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Municipal Handbook 2003

Sid Hemsley
Municipal Technical Advisory Service

Dennis Huffer
Municipal Technical Advisory Service

Mike Tallent
University of Tennessee, Knoxville

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Sid Hemsley, Legal Consultant, Dennis Huffer, Legal Consultant
M. Michael Tallent, Assistant Director

MTAS
Municipal Technical Advisory Service
In cooperation with the Tennessee Municipal League

THE UNIVERSITY of TENNESSEE

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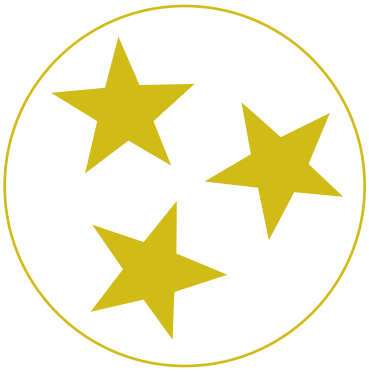

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Sid Hemsley, Legal Consultant,
Dennis Huffer, Legal Consultant,
and M. Michael Tallent, Assistant Director

MTAS OFFICES

Knoxville (Headquarters) ..... (865) 974-0411
Johnson City ..... (423) 854-9882
Nashville ..... (615) 532-6827
Jackson ..... (731) 423-3710
Martin ..... (731) 587-7057

www.mtas.tennessee.edu

The Municipal Technical Advisory Service (MTAS) was created in 1949 by the state legislature to enhance the quality of government in Tennessee municipalities. An agency of the University of Tennessee Institute for Public Service, MTAS works in cooperation with the Tennessee Municipal League and affiliated organizations to assist municipal officials.

By sharing information, responding to client requests, and anticipating the ever-changing municipal government environment, MTAS promotes better local government and helps cities develop and sustain effective management and leadership.

MTAS offers assistance in areas such as accounting and finance, administration and personnel, fire, public works, law, ordinance codification, and wastewater management. MTAS houses a comprehensive library and publishes scores of documents annually.

MTAS provides one copy of our publications free of charge to each Tennessee municipality, county and department of state and federal government. There is a $50 charge for additional copies of "Municipal Handbook 2003."

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MUNICIPAL HANDBOOK 2003

Sid Hemsley, Legal Consultant; Dennis Huffer, Legal Consultant; and M. Michael Tallent, Assistant Director

Chapter 1: State Constitutional Provisions

Municipalities are created and controlled by the state legislature. Unless there is a constitutional or federal law limitation, the state legislature may do anything it wants to a municipality, including ending its existence. A municipality's only powers are those given by the state legislature and constitution. Before 1953, there were no state constitutional restrictions on the state legislature's authority over municipalities. That year, the Sixth, Seventh, and Eighth Amendments to the Tennessee Constitution were adopted, giving citizens more control over their own cities. (These amendments can be found in Article XI, Section 9 of the state constitution. See Chapter 3, "Forms of Government and Governing Bodies," for a more detailed discussion about private acts, general laws and home rule.)

The Sixth Amendment says that before a private act (legislation applying only to cities named in the act) becomes effective, it must be approved locally by a two-thirds majority of the local legislative body or by referendum. The Sixth Amendment also prohibits the legislature from passing private acts that remove incumbents from any municipal office, shorten their terms, or alter their salaries.

The Seventh Amendment gives municipalities the option of adopting home rule by referendum and prohibits the legislature from passing private acts applying to home rule cities. This amendment also says that all new municipalities shall be incorporated only under general law charters provided in state law.

The Eighth Amendment provides for the consolidation of city and county functions.

Forms of Government and Governing Bodies

Home Rule

In Tennessee, home rule means that a city may adopt and change its own charter by local referendum. If a city adopts home rule, the legislature may not pass private acts that apply to that city. General laws that apply to all cities also are applicable to cities with home rule charters.

If a city chooses home rule, it relinquishes the opportunity to have the legislature pass private acts for it. Instead, residents must approve by local referendum any changes to the home rule charter. (See Victor C. Hobday, *An Analysis of the 1953 Tennessee Home Rule Amendments*, Bureau of Public Administration and MTAS, The University of Tennessee, Knoxville; Second Edition, May 1976, pp. 5-9.) In addition, *Tennessee Code Annotated* (*T.C.A.*) 6-53-105(c) requires that the municipal chief financial officer estimate the cost and revenue impact of home rule amendments and for such estimates to appear on ballots containing amendments to home rule charters.

Consolidation of City and County Functions

The Eighth Amendment to the Tennessee Constitution deals with consolidating city and county functions (Article XI, Section 9). Under its terms, merging any function, such as schools,

or completely consolidating city and county governments, as in Nashville and Davidson County, must be approved in a referendum by a majority of the vote in the city and a majority of the vote in the remainder of the county. Implementing legislation for complete city/county consolidation is found in *T.C.A.* 7-1-101–7-3-312. A second consolidation act, the Charter Government Unification Act, applies to counties with a charter form of government (*T.C.A.* 7-21-101 et seq.).

Annexation, Merger, or Creation of Cities

The Tennessee Constitution states, "The General Assembly shall, by general law, provide the exclusive methods by which municipalities may be created, merged, consolidated, and dissolved and by which municipal boundaries may be altered." (Article XI, Section 9).

The state courts have routinely declared unconstitutional annexation laws that exempt certain counties or that apply only to cities with specified populations. This constitutional provision has also been interpreted as preventing the creation of additional private act chartered municipalities. Thus, any unincorporated area wishing to incorporate must do so under one of several general law charters found in Title 6 of *T.C.A.* (Volume 2B).

Financial Provisions in the Tennessee Constitution

Municipal revenues and fiscal administration are covered at length in Chapters 7 and 9 of this handbook. Major financial provisions in the state constitution that affect cities are, in summary:

- "No public money shall be expended except pursuant to appropriations made by law" (Article II, Section 24). This all-encompassing language means that even the profit from a snack machine in the city hall's basement must be appropriated by the city council before it can be spent;
- Article II, Section 28, contains provisions for exempting public, religious, charitable, scientific, literary, and educational property from property taxes and establishing assessment ratios for classifications of real property;
- "The credit of no county, city, or town shall be given or loaned ... nor shall any county, city, or town become a stockholder with others in any company, association, or corporation ..." unless the arrangement is approved by a three-fourths majority of the vote in a referendum (Article II, Section 29). Because of this restriction, some public/private partnership arrangements that other states are trying would require referendum approval in Tennessee. This provision has been strictly interpreted to prohibit municipalities from waiving property taxes or providing similar economic incentives to attract new industries. However, industrial development corporations formed by municipalities may own buildings and property. As governmental entities, they are exempted from taxation and may pass this along to the lessees of such properties;
- Article XI, Section 8, prohibits private acts that "... suspend any general law for the benefit of any particular individual ... [or] grant to any individual or individuals rights, privileges, immunities, or exemptions other than such as may be by the same law extended to any member of the community;"
- Local officials are frequently frustrated when the state mandates an action or service for which their municipalities do not have funds. Theoretically, the Tennessee Constitution gives local

governments some protection against mandates. It says, "No law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost" (Article II, Section 24). It has been held that "The legislature is empowered to elect what the share shall be in the subject expenses." (See *Morie v. Snodgrass*, 886 S.W.2d 761 (Tenn. Ct. App. 1994).)

Dual Officeholding

The Tennessee Constitution (Article II, Section 26) prohibits "any person in this state" from holding "more than one lucrative office at the same time." The Tennessee courts have held that this prohibition applies only to holding two *state* offices, not to holding a state office and a local government office or two local government offices (See *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495 (1931)). For that reason, a municipal officer may serve in the General Assembly or another local government seat unless otherwise prohibited by law. Some municipal charters forbid dual officeholding of various kinds. Such charter provisions have generally been upheld.

Chapter 2: Elections

In 1972, the General Assembly enacted a comprehensive law to regulate all elections (*T.C.A.* Title 2). Its apparent intent was to override provisions in private act charters and other conflicting general laws relating to the conduct of municipal elections, including certain provisions in *T.C.A.* Title 6, Chapter 53, that pertain to municipal elections. Title 6, Chapter 53, has been amended several times since 1972, however, and some of those amendments apply to current municipal elections and appear to be legally sound. For that reason, both *T.C.A.* Title 2 and Title 6, Chapter 53, should be consulted and reconciled with respect to questions regarding municipal elections.

The introductory provisions of *T.C.A.* Title 2 include the following:

- "The purpose of this title is to regulate the conduct of all elections by the people so that ... internal improvement is promoted by providing a comprehensive and uniform procedure for elections ..." (*T.C.A.* 2-1-102(3)); and

- "All elections for public office, for candidacy for public office, and on questions submitted to the people shall be conducted under this title" (*T.C.A.* 2-1-103).

The statutes outline the procedures and conduct of all city elections, and municipal officials should seek guidance from these laws and from those governing county election commissions.

Date of Municipal Elections; Changes

In election law, there is no uniform date for municipal elections as there is for county elections. Private act charters prescribe elections dates, and a private act municipality may change its election date by changing its charter. The general law mayor-aldermanic charter provides that the first election after the incorporation of the municipality shall be held not later than 62 days following the incorporation election, and it authorizes the board of mayor and aldermen to change its election date by ordinance (*T.C.A.* 6-1-207, *T.C.A.* 6-3-104).

The general law city manager-commission charter provides that the first election of commissioners shall be the fourth Tuesday following the incorporation election, and it authorizes the board of commissioners to change the election date by ordinance, including changing to the date of the general state election, within certain limitations outlined in the charter (*T.C.A.* 6-20-102).

The general law modified city manager-council charter provides that the first election of council members after the incorporation of the municipality shall be the fourth Tuesday following the incorporation election, and it authorizes the city council to change the election date by ordinance (*T.C.A.* 6-31-102).

Qualifying Deadline for Municipal Election

T.C.A. 2-5-101(a)(3) requires candidates in municipal elections held with the August general election to file their nominating petitions by noon on the first Thursday in April and candidates in other municipal elections to file their nominating petitions no later than noon on the third Thursday in the third calendar month before the election.

T.C.A. 6-53-101 states, "The county election commission of each county shall hold, upon no less than one hundred twenty (120) days' notice, an election for mayor ... and other officers. ..." *T.C.A.* 6-53-101(a)(2) requires municipalities that have changed the term of office of an elected official to file a certified copy of the ordinance changing the term with the county election commission at least seven days before the deadline for filing the notice of election under *T.C.A.* 2-12-111.

Early Voting

"Early voting" applies to all elections, including municipal elections (*T.C.A.* 2-6-101 et seq.). The time and the place for early voting is not more than 20 days nor less than five days before the date of the election, at the office of the county election commission. However, in the case of a municipal election in which there is no opposition for any of the offices involved, the period is not more than 10 or less than five days before the election.

The time during which the county election commission offices shall be open for early voting is set in *T.C.A.* 2-6-103 and includes certain Saturdays. However, municipalities of less than 5,000 population may set the Saturday schedule. Certain rules govern the hours that election commission offices are open for early voting in municipal elections in the principal city in counties with a population of more than 150,000.

T.C.A. 2-6-112 also provides that, at the request of the municipality, the county election commission must establish a satellite voting location for municipal elections, where the election is held at times other than the regular state general elections in August and November. The municipality is responsible for the cost of the satellite location.

Determination of Residence for Voter Registration Purposes

Any United States citizen who is or will be 18 years old before the next election date and is a Tennessee resident may register to vote unless he or she has been legally disqualified (*T.C.A.* 2-2-102, *T.C.A.* 2-2-104, *T.C.A.* 2-22-122). The registrar follows *T.C.A.* 2-2-122 to determine if a person is a Tennessee resident.

Residency Requirements Applicable to Persons Living in a Newly Annexed Area

People living in newly annexed territory have the same rights as any other people living in the city, as if the annexed area "had always been part of the annexing municipality" (*T.C.A.* 6-51-108(a)). Therefore, any residency period in the annexed area would apply toward residency requirements for voting and running for municipal office. Municipalities should consider election deadline dates when they annex territory. Municipalities that annex territory must provide the appropriate county election commission with:

- Maps depicting the area;
- A copy of the annexation ordinance denoting wards or districts, if applicable; and
- A copy of the census taken for the annexation, if available (*T.C.A.* 2-2-107(c)).

Breaking Tie Votes in Municipal Elections

The municipality's governing body may either break a tie or call for a runoff election (*T.C.A.* 2-8-111(2)).

