PARTICIPANT MANUAL

Prepared by

THE UNIVERSITY OF TENNESSEE
COUNTY TECHNICAL ASSISTANCE SERVICE

Revised
June 2004

LEGAL ISSUES

FOR

COUNTY CLERKS

LEGAL ISSUES FOR COUNTY CLERKS

TABLE OF CONTENTS

I. DESCRIPTION OF THE OFFICE

CHAPTER CONTENTS

I. DESCRIPTION OF THE OFFICE

Legal Qualifications of the County Clerk

Article 7, Section 1 of the TENNESSEE CONSTITUTION provides:

> The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property.

The office of county clerk therefore has the status of a constitutional office. The TENNESSEE CONSTITUTION does not establish qualifications or duties for the office of county clerk. The qualifications and duties of the county clerk are defined by the General Assembly (Legislature). Having the status of a constitutional office essentially means that the General Assembly, while being able to define duties and qualifications so long as they are not inconsistent with the state or federal constitution, may not abolish the office or relieve the county clerk of the basic duties of the office.[1]

Residence. The county clerk must reside within the county of election during the entire tenure (term) of the office. Questions often arise concerning the residence of persons holding public office. The principles for determination of residence for purposes of the election code are (2-2-122):

* The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has a definite intention to return.

* A change of residence is generally made only by the act of removal joined with the intent to remain in another place. There can be only one residence.

* A person does not become a resident of a place solely by intending to make it the person's residence. There must be appropriate action consistent with the intention.

* A person does not lose residence if, with the definite intention of returning, the person leaves home and goes to another country, state, or place within this state for temporary purposes, even if of years duration.

* The place where a married person's spouse and family have their habitation is presumed to be the person's place of residence, but a married person who takes up or continues abode with the intention of remaining at a place other than where the person's family resides is a resident where the person abides.

* A person may be a resident of a place regardless of the nature of the person's habitation, whether house or apartment, mobile home or public institution, owned or rented.

* A person does not gain or lose residence solely by reason of the person's presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while living on a military reservation.

* No member of the armed forces of the United States, or such member's spouse or dependent, is a resident of this state solely by reason of being stationed in this state.

The following factors, among other relevant factors, may be considered in the determination of where a person is a resident (2-2-122):

* The person's possession, acquisition or surrender of inhabitable property.

* Location of the person's occupation.

* Place of licensing or registration of the person's personal property.

* Place of payment of taxes which are governed by residence.

* Purpose of the person's presence in a particular place.

* Place of licensing activities, such as driving.

These same principles, basically the physical presence with intention to make a place your residence, are also used by the courts in determining residence for other purposes.

General Qualifications. The General Assembly has not placed any special requirements on holding the office of county clerk, so only the general qualifications to hold office apply. All persons over the age of eighteen years[2] who are citizens of the United States and Tennessee, and who reside within and are qualified voters of the county they represent,[3] are qualified to hold the office of county clerk, except:

1. Those convicted of offering or giving a bribe, or larceny, or any other offense declared infamous by law, unless those persons have been restored to citizenship;

2. Those against whom there is an unpaid judgment for moneys received by them in an official capacity, due to the United States, Tennessee, or any county;

3. Those who are defaulters to the treasury at the time of election (such an election is void);

4. Soldiers, seamen, marines, airmen, in the regular United States Navy, Army, or Air Force; and

5. Members of Congress and persons holding any office of profit or trust under any foreign power, other state, or the United States (8-18-101).

A crime declared infamous by law essentially means a felony, or a crime which is partially punishable by disenfranchisement (loss of the right to vote). Also, there are several criminal statutes related to an official's misconduct in office, such as official misconduct (39-16-402), official oppression (39-16-403), misuse of official information (39-16-404), and conflict of interest (12-4-101), which, upon conviction, will result in disqualification to hold office for a period of ten (10) years from the date of conviction (39-16-406, 12-4-102). Any disqualified person who takes office is guilty of a misdemeanor (8-18-102).

Method of Election and Term of Office

The county clerk is elected by the county's qualified voters for a four year term beginning on September 1 of the year of election and continuing until a vacancy occurs or until a successor is elected and qualified (18-6-101; Article 7, Section 1, TENNESSEE CONSTITUTION). Elections are held at the regular August election immediately preceding the beginning of a full term (2-3-202). There is no limitation on the number of terms a county clerk may serve.

Under Tennessee Code Annotated, Section 2-5-101(f)(5), a candidate for the county clerk's office is prohibited from running for any other countywide office on the same ballot. This statute provides:

> "No candidate, whether independent or represented by a political party, may be permitted to submit and have accepted by any election commission, more than one (1) qualifying petition, or otherwise qualify and be nominated, or have such candidate's name anywhere appear on any ballot for any election or primary, wherein such candidate is attempting to be qualified for and nominated or elected to more than one (1) state office as described in either § 2-13-202(1) [Governor], (2) [deleted by 1995 amendment] or (3) [Member of the General Assembly] or in Article VI of the Tennessee Constitution [Offices pertaining to the judicial department of the state] or more than one (1) constitutional county office described in Article VII, § 1 of the Constitution of Tennessee [county legislative body, county executive, sheriff, trustee, register, county clerk, assessor of property] or any other county wide office, voted on by voters during any primary or general election."

When it is not prohibited by statute, a candidate for the county clerk's office may also run for an office other than a countywide office at the same election, even though the person may not be able to serve in both capacities if elected. Article 2, Section 26 of the TENNESSEE CONSTITUTION provides:

> No Judge of any Court of law or equity, Secretary of State, Attorney General, Register, Clerk of any court of Record, or person holding any office under the authority of the United States, shall have a seat in the General Assembly; nor shall any person in this State hold more than one lucrative office at the same time; provided, that no appointment in the Militia, or the office of Justice of the peace, shall be considered a lucrative office, or operative as a disqualification to a seat in either House of the General Assembly.

The Attorney General has issued several opinions over the years interpreting Article 2, Section 26. For example, the Attorney General has opined that Article 2, Section 26 does not prohibit a person from seeking the office of state senator and assessor at the same time, but that person could not hold both offices if elected to both of them.[4]

Oaths of Office

The county clerk must take oaths to support the constitutions of Tennessee and the United States and for the faithful performance of the duties of the office (Article 10, Section 1, Tennessee Constitution; 8-18-111). These oaths are:

> I,_____, do solemnly swear that I will support the Constitution of this State and of the United States of America. (Article 10, Section 1, TENNESSEE CONSTITUTION).
>
> I do solemnly swear that I will perform with fidelity the duties of the office to which I have been elected (or appointed, as the case may be) and which I am about to assume. (8-18-111).

These oaths may be administered by any officer legally authorized to administer an oath (8-18-107), which generally includes notaries, judges, and clerks. The county clerk is authorized to administer the oath of office to other officials (18-6-114), with the exception of the assessor of property (whose oath is to be given by the county executive under 67-1-507) and constables (whose oaths are to be given by a judge in the county under 8-10-108). The county clerk is to administer the oath to the chief administrative officer of the county highway department (54-7-108). A judge usually administers the oath to the county clerk. Notwithstanding any of these more particular laws to the contrary, a recent amendment to the law provides that the county clerk, the county mayor, the general sessions judge, or any judge of a court of record may administer the oath of office to any elected or appointed official (8-18-109(b)).

The oath must be in writing and signed by the person taking it. A certificate must accompany the oath, signed by the officer administering the oath, specifying the day and the year the oath was taken (8-18-107). The oath and the certificate of all county officers must be filed in the county clerk's office. The county clerk endorses the day and year of filing, and signs the endorsement (8-18-109; 8-18-110). Any county official who fails to take and file the required oaths is guilty of a misdemeanor (8-18-113).

Bond Requirements

Form of Bond. An official bond is an instrument which requires the sureties to pay up to a specified amount of money if the county clerk fails to perform certain acts or performs wrongful and injurious acts under the color of office. Bonds are to protect the state and county, not the county clerk, and constitute a written promise made by the county clerk to the state and county that the county clerk will (1) perform all of the duties of the office; (2) pay over to authorized persons all funds received in an official capacity; (3) keep all records required by law; (4) turn over to the successor all records, money, and property of the office; and (5) not do anything that is illegal, improper, or harmful while acting in an official capacity. Any person who is injured by the failure of the county clerk to keep this promise may collect from the county clerk's sureties. (8-19-111; 8-19-301).

The bond protects the state, the county, and the citizens in the event the county clerk fails to perform his or her duties properly. The bond does not protect the county clerk from

liability. If a payment is made under the bond, the county clerk's sureties may have a right to recover the amount paid from the county clerk. This action against the county clerk by the sureties is known as subrogation.

Sureties on an official bond may be individuals if the county legislative body has, by resolution, authorized personal sureties; otherwise, the surety must be a bonding company authorized to do business in the state of Tennessee (8-19-101). County officials are prohibited from being sureties for other county officials (8-19-108; 8-19-109).

The form of official bonds is prescribed by the state Comptroller and approved by the Attorney General. Blank copies of official bonds are available from the Comptroller of the Treasury, Division of Local Finance. Official bonds are required to be in the prescribed form. (8-19-101).

The official bond of every county public official must be conditioned in the following manner (8-19-111):

> "That if the _____ (principal) shall:
>
> 1. Faithfully perform the duties of the office of _____ of _____ County during such person's term of office or continuance therein; and
>
> 2. Pay over to the persons authorized by law to receive them, all moneys, properties, or things of value that may come into such principal's hands during such principal's term of office or continuance therein without fraud or delay, and shall faithfully and safely keep all records required in such principal's official capacity, and at the expiration of the term, or in case of resignation or removal from office, shall turn over to the successor all records and property which have come into such principal's hands, then this obligation shall be null and void; otherwise to remain in full force and effect."

Some counties also use "blanket bonds" for all of the county officeholders (8-19-101). The county clerk is ultimately responsible for securing his or her bond and should take steps to ensure that the bond is properly executed, approved, and filed.

Amount of Bond. The minimum amount of the official bond required for county clerks is $25,000 in counties with populations of under 15,000, and $50,000 in counties with populations of 15,000 or more, according to the 1970 federal census, or any subsequent federal census (18-2-201). The bond must be approved by the county legislative body. If a county clerk is acting as clerk of a court, the judge of that court should also approve the official bond, and may require a greater bond.

Filing of Bonds. Official bonds of the sheriff, county trustee, county clerk, assessor of property and register of deeds and any other official vested by law the authority to administer state shared funds, must be approved by the county legislative body, recorded in the office of the register of deeds and transmitted to the Comptroller of the Treasury for safekeeping. (8-19-102, 8-19-103, 54-4-103). Official bonds of clerks of court must be approved and certified by the court, entered into the minutes of the court, recorded in the

office of register of deeds and transmitted to the Comptroller for safekeeping. (8-2-205). The official bonds of other county officials, constables, and county employees required to have bonds shall be approved by the county legislative body, recorded in the office of the register of deeds and transmitted to the office of the county clerk for safekeeping. (8-19-102, 8-9-103, 8-10-106). Official bonds of officers which must be transmitted to the Comptroller must be so transmitted for filing with within forty days of election or twenty days after the term of office begins; all other bonds must be filed in the proper office within thirty days after the election or within ten days after the term of office begins. (8-19-115).

Cost of Bonds. The county pays the premiums and registration fees for the official bonds (8-19-106).

Penalty for Failure to File Bond. If any officer required by law to give bond fails to file in the proper office within the time prescribed, he or she must vacate the office (8-19-117). It is the officer's duty in whose office the bond is required to be filed to certify immediately the failure to give bond and the vacancy must be filled (8-19-117). In addition, an officer is guilty of a Class C misdemeanor if he or she is required to give bond and performs any official act before his or her bond is approved and filed (8-19-119).

If a complaint is filed alleging the failure of a county officer to enter into an official bond as required by law, the circuit court clerk or the clerk and master having jurisdiction issues a summons which is served, together with a copy of the complaint, upon the county officer (8-19-205). If the official fails or refuses to execute the required bond after receiving a copy of the complaint and a hearing before the court, the court will enter a judgment declaring the office vacant, and the vacancy will be filled according to law (8-19-206).

Vacancies

Causes of Vacancies. A county clerk's office, as well as other public offices, is vacated for the following reasons (8-48-101):

1. Death;
2. Resignation, when permitted by law;[5]
3. Removal of residency from the county of election;
4. A decision of a competent tribunal declaring the election or appointment void, or the office vacant;
5. The sentencing of the incumbent by a competent tribunal to the penitentiary, subject to restoration if the judgment is reversed, but not if pardoned; or
6. An adjudication of insanity.

Also, if a county clerk is ousted (8-47-116), or fails to give bond (8-19-117), a vacancy occurs.

Procedure to Fill a Vacancy in the Office of County Clerk. Vacancies in the office of county clerk are filled temporarily by the county legislative body. The person elected to fill the vacancy serves until the next countywide election occurring after the vacancy (5-1-104). Vacancies must be filled at a public meeting, with at least ten days notice to the members of the county legislative body (5-5-113), and at least one week notice in a newspaper of general circulation in the county (5-5-114). The notice must specify the office to be filled and the date, time, and place of the meeting. Nominations must be taken from the public at the meeting when the vacancy is filled (5-5-115). When a vacancy occurs, it is normally the duty of the county clerk to give notice to the county legislative body. However, the county legislative body does not have to wait until the clerk gives notice to act, and can act on information from other sources (8-48-108). A majority of all members of the county legislative body, not a majority of the quorum, is necessary to constitute a majority vote for the purpose of holding such an election (5-5-109(a)).

If a county legislative body member accepts the nomination as a candidate for the office of county clerk or any other county office when the office is being filled by the county legislative body (a vacancy), the county legislative body member is automatically disqualified to continue in the office of county legislative body member and a vacancy exists on the county legislative body (5-5-102). If the county legislative body member does not win the election to fill the vacancy, then that former county legislative body member can be elected to fill the vacancy created by the member's nomination to the county office, but the office of county legislative body member must be filled according to the statutory provision relating to vacancies on the body.

Temporary Successor for the County Clerk and Other County Officials. The law provides for a temporary successor to fill the vacancy in the offices of county clerk, trustee, register, and assessor of property in case of death, resignation or removal from office (18-6-115, 8-11-111, 8-13-105, 67-1-504). The duties are to be discharged temporarily either by the chief deputy or by a deputy designated as temporary successor by the official in writing. It is important to note that this law only applies to the duties of the office and not to the office itself. The temporary successor continues to act only until an appointment can be made by the county legislative body.

Election of a Successor by the People. Any person appointed by the county legislative body to fill a vacancy in an office which is elected by the people serves only until a successor is elected by the voters of the county at the next general election and is qualified (5-1-104).

Temporary Vacancies. A temporary vacancy exists when a county official enlists or is inducted into military service, *i.e.*, the United States Army or any of its branches, the Navy, Air Corps, Marine Corps, Coast Guard, Merchant Marine, or any other military activity (8-48-202). Upon the official's return from military service, he or she is entitled to resume the office for the remainder of the term, if it has not already expired (8-48-202). If the official does not return from military service prior to the expiration of the term, a successor is elected in the regular manner prescribed by law (8-48-203).

When a county clerk (or other county official) is inducted into the United States military service, the office duties are discharged temporarily during the county clerk’s absence by

another person legally qualified, and the office is filled temporarily by the county legislative body (8-48-204, 8-48-205). However, if a clerk and master is inducted into military service, the office is filled by appointment by the chancellor (8-48-205). Any person temporarily elected to an office must execute a bond and subscribe to an oath to discharge the duties (8-48-207). The temporary official receives the same salary and has the same power, authority and privileges as the regular official (8-48-208), except that the temporary official may not remove deputies and assistants appointed by the regular official (8-48-209). All temporary persons chosen to fill offices must be qualified under general law, except that if a school superintendent is inducted into the military service and no county resident has a certificate from the school board, the legislative body may elect a person who is not certified (8-48-206).

Records

The county clerk serves as the custodian of a wide variety of records which are required to be filed and maintained in the office of the county clerk. Some of these documents are required to be filed and maintained in the office of the county clerk so that members of the public may verify certain information of public concern. The maintenance of these records is one of the most important duties of the county clerk, as the county clerk's office serves as one of the information centers for the county. Some of the many records maintained in the office of the county clerk are discussed below.

In all national, state, and most local elections, the county election commission files one copy of its certificate of election returns in the office of the county clerk immediately after the election. The county clerk must provide a receipt acknowledging that the documents have been filed in the county clerk's office. (2-8-106).

After an election to abolish a city charter, if the majority of voters approve "no charter" the election commissioners are required to make triplicate certificates of the election, filing one with the original petition with the county clerk. When all certificates have been duly filed, the corporation becomes extinct. If the majority votes for the "charter", the commissioners make only one return which is filed with the county clerk with the original petition to abolish the charter. (6-52-205).

Copies of a proposed metropolitan charter are filed by the charter commission with the county clerk and other designated officials. The proposed charter must be open to public inspection by any interested person. (7-2-105). The election returns are sent by the election commission to the Secretary of State, who issues a proclamation of the adoption or rejection of the proposal. One copy is sent to the county clerk who attaches it to the copy of the proposed charter. If the charter was adopted, the clerk delivers the county clerk's copy of the charter and proclamation to the officer of the new government as the charter may direct. (7-2-106).

Before a local bar association can receive a copy of each year's acts of the General Assembly for its library, the county clerk must certify the name and address of the association to the Secretary of State. In the event the association ceases to exist or to

maintain a law library, all copies of the acts are to be turned over to the county clerk. (12-6-102).

Pedigree books are maintained by the county clerk for registering the pedigree of jacks or bulls used for public breeding. The registrant makes an oath that the pedigree is genuine. The county clerk receives a fee of $.50 for filing, recording, and making three certified copies of the pedigree. (44-7-301).

County indigent institution records of vouchers for expenditures and books of accounts are examined by the county executive at the end of each year. If the vouchers are approved, they are filed in the county clerk's office and preserved in separate files. (71-5-2208).

Counties are authorized to make appropriations to assist charities. Any charity desiring financial assistance must file an annual report, including a copy of its annual audit, its program which serves the residents of the county, and the proposed use of the county assistance, with the county clerk. (5-9-109).

General contractors are no longer required to record their licenses in the office of the county clerk, but the county clerk can obtain a roster of licensed contractors from the state board of licensing contractors by requesting the same in writing (62-6-110). Veterinarians also are no longer required to record their licenses in the county clerk's office (63-12-118, repealed). The requirement that real estate brokers file a bond with the county clerk has also been repealed (62-13-306, repealed). The former duties of the county clerk in filing contractors' bonds to discharge mechanics' and materialmen's liens were transferred to the register of deeds effective March 23, 1994 (66-11-142).

County clerks are required to index the records in their offices, and to cross-index records pertaining to more than one party (10-7-201). Records must be open to public inspection during business hours (10-7-503), and copies may be made of any public record (10-7-506).

The county legislative body is authorized to have the record books of the county clerk rebound in order to preserve them and keep them in proper condition (10-7-119). During the rebinding of these records, the liability of the county clerk on his or her official bond for the proper safekeeping of such books is suspended (10-7-120).

Public Records. All records of the office of the county clerk are open to the public for public inspection and copying unless specifically made confidential by statute (10-7-503). The clerk is authorized to charge a reasonable fee for the copying of these records for members of the public, which fee covers both the cost of producing and delivering the copies (*Waller v. Bryan*, 16 S.W.3d 770 (Tenn. Ct. App. 1999). If the county clerk refuses to allow members of the public access to any record which is a public record, the person denied access can file a petition in the chancery court to obtain access to these records (10-7-505). If the county clerk willfully refuses to disclose a public record when the clerk knows it to be a public record, the county can be assessed costs and attorneys fees (10-7-505).

There are specific statutes requiring confidentiality of state tax information. The general statute (67-1-1702) provides:

> Returns and tax information shall be confidential, and except as authorized by this part no officer or employee of the state of Tennessee and no other person (or officer or employee thereof) who has or had access to returns or tax information under any provision of law shall disclose any return or tax information obtained by such officer or employee in any manner in connection with such officer's or employee's service as such officer or employee, or obtained pursuant to the provisions of this part, or obtained otherwise.

Violation of this confidentiality statute is a criminal offense. Because the statute makes reference to "tax information" and "returns" which are defined with reference to taxes collected by or on behalf of the state (67-1-1701), there has been some confusion over the release of tax information which is purely local, such as hotel/motel tax. However, the Tennessee Attorney General has issued an opinion that information regarding local hotel/motel taxes is subject to the state confidentiality statute.[6] The opinion further states that officials are not permitted to disclose tax information to non-governmental third parties without written authorization from the affected taxpayers, unless the information can be disclosed in a form which cannot be used to identify particular taxpayers. In addition to the general statute, confidentiality provisions also are found within the statutes pertaining to business taxes. Business tax returns, statements, reports, and audits of the taxpayer's records are confidential and cannot be disclosed except to the taxpayer, the taxpayer's attorney, or an authorized governmental entity (67-4-722). However, the name and address of any present or former business owner as appearing on a business license or application therefor is expressly declared to be a public record and not confidential (67-4-722).

Uniform Motor Vehicle Records Disclosure Act. Since July 1, 1997, personal information obtained in connection with motor vehicle records has been declared to be confidential and cannot be disclosed except under specified circumstances. "Personal information" is defined as information that identifies a person, and includes an individual's photograph, computerized image, social security number, driver identification number, name, address (but not the five-digit zip code), telephone number, and medical or disability information, but it does not include information on vehicular accidents, driving or equipment-related violations, or driver license or registration status (55-25-103). Personal information may be disclosed only under the following circumstances:

(1) For safety, environmental and federal compliance purposes, as provided in 55-25-105.

(2) With the written consent of the person who is the subject to the information (55-25-106).

(3) For use by a government agency, including any court or law enforcement agency, in carrying out its functions, or any private person acting on behalf of a government agency in carrying out its functions (55-25-107).

(4) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls or advisories;

performance monitoring of motor vehicles, parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers (55-25-107).

(5) For use in the normal course of business by a legitimate business, but only to verify the accuracy of personal information submitted by an individual to the business, and if the information submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud, by pursuing legal remedies against or recovering on a debt or security interest against the individual (55-25-107).

(6) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to a court order (55-25-107).

(7) For use in research activities, and for use in producing statistical reports, so long as the information is not published, redisclosed or used to contact individuals (55-25-107).

(8) For use by any insurer or insurance support organization, or by a self-insured entity, its agents, employees or contractors, in connection with claims investigation activities, anti-fraud activities, rating or underwriting (55-25-107).

