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Appendix A: Statutory Provisions Governing County Public Records and the County Public Records Com- mission

Dear Reader:

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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

Table of Contents

Appendix A: Statutory Provisions Governing County Public Records and 3 the County Public Records Commission.....	3
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Appendix A: Statutory Provisions Governing County Public Records and the County Public Records Commission

Reference Number: CTAS-2070

APPENDIX A

STATUTORY PROVISIONS GOVERNING COUNTY PUBLIC RECORDS AND THE COUNTY PUBLIC RECORDS COMMISSION

TENNESSEE CODE ANNOTATED

TITLE 10. PUBLIC LIBRARIES, ARCHIVES AND RECORDS

CHAPTER 7. PUBLIC RECORDS

PART 4--COUNTY PUBLIC RECORDS COMMISSION

(Current through the end of the 2005 Regular Session)

SECTION

10-7-401 County public records commission created—Membership.

10-7-402 Organization of commission— Compensation—Meetings.

10-7-403 “Public records” defined.

10-7-404 Destruction of public records authorized—Conditions prerequisite to destruction—Records manual.

10-7-405 [Repealed]

10-7-406 Original records photographed in duplicate before destruction—Stored for safekeeping—Accessible to public.

10-7-407 [Repealed]

10-7-408 Appropriation of funds.

10-7-409 Charges for copies of records authorized.

10-7-410 Reproductions admissible as evidence.

10-7-411 Rules and regulations of commission.

10-7-412 Destruction of public records authorized—Terminated mortgages, deeds of trust, chattel mortgages.

10-7-413 Preservation of records of permanent value.

10-7-414 Transfer of records to institutions or to state library and archives to be held for historical purposes—Funds for transfer and maintenance of records.

§ 10-7-401. County public records commission created—Membership.

In order to provide for the orderly disposition of public records created by agencies of county government, the county legislative body shall create within the county a county public records commission, composed of at least six (6) members. The county mayor shall appoint three (3) members and the county legislative body shall confirm each appointee. Of the three (3) appointees, one (1) shall be a member of the county legislative body, one (1) shall be a judge of one of the courts of record which holds court in the county and one (1) shall be a genealogist. The county clerk, or the designee of the county clerk, county register and the county historian shall be ex officio members of the commission. In counties having a duly appointed county archivist, that person shall also serve as an ex officio member of the commission. Each elected member of the commission shall hold office during the term for which the member was elected to office. If a vacancy occurs in one (1) of the appointed positions, the county mayor shall appoint a person in the same manner as the original appointment.

§ 10-7-402. Organization of commission—Compensation—Meetings.

The county records commission shall elect a chairperson and a secretary and shall keep and preserve minutes of all its proceedings and transactions. Members of the commission shall receive no compen-

sation except that any member who does not receive a fixed annual salary from the state or the county may be paid a per diem of twenty-five dollars (\$25.00) for each day of actual meeting. Members may be reimbursed for actual necessary expenses incurred in attendance upon their duties. The commission shall meet not less than twice annually.

§ 10-7-403. "Public records" defined.

Public records within the county shall be construed to mean:

(1) All documents, papers, records, books, and books of account in all county offices, including, but not limited to, the county clerk, the county register, the county trustee, the sheriff, the county assessor, the county mayor and county commissioners, if any;

(2) The pleadings, documents, and other papers filed with the clerks of all courts including the courts of record, general sessions courts, and former courts of justices of the peace, and the minute books and other records of these courts; and

(3) The minutes and records of the county legislative body.

§ 10-7-404. Destruction of public records authorized—Conditions prerequisite to destruction—Records manual.

(a) The county public records commission has the right to authorize the destruction of any and all public records as defined in § 10-7-403, which are required by law to be retained, when such records have been photocopied, photostated, filmed, microfilmed, or preserved by microphotographic process, as hereinafter provided; provided, that no record required by law to be permanently retained shall be destroyed without a majority vote of the commission. A county officer or judge of a court of record shall be entitled to prevent the destruction of documents, minutes, or records in the office or court, as appropriate. The requirement to photocopy, photostat, film, microfilm, or preserve by microphotographic process prior to destruction in accordance with this section shall not be required of "temporary records" and/or "working papers" as defined in §§ 10-7-301 and 10-7-403. The commission does not have the authority to authorize the destruction of any financial or other record which is determined by the comptroller of the treasury to be required for audit purposes until the pertinent audit has been completed. After the audit, disposition will be determined pursuant to procedures developed by the comptroller; provided, that the commission shall not have the authority to authorize the destruction of any other record which is otherwise required by law to be retained.

