

**County Employees Serving on County Commissions:  
Managing Conflict of Interest to Maintain Integrity and Trust**

DRAFT

A Draft Report of the Tennessee Advisory Commission on Intergovernmental Relations

## Contents

Managing Conflict of Interest to Maintain Integrity and Trust .....	3
Ensuring Objectivity of Those Serving in Public Office .....	5
Existing Conflict of Interest Provisions .....	6
Interests in Contracts .....	7
Disclosure Statements .....	8
Codes of Ethics .....	8
Legislative Efforts to Restrict County Employees' Service on County Commissions.....	8
Efforts to Prohibit County Employees Serving on County Commissions .....	8
Efforts to Prohibit County Commissioners from Voting when they have a Conflict of Interest .....	12
Other Ways to Manage Conflicts of Interest.....	13
Restricting Service on Committees Based on Conflicts of Interest .....	14
Specifically Defining Conflict of Interest in Law .....	14
Requiring County Legislators to Specifically Describe Conflicts of Interest in Writing .....	15
Serving the Public Interest through Ethics Awareness and Enforcement .....	16
References .....	19
Persons Interviewed .....	21
Appendix A. Senate Bill 466 by Bell, House Bill 985 by Rogers.....	24
Appendix B. Senate Bill 1288 by Hensley, House Bill 1278 by Butt .....	27
Appendix C. Positions that Can and Cannot Be Held at the Same Time .....	29
Appendix D. Summary of Other States .....	32

## Managing Conflict of Interest to Maintain Integrity and Trust

Those serving in leadership positions, whether public or private, will inevitably deal with ethical dilemmas or conflicts of interest when personal, professional, or public interests compete. Managing conflicts of interest, regardless of their source, is critical to good government. As discussed in a 2007 report by the Carl Vinson Institute of Government at the University of Georgia,

[m]aintaining public trust in the integrity of government is essential to the success of democratic government. The public expects its elected officials and public employees to conduct themselves with integrity while working for the public good. Public trust in the integrity of government is cultivated when individual public servants act with integrity and the public is aware that they do. An ethical government is often seen by the public as a precondition for making good public policy; political ethics are one basis by which citizens judge official actions.

Citizens elect their governmental leaders and expect them to make objective decisions that benefit the general public and not their personal interests. Consequently, Tennessee has legal requirements in place to address conflicts of interest at all levels of government. The law prohibits all public officials and employees from having a direct financial interest in any contract or work that they vote on, let out, oversee, or supervise, and if they have an indirect financial interest they must publicly acknowledge it. For example, an elected leader who owns a business that contracts with the government would have a direct conflict of interest. All public officials and candidates are also required to submit disclosure statements of interests to the Tennessee Ethics Commission, and every county is required to adopt and submit a code of ethics.

Concerns remain that the current conflict of interest laws are not sufficient to protect the public interest when elected members of county legislative bodies are also employees of the county. Legislation introduced in 2015, Senate Bill 466 by Bell, House Bill 985 by Rogers, would have disqualified all county employees from serving on the county commission of the county that employs them; the restriction would not have applied to members elected before December 1, 2015. Current law allows county employees to serve on their county commission unless they serve in a county-wide elected or appointed office, including mayor or executive, sheriff, trustee, register, county clerk, property assessor, or any other county-wide office filled by vote of the people or the county legislative body, or as the director of schools. Although not as clearly stated, current law is generally interpreted to also prohibit employees who work directly for a county commission, such as veterans' service officers and administrative assistants, from serving on that commission. Both the House Local Government and the Senate State and Local Government committees considered the bill and voted to send it to this commission for study.

Unlike Tennessee's municipalities and county governments in most other states, Tennessee's county structure is similar to the state and federal governments with separate legislative,

executive, and judicial functions. This separation of powers lessens the possibility of direct conflicts of interest for commission members who may be county employees because they have only indirect influence over the non-legislative parts of county government. County commissioners who were county employees when they were elected can vote if they have a conflict of interest by making a public disclosure statement before they vote; those who became employees after they were elected cannot vote if they have a conflict of interest. Unlike county commissions, the legislative bodies of many cities and metropolitan governments have direct administrative control over operations. Consequently, the laws are different for their employees—city and metropolitan government employees cannot serve on their legislative bodies unless those bodies vote to allow it.

Proponents of the legislation sent to the Commission say that county employees who serve on their county commissions might be biased toward county government and their own interests. But opponents say that in some of the most rural counties, the schools and the county government are often the biggest employers, and prohibiting county employees from serving would eliminate some of the most able, knowledgeable, and willing candidates. In fact, county employees serve on 81% of county commissions in the 69 counties that responded to a June 2015 survey of Tennessee's 92 non-metropolitan-government counties. In about one third of those, county employees make up more than 20% of the total commission members. For the counties that responded, about 14% of all county commissioners are employees of their county governments.

Even though citizens vote for candidates and choose their leaders, strong conflict of interest provisions are necessary to ensure that elected officials who are in a position to vote in their own best interest cannot do so at the expense of the broader public interest. And although there are situations in which the knowledge and expertise of public employees can make them valuable members of policy-setting entities like the state and county legislative bodies, employees who report directly to those policy-setting bodies should not be able to serve on them, nor should members of their staffs.

Rather than forbidding all county employees to serve on their county commissions, conflict of interest provisions in the law could be strengthened to make conflicts more apparent and to further limit the situations in which commission members can exert undue influence to benefit themselves, their businesses, or their families. Examples from existing practices of Tennessee counties, previously introduced legislation, and other states' laws include further restricting voting, restricting service on certain committees, requiring legislators to disclose conflicts in writing when voting, requiring ethics training, creating local ethics committees, and authorizing state ethics commissions to enforce conflict of interest laws. In addition, sitting commissioners who subsequently accept county employment could be added to the list of those currently forbidden to serve; if so, they should be required to resign but allowed to run again in later elections.

## Ensuring Objectivity of Those Serving in Public Office

Conflict of interest in the public service is defined very broadly. The National Association of Counties (NACo), for example, says that a conflict of interest depends on whether a public official makes a decision that would only benefit the public interest or benefits the official personally, professionally, or financially. In its 2007 report *County Ethics Ordinances—An Analysis and Comparison for Gwinnett County, Georgia*, the University of Georgia's Carl Vinson Institute of Government describes the context that gives rise to this issue:

Conflict of interest laws generally seek to assist the general public in receiving an official's most objective, best efforts and to address possibly competing private interests or other influence. A general definition of "conflict of interest" is any situation in which someone in a position of public trust has competing professional or personal interests. To some extent, conflicts of interest at the local government level are to be expected, since local elected officials are commonly part-time public servants and necessarily have outside employment or business interest. . . . A conflict of interest may exist even if no unethical or improper behavior actually results from it.<sup>1</sup>

Conflicts for public officials can arise in many areas, including transacting government business, voting, accepting gifts, using confidential information, disclosing financial interests, and holding outside employment. In its 2003 report *Managing Conflict of Interest in the Public Service*, the international Organisation for Economic Co-operation and Development argues that "the primary task for governments and public organizations should be to recognize risks to good governance arising from conflict of interest and put in place robust measures for ensuring that conflicts of interest which arise are rapidly identified and resolved appropriately."<sup>2</sup>

Because eliminating all conflicts of interest is not realistic, the goal is to manage them. As the 2007 Carl Vinson Institute of Government report explains it, "an effective conflict of interest provision should ensure that public officials have the ability to seek reasonable private gain to the same extent as the general public."<sup>3</sup> Tennessee's laws balance the public interest with the public officials' interest in private gain in several ways. For example, a county commissioner who is an architect or engineer at a private company could have a conflict with a contract for a new building development, or a commissioner who runs an equipment supply company could have a conflict with a purchasing contract for new equipment. These officials can serve but cannot do business with the county if they own the largest share of the business, whether or not they abstain from voting on the contract.

