



# County Technical Assistance Service

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## Other Statutory Conflict of Interest Provisions

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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.

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## Other Statutory Conflict of Interest Provisions

**Reference Number:** CTAS-626

The County Purchasing Law of 1957, T.C.A. § 5-14-101 *et seq.*, and the 1981 Financial Management Act, T.C.A. § 5-21-101 *et seq.*, both contain conflict of interest provisions more stringent than the general conflict of interest statute. The 1957 Act and the 1981 Act are optional general laws which may or may not be in effect in a particular county.

## The County Purchasing Law of 1957-Conflict of Interest

**Reference Number:** CTAS-627

As previously noted, the County Purchasing Law of 1957 contains a separate, and more stringent, conflict of interest provision. *Tenn. Code Ann.* § 5-14-114(a) prohibits the county purchasing agent, members of the county purchasing commission, members of the county legislative body, and other officials of the county, from being financially interested or having 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. An official who violates this statute commits a Class D Felony. While the Tennessee Court of Criminal Appeals found this penalty to be unenforceable, *State v. Whitehead*, 43 S.W.3d 921 (Tenn.Crim.App. 2000), a violation could constitute official misconduct. See Op. Tenn. Atty. Gen. 94-073 (June 16, 1994).

In *Garner v. Blount County*, 2000 WL 116026 (Tenn Ct. App., 2000), the court found that a contract between a county building authority and a corporation in which a county commissioner owned an interest was unlawful under T.C.A. § 5-14-114. See also Op. Tenn. Atty. Gen. 98-218 (November 25, 1998); Op. Tenn. Atty. Gen. 00-152 (October 6, 2000) (county commissioner prohibited under T.C.A. § 5-14-114(a) from working part-time as independent contractor for department of county government); Op. Tenn. Atty. Gen. 07-141 (October 10, 2007) T.C.A. § 5-14-114 prohibits a shareholder of a bank that conducts business with the county from serving as county commissioner, member of the county budget committee, or county purchasing commission).

The statute does not define the term, “personal beneficial interest.” However, in *State v. Whitehead*, 43 S.W.3d 921 (Tenn.Crim.App., 2000) the Court of Criminal Appeals found that the County Purchasing Law of 1957:

prohibits a county official from having any *personally favorable interest* in a county contract, regardless of whether that interest is direct or circuitous. While the statute prohibits a broad range of conduct by county officials, it is not so vague that the prohibited conduct cannot be ascertained.

*Id.* at 929 (emphasis added).

Further, T.C.A. § 5-14-114(b) prohibits the same group of individuals from accepting or receiving, 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. See Op. Tenn. Atty. Gen. 94-073 (June 16, 1994) (in counties that have adopted the County Purchasing Law of 1957, there is a blanket prohibition against the acceptance of gifts of any value by county officials from any company to which a contract may be awarded; depending upon the circumstances, the acceptance of such gifts may constitute the criminal offense of official misconduct).

## County Financial Management System of 1981-Conflict of Interest

**Reference Number:** CTAS-628

The County Financial Management System of 1981 contains the most stringent conflict of interest provisions. *Tenn. Code Ann.* § 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 indi-

rectly, in the purchase of any supplies, materials, equipment or contractual services for the county.

(b) No firm, corporation, partnership, association or individual furnishing any such supplies, materials, equipment or contractual services, 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 a contract for the purchase of supplies, materials, equipment or contractual services.

The statute does not define the term "interest." However, the Attorney General, when discussing this statute, has adopted the definition of "interest" contained in T.C.A. § 12-4-101. See Op. Tenn. Atty. Gen. 00-181 (November 22, 2000) (opining that the sale of items by the spouse of an employee of the school board to that same school system would give rise to a prohibited conflict of interest under T.C.A. § 5-21-121). Nor does the statute define the term, "personal beneficial interest." In *State v. Whitehead*, 43 S.W.3d 921, 929 (Tenn.Crim. App. 2000) the Court of Criminal Appeals found that a similar statute prohibited a county official "from having any *personally favorable interest* in a county contract, regardless of whether that interest is direct or circuitous."

## Schools-Conflict of Interest

**Reference Number:** CTAS-629

Like other county officials, school board members are subject to the general conflict of interest statute, T.C.A. § 12-4-101.

Conflict of interest problems generally arise when a school board member has pecuniary interests that would interfere with that member's ability to vote objectively on matters before the board. Tenn. Code Ann. §§ 12-4-101(a)(1) and (b) provide that it is unlawful for any official whose duty it is to vote for any contract in which the county is concerned to be directly or indirectly financially interested in any such contract.

