



# County Technical Assistance Service

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## Elections

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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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## Elections

**Reference Number:** CTAS-228

## The County Election Commission

**Reference Number:** CTAS-847

Appointment and Removal. The basic unit that regulates elections at the county level is the county election commission. The five commissioners for each county are appointed by the state election commission; three must be members of the majority party in the state, appointed by members of the state election commission from that party, while the other two will be of the minority party, similarly appointed by the minority members of the state election commission. T.C.A. § 2-12-103. Majority and minority parties are defined as the political parties whose members hold the largest and second largest number of seats in the combined houses of the General Assembly. T.C.A. § 2-1-104. Before appointing county election commissioners, members of the state election commission are directed to consult with members of the General Assembly from each county regarding whom to appoint as county election commissioners. T.C.A. § 2-12-103.

## Qualifications and Disqualifications

**Reference Number:** CTAS-848

County election commissioners must be registered voters who have been residents of the state for five years and residents of the county for which they are appointed for two years (with an exception for counties with a population between 276,000 and 277,000). Elected officials, employees of elected officials and employees of a state, county, municipal, or federal government body or agency are not eligible to serve on the election commission. However, this statute does not disqualify the following people: a notary public, employees of county or city school systems who do not work directly under the supervision of an elected official, or a member of a reserve unit of the U. S. armed services or National Guard, unless on active duty. T.C.A. § 2-1-112. If a county election commissioner qualifies as a candidate for any public office, that member will be automatically disqualified and a vacancy will be created on the commission. T.C.A. § 2-12-102.

## Oath of Office and Organization

**Reference Number:** CTAS-849

Within 20 days after their appointment, county election commissioners must qualify by filing an oath of office with the secretary of the state election commission. Failure to qualify will vacate the office. T.C.A. § 2-12-104. Also within 20 days the commission is to organize by electing a chairperson and a secretary from among their number, each of different parties. Within 10 days of this selection, the commission must report the names and addresses of the officers and other members to the state election commission. T.C.A. § 2-12-105.

## Office Hours

**Reference Number:** CTAS-850

Each county election commission must have an office in the county courthouse or another public building, and may designate additional locations if they are needed. A schedule of minimum office hours, which depends on the population of the county and the certification status of the administrator, is set out in T.C.A. § 2-2-108. The county election commission may also keep additional office hours as needed to (1) register qualified applicants, (2) replace lost registration cards, (3) transfer or change registrations, and (4) perform its other duties. T.C.A. § 2-2-108.

## Meetings

**Reference Number:** CTAS-851

The county election commission meets on the call of its chairperson (if there is no chair, the oldest member presides). T.C.A. § 2-1-113. All meetings must be open to the public and preceded by adequate notice, as required by Tennessee's sunshine law. T.C.A. § 8-44-101 *et seq.* This notice must give the time, place, and purpose for the meeting, although the requirement may be met by permanently posting a conspicuous meeting notice in the commission office. The commission must keep official minutes of each meeting, including the vote of each member on all issues, and must allow reasonable times for public examination. A majority of the members constitutes a quorum, and a measure passes on a majority vote of the members present. Any action taken that does not meet these requirements can be voided at the request of anyone who may be adversely affected. T.C.A. § 2-1-113.

## Duties-County Election Commission

**Reference Number:** CTAS-852

## Publication of Election Notices

**Reference Number:** CTAS-853

The county election commission is required to publish in a newspaper of general circulation in the county a notice of all elections, except special elections, at least twenty-one (21) days before the qualifying deadline. A notice of elections on questions must be published sometime between twenty (20) and thirty (30) days before election day, and must include in its entirety the resolution or other instrument that is to be decided. Finally, a notice of every election, stating the day, time, and polling places, must be published sometime between ten (10) and three (3) days before the election. T.C.A. § 2-12-111.

At least five days before the start of early voting and at least five days before election day the election commission must also publish a sample ballot in a newspaper of general circulation; however, a sample ballot does not have to be published if the election commission instead mails a sample ballot to all registered voters at least five days prior to the beginning of the early voting period. T.C.A. § 2-5-211. Also, at least five days before the start of early voting and at least five days before election day, the election commission must post a sample ballot on a website maintained by the county election commission or, if the county election commission does not have or maintain a website, on the website maintained by the secretary of state. T.C.A. § 2-5-211.

## Submission of Semiannual Report

**Reference Number:** CTAS-854

The county election commission is required to provide a semiannual voter registration report to the state coordinator of elections. The content of this report has changed significantly with the implementation of the National Voter Registration Act. See T.C.A. § 2-12-114 or contact the coordinator of elections for information about the requirements of this report.

## Promotion of Voter Participation

**Reference Number:** CTAS-855

The county election commission is charged with the general duty of encouraging wider participation in the electoral process. Generally these duties involve the selection of the administrator of elections and then assistance with the following responsibilities of that office: approving an annual budget for the commission, approving purchases of voting machines and seeing to their maintenance, hiring legal counsel, designating polling places and precinct boundaries, and assisting in obtaining poll workers. Additionally, the commission must ensure the fairness and smooth functioning of elections by certifying voting machines, taking responsibility for absentee ballot boxes, assisting election personnel on election day, certifying election results and election expenses, determining a uniform time for the opening of polls, and maintaining the security of the election commission office and facilities. T.C.A. § 2-12- 116.