Recall Elections

Recall elections are available only for removing municipal officeholders in cities with private act or home rule charters that authorize recall elections. Procedures for recall elections are found in *T.C.A.* 2-5-151. Recall petitions must contain one or more specific grounds for removal (*T.C.A.* 6-53-108).

Petitions for Recall, Referendum, or Initiative
T.C.A. 2-5-151 outlines procedures for cities having charter provisions for recall, referendum, or initiative. The statute contains extensive rules, including:

- A registered voter must submit the prepared petition and question to the county election commission, which must certify within 30 days whether it is proper;
- The individual who files has 15 days to fix any problems;
- The petition must include the question, the printed name of each signer, the date of the signature, and *the signatures of at least 15 percent of the city's registered voters*;
- The completed petition must be filed within 75 days after certification by the election commission and at least 60 days before the election; and
- Individuals have eight days after filing to remove their names from the petition.

Since July 1, 1997, a municipality has been allowed to enact or re-enact controlling charter requirements relative to the number of signatures required and the 75-day deadline after election commission certification of the petition (*T.C.A.* 2-5-151).

Primaries

A municipal election is nonpartisan unless a partisan election is provided for by municipal charter (*T.C.A.* 2-13-208).

Nonresident Property Owners' Voting Rights
Tennessee statutes recognize nonresident property owners' voting rights in municipal elections if such rights are provided by municipal charter or general law. Separate voter registration for nonresident property owners is required. Therefore, nonresident property owners who also are registered to vote anywhere in Tennessee must register as property rights voters before registration closes for an upcoming municipal election, just as other voters must register (*T.C.A.* 2-2-107, *T.C.A.* 6-53-102).

Presumably, only those people whose names appear on deeds or tax rolls would be eligible to register as nonresident property owners. *T.C.A.* 2-2-107(a)(3) provides that no more than two persons are entitled to vote based upon ownership of an individual tract regardless of the number of property owners. If a partnership owns property, only partners named on the deed have nonresident voting rights. Corporate owners have no vote because the Tennessee Constitution and election laws authorize voter registration of only natural people (Article IV, Section 1, and *T.C.A.* 2-2-102).

The general law city manager-commission charter provides that a person eligible to vote in municipal elections solely because of nonresident ownership of real property is not eligible for election as a commissioner (*T.C.A.* 6-20-103).

Nominating Petitions
Nominating petitions must be signed by the candidate and 25 or more registered voters eligible to vote for the office the candidate is seeking (*T.C.A.* 2-5-101(b)(1)). Such petitions may not be issued more than 90 days before the qualifying deadline (*T.C.A.* 2-5-102 (b)(5)).

The county election commission office is required to furnish nominating petition forms for municipal elections (*T.C.A.* 2-5-102(b)(1)). Candidates in a city that lies in two or more counties must file their original nominating petitions with the chairperson or administrator of elections in the county where the city hall is located. They also must file certified duplicates of the petition with the commissions of all the counties in which the city lies (*T.C.A.* 2-5-104).

If candidates miss a filing deadline or if their petitions do not contain the signatures and home addresses of at least 25 registered voters eligible to vote for the offices the candidates are seeking, their names may not be printed on the ballot (*T.C.A.* 2-5-101(c)).

T.C.A. 2-5-101 and *T.C.A.* 2-2-204 provide procedures for the qualification of additional candidates if a candidate is nominated but dies or withdraws before the election.

Candidate Qualifications

Tennessee's "Little Hatch Act" limits the political activity of certain government employees but does not apply to municipal employees (*T.C.A.* 2-19-201 et seq.). Some municipal charters and ordinances contain restrictions on the political activities of municipal employees; however, they have been superseded by *T.C.A.* 7-51-1501. That statute expressly gives local government employees the same rights as other Tennessee citizens to engage in political activities and to run for state and most local government offices. The law contains one significant exception: local government employees may not run for the local governing body unless authorized by law or local ordinance.

Only the names of "qualified" candidates may be on the ballot (*T.C.A.* 2-5-204(a)). In general, charter provisions requiring up to one year of residency in the city to qualify for office are valid.

No minimum age qualification for membership on the municipal governing body may be greater than 21 years at the time the member takes office. A minimum age of 18 is fixed to be a candidate for such an office. However, a minimum age between 18 and 21 for assuming office may be fixed by private act, charter provision, or ordinance, if authorized by charter. This law does not apply in a county with a metropolitan form of government (*T.C.A.* 6-53-109).

Referenda Elections

The Tennessee Supreme Court has held that "the right to hold an election does not exist absent an express grant of power by the legislature." (See *Brewer v. Davis*, 28 Tenn. 208 (1848); *McPherson v. Everett*, 594 S.W.2d 677, 680 (Tenn. 1980).) The Tennessee Attorney General's office has consistently concluded under those cases that referenda are elections for which there must be statutory authorization (Op. Tenn. Atty. Gen. No. 86-146; 95-013).

Local Referenda Permitted

The following referenda are authorized under Tennessee law:

- General obligation bonds (*T.C.A.* 9-21-201 et seq.);
- Liquor retail sales (package stores) or selling alcoholic beverages for consumption on the premises (*T.C.A.* 57-3-101 et seq., *T.C.A.* 57-4-101 et seq.);
- Annexation (*T.C.A.* 6-51-104 et seq.);
- Local sales tax (*T.C.A.* 67-6-701 et seq.);
- Adopting or surrendering the general law mayor-aldermanic charter (*T.C.A.* 6-1-201), the city manager-commission charter (*T.C.A.* 6-18-104), and the modified city manager-council charter (*T.C.A.* 6-30-106);
- A private act passed by the General Assembly (Article XI, Section 9, of the Tennessee Constitution);
- Creating an emergency communications (911) district (*T.C.A.* 7-86-101 et seq.);
- Recalling a city official if the charter permits (*T.C.A.* 2-5-151);
- Adoption or amendment of home rule charters (Article XI, Section 9, of the Tennessee Constitution);
- Popular election of the mayor in cities

incorporated under the uniform city manager-commission charter (*T.C.A.* 6-20-201(b)); and
- Consolidation of city and county government (*T.C.A.* 7-1-101, 7-3-312, and 7-21-101 et seq.).

Referendum Election Procedures

The procedures for holding any type of referendum election generally are in the law that authorizes the election. If the legislation does not address a particular type of referendum, the provisions of the Election Code apply. Additionally, *T.C.A.* 2-3-204 frequently applies, and *T.C.A.* 2-12-111 and *T.C.A.* 2-6-101 et seq. always apply. Elections regarding local option sales tax pursuant to *T.C.A.* 67-7-706(a) shall be conducted according to *T.C.A.* 2-3-204.

Resolutions, ordinances, or petitions requiring elections on questions to be held during the general election or the presidential primary must be filed with the county election commission at least 60 days before the election (*T.C.A.* 2-3-204(b)).

The city attorney is required to summarize in 200 or fewer words any question exceeding 300 words that is to be submitted to the voters (*T.C.A.* 2-5-208(f)).

T.C.A. 2-5-208 requires any question submitted to the people in a local referendum to be followed by the words "yes" and "no" so the voter can mark an X opposite the proper word. Any question must be worded so that "yes" indicates support for and "no" indicates opposition to the measure.

Financial Disclosure/Conflict of Interest Disclosure

All candidates for the chief administrative office (mayor), any candidates who spend more than $500, and candidates for other offices that pay at least $100 a month are required to file campaign financial disclosure reports. Civil penalties of $25 per day are authorized for late filings. Penalties up to the greater of $10,000 or 15 percent of the amount in controversy may be levied for filings more than 35 days late. It is a Class E felony for a multi-candidate political campaign committee with a prior assessment record to intentionally fail to file a required campaign financial report. Further, the treasurer of such a committee may be personally liable for any penalty levied by the Registry of Election Finance (*T.C.A.* 2-10-101–118).

Contributions to political campaigns for municipal candidates are limited to:
- $1,000 from any person (including corporations and other organizations);
- $5,000 from a multi-candidate political campaign committee;
- $20,000 from the candidate;
- $20,000 from a political party; and
- $75,000 from multi-candidate political campaign committees.

The Registry of Election Finance may impose a maximum penalty of $10,000 or 115 percent of the amount of all contributions made or accepted in excess of these limits, whichever is greater (*T.C.A.* 2-10-301–310).

Each candidate for local public office must prepare a report of contributions that includes the receipt date of each contribution and a political campaign committee's statement indicating the date of each expenditure (*T.C.A.* 2-10-105, 107).

Candidates are prohibited from converting leftover campaign funds to personal use. The funds must be returned to contributors, put in the volunteer public education trust fund, or transferred to another political campaign fund, a political party, or an organization described in 26 U.S.C. 1709(c) (*T.C.A.* 2-10-115).

Conflict of interest disclosure reports by any candidate or appointee to a local public office are required under *T.C.A.* 8-50-501 et seq. Detailed financial information is required including the names of corporations or organizations in which the official or one immediate family member has an investment of over $10,000 or 5 percent of the total capital. This must be filed no later than 30 days after the last day legally allowed for qualifying as a candidate. As long as an elected official holds office, he or she must file an amended statement with the Registry of Election Finance or inform that office in writing that an amended statement is not necessary because nothing has changed. The amended statement must be filed no later than January 31 of each year (*T.C.A.* 8-50-504).

Political Ads

A political advertisement must state the name of the person or group funding it and whether the candidate authorized the ad (*T.C.A.* 2-19-120).

Within certain counties, it is illegal for anyone to attach posters, show cards, advertisements, or devices (including election campaign literature) on poles, towers, or public utility company fixtures — whether publicly or privately owned — unless legally authorized (*T.C.A.* 2-19-144).

Candidates are required to remove all election signs on highway rights of way and on other publicly owned property within three weeks after an election, but there is no penalty for failing to do so (*T.C.A.* 2-1-116). In addition to these provisions, many cities have local ordinances regulating posters, advertisements, and devices on public property.

Chapter 3: Forms of Government and Governing Bodies

This chapter deals with provisions not covered elsewhere that are of general application to municipal governments, governing bodies, and their members.

Types of Municipal Charters

Tennessee has three categories of municipal charter:

- **Private act charter.** All cities with a private act charter were incorporated before 1953 when the constitution was amended to prohibit incorporating cities by special act. If a private act city wants to amend its charter, the city's legislative delegation introduces the amendment in the General Assembly, and the city must ratify the new private act;
- **Home rule charter.** A city wanting home rule government writes its own charter and adopts it in a referendum. A home rule city seeking to amend its charter must submit the amendment to a referendum. There are 13 home rule municipalities in Tennessee; and
- **General law charter.** A city may adopt one of the "form charters" that are written into the state code.

(For a complete discussion of the adoption and amendment of the various types of charters, see *Getting to Know and Maybe Love Your Municipal Charter* by Sidney D. Hemsley, The University of Tennessee Municipal Technical Advisory Service, Knoxville, December 1992.)

The governing body of a private act city can play a major role in determining the municipal government's form and structure. Its members can influence the legislature to make private act amendments, which may then be approved by a two-thirds vote of the governing body or by referendum. In a home rule city, charter amendments may be initiated by the governing body passing an ordinance, which is then submitted for referendum approval.

To amend a charter in a general law city, there must be general agreement (or at least no major disagreements) among most of the cities operating under that charter. If there is not agreement, the legislature is not likely to pass a general law amendment.

General Law Charters

The Tennessee code provides four general law charters:

- Mayor-aldermanic charter (*T.C.A.* 6-1-101 et seq.);
- City manager-commission charter (*T.C.A.* 6-18-101 et seq.);
- Modified city manager-council charter (*T.C.A.* 6-30-101 et seq.); and
- Metropolitan government charters (*T.C.A.* 7-1-101 et seq., *T.C.A.* 7-21-101 et seq.).

The following section summarizes the features of the first three general law charters. The two metropolitan government charters are consolidated city/county government charters.

General Law Mayor-Aldermanic Charter

The mayor-aldermanic general law charter provides for a board of mayor and aldermen consisting of the mayor and two to eight aldermen. Newly incorporated cities must have at least one ward, and two aldermen must be elected from that ward. Newly incorporated

cities with more than 5,000 people must have at least two wards, and two aldermen must be elected from each ward.