(9) For use in providing notice to owners of towed or impounded vehicles (55-25-107).

(10) For use by any private investigative agency or licensed security service for any permitted purpose (55-25-107).

(11) For use by any employer or its agent or insurer to obtain or verify information relating to the holder of a commercial driver license that is required under the Commercial Motor Vehicle Safety Act of 1986 (55-25-107).

(12) For bulk distribution for surveys, marketing or solicitation in accordance with procedures adopted by the department, after persons have been given an opportunity to prohibit such disclosure (55-25-107).

(13) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety (55-25-107).

Personal information may be disclosed to any requesting person, regardless of intended use, if the forms for issuance or renewal of licenses, registrations, titles or identification documents contain a conspicuous notice that the personal information may be disclosed to any person making a request for the information, and provide in a clear and conspicuous manner a method for the applicant to prohibit such disclosure (55-25-108). Thus, as long as the forms contain the proper disclosure information, it will be the applicant's responsibility to take action to prohibit disclosure of his or her personal information. Otherwise, the information may be disclosed.

The department of safety is authorized to require the requesting person to meet certain conditions relative to the identity of the person, and if relevant, the authorized use of the

information, or the consent of the subject. The conditions may include the filing of a written application containing such information and certification requirements as the department may prescribe. (55-25-109). Anyone who misrepresents his or her identity or makes a false statement in connection with the request for disclosure of personal information is guilty of a Class C misdemeanor, punishable by a fine up to $1,000 (55-25-112).

Persons who obtain personal information are limited in their ability to resell or redisclose that information as provided in 55-25-110, and are required to keep records of the information obtained and the permitted use for which it was obtained for a period of five years. These requirements do not apply, however, if the person who is the subject of the disclosure has not taken action to prohibit disclosure after having been given the opportunity to do so. (55-25-110).

The department and the county clerk are authorized to charge a reasonable fee not over one dollar ($1.00) for each person on whom information is requested (55-2-106).

Confidential Employee Records. Personal information about county employees is confidential under 10-7-504(f)(1). The information made confidential under this statute includes unpublished telephone numbers, bank account information, social security numbers, and driver license information unless driving is a part of the employee's job) for the employee and members of the employee's immediate family or household. The information made confidential under this statute is to be redacted whenever possible so that it does not limit the public's access to other information which is not confidential.

Records on Computer Media. Since 1993, the county clerk and other governmental officials have been authorized to maintain on a computer any information required to be kept as a record, instead of maintaining bound books or paper records, but only if certain standards are met. The standards for maintaining records on computer media are (10-7-121):

(1) The information must be available for public inspection, unless it is a confidential record according to law;

(2) Due care must be taken to maintain the information that is a public record during the time required for retention;

(3) All daily information generated and stored in the computer must be copied daily to computer storage media, and all copied storage media over one week old must be stored at another location; and

(4) The official must be able to provide a paper copy of the information when needed or when requested by a member of the public.

Disposition of Records. A large number of records are required to be maintained by the county clerk. Storage problems usually occur which require the county clerk to seek a method to dispose of old and obsolete records. Since many of the records maintained by the county clerk are historically significant, great care must be taken in the storage and/or disposition of old or less frequently utilized records.

In recognition of the problems that counties encounter with records disposition, the General Assembly has created a statutory framework for the storage or disposition of county records (10-7-401 *et seq.*). Each county is required to establish a County Public Records Commission to oversee the storage or disposal process. The county clerk serves as a member of the Commission (10-7-401). Original permanent records which have been reproduced or microfilmed cannot be legally destroyed without approval of the Commission (10-7-404). The schedules for retention and/or disposition for records of the office of the county clerk are set out in *Records Management for County Governments*, published by the University of Tennessee County Technical Assistance Service, as required by law (10-7-404).

Interaction with County and State Officials

The many and varied duties of the county clerk's office necessitate interaction with numerous county and state officials. The primary interaction which occurs between the county clerk and the county executive and the county legislative body result from the county clerk's duties as the clerk of the county legislative body (18-6-101; 18-6-104). In this role, the county clerk works closely with these officials in keeping the minutes and other records of actions taken by the county legislative body.

After the county legislative body has approved the bonds for elected officials or bonded employees (8-19-101), the county clerk certifies the approval of the bonds, has the bonds recorded in the office of the register of deeds and forwards the original bonds to the Comptroller (8-19-102). These bonds must be delivered to the Comptroller by messenger or registered mail immediately after they are executed, approved and recorded in the office of the register of deeds (8-19-102). The bonds of notaries public and the county surveyor are required to be filed in the office of the county clerk (8-16-104; 8-12-102).

Certification by the county clerk of other matters, such as approval of a wheel tax, mineral severance tax, or private act, may be necessary to the Department of Revenue, Secretary of State, or other officials as required by law.

The county clerk as the collector of certain state revenue works very closely with officials of the Miscellaneous Tax Division of the Department of Revenue. As a registrar of motor vehicles, the county clerk works very closely with officials of the Division of Motor Vehicles of the Department of Safety. In connection with the issuance of hunting and fishing licenses (70-2-106) and boat registration numbers (69-10-208), the county clerk acts as agent for the Tennessee Wildlife Resources Agency and interacts with the appropriate officials of that agency .

Because the county clerk is responsible for the issuance of marriage licenses, the county clerk interacts with the Department of Health, Office of Vital Records, to ensure that the proper information is gathered and transmitted to the Office of Vital Records. The county clerk's duties with respect to notaries public necessitate interaction with the appropriate officials in the office of the Secretary of State.

The county clerk, as the collector of various privilege taxes and the business tax, interacts with the assessor of property. The assessor is required to notify the county clerk of all persons engaged in business who would be liable for the payment of privilege taxes collected by the county clerk, and the county clerk and the county executive compare the assessor's list with the list of persons paying privilege taxes and report the result to the county legislative body (67-4-108). In addition, the county clerk records the oaths of the assessor and assessor's deputies, and forwards these oaths to the State Board of Equalization (67-5-302).

The county clerk may also interact with the assessor in those counties in which the county legislative body requires the county clerk to prepare the property tax rolls from the assessment records. When the tax roll is completed, the county clerk delivers it to the county trustee on or before the first Monday in October each year for collection of the property taxes. The county clerk also prepares a statement showing the aggregate amount of the value of real and personal property, and the tax thereon, contained in the county, and in each municipality within the county, broken down by civil districts and wards. A copy of this statement must be forwarded to the Commissioner of Revenue and to the mayor of each municipality by the first Monday in November of each year. (67-5-807).

Association Dues

The county legislative body is authorized to appropriate funds for dues to associations of particular county officeholders or associations made up of groups of officeholders. If the county legislative body appropriates funds for dues for the county executive, county highway superintendent, or members of the county legislative body, then the county legislative body is required to appropriate an amount sufficient to pay the annual dues in at least one association, up to $100, for the county clerk and other county officials upon their request. The county legislative body is authorized to appropriate more than $100, in its discretion. None of the money appropriated can be used for lobbying activities (as defined in T.C.A. § 3-6-102) for the purpose of influencing legislation relative to benefits or salaries of the association's members. (5-9-111).

---

1. *Robinson v. Briley, 213 Tenn. 418, 374 S.W.2d 382 (1963).*

2. *The candidate must have attained the legal age by the date the term is to begin. Comer v. Ashe, 514 S.W.2d 730 (Tenn.1974). See also, Attorney General Opinion 84-203 dated June 21, 1984, regarding having the birthday required to qualify for an office twelve days after an election.*

3. *Attorney General Opinion 86-03 dated January 14, 1986, relative definitions of the terms "residents" and "citizens".*

4. *Attorney General Opinion U90-61 dated March 29, 1990; see also Attorney General Opinion 90-11 dated February 6, 1990, which opines that the prohibition against holding two lucrative offices is only applicable to state offices.*

5. *See Attorney General Opinion U89-122 dated October 24, 1989, relative to acceptance of resignations.*

6. *Attorney General Opinion No. U94-059 dated March 24, 1994.*

II. POWERS AND DUTIES

CHAPTER CONTENTS

II. POWERS AND DUTIES

Serving as Clerk of the County Legislative Body

Clerk of the County Legislative Body. The county clerk is the clerk of the county legislative body (18-6-101; 18-6-104). The clerk keeps the official records of the body, sends required notices, and keeps a record of all appropriations and allowances made and all claims chargeable against the county.

In addition to keeping the minutes, the county clerk is required to:

1. Notify each member of a special or called session not less than five days in advance of the meeting (5-5-106);

2. Present each resolution approved by the county legislative body to the county executive for signature promptly after the meeting of the county legislative body and report the approval or nonapproval at the next meeting in the reading of the minutes;

3. Notify members of vacancies which must be filled by the county legislative body (5-5-114), and call each member's name to vote to fill a vacancy (5-5-116); and

4. Carry out any other duties required by local rules of procedure adopted by resolution of the county legislative body or required by statute.

In instances where no statute or rule of procedure adopted locally addresses a question of parliamentary procedure, many county legislative bodies follow *Robert's Rules of Order*, a set of procedural rules which may or may not be adopted by the body.

Within almost every county there are three major operating department heads: the county executive, the chief administrative officer of the highway department, and the director of schools (under the direction of the board of education). Income received and disbursements made by these departments must be authorized by the county legislative body, subject to general and private acts of the legislature and to court decisions. Accordingly, no county funds may be expended unless authorized (generally referred to as "appropriated") by the county legislative body. (5-9-401).

Appropriations may be made by the county for a number of specifically authorized purposes, or pursuant to the general authorization to appropriate funds for any statutorily authorized purpose (5-9-101 *et seq.*). The county clerk keeps a book of appropriations in which each member's vote on a resolution authorizing an appropriation is noted (5-9-301). Once an appropriation is made, warrants signed by the appropriate department head (more than one department head may be required) are drawn on the county treasury (trustee).

Regular Meetings. The county legislative body is required to hold at least four regular meetings each year, at a time, date, and place set by resolution of the county legislative body. All meetings must be public and no secret votes can be taken. (5-5-104).

Officers of the County Legislative Body. Annually, at its first session after September 1, the county legislative body elects a chairperson and a chairperson pro tempore from its membership. The chairperson pro tempore is elected to act as chairperson in the absence of the chairperson. (5-5-103). The county legislative body may elect the county executive to serve as its chairperson. If the county executive serves as chairperson, the county executive forfeits veto power over the actions of the county legislative body. (5-5-103; 5-6-107) . However, these provisions do not apply in Knox, Hamilton, and Shelby counties (5-5-103). County executives who do not serve as chairperson have veto power over actions of the county legislative body (5-6-107). A county executive serving as the chairperson of the county legislative body may cast a vote only in the event of a tie (5-5-109). If the chairperson is a regular member of the body, the chairperson cannot break a tie vote, but may cast a vote in the first instance as a regular member of the body (5-5-109).

If the chairperson is unable or fails to attend a meeting of the county legislative body, the chairperson pro tempore is required to discharge the chairperson's duties. If neither the chairperson nor the chairperson pro tempore is present, the county clerk calls the meeting to order for the election of a member to temporarily preside over the meeting. (5-5-103). This procedure would also apply to the first meeting of a county legislative body.

Special Meetings. The county executive has the power to convene a special session, or a majority of the members of the county commission may submit a petition in writing to the chairperson, who must then call a special session. The call for a special meeting must be made in a newspaper in the county, or by personal notices sent by the county clerk, at least five days before the special session is to convene.[1] The public should also be given adequate notice of the meeting, as required by the Sunshine Law (8-44-101 *et seq*.), discussed below. The call must specify the object and purpose of the session. When the special session is held, the county commission cannot conduct any other business except that set out in the "call" for the session (5-5-104 and 5-5-105). If a special meeting is held for the purpose of filling a vacancy, ten days' notice must be provided to commission members, and one weeks' public notice must be published in a newspaper of general circulation in the county (5-5-113 and 5-5-114).

Minutes. The minutes of the county commission are required to be promptly and fully recorded and open to public inspection in the clerk's office. The minutes must include a record of persons present, all motions, proposals and resolutions offered, the results of any vote taken, and a record of individual votes in the event of roll call. All votes of the county commission must be public; no secret votes or secret ballots can be taken (8-44-104). When the county legislative body makes elections and appointments of county officers the vote must be taken by the county clerk calling and recording the name of each member and his or her vote (5-5-116).

As a general rule the minutes of the county commission are written in third person and contain the following information:

1. Date, place, and time of the meeting and whether the meeting was a regular or special meeting.

2. Names of the members not in attendance.

3. Approval or correction of the minutes of the previous meeting.

4. Motions made, along with amendments, the name of the maker, and the vote on the motions. (Motions withdrawn do not have to be included.)

5. Resolutions adopted in full. Resolutions not presented in writing must be reduced to writing by the county clerk and included in the minutes.

6. Actual vote of each member on roll call votes and "approved by voice vote" or "disapproved by voice vote" for simple voice vote. A count of the votes should be included when voting is done by a show of hands.

7. Summaries or written reports appended to the minutes for committee reports.

8. Committee appointments, elections to fill vacancies or other appointments, and confirmations of appointments.

9. Any special provision required for compliance, such as a two-thirds vote.

10. A notation if the meeting is also serving as a public hearing on an issue.

11. Time of adjournment.

The approved minutes should be signed by the chairperson of the county legislative body and the county clerk. Rough minutes should be retained until the actual minutes are approved, and then may be destroyed. Minutes are kept as permanent records in a minute book which should be well bound and have numbered pages. A method of topical indexing to find minutes of previous meetings should be kept.

Voting. There are many methods of taking votes. Those most often used are: voice, roll call vote, raising the right hand, rising, or "aye" or "no". Many groups use ballot voting, but it must be remembered that secret votes are prohibited in meetings of the county legislative body. For voice voting, the following form is very common: "It has been moved and seconded that: (state the question). As many as are in favor of the motion say *aye*," and after the affirmative voice is expressed, "those who are opposed say *nay* or *no*." The same type of language is used when calling for a vote by show of hands or asking the membership to rise to express their votes.

When a voice vote is taken, the chairperson should announce the results in the following form: "The motion or resolution is carried - the motion or resolution is adopted." If, when the results are announced, any member doubts the vote, that member may call for a "division". The chairperson will announce that "a division is called for" and the vote will be verified by a roll call or a show of hands. Votes will be counted and the results announced.

Another type of voting is called voting by "yeas" and "nays". In this method, the chairperson states both sides of the question at once. The county clerk then calls the roll and each member answers yes or no. Each member's vote on the issue is recorded by the member's name and the total affirmative and negative vote is counted and the results are announced by the chairperson.

Quorum Requirements. A majority of all members of the county legislative body constitutes a quorum for transaction of business by the body in regular or special session (5-5-108). All business for action of the county commission must be presented to the chairperson, who announces the business to the body and takes the vote, which is recorded by the county clerk. The body cannot act on any business which is not presented to the chairperson, unless the body decides to do so by a majority of those present. (5-5-110).

A majority of all the members constituting the county commission, not simply a majority of the quorum, is required to take any action, including making appointments, filling vacancies, fixing salaries, appropriating money, and transacting any other business coming before the county commission in regular or special meetings. The majority vote requirement means a majority of the actual membership at the time and not a majority of the total authorized membership. Therefore, a vacancy would not be counted in determining the required majority.

While most business coming before the commission requires a simple majority vote, some measures require a “supermajority” vote of 2/3 of the members. This is true for the approval of private acts, as well as for imposing some tax measures. Where a supermajority is required, it will be stated in the enabling legislation (general law or private act).

Questions often arise as to the effect of an abstention or "pass" vote. If a member abstains from voting or "passes" for any reason, including a statutory conflict of interest under 12-4-101(c), the vote has the practical effect of a "nay" vote: it is not counted as one of the required "yea" votes necessary to meet the majority approval required for adoption, and yet it must be counted in determining the number necessary for a majority.[2] If the county commission is equally divided on any vote, then and only then may a county executive chairperson cast the deciding vote (5-5-109).

The Agenda. The order of business, or the framework for a specific meeting of the county legislative body, is contained in an agenda. Members of the county legislative body should have a copy of the proposed agenda prior to the meeting of the body. Having the agenda in advance allows members an opportunity prior to the meeting date to seek answers to questions on topics to be considered at the meeting. Receiving an advance copy of the agenda facilitates the smooth operation of meetings of the county legislative body and, since the members are better informed, fewer items may need to be deferred until the next meeting for further study, and meetings may also be shorter.

County clerks may be asked to prepare the agenda. A typical order of business would be:

1. Call to Order by Chairperson.
2. Roll Call by County Clerk.
3. Reading and Approval of the Minutes.
4. Resolutions for Special Recognition.
5. Elections, Appointments, and Confirmations.
6. Reports, County Officials, Standing, and Special Committees.
7. Unfinished Business.
8. New Business.

9. Announcements and Statements.
10. Adjournment.

Open Meetings or Sunshine Law. The Sunshine Law (8-44-101 *et seq*.) requires all county commission meetings to be open to the public. It also requires the governing body to give "adequate notice" to the public of these meetings, both regular and special sessions.

What constitutes adequate public notice is not specified in the law, although a week to ten days' notice is generally accepted as adequate. Whether notice is to be given by newspaper publication or by some other means is also not statutorily mandated. Generally, though, the more formal the meeting the more stringent the notice requirement. For example, a committee of three county commission members meeting to formulate a recommendation on a minor county decision may obtain "adequate public notice" by simply posting an announcement of the meeting in public places, while a meeting of the county budget committee might achieve "adequate public notice" only through newspaper publication. Common sense is the best rule when attempting to determine adequate public notice for a meeting.

There has been quite a lot of controversy concerning the definition of a "meeting" and other questions involving just what meetings must be open to the public. The open meetings law has a broad application. Under these provisions a "governing body" is defined as "the members of any public body which consists of two or more members with authority to make decisions or recommendations to a public body on policy or administration." "Meeting" is defined as "the convening of a governing body of a public body for which a quorum is required in order to make decisions or to deliberate toward decisions on any matter." A narrow exception has been judicially established regarding discussions with the county attorney concerning pending litigation to which the county is a party.[3]

Any action the county commission takes at a meeting which violates the open meetings provisions is void, except for commitments, otherwise legal, affecting the public debt of the county. Should the county commission not abide by these "open meetings" laws, the circuit courts and courts with equity jurisdiction have the power to issue injunctions, to impose penalties, and to enforce the law upon application of any citizen.

Beer Permits

Issuance of Beer Permits. Beer permits are issued by the county legislative body or by a beer board appointed by the county legislative body. As clerk of the county legislative body, the county clerk handles applications for and issuance of beer permits.

Permit Holder. Permits are issued to the owner of the business, whether a person, firm, corporation, joint-stock company, syndicate or association. A permit is valid only for the owner to whom it is issued, and it cannot be transferred to another owner. When the owner is a corporation, a change in ownership (necessitating a new permit) occurs when control of at least 50% of the stock of the corporation is transferred to a new owner. (57-5-103(a)). Similarly, permits are valid only for the business operating under the name

identified in the permit application (57-5-103(a)(2)(C)) If the name of the business changes, a new permit must be obtained.

Permitted Location. A permit is valid only for a single location, which includes all decks, patios, and other outdoor seating areas contiguous to the location. If an owner operates two or more restaurants or other businesses within the same building, the owner may, in the owner's discretion, operate some or all of the businesses under the same permit. Permits are not transferable from one location to another. (57-5-103(a)).

On-Premises or Off-Premises Consumption. A business may sell beer for both on-premises and off-premises consumption under the same permit (57-5-103(a)(5)). However, a permit is not valid for on-premises consumption unless the application so states (57-5-105(a)(5)). If a permit holder for either off-premises or on-premises consumption wishes to change the method of sale, the permit holder must apply for a new permit (57-5-105(c)(8)).

Counties which have adopted distance rules cannot draw a distinction between on-premises consumption of beer as opposed to off-premises consumption in the calculation of the minimum footage requirements.[4]

Temporary Beer Permits. Temporary beer permits, not to exceed 30 days, may be issued at the request of an applicant, upon the same conditions governing permanent permits. However, a temporary permit cannot be issued to authorize the sale, storage or manufacture of beer on publicly owned property, except in Class B counties (those with a metropolitan form of government) and in counties with populations over 300,000, by a bona fide charitable or nonprofit political organization subject to approval of the appropriate governmental authority charged with the management of the property and the approval of the county beer board. (57-5-105(g)).

The Application. The owner of the business desiring to sell, distribute, manufacture or store beer must file an application for a permit with the county beer board. The application must be filed by the owner of the business, and it must contain the following information (57-5-105):

1. Name of the applicant (the owner of the business);

2. Name of the business;

3. Location of the business by street address or other geographical description sufficient to determine conformity with applicable requirements;

4. If the applicant desires to sell beer at two (2) or more restaurants or other businesses within the same building under the same permit, a description of each of the businesses;

5. All persons, firms, corporations, joint-stock companies, syndicates or associations having at least a five percent (5%) ownership interest in the applicant (owner of the business);

6. Identity and address of a representative to receive annual tax notices and any other communication from the county beer board;

7. That no person, firm, joint-stock company, syndicate or association having at least a five percent (5%) interest in the applicant nor any person to be employed in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years;

8. Whether the applicant is applying for a permit which would allow the sale of beer for either on-premises consumption or for off-premises consumption, or both;

9. Any other information as may reasonably be required by the county beer board.

An applicant (and a permit holder) is required to amend or supplement the application promptly if a change in circumstances occurs which would affect the responses given in the application. Any applicant who makes a false statement in the application forfeits the permit and is ineligible for a permit for a period of ten (10) years. (57-5-105).

In order to receive a permit, an applicant also must establish that (57-5-105):

1. No beer will be sold except at places where the sale will not cause congestion of traffic or interference with schools, churches, or other places of public gathering, or otherwise interfere with public health, safety and morals (and if the county legislative body has adopted a distance rule by resolution, that the business is not in violation of the rule).

2. No sale will be made to minors.

3. That no person, firm, corporation, joint-stock company, syndicate or association having at least a five percent (5%) ownership interest in the business has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years.

4. No person employed by the applicant in the distribution or sale of beer has been convicted of any violation of the laws against

possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the last ten (10) years.

5. That no sales for on-premises consumption will be made unless the application so states.

All beer permit holders are required to provide documentation that they are duly registered with the Commissioner of Revenue for sales tax purposes. A new permit holder must provide this documentation within ten (10) days following approval of the permit. The required documentation is an actual copy of the registration certificate indicating that the purchase of beer is "for resale" by the beer permit holder. Permit holders are required to maintain a copy of a valid resale certificate on file with the county. (57-5-103). Persons engaging in the manufacture or wholesale distribution of beer are also required to register with the Commissioner of Revenue and receive a certificate of registration, which must be posted at the location prior to commencement of any business. (57-5-102).