At least quarterly, during a county election commission meeting, a county election commission member of the majority and the minority party shall inspect random voter registration forms accepted by the county election commission since the previous inspection. T.C.A. § 2-2-120. If a deficiency is found, the deficiency must be recorded and a written report must be prepared including the name of the administrator at the time the voter registration form was filed, the nature of the deficiency, and whether the individual has voted since the deficient form was filed and accepted. The report must be filed with the state coordinator of elections. If a significant number of deficient voter registration forms are discovered, then the administrator of elections may be subject to discipline by the state election commission or may be terminated by the county election commission. T.C.A. § 2-2-120.

## Election Administrators

**Reference Number:** CTAS-520

Tennessee statutes require election commissions to employ an administrator of elections (formerly known as the registrar- at-large), who is the chief administrative officer of the commission and who is responsible for daily operations of the office. The duties of the administrator include, but are not limited to, the following:

1. Employment of office personnel;
2. Preparation and presentation of the annual budget;
3. Requisition and purchase of supplies;
4. Maintenance of voter registration files, campaign disclosure records, and other required records;
5. Instruction of poll workers;
6. Preparation of notices for publication;
7. Preparation and maintenance of all fiscal records;
8. Dissemination of information regarding all aspects of the electoral process;
9. Promotion of the electoral process;
10. Attendance at educational seminars;
11. Knowledge of current laws pertaining to the electoral process;
12. Assistance in planning and implementing apportionment plans;
13. Preparation of a plan for placing precinct voting locations and presentation of such plan to the election commission for approval;
14. Preparation of a plan for early voting sites and presentation of such plan to the election commission for approval; and
15. Upon request, assist with redistricting.

T.C.A. § 2-12-201.

In fulfilling these duties, the administrator and election commission must keep in mind that after July 1, 2011, the administrator of elections may not appoint or hire, except in the event of and during an emergency, members of the county election commission, or spouses, parents, brothers, sisters or children, including in-laws of commission members or spouses, parents, brothers, sisters or children, including in-laws of the administrator of elections as deputies, clerical assistants, absentee voting deputies, machine technicians, poll officials or as members of the absentee counting board. T.C.A. §§ 2-12-116, 2-12-201. The election laws also provide for the certification of administrators of elections, T.C.A. § 2-11-202, and for their compensation. T.C.A. §§ 2-12-208, 2-12-209.

## Appointment and Education of Election Officials

**Reference Number:** CTAS-856

The appointment of county election officials normally begins with a nomination process. The county primary board for each party shall (and the executive committee of each party may) submit names to the county election commission 30 days prior to the appointment time. If the nominees meet the qualifications to serve, the election commission shall appoint them. T.C.A. §§ 2-4-103 through -106. However, the commission may refuse to appoint any person who, in the opinion of the commission members from his or her political party, is unfit to serve. If there is an inadequate number of nominees, the county election commission may appoint as many additional people as necessary. T.C.A. § 2-4-106.

From these nominees, if possible, the majority and minority party factions of the county election commission each appoint one precinct registrar for each polling place. For most counties, these appointments are made for each election, but they are made for two-year terms in Shelby County (identified by popula-

tion class). T.C.A. § 2-12-202. The county election commission is also directed to appoint, at a minimum, one officer of elections and three judges for each polling place. Two of the judges appointed shall concurrently serve as the precinct registrars in accordance with T.C.A. § 2-12-202. In precincts where voting machines are used, any judge not serving as a precinct registrar shall concurrently serve as a machine operator. One machine operator can operate up to two voting machines. T.C.A. § 2-4-102. Each of these officers, as well as precinct registrars and assistant precinct registrars, must be registered voters and shall reside in the county in which they are appointed to serve. T.C.A. § 2-4-103. If any election official fails to appear at the polling place, the officer of elections or, in such officer's absence, a majority of the election officials attending, shall select a person to fill the vacancy who is a registered voter of the county. Persons chosen to fill vacancies shall be, whenever practical, members of the same party as the person they are replacing. T.C.A. § 2-7-105. Notwithstanding any other provision of law to the contrary, a county election commission may appoint a person who has reached the age of 17 years as an election official provided that they meet all the other requirements to serve. T.C.A. § 2-4-103(e).

The election commission may also appoint as many inspectors as they deem necessary, who must be registered voters and inhabitants of the county. Inspectors investigate the conduct of elections on behalf of the election commission and report any irregularities to the commission. T.C.A. § 2-4-102.

Not more than two judges at a polling place may be of the same political party if those from different parties are willing to serve. T.C.A. § 2-4-104. If it is practicable, no more than one-half of the election officials at one polling place, and one-half the total number of county inspectors, may be of the same political party. If only one party elects to hold a primary, then only members of that party may serve as election officials. T.C.A. § 2-4-105. Election officials are to be notified of their appointments on a statutorily prescribed form. T.C.A. § 2-4-107.