Any existing city may also adopt the mayor-aldermanic charter. The board appoints the recorder, the treasurer, the city judge (if he or she is not exercising concurrent jurisdiction with General Sessions Court; see Chapter 6, "City Courts"), and other department heads. The mayor prepares the budget, hires and fires employees, and sees that all city laws and ordinances are enforced. However, the board may designate itself or someone else to perform any or all of these mayoral functions. The board may appoint a city administrator by ordinance.

Municipalities that were incorporated under the mayor-aldermanic charter before June 30, 1991, may establish wards, increase or decrease the number of aldermen, and switch to staggered terms in accordance with *T.C.A.* 6-3-101–102.

T.C.A. 6-3-101(a) allows municipalities that incorporated under the mayor-aldermanic charter after June 30, 1991, to modify the number of aldermen and/or wards by ordinance. The ordinance must provide for staggered four-year terms but may provide for transitional terms of fewer than four years.

T.C.A. 6-3-101(b) and 102(a) allow municipalities incorporated under this charter that have only one (1) ward to provide by ordinance for election of aldermen by numerical position. A person seeking office as an alderman may qualify for only one (1) position.

General Law City Manager-Commission Charter

The city manager-commission charter provides for a council-manager government similar to the model city government charter recommended by the National Civic League.

A city operating under this charter has a number of options when structuring its governing body. Small cities may have three or five commissioners. Cities with more than 5,000 residents elect five commissioners for staggered four-year terms. Elections may be at-large or from single-member districts. The commissioners may appoint one of their members as mayor, or the citizenry may elect the mayor to a four-year term.

The charter may be adopted by any newly incorporating or existing city.

The commission appoints a city judge if the judge is not exercising concurrent jurisdiction with General Sessions Court. (See Chapter 6, "City Courts.") The commissioners appoint a city manager who serves at their pleasure, and he or she may be removed only for cause during the first year of employment. The manager is responsible for purchasing, financial affairs, administration, presenting a proposed budget to the commission, selecting and appointing all department heads other than the city judge, and seeing that all city laws and ordinances are enforced (*T.C.A.* 6-18-101 et seq.).

Modified City Manager-Council Charter

The city manager-council charter leaves fewer options in structuring local government than the other two forms.

Seven or more councilmembers are elected from single-member voting precincts for four-year terms. If a city has fewer than seven precincts, the remaining councilmembers are elected at-large. The mayor is elected to a two-year term by his or her fellow councilmembers. The city may ask its legislative delegation to pass a private act allowing all councilmembers to run at-large. For a new city to incorporate under the city manager-council charter, the community must have at least 5,000 residents. There is no explicit provision for existing cities to adopt this form.

The council appoints the city attorney and a city manager. The city judge is elected to a four-year term or an eight-year term if exercising concurrent jurisdiction with General Sessions Court. (See Chapter 6, "City Courts.") All other department heads are appointed by the city manager. The manager serves at the pleasure of the city council. He or she is responsible for purchasing, financial affairs, administration, presenting a proposed budget to the council, and seeing that all city laws and ordinances are enforced. Councilmembers are prohibited from giving orders to the manager's subordinates. Except for inquiries, they are to deal with administrative officers and city employees solely through the manager.

Unlike the two other statutory charters, the modified city manager-council charter includes a recall provision (*T.C.A.* 6-31-301, also see *T.C.A.* 2-5-151).

Restriction on Incorporating New Cities

Communities incorporating under mayor-aldermanic or city manager-commission charters must have at least 1,500 residents.

No territory shall be incorporated within five miles of an existing city of 100,000 or more residents or within three miles of a city of fewer than 100,000 residents (*T.C.A.* 6-1-205, *T.C.A.* 6-18-103).

T.C.A. 6-58-101 provides that no new municipality may be incorporated unless it is within a planned growth area. (See Chapter 23, "Countywide Growth Plan, Annexation and Boundary Adjustments, and Dissolution"). The county legislative body must approve the incorporation prior to the incorporation election. The new municipality must levy a property tax at least equal to its portion of state-shared revenue. For 15 years following its incorporation, the newly incorporated city must give the county the same amount of local option sales tax and wholesale beer tax the county was collecting on the date of incorporation (*T.C.A.* 57-6-103, *T.C.A.* 67-6-712).

T.C.A. 9-4-5306 and *T.C.A.* 67-5-104 establish the following rules for municipalities that have attempted to incorporate under laws subsequently declared unconstitutional (the Tiny Towns Law) and that have received grants or state-shared revenues or collected property taxes:

- Those municipalities are not required to repay state grants, state-shared taxes, or expended property tax revenues;
- Unobligated grants or state-shared revenues belong to the county;
- Unobligated property tax revenues are returned to taxpayers *pro rata*; and
- If grants, state-shared revenues, and property taxes were co-mingled, there is a presumption that the municipality expended grant and state-shared revenues before property tax revenues.

Newly Incorporated City Taking Over Services

If a county government is delivering urban services in an area that becomes part of a city by annexation or incorporation, the city has priority in providing public services. The governing body must declare its desire to take over existing services. Arbitration, subject to court review, is ordered if the parties cannot agree (*T.C.A.* 5-16-110). Municipalities may also have a prior right to take over a utility district's service territory in newly annexed areas of the municipality (*T.C.A.* 6-51-111). That right may be restricted by federal law where the utility district has issued certain bonds (7 U.S.C. 1926(b)). (See Chapter 23, "County-wide Growth Plan, Annexation and Boundary Adjustments, and Dissolution.")

Designee on Other Boards and Commissions

A mayor or full-time commissioner who serves on a municipal, county, or regional board, commission, authority, or development district

in an appointed, elected, or *ex officio* capacity may designate a qualified person as his or her designee. The designee will have the same powers as the official. This includes the power to vote except at any meeting the official attends. This law does not apply if there is a provision for such a substitution in a charter, private act, ordinance, or general law. It also does not apply to governor-appointed members of boards, commissions, or authorities (*T.C.A.* 6-54-112).

Other General Laws

Several other chapters of *T.C.A.* Titles 6 and 7 generally are applicable or available to all cities. Many are summarized in this handbook.

Chapter 4: Ordinances and Codes

"Ordinances" are the legislative enactments of municipal governing bodies. "Codes" are comprehensive ordinances, such as building, plumbing, and electrical regulations. A "code of ordinances" is a compilation (codification) of all city ordinances.

Procedures for Adopting Ordinances

Charters usually spell out the procedures for adopting ordinances, including the number of "readings" required. If the charter is silent, ordinances need be "read" only once. The general law mayor-aldermanic charter requires two considerations of an ordinance (*T.C.A.* 6-2-102). The general law city manager-commission charter calls for two readings, and a city by ordinance may establish a procedure to read only the caption instead of the entire ordinance (*T.C.A.* 6-20-215). The modified city manager-council charter requires two readings (*T.C.A.* 6-32-202).

Publication of Ordinances

Generally, ordinances do not need to be published unless the charter or a specific general law requires otherwise. General law mayor-aldermanic cities have the option of publishing each ordinance or only the caption (*T.C.A.* 6-2-101).

General law city manager-commission cities must publish each penal ordinance or the caption (*T.C.A.* 6-20-218). Publication must be in a city's general circulation newspaper and is necessary for an ordinance to become effective.

Under the general law modified city manager-council charter, at least an abstract of the essential provisions of each ordinance should be published within 10 days after its adoption (*T.C.A.* 6-32-204).

Notwithstanding charter provisions to the contrary, the city needs to publish only the caption and a summary of a comprehensive zoning ordinance (*T.C.A.* 13-7-203).

Adoption of Model Codes

Professional organizations have prepared a number of model codes, such as those for building, plumbing, and electrical, that can be adopted by municipal governing bodies. Such a code may be identified in an ordinance adopting it by reference, which avoids publication. A copy of any code adopted by reference must be filed with the city clerk and be made available for public inspection at least 15 days before the adopting ordinance passes. However, any penalty provisions must be in the adopting ordinance, which must be published in the manner prescribed for ordinances.

If a model code has been adopted, any subsequent amendment must be adopted unless the governing body, by a vote of at least two-thirds of its total membership, elects not to incorporate the amendment (*T.C.A.* 6-54-501–505, 507). *T.C.A.* 6-54-502 (c) contains provisions for administratively adopting amendments to model codes.

Code enforcement is fully discussed in Chapters 17 and 21.

Adoption of Code of Ordinances

Cities adopt ordinances one at a time. Eventually, this collection of ordinances becomes unwieldy unless it is organized under common categories and indexed. Organizing

individual laws into a coherent book of laws is called "codification."

The procedure for making an effective codification is spelled out in *T.C.A.* 6-54-508–509. It includes publishing notice of and holding a public hearing on the proposed code; adopting the new code by ordinance in accordance with charter requirements; publishing notice of adoption of the code; and placing a copy of the code in the city clerk's office for public inspection. Newspaper publication of the code is specifically not required. However, if the codification contains any new penal provisions, they must be explicitly stated in the published notice for the public hearing.

T.C.A. 6-54-510 provides that errors in the original ordinances are cured if corrected in the codification and the new code is adopted by the city council.

Chapter 5: Sunshine Law and Public Documents

Open Meetings

The Sunshine Law establishes "... that the formation of public policy and decisions is public business and shall not be conducted in secret" (*T.C.A.* 8-44-101).

The law applies to formal meetings that require a quorum and to informal meetings of two or more public-body members if they have the authority to make decisions for or recommendations to a public body. If the participants in the meeting "deliberate toward a decision," then the meeting should be open to the public. Public-body members may not use telephones or other electronic communications to evade Sunshine Law requirements (*T.C.A.* 8-44-102).

At meetings, all votes must be public. Secret ballots are not allowed (*T.C.A.* 8-44-104).

The Sunshine Law requires "adequate public notice" for both regular and special meetings (*T.C.A.* 8-44-103). There is no specific statutory definition of "adequate," but the courts seem to have adopted a "totality of circumstances" test to help determine whether a notice is adequate under a particular set of facts. Retreats are covered under the act and may call for extended public notice (See *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. App. 1990).)

An open meeting is not required for:

- On-site inspections of projects or programs (*T.C.A.* 8-44-102(c));
- Chance meetings of two or more public-body members if they do not deliberate toward a decision (*T.C.A.* 8-44-102(d)); and
- Strategy sessions of a governing body in labor negotiations, although actual labor negotiations must be conducted in public (*T.C.A.* 8-44-201).

The courts also have created narrow limitations with respect to communication between the city attorney and the governing body when:

- The discussion concerns a pending lawsuit;
- The governing body is a named party; and
- The discussion is informational only. (See *Smith County Education Association v. Anderson*, 676 S.W. 2d 328 (Tenn. 1984); *Van Hooser v. Warren County Board of Education*, 807 S.W.2d 230 (Tenn. 1991).)

Actions found to violate the Sunshine Law are void. If a citizen successfully sues a city for a Sunshine Law infraction, the Circuit Court may issue an injunction and impose penalties. The court retains jurisdiction over the city for a year, and the city must submit semiannual compliance reports (*T.C.A.* 8-44-105–106).

Open Records

Almost any document of a city official is subject to the state Open Records Law. A person denied access may petition a Chancery Court to allow inspection. The burden of proof is on the official, who must justify denying access by a preponderance of evidence. State law instructs the court to construe the Open Records Law broadly to give "... the fullest possible public access to public records" (*T.C.A.* 10-7-505 (d)).

Costs, including reasonable attorneys' fees, may be assessed against a city or its agent for willfully refusing to disclose a public record (*T.C.A.* 10-7-505). An official required by a court to allow access will not be civilly or criminally liable (*T.C.A.* 10-7-505(f)).