Application Fee. Each applicant is required to pay an application fee of $250 to the county or city in which the business is located prior to consideration of an application to sell beer. No portion of this fee can be refunded to the applicant regardless of whether the application is approved or denied. (57-5-104(a)).

Public Notice of Applications and Hearings. Meetings at which the county beer board considers applications for permits must be public hearings at which members of the public and their attorneys are allowed to speak. (57-5-105(f)). Under the Open Meetings Act ("sunshine law"), adequate public notice of the meeting must be given. (8-44-103). Before issuing a permit, the beer board is authorized to publish a notice in a newspaper of general circulation in the county stating the name of the applicant, the address of the location, whether the application is for on-premises or off-premises consumption, and the date and time of the meeting at which the application will be considered. (57-5-105(f)). The minutes of the meeting must be recorded and open to public inspection, and all votes of the beer board must be by public vote, public ballot, or roll call. (8-44-104).

Duration of Beer Permits. A beer permit has no expiration date, and counties cannot require periodic permit renewals (57-5-103(a)(9)). A beer permit expires upon termination of the business, change in ownership, relocation of the business, or change in the name of the business. A permit holder is required to return the permit to the county that issued it within fifteen (15) days of the occurrence of one of these events, but the permit expires regardless of whether the permit is returned. (57-5-103(a)(6)). Unless one of these events occurs, a beer permit is valid until it is suspended or revoked by the beer board.

Annual Privilege Tax. A privilege tax is imposed on the business of selling, distributing, storing or manufacturing beer in Tennessee in the amount of $100 per year, due each January 1. The county clerk collects this tax for beer permits issued by the county, and the proceeds may be used for any public purpose.

The county is required to mail written notice of the tax to each permit holder at least thirty (30) days prior to January 1 each year. If the permit holder does not remit the tax by

January 31 (or within 30 days after notice is mailed, whichever is later), the county is required to notify the permit holder by certified mail that the tax payment is past due. If the permit holder does not pay the tax within ten (10) days after receiving the certified notice, the permit may be revoked by the beer board. (57-5-104(b)).

At the time a new permit is issued, the permit holder is required to pay this tax on a prorated basis for each month or portion of a month remaining until the next payment date. (57-5-104(b)(5)).

Marriage Licenses and Taxes

Introduction. The county clerk issues marriage licenses, maintains marriage records, submits information to the state office of vital records, and collects the marriage tax. The county clerk is authorized, but not required, to perform the marriage ceremony. County clerks who do perform marriage ceremonies must do so in a nondiscriminatory manner.

Prohibited Degrees of Relationship. Tennessee law defines prohibited degrees of relationship for marriages, generally considered "incestuous". Marriage cannot be contracted with a lineal ancestor (parents, grandparents, great-grandparents, etc.) or descendant (children, grandchildren, great-grandchildren, etc.), nor the lineal ancestor of either parent (grandparents, great-grandparents, etc.) or descendant of either parent (brothers, sisters, half-brothers, half-sisters, nieces and nephews, grandnieces and grandnephews, etc.), nor the child of a grandparent (aunts and uncles), nor the lineal descendants of spouse (spouse's children, grandchildren, stepchildren, step-grandchildren, etc.), nor the husband or wife of a parent (stepmother, stepfather) or lineal descendent (36-3-101). A marriage entered into in violation of this statute is void in Tennessee regardless of whether the marriage was entered into in Tennessee or in another state where the marriage would be valid.[5] In an opinion dated October 24, 1960, the Tennessee Attorney General determined that this statute does not prohibit marriage between first cousins.

Effect of Adoption. The signing of a final order of adoption establishes the relationship of parent and child between the adoptive parent and the adoptive child as if the adopted child had been born to the adoptive parent, and the adopted child is deemed the lawful child of the adoptive parent for all legal consequences and incidents of the biological relation of parents and children (36-1-121).

Bigamy. A second marriage cannot be contracted before the dissolution of the first. However, the first marriage is regarded as dissolved for this purpose if either party has been absent five (5) years, and is not known to the other to be living (36-3-102).[6] Bigamy is a Class A misdemeanor (39-15-301).

Homosexual Marriages. Tennessee statutes prohibit marriages between two persons of the same sex, and Tennessee does not recognize marriages performed in other jurisdictions between persons of the same sex (36-3-113). County clerks are statutorily prohibited from issuing a marriage license to two persons of the same sex (36-3-103(c)(1)); even if a license were issued, it would not be valid because two persons of the same sex cannot obtain a valid marriage license in Tennessee.[7]

Although courts in other states have recognized marriages between two persons of opposite sexes by virtue of one person having completed a successful sex reassignment, Tennessee law provides that the sex of a person will not be changed on an original Tennessee birth certificate as a result of sex change surgery (68-3-203(d)).[8] Therefore, it appears that Tennessee has adopted the "sex at birth" view. While the issue has not been decided by any court in Tennessee, the Attorney General is of the opinion that Tennessee courts could find that sex is determined at birth, and that sex change surgery does not alter a person's sex for the purpose of obtaining a valid marriage license.[9]

Common Law Marriages. Marriage is controlled by statute and not common law in Tennessee. Although Tennessee does not recognize common law marriages, Tennessee will recognize a valid common law marriage entered into in a jurisdiction which recognizes common law marriages.[10]

Requirement of a License. Before being joined in marriage, the parties must present to the minister or other official performing the ceremony a license issued by a county clerk in the State of Tennessee, authorizing the solemnization of a marriage between the parties. The license may be issued by the county clerk in any county in Tennessee, without regard to the residence of the parties or the county where the ceremony is to be performed. A marriage license is valid for thirty (30) days from the date of issuance by the county clerk. (36-3-103). A marriage license may be issued to persons otherwise complying with the requirements of the law who intend to have their marriage solemnized outside the state of Tennessee.[11] A valid marriage will not result from a ceremony performed in Tennessee without a marriage license.[12]

Issuance of the License. County clerks, and deputy county clerks, are authorized to issue a marriage license only upon the following conditions:

1. *Written Application.* Each of the parties must appear and make application in writing, stating the names, ages and addresses of the proposed male and female contracting parties, and the names and addresses of the parents, guardian or next of kin of both parties. The application must be sworn to by both applicants. (36-3-104).

2. *Social Security Number.* The application must contain the social security number of each of the applicants (36-3-104, 36-5-1301). This requirement should be interpreted with a narrow exception for persons who are legitimately unable to obtain a social security number and members of religious groups who are exempt from participation in the social security program; such an interpretation is necessary to avoid unconstitutional interference with the fundamental right to marry.[13]

3. *Appearance by Affidavit (incarcerated or disabled applicants).* If either individual is incarcerated at the time, the inmate is not required to appear but may instead submit a notarized statement containing the name, age, current address, and the name and address of the person's parents, guardian or next of kin. If either individual has a disability which prevents the person from appearing, that person may submit a notarized statement containing the name,

age, current address, and the name and address of the person's parents, guardian or next of kin (36-3-104).

4. *Parental Notification.* If either applicant is under 18 years of age, immediately upon filing the application, the county clerk is required to send notice of the application by registered mail to the parents, guardian or next of kin of any minor applicant. This provision does not apply if both parents, the guardian, or next of kin of the minor applicant join in the application either by personal appearance or by submitting a sworn affidavit. (36-3-104).

5. *Three-day Waiting Period.* If either applicant is under 18 years of age, the application must remain on file and open to the public in the office of the county clerk for three full days before the license can be issued. This provision does not apply if both parents, the guardian or next of kin of any minor applicant join in the application either by personal appearance or by submitting a sworn affidavit. (36-3-104). The three-day waiting period also may be waived by court order (36-3-107).

6. *Parental Consent.* In addition to the requirements set out above, if either applicant is under 18 years of age, the parents, next of kin, guardian, or person having custody of the applicant are required to join in the application, under oath, stating that the applicant is 16 years of age or over and that the applicant has their consent to marry (36-3-106). If the applicant is in the legal custody of any public or private agency or in the legal custody of any person other than a parent, guardian or next of kin, then such person or the duly authorized representative of such agency must join in the application with the parent, guardian or next of kin, stating under oath that the applicant is 16 years of age or older but less than 18 years of age and that the applicant has their consent to marry. This provision does not apply to applicants who are in the custody of the department of mental health and mental retardation. (36-3-106).

The law does not prescribe a particular form for the application, as long as the required information is obtained. The application may, but is not required to, contain a space to be completed by the county clerk as a permanent public record showing that the marriage was solemnized.

Minimum Age of Applicants. It is unlawful for any county clerk or deputy county clerk in this state to issue a marriage license when either of the contracting parties is under the age of sixteen (16) years, unless court consent is granted, and any marriage contracted in violation of this provision may be annulled upon proper proceedings (36-3-105). However, a marriage entered into in violation of this section is valid until set aside by a court. The court has discretion whether to set aside the marriage, and the court is not required to declare the marriage void. Further, cohabitation after attaining marriageable age may validate the marriage.[14]

When either applicant is under the age of eighteen (18), the parents, next of kin, guardian or party having custody of the applicant shall join in the application, under oath, stating that

the applicant is sixteen (16) years of age or over and that the applicant has their consent to marry. If the applicant is in the legal custody of any public or private agency or is in the legal custody of any person other than a parent, next of kin, or guardian, then such person or the duly authorized representative of such agency shall join in the application with the parent, next of kin, or guardian stating, under oath, that the applicant has their consent to marry. This provision does not apply to applicants who are in the legal custody of the department of mental health and mental retardation. (36-3-106).

Upon good cause, the judge of the probate, juvenile, circuit, or chancery court has the power to remove the restriction as to age, and to authorize the county clerk to issue a marriage license regardless of the age of the applicants (36-3-107).

Issuance to Incapacitated Persons Forbidden. No license shall be issued when it appears that the applicants or either of them is at the time drunk, insane or an imbecile (36-3-109). This statute must be very narrowly construed to avoid a finding of unconstitutionality as a result of unreasonable interference with the fundamental right of persons to marry.[15] Marriages entered into in disregard of this statutory requirement are not void, but merely voidable after an appropriate proceeding.[16]

False Documents. Fraudulently signing or knowingly using any false document purporting to be one provided for in T.C.A. § 36-3-104(a) or § 36-3-106 is a Class C misdemeanor, punishable by imprisonment not greater than thirty (30) days or a fine not to exceed fifty dollars ($50.00) or both. (36-3-112, 40-35-111).

County Clerk Violations. Any county clerk or deputy clerk who, not acting in good faith, issues a marriage license without compliance with the provisions of T.C.A. §§ 36-3-104 through 36-3-110 and 36-3-113 is guilty of a Class C misdemeanor, which is punishable by imprisonment not greater than thirty (30) days or a fine not to exceed fifty dollars ($50.00) or both. (36-3-111, 40-35-111).

Contesting the Issuance of a Marriage License. Any interested person has the right to contest the issuance of the marriage license, which contest must be filed, heard and determined by the judge of the probate court, or judge of the juvenile court, or any judge or chancellor; provided, that a contest cannot be filed without a cost bond in the sum of at least fifty dollars ($50.00) with solvent sureties executed by the contestant, conditioned as in civil cases, and the cost of the contest will be adjudged against the losing party (36-3-110).

Solemnizing a Marriage. The rite of matrimony may be solemnized by any of the following persons (36-3-301):

1. All regular ministers, preachers, pastors, priests, rabbis and other religious leaders of every religious belief, more than eighteen (18) years of age, having the care of souls.

2. Members of county legislative bodies.

3. County executives and former county executives.

4. Current and former judges and chancellors of this state.

5. Current and former judges of general sessions courts.

6. Current and former governors of this state.

7. The county clerk of each county.

8. Current and former speakers of the senate and speakers of the house of representatives.

9. Mayors of municipalities.

Ordinarily, elected officials are not authorized to act outside the jurisdiction from which they were elected.[17] However, in 1997 the General Assembly authorized all elected officials and former officials who are authorized to perform marriages to do so in any county in the state of Tennessee (36-3-301(i)).

For all marriages after April 15, 1998, in order to solemnize the rite of matrimony, a minister, preacher, pastor, priest, rabbi or other spiritual leader must be ordained or otherwise designated in conformity with the customs of a church, temple or other religious group or organization, and such customs must provide for ordination or designation by a considered, deliberate and responsible act. (36-3-301(a)(2), added by 1998 Public Chapter 745. The county clerk, however, has neither the authority nor the duty to examine the qualifications of persons seeking to solemnize the rite of matrimony.[18] The county clerk cannot require proof that an officiant is, in fact, a minister or other authorized person.[19]

For marriage purposes, the several judges of the United States courts, including United States magistrates and United States bankruptcy judges, who are citizens of Tennessee are deemed to be judges of this state. However, the term former judges does not include any judge who has been convicted of a felony or who has been removed from office (36-3-301(a)). The term "retired judges of this state" shall be construed to include persons who served as judges of any municipal or county court in any county which has adopted a metropolitan form of government and persons who served as county judges (judges of the quarterly county court) prior to the 1978 constitutional amendments (36-3-301(e)). Also, any person who was a member of a quarterly county court on or before August 1, 1984 can apply to and be certified to perform marriages by the county legislative body (17-1-206).

Deputy county clerks have full power to transact the business of the county clerk (18-1-108(4)). The Attorney General has interpreted this statute to confer upon deputy clerks the power to perform marriage ceremonies.[20]

Particular Marriage Ceremony Not Required. No formula need be observed in such solemnization, except that the parties shall respectively declare, in the presence of the minister or officer, that they accept each other as man and/or wife (36-3-302). This statute has been interpreted by the Attorney General as requiring that the parties personally appear together before a person authorized by law to solemnize marriages, so that a marriage ceremony cannot be performed by telephone.[21] The traditional marriage rite of the Religious Society of Friends (Quakers), whereby the parties simply pledge their vows

one to another in the presence of the congregation, also constitutes an effective solemnization (36-3-301(b)).

Remuneration for Solemnizing a Marriage. Any gratuity received by a county executive mayor, or county clerk for the solemnization of a marriage, whether performed during or after their regular working hours, shall be retained by them as personal remuneration for such services in addition to any other sources of compensation they might receive, and such gratuity shall not be paid into the county general fund (36-3-301). However, a judge's receipt of compensation for performing a marriage ceremony violates Article VI, Section 7 of the TENNESSEE CONSTITUTION, T.C.A. § 8-21-101, and the Code of Judicial Conduct.[22] It appears it is permissible for a judge to accept a check made out to a charity as long as the judge does not treat the funds as income for tax purposes or take a tax deduction for the charitable contribution.[23]

Certification of the License. The county clerk is required to place on each license the following form of certificate, to be signed by the person solemnizing the marriage (36-3-304):

> "I solemnized the rite of matrimony between the above (or within) named parties on the ____ day of _____, 19___."

Return of Documents to the County Clerk. The authorized officiant who performs the marriage ceremony is required to endorse on the license the fact and time of the marriage, and sign his or her name thereto, and return the license to the county clerk within three (3) days from the date of the marriage. Failure to return the license as required is a misdemeanor. (36-3-303). The Certificate of Marriage required by the Tennessee Department of Health Office of Vital Records also must be completed and returned to the county clerk within this three-day time frame (68-3-401). In the case of marriages solemnized among the Religious Society of Friends (Quakers), the functions, duties and liabilities of the party solemnizing marriages are incumbent upon the clerk of the congregation, or in the clerk's absence, the clerk's duly designated alternate (36-3-303).

A county clerk has no authority to require proof that an officiant is a "regular minister of the gospel" or other authorized person who meets the statutory criteria, and must presume that the marriage is valid.[24]

Marriage Certificates. Most county clerks, after receiving the returned marriage license, forward a marriage certificate to the newly married couple, showing the fact that the marriage has been duly recorded in the county's marriage records. However, some county clerks have a two part license with a detachable certificate.

Solemnizing Marriage Between Incapable Persons. If any minister or officer knowingly joins together in matrimony two persons not capable thereof, he or she shall be guilty of a misdemeanor, and, also, forfeit and pay the sum of five hundred dollars ($500), to be recovered by action of debt, for the use of the person suing (36-3-305).

Records Required by the Office of Vital Records. A record of each marriage performed in this state is required to be filed with the Tennessee Department of Health, Office of Vital

Records, and shall be registered if it has been properly completed and filed. The county clerk who issues the marriage license is required to prepare the record on the form Certificate of Marriage furnished by the state registrar upon the basis of information obtained from the parties to be married. The Certificate of Marriage requires the signature of both the bride and groom in the presence of the county clerk. The Certificate of Marriage also contains spaces for the officiant who performs the ceremony to certify the marriage of the persons, the witness to the marriage to sign, the county of marriage, and whether the marriage is a religious or civil service. This Certificate of Marriage, like the marriage license, must be returned to the county clerk within three (3) days of the performing of the marriage ceremony. (68-3-401).

The county clerk must complete and forward the records of marriages filed during the preceding calendar month on or before the tenth day of each calendar month to the Office of Vital Records. A marriage not filed within these time requirements may be registered in accordance with the regulations of the office of vital records. If a marriage license has been obtained by incorrect identification, the fraudulent records should be voided and a correct certificate of marriage placed on file by order of a court in the county where the license was issued in accordance with the regulations established by the Department of Health. (68-3-401).

The county clerk is authorized to record and certify any license used to solemnize a marriage which is properly signed by the officiant when the license is returned to the issuing county clerk. The issuing county clerk then forwards the record to the Office of Vital Records to be filed and registered. This includes Tennessee marriage licenses which are used to officiate out-of-state ceremonies. (36-3-103(c)(1)).

Fees and Taxes. Currently there are two state privilege taxes on marriage, and one local option tax which can be levied in an amount up to $5.00 (67-4-411, 67-4-502, 67-4-505). The collector of both state and local marriage taxes is the county clerk. The county clerk earns fees for performing these duties. The taxes and fees are as follows:

State Privilege Tax (67-4-411)	$15.00
State Privilege Tax (67-4-505)	$ 5.00
Optional County Tax (67-4-502)	$ 5.00
County Clerk's fee for issuance of marriage license and bond (8-21-701(14))	$ 1.00
County Clerk's fee if copy of license and bond requested (8-21-701(15))	$ .50
Clerk's fee for issuance of a marriage certificate (8-21-401(a)(5)(E))	$ 2.00
Clerk's fee for filing certificate and required forms with office of vital records (68-3-401)	$ 1.00

Clerk's fee for affixing seal (8-21-401(a)(3)(B))	$ 2.00

The $5.00 state tax is retained by the county and must be used for county school purposes (67-4-505). The local option tax, if levied, is retained by the county and used as directed by the county legislative body. The $15.00 state tax is paid over to the state commissioner of revenue (67-4-411). The county clerk receives a 5% fee for receiving and paying over these state and county revenues (8-21-701).

Chapter 854 of the Public Acts of 2002 (36-6-413) imposed an additional fee of $62.50 on the issuance of marriage licenses. Of this fee, $2.50 is retained by the county clerk and $60.00 is remitted to the state. This $62.50 fee is in addition to all of the fees county clerks charge for issuance of a marriage license.

Applicants are exempt from payment of $60.00 of the fee IF:

(1) They are not Tennessee residents (a 2004 amendment makes this exemption applicable only in certain counties), OR

(2) They are Tennessee residents and they have completed a four-hour premarital preparation course.

Applicants must pay the $2.50 fee regardless of whether they are exempt from payment of the $60.00 fee.

To qualify for the exemption on the basis of non-residency, both applicants must present to the county clerk either a valid driver license showing they reside outside Tennessee, or an affidavit of non-residency. The form of the affidavit was developed by the Administrative Office of the Courts and is attached.

To qualify for the exemption by attending a premarital preparation course, both applicants must submit a Certificate of Completion showing that they have attended a course, together or separately, within one year of the date of the application for the marriage license. The course must have been at least four (4) hours in length. The new law does not give much guidance as to the content of the course, other than to say that it *may* include conflict management, communication skills, financial responsibilities, children and parenting responsibilities, and data concerning problems reported by married couples who seek counseling. Premarital preparation courses may be taught by any of the following:

(1) Psychologist
(2) Clinical social worker
(3) Licensed marital and family therapist
(4) Clinical pastoral therapist
(5) Professional counselor
(6) Psychological examiner
(7) Official representative of a religious institution
(8) Any other approved instructor (the law does not indicate who approves these instructors).

The Certificate of Completion has been developed by the Administrative Office of the Courts. A copy is attached. The form is to be completed by the instructor of the course. Applicants for a marriage license must present a copy of the completed form to the county clerk in order to qualify for the exemption on this basis.

The $60.00 fee (when it is collected) is to be remitted by the county clerk to the state. The state is responsible for distribution of the fee in accordance with the new law.

Failure to Perform Collection Duties. Any county clerk or other official who fails or refuses to collect and pay over any taxes he or she is legally charged to collect and pay over to the department of revenue is liable therefor and a claim can be made on the clerk's official bond for the amount of such failure (67-4-210(b)). Any county clerk failing in any way, either in person or by agent, to enforce these tax statutes shall be forfeit in each case the sum of $250 to the state and shall be subject to ouster proceedings (67-4-211(a)).

Notary Public Applications

Qualifications, Election and Powers. All notaries must be 18 years of age (8-18-101). United States citizenship is not a requirement for a person to hold the office of notary public (8-16-101). Notaries are elected by the county legislative body in the county in which they reside or have their principal place of business (8-18-101), and are commissioned by the governor (8-16-102). A person with a principal place of business in a Tennessee county may be elected a notary in that county even though that person's residence is in another state (8-16-101). The same basic disqualifications exist for notaries as for other county offices (8-18-101). A notary may be removed from office just as any other county official. The notary's term is four (4) years, beginning on the date of issuance of the commission by the governor (8-16-103). Renewal is by the same method as the original procedure. A notary public is empowered to administer oaths, take depositions, qualify parties in bills in chancery, and take affidavits (8-16-302).

Since July 1, 1993, all notaries public have been authorized to exercise the functions of a notary public in all counties in Tennessee (formerly known as notary "at large") (8-16-208). **A new law passed in 2004 rewrites several of the laws that govern notaries public and reorganizes the statutes contained in the *Tennessee Code Annotated* dealing with notaries, effective July 1, 2004.** This new law deletes any distinction between notaries public and notaries at large, and instead refers to all notaries as notary public for the State of Tennessee, or Tennessee notary public. The following discussion includes the provisions of the new law. However, at the time this manual was published the law had not yet been codified. Therefore, some of the references to sections of the Code may be incorrect after the new law has been placed in the Code and statutes are renumbered.