The county election commission is also responsible for instructing the election officials in their duties. After the appointment of the election officials pursuant to T.C.A. § 2-4-102, a meeting is to be held for this purpose; attendance may be limited to those who are inexperienced or otherwise in need of such training. The officials are to be paid \$10 each for the time spent in training and qualifying but only if they serve in the election. T.C.A. § 2-4-108. They are to be paid \$50 for service on election day. The amounts of compensation can be increased by the county legislative body. T.C.A. § 2-4-109.

## Compensation and Funding

**Reference Number:** CTAS-857

A minimum compensation for members of the county election commission is specified by statute and varies according to the population of the county. These amounts may be increased in any county by resolution of the county legislative body. In order to trigger the daily rate, a commissioner must work at least one hour in any given 24 hour period, but payment is made for meetings lasting less than one hour if they are required by statute, budget preparation, or litigation. T.C.A. § 2-12-108.

A separate statute, T.C.A. § 2-12-208, provides for the compensation of certified administrators of elections, whose salaries are based on a percentage of the salary of the assessor of property. The salary specified by statute for the certified administrator of elections is a minimum that may be increased by the county legislative body. Any certified administrator of elections in a county where the election commission office is open five full days a week is required to receive as a base salary at least 90 percent of the salary of the assessor of property in the county. If the administrator's salary is less than this level on June 18, 2005, then the salary must be increased in the two subsequent fiscal years by at least 5 percent per year to reach the 90 percent level.

Basically, the funding of each county election commission is the responsibility of that county which, if not provided for, will be compelled by the chancery court. However, each municipality is responsible for expenses the county election commission incurs in holding municipal elections, and for the additional expenses attributable to the municipal election when it is held on the same day as a countywide election. Similarly, elections for the sole purpose of choosing a member of the General Assembly are to be funded by the state, as are presidential preference primaries. The state will also fund county primaries that are held along with the presidential primary. All expenses must be properly reviewed and certified in order to be paid. T.C.A. § 2-12-109.

## Nominations and Qualifying Deadlines

**Reference Number:** CTAS-858

## Statewide Organization of Political Parties

**Reference Number:** CTAS-859

Organization of the party begins with the state executive committee of each political party, since it also functions as the state primary board for the party. T.C.A. § 2-13-102. Members of this committee are elected in the regular August primary election immediately prior to the election for governor. One man and one woman from each party are elected from every senatorial district to serve four-year terms beginning on September 15 following their election. They must take the oath of office, filing it with the state coordinator of elections. T.C.A. § 2-13-103.

The state executive committee is to meet at least once in even-numbered years to appoint the county primary boards, made up of five people from each county appointed for two year terms. T.C.A. § 2-13-108. The members of this board are chosen from a list of names submitted by county executive committees, although two of the members may be appointed without regard to the lists if the names on them are not fairly divided among the elements of the party. If no list is submitted, the state primary board is to draw up its own list from which to make appointments, or it may designate the county election commission to act as the county primary board. T.C.A. § 2-13-110.

## Nominating Process

**Reference Number:** CTAS-860

There are several methods by which a candidate may appear on the ballot. One method, party primary at the regular August election, is statutorily required for several offices: (1) governor, (2) members of the General Assembly, (3) U.S. Senator, and (4) members of the U.S. House of Representatives. T.C.A. § 2-13-202. Nominations for offices other than those listed above can be made either by primary or by any other method authorized under party rules. T.C.A. § 2-13-203. The office of the coordinator of elections should be contacted for information regarding procedures for recognizing a new political party.

In 2011, the General Assembly removed the code provisions relative to candidates appearing on a ballot as the nominee of a local political party and provided that no person's name may be shown on a ballot as the nominee of a political party for any office to be voted on by the voters of a county, unless the political party: (1) Is a statewide political party or a recognized minor party; and (2) Has nominated the person substantially in compliance with Chapter 13 of Title 2.

In an election involving only voters of one county or part of one county, candidates nominated by a method other than primary are to be certified to the county election commission by the qualifying deadline. If a method other than primary election is used to fill an office involving voters in more than one county, the candidate is to be certified to the coordinator of elections, who then certifies that candidate to the election commissions in the proper counties. T.C.A. § 2-13-203.

According to T.C.A. § 2-13-203, if a statewide political party decides to nominate by primary election, the county executive committee shall, at least ninety 180 days before the qualifying deadline, direct, in writing, the county election commission of each county whose voters are entitled to vote to fill the office to hold the election. The decision to nominate by primary election may be revoked up until 90 days before the qualifying deadline. Primaries, if any, for nominating candidates for any office which will appear on the regular August election ballot shall be held on the first Tuesday in May before the August election. In the years in which an election will be held for president of the United States, a political party primary for offices to be elected in the regular August election may be held on the same day as the presidential preference primary. In such event, the qualifying deadline for candidates and for delegate-candidates shall be twelve o'clock (12:00) noon, prevailing time, on the date established in § 2-5-101(a)(2).

## Nominating Petitions

**Reference Number:** CTAS-861

All independent and primary candidates must submit a nominating petition in order for their names to appear on the ballot. (Candidates nominated by a method other than primary, however, are certified directly to the election commission by the party.) T.C.A. § 2-5-101. Nominating petition forms are furnished by the county election commission and, for some offices, by the coordinator of elections. T.C.A. § 2-5-102. These petitions are not to be issued more than 90 days before the qualifying deadline for the office sought. T.C.A. § 2-5-102(b)(5).