Confidential Records

In general, city employees' personnel records and all other city documents are subject to public inspection under the state's Open Records Law. Some exceptions that affect local government are:

- Employee Assistance Program records that apply to counseling or referrals for mental health, marriage, alcoholism, and similar personal problems may remain confidential if they are maintained separately from personnel records (*T.C.A.* 10-7-504(d)).
- Unpublished phone numbers, bank account information, Social Security numbers, and driver's license information (except when driving is part of or incidental to the employee's job) of employees are confidential; the same information for the employees' families, and household members is confidential (*T.C.A.* 10-7-504 (f)(1)).
- Public school student names and identification (Social Security) numbers are confidential (*T.C.A.* 49-6-5105).
- City hospital medical records and records of patients receiving medical treatment paid for by a municipality are confidential (*T.C.A.* 10-7-504(a)(1)). (The Americans with Disabilities Act requires that all employee medical records must be confidential and kept in a separate file.)
- Library records identifying a person who requested or obtained specific materials are not open to the public (*T.C.A.* 10-8-101, *T.C.A.* 10-8-103).
- Financial statements filed by cities as evidence of their ability to pay workers' compensation claims are confidential (*T.C.A.* 50-6-405(b)(2)).
- Certain "books, records, and other materials in the possession of the Office of the Attorney General and Reporter which relate to any pending or contemplated legal or administrative proceeding in which the Office of the Attorney General and Reporter may be involved" are not open to public inspection (*T.C.A.* 10-7-504(a)(5)).
- All files, reports, records, and papers relative to child abuse investigations are confidential (*T.C.A.* 37-1-612).
- The *Tennessee Rules of Criminal Procedure* contains a section that "does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with the investigation or prosecution of the case or of statements made by state witnesses or prospective state witnesses" (Tenn. R. Crim. P. 16(2)). This rule is an exception to the rule of discovery, which requires the state to allow a "defendant to inspect and copy or photograph any relevant written or recorded" statements, records, objects, etc., which are material to the defense's preparation (Tenn. R. Crim. P. 16(a)(1)).
- *Arnold v. City of Chattanooga*, 19 S.W.3d 779 (Tenn. Ct. App. 2000), (permission to appeal denied June 19, 2000) holds that a city attorney's work product prepared in anticipation of litigation or in preparation for trial is confidential and is not subject to disclosure under the Public Records Act.
- Unpublished phone numbers possessed by emergency communications districts are confidential until there is a contract to the contrary between the telephone

customer and the service provider (*T.C.A.* 10-7-504(e)).

- Information about law enforcement officers, firefighters, emergency medical technicians, and paramedics who seek help for job-related critical incidents through group counseling sessions led by mental health professionals is privileged and is not subject to disclosure unless the privilege is waived. This includes all memoranda, work notes, work products, case files, and related communication (*T.C.A.* 10-7-504(a)(13)(A)).
- Certain taxpayer information, returns, reports, and audits are confidential (*T.C.A.* 67-2-108, *T.C.A.* 67-4-722, *T.C.A.* 67-5-402).
- The identity of an informant who provides information resulting in an eviction for violation of drug laws or for prostitution is confidential (*T.C.A.* 66-7-107).
- Home and work telephone numbers, addresses, Social Security numbers, or any other information that could be used to locate an individual who has a protection or restraining order are not open to the public. Such an individual may request this protection and present a copy of the order to the record keeper of the municipality and/or utility (*T.C.A.* 10-7-504(a)(15)).
- Any information pertaining to the location of a domestic violence center or rape crisis center is confidential when the director requests such in writing (*T.C.A.* 10-7-504(a)(17)).
- Motor vehicle accident reports retained by law enforcement agencies are subject to public inspection, except for information pertaining to automobile liability insurance contained in such reports (*T.C.A.* 55-10-108 (f)).
- Security codes, plans, passwords, combinations, or computer programs used to protect electronic information and government property are confidential (*T.C.A.* 10-7-504).
- Filing documents required in order of protection cases, except forms required by the courts, are confidential but may be transmitted to the TBI, emergency response agency, or law enforcement agency (*T.C.A.* 10-7-504).
- Records that would allow a person to identify areas of vulnerability of a utility service provider or that would permit unlawful disruption of utility service are confidential. Documents relative to costs of utility property or its protection are not confidential, but confidential information must be redacted when the record is made public. This provision does not limit access to these records by other government agencies performing official functions nor does it preclude any governmental agency from allowing public access to these records in performing official functions (*T.C.A.* 10-7-504).
- Contingency plans for responding to terrorist acts are confidential (*T.C.A.* 10-7-504).
- Credit card numbers, Social Security numbers, tax identification numbers, financial institution account numbers, burglar alarm codes, security codes, and access codes of utilities are confidential. This information must be redacted when possible when the rest of the record is made public. The requester must pay the costs of redaction (*T.C.A.* 10-7-504).

Law Enforcement Officers' Records

Like all public employees' records, law enforcement officers' personnel files are generally open to inspection subject to the limitations mentioned in the previous section. However, the custodian of the records must record all inspections and notify the officer

within three days. The notice must contain the fact that an inspection took place; the name, address, and telephone number of the person making the inspection; for whom the inspection was made; and the date of the inspection (*T.C.A.* 10-7-503).

T.C.A. 10-7-504(g)(1) allows the chief to "segregate" personal information about any undercover police officer or member of his or her immediate family. The chief may refuse to release such information if he or she believes it may endanger the officer or the officer's family.

Records Preservation and Destruction

Municipal public records are governed by *T.C.A.* 10-7-701 and 702. They are defined as "all documents, papers, records, books of account, and minutes of the governing body of any municipal corporation within said county or of any office or department of such municipal corporation within the definition of 'permanent records,' 'essential records,' and/or 'records of archival value' " (*T.C.A.* 10-7-301). *T.C.A.* 10-7-702 authorizes the Municipal Technical Advisory Service (MTAS) to publish retention schedules of records for municipal officials. (Contact the MTAS library or Web site for the most recent publication on this topic.)

Electronic Records

T.C.A. 47-10-101 et seq. allow cities to conduct business by electronic means and to determine the extent to which they will send, accept, and rely on electronic records and electronic signatures. *T.C.A.* 47-10-112 provides that electronic records may be retained and have the same status as original records. Electronic records are subject to open records and retention requirements just like other records.

Electronic Mail

A municipality with electronic mail must adopt a written policy addressing any monitoring of e-mail. The policy shall include a statement that any form of e-mail may be a public record open to inspection (*T.C.A.* 10-7-512).

Disposal of Records

T.C.A. 10-7-702 allows any municipal governing body by resolution to authorize the disposal, including destruction, of permanent paper records that have been copied to another medium, such as microfilm or CD-ROM, in accordance with *T.C.A.* 10-7-121. Other records may be destroyed when the retention period prescribed by the retention schedule used by the municipality has expired.

Charges for Geographic Information System Data

Cities may recover as fees for use of geographic information system (GIS) data 10 percent of the total development costs of the system. An additional 10 percent may be recovered if approved by the governing body and by the state Information Systems Council. After this amount is recovered, fees must be reduced to recover only maintenance costs of the system.

Charges for development costs of GIS data may not be made for non-business use by an individual nor for news gathering by news media. For these uses, only charges for the cost of reproduction may be made (*T.C.A.* 10-7-506).

Chapter 6: City Courts

The Tennessee Constitution empowers the state legislature to define the authority of municipal courts. The constitutional language states that the legislature may "vest such jurisdiction in corporation courts as may be deemed necessary" (Article VI, Section 1).

Tennessee does not have a uniform system for creating municipal courts. Each private act and statutory charter has its own procedures for appointing a city judge and creating a city court. Under the general law charters:

- The mayor-aldermanic charter provides for the board to elect or appoint a city judge (*T.C.A.* 6-4-301);
- The city manager-commission charter provides for the commission to appoint a city judge. Cities meeting population requirements may elect a judge. If no judge is appointed, the recorder serves as city judge (*T.C.A.* 6-21-501);
- The modified city manager-council charter provides for an elected city judge (*T.C.A.* 6-33-102).

City councils in all home rule municipalities have the authority to establish city courts. The city judges in home rule municipalities are "... appointed on nomination of the mayor or chief executive officer, concurred by the city council." After judges are appointed, they must run in the next general election. The governing bodies of home rule municipalities are empowered to create additional divisions of a city court and, by ordinance, fix court costs not exceeding those assessed in General Sessions Courts (*T.C.A.* 16-17-101–105).

Some private act charters provide only for a mayor's or recorder's court. A general law allows those cities to appoint another person to serve as city judge (*T.C.A.* 16-18-101–102).

Powers of Municipal Courts

In addition to their authority to hear municipal ordinance violation cases, a number of private act charters, the general law charters, and the statutes governing home rule municipal courts give city courts the same jurisdiction as Sessions Courts.

In *Town of South Carthage v. Barrett*, 840 S.W.2d 895 (Tenn. 1992), the Tennessee Supreme Court held that municipal court judges exercising concurrent jurisdiction with a state General Sessions Court must meet all of the qualifications of Article VI, Section 4, of the Tennessee Constitution. Judges must be:

- Elected for an eight-year term;
- Thirty years old;
- A resident of the state for five years; and
- A resident of the district or circuit one year before the election.

The Supreme Court relied on the principle of the separation of judicial and legislative powers, reasoning that "judges charged with interpreting the criminal laws of this state should be elected ... to assure an independent judiciary free of the political caprice and whims of other government branches." Subject to the push and pull of a city council, an unelected municipal court judge exercising criminal jurisdiction did not meet the court's standard for independence.

The following points illustrate Tennessee's municipal courts' stand regarding concurrent jurisdiction:

- There is an option for an appointed or elected judge under the general law

mayor-aldermanic charter (*T.C.A.* 6-4-302);

- Two-thirds of Tennessee's cities are chartered under private acts, and a large percentage of those charters grant the municipal court concurrent jurisdiction with General Sessions Courts and provide for an appointed judge;
- Several municipal courts in general law city manager-commission charter cities have been granted concurrent jurisdiction with General Sessions Courts (*T.C.A.* 6-21-501);
- Tennessee has several home rule municipalities. *T.C.A.* 16-17-102 provides that judges in home rule municipalities shall be "appointed on the nomination of the mayor or chief executive officer, concurred on by the city council or other legislative body, but said judges so appointed shall run for election in the next general election." Except in Knoxville, home rule municipal judges have concurrent jurisdiction, having been granted "all other powers touching upon the arrest and preliminary trial, discharging, binding over, of all persons charged with offenses against the state committed in the city or municipality" (*T.C.A.* 16-17-103). Grants of concurrent jurisdiction also are found in many home rule charters themselves. Some home rule charters also provide for appointing the municipal judge. In addition, *T.C.A.* 16-17-102 does not specifically provide for a judicial term of eight years or require that the municipal judge meet the other constitutional qualifications of Article VI, Section 4; and
- *T.C.A.* 16-18-201 et seq. authorize municipalities to provide, by ordinance, for the election of municipal court judges; however, they do not grant municipal court judges concurrent jurisdiction with General Sessions Courts. Such grant of jurisdiction must be found in each city's charter.

In *City of White House v. Whitley*, 979 S.W.2d 262, (Tenn. 1998) the Supreme Court was asked whether Article I, Section 8, of the Tennessee Constitution prevents non-attorney judges from presiding over trials of criminal offenses punishable by incarceration. The court held that individuals facing such charges are constitutionally entitled to an attorney judge. Therefore, non-attorney judges who exercise concurrent General Sessions Court jurisdiction may not preside over criminal cases if the punishment includes jail.

It seems fairly clear that a municipal court judge exercising concurrent jurisdiction must be a resident of the city in which he or she presides over court.

In courts where cases of state law violations may be prosecuted, the district attorney general acts as prosecutor (*T.C.A.* 8-7-103).

Penalties for Violations of Municipal Ordinance

A fine for a municipal ordinance violation may not exceed $50 unless the fine is "remedial." *City of Chattanooga v. Davis* and *Barrett v. Metropolitan Government of Nashville and Davidson County*, 54 S.W. 3rd. 248 (Tenn. 2001). Examples of fines that are remedial include those that recover administrative expenses, disgorge ill-gotten gains, provide restitution, or are prospectively coercive.

Home rule municipalities may recover actual administrative expenses incurred to enforce ordinances that prohibit false threats or hoaxes involving biological weapons, destructive devices, or weapons of mass destruction (*T.C.A.* 6-54-306).

It is questionable whether any municipal court in Tennessee may impose jail sentences for municipal ordinance violations. The only exception may be the willful nonpayment of a fine for an ordinance violation. An indigent person may not be jailed for nonpayment of penalties (*T.C.A.* 40-24-104, *Tate v. Short*, 41 U.S. 395, 28 L.Ed. 2d 130 (1971)). *T.C.A.* 29-9-108 makes failure to appear without just cause a contempt of court offense punishable by a $10 fine and up to five days imprisonment. However, this statute applies only to municipal courts in metropolitan counties, courts that hear violations of municipal ordinance cases, and city courts that exercise jurisdiction over certain environmental cases in cities in Shelby County. In the latter instance, the defendant may also be punished for contempt of court for failure to correct a violation of the municipal code relating to health, housing, fire, and building and zoning codes.