Op. Tenn. Atty. Gen. 01-144 (September 4, 2001).

### Employment

Tenn. Code Ann. § 49-2-203(a)(1)(D) provides as follows:

(D) No member of any local board of education shall be eligible for election as a teacher, or any other position under the board carrying with it any salary or compensation;

The Attorney General has opined that this provision prohibits a school board member from serving as a substitute school teacher in the same school system, notwithstanding the fact that the school board contracts with a third party employment agency to obtain substitute teacher services, rather than employing substitute teachers directly. Op. Tenn. Atty. Gen. 08-180 (December 1, 2008).

"Nothing in the statute, however, prohibits the spouse of a school board member from working for the school board." Op. Tenn. Atty. Gen. 08-102 (May 6, 2008). In this situation the school board member would have an indirect conflict of interest under T.C.A. § 12-4-101(b) if the school board member and his spouse commingle their assets. Op. Tenn. Atty. Gen. 05-017 (February 3, 2005) (an official is indirectly interested in a contract between a governmental agency and the official's spouse if the official and spouse commingle assets); Op. Tenn. Atty. Gen. 00-181 (November 22, 2000).

The Attorney General has opined that "a non-instructional employee of a school system may run for election to the school board without leaving his job, but if elected to the board this individual must quit his job for the school system in order to serve as a school board member." Op. Tenn. Atty. Gen. 02-070 (May 23, 2002). See also Op. Tenn. Atty. Gen. U90-124 (August 29, 1990) (school bus driver prohibited from continuing employment by the school system after he was elected to school board).

No member of the county legislative body nor any other county official shall be eligible for election as a member of the county board of education. T.C.A. § 49-2-202(a)(2). This statute prevents one person

from holding an elected county office and being a member of the school board. Op. Tenn. Atty. Gen. 01-144 (September 4, 2001). Note also that pursuant to T.C.A. § 5-5-102(c)(2) a director of schools is not qualified to serve as a member of the county legislative body.

#### Purchasing

School officials are prohibited from having a direct or indirect pecuniary interest in providing tangible personal property to public schools. The statute applicable to school systems provides:

It is unlawful for any teacher, supervisor, commissioner, director of schools, member of a board of education or other school officer in the public schools to have any pecuniary interest, directly or indirectly, in supplying books, maps, school furniture or apparatus to the public schools of the state, or to act as agent for any author, publisher, bookseller or dealer in such school furniture or apparatus on promise of reward for the person's influence in recommending or procuring the use of any book, map, school apparatus or furniture of any kind, in any public school; provided, that nothing in this section shall be construed to include authors of books.

T.C.A. § 49-6-2003(a).

The statute does not define the term "apparatus." Addressing the statute, the Attorney General opined that "a court would conclude that the term 'apparatus,' as used in Tenn. Code Ann. § 49-6-2003(a), includes school equipment and other tangible personal property, but does not apply to a contract for services." Op. Tenn. Atty. Gen. 09-48 (April 2, 2009).

The statute further provides that a spouse or family member of a principal, teacher or other school administrative employee is not precluded from participating in business transactions with the school system where a sealed competitive bid system is used, as long as the principal, teacher or other school administrative employee does not have discretion in the selection of bids or specifications. T.C.A. § 49-6-2003(b).

## Highway Departments-Conflict of Interest

**Reference Number:** CTAS-630

In those counties under the County Uniform Highway Law, a very strict conflict of interest statute applies. The statute, T.C.A. § 54-7-203(a), provides:

Neither the chief administrative officer, county highway commissioner, member of the county governing body nor any employee of the county road department shall be financially interested in or have any personal interest, either directly or indirectly, in the purchase of any supplies, machinery, materials, equipment or contractual services for the department or system of roads for the county, nor in any firm, corporation, partnership, association or individual selling or furnishing such machinery, equipment, supplies and materials.

Note that this prohibition is so broad as to preclude all employees of the highway department, whether or not they have any discretion or control over the purchase, from having a direct or indirect interest in these purchases. A violation of this statute constitutes official misconduct and is a Class C misdemeanor and is grounds for removal from office. T.C.A. § 54-7-203(b).

## Additional Purchasing Conflicts of Interest

**Reference Number:** CTAS-2471

Pursuant to T.C.A. § 12-4-114, no public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.