For most offices, the nominating petition must be signed by the candidate as well as a minimum of 25 or more registered voters who are eligible to fill the office (presidential and delegate candidates have different requirements). Either the signer's normal or legal signature is acceptable. The voter must also include the residence or other address as shown on the voter registration card. Including additional information on the petition that does not appear on the voter registration card will not disqualify the signature if there is no conflict in the information. T.C.A. § 2-5-101.

## Restrictions on Candidacy

**Reference Number:** CTAS-862

Under T.C.A. § 2-5-101, there are certain restrictions on how a candidate may qualify:

1. No one may qualify with more than one political party for the same office;
2. No one may qualify as an independent and a primary candidate for the same office in the same year;
3. No one defeated in the primary or party caucus may qualify or appear on the ballot as the nominee of a different political party or as an independent in the general election;
4. No primary candidate may appear on the ballot for the general election as a nominee of a different political party or as an independent; and
5. No one may qualify for more than one state office or more than one constitutional county office or countywide office in an election. (Note that unless the qualifications for a particular office prevent it, a candidate may run for one county and one state office in the same election.)

## Qualifying Deadlines and Procedure

**Reference Number:** CTAS-863

Candidates are required to qualify for an election by certain statutorily prescribed times. Although these times vary in certain circumstances, the default rule is that a candidate must qualify by 12 noon, prevailing time, on the third Thursday in the third calendar month before an election or a primary. T.C.A. § 2-5-101. However, there are a number of exceptions based on the office sought and whether or not a primary is being held. For information on specific qualifying deadlines for any election or primary it is always advisable to call the county election commission, regarding local elections, or the state coordinator of elections regarding state elections.

Candidates for some offices are required to file certified duplicate copies of the original nominating petition. For example, candidates for statewide offices, as well as for representative to the U.S. Congress, must file the original petition with the State Election Commission and file duplicates with the coordinator of elections and the party's state executive committee (for primary candidates only). T.C.A. § 2-5-103. Candidates for other offices must file the original nominating petition with the county election commission in the county of residence, and file duplicates with the election commissions of all counties served by the office which the candidate seeks. T.C.A. § 2-5-104.

Candidates for chief administrative officer of county highway departments are required to certify their qualifications under the County Uniform Highway Law by filing affidavits with the Tennessee Highway Officials Certification Board at least 14 days before the qualifying deadline. This board is responsible for certifying that the qualifications are acceptable. This certification, which is filed with the qualifying petition, is required before the candidate's name may be placed on the ballot. All correspondence with this board should be submitted through the office of the coordinator of elections. T.C.A. § 54-7-104.



Any candidate for a judicial office that must be filled by an attorney must certify that he or she is licensed to practice law in this state and must place his or her supreme court registration number on the nominating petition. T.C.A. § 2-5-106.

Similarly to highway officials, sheriffs must file certain materials with the POST Commission 14 days prior to the qualifying deadline for election to the office of sheriff. The POST Commission is responsible for certifying to the election commission that the qualifications are acceptable. This certification is required before the candidate's name may be placed on the ballot. See T.C.A. § 8-8-102 for more details on these requirements.

## Write-In Candidates

**Reference Number:** CTAS-864

Any person trying to receive a party nomination or be elected by write-in ballot must complete a notice to the county election commission of each county of the district requesting that his or her ballots be counted no later than 50 days before the primary or 50 days before a general election. T.C.A. §§ 2-7-133 and 2-8-113. The county election commission is required to promptly notify the state coordinator of elections and the registry of election finance as well as other candidates participating in the affected primary or election of the write-in notice. A write-in candidate will only have votes counted in counties where the notice was completed and timely filed. Write-in candidates for the offices of governor, United States Senator, and members of the United States House of Representatives are required to file their notice with the state coordinator of elections. In a primary election, a write-in candidate for that office must receive a vote equal to at least 5 percent of the total number of registered voters of the district, and receive more votes than any other candidate, to receive the party's nomination. T.C.A. § 2-8-113. Furthermore, a write-in candidate for county or municipal office must receive a minimum of 25 votes in the primary before being placed on the ballot for the general election, a requirement that cannot be modified by private act or charter. T.C.A. § 2-5-219. In an election where voting machines are used, a voter may write-in a name not listed on the ballot if the voter requests a paper ballot from the ballot judge before operating a voting machine. After receiving a paper ballot, a voter may not enter a voting machine. T.C.A. § 2-7-117.

A candidate defeated in a primary election shall not complete a notice requesting write-in ballots to be counted in the general election, and any write-in votes cast for the candidate in the general election must not be counted. T.C.A. § 2-7-133.

## Tie Votes

**Reference Number:** CTAS-865

According to T.C.A. § 2-8-111, the following bodies are to cast the deciding vote (or call for a runoff election) if any of these general elections results in a tie:

1. Elections involving a single county or a part of a county - county legislative body (or the legislative body may call for a runoff);
2. Municipal elections - municipal legislative body (or the legislative body may call for a runoff);
3. Elections for U.S. Congress - governor;
4. Election for governor - General Assembly;
5. Any other election except U.S. Senator (see below) - state election commission.