In addition to the qualifications discussed above, the new law adds a requirement that an applicant certify, under penalty of perjury, that the person (1) has never been removed from office as a notary public for official misconduct, (2) has never had a notarial commission revoked or suspended by this or any other state, and (3) has never been found by a court of his state or any other state to have engaged in the unauthorized practice of law. (8-16-101).

A fee of $12.00 is paid to the county clerk in the county of election for issuance of a commission ($5.00 to the secretary of state under 8-21-201 and $7.00 to the county clerk under 8-16-106 and 8-21-701). The county clerk will certify the election and forward the $5.00 fee to the secretary of state, who, upon receipt of the certificate and the fee, will forward the commission from the governor. The county clerk notifies the person to whom the commission was issued, and, after the oath has been taken and bond posted, the county clerk delivers the commission to the person elected. The county clerk must keep a record of the issuance and expiration dates of commissions, noting such on the bond and in a minute entry. (8-16-107).

Beginning July 1, 2004, notaries are required to live in or have their principal place of business in the county from which they are elected only at the time of their election. If the notary moves to another county, the notary must notify the county clerk in the county from which the notary was elected and pay a fee of $7.00. The county clerk must notify the secretary of state of the change of address and forward $2.00 of the fee to the secretary of state. The county clerk retains the remaining $5.00. (8-16-109). If a notary moves out of state, the notary is no longer qualified to act; it is a Class C misdemeanor for a notary to take acknowledgements after moving out of the state. (8-16-110).

Because all notaries are authorized to act statewide after the 1993 amendments to the law, the provisions of the Code that provided for notaries to qualify in other counties were deleted by the 2004 amendments.

Bonds. After election by the county legislative body, and before commencing duties or exercising powers, a notary must post bond by some surety company authorized to do business as surety in Tennessee, or with two or more good personal sureties, approved by the county legislative body, in the amount of $10,000. Such bond is payable to the state and conditioned upon the faithful performance of the duties of a notary public. The bond is filed in the office of the county clerk in the county of election. (8-16-104). The county clerk may charge $1.50 for taking and recording the bond (8-21-701).

Oaths. The notary must then take and subscribe to an oath before the county clerk or a deputy county clerk to support the Constitutions of the State of Tennessee and the United States and that the notary will, without favor or partiality, honestly, faithfully, and diligently discharge the duties of notary public (8-16-105).

Seal. The notary must purchase an official seal. The secretary of state prescribes the design of the seal, which is to be imprinted by a rubber or other type stamp in any color other than black or yellow as long as it is clearly legible and appears black on a non-color copier; however, the new law provides that a document will not be invalid nor will there be any criminal or civil liability if a notary uses the wrong color ink. (8-16-206). Notaries are not required to obtain a new seal until the expiration of their current term of office, and all impression seals are valid until the expiration of the notary's current term. The seal must be surrendered to the county legislative body upon expiration of the notary's term of office or resignation and the personal representative must surrender the seal in the event of the death of the notary (a provision stating that failure to properly surrender the seal was a misdemeanor was deleted by the 2004 amendments). (8-16-206). The new design prescribed by the secretary of state is circular, and has the notary's name (as

commissioned) printed at the top, the county of election at the bottom, and State of Tennessee Notary Public in the center.

The county clerk may obtain the official seal for the notary public at the notary's request. For providing this service the county clerk may charge a fee not exceeding 20% of the cost of the seal. (8-16-206).

Statutory Form Acknowledgment. Statutory forms for acknowledgment of instruments are set out in 66-22-107 (for natural persons) and 66-22-108 (for partnerships and corporations) and 66-22-114 (another general form). A basic form for acknowledgment of instruments signed by a natural person is as follows (66-22-107):

> State of _____
> County of _____
>
> Personally appeared before me, [name of officer], [official capacity of officer], [name of the natural person executing the instrument], the within named bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the within instrument for the purposes therein contained.
>
> Witness my hand, at office, this _____ day of _____, 20___.

Although the exact language of the forms is recommended, acknowledgments complying with the substance thereof are valid (66-22-114).

In using the above quoted forms, the notary should make certain the proper pronoun, he, she, they, etc., is used. So far as possible, there should be no changes or alterations in the body of the acknowledgment; but should they be required, the notary should initial such changes wherever they appear.

The expiration date of the notary's commission must appear on every certificate of acknowledgment. However, failure to include the expiration date does not invalidate the instrument (a provision was deleted by the 2004 law that made failure to include the expiration date a Class C misdemeanor). (8-16-303).

Privilege Taxes

The county clerk serves as the collector of certain privilege taxes imposed by the state, county or municipality on merchants, persons, companies, firms, corporations or agents (67-4-103). In addition to the privilege tax on marriage, the privilege taxes which may be collected by the county clerk include the business tax (which is the subject of a separate CGT course), the tax on the privilege of engaging in the business of selling alcoholic beverages at retail for consumption on the premises (57-4-301), the wholesale beer tax (57-6-103), the privilege tax on the business of selling, distributing, storing or manufacturing beer (57-5-104), the county motor vehicle privilege tax (5-8-102) (also the subject of a separate CGT course), and county hotel/motel taxes levied by private act of the General Assembly. There are several methods for levying privilege taxes. For

example, the county motor vehicle privilege tax can be levied by private act, by referendum approved by resolution of the county legislative body, or by passage of a resolution of the county legislative body by a 2/3 vote at two consecutive meetings (with the potential for a referendum upon petition of the voters) (5-8-102).

In order to exercise any privilege taxed by the state, county, or municipality and collected by the county clerk, a license must be obtained from the county clerk (67-4-104), and the person, partnership, or corporation is required to complete an application signed by all owners. The application is retained in a book maintained by the county clerk for public inspection. No license may be issued until such an application is completed and delivered to the county clerk. (67-4-105).

At the time the license is issued, all privilege taxes must be paid to the county clerk, and the county clerk is subject to certain fines and penalties for failing to pay these taxes to the Commissioner of Revenue, county trustee, or municipal authorities (67-4-103). The county clerk can issue licenses quarterly, unless the term of the license is provided for in the legislation authorizing the privilege tax (67-4-104).

Certain persons are exempt from the paying of such privilege taxes, including indigent persons, certain agricultural association business agents, and blind persons who have received an exemption from the county legislative body (67-4-102).

The assessor is required to notify the county clerk of all persons engaged in business in any way liable for the payment of privilege taxes and the county clerk compares the list of names provided by the assessor with the list of persons paying privilege taxes, and reports the result to the county legislative body at the July meeting (67-4-108). The county clerk is required to issue distress warrants to the sheriff requiring the sheriff to levy a tax in double the amount of the highest tax imposed upon such privilege, plus costs and commission, by seizing and selling the property of the taxpayer (67-4-109). Also, if the taxpayer is required to post a bond, the county clerk is required to turn over such bonds to the county attorney within 30 days after the bond is due and payable, and notify the Commissioner of Revenue and the county legislative body that such bonds were turned over for collection. (67-4-112).

The statute of limitations for collection of state, county, and municipal privilege taxes collected by the county clerk is six years, after which time collection is barred. This six year period commences on January 1 of the year in which the taxes were to be paid by the taxpayer. (67-1-1501).

In addition to the above-mentioned privilege taxes, the county clerk is responsible for issuing a license to any firm or individual desiring to engage in dealing or trading of livestock, poultry, or other animals. The application must state the name of the applicant or principals of a firm, and the location of each business, and must be accompanied by a fee of $1.00 for each location. This fee is not required from merchants doing a general merchandise business on which tax has been paid. Each month, the county clerk must furnish to the Department of Agriculture a list of all licenses issued, including the name, address, and license number of each business. (44-10-101).

Pawnbroker Licenses

Introduction. The Tennessee Pawnbrokers Act of 1988 governs reporting and recordkeeping requirements and sets forth qualification requirements for obtaining a pawnbroker license. A provision grandfathering persons, firms or corporations who held a valid license on July 1, 1988, allows these persons, firms and corporations remain subject to the bonding and licensing requirements which were applicable to them on June 30, 1988, so long as they retain their valid pawnbroker licenses. (45-6-220).

If a pawnbroker licensed prior to July 1, 1988, chooses to open a second location after July 1, 1988, the pawnbroker is required to meet the application process mandated in the Tennessee Pawnbroker Act of 1988 since the former law (45-6-108) and the current law only permit one place of business per license.

A pawnbroker license does *not* authorize the licensee to lend money on the security of title documents (45-6-203). Title pledge lenders must obtain a title pledge lender license from the county clerk. These licenses are discussed later in this chapter.

Licensing Requirements. As of July 1, 1988, it is unlawful for any person, firm, or corporation to establish or conduct a business of pawnbrokering unless such person, firm, or corporation shall have first procured a license (45-5-205). Operating without a license or any other violation of the pawnbroker's act is a misdemeanor, and if the violation is knowingly committed by an owner or major stockholder and/or managing partner, then the license of the pawnbroker may be suspended or revoked at the discretion of the county clerk (45-6-218) . However, the Attorney General has opined that this provision authorizing the suspension or revocation of a license "at the discretion of the county clerk" is unconstitutional since it fails to provide for notice and a hearing required by principles of due process and constitutes an impermissible delegation of legislative power.[25]

To be eligible for a pawnbroker's license, an applicant (and if the applicant is a business entity, each operator or beneficial owner, and as to a corporation, each officer, shareholder, and director) must:

(1) Be of good moral character.

(2) Have net assets of at least $75,000, readily available for use exclusively in conducting the business of each licensed pawnbroker.

(3) Show that the business will be operated lawfully and fairly within the purpose of the act.

"Net assets" is defined as the book value of the current assets of a person or pawnbroker less its applicable liabilities as stated in this subsection. Current assets include the investment made in cash, bank deposits, merchandise inventory, and loans due from customers excluding the pawnshop charge. Current assets do *not* include the investments made in fixed assets of real estate, furniture, fixtures, or equipment, investments made in stocks, bonds, or other securities or investments made in prepaid expenses or other general intangibles. Applicable liabilities include trade or other accounts payable; accrued sales, income, or other taxes; accrued expenses and notes or other payable that are

unsecured or secured in whole or part by current assets. Applicable liabilities do not include liabilities secured by assets other than current assets. Net assets must be represented by capital investment unencumbered by any liens or other encumbrances to be subject to the claims of general creditors. If the pawnshop is a corporation, the capital investment consists of common or preferred shares and capital or earned surplus as those terms are defined by the Tennessee Business Corporation Act, as amended; if it is any other form of business entity, the capital investment consists of a substantial equivalent of that of a corporation and is determined by generally accepted accounting principles. (45-6-203).

If an applicant has a prior felony conviction within ten years immediately preceding the date of the application and the conviction directly relates to the duties and responsibilities of the occupation of pawnbrokering, or otherwise makes the applicant presently unfit for a pawnbroker's license, the county clerk shall find such applicant ineligible (45-6-206). County clerks have little direct guidance on exactly what felony offenses should make a person ineligible under this provision; however, general guidance could be gleaned from the cases interpreting felonies which make a person unfit to hold public office and offenses which are the basis for beer permit denial. Applicants are required to submit an affidavit stating that the applicant has not been convicted of a felony in the last ten years which directly affects the applicant's ability to lawfully and fairly operate, and a certificate from the sheriff, chief of police, or Tennessee Bureau of Investigation that the petitioner is of good moral character and has not been convicted of any felony within the past ten years (45-6-207).

Persons, firms or corporations desiring a pawnbroker's license must petition the county clerk in the county in which the pawnbroker establishment is to be operated (45-6-201). "Person" is defined in the act to mean any individual, corporation, joint venture, association or any other legal entity however organized (45-6-203). The petition must provide the following information (45-6-207):

1. The name of the person, and in case of a firm or corporation, the names of the persons composing such firm or of the officers and stockholders of such corporation.

2. The place, street, and number where business is to be carried on.

3. Specify the amount of net assets or capital proposed to be used by the petitioner in the business, accompanied by an unaudited statement from a certified public accountant containing the following statement:

   "According to the information provided to me, the net assets, as defined in Tennessee Code Annotated, § 45-6-203, or proposed capital to be used by the applicant, _____ (name) in the pawnbroker business, are valued at not less than seventy-five thousand dollars ($75,000)."

4. The signature of at least ten freeholders, citizens of the county in which petitioner resides, of good reputation, certifying to the reputation and moral character of the applicant or applicants.

5. An affidavit by the petitioner that the petitioner has not been convicted of a felony within the past ten years that directly affects the petitioner's ability to lawfully and fairly operate under the provisions of the act.

6. A certificate from the chief of police and/or sheriff and/or the Tennessee Bureau of Investigation that petitioner (each operator, beneficial owner, officer, shareholder and director) is of good moral character and has not been convicted of a felony within the past ten years.

7. Certified funds in the amount of $50 payable to the county clerk. Additionally, the applicant must pay directly for the costs of the city, sheriff, and Tennessee Bureau of Investigation investigating the petition.

The county clerk has no authority to refund these funds once received. The funds ($50) are used to defray the costs of the county clerk's investigation of the petition (45-6-207).

Persons, firms, or corporations having satisfied the qualification requirements and having paid the business tax and any other taxes, and having produced to the county clerk satisfactory evidence of his/her/their good character as to being a suitable person or persons to carry on the business of pawnbrokering, shall be granted a license, which must state the following (45-6-208):

1. The name of the person, firm, or corporation to whom issued.

2. The place of business and street number where such business is located.

3. The amount of capital employed.

The license entitles the holder to do business at the place designated. Only one place of business may be operated under a license. Therefore, the requirements of the act must be met separately for each location. Licenses may not be transferred from one person to another but may be transferred from one location to another (apparently within the same county) by consent of the county clerk on payment of a transfer fee of $10 to the county clerk. (45-6-208). Licensees must print or paint the name of the pawnbroker, firm name or corporate name, with the words "Licensed Pawnbroker", in large, legible characters over the outside of the door or entrance of the shop, office or place of business (45-6-217).

Operating the Business. Operating, recordkeeping, and inspection rules applicable to all pawnbrokers, even those licensed under provisions of prior law, are outlined in the act. One of these provisions of particular interest to county clerks is the requirement that every licensed pawnbroker shall have sufficient insurance to cover the aggregate stated values on pawn stubs. The policy must be payable to the county clerk and the policy must be deposited with the county clerk. (45-6-215). If the county clerk knows of a violation of this provision or believes the insurance policy filed with the county clerk's office is insufficient to cover the aggregate stated values of pawned articles, the county clerk should notify the district attorney general serving the county clerk's district.

The act prescribes hours of operation for the business, and contains detailed recordkeeping requirements for the pawnbroker, and the pawnbroker’s records must be made available to law enforcement agencies as specified in the act. Pawn tickets must

contain the information specified in the act. Maximum interest rates and allowable fees are also prescribed. Time limitations for holding, safekeeping, insurance, and notice provisions after failure to pay a mature loan are provided. County clerks should not undertake to advise pawnbrokers on the requirements of the law regarding the conduct of their businesses, but instead should refer the pawnbroker to the statutes.

The act lists certain prohibited acts for pawnbrokers (45-6-212). A violation of any provision of the act is a misdemeanor, and if the violation is knowingly committed by an owner or major stockholder and/or managing partner, then the license of the pawnbroker may be suspended or revoked (45-6-218).[26] The prohibited acts include (45-6-212):

1. accepting a pledge from a person under the age 18 years, or from any person who appears to be intoxicated, or from a known thief or person convicted of larceny, burglary or robbery without first notifying a police officer;

2. making any agreement requiring the personal liability of a pledgor in connection with a pawn transaction;

3. accepting any waiver (in writing or otherwise) of any right or protection accorded a pledgor under the act;

4. failing to exercise reasonable care to protect pledged goods from loss or damage;

5. failing to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it is the responsibility of the pawnbroker to replace the goods with like kinds of merchandise or make reimbursement;

6. purchasing property in a pawn transaction for the pawnbroker's personal use;

7. taking any known stolen property;

8. selling, exchanging, bartering, or removing from the business, or permit to be redeemed, any goods for a period of 48 hours after reporting to law enforcement agencies;

9. keeping more than one place of business under one license;

10. keeping the place of business open before 8:00 a.m. or after 6:00 p.m., except that during the period thirty days before Christmas the pawnbroker may remain open until 9:00 p.m.; and

11. entering into any pawn transaction having a maturity date less than 30 days after the pawn transaction.

Title Pledge Lender Licenses

Introduction. Since 1995, the Tennessee Title Pledge Act has governed businesses involved in making title pledge loans (45-15-101 *et seq.*). Licensed pawnbrokers who were in the business of contracting for title pledges or making title pledge agreements as of May 8, 1995, were given sixty days from that date within which to pay the $50.00 license fee and obtain a title pledge lender license without further qualifications or conditions (45-15-119). After that time, all title pledge lenders were required to comply with all of the provisions of the act in order to obtain a license. It is important to note that pawnbrokers who also make loans on title pledges must have *both* licenses.

The act defines "pledged property" as being any personal property, the ownership of which is which is evidenced by a state-issued certificate of title, or a personal property certificate of title (45-15-103). Licensed title pledge lenders are authorized to make the following loans (45-15-103, 45-15-104):

1. Title pledges made on 30-day written agreements (which may be renewed for additional 30-day periods) whereby the lender agrees to make a loan to the pledgor and the pledgor gives the lender a security interest in unencumbered titled personal property, and the lender keeps possession of the certificate of title for the length of the pledge agreement; and

2. Property pledges made on 30-day written agreements (which may be renewed for additional 30-day periods) under which the lender takes physical possession of the unencumbered titled property, as well as the certificate of title.

Title pledge lenders are required to record their security interest by noting liens of the certificate of title for all title pledge transactions, but they are not required to note liens for property pledge transactions in which the lender retains possession of the property as well as the certificate of title (45-15-110).

Licensing Requirements. To be eligible for a title pledge lender's license, an applicant must meet the following requirements (45-15-106):

(1) Be operating as sole proprietorship, general partnership, corporation or limited liability company duly qualified to do business in Tennessee;

(2) Have capital of at least $75,000 per title pledge office ("capital" is defined as assets minus liabilities, measured according to Generally Accepted Accounting Principles (GAAP) or relevant pronouncements of the Financial Accounting Standards Board (FASB); and

(3) "Represent that the business will be operated lawfully, fairly and ethically within the purpose of this chapter."

A petition for a title pledge lender's license is to be made to the county clerk in the county where the applicant's title pledge office is to be operated, and must contain (45-15-107):

(1) Names of all individuals having a beneficial ownership interest in the business, and in the case of a corporation, all individuals serving as

officers and directors whether or not they have a beneficial ownership interest;

(2) Place, street and number where the title pledge office will be located;

(3) Amount of capital to be used in the business, with an unaudited financial statement from a certified public accountant;

(4) Affidavits from each individual named in (1) above stating that the individual has not been convicted of a felony within the 10-year period preceding the application; and

(5) Certified funds in the amount of $50.00 payable to the county clerk to defray costs.

Licenses are granted to applicants who have satisfied the above requirements and have paid the business tax and any other taxes required by law. The license must contain the following information (45-15-108):

(1) Name of person to whom issued;

(2) Place of business and street number where the title pledge office is located; and

(3) Amount of capital employed.

Licenses are not transferable from one person to another, but are transferable from one location to another or from one county to another "upon payment to the county clerk of any county involved in the transfer" a fee of $50.00 (45-15-108).

The license is renewed each year upon payment of the business tax (45-15-108). Only one title pledge office can be operated under a license (45-15-115).

Any licensed pawnbroker who is in the business of contracting for title pledges or making title pledge agreements as of the effective date of the act (May 8, 1995) can apply to the county clerk for a title pledge license within 60 days of the effective date of the act (by Friday, July 7, 1995) upon payment to the county clerk of a fee of $50.00, and the county clerk shall issue the license without any further qualifications (45-15-119).

Operating the Business. Of primary interest to the county clerk is the requirement that a title pledge lender have sufficient insurance on the pledged property to pay the title pledge value in the event of loss or damage to property in the physical possession of the title pledge lender; the insurance policy must name the county clerk as an additional insured party for the benefit of the pledgor. (45-15-116). The act also enumerates the operating, recordkeeping, and inspection rules applicable to all title pledge lenders. The act prescribes hours of operation for the business, and contains detailed recordkeeping requirements for the title pledge lender, and these records must be made available to law enforcement officials as specified in the act. Maximum interest rates and allowable fees are also prescribed. Title pledge agreements and property pledge agreements cannot exceed 30 days in length, which may be renewed (45-15-115). A 20-day holding period

and notice provisions after failure to pay a mature loan are provided. County clerks should not undertake to advise title pledge lenders on the requirements of the law regarding the conduct of their businesses, but instead should refer the title pledge lender to the statutes.

The act lists certain prohibited acts for title pledge lenders (45-15-115). A violation of any provision of the act is a misdemeanor, and if the violation is knowingly committed by an owner or major stockholder or partner, then the license of the title pledge lender may be suspended or revoked (45-15-117). The prohibited acts include (45-15-115):

1. Accepting a pledge from a person under the age 18 years, or from any person who appears to be intoxicated, or from a known thief or person convicted of larceny, burglary or robbery;

2. Making any agreement giving the title pledge lender any recourse against the pledgor other than the right to take possession of the titled property and certificate of title upon default or failure to redeem, and to sell the property;

3. Entering into any title pledge agreement in which the amount of money loaned on a single certificate of title exceeds $2,500 (no such prohibition exists regarding the amount of money loaned in a property pledge transaction);

4. Accepting any waiver (in writing or otherwise) of any right or protection accorded a pledgor under the act;

5. Failing to exercise reasonable care to protect from loss or damage titled property or certificates of title which are in the physical possession of the lender;

6. Purchasing titled property in the operation of the business;

7. Keeping more than one place of business under one license;

8. Keeping the place of business open before 8:00 a.m. or after 6:00 p.m., except during the period from November 25 through December 24 when the business may remain open until 9:00 p.m.

9. Violating consumer disclosure rules promulgated under 45-15-111(c).

Motor Vehicle Titling and Registration

The county clerk, as agent for the Division of Motor Vehicles, has very important duties with regard to the titling and registration of motor vehicles, motorized bicycles, trailers or semi-trailers when moved or driven on the highways of this state, and mobile homes or house trailers occupied in the state. These matters are covered in a separate course.