Furthermore, no public employee having official responsibility for a procurement transaction is allowed to participate in that transaction on behalf of the public body when the employee knows that:

- A. The employee is contemporaneously employed by a respondent to a solicitation or contractor involved in the procurement transaction;
- B. The employee, the employee's spouse, or any member of the employee's immediate family holds a position with a respondent to a solicitation, a contractor involved in the procurement transaction, such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent (5%);

- C. The employee, the employee's spouse, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- D. The employee, the employee's spouse, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a respondent to a solicitation or contractor involved in the procurement transaction.

A public officer or employee who will derive a direct benefit from a contract with the public agency the officer or employee serves, but who is not involved in making or administering the contract, cannot attempt to influence any other person who is involved in making or administering the contract.

No public officer or employee may solicit or receive any gift, reward, or promise of reward in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency the officer or employee serves.

As used in this section, "immediate family" means spouse, dependent children or stepchildren, or relatives related by blood or marriage.

## Prohibition on Consulting Fees

**Reference Number:** CTAS-631

In 2005, the General Assembly passed a law to prohibit state and local government elected officials from receiving a fee, commission or any other form of compensation for consulting services from any person or entity, other than compensation paid by the state, a county or municipality. T.C.A. §§ 2-10-123(a) and 2-10-124(a). A violation of this statutory prohibition is a Class A misdemeanor unless the conduct giving rise to the violation would also constitute the offense of bribery in which case the offense is a Class C felony. A person convicted of any violation under this statute is forever afterwards disqualified from holding any office under state law or the Tennessee Constitution. T.C.A. §§ 2-10-123(c) and 2-10-124(c). See also T.C.A. §§ 39-16-103 and 40-20-114.

As defined with respect to local officials, including a member-elect of a municipal or county legislative body, the term "consulting services" means services to advise or assist a person or entity in influencing municipal or county legislative or administrative action, including, but not limited to, services to advise or assist in maintaining, applying for, soliciting or entering into a contract with the local government represented by such official. T.C.A. § 2-10-122(2).

There are certain types of gifts and benefits listed in T.C.A. § 3-6-305(b) which are not prohibited. The list follows:

- Benefits resulting from business, employment, or other outside activities of a candidate or official or the immediate family of a candidate or official, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the candidate or official. T.C.A. § 3-6-305(b)(1).
- Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication. T.C.A. § 3-6-305(b)(2).
- Gifts that are given for a non-business purpose and motivated by close personal friendship, but only to the extent such gifts are specifically defined and authorized by the rules of the ethics commission. T.C.A. § 3-6-305(b)(3).
- Sample merchandise, promotional items, and appreciation tokens, if such merchandise, items and tokens are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business. T.C.A. § 3-6-305(b)(4).
- Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento and similar items; provided, that any such item shall not be in a form which can be readily converted to cash. T.C.A. § 3-6-305(b)(5).
- Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to:
  - Discounts afforded to the general public or specified groups or occupations under normal business conditions, except that such discounts may not be based on the status of the candidate or official; and
  - Prizes and awards given in public contests. T.C.A. § 3-6-305(b)(6).

Still, most anything of value provided by a vendor to a county official for advice or assistance in influencing county legislative or administrative action, such as getting a contract with the county, is prohibited under the law. Note also that in counties that have adopted the County Purchasing Law of 1957, there is a blanket prohibition against the acceptance of gifts of any value by county officials from any company to which a contract may be awarded. T.C.A. § 5-14-114(b). See Op. Tenn. Atty. Gen. 94-073 (June 16, 1994) (acceptance of such gifts by a county official or employee could constitute official misconduct, a criminal offense). Additionally, in counties under the County Financial Management Act of 1981, county officials and employees are prohibited from accepting any money or other things of value whatsoever from any company to whom any contract for supplies, materials, equipment or contractual services, may be awarded. T.C.A. § 5-21-121(b).

## Prohibition on Honorariums

**Reference Number:** CTAS-632

The acceptance of an honorarium by a public official in such person's capacity as a public official is prohibited. "Honorarium" means a payment of money or any thing of value for an appearance, speech or article, but does not include actual and necessary travel expenses, meals and lodging associated with such appearance, speech or article. T.C.A. § 2-10-116(a). The acceptance of an honorarium for an appearance, speech or article by a public official in such person's capacity as a private business person, professional or tradesperson is not prohibited. T.C.A. § 2-10-116(b). See Op. Tenn. Atty. Gen. 08-11 (January 25, 2008).

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