



County Technical Assistance Service

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Prohibition on Consulting Fees

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.

Sincerely,

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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).

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