Tennessee's law also recognizes the public officials' right to private gain when the officials are

---

<sup>1</sup> Carl Vinson Institute of Government 2007.

<sup>2</sup> Organisation for Economic Co-operation and Development 2003.

<sup>3</sup> Carl Vinson Institute of Government 2007.

local government employees. Local government employees can be candidates for public office with some exceptions. In some cities and metropolitan governments, the legislative bodies have direct administrative control over operations.<sup>4</sup> Consequently, the laws are different for city and metropolitan government employees—they can't serve on their legislative bodies unless those bodies allow it by amending their charters or passing ordinances.<sup>5</sup>

Most county employees, like many state employees,<sup>6</sup> can serve on the legislative body of the government that employs them, although those elected or appointed to the offices of mayor or executive, sheriff, trustee, register, county clerk, property assessor,<sup>7</sup> and any other county-wide office filled by vote of the people or the county legislative body, as well as the director of schools, by statute cannot.<sup>8</sup> And although not as clearly stated in statute, when an employee works directly for the county commission, such as a veterans' service officer or an administrative assistant hired by the commission, the law could be interpreted to also prohibit these employees from serving.<sup>9</sup> Of the 69 county mayors and executives who responded to a June 2015 Tennessee Advisory Commission on Intergovernmental Relations survey, 81% have employees on their commissions, and 14% of their commissioners are county employees. In two counties, half of the commissioners are county government employees, and in about one-third of counties, employees make up more than 20% of the county legislative bodies.

### Existing Conflict of Interest Provisions

Tennessee's general conflict of interest law applies equally to all levels of government and covers both direct and indirect interests.<sup>10,11</sup> Personal financial interest is the key to determining both direct and indirect interests. An official who violates the conflict of interest laws must forfeit pay and compensation for the contract, is dismissed from office, and is ineligible for the same or a similar position for ten years.<sup>12</sup>

---

<sup>4</sup> The mayor-aldermanic form of city government gives the legislative bodies administrative powers. Some private act charter cities may also have given administrative powers to their legislative bodies. Metropolitan governments can give these powers to their legislative bodies in their charters although none of the existing metropolitan governments have done so.

<sup>5</sup> Tennessee Code Annotated, Section 7-51-1501.

<sup>6</sup> State legislators are allowed to be employees as long as the employment position is not an appointive office described in a statute. See Tennessee Attorney General Opinion Number 00-064.

<sup>7</sup> These are elective county offices listed in Article VII, Section 1, of Tennessee's constitution.

<sup>8</sup> Tennessee Code Annotated, Sections 5-5-102 and 7-51-1501.

<sup>9</sup> Libby McCroskey, Lead Legal Consultant, County Technical Advisory Service, e-mail to Jennifer Barrie, August 28, 2015. See also Tennessee Attorney General Opinion Number 13-63.

<sup>10</sup> Tennessee Code Annotated, Section 12-4-101.

<sup>11</sup> Counties can also choose to adopt private acts that are at least as strict as the general law or adopt an optional general law, such as the County Purchasing Law of 1957 or the 1981 Financial Management Act, which are both more stringent. See Tennessee Code Annotated, Section 5-14-101 *et seq.* and Section 5-21-101 *et seq.*

<sup>12</sup> Tennessee Code Annotated, Section 12-4-102.

## *Interests in Contracts*

Public officials and employees who vote for, let out, oversee, or supervise any work or contract are prohibited from having a direct interest in that work or contract. The law is usually applied to purchasing and business contracts but is also interpreted to include employment contracts because employees would have an interest in their salary and benefits.<sup>13</sup> A direct interest is any contract with the official personally or with any business in which the official is the owner, a partner, or the person with the largest share of the company. An exception to the general conflict of interest laws allows persons other than members of county and municipal governing bodies to vote on budgets, appropriation resolutions, and tax rate resolutions, "unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which such person is directly interested."<sup>14</sup> This provision has been interpreted to allow state legislators but not city or county legislators to vote on budgets even if a direct conflict of interest exists.<sup>15</sup>

Officials can have an indirect interest in a contract and still vote on a related matter but must publicly acknowledge their interest, for example, at a public meeting when the governing body is discussing and voting on the contract. An indirect interest includes any contract in which an official is interested but not directly so as well as "contracts in which the officer is directly interested but is the sole supplier of goods or services for that city or county."<sup>16</sup> Indirect interest is also interpreted to include contracts with officials' spouses if their funds are combined.<sup>17</sup>

Tennessee's general conflict of interest law also includes an exception for employees who serve on the governing body of the city or county that employs them, depending on when they began their employment.<sup>18</sup> Local legislators who were government employees when they were elected may vote if they have a conflict of interest in a matter by making a statement before the vote:

"Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents."

Local government legislators who accept city or county employment after being elected

---

<sup>13</sup> Libby McCroskey, Lead Legal Consultant, County Technical Advisory Service, interview with Jennifer Barrie, September 1, 2015. See also Tennessee Attorney General Opinion Number 11-50.

<sup>14</sup> Tennessee Code Annotated, Section 12-4-101(a)(1).

<sup>15</sup> Tennessee Attorney General Opinion Number 03-034.

<sup>16</sup> Tennessee Code Annotated, Section 12-4-101(b).

<sup>17</sup> Tennessee Attorney General Opinion Number 05-017.

<sup>18</sup> Tennessee Code Annotated, Section 12-4-101(c).

cannot vote if they have a conflict of interest. Those who abstain because of a legitimate conflict must inform the chairman, and their vote is not counted when determining the majority vote. The vote of a member having a conflict of interest who does not inform the governing body will be void if challenged during the meeting and before any further business is transacted.

