



# County Technical Assistance Service

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## Relationship to Other County Officials-Highways

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Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

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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## Relationship to Other County Officials-Highways

**Reference Number:** CTAS-832

### Interaction with County Mayor/Executive

**Reference Number:** CTAS-833

The CUHL does not specify which county officer should write warrants upon the county highway fund. This authority is usually provided in a private act. When such a private act does not specify the proper officer, the county mayor/executive has authority to write the warrant under T.C.A. § 5-6-108(5). Some private acts provide for co-signature. If a county has adopted the optional County Fiscal Procedure Law of 1957, a director of budgets and accounts issues a disbursement warrant upon receipt of an invoice and verification by the department head receiving the merchandise. T.C.A. § 5-13-107. Similarly, the director of finance in counties which have adopted the 1981 County Financial Management System (T.C.A. §§ 5-21-101, *et seq.*) oversees the disbursement of funds. Therefore, the chief administrative officer of the county highway department in many counties must interact with other county officers in regard to disbursement of highway funds.

The highway officials must prepare a budget estimate for each fiscal year. Depending upon the budgeting system in the county--the 1957 Budgeting Law, 1981 Financial Management System, private act system or only the general law--the county highway official will prepare a budget and submit it to either the county mayor/executive, director of budgets and accounts, or director of finance, who compiles a budget document for review by a committee or the full county legislative body. The deadline for submitting the budget is April 1 unless otherwise provided by law or county legislative body resolution.

### Interaction with County Legislative Body

**Reference Number:** CTAS-834

County highway officials interact with the county legislative body in several significant ways, including budget approval, classification of county roads, and approval of leases and lease-purchase agreements.

The county legislative body may approve a budget for the highway department as submitted or may reduce the total or vary amounts according to major categories or even by line item. The budget forms are set by the Comptroller. During the year, the county legislative body may amend the current operating budget.

The highway department cannot work on private roads, except to provide routes and turnarounds for postal vehicles and school buses upon written request by the appropriate authorities. T.C.A. § 54-7-202. The county legislative body is mandated to classify the public roads in the county. T.C.A. § 54-10-103. The highway officials need to work closely with the county legislative body to develop an accurate road list so that it will be clear which roads the county highway department is authorized to maintain. The county legislative body must receive a detailed listing of all county roads from the chief administrative officer of the county highway department before making a road classification.

County highway officials cannot execute a lease or lease-purchase agreement for equipment or other property without the approval of the county legislative body. T.C.A. § 7-51-904. As prior approval of the county legislative body is not contemplated by the statute, it is suggested that the lease be bid according to regular purchasing procedures with the clear recital that no bid award is final until approved by the county legislative body. Therefore, lease agreements can be signed if they contain a clause such as: "subject to approval of the county legislative body." The lease or lease-purchase can then be submitted in such a manner that the county legislative body has the full contract and all of its terms before them. If approved, the chairman of the county legislative body can so endorse the agreement and the contract will be binding.

## Interaction with State Offices and Departments

**Reference Number:** CTAS-835

At the state level, county highway officials will find that they interact regularly with employees (agents) of the Tennessee Department of Transportation and the Comptroller's Office. In 1995, the legislature added a new section to the CUHL which created a presumption that the chief administrative officer of each county highway department is authorized to sign binding agreements with the state department of transportation on behalf of the county. The presumption is only overcome by provision of notice by the county legislative body that the chief administrative officer does not have the authority to sign the agreements. The department of transportation must acknowledge receiving the notice for it to be effective. T.C.A. § 54-7-116.

## State-Aid Highway Program

**Reference Number:** CTAS-836

The state-aid highway program is a state program whereby the Tennessee commissioner of transportation, after consultation with local officials, designates those highways and roads which are considered of sufficient importance to be included in the system of state-aid highways. T.C.A. § 54-4-402. Under this program, the county highway officials are required to submit annually a program specifying the type of work to be performed locally on the state-aid highway system. The types of qualifying work may include the planning, engineering, right-of-way acquisition, construction, improvement, and rehabilitation of roads and bridges. T.C.A. § 54-4-403. State funds are appropriated to the state-aid highway program and allocated to the 95 counties as follows:

- 50% divided equally
- 25% divided according to county population
- 25% divided according to county area

Typically, under this program, the county has to match the state funds in an amount of 25%, although the county contributions may be in-kind. T.C.A. § 54-4-404. For projects initiated during fiscal years 2015-16 and 2016-17; however, counties were authorized to use unexpended state-aid funds for a portion of the local match. The amendment to T.C.A. § 54-4-404, enacted as the "County Road Relief Act of 2015", required counties to provide at least 2% of the project cost from county funds or in-kind work, or a combination of both. In 2017, this provision was extended until July 1, 2019.