Miscellaneous Duties of the County Clerk

The county clerk has many miscellaneous duties which he or she is required to perform by various statutes. These duties include such varied tasks as serving as the clerk of drainage districts to the taking of depositions.

Drainage and Levee Districts. The county clerk has numerous responsibilities with regard to drainage or levee districts located in the county. The county clerk receives petitions for the establishment of drainage and levee districts, and approves and determines the amount of the bond which is filed with the county clerk at the time of the filing of the petition to secure the cost of establishing the drainage and levee district (69-6-103). In counties where a district is sought to be established, the county clerk maintains a book known as the "Drainage Record" of all proceedings involving the creation and operation of the drainage district (69-6-140), prepares the assessment rolls for use by the county trustee in collecting drainage assessment to finance construction by a drainage district (69-6-110; 69-6-111; 69-6-127; 69-6-128), prepares and maintains the "Drainage Assessment Book" showing all parcels of land affected by the drainage district upon which a drainage assessment is made and provides a copy of this book to the county trustee (69-6-813), and also advises the trustee of changes in ownership of said parcels of land (69-6-815). The county clerk receives from the county trustee the assessments for drainage and levee districts collected by the trustee and pays the expenses of the drainage and levee district as approved by the county legislative body (69-6-127; 69-6-804). The county clerk is required to post a bond for double the amount received from the county trustee prior to receiving said funds from the trustee (69-6-113; 69-6-130; 69-6-805). Also, the county clerk receives claims of persons claiming damages incurred in the construction of a drainage district (69-6-201), receives reports and drawings of engineers designated to perform work for such districts (69-6-115), provides notice to owners of the fact that their land is within the scope of such a drainage district (69-6-120), receives the bond of engineers employed to supervise construction of drainage or levee improvements (69-6-708), and receives monthly reports of engineers responsible for supervising construction of levee and water work improvements (69-6-709). If bonds are sold to finance a district, the county clerk may receive the full assessment from any property owner prior to the bonds being issued (69-6-902), and countersigns any bonds issued by such a district (69-6-903).

The county clerk is authorized to collect fees for performing these duties in the same amount as authorized for similar services, or as authorized by the county legislative body (69-6-141).

The county clerk also receives petitions for the creation of watershed districts (69-7-105), but may not collect any fees for the filing of such petitions or any other services required under the laws governing watershed districts (69-7-115).

Hunting and Fishing Licenses. The county clerk may act as an agent for the Tennessee Wildlife Resources Agency (TWRA) for purposes of issuing hunting, fishing, and other licenses and collecting the appropriate fees (70-2-106). County clerks who are authorized agents of TWRA may be required to post a bond in an amount determined by the TWRA executive director (70-2-106). The executive director shall deliver blank licenses to the

county clerk at least ten days prior to March 1 of each year, and shall charge the clerk with the number issued to him or her (70-2-105). The clerk may charge a flat fee of $1 on any one annual license, permit or stamp issued by the clerk and 50¢ on any one license, permit or stamp which is valid for a specified day or number of days (70-2-106).

The county clerk must maintain all funds collected on behalf of TWRA in a checking account available for electronic transfer within 24 hours. The penalty for failure to make the required remittance available is 5% of all funds owing and not remitted within the time prescribed. Also, the county clerk may forfeit the privilege to sell licenses in the future until a full and final settlement has been made. (70-2-105).

The license or permit must be filled out in ink, indelible pencil, typewriter, punched or stamped or otherwise marked to prevent erasure (70-2-201; 70-2-202). The licenses or permits are issued for the year beginning March 1 and ending the last day of February of the next year (70-2-107). Any person who violates the licensing or permitting requirements will be guilty of a Class C misdemeanor (70-2-107).

State law requires that all applications for hunting and fishing licenses issued on or after July 1, 1997 contain the social security number of each applicant. The social security numbers must be made available to the department of human services or its contractors or agents enforcing Title IV-D of the Social Security Act, to the extent possible in electronic or magnetic automated formats. (36-5-1301).

Tennessee residents who are 65 years of age or older prior to March 1, 1991 are exempt from hunting, trapping and sport fishing licensing requirements. Tennessee residents who become 65 years of age on or after March 1, 1991, may obtain hunting, trapping and sport fishing licenses upon payment of a one-time fee of $10.00 and proof of age and residency, and will be issued a permanent license for hunting, trapping and sport fishing. (70-2-201).

Residents between the ages of 13 and 15, inclusive, may purchase the junior hunting, fishing and trapping license; non-residents of the same age may purchase a junior license for small game and waterfowl hunting and sport fishing only (70-2-201; 70-2-202). Tennessee residents of this age are entitled to fish without a license for one week each year, beginning Free Fishing Day as proclaimed by the Tennessee Wildlife Resources Agency (70-2-201).

Residents of Tennessee who are blind (as certified by a private physician or the department of human services) and those residents who by reason of service in any war are 30% or more disabled are entitled to obtain hunting and fishing licenses without paying the licensing fee (70-2-104). Residents who are permanently restricted to a wheelchair may purchase a permanent sport fishing license upon payment of a $10.00 fee and presentation of a certificate from a physician licensed to practice in Tennessee (70-2-104).

The fees to be paid to obtain the appropriate licenses or permits are as follows:

<u>Resident Licenses</u> (70-2-201):

Basic Licenses:
(A) Combination hunting

	and fishing	$20.00
(B)	Junior hunting, fishing and trapping	7.00
(C)	Trapping (no license needed to trap beaver)	17.00
(D)	1 day fishing	2.00
(E)	County of residence fishing	5.00
(F)	Sportsman	100.00

Supplemental Licenses:

(A)	Big game--gun	17.00
(B)	Big game--archery	17.00
(C)	Big game--muzzleloader	17.00
(D)	Waterfowl	17.00
(E)	Trout	11.00

Duplicate Licenses: 4.00

Lifetime Sportsman Licenses:

(A)	Less than one year of age	200.00
(B)	One year through twelve years of age	600.00
(C)	Thirteen through fifty years of age	1,200.00
(D)	Fifty-one years of age and older	700.00

Non-Resident Licenses (70-2-202):

1. Hunting, sport fishing and trapping

A.	Hunting		
	1.	Small game and waterfowl	55.00
	2.	All game	155.00
B.	Fishing, except trout		25.00
C.	Fishing, all species		50.00
D.	Trapping		250.00
	(No license is required to trap beavers.)		
D.	Junior hunting and fishing		5.00

2. Trip hunting and sport fishing

A.	Hunting		
	1.	Seven day, small game and waterfowl	$ 30.00
	2.	Seven day, all game	105.00
B.	Fishing		
	1.	Three day, except trout	10.00
	2.	Three day, all species	20.00
	3.	Ten day, except trout	15.00
	4.	Ten day, all species	30.00

Boat Identification Numbers. The Tennessee Wildlife Resources Agency issues certificates of number for boats. The Agency also may authorize the county clerk to issue certificates of number for boats. The Agency issues to the county clerk a block of numbers

and certificates, and upon issuance, the county clerk is entitled to a fee of 25 cents for each certificate. (69-10-208).

All vessels propelled by sail or machinery on the waters of Tennessee are required to be numbered, except (69-10-206):

1. vessels with valid documents issued by the United States bureau of customs must be registered with the Agency but are not required to display numbers;

2. vessels with valid numbers issued by pursuant to federal law or a federally-approved numbering system of another state, so long as the number is properly displayed and the certificate is available for inspection, but this exception does not apply if the vessel is in this state for more than 60 consecutive days;

3. vessels from another country temporarily using the waters of this state;

4. vessels used in public service and owner by the United States government or a state or political subdivision thereof;

5. A ship's lifeboat;

6. A motorboat belonging to a class of boats which has been exempted by the Tennessee Wildlife Resources Commission;

7. Vessels owned by volunteer rescue squads and used solely for emergency or rescue work.

All exempt vessels must prominently display identification by name on the vessel (69-10-206). A violation of the boat registration laws is a Class C misdemeanor (69-10-219).

Certificates are valid for one year, or upon application of the owner, up to three years, and the fees are as follows (69-10-207):

Fee Category	1 Year	2 Years	3 Years
Vessels 16 feet and under in length	$ 4.00	$ 7.00	$10.00
Vessels 16 feet to less than 26 feet	8.00	14.00	20.00
Vessels 26 feet to less than 40 feet	12.00	21.00	30.00
Vessels 40 feet or more	16.00	28.00	40.00
Dealer's Certificate	10.00	---	---
Duplicate Certificate	2.00	---	---

The Tennessee Wildlife Resources Commission issues rules and regulations governing the numbering of boats, including regulations for the issuance of special registration numbers for use by boat manufacturers and dealers for demonstration and transportation purposes, and the issuance of special numbers to the owners of fleets of boats for hire or rent (69-10-209).

Other Duties. Some county clerks act as the clerk of the probate court and/or juvenile court. The legal issues for clerks acting as probate court clerks are addressed in courses designed for clerks of court. Although most county clerks are no longer clerks of court,

county clerks are authorized and empowered to take depositions in any legal proceeding or to take affidavits and administer oaths for general purposes to the same extent and in the same manner as notaries public (18-6-113, 18-6-114). The county clerk is also authorized to take acknowledgments within the state (66-22-102). Such acknowledgment or probate of any deed or other instrument made by a county clerk may be taken or made before the judge having probate jurisdiction, provided the clerk collects the state tax on any such instrument (66-22-105). The county road list, which is approved by the county legislative body each year, is entered of record in the office of the county clerk in a book kept for that purpose (54-10-103). County personnel policies are also filed in the office of the county clerk as a record of the base personnel policies in effect in each county office (5-23-101 *et seq*.).

Denial of Licenses for Failure to Pay Child Support. Legislation effective July 1, 1996, provides for denial or revocation of licenses for failure to pay child support, including licenses, certifications, registrations, permits, approvals and similar documents that grant authority to engage in a profession, trade, occupation, business, or industry, to hunt or fish, and to operate motor vehicles or other conveyances, but not licenses to practice law unless guidelines are established by the Supreme Court (36-5-701 *et seq*.).

When records of the court clerk or Department of Human Services ("DHS") show that child support payments have become delinquent, DHS is authorized to serve notice upon the obligor of the department's intent to notify licensing authorities that the person is not in compliance with the order of support. The person is entitled to request an administrative hearing with DHS or make arrangements to correct the delinquency, and to judicial review of the department's decision. If the person does not comply with the order, request a hearing, or make arrangements to pay within 20 days of service, DHS may proceed to notify licensing authorities by certifying in writing or by electronic data exchange that the person is not in compliance with the support order. (36-5-701 through 36-3-705).

A certification from DHS requires the licensing authority to deny any renewal request, revoke the obligor's license, or refuse to issue or reinstate the license, as the case may be, until the obligor provides the licensing authority with a release from DHS stating that the obligor is in compliance with the order of support (36-5-702, 36-5-706). Upon receipt of a certification from DHS, the licensing authority is required to notify the obligor of the action taken against the license. The notice is to be sent by regular mail and must state that the obligor's application for issuance, renewal or reinstatement has been denied, or that the current license has been suspended or revoked due to certification by DHS that the obligor is not in compliance with an order of support. A notice of suspension must specify the reason and statutory grounds for suspension and the effective date for the suspension. The notice must also state that a release from DHS must be obtained before the license can be issued, reinstated, or renewed. (36-5-706). When the delinquency has been corrected, DHS is required to inform the licensing authority of compliance. Unless the time has passed for a new periodic license fee, the obligor is not required to pay a new fee for the remainder of the licensing period; however, the licensing authority may impose a reinstatement fee not to exceed $5. (36-5-706, 36-5-707).

On or before July 1, 1996, or as soon thereafter as economically feasible and at least annually thereafter, all licensing authorities are required to provide DHS with a database

of information on magnetic tape or other machine-readable format (or if this information is not available on magnetic format, in a format agreed upon by the commission of DHS and the licensing authority). That data shall include information about both applicants and all current licensees (including those currently suspended or revoked if able to be reinstated). If available, the information is to include name, date of birth, address, social security number or federal employer ID number, description, type of license, effective date and expiration date of license, and status of the license. (36-5-711).

Courts are also authorized to order the denial, revocation or suspension of a license in connection with proceedings to enforce orders of child support. If the obligee specifically requests the court to revoke a license, the court may order any or all of the obligor's licenses be subject to revocation, denial or suspension. In that case, the clerk of the court will send a copy of the court order to the appropriate licensing authorities, and the licensing authority is required to revoke, deny or suspend the license in accordance with the court's order. When the obligor is in compliance with the order of support, the court will enter an order showing a finding of compliance which the clerk will send to each licensing authority, and the licensing authority will then issue, reinstate or reissue the license. (36-5-101).

All applications for professional licenses, driver licenses, occupational licenses, hunting and fishing licenses or recreational licenses, or marriage licenses issued on and after July 1, 1997 are required to contain the social security number of each applicant. This information is to be provided to the department of human services or its contractors or agents enforcing Title IV-D of the Social Security Act, to the extent possible in electronic or magnetic automated formats. (36-5-1301).

---

1. *Attorney General Opinion dated March 12, 1982.*

2. *Attorney General Opinion 86-17 (1/1/86); T.C.A. § 12-4-101(c)(3), as amended in 1998.*

3. *Smith County Education Assn. v. Anderson, 676 S.W.2d 328 (Tenn. 1984).*

4. *Attorney General Opinion U93-74 (6/17/93).*

5. *Rhodes v. McAfee, 224 Tenn. 495, 457 S.W.2d 522 (1970) (declaring void the marriage of a stepdaughter to her stepfather after the divorce of the stepfather and the mother).*

6. *Douglas v. Douglas, 6 Tenn. App. 12 (1927); Hall v. Hall, 13 Tenn. App. 683 (1932).*

7. *See Attorney General Opinion 88-43 (2/29/88).*

8. *See, e.g., M.T. v. J.T., 355 A.2d 204, 140 N.J. Super. 77 (1976).*

9. *Attorney General Opinion 88-43 (2/29/88).*

10. *In re Estate of Glover, 882 S.W.2d 789 (Tenn. App. 1994); Andrew v. Signal Auto Parts, Inc., 492 S.W.2d 222 (Tenn. 1972); Lightsey v. Lightsey, 407 S.W.2d 684, 56 Tenn. App. 394 (Tenn. App. 1966); Troxel v. Jones, 322 S.W.2d 251, 45 Tenn. App. 264 (Tenn. App. 1959). But see Crawford v. Crawford, 198 Tenn. 9, 277 S.W.2d 389 (1955) (parties may be estopped to deny marriage, as between themselves, in exceptional circumstances).*

11. *Attorney General Opinion 85-243 (9/18/85).*

12. *Attorney General Opinion 90-49 (4/9/90).*

13. *Attorney General Opinion 98-005 (1/9/98).*

14. *Keith v. Pack, 182 Tenn. 420, 187 S.W.2d 618 (1945).*

15. *Attorney General Opinion 98-011 (1/9/98).*

16. *Bryant v. Townsend, 188 Tenn. 630, 221 S.W.2d 949 (1949); Hunt v. Hunt, 56 Tenn. App. 683, 412 S.W.2d 7 (1965); Coulter v. Hendricks, 918 S.W.2d 424 (Tenn. App. 1995).*

17. *See Attorney General Opinion 85-189 (6/10/85) (under prior law, elected officials had no jurisdiction to perform marriages outside their jurisdiction).*

18. *Attorney General Opinion 97-139 (10/9/97).*

19. *Attorney General Opinion 87-151(9/17/87).*

20. *Attorney General Opinion 85-243 (9/18/85).*

21. *Attorney General Opinion 90-71 (7/16/90).*

22. *Attorney General Opinion 84-286 (10/25/84).*

23. *Attorney General Opinion U87-18 (2/10/87).*

24. *Attorney General Opinion 87-151 (9/17/87).*

25. *Attorney General Opinion 89-53 (4/10/89).*

26. *Attorney General Opinion 89-53 (4/10/89).*

III. FINANCIAL MATTERS

CHAPTER CONTENTS

III. FINANCIAL MATTERS

Expenses of the Office

Compensation of the County Clerk. Effective July 1, 2001, the minimum compensation of the county clerk is established in *Tennessee Code Annotated* Section 8-24-102, and is based on county population. This statute classifies county clerks with registers, county trustees and clerks of court as "general officers". The county legislative body determines the salary of these general officers each year in an amount equal to or greater than the statutory minimum. If the county legislative body takes no action, then the salary for the general officers is the statutory minimum amount. These general officers must be paid the same amount each year, except for an educational incentive payment which the county legislative body may pay in an annual amount up to $3000 minus any state educational incentive paid to officials (and employees) who have received a certificate as a certified public administrator under the county officials certificate training program. (5-1-310). Each July 1, the minimum salary of the county clerk and other county general officers will be increased by a dollar amount equal to the average annualized percentage increase in the compensation of state employees during the prior fiscal year applied to the county with the median population for all counties, subject to a five percent (5%) cap on the increase in any one fiscal year. This cap on the annual increase in the minimum salary schedule does not limit the authority of the county legislative body to provide a salary for county clerks and other county officers above the minimum level. If the county legislative body wishes to take action to pay officials in excess of the statutory minimum compensation levels, this must be done by resolution and it must be scheduled on the posted agenda for the county legislative body meeting at which the resolution is to be passed. (8-24-102).

The population figures used for determining the minimum salary are taken from the most recent federal census. When a new census is taken, the officials have a right to the new salary as of the date the census is taken, even though evidence of the new population is not available until later.[1]

Fee or Non-Fee Office - Budgeting Salary or Payover. The county clerk's interaction with the county legislative body determines whether or not the county clerk maintains a fee account for the payment of the expenses of the office, including the salary of the county clerk. Two methods exist for using and accounting for fees and commissions received by the county clerk. Under the first and oldest system, called the "fee system", the county clerk transfers to the trustee (for the county general fund) on a quarterly basis all of the fees, commissions and charges collected in the preceding quarter in excess of the salaries of the deputies and assistants, the necessary expenses of the office and the county clerk's salary (8-22-104).

Under the fee system, the county clerk is authorized to retain fees in an amount equal to three times the monthly salary of the county clerk and the salaries of the deputies and assistants as a reserve before the payover is required. If the fees collected by the county clerk are insufficient to pay all of the salaries and office expenses, the county legislative body must make up the shortfall. The county legislative body does not need to appropriate

funds for the salaries and office expenses unless the fees are inadequate. Any surplus or excess commissions are remitted to the county general fund on a quarterly basis.

The county legislative body may adopt an alternative system for any of the fee officers of the county, such as the county clerk, or all of them (except the sheriff who is always under this second system). Under the alternative system, sometimes called the "salary system", the county clerk pays over to the county general fund all of the fees, commissions, and charges collected on a monthly basis. The county legislative body is required to pay the county clerk's salary, the salaries of the deputies and assistants, and the authorized expenses of the office from the general fund in 12 equal monthly installments. This alternative system may be adopted by the county legislative body for one or more county offices. It is not necessary for all offices to operate under the same system (8-24-104).

Deputies and Assistants. Under both systems the salaries of deputies and assistants can be determined by court decree (8-20-101 *et seq.*). When the county clerk is unable to conduct the business of the office by devoting his or her entire working time thereto, the county clerk may file a sworn petition in chancery court (with the clerk and master) in the county to obtain a chancery court decree to employ deputies and assistants. The petition should be prepared by an attorney. The petition should set forth the facts showing the necessity for deputies and assistants, the number required and the salary that should be paid to each (8-20-101). The county clerk must name the county executive as the defendant in the petition. A copy of the petition is served on the county executive, who must file an answer within five days either admitting or denying the allegations, or making the answer he or she deems advisable. The chancery court must promptly hold a hearing on the petition. The chancery court may allow or disallow the petition in whole or in part, may allow the entire number of deputies or assistants asked for, or a lesser number, and may allow salaries as set out in the application, or lower salaries (8-20-102). The order or decree fixing the number of deputies and assistants may be changed by increasing or decreasing the number of deputies and their salaries, by application to the court in the same manner, or the county clerk without formal application may decrease the number of deputies and assistants and their salaries where facts justify such action (8-20-104). The costs incurred in connection with the suit are paid out of the fees collected by the county clerk's office (8-20-107).

The number of deputies and assistants and their compensation also may be established by a letter of agreement (8-20-101). If the county clerk agrees with the number and amounts set forth in the budget adopted by the county legislative body, the county clerk can enter into a letter of agreement with the county executive. This document is filed with the Chancery Court where the salary suit would have been filed, but there are no litigation taxes, attorneys' fees or court costs associated with the filing of a letter of agreement. This method can be used regardless of whether the county clerk is under the fee system or the salary system.

The county clerk has the power to employ and discharge employees. The court decree or letter of agreement merely sets the maximum number and maximum compensation of the employees. It is the county clerk's duty to reduce the number of deputies and assistants and/or their salaries when it can reasonably be done (8-20-105).

The compensation for deputies and assistants established by court decree or letter of agreement must be sufficient to comply with the Federal Fair Labor Standards Act (FLSA) and its minimum wage and overtime provisions. In general, nonexempt employees must receive overtime compensation at the rate of one and one-half their regular rate of pay for all hours worked in excess of 40 in a week. Compensatory time off is allowed in lieu of overtime compensation, but the employee must receive one and one-half hours off for each hour worked in excess of 40, and as a general rule, an employee may not accrue more than 240 hours of compensatory time. These and other laws regulating personnel matters are discussed in greater detail in another course dealing with personnel responsibilities.

Expense Accounts. The county legislative body may (*or may not*) by resolution elect to pay the expenses of salaried officials, and may promulgate rules specifying how expenses will be reimbursed and what expenses are reimbursable. In counties providing reimbursement, the county executive prescribes forms, examines expense reports or vouchers to assure items are legally reimbursable and properly filed, and forwards proper expense reports to the disbursing officer (usually the trustee) for payment. In counties with populations of 100,000 or more, salaried county officials, including the county clerk, must be reimbursed for the actual expenses incurred as an incident to holding office, including but not limited to lodging while away on official business and travel on official business, both within and outside the county. The county legislative body in these counties may, by resolution, determine what other expenses are reimbursable (8-26-112).

Before any expenses can be reimbursed, the official must submit accurate, itemized expense accounts, showing the date and amount of each item and the purpose for which the item was expended. The official must also take an oath stating that the expense account is correct and that it was actually incurred in the performance of an official duty. Receipts should be obtained and attached to the expense voucher whenever practical; vouchers are required to be numbered and referred to by number. (8-26-109). Making a false oath on an expense account is perjury (8-26-111).

Automobiles. Based on population class, some counties, including those with populations of 100,000 or greater, may also provide automobiles or monthly car allowances to the county officials described above (8-26-113).