### ***Disclosure Statements***

All public officials and candidates are required to file disclosure statements of interests with the Tennessee Ethics Commission (TEC) listing lobbying activities, professional interests, all sources of income, and other financial information.<sup>19</sup> Although the TEC does not have the authority to monitor the content of the statements or enforce any penalties for behavior or conduct, it does issue civil penalties, up to \$10,000, for not filing or updating the statement on time each year.<sup>20</sup>

### ***Codes of Ethics***

City and county governments are required to adopt ethical standards addressing acceptance of gifts and disclosure of conflicts of interest, make them available to the public, and submit them to the TEC.<sup>21</sup> The law applies broadly to all local public agencies and departments, and although the TEC does not have authority to verify or enforce the adopted standards or regulate behavior of officials, members of city and county governing bodies that do not adopt and file a policy are subject to removal from office. Cities and counties can develop their own ethics policies or adopt model policies developed by the University of Tennessee Municipal Technical Advisory Service (MTAS) and County Technical Assistance Service (CTAS). According to the TEC, most have adopted the MTAS and CTAS model policies.<sup>22</sup>

### **Legislative Efforts to Restrict County Employees' Service on County Commissions**

The General Assembly has considered three bills in the last two years to reduce conflicts of interest involving county employees who are members of their legislative bodies. Two of those bills sought to forbid them to serve on county commissions altogether. One would have forbidden them to vote on any matter in which they or their immediate family had an interest. None passed, but one was sent to the Commission for study.

### ***Efforts to Prohibit County Employees Serving on County Commissions***

Legislation introduced in 2014 (Senate Bill 1513 by Gresham, House Bill 1481 by Faison) would

---

<sup>19</sup> Tennessee Code Annotated, Sections 8-50-501 and 8-50-502.

<sup>20</sup> Tennessee Code Annotated, Sections 8-50-505 and 3-6-205.

<sup>21</sup> Tennessee Code Annotated, Section 8-17-101, *et seq.*

<sup>22</sup> Becky Bradley, Ethics Specialist, Tennessee Bureau of Ethics and Campaign Finance, e-mail message to Jennifer Barrie, September 8, 2015.

have forbidden local government employees to serve on the legislative bodies of the governments that employed them. Members who were employees as of the effective date of the law would have been allowed to complete their current term and additional terms if they were reelected without a break in their service. The legislation was amended to prohibit members of all local governing bodies employed by those governments voting on matters in which they have a direct financial interest. The vote of a member required to abstain would not have been counted when determining the majority vote. The amended bill passed in the Senate but never made it to the floor of the House.

Legislation introduced in 2015, Senate Bill 466 by Bell, House Bill 985 by Rogers, would prohibit all county employees serving on county commissions in the counties where they are employed after December 1, 2015, unless they are already members. Current commissioners reelected on or after December 1, 2015, without an interruption in service could continue to serve. An amendment considered by the House Local Government Committee that would have given counties authority to either allow or prohibit county employees serving on commissions was not adopted. Instead both the House Local Government and the Senate State and Local Government committees voted to send the bill to the Commission for study. An ad hoc committee created by the Tennessee County Commissioners Association is also currently reviewing the bill and considering possible alternatives. The committee plans to make a recommendation to the General Assembly later in 2015.

Proponents of the bill argue that county employees who serve on their counties' legislative bodies may vote for their own or their department's benefit.<sup>23</sup> They highlight Sumner County, where several school employees were elected to the Sumner County Commission last year and the commission subsequently passed a 24% property tax increase, mostly to fund school operations and debt service.<sup>24</sup> Bill opponents argue that schools and county governments are often the biggest employers in rural counties and prohibiting county employees serving would eliminate many willing and able candidates—it is hard enough in these rural counties to find people willing to serve on county commissions. They also expressed concerns about the bill's constitutionality, but those concerns are likely not well founded. Federal courts have not specifically ruled on the constitutionality of laws prohibiting county employees serving on the county governing bodies but have upheld similar laws prohibiting government employees running for office.<sup>25</sup>

A June 2015 survey of county mayors and executives by commission staff found that their experiences with commissioners who are employees are mixed. While 38% of county mayors and executives support allowing county employees to serve on their county commission, 17%

---

<sup>23</sup> See <http://www.tennessean.com/story/news/local/sumner/2015/03/20/sumner-commission-puts-disdain-bill-record/25113549/>.

<sup>24</sup> Anthony Holt, Sumner County Mayor, phone conversation with Jennifer Barrie, September 28, 2015.

<sup>25</sup> See *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548 (1973); *Broadrick v. Oklahoma*, 413 U.S. 601, 37 L. Ed. 2d 830, 93 S. Ct. 2908 (1973); and *Phillips v. City of Dallas*, 781 F.3d 772 (5th Cir. Tex. 2015).

are opposed, and 45% did not express a clear position for or against. Several respondents and other county government representatives said the bigger concern is commissioners who accept county jobs after being elected continuing to serve. They suggested that these commissioners should be required to resign their seats but allowed to run in a later election and serve again if elected while employed by the county.

Several states limit who can serve on governing bodies, but county governments in most states are structured differently than in Tennessee. County commissions in Tennessee are primarily legislative bodies, unlike many city governing bodies, which generally have both executive and legislative functions. The 1978 Tennessee constitutional convention changed the counties' governance structure so that it more closely mirrored the federal and state governments with three distinct branches of government: legislative, executive, and judicial.<sup>26</sup> This separation of powers lessens the possibility of direct conflicts of interest for members who may be county employees because they have only indirect influence over the other parts of county government. County commissioners serve part time, like state legislators. County mayors and executives work full time to fulfill the executive function, hire staff, and run the day-to-day operations of the county. The mayor shares executive duties with other elected constitutional county officers, including the sheriff, trustee, register, county clerk, and assessor of property, who all serve four-year terms.

Having a county executive and other constitutional officers who handle operations and administrative tasks separates the role of county commissions from the other parts of county government. This separation of powers distinguishes Tennessee's counties from their counterparts in most other states where the county governing body exercises legislative, executive, and sometimes judicial functions, as did Tennessee's counties before 1978. Many states have legislative bodies that directly supervise county operations and employ the workers. Some states give their counties stronger "home rule" powers than does Tennessee and allow them to decide their own governing structure.<sup>27</sup> Five New England states either have no county governments at all (Connecticut and Rhode Island) or have county governments with very limited functions (Massachusetts, New Hampshire, and Vermont).<sup>28</sup>

---

<sup>26</sup> Tennessee Constitution Article VII, Section 1.

<sup>27</sup> Only Knox and Shelby Counties fit this model in Tennessee.

<sup>28</sup> US Census Bureau 2013.

### Tennessee's County Government Structure

Tennessee's county governments are unlike Tennessee's city governing bodies and counties in other states:

- Article VII, Section 1 of the Tennessee Constitution, not statute, sets the basic framework for county governments with a legislative body and constitutional officers.
- Since the 1978 Tennessee constitutional convention, county governance structure is similar to state and federal governments with a clear separation of legislative, executive, and judicial powers.
- County commissions have primarily legislative functions separate from the county executive functions.
- Elected constitutional officers—the county mayor or executive, sheriff, trustee, register, county clerk, and assessor of property—share executive duties and run the day-to-day operations of the county.
- Statute sets the structure of Tennessee's city governing bodies—many have both executive and legislative functions.

