



County Technical Assistance Service

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Duties Upon Leaving Office-Sheriff

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

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Capitol Blvd. Suite 400
Nashville, TN. 37219
615-532-3555 phone
615-532-3699 fax
ctas@tennessee.edu
www.ctas.tennessee.edu

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Duties Upon Leaving Office-Sheriff

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Upon leaving office, the sheriff must deliver to the sheriff's successor all books and papers pertaining to the office, all property attached and levied on and in the sheriff's hands unless authorized by law to retain the same, and all prisoners in the jail, and take a receipt therefor, which receipt will be an indemnity to the retiring officer. T.C.A. § 8-8-214. Upon the expiration of the sheriff's term, it is the duty of the sheriff to deliver the jail and the prisoners therein, with everything belonging or pertaining thereto, over to the sheriff's successor or any person duly authorized by law to take charge of the jail. The failure to discharge this duty is a misdemeanor. T.C.A. § 41-4-102. The sheriff is allowed two years from the time of leaving office to close unsettled business, with all the power and subject to all the limitations and restrictions of the actual sheriff. T.C.A. § 8-8-215.

UNEXECUTED PROCESS. The sheriff's power after going out of office is confined to unfinished business. It does not extend to the execution of process not yet commenced. The sheriff cannot execute a *fiery facias* (writ of execution) after the expiration of his term of office unless he has levied it before the expiration of his term. *Todd v. Jackson*, 22 Tenn. 398 (1842) (Indeed the sheriff has no power to execute or return process after he goes out of office. He can do no further official act. He cannot even return writs executed before he ceases to be an officer where the return day comes after he goes out of office. The writs should be delivered, even in such cases, to the new sheriff, who returns it into court.); *Fondrin v. Planters' Bank*, 26 Tenn. 447 (1846) (Held that where a sheriff received an execution before his term of service expired, returnable afterward, that unless he had made a levy before the expiration of his term, he had no power to act on the writ afterward, and that he and his sureties would not be liable on motion for its non-return.); *State ex rel. Nolin v. Parchmen*, 40 Tenn. 609 (1859) (It has been held that where the sheriff's term expires, as in the present case, the only duty imposed upon the outgoing sheriff is to deliver over the process to his successor because he has no power to execute or return the same after his term was at an end unless, while in office, he had begun its execution.); *Haynes v. Bridge, Townley & Co.*, 41 Tenn. 32 (1860).

UNLEVIED EXECUTION. If the outgoing sheriff has not levied an execution before the expiration of his term and the return date is after the expiration of his term, he has no power to act on the writ afterward. His only duty is to deliver it to his successor. This rule applies to all unexecuted process. A failure to execute and return such execution or other process, or deliver it to his successor, is not a breach of the sheriff's bond, and does not render the sheriff's sureties liable. *Todd v. Jackson*, 22 Tenn. 398 (1842) (If Webb had levied or began the execution of the writ before his term expired, then his securities would have been fixed with the debt.); *Sherrell v. Goodrum*, 22 Tenn. 419 (1842); *Fondrin v. Planters' Bank*, 26 Tenn. 447 (1846); *State ex rel. Nolin v. Parchmen*, 40 Tenn. 609 (1859); *Haynes v. Bridge, Townley & Co.*, 41 Tenn. 32 (1860).

It has been held that the sheriff's failure to deliver an unlevied execution to his successor does not render the sheriff's sureties liable, but the sheriff was liable individually in an action on the case for failure to deliver. *State ex rel. Nolin v. Parchmen*, 40 Tenn. 609 (1859).

SALE AFTER EXPIRATION OF TERM. If the sheriff has levied an execution on personal property and has not sold it before the expiration of his term of office, the sheriff has to sell it afterward and make return in the same manner as if the sheriff's office had continued. A failure to do so renders the sheriff and the sheriff's sureties liable, and they are not discharged from liability by the sheriff's delivery of the writ and goods to the sheriff's successor. *Evans v. Barnes*, 32 Tenn. 292 (1852); *Campbell v. Cobb*, 34 Tenn. 18 (1854); *Testaman v. Holt*, 2 Shannon's Cases 375 (1877) (The officer who commences execution of a writ of *fiery facias* is bound to finish it, and if he has levied writ on debtor's goods, he cannot even deliver writ and goods to his successor in discharge of himself but must sell goods and make proper return in same manner as if his office had continued.). See *Overton v. Perkins*, 18 Tenn. 328 (1837).

A sale of land by a sheriff after the expiration of his term, under a *venditioni exponas* (a writ of execution commanding the sheriff to sell lands that he has taken in execution by virtue of a *fiery facias*) issued upon a levy made by the sheriff while in office is void. *Bank of Tenn. v. Beatty*, 35 Tenn. 305 (1855).

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