Fees[2]

County clerks may not demand or receive any fees or compensation not specified by law (8-21-101), and may not receive any authorized fees until the duty or service for which the fee is granted has been performed, unless specifically allowed by law (8-21-102). A county clerk who demands or receives fees higher than those prescribed by law may be liable to the party charged in the amount of $50.00, and is also guilty of a misdemeanor (8-21-103). It is the duty of the courts to decide, upon application by the county clerk, any question arising under law and such decision will protect the county clerk acting pursuant to the decision (8-21-105). The following fees are specified by statute for the county clerk (8-21-701):

1. For taking and certifying the probate or acknowledgment of a deed or other instrument. . . . . $ .25
2. For a commission to take the acknowledgment. . . . . $ .50
3. For entering on the minutes the probate of a will. . . . . $ 1.50
4. For recording a will, per 100 words. . . . . $ .15
5. For recording report of commissioners to lay off year's support. . . . . $ 1.50
6. For qualifying an executor or administrator, and entering the appointment of record. . . . . $ 1.00
7. For taking and recording administration bond. . . . . $ 1.00
8. For recording letters testamentary or of administration. . . . . $ 1.00
9. For copy of same. . . . . $ 1.00
10. For recording in a well-bound book all inventories and accounts of sale, counting 4 figures as a word, per 100 words. . . . . $ .15
11. For copy of same, per 100 words. . . . . $ .15
12. For marriage bond and license, registering the same, and the return on license. . . . . $ 1.00
13. For copy of license and bond. . . . . $ .50
14. For taking and recording each license bond. . . . . $ 1.00
15. For all proceedings in a case of bastardy. . . . . $ 5.00
16. For qualifying, taking and recording bond, and entering appointment of constable. . . . . $ 1.50
17. For similar service in regard to sheriffs. . . . . $ 2.00
18. For similar services as to other official bonds. . . . . $ 1.50
19. For each revenue bond. . . . . $ 1.00
20. For recording mark or brand, and making index thereof. . . . . $ .50
21. For issuing warrant. . . . . $ .75
22. For rendering to the trustee, each year, an account of fines, forfeitures, and other county revenue collected by the trustee, to be paid by the county. . . . . $ 1.50
23. For taking bond and issuing merchant's license. . . . . $ 1.00
24. For issuing license to exhibit shows. . . . . $ 5.00
25. For issuing license to stand stallion or jack. . . . . $ 1.00
26. For issuing license to hawk and peddle. . . . . $ 1.00
27. For issuing boat license to sell goods. . . . . $ 1.00
28. For taking and stating accounts of guardians, executors, and administrators (4 figures to be counted 1 word, and figures to be used when practicable) the first 100 words. . . . . $ 1.00
for every 100 words thereafter. . . . . $ .50
provided, that when making settlements with administrators and executors the clerks shall not be allowed to incorporate the inventory and account of sales of such estates in their settlement, but shall only state the aggregate amount of the inventory of the estate. Whenever the distributive share of any minor does not exceed 200, the county clerk shall not be entitled to more than $1.00 for any settlement made with the guardian of such minor (8-21-702).
29. For recording same, per 100 words. . . . . $ .15
30. For copy thereof, per 100 words. . . . . $ .15
31. For filing and recording refunding bond from legatee or distributee. . . . . $ .50
32. For receiving and filing the suggestion of the insolvency of an estate, and order of publication. . . . . $ .50
33. For receiving and filing each claim against same. . . . . $ .15
34. For receiving and recording schedule of available assets, per 100 words. . . . . $ .15
35. For taking and stating account, making a pro rata distribution (counting 4 figures to the word, and using figures as far as practicable) per 100 words. . . . . $ .15
36. For recording same, per 100 words. . . . . $ .15
37. For copy thereof, per 100 words. . . . . $ .15
38. For orders of court confirming settlement. . . . . $ .50
39. For orders on executors, administrators, or guardians to pay money into court. . . . . $ .50
40. For making out from the assessment books a tax book to be delivered to the trustee, such compensation as the county legislative body shall allow.
41. For entering in tax book the list of any person failing

to return his/her taxables. . . . . $ .10

42. For each road order to be paid by county. . . . . $ .30

43. For receiving petition, making an order for a jury in view, and recording return and the order of court thereon, in road cases. . . . . $ 1.00

44. For entering of record venire facias, and copy. . . . . $ .50

45. For entering an allowance for pauper, and copy. . . . . $ .50

46. For recording settlement with self, or clerk of circuit court, for county revenue only, each to be paid by the county. . . . . $ 1.00

47. For entering of record any allowance, and copy thereof, when necessary, to be paid by the party in whose favor made. . . . . $ .25

48. For settling with trustees of county academies, to be paid by county. . . . . $ 2.00

49. For issuing jury tickets, to be paid by the county, each. . . . . $ .05

50. For recording on minutes of court each bill of costs from circuit court, to be paid by county. . . . . $ .75

51. For each certificate for wolf scalp. . . . . $ .25

52. For settling with county trustee for common school fund, to be paid by county. . . . . $ 2.00

53. For all other services in relation to common schools, to be paid by county. . . . . $ 5.00

54. For recording petition for incorporation of city or town. . . . . $ 2.00

55. For receiving and paying over state and county revenue on the amount collected and paid over. 5%

56. For making out abstract of each civil district's taxable property, for each district. . . . . $ 1.00

57. For ex officio services, the legislative body may make an allowance not exceeding. $50.00

58. For the probate and acknowledgment of the charter of incorporation of each private corporation, or amendment thereto, fees stated elsewhere. However, these fees have been deleted since the county clerk is no longer required to acknowledge corporate charters.

59. For services touching changing names or legitimation of children, the same for like services in other cases.

60. For services in formation of municipal corporation. . . . . $ 3.00

61. For taking acknowledgment or probate of deed or article of limited partnership or removal of same. . . . . $ 1.00

62. For taking bond and issuing license to keeper of tobacco warehouse. . . . . $ 1.50

63. For issuing license to exercise a taxable privilege and taking bond. . . . . $ 1.00

64. For attending to prosecution for penalties under provisions of the inspection laws, on sums collected and paid into state treasury. 10%

65. For services in the recovery of penalty prescribed against breach of revenue laws in relation to licenses, double fees.

66. For services touching probate and acknowledgment of deeds, 66-22-112:
    a. For issuing a subpoena for each witness required to be summoned to provide the execution of a writing. . . . . $ .25
    b. For filing and entering the date of presentation of a deed or other instrument, when its authentication is not completed at the time of presentation, in addition to the fees allowed for taking probates and acknowledgments of deeds and other instruments and certifying the same. . . . . $ .10

67. For copy from original register's book deposited in the clerk's office, and certificate. . . . . $ .50

68. For copy of probate or acknowledgment of deeds and certificate. . . . . $ .25

69. For services touching the receipt of a legacy, distributive share, or interest in an estate 30-2-709:
    a. For each certificate by clerk or justice. . . . . $ .25
    b. For recording a power of attorney and one certificate. . . . . $ 1.00
    c. For each additional certificate. . . . . $ .25
    d. For recording each receipt and acknowledgment, and filing same. . . . . $ 1.00

70. For taking bond and issuing license for discounting securities

for money or shaving notes. . . . . $ 1.50

71. For taking bond against damages for floating logs over milldams. . . . . $ .50

72. For filing, recording, and making certified copies of pedigree of any stallion, jack, or bull, claimed to be pedigreed, and used for public breeding. . . . . $ .50

73. For services in inheritance tax suits, same fees as in other cases.

74. For certificate of payment of transfer tax on land conveyances or deeds of trust or mortgages on land. . . . . $ .50

75. For endorsing entry on tax deed. . . . . $ .25

76. For taking acknowledgment of note for advances on tobacco.. . . . . $ .25

77. For license for lending money on personal property, wages, or salary, or for buying wages or salaries.. . . . . $ 2.00

78. For services in incorporating sanitary districts(7-81-108). . . . . $ 1.00

79. For services in motion cases on privilege license bonds, the usual fee for such services in circuit court.

80. For receiving, keeping, etc., funds derived from enforcement of game and fish laws. 10%

81. For registering the certificate of license of a physician. . . . . $ 1.50

82. For re-registering such certificate upon a physician's removal to another county.. . . . . $ 1.50

83. For reporting registrations, deaths, and removals of physicians, for each name so reported. . . . . $ .10

84. For recording certificate to practice osteopathy. . . . . $ 1.50

85. For recording certificate to practice optometry.. . . . . $ 1.50

86. For recording board's certificate and issuing and recording the license to a trained nurse.. . . . . $ 1.50

87. For recording license to practice veterinary medicine or surgery, or for recording same upon removal to another county. . . . . $ 1.50

88. For report of registrations, deaths, and removals, for each name, to be paid by board of examiners. . . . . $ .10

89. For services in levee and drainage districts proceedings, same as for similar services; additional sums for extra services.

90. For prosecutions for penalties under tobacco inspection law [repealed]. 10%

91. For services pertaining to assignments to secure creditors, the same fees as for like services in other cases.

92. For recording inventory of surviving partner, same fee as for recording inventories of administrators, namely, per 100 words.. . . . . $ .15

93. For each registration of automobile license--original, annual, and on transfer of ownership.. . . . . $ .75

94. For collecting and recording amounts from the business tax: Provided, however, that this fee may not be charged persons paying the annual minimum tax under the provisions of Title 67, Chapter 4, Part 7, if paid on the same date as the respective and related return is filed. . . . . $ 5.00

95. For certifying a notary public's election to the secretary of state pursuant to 8-16-106.. . . . . $ 7.00

96. For accepting signature and commission of a notary from another county pursuant to 8-16-109. . . . . $ 2.00

Miscellaneous other fees include:

1. Notary public fee for qualifying(total), 8-16-106,8-16-201, 8-21-201. . . . . $12.00
2. Fee for collection of sales tax when issuing certificates of title.. . . . . 5%
3. Fee for filing certificate and required forms regarding marriage with the office of vital records, 68-3-401. . . . . $ 1.00
4. Duties involving drainage and levee districts, see 69-6-141, 69-7-115 which provides the fee shall be the same as for similar services or as ordered by the court, and that on petitions to create watershed districts no fees shall be collected.
5. Hunting and fishing license permits or stamps valid for a number of days, 70-2-106.. . . . . $ .50
6. Annual hunting and fishing license, permit or stamp, 70-2-106. . . . . $ 1.00
7. Pawnbroker license fee, 45-6-207. . . . . $50.00
8. Pawnbroker license transfer fee, 45-6-208. . . . . $10.00
9. Title Pledge Lender license fee, 45-15-107. . . . . $50.00
10. Title Pledge Lender license transfer fee, 45-15-108. . . . . $50.00
11. Fees for certifying and making copies of instruments on original books, 10-7-117. . . . . $ 1.00

except certain specified items, such as copies of probate or acknowledgments under 8-21-701.. . . . . $ .25

12. Filing, recording and making certified copies of pedigrees, 44-7-301. . . . . $ .50
13. Business license transfer fee, 67-4-721.. . . . . $ 3.50
14. Transitory Vendor permit fee, 62-30-103. . . . . $50.00
15. Issuing boat identification numbers and certificates, 69-10-208.. . . . . $ .25

Motor Vehicle Fees:

1. Fee for the service of handling special mail orders of plates, 55-4-105(c).. . . . . $ 2.00
2. Fee for handling the special mail order of decals, 55-4-105(c).. . . . . $ 1.00
3. For issuing dealer, manufacturer or transporter plates, per plate, 55-4-117(b)(3). . . . . $ 1.25
   provided that the clerk shall only be entitled to receive a maximum per day from any one dealer of. $10.00
4. Special handling fee for the registration of each vehicle registered within the state which is principally operated outside Tennessee and which is owned by a business entity, 55-4-122(c). . . . . $ 4.00
5. Special handling fee on each unit in the owner's rental fleet registered in Tennessee, principally operated outside Tennessee and owned by a business entity, 55-4-123(e). . . . . $ 4.00
6. For registering the license number of manufacturers and dealers, 55-4-221(c)(1). . . . . $ 5.00
7. For issuing certificates of registration and registration plates from one motor vehicle to another and issuing the certificate therefor, for accepting for surrender certificates of registration and registration plates, for each set of registration plates and certificates of registration, 55-6-104(1). . . . . $ 2.50
   except in Shelby County. . . . . $ 1.50
8. For issuing each replacement certificate of registration, 55-6-104(2). . . . . $ .50
9. For receiving and forwarding to the division of motor vehicles each application for certificates of title, including all acknowledgments of signatures thereunder, 55-6-104(3) (effective7/1/04). . . . . $ 5.50
   of such fee to Tennessee consolidated retirement for county clerk contributions. . . . . $ .50
10. For issuing a duplicate certificate of ownership to replace a lost or destroyed certificate, 55-6-104(4) (effective 7/1/04). . . . . $ 5.50
    of such fee also is for county clerk retirement. . . . . $ .50
11. For each transaction involving motor vehicles where sales tax is collected, 55-6-104(5). . . . . $ 1.00
    except for each transaction involving sales tax collection of the isolated sales of boats and other such vessels, 55-6-104(5). . . . . $ 2.00
12. Issuing temporary operation permits for private passenger motor vehicles, house trailers and one-half ton rated trucks, for period not to exceed 30 days, 55-4-115(a)(11). . . . . $ 2.50
    except in Shelby County. . . . . $ 1.50
13. Issuing plates to replace lost or mutilated or additional duplicate plates to dealers, 55-4-117(a).. . . . . $ 2.50
    except in Shelby County. . . . . $ 1.50
14. Issuing plates to truck dealers, 55-4-117(b)(3). . . . . $ 1.25
    limit per dealer per day. $10.00

The county clerk shall not be entitled to any fees for certificates and seals in the application for pension and pensioners' money, or upon powers of attorney for that purpose and the taking or receiving of fees in any such cases shall be a misdemeanor (8-21-703). A county clerk, acting as a clerk of court, is authorized to demand and receive the same fees as the other court clerks when performing court clerk's duties. These fees are set forth in 8-21-

401 *et seq*. County clerks acting as court clerks also collect the applicable sheriff's fees (8-21-901 *et seq*.). Any county clerk with court clerk duties can take additional training courses with regard to those court clerk duties by taking the office specific certificate training courses designed for clerks of court.

County clerks are prohibited from requiring or encouraging persons who pay by personal check to make the check out to any individual in his or her personal capacity. All checks received by the county clerk should be made out in the name of the appropriate governmental entity or to the county clerk's office, or in the name of the county clerk in his or her official capacity. (9-1-117).

All county officials, including county clerks, are authorized to accept payment by credit card or debit card for any public taxes, licenses, fines, fees or other monies collected. Beginning June 7, 2001, the county legislative body may waive the processing fee that otherwise would be added to the amount collected when payment is made using a credit or debit card. (9-1-108). The credit card numbers and related personal identification numbers are confidential records (10-7-504).

Official Bank Account

Every county official handling public funds, including the county clerk, is required to maintain an official bank account in a bank or banks within this state and to deposit any public funds to the official account or accounts within 3 days of receipt. All county funds deposited with a bank or financial institution must be secured by collateral in the same manner and under the same conditions as state deposits as provided in Title 9, Chapter 4, *Tennessee Code Annotated*, and county clerks who maintain official accounts are authorized to enter into agreements with banks and other financial institutions as necessary for the maintenance of collateral to secure the funds on deposit. All disbursements from these accounts must be made by consecutively pre-numbered checks. A county clerk may also maintain a petty cash fund in an amount sufficient to transact the official business of the office. Any violation of the provisions governing official bank accounts is a Class C misdemeanor. (5-8-207).

Deposit slips, deposit books, bank statements, canceled checks, and check books must be accurately maintained. As a practical matter, a county clerk should keep all available cash in daily interest bearing accounts. In one instance, a county official was charged with felony misappropriation because the official had agreed not to deposit a check at the request of a citizen until sufficient funds were in the bank to cover the check.

Duties as to Revenue

The county clerk is required to maintain a revenue docket in which the county clerk is required to record all sources of county revenue (5-8-106). All appropriations or allowances made by the county legislative body, all claims of jurors and officers for attendance and all other claims chargeable against the county are entered in this revenue docket. Each entry shall include the character, description, purpose, date, amount of

appropriation or allowance, and the minute book and page where the allowance was made. (5-9-304; 18-6-105). No warrant can be drawn for any claim against the county until the claim has been registered, by order of the county executive, in the revenue docket (5-9-306; 8-16-105).

The county clerk is required to make out at the first meeting of the county legislative body each year, a balance sheet of revenue and disbursements of the county for the preceding year giving sources of revenue and items of disbursement, and to post the sheet on the outside wall of the courthouse (18-6-105).

Auditing

The records of all county clerks must be audited on an annual basis (4-3-304(4)). The Comptroller is given the authority to establish auditing standards, and the county legislative body contracts with a certified public accountant, or the Division of County Audit, to make the annual audit (9-13-112). Auditors of the Division of County Audit of the State Comptroller's Office or the independent certified public accountant will audit the county clerk's books, accounts, and records annually to ascertain any errors, irregularities or defaults (4-3-304; 9-3-201) The fiscal year for a county clerk's office is September 1 through August 30. County clerks must use the uniform chart of accounts.

Purchasing

There are three sets of statutes, and many private acts, concerning purchasing by counties. Therefore, there is little uniformity in purchasing procedures in Tennessee's counties. The three major sets of statutes (general laws) affecting counties are: the County Purchasing Law of 1983, which provides some minimum requirements for general fund purchases for counties in which no local option purchasing law is in effect; the local option County Purchasing Law of 1957; and the local option County Financial Management Act of 1981.

The County Purchasing Law of 1957 may be adopted in any county by 2/3 vote of the county legislative body, or by referendum election (5-14-102). Under this law, the county executive appoints, subject to approval by the county legislative body, a purchasing agent who must post a bond (5-14-103). The director of accounts and budgets can also serve as the purchasing agent. The purchasing agent has the exclusive power and duty to contract for and purchase all supplies, materials, equipment, and contractual services, to arrange for all rentals of such items, to transfer materials from one department to another as the need arises, and to supervise the central storeroom (5-14-105). A county purchasing commission is created to establish regulations, policies, and rules for county purchasing (5-14-106). Purchases and contracts are made on the basis of competitive bidding, except in cases when purchases are made from another governmental unit, when prices are fixed by law, or with respect to contracts for professional services (5-14-108). The county is liable for all purchases made in accordance with the procedures of the 1957 Act.

The Financial Management System of 1981 is another local option law which can be adopted in any county either by 2/3 vote of the county legislative body or by referendum election (5-21-126). Under this act's purchasing provisions, the director of finance, or a separate purchasing agent appointed by the director, is responsible for county purchasing (5-21-118). The financial management committee has the authority to set the dollar amount for which formal competitive bids are required in accordance with dollar limitations provided by law (5-21-120).

The County Purchasing Law of 1983 (5-14-201 *et seq*.) applies to all counties except those which have adopted the 1957 or 1981 purchasing provisions, counties which by private act require public advertising and competitive bidding on purchases over the dollar amount established by law (effective July 1, 1995, this amount is $5,000) or some lesser amount, Shelby County, highway department purchases, education department purchases, and purchases made under state contract. This act applies to purchases for the county clerk's office and requires public advertisement and competitive bidding for purchases, leases, or lease-purchases for amounts over the amount provided by law, except:

1. Goods with only a single source of supply or of a proprietary nature;

2. Purchases made in emergencies arising from unforeseen causes, such as delays in transportation, contractor delays, or unanticipated volume of work;

3. Fuel, fuel products and perishable goods exempted by the county legislative body; and

4. Purchases from the Local Government Data Processing Corporation and other similar nonprofit corporations designed to serve counties from bidding requirements.

The county legislative body has the authority to adopt specific regulations and procedures to implement these provisions and may lower the dollar amount limitation required for public advertisement and competitive bidding.

Effective July 1, 1995, the General Assembly amended the purchasing laws (5-14-108, 5-14-202, 5-14-204, 5-14-205, 54-7-113, 49-2-203(a), and 6-56-306) to raise to $5,000 the amount for which public advertisement and competitive bids are required for local government purchases, with purchases under $5,000 to be based on at least 3 competitive bids whenever possible. The county legislative body is authorized to lower that amount in all cases except purchases from highway and education funds.

Budgeting

The county commission formulates a budget, sets a tax rate, and levies taxes. The budget is a formal statement of estimated revenues and expenditures and is the legal authority for county departments to receive and expend funds. Through the adoption of the budget, the county commission appropriates money needed by the various

departments for each fiscal year, *which begins on July 1 and ends on the following June 30*.

The number and compensation of the deputies and assistants for the county clerk's office is established in the budget, agreed to by the county clerk and the county executive in a letter of agreement, or by court decree (8-20-101). All other expenditures for the county clerk's office are also authorized in the budget. For these reasons, the county clerk should have a basic understanding of the budgeting process.

There are several local option budgeting laws, and some counties have adopted private acts which govern the budgeting process. These various laws are discussed briefly below.

The County Budgeting Law of 1957 (5-12-101 through 5-12-114), if adopted by a county, provides for a budget committee which performs duties including preparation and control. Requirements under this law include the publication of the proposed budget and property tax rate each year before it is adopted, as well as the submission of a monthly report by the director of accounts and budgets to the county executive and county commission, showing the condition of the budget.

The County Financial Management Act of 1981 (5-21-110 through 5-21-114) is a local option law which provides for budgeting through the centralized finance office.

The Local Option Budgeting Act of 1993 (5-12-201 through 5-12-217) provides an optional budgeting procedure for all county departments which are funded from county appropriations. The primary purpose of this legislation is to enable a county to develop a consolidated budget for all county appropriations, adopt a tax rate and appropriation resolution to fund that budget, and specify a deadline by which these actions must be taken. It differs from other systems in that, if the county commission does not adopt a budget by August 1 of the current fiscal year, the proposed budgets and tax rates (the budget submitted by the education department and a consolidated proposal for the remaining departments) go into effect by operation of law.

If a county has not adopted one of the local option budget laws or a private act, there are still some general law requirements that must be followed. Under general law, all operating departments are required to prepare and submit a budget to the county executive on or before April 1 of each year, or on such date as prescribed by the county commission. The county executive considers the court decrees setting salaries for fee offices in preparing the general fund budget (5-9-402). This budget should provide the county commission with an estimate of the funds required by the department during the ensuing fiscal year (5-9-402). The county commission will review the submitted departmental budgets and arrive at a county budget for the fiscal year. The county commission cannot refuse to fund the salaries for deputies and assistants which are established by court decree. The form of the county budget is discretionary with the state comptroller of the treasury (5-9-403).