A review of other states' laws on whether county employees can serve on their governing bodies indicates that half, including Tennessee, either explicitly prohibit or explicitly allow it. The other half, including the five New England states with limited or no county governments, have no statutes saying whether county employees can serve on their governing bodies.<sup>29</sup> In the absence of a controlling statute or constitutional provision, the legal doctrine of incompatible offices may determine whether a county employee can serve on the legislative body that employs them if that employee holds a position that is properly considered an "office." Not all government employees are officers, and the question of incompatibility doesn't arise unless someone holds at least two offices. The Tennessee Supreme Court has held that a public "office" is a position in which the individual receives compensation, and the term and duties of the office are defined in statute.<sup>30</sup> Examples of officers in Tennessee include probate judges<sup>31</sup> and notaries,<sup>32</sup> as well as the constitutional county officers. Positions Tennessee courts have said are not offices within the meaning of this doctrine include veterans' service officers<sup>33</sup> and police officers.<sup>34</sup> If, however, the employee holds two positions

---

<sup>29</sup> The other 20 states with no statutes are Arizona, Colorado, Georgia, Hawaii, Idaho, Kansas, Kentucky, Maryland, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, South Dakota, Texas, Washington, and Wyoming.

<sup>30</sup> *Day v. Sharp*, 128 Tenn. 340 (Tenn. 1913) and *Wise v. Knoxville*, 194 Tenn. 90 (Tenn. 1952).

<sup>31</sup> *Marion County Bd. of Comm'rs v. Marion County Election Comm'n*, 594 S.W.2d 681 (Tenn. 1980).

<sup>32</sup> *Wheeler v. State*, 56 Tenn. (9 Heisk.) 393 (Tenn. 1872).

<sup>33</sup> *State v. Farmer*, 189 Tenn. 276, 225 S.W.2d 60 (Tenn. 1949).

properly considered offices, then the incompatibility doctrine may deem the first position vacated when the second position was taken.<sup>35</sup> Whether the two offices are incompatible “depends on the circumstances of each individual case, and the issue is whether the occupancy of both offices by the same person is detrimental to the public interest, or whether the performance of the duties of one interferes with the performance of those of the other.”<sup>36</sup>

Of the 25 states with laws specifying whether county employees can serve on their governing bodies, seventeen states statutorily forbid it and eight, including Tennessee, explicitly allow it. Alabama is the only one of the seventeen that forbid it in which nearly all county governments have a separation of powers comparable to Tennessee’s.<sup>37</sup> Five (Alaska,<sup>38</sup> Delaware, Florida, South Carolina, and Wisconsin) have a mix of county governments, some of which are comparable to Tennessee’s and some of which are not. Eleven have no county governments with a separation of powers like Tennessee’s.<sup>39</sup> Of the seven states that explicitly allow county employees to serve on county legislative bodies, one, Arkansas, has county governments with a separation of powers comparable to Tennessee’s. Another, Illinois, has some county governments comparable to Tennessee’s. County governments in the other five (Iowa, Montana, North Carolina, Oregon, and Utah), are not comparable to Tennessee’s.<sup>40</sup>

### ***Efforts to Prohibit County Commissioners from Voting when they have a Conflict of Interest***

A bill considered by the General Assembly in 2001 (Senate Bill 533 by Cohen, House Bill 666 by Kisber) would have prohibited voting by any member of a city or county governing body, including employees of those bodies, on matters in which they have a conflict of interest and on any procedural actions related to such matters. The bill did not define conflict of interest but did clarify that the vote of a member who abstains because of a conflict would not be counted towards the majority. The bill was never taken up. No similar legislation was introduced until 2015.

Twenty-three states have statutes similar to this bill, prohibiting county legislators voting on matters if there is a conflict of interest.<sup>41</sup> Five of these states (Colorado, Nebraska, Oregon,

---

<sup>34</sup> *Wise v. Knoxville*, 194 Tenn. 90 (Tenn. 1952).

<sup>35</sup> See Appendix C for additional information.

<sup>36</sup> 67 C.J.S. Officers § 38 (2008).

<sup>37</sup> Davidson, Moore, and Trousdale counties in Tennessee are metropolitan governments.

<sup>38</sup> School employees can serve on their legislative bodies. Alaska Stat. Section 29.20.630.

<sup>39</sup> California, Indiana, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, Virginia, and West Virginia.

<sup>40</sup> See Appendix D for a summary of the other states.

<sup>41</sup> Alabama, Arizona, California, Colorado, Florida, Idaho, Maine, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Virginia, West Virginia, Wisconsin, and Wyoming.

Pennsylvania, and Texas) allow county legislators to vote if their votes are necessary for the board to take action on a matter. Two of the twenty-three states, Nevada and Virginia, reduce the quorum requirement if a legislator has to abstain from voting on a matter.

Legislation introduced in 2015 (Senate Bill 1288 by Hensley, House Bill 1278 by Butt) would make Tennessee law more stringent as it pertains to local government employees by prohibiting voting by members of a city or county governing body who are employees of the city or county or whose immediate family is an employee of that city or county on any matter in which the member has a conflict of interest. The bill does not define conflict of interest but does clarify that "immediate family" includes a spouse, child, stepchild, brother, sister, son-in-law, daughter-in-law, parent, or grandparent of the member. Representative Butt withdrew her bill after it was approved by both the House Local Government and Senate State and Local Government committees.

Thirteen states forbid county legislators to vote on matters if there are conflicts of interest involving their family members, but these restrictions apply to all county legislators, not just those who are employees of the government.<sup>42</sup> Most of these states prohibit their voting if there are conflicts involving their spouses<sup>43</sup> and children<sup>44</sup> or dependent children.<sup>45</sup> Idaho forbids voting if household members are affected but does not define who they are. Five states (Alabama, Arizona, Mississippi, Nevada, and South Carolina) prohibit their voting if there are conflicts involving more distant relatives including in-laws,<sup>46</sup> siblings,<sup>47</sup> or parents;<sup>48</sup> grandparents and grandchildren;<sup>49</sup> half-siblings;<sup>50</sup> stepchildren;<sup>51</sup> stepparents;<sup>52</sup> or great-grandparents, great-grandchildren, uncles, and aunts.<sup>53</sup>

## Other Ways to Manage Conflicts of Interest

There are ways of managing conflicts of interest that go beyond what is required by Tennessee

---

<sup>42</sup> Alabama, Arizona, Idaho, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, South Carolina, West Virginia, and Wisconsin.

<sup>43</sup> Alabama, Arizona, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, South Carolina, West Virginia, and Wisconsin.

<sup>44</sup> Arizona, Nebraska, Nevada, and South Carolina.

<sup>45</sup> Alabama, Mississippi, Missouri, New Jersey, West Virginia, and Wisconsin.

<sup>46</sup> Alabama, Arizona, Mississippi, Nevada, and South Carolina.

<sup>47</sup> Alabama, Arizona, Mississippi, and South Carolina.

<sup>48</sup> Alabama, Mississippi, Nevada, and South Carolina.