If a tie vote occurs in a primary election, the tie shall be broken according to the rules of the political party. T.C.A. § 2-8-114. An election for U.S. Senator is void if it results in a tie, and the governor is to order a special election. T.C.A. § 2-8-111.

## Procedure for Elections

**Reference Number:** CTAS-866

## Dates for Regular Elections

**Reference Number:** CTAS-867

Regular general elections are held in every even-numbered year on the first Thursday in August for county offices, and on the first Tuesday after the first Monday in November for state offices. Elections for the following offices are to be held at the regular August election when the election immediately precedes the commencement of a full term:

1. Sheriff;
2. Constable;
3. Assessor of property;
4. County clerk and clerks of the circuit and other courts;
5. Register;
6. County trustee;
7. Members of the county legislative body;
8. Judges of all courts; and
9. District attorney general.

T.C.A. § 2-3-202.

Elections for the following offices are to be held at the regular November election when the election immediately precedes the commencement of a full term:

1. Representative in the General Assembly;
2. Representative in the United States Congress;
3. Senator in the General Assembly;
4. Senator in the United States Congress;
5. Governor; and
6. Electors for the president and vice-president.

T.C.A. § 2-3-203.

## Special Elections

**Reference Number:** CTAS-868

A special election must be held whenever a vacancy in any office is required to be filled by election at a time other than the time fixed for general elections. T.C.A. § 2-14-101. For all county and municipal offices, special elections are ordered by the county election commission, while the governor orders those for all other offices. T.C.A. § 2-14-103. Special elections must be held from 75 to 80 days after notice of the need for an election is received. However, if a regular general election or primary is scheduled within 30 days of the time required for a special election, then the special election may be held on that day. If the day of the election is moved, then all other dates are adjusted accordingly. T.C.A. § 2-14-102. The county election commission must publish notice of the special election within 10 days after it receives the election order. T.C.A. § 2-14-105. In most cases, candidates in a special election must qualify as in regular elections, although the deadline for filing qualifying petitions and party nominations is 12 noon on the sixth Thursday before the day of the special election. T.C.A. § 2-14-106.

## Early Voting Procedures

**Reference Number:** CTAS-869

In 1994 the General Assembly passed legislation that adopted an early voting period and amended absentee voting procedures. T.C.A. § 2-6-101 et seq. This act replaced the procedure to vote absentee by personal appearance (T.C.A. § 2-6-109) with an early voting period, which starts 20 days before an election and runs through the fifth day before the election (seventh day if the election is held at the same

time as a presidential preference primary), in which any registered voter may vote (although different time periods may apply to municipalities). Upon the request of a municipality holding an election at some time other than the regular August or November election, the county election commission shall establish a satellite voting location within the corporate limits of the municipality. The municipality must pay the costs of the location. T.C.A. § 2-6-103. For early voting the county election commission may choose to use voting machines, paper ballots, or a combination of both. The state coordinator of elections is to promulgate rules for voting machine use, as well as forms for early voter and absentee ballot applications, determining distinguishable colors for each type of envelope. Instead of the state forms, a county election commission may use its own computer-generated forms with the approval of the coordinator of elections. T.C.A. § 2-6-312. Voters who are unable to vote either during the early voting period or on election day may submit an application to vote absentee but must meet the statutory requirements. For specific absentee voting procedures, see T.C.A. § 2-6-101 et seq.

## Inactive Voters and Provisional Ballots

**Reference Number:** CTAS-870

County election commissions are permitted to establish a centrally located polling place for voters whose registration is inactive or whose registration has been transferred to a new precinct. T.C.A. §§ 2-7-140 and 2-7-141. When a voter attempts to vote at a precinct where he or she is no longer eligible to vote, the election official at the voter's old polling place would notify the voter that he or she has the choice to vote at either the centrally located place or the new polling place. If the central location is other than the county election commission office, then the site must be equipped with computers linked to the county election commission office to allow voters' records to be changed.

In 2003, the General Assembly authorized provisional ballots in Tennessee. T.C.A. § 2-7-112. Under this law, a person shall be entitled to vote a provisional ballot if they claim to be properly registered in the county and eligible to vote at the precinct, but their eligibility cannot be determined by the computer signature list or by examination of the permanent registration records or an election official asserts that the individual is not eligible to vote.

## Referenda

**Reference Number:** CTAS-871

For a referendum to be held, it must be authorized or mandated by statute. The county legislative body does not have a general power to submit questions; the body has power only to submit questions to the voters that have been granted by general law or private act. Certain questions are required by law to be submitted to the people in referendum for their approval or disapproval. In a referendum election held by a local government, any question submitted to a vote of the people shall be printed on the ballot followed by the words "yes" and "no." The law requires that the language of the question must be worded on the ballot so that a "yes" vote indicates support for the measure and a "no" indicates opposition to the measure. T.C.A. § 2-5-208.