The budget resolution adopted by the county commission may contain a provision which would allow the budget to be amended within major appropriation categories during the course of the fiscal year; general law also provides an amendment procedure that may apply to counties under local option budget systems and private acts as well (5-9-407).

The county commission is generally considered to have the authority to amend the submitted budgets within major categories. Upon adoption of a budget, the county legislative body sets the property tax rate for the county.

---

1. *Underwood v. Hickman, 162 Tenn. 689, 39 S.W.2d 1034 (1931).*

2. *County Revenue Manual, The University of Tennessee County Technical Assistance Service (2000).*

IV. ETHICS, OUSTER AND LIABILITY

CHAPTER CONTENTS

IV. ETHICS, OUSTER AND LIABILITY

Financial Conflicts of Interest

General Law. Conflict of interest problems are most likely to confront the county clerk who purchases supplies for the clerk's office out of the fee account. The basic conflict of interest provision of state law prohibits the direct personal financial interest of the county clerk in contracts, purchases, or work which the county clerk would have a duty to let out, overlook or superintend in any manner. This basic conflict of interest statute (12-4-101) states in pertinent part:

> (a) It is unlawful for any officer, committeeperson, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility districts, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. "Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation....
>
> (b) It shall not be lawful for any officer, committeeperson, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges such officer's interest. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county....

This statute only prohibits conflicts of interest when the county official has a financial interest and will be voting for, overlooking, letting out, or in some manner superintending the work or contract. For example, a county clerk could probably bid on providing ambulance service for the county, or for selling computer equipment to the highway department, if that county clerk would not be voting for or overlooking the contract in any manner. However, a county clerk could not bid on or sell computer equipment to the county clerk's own office. The penalty for violation of this statute is forfeiture of all compensation paid under the contract, dismissal from office, and ineligibility for the same or similar office for ten years (12-4-102).

Only pecuniary interests are prohibited. If a county clerk receives no direct pecuniary interest, but is interested in a contract from another standpoint, that interest would not be a prohibited conflict of interest so long as the county clerk gained no personal financial benefit from the contract. An example would be a county clerk who hires a friend to work in the county clerk's office. Since the county clerk would gain no financial benefit, no prohibited conflict of interest would exist.

The question often arises as to whether it is proper for a county official to have authority over a matter that will have a direct financial benefit to a relative, such as purchasing copying equipment from a nephew. The question becomes more complex when the person who will receive the direct financial benefit is the spouse of a county official. In a question involving the propriety of a person who was a member of the county board of education voting on matters affecting the salary of the spouse of that board member, the Attorney General has opined[1] that if the spouses commingle assets, the board member has an indirect conflict of interest and must acknowledge the interest and recuse himself or herself from voting. If the spouses do not commingle assets, it was the opinion of the Attorney General that the board member should not vote as a matter of public policy. If the county clerk recuses himself or herself as a matter or public policy, the question of how to award an employment contract to a spouse is difficult. This is especially troublesome since, although no anti-nepotism statute is in effect, it is possible that the hiring of a spouse by the county clerk could be considered a prohibited conflict of interest, particularly where assets of the couple are commingled.

The disclosure of indirect interests is required by the statute, which calls for "public acknowledgment" of such interests. What is necessary for public acknowledgment is unclear, especially in the context of an official such as the county clerk acting independently, as opposed to a member of the county legislative body announcing at a regular meeting that the member has an indirect interest prior to a vote. A county clerk should therefore be careful in indirect conflict of interest situations to provide public notice of these interests prior to taking any action. For example, if a county clerk purchases supplies from a corporation in which the county clerk owns a small minority (not plurality) interest, this interest must be disclosed publicly. Because the county clerk has no natural public forum, some form of written public notice via bulletin boards in the courthouse and notice in a newspaper of general circulation in the county may be appropriate.

It is important to note that the conflict of interest statutes make no distinction based on amount of financial interest where there is a direct interest, which would appear to mean that any direct financial interest is prohibited. However, the Attorney General has indicated that a significant interest might be required, as opposed to a *de minimis* interest. Since it would be very difficult to determine what a court might hold to be significant, and since the penalty for violation of the conflict of interest statute is so severe, a county clerk would be well advised to consider any interest as being significant.[2]

Other Statutory Conflict of Interest Provisions. The 1957 Purchasing Law (5-14-101 *et seq.*) and the 1981 Financial Management Act (5-21-101 *et seq.*) both contain conflict of interest provisions. These are optional general laws which may or may not be in effect in a particular county. All of these provisions are at least as stringent as the general statute (12-4-101) discussed above.

The 1981 Financial Management Act contains the most stringent conflict of interest provisions. This statute (5-21-121) provides:

> (a) The director, purchasing agent, members of the committee, members of the county legislative body, or other officials, employees, or members of the board of education or highway commission shall not be financially interested or have any

personal beneficial interest, either directly or indirectly, in the purchase of any supplies, materials or equipment for the county.

(b) No firm, corporation, partnership, association or individual furnishing any such supplies, materials or equipment, shall give or offer, nor shall the director or purchasing agent or any assistant or employee accept or receive directly or indirectly from any person, firm, corporation, partnership or association to whom any contract may be awarded, by rebate, gift or otherwise, any money or other things of value whatsoever, or any promise, obligation or contract for future reward or compensation.

In addition to county officials and officers, this statute includes county employees within its prohibition. Further, the statute makes no distinction as to whether the interested person has any authority over the purchasing decision. The broad language of this statute prohibits county officials, officers and employees from having any interest in any purchases or contracts made by the county.

No special definitions of direct or indirect interests are found in the 1981 Financial Management Act. Therefore, the general law definitions should be used for purposes of application of this provision involving purchasing of supplies, materials or equipment for the county. Under this Act, the Director of Finance or a Purchasing Agent makes purchases for offices such as the county clerk. However, even though a Purchasing Agent makes the purchase following a requisition from the county clerk, the county clerk may not bid on the contract because of the broad language of the statute.

A similar situation holds in those counties under the County Purchasing Law of 1957, but the prohibition does not include county employees. The conflict of interest statute (5-14-114) contained in the County Purchasing Law of 1957 states:

(a) Neither the county purchasing agent, nor members of the county purchasing commission, nor members of the county legislative body, nor other officials of the county, shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any supplies, materials, equipment or contractual services used by or furnished to any department or agency of the county government.

(b) Nor shall any such persons accept or receive, directly or indirectly, from any person, firm, or corporation to which any contract or purchase order may be awarded, by rebate, gift or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation.

(c) A violation of this section is a Class D felony.

Performance of Official Duties When Clerk Incompetent. In the event that a county clerk is incompetent, because of a conflict of interest, to perform any official act required by law to be done by the county clerk, then the county executive is empowered to perform that act on behalf of the county clerk (5-6-114, 18-6-112). When the county clerk is unable to take and state any account, then the county legislative body is to appoint a special commissioner to perform that act (5-6-115, 18-6-112).

Conflicts of Interest Based on Offices or Employment

Any county employee who is otherwise qualified may serve as a member of the county legislative body, notwithstanding the fact that such person is a county employee, except persons elected or appointed as county executive, sheriff, trustee, register, county clerk, assessor of property, or any other countywide office filled by vote of the people or the county legislative body (5-5-102). Countywide officeholders may not be nominated for or elected to membership in the county legislative body. However, deputy trustees, secretaries and assistants may simultaneously hold the office of county legislative body member. Particular care must be taken to publicly acknowledge interests concerning matters relating to employment for such an employee/county legislative body member. Detailed procedures for acknowledging such interests and restricting voting are provided for such county legislative body members (5-5-102 and 12-4-101). A county legislative body member may hold that office and seek another office, such as county clerk, so long as the county legislative body is not filling the position. However, the person cannot hold both positions simultaneously.[3]

Perks and Bribes

Bribery. It is a criminal offense for any elected official to accept any bribe (39-16-102). Bribery, as commonly understood, is the act of giving or receiving a gift for the purpose of effecting the improper discharge of a public duty. A "kickback" is a bribe involving the payment of money or property to an individual for causing the county to buy from, to use the services of, or to otherwise deal with, the person making the payment. A kickback is often viewed as specific inducement for a particular sale, or as a reward for accomplishing a particular purpose.

Bribery is a Class C felony (39-16-102), and any county clerk convicted under this statute may be punished by imprisonment for not less than three nor more than 15 years and fined up to $10,000 (40-35-111). Persons convicted of attempting to bribe a public official are subject to the same punishment.

The classic kickback situation, on a county level, involves a county official who is approached by a sales agent and is offered 10% of the purchase price if the county purchases equipment from the agent. The official is influential in the subsequent purchase of the equipment and receives the promised "cut". Both parties are guilty of bribery. It does not matter which party initiated the illegal transaction. Further, if the county official solicited the kickback, the county official would be guilty of bribery regardless of whether the sales agent agreed to pay the bribe. While bribery in terms of money is the most frequent and the most prosecuted form, other business practices that involve the giving of other amenities must be carefully scrutinized.[4]

Perks, which are usually small benefits that have no promise to act in any manner connected with them, generally are not considered a violation of law, but are prohibited by the broad language contained in the Purchasing Act of 1957 in those counties in which have adopted those laws. However, the difference between a perk and a bribe can be a

subtle difference in intent, so the county clerk should be careful in accepting gifts or other benefits.

It is possible that gratuities or perks, such as free food, lodging, and transportation given to a county official by private parties with whom the official conducts county business, may be considered a bribe. The greater the value of the perk or gratuity, the more difficult it would be to overcome the public's idea that "you don't get something for nothing".

Bribery for Votes. The Constitution and statutes also prohibit offering bribes for votes.[5] It is unlawful for any candidate for the office of county clerk to expend, pay, promise, loan or become pecuniarily liable in any way for money or any other thing of value, either directly or indirectly, or to agree to enter into any contract with any person to vote for or support any particular policy or measure, in consideration of the vote or support, moral or financial, of that person (2-19-121). A violation of this statute, known as bargaining for votes, is a Class C misdemeanor (2-19-123). However, this does not render it illegal to make expenditures to employ clerks or stenographers in a campaign, for printing and advertising, actual travel expenses, or certain other allowed expenditures (2-19-124).

A stronger prohibition against bribing voters is found in the statute which makes it illegal for a person, whether directly or indirectly, either personally or through another person, to pay or give anything of value to a voter to influence the person's vote (or failure to vote) in any election, primary or convention (2-19-126). A violation of this statute is a Class C felony (2-19-128). Voters are also prohibited from accepting bribes, and the same penalty applies. Betting on elections is also prohibited (2-19-129 through 2-19-131).

In a case involving the matter of whether the district attorney abused his or her discretion in refusing to bring a quo warranto proceeding against the Mayor of Nashville-Davidson County as requested by an unsuccessful candidate for that office,[6] the Tennessee Supreme Court considered the question of bribery in violation of the bribery statutes and Article 10, Section 3 of the Tennessee Constitution, which states:

> Any elector who shall receive any gift or reward for his vote, in meat, drink, money or otherwise, shall suffer such punishment as the law shall direct. And any person who shall directly or indirectly give, promise or bestow any such reward to be elected, shall thereby be rendered incapable, for six years, to serve in the office for which he was elected, and be subject to such further punishment as the Legislature shall direct.

The allegations of wrongdoing on the part of the Mayor involved distribution of free cheese and butter to low income groups through the Metropolitan Development and Housing Agency, and a barbecue and watermelon feast sponsored by the Mayor's re-election committee.

The Supreme Court held:

> A quo warranto proceeding is not maintainable at the instance of a private citizen (citation omitted). However, if the District Attorney 'should act arbitrarily or capriciously or should be guilty of a palpable abuse of his discretion in declining to bring such action or in authorizing its institution, the Courts will take jurisdiction upon

> relation of a private citizen, in the name of the State of Tennessee.' (citation omitted). The burden of proof is on the party having the affirmative of an issue and this burden never shifts (citation omitted). The burden of proving that the District Attorney acted arbitrarily or capriciously or was guilty of palpable abuse in declining to proceed is upon the private citizen who seeks to rectify the alleged public wrong without approval of the District Attorney General.
>
> The prohibition of the Constitution and the statute involved here is directed to the giving or promising of rewards such as meat, drink, money or things of value for a vote to be elected to public office. Ms. Anderson and her attorney did not provide the District Attorney with a single instance wherein it was factually asserted that Mayor Fulton had given anything of value in exchange for a promise to vote for him in the Mayoral election. Implicit in the District Attorney General's letter of May 17 was the observation that the serving of food at a traditional political rally promoting a candidate for election to public office, to which the general public is invited, lacks the essential element of bribery, to-wit: that a voter is given food in exchange for his vote, which element was also not present in the distribution of butter and cheese.

Time and Use of Property Considerations

The county clerk has a duty not to neglect the duties of the office. Therefore, while outside activities are permissible, they can cause problems if taken to extremes. For example, a county clerk could sell computers during non-working hours, but if a contract called for the county clerk personally to train the purchaser's employees to use the new equipment during regular working hours over the first month of operation, a serious question of neglect of duty could arise. Similarly, a small use of the telephone for personal business should not cause a problem, but if the county clerk were also, for example, a real estate broker, the county clerk could not use the office in a dual capacity, official and private, without violating various duties and violating the prohibition against use of public property for private purposes, which would be a form of official misconduct (39-16-402).

Criminal Offenses

In addition to the offenses discussed above, the county clerk should be aware of certain provisions of the state criminal code which may affect the clerk's official duties. The statutes contained in T.C.A. § 39-16-101 *et seq*., which set out the offenses against the administration of government, are of primary interest to most public officials and employees. In addition to the provisions of the state criminal code, officials should be aware that there are a number of offenses that involve official misconduct, influence peddling, racketeering and wire and mail fraud that can serve as the basis for federal criminal prosecution.

Bribery Offenses. As discussed previously, the offense of bribery of a public servant is committed when a person offers, confers, or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion or other action in the public servant's official capacity. If a public servant solicits, accepts or agrees to accept any pecuniary benefit upon an agreement or

understanding that the public servant's vote, opinion, judgment, exercise of discretion or other action as a public servant will thereby be influenced, then the public servant has committed the offense as well. Bribery of a public servant is a Class C felony (39-16-102). Any executive, legislative or judicial officer convicted of bribery is forever disqualified from holding any office under the laws or constitution of this state (39-16-103). In addition to this bribery offense, there are several related bribery offenses which are discussed below.

Soliciting Unlawful Compensation. A public servant who requests a pecuniary benefit for the performance of an official action knowing that he or she was required to perform that action without compensation or at a level of compensation lower than that requested has committed the offense of solicitation of unlawful compensation, a Class E felony (39-16-104).

Buying and Selling in Regard to Offices. This offense is committed when any person holding any office, or having been elected to any office, enters into any bargain and sale for any valuable consideration whatever in regard to the office, or sells, resigns, or vacates the office or refuses to qualify and enter upon the discharge of the duties of the office for pecuniary consideration. This offense is also committed when any person offers to buy any office by inducing the incumbent thereof to resign, to vacate, or not to qualify, or when a person directly or indirectly engages in corruptly procuring the resignation of any officer for any valuable consideration. This offense is a Class C felony. (39-16-105).

It is an exception to the offenses of bribery, solicitation, and buying and selling public office that the benefit involved is a fee prescribed by law to be received by a public servant or any other benefit to which the public servant was lawfully entitled, and it is a defense that the benefit was a trivial benefit incidental to personal, professional, or business contacts, which involves no substantial risk of undermining official impartiality, or a lawful contribution made for the political campaign of an elective public servant when the public servant is a candidate for nomination or election to public office (39-16-106).

Bribing a Witness. If a person offers, confers or agrees to confer anything of value upon a witness or a person the defendant believes will be called as a witness in any official proceeding, with intent to corruptly influence the testimony of the witness, induce the witness to avoid or attempt to avoid legal process summoning the witness to testify, or induce the witness to be absent from an official proceeding to which that witness has been legally summoned, then the person has committed the Class C felony offense of bribing a witness. If a witness or person who believes he or she will be called as a witness in any official proceeding solicits, accepts or agrees to accept anything of value upon an agreement or understanding that the witness's testimony will thereby be influenced, the witness will attempt to avoid legal process summoning the witness to testify, or the witness will attempt to be absent from an official proceeding to which the witness has been legally summoned, the witness has also committed a Class C felony. However, the statute does not prohibit the payment of additional compensation to expert witnesses. (39-16-107).

Bribing a Juror. "Juror" is defined to mean any person who is a member of any jury, including a grand jury, impaneled by any court of this state or by any public servant

authorized by law to impanel a jury, and also includes any person who has been summoned or whose name has been drawn to attend as a prospective juror (39-16-101). A person who offers, confers or agrees to confer any pecuniary benefit upon a juror with the intent that the juror's vote, opinion, decision or other action as a juror will thereby be corruptly influenced, or who solicits, accepts or agrees to accept any pecuniary benefit upon any agreement or understanding that the juror's vote, opinion, decision or other action as a juror will thereby be corruptly influenced, is guilty of the Class C felony of bribing a juror (39-16-108).

Contraband in Penal Institutions. It is a Class C felony for any person to knowingly and unlawfully take, send or otherwise cause to be taken or have in his or her possession (without the express consent of the chief administrator of the institution) in any penal institution where prisoners are kept any weapons, ammunition, explosives, intoxicants, legend drugs, or controlled substances (39-16-201).

Criminal Impersonation. A person commits criminal impersonation who, with intent to injure or defraud another person, assumes a false identity, pretends to be a representative of some person or organization, pretends to be an officer or employee of the government, or pretends to have a handicap or disability (39-16-301). Criminal impersonation is a Class B misdemeanor. Impersonating a licensed professional constitutes a Class E felony(39-16-302). The use of a false identification to obtain goods, services or privileges to which the person would not otherwise be entitled is a Class C misdemeanor (39-16-303).

Misconduct Involving Public Officials and Employees. The criminal statutes relating to misconduct of public officials and employees are found in 39-16-401 *et seq.* "Public servant" is broadly defined for these purposes as persons elected, selected, appointed, employed or otherwise designated as an officer, employee or agent of government; a juror or grand juror; an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; an attorney at law or notary public when participating or performing a governmental function; a candidate for nomination or election to public office; or a person who is performing a governmental function under claim of right although not legally qualified to do so (39-16-401).

Official Misconduct. A public servant commits an offense who, with intent to obtain a benefit, or to harm another, intentionally or knowingly:

1. Commits an act relating to the servant's office or employment that constitutes an unauthorized exercise of official power,

2. Commits an act under color of office or employment (acting or purporting to act in an official capacity or take advantage of such actual or purported capacity) that exceeds the servant's power,

3. Refrains from performing a duty that is imposed by law or that is clearly inherent in the nature of the office or employment,

4. Violates a law relating to the servant's office or employment, or

5. Receives any benefit not otherwise provided by law.

It is a defense to prosecution that the benefit involved was a trivial benefit incidental to personal, professional, or business contact, and involved no substantial risk of undermining official impartiality. The offense of official misconduct is a Class E felony. (39-16-402).

Official Oppression. A public servant acting under color of office or employment (acting or purporting to act in an official capacity or taking advantage of actual or purported capacity) who intentionally subjects another to mistreatment or to arrest, detention, stop, frisk, halt, seizure, dispossession, assessment, or lien that the servant knows is unlawful, or intentionally denies or impedes another in the exercise of enjoyment of any right, privilege, power, or immunity, when the servant knows the conduct is unlawful, commits the Class E felony of official oppression (39-16-403).

Misuse of Official Information. The Class B misdemeanor of misuse of official information is committed by any public servant who, by reason of information to which the servant has access in the servant's official capacity and which has not been made public, attains, or aids another to attain, a benefit (39-16-404).

Persons convicted of official misconduct, official oppression or misuse of official information shall be removed from office or discharged from the position. A public servant elected or appointed for a specified term shall be suspended without pay beginning immediately upon conviction in the trial court and continuing through the final disposition of the case, removed from office for the remainder of the term during which the conviction occurred if the conviction becomes final, and barred from holding any appointed or elected office for ten years from the date the conviction becomes final. A public servant who serves at will shall be discharged upon conviction in the trial court. Subsequent public service shall rest upon the hiring or appointing authority provided that such authority has been fully informed of the conviction. (39-16-406).

Purchasing Property Sold Through Court. A judge, sheriff, court clerk, court officer, or employee of any court commits an offense who bids on or purchases, directly or indirectly, for personal reasons or for any other person, any kind of property sold through the court for which the judge, sheriff, court clerk, court officer, or employee discharges official duties. A bid or purchase in violation of this provision is voidable at the option of the person aggrieved. This offense is a Class C misdemeanor, with no incarceration. (39-16-405).

Interference with Governmental Operations. Under the umbrella of interference with governmental operations are the offenses of false reporting to law enforcement officers (39-16-502), and tampering with or fabricating evidence (39-16-503), both of which are illegal for all persons. Also, it is illegal for any person knowingly to make a false entry in, or false alteration of, a governmental record, or make, present, or use any record, document, or thing with knowledge of its falsity and with intent that it will be taken as a genuine governmental record, or intentionally and unlawfully to destroy, conceal, remove, or otherwise impair the verity, legibility, or availability of a governmental record.

Destruction of or tampering with a governmental record is a Class A misdemeanor (39-16-504).

Also included within offenses against the administration of government are the offenses which constitute interference with government operations, including coercion of witnesses (39-16-507), coercion of jurors (39-16-508), improper influence of a juror (39-16-509), retaliation against a juror (39-16-510), and compensation for past action of a juror (39-16-511; 39-16-512).

The same broad definition of public servant applies to these offenses (39-16-501). As with other offenses, there may be a defense when the benefit is trivial (39-16-513). Finally, it is a Class A misdemeanor for any employer to dismiss any employee from employment because of jury service by the employee (39-16-514).

Obstruction of Justice. Included within the obstruction of justice offenses are the offenses of resisting stop, frisk, halt, arrest or search (39-16-602), evading arrest (39-16-603), and accepting or soliciting a benefit for refraining, discontinuing or delaying assistance in the prosecution of an offense, or "compounding" (39-16-604). It is a defense to the offense of compounding when the benefit accepted by the victim did not exceed an amount reasonably believed by the victim to be restitution or indemnification for loss caused by the offense. The offenses related to escape are found in T.C.A. §§ 39-16-605 through 39-16-608. It is an offense for any person to knowingly or intentionally permit or facilitate the escape of a person in custody (39-16-607), and it is unlawful for any person to provide an inmate with anything that may be useful for the inmate's escape with the intent to facilitate an escape (39-16-608). Failure to appear when lawfully issued a citation in lieu of arrest or when lawfully released conditioned on subsequent reappearance, or to knowingly go into hiding to avoid prosecution or court appearance, is unlawful under 39-16-609.

