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Miscellaneous Tennessee Constitutional Provisions Affecting County Government

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

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

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

Sincerely,

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Article II, Section 24, of the Tennessee Constitution, in a portion relevant to counties, states that "no law of general application shall impose increased expenditure requirements on cities and counties unless the General Assembly shall provide that the state share in the cost." Article II, Section 28, of the Tennessee Constitution deals with property taxation and other tax matters. It also states that each respective taxing authority shall apply the same tax rate to all property within its jurisdiction. However, the Supreme Court has found that the General Assembly may authorize counties to levy a different property tax rate on property within and without municipalities for school bonds, county road purposes, and perhaps other services as well. *Albert v. Williamson County*, 798 S.W.2d 758 (Tenn. 1990); *Op. Tenn. Att'y Gen. 92-29* (April 7, 1992). Also, so-called "double taxation," levied by a county and city to fund similar services if statutorily authorized, is not unconstitutional. *Oliver v. King*, 612 S.W.2d 152 (Tenn. 1981); *Op. Tenn. Att'y Gen. U95-96* (Dec. 22, 1995).

Article II, Section 29, grants the General Assembly the authority to authorize counties and municipalities to impose taxes for county or municipal purposes, in such a manner as is prescribed by law. This Section also states that the credit of a county or municipality may not be given or lent to or in aid of any person, company, association or corporation, except upon an election wherein a three-fourths majority of the voters cast ballots in favor of such an extension of credit.

Article VI, Section 13, provides for the appointment of clerks and masters by chancellors for terms of six years, and for the popular election of clerks of inferior courts, by county or district, for terms of four years. The circuit court clerk is the prime example of a popularly elected inferior court clerk.

Article X, Section 1, requires that every person chosen or appointed to any office of trust or profit under the constitution or any statute must take an oath to support the constitution of this state and of the United States, as well as an oath of office before entering on the duties of the office.

Article X, Section 3, prohibits any official or candidate from accepting any type gift or reward which might be considered a bribe. The Section also provides that any person who directly or indirectly promises or bestows any such gift or reward in order to be elected is punishable as provided by law.

Article X, Section 4, provides the method by which new counties may be established. This Section also restricts the General Assembly in consolidating counties by stating that the seat of justice may not be removed without approval by two-thirds of the voters of the county being abolished (*James County v. Hamilton County*, 89 Tenn. 237, 14 S.W. 601 (1890)), but this limitation does not apply to Obion and Cocke counties. This Section is complicated and limits the discretion of the General Assembly in dealing with the boundaries or existence of certain specified counties (which are often referred to as "constitutional" counties).

Article XI, Section 8, provides that the General Assembly cannot suspend the general law for the benefit of any individual or individuals. This provision has been interpreted by the courts to mean that the General Assembly cannot pass private or local legislation applicable to a single county or counties that contravenes a general law of mandatory statewide application, unless a reasonable basis for the discrimination can be found. See, e.g., *Knox County Educ. Ass'n v. Knox County Bd. of Educ.*, 60 S.W.3d 65 (Tenn. Ct. App. 2001).

Article XI, Section 17, provides that no county office created by the legislature shall be filled in any manner other than by vote of the people or by appointment of the county legislative body.

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