Other Provisions

T.C.A. 16-1-102 gives "every court ... power to punish for contempt." The Tennessee Supreme Court held that a city court may exercise such power (*May v. Krichbaum*, 152 Tenn. 416, 278 S.W. 54 (1925)). However, punishment for contempt in a city court is limited to a maximum $10 penalty (*T.C.A.* 29-9-103).

City judges in cities with a population of more than 160,000 must be lawyers authorized to practice law in Tennessee courts (*T.C.A.* 17-1-106(d)). City judges in general law modified city manager-council cities also are required to be licensed attorneys (*T.C.A.* 6-33-102). All municipal judges are under the jurisdiction of the Court of the Judiciary (*T.C.A.* 17-5-102). *T.C.A.* 16-18-301 empowers municipal court judges to administer oaths.

The judge is required "to keep or cause to be kept" records on traffic charges that reflect "every official action by the court or the Traffic Violations Bureau ... including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, and the amount of fine or forfeiture resulting from every traffic complaint, warrant, or citation ..." (*T.C.A.* 55-10-306).

Municipal clerks may accept fines, court costs and other fees by credit card and collect a processing payment not exceeding 5 percent of the fine, court cost or other fee (*T.C.A.* 8-21-107). Fines also may be paid by check or money order (*T.C.A.* 9-1-108). If a check or money order for fines, court costs, or other fees is returned unpaid, *T.C.A.* 9-1-109 authorizes a penalty of 1 percent of the check or money order. If the check or money order is less than $2,000, the penalty is $20 or the same amount as the check or money order, whichever is less.

Fines and costs imposed by a municipal court judge that are not paid after 30 days may be collected by execution issued by the municipal court clerk using the procedure prescribed for General Sessions Courts in *T.C.A.* Title 26, Chapters 1, 2, 3, and 4. A police officer is authorized to serve the necessary papers anywhere in the county (*T.C.A.* 6-54-303). The local governing body may authorize a collection agency to collect fines and costs that are more than 60 days overdue. The contract with the collection agency must be in writing, and the agency's fee may not exceed 40 percent of the sums collected (*T.C.A.* 40-24-105).

Collected fines and costs resulting from a municipal court exercising concurrent jurisdiction with General Sessions Courts must be shared with the state and county except in Madison and Gibson counties (by population classification), where they are to be remitted to the respective municipality (*T.C.A.* 6-54-304(2)).

Reports to Administrative Office of the Courts by Municipal Courts with General Sessions Jurisdiction

T.C.A. 16-1-117(a)(3) and (4) require municipal courts with General Sessions jurisdiction to report data to the administrative office of the courts on all criminal and civil cases. Caseload data must be reported once a month and must show all cases filed and disposed of in a month by the 15th of the following month. Reports must be made beginning on or before July 1, 2003.

Chapter 7: Municipal Revenues

A primary responsibility of a city's governing body is to determine the city government's functions and activities and how they will be financed. Since cities are required to operate with balanced budgets, they continually face the problem of raising revenues to match rising expenditures. Following is a general treatment of the major revenue sources available to Tennessee cities.

Property tax

Levy

Article II, Sections 28 and 29, of the Tennessee Constitution and *T.C.A.* 67-5-101 give cities the authority to tax all real and personal property unless state law provides an exemption. Property tax is the mainstay of municipal revenue for nearly all Tennessee cities. (Some small cities make no levy.) Many cities derive substantial revenues from other sources. But even in those cities, property tax is the primary "budget balancer" because the tax rate and imposition of the tax are subject to the discretion of the governing body. *T.C.A.* 67-5-103 wiped out all existing maximum tax rate limitations, whether imposed by home rule, general, or private charters; however, it is not clear if reimposing such a limitation by a subsequent charter provision is allowed (*T.C.A.* 67-5-103).

Assessment

Local assessments generally are made by county assessors. The act that consolidated city assessment offices with county assessors directs that a property assessment roll be furnished to each city at the cost of reproduction (*T.C.A.* 67-1-513). The assessor also is required to certify to the mayor by the first Monday of every November a copy of the assessor's annual aggregate statement showing the total assessed value of the property in each city, civil district, and ward (*T.C.A.* 67-5-807).

The county Board of Equalization is the only body in each county to hear assessment appeals. However, a city located in two or more counties is authorized to make its own assessments and have a Board of Equalization. It may contract with the state Board of Equalization for assessment services. *T.C.A.* 67-1-513 provides for cities to appoint some members to county Boards of Equalization. The number of appointees depends on the size of the city. For example, in counties having one or more cities with between 10,000 and 60,000 residents, each of the two largest cities with populations exceeding 10,000 appoints one member to the board (*T.C.A.* 67-1-401(a)(3)). Supervision and technical assistance for the counties' assessment functions are provided by the state Board of Equalization (*T.C.A.* 4-3-5103, 5105; *T.C.A.* 67-1-307).

The property of privately owned public utilities (railroads, bus lines, gas companies, etc.) is assessed by the Comptroller of the Treasury, and the assessments are subject to review and revision by the state Board of Equalization. The comptroller certifies to each city recorder or other tax-collecting official the assessed valuations subject to local taxation (*T.C.A.* 67-5-1301–1331).

Periodic Reappraisal

Every four or six years, as determined by the assessor with the county governing body's approval, reappraisal of all real property and equalization of assessments are required in every Tennessee county unless the state Board of Equalization determines that reappraisal

is unnecessary for a particular county. With the board's approval, the program may be undertaken by the county property assessor and staff, the state Division of Property Assessments, or a professional firm employed for this purpose. Program costs are prorated among the state, counties and cities (*T.C.A.* 67-5-1601).

All property (real, personal, operating, and nonoperating) of private utilities is reappraised by the Comptroller of the Treasury each year (*T.C.A.* 67-5-1301–1302). As a result, in inflationary times the share of a jurisdiction's taxes paid by utilities could grow for six years until the local reappraisal shifts a fair share of the burden back to homeowners and other locally appraised property owners. To prevent such tax shifting, the state Board of Equalization conducts sales ratio studies every two years to measure how up-to-date a county's assessments are. The analysis takes a sample of properties that have recently been sold and compares actual sale prices to values on the county assessor's books. The comptroller of the treasury uses the resulting sales ratios to adjust the taxable assessed value of the utility property it appraises (*T.C.A.* 67-5-1605–1606). A similar process is prescribed for the state Board of Equalization to equalize the personal property assessment used by businesses and manufacturers (*T.C.A.* 67-5-1509).

Any city lying in more than one county will be reappraised under a separate plan of reappraisal on a cycle determined by the Board of Equalization. The reappraisal will be done under contract with the state unless the city has a separate assessment office (*T.C.A.* 67-5-1601(b)).

Reappraisal Cycles

T.C.A. 67-5-1601 requires six-year reappraisal cycles. However, the state Board of Equalization may approve four-year cycles, and the assessor and county legislative body may allow five-year cycles. The Board of Equalization may extend the reappraisal cycle of a county beyond the six years to synchronize with a contiguous county's cycle when a city lies partly in each county and contains property of the federal government for which in lieu of tax payments are being made. The statute also changes state funding of reappraisals to a per parcel grant. State grants to four- and five-year programs are limited to the amount required by a six-year program. The Board of Equalization will determine the initial schedule of review and revaluation.

Certified Tax Rate

After completing a general property reassessment, a city must determine the tax rate on the new total assessment that would produce no more than the amount of property tax revenue generated the preceding year. This rate is called the certified tax rate.

To reflect extraordinary assessment changes, the municipality's governing body may adjust the calculated certified tax rate according to a method approved by the state Board of Equalization. The city must submit for review a new, tentative tax rate and supporting calculations to the executive secretary of the state Board of Equalization. The municipality must then consider the board official's report before fixing a certified tax rate. When there is an excessive adjustment, the board shall order recapture in the following year if the certified tax rate has been overstated because the appeals adjustment was overestimated. A public hearing is necessary if the city exceeds the recapture rate.

A city may not take an automatic windfall of increased revenue from a reappraisal. However, if a city wants to increase its revenue after a reappraisal, it has to formally advertise its intention before the council votes to adopt a tax rate that is higher than the certified tax rate (*T.C.A.* 67-5-1701–1703).

Assessment Ratios

Article II, Section 28, of the Tennessee Constitution provides for using the following percentages of full value to determine assessments:

- Public utility real and tangible personal property–55 percent;
- Industrial and commercial real property–40 percent;
- Industrial and commercial tangible personal property–30 percent;
- Residential and farm real property–25 percent; and
- Other tangible personal property–5 percent (*T.C.A.* 67-5-801, 901).

Property Tax on Personal Property

Tangible personal property is subject to the property tax, but the state constitution provides an exemption for personal clothing, household goods, and furnishings (Article II, Section 28).

The system for reporting personal property relies largely on the initiative of the individual taxpayer. Consequently, in the past there have been significant differences in the extent of reporting and payment of personal property taxes in different counties across the state. Legislative enactments over the past several years have made the system more uniform. For example, *T.C.A.* 67-5-215(b) was repealed in 1984. It authorized county governing bodies to place a zero value on tangible personal property owned by businesses subject to the Business Tax Law. The legislature also closed a loophole that allowed leased personal property to escape taxation (*T.C.A.* 67-4-702(a)(7), *T.C.A.* 67-5-502, 901). The same act established statewide depreciation schedules for valuing industrial personal property (*T.C.A.* 67-5-903). The act also requires the state Board of Equalization to direct that commercial and industrial tangible personal property assessments are equalized with real property in each county by applying the county's real property appraisal ratio to the depreciated value of the taxpayer's personal property (*T.C.A.* 67-5-1509).

Greenbelt Law

Lower assessments are provided to encourage open-space land in urban areas. Owners may petition the county assessor to classify land as agricultural (minimum tract size 15 acres), forest (minimum tract size 15 acres), or open space (minimum tract size three acres). If so classified by the assessor, the land is assessed and taxed at its use value. Normally, land is appraised at the value an arms-length purchaser would pay. Use value is calculated by capitalizing the annual income a property owner is earning by using his or her land. *T.C.A.* 67-5-1008(c) caps the amount greenbelt land can increase in value because of a reappraisal at 6 percent multiplied by the number of years since the latest reappraisal.

An appeals procedure is provided for adverse decisions by the assessor. To limit the fiscal impact and inequities of this tax break, a maximum of 1,500 acres for one owner in any one taxing jurisdiction is fixed, and affiliated ownership is to be included for any person with legal or equitable title in more than 50 percent of the land ownership. Noncontiguous tracts must be located in the same county to qualify as agricultural land for greenbelt purposes. A procedure is provided for determining annually additional taxes that would be payable if the land were assessed at its real value. If the land is subsequently converted to any other use, such cumulative taxes for the preceding three years (agricultural and forest) or five years (open space)–referred to as rollback taxes–must be paid on the first assessment roll following the conversion.

When the assessor determines that there is a liability for rollback taxes, the assessor notifies only the tax collecting official. This official must then send a notice demanding payment to the responsible person.

The act that created the use value assessments provides a more sure and direct method for a municipality to preserve its open space. Cities and counties also are empowered to expend funds to acquire "the fee or any lesser interest ... necessary to achieve the purposes of this act" (*T.C.A.* 67-5-1001–1050).

Collection

When read together, *T.C.A.* 67-1-701–702, *T.C.A.* 67-5-1801, and *T.C.A.* 67-5-2005 permit a municipality to collect its own property taxes (if authorized by its charter) or to turn over such collection to the county trustee. Generally, if the county trustee collects the municipality's taxes, the tax due date is the first Monday in October, and the delinquency date is the following March 1. The effect of the due and delinquency dates prescribed by the municipal charter or ordinance is outlined in the "Delinquent Property Taxes" section later in this chapter.

By the 10th of each month, the trustee must make settlement and pay the city its share of taxes collected the previous month (*T.C.A.* 67-5-1902). The trustee's office keeps the following commissions on taxes collected:

- Up to $10,000–6 percent;
- $10,000 to $20,000–4 percent;
- More than $20,000–2 percent.

In computing the trustee's compensation, all state, county, school, and special funds are lumped together, and each of the political subdivisions must pay its respective portion of the above commissions (*T.C.A.* 8-11-110).

A trustee who collects city taxes must "execute such bonds as may be required ... by the law or any ordinance of any city or town for the collection and prompt payment of all taxes due said city or town" (*T.C.A.* 67-5-1901(b)).

A municipality's governing body may provide by ordinance or resolution for the early payment of property taxes and provide a taxpayer rebate as follows:

- Two percent within 30 days of the due date, and
- One percent within 30 to 60 days of the due date.