Perjury Offenses. Perjury includes both the making of a false statement under oath and the making of a false statement, though not under oath, on an official document which is required or authorized to be under oath and states that a false statement is subject to the penalties of perjury (39-17-702). Aggravated perjury is a statement which constitutes perjury and the statement could have affected the outcome of the proceeding (39-16-703). It is a defense to aggravated perjury that a retraction is made before the completion of the testimony at the proceeding during which the aggravated perjury was committed (39-16-704). Inducing another to commit perjury or aggravated perjury is also an offense (39-16-705). It is not a defense to perjury or aggravated perjury that there was an irregularity in the oath (39-16-706).

Penalties. The criminal code provides that violations which may be punished by one year or more of confinement or by death are felonies, and violations punishable by a fine or confinement for less than one year are misdemeanors (39-11-110). Felonies are classified as either A, B, C, D or E and misdemeanors are classified as A, B or C (40-35-110). Sentence ranges are assigned to each classification as follows (40-35-112):

Felony	Years of Sentence
A	15 - 60
B	8 - 30

C	3 - 15
D	2 - 12
E	1 - 6

Misdemeanor	Years of Sentence
A	up to 11 months 29 days
B	up to six months
C	up to 30 days

The presumptive sentence for a felony is the minimum in each range, but the judge may increase the sentence based on enhancing and mitigating factors. Sentencing considerations are codified in the Criminal Sentencing Reform Act of 1989 (40-35-101 *et seq.*). Offenses which are not classified and for which no penalty is specified are considered Class A misdemeanors (39-11-111 and 39-11-114). Felonies for which no punishment is prescribed are considered Class E felonies (39-11-113).

Ouster

Article 7, Section 1 of the TENNESSEE CONSTITUTION provides that county officers, including the county clerk, shall be removed from office for malfeasance or neglect of duty. The General Assembly has defined malfeasance, neglect of duty, and incompetency by statute (8-47-101). Under this statute county officials, including the county clerk, may be ousted from office for:

1. Knowingly or willingly engaging in misconduct while in office;

2. Knowingly or willingly neglecting to perform duties required by law;

3. Being intoxicated in a public place;

4. Engaging in illegal gambling; or

5. Committing any act violating any penal statute involving moral turpitude.

Decisions regarding whether a crime involves moral turpitude must be made on a case-by-case basis. In general, a crime involving moral turpitude reflects upon the moral fitness of a person, such as a crime involving dishonesty, murder, sale of drugs, prostitution, and possibly, any intentional and serious bodily harm to others. Many of the cases involving a determination of whether a crime is one of moral turpitude are those involving fitness for the granting of a license, such as a beer permit. For instance, the case of *Gibson v. Ferguson*[7] involved the question of a person's fitness for a beer permit. The case held that the offense of "rolling high dice for a Coke" and the offense of failing immediately to release seventeen bluegill fish were not crimes of moral turpitude. Generally, an official cannot be removed for a misdemeanor offense not involving a crime of moral turpitude, and not for a misdemeanor in office.

Ouster proceedings are civil proceedings and may be instituted by the attorney general, district attorney general, or county attorney, either on their own initiative or after a

complaint has been made (8-47-102). It is the duty of these persons to investigate all written complaints of misconduct by an official in their jurisdiction, and if the attorney determines that reasonable grounds exist for the complaint, to institute court proceedings to oust the official (8-47-103). The privilege against self-incrimination may not be used by an official against whom ouster proceedings have been brought (8-47-107).

Citizens may also file ouster proceedings (8-47-110). Ten citizens and freeholders are required to institute the proceedings, posting security for the costs of the lawsuit. Upon request by the citizens, the attorneys named above must provide assistance to these citizens. (8-47-107).

Upon a finding of good cause, an official may be suspended from office by the judge pending the final hearing of the case, and the vacancy thereby created is then filled as would be any other vacancy (8-47-116, 8-47-117). The person filling the vacancy receives the same salary and fees which would have been paid to the suspended official (8-47-121).

Either party to an ouster proceeding may appeal, but the appeal does not operate to suspend or to vacate the trial court's judgment or decree, which remains in force until vacated, revised or modified (8-47-123). An official who successfully defends an ouster suit will be restored to office and will be allowed costs of the cause and the salary and fees of the office during the time of any suspension (8-47-121).[8] Where the ouster is successful, however, the full costs of the action will be adjudged against the ousted official (8-47-122).

As discussed previously, a conflict of interest violation (12-4-101) can result in a county clerk's being ousted and found ineligible to hold office for ten years (12-4-102). In addition, a county clerk who fails to account for and pay over all taxes the county clerk is required to collect may be removed from office and may be required to pay a penalty of 2% per month from the time the taxes would have been paid, plus attorneys' fees, and none of the amount due can be remitted after the matter has been placed in the hands of an attorney for collection (67-1-1616). Suits may be filed to collect the amounts due by the state, the county or a city, and under some circumstances by taxpayers, according to the procedure established by statute (67-1-1617 *et seq.*). Willful failure to pay into the state treasury the tax revenues collected on behalf of the state is a Class E felony (67-1-1625).

Liability Problems

Liability exposure, particularly personal liability exposure, and also (because of the rapid rise in the cost of insurance) county liability exposure, is one of the most important subjects for county clerks to understand. Tort reform has been a popular topic in recent years, but non-tort liability can in many instances be more costly to county clerks and to counties. This chapter will discuss both tort and non-tort liability, including certain immunity provisions of law. Liability associated with personnel, one of the fastest growing areas of the law, will be mentioned only briefly in this course. Personnel is covered in depth in another course.

What is a tort? A tort is a civil action based on a violation of a duty imposed by law. A tort can be the result of an intentional act or a negligent act. An action can be both a tort and a crime, as, for instance, an assault could result in both criminal liability and civil liability. The plaintiff who claims to have suffered a tort must show an act, intentional or negligent, which violates a duty imposed by law, generally the standard of care an ordinary person would exercise in the circumstances, and damages resulting from the breach of duty. The violation of duty can be through misfeasance (the improper doing of an act), or by nonfeasance (omitting to do an act).

Tennessee Governmental Tort Liability Act. Prior to 1973, Tennessee counties were subject to the state's sovereign immunity for governmental acts, but were liable for damages resulting from proprietary activities. Governmental acts were those activities that were peculiar to governments, or activities only governments could provide, such as police protection, fire protection, education, or tax collection. Proprietary activities were those that could be provided by private as well as governmental entities, such as water and sewer service, electrical services, and mass transit.

In 1973, the Tennessee General Assembly enacted the Tennessee Governmental Tort Liability Act (29-20-101 *et seq.*), which provides that counties are immune under state law from all suits arising out of their activities, either governmental or proprietary, unless immunity is specifically removed by the law. It is important to remember that this immunity does not extend to liability under federal law.

In cases where the county is immune, county officials and employees may be individually liable, but only up to the liability limits established in the Tennessee Governmental Tort Liability Act (29-20-310(c)). When the case is one where the county can be liable, the official or employee is immune (29-20-310(b)). Willful, malicious, or criminal acts, or acts committed for personal gain, do not fall under the personal liability protective provisions of the Tennessee Governmental Tort Liability Act (nor do medical malpractice actions brought against a health care provider).

Members of all county boards, commissions, agencies, authorities, and other governing bodies created by public or private act, whether compensated or not, are absolutely immune from suit under state law arising from the conduct of the entity's affairs. This immunity is removed when the conduct is willful, wanton, or grossly negligent. (29-20-201).

Areas in which the Tennessee Governmental Tort Liability Act removes governmental immunity (*i.e.*, kinds of actions for which the county can be sued) are:

1. Claims arising from the negligent operation of motor vehicles;

2. Claims arising from negligently constructing or maintaining streets, alleys or sidewalks;

3. Claims arising from the negligent construction or maintenance of public improvements; and

4. Claims arising from the negligence of county employees (29-20-202 through 29-20-205).

There are exceptions to these areas where immunity is removed. These activities, for which the county is immune under state law, but for which the county clerk or an employee may be liable, include claims arising from:

1. The exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;

2. False imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of privacy, or civil rights;

3. Issuing, denying, suspending, or revoking, or the failure to refuse to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization;

4. Failing to inspect or negligently inspecting any property;

5. Instituting or prosecuting any judicial or administrative proceeding;

6. Negligent or intentional misrepresentation;

7. Riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances; or

8. Assessing, levying or collecting taxes (29-20-205).

Persons other than elected or appointed officials and members of boards, agencies and commissions are not considered county employees for purposes of the Governmental Tort Liability Act unless the court specifically finds that all of the following elements exist:

1. The county selected and engaged the person in question to perform services;

2. The county is liable for the compensation for the performance of such services and the person receives all compensation directly from the county's payroll department;

3. The person receives the same benefits as all other county employees, including retirement benefits and eligibility to participate in insurance programs;

4. The person acts under the control and direction of the county not only as to the result to be accomplished but as to the means and details by which the result is accomplished; and

5. The person is entitled to the same job protection system and rules, such as civil service or grievance procedures, as other county employees (29-20-107).

A regular member of the county voluntary or auxiliary firefighting, police or emergency assistance organization is considered to be a county employee without regard to the elements listed above (29-20-107(d)). The county cannot extend immunity to independent contractors or other persons or entities by contract (29-20-107(c)).

The county may insure, either by self-insurance or purchasing insurance, or indemnify (up to the new limits set in the Tennessee Governmental Tort Liability Act) its employees and officials, including county clerks and the clerks' employees, for their liability exposure under the Tennessee Governmental Tort Liability Act (29-20-310(d)). The issue as to whether the county clerk may purchase liability insurance as an expense of the office for clerks operating out of the fees of the office needs to be addressed by legislation.

For actions arising on or after July 1, 1987 but before July 1 2002, the liability limits under the Tennessee Governmental Tort Liability Act (29-20-403) were as follows:

Type of Claim	Limit
Bodily injury or death of any one person in any one accident, occurrence or act	$130,000
Bodily injury or death of all persons in any one accident, occurrence or act	$350,000
Injury to or destruction of property of others in any one accident	$ 50,000

On July 1, 2002, the above limits increased to the following amounts, which will remain in effect until July 1, 2007:

Type of Claim	Limit
Bodily injury or death of any one person in any one accident, occurrence or act	$250,000
Bodily injury or death of all persons in any one accident, occurrence or act	$600,000
Injury to or destruction of property of others in any one accident	$ 85,000

On July 1, 2007, the limits will increase to the following amounts:

Type of Claim	Limit
Bodily injury or death of any one person in any one accident, occurrence or act	$300,000
Bodily injury or death of all persons in any one accident, occurrence or act	$700,000

Injury to or destruction of property of others in any one accident	$ 100,000

It is important to remember that these limits do *not* apply to federal civil rights actions in state or federal courts.

Actions under the Governmental Tort Liability Act must be commenced within 12 months after the cause of action arises (29-20-305), like other tort claims. This one year statute of limitations can be extended when claims involve persons under legal disabilities (incompetents, minors, etc.) or when the injured party has reasonably failed to discover the existence of his or her cause of action against the county, county officials, or employees.

Liability for Personnel Matters. The county clerk has general authority over the personnel in the county clerk's office. Important employment law considerations include hiring, compensation, benefits, termination, retirement, the federal Fair Labor Standards Act ("FLSA"), right-to-know statutes, reserve service, jury service, the Occupational Safety and Health Act, the Equal Pay Act, the Immigration Control Act, the insurance provisions of the Consolidated Omnibus Budget Reduction Act ("COBRA"), FICA and FIT withholdings, and maternity leave.

As an employer, the county clerk must refrain from retaliating or firing based on the employee's exercise of a protected constitutional right (*e.g.*, freedom of speech), or a statutory right (*e.g.*, filing a workers' compensation claim). Discrimination must be avoided in every aspect of employment. Under state and federal law, an employer cannot discriminate against an employee or a potential employee based upon race, color, sex, religion, national origin, age or disability (including infectious, contagious or similarly transmittable diseases). Further, any form of sexual harassment is illegal. An individual may file a discrimination complaint with the Equal Employment Opportunity Commission ("EEOC") or the Tennessee Human Rights Commission ("THRC").

An employer cannot fire an employee solely for: (1) refusing to participate or remain silent about illegal activities; or (2) using an agricultural product not regulated by the alcoholic beverage commission that is not otherwise prohibited by law (*i.e.*, smoking) if the employee follows the employer's guidelines regarding the use of the product while at work (50-1-304).

Finally, the First Amendment to the United States Constitution prohibits patronage dismissals of certain types of governmental employees.[9] Patronage dismissals are those based upon political activity or affiliation.

Other Non-Tort Liability. The Tennessee Governmental Tort Liability Act does not apply to many types of actions filed in both state and federal courts. In state court, for example, compensation, breach of contract, inverse condemnation, and many other types of common law and statutory causes of action can be the basis of a non-tort action. The limits of the Tennessee Governmental Tort Liability Act do not apply to these non-tort actions.

Breach of Contract. Counties are responsible for the breach of a contract entered into by the county. The extent of liability in such a contract action depends upon the terms of the

contract and the damages suffered by the parties. The county could be required by the courts to perform a contract according to its terms in an action for specific performance.

When an official attempts to enter into a contract on behalf of the county without actual authority to enter into such a contract, the official may then be held personally liable for the performance of the contract.

Other Actions. There are numerous areas, including search and seizure, voting rights, improper arrest, discriminatory enforcement of statutes, and the use of unlawful force, which may result in lawsuits against the county based on the actions of law enforcement and other court personnel. These claims can result in lawsuits in federal court under the federal civil rights act (42 U.S.C. § 1983) or in state court under the same federal statutes or as common law actions.[10] A negligent action, unless it rises to the level of gross negligence, will not give rise to an action under § 1983.[11]

The federal antitrust laws (15 U.S.C. § 1 *et seq.*) provide that counties will not be held responsible for damages in antitrust actions, but the county can still be enjoined from doing, or mandated to do, certain acts. In general, county officials must take care in actions which restrict competition, such as granting of exclusive franchises, referring the public to particular attorneys or lending institutions, or giving different persons different access to records.

There is an extensive framework of other laws, both state and federal, applicable to counties. Consult your county attorney when you are uncertain about the legal implications of any action you are preparing to take.

Election Issues and Disclosures

Campaign Financial Disclosure Act of 1980. The Campaign Financial Disclosure Act of 1980 requires county clerks and other candidates for public office to disclose certain information regarding campaign contributions and expenditures. Candidates for part-time offices paying less than $500 per month, whose expenditures do not exceed $1000, are exempt from these requirements (2-10-101).

Contributions are broadly defined as “any advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, personal funds of a candidate, payment, gift, pledge or subscription, of money or like thing of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, made for the purpose of influencing a measure, or nomination for election or the election of any person for public office.” (2-10-102). “Expenditure” is defined as “a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing a measure or the nomination for election or election of any person to public office. . . . [and] also includes the use of campaign funds by an officeholder for the furtherance of the office of the officeholder.” (2-10-102).

Before a candidate can receive any contributions or make any expenditures, the name and address of the political treasurer must be certified to the county election commission for

local elections, or the registry of election finance for state races. The candidate may serve as political treasurer, or may appoint another person to serve. If a candidate files this designation more than one year before the election, then financial reports must be filed each January 31 through the year of the election. However, this annual report need not be filed if the reporting date falls within sixty days of a report otherwise required by the Act. (2-10-105).

Candidates must report all contributions received and expenditures made prior to each election, and again after each election. For primary elections, the report must encompass the first contribution received and expenditure made through the tenth day before the primary election. For regular and special elections, the report includes all contributions and expenditures from the last day included in the prior report, or if no prior report has been filed, from the first contribution received and expenditure made through the tenth day before the election. Each of these reports must be filed no later than seven days before the election. No later than 48 days after each election, the candidate must report all contributions and expenditures from the date of the last report through the 45th day after the election. If this statement has a zero ($0) balance, this is considered the final statement and no additional reports are required. The candidate is required to keep for one year after the election all records used to complete the reports. (2-10-105).

In addition to the financial transactions shown in these regular statements, substantial contributions or loans received within ten days of any election must also be reported. In a state election this means that any transfer of funds over $5,000 must be reported within seventy-two hours to the registry of election finance. Any amount over $2,500 in a local race triggers the requirements of this section and must be reported to the county election commission. The report is to be submitted on forms furnished by the registry, and should include the following information: amount, date contributed, description and valuation of in-kind contributions, and for a loan, the name and address of lender, name of recipient, and details of any security agreement for the loan's repayment. (2-10-105).

Financial statements submitted under the Act must contain specified information about all income and expenditures during the period covered by the report. If neither expenditures nor contributions exceeded $1,000 during this time period, the report may simply state that fact. Otherwise the report should list separately any single contribution or expenditure over $100, including full name, address and, for expenditures, purpose. Contributions of $100 or less are to be totaled and listed together, as are expenditures of this amount, though the latter are to be grouped by category. "In kind contributions," those other than money, are to be listed separately, though once again those of $100 or less are to be totaled. The registry of election finance has more specific information regarding in kind contributions. (2-10-107).

When a candidate or political campaign committee desires to close out a campaign account, it may file a statement to that effect at any time; however, the statement must show no unexpended balance, continuing obligations, or deficits. (2-10-107). A candidate may close out a campaign account by transferring any remaining funds to another campaign fund and commencing annual filings on that account. (2-10-106). Other permissible uses for unexpended campaign funds include returning the funds to contributors, transferring them to the political party, contributing them to an education trust

fund or other specified tax-exempt organization, and using them to defray costs necessitated by the office (2-10-114). At no time are campaign funds the personal property of the candidate, and they are not available to satisfy any debts other than campaign obligations (2-10-106). The candidate must decide upon the allocation of remaining campaign funds within sixty days after the election (2-10-114).

All campaign financial statements are available for public inspection, either at the registry of campaign finance, for state elections (2-10-206), or the county election commission in local races (2-10-103). Anyone wishing to make an inspection must provide name, address, and whom he or she represents, if anyone else, and must provide identification evidence. A record of this information must be made and forwarded to the candidate within three days of the inspection. (2-10-111). Any registered voter who believes information has been omitted or misstated may file a sworn complaint with the registry of election finance (state elections) or the district attorney general where the voter resides (local elections). However, anyone who knowingly files a false complaint or one for harassment purposes is liable for civil penalties and attorneys' fees (2-10-108). The registry of election finance or the district attorney general is responsible for investigating complaints and seeking injunctions to enforce these provisions (2-10-109).

Civil penalties may also be assessed against a candidate who fails to file a required report or who files it late. These fines range from $25 to $10,000 or more, depending upon the circumstances.

Campaign Contribution Limits Act. In 1995 the General Assembly passed the Campaign Contribution Limits Act, codified in T.C.A. Title 2, Chapter 10, Part 3. As with most other areas of campaign finance, the Registry of Election Finance has administrative and enforcement powers over this act.

The act prohibits contributions by a person to any candidate which, in the aggregate, exceed $2,500 in a statewide election or $1,000 in other state or local elections. Multi-candidate political campaign committees are limited to contributions of $7,500 in statewide elections and $5,000 in other state and local elections. The amount a candidate can contribute to his or her own campaign is also limited although the constitutionality of this limitation has been questioned. Candidates cannot contribute more than $250,000 to their own campaign in statewide elections, $40,000 in senate campaigns, and $20,000 in any other state or local office campaign. (2-10-302).

The limitations of this statute do not apply to loans of money by a financial institution as defined in T.C.A. § 45-10-102(3) if they meet certain qualifications. There are also limits on the aggregate contributions allowed by political parties. These are: $250,000 in statewide elections, $40,000 for candidates for the senate, and $20,000 for elections to other state or local public office (2-10-306).

The term “contributions” as used in these statutes is defined very broadly (2-10-306). Anyone involved in fund-raising or campaign activities should take a close look at these statutes or contact the Registry of Election Finance for advice. Contributions which exceed the limit will not be considered a violation of these laws if the candidate or political

campaign committee returns the contribution to the person who made the contribution within sixty days of the receipt of the contribution (2-10-307).

The registry may impose a penalty up to $10,000 or 115% of the contributions that exceed the limits. If the penalty is not paid for thirty days, the candidate becomes ineligible to qualify for election until the penalty is paid (2-10-308).

Conflict of Interest Disclosures. Each candidate for public office is required to file a disclosure statement regarding possible conflicts of interest. Items listed in this report include the following: major sources of income over $1,000, investments over $5,000, all lobbying activities, subject areas in which professional services are rendered, bankruptcy adjudication, non-business loans in excess of $1,000 (with certain exceptions), and any other information the candidate wishes to disclose. The statement includes not only the interests held by the candidate, but also those of his or her spouse and minor children. (8-50-502).

Candidates in local races must file the conflict of interest statement with the county election commission in the county of the candidate's residence, while state race candidates file with the registry of election finance. Statements must be filed in the appropriate office within thirty (30) days after the qualifying deadline for the desired office. The disclosure must be written on the form prescribed by the registry of election finance and must be signed by one attesting witness. The statement becomes a public record after it is filed. (8-50-501). As with improper financial disclosure, failure to report possible conflicts of interest can result in civil penalties. (8-50-505, 2-10-110). These forms, once filed, are public record.

---

1. *Attorney General Opinion dated July 15, 1983.*
2. *Attorney General Opinion 84-067 (2/16/84).*
3. *Attorney General Opinion No. 85 (11/01/79).*
4. *"Gratuities May Cause Severe Implications for County Officials", Tennessee County News, March-April, 1982.*
5. *Clariday v. State of Tennessee, 552 S.W.2d 759 (1976); State v. Prybil, 211 N.W.2d 308 (Iowa 1973).*
6. *State ex rel. Anderson v. Fulton, 712 S.W.2d 90 (Tenn. 1986).*
7. *562 S.W.2d 188 (Tenn. August 30, 1976).*
8. *Marshall v. Sevier County, 639 S.W.2d 440 (Tenn. Ct. App. 1982).*
9. *See Rutan v. Republican Party of Illinois, 497 U.S. 62, 64 (1990).*

10. *Poling v. Goins, 713 S.W.2d 305 (Tenn. 1986).*

11. *Daniels v. Williams, 106 S.Ct. 662 (January 21, 1986); Nishiyama v. Dickson County, Tennessee, 814 F.2d 277 (6th Cir. 1987).*