<sup>49</sup> Alabama (if dependent), Arizona, Nevada, and South Carolina.

<sup>50</sup> Arizona.

<sup>51</sup> Arizona and Nevada.

<sup>52</sup> Mississippi.

<sup>53</sup> Nevada.

law without prohibiting county employees serving on their county legislative bodies. Examples come from the existing practices of Tennessee counties and other states' laws and include restricting service on certain committees, requiring legislators to disclose conflicts in writing when voting, requiring ethics training, creating local ethics committees, and authorizing state ethics commissions to enforce conflict of interest laws.

### *Restricting Service on Committees Based on Conflicts of Interest*

Some Tennessee county commissions limit potential conflicts of interest by forbidding commissioners to serve on certain committees.<sup>54</sup> County commissions can and do consider conflicts of interest when making committee assignments. For example, some do not allow developers to serve on planning committees, and some do not allow county employees to serve on budget committees.

### *Specifically Defining Conflict of Interest in Law*

Sixteen states specifically define conflict of interest in their laws to make clear what matters local legislators cannot vote on.<sup>55</sup> In five of these states (California, Maine, Minnesota, Nevada, and New Jersey), conflict of interest is defined as a financial interest in a matter the county legislators are taking action on. Seven (Florida, Idaho, Missouri, Nebraska, Pennsylvania, South Carolina, and South Dakota) define it as a financial benefit or harm that is distinguishable from the financial benefits or harms received by the general public or a distinct group of people. Virginia requires county legislators to disqualify themselves from votes in which they would have a personal interest, defined as

- ownership or an option for ownership of more than 3% of a business;
- personal liability assumed on behalf of a business if the liability exceeds 3% of the business' value;
- annual income in excess of \$5,000 from ownership of a business or real or personal property;
- salary or other benefits that exceed \$5,000 annually from the use of property, provided by a business or governmental agency; or
- ownership or an option for ownership of real or personal property if the interest exceeds \$5,000 in value.

---

<sup>54</sup> Information gathered during interviews with county mayors and executives and other county government representatives.

<sup>55</sup> Alabama, California, Florida, Idaho, Maine, Minnesota, Missouri, Nebraska, Nevada, New Jersey, Oregon, Pennsylvania, South Carolina, South Dakota, Virginia, and Wyoming.

Three of the sixteen states, Alabama, Oregon, and Wyoming, define conflict of interest as a financial interest in a matter and then go further, describing situations that are not considered conflicts of interest. In Alabama, conflicts of interest do not include

- a loan or financial transaction made or conducted in the ordinary course of business,
- an occasional nonpecuniary award publicly presented by an organization for performance of public service,
- payment of or reimbursement for actual and necessary expenditures for attendance at a convention or other meeting, or
- any campaign contribution.

In Oregon, it is a conflict of interest for county legislators to vote on matters from which they would derive a pecuniary benefit or detriment with the exception of

- an interest or membership in a particular business, industry, occupation, or other class required by law as a prerequisite to the holding by the person of the office;
- any action in the person's official capacity that would affect to the same degree a class consisting of all state residents or a smaller class consisting of an industry, occupation or other group including one in which the person is a member or is engaged; or
- membership in a tax-exempt nonprofit corporation.

Wyoming defines conflict of interest as a pecuniary benefit in the form of property that does not include property worth less than \$20; food, drink, or entertainment that is tax deductible; and political contributions.

### *Requiring County Legislators to Specifically Describe Conflicts of Interest in Writing*

Seven states require county legislators to submit written disclosures describing conflicts of interest that prevent them from voting on specific matters.<sup>56</sup> Four of the states (Colorado, Nebraska, Pennsylvania, and Texas) allow county legislators to vote if their votes are necessary for the board to take action on an issue, but the required disclosure must be filed before the vote. In the three other states, Florida, Minnesota, and South Carolina, county legislators cannot vote if there is a conflict, but the disclosure can be filed after the vote. Six of the states (Florida, Minnesota [in seven counties], Nebraska, Pennsylvania, South Carolina, and Texas) require the disclosures to be filed with the county legislative bodies; Colorado requires the disclosures to be filed with the secretary of state's office.

---

<sup>56</sup> Colorado, Florida, Minnesota (seven Minneapolis-St. Paul metropolitan counties only), Nebraska, Pennsylvania, South Carolina, and Texas.

## *Serving the Public Interest through Ethics Awareness and Enforcement*

Training about and enforcement of conflict of interest laws serve the public interest by promoting, encouraging, and maintaining transparency, accountability, and compliance with these laws. Although it is not required, some Tennessee counties have created local ethics committees to investigate and refer ethics complaints to proper authorities. Some states' ethics commissions have authority not only to investigate but also to enforce conflict of interest laws; Tennessee's does not. County government professional organizations recommend training, and a few states require it, but Tennessee does not.

### *A Few States Require Ethics Training for County Legislators*

Professional organizations, including the International City/County Management Association (ICMA), the Organisation for Economic Co-operation and Development (OECD), the National Association of Counties (NACo), the University of Tennessee County Technical Assistance Service (CTAS), and the Tennessee County Commissioners Association, recommend ethics training for public officials to help manage conflicts of interest. The ICMA says that "[o]rientations for newly appointed and elected officials are a great opportunity to raise awareness about the complexity of conflicts of interest and their potential to undermine the public's confidence in local government."<sup>57</sup> The OECD recommends that

While laws and codes, as primary sources, can establish definitions, principles and essential procedural requirements of a conflict-of-interest policy, guidelines, training materials, advice and counseling should also be used to provide practical examples and concrete steps to be taken for identifying and resolving conflict-of-interest situations, especially in rapidly-changing or "grey" areas such as private-sector sponsorship, public-private partnerships, interchange of personnel between sectors, NGO relations, and party-political activity by individuals.<sup>58</sup>

Although not required in Tennessee, public officials can voluntarily participate in training. CTAS offers training for county officials and employees in cooperation with the Tennessee County Services Association and the County Officials Association of Tennessee through their County Officials Certificate Training Program (COCTP), which includes technical, managerial, and ethics training for elected officials and employees to help them understand county government operations and serve more effectively. Participants may take individual courses or work toward becoming a certified public administrator. CTAS believes that a broader understanding of the mechanics of county government affords COCTP graduates better knowledge of the county as an entity, which helps them better serve their constituency.<sup>59</sup>

---

<sup>57</sup> Dailey 2009.

<sup>58</sup> Organisation for Economic Co-operation and Development 2003.

<sup>59</sup> For more information about COCTP, see [http://www.ctas.tennessee.edu/sites/default/files/2014\\_COCTP+Brochure\\_web.pdf](http://www.ctas.tennessee.edu/sites/default/files/2014_COCTP+Brochure_web.pdf).