Generally, if the law does not provide otherwise, referendum elections submitted to the people are to be held on dates set by the county election commission but not less than 75 days or more than 90 days after the county election commission is directed to hold the election. However, resolutions, ordinances or petitions requiring the holding of elections on questions submitted to the people that are to be held with the regular August election, the regular November election or the presidential preference primary shall be filed with the county election commission not less than 75 days prior to that election. T.C.A. § 2-3-204. If the date set for a referendum falls within 90 days of an upcoming regular election or primary, the election commissions of the counties involved may reset the date of the referendum to coincide with the regular general or primary election. All other dates dependent on the election date will be adjusted accordingly. If the referendum is to be held in more than one county, the election commissions for both counties must meet and set a date jointly. T.C.A. § 2-3-204. Uniform procedures for the filing and acceptance of petitions in governmental entities that allow for recall, referendum, or initiative elections pursuant to terms of the charter of that government can be found in T.C.A. § 2-5-151.

## National Voter Registration Act

**Reference Number:** CTAS-872

In 1993 the U.S. Congress passed the National Voter Registration Act, codified as 52 U.S.C. § 20501 - 52 U.S.C. § 20511. The law has been commonly dubbed the "Motor Voter" program due to the law's requirement that driver's license facilities (as well as a number of other agencies) offer voter registration services to their clients. Congress required most states to pass legislation and implement the programs of the act by January 1, 1995. Tennessee fully implemented the program by that date. Some of the act's programs (such as by-mail voter registration) were already available in Tennessee. Under this legislation, Tennessee established a network of cooperative efforts between local county election commissions and numerous state and local agencies. The participating voter registration agencies in Tennessee are the following: the Department of Safety (motor vehicles division), Department of Health (WIC program), Department of Human Services, Department of Mental Health and Mental Retardation, Department of Veterans Affairs, public libraries, public high schools, county clerks, and registers of deeds. T.C.A. § 2-2-202.

In addition to expanding the locations for voter registration, the law made substantial reforms in voter registration record keeping and maintenance. It eliminates purging a voter record for non-voting (formerly practiced in Tennessee) and requires election commissions to accommodate voters who have moved within a county but failed to update their voter registration.

## Help America Vote Act

**Reference Number:** CTAS-873

The Help America Vote Act is a federal law to improve state and local voting procedures. In order to comply with the federal law and receive funding under this new act, Tennessee's General Assembly enacted 2005 Public Chapter 308, codified at *Tennessee Code Annotated*, Title 2, Chapter 2, Part 3. This state law provides for a statewide voter registration database maintained by the Tennessee coordinator of elections. This law establishes the Automated Electoral System as the official list of registered voters in the state and requires data from county election commissions to be transferred to the state via the Automated Electoral System not less than once daily.

County election commissions are required to purge voting registrations of all deceased registered voters appearing on the report transmitted by the coordinator of elections at least every 30 days, and beginning with the first day of any period of early voting, purges must be made daily, through the day of the election as the information is received from the coordinator of elections. T.C.A. § 2-2-133.

## Campaign Financial Disclosure Act of 1980

**Reference Number:** CTAS-874

This act requires all candidates for public office to file a report of campaign contributions and expenditures, except that candidates for part-time offices paying less than \$1,000 per month are exempt from these requirements. The exemption does not apply, however, to a candidate for a chief administrative office or whose campaign expenditures exceed \$1,000. T.C.A. § 2-10- 101. Enforcement and administration are the responsibility of the Registry of Election Finance.

Before a candidate or campaign committee can make or receive campaign contributions or expenditures, it must file the name and address of the political treasurer with the Registry of Election Finance for state elections, or with the county election commission for local elections. The candidate may serve as political treasurer, but if he or she appoints someone else, the candidate must co-sign the required statements. T.C.A. § 2-10-105. A statement certifying a candidate's treasurer must contain the office the candidate is seeking and the year of the election. If the candidate or committee files this statement prior to January 1 of the year in which the candidate expects to be involved, then a financial report must be filed with the proper agency by January 31 and July 15 immediately succeeding the filing, and semiannually thereafter until the year of the election. However, a semiannual report need not be filed if the reporting date falls within 60 days of a report otherwise required by the election laws. During an election year, reports are filed quarterly and are due within 10 days of the periods ending March 31, June 30, September 30 and January 15. The candidate is also required to file a pre-primary and pre-general statement covering activity from the last quarterly report until the 10th day prior to the primary or election. These reports are due seven days before the primary or election. T.C.A. § 2-10-105.

Reports for both primary and general elections must be filed separately, even for the same office in the same year. However, appointment of the political treasurer for the primary election is also valid for the general election for the same office. All records used in preparing financial disclosure statements must be retained for at least two years after the election or after the date of the statement, whichever is later. T.C.A. § 2- 10-105.

In addition to the financial transactions shown in these regular statements, substantial contributions or loans received within 10 days of any election must also be reported. In a state election this means that any transfer of funds over \$5,000 must be reported by the end of the next business day to the state Registry of Election Finance. Any amount over \$2,500 in a local election triggers the requirements of this Section and must be reported to the county election commission by the end of the next business day. The report is to be submitted on forms furnished by the registry and should include the following information: amount, date contributed or loan reported, description and valuation of in-kind contributions, and for a loan, the name and address of lender, name of recipient, and details of any security agreement for the loan's repayment. T.C.A. § 2- 10-105.

