attach a voucher to every school warrant amounting to \$500 or more drawn by the county board of education for any purpose other than the salaries of the supervisors and teachers, showing that the board has complied with the law requiring contracts to be let on competitive bids. Additionally, it is the duty of the county trustee to keep all public school funds separate and apart from all other funds coming into the trustee's hands. T.C.A. § 49-2-103. See also T.C.A. § 8-11-104.

*Student Activity Funds.* A school may, if authorized by the board of education, receive funds for student activities and for events held at or in connection with the school. Funds derived from such sources are the property of the school. The board of education must provide reasonable regulations, standards, procedures and an accounting manual covering the various phases of student body activity funds and other internal school funds accounting. T.C.A. § 49-2-110(a). The regulations must include, among other things, procedures for the proper handling of cash receipts, the making of deposits, the management of funds, the expenditures of funds and the accounting for funds. T.C.A. § 49-2-110(a)(2). It is the duty of the principal of each school to institute and follow the regulations, standards, procedures and the accounting manual adopted by the board of education. T.C.A. § 49-2-110(d). Additionally, the State Department of Education has prepared a uniform accounting policy manual for local school systems as required by T.C.A. § 49-2-110(e) which must be followed. See Op. Tenn. Atty. Gen. 92-54 (September 24, 1992).

With regard to school support organizations (e.g. booster clubs, parent teacher associations, parent teacher organizations) handling of money see T.C.A. § 49-2-110(f) and T.C.A. § 49-2-601 *et seq.* See also Op. Tenn. Atty. Gen. 08-174 (November 18, 2008) (School Support Organization Financial Accountability Act).

## Disbursement Warrants under Fiscal Control Acts of 1957

Reference Number: CTAS-1851

The Fiscal Control Acts of 1957 are divided into three separate acts: budgeting (T.C.A. § 5-12- 101 *et seq.*), accounting (T.C.A. § 5-13-101 *et seq.*), and purchasing (T.C.A. § 5-14-101 *et seq.*).

In those counties operating under the County Fiscal Control Acts of 1957 it is the duty of the director of accounts and budgets to prepare disbursement warrants on all county funds. T.C.A. § 5-13-105(b)(1). It is the duty of the director to sign all county disbursement warrants as evidence of the director's audit and approval of the expenditure. T.C.A. § 5-13-105(b)(2). See also T.C.A. § 5-12-110(f)(2). However, no disbursement warrant drawn on the county trustee becomes a county liability payable by the county trustee until the warrant has also been signed by the county mayor, county director of schools, or other official or officials whose signatures are required on such warrants. T.C.A. § 5-13-105(b)(2).

Pursuant to T.C.A. § 5-12-110(f)(1), expenditures from all funds of the county, except school funds, shall be made by disbursement warrants on the county trustee signed by the county mayor and the director of accounts and budgets, and no other official, department, institution or agency of the county may issue negotiable warrants or vouchers for expenditures.

Before any obligation against the county is paid or any disbursement warrant or voucher issued therefor, a detailed invoice or statement approved by the head of the office, department or agency for which the obligation was made must be filed with the director of accounts and budgets. The director must make a careful pre-audit of such invoice or statement, including a comparison with any encumbrance document previously posted or filed authorizing such obligation, and must approve for payment only such items as appear to be correct, properly authorized, and not exceeding the otherwise unencumbered balance of the allotments or appropriations against which they are chargeable. T.C.A. § 5-13-107(a) and (b). See also T.C.A. § 5-12-110(f)(2).

Disbursement warrants must be promptly prepared for all such approved items by the director and mailed or delivered to the payees thereof. A duplicate copy of all disbursement warrants, with all original invoices or other supporting documents, or both, attached to the duplicate copies, must be kept on file in the office of the director. T.C.A. § 5-13-107(c) and (d).

*Payroll Account.* The director and the county mayor are authorized to maintain a special county payroll account at a local bank at the county seat in which disbursement warrants for the total of each payroll may be deposited and against which individual net earning checks may be issued to each county employee. The county mayor may authorize the issuance of payroll checks on the signature of the director, and in such event the depository bank shall be so instructed. T.C.A. § 5-13-105(g)(2) and (3).

*Application to Schools.* The provisions of the 1957 laws do not apply to county school funds for any purpose, the county board of education, and the county director of schools unless approved by the commissioner of education. T.C.A. §§ 5-12-113; 5-13-110; 5-14-115. See Op. Tenn. Atty. Gen. 88-25 (February 2, 1988).