Only three states, Alabama, California, and Florida, require county legislators to attend ethics training. Alabama requires them to attend ethics training provided by the Alabama Ethics Commission within 120 days of being sworn into office. Training must be made available online but can be provided in person. A free video on the Ethics Commission website satisfies Alabama's training requirement.<sup>60</sup> After viewing the video, commissioners must submit their name online, and the information is reported electronically to the Ethics Commission. Free DVD copies of the video can be requested, but the Ethics Commission must be notified in writing that the training has been completed. The training requirement can also be satisfied by completing the Alabama Local Government Training Institute's ethics course.

In California, members of the county boards of supervisors must attend two hours of ethics training within their first year of service and at least once every two years thereafter. It can be provided online, in person, or through self-study by commercial organizations, nonprofits, or local governments. The California Fair Political Practices Commission and the Attorney General must be consulted about course content. A free online training course is available on the California Fair Political Practices Commission website.<sup>61</sup> Supervisors must take an online test at the end to prove they took the course. The California Institute of Local Government offers a \$25 self-study program and on-site training for a fee.<sup>62</sup>

County commissioners in Florida are required to attend four hours of training each calendar year. County commissioners can take training from any source they choose, and free online training is available on the Florida Commission on Ethics website.<sup>63</sup> County commissioners must certify on their annual statements of financial interests forms that they have completed the required training.

### *Some Tennessee Counties have Formed Local Ethics Committees*

Although no state requires it, NACo suggests that counties form local ethics commissions.<sup>64</sup> CTAS recommends that counties create local ethics committees to receive and investigate ethics complaints<sup>65</sup> and suggests that the committees include county commissioners, one constitutional county officer, and one other board, committee, or commission member, all appointed by the county mayor or executive. According to CTAS, many Tennessee counties have established ethics committees to address ethics complaints, but those committees only screen complaints and do not have enforcement authority.<sup>66</sup> If complaints relate to issues covered in counties' adopted ethics policies, CTAS recommends that the committees refer the

---

<sup>60</sup> <http://ethics.alabama.gov/training/Intro.aspx>.

<sup>61</sup> <http://www.fppc.ca.gov/index.php?id=477>.

<sup>62</sup> <http://www.ca-ilg.org/ethics-education-and-training-ab-1234>.

<sup>63</sup> <http://www.ethics.state.fl.us/Training/Training.aspx>.

<sup>64</sup> Markwood 2009.

<sup>65</sup> The University of Tennessee County Technical Assistance Service 2006.

<sup>66</sup> Austin 2010.

complaints to the appropriate persons or agencies to take action.

### *State Ethics Commissions Enforce Conflict of Interest Laws in a Handful of States*

Many states including Tennessee have state ethics commissions, but most do not have authority to enforce conflict of interest laws. Ethics commissions in only four states (Missouri,<sup>67</sup> Nebraska,<sup>68</sup> Ohio,<sup>69</sup> and West Virginia<sup>70</sup>) have power to enforce conflict of interest laws that affect county legislators. These four commissions range in size from six to twelve members, and all have full-time staffs. Citizens can file complaints, and the commissions then investigate and hold hearings on the matters. If they determine that the conflict of interest laws have been violated, the Missouri, Nebraska, and West Virginia commissions have power to impose fines and issue cease and desist orders. Missouri's commission can also issue letters of reprimand. Ohio's commission does not have power to impose penalties but can refer matters to the appropriate prosecutor for criminal prosecution. Referrals remain confidential unless the prosecutor fails to act within 90 days. If the prosecutor fails to act, the commission may disclose that the referral was made.

DRAFT

---

<sup>67</sup> <http://www.mec.mo.gov/>.

<sup>68</sup> <http://www.nadc.nebraska.gov/>.

<sup>69</sup> <http://www.ethics.ohio.gov/>.

<sup>70</sup> <http://www.ethics.wv.gov/Pages/default.aspx>.

## References

- Austin, Steve. 2010. *Ethics-Conflicts of Interest-Ouster*. The University of Tennessee County Technical Assistance Service.
- Carl Vinson Institute of Government. 2007. *County Ethics Ordinances: An Analysis and Comparison for Gwinnett County, Georgia*. University of Georgia.  
<https://www.cviog.uga.edu/free-downloads/county-ethics-ordinances.pdf> (accessed September 29, 2015).
- Dailey, Jared. "Ethics: Managing Conflicts of Interest", *ICMA Public Management Magazine*. March 2009, Vol. 91, No. 12.  
[http://icma.org/en/icma/knowledge\\_network/documents/kn/Document/6092/Managing\\_Conflicts\\_of\\_Interest](http://icma.org/en/icma/knowledge_network/documents/kn/Document/6092/Managing_Conflicts_of_Interest) (accessed September 18, 2015).
- Markwood, Chris. 2009. *County Code of Ethics*. National Association of Counties, Research Division.  
<http://www.naco.org/sites/default/files/documents/County%20Code%20of%20Ethics.pdf> (accessed September 29, 2015).
- National Association of Counties. 2008. *County Leadership Handbook*.  
<http://www.naco.org/sites/default/files/documents/NACo%20County%20Leadership%20Handbook.pdf> (accessed September 18, 2015).
- Organisation for Economic Co-operation and Development. 2003. *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*. OECD Publications Service: Paris, France. <http://www.oecd.org/gov/ethics/48994419.pdf> (accessed September 29, 2015).
- The University of Tennessee County Technical Assistance Service. "Model ethics Policy Under the Ethics Reform Act of 2006". *Spotlight on Current Issues*, December 2006.  
<http://www.tn.gov/sos/tec/CTAS%20Ethics%20Policy.pdf> (accessed September 18, 2015).
- The University of Tennessee County Technical Assistance Service. "County Officials Certificate Training Program".  
[http://www.ctas.tennessee.edu/sites/default/files/2014\\_COCTP+Brochure\\_web.pdf](http://www.ctas.tennessee.edu/sites/default/files/2014_COCTP+Brochure_web.pdf). (accessed September 28, 2015).
- The University of Tennessee County Technical Assistance Service. "Forms of County Government." <http://eli.ctas.tennessee.edu/reference/forms-county-government> (accessed September 14, 2015).
- The University of Tennessee Municipal Technical Advisory Service. "Cities by Charter Form"  
<http://www.mtas.tennessee.edu/web2012.nsf/Web/Charter+Form+Codes> (accessed

September 28, 2015).

The University of Tennessee Municipal Technical Advisory Service. "Charters".  
<http://mtasresource.mtas.tennessee.edu/reference/charters> (accessed September 28, 2015).

United States Census Bureau. 2013. *Individual State Descriptions: 2012*. US Department of Commerce. <http://www2.census.gov/govs/cog/2012isd.pdf> (accessed September 25, 2015).