If the county trustee has the authority established by *T.C.A.* 67-1-702 to collect taxes any time after July 10 prior to the first Monday in October, a municipality's governing body by the same method may provide for the early payment of property taxes and give a taxpayer rebate as follows:

- Three percent if paid by the end of July;
- Two percent if paid by the end of August; and
- One percent if paid by the end of September.

In the latter instance, the trustee may accept such payments at his or her discretion (*T.C.A.* 67-5-1804).

The purchaser of a business is required to withhold an amount to cover any taxes payable on personal property until the seller produces a receipt from the municipal collector that all taxes, interest, and penalties have been paid. The purchaser's failure to do so makes him or her jointly liable for any such unpaid amounts (*T.C.A.* 67-5-513).

Partial Payments

All trustees in all counties may accept partial payments of property taxes. In Metro Nashville, the minimum payment is no more than 15 percent or $25, whichever is less (*T.C.A.* 67-5-1801(e)).

When Delinquent if Mailed

"Any tax report, claim, return, statement, remittance, or other tax document required or authorized to be filed with or any payment made to the state or to any political subdivision thereof, which is ... transmitted through the

U.S. mail to the state or political subdivision and postmarked no more than 24 hours subsequent to the last date for the timely filing of such document or payment shall not be considered delinquent" (*T.C.A.* 67-1-107).

Delinquent Property Taxes

A municipality has the option to collect delinquent property taxes any one of four ways:

- Under the provisions of its charter for the collection of delinquent property taxes;
- Under *T.C.A.* 6-55-201–206;
- By the county trustee under *T.C.A.* 67-5-2005 (a)-(c); or
- Under *T.C.A.* 67-5-2005 (d).

If the municipality has the authority under its charter to collect its property taxes, but the charter makes no provision for the collection of delinquent property taxes, then the municipality may provide by ordinance for the collection of delinquent property taxes. (As a practical matter, it is unlikely that any municipal charter authorizes a municipality to collect its own property taxes but does not authorize it to collect delinquent property taxes.)

If a municipality uses the county trustee or the delinquent tax attorney to collect its delinquent property taxes, the municipality must certify its delinquent taxes to the trustee by April 1 of the second calendar year after the taxes become due. *T.C.A.* 67-5-2405 requires the county delinquent tax attorney to bring suit in the name of the county, in the county's behalf and for the benefit of any municipality that has certified a delinquent tax list. Property certified to the county trustee shall be advertised and sold by the county trustee at the same time, in the same manner, and as a part of the county trustee's other sales of property for state and county taxes (*T.C.A.* 67-5-2005).

T.C.A. 67-5-2010(a)(1) provides that, "To the amount of tax due and payable, a penalty of one-half percent and interest of one percent shall be added on March 1 following the tax due date and on the first of each succeeding month except as otherwise provided in regard to municipal taxes."

Therefore, if the municipality collects its own current property taxes but turns the collection of its delinquent property taxes over to the trustee, the property tax due and delinquency dates, the penalties, and the interest are those set out in the municipality's charter or ordinance.

T.C.A. 67-5-2010(b) provides that, in all instances in which current municipal taxes are collected by the county trustee, the following provisions and rules for collecting delinquent taxes that may be due to the municipalities, and none other, shall prevail and obtain, anything in this chapter to the contrary notwithstanding:

- The taxes levied and assessed by such municipalities shall become due and delinquent on the date now provided by existing law; and
- If the municipal taxes are not paid on or before the date fixed for delinquency in the amount due and payable, a penalty of 0.5 percent and interest of 1 percent shall be added on March 1 following the tax due date and on the first day of each succeeding month.

In this circumstance, where the county trustee collects the municipality's current or delinquent property taxes, the property tax due and the delinquency dates remain those set out in the municipality's charter or ordinance; however, the penalty and interest prescribed by that statute prevail over the municipality's charter or ordinance and do not attach until March 1 following the tax due date.

A municipality is barred from collecting property taxes following 10 years after April 1 of the year in which such taxes became delinquent (*T.C.A.* 67-5-1806).

T.C.A. 67-5-1512 outlines the conditions under which taxpayers appealing their assessments must pay all or a part of the property tax and interest during the appeals process as a condition of the appeal.

Property taxes, interest, and penalties owed to the state, county, and municipality on property shall become and remain a first lien upon the property from January 1 of the year for which the taxes were assessed. Property taxes are also a personal debt of the property owners as of the same date (*T.C.A.* 67-5-2101).

Cities have the authority to give foreclosed properties to private, nonprofit entities (*T.C.A.* 67-5-2509(d)(2)).

Extension of Due Date for Military Personnel Engaged in Hostilities

T.C.A. 67-5-2011 extends the due date of property taxes owed by persons in the armed services or who are called into active duty from a reserve or national guard unit and who are engaged in hostilities until ninety (90) days after the conclusion of the hostilities or ninety (90) days after the person is transferred from the area of hostilities, whichever is sooner.

Intangible Personal Property

The constitution allows taxing stocks, bonds, and other intangible personal property. Intangible personal property is classified and assessed as the legislature directs. Banks and other financial institutions may be taxed in such manner as the legislature provides, and these taxes are in lieu of the property tax on shares of stock, customers' accounts, or any other type of intangible property (Article II, Section 28). Cities do not tax intangible property. However, they do receive a share of the Hall Income Tax (see later section entitled "Hall Income Tax"), as well as revenue from property taxes on intangible property having no actual *situs* in this state paid by utilities and carriers and distributable to counties, municipalities, and taxing districts (*T.C.A.* 67-5-1325).

Property Tax Relief for the Elderly and Disabled

Article II, Section 28, of the Tennessee Constitution provides that the legislature "shall provide, in such manner as it deems appropriate, tax relief to elderly, low-income taxpayers through payments by the state to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed directly or indirectly upon counties, cities, or towns." It also authorizes the legislature to provide tax relief to totally and permanently disabled homeowners "as provided herein for the elderly."

T.C.A. 67-5-702 and *T.C.A.* 67-5-703, respectively, provide state-reimbursed tax relief to people age 65 and older and to totally and permanently disabled homeowners under rules and regulations adopted by the state Board of Equalization. These property owners must meet maximum income requirements set annually in the state's General Appropriations Act. The ceiling is revised yearly based on the cost-of-living adjustment for Social Security recipients. The tax relief applies to the first $18,000 of the home's full market value. *T.C.A.* 67-5-704 provides state-reimbursed tax relief to severely disabled veterans and their surviving spouses on the first $140,000 of the full market value of their homes, regardless of their total annual income.

The state Board of Equalization has issued rules and regulations governing the administration of *T.C.A.* 67-5-701–704, including definitions, age requirements, disability requirements, widows of disabled veterans requirements, certification of owner-ship and residency requirements, income requirements, methods and handling of applications (including

forms and documents), and decertification requirements (Rule 0600-3-.01 et seq.).

Three statutes authorize municipalities to create their own supplemental tax relief programs for the elderly. One is a pure tax relief statute, and two are tax deferral statutes. Under *T.C.A.* 67-5-705, the city may, by resolution, adopt a program freezing the property tax of people age 65 and older whose annual incomes do not exceed $12,000. The tax is frozen at the amount they paid in the tax year they reached 65. Improvements to the property are taxed as prescribed by the statute. In *Perkins v. Alexander*, the Chancery Court of Shelby County on January 10, 1980, declared that statute violated Article II, Section 28, of the Tennessee Constitution, which requires that all property be taxed according to its value, that taxes be equal and uniform within a taxing jurisdiction, and that tax relief for the elderly could not be imposed by the state upon local governments. Although that case has no formal precedential value, it is persuasive.

T.C.A. 7-64-101 et seq. (Chapter 821 [Public Acts 1998] Deferral) authorize municipalities to *defer,* by resolution, taxes on principal residences owned by single people, married couples over the age of 65, and totally disabled people whose gross annual income is less than $12,000. The city's governing body may by a two-thirds vote approve an increase in the gross income to $25,000 a year; approval must be certified to the Tennessee Secretary of State. The tax deferral applies to the principal residence and a maximum of one acre of land and to a maximum of $60,000 appraised market value. Improvements to the property are taxed as provided in the statute. The assessment of taxes continues on an annual basis, and the tax deferral continues until a terminating event such as death of the person(s) to whom the deferral was granted or sale of the residence. The deferred taxes constitute a lien on the property and earn 10 percent interest annually but are not subject to the statutory penalties for delinquent taxes. The schedule for payment of deferred taxes after a terminating event is set out in the statute.

T.C.A. 7-64-201 et seq. (Chapter 659 [Public Acts 1980] Deferral) authorize municipalities by resolution to *defer* taxes on principal residences owned by taxpayers and their spouses over the age of 65, totally and permanently disabled taxpayers, and disabled veterans whose combined incomes do not exceed $12,000 annually. The city's governing body may by a two-thirds vote approve an increase in the gross income to $25,000 a year; approval must be certified to the Tennessee Secretary of State. The tax deferral is limited to the principal residence and one acre of land and to a maximum appraised value of $50,000. A qualifying taxpayer who turned 65 on or before March 27, 1980, is entitled to a tax deferral on taxes in excess of his or her 1979 taxes, and a qualifying taxpayer who turned 65 after March 27, 1980, may defer any taxes in excess of the amount of taxes in effect the year the taxpayer turned 65. A qualifying taxpayer who purchases property after turning 65 may defer taxes in excess of the amount of taxes owed in the year the property was purchased. Improvements to property are taxed as provided in the statute. The statute's provisions for a tax lien and interest are similar to those in *T.C.A.* 7-64-101 et seq. Termination of deferral events include death of the person(s) to whom the deferral was granted, sale of the residence, and change in the use of the property from the principal place of residence.

Golf Courses as Farm Property

Golf course playing-hole improvements are now included as farm property. Therefore, the property tax rate is 25 percent rather than 40 percent of the appraised value (*T.C.A.* 67-5-501(3)).

In-Lieu-of-Tax Payments

Tennessee Valley Authority In-Lieu-of-Tax Payments

The Tennessee Valley Authority (TVA) pays 5 percent of gross power sales proceeds to the state in lieu of taxes. Counties and cities are allocated 48.5 percent of the increase in TVA payments made to the state above the amount received in the base year (fiscal year 1978). Counties receive 70 percent of this allocation, and cities receive 30 percent.

Distribution of the city share is based on population. Three percent of the earmarked revenue is allocated to cities and counties impacted by TVA power plant construction. Cities that received TVA in-lieu-of-tax payments from the state before implementing theper capita formula continue to receive that amount in addition to the formula allocation (*T.C.A.* 67-9-101–103). (For the most current per capita figure, see MTAS's annual *Hot Topic* on state revenue estimates.)

Utility Tax Equivalents

Tennessee cities that operate electric distribution systems are allowed to take tax equivalents up to maximums prescribed by the Municipal Electric System Tax Equivalent Law of 1987. This law replaces former statutory provisions and supersedes all charter or private act provisions.

The allowed payment is an amount equal to the property tax the system would pay if it were a private utility, plus 4 percent of the average of revenue minus power costs from electric operations for the preceding three fiscal years (*T.C.A.* 7-52-304). A city's governing body is allowed to prescribe the amount up to the maximum after consulting with a Power Board to determine the "fair share of the cost of government" borne by the municipality on behalf of the utility. The act also provides for tax equivalent payments to the county government and to neighboring municipalities served by a city's electric distribution system (*T.C.A.* 7-52-301–310).

Another act contains almost identical provisions and is applicable to gas systems owned and operated by municipalities, counties, and metropolitan governments. It, too, supersedes the provisions of any charter or private act (*T.C.A.* 7-39-401–406).

Community Development Block Grants In-Lieu-of-Property-Tax Expenditure Reports

T.C.A. 6-54-124 requires municipalities that receive Community Development Block Grants (CDBG) and municipalities and industrial development corporations that are party to an in-lieu-of-property-tax agreement to make a report addressing the expenditures of such funds. In addition, municipalities must place a copy of the report in the main branch of their public libraries or on the Internet.

Municipal Utility In-Lieu-of-Tax Payments

Municipalities are authorized to request by resolution in-lieu-of-tax payments from any public works (*T.C.A.* 7-34-115). "Public works" is defined by *T.C.A.* 7-34-104(3) as water, sewer, gas or electric heat, light, power, or parking facilities. Except for municipal gas and electric plants, these payments may not exceed the amount of taxes payable on private property of a similar nature (*T.C.A.* 7-34-115). Gas and electric in-lieu-of-tax payments are computed under *T.C.A.* 7-39-404 and *T.C.A.* 7-52-301 et seq. respectively.