In counties where the 1957 laws have been approved for schools, the accounts and other obligations of the county department of education, other than payrolls, are paid by disbursement warrants drawn on the county trustee by the county board of education. Copies of all disbursement warrants issued by the board of education, showing the accounting classification chargeable, shall be furnished by the board of

education to the director of accounts and budgets daily as issued. As an alternative, disbursement warrants may be prepared in the office of the director of accounts and budgets for the county board of education. T.C.A. § 5-12-110(e).

## Disbursement Warrants under Financial Management System of 1981

Reference Number: CTAS-1852

In those counties operating under the County Financial Management System of 1981, the director of the finance department cosigns all disbursement warrants for all funds that are handled by the county trustee. Disbursement warrants are prepared by the director of finance and signed in accordance with T.C.A. § 5-21-116. T.C.A. § 5-21-115(b)(3). See Op. Tenn. Atty. Gen. 99-032 (February 18, 1999) (authority to sign disbursement warrants).

Pursuant to T.C.A. § 5-21-116(a), all disbursement warrants drawn on the county trustee for the obligations of all county departments, agencies, and officials, including the county mayor, the county highway department, and the county department of education, are signed as follows:

- (1) The disbursement warrants are prepared in the finance department, and provided to each department for signing.
- (2) Upon preparation of the warrant by the finance department, the department head signing the disbursement warrant keeps one copy for filing in the department.
- (3) The original and all other copies of the warrant are returned to the director for the director's signature as a cosigner and for filing and mailing from the finance department.
- (4) A duplicate copy of all disbursement warrants, with all original invoices and other supporting documents attached thereto, are kept on file in the office of the director.

T.C.A. § 5-21-116(b).

In lieu of each department agency or official signing disbursement warrants, the departments may authorize the director to use a signature plate in accordance with the general law and approval by the comptroller of the treasury. If a signature plate is used, it must be secured in a safe place when not in use and supervised by the person responsible for its safekeeping when in use. A record must be maintained indicating when the signature plate is used, numbers of the warrants signed, and the person using such plate. T.C.A. § 5-21-116(c).

*Payroll Account.* The financial management committee shall maintain a special county payroll account at a bank, in which disbursement warrants for the total of each payroll shall be deposited and against which individual net earning checks may be issued to each of the county employees. The committee may authorize the issuance of payroll checks on the signature of the director of finance and, in such event, the depository bank shall be so instructed. T.C.A. § 5-21-117.

*Application to Schools.* The provisions of the 1981 Act apply to county school funds if the Act has been adopted by the county. See Op. Tenn. Atty. Gen. 88-202 (December 2, 1988).

## Optional Checking System

Reference Number: CTAS-1843

The county trustee may adopt a checking system for the disbursing of county funds by the county trustee as prescribed by T.C.A. § 5-8-210 by giving at least thirty days notice to each official authorized to sign checks. Once adopted, the trustee may, with the approval of the county finance committee created pursuant to T.C.A. § 5-8-201, or with the approval of the county legislative body, discontinue the practice. T.C.A. § 5-8-210(a).

County Master Account. The "county master account" means all accounts maintained by the county trustee for the purpose of handling banking transactions of the various county funds required by law to be managed by the county trustee, except for any check clearing account as defined in T.C.A. § 5-8-210(c). It is the duty of the county trustee to reconcile all county master accounts and maintain all records as required by law relating to such accounts, including maintaining paid checks. T.C.A. § 5-8-210(b).

Check Clearing Account. A "check clearing account" includes any account created for combined offices and departments or created for separate offices or departments, or both, that the county trustee establishes



as a separate checking account for county payrolls or as a method of certifying checks. If any check clearing account is established, the account must be reconciled by the county trustee, except that a separate clearing account established for a single office or department shall be reconciled by that office or department; provided, that if the county trustee deems it necessary or advisable, the county trustee may reconcile any check clearing account established for a single office or department, which shall include maintaining the paid checks. T.C.A. § 5-8-210(c).

**Bank Accounts.** In any county coming under T.C.A. § 5-8-210, a county master account and a check clearing account are established by the county trustee at a financial institution selected by the county finance committee created pursuant to T.C.A. § 5-8-201 or, if the county legislative body has not created a county finance committee or the county finance committee fails to specify one or more financial institutions, then the county trustee may select a financial institution authorized to handle the account. The financial institution shall be selected based on the institution offering the highest and best bid or bids to pay interest on daily balances of the county's funds, considering the lowest service charges, and considering other factors affecting safety and liquidity of county moneys. T.C.A. § 5-8-210(e).