Upon the request of county highway officials, the department of transportation may agree to act as the agent of the county to carry out any phase of work authorized on the state-aid highway system, or all preconstruction activities may be performed by the county highway department if done according to state standards, or the county may award a construction contract to a private company in accordance with state regulations on bidding, or the county may negotiate with the department to perform the work. T.C.A. § 54-4-405. The state department of transportation (DOT) may lease its equipment to the county according to terms agreed upon by the commissioner and the county highway department. T.C.A. § 54-4-402.

All roads designated as part of the state-aid highway system must be maintained by the county highway department. If the county fails to maintain these highways according to DOT standards, then the commissioner may withhold state-aid funds until the roads are restored to proper condition. T.C.A. § 54-4-406.

## County-Aid Funds

**Reference Number:** CTAS-837

The state provides to counties rather large sums of money in the form of "county-aid funds" primarily from the state gasoline tax. County-aid highway funds may be used in the building, repairing and improvement of county roads and bridges or for the funding of mass transit systems (not to exceed 22.2% of total). T.C.A. § 54-4-103. There are further restrictions on the use of these funds detailed in the gasoline tax distribution statute, T.C.A. § 67-3-901. If a county is to receive its full allocation of county-aid funds under the basic formula: 50% equally to all counties, 25% according to population, and 25% according to area, the county must appropriate for road purposes from local revenue sources an amount equal or greater than the average of the preceding 5 years from local sources. The county highway officials must

certify these items to the DOT each year. It should be noted here that some counties have not appropriated local revenue in the past 5 years; if so, the state will not diminish the county-aid funds so long as this fact is certified by the county officials. Also, the portion of the gasoline tax proceeds from 3¢ of the total gasoline tax (effective since 1985) which become county-aid funds must be used for the purposes of resurfacing and upgrading county roads, including paving of gravel roads. T.C.A. § 67-3-901.

## 1990 Bridge Grant Program

**Reference Number:** CTAS-838

The 1990 Bridge Grant Program enables the county highway department to replace or rehabilitate certain bridges when the commissioner finds that a bridge is structurally deficient or functionally obsolete. T.C.A. § 54-4-503. Typically, the state share is no more than 80% of the approved project cost and the local government share must be at least 20% of the approved project cost, and may be provided by local government funds and in-kind project work approved by the commissioner, or either of them, wholly or partly. However, the County Bridge Relief Act of 2014, Public Chapter 573, authorized counties to use unexpended state-aid bridge grant funds to pay the county portion of project costs. The Act required counties to provide at least two percent of the project cost from county funds or in-kind contributions. This funding formula was initially available for projects initiated in fiscal years 2014-15 and 2015-16 but was put in place permanently in 2016. T.C.A. § 54-4-507.

In order to participate in the program, the county highway department must be in compliance with any Department of Transportation recommendations concerning the posting and enforcement of load limits, and the closure of structures, based on the National Bridge Inspection Standards (including ineligibility for a geographic area to participate for the following fiscal year if no county in the area has taken necessary action to assure maximum utilization of the program). T.C.A. § 54-4-504. Once the local governments in a geographic area have addressed project priorities established by the Commissioner of Transportation, application may be made for permission to expend moneys allocated for other roadway purposes. The Commissioner must approve any such expenditure and may require that certain conditions be met in conjunction with the expenditure. T.C.A. § 54-4-506. Projects undertaken under this program must be maintained by the county or other local government where the project lies. T.C.A. § 54-4-508. If the local government fails to maintain these projects in accordance with reasonable standards established by the Commissioner of Transportation, the Commissioner may withhold all funds otherwise available under the bridge program until the insufficiently maintained project is restored to proper condition.

## Audits

**Reference Number:** CTAS-839

County highway departments are subject to regular audits by the Comptroller. These are complete financial, inventory, and activity audits. As noted earlier, an inventory of all machinery, equipment, tools, supplies, and materials owned or used by the county highway department must be kept and made available to the Comptroller and filed with the county legislative body and the county mayor/executive within 60 days of the chief administrative officer taking office and annually thereafter by September 1 reflecting the state of the inventory on July 1 of each year. Failure to file can result in a cutoff of county-aid funds. Also, as noted earlier, audit reports by the Comptroller are forwarded regularly to the local District Attorney General for his or her review.

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