Housing Authority In-Lieu-of-Tax Payments

Housing authorities "shall agree" to pay in-lieu-of-tax payments or special assessments not to exceed the cost of services, improvements, or facilities provided (*T.C.A.* 67-5-206). A similar requirement provides that nonprofit housing corporations providing low-cost housing for elderly or handicapped people must

agree to make in-lieu-of-tax payments for any project exceeding 12 units occupied after January 1, 1990 (*T.C.A.* 67-5-207).

Municipalities with housing authorities, except in Davidson County, may delegate to the authority by a majority vote the right to negotiate and accept payments in lieu of taxes from lessees operating property restricted under the Low Income Housing Tax Credit Program. The housing authority must submit the agreement to the local legislative bodies of affected jurisdictions for approval. Housing authorities must file reports by October 1 of each year on property owned by them that is subject to in-lieu-of-tax payments (*T.C.A.* 13-20-104).

Golf Courses

If a government body leases a golf course to a private operator, the operator must make in-lieu-of-property-tax payments equal to what the *ad valorem* taxes would be if the course were private property (*T.C.A.* 67-5-203(c)).

Local Taxes

Local Option Sales Tax

A municipality may levy a local sales tax, but the combined rate of the county's levy and that of the municipality may not exceed 2.75 percent. A county's levy supersedes the municipality's levy. Therefore, if the county levy is 2.75 percent, a municipality in that county may not levy a local sales tax. If the county levy is 2.25 percent, a municipality could levy an additional 0.5 percent. Regardless of the local levy amount, it must be approved by a majority vote in a referendum in the affected municipality. An ordinance calling for such a referendum may specify a period for which the tax shall be effective (*T.C.A.* 67-6-701 et seq.). A statewide uniform local sales tax rate of 2.5 percent applies to intrastate telecommunications services. Revenues will be used for the same purposes as other local sales tax revenues (*T.C.A.* 67-6-702).

Unlike the state sales tax, the local option tax is not applied to the full purchase cost of expensive items. The local tax now applies to the first $1,600 of the purchase price. Because of this cap, the purchaser of an economy car and the buyer of a Rolls Royce pay the same local option sales tax (*T.C.A.* 67-6-702).

If a countywide local option sales tax is levied by referendum, then state law requires that half of any county levy be distributed on the same basis as the county property tax for schools (average daily attendance formula). The other half is distributed to the jurisdictions where collection took place. If it was collected in a city, it is distributed to that city. If it was collected outside the city, it is distributed to the county. However, an agreement between a county and a city may provide for a different distribution. One hundred percent of a city-only levy is general fund revenue subject to appropriation by the governing body, but it would terminate at the end of the city's current fiscal year if the county makes a levy at the same or higher rate (*T.C.A.* 67-6-703, *T.C.A.* 67-6-712).

The local option sales tax is a *situs* tax. That is, the geographic location where the sale is made or the service is delivered determines which jurisdiction receives the collected tax. A municipality receives the tax if the transaction occurs within its corporate limits. Municipalities could enhance their revenues by verifying the *situs* code for every business located within their corporate boundaries. (For a complete discussion of how to check these codes, please see *Municipal Finance Report: A Method of Revenue Enhancement Verifying Local Option Sales Tax Distribution* by Harold Yungmeyer, The University of Tennessee Municipal Technical Advisory Service, 1989.)

For a period of 15 years, a newly annexed area or newly incorporated city gives the county the same amount of local option sales tax and wholesale beer tax it was collecting on the date of incorporation (*T.C.A.* 67-6-712).

Local Wholesale Beer Tax

Wholesale beer deliveries to retail outlets in a city or county are taxed at 17 percent of wholesale prices (excluding state and federal privilege taxes levied after May 3, 1983). The tax is paid by each beer wholesaler directly to the city or county, and monthly sales reports are made to the state Department of Revenue and to each city and county. A city should check that tax payments are being received from beer wholesalers serving the area based on deliveries to all retail beer outlets in the city. An investigation by the Department of Revenue may be requested if there is doubt about administration of the tax (*T.C.A.* 57-6-101–118).

For a period of 15 years, a newly annexed area or newly incorporated city gives the county the same amount of wholesale beer tax it was collecting on the date of incorporation (*T.C.A.* 57-6-103).

Local Mixed-drink Tax

Cities that have passed a liquor-by-the-drink referendum may levy and collect a local privilege tax from businesses selling alcohol for on-premises consumption based on the schedule provided in *T.C.A.* 57-4-301(b)(2).

Retail Liquor License Inspection Fees

Cities may levy inspection fees on retail liquor licensees based on wholesale liquor prices. The fees may not exceed 8 percent in counties with a population of less than 60,000 and in counties where premier tourist resort cities are located, or 5 percent in other counties. Populations are to be taken from the most recent federal census (*T.C.A.* 57-3-501).

Business Taxes

The business tax is "in addition to all other privilege taxes" and is intended by the legislature to be in lieu of any other *ad valorem* tax on "inventories of merchandise held for sale or exchange" (*T.C.A.* 67-4-701).

The Business Tax Act establishes five classifications of businesses that are taxable by cities at gross receipts rates ranging from one-eighth to one-sixtieth of 1 percent, in addition to a minimum tax of $15. The Tax Reform Act of 2002 (Chapter No. 856) increased these rates by 50 percent, but revenues from these increases accrue only to the state (*T.C.A.* 67-4-708–709). A city must pay the state 15 percent of the total collected business tax under rates that existed before September 1, 2002, and 100 percent of revenues produced by the 50 percent increase in rates effected by the Tax Reform Act of 2002. An annual report must accompany the payment by June 20 for each year ending May 31. The Department of Revenue will accept quarterly or monthly installment payments (*T.C.A.* 67-4-724).

Transient vendors must pay a $50 minimum tax for each 14-day period of business in a municipality, but they are not subject to the percent of gross receipts portion of the tax (*T.C.A.* 67-4-702, 709).

Any other "regulatory fee, inspection fee, or special tax or fee of any type or kind" on beer is explicitly prohibited (*T.C.A.* 67-4-728).

The Department of Revenue is authorized to collect for a city, but the department's costs of such collection are too high to make this procedure feasible (*T.C.A.* 67-4-726).

The Tax Reform Act of 2002 eliminated a provision that allowed municipalities and counties to levy rates lower than those set out in state law. This act also provides that personal property tax credits, which apply to taxes that accrue to the municipality, do not apply to

revenues produced by rate increases effected by the Tax Reform Act of 2002 and accruing to the state.

Businesses are required to file tax returns with the city tax collector on forms furnished by the collector. Businesses must list the gross amount of sales tax owed the state, the amount of deductions for sales tax purposes, and total gross sales. This form must be accompanied by the appropriate business tax payment (*T.C.A.* 67-4-715).

Contractors who perform work outside their home jurisdictions are required to pay the business tax in the jurisdiction where the contract work is performed if they receive $50,000 or more for a job. The home jurisdiction may not impose any business tax on this same activity (*T.C.A.* 67-4-708(a)).

Due and delinquent tax dates are fixed, and the Sales Tax Law provides for collecting delinquent taxes using distress warrants. A municipality may hire an attorney or agent to collect delinquent business taxes but must adopt the permissive state law allowing this by a two-thirds vote of the governing body (*T.C.A.* 67-4-714–715, 719; *T.C.A.* 6-55-301–304). The municipal tax collector is required to collect delinquent taxes, penalties and interest within six months of the taxes becoming delinquent, or the delinquent taxes will be audited and collected by the Commissioner of Revenue. If the commissioner collects the delinquent taxes, all the funds will be deposited with the state (*T.C.A.* 67-4-719). There is a six-year statute of limitations beginning January 1 of the year in which the tax return and payment are due (*T.C.A.* 67-1-1501).

Hotel/Motel Tax

Home rule municipalities, metropolitan governments, and certain cities by private act may levy a hotel/motel tax. For home rule municipalities, the hotel/motel tax applies to motel occupancies of fewer than 30 days (*T.C.A.* 67-4-1401). The tax levied by a home rule municipality may not exceed 5 percent of the consideration charged for occupancy. It is collected when the customer is invoiced and remitted by the operator no later than the 20th of each month. Penalties and interest for delinquencies are authorized under *T.C.A.* 67-4-1408, which allows home rule municipalities to use distress warrants to collect the tax. Municipalities that did not impose a hotel/motel tax by May 12, 1988, are prohibited from adopting such a tax if the county where the city is located already levies the tax. (This prohibition was removed for cities in Rutherford, Williamson, Blount, Dickson, and Shelby Counties, and for cities that have constructed a project under the Convention Center and Tourism Development Financing Act, codified as *T.C.A.* 7-88-101 et seq.) Cities in the exempted counties that are incorporated under the general law may levy the tax by ordinance passed by a two-thirds vote of the governing body. The tax may not exceed 5 percent of the consideration charged by the operator and revenues must be used for tourism as defined in *T.C.A.* 7-4-101(8). If a city has already enacted the hotel/motel tax, the county may impose a hotel/motel tax only outside that city (*T.C.A.* 67-4-1425).

State Shared Taxes

State Sales Tax

The state sales and use tax is 7 percent (except for food, on which the rate remains 6 percent), plus an additional 2.75 percent on the portion of the purchase price of single articles subject to local sales taxes from $1,600.01 through $3,200. The 0.5 percent increase adopted in 1992 is earmarked for K-12 education. The 2002 increase from 6 percent to 7 percent on nonfood items accrues to the state general fund. Cities receive 4.2462 percent of the remaining 5.5 percent state tax after deductions, including

funds to support MTAS. A city's share is calculated by computing the city population as a portion of all city residents in the state (*T.C.A.* 67-6-103). (For the most current per capita figure, see MTAS's annual *Hot Topic* on state revenue estimates.)

T.C.A. 67-6-221 levies a 7.5 percent sales tax on interstate telecommunications services sold to businesses. Revenues from 0.5 percent of this tax are distributed to municipalities and counties based on population and must be used for the same purposes as local sales tax revenues.

State Beer Tax

The state levies a $4.29 per barrel tax on the manufacture, sale, and transportation of beer. Cities are allocated 10.05 percent of this money on a per capita basis without regard to legal beer sales in the community. Another 10.05 percent of the revenue is allocated to counties (*T.C.A.* 57-5-205). Chapter No. 355, Public Acts of 2003, reduces revenues accruing to cities from this tax by 9 percent. (For the most current per capita figure, see MTAS's annual *Hot Topic* on state revenue estimates.)

State Mixed-drink Tax

In addition to a state privilege tax, the state levies a 15 percent gross receipts tax on wine and spirit sales (*T.C.A.* 57-4-301(c)). The tax is earmarked for education and local government. Cities receive one-quarter of the tax collected from businesses within their boundaries. Chapter No. 355, Public Acts of 2003, reduces revenues accruing to cities from this tax by 9 percent (*T.C.A.* 57-4-306).

Counties with a population of more than 250,000 (based on the last federal census) are required to pay 30 percent of the portion of the state tax on mixed drinks distributed to the counties to cities in their counties with a population of more than 150,000. Chapter No. 355, Public Acts of 2003, reduces revenues accruing to cities from this tax by 9 percent (*T.C.A.* 57-3-306(c)).

Excise Tax on Banks

Generally, the excise tax on banks is 3 percent of net earnings (excluding interest from state bonds) minus 7 percent of *ad valorem* taxes, with a complicated formula for determining a minimum tax based on a bank's capital stock. Local tax rates determine the payment allocation between the county and the city, so a city must levy a property tax to receive any funds. Another formula is prescribed for allocating such revenue if a bank has branches in more than one city and/or county. Chapter No. 355, Public Acts of 2003, reduces revenues accruing to cities from this tax by 9 percent (*T.C.A.* 67-4-2017).

Hall Income Tax

Three-eighths of the 6 percent state tax on certain dividend and interest income paid by taxpayers is remitted by the state to the city in which the taxpayers live. Payment is made for all such taxpayers no later than the following July 31–based on taxes collected in that city in the preceding fiscal year. Chapter No. 355, Public Acts of 2003, reduces revenues accruing to cities from this tax by one-third (*T.C.A.* 67-2-119).