(b) The county technical assistance service, a unit of the Institute for Public Service of the University of Tennessee, is authorized to compile and print manuals, in cooperation with the state library and archives, and the division of records management, department of general services, which shall be used as guides by all county public records commissions, county offices, and judges of courts of record, setting out which records shall or may be destroyed, and those which should not be destroyed, after photographing, photostating, filming, microfilming, or other microphotographic process. Until these manuals are available, the Tennessee county records manual compiled by the Tennessee state library and archives shall be used.

(c) Nothing in § 10-7-401, § 10-7-413(c) [Note: Section 10-7-413(c) was transferred to 10-7-511 by Acts 1999, Chapter 167], subdivision (b)(2) of this section, or the amendment to § 10-7-403(4) by Acts 1994, ch. 884, shall be construed to permit or authorize a county public records commission, a court clerk, a county or municipal official or any other person to destroy or authorize the destruction of any original process in a civil action or criminal proceeding.

(d)(1) In addition to the foregoing procedure for the destruction of original public records, the county public records commission may, upon the request of any office or department head of county government having custody of public records, including court records, authorize the destruction or transfer of original public records which have been reproduced onto computer or removable computer storage media, including CD ROM disks, in accordance with the provisions of Section 10-7-121 and this subsection. The secretary of state, as supervisor of the state library and archives, shall promulgate regulations regarding the approved technology, standards and procedures for reproducing public records under this subsection which shall be followed by county officers, department heads and the county public records commission. Additionally, the county public records commission shall not order the destruction of such original public records which have been reproduced pursuant to this subsection unless the county public records commission has complied with the provisions of Sections 10-7-413 and 10-7-414. Prior to any order of destruction or transfer of any original public records pursuant to this subsection, the officer or department head having custody of such records shall advertise in a newspaper of general circulation in the county,

and in counties having a population in excess of two hundred thousand (200,000) according to the 1990 Federal Census or any subsequent federal census, also in a weekly newspaper, that certain records of the office or department, to be described in the advertisement by title and year, have been electronically stored, reproduced and protected and that the office or department has applied for permission to no longer retain such originals. The authority to destroy original public records granted by this subsection is not exclusive and shall not prevent the destruction of original public records where otherwise authorized.

(2) If the county public records commission fails to act upon a request of a county officer or department head having custody of public records to order the destruction or transfer of original public records after the same have been reproduced in accordance with this subsection within six (6) months of receiving such a request in writing, then the county officer or department head may forward the request to the State Library and Archives, whereupon the state librarian and archivist, or his or her designated representative, shall have authority to authorize the destruction or transfer of the public records instead of the county public records commission. Failure of the State Library and Archives to respond to the records disposal request of the county officer or department head within nine (9) months of receiving such a request shall authorize the county officer or department head to destroy the original public records which have been reproduced in accordance with any regulations on this subject promulgated by the secretary of state.

§ 10-7-405. Repealed by 1994 Pub.Acts, c. 884, § 4, eff. May 2, 1994

§ 10-7-406. Original records photographed in duplicate before destruction—Stored for safekeeping—Accessible to public.

(a)(1) When the county public records commission, with the consent and concurrence of the officers and bodies, if any, as prescribed in §§ 10-7-404 and 10-7-405, shall decide to destroy the originals of any records required by law to be permanently kept, the commission shall cause the records to be photographed, microphotographed, filmed or microfilmed in duplicate. This duplication process shall result in permanent records of a quality at least as good as is prescribed by the minimum standards of quality for permanent photographic records made and established by the bureau of standards of the United States government. If a marginal release or other information on an old record has faded or has been obliterated to a degree that it is impossible to photograph, the same may be verified on the margin by the register before microfilming. One (1) copy of such reproduction shall be stored for safekeeping in a place selected by the commission and concurred in by the county legislative body.

(2) Such place shall be in the state if proper facilities are available, but, if not, then in a place outside the state.

(3) Such location shall be selected with a view of protection of the records from fire and all other hazards. The other copy of each document shall be kept in an office in the county accessible to the public and to the several county officers and the county clerks, together with the proper equipment for using examining, exhibiting, projecting and enlarging the same wherever required and requested by the public during reasonable office hours. The records of each office may be kept in that office, or, if the commission so determines, all the reproduced records may be kept in one (1) central records office.

(b) Any public record defined as "temporary record" and/or "working papers" as defined in § 10-7-301 may be destroyed in accordance with the rules and regulations adopted by the commission without retaining the originals of such records.

(c) The purpose and intent of this chapter is to provide for the original recording of any and all instruments by photograph, photostat, film, microfilm or other microphotographic process. If any laws or part of laws as set forth in this chapter are in conflict with such purpose, such laws or part of laws to that extent are hereby repealed.

§ 10-7-407. Repealed by 1994 Pub.Acts, c. 884, § 5, eff. May 2, 1994

§ 10-7-408. Appropriation of funds.