## Reports on Unexpended Balances

**Reference Number:** CTAS-875

If the final statement of a candidate shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry (for state offices) or county election commission (for local offices) a supplemental semiannual statement of contributions and expenditures. These reports begin after filing the first quarterly report due after an election and will continue to be filed until the account shows no unexpended balance, continuing debts and obligations, expenditures, or deficit. T.C.A. § 2-10-106.

## Contents of Campaign Finance Reports

**Reference Number:** CTAS-876

Financial statements submitted under the act must contain specified information about all income and expenditures during the period covered by the report. If neither expenditures nor contributions exceeded \$1,000 during this time period, the report may simply state that fact. Otherwise the report should list separately any single contribution or expenditure over \$100, including full name, address, occupation and employer of each contributor. For expenditures, the report must indicate the full name and address of each person to whom a total of more than \$100 was paid, the total amount paid to that person and the purpose of the expenditure. Contributions of \$100 or less are to be totaled and listed together, as are expenditures of this amount, though the latter are to be grouped by category. "In-kind contributions," those other than money, are to be reported in a similar manner, though once again those of \$100 or less are to be totaled. T.C.A. § 2-10-107. The Registry of Election Finance should be consulted for more specific information regarding reporting requirements.

## Closing Out Accounts and Using Unexpended Funds

**Reference Number:** CTAS-877

When a candidate or political campaign committee desires to close out a campaign account, it may file a statement to that effect at any time; however, the statement must show no unexpended balance, continuing obligations, or deficits. T.C.A. § 2-10-107. A candidate may close out a campaign account by transferring any remaining funds to another campaign fund and commencing annual filings on that account. T.C.A. § 2-10-106. Other permissible uses for unexpended campaign funds are listed in T.C.A. § 2-10-114. It is not permissible to disburse such funds for personal use. T.C.A. § 2-10-114.

## Enforcement-Campaign Finance

**Reference Number:** CTAS-878

All campaign financial statements are available for public inspection, either at the Registry of Election Finance, for state elections, or the county election commission for local elections. T.C.A. §§ 2-10-206,

2-10-103. The county election commission is required to notify the state election commission and the Registry of Election Finance of each local election held in the county. Each time that campaign statements are due in a local election, the county election commission is required to file a report with the registry certifying that all candidates have filed timely or provide a list of all who have failed to report timely. T.C.A. §2-10-111. The registry may impose a civil penalty of not more than \$25 per day up to a maximum of \$750 for late filings. Notice of a failure to file is required to be sent to candidates who did not timely file. A failure to file a report within 35 days after receiving such notice is considered a class 2 offense and punishable by a maximum civil penalty of not more than \$10,000. T.C.A. § 2-10-110. Any registered voter who believes information has been omitted or misstated may file a sworn complaint with the Registry of Election Finance (state elections) or the district attorney general where the voter resides (local elections). However, anyone who knowingly files a false complaint or one for harassment purposes is liable for civil penalties and attorney's fees. T.C.A. § 2-10-108. The Registry of Election Finance or the district attorney general is responsible for investigating complaints and seeking injunctions to enforce these provisions. T.C.A. § 2-10-109.

## Campaign Contribution Limits

**Reference Number:** CTAS-879

In 1995 the General Assembly passed the Campaign Contribution Limits Act, codified in T.C.A. Title 2, Chapter 10, Part 3. As with most other areas of campaign finance, the Registry of Election Finance has administrative and enforcement powers over this act.

The act prohibits contributions by a person to any candidate that, in the aggregate, exceed \$2,500 in a statewide election or \$1,000 in other state or local elections. Multicandidate political campaign committees are limited to contributions of \$7,500 in statewide elections and \$5,000 in other state and local elections.

Candidates running in statewide elections are prohibited from accepting more than 50 percent of their total contributions from multicandidate political campaign committees. For any other office there is a simple \$75,000 limit on the total contributions from multicandidate committees. These calculations do not include contributions made to the candidate by a political party.

Some contributions may be indirectly attributed to the candidate. Anyone involved in campaign or fundraising activities should examine the rules regarding these contributions. T.C.A. § 2-10-303.

The limitations of this statute do not apply to loans of money by a financial institution as defined in T.C.A. § 45-10-102(3) if they meet certain qualifications. There are also limits on the aggregate contributions allowed by political parties. They are: \$250,000 in statewide elections, \$40,000 for candidates for the Senate, and \$20,000 for elections to other state or local public office. T.C.A. § 2-10-306.

Contribution limits are adjusted to reflect the percentage of change in the average consumer price index (all items-city average), as published by the United States Department of Labor, Bureau of Labor Statistics, for the period of January 1, 1996, through December 31, 2010. The Registry of Election Finance publishes each such adjusted amount on its Web site. T.C.A. § 2-10-302.

The term "contributions" as used in these statutes is defined very broadly. T.C.A. § 2-10-306. Once again, anyone involved in fundraising or campaign activities should take a close look at these statutes or contact the Registry of Election Finance for advice. Contributions that exceed the limit will not be considered a violation of these laws if the candidate or political campaign committee returns the contribution to the person who made the contribution within 60 days of the receipt of the contribution. T.C.A. § 2-10-307.