Once a financial institution has been selected, the county trustee is required to establish one or more county master bank accounts or one or more check clearing accounts, or both, and have each official authorized by law to sign checks drawn on each account to complete forms as required by the financial institution. The forms must be completed and returned to the financial institution prior to any checks being issued on the account. Persons who have the authority to sign checks drawn on the account must promptly complete these forms and return them to the county trustee. The county trustee is required to maintain a copy of these forms and to provide a copy of each completed form to the county mayor and to each person who is authorized to sign checks drawn on the account. T.C.A. § 5-8-210(f).

The county trustee, in conjunction with the financial institution, may designate specifications for checks used to make withdrawals on any account established pursuant to T.C.A. § 5-8-210. In the event of a written objection to the specifications by the county mayor, a department head, the director of accounts and budgets, or the director of finance is filed with the trustee, the county trustee's specifications for checks shall be approved by the finance committee created pursuant to T.C.A. § 5-8-201, or by the county legislative body. T.C.A. § 5-8-210(g).

Financial institution charges incurred by a county for a county master account or for a check clearing account are an allowable office expense for the county trustee. Financial institution charges incurred for a check clearing account established for a single office or department are a charge against the funds of that office or department. T.C.A. § 5-8-210(d).

**Certification of Checks.** In any county that adopts the provisions of T.C.A. § 5-8-210, the issuance of checks shall be certified by one of the following methods adopted by the county trustee:

- (1) List Certification Method. This method requires each department, including the county mayor, a department head, director of accounts and budgets, and a director of finance, to submit a list by fund to the county trustee of the checks being issued showing the date of the check, check number, payee and amount. The county trustee verifies the department's fund balance and certifies that funds are available or will be available in the "check clearing account" for payment of those checks. The county trustee then transfers funds from the "county master account" to the "check clearing account." The county trustee may develop a procedure for emergency certification by the county trustee in circumstances where such would be reasonable, in which event the county trustee must be provided with a written document for certification by the end of the next business day;
- (2) Check Signing/Validation Method. This method requires each department, including the county mayor, department heads, director of accounts and budgets, and directors of finance, to submit a list to the county trustee of checks being issued showing the date of the check, check number, payee and amount. The county trustee verifies the department's fund balance. The county trustee signs or validates each check if sufficient funds are or will be available and makes any necessary transfer of funds from the master account to the check clearing account;
- (3) Combination Method. The method outlined in (1) may be followed for some offices and departments, and the method outlined in (2) followed for other offices and departments in the discretion of the county trustee; or
- (4) Any other certification method requested by the county trustee and approved by the comptroller of the treasury. T.C.A. § 5-8-210(h).

When the county trustee has certified that funds are available, the total amount certified shall be charged to the fund on which the check or checks are drawn on at least a daily basis so that a current balance is maintained. T.C.A. § 5-8-210(I).

Any reference in the *Tennessee Code Annotated* or regulations issued pursuant to the code that require or

authorize the issuance or acceptance of a county warrant shall also authorize the issuance or acceptance of a check drawn pursuant to T.C.A. § 5-8-210 and, to the extent that the provisions of T.C.A. § 5-8-210 conflict with other laws or regulations, the provisions of T.C.A. § 5-8-210 shall apply in any county in which this section has been adopted by the county trustee as provided in T.C.A. § 5-8-210(a). T.C.A. § 5-8-210(j).

Any person who signs or issues any check required to be certified by the county trustee, that has not been certified by the county trustee in accordance with T.C.A. § 5-8-210, is in violation of the law and is subject to removal from position or office, and is subject to personal liability for any improperly disbursed funds. T.C.A. § 5-8-210(k).

## Credit Cards

Reference Number: CTAS-708

County officials or entities may (but are not required to) receive payment by credit card or debit card for any public taxes, licenses, fines, fees or other monies collected. The entity or official collecting payment by credit or debit card must collect a processing fee in an amount equal to the fee charged by the third-party processor for processing the payment. The amount or percentage of the processing fee must be stated on the notice sent to the person owing the tax, fine, fee or other money. This processing fee may be waived, however, with approval of the county legislative body. T.C.A. § 9-1-108(c). If payment is not honored by the credit card company or the entity upon which a debit card payment is drawn, the county entity or official may collect a service charge in the same amount charged for the collection of a check drawn on an account with insufficient funds. T.C.A. § 9-1-108(c)(4).