DRAFT

## Persons Interviewed

David Angerer, Municipal Management Consultant, Jackson  
University of Tennessee Municipal Technical Advisory Service

Jim Arnette, Director, Division of Local Government Audit  
Tennessee Comptroller of the Treasury

Melissa Ashburn, Legal Consultant, Knoxville  
University of Tennessee Municipal Technical Advisory Service

Terry Ashe, Executive Director  
Tennessee Sheriff's Association

Steve Austin, Legal Consultant  
University of Tennessee County Technical Assistance Service

Laura Baigert, Sumner County Citizen  
Sumner Taxpayers Alliance

Mike Bell, State Senator  
District 9

Doug Bodary, County Government Consultant, Region 5  
University of Tennessee County Technical Assistance Service

Ernest Burgess, County Mayor  
Rutherford County

Kenneth Carey, County Mayor  
Cumberland County

Carroll Carman, County Mayor  
Trousdale County

Rodney Carmical, Executive Director  
Tennessee County Highway Officials Association

Fred Congdon, Executive Director  
Association of County Mayors

David Connor, Executive Director  
Tennessee County Services Association

Charles Curtiss, Executive Director  
Tennessee County Commissioners Association

Dana Deem, Municipal Management Consultant, Jackson  
University of Tennessee Municipal Technical Advisory Service

Ron Fults, Legal Counsel  
Greater Nashville Regional Council

Mike Galey, County Government Consultant, Region 8  
University of Tennessee County Technical Assistance Service

Karen Garrett, Legal Services Attorney  
Tennessee General Assembly

Doug Goddard, Former Executive Director  
Tennessee County Commissioners Association

Brent Greer, County Mayor  
Henry County

Rick Hall, County Government Consultant,  
Region 1  
University of Tennessee County Technical  
Assistance Service

Larry Hinton, County Commissioner  
Sumner County

Elisha Hodge, Legal Consultant, Nashville  
University of Tennessee Municipal  
Technical Advisory Service

Anthony Holt, County Mayor  
Sumner County

Dennis Huffer, Legal Counsel  
Greater Nashville Regional Council

Jeff Huffman, County Executive  
Tipton County

Merrol Hyde, County Commissioner  
Sumner County

Gary Jaeckel, Municipal Management  
Consultant, Nashville  
University of Tennessee Municipal  
Technical Advisory Service

Chad Jenkins, Deputy Director  
Tennessee Municipal League

Kenny McBride, County Mayor  
Carroll County

Libby McCroskey, Manager of Legal  
Services  
University of Tennessee County Technical  
Assistance Service

Iliff McMahan, Regional Director,  
Northeast Tennessee Region  
Department of Economic and Community  
Development

Kim McMillan, Mayor  
City of Clarksville

Jeff Metzger, Legal Consultant  
University of Tennessee County Technical  
Assistance Service

John New, Former Legislative Liaison  
Tennessee Municipal League

Drew Rawlins, Executive Director  
Tennessee Bureau of Ethics and Campaign  
Finance

Wesley Robertson, County Government  
Consultant, Region 2  
University of Tennessee County Technical  
Assistance Service

Ben Rodgers, County Government  
Consultant, Region 3  
University of Tennessee County Technical  
Assistance Service

Courtney Rogers, State Representative  
District 45

Sloan Stewart, County Mayor  
Moore County

Jerry Stone, Former County Commissioner  
Sumner County

Mike Turner, Former State Representative  
District 51

Larry Waters, County Mayor  
Sevier County

Jim Westbrook, County Commissioner  
Weakley County

Tim Wirgau, State Representative  
District 75

Jim Wrye, Assistant Executive Director,  
Communications and Government  
Relations  
Tennessee Education Association

Ken Yager, State Senator  
District 12

DRAFT

## Appendix A. Senate Bill 466 by Bell, House Bill 985 by Rogers

House Bill 985  
By Rogers

SENATE BILL 466

By Bell

AN ACT to amend Tennessee Code Annotated, Title 2;  
Title 5; Title 6; Title 7; Title 8 and Title 12, relative  
to county government.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 5-5-102, is amended by deleting subdivision (c)(1) in its entirety and substituting instead the following:

(1) Notwithstanding any law to the contrary, any county employee shall be disqualified from serving as a member of the county legislative body for the county that employs such county employee, by reason of being a county employee. Any member of a county legislative body who is a county employee on December 1, 2015, shall not become disqualified and may continue in office as a member of the county legislative body pursuant to this subdivision (c)(1) for the remainder of the member's term. Any member of a county legislative body who is a county employee on December 1, 2015, who is reelected to the county legislative body on or after that date, without any interruption in holding such office, may continue in office as a member of the county legislative body.

SECTION 2. Tennessee Code Annotated, Section 5-1-210(4), is amended by deleting the subdivision in its entirety and substituting instead the following:

(4) For the size, method of election, qualification for holding office, method of removal, and procedures of the county legislative body with such other provisions with respect to such body as are normally related to the organization, powers, and duties of governing bodies in counties; provided, however, any county employee shall be disqualified from serving as a member of the county legislative body for the county that

employs such county employee, by reason of being a county employee; provided, further, that any member of a county legislative body who is a county employee on December 1, 2015, shall not become disqualified and may continue in office as a member of the county legislative body for the remainder of the member's term. Any member of a county legislative body who is a county employee on December 1, 2015, who is reelected to the county legislative body on or after that date, without any interruption in holding such office, may continue in office as a member of the county legislative body.

SECTION 3. Tennessee Code Annotated, Section 2-12-102(b), is amended by adding the following language at the end of the subsection:

As used in this subsection (b), "qualifies as a candidate for any public office" means when a person has made a formal announcement of candidacy; has filed a petition seeking nomination for election to public office; or has received contributions or made expenditures or given consent for a campaign committee to receive contributions or make expenditures for the person's election to public office.

SECTION 4. Tennessee Code Annotated, Section 12-4-101(c), is amended by adding the following language as a new subdivision:

(4)

(A) This subsection (c) shall apply to:

(i) Any member of a local governing body of a county who is also an employee of such county on December 1, 2015, and who continues in office for the remainder of the member's term; or

(ii) Any member of a local governing body of a county who is also an employee of such county on December 1, 2015, and who is reelected to the governing body, without any interruption in holding the member's office.

(B) Nothing in this subsection (c) shall authorize any member of a local governing body of a county who is also an employee of such county to qualify as a candidate for the local governing body after December 1, 2015.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. This act shall take effect December 1, 2015, the public welfare requiring it, and shall apply to any election or vacancy occurring on or after such date.

DRAFT

## Appendix B. Senate Bill 1288 by Hensley, House Bill 1278 by Butt

HOUSE BILL 1278  
By Butt

SENATE BILL 1288

By Hensley

AN ACT to amend Tennessee Code Annotated, Title 5 and  
Title 12, relative to local government.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 5-5-102, is amended by adding the following new subdivision to subsection (c):

(4)

(A) Notwithstanding this section and § 12-4-101, effective July 1, 2015, if a member of a local governing body of a county or municipality, or the member's immediate family, is also an employee of the county or municipality, the member is prohibited from voting on any matter in which the member has a conflict of interest.

(B) As used in this subdivision (c)(4), "immediate family" means a spouse, child, stepchild, brother, sister, son-in-law, daughter-in-law, parent, or grandparent of the member.