(a) The county legislative body of any county which shall create a county records commission has the power to appropriate such funds as may be required for the carrying out of the purposes of this chapter including, but not limited to, the purchase or leasing of equipment, the equipping of an office and the payment of the expenses thereof, the furnishing of secretaries and clerical help and the employment of expert advice and assistance.

(b) In any county having a population greater than eight hundred ninety-seven thousand (897,000), according to the 2000 federal census or any subsequent federal census, if the county legislative body creates a county records commission, then the county legislative body is authorized to:

(1) Appropriate such funds as may be required for carrying out of the purposes of this chapter including, but not limited to, the purchase or leasing of equipment, the equipping of an office and the payment of the expenses thereof, the furnishing of secretaries and clerical help and the employment of expert advice and assistance; and

(2) Establish and collect, through all entities creating public records as defined in § 10-7-403(1) and § 10-7-403(3), except for the office of county register, an archives and record management fee not to exceed two dollars (\$2.00) per document filed. Funds collected through this fee must be designated exclusively for duplicating, storing, and maintaining any records required by law to be permanently kept.

§ 10-7-409. Charge for copies of records authorized.

The county records commission has the power to establish charges for and to collect such charges for making and furnishing or enlarging copies of records.

§ 10-7-410. Reproduction admissible as evidence.

Any reproduction of any record herein authorized to be made shall be deemed to be the original of the record so reproduced for all purposes, and any facsimile of such record duly certified to be such by the officer or clerk charged by law with the custody thereof shall be admissible as evidence in any court or proceeding in this state and shall have the same force and effect as would the original of the document or a certified copy thereof if made from the original record, document or paper.

§ 10-7-411. Rules and regulations of commission.

(a) The county records commission has the authority to promulgate reasonable rules and regulations pertaining to the making, filing, storage, exhibiting, and copying of the reproductions of records authorized by this chapter.

(b) Such rules and regulations shall provide, but not be limited to, the following:

(1) Standards and procedures for the reproduction of records for security or for disposal of original records in all county offices;

(2) Procedures for compiling and submitting to all county offices lists, schedules or time tables for disposition of particular records within the county; and

(3) Procedures for the physical destruction or other disposition of public records.

(c) All rules and regulations shall be approved by a majority of the voting members of the county public records commission. The chair of the commission shall sign all rules and regulations on behalf of the commission.

§ 10-7-412. Destruction of public records authorized—Terminated mortgages, deeds of trust, chattel mortgages.

The county records commission has the right to authorize the destruction of any and all public records as defined in § 10-7-403 pertaining to all mortgages and deeds of trust on personal property and chattel mortgages, the terms of which have expired or the conditions of which have been complied with in their entirety; provided, that no such document or record of the county register's office shall be destroyed without the consent of the county register; and provided further, that no such mortgages and deeds of trust on personal property and chattel mortgages shall be destroyed without a majority vote of the county records commission.

§ 10-7-413. Preservation of records of permanent value.

(a) Before any records other than "temporary records" and/or "working papers" as defined in § 10-7-301 are destroyed, after being so authorized by the county public records commission, ninety (90) days' notice shall be given to the state librarian and archivist, whereupon the state archivist or the archivist's representative shall examine the records approved for disposal and shall take into the archivist's possession, for preservation in the state library and archives, any records the archivist believes to be of value for permanent preservation. If a county public records commission does not receive a response from the State Library and Archives within nine (9) months of submitting the notice required under this subsection, the county public records commission may proceed with the destruction of the records which were the subject of the notice.

(b) The county public records commission has the right to authorize the lamination of certain original records such as wills, will books, deeds, deed books, marriage licenses, marriage bonds, marriage registers, and other records which are to be permanently preserved.

§ 10-7-414. Transfer of records to institutions or to state library and archives to be held for historical purposes—Funds for transfer and maintenance of records.

(a) The county public records commission, after authorizing destruction of any public records and after examination of these records by the state librarian and archivist or the state librarian and archivist's representative in accordance with § 10-7-413, may authorize, by majority vote, to place any document or record which would otherwise be destroyed in the custody of a local or regional public library, a local, regional, or state college library, or the county or regional historical society, to be held for historical purposes.

(b) After custody of any document or record is given to any designated institution, the county public records commission, upon majority vote, may transfer custody of any document or record to another designated institution after giving one (1) month's notice to the institution originally designated. Further, upon request of the state librarian and archivist, the county public records commission may cause the transfer of any of the documents or records from a designated institution to the state library and archives.

(c) The county public records commission is authorized to expend funds appropriated by the governing body of the county for the purpose of transferring these documents and records, and may also expend funds so appropriated for maintenance of these documents and records at any of the designated institutions.

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