Acceptance of payments by credit cards for clerks of court and county clerks is also authorized under T.C.A. § 8-21-107. Acceptance of credit card or debit card payments for taxes collected by trustees is also covered in T.C.A. § 67-1-704. Both of these statutes are substantially the same as T.C.A. § 9-1-108, discussed above.

In credit or debit card transactions, no more than the last five digits of the card number may be printed on the receipt. T.C.A. § 47-18-126.

## Disposition of Surplus County Property

Reference Number: CTAS-709

Generally, the county legislative body may by resolution direct the sale and conveyance of county real property and personal property other than school property. T.C.A. § 5-7-101. However, in those counties operating pursuant to the County Purchasing Law of 1957, property that is declared surplus, obsolete or unusable must be disposed of by the purchasing agent either by sale at auction or by competitive bid, excepting books and other material in general circulation at a county public library. T.C.A. 5-14-108(o). In counties operating under the County Financial Management System of 1981, the director of finance has responsibility for the public sale of all surplus materials, equipment, buildings and land. T.C.A. § 5-21-118. The county board of education has the authority to determine the sale or transfer of county school property, both real and personal. Surplus school personal property valued at \$250 or more is sold to the highest bidder unless sold or transferred to a local government. The county board of education may transfer surplus real property to the county or to a municipality within the county without sale or competitive bidding. T.C.A. §§ 49-6-2006, -2007. All counties may sell surplus property by internet auction whenever they are required by law or their charter to sell surplus property by public auction. T.C.A. § 5-1-128.

Notwithstanding any other laws to the contrary, T.C.A. § 12-2-420 (formerly T.C.A. § 12-3-1005) authorizes counties to establish a procedure by resolution of the governing body for the disposition of used or surplus personal property to other governmental entities, including but not limited to other counties, municipalities, metropolitan governments, state or federal government, any other state governments and their political subdivisions, and instrumentalities of the foregoing, without the necessity of public advertisement or competitive bidding, upon such terms as the governing body may authorize. T.C.A. § 12-2-420.

Under T.C.A. § 12-9-110, public agencies, including county legislative bodies and boards of education, have broad power to convey or transfer both real property and personal property to other public entities without sale or competitive bidding. The conveyance may be made by an agreement between the governing bodies of the public agencies authorizing the conveyance and determining that the terms and

conditions are appropriate. The public agency or agencies receiving the conveyance or transfer must use the property for a public purpose. This provision may be used without declaring property surplus, and it supersedes any contrary requirements in any other general law or private act. T.C.A. § 12-9-110.

For more detailed information regarding disposition of surplus property, see CTAS-940 under Purchasing.

## Auditing

Reference Number: CTAS-710

In Tennessee, the financial records of all local governments must be audited annually. T.C.A. § 9-3-211. The state comptroller of the treasury through the Division of Local Government Audit is given the authority to establish accounting standards (T.C.A. §§ 5-8-501, 9-3-212(b)) and auditing standards. T.C.A. § 9-3-212(b). The county legislative body contracts with a certified public accountant or the Division of Local Government Audit to make the annual audit. T.C.A. § 9-3-212. However, the county must receive approval of a private auditor from the Division of Local Government Audit and comply with other requirements of that office. The contract cost to use the state department of audit was set in 2016 at \$0.36 cents for each person in the county based on the most recent federal census with an annual 3% fee increase beginning July 1, 2017. T.C.A. § 9-3-210. Regardless of who performs the audit, a certified copy of it must be submitted to the state comptroller. T.C.A. § 9-3-213. In the event state-shared funds are misappropriated or misused, the state is authorized to withhold state funds for the amount misused. Also, the state may collect on the individual official's surety bond if the misused funds result from that official's unlawful or dishonest acts. T.C.A. §§ 9-3-301, 9-3-302. If a public servant, with intent to deceive, to knowingly misrepresents information to an auditor, this action constitutes a Class C misdemeanor. T.C.A. § 39-16-407.

Counties with one or more audit findings must submit a corrective action plan to the comptroller setting out the actions taken or to be taken to address the findings. The plan must include contact information for the person responsible for the corrective action, the corrective actions taken or to be taken and the anticipated completion date. If a county disagrees with an audit finding, the plan should include the reasons and justifications for the disagreement. T.C.A. § 9-3-407.

## Internal Controls

Reference Number: CTAS-2200

Effective June 30, 2016, local governments were required to establish and maintain internal controls to provide reasonable assurance that:

- obligations and costs are in compliance with applicable law;
- funds, property and other assets are safeguarded against waste and loss; and
- revenues and expenditures are properly recorded and accounted for to allow for accurate and reliable financial reports.

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