The registry may impose a penalty up to \$10,000 or 115 percent of the contributions that exceed the limits. If the penalty is not paid for 30 days, the candidate becomes ineligible to qualify for election until the penalty is paid.

Each candidate for local public office or political campaign committee for a local election shall file with each county election commission of the county where the election is held a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee. T.C.A. § 2-10-105(b). Penalties for failure to timely file the statement of contributions and expenditures are found in T.C.A. § 2-10-110.

## Cash Contributions and Aggregate Contribution Limits

**Reference Number:** CTAS-880

Under the 2006 Comprehensive Governmental Ethics Reform Act, a new statute was enacted under Title 2, Chapter 10, Part 3, to prohibit a person from making cash contributions to any candidate with respect to any election that, in the aggregate, exceed \$50. T.C.A. §§ 2-10-302 and 2-10-306 also place limits on aggregate contributions from individuals and from political campaign committees. These limits (besides the cash contribution limit) are adjusted every two years and the registry of election finance publishes the adjusted amounts on its website.

## Conflict of Interest Disclosure Statements

**Reference Number:** CTAS-881

Each candidate for public office is required to file a disclosure statement regarding possible conflicts of interest. Items to be listed in this report include the following:

1. The major source or sources of private income of more than one thousand dollars (\$1,000), including, but not limited to, offices, directorships, and salaried employments of the person making disclosure, the spouse, or minor children residing with such person, but no dollar amounts need be stated. However, the disclosure of any client list or customer list is not required;
2. Any investment which the person making disclosure, that person's spouse, or minor children residing with that person has in any corporation or other business organization in excess of ten thousand dollars (\$10,000) or five percent (5%) of the total capital; however, it shall not be necessary to state specific dollar amounts or percentages of such investments;
3. Any person, firm, or organization for whom compensated lobbying is done by any associate of the person making disclosure, that person's spouse, or minor children residing with the person making disclosure, or any firm in which the person making disclosure or they hold any interest, complete to include the terms of any such employment and the measure or measures to be supported or opposed;
4. In general terms by areas of the client's interest, the entities to which professional services, such as those of an attorney, accountant, or architect, are furnished by the person making disclosure or that person's spouse;
5. By any member of the general assembly, the amount and source, by name, or any: (A) Contributions from private sources for use in defraying the expenses necessarily related to the adequate performance of that member's legislative duties; (B) Travel expenses, including any expenses incidental to such travel, paid on behalf of the member by a person with an interest in a public policy of this state if the travel was for the purpose of informing or advising the member with respect to the public policy. Travel expenses do not include expenses for travel, if such expenses are paid for or reimbursed by a governmental entity or an established and recognized organization of elected or appointed state government officials, staff of state government officials, or both officials and staff, or any other established and recognized organization that is an umbrella organization for such officials, staff, or both officials and staff;
6. Any retainer fee which the person making the disclosure receives from any person, firm, or organization who is in the practice of promoting or opposing, influencing or attempting to influence, directly or indirectly, the passage or defeat of any legislation before the general assembly, the legislative committees, or the members to such entities;
7. Any adjudication of bankruptcy or discharge received in any United States district court within five (5) years of the date of the disclosure;
8. Any loan or combination of loans of more than one thousand dollars (\$1,000) from the same source made in the previous calendar year to the person making disclosure or to the spouse or minor children unless: (A) The loan is from an immediate family member (spouse, parent, sibling or child); (B) The loan is from a financial institution whose deposits are insured by an entity of the federal government, or such loan is made in accordance with existing law and is made in the ordinary course of business. A loan is made in the ordinary course of business if the lender is in the business of making loans, and the loan bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule; (C) The loan is secured by a recorded security interest in collateral, bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repay-

ment, is evidenced by a written instrument, and is subject to a due date or amortization schedule; (D) The loan is from a partnership in which the legislator has at least ten percent (10%) partnership interest; or (E) The loan is from a corporation in which more than fifty percent (50%) of the outstanding voting shares are owned by the person making disclosure or by a member of such person's immediate family; and

9. Such additional information as the person making disclosure might desire. T.C.A. § 8-50-502. Prior to October 1, 2006, candidates in local elections filed their conflict of interest statement with the county election commission in the county of the candidate's residence, while state election candidates filed with the Registry of Election Finance. However, all such statements are now to be filed with the newly formed State Ethics Commission. T.C.A. § 8-50-501. Statements must be filed within 30 days after the qualifying deadline for the desired office. The disclosure must be written on the form prescribed by the Tennessee ethics commission and must be signed by one attesting witness. The statement becomes a public record after it is filed. T.C.A. § 8-50-501. As with improper financial disclosure, failure to report possible conflicts of interest can result in civil penalties. T.C.A. §§ 8-50-505, 2-10-110. Candidates running for reelection to the same office or position they currently hold are not required to file a conflict of interest statement as long as they are in compliance with T.C.A. §§ 8-50-503 and 8-50-504 (filing of amended disclosure statements).

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