

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 13-30

Removal of County Property Assessor for Misconduct

QUESTION

By what methods may citizens remove from office an elected county property assessor?

OPINION

An elected county property assessor could be removed from office through an ouster action under Tenn. Code Ann. §§ 8-47-101 to -127 or by recall where permitted by Tennessee law.

ANALYSIS

Under article VII, section 1, paragraph 1, of the Tennessee Constitution, certain county officials including a county assessor of property are elected for a four-year term and “shall be removed for malfeasance or neglect of duty as prescribed by the General Assembly.”¹ Qualifications for the office of county property assessor are established under Tenn. Code Ann. §§ 67-1-501 to -514. Neither these statutes nor any other statutes specifically provide for the removal of a property assessor from office.

Public officers are generally subject to removal under the ouster law codified at Tenn. Code Ann. §§ 8-47-101 to -127. Tenn. Code Ann. § 8-47-101 provides:

Every person holding any office of trust or profit, *under and by virtue of any of the laws of the state, either state, county, or municipal*, except such officers as are by the constitution removable only and exclusively by methods other than those provided in this chapter, who shall knowingly or willfully commit misconduct in office, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any of the laws of the state, or who shall in any public place be in a state of intoxication produced by strong drink voluntarily taken, or who shall engage in any form of illegal gambling, *or who shall commit any act constituting a violation of any penal statute involving moral turpitude*, shall

¹ A county office is immediately vacated if the incumbent is sentenced to the penitentiary as punishment for an offense. Tenn. Code Ann. § 8-48-101(6).

forfeit such office and shall be ousted from such office in the manner hereinafter provided.

(emphasis added). A county property assessor would be subject to ouster under this statute. Under Tenn. Code Ann. § 8-47-103, the attorney general and reporter, district attorney general, and county attorney must investigate any written complaint that a county assessor has been guilty of any of the actions set out in Tenn. Code Ann. § 8-47-101 and must initiate an ouster proceeding if there is reasonable cause for such complaint. The Governor may also direct the district attorney general and the county attorney to file an ouster petition against a county officer. Tenn. Code Ann. § 8-47-108. The petition is initiated as follows:

The petition or complaint [for ouster] shall be in the name of the state and may be filed upon the relation of the attorney general and reporter, or the district attorney general for the state, or the county attorney in the case of county officials, and of the city attorney, or the district attorney general, in the case of municipal officers; *and in all cases it may be filed, without the concurrence of any of such officers, upon the relation of ten (10) or more citizens and freeholders of the state, county, or city, as the case may be, upon their giving the usual security for costs.*

Tenn. Code Ann. § 8-47-110 (emphasis added). It is the duty of the district attorney general and county attorney, upon request of relator citizens, to aid and assist in the prosecution of an ouster proceeding against a county officer. Tenn. Code Ann. § 8-47-111. Citizens who bring an ouster proceeding directly must bear the costs of the proceeding. Tenn. Code Ann. § 8-47-122.

Whether any particular criminal offense would be grounds to oust a county official would depend on the circumstances under which it was committed, as well as the elements of the offense. Under Tenn. Code Ann. § 8-47-101, an offense would be grounds if it constitutes knowing and willful misconduct in office; knowing or willful neglect to perform the duties of the office; public intoxication; illegal gambling; or any act constituting a violation of any penal statute involving moral turpitude. “Moral turpitude” has been defined by the Tennessee Supreme Court as “[a]n act of baseness, vileness, or depravity in the private and social duties which man owes to his fellowmen or to society in general, contrary to the accepted rule or right and duty between man and man.” *Brooks v. State*, 187 Tenn. 67, 76, 213 S.W.2d 7 (1948) (internal quotation marks omitted). It is an act “intrinsicly and morally wrong and malum in se,” whether denominated a felony or misdemeanor. *Meadows v. Tenn. Bd. of Emergency Med. Serv.*, No. M2001-00478-COA-R3-CV, 2001 WL 1158873, at *4 (Tenn. Ct. App. Oct. 2, 2001) (quoting *Tillinghast v. Edmead*, 31 F.2d 81, 83 (1st Cir. 1929)). See, e.g. *Bryant v. Moore*, 198 Tenn. 335, 337, 279 S.W.2d 517 (1955) (holding forgery is a crime involving moral turpitude); *Meadows*, 2001 WL 1158873 at *4 (holding theft, whether a felony or misdemeanor, is act involving moral turpitude); *Jenkins v. State*, 509 S.W.2d 240, 246 (Tenn. Crim. App. 1974) (holding burglary and larceny are crimes involving moral turpitude).

Tennessee courts have stated that an ouster suit should only be brought if “there is a clear case of official dereliction, as such a drastic statute should be invoked only in plain cases and not for purposes of inquisition.” *Vandergriff v. State*, 185 Tenn. 386, 206 S.W.2d 395, 397 (1937).

See also State ex rel. Leech v. Wright, 622 S.W.2d 807, 818 (Tenn. 1981). The evidence of official dereliction should be clear and convincing. *State ex rel. Thompson v. Walker*, 845 S.W.2d 752, 759 (Tenn. Ct. App. 1992).

There is no other law of statewide applicability that provides a mechanism for the removal from office of a county property assessor. While there is no general law authorizing the recall of public officers in Tennessee, the charters of certain governmental entities may provide for recall. *See* Tenn. Code Ann. § 2-5-151(a) (providing that “any governmental entity having a charter provision for a petition for recall . . . or any person acting pursuant to such charter provision” must meet the requirements set forth therein).

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