Like the local option sales tax, the Hall Income Tax is a *situs* tax. Cities should check *situs* codes and file *situs* reports to assure that all revenue due to the city is actually received.

Tax Information

Certain information and data that taxpayers report to the state are open to city officials whose "official duties require such inspection or disclosure for tax administration purposes" (*T.C.A.* 67-1-1704). Any person who divulges or uses this information and data for any purpose other than collecting municipal revenues may be convicted of a felony that carries a maximum $5,000 fine, up to five years imprisonment, or both (*T.C.A.* 67-1-1709).

Litigation Tax

Municipal

A municipality may levy a privilege tax on litigation in all cases in municipal court. The tax must be established by ordinance or resolution and may not exceed the state litigation tax. The tax is collected upon all judgments against the defendant in municipal court (*T.C.A.* 67-4-601; Op. Tenn. Atty. Gen. No. 81-598 (Nov. 9, 1981)).

State

The state litigation tax, like the municipal litigation tax, is collected upon all judgments against the defendant in municipal court. The tax applies in all civil suits and to all criminal charges, upon conviction or by order, instituted in city courts. The tax is in addition to the privilege tax of $26 provided for General Sessions Courts if the city court is exercising concurrent criminal jurisdiction (*T.C.A.* 67-4-601, *T.C.A.* 67-4-602–606). One dollar of the litigation tax is automatically earmarked by the state to be used for grants to purchase electronic fingerprinting systems. This dollar is added to the current litigation tax (*T.C.A.* 67-4-602(g)).

Cable TV/Telecommunications

Municipal governments may grant franchises to privately owned utilities that use public rights of way. The majority of city charters contain procedures for granting franchises. Most franchises require the utility to pay a fee to reimburse the community for using its streets and rights of way.

Within limits established by the Federal Communications Commission (FCC), the Cable Television Consumer Protection Act of 1992, and the 1996 Telecommunications Act, cities may franchise and regulate cable TV operators and even run their own cable systems. The 1992 act provides local governments with some control over customer service standards and rates for "basic" service.

Customer service standards are prescribed by the FCC (47 CFR 76.309). A city may require its cable TV operator(s) to comply with the standards either through the franchise process or by ordinance in addition to the franchise. The standards include:

- Operating a 24-hour telephone service that answers 90 percent of calls within 30 seconds;
- Establishing a "conveniently located" office; and
- Providing "appointment windows" for installation and repair.

A city must notify the cable company in writing 90 days in advance that it intends to enforce the customer service standards.

Cable TV rates may be regulated where there is no "effective competition." Because of the act's definition of this term, it means "just about everywhere." Cities may regulate only basic service. This is the lowest cable tier, which includes local broadcast, "must-carry," and public TV stations. The standards for reasonable rates are based on national averages and the system's number of:

- Channels;
- Channels that are satellite signals; and
- Customers.

The FCC-prescribed standards are structured so that basic service rate regulation by Tennessee cities has yielded few successes in holding down rates. Higher levels of service, including additional tiers, premium channels (HBO, Disney, Showtime, etc.), and pay-per-view services, are not rate regulated on any government level.

State law delegates regulatory power to cities (and counties for unincorporated territories) and outlines the conditions, rights, and obligations of cities, counties, and franchise holders for providing cable TV services. Cities are prohibited from granting overlapping cable TV

franchises on terms more favorable than those in any existing franchise. Before granting a cable franchise, a city must hold a public hearing. A number of specific issues must be considered at the hearing (*T.C.A.* 7-59-101–208).

Cities under the general law modified city manager-council charter have authority to acquire, own, and operate cable TV systems (*T.C.A.* 6-33-101). Under the 1992 Cable Act, all cities may build and operate a cable system in competition with their existing franchise without granting themselves a franchise.

Municipally owned electric utility systems now have the authority to construct and operate cable TV systems in their service areas. However, the cable operation may not be subsidized by the municipality or by the electric system, and it must pay tax equivalents using the same method prescribed for the electric system (*T.C.A.* 7-52-401–407).

In addition to cable TV companies, cities have issued franchises to private companies providing gas, electric, water, steam, and public transportation. State law prohibits a company from acquiring the franchise or property of another company operating under a city franchise without the city's permission (*T.C.A.* 6-54-109).

Municipalities probably do not have the authority to franchise a telephone/telecommunications company or to collect a franchise fee based on the company's income. But, cities may require the firm to pay "police power" rent, *i.e.*, a fee that covers the municipality's direct costs of the telephone/telecommunications company's use of rights of way (*T.C.A.* 65-21-103, *T.C.A.* 65-21-203). (Also see *City of Chattanooga v. BellSouth Telecommunications*, (unreported) 2000 W.L. 122199 (Tenn. Ct. App. 2000.))

City Tag or Wheel Tax

The terms "tag tax" and "wheel tax" commonly are used to describe the regulatory fee levied by some cities on motor vehicles using city streets. *T.C.A.* 6-55-501 provides that "no tax (for the privilege of driving any motor vehicle upon streets) under any guise or shape shall hereafter be assessed, levied, or collected by any municipality." However, *T.C.A.* 6-55-502 somewhat equivocally provides that the law shall not "abridge [a city's] right to require city automobile tags." The same section also authorizes cities to operate automobile safety lanes and inspection stations. Cities are prohibited from imposing a wheel tax on vehicle owners living outside the city (*T.C.A.* 7-51-702).

State vehicle license plates must be stamped in a way that will provide space to display a municipal wheel tax sticker. This provision supersedes any local requirement respecting the display of such stickers (*T.C.A.* 55-4-103(b)). A city may contract with the county clerk of the county in which it is wholly or partially located to collect its motor vehicle regulatory fees when motorists obtain their state licenses from the clerk (*T.C.A.* 7-51-703).

Refuse Collection Fees

Many cities have a long history of charging for collecting garbage and other refuse. Some charge only for pickups from businesses. The Solid Waste Management Act of 1991 explicitly authorizes cities to charge solid waste disposal fees, which may be collected through electric utility bills (*T.C.A.* 68-211-835). Cities that fund waste disposal by special assessment are allowed to bill homeowners on their property tax notices (*T.C.A.* 67-5-103).

Stormwater Management Fees

T.C.A. 68-221-1101 et seq. allow municipalities to levy fees for the privilege of discharging stormwater.

Petroleum Tax

Gas Tax

The Petroleum and Alternative Fuels Tax Law, passed in 1997 and effective January 1, 1998 (*T.C.A.* 67-3-1201–2409), entirely repealed and replaced the previous laws governing petroleum taxes (the "gas tax") in Tennessee. That law imposes a state tax on various petroleum products sold in Tennessee. Most of the proceeds from this tax go into the state highway fund, state sinking fund, state general fund, and other state funds or programs, but the law also provides that counties and municipalities receive a share of the tax. However, tax rates and formulas for the distribution of those taxes, including the share of counties and municipalities, cannot be determined solely from the face of the law. Those rates and formulas require extensive reference to the previous laws governing petroleum taxes and to the public acts upon which they were based, particularly *Public Acts 1985*, Chapters 419 and 454; *Public Acts 1986*, Chapter 931; and *Public Acts 1989*, Chapter 46.

The current state tax rate on various petroleum products sold in Tennessee, the share of those taxes that counties and municipalities receive, and formulas for distribution of the shares of counties and municipalities are reflected below.

Gasoline Tax: 20 Cents Per Gallon (T.C.A. 67-3-1301)

Counties and municipalities receive the following portions of 11 cents:

- Counties — 28.6 percent*
- Municipalities — 14.3 percent*

*Minus 1 percent for administrative costs

(*T.C.A.* 67-3-2001(b) and (c), *T.C.A.* 54-4-103, *T.C.A.* 54-4-204).

Counties and municipalities receive the following portions of 3 cents:

- Counties — 66.6 percent*
- Municipalities — 33.3 percent*

* Minus 1 percent for administrative costs

(*T.C.A.* 67-3-2001(c)(2), *T.C.A.* 67-3-2011(f)(2), *T.C.A.* 67-3-2001(i)).

Limited funding from the gasoline tax for a utility relocation loan program also is authorized under *T.C.A.* 67-3-2001(b)(5) and (j).

Diesel Fuel Tax: 17 Cents Per Gallon (T.C.A. 67-3-1302)

Counties and municipalities receive the following portions of 12 cents:

- Counties — 24.75 percent
- Municipalities — 12.38 percent

(*T.C.A.* 67-3-2005; Op. Tenn. Atty Gen. No. 86-136).

Prepaid Diesel Fuel Tax (T.C.A. 67-3-2409)

A prepaid user diesel tax is levied on the passenger cars and trucks (based on their weight) of certain users of diesel fuel for agricultural purposes, according to the schedule laid out in *T.C.A.* 67-3-2409. Counties' share of that tax is 24.75 percent; municipalities' share is 12.38 percent (*T.C.A.* 67-3-2005).

Compressed Gas Tax: 13 Cents Per Gallon (T.C.A. 67-3-2213)

Counties and municipalities receive the following portions of 9 cents:

- Counties — 24.75 percent
- Municipalities — 12.38 percent (*T.C.A.* 67-3-2005).

Liquified Petroleum Tax: 14 Cents Per Gallon (T.C.A. 67-3-2202)

Counties and municipalities receive the following portions of 9 cents:

- Counties — 28.28 percent
- Municipalities — 14.14 percent (*T.C.A.* 67-3-2008(a)).

Counties and municipalities receive the following portions of 1 cent:

- Counties — 66.6 percent*

- Municipalities — 33.3 percent *

  * Minus 1 percent for administrative costs (*T.C.A.* 67-3-2008(b)).

Except where specifically indicated otherwise:

1. Fifty percent of the counties' shares are divided equally among the 95 counties, 25 percent on the basis of area and 25 percent on the basis of population;
2. Municipalities' shares are divided among them based on the population each municipality bears relative to the to the aggregate population of all municipalities, according to the federal census or a special census as prescribed by *T.C.A.* 54-4-203. (*T.C.A.* 67-3-2001(b), (c), (f)(2) and (i); *T.C.A.* 67-3-2005; *T.C.A.* 67-3-2008; *T.C.A.* 54-4-103; and *T.C.A.* 54-4-204; Op. Tenn. Atty. Gen. No. 86-136); and
3. The money each individual municipality receives under the Petroleum and Alternative Fuels Tax Law is paid into the municipality's state street aid fund and is required to be administered and spent under the law that governs that fund (*T.C.A.* 54-4-103, *T.C.A.* 54-4-204). (For an outline of what expenditures are authorized under the law governing the state street aid fund, see *State Street Aid Fund Expenditures: On the Road to Understanding*, Ron Darden, The University of Tennessee Municipal Technical Advisory Service, January 2003).

Special Privilege Tax; Export Tax

T.C.A. 67-3-1303 levies a special privilege tax of 1 cent per gallon on all petroleum products, and *T.C.A.* 67-3-1306 levies an export tax of one-twentieth of 1 cent per gallon on certain petroleum products exported from Tennessee. Ninety-eight percent of the proceeds from these taxes is paid into the state highway fund, and 2 percent is paid into the state general fund for administrative purposes. From the actual proceeds of those taxes, there is established a local government fund of $12,017,000. "The local government fund shall be used solely for county roads and city streets." Counties receive from this fund the monthly sum of $381,583 based on county population; municipalities receive from the fund a monthly sum of $619,833, based on municipal population* (*T.C.A.* 67-3-2006).

** $10,000 per month is deducted from the municipalities' share to help support The University of Tennessee training program, which is now housed at MTAS.*

Local Option Gasoline Tax for Public Transportation

T.C.A. 67-3-2101 et seq. authorize municipalities and counties to levy a local gasoline tax of 1 cent per gallon to fund public transportation systems, but no local government has used this authority.

Population Counts

Most state-shared taxes are distributed on the basis of population data certified by the Tennessee State Planning Office as of July 1 each year. A rapidly growing city may take, at its expense, three citywide censuses between federal decade counts to keep its revenue current. After the local census is certified by the State Planning Office, the new population count is used to compute state-shared revenues the following July (*T.C.A.* 67-6-103(b)(3), *T.C.A.* 54-4-203(b)). Special censuses that count newly annexed residents of a city are not subject to the three-per-decade limit (*T.C.A.* 6-51-114). (See *Special Censuses: Ruminating About Enumerating?* by Mary Beatty and Rebecca Crowder, The University of Tennessee Municipal Technical Advisory Service, February 1994.)