SECTION 2. Tennessee Code Annotated, Section 12-4-101, is amended by adding the following new subdivision to subsection (c):

(4)

(A) Notwithstanding this section or § 5-5-102, effective July 1, 2015, any member of a local governing body of a county or a municipality who is also an employee of the county or municipality, or whose immediate family is an employee of the county or municipality, shall, regardless of when the member's employment began, not vote on matters in which the member, or the member's immediate family, has a conflict of interest.

(B) As used in this subdivision (c)(4), "immediate family" means a spouse, child, stepchild, brother, sister, son-in-law, daughter-in-law, parent, or grandparent of the member.

SECTION 3. This act shall take effect on July 1, 2015, the public welfare requiring it.

DRAFT

## Appendix C. Positions that Can and Cannot Be Held at the Same Time

### Tennessee Constitution Article II, § 26

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 to 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.

### Positions that Can be Held at the Same Time

A county court judge can serve as an uncompensated criminal court judge because the criminal court judge position is not a lucrative office. *Hodge v. State*, 135 Tenn. 525, 188 S.W. 203, 1916 Tenn. LEXIS 45 (1916).

Pike commissioner employed temporarily and for a single purpose is not an office within the constitutional or statutory meaning of the term, and a member of the county court can hold that position and still vote for the road improvement bond the pike commissioner were appointed by the court to sell. *Whitehead v. Clark*, 146 Tenn. 660, 244 S.W. 479, 1922 Tenn. LEXIS 14 (1922).

A state senator can serve in the office of school director because the school director position is not a lucrative office. *Wallace v. Grubb*, 154 Tenn. 655, 289 S.W. 530, 1926 Tenn. LEXIS 164 (1926).

A person can serve in a lucrative office and serve as a back tax collector because tax collector is not an office. *State ex rel. Harris v. Brown*, 157 Tenn. 39, 6 S.W.2d 560, 1927 Tenn. LEXIS 46 (1928).

A county court clerk can serve as ex officio general sessions court clerk because a statute conferring additional duties on a public officer ex officio does not have the effect of appointing him to a second office. *Hancock v. Davidson County*, 171 Tenn. 420, 104 S.W.2d 824, 1937 Tenn. LEXIS 122 (1937).

A county judge or chair can serve an ex officio member of a county highway commission because the ex officio position does not confer on the judge a second office of trust or profit. *Cheatham County v. Murff*, 176 Tenn. 93, 138 S.W.2d 430, 1939 Tenn. LEXIS 104 (Tenn. 1940).

A county superintendent of schools can serve as a state senator because the county superintendent position is not a lucrative office. *Phillips v. West*, 187 Tenn. 57, 213 S.W.2d 3, 1948 Tenn. LEXIS 410 (1948).

A circuit court clerk serve as ex officio general sessions court clerk because a statute conferring additional duties on a public officer ex officio does not have the effect of appointing him to a

second office. *Clay County v. Stone*, 208 Tenn. 1, 343 S.W.2d 863, 1961 Tenn. LEXIS 388 (1961).

A constable can serve as a part-time town policeman because these are not lucrative offices. Office of Attorney General Opinion No. 99-095 (4/26/99).

A deputy sheriff can serve as interpreter in a criminal prosecution because an interpreter is not a lucrative office. Office of Attorney General Opinion No. 99-211 (10/20/99).

A municipal official can serve on the State Election Commission because the municipal position is not a lucrative office but Tennessee Code Annotated Section 2-1-112(a) prohibits a candidate for election or re-election to any state or local office from serving as a member of the State Election Commission. Office of Attorney General Opinion No. 02-117 (10/22/02).

A city court judge can serve as a juvenile court referee because both are local offices. Article II, Section 26, of the Tennessee Constitution does not bar the same individual from holding two local offices. Office of Attorney General Opinion No. 06-123 (8/1/06).

A state legislator can serve as a dispute resolution neutral because a dispute resolution neutral is not a lucrative office. Office of Attorney General Opinion No. 11-58 (7/18/11).

An elected county official can serve on a county soil conservation district because the elected county office is not a lucrative office. Office of Attorney General Opinion No. 13-18 (3/6/13).

A county commissioner may serve as clerk and master because these are not lucrative offices. Office of Attorney General Opinion No. 14-23 (2/26/14).

### **Positions That Cannot Be Held at the Same Time**

Elected constable and general deputy sheriff are both lucrative offices and cannot be held at the same time. *State ex rel. Little v. Slagle*, 115 Tenn. 336, 89 S.W. 326, 1905 Tenn. LEXIS 67 (1905).

One cannot hold the offices of attorney general and United States senator at the same time because they are both lucrative offices. *Kelly v. Woodlee*, 175 Tenn. 181, 133 S.W.2d 473, 1939 Tenn. LEXIS 28 (1939).

Constitutional convention delegate and general assembly member are both lucrative offices and cannot be held at the same time. Office of Attorney General Opinion No. 98-054 (3/3/98).

A county medical examiner in whom the county commission has vested the duties of county coroner is prohibited by Tenn. Code Ann. § 5-5-102(c) (2) from serving as a county commissioner. Office of Attorney General Opinion No. 11-74 (10/17/11).

A county commissioner can serve on a road board and because the office of county commissioner is not a lucrative office. Office of Attorney General Opinion No. 00-159

(10/17/00).

The constitutional prohibition against a person holding more than one state office at the same time does not apply to prevent an alderman from also having a county constable seat, as those offices are both local offices. Office of Attorney General Opinion No. 01-152 (9/25/01).

An individual may serve and be compensated as both a juvenile court referee and as appointed counsel in criminal cases. Office of Attorney General Opinion No. 01-162 (11/5/01).

An elected state official cannot serve on a county soil conservation district because these are both lucrative offices. Office of Attorney General Opinion No. 13-18 (3/6/13).

A city's interim chief of police may not be able to serve as interim city administrator because of the common-law prohibition against incompatibility of offices. Office of Attorney General Opinion No. 14-50 (4/24/14).

DRAFT

## Appendix D. Summary of Other States

	County Structures Similar to Tennessee's	Some Counties' Structures Similar to Tennessee's	County Structures Not Similar to Tennessee's
<b>Statute Prohibits County Employees Serving</b>	<b>1</b>	<b>5</b>	<b>11</b>
	Alabama	Alaska, Delaware, Florida, South Carolina, Wisconsin	California, Indiana, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, Virginia, West Virginia
<b>Statute Allows County Employees to Serve</b>	<b>2</b>	<b>1</b>	<b>5</b>
	Arkansas, Tennessee	Illinois	Iowa, Montana, North Carolina, Oregon, Utah
<b>No Statute Allows or Prohibits County Employees Serving</b>	<b>2</b>	<b>1</b>	<b>17</b>
	Hawaii, North Dakota	Pennsylvania	Arizona, Colorado, Georgia, Idaho, Kansas, Kentucky, Maryland, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, South Dakota, Texas, Washington, Wyoming
<b>No County Governments or Limited County Governments</b>	<b>0</b>	<b>0</b>	<b>5</b>
			Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont